

PROCEEDINGS IN EQUITY

1919—1921

Concerning Deed of Trust

of January 25, 1898

CONSTITUTING

The Christian Science Publishing Society

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# PREFACE

At the time the Bill in Equity in the so-called Christian Science case was filed in the Supreme Judicial Court of Massachusetts (March 25, 1919), the Trustees of The Christian Science Publishing Society intended to have no reference to that controversy in the courts appear in the Christian Science periodicals. Believing, however, that the Christian Scientists should not be kept in ignorance of what was taking place among those charged with certain duties and responsibilities to the Christian Science movement, they had copies of the Bill in Equity printed and sent them to the subscribers of the Christian Science periodicals. Later the Board of Directors and Mr. Dittmore sent out printed copies of their answers.

A short time before the hearings on the Bill in Equity before the Master, the Directors of The Mother Church urged that the court proceedings be reported in The Christian Science Monitor. The practical impossibility of reporting the case in the ordinary manner without occasioning criticism from either or both parties to that action because of what might appear to be partial or biased reports, was foreseen. The Trustees of the Publishing Society, therefore, although cognizant of the Herculean task imposed by publishing each night the entire proceedings which had taken place in the court during the day, nevertheless decided, after due consideration, to publish these proceedings verbatim, without comment, in The Christian Science Monitor. Reports of the hearings were made by the official court stenographers, who translated these reports and furnished typewritten copies to the Monitor for publication. The record published in the Monitor was made directly from (was a copy of) these official reports of the hearings. Owing to the haste necessary in transcribing and composing, as well as to the unfamiliarity of terms and words common to Christian Scientists but unusual to those unacquainted with Christian Science terminology, both the typewritten reports of the stenographers and the printed reports in the Monitor contained a number of typographical errors. Upon most careful comparison, however, by all the attorneys, as well as the parties, not a single mistake was found in the entire transcript of the case as published which materially affected the meaning of any statement or sentence.

The publishing of the verbatim report in the Monitor had a salutary effect in that it tended to discourage exaggerated or prejudiced reports of the hearings in other newspapers and publications. After publishing the first day's proceedings in the Monitor, the same type was used for printing extra copies in more convenient form for the use of the court and counsel. Nearly a thousand extra copies were printed on sheets, some of which were furnished gratuitously to the individual parties, their counsel, and to the Master, and some of which were filed as part of the records of the Publishing Society itself; from day to day throughout the hearings, this printed record was the one used by all of the counsel and the court, as well as the parties.

When the case was finally submitted before the full Bench, about eight hundred of these printed sheets remained. As these could be bound into convenient book form, it was decided to do so and to offer these books to the Christian Scientists who may desire to know what questions were involved in the case and what testimony was given during the trial, so that any Christian Scientists who so desired, might be correctly informed.

The record of the trial contains much valuable history relating to the Christian Science movement, including the establishment and development of The Mother Church, the Board of Directors, The Christian Science Publishing Society and the Board of Trustees, and the relation of our Leader, Mary Baker Eddy, to these activities, and will prove of increasing value and interest to the Christian Science movement in years to come.

# Errata

Note—This list does not include misspelled words.

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|--|---|
| Page 67, col. 3—“July 28, 1919” should read “July 25, 1919.”                     | Page 586, col. 2—“Mrs. McKenzie” should read “Mr. McKenzie.”  |
| “ 80, “ 2—“it” (referring to Manual) “contains” should read “Journal contains.”  | “ 591, “ 3—“torn up” should read “drawn up.”  |
| “ 104, “ 1—“lines 19 to 21” should read “lines 17 to 19.”                        | “ 672, “ 2—“directors’ records” should read “trustees’ records.”  |
| “ 113, “ 2—“for beyond” should read “far beyond.”                                | “ 672, “ 3—“directors’ records” should read “trustees’ records.”  |
| “ 133, “ 3—“W. D. McKenzie” should read “W. P. McKenzie.”                        | “ 718, “ 1—“Jan. 18, 1898” should read “Jan. 15, 1898” (in Ex. 784a).   |
| “ 135, “ 3—“Board of Directors” should read “Board of Trustees.”                 | “ 723, “ 1—“\$42,755.22” should read “\$42,755.32.”   |
| “ 174, “ 2—“appoint” should read “appointment.”                                  | “ 734, “ 1—“Mr. Whipple—I should like to offer,” these words out of place, should be at top of column.                          |
| “ 177, “ 1—“March 8, 1919” should read “March 18, 1919.”                         | “ 818, “ 1—“changes” should read “chances.”   |
| “ 194, “ 2—“\$70,699.66” should read “\$70,699.88.”                              | “ 879, “ 3—“Mr. Eustace” should read “Mr. Rowlands.”  |
| “ 258, “ 2—“First of Executive” should read “First or Executive” (in Ex. 173).   | “ 885, “ 3—“Then the question came us” should read “Then the question came on.”   |
| “ 290, “ 3—“Feb. 10, 1910” should read “Feb. 10, 1919” (in Ex. 208).             | “ 890, “ 1—“necessary to find our” should read “necessary to find out.”   |
| “ 292, “ 2—“Feb. 20, 1919” should read “Feb. 21, 1919” (in Ex. 213).             | “ 1033, “ 3—“the trustees sent this letter” should read “the trustees sent this telegram.”                                      |
| “ 306, “ 3—“conditions” should read “additions” (in Ex. 246).                    | “ 1035, “ 2—“(2) to Mr. McKenzie dated April 23” should read “(2) to Mr. McKenzie dated April 22.”                              |
| “ 312, “ 2—“Board of Directors” should read “Board of Trustees” (in Ex. 267).    | “ 1084, Ex. 793—“March 19, 1902” should read “March 17, 1902.”  |
| “ 314, “ 2—“Board of Directors” should read “Board of Trustees” (in Ex. 289).    | “ “ “ 794—“March 14, 1903” should read “March 31, 1903.”  |
| “ 325, “ 2—“June 29, 1918” should read “June 22, 1918” (in Ex. 351).             | “ “ “ 745—“June 6, 1904” should read “May 11, 1904.”  |
| “ 326, “ 1—“Exhibit 256” should read “Exhibit 356.”                              | “ 1095, col. 3—“(2) Petition and decree of court, July 29, 1906” should read “(2) Petition and decree of court, Jan. 29, 1906.” |
| “ 349, “ 1—“No Monopoly, Sect. 31” should read “No Monopoly, Sect. 30.”          |   |
| “ 419, “ 1—“marked Exhibit 567” should read “marked Exhibit 561.”                |   |
| “ 421, “ 3—“I do no think” should read “I do not think.”                         |   |
| “ 430, “ 2—“Jan. 7, 1918” should read “Jan. 7, 1919” (in Ex. 614).               |   |
| “ 433, “ 1—“bequests” should read “requests.”                                    |   |
| “ 455, “ 2—“Exhibit 24, on page 30” should read “Exhibit 23, on page 30.”        |   |
| “ 470, “ 2—“saw what else was said” should read “say what else was said.”        |   |
| “ 509, “ 3—“Mr. Dittimore’s marks on it” should read “Mr. Dickey’s marks on it.” |   |
| “ 566, “ 2—“well you don’t know as a mat-” these words are left out.             |   |
| “ 567, “ 1—“Sept. 26, 1918” should read “Sept. 21, 1918” (in Ex. 713).           |   |

## SUPPLEMENT

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| Page 4, col. 3—“Exhibit A” should read “Exhibit B.”                                     |
| “ 28, “ 2—“before of no value” should read “be of no value.”                            |
| “ 53, “ 1—“If it were for” should read “If it were not for.”                            |
| “ 61, “ 1—“very well, you you are” should read “very well, you who are.”                |
| “ 117, “ 1—“and them demurrers were filed” should read “and then demurrers were filed.” |
| “ 117, “ 1—“a little for me to analyze” should read “a little hard for me to analyze.”  |

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Full Report of the  
Hearing on Bill in Equity

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# Hearing on Bill in Equity

Full Report of the Testimony before the Special Master as Transcribed from  
the Notes of the Official Stenographer, and printed in  
The Christian Science Monitor

BOSTON, Massachusetts—Hearings of the suits of the Board of Trustees of The Christian Science Publishing Society vs. the Christian Science Board of Directors and J. V. Dittmore, and of J. V. Dittmore vs. the Christian Science Board of Directors began before a Master in the Supreme Judicial Court of the Commonwealth of Massachusetts, Tuesday, June 3, 1919.

June 3, 1919

## COMMONWEALTH OF MASSACHUSETTS

Supreme Judicial Court

Suffolk, ss. No. 30654. In Equity  
Herbert W. Eustace et al. v. Adam  
H. Dickey et al., Defendants.

Suffolk, ss. No. 30788. In Equity  
John V. Dittmore, Plaintiff, v.  
Adam H. Dickey et al., Defendants.

Before Hon. Frederic Dodge, Master.

### Appearances:

Hon. Charles E. Hughes (of New York); Messrs. Whipple, Sears & Ogden (Sherman L. Whipple and Lothrop Withington, Esqrs.); and Silas H. Strawn, Esq. (of Chicago), Counsel for Plaintiffs Herbert W. Eustace, David B. Ogden and Lamont Rowlands.

Messrs. Bates, Nay, Abbott & Dane (Hon. John L. Bates); Clifford P. Smith, Esq.; and Edwin A. Krauthoff, Esq. (of Washington, District of Columbia), Counsel for Defendants Adam H. Dickey, James A. Neal, Edward A. Merritt, William R. Rathvon, and Annie M. Knott.

Messrs. Streeter, Demond, Woodworth & Sulloway (Hon. Frank S. Streeter and Fred C. Demond, Esq.), William G. Thompson and Romney Spring, Esqrs., Counsel for John V. Dittmore, as he is a Defendant in No. 30654, and Plaintiff in No. 30788. Court House, Boston, June 3, 1919.

Mr. Whipple—May it please Your Honor, the cases which have been referred to Your Honor by order of the Supreme Judicial Court, under the ordinary rule to a special Master, are entitled, the first one

Herbert W. Eustace of Boston, David B. Ogden of Brookline, Lamont Rowlands of Picayune, in the State of Mississippi, in their official capacity as trustees under a deed of trust dated Jan. 25, 1898, wherein Mary Baker G. Eddy is the donor;

The defendants are Adam H. Dickey, James A. Neal, Edward A. Merritt, of said Brookline, and William R.

Rathvon, as they are trustees under a deed of trust dated Sept. 1, 1892, wherein Mary Baker G. Eddy is donor; and a declaration of trust supplementary thereto and in amendment thereof, dated March 19, 1903, and as they are also Directors of The First Church of Christ, Scientist, in Boston, Massachusetts; and John V. Dittmore and Annie M. Knott, both of said Boston, each claiming to hold the position and office of trustee and director in association with the other defendants.

The suit was brought in the manner described because just prior to the filing of the bill the four remaining directors attempted to oust Mr. Dittmore from his office as a director, attempted to remove him, and attempted to elect Annie M. Knott as his successor, as one of the directors.

I do not mean to suggest by that form of speech that they either failed to oust Mr. Dittmore or to elect his successor, but merely to indicate that there is a claim on the part of Mr. Dittmore that he was not properly ousted, that he is still one of the directors of The First Church of Christ, Scientist, and that Mrs. Knott was not duly elected, of course, as his successor.

That leads me to say that a second suit has been referred to Your Honor in which that very controversy is raised as the principal and perhaps the only issue. That is a suit by Mr. Dittmore against four of the other defendants in this suit who were his associate trustees, and perhaps still are, and Mrs. Knott is also named as a defendant.

By a subsequent order of the Court that dispute or controversy was referred to Your Honor, with the direction that it be heard with this bill in equity in which Eustace and others are plaintiffs. An intimation was given by the presiding justice as to the way in which they should be heard, and I think we shall have no disagreement as to the order of procedure, although we may find it necessary to take Your Honor's direction. The suits are in no respect consolidated, but since they deal with kindred and in some respects similar matters it was thought that there would be an economy of time if, when evidence was taken that applied to both suits, it might be so applied without a repetition in an independent suit.

The Master—I suppose, as the evidence is put in under these orders of the Court, the evidence in one case would apply to the other, wouldn't it?

Mr. Whipple—It would.

The Master—The order is that the above entitled case, namely, Dittmore v. Dickey, be heard with Eustace et al. v. Dickey et al.

Mr. Whipple—Yes, Your Honor, and that was for the very purpose of making it possible that there should not be a duplicate presentation of that part of the evidence which applies to the issues in both cases. I understand, although I was not present, that that was the purpose of the Judge.

The Master—Is that agreed to by counsel?

Mr. Bates—Yes, Your Honor.

Mr. Whipple—We had rather assumed that, our suit having been brought first, we should be called upon to proceed in the first instance, but desire to do that with the assent of all the parties, if that is their understanding of it, unless some other procedure should seem better and should be directed by Your Honor. I think the matter of the procedure in the two cases is left entirely in the hands of Your Honor; there is no other direction to Your Honor from the Supreme Court except what is contained in the order.

I took the liberty, with the assent and knowledge of all the other counsel, of sending to Your Honor a copy of each bill and a copy of all of the answers, and also the bill and answer or answers in each case arranged in parallel pages, so that you could readily compare the bill and the answer paragraph by paragraph. I assume Your Honor may have read those papers, or some of them, so that perhaps when we get to the point it will not be necessary to re-read all of the bills and answers, but it may be sufficient to refer to the various controversies and various issues by way of opening.

Since this assignment was made, as we have already notified Your Honor, another and collateral matter has come up in the Supreme Judicial Court and is on the list for this morning; and, while it is not likely to be reached for some hours, it had been thought best and I understand agreed by all the parties, that we should merely do enough this morning so that the cases might be considered as having been begun and under way, which

would protect all the counsel from other engagements; and that, having met Your Honor to receive, if you desire to give them, any directions as to procedure, we would then suspend until the proceedings in the Supreme Court have been finished.

I may say, as to the appearances, if you want me to state them I will do so.

The Master—I take it by consent this is the first hearing before the Master?

Mr. Whipple—Yes, Your Honor.

The Master—And everybody agrees to that?

Mr. Whipple—Yes, Your Honor.

The Master—There have been no notices of the hearing sent out by the Master, and except by consent I do not know that this is a hearing.

Mr. Whipple—We all consent to it as the first hearing, which will place us in a position where we may adjourn from time to time subject to Your Honor's direction. Shall I state to Your Honor the appearances?

The Master—I think it would be well. First, about your record. Is there an agreement with regard to that?

Mr. Whipple—Yes, Your Honor.

The Master—Have you a stenographer who is agreed on—a stenographer agreed on by all hands?

Mr. Whipple—I think so. I asked, or we asked, and I understand with the assent of all that Mr. Richard H. Jones, who is a very well known stenographer, should furnish the necessary force, and two associates of Mr. Jones are present busily engaged.

The Master—Perhaps it would be well to have that agreement become a part of the record, then.

Mr. Whipple—It might.

The Master—I mention it because I have known of cases where in the absence of an agreement there was some confusion later on.

Mr. Whipple—Well, we are agreed that Mr. Jones shall serve, with the discretion on his part to employ his assistants. As to the distribution of expense, I suppose something ought to be said. We are proposing to have sufficient stenographers so that the evidence may be transcribed hourly, and the usual way, where there are three-cornered issues, is to divide it into thirds. I do not know whether there is any other suggestion on the part of anybody here or not.

Mr. Thompson—I understand, if Your Honor please, that there is a gentleman who wants to be furnished with a copy outside of counsel, for the purpose of publishing a verbatim account of everything that goes on here. Now, if he is furnished with a copy, that would divide the expense into fourths instead of thirds and make it somewhat easier for the parties. That is a matter about which our client would be interested, because he is a lone contestant here without anybody behind him except such of his friends as may desire to assist him, and it is

a matter of considerable moment to him what the expense of these mechanical appliances may be, and if he can in any way avoid paying a third and escape with a quarter, it is a material matter to him. Now, if there isn't any objection I should like to have it understood that the stenographers will furnish, not merely four copies, one for Your Honor and one for each of the parties, but five copies, and that the expense be divided into four parts and not into three, a fourth being paid by the gentleman, who I think is known to everybody here and as to whose personality I think there could be no objection. He desires to be furnished with a verbatim copy in order that he may publish it.

The Master—I take it that is a matter of agreement between counsel.

Mr. Whipple—We have no objection to that; indeed, we think it has this advantage. I understand that Mr. Swan desires the copy in order that he may use it for publication. Unquestionably the public have a right, or the newspapers have a right, to publish the testimony if it is a fair and accurate transcript; therefore this suggestion seems to make it sure that they will get the transcript absolutely accurate, and since they are entitled to have it anyway it is for the benefit and advantage of all of them that they have an accurate copy.

Mr. Bates—May it please the Court, we represent the Board of Directors de facto, five of the defendants named in these suits. We have no objection to the suggestion that has been made in regard to the stenographer, as to who shall do the work, and in regard to the division of the expense.

Mr. Whipple—We shall desire an extra copy or two, but we will pay for that as an extra expense assessed upon us. I suppose anyone can order an extra copy and pay that expense themselves. It is understood then, as I understand it, that there will be five copies furnished—one to Your Honor, one to each of the three parties, and one to Mr. Swan for the purposes that have been indicated.

Mr. Thompson—Let us get his full name. William U. Swan.

Mr. Whipple—William U. Swan—and that the expense so far shall be divided into quarter parts, to be shared by every one except Your Honor, and any one of the parties may order extra copies at their own expense. We shall want one extra copy.

Mr. Bates—May it please the Court, I assume that the extra copy which Mr. Whipple speaks of is something that he will arrange in regard to with the stenographers himself.

Mr. Whipple—Yes.

Mr. Bates—We shall expect to arrange for an extra copy also, but that is a matter between ourselves and the stenographers, I assume.

Mr. Whipple—Yes; I have just stated that I should want an extra copy.

Mr. Bates—Mr. Whipple has stated that Mr. Swan is to be the party who is to bear the expense of the fourth

copy. I had understood that this was to be a copy for The Christian Science Monitor, and we were ready to pay for a share of that, as stated. Mr. Swan I understand represents The Boston Herald, and if he represents The Boston Herald I am not at all certain that we ought to make that arrangement. I would like to know whom Mr. Swan does represent and what authority he has to so represent them.

Mr. Thompson—Inasmuch as I first mentioned this matter I might explain as to what I know, in so far as I do know, and then let Mr. Swan explain the rest. I do not understand that Mr. Swan represents The Boston Herald in any respect or at any time. I understand he has some connection with them as a reporter, but in this particular transaction he has no connection with the Herald at all. It is not proposed that The Boston Herald shall publish these accounts that Mr. Swan is getting verbatim. It would be away beyond the resources of any newspaper and beyond the space, to do that. As I understand the matter, Mr. Swan is undertaking on his own account to furnish to persons who subscribe to him personally at so much apiece absolutely verbatim copies of everything that takes place here, and he receives his pay from the persons who desire to obtain these copies from him which he has printed. It is a considerable speculation that he has entered into, involving the expenditure of considerable sums of money. In so far as he is a reporter he might summarize, if he were working for the Herald; so far as this transaction is concerned it is supposed to be an absolutely verbatim publication, without comment, summary, change or alteration in any respect. If I have misstated it I think Mr. Swan had better explain it himself; and if he has anything to add, if he desires to, he should do so now.

The Master—Let me see if I understood Mr. Whipple. There were to be five copies in all, one to go to each of the three parties, if we may so call them, in the case, one to Mr. Swan, one to the Master, and then the expense of the five copies was to be borne one-quarter each by the three parties and by Mr. Swan. That is the way I understand it.

Mr. Whipple—That is right.

Mr. Bates—I do not think that Mr. Swan should be recognized as a party of record in this case. Let me state to Your Honor—

The Master—I did not quite gather from Mr. Whipple that he was to be recognized as a party.

Mr. Bates—Only as a party to this agreement, I will state, then.

The Master—As a party to this agreement?

Mr. Bates—It has been stated to me by the editor in chief of The Boston Herald within a comparatively few days that Mr. Swan was their Christian Science editor. The statement was made because I had complained of articles which were being

published in The Boston Herald which we thought deliberately misrepresented the whole case, and it was told to us that Mr. Swan was their Christian Science editor and was responsible for those articles. Under those circumstances I certainly object to making any agreement that includes him in this matter.

Mr. Thompson — Does counsel realize the fact that he is asked, not to make an agreement with The Boston Herald or in any wise to facilitate the publication of anything injurious or beneficial in The Boston Herald, but merely to reduce the expense by a fraction of the taking down and getting out by these stenographers of a literal account of what takes place? It passes my comprehension how, if it were the foul fiend himself doing it, it could hurt or help any party in this case in his interest as a litigant. It simply reduces the expense. I must confess that it seems singular to object to something which is urged by Mr. Dittmore simply for the purpose of reducing a little the enormous expense of this litigation to him, who is least able of all the parties here to bear any expense in this case.

Mr. Bates—May I add one word more, Your Honor? It was stated to us by my brother that the purpose was to have this published in The Christian Science Monitor in full, which is the organ of the church that is interested in these cases. That we did not object to. The publishers of The Christian Science Monitor are the trustees who are parties to these suits. If they want a copy for The Christian Science Monitor, then we are willing to agree to that, but we are not willing to agree to share the expense with Mr. Swan, or any outside parties, so that they may have a copy to use for any purpose that they may please. Our agreement was limited to the idea of it being published in The Christian Science Monitor; if anybody else wants a copy they should make an arrangement entirely independently of us.

Mr. Whipple—If Your Honor please, the extra copy which we ordered is for publication in The Christian Science Monitor; that will be ordered at our own private expense as trustees; we do not wish to ask anyone to share in that expense. The Monitor, as the official organ of the Christian Science faith, has felt that these proceedings ought to be reported to the field, as it is called, very accurately. A transcript of the evidence and whatever is said, and an account of whatever is done before Your Honor, will be published in that newspaper in full, without comment. But the trustees, whom we represent, who are charged with the duties of management of the Monitor, have not felt that they rightfully might attempt to exclude or make difficult to any other journal or newspaper, or to any person desiring to publish what is said with equal accuracy, and send

it out to those interested—that they should be deprived of the opportunity and that the Monitor itself should have the exclusive publication of that news, although it would be manifestly for its advantage so to do. Any newspaper would have the right to have a stenographer present and take the testimony independently, as I understand it, and bear the expense of it.

The Master—I understand that there is a rule of the Court in regard to it.

Mr. Whipple—Yes, Your Honor. The Chief Justice in a comparatively recent case stated that the hearings before a master, where the master takes the place of the Court, are just as open as hearings before the Court itself, and that the testimony is to be taken publicly; and the only result, if the accurate transcript really is for the Herald, would be to make it cost that newspaper more than they otherwise would have to pay for it, and it would make the parties here pay the full expense, when Mr. Swan or the Herald, or whoever is making the request, offers to share the expense.

The Master—I take it that this is a matter for your agreement, gentlemen. It is nothing for me to rule upon; I could not rule on it against objection, I suppose.

Mr. Whipple—I think that that is a matter of private accommodation, but I see no reason why the stenographer should not take an order from Mr. Swan at such rates as he might agree upon with the stenographer. Do you see any objection to that, Governor Bates?

Mr. Bates—I assume that they are in our employ and take this case for our benefit and that they do not have the right to give out copies unless we may so direct them.

Mr. Thompson—I do not understand anything of the sort, and I assumed that that was at the bottom of the objection made by Governor Bates. Now the cat is out of the bag. He does not mind the extra expense that he is putting on Mr. Dittmore, but what he does want is to deprive Mr. Swan from getting a verbatim copy of what takes place in this room and sending it to whom he pleases. In other words, to that extent Governor Bates is unwilling to have proper publicity in this case, and that is the nature of his objection. I strongly object to any arrangement which prevents Mr. Swan from buying, paying for and getting whatever takes place here, exactly as it takes place; in other words, from letting the truth be known—which is at the bottom of my brother's objection.

Mr. Whipple—May I offer a friendly suggestion? That it is perfectly competent for General Streeter or Mr. Thompson to order an extra copy and deliver it to Mr. Swan, or to The Boston Herald, or anybody else they see fit to deliver it to, provided the purpose is a proper one, and no one would think for a moment that it were otherwise than entirely proper. Perhaps that would solve the difficulty.

Mr. Bates—We are not disposed to disclose your private transactions, Mr. Whipple. Those are not an issue in this case. If you see fit to buy a copy and present it to somebody we should have no objection; at least, if we had we should not raise it. What we do object to—

The Master—If you will pardon me for the interruption, then, there is no conflict between you as to this point. Mr. Jones, as the stenographer, is required to furnish a copy for the Master, a copy for each of the three parties in the case, and, beyond that, as many copies as he likes to anyone who orders them and is willing to pay for them.

Mr. Bates—To anyone who is counsel in the case.

The Master—To anyone who is counsel in the case?

Mr. Bates—To any who are counsel in the case.

The Master—Not to anyone except counsel?

Mr. Bates—I don't think they have that right. We employ them and pay them for their time, and the notes which they have belong to us. We pay them for writing them out. I think counsel have the right to order as many copies as they please.

The Master—If there is a difference between you I think you had better settle it.

Mr. Bates—That I am right I think is shown by the fact that they endeavored to obtain a copy by agreement in this way; if they had understood they could get it they wouldn't have done so.

The Master — The agreement that they suggested as I understood it—and I may have misunderstood it—related mainly to sharing the expense.

Mr. Bates—Well, Mr. Swan represents one city paper that has been conspicuously hostile to the Christian Science Church and the Christian Science movement, and that no longer ago than this morning published a misrepresentation of matters that occurred yesterday at their annual meeting. We object to entering into any bargain with representatives of a newspaper that is not fair or treating this matter fairly, even though he may pay for the whole of it.

Mr. Thompson—Let us have it thoroughly understood. There is no objection to my taking my copy, or buying two copies, and turning over one of them to Mr. Swan on such terms as I please, is there?

Mr. Bates—I have previously said that I think Mr. Thompson has the right to order more copies if he wishes to do so, and we are not going to concern ourselves with what he does with them.

Mr. Thompson—In other words, while you have no legal or other objection to Mr. Swan getting a copy and paying for it through me or Mr. Dittmore, you do desire to put a fraction of the extra expense on Mr. Dittmore, when you could just as well leave it off, having no more and no

less happen by making the financial arrangement that I have suggested.

Mr. Bates—We do not wish to prolong this controversy, Your Honor, but the absurdity of the position is shown by the statement of it. If he is going to get two copies, and get his extra copy at reduced rates at which extra copies are obtained, he can then give it to Mr. Swan or The Boston Herald, and get the full quarter that they were going to pay on this, and instead of Mr. Dittmore being harmed in the matter he would be assisted by it, but it prevents our becoming parties with those who have shown themselves hostile.

Mr. Thompson—That is not a correct financial statement of it.

The Master—Well, this is hardly a controversy; it is a matter of discussion as to a proposed agreement. We had better get the agreement, I think, in writing, and then we will know just what it is before we go ahead.

Mr. Thompson—I understand now the agreement is that the expense is divided into thirds for four copies, and any extra copy each counsel pays for himself. That is all there is to it.

Mr. Whipple—And he may use it as he pleases.

Mr. Thompson—To use as he pleases; the stenographer is at liberty to sell as many copies as he wants to, to counsel, and counsel in turn is at liberty to turn it over to whomever he pleases.

The Master—Would it not be well to draw that up in writing?

Mr. Streeter—Your Honor, is it possible that we have got to make an agreement with Brother Bates that we can use a couple of copies of this stenographic report as we please, assuming that it is legitimately used? I cannot see the occasion for all this extended controversy about it. The Governor apparently does not want Dittmore or Swan or anybody that he does not like to be relieved in the slightest degree of expense. Well, now, we can take care of that. We get three copies, one for each party. If they object to Swan's having it we will order another copy, and, as I understand it, under the law that is our copy and we can do as we have a mind to with it provided it is legitimately used. I do not see any occasion for going on with any controversy about that with Brother Bates.

Mr. Bates—All I object to in General Streeter's statement is that I object to Mr. Swan, because I do not like his having a copy. Personally I like Mr. Swan, and have for years; but I do object to any paper having a copy or any portion at our expense when that paper cannot show itself fair in its columns in a controversy of this kind.

Mr. Thompson—I think before we go further a general denial should be inserted here. As far as I have read what has come out in the Herald it seemed to me the only objection to it was that it was too conspicuously fair to the directors.

Mr. Whipple—If this discussion is to go on I should think the Herald ought to be represented, as it seems to be at the point of attack.

Mr. Bates—I will make one suggestion, Your Honor, and that is this: If Mr. Swan will agree that The Boston Herald will publish the whole of these proceedings verbatim, without any comment, as I understand The Christian Science Monitor proposes to do, I will be glad to enter into any agreement The Boston Herald desires to that end.

Mr. Thompson—I think Mr. Swan would like to say something at this stage, if Your Honor pleases.

Mr. William U. Swan—May it please Your Honor, I occupy two positions at this hearing. I am a representative of the Court Information Bureau, which has promised the Christian Science field to publish a verbatim report of this hearing without comment. I am also a newspaper man, and representing here nearly all the papers in the country. I represent not only The Boston Herald, The New York Herald, but a large number of the other papers which have asked me to look after the story of this hearing, the newspaper story, through the boys who are here in the Court House covering these hearings. Therefore I am here in that dual capacity. I have therefore made this request for a stenographic report in order that I may furnish it to this Court Information Bureau, which I have organized for the benefit of the Christian Science field, in order that they may receive a full, unbiased and unexpurgated report of these hearings.

Mr. Bates—May it please the Court, one suggestion made by Mr. Swan simply emphasizes our position, because the only two papers that have been mentioned, The Boston Herald and The New York Herald, are the only two papers that have assumed this attitude in the whole country, so far as we know. No longer ago than last Sunday an article from Boston, whose representative we have just heard from, appeared in The New York Herald that was highly offensive and I think would have made the writer of it subject to contempt proceedings. It is not the first article. They have been publishing them for several weeks. The New York Herald and The Boston Herald are in the same boat in that respect, and they are the only two papers that have not treated this matter right.

Mr. Streeter—May I ask Your Honor what we are talking about? What is the issue here? I cannot see it.

The Master—I hardly think that is directed to any issue before the Court, General Streeter.

Mr. Streeter—Or not before the Court.

The Master—Governor Bates declines to modify his position, as I understand it; therefore it leaves the matter in this form according to the understanding of the Master: The stenographers to make four copies, one to go to the master, one to each

of the three parties involved in the suits, the expense to be shared in thirds by them, either party to be at liberty to order other copies at its own expense.

Mr. Bates—Yes.

Mr. Streeter—That is exactly it.

Mr. Whipple—If there are no other matters, if Your Honor please, to be taken up, I would suggest an adjournment.

The Master—Would it be well, Mr. Whipple, to get the appearances of counsel on record, or isn't that necessary?

Mr. Whipple—I was about to state the appearances of counsel, but most of the counsel have introduced themselves somewhat vivaciously already, so there would be very little left to be done in that respect. The counsel for the plaintiffs in the first bill in equity—

The Master—I take it the appearances of counsel are on file in the case already?

Mr. Whipple—Yes, Your Honor, but with regard to the plaintiffs, one other counsel is—

The Master—Before the Master it might be well to have a record of counsel who appear for the purpose of this hearing; it may be they are not all here.

Mr. Whipple—Of the counsel for the plaintiffs, Judge Hughes of New York—

The Master—Now we are on Eustace et al. v. Dickey et al.?

Mr. Whipple—Yes. Former Judge Charles E. Hughes of New York, of counsel, is not present this morning, but it is expected and hoped that he may be present during some of the hearings before the Master. Mr. Strawn of Chicago is present; Silas H. Strawn, Esq., of Chicago, is present. Lothrop Withington, Esq., will be present and participate in the trial, and Sherman L. Whipple. That covers the appearances and participants in the trial on behalf of the plaintiffs in the first suit.

The Master—Now, the defendants, Adam H. Dickey et al.?

Mr. Bates—May it please the Court, the defendants Adam H. Dickey, James A. Neal, Edward A. Merritt, William R. Rathvon and Annie M. Knott, whom we claim to be the Board of Directors of the Christian Science Church, and surely the de facto board, are represented by Clifford P. Smith of Boston, Edwin A. Krauthoff of Washington, and my firm, Bates, Nay, Abbott & Dane. We represent the same parties in each suit.

The Master—Now we come to the second case.

Mr. Streeter—In the second case, Mr. Thompson and my partner, Mr. Fred C. Demond, and myself, appear for Mr. John V. Dittmore, who is in the second case the plaintiff, and for him as a defendant in the Eustace case.

Mr. Thompson—It ought to be said that General Streeter himself is senior counsel.

Mr. Streeter—I don't think that is very material.

The Master—That gives us the counsel in the second case.

Mr. Whipple—We are not in the second case, the trustees are not in the second case, in which the appearances have been stated. That is purely between Mr. Dittmore and his former associates, the directors, and Mrs. Knott.

The Master—Is there anything else we need to arrange at this hearing?

Mr. Whipple—Nothing except the date of the next hearing, and I was about to suggest that if we should not trespass too much upon Your Honor we would like to suspend the hearing merely and notify Your Honor as soon as the engagement to which I referred earlier in what I said is finished. We might at this time, if Your Honor felt like giving it, receive Your Honor's directions in regard to the opening. Of course, the plaintiffs would make their opening in our case, I take it, in the first instance.

The Master—Now, if I understand you, the hearing is to be suspended until further notice.

Mr. Whipple—Not formal notice—

The Master—Who is going to give notice?

Mr. Whipple— —but we will notify you informally as soon as we are released from the obligation in the Supreme Court.

The Master—That is to be by consent?

Mr. Whipple—Yes, Your Honor.

The Master—You will agree upon another time and notify the master?

Mr. Whipple—Yes, Your Honor; and that other time will be just as soon as we have finished in there unless we agree on something else.

The Master—Now, as to the opening.

Mr. Whipple—I have assumed that we should proceed for the trustees with our opening in the first instance. Then whether Your Honor will ask to have the second case opened, or whether you will ask an opening on the part of the defendants, I suppose may properly be determined before the evidence is put in, or perhaps they would not care to make any.

Mr. Bates—I didn't hear.

Mr. Whipple—Do you care to make any opening before any evidence is put in?

Mr. Bates—Not if the pleadings are to be read.

Mr. Whipple—All right; we will read them.

The Master—Are you going to read the pleadings in full? I have them in print here.

Mr. Whipple—Either read them or summarize them.

The Master—What do you say about that, Governor Bates?

Mr. Bates—Why, we will proceed either way; we will make a comparatively brief opening with the understanding that we shall be permitted to make a longer one at the time when we come to the defense, or we will agree that in case the pleadings

are read in full then we will waive any opening at the outset of the case.

Mr. Whipple—Well, we will either read them in full or substantially in full; I mean, we will be able to summarize a good deal of the statement of facts about which there is no dispute.

Mr. Thompson—Why wouldn't it be proper to say that anybody who wanted could read as liberally as he chose from the pleadings?

Mr. Whipple—That is right. "

Mr. Thompson—And if that is so we do not care to open our case at first or until the time comes for a more formal opening later.

The Master—These were sent to me some days ago, and I read them through, so that as the matter seems likely to take a good deal of time perhaps we can economize to some extent by summarizing the pleadings. I will leave that entirely to you. Now, Mr. Whipple raises this point. I understood you, Mr. Whipple, that your suggestion was that your case being the first one on the docket, Eustace et al. v. Dickey et al., you being the plaintiffs in that case, that you begin, according to the usual rule. Is there any objection to that?

Mr. Bates—No.

The Master—Very good. The plaintiffs will then begin in that case and put in their evidence, and then the defendants, first, those represented by Governor Bates and his associates, and then those represented by General Streeter and his associates. Is that right?

Mr. Whipple—Yes.

The Master—And then after we get through with that you probably can tell better what ought to be done in the other case than you can now.

Mr. Thompson—Then after Governor Bates has put in such defense as he cares to put in, if there should seem to us to be anything left over which is material to Mr. Dittmore to put in, I suppose that would be the proper time for us to put it in.

The Master—And then rebuttal, in the usual way, of course.

Mr. Whipple—And then take up the second case.

Mr. Bates—Is it, then, Your Honor's intention to hear the entire evidence in the Eustace case before hearing any evidence in the Dittmore case?

The Master—As I understood it, we had already agreed that the evidence in one case was to be evidence in the other. I suppose, therefore, that when we have got the evidence all in in the case of Eustace v. Dickey we shall have already in a very considerable portion of the evidence that belongs to the second case.

Mr. Bates—Then from that I assume, Your Honor—

The Master—And it will not be necessary to put it in all over again.

Mr. Bates—I assume that in examining witnesses who are offered in one case that it will be proper at the time of their original examination to also examine them in regard to

matters which they may know which may affect the second case.

Mr. Whipple—We make no objection to that, although we are not concerned in the question.

Mr. Thompson— I don't think it makes much difference, I should suppose all the benefits of consolidation would be secured if it were understood that in the cross-examination of witnesses in the case of Eustace v. Dickey matters could be gone into, if there are any, which are solely relevant in the case of Dittmore v. Dickey. To extend it beyond that may or may not be advisable. I should think that would serve all the purposes of convenience and promptness.

The Master—Is that agreeable to everybody?

Mr. Bates—So far as I understood what Mr. Thompson said, but he spoke a little low and I could not hear him very well.

Mr. Thompson—I said it seemed to me we should be carrying out the order of the Court in consolidating and ordering these cases tried together, both in letter and in spirit, if we should have it understood that when any witness is offered in Eustace v. Dickey he might be cross-examined, if it was desired to do so, by any party interested in Dittmore v. Dickey, and that beyond that it would be useless to try to go in the introduction of testimony while the case of Eustace v. Dickey is being tried. To introduce testimony in chief which has no bearing whatever on Eustace v. Dickey, if there is any such testimony, but only on Dittmore v. Dickey, would seem to be a futile waste of time. All the benefits of consolidation could be obtained by the other method that I have suggested, namely, that the cross-examining counsel, if he finds any witness in Eustace v. Dickey whom he desires to cross-examine in the Dittmore case, he may do so, but not introduce new witnesses in Dittmore v. Dickey while the case of Eustace v. Dickey is being tried.

Mr. Bates—My question pertained merely to the question as to whether or not it would be necessary to dispose of the witness when he first appears, and to get all the evidence out of him on both cases, or whether it would be optional to us at that time to examine him in the second case, or call him again later.

Mr. Thompson—I don't think there is the slightest difference of opinion between Governor Bates and myself. It appears to me that we mean exactly the same thing. Beyond that, if he meant that while Mr. Whipple was trying his case he might introduce some witness himself having nothing to do with Mr. Whipple's case, and examine him in the Dittmore case, that I think would be a foolish performance. As I now understand it, I think there is no difference between us whatever.

The Master—The fact that a witness has already been examined in the first case under that arrangement

would not necessarily prevent his being called again.

Mr. Thompson—Not at all.

The Master—I understand here we are not governed by the rules of the Federal Court where cross-examination is necessarily limited to what is opened in direct.

Mr. Whipple—I think the principle that the State court has endeavored to apply is to elicit all the truth from a particular witness when he is on the stand, especially by way of cross-examination, and not be hampered by any rule restricting him to what he has testified to in direct.

The Master—I may find it a little difficult to get used to that, but I will try my best to do so. What else, gentlemen, is there this morning?

Mr. Whipple—Nothing, I think.

The Master—Then we now adjourn until such time as the parties hereafter agree upon and notify the master.

Mr. Whipple—Well, may I offer the suggestion that we merely suspend instead of attempting to adjourn—just suspend the hearing?

The Master—I think that will be better, Mr. Whipple, yes. We will suspend.

Mr. Whipple—Then we will notify Your Honor as soon as we are able to take up the presentation of the evidence.

June 11, 1919

## SECOND DAY

Supreme Judicial Court Room,  
Court House, Boston, Massachusetts.

June 11, 1919.

(The hearing is resumed at 10:26 a. m.)

Opening Statement of Sherman L. Whipple, Esq., in behalf of the plaintiffs:

May it please Your Honor—The plaintiffs in the first case are gentlemen who hold the position of trustees under a Deed of Trust executed and delivered on Jan. 25, 1898. They bring this bill in their capacity as trustees under that Deed of Trust. A copy of the Deed of Trust is attached to the bill and marked Exhibit A. If Your Honor happens to have one of the smaller books or pamphlets you will find it printed in the most convenient form on page 42 of that pamphlet.

The Master—I have one.

### Mr. Whipple Opens

Mr. Whipple—The defendants are the directors, so-called, but really are the trustees under another Deed of Trust executed by the same Donor, Mrs. Eddy, at an earlier date, Sept. 1, 1892. There was an amendment to that original Deed of Trust of Sept. 1, which was brought about by a conveyance of the trust property by the trustees to a third person, who in turn reconveyed it to the trustees with an amendment to the trust.

Copies of these deeds are attached to the bill, Exhibit B and Exhibit C.

I said that the suit was brought against these trustees, also known as the directors, of The First Church of Christ, Scientist, in Boston. Your Honor will observe that there are six defendants, and that number is included because of the uncertainty as to whether one of the defendants, Mrs. Knott, is actually a director, or whether Mr. Dittmore is actually a director. I may say in that connection that the suit which is to be heard with this is a suit to determine whether Mr. Dittmore holds his position as a director or trustee, or whether the attempt to remove him was a valid and successful proceeding, and Mrs. Knott is the real defendant in this case. The bill avers that these plaintiffs do not know which is the real defendant, and therefore they join them both as parties.

We have therefore a controversy between two sets of trustees, both of whom hold their office under and by virtue of trust deeds from the same Donor, Mrs. Eddy. The bill sets forth in its first paragraph that prior to the date of either of the trust deeds, Mrs. Eddy had become the Leader in the organization of a church "designed to commemorate the word and works of our Master, which should reinstate primitive Christianity and its lost element of healing;" and that after the charter of the Church was obtained, in June, 1879, she became its Pastor; that in September, 1892, she was instrumental in reorganizing the Church, which was named "The First Church of Christ, Scientist," and Mrs. Eddy became the Pastor and later on was Pastor Emeritus until the date of her passing on.

The averments of the first, second, and third paragraphs of the bill are not particularly controverted in the answer. There is a differentiation in the matter of detail as to these historical facts, but I think it will not be found to be of particular importance.

Mrs. Eddy, in her plan for the development and extension throughout the world of the religion of which she was the Founder and the Leader, first made these deeds referred to, or this deed, which created the church directors. Perhaps it would be well to refer to that deed for the definition of the powers which she gave to these gentlemen.

The donees are Ira O. Knapp, William B. Johnson, Joseph S. Eastaman, and Stephen A. Chase, and she conveyed to these gentlemen and trustees a certain parcel of land situated on Falmouth Street in Boston. Then follows a description of it. The statement is then made, on page 49, that:

"This Deed of conveyance is made upon the following express trusts and conditions which the said grantees by accepting this deed agree and covenant for themselves and their successors in office to fully perform and fulfill.

"1. Said grantees shall be known

as the 'Christian Science Board of Directors.'"

And that is the name by which these defendants, who are now five in number, are known. The deed ordains that the grantees "shall constitute a perpetual body or corporation under and in accordance with Section 1, Chapter 39, of the Public Statutes of Massachusetts." It then provides for the filling of a vacancy in the board by the remaining members. It then prescribes the qualifications of membership of the board. No one shall be eligible who is not in the opinion of the remaining members of the board a firm and consistent believer in the doctrines of Christian Science as taught in a book entitled "Science and Health with Key to the Scriptures" by Mrs. Eddy.

In the second paragraph there is a provision that the board shall, within five years from the date hereof, build a church. Then the third provision is that the board shall elect a pastor, reader, or speaker, to fill the pulpit, who shall be a genuine Christian Scientist. The fourth provides with regard to the character of the building. The fifth provides that the Board of Directors "shall not allow or permit in said church building any preaching or other religious services which shall not be consonant and in strict harmony with the doctrines and practice of Christian Science," as taught by Mrs. Eddy.

The sixth gives the name of the church. The seventh limits the right to sell or mortgage. The eighth deals with the question of the church building. The ninth provides for maintaining regular preaching. The tenth provides for a reversion of the whole property to Mrs. Eddy's heirs if they do not go on with the religious services. The eleventh is that, in substance.

That is the creation of the defendants, the Board of Directors, and although they have that name, which can be conveniently used to distinguish them from the plaintiffs, they are, as Your Honor will observe, trustees under a deed of trust. I do not find at the moment an expression of the purposes of the trust in the terms of extension and development of Christian Science, but it is perfectly obvious that that is the entire purpose of the trust. I do not think it is necessary to call attention to Exhibit C, for the present, at least.

Now, the bill goes on to allege that while Mrs. Eddy thus founded a church and made the defendants the trustees of the church, or directors, having the management of the church which she indicated they should have, she herself held and managed another instrumentality for developing and extending the great religion of which she was the Founder, and that was a publication society, and on the basis of these two acts there is an averment in the bill, appearing in paragraph 4, that:

"The conception and plan of Mrs. Eddy for the promotion and extension

of the religion of Christian Science, as taught by her, involved two general branches of activity. . . . The second, by increasing the circulation throughout the world of publications containing the truths of Christian Science, for the purpose thereby of more effectually promoting and extending the religion of Christian Science."

For some years she herself handled and managed the affairs of the business which was conducted under the name of The Christian Science Publishing Society, and it is averred and admitted that a great work was done in the promotion of the religion of Christian Science by the Publishing Society as managed by Mrs. Eddy herself. We call attention to the fact that she did not give the directors of The Mother Church any power or authority over the Publishing Society at all. She committed to their charge the management of The Mother Church, but withheld from them, and held herself, the management of this great activity which she had instituted and founded to extend her religion.

But later, several years later, in 1898, she decided to put the management of that Publishing Society into the hands of trustees, and the plaintiffs attach significance to the fact, in the averments of their bill, that she did not select directors or any member of that Board of Trustees which she had created six years before; she selected no one of them as an instrumentality for carrying out and carrying on this great trust, which we think it is obvious was a greater and more important trust than the management of a single church, because the intention was, by the circulation of this literature, to reach the multitude, to reach hundreds of thousands and millions, where the reader of a particular church would reach perhaps five or ten thousand people at the best. It was a somewhat novel method of promulgation of religious truths, in a sense, and its success has been a demonstration of the sagacity and business judgment, as well as religious wisdom, of Mrs. Eddy.

She selected, accordingly, three trustees to handle the affairs of the Publishing Society, and very definitely she laid out the manner in which they should handle their trust. That appears in Exhibit A, the Deed of Trust of Jan. 25, 1898. Your Honor will permit me to call attention to the provisions of that Deed of Trust, appearing on page 42.

In the first place, Mrs. Eddy made it a condition that the trustees should manage their trust as she provided in this trust instrument. The conveyance is made in consideration of one dollar and "in consideration of their agreement to faithfully observe and perform all the conditions hereinafter specified to be by them observed and performed," apparently intending that

if the trustees should at any time manage their trust otherwise than in the manner defined in the trust deed itself, a condition on which the conveyance was made would not be fulfilled, and, it might be, the property revert to the Donor.

She defines the purposes of this trust after the description of the property which she conveyed, first stating that the trust was to be "*upon the following perpetual and irrevocable trust and confidence.*" I need not point out that those particular and impressive words, in connection with this controversy, were not used in the Deed of Trust, even, to the directors; but here, although such a trust would be by law perpetual and irrevocable even if Mrs. Eddy had not stated it, her purpose and intent, with that remarkable wisdom that she always showed, were, she declared in words, that this trust should be perpetual and irrevocable.

The Master—That is, italics are indicated in the deed?

Mr. Whipple (to Mr. Withington)—Am I right in that?

The Master—I suppose they must be.

Mr. Whipple—They are typewritten and they are underscored.

The Master—Underscored?

Mr. Whipple—I shall offer the paper in a moment. But the copy, I think, is exactly accurate. Perhaps, as Your Honor has raised the question now, while it is in your mind—

The Court—I supposed it must be so.

Mr. Whipple—Well, it sometimes happens that those things are italicized because the party wants to emphasize particular attention to the fact, but in this case the italicizing is in the paper itself.

The first paragraph states as the first condition under which the trustees may hold this property and execute the trust which, in the view of Christian Scientists, is a sacred trust on the part of Mrs. Eddy:

"Said trustees shall hold and manage said property and property rights exclusively for the purpose of carrying on the business, which has been heretofore conducted by the said Christian Science Publishing Society, in promoting the interests of Christian Science."

Then No. 2 gives the name under which the business shall be conducted and carried on.

The Master—I suppose that that "Christian Science Publishing Society" referred to in Paragraph 1 is a corporation?

Mr. Whipple—No, Your Honor. As I understand the fact, Mrs. Eddy had conducted the business under that name. It was a trade name, so to speak, if we may apply that term. But at one time, I am informed, the business had been conducted by a corporation. You will notice that in what may be called the preamble.

The Master—The reference there is

to The Christian Science Publishing Society, which conveyed certain goods and chattels under the bill of sale of Jan. 21. Was that a corporation?

Mr. Whipple—It was, yes, Your Honor. That is, the corporation conveyed to Mrs. Eddy, Mrs. Eddy conveyed to the Directors the property which had been conveyed to her by The Christian Science Publishing Society; and then in Paragraph 2 she ordains that the business shall be done under the unincorporated name of "The Christian Science Publishing Society." So that that name was handed over by Mrs. Eddy herself to the trustees as a name under which they should and must conduct the business, and, of course, a name of very great importance to the business. The very fact that it had the seal of Mrs. Eddy's approval gives it in Christian Science circles a value that it is impossible to estimate.

The third paragraph provides that the trustees, "shall energetically and judiciously manage the business of the Publishing Society on a strictly Christian basis, and upon their own responsibility"—We would like to accentuate Your Honor's attention to that—

"and without consulting me about details, subject only to my supervision, if I shall at any time elect to advise or direct them."

We would like to accentuate Your Honor's attention to that provision that Mrs. Eddy reserved the right herself, and to herself, and to herself alone, to advise or direct these trustees at any time she might see fit; a reservation filled with power, and a reservation which no trustee would for a moment think of disputing, a reservation which guided during Mrs. Eddy's lifetime the entire handling of the business of the Publishing Society. But Your Honor will observe that she reserved to herself alone this authority to do the very things that these defendant directors are trying to do, namely, to direct these trustees as to how they shall manage this great trust.

The fourth paragraph provides that the trustees shall keep accurate books of account and that, "all surplus funds over and above the sum necessary to defray the running expenses of the business" shall be kept "until the same shall be paid over to the Church treasurer as herein provided."

There are certain details covered in that statement,—payments and accounts every six months, a limitation of authority of the trustees to expend money of the trust for property not necessary for the immediate successful prosecution of the business, prohibition against speculation or incurring liabilities beyond their power to pay.

"Said treasurer shall hold the money so paid over to him subject to the order of 'The First Members' of said Church, who are authorized to order its disposition only in accordance with the

rules and by-laws contained in the Manual of said Church."

It will be necessary, or fitting, perhaps, for me to speak a little later as to who or what "The First Members" were, and I shall refer to the Manual of the Church in that connection.

Paragraph 5 provides for a business manager and that he shall present to the trustees at the end of each month a full and correct statement of the receipts and expenditures.

Paragraph 6 is an important provision, if Your Honor please, as we think, in connection with this litigation. It provides:

"Said trustees shall employ all the help necessary to the proper conduct of said business, and shall discharge the same in their discretion or according to the needs of the business, excepting that the business manager may call in at times of necessity such temporary help as will facilitate the business."

The Master—The business manager—that is in Clause 5.

Mr. Whipple—Yes, Your Honor.

The Master—Is that the first mention of that official?

Mr. Whipple—I have not noticed an earlier mention of him. Yes, that is the first time, I am informed.

The Court—It is taken for granted that they had a business manager?

Mr. Whipple—I think so. They have always had a business manager, an occupant of the office known as such. And you see it provides that the employment of the help necessary to the proper conduct of the business—that is, the assistants necessary in conducting—is solely with the trustees, except so far as the manager is authorized to call in at times of necessity such temporary help as will facilitate the business.

The Master—Clause 3 directs the trustees to manage the business?

Mr. Whipple—Yes, Your Honor.

The Master—Yet in Clause 5 we first hear of a business manager.

Mr. Whipple—Yes, Your Honor. They manage it through the business manager. I mean that is the construction. Then No. 7, while it is not perhaps particularly pertinent to the case in any specific issue, there is a statement that, "The Trustees shall employ such number of persons as they may deem necessary to prepare Bible Lessons or Lesson-Sermons to be read in the Christian Science churches, the same to be published Quarterly as has heretofore been done by and in the name of the Christian Science Quarterly"—that was one of the publications which they were to send out—"and they may, in their discretion, change the name or style of such quarterly publication as occasion may demand. They shall also fix the compensation of the persons so selected." There is a provision requiring the trustees to go to a point which might at the first blush seem beyond merely the handling of the Publication Society's affairs in dealing with these instructions, dealing with the Church it-

self, because they prepare Bible lessons or lesson-sermons to be read in the Christian Science churches, and I think it may not be amiss to state, as I understand the fact to be, that sermons prepared in the usual way in other churches are not delivered in the Christian Science churches, but they have a reader, a first and second reader, who read the lessons or sermons prepared for them to read with reference to the Bible and to Mrs. Eddy's Key to the Scriptures. So that a very important duty and function was given to the trustees by Exhibit C in connection with their Publication Society work. All the journals, of course, were to be devoted to the spread of Christian Science, primarily.

Paragraph 8 provides that the "trustees shall have direction and supervision of the publication of said Quarterly, and also of all pamphlets, tracts, and other literature pertaining to said business, using their best judgment as to the means of preparing and issuing the same, so as to promote the best interests of the Cause, reserving the right to make such changes as I may think important."

There was another very important duty imposed upon the trustees, in which the directors or trustees under the other trust were to take no part. I may be permitted to say that I ask special attention to that, because you will frequently through the hearing, if the precedents are of any consequence, hear claims made by these directors that the organs are "our" publications, "our" pamphlets; that they are the organs of the Church and therefore are "ours," that is, the directors'. And I desire to point out how clearly that was absent from the scheme that Mrs. Eddy laid out in one of the most important, one of the most sacred, one of the most illuminating papers that she signed, how clearly that was absent from her scheme for the advancement of the cause of Christian Science, how fully she put into the hands of the trustees the doing of these important things in connection with the publications, reserving to herself, and herself alone, and to no one else, the right to make such changes as she might think important.

Then the qualifications of the trustees are described in Paragraph 9:

"Said trustees and their successors in trust shall not be eligible to said trusteeship or to continue in the same, unless they are loyal, faithful, and consistent believers and advocates of the principles of Christian Science as taught by me in my book 'Science and Health with Key to the Scriptures.'"

Then there is a provision in Paragraph 10 for the filling or declaration of a vacancy.

"Whenever a vacancy shall occur in said trusteeship for any cause, I reserve the right to fill the same by appointment, if I shall so desire, so long as I may live; but if I do not elect to exercise this right, the remaining trustees shall fill said vacancy. The First Members together

with the directors of said Church shall have the power to declare vacancies in said trusteeship for such reasons as to them may seem expedient."

Your Honor will note, and I may call attention to it because that becomes important later, that the First Members of the Church, whose identity will be described and whose function will be referred to, are those who can declare vacancies in the trusteeship with the cooperation of this Board of Directors, and this is the first time that the Board of Directors is mentioned. It must be a power exercised by the First Members, but with the cooperation of the directors. The directors are given no power of removal or if that is to be construed a removal. The First Members are given the power of removal with the necessity of the Board of Directors cooperating with them; that is, the directors, as we understand it, having a check upon the power of the First Members, because the First Members cannot do it without the directors. I think it will appear that the First Members' functions have been utterly changed since that time. I do not know whether it will be claimed by the defendants that they no longer exist, or the body no longer exists, or what change is made, and I do not know that it is of very much consequence, because the directors themselves as such, as First Members, have no right or authority under the trust deed.

The eleventh paragraph is a reservation of the right to withdraw from the trust the publication of The Christian Science Journal; and the twelfth paragraph a provision that upon her decease The Christian Science Journal was to go to the Publication Society as a part of the trust res, and that was never withdrawn and is a part of the trust.

The thirteenth provides the compensation of the trustees for their services.

The fourteenth is important.

"The delivery of this instrument to, and its acceptance by, said trustees shall be regarded as the full establishment of the trust and as the agreement by the trustees to honestly and faithfully do and perform all things to be done and performed by them within the terms, objects and purposes of this instrument."

Then follows a statement which is indorsed on the Deed of Trust itself of the resignation of certain trustees and the election of their successors.

In the answer of the defendants they state a little more in detail the succession of trustees—the fact of the appointment by Mrs. Eddy when she appointed, as she had a right to do. That appears in paragraph two of the answer.

Thus in 1898 Mrs. Eddy had created two independent boards of trustees, one to manage the Church which she founded, and one with an entirely different and separate scope of activities, to handle and manage that other great



instrumentality by which she intended to spread the Christian Science religion, the publication society. Their respective duties are outlined and defined with precision, with care, with judgment, and with wisdom, as might be expected, considering their author.

The things which Mrs. Eddy said and the directions which she gave in her lifetime are peculiarly sacred to the believers in the religion that she established; and their search for Truth is a search in her writings and for her sayings, and when they find them they feel that they have guidance and direction as to what shall be done.

These boards having been established, during Mrs. Eddy's lifetime there was never the slightest difference as to what should be done. Her expression and judgment were accepted not only willingly but with enthusiasm.

Let me refer here to what is called the Manual. Mrs. Eddy established for the control of her Church, The Mother Church, a manual or set of by-laws. It was changed from time to time. Some radical changes were made near the end of her life. The Manual is regarded in the same way by Christian Scientists as other things which she wrote and which she did, and it is a spiritual guide of all who believe in Christian Science. I shall refer a little later to what the defendants claim with regard to the Manual, as affecting the trust deed. It is enough to say that, in the first instance, the Manual accorded in all respects with the trust deed. I shall not say more about it, because we have a serious doubt as to whether in any aspect of the case the Manual can be made admissible. But what I have said as to its general features it seems proper to state, because the fact will undoubtedly be referred to that there is a Manual, and some claims will be made with regard to it.

After Mrs. Eddy passed on, of course the things which she, and she alone, could do, could no longer be done; and there were left some uncertainties in connection with provisions, either in trust deeds or otherwise, which required some positive action on her own part. These two trusts were left, of course, without the possibility of Mrs. Eddy's personal direction or interference any further. The trustees and directors, as should have been the case, worked harmoniously to do the things which Mrs. Eddy had imposed upon both of them as a trust, namely, to do the best they could, and all within their power, within the rules that she laid down, to promote and extend Christian Science. And they worked along harmoniously until something like a year ago, perhaps a little later than that, when the directors began to intimate and to take the position that they had supreme authority with regard to the Church, practically claiming that they succeeded to all the power and authority that Mrs. Eddy herself had; and they began to arrogate to themselves the

claim that these publications were theirs, and were under their control, and that the trustees were subject to their direction. It is a curious fact that never had there been a thing as to which the trustees and directors had disagreed. There was not a thing which the directors wanted done that the trustees had not arranged to do. Nothing came up which, as a practical matter, there was any disagreement about; but vaguely, in one sense, and in another sense, in a very direct way, the directors said, "We must have an admission that we are in authority. We want you to stand up and admit that we are in authority." "Well, what do you want us to do—what particular thing?" "Well, nothing in particular, but we want an admission by you that we, the directors, are the supreme authority in The Mother Church, and in the publication society, that we have a right to control the editorial policies, that the publications are ours, and that they are not yours." "But," the trustees said, "look at our Deed of Trust. The author of that was a sacred person, and her wishes are sacred to us. We admit your absolute supremacy so far as has to do with church discipline, but the publishing society is a sacred trust to us." They intimated that that was a mere legal instrument, and that Mrs. Eddy really intended that they should handle the whole thing. They pointed out some things in the Manual which they thought justified them in claiming that they were to be absolutely supreme. A good deal of correspondence passed on the subject—a purely academic subject, because there was not any agreement as to what should be done, practically. For instance, in the selection of an editor they never had had any trouble in agreeing upon the same one; they agreed upon the same business manager; and the very fact that the trustees always agreed with them as to what should be done, so that there was not any definite thing which they could bring up, made them finally come out flatly and say, "What we want, before we go any further, is to have you make a written admission that we can give such orders and directions as we please with regard to the publication society."

The trustees were unable to assent to that, and after a while consulted counsel, as appears in the bill, as to what they ought to do; and counsel gave to them an opinion, which was addressed to the counsel for the defendants, in order that their position might be made known.

While it is not material at all in the legal phase, perhaps the trustees' position may properly be stated in that respect. They say that the Deed of Trust made by Mrs. Eddy is just as sacred a trust, just as inspired a paper or instrument, just as important a direction, as any that she gave in the Manual, which is for church discipline merely, or in any other utterance which she ever made, either orally or in writing. They say, be-

yond that, that the very fact that she stated it to be irrevocable, and that in her wisdom she knew that under the law it was irrevocable and unamendable, was a thing which is of the greatest importance in determining the trustees as to what they should do. They say that they are not in disobedience to any wish or suggestion that Mrs. Eddy ever made; but that, being confronted on the one hand with a solemn statement in a solemn and irrevocable instrument as to what they should do, they are obliged to accept it rather than to take the ephemeral expression of Mrs. Eddy in another part of her writings or sayings—an expression which was made to meet the exigencies of church discipline of a particular moment or a particular period, and which might be changed upon her wish at any moment—that, as between those conflicting, or apparently conflicting, directions of Mrs. Eddy, the one which was solemnly made, and made irrevocable by her, was the one which they must obey. I am speaking of that merely in the aspect of the case as to the performance of their duty as Christian Scientists. I doubt if it has any legal bearing or significance whatever, because of the familiar rule, which must have been known to Mrs. Eddy, that any subsequent declarations on her part could not in the slightest degree affect or change this instrument, and which is the rule that must be applied.

After counsel had consulted together, earnestly and unanimously desiring to spare the great Christian Science Church the embarrassment and scandal of a schism between those in authority, a modus vivendi was reached. It was understood as between the parties that each one, without yielding his contentions, and each body without yielding its contentions, should go forward in an attempt to cooperate together to do the commands which had been laid upon them both by Mrs. Eddy within the scope of the activities as she defined their respective activities. But, unfortunately, within 48 hours of the time that this agreement had solemnly been made, an agreement which had been ratified by the shaking of hands and the mutual statements on the part of the parties that in good faith they would attempt to carry out what had been agreed upon—I say, within 48 hours these directors repudiated that undertaking, and insisted, as is stated in the bill, that unless these plaintiffs would do what they had been insisting that they do for all these months before the counsel had reached this agreement—unless they would repudiate their counsel's advice, there could be no peace; and they intimated and threatened that they would take action to make the position of these trustees so untenable and embarrassing, by the exercise of their great power as directors, that they would have to abandon the trust which they had accepted from Mrs. Eddy,

and give up the efforts which they had solemnly promised her by accepting the trust that they would attempt to carry out. That is stated in the bill on page 23.

Mr. Streeter—Are the pages the same in this copy, brother Whipple?

Mr. Whipple—I think not. In the small copy it is Paragraph 12.

“As a result of conferences between counsel of the trustees and directors, it was agreed that the respective boards would make a sincere attempt to harmonize their different views as to the authority of the Board of Trustees in respect to the manner in which the trustees should perform their duties as such. The plaintiffs endeavored in good faith to carry out such agreement, but the directors personally and through counsel, both in interviews and by correspondence, demanded of the trustees and insisted as a condition of their continuing to hold their offices, that the plaintiffs should explicitly and in writing repudiate the advice and opinion of their counsel as hereinabove set forth, and agree that their actions should not be governed thereby.

“Said directors requested the trustees particularly to repudiate that part of the opinion of counsel stated in the following terms:

“If there be any conflict between the terms of the deed (the Deed of Trust dated January 25, 1898) and the language of the Church Manual, the legal and moral obligation of the Trustees compels them to respond to and obey the mandates of the Deed.”

“The directors insisted as a further condition of the trustees retaining their offices as such, that the trustees acknowledge in writing that the Board of Directors have final authority in regard to the editorial policy of the publications of The Christian Science Publishing Society, and general supervision of the general affairs of The Christian Science Publishing Society.”

As I have told Your Honor, not one editorial had ever criticized, not one publication had ever come under the ban of the directors, so far as the trustees knew. There was no ground for any real criticism, so far as we know. Any suggestion that they made we were willing to abide by. But it was a pure attempt on the part of these gentlemen to have an authority recognized which they claimed existed, not because there was any particular reason for using it, because apparently the only reason was that they should have a comfortable sense of being more autocratic, more powerful, more absolute as a religious oligarchy than the Pope of Rome ever thought of being in the Roman Catholic religion; and the reason, among others, as the trustees expressed it, why they could not assent to it, was that the plan and scheme of Mrs. Eddy for religious development, and for the creation of the Church, was to have a great democracy, that an oligarchy, a religious hier-

archy or oligarchy should not exist; that the Church should be a democratic Church, ruled by democracy, ruled by its members, and not ruled by any pope or set of popes. So that they were constrained not only by the terms of their deed, but by their belief in the methods of church policy and church polity, what they believed to be Mrs. Eddy's wishes, to resist this demand upon them—perfectly groundless, as they themselves believed and were advised by their counsel.

The plaintiffs refused “to repudiate the advice of their counsel and stated that, in the administration of their trust they would be guided by the terms of the trust instrument, with a due regard for the By-Laws of the Church and the provisions of the Church Manual, interpreted in relation to the expression of Mrs. Eddy's desires and purposes in the provisions of the Trust Deed.”

Then these trustees sent a notice of dismissal to Mr. Rowlands. Of course they had some theory or scheme as to why they selected one man for ejecting him from the position, or on whom to try out their attempt. They selected Mr. Rowlands, a gentleman who had made an enormous financial sacrifice to accept this position of trust with Mrs. Eddy, and who desired to maintain the position only to perform his duty as a Christian Science believer and as a man having once undertaken it. The notice of dismissal appears on pages 26 and 27. Notice was given to Mr. Rowlands' associates of this action, with a statement that they required the remaining trustees to fill the vacancy, or suggesting that it was their duty to fill the vacancy. They stated that, “it is the Board's desire that you immediately appoint some one to fill the position made vacant by their action of yesterday, and in the appointment of Mr. Rowlands' successor they expressly request that you name a person who shall be suitable and satisfactory to the Board of Directors.”

The plaintiffs state that there was no proper ground for the removal of Mr. Rowlands. They do not state any, except that Mr. Rowlands, with the other trustees, would not sign a written paper which would be a betrayal of their trust that they had received from Mrs. Eddy herself.

Then there is an averment which has more particularly to do with the request for a temporary injunction, which appears in Paragraph 17, that these defendants did not intend at all to apply to the courts to have an orderly decision of the Court as to what their rights were under the Trust Deed, but they proposed to coerce these defendants by the use of the tremendous power that they had as a result of their quasi-dictatorial attitude toward the affairs of The Mother Church—their right to distribute patronage, so to speak, their right to

make appointments and grant licenses; and there was danger that they would carry out the threats which they had made, that they were going to make of this publication society an empty shell if they could not have their way with regard to controlling it or running it. And, as appears, an injunction was granted for the purpose of preventing them from carrying out such threats as that.

Herbert W. Eustace, Sworn

Q. (By Mr. Whipple.) Will you state your full name, Mr. Eustace?  
A. Herbert Willoughby Eustace.

Q. Where do you reside? A. At the Hotel Braemore.

Q. You are one of the Trustees under the Deed of Trust from Mrs. Eddy under date of Jan. 25, 1898?  
A. I am.

Q. How long have you held that position? A. Since December, 1912.

Q. Who, prior to the attempted removal of Mr. Rowlands, were your associates on the board? A. Mr. McKenzie, Mr. Hatten, and Mr. Merritt.

Q. That is when you were appointed? A. Yes.

Q. Who were they immediately before the attempt or the notice of dismissal, so-called, of Mr. Rowlands?  
A. Mr. Rowlands and Mr. Ogden.

Q. How long have they been your associates? A. Since August, 1917.

Q. That is the date of their selection? A. Aug. 1 was the date they took office.

Q. Did they take office as a result of election by the trustees then in office? A. They did.

Q. And not by appointment of Mrs. Eddy? A. No.

Q. She had passed on when? A. In December, 1910.

Q. And this, as you said, was in August, 1917? A. 1917.

Q. Will you state the method of their election? A. It was simply, as I remember it, Moved and seconded and carried.

Q. Who were the three before they were elected? A. Mr. McKenzie and Mr. Merritt.

Q. And they were about to retire? A. They were retiring.

Q. One was to become editor-in-chief of some of your periodicals?

A. Yes, Mr. McKenzie.

Q. And Mr. Merritt was— A. Had become a member of the Board of Directors.

Q. I suppose one of them resigned first. Which one, do you remember?  
A. Mr. McKenzie resigned first, both to take effect Aug. 1.

Q. And then you and Mr. Merritt elected whom? A. Mr. Ogden.

Q. Who to succeed Mr. McKenzie?  
A. Mr. Ogden.

Q. And then you and Mr. Ogden elected Mr. Rowlands, to succeed Mr. Merritt, or how was that?

Mr. Krauthoff—If Your Honor please, these are matters of record, I believe.

Mr. Whipple—Well, not any record that could be used, except to refresh his recollection. These are not officials, are not public officers.

The Master—Isn't most of this which you are now covering admitted by the pleadings?

Mr. Whipple—I think so; yes, Your Honor.

Mr. Krauthoff—We are asking for those records.

Mr. Whipple—You shall have them later.

Q. Will you state? A. I would like to refresh my memory from the record, but Mr. Rowlands was elected, I believe, by Mr. Merritt, and, I think, Mr. McKenzie and myself.

Mr. Whipple—Well, very well.

Mr. Krauthoff—May we examine that record now? It will facilitate the cross-examination.

Mr. Whipple—Not now. You are going to have your chance, Mr. Krauthoff.

Mr. Krauthoff—I think if we had—

Mr. Whipple—I think it will be better not to interrupt.

Mr. Krauthoff—We make objection at this time.

Mr. Whipple—What are you objecting to? There is no question.

Mr. Krauthoff—As to the manner in which these trustees were elected.

Mr. Whipple—I have passed that, I am not going any further.

Mr. Krauthoff—We object to any further testimony of that because the record is the best evidence of what was done as to the trust.

Mr. Whipple—I think the evidence has all gone in as far as I desire to do it, but I do not want to take any advantage of that except that I do not want to be delayed and impeded by objections as to purely formal matters. We have the records here, such as they are, and they can be called for in the cross-examination. I will take Your Honor's direction.

The Master—The objection of counsel for the defendants is on the record.

Mr. Whipple—Yes, Your Honor.

The Master—And you may pass it, I think, and they can insist upon it later if they find it desirable.

Mr. Whipple—Yes, Your Honor.

Q. Now, have Mr. Ogden and Mr. Rowlands continued to discharge the duties of trustees ever since they were appointed? A. They have.

Q. With you, up to the present time. Mr. Rowlands, if not a real trustee, has been a de facto trustee? A. He has—a very effective one.

Q. In the handling or management of the affairs of the trust since the appointment of your associates have there been any disagreements between your associates and yourself? A. None whatever.

Q. You have always acted unanimately? A. Unanimously in everything.

Q. Is this paper the Trust Deed under which you have been acting? (Handing paper to witness.)

Mr. Krauthoff—We object to the

question, "under which he has been acting," as calling for a conclusion, as to the manner in which—

Mr. Whipple—I will waive that.

Q. Is this the Trust Deed under which you understand you were appointed as trustees?

Mr. Krauthoff—We object to that question, too, if Your Honor please, because the question of whether this witness has been appointed under this Trust Deed is a subject of controversy. I am willing to admit that this instrument was executed by Mary Baker G. Eddy on Jan. 25, 1898, purporting to be what it is.

Mr. Whipple—I do not care for your admission, sir.

Mr. Krauthoff—I object to the question.

The Master (to the stenographer)—Read me the question as it now stands.

(The question is read by the stenographer.)

The Master—You insist upon it, Mr. Whipple?

Mr. Whipple—Yes, Your Honor.

The Master—I see no reason for excluding it. I will take it subject to the objection of counsel for the defendants.

A. It is.

Q. Is that the original signature of Mary Baker G. Eddy?

Mr. Krauthoff—We object to it.

A. As far as I know.

Mr. Krauthoff—We object to that. There is no evidence that this witness is qualified to speak as to the signature of Mary Baker G. Eddy.

Q. Have you seen Mrs. Eddy's signature? A. I have seen it on letters.

Q. You haven't seen her write it, but you have seen it on a great many letters? A. I have seen it on letters, yes.

Mr. Krauthoff—We object to that unless it is shown that these were letters which he received from Mrs. Eddy in the usual and ordinary course of business. We admit that it is the signature, but you cannot prove it that way.

Mr. Whipple—I beg pardon?

Mr. Krauthoff—I say, we are perfectly willing to admit that it is her signature, but it cannot be proved in that way.

The Master—If it is admitted that that is her signature—

Mr. Krauthoff—We admit it is the signature.

The Master—Why, then, take up time?

Mr. Krauthoff—Our desire is, if Your Honor please, that the witness shall proceed accurately, and the counsel shall do the same.

Mr. Whipple—In other words, if Your Honor please, the objection seems to be very much like the attitude of the gentlemen who employ him. It is disciplinary merely, and not for the purpose of really accomplishing anything except to show power. I offer the paper, if Your Honor please, and will ask to have it marked Exhibit 1.

Mr. Bates—Let me see it just a moment, please. (The paper is handed to counsel.)

Mr. Whipple—We will have this marked as an exhibit.

Mr. Krauthoff—If Your Honor please, one moment. May I inquire of counsel? The instrument has a number of indorsements upon it that were placed subsequently to Jan. 25, 1898, after the execution of it by Mrs. Eddy. Does the offer embrace all the subsequent indorsements or merely to and including the signature of Mrs. Eddy?

Mr. Whipple—I think the indorsements go with it.

Mr. Krauthoff—We object to the indorsements as not a part of the instrument and as things which do not prove themselves. The indorsements relate to the subsequent trustees, the validity of whose election and appointment may become a subject of controversy in one phase of this case.

Mr. Whipple—If Your Honor please, it cannot be, because they are practically all admitted in the answer. I have not yet been able to make out from that curious part of the answer just what they mean; but, as I construe it, it is an absolute admission of the proper election of the Board of Trustees; but I view it as a technicality that may impede us for the moment in going on with the hearing, and it is scarcely a meritorious one.

The Master—One moment, Mr. Whipple. (To Mr. Krauthoff.) I think that your rights will be preserved if I allow the document to go in subject to your objection.

Mr. Krauthoff—Very well, so long as our position is clear as we proceed.

The Master—Yes.

Mr. Whipple—Now, if Your Honor please, I would like to have this marked as Exhibit 1, and then, as it is an important document, we crave the authority to keep it ourselves and substitute for use in the trial a copy of it, and we will have one of these printed copies marked.

Mr. Krauthoff—There is no objection.

The Master—There is no objection. That course may be followed.

Mr. Bates—We think the original should be kept in court where we could refer to it in case we need to.

Mr. Whipple—Well, I should doubt if we had it in court all the time, because it is a very choice instrument, and unless you request it we shall take it and put it in the repository where it has been kept. If at any time you desire to use it we will send for it.

Mr. Bates—That will be sufficient.

Mr. Whipple—We have here a printed copy of the Deed of Trust, by itself. I think Your Honor has the Bill in Equity, but we will hand you a copy of the Deed of Trust separate and apart from the original.

[Original Deed of Trust, executed by Mary Baker G. Eddy on January 25, 1898, is marked Exhibit 1.]

A copy of the same is also marked Exhibit 11.

Mr. Krauthoff—May we have the original document for a moment, Mr. Whipple?

Mr. Whipple—Yes, certainly.

Mr. Krauthoff—If Your Honor please, with respect to this printed copy of this Trust Deed which has been handed to Your Honor, I want to point out that the heading is not a part of the instrument itself; that is, the words, "Deed of Trust, The following is a copy of the Deed of Trust constituting the Board of Trustees—organizing The Christian Science Publishing Society"—that is not in the original document.

The Master—It does not purport to be, does it? "The following is a copy."

Mr. Krauthoff—Yes. I wanted to point out that the instrument begins with the words, "Be it known." And then we shall desire to call attention to the fact that some of these are interlined, at the proper time.

Mr. Whipple—I did not catch your last remark.

Mr. Krauthoff—That some of the language of the Deed of Trust is interlined.

Mr. Whipple—Well, let us call attention to it now.

Mr. Krauthoff—We do not mean to intimate that it is not properly interlined. As bearing upon the purpose of Mrs. Eddy I want—

Mr. Whipple—Your observation must have some pertinence or else not, and if it has any pertinence whatever let us bring it out now.

Mr. Krauthoff—Mr. Whipple, be good enough to permit me to finish what I was about to say.

Mr. Whipple—Yes; I would be very glad to have you.

Mr. Krauthoff—The point we wanted to make, if Your Honor please, was that, at the end of Paragraph 8, the words "reserving the right to make such changes as I may think important," are interlined in pen and ink.

Mr. Whipple—Are they in Mrs. Eddy's handwriting?

Mr. Krauthoff—I do not think so. I am not an expert on her handwriting. We are not objecting to that as affecting the validity of the interlineations, but simply as bearing upon the importance of that clause.

The Master—In order to make that fully intelligible, of course, it should appear that we know that the rest of the instrument is in typewriting.

Mr. Krauthoff—Yes, in typewriting.

Mr. Streeter—Will you let me look at that again?

Mr. Whipple—You say you think that bears on the importance of what is inserted. Which way? Do you think it makes it more important or less?

Mr. Krauthoff—I think it makes it more important.

Mr. Streeter—Let me look at it.

Mr. Whipple—More important; that is, that it was interlined?

Mr. Krauthoff—Just one moment.

The Master—Suppose you have counsel tell us all the things that he says are interlined first.

Mr. Krauthoff—Paragraph 10: "Whenever a vacancy shall occur in said trusteeship for any cause, I reserve the right to fill the same by appointment; if I shall so desire, so long as I may live." Then the words, "but if I do not elect to exercise this right"—those are written in pen and ink.

The Master—The words, "but if I do not elect to exercise this right"?

Mr. Krauthoff—Yes; that is written in pen and ink.

The Master—Very well. What about the following words, "the remaining trustees"?

Mr. Krauthoff—That is all in typewriting.

The Master—That is in typewriting.

Mr. Krauthoff—Now, there are some words eliminated that were in typewriting. "On and after my decease," it says; those are stricken out, those are not in the printed copy, they are stricken out of the paper.

The Master—Where is that, what paragraph?

Mr. Krauthoff—That is in place of those words that I have just read, "but if I do not elect to exercise this right, the remaining trustees." The original is—what was written in—"on and after my decease."

The Master—Oh, yes.

Mr. Krauthoff—Then at the end of Paragraph 13 the words, "or such salary as the said Church may determine from time to time" are interlined in pen and ink.

The Master—What paragraph?

Mr. Krauthoff—At the end of paragraph 13, the words, "or such salary as the said Church may determine from time to time."

Then in paragraph 4 the word "reasonably" appears twice in typewriting and is stricken out in pen and ink. I was going to suggest, if Your Honor please, that the trustees have a photograph made of this instrument; all of these things would then clearly appear without any question.

Mr. Whipple—Why not? I think that is a very good suggestion. We will have one prepared.

Mr. Krauthoff—Well, thank you. General Streeter wanted to see the document.

Mr. Streeter—I just wanted to look at it for a moment. (The document is examined by counsel.)

Mr. Whipple—We find, and perhaps it might be stated—not as affecting the signature—that these interlineations are some of them in General Streeter's handwriting.

Mr. Streeter—Well, that is all I wanted to see of it now.

Mr. Whipple—May it be stated, as a matter at least of historical interest, that the interlineations in handwriting are in General Streeter's handwriting?

Mr. Streeter—Let me look at that again; I want to be sure whether that is so.

Mr. Krauthoff—I beg pardon? Did

you ask me for an admission as to that? We desire to object to the statement of counsel as to whose handwriting those interlineations are in. The Master—I think Mr. Whipple inquired whether it might be admitted that they were.

Mr. Krauthoff—We have no knowledge on that subject.

Mr. Whipple—Well, General Streeter says that they are. Will you take his statement?

Mr. Krauthoff—If General Streeter says that those are his interlineations, why, certainly.

Mr. Streeter—Those three interlineations are in my handwriting. The striking out or drawing the pen through the word "reasonably" in the fourth paragraph, why, of course, I do not know that I drew the pen through that.

Q. Are you familiar with Mr. McKenzie's signature? A. I think I am.

Q. Is that his signature under the words, "We accept the foregoing trust"? A. I would say it certainly was.

Q. Are you familiar with Mr. Neal's signature, James A. Neal? A. I am.

Q. He is one of the defendants, isn't he? A. He is.

Q. Is that his signature? A. I should say it was.

Q. Are you familiar with the signature of Edward P. Bates? A. No, I am not.

Mr. Whipple—Two of the signatures under the heading, "We accept the foregoing trust," are James A. Neal and William P. McKenzie.

Mr. Krauthoff—It may be admitted that that is the signature of Edward P. Bates, appearing on that instrument.

Mr. Whipple—All right.

Q. Are you familiar with Mr. Hatten's signature? A. I am.

Q. Is that the signature of Thomas W. Hatten? A. It is.

Q. That is the name set between the typewritten dates, Sept. 8, 1898, "Thomas W. Hatten, succeeding Edward P. Bates, resigned." That is Thomas W. Hatten's own signature? A. It is.

Q. The next is Oct. 21, 1898. "Joseph B. Clark, succeeding"—in typewriting—"James A. Neal"; and over-written, "James A. Neal."

Q. Is that Mr. Neal's signature? A. I should say it was.

Q. "Sept. 25, 1906, Allison V. Stewart, succeeding Joseph B. Clark, deceased." Is that Allison V. Stewart's signature? A. I should say it was.

Mr. Krauthoff—Excuse me one moment, Mr. Whipple. We want to object to the use of the word "succeeding" there as having any probative force or effect. Whether they actually succeeded or not would be a question of law to be determined upon the facts. Those are mere indorsements that were made at the time the trustees accepted and signed their names.

Q. "Jan. 6, 1908, William D. McCrackan succeeding Allison V. Stewart,

resigned." Is that William D. McCrackan's own signature? A. I should say it was.

Q. And that of Allison V. Stewart? A. I should say so.

Q. "June 19, 1908, Clifford P. Smith, succeeding William D. McCrackan, resigned." Is that Mr. Smith's signature? A. I think it is.

Q. Then "Sept. 12, 1911, James A. Neal, succeeding Clifford P. Smith." Are those signatures those of Mr. Neal and Mr. Smith? A. I think so.

Q. "Dec. 2, 1912, Herbert W. Eustace, succeeding James A. Neal." Is that your signature? A. It is.

Q. And James A. Neal—his signature? A. I think so.

Q. "Feb. 1, 1917, Edward A. Merritt, succeeding Thomas W. Hatten." Are those the signatures respectively of Mr. Merritt and Mr. Hatten?

Mr. Krauthoff—Mr. Whipple, excuse me; I suppose it is an oversight. You omit to show that the word "resigned" is shown after all those names.

Mr. Whipple—Yes, it is—resigned. "Succeeding Thomas W. Hatten, resigned." It is—rather to be particularly nice about it, and get it exactly accurate—it is the mark indicating "ditto," ditto marks.

Mr. Krauthoff—Just so we understand each other.

Mr. Whipple—Oh, I think we shall probably be able to agree what it means if we confer on it; perhaps we may do it privately so as not to take too much time.

Q. "Aug. 1, 1917, David B. Ogden, succeeding William P. McKenzie," ditto, or resigned. Are those the signatures of Mr. Ogden and Mr. McKenzie respectively? A. They are.

Q. "Aug. 1, 1917, Lamont Rowlands, succeeding," or ditto, "Edward A. Merritt, resigned." Are those the signatures of Mr. Rowlands and Mr. Merritt respectively? A. They are.

Mr. Whipple—"City of Boston, Oct. 7, 1918, 3:28 p. m., Received and entered in the Records of Mortgages, Book 1313, page 221. James Donovan, City Clerk." And then there is a stamp as to when it was received.

Q. You had this recorded? A. Then we had it recorded.

Q. At City Hall? A. Yes.

Q. I take it that the record of mortgages was the only place you could find to record it down there, I mean, there was not anything else? A. It is recorded in the Secretary of State's office.

Q. Oh, in the Secretary of State's office? A. Yes.

Mr. Whipple—I do not find the incorporation here.

Mr. Bates—Mr. Whipple, I did not understand the date of that being recorded in City Hall.

Mr. Whipple—October, 1918. The Master—What year?

Mr. Whipple—1918, Oct. 7, 3:28 p. m., 1918. The answer admits the deeds of trust creating the Christian Science Board of Directors. I think perhaps

we had better have them put in. Have you them here?

Mr. Krauthoff—If Your Honor please, we admit the execution of instruments bearing a certain date, but we do not admit that those instruments create the Christian Science Board of Directors.

Mr. Whipple—Well, never mind the admission. Have you the papers here? Mr. Krauthoff—They are printed in the back of the bill.

Mr. Whipple—Well, let us have your originals. Will you produce them?

Mr. Krauthoff—We will do that.

Mr. Whipple—You haven't them here?

Mr. Krauthoff—No.

Mr. Whipple—But you will produce them?

Mr. Krauthoff—Yes.

Mr. Whipple—Very well. We will reserve the numbers 2 and 3 for those exhibits.

Mr. Krauthoff—You mean, the two instruments which are printed in the Church Manual from pages 128 to 138, both inclusive?

Mr. Whipple—I do not know what is printed there, but what I do refer to is the paper printed, Exhibit B, attached to the Bill in Equity, and Exhibit C, attached to the Bill in Equity. It is the originals of those that I would like to have produced.

Mr. Krauthoff—We shall be very glad to do that.

Mr. Whipple—Thank you. If you will have them here. They will be, with Your Honor's approval, Exhibits 2 and 3 respectively.

The Master—You have the admission, haven't you, in the—

Mr. Krauthoff—We admit now that they were executed and are correctly set forth.

The Master—The answer is that those were true copies and that they were duly executed.

Mr. Whipple—Quite right, Your Honor, but we should like to have the originals presented. Then they may be withdrawn and copies marked in their place.

[Deed of Trust, dated Sept. 1, 1892, signed by Mrs. Eddy, is designated Exhibit 2;

Deed conveying land for church purposes, Metcalf to Knapp et als., dated March 19, 1903, is designated Exhibit 3.]

Q. Are you a member of The Mother Church, so-called—The First Church of Christ, Scientist, in Boston? A. I am.

Q. How long have you been? A. Since December, 1894.

Q. Before you became one of the trustees of the Publishing Society, what offices, if any, had you held in connection with the Church itself? A. None whatever.

Q. Had you been a practitioner or a lecturer? A. I had been a practitioner.

Q. A practitioner of Christian Science? A. Yes.

Q. In accordance with the book of

Mrs. Eddy on "Science and Health with Key to the Scriptures"? A. In accordance with that book.

Q. Where had you been a practitioner? A. San José, California.

Q. From what time to what time? A. I think from about 1897.

Q. Up to the time you became a trustee? A. Yes, sir.

Q. Are your associates on the board, Mr. Ogden and Mr. Rowlands, both members of The Mother Church? A. They are both members of The Mother Church.

Q. When were they—

Mr. Krauthoff—We object to this witness testifying as to facts of which he has no knowledge. He does not know when they became members of The Mother Church of his own knowledge.

Mr. Whipple—Oh, I think he does.

Mr. Krauthoff—May I examine him?

Mr. Whipple—You must not be too technical, brother Krauthoff. We will be here all summer if you keep up that sort of thing. There are some things that we had better use our common sense about; don't you think so?

Mr. Krauthoff—I desire to examine as to this witness' knowledge as to when his associates became members of The Mother Church.

Mr. Whipple—Do you want to do it now? You seem in a great hurry to get to the cross-examination.

Mr. Krauthoff—I object to his testimony by this witness of his associates becoming members of The Mother Church.

Mr. Whipple—All right. I will waive it. All he has said is that they are members of the Christian Science Church, and that is The Mother Church, and that is enough for the present; and if I want to offer more I will give you notice so that you can make your objection seasonably.

Mr. Krauthoff—If Your Honor please, I am entitled to decent treatment at the hands of Mr. Whipple. I will make my legal objections, and I will ask the Court for decent treatment at the hands of Mr. Whipple.

The Master—I am unable to see so far that you have anything to complain of. He has offered you an opportunity to raise your objection seasonably to any further questions of his.

Q. Now, referring to the Deed of Trust. I want to ask the general question whether in what you have done since you have been on the board, and especially since you have been associated with your present associates, you have observed and understood and followed the terms of the Deed of Trust executed by Mrs. Eddy?

Mr. Krauthoff—We object to that as calling for the conclusion of the witness. The meaning of this Deed of Trust is in controversy at the outset, and what this witness did is determined by the facts and not by his conclusions.

Q. I will revise the question and put it: So far as you are aware, have you observed in the discharge of your duties the terms of the Deed of Trust?

Mr. Krauthoff—We object to that. A. Absolutely.

The Master—Pause a moment.

Mr. Krauthoff—We object to that question because it calls for the conclusion of the witness.

The Master—I think I shall have to take the answer to the question subject to your objection. I think your rights will be all saved if that is done. You would hardly expect me, I suppose, to peremptorily exclude it in view of the objection.

Q. Are you aware of anything that has been done, either by your associates or yourself, in violation of the terms of that trust deed?

Mr. Krauthoff—We object to that as calling for the conclusion of the witness.

The Master—The witness may answer subject to the objection.

The Witness—May I have the question again?

(Question read by stenographer.)

A. I know of nothing.

Q. After you became a trustee, will you state when, if at all, any differences arose between the Board of Directors and the trustees—when first, as you remember it? A. I think the only thing that could be called a difference was in the early part of 1916, when a memorandum, so-called, was presented by the Board of Directors to the Board of Trustees.

Q. Have you that memorandum? Either the original or a copy? A. It is in Mr. Dittmore's answer, I think.

Mr. Krauthoff—We object to the statement of witness that memorandum is in Mr. Dittmore's answer. The memorandum is the best proof of its contents.

The Master—Will you read me the whole answer?

(Answer read by stenographer.)

Q. You mean, a copy of it is? A. A copy of it is.

The Master—What statement do you object to?

Mr. Krauthoff—We object to his statement that the memorandum is copied in Mr. Dittmore's answer. The memorandum is the best proof of its contents.

Mr. Whipple—We are not proving the contents of the memorandum; we are identifying the paper.

Mr. Krauthoff—Very well, then. I assumed that the answer was for proving its contents.

Mr. Whipple—Well, we can agree with you—

The Master—Is it worth while, gentlemen, to spend time about this? He says there is a copy attached to Mr. Dittmore's answer. That is as far as he has gone. Why not let that stand just as it is?

Q. Afterward was there correspondence on the same subject? A. There were conferences.

Q. That is, while Mr. Merritt and

Mr. McKenzie were on the board? A. While Mr. McKenzie and Mr. Hatten were on the board.

Q. Then was there any other communication on the subject? When next? A. I think the next time it was brought up was sometime in June or July. In June, I think. I think in June of 1918.

Q. Now, let me ask whether there was any written reply to this memorandum that you refer to? A. Any written reply by the trustees?

Q. Yes. A. At any time, you mean?

Q. Well, was there at any time while Mr. McKenzie and Mr. Merritt were on the board? A. There was a letter prepared, but whether it was ever signed and delivered I do not know.

Q. Was there a disagreement between the directors and the trustees as to the memorandum? A. An absolute disagreement.

Q. Was it in any way settled or adjusted? A. It was—as I understood, the adjustment was that it was to be absolutely forgotten.

Mr. Krauthoff—If Your Honor please, I move to strike out the testimony of the witness as to what he understood.

The Master—Should it not be stated first what was done?

Mr. Whipple—Yes. I won't go through all the conversations, unless Your Honor should direct me to.

Q. What was the resulting and final conversation? A. The agreement was—

Mr. Krauthoff—We object—

Q. They will object if you call it an agreement. If you state a conversation you escape at least one of those technicalities that might otherwise obstruct your testifying.

A. The conversation—

Mr. Krauthoff—If Your Honor please, we make the distinct objection that the witness must state the conversation.

Mr. Whipple—Oh, no. You state the conversation. If you can't remember it in detail, state the substance of it.

The Witness—I can only state the substance of it.

Q. That is all right. You may do that. A. The substance of the conversation was that the memorandum should be laid aside and forgotten, and that we would work on in the spirit of true Christian Science.

Q. Now, next, as I understand it, there was a communication some time in June of last year? A. June—it was not a communication; it was a conference. A conference between the Board of Directors and the Board of Trustees.

Q. On that same subject matter or a kindred matter? A. The subject was brought up.

Q. The subject was brought up? When was there any written communication with regard to it? Do you remember the first one? Was the first one on Sept. 30? The first communi-

cation on the subject? A. After the June—yes, I think Sept. 30 was the only time it was referred to in a communication.

Q. But there had been conversations before that? A. There had been this conversation in June, and I think it was referred to in a conference on Sept. 11.

Mr. Streeter—What was that last?

The Witness—I think it was referred to in a conference between the two boards on Sept. 11.

Mr. Whipple—Now, if Your Honor please, while we do not think that this preliminary correspondence is of any material value, I think, perhaps, as a part of the history leading up to the point at issue, it may be offered as a matter of inducement. Therefore I will ask you to produce the letter of Sept. 30, 1918, if you have it. (Papers handed to Mr. Whipple by Mr. Krauthoff.)

Mr. Whipple—There are two letters, two communications, one dated Oct. 1, 1918, and one dated Sept. 30, 1918. The letter bears the stamp—

The Master—Are these in the pleadings anywhere?

Mr. Whipple—No, Your Honor. They are merely preliminary to the real issue. I will have them marked respectively Exhibit 4 and Exhibit 4a.

The Master—Those, if I understand it, are communications from the Board of Directors?

Mr. Whipple—No, Your Honor. These are communications from the trustees to the directors, in which—

The Master—Communications from the trustees to the directors?

Mr. Whipple—Yes, Your Honor.

The Master—Both of them?

Mr. Whipple—Yes, Your Honor.

Mr. Krauthoff—May I inquire if this is considered a formal offer of the letters in evidence by having them identified?

Mr. Whipple—Oh, I am not having them identified; I am offering them as exhibits.

Mr. Krauthoff—You are offering them in evidence as exhibits?

Mr. Whipple—Yes, that is right.

Mr. Krauthoff—Well, we object to the statement of the trustees in their own favor except as statements of claims made by them.

The Master—Mr. Whipple, as I understand it, offers these communications between the two contending parties, as a part of the history of what went on.

Mr. Whipple—Purely a part of the history as to what went on.

The Master—That is enough to make them admissible, is it not?

Mr. Krauthoff—For that purpose, yes.

The Master—Well, what conclusions can be drawn from them, for what purposes they can be used, is a matter to be considered hereafter.

Mr. Krauthoff—Certainly; but we desire at this time to point out that they are no proof of the statements

that the trustees made in their own favor.

Mr. Whipple—Oh, but we think they are.

Mr. Krauthoff—They are not proof of the facts that are claimed.

The Master—Your objection being on record, that is all you want for the present?

Mr. Krauthoff—Yes.

The Master—I think we better go on.

Mr. Whipple—They are some proof of it; they are not conclusive. The first letter is—

Mr. Streeter—What are they? Exhibits 4 and 5?

Mr. Whipple—Exhibits 4 and 4a, General. The first letter is dated Oct. 1, on the heading of The Christian Science Publishing Society, Boston, U. S. A., cable address "Monitor, Boston," Office of Business Manager, Oct. 1, 1918. There is a stamp on it which you will notice on these communications, as follows: "Read, Oct. 1, 1918, The C. S. Board of Directors." That is, the directors had a habit of causing these communications to be stamped when they were read:

"Dear Friends:

"Under separate cover we are sending to the Board of Directors a letter bearing upon the subject that we were to discuss with you today. A copy of the letter is being sent for each member of your board, and also a copy of the Deed of Trust. If, after reading this letter, the Board of Directors still wishes to see the trustees, we shall be in session at the Publishing House and shall be glad to have you telephone us. With best wishes,

"Yours sincerely,

"BOARD OF TRUSTEES,

"Herbert W. Eustace,

"Secretary."

[The above letter, dated Oct. 1, 1918, is marked Exhibit 4.]

Mr. Whipple—The second letter, which appears to be one of the copies, is dated Sept. 30, 1918. It is stamped, "Read, Oct. 1, 1918, The C. S. Board of Directors"; and also, "Read, Dec. 19, 1918, The C. S. Board of Directors."

[Letter, dated Sept. 30, 1918, is marked Exhibit 4a, and reads as follows:]

"Sept. 30, 1918.

"The Christian Science Board of Directors,

"Falmouth and St. Paul Streets,

"Boston, Massachusetts.

"Dear Friends:

"Referring to our meeting with you on Wednesday, Sept. 11, and your request later that the Board of Trustees listen to the reading of the minutes of the Board of Directors recording their interpretation of that meeting, after most careful and earnest consideration, the Board of Trustees has decided that this would not be a wise course of action for the trustees to take.

"In view of this request of the directors and of the meeting of Sept. 11, and more especially in view of the reference to a certain 'memorandum' pre-

pared by the Board of Directors and presented to the Board of Trustees for their acceptance at certain joint conferences held by the two boards in the month of February, 1916, and again brought up by the Board of Directors for discussion with the Board of Trustees in recent conferences, which, though having been rejected by the trustees as a contravention of the Deed of Trust and the Church Manual, may still be in the directors' file, it is our desire to set forth clearly in writing the position of the Board of Trustees as stated at the meeting of Sept. 11.

"At that meeting the trustees stated to the Board of Directors exactly how they viewed the Deed of Trust and the Manual in their relation to the trustees and their work. The trustees affirmed definitely that to them, as loyal Christian Scientists, their trust was not only a most sacred and honored trust given to them by our Leader as a 'perpetual and irrevocable trust and confidence' (Deed of Trust), but that it was an absolutely legal trust governed and perpetuated by the laws of Massachusetts and the United States, and that in order to be true to this trust there was no other course possible to them than to abide absolutely by the Deed of Trust and the Manual, both in the letter and the spirit, and that from that day they proposed to do so; that the trustees felt that it was incumbent upon them to interpret the Deed of Trust through their own metaphysical understanding of what our Leader has written, since they were the ones called upon to fulfill the trust, and that that interpretation could not be done by somebody else for them.

"The directors stated at the close of the meeting that the trustees had made their position quite clear, and in view of that statement, this letter might seem superfluous, but as we have already stated, it seems just to state our position in writing, and provide a copy of this letter for each member of your board so that every statement therein may be verified with the Manual and the Deed of Trust.

"At the meeting on Sept. 11 some members of your board indicated that the statement of the trustees was an entirely new position for the trustees to take, and that it was a complete surprise to the directors. Since that meeting the trustees have gone back over old correspondence with the directors, and they find that their position in substance is in exact accord with the record of the trustees for a number of years, and so far as they can learn, it is the position that the Board of Trustees has felt was the only correct position from the beginning of the trusteeship. Therefore the surprise could only have been occasioned by the directors' never having grasped the viewpoint of the trustees as to the purport of the Deed of Trust and the Manual in their relation to the Board of Trustees.

"In order to make the question per-

fectly clear, we wish to state, in our Leader's words, that the Deed of Trust, under which the trustees legally operate, was prepared by our Leader and given as 'A Gift to The Mother Church,' and a Grant of Trusteeship' (letter conveying the Deed of Trust), and it was to be a 'perpetual and irrevocable trust and confidence' (Deed of Trust), and that 'The delivery of this instrument to, and its acceptance by said trustees shall be regarded as the full establishment of the trust and as the agreement by the trustees to honestly and faithfully do and perform all things to be done and performed by them within the terms, objects and purposes of this instrument' (Sec. 14). This Deed of Trust, according to Sec. 1 of Art. XXV of the Church Manual, is inferentially incorporated as part and parcel of the Church Manual. Therefore its conditions are obligatory upon the trustees, not only as an integral part of the Church By-Laws, but also according to the laws of the land.

"Simply stated, the trustees consider their trust is for the one purpose, as stated in the Deed of Trust, 'of more effectually promoting and extending the religion of Christian Science as taught by' Mrs. Eddy, and not for the purpose of making money, although all 'net profits'—and the Deed of Trust defines what is meant by the term 'net profits'—are to be paid over each six months to the treasurer of The Mother Church.

"The trustees understand that they are absolutely responsible for the entire business of The Christian Science Publishing Society, being the owner and manager in trust of said business and constituting in their trusteeship. The Christian Science Publishing Society, under which name they are required to do business. The Deed of Trust demands that the 'trustees shall energetically and judiciously manage the business of the Publishing Society on a strictly Christian basis, and upon their own responsibility' (Sec. 3), and shall further 'employ all the help necessary to the proper conduct of said business, and shall discharge the same in their discretion or according to the needs of the business' (Sec. 6). This requirement, relating to employing and discharging, the trustees hold to include every man, woman, and child working for the Publishing Society, in whatever capacity. The Board of Directors elect the editor and associate editors of our monthly and weekly periodicals, the editor of our daily newspaper, and the business manager, but the trustees employ these officers, and determine their salary; hence they are employees of The Christian Science Publishing Society,—in other words, of the Board of Trustees and not of the Board of Directors. This is clearly pointed out by our Leader in the letter conveying the Deed of Trust, wherein she says, 'I now recommend that these Trustees continue at present the efficient ser-

vice of Mr. Joseph Armstrong as the business manager of the publishing house.' Mr. Armstrong was at the time of this recommendation not only the business manager of the publishing house, but was also publisher of our Leader's works and a member of the Board of Directors of The Mother Church. Said term of office, according to the Manual, is 'one year each, dating from the time of election' (Art. XXV, Sec. 4), and is not subject to termination before the expiration of one year except in the event of discharge by the trustees for cause. The trustees hold that the directors have no direct control over the editors or the business manager, and can therefore make no business arrangements with them which in any way concern the Publishing Society.

"The Manual, in Sec. 14 of Art. VIII, under the chapter 'Discipline,' declares, 'It shall be the privilege and duty of every member, who can afford it, to subscribe for the periodicals which are the organs of this Church,' and at the close of the paragraph it is stated, 'and it shall be the duty of the Directors to see that these periodicals are ably edited and kept abreast of the times.' This is clearly a disciplinary function and not an executive function; therefore, the trustees hold that as discipline it is the duty of the Board of Directors to call attention at once to any failure on the part of the trustees to have the periodicals well edited and kept abreast of the times. But the trustees hold it is not the province of the directors to edit the periodicals, any more than it is the province of the directors to conduct the business of The Christian Science Publishing Society. The directors elect the editors and the business manager, but their employment and adjustment to office is the responsibility of the trustees, and if these officers do not do their work rightly, then the trustees are to blame, for they have the authority, as already quoted from the Deed of Trust, to discharge any employee for non-fulfillment of duty. The trustees feel, however, that the editors have a natural right to talk over with the Board of Directors any matter concerning the editorial work at any time they desire to do so, and request the benefit of their experience and enlightenment.

"Mrs. Eddy, in establishing the Deed of Trust, evidently took pains to define the character of thought that should constitute the Board of Trustees—business, metaphysics (a doctor), and scholarship—and, furthermore, she stated, 'I have asked for a small Board of Trustees, and as I believe a strong board' (letter conveying the Deed of Trust). Following this, she defined clearly and unmistakably what the duties of the Board of Trustees should be, stating specifically, and thus showing why she had defined the mental qualities constituting the Board of Trustees (Sec. 2), 'Said trustees shall have direction and supervision

of the publication of said Quarterly, and also of all pamphlets, tracts, and other literature pertaining to said business, using their best judgment as to the means of preparing and issuing the same, so as to promote the best interests of the Cause.'

"Mrs. Eddy also covered, in Sec. 6 of Art. XXV of the Church Manual, the rules and orders that should govern any further publications issued by The Christian Science Publishing Society. In Sec. 8 of Art. XXV she declares, 'Only the Publishing Society of The Mother Church selects, approves, and publishes the books and literature it sends forth,' and concludes the section with the statement, 'A book or an article of which Mrs. Eddy is the author shall not be published nor republished by this Society without her knowledge or written consent.' In connection with this last sentence in Sec. 8, the trustees wish here to state positively their interpretation of this By-Law, and it is that this society can issue no book or article of which our Leader is the author that is not already in her published works, unless the provisions of this By-Law can be established.

"We should like at this point to bear record, with a great deal of appreciation, that at the time of the publication of the article entitled 'Life,' by our Leader, which appeared in the Sentinel of Feb. 2, and in the April Journal, which at that time we heartily approved, that when the trustees desired to republish this article in pamphlet form, the directors advised otherwise, and very wisely, for now we see clearly that this By-Law prohibits the publishing or republishing of any such articles. Inasmuch as the article originally was not referred to the trustees by the directors, as we now hold it should have been before being presented to the editors for their consideration for publication, the directors were primarily responsible for its first publication, but the field has a right to hold the Publishing Society, under the Church Manual, responsible for not upholding this By-Law. This mistake shows the great necessity of working in exact accord with the Deed of Trust and the Manual. We accept our full responsibility for this departure in regard to publishing the article 'Life,' as we should have been fully alive to our trusteeship.

"We have notified the editor of the Journal and Sentinel and the editor of the Monitor, that we hold them responsible for everything that is published in the periodicals, and that we look to them to be true to their responsibility, just as we hold the business manager responsible for the business. The trustees are fully aware that there is only one way in which to govern the business of The Christian Science Publishing Society, 'on a strictly Christian basis' (Sec. 3 of the Deed of Trust)—by holding every man and woman in the Publishing House responsible for his

own individual work, for we can conceive of no government by Principle except by trusting each employee to his own individual demonstration of Principle, and then, if the demonstration is not satisfactory, to point out the mistake. The future vastness of the Publishing Society's business is so great that to contemplate any other way of conducting the business is impossible. Therefore, each individual must be held responsible for his own demonstration, for this inevitably brings out the very best that is in the individual, and makes him responsible to God for his office and for his continuance in that office, instead of looking to person or persons, and this applies to all employees, from those who seem to have unimportant work to those who fill the most important offices.

"The members of the Board of Trustees naturally feel a deep sense of responsibility in the handling of this sacred and tremendous trust committed to their care, and they are resolved to faithfully live up to the Deed of Trust and the Manual both in the letter and in the spirit. They wish neither to shirk any responsibility nor to assume any responsibility that is not properly theirs, but God will not allow them to avoid in the slightest degree fulfilling the full requirements of the Deed of Trust and the Manual, and the trustees hold that this responsibility includes the complete and entire management of The Christian Science Publishing Society in every detail, 'upon their own responsibility' and 'energetically and judiciously.'

"In defining our position we have spoken frankly and directly, and our one desire has been to do God's will and to be obedient to the teachings of Mrs. Eddy, as embodied by her in the Deed of Trust and the Manual. The trustees wish to reiterate the high personal regard they entertain for the individual members of the Board of Directors and, above all, they want to declare the love and honor they have for the office of the Christian Science Board of Directors, and in turn rightly expect the same love and honor on the part of the directors for the office of the Board of Trustees. These two boards, designated and constituted by our Leader, each having its own well defined work, one being the governing board of the Church and its activity and the other the governing board of the Publishing Society and all its publications, must inevitably cooperate at every point. This cooperation, however, can only be accomplished by a right mutual respect for each other's boards and their respective work. Yet when all is said and done, in spite of the tremendous importance of the letter, still how small is the letter compared to that Spirit that must inspire everything bequeathed to us by our Leader in the service of God. It is in



the unity of this Spirit that this letter is written, signed, and sent.

"Very sincerely yours;

(Signed) "HERBERT W. EUSTACE,  
"DAVID B. OGDEN,  
"LAMONT ROWLANDS,  
"Board of Trustees."

Q. Now, up to that time had you consulted any counsel with reference to the matter of the discharge of your duties as trustees?

The Master—"That time" is what?

Mr. Whipple—September of last year.

The Master—September when?

Mr. Whipple—Sept. 30 of last year.

A. We had not.

Q. Up to that time had any difference in opinion arisen between you and the directors as to any specific thing which should be done, or that either should refrain from doing? A. Yes, there had.

Q. What? A. In the publication of a pamphlet called "Purification."

Q. Well, that is referred to here? No, that is not referred to here. A. No.

Q. Any other than that one? A. I think not.

Q. Tell us about that. You were to publish a pamphlet, or did publish one? A. It is the duty of the Publishing Society to issue pamphlets. It has been the—

Mr. Krauthoff—Excuse me, if Your Honor please. I object to that statement, of course, that it is the duty of the Publishing Society to issue pamphlets, as calling for a conclusion of the witness. The duties of the Publishing Society depend upon certain facts.

The Master—There may be some question about it, but I think that we had better take it subject to objection.

Q. You mean the duty as defined in the trust deed? A. In the trust deed, yes.

Q. And you refer to a particular clause in the trust deed, whatever it is? A. It says that they shall have authority to issue pamphlets, etc., and all other literature.

Q. Yes. Now, proceed from the point at which you were interrupted. A. It being the duty of the Publishing Society to issue pamphlets, it has been the custom of the trustees to select articles appearing in the periodicals from time to time for issuance in pamphlet form. There were certain articles issued in the meantime over a series of several weeks, and to the trustees these articles were of very vital significance at the time, and at all times, and it was decided to issue these articles in pamphlet form, and call the pamphlet "Purification." This was done in the usual way, and I think the first objection to it came in a— I will have to tell this just as I remember it—

Q. Yes. A. The first objection came, as I remember it, from the Board of Directors. They had heard that we were issuing—

Q. In a written communication, or orally? A. No, not at that time.

Q. Yes. All right. State what was said about it. A. They said that they would like to talk with the trustees about the pamphlet "Purification" before it went out. There may have been little intervening things, but I don't remember exactly. And the trustees had a conference with the Board of Directors on this subject.

Q. About when? Which year? A. It was early in September of 1918.

Q. Yes. Before this letter was written? A. Oh, yes, yes.

Q. All right. A. It was early in that same month.

Q. Now, will you state the substance of the conference? A. Several objections were made to specific things in the pamphlet, but nothing very important, and the trustees said that they would take them under consideration. One was a typographical error which self-evidently needed changing; the others were points of making the statements in the pamphlet perhaps a little clearer; and also the directors desired to have the name of the author of the writings on the pamphlet. After returning to our board room it was decided to issue the pamphlet and make the change with regard to the name, placing the name on the pamphlet, and the pamphlets had then nearly all been printed; and, as I remember it, the word was sent to the directors that we would make the changes in the next edition; and the pamphlet was ordered sent out. I think the next thing that we knew of was that the business manager reported to us—

Mr. Krauthoff—We object to what the business manager reported.

Mr. Whipple—You may pass that.

The Master—We are now getting a connected history of the whole thing. I think that it may go in, reserving your objection.

The Witness—The next thing was that the business manager reported to us that he had received a communication from the directors, ordering that this pamphlet be not sent out without further instructions from them. That is in substance as I remember it. He reported this to the trustees, and the trustees in substance told him that he had the direction of the order—

Mr. Krauthoff—We object to what the trustees told the business manager.

The Master—Do you want that, Mr. Whipple?

Q. Well, did you send it out just the same? A. The business manager sent it out.

Q. By your direction? A. By our direction.

Q. Yes; that is right. Now, were there any other disagreements or controversies than that? Had there been on any specific thing up to that time? A. I would say no.

Q. I think perhaps it will help if you will state what publications the publication society does issue. A. The Christian Science Journal—

Q. Describe that. How often is it

published? A. It is a monthly publication.

Q. I beg pardon? A. Published monthly. It is the original publication, founded in 1883 by Mrs. Eddy.

Q. What does it contain? A. Articles written by Christian Scientists throughout the field, editorials, and testimonies of healing, and also a list of practitioners and churches and societies.

Q. How about the rest of them? A. The Christian Science Sentinel, which is a weekly publication, established in 1898 by Mrs. Eddy; Der Herold der Christian Science—

Q. What is its character? A. It has, also, shorter articles, perhaps, written by Christian Scientists, and testimonies of healing, and editorials, and some other items of interest from religious exchanges and such things.

Q. Very well. A. Der Herold der Christian Science, a periodical, a monthly periodical, printed in the German language, with the English on opposite pages. This was established or authorized by Mrs. Eddy, I think, in 1890.

Q. Where does that circulate? A. Throughout the world.

Mr. Bates—I did not understand the date.

The Witness—I think it was in 1890.

Mr. Bates—Do you mean that?

The Witness—No, of course I don't mean 1890. Let me see.

Is there a Sentinel here?

Mr. Whipple—We will fix that.

The Witness—Wait a minute—1893 and 1898—well, it is of minor importance, is it not, the date?

Mr. Whipple—Yes, we will fix the date later.

Q.—What is the character of that publication? A. Of the Herold, the German Herold?

Q. Yes. A. It now consists of articles and testimonies and editorials translated into the German language that have appeared in our other periodicals.

Q. And the others? A. Then there is the Christian Science Quarterly, which appears quarterly, containing what are called the Bible lessons. They are the lesson sermons read each Sunday in all Christian Science churches, and are issued each quarter.

Q. By whom are they prepared? A. They are prepared by a committee appointed by the Board of Trustees.

Q. And are those the things which are read throughout the world in Christian Science churches on Sunday? A. Those are the lessons studied by Christian Scientists and read on Sunday at the Sunday services.

Q. Does the reading of those lessons or sermons constitute the entire exercise on Sunday? A. No.

Q. What else is there? A. That is the sermon part of the exercise. It consists of the singing of hymns, reading from the Scriptures, and the Lord's Prayer, and the interpretation,

the spiritual interpretation, of the Lord's Prayer, as given in the Christian Science textbook, Science and Health.

Q. So that they take the place of what are called sermons in the other churches? A. That is their purpose, I believe.

Q. And those are prepared by a committee appointed by the Board of Trustees? A. A committee of six.

Q. And have been ever since you have had anything to do with it? A. They have.

Q. Have the directors ever had anything to do with that? A. Not that I know of.

Q. And the other periodical or paper? A. A French paper that we issue, called Le Héraut de Christian Science. That is like the German periodical—it consists of translations from articles and editorials and testimonies that have previously appeared in our other periodicals. And then there is The Christian Science Monitor, established in 1898. That is our daily newspaper.

Q. And where does that circulate? A. That circulates throughout the entire world.

Q. And deals with news throughout the world? A. Yes; containing also one Christian Science article each day.

Q. One Christian Science article? A. Yes.

Q. Now, pamphlets have been spoken of. A. Yes. That is incidental to our business.

Q. It is said that the Monitor was established in 1908 instead of 1898. A. Yes, 1908, that is right.

Q. Then, from time to time, you issue pamphlets which are a part of the Christian Science literature? A. Yes.

Mr. Whipple—Now I will offer the reply to the letter of Sept. 30th, and that will be marked Exhibit 5.

Mr. Strawn—You have a copy of this letter, have you, bearing date Oct. 8, 1918, written by the Board of Directors to the Board of Trustees?

Mr. Krauthoff—We haven't it with us.

The Master—Show it to the other counsel, then, if they have not seen it.

Mr. Whipple—This is the original letter. I think that they all have copies of it.

Mr. Krauthoff—I do not think that we have any objection to an original document from our clients. (After examining the letter referred to) No, we have no objection to it.

The Master—Then you may read it. Mr. Strawn. [Reading]:

"Copy

"The Christian Science Board of Directors, Boston, Massachusetts  
"Oct. 8, 1918.

"Board of Trustees,

"The Christian Science Publishing Society,  
"Boston, Massachusetts.

"Dear Friends:

"Your letter of Sept. 30 has been carefully considered. Looking first

for points of agreement, the Christian Science Board of Directors proposes, as a general rule, to exercise its supervision of the publishing department of The Mother Church with and through the trustees of The Christian Science Publishing Society. Nevertheless, this board reserves the right to adopt any mode of action that may be appropriate or necessary, in any particular situation, to fulfill its legal, moral, and spiritual responsibilities.

"Mrs. Eddy's gift of the business of The Christian Science Publishing Society was in purpose and effect a gift to The Mother Church. This fact is proved by her disposition of its profits. It is also proved by her contemporaneous letter to the original trustees, in which she summed it up as, 'A gift to The Mother Church, and a grant of trusteeship.' Before that she had made the Christian Science Board of Directors the 'body corporate for the purpose of taking and holding' all gifts to her Church (Church Manual, p. 130). Again on page 13 of her 'Message for 1902,' Mrs. Eddy spoke of the business of The Christian Science Publishing Society as a transfer to The Mother Church. Since her 'gift' and 'transfer' was 'to The Mother Church' her 'grant of trusteeship' was evidently and necessarily consistent with and subordinate to her plan for a church; hence the trusteeship which she granted at that time was a secondary and subordinate grant. It cannot be regarded as independent; it must be construed in relation to the Massachusetts statute and the Deed of Trust copied on pp. 128-135 of the Manual, and in relation to all other steps taken by Mrs. Eddy as the Founder of Christian Science. Prominent in this connection is the provision by which, 'The business of The Mother Church shall be transacted by its Christian Science Board of Directors.' (Manual, Article I, Sec. 6.) By this and other provisions of our Church By-Laws the Christian Science Board of Directors became more than the body corporate described in the statute and trust deed quoted on pp. 128-135 of the Manual; it became the superior directing body in Christian Science affairs. The power of this board to declare vacancies in the trusteeship of The Christian Science Publishing Society (Manual, Art. XXV, Sec. 3), was doubtless intended to establish the superior relation of this board to that trusteeship beyond question.

"The plan proposed in this letter—that the directors will, as a general rule, exercise their supervision of the Publishing Society with and through the trustees—will need for its success a mutual conception of the relations between the two boards and a consistent intention to cooperate accordingly. The plan now proposed will succeed only when each board acts in full accordance with its respective functions.

"It does not seem necessary now

for the directors to take up every point in the trustees' letter. The directors must, however, expressly disallow the claim of the trustees that their recent interpretation of the Deed of Trust dated Jan. 25, 1898, is conclusive. Such a claim, if conceded, might destroy the unity of the Christian Science movement for the same reason that a similar claim made by certain states in 1861 in regard to the American Constitution, threatened to break up and destroy the American Union.

"With reference to the question whether the claims now advanced by the trustees are new and surprising, it is to be remembered that some of the directors have been on one or the other of the two boards for a longer time than any of the trustees have served as such. The directors, therefore, may be better informed on this subject than the trustees. Specific evidence that the claims now advanced by the trustees are of recent origin is furnished by a letter from the trustees to the directors dated Feb. 15, 1916.

"The directors must also disallow the claim of the trustees that 'the duty of the directors to see that these (the Christian Science) periodicals are ably edited and kept abreast of the times' (Manual, Art. VIII, Sec. 14) is merely a disciplinary function. The word 'discipline,' on which the trustees base this claim, is the general heading of Articles VIII to XII of the Manual; which five articles include forty-nine sections pertaining to about as many subjects, the same being variously near to or remote from what is commonly called discipline. The heading of Art. VIII is 'Guidance of Members.' Moreover, the immediate context of the provision in question is a declaration of the privilege and duty of members to subscribe for the periodicals. The two declarations of duty in the same by-law, with only a semicolon between them, are evidently related closely by contents as well as position. They are much closer to each other, both in position and significance, than either of them is to the heading 'Discipline.' The privilege and duty of members is to subscribe for the periodicals; the related or corresponding duty of the directors is 'to see that these periodicals are ably edited and kept abreast of the times.' Now the verb 'see,' as defined in the Century Dictionary, means 'to bring about as a result; superintend the execution or the performance of a thing so as to effect (a specified result); make sure; with an object-clause with that specifying the result.' Hence the provision in question, instead of being limited to what is commonly called 'discipline,' clearly supports and confirms the directors' entire view of their relation to the Publishing Society.

"The directors infer that the trustees have read their Deed of Trust by itself, or without enough regard for the other instruments to which it is essentially

related. Our Leader founded one Church or institution; hence, no part thereof can be understood by itself. It would seem from the trustees' letter that they have failed to get a complete view of the entire situation. In particular, it would seem that the trustees have failed to give due effect to the statute quoted on page 130 of the Manual, to the Deed of Trust based on that statute, and to the Church By-Laws, which clearly confer superior authority on the Christian Science Board of Directors. Two of these By-Laws are already quoted in this letter; others are Secs. 2, 3, 4, 5 and 9, of Art. XXV.

"The By-Laws just cited apply explicitly to the relations between the Christian Science Board of Directors and the trustees of The Christian Science Publishing Society. Even without them, there would be sufficient evidence for the conclusions that the jurisdiction of this board extends to every matter affecting the cause of Christian Science as a whole, and that it includes such supervision over all departments and branches of The Mother Church as may be necessary to preserve the purity and integrity of the religion which it represents. This conclusion from the contents of our Church Manual was stated by this board, when only one of its present members were on it, in a letter published on Nov. 3, 1909, in the Christian Science Sentinel; that statement had the express advance approval of Mrs. Eddy as well as the general approval of loyal Christian Scientists. The fact that the net profits of the business go to The Mother Church carries with it a legal right of oversight to guard against mismanagement and loss. Yet this fact is only one of many considerations which unitedly support and confirm the directors' conclusions.

"Of necessity there must be a board or body having superior authority in such an institution as that which represents Christian Science. If the trustees of The Christian Science Publishing Society were not subordinate to the Christian Science Board of Directors, there would be two boards having equal authority in regard to the same affairs; a situation which would at once defy metaphysics and invite failure in business. On the other hand, the relation between the two boards stated in this letter not only results from and is consistent with all of Mrs. Eddy's acts as the Founder of Christian Science; it is also the only feasible or workable arrangement. Heartily carried on, the authority which it concedes to the trustees will give them one of the most important responsibilities in the world.

"The expressions of personal regard in the trustees' letter are cordially reciprocated. The present directors hope that the present trustees will proceed in accordance with the conclusions stated in this letter. An assurance on this point is desired, and is needed for the general welfare. Our Leader has said, 'Unity is the essential

nature of Christian Science. Its Principle is One, and to demonstrate the divine One, demands oneness of thought and action.' (Miscellaneous Writings, p. 264.)

"Sincerely yours,  
"THE CHRISTIAN SCIENCE BOARD  
OF DIRECTORS.

"By (Signed)  
"EDWARD A. MERRITT,  
"Secretary."

[The letter of which the foregoing is a copy is marked Exhibit 5. R. H. J.]

Mr. Whipple—May we suspend, Your Honor, until, say, five minutes past two?

Mr. Bates—I would suggest quarter past two, merely because the elevators are apt to be so crowded at two o'clock.

Mr. Whipple—They will get over the crowd by five minutes past two.

Mr. Bates—I know it, but, in order to get here by five minutes past two we shall have to come up in the midst of the crowd. It is only a suggestion. Make it 10 minutes past, if you prefer it.

Mr. Whipple—All right. We do not want to lose any time if we can help it, because with such an array of distinguished counsel as we have here every five minutes counts.

[Recess until 2:10 o'clock p. m.]

#### AFTERNOON SESSION

Mr. Whipple—We were merely reading letters; I do not believe Mr. Thompson or Mr. Streeter would care if we proceed.

The Master—At what hour this afternoon do counsel think we had better adjourn?

Mr. Bates—Whatever is agreeable to Your Honor.

Mr. Whipple—The regular hours in the state court are from two to four in the afternoon; that is agreeable to us.

Mr. Bates—Your Honor, that is agreeable to us—anything that is agreeable to the master. I would suggest that as we did not begin until 2:15 perhaps we better go over until 4:15.

The Master—It doesn't make any difference to me, anything that is agreeable to counsel.

Mr. Bates—A two-hour session in the afternoon.

Mr. Whipple—The next letter is one dated Oct. 11, 1918, the original of which you have. Shall we use a copy?

Mr. Krauthoff—A letter from the trustees?

Mr. Whipple—Yes

Mr. Krauthoff—I do not know that we have.

Mr. Strawn—It is a very short letter.

Mr. Strawn reads the following letter:

"Oct. 11, 1918.

"The Christian Science Board of Directors,

"Falmouth and St. Paul Streets,

"Boston, Massachusetts.

"Dear Friends:

"We wish to acknowledge the receipt of your letter of Oct. 8 and to

say that we will defer our reply until we have our full board present.

"Very sincerely yours,  
"BOARD OF TRUSTEES,  
(Signed) "HERBERT W. EUSTACE,  
"Secretary."

Mr. Krauthoff—May I ask that the letter of Oct. 8 be offered in connection with it?

Mr. Strawn—I think it has been offered.

Mr. Whipple—That has been offered and has been marked.

Mr. Strawn—That is the one I read just before adjournment.

[The above letter, Board of Trustees to the Board of Directors, Oct. 11, 1918, is marked Exhibit 6.]

Mr. Strawn—The next letter is also from the trustees to the directors, the original of which I dare say you have, dated Nov. 11, 1918.

Mr. Strawn reads the following letter:

[Exhibit 7.]

"Nov. 11, 1918.

"The Christian Science Board of Directors,

"Falmouth and St. Paul Streets,

"Boston, Massachusetts.

"Dear Friends:

"The Board of Trustees again acknowledges receipt of your courteous favor of Oct. 8. This board sincerely regrets it cannot adopt the definition of its powers and duties set forth in your letter, but after having given further careful consideration to the subject refers to the conclusions expressed in its letter to your board under date of Sept. 30, 1918.

"This board is in accord with your suggestion that the action of the two boards should be entirely harmonious, and that both should be impelled by no other motive than the best interests of the cause which each is trying to serve. If you desire to discuss the subject further, the members of this board will be pleased to meet with you at any time you may appoint.

"With renewed assurance of our esteem and sincere regard, we are,

"Very sincerely yours,  
(Signed) "HERBERT W. EUSTACE,  
"DAVID B. OGDEN,  
"LAMONT ROWLANDS,  
"Board of Trustees."

[The above letter, Board of Trustees to Board of Directors, Nov. 11, 1918, is marked Exhibit 7.]

Q. Mr. Eustace, we do not find in the files any reply to the last letter, Exhibit 7. Do you remember whether there was a reply? A. I think not.

Q. No written reply? A. No written reply.

Q. Were the trustees at this time in communication with the directors orally? Were you having meetings together or not? A. No, I think we were not having meetings at that time.

Q. Then the communications between you were entirely in writing?

A. They were.

Q. And we may assume that un-

less we find a letter that there was no communication? A. No.

Mr. Whipple—May I ask, Mr. Krauthoff, whether you have any letter between the date of the last one, Nov. 11, and Dec. 13, 1918, or a copy of a letter that passed between the boards?

Mr. Krauthoff—We have one of Nov. 23, from the business manager to the board, about the financial statement.

Mr. Whipple—Well, I am asking more particularly for the letters which passed with regard to the controversy which had arisen, and not those in the ordinary routine.

Mr. Krauthoff—You want everything after Nov. 11, 1918?

Mr. Whipple—Yes, up to Dec. 13. That is the next one we have.

Mr. Krauthoff—We have nothing between Nov. 11 and Dec. 13, except a letter from the business manager about the funds.

Mr. Whipple—We now offer a copy of a letter from Mr. Jarvis, corresponding secretary, to the Board of Trustees, dated Dec. 13, 1918; or, rather, we offer the original, but it should have attached to it that inclosure.

Mr. Strawn—This letter is on the letterhead of the Christian Science Board of Directors, dated Dec. 13, 1918, addressed to the Board of Trustees.

Mr. Strawn reads the following letter:

[Exhibit 8.]

"The Christian Science Board of Directors, Boston, Massachusetts.

"Dec. 13, 1918.

"Board of Trustees,  
"The Christian Science Publishing Society,  
"Falmouth and St. Paul Streets,  
"Boston, Massachusetts.

"Dear Friends:

"I am instructed by the Christian Science Board of Directors to inclose herewith circular letter which has this day been sent to all teachers of Christian Science, advising them that the directors have voted to change the teaching year to conform to the calendar year, commencing Jan. 1, 1919.

"Will you kindly change the notice at the head of the list of Christian Science practitioners in the Christian Science Journal accordingly, and oblige,

"Sincerely yours,  
(Signed) "CHAS. E. JARVIS,  
"Corresponding Secretary for the Christian Science Board of Directors." CEJ—L

Mr. Strawn—The inclosure reads as follows, the same date:

Mr. Strawn reads the following:

"The Christian Science Board of Directors, Boston, Massachusetts.

"Dec. 13, 1918.

"To all Teachers of Christian Science,  
"Dear Friends:

"The General Association of Teachers, which was dissolved in 1908 by the

repeal of the By-Laws of The Mother Church providing for the association, adopted the rule that the teaching year should extend from Aug. 1 of the calendar year, and this rule, which was fixed by mutual consent rather than by executive authority, has been adhered to since that time.

"Frequently during the intervening years the question of changing the date has arisen, and I am instructed by the Christian Science Board of Directors to state that they have given careful consideration to the subject. Since the By-Laws of The Mother Church do not designate the specific time of the teaching year referred to in Art. XXVI, Sec. 6, of the Church Manual, and since there seems to be no reason why a change should not be made, it has been voted by the Christian Science Board of Directors that, commencing Jan. 1, 1919, and thereafter, the teaching year shall conform to the calendar year. The board feels that this change has many advantages and that it will not work a hardship in any way.

"Trusting that this plan is agreeable to you,

"Sincerely yours,

(Signed) "CHAS. E. JARVIS,  
"Corresponding Secretary for the Christian Science Board of Directors."

[The above letter, from Charles E. Jarvis, corresponding secretary for Board of Directors, to the Board of Trustees, dated Dec. 13, 1918, is marked Exhibit 8.

The inclosure, from Charles E. Jarvis, corresponding secretary, to teachers of Christian Science, dated Dec. 13, 1918, is marked Exhibit 8-A.]

Mr. Krauthoff—Have you the answer to that?

Mr. Strawn—Yes, I have. This is a carbon of the answer, I dare say you have the original, dated Dec. 18, addressed to the Christian Science Board of Directors by the trustees, reading as follows:

Mr. Strawn reads the following letter:

"Dec. 18, 1918.

"The Christian Science Board of Directors,  
"The First Church of Christ, Scientist,  
"Boston, Massachusetts.

"Dear Friends:

"Your letter of Dec. 13, inclosing copy of your letter of even date 'To all teachers of Christian Science,' is received.

"In order that we may consider the recommendation you make with regard to changing the notice at the head of the Journal cards, will you please furnish us in writing the data and your reasons for making this recommendation.

"You will appreciate that a change in a printed notice of this important character, which has been published by the authority of The Christian Science Publishing Society for almost

six years, can be justified only for good and sufficient cause.

"Very sincerely yours,  
"BOARD OF TRUSTEES,  
(Signed) "HERBERT W. EUSTACE,  
"Secretary."

[The above letter, Board of Trustees to Board of Directors, Dec. 18, 1918, is marked Exhibit 9.]

Mr. Strawn—Next is a letter of Dec. 18, 1918, addressed by the corresponding secretary of the Board of Directors to the Board of Trustees, which reads as follows:

Mr. Strawn reads the following letter:

"Board of Trustees,  
"Dec. 18, 1918.  
"The Christian Science Publishing Society,  
"Falmouth and St. Paul Streets,  
"Boston, Massachusetts.

"Dear Friends:

"I am instructed by the Christian Science Board of Directors to say that the Board of Directors have some important business matters they would like to discuss with the trustees of the Publishing Society, and would like to have an interview with you tomorrow morning at 10 o'clock in the board room of The Mother Church.

"Trusting that it will be agreeable and convenient for you to be present,

"Sincerely yours,  
(Signed) "CHAS. E. JARVIS,  
"Corresponding Secretary for The Christian Science Board of Directors."

[The above letter, Charles E. Jarvis, corresponding secretary, to Board of Trustees, Dec. 18, 1918, is marked Exhibit 10.]

Mr. Strawn—The next is under date of Dec. 18, 1918, and reads as follows: addressed to the Christian Science Board of Directors.

Mr. Strawn reads the following letter:

"December 18, 1918.

"The Christian Science Board of Directors,  
"The First Church of Christ, Scientist,  
"Boston, Massachusetts.

"Dear Friends:

"Your letter of this date is received.

"At the present time Mr. Rowlands is absent, and we are not advised of the immediate date of his return; however, at one of our regular board meetings it was unanimously decided that in future conferences between the Board of Directors and the Board of Trustees, if the directors desired to ask the trustees something concerning the Publishing Society, the trustees would be very glad to set a time for the conference in the board room of the trustees, and that, if, on the other hand, the trustees desired to ask the directors some question, they would ask for an appointment to meet with the directors in their board room.

"It was also unanimously decided that all points to be talked over should

be included in the letter asking for the conference, and that no conference should be held between the two boards in relation to our letter to you of Sept. 30 until all the members of both boards were present.

"We would therefore ask you to please let us know the points that you desire to bring up at the conference you request, whereupon the meeting can be readily arranged.

"Very sincerely yours,  
"BOARD OF TRUSTEES.

(Signed)

"HERBERT W. EUSTACE,  
"Secretary."

[The above letter, Board of Trustees to Board of Directors, Dec. 18, 1918, is marked Exhibit 11.]

Mr. Strawn—The answer to that letter is as follows, on the letterhead of the Christian Science Board of Directors, dated Dec. 20, 1918, addressed to the trustees.

Mr. Strawn reads the following letter:

"The Christian Science Board of Directors,  
"Boston, Massachusetts,  
"Dec. 20, 1918.

"Board of Trustees,  
"The Christian Science Publishing Society,  
"Boston, Massachusetts.

"Dear Friends:

"I am instructed by the Christian Science Board of Directors to acknowledge receipt of your two letters dated Dec. 18, 1918, and to send you this answer to one of them.

"As the directors understand the trustees' letter, it practically asserts an equality with the Christian Science Board of Directors, even a superiority over this board. In particular the trustees' letter virtually informs the directors that the trustees have attempted to adopt rules or regulations to be observed by the directors.

"The directors intend to exercise their supervision of The Christian Science Publishing Society in the most considerate manner and with all due regard for the trustees thereof, but the directors cannot for one moment concede that their supervision can be regulated or limited as asserted by the trustees' letter.

"The directors hold that The Christian Science Publishing Society is, to quote from the Manual, 'the Publishing Society of The Mother Church' (Article XXV, Section 8), that its business is the business of The Mother Church, and that said business is under the supervision of the Christian Science Board of Directors. It may be that the directors can usually give such directions as may be needed to or through the trustees as proposed in the directors' letter of Oct. 8, 1918. However this may work out in practice, this board is resolved to fulfill its duties and responsibilities under our Church by-laws and the other instruments which express our Leader's

intention. This the directors expect to do as they have been and will be able to manifest divine guidance. Nothing less than this will maintain the unity and integrity of the Christian Science movement.

"An immediate assurance from the trustees is desired.

"Sincerely yours,  
(Signed) "CHAS. E. JARVIS,  
"Corresponding Secretary for The Christian Science Board of Directors."

[The above letter, Board of Directors to Board of Trustees, Dec. 20, 1918, is marked Exhibit 12.]

Mr. Strawn—That was followed by another letter to the trustees under date of Dec. 20, 1918, on the letterhead of the directors, reading as follows:

Mr. Strawn reads the following letter:

"The Christian Science Board of Directors,  
"Boston, Massachusetts,  
"Dec. 20, 1918.

"Board of Trustees,  
"The Christian Science Publishing Society,  
"Boston, Massachusetts.  
"Dear Friends:

"I am instructed by the Christian Science Board of Directors to send you this letter.

"In view of the by-law, 'The business of The Mother Church shall be transacted by its Christian Science Board of Directors' (Church Manual, Article I, Section 6), this board understands that the business of The Mother Church includes the recognition of branch churches and of determining the eligibility of members of The Mother Church for recognition as practitioners and nurses, and that the duty of this board includes the final decision upon such recognitions. Accordingly, the following is transmitted for your guidance and direction:

"1. The responsibility for all final decisions in regard to recognizing new branches of The Mother Church including societies rests with the Christian Science Board of Directors. To this end, the trustees of The Christian Science Publishing Society shall submit the names and addresses of organizations whose applications the trustees have voted to recommend be accepted or declined, to the directors, for their final decision, together with any necessary explanation.

"2. The directors will make all final decisions in regard to the eligibility of persons who may apply for recognition as practitioners or nurses. This shall be done in the manner provided in the preceding paragraph.

"3. Nothing shall be done by the trustees, directly or indirectly, to regulate the practice of Christian Science, by rules, questions, or other means, without first securing the consent or approval of the directors. In particular the trustees shall give full effect to the rule, 'Choice of

patients is left to the wisdom of the practitioner' (Manual, Art. XXVII, Sec. 4).

"4. All questions pertaining to the general welfare of the Christian Science movement, not particularly connected with the business of the Publishing Society, shall be determined by the Christian Science Board of Directors. All important questions pertaining to the general welfare of the Christian Science movement and connected with the business of the Publishing Society shall be determined by the trustees upon consultation with the directors.

"5. The directors will determine the editorial policy of the Christian Science publications. If advertisements are used for editorial purposes, this rule shall apply to them.

"6. The salaries of the editors and of the business manager elected by the directors shall be subject to approval by the directors.

"7. In view of Art. XXV, Sec. 5, of the Manual and the nature of the work done by the Committee on Bible Lessons, the trustees shall not fill a vacancy on that committee without a prior acceptance by the directors of the person to be appointed.

"Kindly let the board have a prompt acknowledgment of this letter.

"Sincerely yours,  
(Signed) "CHAS. E. JARVIS,  
"Corresponding Secretary for the Christian Science Board of Directors."

[The above letter, Board of Directors to Board of Trustees, Dec. 20, 1918, is marked Exhibit 13.]

Mr. Strawn—The answer to that was under date of Dec. 24, addressed to the Christian Science Board of Directors by the trustees.

Mr. Strawn reads the following letter:

"December 24, 1918.  
"The Christian Science Board of Directors, The First Church of Christ, Scientist, Boston, Massachusetts.

"Dear Friends:  
"After careful consideration of your two letters dated Dec. 20, this board can only reiterate and reaffirm its position as stated in its previous letters to your board of Sept. 30 and subsequent dates.

"With our united kindest regards, and wishing you all the greetings of the season,

"Very sincerely yours,  
(Signed) "HERBERT W. EUSTACE  
"DAVID B. OGDEN  
"LAMONT ROWLANDS  
"Board of Trustees."

[The above letter, Board of Trustees to Board of Directors, Dec. 24, 1918, is marked Exhibit 14.]

Mr. Strawn—The next was under date of Dec. 26, 1918, addressed by the Secretary of the Board of Directors to John R. Watts, Business Manager of The Christian Science Publishing Society.

Mr. Strawn reads the following letter:

"The Christian Science Board of Directors,  
"Boston, Massachusetts.  
Dec. 26, 1918.

"Mr. John R. Watts, Business Manager,  
"The Christian Science Publishing Society,  
"Boston, Massachusetts.

"Dear Mr. Watts:

"I am instructed by the Christian Science Board of Directors to transmit to you the following request with regard to the business of The Christian Science Publishing Society, which is under your management.

"To enable the Board of Directors to fulfill its duties and responsibilities under the By-Laws of The Mother Church the board desires that you take any important and unusual action in the course of your official work only after you have made sure that it has the approval of the Board of Directors of The Mother Church.

"The directors will appreciate your assurance of cooperation in this respect, and desire me to extend to you their kind personal regards.

"Sincerely yours,

(Signed) "CHAS. E. JARVIS,  
"Corresponding Secretary for The Christian Science Board of Directors."

[The above letter, Board of Directors to John R. Watts, Business Manager, Dec. 26, 1918, is marked Exhibit 15.]

Mr. Strawn—Another letter, under date of Dec. 28, 1918, on the letter-head of the directors, to the trustees, reading as follows:

Mr. Strawn reads the following letter:

"Dec. 28, 1918.

"Board of Trustees,  
"The Christian Science Publishing Society,  
"Boston, Massachusetts.

"Dear Friends:

"I am instructed by the Christian Science Board of Directors to acknowledge receipt of your favor of Dec. 23 and to say in reply thereto and in further reply to recent communications from you, that in the trustees' letter of Sept. 30, 1918, they spoke of the Deed of Trust dated Jan. 25, 1898, as 'an absolutely legal trust governed and perpetuated by the laws of Massachusetts and the United States.' In the same letter, the trustees also spoke of the same deed as 'inferentially incorporated as part and parcel of the Church Manual,' and spoke of its conditions as 'obligatory upon the trustees, not only as part of the Church by-laws, but also according to the laws of the land.' These quoted words, to which the directors have no objection, indicated that the trustees had sought the advice of counsel as to their rights, duties, and liabilities under the Trust Deed. With this indication before them, it seemed

wise that the directors should also consult counsel about the 'laws of the land.' They now have three opinions which were written by different counsel without consulting each other. Three of these counsel are members of The Mother Church. To the end that nothing be left undone which may lead to the establishment of the right concept of the relationship of the Publishing Society to The Mother Church, the directors now offer to furnish copies of these opinions to the trustees and in turn offer to consider any opinions of counsel which the trustees have received.

"The directors earnestly recommend that the trustees consider and reconsider whether they are not making an attack on the by-laws and government of The Mother Church. The recent conduct of the trustees is not to be distinguished from such an attack by their avowed adherence to the Manual. That factor has been present in certain other cases, which, if they had been successful, would likewise have repudiated certain important provisions which our Leader has given us for unswerving obedience. For the trustees to set up the Deed of Trust dated Jan. 25, 1898, as creating a trust not subject to the Church by-laws adopted since that date, or as creating a trust not subject to the present government of The Mother Church, would be in effect an attack on the by-laws and government of The Mother Church. If the trustees continue to insist on any such contention, it will constitute a most threatening menace to the welfare of the Christian Science movement. In such an exigency the advice and warning given by Mrs. Eddy in the letter to the Board of Directors published in the Sentinel of Aug. 22, 1914, is pertinent for all persons concerned. The directors refer especially to the following sentences:

"The present and future prosperity of the cause of Christian Science is largely due to the by-laws and government of 'The First Church of Christ, Scientist,' in Boston. None but myself can know, as I know, the importance of the combined sentiment of this church remaining steadfast in supporting its present by-laws.'

"With the sincere hope that Principle may be demonstrated in this vital matter,

"Sincerely yours,

(Signed) "CHARLES E. JARVIS,  
"Corresponding Secretary for the Christian Science Board of Directors."

[The above letter, Board of Directors to Board of Trustees, Dec. 28, 1918, is marked Exhibit 16.]

Mr. Strawn—That was answered under date of Dec. 31 by the trustees to the directors.

[The letter dated Dec. 31, 1918, is marked Exhibit 17, WHM, and is read by Mr. Strawn as follows:

[Exhibit 17.]

"Dec. 31, 1918.

"The Christian Science Board of Directors,  
"The First Church of Christ, Scientist,  
"Boston, Massachusetts.

"Dear Friends:

"Your letter of Dec. 28 has been given very careful consideration, and surely the proverbial Philadelphia lawyer must have composed it, for it is truly an enigma to us.

"As the trustees read your letter, they feel that the second paragraph nullifies the statements made in the first paragraph, and it goes without saying that the trustees absolutely repudiate the charges the Board of Directors have apparently preferred against the Board of Trustees in this second paragraph, and further wish to state that they feel that the directors do not fully realize the seriousness of the statements they have made.

"With cordial good wishes,

"Yours sincerely,

(Signed)

"HERBERT W. EUSTACE,

"DAVID B. OGDEN,

"LAMONT ROWLANDS.

"Board of Trustees."]

Mr. Strawn—The next letter is under date of Jan. 3, 1919, from the directors to the trustees, and reads as follows:

[The letter, dated Jan. 3, 1919, is marked Exhibit 18, WHM, and is read by Mr. Strawn as follows:

[Exhibit 18.]

"The Christian Science Board of Directors, Boston, Massachusetts.  
"Jan. 3, 1919.

"Board of Trustees,

"The Christian Science Publishing Society, Boston, Massachusetts.

"Dear Friends: I am instructed by the Christian Science Board of Directors to acknowledge receipt of your letter of Dec. 31 and to send you this letter.

"The directors' letter of Dec. 28 included a simple offer and a plain recommendation, stated in two consistent paragraphs. The fact that the trustees have replied without making any response to an offer and a recommendation of that nature and importance is another item of proof that they are not at present qualified for their work and trust.

"For a long time the Christian Science Board of Directors has been obliged to witness an accumulation of signs that one or more changes must be made in the personnel of the Board of Trustees of The Christian Science Publishing Society. At all times this conclusion has been unwelcome. It has been put off more than once when the evidence furnished by the trustees themselves seemed imperative. Now it has become clear beyond question that one or more changes must be made, to preserve the business of the Publishing Society, to keep the unity of the Christian Science move-

ment, and to guard the By-Laws and government of The Mother Church.

"In this situation the directors have one more proposal to make. It is that the present members of the Board of Trustees submit their resignations to the Christian Science Board of Directors to take effect when their resignations are accepted by the Board of Directors, and that they help to install one at a time as many new trustees as the directors may declare are needed. The directors assume that the trustees will desire to be, not obstructive, but helpful.

"Sincerely yours,

(Signed) "CHAS. E. JARVIS.

"Corresponding Secretary for the Christian Science Board of Directors."]

Mr. Strawn—Under date of Jan. 17 another letter came from the directors to the trustees, reading as follows:

[The letter dated Jan. 17, 1919, above referred to is marked Exhibit 19, WHM, and is read by Mr. Strawn as follows:

Exhibit 19.

"The Christian Science Board of Directors,

"Boston, Massachusetts.

"Jan. 17, 1919.

"Board of Trustees,

"The Christian Science Publishing Society,

"Falmouth and St. Paul Streets,

"Boston, Massachusetts.

"Dear Friends:

"I am instructed by the Christian Science Board of Directors to advise you that at a meeting of the board held this day, on motion and by unanimous vote of the members present, the Christian Science Board of Directors instructed the corresponding secretary for this board to request the Board of Trustees of The Christian Science Publishing Society to collect and furnish to this Board of Directors as soon as possible, the papers and information described as follows:

"1. Copies of all blanks and forms used by The Christian Science Publishing Society at any time since the 1st of January, 1918, in its correspondence with persons or organizations applying, or signifying an intention or desire to apply, for cards or advertisements in The Christian Science Journal, the official organ of The First Church of Christ, Scientist, in Boston, Massachusetts. This request covers blanks and forms, including forms used for composing letters, pertaining to correspondence with persons or organizations applying, or signifying an intention or desire to apply, for any kind of a card or advertisement in said periodical.

"2. A complete list of the persons who applied in the year 1918 to The Christian Science Publishing Society for practitioners' cards in The Christian Science Journal, or signified in said year their intention or desire to make such an application, and whose applications The Christian Science Publishing Society did not accept, to-

gether with the reasons in each instance for not accepting the same.

"3. A complete list of the organizations or groups of Christian Scientists which applied to The Christian Science Publishing Society in the year 1918 for advertisements in The Christian Science Journal as branch churches or societies, or signified in that year their intention or desire to make such an application, and whose applications The Christian Science Publishing Society did not accept, together with the reasons in each instance for not accepting the same.

"Sincerely yours,

(Signed) "CHAS. E. JARVIS,

"Corresponding Secretary for The Christian Science Board of Directors.

"CEJ-L"]

Q. (By Mr. Whipple.) Now, at some time before the date of the last letter, the Board of Trustees had consulted counsel, had they not? A. Yes.

Q. Can you remember the date when you first consulted counsel? A. When we first consulted Justice Hughes? No, I could not remember the date. I can—

Q. Was he the first counsel that you consulted? A. We had an informal talk with Mr. Strawn.

Q. Mr. Strawn of counsel? A. Yes.

Mr. Streeter—Will you speak a little louder, Mr. Eustace?

The Witness—We had an informal talk with Mr. Strawn, but we had not engaged counsel at all.

Q. How early had you informally conferred with Mr. Strawn? A. It must have been some time, I think, at the end of October.

Q. Mr. Strawn was and had been counsel for one of your members? A. Yes.

Q. In his personal matters for a long time before his becoming one of the trustees? A. Yes.

Q. And he gained the confidence of the other trustees through Mr. Rowlands, and the advice that he gave you? A. Yes.

Q. On matters affecting the board? That, you say, was in the last of October? A. I think that was the last of October. Some time there.

Mr. Krauthoff—What was the year? He spoke of the last of October.

Mr. Whipple—Last year.

The Witness—1918.

Q. Then your board consulted Mr. Justice Hughes, or former Justice Hughes of the Supreme Court of the United States? A. We did.

Q. In New York? A. In New York.

Q. And went there for the purpose? A. And went there to consult him.

Q. Then after this letter in which the directors threatened to attempt, at least, to exercise a power of removal, did you confer with Mr. Justice Hughes again? A. We did. We went down to talk the whole matter over again.

Q. It appears that Mr. Justice Hughes was consulted first in November—Nov. 13. Would that accord with your memory? A. Yes, I think that is probably it.

Q. Then you saw him again in January? A. Yes.

Q. In the meantime had he examined the facts which were put before you and given you an opinion? A. He had—on our presentation of the matter he questioned us as to the letters that had passed between the two boards and the Deed of Trust, asking for a copy of it, and other questions, and asked us—he said—we requested him for a written opinion as to the rights and duties of the trustees.

Q. Yes. A. And he took the matter under advisement. Do you wish me to—

Q. No, that is enough. Then later, after the threat to remove you, you conferred with him again? A. We conferred with him again.

Mr. Krauthoff—We object to the threat to remove. It was a request for resignation.

Mr. Whipple—Well, I will accept any terminology which meets your approval. I think we want to put the same question, but I am a little inept in meeting your criticisms. You may frame it if you would like to.

Mr. Krauthoff—I would be very glad to help you, Mr. Whipple, by any means within my power.

Mr. Whipple—I like to have your help; it is sometimes refreshing and sometimes thrilling.

Q. Then you saw him again in— A. Yes.

Q. After the communication which suggested the resignations, or whatever that may be? A. Yes.

Q. Then after a season, is it a fact that a meeting was arranged between counsel who had been retained by the trustees and counsel who were acting for the directors? A. It is.

Q. Let me ask you this: How long, as you remember it, has it been that Judge Smith, as he has been called, was acting for the directors in advising them? Has he been connected with them for some time? A. I suppose so. I do not really know anything about that, Mr. Whipple.

Q. Well, did you meet him at directors' meetings when you met with them? A. Never except once.

Q. When did you first hear of Mr. Krauthoff? A. I first heard that Mr. Krauthoff was in the case just prior to the letter received from the Board of Directors saying that they had engaged counsel.

Q. Saying that they had engaged counsel? A. Yes.

Q. But you had known of Judge Smith's being connected with the Board of Directors, or with the board, as a Committee on Publication, or something of that sort, for quite a while? A. We did. And we supposed he was counsel.

Q. And for quite a while? A. Yes.

Q. What I want to get at, he has heard with the— A. Oh, for a number of years.

Q. —with the Board of Directors for a number of years? A. A number of years.

Q. And has an office with them?

A. In the same building.

Q. And then Mr. Krauthoff you heard of as their counsel when it is said that they— A. Just prior to that, I think three days before, we received that or heard of it.

Mr. Whipple—Well, have you your directors' records here, Mr. Krauthoff, which will show the date?

Mr. Krauthoff—No, we didn't bring them today.

Mr. Whipple—Would you mind doing it tomorrow?

Mr. Krauthoff—Yes.

Mr. Whipple—If you will bring all the directors' records. We do not want to read them all, but it will be of advantage to have them here, so that we can put in such parts as we want to.

Mr. Krauthoff—On what subject, Mr. Whipple, did you want the—

Mr. Whipple—Well, I guess I would bring them all, because you see I can't tell you just the subjects now. If you have them all here—I take it they are not very bulky—then as they come up we shall not have to send for them; and I take it that we may depend on that being done, rather than to issue a duces tecum to your secretary.

Mr. Krauthoff—Why, your oral request, Mr. Whipple, is the most potent thing I know of.

Mr. Whipple—Thank you. It has never before been compared with a subpoena duces tecum, but if it will go, it will save the expense of employing a constable.

Mr. Streeter—Do I understand the records are to be brought here?

Mr. Whipple—Yes, I understand. I understand that is the result of this colloquy that has just taken place.

Mr. Streeter—If Your Honor please, there are certain matters, certain parts of the record that we desire to examine for Mr. Dittmore, and we join with Mr. Whipple, at least to that extent, in desiring the records here.

Mr. Whipple—We would like the records.

The Master—I understand the defendants' counsel is perfectly willing to bring them.

Mr. Whipple—Yes.

The Master—And will bring them.

Mr. Whipple—And I will suggest that you need not bring them back of 1916; from 1916 up to date. Is that agreeable?

Mr. Streeter—No. I would like to have you bring them from January, 1916, if you please.

Mr. Krauthoff—All right; and we need them from Sept. 23, 1912.

Mr. Streeter—Well, you can have them.

Mr. Krauthoff—Or 1892, rather.

Mr. Whipple—In Mr. Dittmore's bill, which we have not come to, he intimates strongly that these records

of the directors are not altogether reliable, and that he has something that is, and I therefore will respectfully request of distinguished counsel for Mr. Dittmore that they will bring theirs in at that time so that we may have the real thing.

Mr. Streeter—Well, we note what you say, brother Whipple.

Mr. Krauthoff—If Your Honor please, I ask that Mr. Whipple's characterization of Mr. Dittmore's bill be stricken from the record. Whatever intimation is in it, the bill speaks for itself.

Mr. Whipple—I didn't characterize the bill. I said that in the pleadings, which are before Your Honor, there is a statement as to the unreliability of all the records of the directors.

Mr. Krauthoff—We object to that statement. We have not discovered it in the bill.

Mr. Whipple—Well, all right. If the bill does not justify it—

The Master—That perhaps is hardly characterizing the bill. The bill is before us. Perhaps Mr. Whipple can some time or other refer us to the particular passage that he has in mind.

Mr. Whipple—We have copies and the originals of two letters under date of Jan. 22 of the present year which the Board of Directors, through their corresponding secretary, caused to be sent to the Board of Trustees. I was about to say that it did not seem worth while to read them, but I guess we would better, and we will offer them. The shorter one we will have marked first. That would be Exhibit 20.

[The letter dated Jan. 22, 1919, above referred to, is marked Exhibit 20, W.H.M.]

Mr. Whipple—And the longer one will be Exhibit 21.

[The letter above referred to dated Jan. 22, 1919, is marked Exhibit 21, W. H. M.]

Mr. Whipple—Mr. Strawn, are you willing kindly to help me out still?

Mr. Strawn—I will do the best I can. The one which has been identified as Exhibit No. 20 reads as follows:

"Exhibit 20.

"The Christian Science Board of Directors,  
"Boston, Massachusetts.

"Jan. 22, 1919.

"Board of Trustees,  
"The Christian Science Publishing Society,  
"Falmouth and St. Paul Streets,  
"Boston, Massachusetts.

"Dear Friends:

"I am instructed by the Christian Science Board of Directors to advise you that at a meeting of the board held this day, the following motion being offered was unanimously adopted by the Christian Science Board of Directors:

"Whereas, on the 20th day of December, 1918, the Christian Science Board of Directors sent a letter to the Board

of Trustees of The Christian Science Publishing Society containing the following paragraph:

"(4) All questions pertaining to the general welfare of the Christian Science movement, not particularly connected with the business of the Publishing Society, shall be determined by the Christian Science Board of Directors. All important questions pertaining to the general welfare of the Christian Science movement and connected with the business of the Publishing Society, shall be determined by the trustees upon consultation with the directors."

"And whereas, The Christian Science Board of Directors has found that the above quoted paragraph is liable to be misunderstood, and that it does not clearly or fully express the board's thought and intention:

"Therefore, it is hereby ordered:

"That the following paragraph be and is adopted instead of the above quoted paragraph, in and for said letter:

"(4) Upon every matter affecting the cause of Christian Science connected with the business of The Christian Science Publishing Society, the Board of Trustees thereof shall be governed by the decisions and orders made by the Christian Science Board of Directors in accordance with the By-Laws of The Mother Church."

"That a copy of the record of this proceeding be sent to the Board of Trustees of The Christian Science Publishing Society, and that reference to this proceeding be made in the margin of the record of the former proceeding of this board in regard to said letter.

"Sincerely yours,

(Signed) CHAS. E. JARVIS,

"Corresponding Secretary for The Christian Science Board of Directors.

"C E J-L"

Mr. Strawn—The next is Exhibit 21, under date of Jan. 22, 1919; addressed to the trustees, and reads as follows:

(Exhibit 21.)

"The Christian Science Board of Directors, Boston, Massachusetts

"Jan. 22, 1919

"Board of Trustees,  
"The Christian Science Publishing Society,

"Falmouth and St. Paul Streets,  
"Boston, Massachusetts.

"Dear Friends:

"I am instructed by the Christian Science Board of Directors to advise you that at a meeting of the board held this day, the following motion being offered, was unanimously adopted by the Christian Science Board of Directors:

"Resolved: That the following orders be and are hereby adopted and made for the direction of the Board of Trustees of The Christian Science Publishing Society:

"(1) That the following words on page xiii of the January, 1919,



Issue of The Christian Science Journal, the official organ of this Church. The teaching year begins Aug. 1, shall be changed in the April, 1919, and subsequent issues of said periodical, so as to read as follows: "The teaching year, which formerly began Aug. 1, now begins Jan. 1, and these latter words shall be printed in the April, 1919, and subsequent issues of said periodical instead of the former words."

"(2) The following paragraph on page v of the January, 1919, issue of The Christian Science Journal, the official organ of this Church, shall be omitted from all issues of said periodical hereafter printed: "When members of The Mother Church in a community believe that the time has come for the holding of regular services, and for the formation of a Christian Science Society, or the formation of a branch Church of Christ, Scientist, if they will write to The Christian Science Publishing Society, a letter will be sent regarding the steps to be taken in organizing their work, and the rules to be observed in order to have an advertisement in the Journal."

"(3) The following paragraph, together with its heading and signature, shall be printed in all issues of The Christian Science Journal hereafter printed, and shall be placed therein immediately before the matter headed 'Instructions Regarding Cards':

"Organization and Recognition of Branch Churches and Societies of The Mother Church.

"When members of The Mother Church in a community believe that the time has come for the holding of regular services, and for the formation of a Christian Science Society, or the formation of a branch Church of Christ, Scientist, in accordance with Art. XXIII, Secs. 6 and 7, of the Church Manual, they should write to The Christian Science Board of Directors for information concerning organization and recognition as a branch of The Mother Church, The First Church of Christ, Scientist, in Boston, Massachusetts.

"The Christian Science Board of Directors."

"Resolved Further: That the following requests be and are hereby made of the Board of Trustees of The Christian Science Publishing Society:

"(1) The Board of Trustees of The Christian Science Publishing Society is hereby requested to transmit to The Christian Science Board of Directors all pending correspondence, and all correspondence hereafter received by the Publishing Society, from Christian Scientists seeking recognition or advertisement as branch churches or societies of The Mother Church who have not been recognized as such by The Mother Church through its Christian Science Board of Directors.

"(2) The Board of Trustees of The Christian Science Publishing Society is hereby requested to confer with The Christian Science Board of Directors in the directors' room in The Mother

Church next Monday morning at 10 o'clock on a method of handling correspondence, with Christian Scientists applying for recognition and advertisement as branch churches or societies of The Mother Church, designed to avoid duplication of correspondence on those subjects.

"Resolved Further That by the adoption of this resolution, the second sentence of the first numbered paragraph of the letter dated Dec. 20, 1918, from the directors to the trustees is superseded:

"Resolved Further: That a copy of these orders and requests shall be sent to the Board of Trustees of The Christian Science Publishing Society; and that the Board of Trustees of The Christian Science Publishing Society be requested to return an early assurance that said board will comply with the foregoing orders and requests.

"Sincerely yours,

(Signed) "CHAS. E. JARVIS.

"Corresponding Secretary for The Christian Science Board of Directors. "CEJ-I."

Q. (By Mr. Whipple.) Now, Mr. Eustace, referring to those two letters: I call your attention to this statement in the first one, Exhibit 20, that a new paragraph had been substituted in their resolution which made it read:

"Upon every matter affecting the cause of Christian Science connected with the business of The Christian Science Publishing Society, the Board of Trustees thereof shall be governed by the decisions and orders made by The Christian Science Board of Directors in accordance with the By-Laws of The Mother Church."

Had ever any such demand or suggestion as that been voiced before? A. In the famous memorandum, it had.

Q. But that you had not conceded? A. We had absolutely repudiated and rejected it.

Q. And here again it appeared that in every matter affecting the cause of Christian Science connected with your business you should accept the decision of the Board of Directors. Did you assent to that? A. We certainly did not.

Q. Now, take it Jan. 22. They issued to you some orders on various matters, first about the change in the teaching year: That had been a matter which had been regulated by whom? How had the teaching year been fixed? A. The only knowledge, absolute knowledge that I have of it was that it was stated when I went through the college in 1902, the teaching year—no, it was in the association, I think, following that, that the teaching year was stated as commencing Aug. 1. May I explain in connection with that?

Q. Let me ask: Was that in Mrs. Eddy's lifetime? A. Yes.

Q. And had it been during all the years that you knew, the teaching year Aug. 1? A. No. Previous to the August period it was March.

Q. And the change had been made?

A. And there were two classes then held during the year. And when it came to changing it to one class, the teaching year was then stated, as I understood it, and as all teachers accepted, I believe—Aug. 1 was the teaching year—from Aug. 1.

Q. And that was in Mrs. Eddy's lifetime? A. That was in Mrs. Eddy's lifetime.

Q. And from that time, which was what date, about what time? A. I should think that was Aug. 1, 1903, or 1904—somewhere around there.

Q. And from that time until the date of this letter, or letters, on this subject it had always been— A. From Aug. 1 to July 31.

Q. And was so published in the Journals? A. For six years it had been published so in the Journal.

Q. Then there is a resolution which they wanted omitted from all issues of The Christian Science Journal:

"When members of The Mother Church in a community believe that the time has come for the holding of regular services, and for the formation of a Christian Science Society, or the formation of a branch Church of Christ, Scientist, if they will write to The Christian Science Publishing Society, a letter will be sent regarding the steps to be taken in organizing their work."

How long had that been done? A. I can't say, but several years.

Q. Before the time you came there? A. No; I think that was reworded some years—it had probably been running a number of years. I would have to look back in the record.

Q. And The Christian Science Publishing Society had performed these functions in regard to the organization of new churches? A. Always, as far as I understand, since the Deed of Trust.

Q. Certainly ever since you have been there? A. Yes.

Q. And this proposal in this letter of Jan. 22 was that that should be changed so that the organization and recognition of branch churches and societies of The Mother Church should be entirely in the hands of the directors—that was the proposal—and taken from the hands of the trustees? A. Yes.

Q. When had that first been suggested? A. I think that letter was the first notification we had had.

Q. Then there was a resolve that the trustees should transmit to the directors all pending correspondence with regard to the Christian Science Church seeking recognition or advertisement as branch churches, and you were asked to devise a method of handling correspondence with Christian Scientists applying for recognition and advertisement as branch churches. That matter had all been in your hands, as I understand it, theretofore? A. Yes.

Q. I will ask you if it is a fact that between these dates—the 22d of Jan-

uary and the 27th of January—a meeting between your counsel and counsel for the directors was arranged in Boston? A. It was.

Q. And held here at some date between the 22d and the 27th of January? A. It was.

Q. And there were present former Justice Hughes—

Mr. Krauthoff—May I inquire if he was present—if Mr. Eustace was present at this conference?

The Witness—I was not.

Mr. Krauthoff—I object to any testimony about the conference at which he was not present.

Q. Did you know that Mr. Hughes and Mr. Strawn and myself were all in town and at my office? A. Not prior to the 27th. There was a meeting held first. There were two conferences of counsel, were there not?

Q. Yes, A. And the first one Justice Hughes was not present at.

Mr. Strawn—That is right.

The Master—I understand the defendants object to his stating who was present at a meeting where he was not present.

Mr. Whipple—I am not asking him to do that.

Q. Do you know that Mr. Justice Hughes was not in town, but Mr. Strawn was? A. I do.

Q. And that Mr. Whipple was in town? A. I do.

Q. And you knew of a meeting being arranged with counsel? A. I did.

Mr. Whipple—Will you produce a letter from counsel for the trustees, dated Jan. 27, 1919, if you please?

Mr. Krauthoff—Letter to us, you mean?

Mr. Whipple—Yes.

Mr. Krauthoff—We have not our copy convenient.

Mr. Whipple—All right; we will offer our copy, if you do not mind.

Mr. Krauthoff—Are you offering that part pleaded in the bill, or are you offering the letter in full?

Mr. Whipple—We are putting in the whole of it.

The Master—This is the letter of which a certain part is in the bill?

Mr. Whipple—Yes, Your Honor.

Mr. Strawn—This will be offered as Exhibit No. 22.

Mr. Krauthoff—Our position in regard to that letter, Your Honor, is this: It is immaterial as evidence, but counsel no doubt will repeat the same legal argument in a brief, so that the Court may take it for what it is—that is, the legal argument on the—

The Master—I supposed that we were now getting at all the correspondence between the two boards.

Mr. Strawn—That is right.

The Master—Doesn't this letter from the trustees come under that head?

Mr. Krauthoff—It is a letter from the trustees' counsel to the directors' counsel advising the directors' counsel as to what the trustees' counsel conceived the law of the case to be.

The Master—But I suppose it would hardly be a part of the correspondence.

Mr. Strawn—It is an answer, if Your Honor please, to some of the claims that are made by the counsel and by the trustees—I mean, by the directors—in letters to the trustees which had not theretofore been answered by the trustees. The letter bears date Jan. 27, 1919, and is on the letterhead of Judge Hughes.

[Exhibit 22.]

On office letterhead of Justice Hughes.

“January 27, 1919.

“Messrs. JOHN L. BATES,

“CLIFFORD P. SMITH,

“LEON M. ABBOTT,

“EDWIN A. KRAUTHOFF,

“Counsel for the Board of Directors of The First Church of Christ, Scientist, in Boston, Mass.

“Dear Sirs:

“In view of the courtesy extended to us by you on the 25th instant, in the interview in which you stated the views of your clients respecting the position of the Board of Trustees—known as The Christian Science Publishing Society—represented by us, and the conduct of the present members of the Board of Trustees, we believe that we owe you the courtesy of stating the facts as our clients understand them.

“The trustees have sought our advice respecting their rights and duties as trustees under the Deed of Trust executed by Mary Baker G. Eddy, under date of Jan. 25, 1898. Among the ‘perpetual’ and ‘irrevocable’ trusts and confidences reposed in the trustees by that deed were the following:

“(a) To hold and manage the property and property rights exclusively for the purpose of carrying on the business theretofore conducted by The Christian Science Publishing Society in promoting the interests of Christian Science:

“(b) Energetically and judiciously to manage the business of the Publishing Society on a strictly Christian basis and upon their own responsibility:

“(c) To keep accurate accounts of the business and deposit in a responsible and reliable bank or trust company all bonds, mortgages, deeds or other documents or writings obligatory, for safe keeping, also all surplus funds over and above the sum necessary to defray the running expenses of the business, until the same is paid over to the treasurer of The First Church of Christ, Scientist.

“Once in every six months to account for and pay over to said treasurer the net profits of said business, ‘net profits’ being understood to mean the balance remaining at the end of each six months, after paying the usual and legitimate expenses incurred in conducting the business;

“(d) To employ all the help necessary to the proper conduct of the business, and to discharge the same

in their discretion or according to the needs of the business; and to employ such number of persons as they deem necessary to prepare Bible Lessons or Lesson Sermons to be read in The Christian Science Church, the same to be published quarterly and in the name of the Christian Science Quarterly; and they may, in their discretion, change the name or style of such Quarterly publication as occasion may demand. They shall also fix the compensation of the persons so selected.”

“(f) To have direction and supervision of the publication of said Quarterly and also of all pamphlets, tracts, and other literature pertaining to said business; using their best judgment as to the means of preparing and issuing the same so as to promote the best interests of the cause.”

“The deed further provides:

“Whenever a vacancy shall occur in said trusteeship for any cause, I reserve the right to fill the same by appointment, if I shall so desire, so long as I may live; but if I do not elect to exercise this right, the remaining trustees shall fill said vacancy. The First Members, together with the directors of said Church, shall have the power to declare vacancies in said trusteeship for such reasons as to them may seem expedient.”

“The concluding paragraph of the deed provides:

“The delivery of this instrument to, and its acceptance by, said trustees shall be regarded as the full establishment of the trust and as the agreement by the trustees to honestly and faithfully do and perform all things to be done and performed by them within the terms, objects and purposes of this instrument.”

“After having carefully considered the deed, we have advised our clients that,

“(1) The deed created a valid, express trust. The activities, powers and duties of the trustees are therein stated in clear and decisive terms:

“(2) The Deed of Trust is complete in itself and irrevocable. By it the title to the property therein described was transferred and the relation of the trustees and cestui que trustent was definitely fixed. It was beyond the power of Mrs. Eddy, the creator of the trust, thereafter to change, alter or modify the rights and interests established by the deed;

“(3) The power under the Deed of Trust to declare vacancies having been vested jointly in the Board of Directors and the First Members, the Board of Directors alone cannot exercise the power;

“(4) The source of the powers and duties of the trustees is the Deed of Trust. To it they must look for the extent and limit of their authority. The language of the Deed of Trust being definite and controlling, neither subsequent provisions of the Church Manual nor, as heretofore stated, any

subsequent declarations of Mrs. Eddy, can have the effect of modifying the Deed of Trust or the estates and equitable interests thereby created. Nor can such provisions or declarations add to, or detract from, the particular responsibilities, duties, and functions imposed upon the trustees by the deed.

"(5) If there be any conflict between the terms of the deed and the language of the Church Manual, the legal and moral obligation of the trustees compels them to respond to and obey the mandates of the deed. Should they do otherwise, they would violate the compact which they made by their acceptance of the trust to honestly and faithfully do and perform all things to be done and performed by them within the terms, objects and purposes of this instrument."

"Although the Deed of Trust provides that the balance remaining after paying the usual and legitimate expenses incurred in conducting the business shall be paid over to the treasurer of The First Church of Christ, Scientist, in Boston, the avowed and reiterated purpose of Mrs. Eddy in creating the trust was more effectually to promote and extend the religion of Christian Science. As said by the Supreme Court of Massachusetts in *Chase v. Dickey* (212 Mass. pp. 555, 561, 562): 'This latter purpose in substance is not a gift to the particular ecclesiastical organization for its special needs. It manifests a broader design, and authorizes the use of the gift for spreading the tenets of faith taught by the testatrix over an area more extensive than could possibly be gathered in one congregation. It includes the most catholic missionary effort both as to territory, peoples and times. It is the founding of a trust of comprehensive scope for the upbuilding of the sect which the testatrix made the object of her bounty.' Obviously it was not Mrs. Eddy's intention to establish a mere money-making enterprise for the benefit of The First Church in Boston.

"Having been thus advised as to their powers and duties and the objects of the trust, the trustees assert it always has been and is now their purpose, as trustees and as 'loyal, faithful, and consistent believers and advocates of the principles of Christian Science as taught by me (Mrs. Eddy) in my book, "Science and Health with Key to the Scriptures," as required by the Deed, strictly to carry out and faithfully to discharge the duties and responsibilities which the Deed imposes.'

"It must be assumed that in creating the Publishing Society and in designating trustees to hold and manage the property and property rights involved, and in imposing upon them the duty of energetically and judiciously managing the business of the Publishing Society on a Christian basis and 'upon their own responsibility,' Mrs. Eddy intended to commit

this important work of 'effectually promoting and extending the religion of Christian Science' to men of character, discretion, and courage, and that by the controlling terms of the deed she did not intend that the trustees should yield their responsibility to some other body or individuals; or to permit the judgment of others to be substituted for that of the trustees.

"Minds may differ as to the manner in which the trustees have performed and are performing their duty, but there can be no serious dispute as to the meaning of the language of the deed. The trustees welcome kindly and just criticism of anything which they may do or fail to do in the discharge of their duty. In the same spirit, they feel they must refuse to accept peremptory orders concerning subjects which rest wholly within the discretion of the trustees.

"The letters of the directors to the trustees of date, Jan. 3, Jan. 17, and Jan. 22, 1919, have remained unanswered because the trustees, before answering those communications, desired to be fully advised of their rights in the premises. We will now attempt to answer the letters referred to.

"With the greatest respect for the judgment of the directors, the trustees deny that they or any of them have done or omitted to do anything which would justify or warrant their resignation as trustees, and they expressly deny any right or authority in the directors to demand or request such resignation.

"Reserving all the discretion and powers committed to them by the Deed of Trust, and denying the right of the directors to make the demand, the trustees nevertheless cheerfully will comply with a request of the directors that they (the directors) be furnished with copies of all blanks and forms used by the Publishing Society at any time since Jan. 1, 1918, in its correspondence with persons or organizations applying, or signifying an intention or desire to apply for cards or advertisements in The Christian Science Journal, including forms used for composing letters pertaining to correspondence with persons or organizations applying or signifying an intention or desire to apply for any kind of an advertisement in said periodical. Also to furnish a complete list of the persons who applied in the year 1918 to the society for practitioners' cards in the Journal, or who signified in said year their intention or desire to make such application and whose applications the society did not accept, together with the reasons in each instance for not accepting the same; also a complete list of the organizations or groups of Christian Scientists who applied to the society in the year 1918 for advertisement in the Journal as branch churches or societies, or who signified, in that year, their intention or desire to make such an application, and

whose application the society did not accept, together with the reasons in each instance for not accepting the same.

"The trustees express an entire willingness to receive, and pledge themselves carefully to consider, any suggestion or criticism which the Board of Directors may have to offer in respect of such matters.

"Referring to the letter to the trustees of date Jan. 22, 1919, requesting the change in the April issue, 1919, of the Journal, of the date of the beginning of the teaching year from Aug. 1 to Jan. 1, the trustees respectively beg leave to suggest that they are ignorant of any such provision of the Manual or of any direction of Mrs. Eddy vesting in the Board of Directors the power or right to dictate the teaching year.

"It is the belief of the trustees that the change in the teaching year should be made by the teachers and not by the directors. Being responsible for the contents of all publications published by them under authority of the deed, they hesitate to assume any part of the responsibility of making such announcement. Notwithstanding these considerations, the trustees will comply with the request of the directors, and cause to be published in the April number of the Journal the following statement: 'Pursuant to resolution of the Board of Directors of The First Church of Christ, Scientist, in Boston, Mass., the teaching year, which formerly began Aug. 1, now begins Jan. 1.'

"The trustees also will cause to be published, commencing with the April issue of the Journal, and in all subsequent issues, under the heading, 'Instructions Regarding Cards':

"'Organization and Recognition of Branch Churches and Societies of The Mother Church:'

"'When members of The Mother Church in a community believe that the time has come for the holding of regular services, and the formation of a Christian Science Society, or the formation of a branch Church of Christ, Scientist, in accordance with Article XXIII, Sections 6 and 7, of the Church Manual, they should write to The Christian Science Board of Directors for information concerning organization and recognition as to a branch of The Mother Church, The First Church of Christ, Scientist, in Boston, Massachusetts.

"'The Christian Science Board of Directors.'

"The trustees desire it to be expressly understood that compliance with the requests of the directors aforesaid in no way shall destroy or interfere with the authority vested in the trustees by the Trust Deed respecting the affairs of the Publishing Society.

"The Board of Trustees will also comply with the request of the directors to transmit to the directors all pending correspondence, and all correspondence heretofore received by the

Publishing Society from Christian Scientists seeking recognition or advertisement as branch churches or societies of The Mother Church, who have not been recognized as such by The Mother Church through its Christian Science Board of Directors.

Referring to the second letter of the directors under date of Jan. 22, 1919, which quotes the following from a letter of the directors to the trustees under date of Dec. 20, 1918:

"(4) All questions pertaining to the general welfare of the Christian Science movement, not particularly connected with the business of the Publishing Society, shall be determined by The Christian Science Board of Directors. All important questions pertaining to the general welfare of the Christian Science movement and connected with the business of the Publishing Society, shall be determined by the trustees upon consultation with the directors;" and which in the letter of January 22, the directors changed to read as follows:

"(4) Upon every matter affecting the cause of Christian Science connected with the business of The Christian Science Publishing Society the Board of Trustees thereof shall be governed by the decisions and orders made by The Christian Science Board of Directors in accordance with the By-Laws of The Mother Church."

The trustees cannot recognize the order of the directors, above set forth, because they are advised that they must look to the Deed of Trust as their chart in the discharge of the duties and responsibilities thereby imposed.

Mr. Krauthoff—One moment, Mr. Strawn. If your Honor please, the rest of that letter, in our judgment, relates entirely to matters that were discussed confidentially between counsel, and I will ask the counsel for the trustees to further consider whether it is to the interest of the trust that they are administering to offer the letter in evidence as to those items. They relate to subjects which, as I understand, are not now in controversy.

Mr. Whipple—Well, we think, if Your Honor please, that it is important that the whole thing should be read, because the attitude which the trustees took in an endeavor to prevent this schism which was being forced upon them by what we claim was the intolerable and headstrong and unjustifiable conduct of these directors ought to appear. It is of importance in this case that the limits to which we went in order to reconcile our performance of our duty short of abandonment of our trust, at their request, should be known; and I do not believe that there is any part of the letter that ought to be exempt.

Mr. Krauthoff—I think, Mr. Whipple, that if you will read the second and third paragraphs of what you are now approaching you will agree with me

that it is not to the interest of the trust that you are administering to make that discussion a matter of public notoriety. I would like to have you look at that again before you read it.

Mr. Whipple—I will look at it, but there is too much secrecy with regard to the affairs of this Church. Mrs. Eddy intended that it should be a church of democracy in its principles, governed and managed by the people who are interested in the Church, and not by a hierarchy or theocracy; and the complaints are justified that there is too much of secrecy, and I do not believe that there is anything that—

The Master—Why could you not pass that for the present and consider further whether you would not both prefer to avoid having it become public?

Mr. Thompson—If any evidence is not going to be produced, Sir, we should like to have an opportunity of knowing what it is before it is suppressed. We are parties to this proceeding.

Mr. Whipple—The only possible—

The Master—If I understand you, that is what my suggestion tended to your doing—that you should both look it over and see whether you can agree.

Mr. Thompson—I understood Your Honor to refer only to Mr. Whipple and Mr. Krauthoff.

Mr. Krauthoff—Of course Mr. Thompson is entitled to see what it is, and there is no thought of suppressing anything, and there is no thought of secrecy about it.

The Master—I supposed that all of the counsel would prefer to read that over.

Mr. Krauthoff—The purposes of Mrs. Eddy as to her Church are set forth in the Church Manual, which, among other things, forbids a director to state what happened before the board.

Mr. Thompson—But it must be perfectly apparent to counsel that such injunctions as that can have no significance in a court of justice. I do not know whether this particular matter ought to be read or not.

The Master—You have not read that yourself?

Mr. Thompson—No. I would like to have a chance to read it myself. The general suggestion that there is too much secrecy in this Board of Directors I am heartily in sympathy with.

The Master—That is hardly the question before us at the present time.

Mr. Whipple—We do not care to press it at the moment, but I do not think that we should change our view that this ought to be read.

Mr. Streeter—Well, let us see it.

Mr. Whipple—Yes, here it is, beginning,

"At the interview on the 25th, Judge Smith stated," etc.

The Master—I by no means undertake to suggest whether it should be read or whether it should not be read.

I am only suggesting that, inasmuch as you not all had an opportunity to examine and consider it, perhaps it would be better to wait until you have all had an opportunity to examine it.

Mr. Whipple—I quite appreciated Your Honor's suggestion, which is, as I understand, to this effect, that if all the parties thought that it ought not to be read and become a public matter, in that case we might agree, but otherwise that it is a part of the evidence.

The Master—Quite so.

Mr. Krauthoff—I do not make it as a legal objection. I am making it only in the interests of the trust, in which we are all interested, after all.

The Master—I so understood you.

Mr. Streeter—What is the trouble with this, Mr. Whipple?

Mr. Whipple—I cannot see the slightest trouble. My only difficulty in dealing with the matter is that I do not really quite understand why Mr. Krauthoff thinks that it is objectionable.

Mr. Thompson—Why, it has a bearing in a certain way upon another suit pending in court.

Mr. Streeter—I cannot see anything there, Mr. Krauthoff.

Mr. Krauthoff—Why, if Your Honor please, our position about the matter is this: It is our desire to live in peace and harmony with all the religious denominations upon the face of the earth. We have no desire to engage in controversy with any of them.

Mr. Streeter—Do you refer to what is said there about the Roman Catholic Church?

Mr. Krauthoff—Of course, since Mr. Streeter has seen fit to make mention of the other religious denomination, I withdraw any objection I made to it.

Mr. Streeter—There is no use having any secrecy about this thing.

Mr. Krauthoff—The virtue of what I was trying to do has been destroyed over my objection, but I cannot help it.

The Master—I suppose you may continue.

Mr. Strawn—(Resuming the reading.)

"At the interview on the 25th, Judge Smith stated the criticism by the directors of the trustees in four particulars:

(1) That the directors claim the sole right to determine the acceptance of branch churches, and that the trustees should not assume that responsibility, citing as examples Nashville and the Seventh Church of New York.

So far as the trustees are advised, they have never claimed the right or authority to pass upon the acceptance of a church as a branch of the Mother Church, and have never attempted to assume the authority for so doing. The sole duty of the trustees in that behalf is to determine, as a condition precedent to the insertion of an advertisement of such branch church in the publications, the fact that such

branch church has been properly organized and really exists as a branch church.

Referring to the Nashville incident, the facts as known to the trustees are as follows:

For some years it has been a matter of common knowledge among the directors and trustees that there were disturbing elements in First Church of Christ, Scientist, in Nashville, the claim being that there was a domination by certain of the members and that in order to become a member of the church it was necessary to be persona grata to those dominant members. In the course of events, other Christian Scientists in Nashville proceeded to form a society, and applied in the usual way for an advertisement in the Journal and they were accepted. The trustees have heard no criticism from the directors, or from anyone else, other than from First Church of Nashville, and from two members of that church whose names recently have been dropped from the Journal pursuant to a vote of the Board of Directors of The Mother Church.

As to the New York advertisement, we assume that Judge Smith intended to refer to the society advertised in New York, rather than to Seventh Church. The facts in this case are as follows:

On Aug. 31, 1915, an application for an advertisement in the Journal was received from a body of Christian Scientists calling themselves Christian Science Society of Bedford Park, New York City. Great care was exercised in inquiring into the situation causing this new society to be formed, the reason for such careful inquiry being that objection was made by several of the New York churches to a new society being formed. Finally, however, on May 23, 1916, after the society had proved that it could grow and be of use in New York City, the advertisement was accepted. The file in the possession of the trustees contains protests which warrant the care exercised before accepting the advertisement.

As in the case of the Nashville incident, the statement by Judge Smith at the meeting on the 25th was the first information the trustees have had of any criticism by the directors of the action of the trustees in the premises.

The second point of criticism stated by Judge Smith was that the questionnaire sent out by the trustees to practitioners, as a step precedent to the insertion of the cards of such practitioners in the Journal, is too inquisitive, and that the general attitude of the trustees is hostile to any practitioner who has been a Roman Catholic or who receives patients who have been Roman Catholics.

As to the questionnaire, the trustees have never been informed by the directors that they had any criticism to offer. Indeed, they have assumed the directors to be in entire accord

with the purpose of the trustees to obtain all the information possible. The questionnaire, now in use, together with the preliminary letter to practitioners, the trustees have always understood the same, having been the subject of discussion in conference to be acceptable to the directors.

As to the attitude of the trustees respecting Roman Catholicism, they desire to record themselves as having no quarrel with the Roman Catholic Church or with its communicants. The experience of the trustees as well as that of the directors over a period of years has demonstrated the vigilance with which the Roman Catholic Church watches its members, irrespective of the question whether those members are active or indifferent. Therefore it is the policy of the trustees to be very careful not to precipitate upon one who was once a Roman Catholic, and who now desires to become a Christian Scientist, the antagonism and criticism of his church unless and until, by the most exhaustive inquiry, it appears that the applicant for Christian Science help is firm in his belief and is entirely willing to meet this criticism.

Thus it has been the policy of the trustees to be cautious in the insertion of advertisements of practitioners who have been Roman Catholics, or of those whose avowed intent and purpose is to take Roman Catholics as patients.

Referring to the two instances cited by Judge Smith, the trustees will be very glad to submit to the directors their files on the subject, and to receive and carefully consider any suggestions which the directors have to offer.

The third criticism mentioned was the anti-Roman Catholic editorial policy of the Monitor. Believing, as they do, in the very unusual ability and vision of the editor, Mr. Dixon, the trustees have not interfered with his editorial policy. Until the statement by Judge Smith, the trustees assumed that the directors were in entire sympathy with this policy.

The trustees will very much appreciate and gladly welcome helpful criticism of any editorials which may appear, and invite suggestions as to the general editorial policy, reserving to themselves, as they must in the performance of the duties imposed upon them, the right to determine whether the editorials published are consistent with the purposes of the Deed of Trust.

The fourth criticism was in regard to the publication of an editorial entitled "A Mad World," the point of this criticism being that the editorial was republished as an advertisement by churches throughout the country, and that this was very prejudicial to the Christian Science movement in that it created a feeling that Scientists defied the law.

The trustees have received a large number of letters commending them

for the publication of this editorial. They have answered requests for republication of it by churches, giving their consent. We are advised that the trustees are unable to share the view of the directors that the editorial inspired lawlessness, or was in defiance of the laws of the land. Certainly, such was not the intent.

It has been the understanding of the trustees that one of the avowed purposes of Christian Science and of Christian Scientists is to bring to the minds of the people the baneful influences of fear, and they have never heard any criticism from the Board of Directors of the furtherance of this purpose.

"It has come to the knowledge of the trustees, from sources which they are disposed to recognize as reliable, that one of the directors recently visited New York City, and while there depreciated the work of the trustees, questioned their veracity as to the circulation of the Monitor, and suggested that the Board of Trustees was about to be removed. A copy of the letter detailing this episode has been delivered to the directors.

"The trustees sincerely hope that the report of the conduct of this director is not true: if it be true they regard it as very much to be deplored. Instead of disparaging the efforts of the trustees, we submit that it should be the desire of your clients and ours to exhaust all reasonable effort amicably to remove the differences existing between them.

"We reiterate what was stated to you at the interview—our earnest wish to cooperate with you to the end that our respective clients may work harmoniously and effectively in the discharge of the duties which they have severally assumed, and we welcome your suggestions.

"Very sincerely yours,  
(Signed) "CHARLES E. HUGHES  
"SILAS H. STRAWN  
"SHERMAN L. WHIPPLE

"Counsel for the Board of Trustees of The Christian Science Publishing Society."

[The letter of which the foregoing is a copy is marked Exhibit 22, R.H.J.]

I should like to read the answer to that letter, under date of Feb. 6, 1919, and ask to have it marked Exhibit 23. This is a letter which was addressed to each of the three men who signed the letter to the counsel for the directors and it reads as follows:

"Boston, Mass.,  
"Feb. 6, 1919."

Mr. Streeter—You did not tell us who wrote this letter.

Mr. Strawn—This letter is written by Messrs. Bates, Abbott, Smith, and Krauthoff, to Messrs. Hughes, Strawn, and Whipple.

Mr. Whipple—And perhaps it might be stated, although it bears internal evidence of the fact, that it was after an arrangement and accommodation had been reached, which is expressed in the letter. It had been reached as a result of interviews at which I

think the trustees themselves were present.

Mr. Strawn—The conference was had in Boston on the first of February.

Mr. Bates—That is not correct.

Mr. Strawn—Neither the trustees nor directors were present, but the counsel for either side consulted their respective clients during the conference, and they returned to the conference and agreed upon the modus vivendi, as the result of conferences with their clients.

Mr. Whipple—And this expresses what was then reduced to writing as an agreement.

Mr. Bates—The paper speaks for itself.

Mr. Whipple—Yes.

Mr. Strawn (reading)—

"Boston, Mass., Feb. 6, 1919.

"Hon. Silas H. Strawn,  
"First National Bank Building,  
"Chicago, Illinois.

"Dear Sir:

"Our conference of Feb. 1, 1919, rendered an answer in writing to your courteous communication of Jan. 27 unnecessary. For record we quote as follows the two memoranda then exchanged:

"It is understood by The Christian Science Board of Directors of The First Church of Christ, Scientist, in Boston, Massachusetts, and the Board of Trustees of The Christian Science Publishing Society, as follows:

"(1) The responsibility for all decisions in regard to recognizing branches and societies of The Mother Church rests with The Christian Science Board of Directors. To this end, all preliminary correspondence on the subject named shall be conducted by the directors and not by the trustees. When a branch church or society of The Mother Church has been recognized as such by the directors, upon proper application made in accordance with the rules of The Christian Science Publishing Society, the services of such a church or society may be advertised in The Christian Science Journal. The recognition by the directors of the church or society as a branch of The Mother Church shall be accepted by the trustees for the purposes of publication as conclusive evidence of the fact that such branch church or society has been properly organized as a branch church or society. The card of a church or society not so recognized by the directors shall not be inserted in the Journal. As a condition precedent to recognition or its continuance, churches or societies shall be required to insert and have continued a card in the Journal. (This work has heretofore been done by the trustees at the request of the Board of Directors and by their authority and not by the trustees under the Deed of Trust.)

"(2) The responsibility for the determination of the eligibility of practitioners and nurses who are members of The Mother Church, to be recog-

nized as such rests with The Christian Science Board of Directors. To this end, all preliminary correspondence on the subject named shall be conducted by the directors and not by the trustees. When the directors have determined that a practitioner or nurse be recognized as such, upon proper application made in accordance with the rules of The Christian Science Publishing Society, such a practitioner or nurse may have a card inserted in the Journal. The determination by the directors of such recognition shall be accepted by the trustees as conclusive evidence of the eligibility of such practitioner or nurse to be advertised as such. The card of a practitioner or nurse not so recognized by the directors shall not be inserted in the Journal. (This work has heretofore been done by the trustees at the request of the Board of Directors and by their authority and not by the trustees under the Deed of Trust.)

"As to matters under discussion not covered by the memoranda, neither side waived its contentions, but it was understood that the two boards would resume their meetings with the hope that agreement regarding all points of difference might soon become possible.

"We are sending this same communication to Hon. Charles E. Hughes and Hon. Sherman L. Whipple.

"With cordial regards,

"Sincerely yours,

"JOHN L. BATES,

"LEON M. ABBOTT,

"CLIFFORD P. SMITH,

"EDWIN A. KRAUTHOFF."

[The letter of which the foregoing is a copy is marked Exhibit 23, R.H.J.]

The next letter, if the master please, is under date of Feb. 3, 1919, and is a communication addressed by the corresponding secretary for The Christian Science Board of Directors to the Board of Trustees. I will ask to have it marked Exhibit 24.

Mr. Whipple—And the paper attached to it may be marked Exhibit 24a.

Mr. Strawn—And the inclosure thereto attached will be Exhibit 24a.

Mr. Thompson—The date of the other one was Feb. 6, was it not?

Mr. Strawn—Yes. I got them a little chronologically out of sequence on account of its being in answer to the letter of Jan. 27.

Mr. Whipple—This is a letter written after the accommodation had been reached, but before the terms of it had found expression in the letter. The memorandum of it had been drawn up. That is a correct statement, I think.

Mr. Strawn—This letter reads as follows:

"I am instructed by The Christian Science Board of Directors"—

Mr. Streeter—Who wrote it?

Mr. Whipple—It is from the Board of Directors to the Board of Trustees.

Mr. Strawn (reading)—  
"The Christian Science Board of Directors,

"Boston, Massachusetts,  
"February 3, 1919.

"Board of Trustees,  
"The Christian Science Publishing Society,  
"Boston, Massachusetts.

"Dear Friends:

"I am instructed by The Christian Science Board of Directors to transmit herewith three copies for the respective trustees of the communication from Mr. William R. Rathvon, read at the joint session held this morning of the directors and trustees.

"Sincerely yours,  
(Signed) "CHAS. E. JARVIS,  
"Corresponding Secretary for The Christian Science Board of Directors."

C. E. J.—L.

[The letter of which the foregoing is a copy marked Exhibit 24, R.H.J.]

"William R. Rathvon, C. S. B.,  
"236 Huntington Avenue,  
"Boston, Massachusetts

"February 2, 1919.  
"Board of Trustees and Board of Directors in Joint Session  
"Mother Church Building

"Fellow Scientists:

"As the only member of either board who has not previously attended a joint meeting such as this, I beg to register my often expressed approval of regular and frequent conferences between bodies having important interests in common. I hope I am voicing the desire of every one here that this meeting may be the first of a series whose good results will justify their permanent continuance.

"However widely men may differ in belief there is always hope of composing their differences amicably so long as they regularly come together 'of one accord in one place.' (Acts 2:1.) Family differences lead to family divisions only when the brethren refuse to heed the scriptural injunction 'come now, and let us reason together.' (Isa. 1:18.)

"Without reciting the events which led up to our gathering here today, I wish to say to the trustees, what of late I have frequently had occasion to say about them, namely, that I have at no time doubted their sincerity or honesty of purpose. Moreover, I am confidently expecting that before so very long there will be given out such evidences of undivided loyalty to the Manual and The Mother Church, that even the most incredulous will be convinced that certain disloyal declarations attributed to the trustees were unauthorized and will be specifically repudiated.

"This is not the hour for standing aloof and looking backward, but for joining hands and pushing forward. It matters not so much what was our position yesterday as what it is today.

It is not a time to discuss what we have done but to decide what we shall do. It is not the time for recrimination or suspicion, but for confidence and cooperation. It is a time to give and take lovingly as children of one Father and joint heirs of one estate.

"Fraternally yours,

(Signed) "WM. R. RATHVON."

WRR—F

[The letter of which the foregoing is a copy is marked Exhibit 24a. R. H. J.]

Q. Do you remember the occasion of that meeting? A. I do.

Q. It was a cordial and friendly meeting? A. Very.

Q. Have you the records here, the memoranda that were made in connection with that meeting of February 3d? Do you happen to have yours here, or a copy, Mr. Krauthoff?

Mr. Krauthoff—The meeting of Feb. 3, 1919?

Mr. Whipple—Yes.

Mr. Krauthoff—No, the record is not here.

Mr. Whipple—Perhaps it would be as convenient a way as any for me to read it. Of course it is not an official record, and, in a technical sense, it could only be used to refresh a witness' recollection as to what happened.

Mr. Streeter—Does it purport to be a copy?

Mr. Whipple—It purports to be a record of the meeting.

Mr. Krauthoff—Trustees' records, do you mean?

Mr. Whipple—Yes.

Mr. Krauthoff—Is it an official record?

Mr. Whipple—So far as trustees under a deed can have an official record. I never understood the trustees had any record which was official in the sense that the records of public body are official; in point of fact, they did appoint a secretary, who transcribed as nearly as he could—and Mr. Eustace was the secretary—an accurate account of what happened. That is all that it is.

Mr. Krauthoff—Well, why don't you—

Mr. Whipple—Boards of aldermen and public officials like that have a record which can be put in under the seal of the clerk, or something, but I do not understand that common, ordinary trustees under a trust deed can.

Mr. Krauthoff—May we see the document that you are about to offer?

Mr. Whipple—Well, I am not going to offer it. I was going to read it as a substitute for the testimony.

Mr. Krauthoff—Suppose you read it, and then we will make our remarks on it.

Mr. Whipple—Supposing you pass it along (passing a volume of records to Mr. Streeter). I like to keep you active!

Mr. Streeter—Yes, I would like to do something! (Passing to Mr. Krauthoff the volume referred to.)

Mr. Krauthoff—This is a record,

Mr. Whipple, as I understand it, made by the trustees at the time of the meeting?

Mr. Whipple—Yes, I so understand it—by the gentleman who was appointed to act as secretary.

Mr. Krauthoff—That is all right.

Mr. Whipple—It is a contemporaneous record of this meeting of harmony and love.

Mr. Bates—Not exactly contemporaneous, was it?

Mr. Krauthoff—It was written out, as I understand it, during the day, after the meeting.

Mr. Whipple—When was it written out, Mr. Ogden?

Mr. Ogden—Written up on the same day.

Mr. Whipple—Written up on the same day.

"Feb. 3, 1919.

"The meeting convened, at 9:45, with Messrs. Eustace, Rowlands, and Ogden present.

"The chairman telephoned to the chairman of the Board of Directors to ascertain if they would be ready to see the trustees at 10 o'clock, and learned that they had understood the hour was 11 o'clock.

"The business manager came to the meeting, and the hour was spent in reading articles from the Bible and from our Leader's writings, and in talking about God."

If I may interrupt myself, Mr. Watts is the business manager?

The Witness—Mr. Watts is the business manager.

Q. And Mr. Watts is also a lawyer and a member of the Suffolk bar? A. He is.

Mr. Streeter—Mr. Whipple, will you be good enough to tell us who the gentleman was who wrote this record?

Mr. Whipple—Mr. Ogden. His name is signed to it. He was at that time secretary.

"Promptly at 11 o'clock Mr. Dickey telephoned that the directors would be glad to see the trustees, and the three trustees immediately went to the board room of The Mother Church.

"Meeting with Directors—Mr. Dickey, Mr. Merritt, and Mr. Rathvon were present, and Mr. Dickey explained that Mr. Neal had left on his vacation, but that he was heartily in accord with the meeting and with the views entertained by the three members present.

"Regarding Mr. Dittmore, he simply said that he was not present.

"Gratification—Mr. Dickey, as chairman of the meeting, expressed his gratification at the coming together of the two boards, which was seconded by Mr. Merritt. Mr. Rathvon, explaining that he was the newest member of the Board of Directors and had not hitherto met with the trustees, said he had prepared a brief letter last evening which he would like to read, which also expressed his gratification at the coming together of the boards.

"Pledge to Come Together—Each

one of the trustees reciprocated in the harmony and cooperation expressed by the directors, and the six Christian Scientists present pledged themselves to come together and talk out between themselves any point of difference should this arise at any time in future.

"Statements of Difference Refuted—It was also agreed that should it come to any member of the Board of Directors or the Board of Trustees that there is or has been a difference existing between the boards, it should be affirmed that this was now absolutely a thing of the past, and that the boards are in full harmony and cooperation, and that this can be verified by addressing an inquiry to either board.

"Transfer of JI. Cards—The general question as to the turning over and handling of the applications for cards in the Journal was discussed, and the trustees volunteered to give all of the assistance possible in making this transfer.

"After a conference of an hour and a quarter the trustees returned to the Publishing House and continued their own meeting.

"The only thing that needs to be added as to the meeting which they held afterwards is:

"Telegrams were sent to Justice Hughes, Mr. Whipple and Mr. Strawn, telling them of the harmonious meeting this morning."

Mr. Streeter—Mr. Whipple, will you be good enough to let us see the balance of the record?

Mr. Whipple—Yes, certainly.

Mr. Streeter—Do you think that that is the only thing that ought to be read?

Mr. Whipple—I am perfectly willing that the rest of it should be read, but that was a meeting of the trustees alone, and not of the directors.

Mr. Thompson—Mr. Whipple consents, if Your Honor please, to our putting in at this stage of the proceedings a part of the record that may become in its entirety admissible later, namely, the account given by Mr. Dittmore in his diary, which he kept daily, of the condition in which he found some or all of these parties when he returned to the meeting. He described it as a condition of "mesmeric ecstasy."

Mr. Krauthoff—What is it that is being offered?

Mr. Thompson—I thought that it was rather plain when I read it.

Mr. Krauthoff—We object to Mr. Dittmore's diary, and ask that it be stricken out. Counsel read it without submitting the document to us, and he gave us no opportunity to object to it.

Mr. Thompson—It may go out as to Mr. Krauthoff if he likes, but it is in for other purposes.

Mr. Krauthoff—It goes out as to the directors.

The Master—I do not quite understand how it is in.

Mr. Thompson—Mr. Whipple con-

sents that it may go in, so far as his clients are concerned, sir; and if Mr. Krauthoff's clients object to it, so far as they are concerned, we will not press it at this stage of the proceeding.

Mr. Krauthoff—We object to its being in the record at all.

Mr. Thompson—I do not see how you can keep it out if Mr. Whipple agrees.

Mr. Krauthoff—Mr. Whipple was examining a witness directly, and Mr. Thompson, without being in charge of the witness, and without making any offer of anything, injects a statement made by Mr. Dittemore in his diary. It has no place in this record whatever, and it should be entirely stricken out. I move that that whole incident be stricken out of the record.

Mr. Thompson—I see no occasion for doing it, so long as—

The Master—I do not hear you, Mr. Thompson.

Mr. Thompson—I do not see any occasion for further controversy about the matter. It appears to be entirely agreeable to Mr. Whipple that this very beautiful description of the condition of his clients should remain in the record.

Mr. Krauthoff—Well, we object very strenuously to that method—

The Master—We are trying here two cases together. Opposing counsel in one case agree that this may go in as a part of the record for the purposes of that case. If they agree, I do not see why I should strike it out of the record. You object, and say that it should not be in the record for the purposes of your case.

Mr. Krauthoff—My point is that that is not the way to try a lawsuit, and that it is unfair to us,—while a witness is being examined by Mr. Whipple, for other counsel to pick up a document that the witness was not testifying about, and simply read it into the record, without giving anybody a chance to see it or to make any objection. It was put in solely for the purpose of giving it the publicity which attends the reporting of these proceedings, and we think that it ought to go out of the record entirely.

Mr. Bates—Let me just direct Your Honor's attention to the fact that we are defendants in both suits. We have a right to raise an objection, and if the objection is sustained it goes out, and I understand that it goes out in both suits. If we were parties to one suit alone, it could not be stricken out, perhaps, but we are parties to both suits.

Mr. Thompson—There seems to be a certain solemnity about the remarks of counsel on the other side, particularly the counsel who first spoke. I have already said that if Mr. Krauthoff objects to this language, either in form or substance, it may be regarded as not applying to his clients; but inasmuch as Mr. Whipple consents that it may remain in, in the serious controversy that we have with his clients,

I see no reason for striking it from the record.

The Master—Let me see if I am wrong about the counsel. You are in both suits, you say?

Mr. Bates—We are counsel for defendants in both suits. Mr. Dittemore happens to be plaintiff in one suit, and he is represented by Mr. Thompson—

Mr. Thompson—And he is a defendant in another.

The Master—Are you not mistaken about that? Is he plaintiff in one?

Mr. Bates—Mr. Dittemore?

The Master—Yes.

Mr. Bates—He certainly is plaintiff in one.

Mr. Whipple—Mr. Dittemore is one of the defendants in the suit which is now being tried before Your Honor, and Mr. Thompson and General Streeter represent him. The other five defendants are represented by Governor Bates and his associates.

The Master—In both suits?

Mr. Whipple—Well, I am not speaking of our suit, that is now being tried. The other suit is between Mr. Dittemore on the one hand and Governor Bates's clients on the other, and we are not in it; and this is being offered in the first suit.

I have offered a record of what transpired as between the trustees and those of the directors who were present; and then Mr. Thompson suggested to me that Mr. Dittemore, who was regarded as not present, came back a little later and made a memorandum of the condition in which the directors were found, which seemed to me to be pertinent upon the question of the great satisfaction and the clear agreement that the parties were in at that time; and therefore I assented, as affecting these plaintiffs in their controversy with Mr. Dittemore, that it should go in. I thought that it really helped our plaintiffs more than it did Mr. Dittemore. That is why I assented, and I do not see why it should not stand. It does not affect Governor Bates or his clients, unless they assent to it, because I am in accord with them that it was put in out of order, as far as proof was concerned as affecting their defendants.

Mr. Krauthoff—If Your Honor please, it may be a trifling incident to speak of at this time—

The Master—Now, Mr. Krauthoff, this is the action that I think that I will take about this piece of evidence, if we may call it such. It is, in any case, out of order. I think that I shall strike it out for the present, without prejudice to the right of anybody interested to offer it again.

Mr. Whipple—Yes, Your Honor.

Mr. Thompson—That is entirely satisfactory to me, if Your Honor please.

Mr. Streeter—Nobody objects to Your Honor's ruling.

Q. Let me hand you this paper, stamped "Mr. Adam H. Dickey," and purporting to be a copy of a letter from Judge Smith to The Christian Science Board of Directors under date

of Feb. 5, 1919 (passing a document to the witness). How did that come into your possession? A. I think this was handed to me to read.

Q. By whom? A. By Mr. Dickey, I think.

Q. Well, what I desire to ask now is whether it was handed to you under any seal of confidence, or anything of that sort, which makes it improper for me to offer it in evidence? A. I prefer to ask Mr. Dickey if it may be given.

Q. Well, was there at the time anything suggested indicating that it was in confidence, or that the paper was to be returned, or anything of that sort, or that you were not to use it? A. I don't remember anything of that kind.

Q. Well, will you let me take it a moment? I would like to hand it to the counsel, and I will ask you to ask Mr. Dickey about it—there seems to be some sort of a suggestion that that was a confidential communication, and I do not want to use it in any way that does not accord with the pledge or understanding with which it was handed over.

[The document referred to is passed to Mr. Bates.]

Mr. Krauthoff—If Your Honor please, we are so near adjournment that I will ask if we may not wait until the morning as to this letter?

Mr. Whipple—Yes, I am entirely willing, but I want to ask Mr. Eustace a question.

Q. Were you asked, after this harmonious meeting which has been referred to, in February—were you at any time asked to repudiate the advice which your counsel had given you, as contained in the letter which has been read, and to take action contrary to it? A. Frequently.

Q. Well, how soon after that harmonious meeting? A. The following meeting that we had, whenever that was.

Q. Well, were you, by the 5th of February? A. The proposal, I think, was tentatively submitted—

Q. On the 5th of February? A. That would be the—

Q. That would be within 48 hours of the time your meeting had— A. Either that or the next day, I think.

Q. Yes; that is, the suggestion that you should not— A. That we should do something to repudiate it.

Q. To repudiate the advice of counsel. Was this letter from Judge Smith which has been referred to shown to you in that connection? A. I think it was.

Mr. Streeter—Well, if Your Honor please, with reference to this letter, if we grasp what it is, it seems to be a draft of an official letter which was made by the board to be sent to the trustees, and then was given by Dickey to Eustace—

Mr. Whipple—No. Let me explain what it was.

Mr. Streeter—Is that right?

Mr. Whipple—No.



Mr. Streeter—Well, at any rate, being a letter of the board, we want to see it.

Mr. Whipple—It is not a letter of the board. Let me explain what it is. I thought I did. It is a letter from Judge Smith, the counsel of the board, to the Board of Directors, and he took a copy of it, and had a conversation with Mr. Eustace, in which the suggestion was made that Mr. Eustace, of the Board of Trustees, should repudiate their counsel's advice which they had received, and take action contrary to it; and in that connection he showed him Mr. Smith's letter, which had been sent to the board, which dealt with that subject. Now I do not care anything about the particular terms of the letter. The only thing that we desire to establish, and that we do establish by this testimony, is how promptly the trustees, after this agreement had been made, were invited to repudiate their position, and how quickly the old demands of the directors were again presented. Having done that, I think that probably there is no object in putting in the letter itself, but we will suspend on that until tomorrow morning.

Q. Now, I will direct attention to the record of a meeting of the Board of Trustees, dated Feb. 10, 1919, and I will ask you whether at that time you had a joint meeting with the Board of Directors? A. We did.

Mr. Whipple—I should like to read that record of the joint meeting as I did the other.

Q. You would testify that the thing occurred which is recorded here, would you not? A. I will.

Mr. Whipple—Well, now, as a short way of putting it in, I would like to read this.

Mr. Krauthoff—You may read it.

Mr. Whipple (reading)—

"February 10, 1919. The trustees met at 11:30 a. m. on Monday, February 10, with all members present, and opened the meeting with the usual prayer.

"Meeting with directors. At noon the trustees went over for their regular Monday conference with the directors. All members of the Board of Directors were present except Mr. Neal, who is still away on his vacation.

"Mr. Rathvon read a letter which he had prepared, which set forth the advisability of having a definite signed agreement as to what the directors felt to be the present adjustment between the boards, and then submitted to the trustees the following agreement, which it was proposed be signed by the members of the boards of directors and trustees:

"It is mutually understood by The Christian Science Board of Directors and the Board of Trustees of The Christian Science Publishing Society that the former board, as in relation to the latter board, has final authority in regard to the editorial policy of the official organs of The Mother Church, and final authority in regard to all matters affecting the policy of The

Mother Church or the cause of Christian Science."

Was that substantially different from what they had been claiming for several months?

The Witness—It was the same.

Q. The same thing? A. The same thing.

Q. And the thing that you had settled? A. The thing that we had supposed we had settled, so that we could work it out.

Q. And in respect of which you had made several concessions and given up many duties that you had performed before, or some duties? A. Yes, a number of them.

Mr. Whipple (resuming the reading)—

Proposed Agreement—"Mr. Rowlands, chairman of the Board of Trustees, said that, while he spoke as an individual, he felt it expressed the unanimous attitude of the Board of Trustees that it would not be our sense of demonstration to sign any such agreement, inasmuch as it would not leave the question of editorial policy open for demonstration on the part of the editors, and that this, and the other question in the proposed agreement, were those which it had been agreed to leave open for demonstration on the part of the two boards. Then followed a general discussion of this subject for an hour or more, the directors maintaining that this agreement was essential before any further steps could be taken in our joint work, and the trustees maintaining that, to them, such a course would not be in accord with scientific demonstration. It was finally agreed to leave the question open for further demonstration and to meet again on Wednesday noon of this week."

Mr. Krauthoff—Mr. Whipple, have you the letter of Mr. Rathvon that was read at that meeting of Feb. 10?

Mr. Whipple—No, I haven't.

Mr. Krauthoff—I have a copy, if you wish to use it.

Mr. Whipple—I hardly think that is pertinent to anything that I have in mind. What I want to show is that the same old demand was made. You haven't read through this copy of Mr. Smith's letter so you want to deal with it tonight, have you?

Mr. Krauthoff—You may read it in evidence, Mr. Whipple.

Q. Mr. Smith was present as one of the counsel in the conference of counsel for the purpose of settling? A. I understood so.

Mr. Whipple—I think that has all appeared so far. We will now put in this letter of Feb. 5, which is a copy of a letter from Judge Smith to The Christian Science Board of Directors. [To Mr. Krauthoff.] Will you let me take the one I handed over to you? I would like to put that in, because that shows its source. I will have this marked as soon as I have finished reading. It has a stamp on the top showing it was Mr. Dickey, I take it. "Copy of a letter from Judge Clifford P. Smith."

[The letter is read by Mr. Whipple.]

Q. Was Mr. Smith present at this meeting of reconciliation and attempt to get on together? A. He was not.

Q. Did Mr. Dickey, in talking with you about this proposition to start this controversy all over again, refer to anyone else except Mr. Smith as the man starting it?

Mr. Krauthoff—We object to that question, if Your Honor please, because there is no evidence that anything of the kind happened.

Mr. Whipple—What kind happened? Mr. Krauthoff—What you have assumed in your question.

Mr. Whipple—That letter shows it. Mr. Krauthoff—We object to the question.

Mr. Whipple—Opening the whole controversy.

Q. Did he refer to anyone else as having been dissatisfied with the settling, and reopening the controversy? A. Mr. Dickey talked to me—

Q. Well, if I may trouble you to answer that. Did he refer to anyone else as desiring to reopen the controversy? A. I think not.

Mr. Krauthoff—We object to that question. There is no intimation here of reopening the controversy.

Mr. Whipple—Well, except so far as this letter shows it. I think that is as plain as the nose on a man's face, even if it wasn't a very big one.

Mr. Krauthoff—The controversy was in process of adjustment. It had not been closed at all.

Mr. Whipple—Then you agree with Judge Smith that their ratification meeting or jollification meeting was premature?

Mr. Krauthoff—No, it wasn't.

Mr. Whipple—And that his condition of mental ecstasy—

Mr. Krauthoff—It was a step in the direction of an ultimate adjustment which will some day be reached.

Mr. Whipple—Well, this was a trig in the ultimate adjustment, if that step had been made. I understood the question was answered and it was before Your Honor whether the answer should be struck out.

Mr. Krauthoff—I didn't hear the answer.

Mr. Whipple—Oh, yes, it was answered. [To the stenographer.] Will you read the answer?

[The answer is read: "I think not."]

Mr. Whipple—Read the question and the answer.

[The last question and answer are read.]

Mr. Whipple—I said I would hand that to you to be marked.

The Court—You don't ask me to strike that out, do you, Mr. Krauthoff?

Mr. Krauthoff—I make no point about it.

[The letter dated Feb. 5, 1919, from Judge Clifford P. Smith to the Christian Science Board of Directors is marked Exhibit 25, W. H. M., and is copied into the record as follows:

[Exhibit 25.]

COPY

of a letter from Judge Clifford P. Smith.

Feb. 5, 1919.

"The Christian Science Board of Directors,  
105 Falmouth Street,  
Boston, Mass.

"Dear Friends:

"This letter collects certain facts which should be brought together in one statement, for record and for any use that may need to be made of them. Sending a copy of this letter to Messrs. Eustace, Ogden and Rowlands, would make sure that they are aware of all of the facts it contains.

"In a letter from The Christian Science Board of Directors to the Board of Trustees of The Christian Science Publishing Society dated Dec. 28, 1918, the directors said, 'For the trustees to set up the Deed of Trust dated Jan. 25, 1898, as creating a trust not subject to the Church by-laws adopted since that date, or as creating a trust not subject to the present government of The Mother Church, would be in effect an attack on the by-laws and government of The Mother Church. If the trustees continue to insist on any such contention, it will constitute a most threatening menace to the welfare of the Christian Science movement. In such an exigency the advice and warning given by Mrs. Eddy in the letter to the Board of Directors published in the Sentinel of Aug. 22, 1914, is pertinent for all persons concerned.' The directors refer especially to the following sentences: 'The present and future prosperity of the cause of Christian Science is largely due to the by-laws and government of "The First Church of Christ, Scientist," in Boston. None but myself can know, as I know, the importance of the combined sentiment of this Church remaining steadfast in supporting its present by-laws.'

"In reply to this part of the directors' letter, the trustees in their letter of Dec. 31, 1918, said, 'It goes without saying that the trustees absolutely repudiate the charges the Board of Directors have apparently preferred against the Board of Trustees in this second paragraph, and further wish to state that they feel that the directors do not fully realize the seriousness of the statements they have made.'

"In a letter dated Jan. 27, 1919, from Messrs. Hughes, Strawn, and Whipple as counsel for the trustees of The Christian Science Publishing Society, to Messrs. Bates, Smith, Abbott, and Krauthoff as counsel for The Christian Science Board of Directors, the former counsel said, 'If there be any conflict between the terms of the deed (the Deed of Trust dated Jan. 25, 1898) and the language of the Church Manual, the legal and moral obligation of the trustees compels them to

respond to and obey the mandates of the deed.' Again in the same letter the same counsel said, 'They (the trustees of The Christian Science Publishing Society) expressly deny any right or authority in the directors to demand or request such resignation (the resignation of said trustees).'

"In the conference between Messrs. Hughes, Strawn, and Whipple, as counsel for the trustees, and Messrs. Bates, Smith, Abbott, and Krauthoff, as counsel for the directors, held on Feb. 1, 1919, the counsel for the trustees said that the by-laws of The Mother Church are not obligatory on the trustees of The Christian Science Publishing Society in their capacity as trustees. This statement was made and repeated by Judge Hughes in his summing up of the trustees' position, and it was made without dissent from the other counsel for the trustees.

"By these written and oral statements the counsel for the trustees plainly did all that, and even more than, the directors warned against in their letter of Dec. 28, 1918, as quoted above.

"It is barely possible that the foregoing written and oral statements were made by their counsel without the knowledge or approval of Messrs. Eustace, Ogden, and Rowlands, but any question on this point can be removed by sending them a copy of this letter. If they, with such knowledge or notice, do not disavow the written and oral statements made for them by their counsel, as stated in this letter, and declare their absolute and unqualified acceptance of the present by-laws of The Mother Church, then their repudiation thereof will be clear beyond question. Of course, they cannot accept as Christian Scientists and repudiate as trustees. The Deed of Trust plainly provides that the trustees must be loyal, faithful, and consistent Christian Scientists in order to become or continue as trustees.

"Certain additional facts will make entirely clear the full meaning and effect of the denial quoted above from the letter written by Messrs. Hughes, Strawn, and Whipple; that is, 'They (Messrs. Eustace, Ogden, and Rowlands) expressly deny any right or authority in the directors to demand or request such resignation (the resignation of said trustees).' In the first place, that denial repudiates Article XXV, Sec. 3, of our Church Manual; which provides that 'The Christian Science Board of Directors shall have the power to declare vacancies in said trusteeship, for such reasons as to the Board may seem expedient.' In the second place, that denial repudiates Art. XXV, Sec. 5, of our Church Manual; which provides that 'A person who is not accepted by the Pastor Emeritus and the Christian Science Board of Directors as suitable, shall in no manner be connected with . . . The Christian Science Publishing Society.'

"It is to be observed, also, that the denial in question applies not only to the by-laws of The Mother Church but to the following provision in the Deed of Trust dated Jan. 25, 1898: 'The First Members together with the directors of said Church shall have the power to declare vacancies in said trusteeship, for such reasons as to them may seem expedient.' It is true that the by-laws of The Mother Church providing for First Members or Executive Members have been repealed. Nevertheless it is also true that the by-laws of The Mother Church, proposed and approved by our Leader, have fully covered this point. On the 10th of January, 1901, as proposed by her, the First Members of The Mother Church adopted the following by-law: 'The business of The Mother Church hitherto transacted by the First Members shall be done by its Christian Science Board of Directors.' This provision was continued as a by-law of The Mother Church until the adoption, as proposed by Mrs. Eddy, of the following provision which is now a part of Art. I, Sec. 6: 'The business of The Mother Church shall be transacted by its Christian Science Board of Directors.' For these reasons, the denial made by Messrs. Hughes, Strawn, and Whipple for Messrs. Eustace, Ogden, and Rowlands as quoted above, not only repudiates Art. XXV, Secs. 3 and 5, of our Church by-laws, but also repudiates a clause of the Deed of Trust dated Jan. 25, 1898, and the two by-laws of The Mother Church which transferred the authority of its First Members to its directors.

"Moreover, the denial in question virtually defies the law of Massachusetts. It is possible that Messrs. Hughes, Strawn, and Whipple were not fully informed on this point, and therefore did not fully advise their clients. The following citations, however, should make the law of Massachusetts clear to the trustees, either with or without the aid of counsel.

"In the case of Gould v. Mather, decided in 1870, and reported 104 Massachusetts Reports 283, the Supreme Judicial Court of Massachusetts decided a case which was thus stated in the official syllabus: 'A testator, in his will, named an executrix and an executor, and gave them all his estate in trust to accumulate for his children for 10 years, paying meanwhile the expenses of their support out of the income and investing the balance thereof. In a separate clause he provided that "if it shall be found necessary or expedient to dispose of any of my real property for the benefit of the estate, in the judgment of my executrix and executor, I hereby give them full power to do so and invest the sums so received for the benefit of my children." Held, that this power was given to the executrix and executor as an incident of their office, and upon the resignation of one of them the other might exercise it singly.'

"In the case of Coffin v. Atty. Gen. decided Jan. 2, 1919, and not yet offi-

cially reported, the Supreme Judicial Court of Massachusetts held that where a power coupled with an interest was given to two persons jointly, it could be exercised by one of them after the other's death. In that case, a husband and father had made a will by which he gave his wife and daughter a certain interest in his estate and gave them power to designate the charities which should receive the residue of his estate. His words were: 'Shall be devoted to missions and like good objects as they may think best, and the principal shall go finally to the same or similar objects as my wife and daughter shall decide, knowing as they do my purpose.' The daughter having died, it was contended that this power had failed, but the Court said, 'The power conferred on his wife and daughter as trustees to designate charities, having been coupled with an interest, could be rightfully exercised by the widow after her daughter's death.'

"These two decisions, and others like them which can be cited, are conclusive that the power of removal given by Mrs. Eddy to the First Members and the directors of The Mother Church, being given to them as officers thereof and being coupled with the interest of The Mother Church in the net profits of The Christian Science Publishing Society and in the purpose of its business, has not failed, but can be exercised by The Christian Science Board of Directors, even as a power conferred through the Trust Deed considered by itself.

"Messrs. Hughes, Strawn, and Whipple are undoubtedly lawyers of great ability. Yet it is within the common knowledge of judges and lawyers that the most eminent counsel may not be so well prepared in a particular case as other counsel who have a more intimate or appreciative knowledge of the salient facts and have made a more careful or extended search for precedents. Moreover, as Mrs. Eddy has said on page 149 of Miscellany, 'Lawyers may know too much of human law to have a clear perception of divine justice.'

"It can be safely said, I confidently assert, that Mrs. Eddy's plan for an institution representing Christian Science, shown by our Church Manual, can be carried out consistently with the law of Massachusetts. If the present trustees of our Publishing Society do not now see how this can be done, it is, I submit, their duty and privilege as Christian Scientists to peaceably resign; and allow the appointment of other trustees who are willing and feel able to obey our Church By-Laws.

"If there should be a meeting between the directors and the trustees for the consideration of this subject, I would recommend the following words by Mrs. Eddy as applicable to that occasion: 'You have convened only to convince yourselves of this grand verity: namely, the unity in Christian Science. Cherish steadfastly this fact.

Adhere to the teachings of the Bible, Science and Health, and our Manual, and you will obey the law and gospel.' (Miscellany, page 251.)

"Cordially and sincerely yours,  
(Signed) "CLIFFORD P. SMITH.  
"CPS—HM."

Mr. Whipple—We have already read the meeting of the 10th, the record of the meeting, and Your Honor will bear in mind what Mr. Rathvon wanted the trustees to agree to at that meeting. I am referring to it because this letter I didn't put in in order, but I now put it in, and I refer to the meeting of the trustees, or a joint meeting, on the 10th. Your Honor remembers that which I read a moment ago, the request that they agree as to the supreme authority of the directors.

Mr. Krauthoff—Are you offering the letter of Mr. Rathvon of Feb. 10, 1919, to the two boards?

Mr. Whipple—No, I have not yet, Mr. Krauthoff.

Mr. Krauthoff—Oh, I thought you were.

Mr. Whipple—Oh, no. I offered the memorandum. I have offered and read some time ago the record of the meeting between the trustees and the directors, in which Mr. Rathvon made his request that the trustees do what their counsel advised them, they were not under obligation—

Mr. Krauthoff—My information was the request was in writing and you had a copy of it. I am interested in knowing whether you are offering the writing.

Mr. Whipple—Now, had we better suspend? Shall we suspend at this point and come in tomorrow morning at 10 o'clock?

The Master—Tomorrow morning at 10 o'clock, then.

[At 4:30 p. m. the hearing is adjourned to 10 o'clock a. m., Thursday, June 11, 1919.]

June 12, 1919

THIRD DAY

Supreme Judicial Court Room,  
Boston, Massachusetts,

June 12, 1919, 10 a. m.

Mr. Whipple—We are ready to proceed, if we have Your Honor's permission.

The Master—You may proceed.

Mr. Whipple—We will offer next in chronological order of the correspondence which declares the basis and reason for the attempted removal of Mr. Rowlands a letter of Feb. 24, 1919, from the directors to the trustees.

"The Christian Science Board of Directors,

"Boston, Massachusetts.

"Feb. 24, 1919.

"Board of Trustees of

"The Christian Science Publishing Society,

"Boston, Massachusetts.

"Dear Friends:

"I am instructed by The Christian Science Board of Directors to send you

the following letter and to request your earnest consideration thereof:

"From time to time since the meeting between the trustees and the directors on Sept. 11, 1918, the directors have considered and reconsidered every aspect of their relations with the trustees, and have done this for the purpose of understanding and maintaining the relations shown by the final expressions of our Leader's intention. At all times, the directors have held the conviction that her final intention regarding the relations between these two boards could be carried out consistently with every moral, legal, or spiritual obligation. It was to be expected that the trustees would have the same conviction, and that concurrence on this point would furnish a basis on which full accord would become possible. Instead of concurring on this basis, the trustees have employed counsel to act for them, who have set up the Deed of Trust dated Jan. 25, 1898, as superior to the subsequent expressions of our Leader's intention in our Church Manual, and as establishing a trust existing by itself apart from The Mother Church. Manifestly, such contentions, not yet disavowed by the trustees, constitute a repudiation of our Church Manual and a grave danger to The Mother Church.

"It seems to the directors that another grave danger is presented by the trustees themselves in what they have referred to as their 'metaphysical interpretation' of our Church By-Laws. For instance, in their letter of Sept. 30, 1918, the trustees construed Mrs. Eddy's words, 'and it shall be the duty of the Directors to see that these periodicals are ably edited and kept abreast of the times' (Art. VIII, Sec. 14) to mean that 'it is the duty of the Board of Directors to call attention at once to any failure on the part of the trustees to have the periodicals well edited and kept abreast of the times.' Such an interpretation would practically wipe out Mrs. Eddy's words and allow to The Christian Science Board of Directors only such a duty as is conferred on 'any member of this Church' in a sentence which extends from the bottom of page 28 to the top of page 29 of the Manual. According to the dictionaries, the words 'see that' as used in the by-law just quoted call for supervision and denote superior authority.

"It is to be observed, also, that the trustees' interpretation would take what Mrs. Eddy has described as 'the periodicals which are organs of this Church' away from The Mother Church and make them only organs of The Christian Science Publishing Society. It would virtually compel The Mother Church to have no periodicals as its organs, or compel it to start other periodicals for that purpose. The word 'organ' as used in this by-law means 'a medium of communication between one person or body and another; as . . . a newspaper is the organ of its editor, or of a party,

sect, etc.' (Webster's New International Dictionary.) Therefore it must be Mrs. Eddy's intention that the periodicals issued by The Christian Science Publishing Society shall be, not merely mediums of communication between publisher and readers, but mediums of communication between The Mother Church and its members and other readers.

"The directors are obliged to remember, also, that Art. VIII, Sec. 14, puts them under a special and direct obligation to the members of The Mother Church. In this by-law 'the privilege and duty of every member, who can afford it, to subscribe for the periodicals which are the organs of this Church' is coupled with 'the duty of the Directors to see that these periodicals are ably edited and kept abreast of the times.' In effect the privilege and duty thus conferred upon the members is accompanied by the condition and assurance that the directors have and will perform the duty thus conferred upon them. The duty thus conferred upon the directors would not be worth mentioning if it amounted to nothing more than the privilege of submitting criticisms to the trustees. This could be done by any member, by any subscriber, or even by any reader. The duty stated in the by-law must mean that the organs of The Mother Church for which the members should subscribe are under the jurisdiction of its directors, who can and will give all necessary directions regarding their contents.

"Again, in the letter from counsel for the trustees to counsel for the directors dated Jan. 27, 1919, the second part of Art. VIII, Sec. 14, was construed or rejected as follows: 'The trustees will very much appreciate and gladly welcome helpful criticism of any editorials which may appear, and invite suggestions as to the general editorial policy, reserving to themselves, as they must in the performance of the duties imposed upon them, the right to determine whether the editorials published are consistent with the purposes of the Deed of Trust.' This statement by counsel for the trustees plainly disregards our Church Manual; nevertheless the directors feel that the foregoing quotation from the trustees' letter of Sept. 30, 1918, is no less contrary to the Manual, and that the trustees' letter is more dangerous because it purports to be an interpretation, not a simple rejection.

"Again, several persons, including counsel for the trustees, have stated that the trustees have construed Mrs. Eddy's words, 'The Christian Science Board of Directors shall have the power to declare vacancies in said trusteeship, for such reasons as to the Board may seem expedient' (Art. XXV, Sec. 3), to mean that if a vacancy occurs without action by the directors, then the directors can say it has occurred. Such an interpretation would not only ignore the clause,

'for such reasons as to the Board may seem expedient,' but, it would accuse Mrs. Eddy of neglecting a necessary safeguard while providing for a solemn and useless farce.

"Counsel for the directors have mentioned the following decision by the United States Supreme Court. A will authorized two trustees to remove the third one 'for good and sufficient cause.' The Court held that this provision conferred on the two trustees, not only the power of removal, but the power to determine when there was good and sufficient cause for removal. This case is *May v. May*, 167 U. S. 310.

"For these reasons the directors again invite the trustees to sign the paper which was proposed for signature on the 10th of this month, and of which another copy will be attached to this letter. Additional reasons are furnished by the following quotations from the letter written on Feb. 15, 1916, by the then trustees of The Christian Science Publishing Society to The Christian Science Board of Directors.

"It is our duty to hold and manage the business which Mrs. Eddy made a gift to her Church, and The Christian Science Board of Directors is the responsible authority of this Church.'

"In defining the financial situation in regard to the church edifice the Manual says: 'The Christian Science Board of Directors owns the church edifices, with the land whereon they stand, legally, and the church members own the aforesaid premises and buildings, beneficially.' We believe the situation to be similar in regard to the business, in that, according to the Deed of Trust, the Board of Trustees holds the property 'legally' and The Mother Church owns the business 'beneficially.'

"The directors have, by the rules, now given in the Manual, taken the place of the First Members (or Executive Members) and exercise the rights which they formerly had. The Christian Science Board of Directors is therefore the responsible authority in direction of the affairs of The Mother Church, and the business of The Christian Science Publishing Society being a gift to the Church, the Board of Trustees in carrying out their well-defined duties according to the Deed of Trust and the Manual, are working under the authority of The Mother Church.'

"Finally, the directors invite the trustees to consider whether it is right for them to accept election to an office which for 20 years had a well-defined character, and then hold it in spite of a request to resign, after having tried to convert it into an office of a different character. Would not most honorable men, if they formed the opinion that an office to which they had been elected should be enlarged and given a different character, resign rather than insist on taking greater and different authority? The directors feel that this

would be the course pursued by most Christian Scientists if they unexpectedly found themselves in such a situation. What the directors, especially desire, however, is some clear and conclusive evidence that the trustees do not intend to separate The Christian Science Publishing Society from The Mother Church but intend to fully maintain the unity shown by our Church Manual. The paper attached to this letter is submitted for signature as a suitable expression of that institution. Possibly some other paper could be prepared that would be equally suitable; but the directors feel that it should be an adequate assurance regarding the dangers which have been presented by the trustees and their counsel.

"Sincerely yours,

(Signed) CHAS. E. JARVIS,

"Corresponding Secretary to The Christian Science Board of Directors.

"CEJ—C

"Enc."

[The letter of which the foregoing is a copy is marked Exhibit 26. R. H. J.]

Q. Before reading the paper attached, I will ask you, Mr. Eustace, if you had ever in any form of words, directly or indirectly, expressed an intention, or to your knowledge had any of the trustees expressed any intention of separating The Christian Science Publishing Society from The Mother Church? A. Absolutely never.

Q. Or to do anything else except to work under the Deed of Trust in unity with the Board of Directors? A. That is all.

Q. And have you ever, at any time, either directly or indirectly, or has either of the other trustees, to your knowledge, expressed an intention not to follow Mrs. Eddy's wishes as expressed in an authoritative form? A. Never.

Q. Or to disregard—

Mr. Krauthoff—If Your Honor please, we object to the question which says "in an authoritative form" as calling for a conclusion. That is the question in this case, what the authoritative form is—the Deed of Trust on the one hand, or the Deed of Trust and the Manual on the other hand?

The Master—I suppose that we all understand that, and his answer will be given subject to that understanding.

Mr. Krauthoff—I do not understand it.

Mr. Whipple—Well, that is unfortunate, but I think that every one else does, Mr. Krauthoff. That is the way I understand it.

Mr. Krauthoff—We will inquire more fully.

Mr. Whipple—I take it that the answer may stand. I will now read, if Your Honor please, the paper which is attached, to which, again, the directors requested the trustees' signatures.

Mr. Streeter—Is this under date of Feb. 24, 1919?

Mr. Whipple—Yes, one of the last communications prior to the notice of dismissal, so-called.

Boston, Feb. [blank], 1919.  
"It is mutually understood by The Christian Science Board of Directors and the Board of Trustees of The Christian Science Publishing Society that the former board, as in relation to the latter board, has final authority in regard to the editorial policy of the official organs of The Mother Church, and final authority in regard to all matters affecting the policy of The Mother Church or the cause of Christian Science.

"In witness whereof this memorandum is signed by the respective members of said boards as follows:"

Then blank lines are left for the signatures "For The Christian Science Board of Directors," and blank lines for the signatures "For the Board of Trustees of The Christian Science Publishing Society."

[The paper of which the foregoing is a copy is marked Exhibit 26a. R. H. J.]

Q. Did you understand that to be in substantially the same form that they had requested your submission to their authority from the very beginning? A. Substantially so, yes.

Q. And raising again the question which had been settled by the agreement? A. Raising the entire question.

Mr. Whipple—I did not hand Your Honor a copy. I will hand you the original if you would like it.

The Master—I think I have it, haven't I, in the printed record?

Mr. Whipple—I think not.

The Master—There is a letter of Feb. 24, 1919.

Mr. Whipple—Then I am wrong about it. No, this letter is not in, this letter is not set forth in the bill.

The Master—Oh, no; but I have the Bill in Equity and the answer in each case.

Mr. Whipple—I see. It is set up in the answer.

The Master—On page 38 of the record in Eustace v. Dickey appears to be printed the letter you have just read of Feb. 24, 1919.

Mr. Whipple—Yes, Your Honor, I had overlooked that.

Mr. Streeter—What page was that on?

The Master—Page 38.

Q. I take it, Mr. Eustace, that the Board of Trustees did not assent to or sign that paper? A. They did not.

Q. They refused, as they had always refused? A. Always.

Mr. Whipple—There is, if Your Honor please, a letter which was sent to the trustees on Feb. 26, wherein the directors tried out an experiment; that is, they gave certain directions which they said they wanted carried out, which the trustees refused to carry out. I do not know whether it is necessary to put the letter itself in. (To Mr. Krauthoff) Do you want it in?

Mr. Krauthoff—We object to the statement that the directors tried out an experiment.

The Master—It is not evidence.

Mr. Krauthoff—No; it is Mr. Whipple's statement.

Mr. Whipple—That is right.

Mr. Krauthoff—That is not evidence.

Mr. Whipple—Do you want the letter put in?

Mr. Krauthoff—If you care to offer it you may.

Mr. Whipple—I do not care to offer it, although I have offered to do it as what I supposed is a part of your case. I see no reason for offering it.

Q. I will ask you whether in point of fact the directors did thereafter attempt to give certain directions as to how your periodicals should be published or dealt with, which you declined to carry out? A. They did.

Mr. Whipple (to Mr. Rowlands)—Where is the so-called notice of dismissal? Have you the so-called notice of dismissal? It is along about March 17. (Paper produced.) I will offer now the so-called notice of dismissal.

Q. I will ask you to look at it and see if you remember it. (Handing paper to witness.) A. I do.

Q. Was that paper read at a joint meeting of the directors and trustees?

The Master—You might give us the date.

Mr. Whipple—It is not dated, but there is a memorandum on it saying it was adopted by the directors March 17 and read to the trustees at a conference at noon on the same day.

Q. Does that accord with your memory? A. That is a fact; it does.

Mr. Whipple—I will read this.

[The "Notice of Dismissal" of Mr. Rowlands is marked Exhibit 27.]

Mr. Whipple reads the following (Exhibit 27):

"The following resolution is offered for adoption by The Christian Science Board of Directors, the Board of Directors of The First Church of Christ, Scientist, in Boston, and the governing board of the Christian Science denomination. It is offered for adoption in the exercise of the rights and powers vested in this Church and in this board by the law of Massachusetts, by the Deed of Trust dated Jan. 25, 1898, through which Mary Baker Eddy, the Discoverer and Founder of Christian Science, and the Leader of the Christian Science movement, constituted the Board of Trustees of The Christian Science Publishing Society, by the By-Laws of this Church, and by the usage of the Christian Science denomination."

Mr. Whipple—If Your Honor please, that appears in our Bill in Equity, pages 26, 27, 28, and part of 29.

The Master—Yes.

Mr. Whipple continues reading, as follows:

"Whereas, Mr. Lamont Rowlands, who has been acting as a trustee of The Christian Science Publishing Society under said Deed of Trust and under Article XXV of the By-Laws of

this Church, was put into said position for the reason, among other reasons, that he was a member of this Church who had subscribed to its By-Laws and was regarded as obedient to its By-Laws and government; and

"Whereas, Mrs. Eddy has declared that "The present and future prosperity of the cause of Christian Science is largely due to the By-Laws and government of The First Church of Christ, Scientist, in Boston (Christian Science Sentinel, Vol. XVI, page 1010); and

"Whereas, Mrs. Eddy has declared that Law constitutes government, and disobedience to the laws of The Mother Church must ultimate in annulling its Tenets and By-Laws. Without a proper system of government and form of action, nations, individuals, and religion are unprotected; hence the necessity of this By-Law and the warning of Holy Writ: "That servant, which knew his Lord's will, and prepared not himself, neither did according to his will, shall be beaten with many stripes" (Church Manual, page 28); and

"Whereas, the tenets referred to in the foregoing quotation are the important points, or religious tenets, of Christian Science (Science and Health, page 497), and the system of government and form of action referred to in the foregoing quotation is that which is shown by the By-Laws of this Church; and

"Whereas, it has become evident that Mr. Rowlands does not understand or recognize the importance and necessity of promoting the interests of Christian Science by following the directions given by Mrs. Eddy in our Church By-Laws; and

"Whereas, Mr. Rowlands has shown a disposition to invent or adopt interpretations of our Church By-Laws that pervert their meaning and annul their effect; and

"Whereas, since Mr. Rowlands began to act as a trustee of The Christian Science Publishing Society, he and the other trustees thereof have tried to change the relation which had always theretofore existed between The Christian Science Publishing Society and its Board of Trustees on the one hand and The Mother Church and its proper officers on the other hand, and he in particular has tried to convert and enlarge said trusteeship into an office or function of a new and different character; and

"Whereas, Mr. Rowlands and other persons acting with him, including several eminent lawyers wastefully employed, have set up said Deed of Trust against the By-Laws and government of The Mother Church, and have threatened this board with litigation if this board exercise its right and power to remove any of said trustees; and

"Whereas, it has become evident that Mr. Rowlands has allowed a sense of self-interest to interfere with the interests of Christian Science; that he has become self-assertive, contentious,

and disposed to make trouble without regard to consequences; and that he is, for these reasons and the foregoing reasons and other reasons, not suitable for connection with The Christian Science Publishing Society as a trustee thereof; and

"Whereas, Mr. Rowlands evidently has other interests which prevent him from giving sufficient time and attention to the business of The Christian Science Publishing Society;

"Now, therefore, it is resolved by The Christian Science Board of Directors, the Board of Directors of The First Church of Christ, Scientist, in Boston, and the governing board of the Christian Science denomination, in the exercise of the rights and powers above mentioned, that Mr. Rowlands is no longer accepted by this board as suitable for connection with The Christian Science Publishing Society as a trustee thereof; that he be and hereby is removed from the Board of Trustees of said society; and that the trusteeship in connection with said society heretofore held or claimed by him be and hereby is declared vacant."

Q. Now, you had been associated with Mr. Rowlands as a trustee for several years, had you? A. I have.

Q. First let me ask you, do you know of any paper wherein these defendant gentlemen are termed the governing board of the Christian Science denomination? A. I do not.

Q. It appears by a Deed of Trust that is put in that they are named The Christian Science Board of Directors. Do you know of any paper creating any other title for them than that? A. I do not.

Q. Do you know whether there is a paper, either in the Manual or otherwise, in which they are called the Board of Directors of The First Church of Christ, Scientist, in Boston? A. No, I do not remember any.

Q. But they are termed in the Deed of Trust under which they hold the property, a Deed of Trust signed by Mrs. Eddy herself, The Christian Science Board of Directors? A. They are termed The Christian Science Board of Directors.

Q. Yes; I mean in the paper which Mrs. Eddy drafted creating them. Now, then, referring to these various "whereases," it recites that Mr. Rowlands was a member of The Mother Church. You have already testified that he was. A. Yes.

Q. Now, I will ask you to note this recitation: "Whereas it has become evident that Mr. Rowlands does not understand or recognize the importance and necessity of promoting the interests of Christian Science by following the directions given by Mrs. Eddy in our Church By-Laws." You say that you have made a study of Christian Science for many years? A. I have.

Q. Now, did you notice in any respect whatever anything that Mr. Rowlands said or did in connection with the discharge of his duties as

trustee, which indicated that he did not understand or recognize the importance and necessity of promoting the interests of Christian Science, or indicating that he was not following the directions given by Mrs. Eddy in the Church By-Laws?

Mr. Krauthoff—We object to that as calling for a conclusion, and as leading in form. Then it is a question as to whether Mr. Eustace understands what Mr. Rowlands understood and recognized.

The Master—I don't hardly think, do you, that I ought to exclude it entirely out of the record for no reason?

Mr. Krauthoff—Well, we make the objection, first, to the form of the question; second, that it is the conclusion of the witness; and, third, he is asked to testify as to the mental operation of another person; and, fourth, for the reason that the Bill in Equity in this case is a direct repudiation of the Church Manual.

The Master—That will be a matter for argument later, I suppose.

Mr. Krauthoff—On its face it is. The Bill in Equity is a repudiation of the Church Manual in toto.

The Master—I can hardly decide that at present, I think. I think the answer may be taken subject to the objection raised.

A. Not in one single instance, sir.

Q. Then I will call your attention to the next "Whereas"; that "Mr. Rowlands has shown a disposition to invent or adopt interpretations of our Church By-Laws that pervert their meaning and annul their effect." I will ask whether you noticed anything in what he said or what he did, or in any action on his part indicating such a disposition?

Mr. Krauthoff—We object to that question as leading in form.

The Master—In a hearing of this kind is that a necessary reason for exclusion?

Mr. Krauthoff—It would seem to me that a hearing of this kind—

The Master—We have no jury here.

Mr. Krauthoff—No, but the form of the question is a matter for objection.

Mr. Whipple—May I suggest, if Your Honor please, on the record that the question is not leading. It is a direct question. The only way to negative a proposition, as I understand it, is by putting a direct question, and the ancient custom of a circumlocutory or circumambulatory question that hides from everybody the thought that you have in putting the question has entirely disappeared, I had supposed, and that direct questions which were reasonable and to the point were always permitted.

The Master—I hardly think I ought to forbid the question to be put or answered.

A. In no way.

Q. Let me call your attention to another "Whereas," the next one: "Whereas since Mr. Rowlands began to act as a trustee of The Christian Sci-

ence Publishing Society, he and the other trustees thereof have tried to change the relation which had always theretofore existed between The Christian Science Publishing Society and its Board of Trustees on the one hand and The Mother Church and its proper officers on the other hand, and he in particular has tried to convert and enlarge said trusteeship into an office or function of a new and different character." I will ask, first, if you noticed anything in Mr. Rowlands' conduct or behavior, in what he said or in what he did, indicating that he was in any way attempting to convert and enlarge the trusteeship into an office or function of a new and different character? A. Never in the slightest.

The Master—I suppose all this is subject to the defendant's objection.

Mr. Whipple—Yes, Your Honor.

Q. Did you notice from the time when he began to act, or at any time during his action as trustee, he had tried to change the relation of the Board of Trustees to the Board of Directors? A. I never did.

Q. Now, we have gone over the matter of the change with regard to the handling of applications to practice, that is, cards for practice and other things. A. Yes.

Q. I think you have already stated that those had been handled by the Board of Trustees for years? A. They had.

Q. And at the request of the directors it was changed? A. It was.

Q. What do you say as to whether you as a trustee endeavored in any way to change the relation which had existed while you had been trustee, or to enlarge the scope of your duties or activities or powers as a trustee? A. Not in the slightest, as I understood them.

Q. This application whereby the board should sign a paper acknowledging some authority on the part of the Board of Directors, did you regard that as a change from the order which had been established and followed before that?

Mr. Krauthoff—Excuse me one moment, Mr. Whipple. In your question you said, "board." You meant the Board of Directors, didn't you?

Mr. Whipple—Put it "Board of Trustees was requested to sign a paper."

The Witness—Is that the question?

Mr. Whipple—It will be as soon as I get it amended so as to meet my own views of what I said and those of Mr. Krauthoff also.

(The question is read as follows:

"Q. This application whereby the Board of Trustees should sign a paper acknowledging some authority on the part of the Board of Directors, did you regard that as a change from the order which had been established and followed before that?")

A. I considered it an absolutely unwarranted assumption of an authority that they had never had.

Q. And what did you believe or

understand, and what were you advised as to whether that was a proper action on your part, in view of the terms of the Deed of Trust signed by Mrs. Eddy herself? A. I considered they had no right to any such authority or power.

Q. Now, the next "Whereas": "Whereas Mr. Rowlands and other persons acting with him, including several eminent lawyers wastefully employed, have set up said Deed of Trust against the By-Laws and government of The Mother Church, and have threatened this board with litigation if this board exercise its right and power to remove any of said trustees"; I will ask you, first, whether you regarded the board as having the right and power, or whether you were advised that the board did have the right and power to remove any one of the trustees merely because they would not sign this paper? A. I don't quite catch the question.

Q. Did you understand, or were you advised, that the Board of Directors had a right to remove a trustee or the Board of Trustees, merely because they would not sign this paper? A. Certainly not.

Mr. Krauthoff—Excuse me. I didn't quite understand the answer. You mean you were not advised, or that the board did not have a right?

The Witness—The board did not have a right.

Mr. Whipple—That makes it clear.

Q. Did you understand at all that you or the trustees set up the Deed of Trust against the By-Laws and government of The Mother Church? A. We never did any such thing, and never contemplated such a thing.

Q. Or had you threatened the Board of Directors with litigation in case the Board of Directors exercised any right or power that they had, of any sort or description? A. We never made a threat of any kind.

Q. The next "Whereas." "Whereas it has become evident that Mr. Rowlands has allowed a sense of self-interest to interfere with the interests of Christian Science; that he has become self-assertive, contentious, and disposed to make trouble without regard to consequences;" Had you noticed anything in Mr. Rowlands' behavior or attitude, in anything that he said or did, indicating that he had become self-assertive or contentious or disposed to make trouble? A. I had not.

Q. What was his attitude and demeanor, as you observed it, in the discharge of his duties as trustee? A. One of the greatest friendliness to all concerned in everything.

Q. Was his manner gentle and kindly, or was he ugly and disputive? A. Always kindly.

Q. Did you ever hear him in any of the discussions speak in a way that could possibly be regarded as contentious or self-assertive? A. Not at all.

Q. I mean in any of the board meetings. A. He expressed himself strongly, as we all did.

Q. But not contentiously? A. Not at all.

Q. Any more strongly than the directors did? A. No. I think it was a mutual contest.

Q. Did you notice anything in what he did or said indicating a gratification of any self-interest? A. The very reverse of that.

Q. The suggestion is offered that Mr. Rowlands had other interests which prevented him from giving sufficient time and attention to the business of the Publishing Society. Were you in a position to observe how he discharged his duties as trustee? A. I certainly was.

Q. Did you notice any lack of attention or any failure to give the time necessary to the proper discharge of his duties? A. He gave all the time that was necessary.

Q. In point of fact, when he was invited on to the board did you know that he was a business man of large responsibilities? A. I did.

Q. And those that he gave up—you knew something of what the sacrifice was to take this position? A. I did, yes.

Mr. Whipple—Now, the next letter is dated March 18, 1919, and is a letter from Mr. Jarvis, secretary, to Mr. Eustace and Mr. Ogden as trustees, and the letter appears on page 29 of the Bill in Equity in the smaller copy.

Mr. Bates—Page 61 of the large.  
Mr. Whipple—Page 61 of the large. It is the last of paragraph 13.

(Letter dated March 18, 1919, above referred to, is marked Exhibit 23. R. H. J., and is read by Mr. Whipple as follows:

"The Christian Science Board of Directors,  
"Boston, Massachusetts.

"March 18, 1919.  
"Mr. Herbert W. Eustace,  
"Mr. David B. Ogden, Trustees,  
"The Christian Science Publishing Society,  
"Boston, Mass.  
"Dear Friends:

"I am instructed by The Christian Science Board of Directors to say in furtherance of the board's interview with you on the 17th inst., at which time you were served with a notice of the dismissal of Mr. Lamont Rowlands as a trustee of The Christian Science Publishing Society, which action was taken by The Christian Science Board of Directors under Art. XXV, Sections 3 and 5, of The Mother Church Manual, the board calls attention to your duty under Art. XXV, Sec. 3, of the Manual, requiring the remaining trustees to fill the vacancy. It is the board's desire that you immediately appoint some one to fill the position made vacant by their action of yesterday, and in the appointment of Mr. Rowlands' successor they expressly request that you name a person who shall be suitable and satisfactory to the Board of Directors.

"Kindly acknowledge receipt of this letter, and advise the Board of Direc-

tors when you will be able to comply with the above request.

"Sincerely yours,  
(Signed) "CHAS. E. JARVIS,"  
"Corresponding Secretary for The Christian Science Board of Directors.  
"CEJ—L"

May I, in connection with the offer of that letter, call Your Honor's attention to the fact that the directors do not refer in any way to the Deed of Trust, or the exercise of any power under the Deed of Trust? They put it solely upon a provision of the Church Manual, without any reference to the Deed of Trust.

Q. Now, in any conversation or communication up to the date of the notice of dismissal, had there been any complaint on the part of the Board of Directors with reference to the action of the trustees, or any one of them, or any criticism of acts made to you, except that they would not sign this paper acknowledging the supreme authority, or acknowledging the authority of the Board of Directors over the publication society—had there been any specific things except what would fall under that head?

Mr. Krauthoff—If Your Honor please, the paper did not say supreme authority over the publication society.

Mr. Whipple—Well, I changed that. I said, or authority over the publication society affairs.

Mr. Krauthoff—Over the periodicals of The Mother Church.

Mr. Whipple—What is that?

Mr. Krauthoff—It was the periodicals of The Mother Church.

Mr. Whipple—Did Mrs. Eddy convey to the directors as trustees the periodicals?

Mr. Krauthoff—Of The Mother Church?

Mr. Whipple—Did she?

Mr. Krauthoff—She did not convey them to the directors as trustees.

Mr. Whipple—She conveyed them to the trustees; that is right.

Mr. Krauthoff—We object to that statement, because that statement is not borne out by the evidence.

Mr. Whipple—May I put the question, if Your Honor please?

The Master—Yes.

Mr. Whipple—Will you read the question?

(The question is read as follows: "Now, in any conversation or communication up to the date of the notice of dismissal, had there been any complaint on the part of the Board of Directors with reference to the action of the trustees, or any one of them, or any criticism of acts made to you, except that they would not sign this paper acknowledging the supreme authority, or acknowledging the authority of the Board of Directors over the publication society—had there been any specific things except what would fall under that head?"

A. Nothing of any moment.

Mr. Whipple—The next is a letter from Mr. Eustace, of the Board of Trustees (the secretary), dated March

21, 1919, addressed to the Board of Directors.

March 21, 1919.  
"The Christian Science Board of Directors,"  
"Falmouth and St. Paul Streets,"  
"Boston, Massachusetts.

"Dear Friends:  
"We acknowledge receipt of your communication of March 18, in which you express the desire that we immediately fill the position alleged by you to have been made vacant by your action of the previous day.

"We are giving to this request that careful attention and thought which its importance demands, and we will shortly send you our reply.

"Yours sincerely,  
"BOARD OF TRUSTEES,  
"Secretary."

[The letter, of which the foregoing is a copy, is marked Exhibit 29. R. H. J.]

The next is a communication from Mr. Eustace, as secretary, to the Board of Directors.

March 25, 1919.  
"The Christian Science Board of Directors,"  
"Falmouth and St. Paul Streets,"  
"Boston, Massachusetts.

"Dear Friends:  
"After careful reflection we have been constrained to feel that the course in which the directors persist, if not checked will result in the destruction of a sacred trust created by our great Leader, defeat her purposes as therein declared, injure irrevocably the Christian Science movement, and deprive The Mother Church and Mrs. Eddy's trustees of a great benevolence with which she endowed the movement.

"We feel it our duty to take measures to prevent this appalling result and to defend our trust.

"Accordingly, we have filed in the Supreme Judicial Court a bill in equity, for that purpose. We have a copy available if you desire it. Mr. Whipple is sending one to Governor Bates.

"Yours sincerely,  
"BOARD OF TRUSTEES,  
(Signed) "HERBERT W. EUSTACE,  
"Secretary."

[The letter of which the foregoing is a copy is marked Exhibit 30. R. H. J.]

The Master—What is the date of the filing of the bill? I do not think that I have it on anything that I have. Is it the same date as the date of the letter, March 25?

Mr. Whipple—When was it filed?  
Mr. Ogden—The bill was filed on March 25.

Mr. Whipple—It was filed on this day, if Your Honor please, on March 25. A subpoena was issued on that day, and an ex parte ad interim injunction was issued. I will offer a letter which the directors caused to be sent to Mr. Watts, the business manager, although it is not exactly in the line of the correspondence which I have been offering, which was for the

purpose of showing what the sole reason for removal was.

"The Christian Science Board of Directors,"  
"Boston, Massachusetts."  
March 18, 1919.

"Mr. John R. Watts, Business Manager,  
"The Christian Science Publishing Society,

"Boston, Mass."

"Dear Mr. Watts:  
"I am instructed by the Christian Science Board of Directors to notify you that on Monday, March 17, The Christian Science Board of Directors, acting under the authority of Art. XXV, Secs. 3 and 5, of The Mother Church Manual; declared a vacancy on the Board of Trustees of The Christian Science Publishing Society, and notified Mr. Herbert W. Eustace and Mr. David B. Ogden of the dismissal of Mr. Lamont Rowlands from membership in said Board of Trustees.

"The board now desires to call your attention to the fact that there is a vacancy on the Board of Trustees of The Christian Science Publishing Society; which the directors have requested the remaining trustees to fill with a person suitable to the Board of Directors of The Mother Church. We feel that as an appointee of this board you should have this information.

"Sincerely yours,  
(Signed) "CHAS. E. JARVIS,  
"Corresponding Secretary for The Christian Science Board of Directors."

[The letter of which the foregoing is a copy is marked Exhibit 31. R. H. J.]

The reply is as follows:  
March 19, 1919.

"The Christian Science Board of Directors,"  
"Falmouth and St. Paul Streets,"  
"Boston, Massachusetts.

"Dear Friends:  
"Your letter of March 18, notifying me of your action in declaring a vacancy on the Board of Trustees of Mr. Lamont Rowlands, has been received and carefully noted.

"With best wishes,  
"Sincerely yours,  
(Signed) "JOHN R. WATTS,  
"Business Manager."

[The letter of which the foregoing is a copy is marked Exhibit 32. R. H. J.]

Q. Mr. Eustace, did you know, or was there called to your attention any valid or sound reason why Mr. Rowlands should not continue in his office as trustee under the Deed of Trust of Jan. 25, 1898? A. None at all.

Q. And you refused to elect any successor? A. We absolutely refused.

Q. The bill states that you believed, and therefore asserted, that the action was undertaken as an arbitrary and capricious attempt to exercise offensive power which did not exist. Did you actually believe that? A. I felt that it was for no other purpose than that.

Q. And that the action was under-

taken for the purpose of extending the power of the directors individually or collectively into a domain purposely excluded from their jurisdiction by the specific provisions which the Donor caused to be inserted in said trust instrument—

Mr. Krauthoff—We object to that question.

Q. And thus—let us finish the question—and thus create an absolute oligarchy in control of the great Christian Science movement which its Founder and Leader never intended, and against which she specifically provided in creating the trust under which the plaintiffs are acting—

Mr. Krauthoff—Just a moment. We object.

Mr. Whipple—I have not finished the question.

Mr. Krauthoff—I understand, but the witness always answers before the objection is made.

Mr. Whipple—Just wait for Mr. Krauthoff to object.

The Master—Do not answer until I tell you to, please.

Q. I ask you whether you did believe the facts stated in your bill that you verified by your oath, those facts which I have just recited.

Mr. Krauthoff—I object to the question as leading in form, and for the further reason that the belief of the witness is immaterial.

The Master—I suppose that it will go no further than to show that what he did was done in good faith.

Mr. Krauthoff—He has not the power to refuse obedience to the Manual in good faith. The Manual made it his duty to elect another trustee. Now, that Manual either bound him or did not bind him, and his good faith in refusing to follow the Manual of The Mother Church is not a defense against the violation of it.

The Master—I think that we will take his answer subject to objection.

Mr. Whipple—Let me suggest that the case that is being tried is not a violation of the Manual; that would be a side issue. The Court has no jurisdiction over that.

The Master—We cannot settle that now.

Mr. Krauthoff—No.

Mr. Whipple—I quite agree, Your Honor.

The Master—I would not open up that discussion now, I think. I will allow the witness to answer for the purpose that I have indicated, subject to your objection.

Mr. Krauthoff—Of course we do not accept the statement of Mr. Whipple that the Court has no jurisdiction over the Manual. A. I did.

Q. Now, did you before filing the bill receive information as to what the directors proposed to do by way of carrying into effect their declared purpose to supervise and to control the affairs of the publication society?

The Witness—May I hear that ques-



tion in full again? (The question is read.)

A. Yes.

Q. From whom? A. From various sources.

Q. Did you learn of any statement they made as to what they would do to the publication society in case—

Mr. Krauthoff—We—excuse me—  
The Master—Just a minute. Wait before you answer.

The Witness—I will.

Q.—in case you did not comply with their wishes in respect of either resigning or acknowledging the authority of the directors?

Mr. Krauthoff—We object to that unless it came directly from one of the directors to the plaintiff testifying.

Mr. Whipple—We are offering this merely on the matter of good faith, in respect of these allegations.

The Master—Yes, but that might bring out the statement of some third person.

Mr. Whipple—We should not claim that any statement by a third person had any probative effect as to the fact that was stated. We are offering this for this purpose—for instance, the knowledge of the threat which is alleged in the bill, that they would make the publication society an empty shell, came to us directly from a person to whom they had made the threat.

The Master—Can you not call him?

Mr. Whipple—Yes, Your Honor; I am proposing to do that, but I did not want to have to recall Mr. Eustace later to say that they heard it; but I am perfectly willing to take that course if it will save objection.

The Master—That, perhaps, makes it a mere question of the order of proof, and, upon your statement that you propose to prove statements by the directors to a person not yet named, the witness may answer the question now put.

A. I did.

Q. From whom? A. I learned of it from two sources.

Q. What were they? A. One through the business statement made to our business manager; and the other directly from the directors themselves, but not in the same way; it was inferred from what they said.

Q. Do you remember what they said from which you inferred it? A. Well, the substance—I can give you the substance of it—

Q. Yes, that is right. A. The substance of what they said was to the effect that the publishing buildings belonged to them, and that if it became necessary they would publish periodicals of their own, and that to me inferred that it would make The Christian Science Publishing Society as formed by Mrs. Eddy an empty shell.

Q. Then what did the business manager state had been said to him by the directors? A. In substance, that they had said that they would make it an empty shell.

Q. That is, would make the Publishing Society an empty shell? A.

The Publishing Society an empty shell.

Q. There are certain figures of income set out in the Bill in Equity as having been paid over, on pages 10 and 11. Do you know from your personal examination of the accounts or in the ordinary course of business that for the six months ending Oct. 1, 1918, a sum in excess of \$450,000 was paid over by the trustees to the directors, in two different capacities, as earnings and profits from the conduct of the trust? A. I do.

Mr. Krauthoff—We object to that question, if Your Honor please, because the directors were not acting in two different capacities. The bill in that respect is in error. A part of the directors are part of the trustees under Mrs. Eddy's will.

Mr. Whipple—Well, I meant to the defendants in the two capacities.

The Witness—I do.

Mr. Whipple—That may be corrected, and make it defendants instead of directors. I am glad that we have an accurate and prompt censorship on these things; then we shall get our statements very correct.

Mr. Krauthoff—We object to the question, because the payment to the trustees under Mrs. Eddy's will included Mr. Fernald as a trustee, who is not a defendant in this case.

Mr. Whipple—Don't you think really that is pretty technical, in view of the fact that it all went for the extension and the development of the Christian Science movement?

Mr. Krauthoff—No, I do not.

Mr. Whipple—Or, at least, we assume it did. We haven't looked over your accounts; we assume and certainly hope it did—what did not go for incidental expenses of another sort.

Mr. Krauthoff—Such as you are indulging in now.

Mr. Whipple—I beg pardon?

Mr. Krauthoff—Such as the trustees also are indulging in now.

Mr. Whipple—Oh, no; I am not referring to that.

The Master—I would not let this discussion go too far at the present stage.

Mr. Krauthoff—The point we wanted to make about it is this, if Your Honor please. The plaintiffs in this case have two relationships, one to the Board of Directors of The Mother Church, to whom they pay the net profits of the business; one to the trustees under the will of Mrs. Mary Baker Eddy, to whom they pay a part of the expense of conducting their own business. Now, they have mingled those two things into one lump sum, and we point it out in our answer, and they still adhere to the claim that they produced all this as profits.

The Master—You will have an opportunity to show that.

Mr. Whipple—What Mr. Krauthoff has said is, I think, substantially correct. There are two different capacities in which that money has been re-

ceived, but the essential fact that the trustees have collected it as profits and turned it over to promote this great movement is the only thing that we regard as very material; and the answer I find on looking at it practically admits that. Whether it is paid over in two capacities or how it goes to carry out this great purpose, is of very little consequence to us. If anyone can find any comfort in the fact that it goes in two different ways, I will be very glad to have them. There are no further questions of Mr. Eustace.

#### Cross-Examination

Q. (By Mr. Krauthoff) Mr. Eustace, have you the records of the trustees of The Christian Science Publishing Society with you? A. We have.

Q. How far back do they go? A. I think you asked for 1898, and we brought them all.

Q. Now, will you be good enough to turn to the proceedings of The Christian Science Publishing Society which relate to the manner in which Edward P. Bates was, on or about Sept. 8, 1898, succeeded as a trustee under the instrument by Thomas W. Hatten.

Mr. Whipple—While that is being looked up, may I ask what the pertinency of that is?

Mr. Krauthoff—The pertinency of it is in support of the first paragraph of the defendants' answer.

Mr. Whipple—What part of it? Mr. Krauthoff—Why, the first paragraph of the defendants' answer, in the second sentence.

Mr. Whipple—What does it say? Mr. Krauthoff—"And said defendants aver that the said Edward P. Bates was, on or about Sept. 8, 1898, duly succeeded as trustee under the said instrument by Thomas W. Hatten."

Mr. Whipple—That has all gone in.

Mr. Krauthoff—I haven't seen it.

Mr. Whipple—Oh, on the contrary, we put it in one of the very first things. You were objecting to it, then, you know, but it was ruled in. It all appears on the back of the Trust Deed.

Mr. Krauthoff—Oh, that is not what I am asking about; the Trust Deed is not the record of it.

Mr. Whipple—Well, that makes no difference; it has been so testified.

Mr. Krauthoff—We made the objection to the Trust Deed, if Your Honor please, because that was not the proper record of it, and at the time it was said that we would have an opportunity to go into that.

Mr. Whipple—Isn't your question really what you indicated, that you wanted to show how he was elected? Well, now, how is that material?

Mr. Krauthoff—Well, it is material in this case for this reason, if Your Honor please. If the plaintiffs' contention with respect to the interpretation of this Deed of Trust be true the plaintiffs are not the trustees under the instrument.

Mr. Whipple—Who are?

Mr. Krauthoff—And they have stated themselves out of court.

Mr. Whipple—Who are the trustees in that case?

Mr. Krauthoff—My judgment is that Mr. Neal and Mr. Hatten and Mr. McKenzie would be.

Mr. Whipple—Well, I could not see how.

The Master—I think that the defendants have the right to put in the record under the pleadings here if they insist upon it.

Mr. Krauthoff—I have no hesitancy in stating the legal theory now.

The Master—I would not do it now. Put in the evidence and then we will hear about the effect of it later.

Q. What have you, Mr. Eustace? A. The first minute is the record of the Deed of Trust: "I hereby create a Board of Trustees, namely, Edward P. Bates, James A. Neal, and William P. McKenzie." It starts with the gift to The Mother Church and then goes on with the Deed of Trust.

Q. May I see that? I don't want to see anything that I am not entitled to see. A. You can see anything, so far as I know.

Mr. Krauthoff—We offer the first document in this record: "A gift to The Mother Church and a grant of trusteeship."

Mr. Whipple—Just a moment. This, if Your Honor please, is not covered by what was stated before. He now asks for the record as to how the trustees were elected. Now this is something entirely different; I do not know what it is; but it is for our interest that we should not have a lot of things that are not material. I would be entirely glad if Your Honor would cast your eye over it and if you think it is admissible we will accept your decision without objection.

Mr. Krauthoff—It is, if Your Honor please, a variation from the question that I asked.

The Master—Why not follow out the question you asked first?

Mr. Krauthoff—Very well.

Q. Can you find the record of Mr. Bates' succession by Mr. Hatten on or about Sept. 8, 1898—I am advised. A. At Sept. 8. Shall I read this?

Q. If you will be good enough. A. "Sept. 9, 1898. Regular meeting of the Board of Trustees convened at 10 a. m. The first order of business was the reception of the following communication dated Sept. 8, 1898:

"Rev. William P. McKenzie and James A. Neal, My Dear Board of Trustees: I hereby appoint Thomas W. Hatten to fill the vacancy on your board. With love, Mary Baker Eddy."

"In accordance with the above appointment, Mr. Hatten was called upon to take his place on the Board of Trustees and instructions were given to the business manager to have the new name placed on the pay roll at this date."

Q. Now, can you turn to the record of Oct. 22, 1898, with respect to Mr. Neal being succeeded by some

one, according to the record? A. You only want what is germane to that subject?

Q. Certainly, yes. A. "Oct. 22, 1898. Special meeting convened at 10 a. m. Present, Messrs. Hatten, Neal, and McKenzie. The following letter from our Leader is put on record:

"Pleasant View, Concord, New Hampshire, Oct. 13, 1898. Beloved C. S. Trustees: In accordance with Mr. James Neal's willingness and my own desire that he devote his entire time to the great work of Christian Science healing, in which he has been very successful, and which is one of the great needs of the period, I hereby request that this board give him an honorable discharge, with my thanks for his faithful discharge of his obligations as a member of this board, and that you elect Mr. Joseph Clark to fill the vacancy. With love, Mother, Mary Baker Eddy."

Q. And does the record show any appointment of Mr. Clark, or was that letter treated as the appointment? A. It says here: "This appointment having been thus made in accord with Sec. 10 of the Deed of Trust, it only remained to notify Mr. Clark and invite him to take his place as a member of the board, which was done."

Q. That is, Sec. 10 of the Deed of Trust reads: "Whenever a vacancy shall occur in said trusteeship for any cause, I reserve the right to fill the same by appointment, if I shall so desire, so long as I may live; but if I do not elect to exercise this right, the trustees shall fill said vacancy."

Q. Accordingly, that was done? A. Evidently.

Q. I find it here that on or about Sept. 25, 1906, Joseph B. Clark departed this life. See what you can find with respect to the succession of Mr. Clark, Sept. 25, 1906? A. "Sept. 18, 1906. Regular meeting of the Board of Trustees convened at 9:30 a. m. Members present, Messrs. Hatten and McKenzie. Minutes of previous meeting read and approved. Applications for cards and church notices received and passed upon for publication." You don't want all that?

Q. No, just what relates to Mr. Clark. A. "A communication dated Sept. 14 was received from our Leader in which she declined to make the selection of some one to fill the vacancy on the Board of Trustees and requested the remaining trustees to do so. After careful consideration of the matter Mr. A. V. Stewart of Chicago was thought of as a suitable man to fill the vacancy, and a letter was written and sent to our Leader to that effect for her approval."

Q. Did that letter come back—was there an approval of it? A. It will be in another meeting.

Q. Before we pass that, does the record show that Mr. Clark died? A.

Yes; there is a notice, I think. Yes. Do you want that?

Q. If you will, please. A. "Sept. 10, 1906. Special meeting of the Board of Trustees convened at 10 a. m. Members present, Messrs. McKenzie and Hatten. The following minute was adopted: 'Our brother Joseph B. Clark having passed away'—Do you want that?"

Q. No, I do not care for it in full, just the fact that he had passed away. A. Had passed away.

Q. The date? A. Sept. 10, 1906.

Q. Now then, turn to the—

Mr. Whipple—Pardon me; you are asked to give the full statement.

Mr. Krauthoff—I would be very glad to have him read it through.

Mr. Whipple—With regard to the election or selection of a successor.

The Witness—Yes. I have got that further on here.

Mr. Whipple—Well, I understand that is what you are asked for.

Mr. Krauthoff—Yes, certainly. Now—

The Witness—Well, just a minute.

Mr. Krauthoff—I beg pardon.

A. "Sept. 20, 1906. Special meeting of the Board of Trustees convened at 9:30 a. m. Members present, Messrs. McKenzie and Hatten. A communication was received from our Leader indorsing the nomination of Mr. A. V. Stewart of Chicago as a member of the Board of Trustees of The Christian Science Publishing Society, to fill the vacancy occasioned by the passing away of our good brother and faithful worker, Mr. Joseph B. Clark. A letter was written and sent Mr. Stewart, advising him of his nomination."

Q. You knew Mr. Stewart? A. I did.

Q. And you knew of his passing away in March, 1919? A. I did; I heard of it.

Q. It was so stated in your periodicals? A. Yes.

Q. Now, turn to Jan. 6, 1908, with respect to the resignation of Mr. Stewart. A. Do you want the whole of this?

Q. Yes. A. (Reading)—"Jan. 4, 1908. Special meeting of the Board of Trustees convened at 11:45 a. m., all members present. Mr. Stewart announced that he received appointment as a director on condition of resigning from the Board of Trustees, and after discussion of the situation presented his resignation, which was accepted with regret for the loss of his brotherly fellowship in work, and with congratulations because of the new appointment for service. The remaining trustees conferred and presented the case to the Leader, according to the Manual, asking her if she wished to exercise her reserved right to fill the vacancy by appointment, indicating that in case she did not exercise this right they would ask her approval of their election of Mr. W. D. McCrackan, at present a Reader of The Mother Church, but with only five months to serve, expecting from him good assist-

ance in connection with the increasing scope of our periodicals and general literature, and especially in connection with German and foreign work."

Mr. Whipple—May I ask the date of that?

The Witness—Jan. 4, 1908.

Mr. Whipple—May I ask, does the record show who made it a condition of his being appointed director that he should not also be trustee?

The Witness—No, it does not show.

Q. Now, is there a record there of the appointment of Mr. McCrackan?

A. (Reading):

"Jan. 6, 1908.

"Special meeting of the trustees convened at 10.20 a.m., and the following letter was received from our Leader:

"Pleasant View, Jan. 5, 1908.

"Messrs. William P. McKenzie and Thomas W. Hatten,

"Beloved Students:

"I highly approve of Mr. W. D. McCrackan to fill the vacancy as trustee of the Publishing Society.

"Lovingly yours,

"MARY B. EDDY."

"The trustees then formally elected Mr. W. D. McCrackan and invited him to be present at their meeting."

Q. Turn to June 19, 1908, with respect to Mr. McCrackan and Judge Smith.

Mr. Whipple—May I suggest that I am informed that you look back in April to find the inception of that change, April 17.

The Witness—April 17?

Mr. Whipple—Yes, that is right.

A. (Reading):

"April 16, 1908.

"Regular meeting convened and opened in the regular way. Present: Messrs. McKenzie and Hatten. The resignation of Mr. McCrackan presented to the chairman under date of April 9, and held one week for consideration, was accepted with regret."

Q. Then what does the record next show? It was June, I believe, that Judge Smith's appointment was accepted, was it? His signature is on the date of June 19, 1908? A. June 18, 1908.

Q. What does the record show?

A. (Reading): "Special meeting convened at 10 a. m. Present, Messrs. McKenzie and Hatten. The question of filling the vacancy on the board was considered, and it was agreed to nominate Judge Clifford P. Smith and submit his name to our Leader for approval. A letter to this effect was drafted and typewritten, to be delivered today. It was agreed to"—that is another matter.

Q. Now, find the answer. A. (Reading): "Meeting adjourned at noon, and at 3:45 p. m. again convened to receive report of our Leader's action brought by Mr. McKenzie. Of the nomination she said 'I approve.' Consequently the trustees found the way clear to elect Judge Smith a trustee to fill the vacancy on the board. A letter was prepared and sent to the new

incumbent, inviting him to enter upon his new duties."

Q. The next record we seem to have is Sept. 12, 1911.

Mr. Whipple—Wouldn't it be proper to have the letter which Mr. McKenzie wrote on that subject to Mrs. Eddy?

Mr. Krauthoff—I would be very glad to.

Mr. Whipple—Have you it there?

The Witness—No.

Mr. Whipple—Is it in the record?

The Witness—I don't think it is. I don't see it here.

Mr. Krauthoff—I will be glad to have you read it in connection with the record.

Mr. Whipple—(Reading):

"Rev. Mary Baker Eddy,

"Chestnut Hill,

"Massachusetts.

"Beloved Teacher: In regard to the vacancy on the Board of Trustees, you were pleased to say to the remaining trustees, 'Please make your own choice.' We now desire to nominate Judge Clifford Smith, and if this choice is approved by you we shall proceed to election. Judge Smith mainly prepared the pamphlet, Christian Science and Legislation, and in that association with our work revealed his ability to help the cause. He has had experience in business as well as in legal matters, and has consecrated his life to service in Christian Science.

"With constant affection,

"Yours lovingly,

(Signed)

"WILLIAM P. MCKENZIE,

"Chairman,

"THOMAS W. HATTEN,

"Treasurer,

"Of the Board of Trustees, Christian Science Publishing Society."

On the back of the page in handwriting is: "I approve. (Signed) M. B. G. Eddy, June 18, 1908."

Q. Now, then, Sept. 12, 1911, about that time, with respect to the resignation of Judge Smith. A. (Reading):

"Sept. 12, 1911.

"Regular meeting of the Board of Trustees convened at 2 p. m. All members present. Under the by-law directing that when a new trustee is required the remaining trustees shall fill the vacancy, James A. Neal was elected to fill the vacancy caused by the resignation of Judge Clifford P. Smith."

Q. What does that refer to, "by-law"? A. I don't know.

Q. Then the next, Mr. Neal succeeded Judge Smith, as I understand it? A. Yes.

Q. Now, then, on Dec. 2, 1912, or before that time Mr. Eustace was elected, I believe—you? A. Yes. It was to take office then.

Q. Will you show the record of your own election in full? A. (Reading):

"Sept. 23, 1912.

"Regular meeting of the Board of Trustees convened at 2 p. m. All members present. Minutes of last meeting

read and approved. Mr. Herbert W. Eustace was elected a member of the Board of Trustees to fill the vacancy caused by the resignation of Mr. James A. Neal. Mr. Eustace to begin work Dec. 2, 1912.

Q. Does that record of the trustees show the correspondence between the trustees and yourself at that time?

A. I don't know. I don't think it does.

Q. Have you that correspondence here? A. What correspondence did I have?

Q. The correspondence from the trustees advising you of your election, and your answer to the trustees with respect to a certain action to be taken by the Board of Directors? A. No. I think I would have to look that up, if I have it at all.

Q. Now, turn to Mr. Merritt's election on Feb. 1, 1917.

Mr. Whipple—Feb. 1, 1917?

Mr. Krauthoff—Feb. 1, 1917. It seems Mr. Merritt signed on the 1st of February, 1917, and I assume that his election was before that time.

Mr. Whipple—I thought it was August, 1917.

Mr. Krauthoff—That is when he became a director. A. There is a statement here saying he took his seat.

Mr. Whipple—Where is your Deed of Trust? That gives the date on that.

Mr. Krauthoff—Feb. 1, 1917, is when he signed. A. (Reading):

"At 4 o'clock Mr. Merritt arrived from Florida and took his seat on the board."

That was Thursday, February the 8th.

Q. Will you look at something in January and see what you can find? He signed the statement apparently on the 1st of February. A. I don't see anything on that.

Mr. Bates—Pardon me, Your Honor. I want to suggest that both the witness and brother Krauthoff speak a little louder. I notice the reporters are making notes of remarks which we are unable to hear at all.

Mr. Krauthoff—All right. We shall bear that in mind. Thank you, Governor.

A. (Reading):

"On Jan. 6, 1917, moved, that in consideration of the resignation of Mr. Hatten, which will take effect Feb. 1, 1917, the remaining trustees do hereby elect Edward Alfred Merritt, C. S. B., of Cleveland, to fill the vacancy on that date, and that Mr. Merritt be notified at once. Carried."

Q. Aug. 1, 1917, what is your record? A. Do you want this, what is said?

Q. You may read further. A. (Reading):

"And that Mr. Merritt be notified at once. Letter to Mr. Merritt read, approved and sent. Mr. Merritt met with the board at noon, and signified his acceptance of his election as a

member of the Board of Trustees, to begin the duties thereof Feb. 1, 1917.

Q. Now, coming down to July of 1917, will you read the record disclosing the succession of Mr. McKenzie by Mr. Ogden, for whichever succeeded first. A. July 24, 1917. First of all comes the resignation of Mr. McKenzie.

Q. Will you read that, please? A. (Reading): "The following letter was received and read:

"To the Board of Trustees,  
"Dear Friends: Because of new duties due to election to office of editor, I am constrained to offer my resignation from this board on which I have been a worker since February, 1898, and leave my association with the board with regret and love. This resignation to take effect Aug. 1, 1917.

"Yours,

(Signed)

"WILLIAM P. MCKENZIE"

"On motion of Mr. Eustace, duly seconded by Mr. Merritt, Mr. McKenzie's resignation is hereby accepted, to take effect Aug. 1."

Then there is a statement of appreciation of Mr. McKenzie's work.

"On motion of Mr. Merritt, seconded by Mr. Eustace, Mr. David B. Ogden was unanimously elected a member of the Board of Trustees to take office Aug. 1, 1917."

Q. What does the record next show after Mr. Merritt's resignation?

Mr. Whipple—I happen to have laid before me his letter of July 26, if you want to put it into the record.

Mr. Krauthoff—All right. I will be very glad to.

Mr. Whipple—Mark it as an exhibit, or read it in, whichever you want to.

Mr. Krauthoff—Edward A. Merritt—it should be identified first.

Mr. Whipple—Oh, no. Read it and then have it marked.

[Letter dated July 26, 1917, is marked Exhibit 33, WHM, and is read by Mr. Krauthoff as follows:]

[Exhibit 33.]

"Edward A. Merritt,

"1101 Beacon Street,

"Brookline, Massachusetts.

"July 26, 1917.

"Board of Trustees,

"The Christian Science Publishing Society,

"Falmouth and St. Paul Streets,

"Boston, Massachusetts."

"Dear Fellow Workers: I hereby tender my resignation as trustee of The Christian Science Publishing Society to take effect the first day of August, 1917. Notwithstanding my brief incumbency to that office I wish to reiterate what you already know, that it has been a great joy to me to have been of any slight service in this work. I have come to appreciate that the Publishing Society under the government of divine Love is the largest and best equipped institution in the world for giving to mankind daily and periodically that food and drink which

is spiritual, and which accords with the Master's saying, 'Whosoever drinketh of the water that I shall give him shall never thirst.' (John 4: 14.) With loving regard to the Board of Trustees, I am,

"Cordially and sincerely,

"EDWARD A. MERRITT."

Q. The gentleman who wrote that letter is now a member of The Christian Science Board of Directors; is that true, Mr. Eustace? A. It is.

Q. Now, will you read the succession of Mr. Merritt by Mr. Rowlands?

A. (Reading):

"July 26, 1917."

"Resolved, That Mr. Lamont Rowlands be and is hereby appointed a trustee of The Christian Science Publishing Society to succeed Edward A. Merritt, to take effect as of Aug. 1, 1917."

Mr. Whipple—What was the date of Mr. Rowlands' election? What was the date of the meeting you just read?

The Witness—July 26, 1917.

Mr. Krauthoff—Now, if Your Honor please, I have asked about some record details, and I am reminded that our counsel, that is, counsel for the directors agreed that Mr. Thompson should be shown the courtesy or given the opportunity of cross-examining Mr. Eustace ahead of us, and if Mr. Thompson desires to avail himself of that I shall be glad now to yield to Mr. Thompson, with the understanding that I will continue when Mr. Thompson is finished.

Mr. Thompson—It is not customary, if Your Honor please, in the courts of this Commonwealth, either to make or to accept such a proposition. It was perfectly clearly understood that Mr. Bates should go forward and we follow, and we cross-examine on the issues in both cases as far as we saw fit. When this gentleman is through I will take my turn, not before.

Mr. Krauthoff—Well, I am sorry, if Your Honor please, to be reminded that I did anything that was not customary in Massachusetts. I did it upon the advice of Massachusetts counsel.

Mr. Bates—May I ask if it is the expectation of the Court to take a little recess?

The Master—Certainly. How long do you wish?

Mr. Bates—I should think five minutes will be all right.

The Master—We will suspend for five minutes, or until 10 minutes to 12.

[Short recess.]

Mr. Bates—Will you let me examine the trustees' records?

Mr. Whipple—If you will let me have the directors' records I will exchange with you.

Mr. Bates—I didn't ask to exchange.

Mr. Whipple—If I can be assured of the opportunity to look over the directors' records when I come to examine them, or before, I shall do it.

Mr. Bates—Certainly. We do not ask for any privilege—

Mr. Whipple—Well, if you will tell

me that you will give me full opportunity to look them over later, I will entertain that suggestion.

Mr. Bates—What is that?

Mr. Whipple—If you will give me full opportunity to look over the records later.

Mr. Bates—We will give you full opportunity to look over any records that bear on this case.

Mr. Whipple—Well, that isn't quite it. You are asking now to take the trustees' records and look them all through. That is exactly what I want with regard to the—

Mr. Bates—I haven't asked to take them out of your possession. I simply ask for an opportunity to examine them with you.

Mr. Whipple—Now, will you give me the same opportunity to examine the directors' records?

Mr. Bates—So far as they are pertinent to this case.

Mr. Whipple—Then I will say so far as these records are pertinent to the case you may look them over.

Mr. Bates—That is all we ask for.

Mr. Whipple—Now, I think you have got everything in that is pertinent to the case.

Mr. Bates—Well, we haven't yet.

Mr. Whipple—How are you to determine that? You want to take them and look them over, and you decline—

Mr. Bates—I was merely making the suggestion to save the time of the Court. If my brother doesn't wish to accede to it we will have to take the time of the Court to get at it.

Mr. Whipple—All right. I have offered, if I have the same privilege with regard to the directors' records, that you may take these and go over these just to the full extent you please, but I want to have the same privilege with the directors' records that you have with the trustees'.

Q. Mr. Eustace, will you go back to your record of January, 1898, and read in the record the document that is recorded on the first page of the record?

Mr. Whipple—We do not think, if Your Honor please, that the document is material, but if Your Honor would inspect it and then pass upon it, we accept Your Honor's decision with regard to it. If you will kindly hand it to His Honor.

The Master (to Mr. Krauthoff)—Do you object?

Mr. Krauthoff—Certainly Your Honor may inspect it. If there is any doubt as to its materiality, we desire to be heard upon it.

The Master—How much of this is now offered, down to there, or how far?

Mr. Krauthoff—Why, including the whole record of the document. I don't know how far it covers, because I haven't examined the record.

The Master—I should hardly be prepared to rule that that could not be material for any purpose in the case. Why not let it go in for what it is worth?

Mr. Whipple—May I offer the suggestion that is in my mind? We are

not informed as to the ground on which it is claimed to be material; but I understand the fact to be that prior to the Deed of Trust under which these trustees are appointed and are acting Mrs. Eddy had prepared a paper, which perhaps was intended as a Deed of Trust to The Christian Science Publishing Society, but which was not effective for the purpose. I think if Your Honor will read it, you will see that there is no real conveyance of anything.

The Master—It is prior in date to the trust deed of June 25th.

Mr. Whipple—Yes; that thereafter she apparently, under advice, prepared the Deed of Trust which became effective. Well, now as I understand it, this earlier paper, which was not really a Deed of Trust and not effective, is put in with some vague notion that it can alter or modify or in some way affect the terms of the Deed of Trust which actually did become effective. I think perhaps we all agree that for that purpose it cannot be admitted. Outside of that no ground occurs to me on which it could be admitted, but Your Honor's intimation was distinct, that perhaps there was some other ground, and if so, I have overlooked it. I merely want to make this statement, that we could not—

The Master—No, I didn't mean—

Mr. Whipple—and that Your Honor would not rule that it could be admitted for the purpose of modifying or in any way affecting the terms of the trust deed which went into effect. Outside of that, why, if it has any significance, of course it ought to be admitted.

The Master—My only statement was that I should hardly be prepared to rule that nothing in the document could possibly be material for any purpose of the case.

Mr. Whipple—I understood that statement, Your Honor.

The Master—That is as far as I go. If I exclude it, I suppose it would have to go into the record to show what was excluded. Therefore I think you had better put it in for what it is worth, subject to all objections.

Mr. Krauthoff—I would like to have the record show in that connection, if Your Honor please, that this instrument is not offered with any vague notion in mind on the part of anybody. It is a substantive document under the signature of Mary Baker Eddy, executed at or about the time of the transaction in question. We are not agreed that it is not admissible. We claim it is not only admissible, but it is conclusive evidence that this is a gift to The Mother Church.

Mr. Whipple—Well, now, then, I don't understand that it is so admitted. I understand that the purpose is to show by this collateral instrument that the deed to the trustees of the property therein conveyed is really not a deed to the trustees, but a gift of the property therein described to The Mother Church. Is that it?

Mr. Krauthoff—We do not admit that this is a collateral instrument. This is an instrument executed by Mary Baker Eddy, the grantor, on the 15th day of January, 1898. It is direct and controlling.

The Master—If the defendants offer it, I think it had better go in, subject to the objection and on the terms which I have stated, and we had better discuss other matters relating to it further on.

Mr. Whipple—Then we don't need to take any formal exception, because, as I understand it, Your Honor will very likely deal with it later.

The Master—Yes.

Mr. Whipple—Or perhaps it would be sufficient merely to reserve our rights with regard to its ultimate admissibility, in case it should be later considered.

The Master—Quite so.

Mr. Bates—Let me make this one suggestion, to make sure that Your Honor has the date right: I understood Your Honor to say the date of the other deed was June 25.

The Master—Jan. 25.

Mr. Bates—It is Jan. 25. This was 10 days before that.

The Master—All right. Go on.

A. (Reading):

"A Gift to The Mother Church, and A Grant of Trusteeship.

"My Beloved Students:—

"I appreciate your uniform loyalty and courtesy to me, who desire to know no partiality for one more than another of Christian Scientists, but to earnestly consider the welfare of all. I have asked for a small Board of Trustees, and as I believe a strong board; one is a business man, another a doctor, and still another a scholar. I now recommend that these trustees continue at present the efficient service of Mr. Joseph Armstrong as the business manager of the publishing house, for the benefit of The Mother Church in Boston, Mass. Please to hand an attested copy of this letter and document to the editors of The Christian Science Journal for publication in the February number of The Christian Science Journal.

"With love,

"MARY BAKER G. EDDY."

Mr. Streeter—What is the date of that? I didn't hear it.

Mr. Whipple—It isn't dated.

The Witness—There is no date to it.

Q. This letter you have read. Now, will you read the document that follows the letter?

Mr. Whipple—Now, just pause a moment. Where is the original of this letter? A copy cannot be admitted until the original is accounted for. Do you know, sir?

Mr. Krauthoff—Why, the original of the letter is in the possession of The Mother Church.

Mr. Whipple—Then I think you had better produce it.

Mr. Krauthoff—No. It is admissible as against these plaintiffs, because they have written it on their own records.

Mr. Whipple—I pray Your Honor's judgment as to that. These are no records, these are not official records in any way. Anything that any one of these gentlemen write would be admissible against them, but this is written by somebody else.

Mr. Krauthoff—It is written in the records of the trustees at the time, Jan. 15, 1898, the predecessors in title of the plaintiffs, and we offer that record from their own records.

Mr. Whipple—We do not understand that these are official records.

Mr. Krauthoff—It is not a question of their being official records.

The Master—We have gone into their records for some purposes, I think, and it appears that this is a part of them.

Mr. Whipple—Yes.

The Master—I think we had better go on and complete the reading of what is now offered.

Mr. Whipple—Very well.

The Witness—(Reading): "The following is the document above referred to, as prepared by its author for intended publication in the February number of The Christian Science Journal.

"Deed of Trust of The Christian Science Publishing Society.

"I hereby create a Board of Trustees, namely Edward P. Bates, James A. Neal, and William P. McKenzie, all of them being residents of Boston, Massachusetts, for the purpose of intrusting to the aforesaid persons The Christian Science Journal, and all moneys, subscription list, real estate, or whatever other property is connected therewith at this date. This property is only to be held in trust by the above-named persons for the purpose of carrying on the business which has been conducted by The Christian Science Publishing Society at Boston, Massachusetts. The net proceeds accruing from sales of The Christian Science Journal, and the literature connected therewith, after deducting therefrom semi-annually the salary for each of these trustees—shall, by the treasurer of the trustees for the publishing house of The Mother Church, be immediately handed over to the treasurer of The Mother Church, The First Church of Christ, Scientist, in Boston, Massachusetts, to be applied to the use and for the benefit of this Church. I retain my ownership of The Christian Science Journal. It shall be copyrighted in my name during my so-called natural life, and the above-named Church shall receive the benefits derived therefrom; but thereafter the copyright, and the aforesaid Christian Science Journal shall become the property of this Church. No member of this Board of Trustees shall be empowered to conduct the business that pertains to the board without the knowledge and consent of the majority of its members. For the faithful performance of this trust each of the above-named trustees or their successors shall, from the date hereof, receive a salary of \$1000, payable semi-

annually, beginning at the date of this trusteeship. The Christian Science Journal shall not descend to my heirs or assigns; but it shall continue a benefit until it becomes a gift to The Mother Church—unless, for some reason, I shall, over my own signature and handwriting, withdraw it. If, for any reason, a member of this board becomes incapacitated to transact the duties of his office, his place shall by a majority vote of the board, subject to my approval (or by myself if I see fit so to decide), be declared vacant, and the remaining members shall at once proceed to elect a new member to fill the vacancy. No candidate shall be eligible to this position unless it can be shown that he or she is at the time of election a true and loyal Christian Scientist.

"In witness whereof I have hereunto set my hand and seal this fifteenth day of January, in the year of our Lord 1898.

"Witness, FRED N. LADD,

"HENRY W. STEVENS)

[Seal]

(Signed) "MARY BAKER G. EDDY,"

Q. When did you first know of that document, Mr. Eustace? A. I never have known of this document.

Q. Known of that record. A. Sometime after I came here.

Q. In 1913? A. I don't know whether it was in 1913, but sometime then I learned of it.

Q. Was the copy of that document included in the documents that you submitted to your counsel for an opinion of counsel as to the rights of trustees? A. Why, I don't think so; I don't think it was.

Q. Coming back to your own election or appointment as trustee in 1912, have you any knowledge of any proceedings in any court of record in Massachusetts appointing you as trustee under the instrument of Jan. 25, 1898? A. Have I any knowledge? I didn't get that, Mr. Krauthoff. (The question last put is read to the witness.) No.

Q. And do you have any knowledge of any with respect to the appointment of Mr. Ogden or Mr. Rowlands, in 1917? A. No.

Q. Or do you know of any proceeding in any court, accepting the resignation of Mr. McKenzie or Mr. Merritt or Mr. Neal? A. No.

Q. Or any of the trustees, so far as you know? A. No.

Q. Before you came to Boston to be a trustee in The Christian Science Publishing Society, you had become a member of The Mother Church? A. I had.

Q. And you were familiar with the provisions of its Manual? A. I was.

Q. Of its Church Manual. I believe you have heretofore testified that that was the spiritual direction to the members of The Mother Church? A. I have.

Q. You were familiar with the provisions contained in Sec. 5 of Art. XXV, on page 81? It is not in that, Your Honor. It is in the Church Manual—

The Master—It is quoted in the pleadings here somewhere, is it not?

Mr. Krauthoff—Yes, but I thought that it would be easier for you to find it in the Manual.

The Master—Go on.

Q. "Sec. 5. A person who is not accepted by the Pastor Emeritus and the Christian Science Board of Directors as suitable, shall in no manner be connected with publishing her books, nor with editing or publishing The Christian Science Journal, Christian Science Sentinel, Der Herold der Christian Science, nor with The Christian Science Publishing Society."

You knew of that provision in the Manual at the time that you were advised of your selection as a member of the Board of Trustees?

Mr. Whipple—Just a moment. May we have Your Honor's direction or ruling with reference to the use of the Manual? The claim is broadly made that the terms of the Manual control the trustees with reference to their duties. The claim, as Your Honor has observed, is that the duties of the trustees in their legal aspects are entirely controlled by the instrument itself. The defendants claim that the deed itself may be modified, and was modified, by the subsequent statement in the Manual. We claim that such a legal proposition cannot be; that it is not sound. Now, the question thus being defined, at some time a ruling is necessary, and if Your Honor will give us your direction as to how that question may be raised, and when it will be dealt with, and the manner in which it will be dealt with, it will be very helpful at this stage of the proceedings. Of course our contention is that the trustees have acted strictly in accordance with the Manual, because of the reference to or incorporation of the trust deed in the Manual; but we say that that is not a matter with which the Court is concerned, or which it can take into consideration; that we cannot go into it in Court on account of the rule of law, which we may assume that the donor in this grant well knew, that an irrevocable instrument of this sort cannot be revoked or modified by any subsequent declarations. I invite or ask for Your Honor's direction, which will control the whole hearing and make it unnecessary to interrupt further by discussions.

Mr. Krauthoff—Mr. Whipple at this time, if Your Honor please—

The Master—I would like to know just what you ask me to do now, Mr. Whipple.

Mr. Whipple—Well, what we desire is to have at some time a ruling made in accordance with what we understand to be the law that, for the purposes of this proceeding, any statements in the Manual which attempt to qualify the deed are not admissible; and that is what they are trying to put in now; and therefore that the evidence would be excluded.

The Master—Have I everything before me at this stage that is necessary

for the purposes of a final ruling on that question?

Mr. Krauthoff—Your Honor has just touched the surface of it. That is what this lawsuit is about, whether this Manual is in this court room or whether it is not. Mr. Whipple is saying that this Manual is not in this court room. I understand that that is—

The Master—No, no. He does not quite say that.

Mr. Krauthoff—I understood him this morning to say that this Court has no jurisdiction of the Manual; and to create here a legal aspect to this situation—

The Master—I am dealing now with the Manual as a matter of evidence, and I want to find out whether I have everything before me that is necessary for the purposes of making a ruling.

Mr. Whipple—What I say is, and I will repeat it merely because you (Mr. Krauthoff) do not seem to understand it, although I have stated it as clearly as I know how to state it: These trustees have conformed to the Manual as Christian Scientists, absolutely—

Mr. Krauthoff—Yes.

Mr. Whipple—but that is of no consequence in the construction of this deed one way or the other. That is important in their relations with the Christian Science movement, and that alone. The question here is not that, and the Court cannot determine it, because it is not in the pleadings. The Court will determine here as to whether they have conformed with the Deed of Trust, which has not been and cannot be, as a legal proposition, affected or modified in any way by any subsequent declarations of the donor; and those subsequent declarations, if any, must have been made with a knowledge on the part of the donor that the deed Mrs. Eddy had made was irrevocable. That is our position with regard to it. And you, by saying that by subsequent words, Mrs. Eddy, with all her wisdom, did not understand that what she had done was irrevocable, impeach her wisdom and judgment, and you ought not to do it!

Mr. Krauthoff—Now, if Your Honor please, Mr. Whipple has stated very clearly the fundamental error which animates the bringing of this lawsuit, and that is that when the trustees bring a lawsuit they cease to be Christian Scientists, and cease to be bound by the Manual of the Founder of the religion of Christian Science. Now, our contention, if Your Honor please, about that is this, that upon the whole evidence that will be introduced in this case this Manual will be in this court room, as it is everywhere else on earth, the controlling authority with respect to Christian Scientists; and these plaintiffs claim to be such. It cannot be disposed of at this time without the presentation of evidence and argument that would practically suspend the hearing on this case. The Manual is here, and it is to be enforced against these plaintiffs as long

as they claim to be Christian Scientists; and when they cease to be Christian Scientists they cease to be trustees.

The Master—I hardly feel prepared to make any final ruling at this stage on that question that you suggest. I think that we shall have to get all the evidence in before we can satisfactorily deal with that question. This is the Manual. Nobody disputes that it is the Manual; nobody disputes what the contents are; and the witness testifies that they are all known to him. Now, it does not seem necessary to call his attention to paragraphs in the Manual at any great length. I do not see why time should be taken up with that. You can refer later, for the purposes of argument, to anything that there is in the Manual that you desire.

Mr. Krauthoff—I had assumed, if Your Honor please, that if I read the provision in the Manual to which I was referring, it would enable Your Honor to understand more clearly the nature of the answer that I was seeking to elicit from the witness; and it is also—

The Master—Ask him if he is familiar with it. Can we not take it for granted that he is, if he says that he knows all that there is in the Manual.

Mr. Krauthoff—There is one other question, if Your Honor please, or one other statement that I would like to make. Those who follow this Manual lay it down as a precept that they must quote it, and not undertake to state it. That is another reason why I wished to read it, to try to be accurate.

Q. Are you familiar with Sec. 5 of Art. XXV of the Manual, which relates to the suitability of the persons connected with The Christian Science Publishing Society?

The Master—My question was whether there was any necessity of asking him that, if he says that he is familiar with the whole Manual?

Mr. Krauthoff—Oh, very well. I was trying to make a point that I was going to follow up with a letter from Mr. Eustace. The letter is meaningless unless I point out in the Manual the provision under which it comes.

The Master—There is no objection to your pointing it out, but why read it in full?

Mr. Krauthoff—I will have that letter marked.

Mr. Whipple—What is this? Let me look at it.

[The paper referred to is passed to Mr. Whipple for inspection.]

Mr. Krauthoff—It is on page 81, Sec. 5.

The Master—You offer that in connection with a letter.

Mr. Krauthoff—I offer that as the basis of a question upon which I hope to offer a letter written by Mr. Eustace.

The Master—Well, now, why not proceed to put your question?

Mr. Krauthoff—Mr. Whipple is examining the letter.

The Master—Oh, yes. All right.

Mr. Whipple—It does not seem to me that the letter is admissible for any proper purpose, but I accept Your Honor's suggestion that you can deal better with the matters when they are more fully before you. Therefore let it be taken with the reservation of our rights that I have heretofore suggested.

Q. You saw that letter? Mr. Eustace? A. No, I did not, but then I—

Q. It is over your signature? A. (After examining the letter.) Yes; I wrote that letter.

Mr. Krauthoff. (Reading):

“Sept. 30, 1912.—  
The Christian Science Board of Directors,

“The First Church of Christ, Scientist,  
Boston, Massachusetts.

“Dear Friends:

“I want to express my sincere appreciation of your unanimous and cordial acceptance of my appointment by the Board of Trustees to fill the vacancy on that board caused by Mr. James A. Neal's resignation on assuming his larger duties as a member of The Christian Science Board of Directors.

“I feel deeply the honor and privilege of this appointment, for I know that it means increased opportunities for working for our cause in a broader and more far-reaching way, and I thank you for making my acceptance of this appointment possible by your approval thereof.

“It will be my earnest purpose to act in all matters as a genuine Christian and Christian Scientist should, and I know, because God alone is Mind, I shall not falter or fail in any work He may give me to do.

“I expect to take my place on the board Dec. 2.

“With kindest remembrances. Believe me,

“Very sincerely yours,  
“HERBERT W. EUSTACE.”

[The letter of which the foregoing is a copy is marked Exhibit 34, R. H. J.]

Q. Now, Mr. Eustace, in this letter you refer to the expression “our cause.” What do you understand to be “our cause” as used in this letter? A. The Christian Science movement as a whole.

Q. The Christian Science movement as a whole. And you were writing to The Christian Science Board of Directors about becoming a trustee in the Publishing Society as a part of the Christian Science movement as a whole? A. Yes.

Q. You say here, “I thank you for making my acceptance of this appointment possible by your approval.” What did the approval of the Board of Directors have to do with your becoming a trustee under this instru-

ment of Jan. 25, 1898? A. When I was on here in September, I came on to see whether I was acceptable to the trustees, and whether I wanted to accept the trusteeship. After I had arrived here I discovered certain conditions present that I had no idea of. There were certain conditions on the Board of Directors that I found that I was wholly ignorant of; and I saw very clearly that in order to be any use here at all I was not going to be ground between the millstones. In other words, I found two conditions on the Board of Directors, two opposing factions, and I was not going to come here without a clear understanding that none of those men were objecting to my coming; and I said to Mr. Neal that I would not accept the trusteeship unless I was assured that there was no opposition from any member of the Board of Directors; and I asked him to bring that matter up, and to wire me; and he did; and I put into that letter the statement that you have read there, that I would not falter or fail in any work that I felt God had given me to do, because I foresaw apparently that some conditions might arise in these things that I had known nothing about before, that would cause me to have to take a very strong stand for Principle; and I said there that I would not fail if that came up.

Q. What did the approval of the Board of Directors have to do with your becoming a trustee? A. Not one solitary thing!

Q. Not one solitary thing? A. Not one solitary thing.

Q. Despite the provision in the Manual, to which your attention was called, that no person not deemed suitable by the Board of Directors shall be connected with The Christian Science Publishing Society?

Mr. Whipple—It does not say that in the Manual. You had better read it rather than attempt to quote it.

Mr. Krauthoff—I shall be very glad to read it.

“A person who is not accepted by the Pastor Emeritus and the Christian Science Board of Directors as suitable—”

Mr. Whipple—“and the Christian Science Board of Directors—”

Mr. Bates—You asked him to read it, did you not?

Mr. Whipple—Yes, but he was slurring over the important word in it, the word “and.”

Mr. Bates—Let us have your interpolations in italics.

Mr. Krauthoff—“A person who is not accepted by the Pastor Emeritus and the Christian Science Board of Directors as suitable, shall in no manner be connected with publishing her books, nor with editing or publishing The Christian Science Journal, Christian Science Sentinel, Der Herold der Christian Science, nor with The Christian Science Publishing Society.”

Q. Notwithstanding that provision in the Manual, you say that the ap-

approval of the Board of Directors of your election as trustee was of no force or effect whatever? A. I should have paid no attention to that as applying to the trustees, anyway.

Q. Why not? A. Because the Board of Trustees is The Christian Science Publishing Society.

Q. Yes; but the Board of Directors;—I asked about the approval by The Christian Science Board of Directors of your election as trustee of The Christian Science Publishing Society. A. I would say that it had nothing whatever to do with it.

Q. Nothing to do with it? A. Nothing whatever.

Q. That was what you thought when you came here in 1912? A. Absolutely, except in so far as I have said.

Q. When you came to elect the successor of Mr. Hatten did you write to the directors about Mr. Merritt? A. I did not.

Q. Did the trustees write? A. Not that I know of.

Q. Did Mr. McKenzie write to your knowledge? A. Not that I know of.

Q. Who first introduced Mr. Merritt to you? How did you come to select him? A. Oh, I had met Mr. Merritt years before.

Q. Did the directors participate in any way in the selection of Mr. Merritt as a trustee? A. Not that I am aware of.

Q. Not any member of the board? A. Not that I am aware of.

Q. Coming down to the selection of Mr. Ogden and Mr. Rowlands, in July, 1917, the board consisted of Mr. McKenzie, yourself (Mr. Eustace), and Mr. Merritt? A. Yes.

Q. And Mr. McLellan was a member of The Christian Science Board of Directors? A. He was.

Q. He passed away on the 17th of July, 1917? A. I don't know the date, but I believe that that is it.

Q. Did you have a conference with the Board of Directors then in respect to the situation caused by the passing of Mr. McLellan? A. I expect we did.

Q. You expect you did, do you? A. A conference about what?

Q. Well, the board elected Mr. McKenzie, the Board of Directors elected Mr. McKenzie, to be an editor to succeed Mr. McLellan, did it not? A. I suppose he was notified of that if they did. He is the editor—

Q. Do you say that you were not notified of it? A. I really don't know now whether we were or not.

Q. Do you mean now to say that you did not know in July, 1917, that the Board of Directors elected William P. McKenzie editor of the Christian Science periodicals? A. I say that I believe that they did, and that he was notified.

Q. You say that you believe that they did? A. I can't say. I was not present at their meeting, and therefore I can't say whether they elected him or not.

Q. And you never received any letter telling you that they had? A. If I did, it is in the records. I don't know.

Q. At any rate, Mr. McKenzie became the editor? A. He did.

Q. And he resigned as a trustee? A. He did.

Q. Did you have any conference with the Board of Directors of The Mother Church with respect to the selection of Mr. Rowlands and Mr. Ogden? A. Not in respect to Mr. Rowlands, but in respect to Mr. Ogden's being business manager. We talked the matter over.

Q. How did his being business manager make any difference? A. Simply the fact that he was business manager, and they had, as you have stated with regard to electing Mr. McKenzie—I suppose that they had elected Mr. Ogden at their various meetings; I don't know about that, except as I was informed.

Q. Mr. Ogden was the business manager when you came to be a trustee? A. He was.

Q. And you think he was elected by The Christian Science Board of Directors? A. I don't know anything about that, Mr. Krauthoff.

Q. Now, coming down to the election of Mr. Rowlands and Mr. Ogden, what conferences, if any, did you have with The Christian Science Board of Directors in July, 1917, on that subject? A. I do not remember any conference about Mr. Rowlands.

Q. What conference did you have about Mr. Ogden? A. Just simply as I have stated, that we had proposed to elect—Mr. McKenzie and Mr. Merritt and myself intended to elect Mr. Ogden, and we were talking the thing over in conference.

Q. Now, don't you remember, Mr. Eustace, since your attention is called to it, that the Board of Directors of The Mother Church and the Board of Trustees of The Christian Science Publishing Society got together in July, 1917, and discussed the whole subject about Mr. McKenzie becoming editor, and Mr. Watts becoming business manager, and Mr. Ogden becoming a trustee, and Mr. Rowlands becoming a trustee, and that you took that up with the Board of Directors and worked it up together? A. No, I do not. Mr. Rowlands I do not remember being discussed at all. Mr. McKenzie, Mr. Merritt, and I talked it over together. He was on both boards. And I felt, as I expressed to Mr. Merritt, that Mr. McKenzie was one of the best scholars in our movement and would make an admirable editor.

Q. When did you first hear that Mr. McKenzie was to become the editor? A. I cannot tell you; I do not know.

Q. When did you employ him? A. I think about the 27th of July, or something like that.

Q. After he had been elected by the Christian Science Board of Directors? A. I suppose that they had done so. As I have said, I don't know whether

they went through the form of election or not, or what took place. I was not present.

Q. You now call the provision of the Manual about electing editors a form of election? A. I what?

Q. You now call the provision in the Manual relating to the election of the editors the form of an election? A. All right.

Q. Is that your statement? A. I suppose if I said it it was.

Q. Well, I just wanted to understand your statement. A. I can't state something that I was not present at, and therefore I don't know what took place or how it was done.

Q. I was calling your attention to the use of the word "form." In your direct examination, Mr. Eustace, Mr. Whipple asked you if you at all times were obedient to the directions of Mrs. Eddy that came to you in an authoritative form. Please state what you consider the authoritative form of Mrs. Eddy's directions to you as a trustee of The Christian Science Publishing Society and as a plaintiff in this lawsuit? A. The most authoritative form that I can conceive of as coming to me as a trustee of The Christian Science Publishing Society is the Deed of Trust which I accepted and signed.

Q. That is, you speak of the most authoritative form? A. That is to me the most authoritative thing that I have had.

Q. What is the next? A. The whole of Mrs. Eddy's writings.

Q. Where do you include the Manual? A. In those writings.

Q. In those writings? A. Yes.

Q. So that the Manual is an authoritative direction to you? A. Certainly it is.

Q. Oh, certainly. Now we are getting along. To what extent is it? A. As I have said, it is the spiritual guide.

Q. Yes; but to what extent is it? A. To the extent that I can spiritually understand and demonstrate it.

Q. And apply it? A. And apply it spiritually.

Q. To the conduct of your affairs as a trustee of the Christian Science Publishing Society? A. Spiritually.

Q. Yes, spiritually? A. Yes.

Q. Just tell us what you mean by that, Mr. Eustace. A. Well, I mean that the spirit of it must animate my thought in what I am doing.

Q. And in the conduct of your human affairs you are animated by the spirit of the Manual? A. I must be animated not only by the spirit of the Manual but the spirit of everything that Mrs. Eddy has written.

Q. Well, we will agree on that. Now, you spoke of the Deed of Trust being the most authoritative form. What is the distinction now between the two, the Deed of Trust and the Manual, with respect to one being the most authoritative form? A. Because the Deed of Trust to me is a legal, irrevocable instrument, that Mrs. Eddy signed, specifically stating exactly what my duties as a trustee must be.



Q. It being a legal instrument, you think it is greater than the Manual? A. To that extent, that she did it deliberately and purposefully.

Q. Didn't she write the Manual deliberately and purposefully? A. Just as she wrote her other books. Those books were given to us spiritually understand and unfold. The Deed of Trust to me is not in that same category.

Q. Isn't that a spiritual direction? A. It is in the sense that it is spiritual direction, but it is legally couched, and she has made it irrevocable.

Q. I understand. But in your bulletin that you sent out to such of the field as wrote to you about the bringing of this lawsuit you spoke of the inspired instrument? A. Yes.

Q. So the Deed of Trust is the inspired act of Mrs. Eddy? A. Absolutely.

Q. That is, as loyal Christian Scientists we all believe that everything that Mrs. Eddy did for the direction and guidance of the Christian Science movement is inspired? A. We do.

Q. Inspired; a revelation of God direct to Mary Baker Eddy? A. We do.

Q. What is the teaching of Christian Science as to spiritual ideas being at war with each other? A. No, thank you. Your Honor, I can't go into an explanation of Christian Science in court.

Q. I see no reason why you should not. A. That would require a long explanation.

Q. Well, I am ready to listen to it. A. Well, I am not—

Q. Do you contend as a Christian Scientist that two spiritual ideas can be in conflict or at war with each other?

Mr. Whipple—I would request Your Honor's ruling with regard to it; it seems to me we are getting far afield.

Mr. Krauthoff—If Your Honor please—

Mr. Whipple—I am very much interested in Mr. Krauthoff's rather remarkable cross-examination. I do not want to have it interrupted unless Your Honor thinks it is too far afield.

Mr. Krauthoff—If Your Honor please, that is the basis of this lawsuit. The plaintiff is a trustee under an instrument which directs him to promote and extend the religion of Christian Science, an instrument which requires him to be an ardent and consistent advocate of and believer in the principles of the religion of Christian Science as taught by Mary Baker Eddy. His statement that the Deed of Trust is superior to, or most authoritative, or different from the Manual, is a denial of the Principle of Christian Science.

Mr. Whipple—Oh, no. See here—

The Master—That is what you are going to claim and argue, as I understand?

Mr. Whipple—What is that? There is no real basis for that, of course. The question is now whether we shall go into a scientific disquisition as to the—what is it—the opposition of spiritual ideas?

Mr. Krauthoff—Yes.

Mr. Whipple—It seems to me you are a little far afield, a little metaphysical; but I am really very much interested in the development of your thought, I do not want to interrupt it.

Mr. Krauthoff—When Mr. Whipple knows more about Christian Science than he does now he will realize that that is the answer to his lawsuit.

Mr. Whipple—Well, it will have to take a lot of learning to find that a lawsuit is answered by going into vagaries of that sort.

Mr. Krauthoff—Now, if Your Honor please, we object to counsel of The Christian Science Publishing Society referring to a statement of Christian Science as being a vagary.

The Master—Let us get back to your question.

Mr. Whipple—I am not referring to any principles as vagaries; the vagarious character of it is in the utterance.

Mr. Krauthoff—I object to that statement.

The Master—I do not see any good purpose to be gained by continuing this discussion at this stage. I wish you would read to me this question again to which objection has been made.

[The question is read by the stenographer: "Do you contend as a Christian Scientist that two spiritual ideas can be in conflict or at war with each other?"]

The Master—That is your question, is it?

Mr. Krauthoff—Yes.

The Master—I think he may answer that. A. The question itself is an absurdity from the Christian Science standpoint, because we do not contend that there are two spiritual ideas. We maintain as Christian Scientists that God and his infinite manifestation is all in all.

The Master—Well, the question as I understood it, Mr. Eustace, was merely, "Do you contend so and so?"

The Witness—I answer, then, no, Your Honor.

Q. You say "No." You do that, as I understand, upon the statement that there are not two spiritual ideas. Are there two spiritual ideas?

Mr. Whipple—Where? What do you mean—are there two spiritual ideas? Where?

Mr. Krauthoff—Why, in infinite consciousness.

Mr. Whipple—That is right. Finish it up.

The Master—I think this is going too far away from the issues we are trying. I will exclude that. He does not contend as you stated.

Mr. Krauthoff—Now, I will ask this question, then. Counsel may ridicule what I am saying—

The Master—Never mind about that. Put your next question.

Q. What is the teaching of Christian Science as to two spiritual ideas? A. That there is no—

The Master—Two spiritual ideas in general?

Mr. Krauthoff—No, if Your Honor please, not in general.

The Master—That does not come down near enough to his testimony.

Mr. Krauthoff—Yes. Very well.

The Master—To make it proper in cross-examination, so far as I am now able to see.

Mr. Krauthoff—Well, we can only do this, Your Honor, by taking the human footsteps.

Mr. Streeter—Your Honor, we are not operating under the United States Court rule and the cross-examination is not confined.

The Master—Strictly limited. That is quite true, Mr. Streeter, I fully understand that.

Q. Now, Mr. Eustace, do you state that the instrument of Jan. 25, 1898, under which you are acting as a trustee, is the inspired word of God revealed unto Mary Baker Eddy? That is your statement? A. I consider that everything that Mrs. Eddy gave to the Christian Science movement was done from her understanding of divine Principle and the right direction of this movement.

Q. That includes the Deed of Trust? The Master—Pardon me one moment. I shall have to hear his question again.

[The question is read by the stenographer.]

The Master—Has he answered that directly, either that he does or does not?

Mr. Krauthoff—He answered it generally by saying that everything was—

The Master—Please give us a direct answer to the question. A. I say I do.

Q. And that is also true with respect to the Church Manual? A. It is true in respect to her published writings entirely.

Q. Now, in your direct examination, Mr. Eustace, you were asked the question whether you had ever endeavored to separate The Christian Science Publishing Society from The Mother Church. I gathered from your answer that you had not; that such a separation would be very injurious to the Publishing Society. A. Are you asking me a question?

Q. Yes. A. It certainly would be injurious to our movement as a whole.

Q. It would be injurious to the Publishing Society and to the Church and to the cause of Christian Science? A. As a whole.

Q. It would not result in the promotion and extension of the religion of Christian Science? A. No.

Q. That is the object of your trust? A. That is the purpose of our trust.

Q. In your bill you make this statement, in paragraph 4 of the bill: "The conception and plan of Mrs. Eddy for the promotion and extension of the religion of Christian Science, as taught by her, involved two general branches of activity." Where did you get the authority for that statement? A. By the two trust instruments.

Q. The two trust instruments? A. Yes.

Q. Do you mean the instrument of Jan. 25, 1898, under which the trustees of The Christian Science Publishing Society were named? A. Yes.

Q. And then the two instruments printed in the back of the Manual relating to the ground on which the original Mother Church is erected? A. And the church, yes.

Q. Well, it is your understanding that the power of The Mother Church is limited to those two instruments?

A. The power of The Mother Church?

Q. Yes. A. To me The Mother Church is vastly more than this that is in Boston.

Q. Certainly, we agree with that. We will call your attention to that directly. The Manual is a part of The Mother Church?

The Master—Suppose you repeat the question. I think the witness is in danger of getting a little away from it. (The question is read by the stenographer.)

The Master—Will you answer that directly, Mr. Eustace?

The Witness—Let me hear that again.

(The question is again read.)

A. Yes.

Q. What becomes of the Manual of The Mother Church? A. It is the spiritual direction of its members.

Q. Yes; and the power of The Mother Church is not limited in any way, is it? A. As a spiritual idea.

Q. In other words, coming down to ordinary— A. As a human concept of course it is limited.

Q. It is limited? A. Yes.

Q. And you think that The Christian Science Board of Directors cannot do anything unless it is provided in those two instruments conveying pieces of real estate? A. I don't believe it is for me to say what they can do except in so far as it affects me, in my trust.

Q. Do you understand that under the Church Manual The Christian Science Board of Directors does have certain powers with respect to the Church itself? A. It has certain functions to perform.

Q. With respect to The Mother Church? A. With respect to its duties.

Q. So that the powers of The Christian Science Board of Directors are not limited to those two instruments conveying real estate? A. I cannot answer that question because it is not my business to do it.

Q. You are asked on direct examination if you knew of any document that made The Christian Science Board of Directors the governing board of the Christian Science denomination. You said you knew of none? A. I do not.

Mr. Whipple—Oh, if you will pardon me, I asked any instrument in which they were nominated as that, and called that. I merely wanted to bring out that they were arrogating to

themselves new names that Mrs. Eddy had never authorized.

Mr. Krauthoff—You do not mean to say that they were not in truth and in fact the governing board of the Christian Science Church?

Mr. Whipple—I have said what I have said and you ought to be able to understand it. You misquoted my question and I was correcting you.

Mr. Krauthoff—I am glad to be corrected.

Mr. Whipple—That is right.

Q. What you mean is that you do not know of any instrument in which those precise words are used? A. I do not.

Q. The governing board of the Christian Science denomination? A. I do not.

Q. Who is the governing board of this Christian Science denomination? A. Divine Principle.

Mr. Whipple—I pray Your Honor's judgment.

Mr. Krauthoff—I beg pardon?

The Master—I think he may answer; he seems ready to do so. A. Divine Principle.

Q. Divine Principle; and the Church Manual provides that the business—I am talking now about the Christian Science denomination—the business of The Mother Church shall be transacted by a Christian Science Board of Directors. In your statement about separating these two you further continue, paragraph 4:

"The conception and plan of Mrs. Eddy for the promotion and extension of the religion of Christian Science, as taught by her, involves two general branches of activity. The first, the organization of churches for a study of the Bible and doctrinal truths of Christian Science as contained in Mrs. Eddy's textbook of Christian Science, 'Science and Health with Key to the Scriptures.' The second, by increasing the circulation throughout the world of publications containing the truths of Christian Science, for the purpose thereby of more effectually promoting and extending Christian Science."

Now, I understood your direct examination was that you had not intended to separate those two general branches of activity? A. Certainly not.

Q. Is it not a fact that they are so essentially intermingled that they are incapable of separation? A. For the welfare of the cause they must work cooperatively together.

Q. Have they not at all times since Jan. 25, 1898, been administered as one and the same thing? A. I do not know what you mean by administered.

Q. Well, you were a trustee, and you were administering the trust as a trustee? A. Well, I was administering the trust of The Christian Science Publishing Society.

Q. And you have at all times treated it as a part of The Mother Church, prior to the advice by

counsel? A. Working in cooperation with the Board of Directors.

Q. But, however it was done, it was all done as one and the same thing? A. The whole movement is one; we recognize it, as one.

Q. The whole movement is one?

A. Yes.

Q. All right. Now, we have agreed on that; the whole movement is one.

A. Yes, absolutely.

Q. And of course, being a movement, it has to have a leader? A. Divine Principle.

Q. Divine Principle manifested to human consciousness in some form that is tangible? A. Through our Leader's writings.

Q. Certainly. Now, then, we have one Christian Science movement, so that the second verse of "Onward, Christian Soldiers" was all right, wasn't it? A. It was the inference in that verse that we were divided.

The Master—We have not yet heard anything about "Onward, Christian Soldiers."

Mr. Whipple—I take it Your Honor is expected to take judicial notice of that stanza; there has nothing been said about it.

Q. Why did you say you took that out of the article—because of the inference that we were divided? A. The inference that we were divided, and not one.

Q. Then we are not to be divided? A. Certainly not.

Q. And we are one? A. We are one, absolutely.

Q. Well, that is fortunate. Now, in your bill you speak of putting the affairs of the Publishing Society separate and distinct, page 75 of the bill. You speak of Mrs. Eddy's purpose "to provide a management and control of the Publishing Society, separate and distinct from the management and control of The Mother Church." Now, that is your understanding of Mrs. Eddy's purpose? A. Absolutely.

Q. And you say that you have no thought of separating the management and control of the Publishing Society from the management and control of The Mother Church?

Mr. Whipple—That he has never said at all. He has said the management is distinct, but the movement was one.

Mr. Krauthoff—Your Honor will recall that in direct examination Mr. Eustace stated, in response to Mr. Whipple's question, that he had never in any way attempted to separate The Christian Science Publishing Society from The Mother Church.

Mr. Whipple—Now you are using the word "management."

The Witness—Yes.

Mr. Whipple—After having stated it correctly, then you inadvertently—I won't suggest you did it otherwise—put in the separation of a different sort of thing.

Q. Now, this is what the bill alleges; you did allege it in the bill?

The Master—Wait a minute. You are now reading from the bill?

Mr. Krauthoff—Page 75; in which the purpose of Mrs. Eddy is stated by this witness under oath to be "to provide a management and control of the Publishing Society, separate and distinct from the management and control of The Mother Church."

The Witness—Yes.

Q. Now, have you at any time endeavored to separate the management and control of the Publishing Society from the management and control of The Mother Church? A. You will have to define first for me what management and control of The Mother Church means.

Q. I am taking your language, Mr. Eustace, over the signature of your counsel, and over your oath. A. That the Trust Deed of the Publishing Society is a distinct and well-defined instrument controlling the Publishing Society, and is separate and distinct from the Trust Deed controlling The Mother Church, the Board of Directors, goes without saying, I think.

Mr. Whipple—But the question is, if Your Honor please, as I understand, whether Mr. Eustace has done anything toward separating, and he has answered that he has not, Mrs. Eddy did it. Mrs. Eddy did it, and he has done nothing except what Mrs. Eddy did by the creation of the two different boards of management.

Mr. Krauthoff—If Your Honor please, I prefer to cross-examine Mr. Eustace, and if Mr. Whipple wants to be a witness, why, I will be glad to cross-examine him.

The Master—What is your question now?

Mr. Krauthoff—I am calling Mr. Eustace's attention to his language in his bill of equity.

The Master—Now, what do you ask him about it?

Mr. Krauthoff—I ask him what steps he has taken to make the management and control of the Publishing Society separate and distinct from the management and control of The Mother Church.

The Witness—Why, I have taken no steps at all in any sense of separating it.

Q. Well, is the management and control of one separate and distinct from the management and control of the other? A. They are both under the direction of Mrs. Eddy's instruments.

Q. I asked you if they were separated? A. The instruments themselves separate them in that sense.

Q. I am talking now about whether you say they are separated? A. I say that the instruments themselves do all the separation that there is to be done.

Q. I am asking you what you say. A. I say that.

Q. You say they are separated? A. I say that the instruments themselves—

Q. I didn't ask you what the instruments said, I asked you what you say.

Mr. Whipple—I pray Your Honor's judgment. Isn't the only thing that he can say what the instruments say?

Mr. Krauthoff—No; that is not all that he can say, if Your Honor please.

The Master—If he thinks he can say anything else let us see what it is.

The Witness—Why, there is nothing else I can say.

The Master—Very well; then I think that is the end of that line of inquiry.

Q. You mean all you can say is that the instruments so provide? A. The instruments do all that is done.

Q. And then you have done nothing? A. I have done nothing.

Q. Very well. Now, in your direct examination Mr. Whipple placed great stress upon the meeting of the trustees and the directors on Feb. 3, 1919, and, as I understand it, pointed out to you that you had agreed on Feb. 3, 1919, to do something, and that in some way or other somebody had reopened a controversy. You had not agreed on Feb. 3, 1919, each with the other, that the trustees of The Christian Science Publishing Society would in all respects obey the Church Manual? A. We never allowed for one moment that we were not obeying the Church Manual.

Q. You did not agree that you would? A. Why, we absolutely affirmed and reaffirmed, always, that we had never gone counter to our understanding of the spiritual intent of the Church Manual.

Q. And that is true today? A. That is absolutely true today.

Q. Who elects the editors of the Christian Science periodicals today? A. The Christian Science Publishing Society employ all the help necessary.

Q. I asked you who elected the editors of the Christian Science periodicals. A. I have never been present—

Mr. Whipple—Pardon me a moment, if Your Honor please. There is no election of those people. They are not properly candidates, there is no provision for an election. The Deed of Trust shows how they shall be selected or employed.

The Master—The question was, as I got it, Who elects the editors? Is that right?

Mr. Krauthoff—Yes.

The Master—Of the Christian Science—what?

Mr. Krauthoff—Periodicals.

Mr. Whipple—The further suggestion is—

The Master—Wait a moment, I want to get the question.

Mr. Krauthoff—Yes, that is the question.

The Master—Who elects—

Mr. Krauthoff—Who elects the editors of the Christian Science periodicals?

The Master—Now I think you better let him answer that, if he can.

Mr. Whipple—Well, I want him to realize, and counsel also, that the directors are under injunction of this court that they shall not do it or at-

tempt in any way to interfere. He is asked who today elects them.

Mr. Krauthoff—That injunction is procured by the plaintiffs in this case.

Mr. Whipple—Why, of course.

The Master—Let us see if he can answer the question; if he cannot answer it he can say so.

Mr. Krauthoff—The question can be stated in another form.

The Master—Do you withdraw the question?

Mr. Krauthoff—Yes, I do.

The Master—Very good. Now, start again.

Q. At this time in which body, The Christian Science Board of Directors or the Board of Trustees of The Christian Science Publishing Society, is the power vested to elect the editors of the Christian Science periodicals? A. I cannot answer.

Q. What do you claim about it?

Mr. Whipple—I pray Your Honor's judgment.

The Master—What was your answer?

The Witness—I cannot answer.

Mr. Krauthoff—We have the right to know what he claims, if Your Honor please, because he says that he is obedient to the Church Manual, and the Church Manual contains a provision in that respect, which he has denied.

Mr. Whipple—Pardon me; that assertion is groundless.

Mr. Krauthoff—Well, let him answer the question, then.

Mr. Whipple—The Church Manual provides with regard to an election with Mrs. Eddy's approval; it gives no power whatever to these directors to act without it, and when she passed on the authority that she had ceased, the authority that the directors had ceased, under the Manual itself. Now, why not be fair with the witness?

Q. Mr. Eustace, you just heard the statement of Mr. Whipple as your counsel as to the power of the Board of Directors to elect an editor having ceased with the passing of Mrs. Eddy? You heard that statement. A. I heard it.

Q. Do you testify to that as a witness?

Mr. Whipple—Now, I pray Your Honor's judgment.

Mr. Krauthoff—We have the right, if Your Honor please, to test this man's loyalty to the Christian Science Church.

The Master—I think he may answer, whether he agrees to it or whether he does not.

A. I accept it absolutely, as the legal advice of our counsel.

Q. I am asking you now as a Christian Scientist. A. I cannot answer.

Q. As a Christian Scientist, now, do you say—

The Master—He says he cannot answer.

Mr. Krauthoff—Very well.

Q. As a Christian Scientist and as a member of The Mother Church, do you now testify that the power of the Board

of Directors to elect the editor has ceased because Mrs. Eddy has passed away? A. I cannot answer.

Q. I will ask you, as a Christian Scientist, if that is not an argument in favor of death? A. If that is not what?

Q. If that is not an argument of death?

The Master—I think we shall have to stop with his statement that he cannot answer; he says he cannot answer.

Mr. Krauthoff—It is now 1 o'clock.

Mr. Streeter—May I make a suggestion, Your Honor, before we adjourn? I suggest this to my Brother Whipple. This record book that has been produced here is described as the "Minute book of the Board of Trustees appointed by Rev. Mary Baker G. Eddy, for her trust in behalf of The First Church of Christ, Scientist, in Boston, Massachusetts." Then follows, at the first meeting, an election of Mr. McKenzie as secretary. Then follow meetings in regular course. Now, there may be some things in this book, in this record, that, representing Mr. Dittmore, we shall want to use. Will it be agreeable to have it understood that the book is in the case with the master, but before anyone makes use of anything in it that attention shall be called to it? Is there any objection to that, Brother Whipple?

Mr. Whipple—Well, if an arrangement can be made similar to that with regard to the records that are kept of the directors' actions, I am perfectly willing, adding to it a stipulation that the records kept by Mr. Dittmore of the directors' actions shall also be deposited and accessible to us in the same way. I am not asking you to make a trade, but I think it important that all these records of the activities of the different heads of the Church, or those employed in the major activities, should be made accessible all around. Do you agree that Mr. Dittmore's notes shall be thus made accessible?

Mr. Streeter—Do you agree, Brother Bates, to Squire Whipple's suggestion?

Mr. Bates—Not at this time.

Mr. Streeter—Well, as representing Mr. Dittmore, and not as representing the directors whom Mr. Bates represents, we desire so far as we are concerned to use, or may desire to use, some of the things in here.

Mr. Whipple—They will be made accessible to you, but I crave of you the same courtesy with regard to Mr. Dittmore's records.

Mr. Streeter—I don't think we shall have any difficulty about that.

Mr. Whipple—All right.

Mr. Streeter—The understanding is that these records of the trustees will be here, and accessible.

Mr. Whipple—They will be accessible to you, and on the condition that I suggested, that when Mr. Dittmore testifies I shall want his records accessible to me in the same way. I made that same offer to Mr. Krauthoff's clients, but that has not yet been accepted. There seems to be

some reluctance about those directors' records being made accessible. I want to do what I can to get access to those records, but these will be accessible to you to put in such parts as you desire. Otherwise than that they are under the direction of the Master.

Mr. Streeter—If Your Honor please, I want to say that while in many respects we are at odds with my Brother Whipple, and in some serious respects, we are at odds with the clients of my Brother Bates; yet on this matter we join Brother Whipple in asking that the directors' records be made accessible, be brought here and be made accessible to us all. And I will say to Squire Whipple that, so far as Mr. Dittmore's records are concerned, official and unofficial, that they will be at the service of the Court and counsel.

Mr. Whipple—Thank you. We accept the offer.

Mr. Streeter—Only one thing more, and that is, that this book, Mr. Whipple, only comes down to 1906.

Mr. Whipple—We have the other one here. That will be accessible and under the direction of His Honor in the same way.

(Recess to 2 p. m.)

#### AFTERNOON SESSION

Q. (By Mr. Krauthoff.) Mr. Eustace, prior to adjournment I used a phrase that perhaps I did not make myself entirely clear in my use of. I used the phrase, "an argument of death." Now, I want to ask you this question: The Church Manual provides for electors or editors of The Christian Science Publishing Society in Sec. 3 at the bottom of page 25:

"The term of office for the Clerk and the Treasurer of this Church (also for the editors and the manager of The Christian Science Publishing Society, and the manager of the general Committee on Publication in Boston) is one year each, dating from the time of election to office. Incumbents who have served one year or more, may be re-elected, or new officers elected, at the annual meeting held for this purpose, by a unanimous vote of the Christian Science Board of Directors and the consent of the Pastor Emeritus given in her own handwriting."

Now, as I understand, you have been advised by counsel that Mrs. Eddy, having passed away, and it being humanly impossible to get the consent of the Pastor Emeritus given in her own handwriting, that whatever power The Christian Science Board of Directors ever had under this Manual to elect editors has ceased. A. Are you asking me if that is so?

Q. If that is so. A. I should say that legally, yes.

Q. Legally, yes. Are there other provisions in the Church Manual which also require the consent of the Pastor Emeritus? A. There are.

Q. For their exercise. Now, pursuing that statement to its logical con-

clusion, what does that do to The Mother Church? A. I cannot answer.

Q. Does it not argue for an extinction of The Mother Church? A. Not at all. It argues for demonstration, according to my understanding of Christian Science.

Q. For demonstration? I see. And of course you are helping to make that demonstration? A. I certainly am.

Q. Now, Mr. Eustace, when did you first become interested in Christian Science? A. I think in 1892.

Q. And where? A. In San Jose, California.

Q. You were interested in the church at San Jose? A. I was.

Q. Are you familiar with the incident of the church at San Jose contributing money to the publishing house fund of The Mother Church in 1909? A. I am.

Q. Will you be good enough to look at this letter and see if you are the author of it? A. I can tell you right now I am not the author of it.

Q. You are not the author of it? A. I may have had part in it. (Inspecting the letter) I evidently did not have part in it, except to vote for it.

The Master—I didn't get that.

The Witness—I evidently did not—oh, this is from the Sunday School. No, I did not have any part in that at all.

Q. It isn't a letter from the Sunday School. It says, "The members and the Sunday School of this church." A. The members of the Sunday School, isn't it?

Q. No. It says, "Members and the Sunday School of this church," and it is signed by the First Church of Christ, Scientist, of San Jose. A. By a committee, yes. Two thousand—yes, that is the amount; that is right.

The Master—I don't get your answer.

The Witness—I did not write that letter, but I was heartily in accord with that letter and voted for it.

The Master—I think the question was whether you wrote it, wasn't it?

The Witness—No, I didn't.

Q. Did the Church vote on the text of the letter itself, or merely on the donation? A. Well, I can't tell you that. I don't know.

Q. You don't know about that? A. No; at least I don't remember, Mr. Krauthoff, about it.

Mr. Krauthoff—In view of that fact I will not press my offer of it.

Q. Well, you were a member of this Church at San Jose, California, you became a member of The Mother Church? A. I did.

Q. And that, I believe, is The Mother Church, the Church of which you became a member? A. It is The Mother Church, yes.

Q. Mr. Whipple spoke of it as a so-called Mother Church. A. Well, that was in the sense of a term for it, wasn't it? The Mother Church is not an official term. That is The First Church of Christ, Scientist, in Boston, Massachusetts.

Q. Well, it is The Mother Church of Christian Science? A. That is the designation of it.

Q. And that is the fact? A. Certainly it is the fact.

Q. In the sixth paragraph of the bill of complaint, I find this allegation, page 37, on the left-hand side:

"In the growth and extension of the Christian Science movement, more than 1800 Christian Science churches and societies have been created and are now in existence. The 'Christian Science Board of Directors,' herein-after referred to as directors, or directors of The Mother Church, are directors of only one of these Christian Science churches: to wit, The Mother Church situated in Boston." Is that your understanding of the relationship of The Mother Church to its branches, that it is only one of the 1800 churches? A. That the directors are the directors of The Mother Church, and that they are not the directors of any of the branch churches.

Q. I appreciate that, but is The Mother Church only one of 1800 churches? A. The Mother Church is The Mother Church.

Q. I ask you the question, is The Mother Church only one of 1800 churches? A. Why, certainly it is only one.

Q. Only one? A. How many would it be? Yes.

Q. Isn't it the one? A. Are you referring to The Mother Church or The First Church of Christ, Scientist, in Boston, Massachusetts? The Mother Church is an expression.

Q. I am referring to one and the same thing, The Mother Church, The First Church of Christ, Scientist, in Boston, Massachusetts. A. Are you referring to it as a building?

Q. I am referring to it as it is, The Mother Church. A. Well, I will have to ask you to explain what it means, then I can answer.

Q. I am asking you now whether the organization, the church organization, of which you are a member— A. Yes.

Q. — the organization that you joined, is that only one of 1800 churches? A. Well, it certainly isn't two, so it must be one.

Q. Is it only one? A. That is all that it is.

Q. It isn't *The* Mother Church of all of them? A. There is no other Mother Church, therefore it is *The* Mother Church.

Q. Of all of them? A. Why, if you are going to say of all of them, yes.

Q. Very well. Why do the churches and societies which are not The Mother Church, why are they called branch churches and societies? A. Because I suppose that was Mrs. Eddy's form of government.

Q. Do you know where she got the word "branch"? A. I do not.

Q. Have you ever read the statement in the Bible, "I am the true vine and ye are the branches"? A. I have.

Q. Did it ever occur to you that is where it came from? A. It is certainly symbolic of that, doubtless.

Q. And the branch abides in the vine and the vine in the branch? A. That is right.

Q. So that each of these branch churches is a branch of The Mother Church? A. It couldn't be anything else.

Q. And they are called authorized branches of The Mother Church? A. I never heard that expression—that is, I may have heard it. I have never seen it as anything—

Q. You never attended a Christian Science service and heard them state that, "This is an authorized branch church of The Mother Church"? A. I perhaps have. I have attended a good many services.

Q. In any event they are branches of The Mother Church? A. Certainly they are.

Q. And when you were a member of this branch church in San Jose, California, you joined The Mother Church in Boston? A. I did.

Q. Did you do it because they were exactly alike? A. I did it because it was a privilege to belong to The Mother Church in Boston.

Q. What is the difference between The Mother Church in Boston and the branch church in San Jose? A. In spirit there should be no difference at all.

Q. Oh, certainly. In spirit there is no difference about anything. A. Yes; that is right.

Q. The spirit is one? A. That is right.

Q. But, now, as applied to the apprehension of the spirit in human consciousness, and as applied to church organization, what is the difference? A. Perhaps you have stated it yourself, if I accept that simile of the branch and the vine.

Q. Very good. Now, referring to the relation of The Mother Church to the branch churches, may I call your attention to Sec. 1 of Art. III of the Manual, page 31: "The Readers of The Mother Church and of all its branch churches must devote a suitable portion of their time to preparation for the reading of the Sunday lesson,—a lesson on which the prosperity of Christian Science largely depends. They must keep themselves unspotted from the world,—uncontaminated with evil,—that the mental atmosphere they exhale shall promote health and holiness, even that spiritual animus so universally needed." So that, Mr. Eustace, we do find in the Manual of The Mother Church provisions that regulate branch churches? A. We certainly do.

Q. You quoted a part of this in your bill, didn't you? A. Part of what?

Q. Part of these provisions about branch churches? A. Yes; we referred to it.

Q. You didn't quote them all? A. We didn't publish the Manual, no.

Q. No, and you didn't quote everything that applied to branch churches.

The Master—I don't find a quotation from the Manual. I find a quota-

tion from a by-law. Perhaps that is the Manual.

Mr. Krauthoff—That is the same thing.

Q. You stated in your bill: "The church By-Laws created by Mrs. Eddy provide for local self-government of churches." Now, then, this Art. III of the Manual on page 31 is headed, "Duties of Readers of The Mother Church and of Its Branch Churches." What is your understanding of the relation of The Mother Church to a branch, in the event that the readers of the branch churches do not obey this part of the Manual? A. I can't answer that question, Mr. Krauthoff.

Q. Oh, but, Mr. Eustace, you stated under oath that these By-Laws provided for a local self-government? A. Yes.

Q. Do you mean by that a local branch church is free to select readers who are not members of The Mother Church? A. You didn't ask me that question.

Q. Well, I ask you that question. A. They are not free to elect any except members of The Mother Church.

Q. Suppose a branch church elected a person to be a reader who was not a member of The Mother Church?

Mr. Whipple—I pray Your Honor's judgment. Does that seem to be profitable, as to what would happen?

The Master—It does not seem to me so.

Mr. Krauthoff—The point, if Your Honor please, is this: One of the important questions in this case is the relationship of The Mother Church to its branches. We are now offering to prove that it is an essential part of this Church Manual that a reader of a branch church is required to be a member of The Mother Church, and that if a branch church had a reader who was not a member of The Mother Church: then The Mother Church would be justified, and required, indeed, to exercise some jurisdiction over that branch church in the premises.

The Master—If there is anything in the Manual to show that, why, you have got it in the Manual. I hardly see what you gain by asking this witness his opinion about it.

Mr. Krauthoff—I am dealing with this witness' allegation in his bill in equity that the Manual provides for local self-government. I am trying to demonstrate that that statement is not true.

Mr. Whipple—Well, if it isn't true, as Your Honor has stated, the Manual will show it.

The Master — The Manual will show it.

Mr. Krauthoff—I am trying to prove he knew it when he signed the bill in equity.

Mr. Whipple—That is a task that you can't accomplish.

Mr. Krauthoff—Well, I have the right to attempt it; that he knew when he signed this bill in equity

this Manual does not provide for local self-government by branch churches.

The Witness—May I answer that question?

Mr. Krauthoff—Yes.

A. On page 70 of the Church Manual you will find the statement, "Local Self-government."

Q. Yes. A. (Reading):

"The Mother Church of Christ, Scientist, shall assume no general official control of other churches, and it shall be controlled by none other."

Q. That is, no official control of other churches. I am now asking you this question—

Mr. Whipple—Just a moment. He hasn't finished. It goes right on.

The Master—Now, is it desirable to read this into the record? It is in the bill now.

The Witness—Yes.

Mr. Whipple—Certainly, but I understand we are undergoing a demonstration, and Mr. Krauthoff is trying to demonstrate that that is not so, although it is in the Manual.

The Master—It would seem to me to be best to avoid a duplication as much as possible, as the record is likely to be very bulky in any event.

Mr. Whipple—We agree to that entirely.

Mr. Krauthoff—And so do we. The provision to which I called Mr. Eustace's attention about the reader was not in the bill.

Mr. Whipple—We do allege in the bill that the directors by appointing those readers and by appointing officers of the branch churches wield a great power and influence, and that they threatened to wield it against these gentlemen. So by implication we stated it, but that is not inconsistent with that local self-government which Mrs. Eddy herself declared.

Q. May I ask, Mr. Eustace, what power The Christian Science Board of Directors of The Mother Church had to appoint readers in branch churches? A. They have no power whatever.

Q. To appoint any? A. Only inferentially.

Q. To appoint anybody in branch churches? A. No.

Q. Well, now, you said "inferentially." Please state it inferentially. A. Inferentially they could by removing a member of The Mother Church. They could inferentially remove him, or, rather, automatically remove him from membership in The Mother Church, as a reader in the branch church.

Q. That is, a reader in a branch church is required to be a member of The Mother Church? A. Yes.

Q. And The Mother Church, acting through this Board of Directors, could expel a man from membership in The Mother Church? A. For cause.

Q. For cause, and if he was so expelled he would not be eligible to be a reader in a branch church? A. That is correct.

Q. And your idea is that the Board of Directors will do that in order to make you cease being a trustee of The Christian Science Publishing Society? A. Well, I wouldn't like to accuse the Board of Directors of doing that.

Q. Well, you have done so in your bill in equity? A. I was going to finish.

Q. Oh, I beg your pardon. A. I would prefer to think of the Board of Directors as I have always endeavored to think of them, as the activity of Principle.

Q. But you have so alleged in your bill? A. I have been compelled to so allege in my bill.

Q. Do you know of any reader in a branch church who has been expelled from membership in The Mother Church because of his support of the trustees? A. No, I do not.

Q. You are a member of The Mother Church today, aren't you? A. I am.

Q. Coming back again to this relationship of The Mother Church to its branches, you are familiar with the rules for motives and acts? A. I am.

Q. Which, under the Church Manual of The Mother Church, is read in branch churches on the first Sunday of each month? A. It is.

Q. You are familiar with Sec. V of Art. VIII of the Manual which relates to the prayers in Christian Science churches? A. I am.

Q. And that applies to branch churches? A. It does. It applies, rather, to everybody, to all Christian Scientists.

Q. That is, the prayers in Christian Science churches shall be offered for the congregations collectively and exclusively? A. Oh, yes, that one; that is right.

Q. You are also familiar with the provision of Sec. XVI of Art. VIII of the Manual, which provides that it shall be the duty of the members of The Mother Church and of its branches to promote peace on earth and good will toward men, and so on to the end of that section? A. I am.

Q. And that applies to branch churches? A. To all.

Q. To The Mother Church and its branches. You are familiar with the provision in the Manual which provides that Christian Scientists shall not report for publication the number of the members of The Mother Church nor that of the branch churches.

Mr. Whipple—I pray Your Honor's judgment. It seems to me in view of what Your Honor has said that it is enough that once for all Mr. Eustace has said he is familiar with the Manual, that we gain nothing except a waste of time by this repetition.

The Master—That is my view of the matter as I have already stated, Mr. Krauthoff.

Mr. Krauthoff—Well, if Your Honor please, I am sorry I didn't make myself entirely clear.

The Master—However, having asked him if he is familiar with these differ-

ent things, do you stop, or do you want to ask him some question?

Mr. Krauthoff—The point I desire to bring out, if Your Honor please, is that Mr. Eustace knows of all these provisions in the Manual showing the relation of The Mother Church to its branches and the relation of The Mother Church to its members.

The Master—Well, we should have assumed that from what he testified to some time ago. Now, do you ask him any—

Mr. Krauthoff—That these provisions of the Manual prove that his statement in the bill over the signature of his counsel and his own oath, that these branch churches have local self-government is not accurate.

The Master—Well, that is a matter for argument.

Mr. Krauthoff—Very well.

The Master—But not for argument between you and the witness.

Mr. Krauthoff—Very well. Then I shall proceed further.

Q. Referring, then, to the constitution of this branch church in San Jose, California, I mean its structure, will you please explain how services in Christian Science churches are conducted. A. They are conducted exactly in accordance with the rules given in the Manual, or, rather, the order of service, not the rules.

Q. And that is found on page — A. At least I suppose they are, Mr. Krauthoff. I haven't been there for some time.

Q. Well, all the branch churches you ever attended followed that, did they not? A. I think they all intended to, at least.

Q. Pages 120 and 121 of the Manual. A. 120.

Q. Now, what is the most striking feature of this service to one who has never attended one before? A. I think you will have to ask some one. I can't tell you.

Q. Well, I mean, take the question of the pastor, who is the Christian Science pastor? A. Science and Health with the Bible, and "Science and Health with Key to the Scriptures" by Mary Baker Eddy.

Q. So constituted by the Manual of The Mother Church? A. So constituted by Mrs. Eddy.

Q. So provided in the Manual of The Mother Church? A. And so provided in the Manual.

Q. Now, may I show you a Christian Science Quarterly (passing a publication to the witness)? A. Yes.

Q. That is the current Christian Science Quarterly? A. That is the one in operation now.

Mr. Krauthoff—I offer that.

Mr. Whipple—Why is this offered? I see no reason for introducing it.

Mr. Krauthoff—Why, it is offered to show the absurdity of the claim that The Christian Science Publishing Society, under a management separate and distinct from that of The Mother Church, can continue to publish the sermons of The Mother Church, and

at the same time claim not to be subject to its orders.

Mr. Whipple—That is exactly what the Deed of Trust says shall be done.

Mr. Krauthoff—That will be a matter of argument.

The Master—Leaving the discussion of that question for the present, what is the present evidence that is offered? I have not been able to make out exactly what the point is now.

Mr. Whipple—I have not, either, but he offers a Christian Science Quarterly, and now—

The Master—That is identified.

Mr. Whipple—Why, yes; he says that it is a copy of it; but what it is—

The Master—That has been identified by the witness. Now, do I understand that it is offered in evidence?

Mr. Whipple—I judge so by his handing it to the stenographer.

Mr. Krauthoff—I offered it in evidence.

The Master—Do you want to see it?

Mr. Whipple—I object to it, because I do not think—

The Master—Will you point out anything in it that you offer in evidence?

Mr. Krauthoff—I offer the whole document.

The Master—The whole number of The Christian Science Quarterly?

Mr. Krauthoff—The whole number of The Christian Science Quarterly.

The Master—Is there objection?

Mr. Whipple—Yes, Your Honor.

The Master—I do not think that you can do that, without pointing out something in particular in it that has a bearing on the case.

Mr. Krauthoff—The whole document has, if Your Honor please. May I make myself clear? This is the sermon which is preached in Christian Science churches. We offer it in evidence to show that it is published by The Christian Science Publishing Society. We offer it in evidence to show that their claim is that they have the right to publish the sermons of The Mother Church, and not be subject to the control of The Mother Church; and we have a right to show that as bearing upon our good faith in removing these trustees that they claim to be our preacher, but not subject to our control.

The Master—The witness identifies that as one number of The Christian Science Quarterly. You offer it to show that it is a publication by The Christian Science Publishing Society. Perhaps there is no objection to that.

Mr. Whipple—Well, not for any such purpose as it has been offered for. It is admittedly The Christian Science Quarterly. The Christian Science Quarterly is admittedly published by The Christian Science Publishing Society; and Your Honor will remember that under the Deed of Trust the publication of that quarterly is imposed as a duty upon the trustees.

The Master—Yes.

Mr. Krauthoff—Yes.

The Master—I think that I will admit that for the present, anyway.

Mr. Whipple—Very well.

[The copy of The Christian Science Quarterly, for the quarter of April, May and June, 1919, Vol. XXX, No. 1, is marked Exhibit 35. R. H. J.]

Mr. Krauthoff—Now, there are two of these Quarterlies that I have shown you—

The Master—Do you desire to offer more than one of them?

Mr. Krauthoff—No, no; only just one.

Mr. Whipple. This is a copy that Mr. Watts let me have.

Mr. Krauthoff—Yes, I understand.

The Master—One is offered and identified. Now, do you wish to offer another?

Mr. Krauthoff—No, no; only one is offered.

The Master—That is what I say.

Mr. Krauthoff—It seems to me that the one I handed to the stenographer, and that he numbered, has passed out of his hands.

Mr. Whipple—No, I do not think he numbered it, that is the trouble.

Mr. Krauthoff—Well, we have this one now, and this is Exhibit 35.

The Master—Now, it has been numbered, and I have admitted it subject to the objection of the plaintiffs.

Q. Now, this Quarterly has in it 13 lessons, and the titles are given in the Quarterly, one for each Sunday—

Mr. Whipple—May we hand an illustrative copy to Your Honor? It is not the same month, I think, but it is of the same character.

Mr. Krauthoff—Is that for another quarter?

Mr. Whipple—I do not know. What is your number?

Mr. Krauthoff—April, May and June.

The Master—It is the same thing.

Mr. Whipple—Of the present year.

Q. Then, in addition to the 13 titles that there are on this Quarterly that is offered in evidence, there are 13 other titles which appear in the Quarterly for January, February and March of 1919? A. Yes.

Q. Twenty-six titles in all? A. I think that that is correct.

Q. Now, these 26 titles are the only titles of the Bible lessons, or the lesson-sermons in Christian Science?

A. They are.

Q. The same titles are used twice a year? A. Twice a year.

Q. Those titles were established by Mrs. Eddy? A. They were.

Q. And these lesson-sermons, or Bible lessons—we will call them Bible lessons—consist of a Golden Text, Responsive Reading, both the Golden Text and the Responsive Reading being selected from the Bible, and then correlative passages from the Bible and Science and Health? A. That is correct.

Q. Divided into six sections? A. Yes.

Q. And they are read by readers? A. They are.

Q. Usually a man and a woman? A. Usually.

Q. In each case the second reader first reads the first section from the Bible? A. That is correct.

Q. And then the first reader reads the correlative passages from Science and Health? A. That is correct.

Q. You understand these passages are thought to be correlative? A. They are.

Q. That means that the quotations from Science and Health have some bearing on the selections from the Bible? A. A commentary, if you like to use that term, on the Bible.

Q. You have served on this Lesson Committee? A. Just a short time, yes.

Q. And you do not take any sentence in Science and Health and match it against any statement in the Bible? A. No; you try to make it intelligible.

Q. In other words, it is the use of intelligence in the preparation of these lessons? A. That is right.

Q. A very important work? A. Very.

Q. It is done now by how many people? A. Six people.

Q. By whom are they selected? A. By the Board of Trustees.

Q. And how much of their time do they give to this work? A. Well, if you asked them, you would probably find that they give a great deal of their time.

Q. And your statement of your position is, Mr. Eustace, that the trustees of The Christian Science Publishing Society have the sole right to select this committee? A. Absolutely the sole right.

Q. And The Mother Church, in whose services these lessons are read, has nothing to say about who shall compose that committee? A. Nothing whatever.

Q. Nor the branch churches? A. Nor the branch churches.

Q. At any time were any members of the Bible lesson committee appointed with the consent of The Christian Science Board of Directors? A. Not that I know of.

Q. Not that you know of. And, so far as you know, none who are now acting have been? A. They have known of it, The Christian Science Board of Directors have.

Q. I beg pardon? A. The Christian Science Board of Directors have known of those who were appointed.

Q. And if The Christian Science Board of Directors objected to any one of the six, that objection would not be controlling with you? A. Any objection that The Christian Science Board of Directors made on anything that had to do with The Christian Science Publishing Society would be given due honor and consideration.

Q. But it would not be controlling in any sense, would it? A. It would not be controlling in any sense of the word.

Q. Very well. Now, in your Bill in Equity, you say in paragraph 4, in describing the two general branches of activity, that, "The conception and

plan of Mrs. Eddy for the promotion and extension of the religion of Christian Science, as taught by her, involved two general branches of activity. The first, the organization of churches. . . . The second, by increasing the circulation throughout the world of publications containing the truths of Christian Science." Now, these Bible lessons, consisting of sermons read in the churches—to which one of these branches of activity do those belong? A. The Publishing Society.

Q. It does not belong to the organization of churches for the study of the Bible and teaching the doctrinal truths of Christian Science, as contained in Mrs. Eddy's textbook of Christian Science, "Science and Health with Key to the Scriptures"? A. The branches organize themselves, and then they study this periodical issued by the Christian Science society.

Q. I understand. But you speak here of two branches of activity. To which branch does it belong—to one or both? A. Which do you mean? The Quarterly? To which does that belong?

Q. Yes. A. It belongs to the Publishing Society.

Q. What do the churches have to do with it? A. Why, it is used in their services.

Q. They buy it? A. They buy it.

Q. And you print it? A. We print it and issue it.

Q. And hence it is within your branch of activity? A. It is within our branch of activity.

Q. Suppose they never read it? A. That would be their loss.

Q. I see. Now, this Quarterly is one of the most valuable things that you have, is it not? A. It is one of the most valuable things we have.

Q. And will you be good enough to state how many copies of this you sell? A. I think about 450,000.

Q. Yielding about a dollar a year apiece? A. That is the price. It does not necessarily yield that.

Q. That is what you get for it? A. No, not quite that, because there is a discount to the churches.

Q. And they are sold to the branch churches and to The Mother Church? A. They are.

Q. And read by many Christian Scientists throughout the world who are not able to go to church? A. They are.

Q. And read by them daily? A. I hope so.

Q. By some of them. In connection with your work in the branch church at San Jose, you became familiar with the provisions of the Manual with respect to the establishment of reading rooms, did you not? A. Yes.

Q. And every branch church, by the Manual of The Mother Church, is required to have a reading room of its own, or to join with some other church in the same vicinity in the establishment of a reading room? A.

I don't know that "the vicinity" means anything.

Q. I mean in the same city. A. In the same city.

Q. That is true, is it not? A. I think so.

Q. These reading rooms in many places are located in the church building itself? A. No, I think not.

Q. In some? A. No; I thought that that had disappeared entirely.

Q. At any rate, they are a part of the church activity itself? A. Certainly they are.

Q. The librarian in each reading room is elected by the local church? A. Yes.

Q. The rent for the reading room is paid by the local church? A. It is.

Q. And the whole management of that reading room is in the hands of the local church? A. I understand so.

Q. With the management of the reading room you have nothing to do? A. Nothing whatever.

Q. You do sell literature to these reading rooms? A. We do.

Q. And, under the Church Manual, the literature of The Christian Science Publishing Society, together with the works of Mary Baker Eddy and the Bible, is the only literature that may be sold in these reading rooms? A. Absolutely.

Q. And assuming that a branch church did not obey that part of the Manual, and undertook to sell literature that was not published by The Christian Science Publishing Society, would you as trustees of The Christian Science Publishing Society, under the Deed of Trust, have any power to compel them to buy your literature? Mr. Whipple—I pray Your Honor's judgment as to that. These hypothetically possible punishments for things that have nothing to do with this issue—

Mr. Krauthoff—They are neither hypothetical nor impossible.

Mr. Whipple—Well, they have nothing to do with this issue, I think. I ask to have it excluded.

The Master—If there is any custom or usage about it you might show that, perhaps.

Mr. Whipple—Yes; but that is not the question.

The Master—The answer to a purely hypothetical question I do not think can be of any benefit to us.

Mr. Krauthoff—The point that I tried to make, if Your Honor please, is this—

Mr. Whipple—Well, I will waive it rather than have a discussion. Perhaps it will take less time, and I am merely trying to save time.

The Master—Go on.

The Witness—May I have the question?

The Master—Read the question.

(The question is read as follows: "And assuming that a branch church did not obey that part of the Manual, and undertook to sell literature that was not published by The Christian Science Publishing Society, would you

as trustees of The Christian Science Publishing Society under the Deed of Trust have any power to compel them to buy your literature?")

A. None whatever.

Q. That depends upon the enforcement of the Church Manual? A. That would depend on their being Christian Scientists themselves.

Q. And upon the Church Manual? A. I suppose that would guide them in it.

Q. That is, Christian Scientists generally are guided by the Church Manual? A. They certainly ought to be.

Q. What control have The Mother Church and the branch churches over the literature exclusive of the works of Mary Baker Eddy that is sold in their reading rooms? A. The Mother Church, you say?

Q. What control has The Mother Church, or its branches, over the Christian Science literature, exclusive of Mrs. Eddy's works, that is sold in the reading rooms of the branch churches and societies of The Mother Church? A. None, whatever.

Q. None whatever? A. Except as Christian Scientists, if it was not correct Christian Scientists' literature, they would very quickly report it as incorrect, and why it was incorrect, and it would doubtless be changed at once.

Q. That is, it would be reported to the trustees? A. To the trustees.

Q. But the churches as such have no control over the literature that is sold in their own reading rooms? A. Not that I know of.

Q. Not that you know of. In your work as a member of a local church, you became interested in Sunday schools, did you not? A. I was indirectly interested, but never actively.

Q. The church had a Sunday school? A. The church had a Sunday school, yes.

Q. And there is a provision in the Church Manual about Sunday schools? A. There is.

Q. And about how Sunday school scholars shall be taught? A. There is.

Q. Coming back to this subject of reading rooms, for the moment. In the literature of The Christian Science Publishing Society, found in the Journal and the Sentinel, there are a great many articles on the subject of reading rooms, are there not? A. I think from time to time there are articles.

Q. Showing their importance to the Christian Science movement? A. Certainly.

Q. And pointing out the literature that is to be sold in them? A. I suppose so. I have not any direct article in mind in supposing it.

Q. Would it be possible to write an article on the proper conduct of a reading room without referring to the Church Manual? A. No; I do not know that anyone would. I do not know about that.



Q. You have not tried it? A. No, I have not tried it.

Q. Now, as to the Sunday schools. Those are provided for, I think you said, in the Church Manual? A. They are.

Q. Each branch church and The Mother Church have a Sunday school? A. They do. At least I suppose so.

Q. As provided in the Church Manual? A. Yes, sir.

Q. And you have a great many articles in the periodicals of The Christian Science Publishing Society, as you call them, on the Sunday schools? A. If there are a great many. I didn't know it, but then I suppose there are occasionally some.

Q. Well, there are some? A. Yes, some, I think.

Q. And these articles refer to the Church Manual? A. I will take your word for it.

Q. Does The Mother Church have what is known as a Board of Lectureship? A. I believe it does.

Q. You believe it does? A. Yes.

Q. And you have heard of it? A. I have.

Q. And that is provided for in the Church Manual? A. It is.

Q. The lecturers, the members of this Board of Lectureship, are appointed by The Mother Church? A. Appointed by the Board of Directors, I believe, yes.

Q. Yes, for The Mother Church? A. Well, I do not recognize, and I do not want to be understood as recognizing, that the Board of Directors is The Mother Church.

Q. Nor the governing body of The Mother Church? A. The directors are directors of The Mother Church.

Q. And when the Board of Directors appoint a lecturer, he is the lecturer of The Mother Church? A. He becomes by virtue of that appointment a lecturer of The First Church of Christ—a member of the Board of Lectureship of The First Church of Christ, Scientist, of Boston, Mass.

Q. Of course the trustees are not the Publishing Society either, are they? A. Well, that is a little different. The Board of Trustees is The Christian Science Publishing Society.

Q. Coming back, then, to this Board of Lectureship—are any lectures on Christian Science delivered in any of the branch churches or societies, except through a member of the Board of Lectureship of The Mother Church? A. No, not that I know of.

Q. Not that you know of? A. Yes.

Q. These lectures are published by The Christian Science Publishing Society? A. At times.

Q. At times? Where do you get the manuscript from which to publish them? A. Usually we take it from a lecture given in The Mother Church.

Q. Who delivers the lecture to you? A. I do not know. It goes to our Editorial Department.

Q. You are not advised that those come to you from the clerk of The

Mother Church? A. No, but that would be a very natural way for them to come, and a very correct way.

Q. Under your interpretation of the Deed of Trust, as you are now advised, you are not limited in the publication of lectures to lectures delivered by the Board of Lectureship of The Mother Church? A. We would not publish any lecture that was not.

Q. I mean, you have the power to do it, as you understand it? A. We have only a power to conduct those publications according to Christian Science.

Q. I understand. But what, under the Deed of Trust, limits you in the publication of pamphlets? A. I really do not know that there is any, but we have to be Christian Scientists.

Q. Well, I appreciate that. And so, being Christian Scientists, you do not print any lectures on Christian Science except those delivered by the lecturers of The Mother Church? A. We would not.

Q. You have not? A. I have not; I would not.

Q. There is in connection with The Mother Church a Board of Education? A. There is.

Q. And you have attended that Board of Education? A. I have had that privilege.

Q. And only members of The Mother Church may attend that? A. That is true.

Q. So that you are a practitioner of Christian Science, I believe? A. I am.

Q. And devote a part of your time to that? A. All the time I can.

Q. All the time you can? And as a practitioner of Christian Science you have your name in the list of practitioners in The Christian Science Journal? A. I have.

Q. Only members of The Mother Church may appear in that list? Is not that true under a rule of the Publishing Society? A. Yes, under the rule of the Publishing Society.

Q. There is nothing in the Deed of Trust that regulates that, is there? A. Not that I know of.

Q. Nor in the Manual? A. Except to be good Christian Scientists.

Q. I understand. And being good Christian Scientists, you have not up to the present time put the name of anybody in that list who was not a member of The Mother Church? A. We certainly have not.

Q. Are you legally, by the laws of the Commonwealth of Massachusetts, restricted to that? A. Why, I should say not, except in so far as we are good Christian Scientists and therefore would not do it.

Q. This list of practitioners prior to April, 1919, carried with it the statement at the head of it: "The practitioners whose advertisements appear in these columns are members of The Mother Church, The First Church of Christ, Scientist, in Boston, U. S. A., and are amenable to its by-laws." For many years, you understand, that The Christian Science Pub-

lishing Society passed on these applications for advertisements in The Journal of Practitioners and Nurses? A. As far as I know always until just lately.

Q. Until just lately? A. And we are still passing on them absolutely for the advertisement.

Q. I don't understand that. A. We are still passing on them, so far as the advertisement is concerned; but we have for the last few months allowed the Board of Directors to make to us the recommendation as to who they considered fitted to have an advertisement.

Q. And that advice of the Board of Directors is not controlling on the trustees? A. If you mean it is controlling since the agreement was made, and the Board of Directors broke it within 48 hours, almost, I do not know that we are compelled by honor to accept it any longer.

Q. Now, the agreement was in writing, was it not, on the 1st of February, 1919? A. The agreement was a memorandum agreement which was part of a reconciliation, and which was promptly broken.

Q. Now, let me get back to that. Isn't there a clause in that memorandum which says that, whatever the trustees did, prior to Feb. 1, 1919, with respect to the recognition of practitioners and nurses, and churches and societies, was not done by the trustees under the Deed of Trust, but was done by the trustees at the request of the Board of Directors? A. Quite right.

Q. So that you were not acting under the Deed of Trust? A. We were only acting so far as what we published in our periodicals was concerned—was correct.

Q. But in passing on practitioners and nurses, and churches and societies, you were not acting under the provisions of the Church Manual? A. If you mean—

Q. I mean, you were not acting under the Deed of Trust? A. If you mean, Mr. Krauthoff, that we had never arrogated to ourselves the right to determine whether a church should be a branch church of The Mother Church, or a practitioner, or an individual Christian Scientist, be allowed to become a public practitioner, no, we have never done that. We have only passed on the churches and on the practitioners to find out for ourselves whether their advertisement was a fit and proper advertisement to carry in The Christian Science Journal.

Q. Well, Mr. Eustace, prior to the 1st day of February, 1919, did not the trustees of the Publishing Society undertake to say whether a practitioner could have a card in the Journal? A. Ah! Whether they might have an advertisement in the Journal, yes.

Q. Certainly. A. Yes.

Q. You, prior to the 1st day of February, 1919, passed on that question? A. We did. We still do.

Q. Well, you do not pass on it now

exactly the way you did then? A. It is only the form of passing on it that is changed.

Q. Prior to the 1st day of February, 1919, your practice, as I understand it, was that the application came direct from the practitioners to the trustees? A. It did.

Q. And the trustees then stated that if the trustees declined to give a practitioner a card in the Journal that was an end of it? A. That was—if we could not accept their advertisement it was for good and sufficient reasons, and we would not accept it.

Q. And The Mother Church had no power to see that one of its members got a card in the Journal? A. No, it had no power.

Q. And the Journal is the official organ of The Mother Church? A. That is right; it is the official organ.

Q. Published by The Christian Science Publishing Society? A. Yes, but that was nothing to do with that.

Q. I understand. Now then, this list of practitioners is used in reading rooms of the branch churches of The Mother Church? A. Is it, do you say?

Q. Isn't it? A. I suppose it is.

Q. That is, you do not know that people go to the branch church reading rooms asking for a practitioner and are given a copy of the Journal? A. I know in every town there are probably as many active workers who have not their cards in the Journal, practicing in Christian Science, as perhaps have their names in the Journal.

Q. Well, does a card in the Journal mean anything? A. A card in the Journal means that those people are ready to devote their entire time to the practice of Christian Science and are at the service of the public night or day.

Q. Your card is in the Journal? A. It is.

Q. There is a provision in the Manual about cards in the Journal, is there not, about the time that they are required to give—that practitioners are required to give? A. That is in reference to those holding official positions.

Q. Section 9, on page 82:

"Members of this Church who practice other professions or pursue other vocations, shall not advertise as healers, excepting those members who are officially engaged in the work of Christian Science, and they must devote ample time for faithful practice."

Are you officially engaged in the work of Christian Science? A. I have conceived of my work as being officially engaged in Christian Science work.

Q. What office do you hold in Christian Science work? A. I hold the office of trustee of The Christian Science Publishing Society, established by Mrs. Eddy under a Deed of Trust.

Q. Now, coming back to this agreement of February 1, 1919. That

agreement was read in evidence by Mr. Whipple in Governor Bates' letter to Mr. Whipple. Did I understand you to say that that agreement, if we may so call it, is no longer operative? A. Mr. Krauthoff, if I expressed my opinion, I think it was one of the most disgraceful and most dishonorable acts that could possibly have been performed by any one set of men with another set.

The Master—One moment, Mr. Witness. You are asked whether in your opinion it is any longer operative.

The Witness—I say, on account of its being broken that it is not operative any longer unless we choose to allow it to be so.

Mr. Krauthoff—I move that the previous answer of the witness be stricken out, if Your Honor please, as not responsive.

Mr. Streeter—I object to it being stricken out. I do not see why it should be stricken out.

The Master—I think it was irresponsible to the question. I do not see why it should not be stricken out.

Mr. Whipple—I think it is clear, if Your Honor please, that Mr. Eustace mistook the question. I think that is why his answer was beside the mark.

The Master—But it is not at all unnatural that he should have answered as he did.

Mr. Whipple—I think he thought he was asked about it.

The Master—Witnesses find it difficult to confine their attention to the precise question.

Mr. Whipple—Yes, exactly.

Mr. Bates—May it be understood, Your Honor, that when an answer is stricken out that the reporters are not to have it printed? I have noticed that they have printed the whole proceedings in one or two instances just the same. The effect of striking it out is so that it shall not be on the record and not published in the record.

Mr. Whipple—No. I understand that whatever is said goes into the record. The striking out means that it will not be considered by the tribunal.

Mr. Bates—I think it should be stricken out.

Mr. Whipple—Otherwise your record is not complete, unless what happened is transcribed.

Mr. Bates—I will leave it to Your Honor's judgment whether it should appear in the record. Your Honor understands this is being published verbatim as an official record in the press.

The Witness—Your Honor, may I ask that it be stricken out?

The Master—One moment. I think not now. Isn't that all governed by agreement of counsel?

Mr. Streeter—I did not understand Your Honor.

The Master—Isn't all that matter, what shall appear in so much of the stenographer's record as printed in the papers—isn't that all governed by the counsels' agreement? Have I anything to do with it?

Mr. Streeter—I do not see how you

have. And not only that, but with reference to any such response as was made here, whatever Your Honor may order about its being stricken out—suppose you ordered it be stricken out, that means that Your Honor does not consider it.

The Master—Does not remain any longer a part of my record.

Mr. Streeter—Not a part of your record, but it cannot go out of the stenographer's record.

The Master—Of the official record.

Mr. Krauthoff—We do not press the motion to strike out, if Your Honor please, if Mr. Eustace wants it.

Mr. Streeter—We should object to having the record mutilated by making a hiatus here.

Mr. Whipple—The Court has ordered it stricken out. Do you want it stricken in again?

Mr. Krauthoff—Oh, no, I am quite content to regard the incident as closed.

Mr. Whipple—That is, you started to say something about not pressing your motion to strike out. I just wanted to know where you were going to definitely land.

Mr. Krauthoff—I did not know at the moment that it had been stricken out.

Mr. Whipple—Well, all right.

Q. Mr. Eustace, coming back to this memorandum of February 1, 1919. Do you understand that the arrangement or agreement, as we call it, about the practitioners and nurses, and the churches and the societies, was a part of one comprehensive plan of settlement and unless the whole affair was adjusted that those steps were nothing? A. Why, I certainly took it as a part of the adjustment.

Q. Of the adjustment? A. Yes.

Q. And you distinctly stated in that adjustment, "This work has heretofore been done by the trustees at the request of the Board of Directors and by their authority, and not by the trustees under the Deed of Trust." A. We did.

Q. That was added by your counsel? A. It was.

Q. And that statement is true? A. That statement is inferentially true; they had never made the request of us at all to do it.

Q. Well, this statement that you did not do it under the Deed of Trust is true? A. Yes, that part of it.

Q. So that under the Deed of Trust it is no part of your duty to determine whether a branch church shall have a card in the Journal, is it? A. Oh, I didn't say any such thing. Whether they shall be a branch church, not whether they shall have a card in the Journal. That absolutely is our duty and we still maintain that, and we still do it.

Q. Then, as I understand it, a branch church may be formed in accordance with the Manual and be recognized as such by The Mother Church, and the Board of Trustees will still be free to decide whether or not that

church shall have a card in the Journal? A. Absolutely.

Q. And The Mother Church has no control over that? A. No; no control in the sense in which you are using the word control.

Q. In other words, if a branch church is recognized by The Mother Church you do not put its card in the Journal unless you decide that it is proper to put it in? A. You see, Mr. Krauthoff, we have such a high regard and respect for The Mother Church and its Board of Directors that we are very glad for them to do that work and relieve us of a great deal of it, and therefore we are glad to accept their D. K. on any branch church or practitioner or nurse.

Q. In other words, when The Mother Church recognizes a branch church it is acting as an agency of the Publishing Society? A. That is right. It is very nice to have them do that.

Q. What part of the Publishing Society work relates to the organization of churches? A. What part?

Q. In your Bill in Equity you divided the two branches of activities that Mrs. Eddy established; first, the organization of churches. A. That is under the Manual.

Q. No; but you have stated in your bill, "The conception and plan of Mrs. Eddy for the promotion and extension of the religion of Christian Science as taught by her, involved two general branches of activity. The first, the organization of churches." A. Well, that is The Mother Church and the branch churches.

Q. That is The Mother Church and the branch churches? A. Yes.

Q. Now, then, a card in the Journal is accepted as evidence of the organization of a church? A. It is.

Q. And then you say that notwithstanding The Mother Church has recognized it, you, the Publishing Society, have a right to determine whether a branch church shall go in the Journal? A. Perhaps you forget that it is not the advertisement in the Journal that constitutes the branch as a branch of The Mother Church.

Q. Isn't the advertisement in the Journal recognized in the Manual? A. Certainly it is.

Q. And to have a card in the Journal, isn't every church in the Journal required to recognize every other church in the Journal? A. It is.

Q. Are you at liberty to put any church in the Journal that is not recognized by the Board of Directors? A. By the Board of Directors?

Q. Of The Mother Church. A. Why, what do you mean? What are you referring to?

Q. I am not referring to any particular thing. I am asking you.

The Master—He has asked you a question. Now try to answer it directly, if you can.

Q. Suppose people organizing a branch church apply directly to the Publishing Society to be a branch church of the Publishing Society?

A. Well, we don't have branch churches.

Q. Oh, I beg pardon. A. The branch churches are organized under the Manual; it is nothing to do with the directors or trustees. They have nothing to do with that. The Manual declares exactly how the branch church shall be organized.

Q. Who determines whether a branch church has been organized in accordance with the provisions of the Manual? A. The branch church itself determines that.

Q. Without any action of The Mother Church? A. Without any action of The Mother Church whatever.

Q. So that your theory now is that a branch church can be a part of The Mother Church without The Mother Church having anything to say about it? A. There is nothing in the Manual that says that The Mother Church has got to do it.

Q. I didn't ask you what was in the Manual, I asked you what your theory was. A. I say that a branch church must organize according to the Manual or it is not a branch church.

Q. Who decides whether it is organized in accordance with the Manual? A. It must decide that question itself.

Q. And The Mother Church can be the mother of a child without having anything to say about recognizing it as such? A. You see, the children are born—

Q. Well, I am asking you that question.

Mr. Whipple—I pray Your Honor's judgment; that is not a real question. It is rather a weak attempt at an argument by illustration as between a mother and a child.

The Master—It is a good deal more argument than question. Let us see if you cannot put it in the form of a question that he can answer directly.

Q. Can a branch become a branch of The Mother Church without any action on the part of The Mother Church? A. Yes, according to the Manual it can.

Q. That is your present interpretation? A. That is my present interpretation.

Q. For many years you spent a good deal of time determining whether branches should be recognized or not? A. Whether they should be advertised—not recognized at all.

Q. Should be advertised? A. Yes.

Q. And do you not think that that advertisement was a recognition? A. It was an advertisement, and an advertisement alone.

Q. Was that all? A. That is all.

Q. Wasn't it accepted as the only evidence of the existence of a branch church? A. I cannot tell you what it was accepted as. I only know what animated my thought in everything that I did in connection with it.

Q. What did you do when you passed on a branch church's application for a card in the Journal? A. I

endeavored to find out that it was thoroughly in accord with the teachings of Christian Science.

Q. And what else? A. That is all.

Q. Did you endeavor to find out how many people were joining it and belonged to it? A. Oh, yes. Of course there are certain things that we looked into to see if it was properly organized.

Q. And whether there was any room in the town for two of them? A. Any what?

Q. Whether there was room enough in a city for two churches? A. Yes.

Q. Or, to state it differently, whether the organization of two churches would weaken an existing church. A. Oh, we asked that question.

Q. And to what extent they subscribed for the periodicals of The Christian Science Publishing Society? A. That question was asked for the purpose of determining what they were as Christian Scientists—how they felt with regard to things.

Q. That is, the test of being a good Christian Scientist was determined to some extent by the number of periodicals of The Christian Science Publishing Society that they purchased? A. Not at all. It indicated their wide-awakeness to the—

Q. I do not mean in a commercial sense. Do not misunderstand me. I mean the test of their growth and development as Christian Scientists. A. It indicated that, yes.

Q. Now, you say, then, after all that, that your present understanding is that neither the trustees nor the Publishing Society nor The Mother Church has anything to say about the establishment of a branch church? A. I do.

Q. Who has to say whether their card shall go in the Journal or not? A. The trustees.

Q. And if the trustees refuse to put the card of a branch church in the Journal, what is the remedy of the branch church? A. Why, they would have to take it up, I suppose, with the trustees and determine what was the best thing to do.

Q. I want to call your attention to this language of the agreement: "The recognition by the directors of the church or society as a branch of The Mother Church shall be accepted by the trustees, for the purposes of publication, as conclusive evidence of the fact that such branch church or society has been properly organized as a branch church or society." A. Mr. Krauthoff, that is—

The Master—What do you ask him about that?

Q. I ask you if that agreement is now recognized by The Christian Science Publishing Society as being still in force and effect? A. All agreements—no agreement is now in force.

Q. No agreement is now in force? A. No agreement that we made.

Q. No agreement about the rec-

ognition of churches or societies? A. Only in so far as we do it.

Q. As Mr. Whipple stated in open court, it is a matter of comity? A. It is a matter of comity, entirely.

Q. And that applies to practitioners and nurses. The Mother Church has no control over anything that goes into the official organ of The Mother Church? A. No control.

Q. No control, nothing to say about it, except advisory? A. Advisory, altogether.

Mr. Whipple—Mr. Krauthoff, wouldn't you like to call attention to Sec. 6 of the By-Laws as to organizing churches?

Mr. Krauthoff—I shall be delighted to.

Mr. Whipple—Art. XXIII, Sec. 6, at page 72.

Mr. Krauthoff—I shall be very glad to.

Mr. Whipple—Why not read it and see what it says?

Mr. Krauthoff—(Reading):

"A member of this Church who obeys its By-Laws and is a loyal exemplary Christian Scientist working in the Field, is eligible to form a church in conformity with Sect. 7 of this Article, and to have church services conducted by reading the Scriptures and the Christian Science textbook. This Church shall be acknowledged publicly as a Church of Christ, Scientist. Upon proper application, made in accordance with the rules of The Christian Science Publishing Society, the services of such a church may be advertised in The Christian Science Journal. The branch churches shall be individual, and not more than two small churches shall consolidate under one church government. If the Pastor Emeritus, Mrs. Eddy, should relinquish her place as the head or Leader of The Mother Church of Christ, Scientist, each branch church shall continue its present form of government in consonance with The Mother Church Manual."

"Sec. 7. A branch church"—

Mr. Whipple—Well, that is headed, "Requirements for Organizing Branch Churches."

Mr. Krauthoff—It is referred to in Section 7.

"A branch church of The First Church of Christ, Scientist, Boston, Massachusetts, shall not be organized with less than sixteen loyal Christian Scientists, four of whom are members of The Mother Church. This membership shall include at least one active practitioner whose card is published in the list of practitioners in The Christian Science Journal."

Mr. Whipple—There seems to be in the audience here a little doubt, audibly expressed, as to what Mr. Eustace had testified to, and we thought it would be well to call attention to the statement itself.

Mr. Krauthoff—It is very natural that that doubt should be expressed.

Mr. Whipple—Not after they had read their Manual. It is only igno-

rance of the Manual that would create such a doubt.

Q. Mr. Eustace, you spoke this morning of a difference of opinion which arose on November 20th, 1915, and I would like to call your attention to a memorandum which you then prepared and ask you if you prepared it. A. November 20th—what is the question?

Q. Did you prepare that? A. I think I possibly did. In fact, I am quite sure that I did.

Q. And that was used in a discussion with the directors at that time of your respective statements of your position? A. Never that I know of.

Q. Was not that used with the directors? A. Never that I know of. I never heard it used.

Q. Does it state your position at that time? A. I would have to read it carefully through to see whether it does or not. I can give you an explanation of how I came to prepare that, if it is necessary.

Q. I should be very glad to have you tell me how you prepared it. A. The question had come up with the Board of Trustees—

The Master—Is that paper to be offered in evidence?

Mr. Krauthoff—Yes, if Your Honor please.

The Master—Have you shown it to the opposing counsel?

Mr. Whipple—Well, I can't see how it is admissible as it now stands. It is not part of the records. It is a memorandum prepared by Mr. Eustace, as I understand, which he never presented to the directors in any way, in 1916.

Mr. Krauthoff—1915.

Mr. Whipple—1915.

Mr. Krauthoff—It is offered as a part of the cross-examination of this witness, if Your Honor please, to show what his understanding was on Nov. 20, 1915.

Mr. Whipple—I don't think that is material at all. All that we have attempted to show is that there was a controversy and how soon it started, but the position that they took is of no consequence. I don't know what is in it.

The Master—All we know about that paper at present is that it is a paper which the witness says he prepared in 1915.

The Witness—I think I prepared—

The Master—One moment. Is there anything more than that, Mr. Krauthoff?

Mr. Krauthoff—That is all he states. Now, we offer it in contradiction of his direct examination.

Mr. Whipple—What part of it?

Mr. Krauthoff—The statement that at all times The Christian Science Publishing Society was separate and distinct from the control of The Mother Church.

Mr. Whipple—Well, any paper that he prepared does not bear upon that subject, because the separation or the distinction between the two lines of

activity which ought to be coordinated was created by Mrs. Eddy, not by this gentleman.

The Master—Suppose he prepared it and it never got out of his hands, would you have the right to use it?

Mr. Krauthoff—Why, yes, as a statement of his own position. But it did come to the directors. We will prove that without any question. We do have the right on cross-examination to show him any paper that he prepared as bearing upon his direct examination.

The Master—That depends, doesn't it, somewhat on the circumstances under which and the purpose for which he prepared it? At present we know nothing more about that than that he says, "I prepared it."

Mr. Streeter—If Your Honor please, will you indulge me a single suggestion? Representing Mr. Dittmore here, we are nominal defendants, or we are defendants in this case. Now, to this particular matter Mr. Eustace has testified, and he has testified pretty strongly, as to a certain position that he has taken. He has left absolutely no doubt as to his position or his claims. Now, Mr. Krauthoff presents to him a paper, which he admits that he wrote in 1915. He prepared it, he admits that he prepared it. I have not seen the paper, but I understand that the paper contradicts what he has said here now. That is, his views then were in contradiction of what they are now, and that the paper will so show. If that is so, if Mr. Krauthoff has stated it correctly, I feel that the paper ought to be admitted.

Mr. Whipple—Will you call attention, if you please, to anything that contradicts anything that Mr. Eustace has said?

Mr. Krauthoff—Why, the whole document there.

Mr. Whipple—Pardon me. Point out anything, I said.

The Master—Pause a moment. I still understand you offer it in evidence?

Mr. Krauthoff—I offer it in evidence.

The Master—Without undertaking to show anything further about it?

Mr. Krauthoff—Well, if Your Honor please, Mr. Whipple asked me a question and I stated that the whole document is in conflict with the—

The Master—Well, whether it is or not, do you undertake to show anything further about it except what you show now?

Mr. Krauthoff—Except Mr. Eustace's statement that he prepared it.

The Master—You stop with that, do you?

Mr. Krauthoff—That is all I can show now.

The Master—Very good.

Mr. Streeter—If Your Honor please, he has already stated that it came from Mr. Eustace to the Board of Directors.

The Witness—It did not. Oh, excuse me.

The Master—I did not, and do not now understand he has said so.

Mr. Streeter—Mr. Krauthoff said so.

Mr. Whipple—Oh, well, he isn't testifying.

Mr. Krauthoff—I don't regard that as testimony.

Mr. Whipple—Oh, no. None of us do.

Mr. Krauthoff—That is on a parity with all the statements of counsel.

The Master—Now, is the paper objected to?

Mr. Whipple—Yes, Your Honor, because we say it is not contradictory, and on other grounds.

The Master—Is that the only ground of objection?

Mr. Whipple—I say, on all grounds, on the other ground, largely, I must confess, so that we may shorten this record. My reasons for objection are so that we may not clutter up this record, but the legal ground is that it is not made admissible by the testimony.

Mr. Streeter—If I may ask, how can Your Honor determine whether that paper contradicts Mr. Eustace without taking it into the record? Mr. Krauthoff is saying that it does contradict him and my good brother is saying that it does not.

The Master—I do not think I should undertake to exclude it on that ground, but the evidence stops here, that he prepared it. For anything I know he may have changed his mind the next day before he ever showed it to anybody or made any use of it.

Mr. Krauthoff—We are entitled to show that he prepared it and those were his views at the time he prepared it. Now, if the next day he changed his mind, he can say that he changed his mind next day.

Mr. Whipple—Well, I will shorten this controversy by saying that you may read it, if you want to, and then let Mr. Eustace state the circumstances under which it was prepared. I am not saving time by objection, and that is all I want to do is to save time. You may have anything in you want.

[Document entitled "Memorandum" is marked Exhibit 36. W.H.M.]

Mr. Whipple—Now, read it and point out the contradiction when you get through.

Mr. Krauthoff—All right.

[Exhibit 36 is read by Mr. Krauthoff as follows:

[Exhibit 36.]

Memorandum

The question of The Christian Science Publishing Society's passing upon all cards for advertisement in The Christian Science Journal and Der Herold der Christian Science, whether these advertisements are of churches, societies, Christian Science practitioners, or nurses, must be viewed from the standpoint of what we have in the Church Manual of The First Church of Christ, Scientist, in Boston, Mass., and also in the Deed of Trust, constituting the Board of Trustees of

date January 25, 1898. These seem to contain the data on which all questions concerning this subject are given.

First of all, in constituting the Board of Trustees, it seems evident that Mrs. Eddy intended that it should be an important, deliberative body, capable of thoroughly conducting all work connected with the publishing of the literature of the Christian Science movement other than her own publications, for Mrs. Eddy says in the Deed of Trust: "I have asked for a small Board of Trustees, and as I believe a strong board; one is a business man, another a doctor, and still another a scholar." The constitution and designation of this board and its members would indicate that it had a threefold office: First business; second, metaphysics; and third, scholarship. There must have been a motive in this choice, indicating that it was not just one phase of activity, namely business, that was to be the purpose of the board, but that its activities would be much more far-reaching, and would have to include metaphysics and scholarship.

In the Deed of Trust there occurs this statement in connection with the trust: "Upon the following perpetual and irrevocable trust and confidence." Therefore, the constitution of the Board of Trustees and the trust committed to its care—namely, to include business, metaphysics, and scholarship—is perpetual and irrevocable. There also occurs in the Deed of Trust the statement that "Said trustees shall energetically and judiciously manage the business of the Publishing Society on a strictly Christian basis, and upon their own responsibility, and without consulting me about details, subject only to my supervision, if I shall at any time elect or desire to direct them," thus throwing the responsibility for the entire conduct of The Christian Science Publishing Society, with its trust of the periodicals, etc., on the Board of Trustees, and providing that this trust shall be conducted "on their own responsibility."

Also, under Sec. 8 of the Deed of Trust, is the explicit direction that "Said Trustees shall have direction and supervision of the publication of said Quarterly, and also of all pamphlets, tracts, and other literature pertaining to said business, using their best judgment as to the means of preparing and issuing the same, so as to promote the best interests of the Cause." The two terms here used, "preparing and issuing the same," would indicate that the preparation of the material to be used in everything to do with The Christian Science Publishing Society was to be in the hands of the Board of Trustees, as well as the actual issuing of the literature. The terms "direction and supervision" also imply two specific acts, which should be taken into consideration.

In turning to the Church Manual

we find page 27, Sec. 6 of Art. I, that the Deed direction that "The business of The Mother Church shall be transacted by its Christian Science Board of Directors," and on page 79, in Sec. 1 of Art. XXV, is the explicit direction that "The Board of Trustees . . . shall hold and manage the property therein conveyed, and conduct the business of 'The Christian Science Publishing Society' on a strictly Christian basis, for the promotion of the interests of Christian Science." These two by-laws indicate that the business of The Mother Church and the business of The Christian Science Publishing Society are, in a sense, two separate affairs, and managed by their own boards, although of course working for the same purpose.

"In the Deed of Trust, a statement regarding The Christian Science Journal is given as follows: 'I also reserve the right to withdraw from said trust, if I shall so desire, the publication of The Christian Science Journal, but if I do not exercise this reserved action, then said Journal shall remain a part of the trust property forever.' Again in Section 12 Mrs. Eddy states, 'Upon my decease, in consideration of aforesaid, I sell and convey to said trustees my copyright of The Christian Science Journal, to be held by them as the other property of said trust.' On page 81 of the Church Manual, in Sec. 6 of Art. XXV, is the by-law: 'Periodicals which shall at any time be published by The Christian Science Publishing Society, shall be copyrighted and conducted according to the provisions in the Deed of Trust relating to The Christian Science Journal.' This by-law plainly puts all periodicals under the same régime as The Christian Science Journal, which is, according to the Deed of Trust, owned and published by The Christian Science Publishing Society—in other words, by the Board of Trustees. Therefore, these periodicals necessarily come under the provisions of Sec. 8 of the Deed of Trust, wherein the direction and supervision, and the preparation and issuance of literature in the trust, is in the hands of the trustees.

"In Sec. 8 of Art. XXV, on page 81 of the Church Manual, is this statement, under the heading, 'Books to Be Published': 'Only the Publishing Society of The Mother Church selects, approves, and publishes the books and literature it sends forth. If Mary Baker Eddy disapproves of certain books or literature, the society will not publish them. . . . A book or an article of which Mrs. Eddy is the author shall not be published nor republished by this society without her knowledge or written consent.' The term 'literature' here used, evidently includes articles by Mrs. Eddy, indicating that an article by Mrs. Eddy, published in one of the periodicals, is not to be published or republished without her consent. The implication from this might be that the term

'literature' applies to those societies as a whole, especially who do it. with Sec. 7 of Art. I, on page 7 of the Church Manual, in which is stated: 'It shall be the care of the Christian Science Board of Directors to provide a suitable building for the publication of The Christian Science Journal, Christian Science Sentinel, Der Herold der Christian Science, and all other Christian Science literature published by The Christian Science Publishing Society.' The use of the term 'other' Christian Science literature implies that the Journal, Sentinel, and Herold are Christian Science literature, and therefore come under the term used in the Deed of Trust, Sec. 8, and in Sec. 8 of Art. XXV of the Church Manual, on page 82: 'the books and literature it sends forth.' If we take the term 'literature' here in its broad sense, and allow it to include the periodicals of the Christian Science movement, then it must necessarily follow that the Christian Science periodicals, and all that goes into them, must be selected, approved, and published by the Publishing Society—in other words, by the Board of Trustees.

"Now with regard to the advertisements appearing in these periodicals,—it is difficult to separate an advertisement appearing in The Christian Science Monitor from an advertisement appearing in The Christian Science Journal or Der Herold der Christian Science. One of course is a business advertisement and the other is a personal advertisement, but both are advertisements, and both appear in the Christian Science periodicals. If one is subject to the supervision and acceptance of the Publishing Society, it seems a natural deduction that the other is equally so, since they are all, according to the Manual (Sec. 6 of Art. XXV) under the same régime. This being the case, then the question of the acceptance of a practitioner's advertisement would certainly come under the supervision of the Board of Trustees.

"While there is no specific direction on this point of a practitioner's advertisements in the Church Manual or in the Deed of Trust, an advertisement is surely a part and parcel of the literature sent forth, and if the rejection or acceptance of reading matter is under the supervision of the Publishing Society, then it would certainly seem that the advertisements, from whatever source they may come, are equally so, and that this is the intention of the Manual and the Deed of Trust.

"In the case of the advertisements of churches and societies, as well as of nurses, the Manual is explicit, for it plainly states under Sec. 6 of Art. XXIII, in speaking of churches: 'Upon proper application, made in accordance with the rules of The Christian Science Publishing Society, the services of such a church may be advertised in The Christian Science

Journal,' and in Sec. 31 of Art. VIII, in speaking of nurses, it says: 'The cards of such persons may be inserted in The Christian Science Journal under rules established by the publishers.' The evident indication here is that the rules under which churches and nurses can be accepted for advertisement are not only changeable as the need demands, but are made 'by the publishers.' From these two By-Laws it would seem that the inference might be drawn that advertisements of practitioners would pass through the same scrutiny and determination that the advertisements of churches and nurses must pass through.

"That it is the intention of the Manual that the acceptance of advertisements should be in the hands of the Publishing Society is also implied in the By-Law, Sec. 9 of Art. XXV, covering the removal of cards, in which is stated: 'No cards shall be removed from our periodicals without the request of the advertiser, except by a majority vote of the Christian Science Board of Directors at a meeting held for this purpose or for the examination of complaints.' The fact that no card can be removed except by The Christian Science Board of Directors or the request of the advertiser would seem to imply that the card was accepted through some other avenue than through The Christian Science Board of Directors, for it would be plainly evident that if The Christian Science Board of Directors accepted the card, it would go without saying that that same board could remove it. Therefore, the fact that it is explicitly stated what power has the authority to remove the advertisements of practitioners, churches, or nurses, indicates that it is not the power that accepted the advertisements.

"In connection with this point, there is also to be remembered that The Christian Science Board of Directors is the governing power of the Christian Science organization, and that everything to do with the membership of this organization—with the membership of The Mother Church—is under the direct control of The Christian Science Board of Directors. Therefore, anything affecting the good standing of a member of The Mother Church must necessarily come under the direction of the governing board of this Church. No person can have an advertisement in the periodicals as a practitioner or nurse unless he is a member of The Mother Church. To remove for cause the advertisement of any practitioner or nurse advertised, invariably impugns the good standing of that member, and therefore touches his membership with The Mother Church. To confer the privilege of an advertisement on a member of The Mother Church does not touch his standing, but to take away that privilege after it has once been conferred does do so, and therefore the power to take away the privilege of an advertisement rightly belongs

with the governing board of the Church and its members—The Christian Science Board of Directors. However, the very fact that this danger of the removal of advertisements is guarded against by plainly stating how it is to be done, indicates quite conclusively that the privilege of an advertisement is conferred through another channel, and that the removal of an advertisement is not an ordinary proceeding, but is an exception.

"Under 'Discipline,' Art. VIII, Sec. 14, states: 'It shall be the duty of the Directors to see that these periodicals are ably edited and kept abreast of the times.' Here again is a disciplinary supervision, which applies not only to the editing but to the general make-up of the periodicals, and therefore would extend to the removal of any advertisement. Under Sec. 9 of Art. XXV, under the heading of 'Removal of Cards,' there is the indication that a personal card advertised, whether of a church, society, practitioner, or nurse, is different from an ordinary advertisement, and while it would be thoroughly within the province of the Board of Directors to request the removal of an advertisement, even one in the Monitor, or at least to discuss why the advertisement was in the Monitor, Sec. 14 of Art. VIII, and Sec. 9 of Art. XXV, plainly confer upon the Board of Directors the authority, and also point out the modus operandi whereby personal cards from the Journal and Herold shall be removed.

"The fact that Mrs. Eddy asked for a small Board of Trustees, which request was plainly intentional, indicated that the Board of Trustees would have to personally be responsible for many things for which a larger board could not be held personally responsible. Among these, it would seem, could rightly be placed the acceptance of practitioners', churches', and nurses' advertisements. The fact, also, that the advertisements of churches and nurses 'may be' advertised, indicates that there should be a careful selection, and that the movement is thus safeguarded from an indiscriminate compulsion of accepting every denominational advertisement submitted. The further fact that the Board of Trustees is enjoined, on page 104 of the Manual, under Sec. 2 of Art. XXXV, to 'keep a copy of the Seventy-third Edition and of subsequent editions of the Church Manual; and if a discrepancy appears in any revised edition, these editions shall be cited as authority,' before them to guide and direct their actions, surely means that they shall strictly carry out the provisions of the Church Manual and the Deed of Trust, as laid down by Mrs. Eddy under divine direction.

"It seems difficult to draw any other conclusion from the Church Manual and the Deed of Trust than that the entire selection, approval, and issuance of everything going forth from The Christian Science Publishing So-

ciety primarily rests with the Board of Trustees, subject to the final analysis, in any instance, of The Christian Science Board of Directors. This conclusion seems to apply equally to all advertisements, whether in the Journal, Sentinel, Herald, or Monitor. The responsibility resting on the Board of Trustees from such a conclusion cannot be escaped, for it would seem that only by such a double check on everything can the movement be guarded against any danger of carelessness or inefficiency in any of the departments of the Publishing Society. The by-law governing the appointment of editors and business manager does not release the Board of Trustees from supervision of the editorial departments of the periodicals—of news any more than advertisements, or any more than the business affairs of the Publishing Society—for the by-law under 'Discipline,' charging the Board of Directors to see that the periodicals 'are ably edited and kept abreast of the times' covers both editorial and business, for 'kept abreast of the times' surely means in respect to the general makeup of the periodicals, as to paper, covers, etc., etc., thus indicating that this disciplinary supervision is as much, and no more so, in the editorial department than in the business; implying, therefore, that it is a disciplinary supervision, although one of the utmost importance, placing the final responsibility on The Christian Science Board of Directors, so far as not allowing 'offenses' to continue.

"One other point might be made in connection with the acceptance of advertisements for the periodicals—that in the Deed of Trust it expressly states in Sec. 6: 'Said trustees shall employ all the help necessary to the proper conducting of said business, and shall discharge the same in their discretion or according to the needs of the business.' The acceptance of the advertisements for our periodicals is no small labor, and could not be done without a great deal of help. Since the Board of Trustees are enjoined to employ all the help, the inference is that no help is to be employed except by the Board of Trustees, and if the necessary help to get the advertisements in shape was under any other supervision than that of the Board of Trustees, it would require help being engaged through another source than the Board of Trustees, although for the purpose of the Publishing Society.

"In order that there may be no conflict whatever of the Church Manual and the Deed of Trust, and one by-law with another by-law, it would seem that the only way to have these all perfectly knit together is that The Christian Science Publishing Society absolutely is responsible for all the literature of this movement except the publication of our Leader, and that this society is responsible for everything that goes into those publications,

whether in the form of articles, news or advertisements, and that The Christian Science Board of Directors is in the final analysis responsible from a disciplinary standpoint to see that this work of The Christian Science Publishing Society is well done.

"November 20, 1915."

Q. Now that you have heard that read, Mr. Eustace, do you recall that you prepared it? A. I prepared it, and there are several changes that should be put in it, that I would put in it, and that I did put in it later on. But I want to say, in connection with this, that I prepared this as a brief in favor of the Board of Directors, handling the cause I was trying—that is what it was written for; and the only conclusion that I could come to was the conclusion that I drew there, that it absolutely rested with The Christian Science Publishing Society.

Q. That is, you desired, in November, 1915, that The Christian Science Board of Directors should pass on the acceptance of the cards of churches and societies and practitioners and nurses? A. I did not; but the question had come up on our board on account of certain difficulties that had arisen as to whether it was possible and right under the Deed of Trust and the Manual for the Board of Directors to do that work, and I said I would try to write a brief on the thing and see if it could be done, and that was my conclusion.

Q. Well, of course, in trying to write that brief you undertook to state your position as you then saw it? A. I undertook to state the position as favorably as possible to give the Board of Directors the privilege of doing that work.

Q. Well, you were working according to Principle? A. I was endeavoring to.

Q. Yes; and to see the right of it without regard to how it worked out? A. I was.

Q. Now, you state here that this question of accepting advertisements must be viewed from the standpoint of what we have in the Church Manual and also in the Deed of Trust. At that time, in writing the two phrases, you put the Church Manual first? A. What significance has that?

Q. I ask you if you didn't put the Church Manual ahead of the Deed of Trust at that time?

Mr. Whipple—Doesn't the paper show?

The Master—Doesn't it show for itself whether he did or not?

Mr. Krauthoff—it does, if Your Honor please.

The Master—Then why is it necessary for him to say whether he did or not?

Mr. Krauthoff—Why, I thought it was a part of the cross-examination, in view of his statements on the direct. I will pass it.

Q. Now, at this time you pointed out a statement of Mrs. Eddy said to

of Trust, with respect be in the Deed for a small Board of Trustees. That is in the letter accompanying the Gift to The Mother 1898, called a not in the Deed of Trust? Church—It does it say in the Deed of A. It is.

That is a typographical error. Yes, you say, "The constitution. No designation of this board and its members would indicate that it had a threefold office; first, business; second, metaphysics; and third, scholarship." Now, of the first three trustees, Mr. Bates and Mr. Neal and Mr. McKenzie, who do you understand was the business man?

Mr. Whipple—I pray Your Honor's judgment. Aren't we getting far, far afield?

Mr. Krauthoff—Why, if Your Honor please—

The Master—I am unable to see any importance in that question.

Mr. Krauthoff—If Your Honor please, I will state what it is that I desire to prove, if it will aid the situation. The statement is that Mr. Eustace has built up an argument that he is the metaphysician of the trustees of The Christian Science Publishing Society.

Mr. Whipple—What if he is? Of what consequence is it?

Mr. Krauthoff—It is of very great consequence.

Mr. Whipple—Well, I must confess that I cannot see it. I have been mystified by this cross-examination a great deal, but that is entirely beyond anything that I connect with any issue in this case.

Mr. Krauthoff—The point about it is this, if Your Honor please: For one of three trustees of The Christian Science Publishing Society to constitute himself the metaphysician of these three is in violation of the principles of Christian Science.

Mr. Whipple—We have not had the principles laid down yet.

The Master—He has not, in anything that he has said here, made any such claim yet.

Mr. Krauthoff—No; but I want to show that in this document he did.

The Master—It seems to me at present too remote on anything that I have to consider.

Mr. Krauthoff—Very well.

Q. Now, in this document of Nov. 20, 1915, you quoted freely from the Church Manual? A. I always think and quote freely from it.

Q. As a trustee of The Christian Science Publishing Society? A. I do.

Q. And you do that today? A. I do it exactly the same today.

Q. No distinction between this document of Nov. 20, 1915, and the present? A. I said that there are some things in there that I changed myself, before.

Q. Will you point out what it was? A. Well, I would have to go through it.

Q. Will you do it by tomorrow morning? A. I will.

Mr. Krauthoff—And, I, you further about it, when I will, ask

Mr. Whipple—Has it been marked as an exhibit? Let it be marked, and then you may take it along, marked, and

Mr. Krauthoff—It is marked with you. 36. Marked Exhibit

Q. Do you recall the early part of 1916 when the letter was written from the trustees of the Christian Science Publishing Society to the Christian Science Society of Directors? A. I would want to see that letter.

Q. That is the letter that the Board of Directors returned to you? A. I don't know; I will have to see the letter.

Q. You will have to see the letter before you— A. Yes.

The Master—Has there been any reference to it so far in the evidence?

Mr. Krauthoff—I understand not. The history of that letter, as I understand, is that it was a letter written from the trustees to the directors. The original was returned by the directors to the trustees, and the trustees state that they do not have the original, nor do they have any copy of it, they say. So I will have to prove this document by other evidence, and then take the liberty of recalling Mr. Eustace for cross-examination on it.

Q. Now, Mr. Whipple read the statement of Sept. 30, 1918. I want to speak to you about some things in it. You state in the letter of Sept. 30, 1918, referring to a meeting of Sept. 11, 1918, that at that meeting the trustees stated to the Board of Directors exactly how they viewed the Deed of Trust and the Manual in their relations to the trustees and their work. Now, how did you state that you viewed it?

Mr. Whipple—Well, it appears right in that letter. Why go into it more?

Q. Did you state anything except what you have set out in that letter? A. I stated what is in that letter.

Q. You stated what is in this letter? A. Yes.

Q. And that statement is that there was no other course possible to the trustees than to abide absolutely by the Deed of Trust and the Manual, both in the letter and the spirit.

Mr. Whipple—Pause a moment. What he stated is in the letter—not in one part of it, but in the whole of it; and why read it and ask him if he did not state that, when he has said that what he stated is in the letter? It simply duplicates.

Mr. Krauthoff—I have the right—

Mr. Whipple—I doubt if you do have the right, sir, to use the record in that way. At any rate, it is not good discretion.

Mr. Krauthoff—As I understand, on cross-examination, if Your Honor please, I have the right to call his attention to a statement in this document with a view of basing a question upon it.

Mr. Whipple—That you are not

If you were trying to do that, do head.

Mr. Krauthoff—Thank you, Mr. Whipple. If you will give me time I will try to catch up with you.

The Master—Do it so far as possible without re-reading at length what has already been put in the record once.

Mr. Krauthoff—That is what we are doing.

Mr. Whipple—It is not time that he wants; it is eternity!

Mr. Krauthoff—That is what we are dealing with!

Mr. Whipple—I am glad that you have not lost your sense of humor.

Q. This is still your position, Mr. Eustace? A. My position has always been to be a genuine Christian Scientist, and obedient to what Mrs. Eddy has said.

Q. And to abide absolutely by the Deed of Trust and the Manual? A. It has.

Q. And that is true after you have had the advice of counsel? A. Our counsel has never advised us anything else.

Q. In your direct examination Mr. Whipple asked you if you had had advice of counsel when you wrote this letter of September 30, 1918, and I believe you stated that you had not conferred with Mr. Justice Hughes, but had conferred informally with Mr. Strawn? A. I did not say so.

Q. I misunderstood you. What advice of counsel did you have when you wrote that letter of September 30? A. I had no advice of counsel whatever.

Q. From any source. But now that you have had advice of counsel you are still of the same opinion? A. Still, in substance, of exactly the same opinion.

Q. I call your attention to the statement in this memorandum that the Deed of Trust is inferentially incorporated as part and parcel of the Church Manual. Are you still of that opinion? A. I couldn't be of any other opinion. I am.

Q. That is, that the Deed of Trust is part of the Church Manual. In this letter you pointed out that when Mrs. Eddy created the trust in the first instance she requested the trustees to continue the services of Mr. Armstrong as the business manager of the publishing house. Have you made a research to ascertain what the condition of the Church Manual was on Jan. 25, 1898? A. I don't know that I have.

Q. So that that statement would be affected by the Manual, would it not? A. I wasn't—read the statement.

Q. (Reading):

"The Board of Directors elect the editor and associate editors of our monthly and weekly periodicals, the editor of our daily newspapers and the business manager, but the trustees employ these officers and determine their salary, hence they are employees of The Christian Science Publishing Society, in other words, of the Board of Trustees and not of the

Board of Directors. This is clearly pointed out by our Leader in the letter conveying the Deed of Trust, wherein she says: "I now recommend that these trustees continue at present the efficient service of Mr. Joseph Armstrong as the business manager of the publishing house."

Now, have you looked to see whether the Manual at that time, Jan. 25, 1898, gives The Mother Church any power to elect the manager of the publishing house? A. I don't think it did. I believe that the Manual at that time was in consonance with just the wording of the Deed of Trust, and I wouldn't like to say.

Mr. Whipple—The point of that, Mr. Krauthoff, is that he contends merely that the directors have never had the right to have or exercise any authority that Mrs. Eddy herself couldn't. Their wildest claim is that they exercise as great authority as her, and Mrs. Eddy made the request or recommendation merely, and not any direction.

Mr. Krauthoff—Yes, and the answer to it, Mr. Whipple, is that at that time the Church Manual did not give The Mother Church the power to elect the business manager.

Mr. Whipple—Mrs. Eddy was above the Church Manual, but, acting under the Church Manual, or otherwise, the Board of Directors could not exceed her authority, and she did not assume to exercise the authority of directing. She recommended to these trustees; your directors want to do more than that.

Mr. Krauthoff—They want to obey the Manual.

Mr. Whipple—Well, they take a queer way of doing it.

Q. In this memorandum you stated twice that the directors elect the editors and the business manager. You knew they did prior to the bringing of this suit? A. They did.

Q. Well, you have stated it in this memorandum? A. That statement is from the Manual. We were writing from the Manual.

The Master—Now, what question do you base on that statement?

Mr. Krauthoff—The question is that they did elect the editors and the managers before the bringing of this suit.

The Master—Well, what do you answer to that? Did they or didn't they?

The Witness—Yes; according to the Manual they did.

The Master—Now, what is the next question?

Mr. Whipple—Mr. Krauthoff, may I ask whether you can finish in a short time, or do you expect quite an examination?

Mr. Krauthoff—Why, I haven't anticipated any immediate close.

Mr. Whipple—Well, if that is so, then perhaps we had not better continue too long in anticipation that Mr. Krauthoff would, because I would like to ask Your Honor what your



direction would be with reference to next week. I am raising the question tonight, because it is important for all of us to know how we may use our time next week.

The Master—You expect to go on tomorrow, I take it?

Mr. Whipple—Yes, Your Honor.

[At 4:05 p. m. the hearing is adjourned to 10 o'clock a. m. Friday, June 13, 1919.]

June 13, 1919

#### FOURTH DAY

Supreme Judicial Court Room,  
Boston, Massachusetts,  
June 13, 1919, 10 a. m.

Herbert W. Eustace, Cross-Examination Resumed

Q. (By Mr. Krauthoff.) Mr. Eustace, on yesterday, in response to the question as to what was the governing power of The Mother Church, I understood you to answer divine Principle as revealed in the writings of Mary Baker Eddy. A. I think that is correct.

Q. That is also true of The Christian Science Publishing Society? A. It is.

Q. In this bill of complaint, which you filed, in paragraph 4, you refer to the conception and plan of Mrs. Eddy for the promotion and extension of the religion of Christian Science as taught by her. What information have you as to that conception and plan, other than the Deed of Trust, as you understand it? A. Nothing, except her writings, of course, as a whole.

Q. Her writings as a whole. Was it your privilege to know her in her lifetime? A. It was not.

Q. And you never conversed with her personally on the subject? A. Never.

Q. So as to that whatever bears on it is to be found in her writings, including the Deed of Trust and the Manual? A. In her written word, yes.

Q. In paragraph 7 you speak of the directors and say that, "Upon one excuse or another, the directors have sought from the trustees various information with regard to the work of the Publishing Society and the management of its affairs." The Mother Church is the beneficiary of the income of this trust in perpetuity, is it not? A. It is a beneficiary.

Q. Well, it is the distributing beneficiary? A. It is of the net profits.

Q. Now, what excuse did The Mother Church have to make when it asked for any information from the trustees of a trust of which the net profits were to be paid to it? A. What excuse does it have to make, do you say?

Q. Yes. A. I don't quite catch the meaning.

Q. Wasn't it the right of The Mother Church to ask any question of you it saw fit to ask? A. Up to a cer-

tain point, naturally, the agents of a beneficiary have a right, a certain right, to find out how the trust is being conducted.

Q. I mean the right to ask the question. I am not talking about the answer now. A. Reasonable questions, yes.

Q. I am referring to the excuse. You say, "Upon one excuse or another." What was the excuse? A. I really don't know, except the excuse of—

Q. You say here under oath, "Upon one excuse or another." A. You mean what were the things that they did?

Q. No. What was the excuse that you talked about? A. Why, the reasons that they gave in their various letters.

Q. You say those are all excuses. In paragraph 8—

Mr. Whipple—If Your Honor please, I am going to suggest that Mr. Eustace have a copy of the bill so that he can refer to the language.

Mr. Krauthoff—I will be very glad to have that done.

(A copy of the Bill in Equity is handed to the witness.)

Q. In paragraph 8 at the top of page 14. You have the little book, I believe, haven't you? A. Paragraph 8? I have this one, yes.

Q. You speak there of "certain alleged wishes of Mrs. Eddy, the Donor, alleged by said directors to have been expressed both in the Manual of The Mother Church." Has the word "alleged" any significance there, or is that a mere adjective? A. I haven't found the place yet.

Q. Page 14. A. Oh, yes. Well, the alleged wishes were, as I understood them, the statements that the Board of Directors made with regard to what Mrs. Eddy intended they should do as to the government of The Christian Science Publishing Society.

Q. Now, the wishes were expressed, as you understand it, in the writings of Mary Baker Eddy. They were not alleged wishes, were they? A. Why, they were not expressed at all, according to my interpretation.

Q. According to your interpretation? A. Yes.

Q. Did they rely upon anything that was not in the writings of Mary Baker Eddy? A. Unless it was their own imagination.

Q. I understand, but in their statements to you did they rely on anything that was not in the writings of Mary Baker Eddy? A. Their own imaginary interpretations of those writings.

Q. Well, they relied on their interpretation of those statements? A. I suppose so. I gave them credit for that.

Q. So that it is not a question of whether the wishes were alleged or not, it is a question as to what those wishes mean? A. They alleged certain wishes which we did not agree to.

Q. Now, what I am trying to get at is, was it that the wish was never expressed, or was it that you say that the

interpretation that you placed upon it differed?

Mr. Whipple—If Your Honor please, he has already answered. He has said the wishes were never expressed, although the directors contended they had been, and that is the significance of the word "alleged."

Q. Now, then, you further say, "although these alleged expressions and statements are admittedly inconsistent with the terms of the Deed of Trust." Now, what expressions and statements of Mrs. Eddy did the directors rely upon that are not expressed in her writings? A. What did they rely upon? I don't know.

Q. Well, you say here that the board required you to act "in accordance with the interpretation by said Board of Directors of certain alleged wishes of Mrs. Eddy," and then you go on and say that those "alleged expressions and statements are admittedly inconsistent with the terms of the Deed of Trust." Now, what statements and expressions of Mrs. Eddy did the directors rely upon, other than the expressions and statements contained in her complete works? A. Why, just as I have stated, their own interpretation of what they thought she had said.

Q. Well, I am not asking you about their interpretation of what they thought she had said. What statement of Mrs. Eddy did they rely upon for their interpretation? I will get to the correctness of the interpretation directly, but let us begin with what statements did they rely upon other than the ones contained in her published writings? A. Why, you will have to refer to their "letters" to see what interpretation they put upon it.

Q. Now, all of these statements are in writing, then? A. Amplified by countless conferences.

Q. Whatever these statements are, they are in the writings between the directors and the trustees? A. Oh, no, I wouldn't say entirely. I would say that countless interpretations were given.

Q. I am not talking about interpretations, Mr. Eustace. What statement of Mrs. Eddy's did they rely upon, other than stated in her complete works in writing? A. I don't grasp what you mean, Mr. Krauthoff, because—

Q. Perhaps we can get at it this way: Did any director ever say to you that Mrs. Eddy stated to him orally that so and so was to be the case, and that he relied upon her oral statement? A. Why, yes, they have said—

Q. Now, then, you don't know whether Mrs. Eddy made those statements to them or not? A. And I haven't the slightest interest whether she did or not.

Q. Although you are obedient to every direction of Mary Baker— A. All her written word I am obedient to.

Q. All her written words? All right. Not to her oral statements to others?

A. No, because each one must necessarily hear what a person says with his own interpretation of what is said.

Q. So then we come down that you are obedient to the written word?

A. I am.

Q. Now, then, the allegation in your bill is that these alleged wishes of Mrs Eddy were alleged by the "directors to have been expressed both in the Manual of The Mother Church and otherwise, on occasions long after the date of the Deed of Trust." A. Yes.

Q. Now, what do you understand is the binding force and effect of the statements in the Manual with respect to The Christian Science Publishing Society, it being understood, of course, that all these statements in the Manual, that now appear in the Manual, were put in after Jan. 25, 1898, except one? A. I, first of all, accept the Deed of Trust, under which I am operating as a trustee, as my absolute authority as to how I am to conduct that trust.

Q. Well, Mr. Eustace, do you accept that as a separate and distinct document disassociated from everything that preceded it and followed it? A. I accept that document in toto, just as it is, and I have to.

Q. I am asking you whether you accept it as a single isolated act or a part of a general transaction? A. I accept it—

Mr. Whipple—I pray Your Honor's judgment. How can that be answered? It does not seem to me a question, if I may say so, frankly, capable of being answered.

Mr. Krauthoff—In my judgment it is, if Your Honor please, very capable of being answered. Here is a man that has been a trustee under an instrument since 1912.

The Master—I suppose ultimately the Court will have to construe the instrument.

Mr. Krauthoff—Certainly.

The Master—How he accepts it is a matter that cannot control the Court's interpretation.

Mr. Krauthoff—I appreciate that, but under the case that is made by this bill we have the right to show the conduct of the parties under this instrument and the manner in which this witness has accepted it and treated it.

Mr. Whipple—He has stated that. He has—

The Master—It seems to me he has stated that already pretty fully.

Mr. Krauthoff—May I be reminded of how he has stated it?

The Master—That would involve going over more of his evidence than is desirable to do at present.

Mr. Krauthoff—Very well. I confess that at the present moment I am not clear whether Mr. Eustace accepts this Deed of Trust as a single isolated transaction, complete in itself, or whether he accepts it as a part of the general plan of Mary Baker Eddy for the promotion and extension of the religion of Christian Science, and I would like to know for my own guidance in my

question that I am about to put which of those two versions is the correct one from his standpoint.

The Master—He can answer anything about that that he desires.

A. I accept, as I stated before, that Deed of Trust as the instrument, the authoritative, irrevocable instrument under which I am acting as a trustee. Everything else that Mrs. Eddy has written I accept, in so far as I can make it consistent with that Deed of Trust.

Q. Now, Mr. Eustace, let me take up the Manual. Have you a Manual convenient? Now, let us take up the Manual and see how far it is inconsistent with the Deed of Trust as you interpret it. Will you turn to Article I of the Manual, please? A. All right.

Q. Section 1 and Sec. 2 of Article I, as I understand it, do not bear on The Christian Science Publishing Society.

Mr. Whipple—Now, if Your Honor please, inasmuch as we are apparently embarking upon a new quest, I desire to raise the objection that this is all immaterial. I take it that we are now going to take this Manual and go through it, and ask the interpretation of the witness as to his views of the consistency or inconsistency of certain specific statements in the Manual as compared with the Deed of Trust. As Your Honor has just indicated, this Deed of Trust is to be interpreted by the Court, and I take it it is elementary knowledge that subsequent declarations cannot affect that, and to say that Mrs. Eddy did not know it is to me a reflection upon her wisdom and foresight and judgment that I should not think a consistent believer in Christian Science would be guilty of. And what difference does it all make what his view is with regard to the Manual as compared with the paper which must control? I offer this at the outset of the inquiry so that we may save time, if Your Honor takes that view.

The Master—I think I have intimated what my view is at present, but the understanding of the witness, one witness, is hardly a matter that can control the interpretation of the document that has to be made.

Mr. Krauthoff—I appreciate that, and I am not asking for his understanding as a witness.

The Master—How can it be anything else?

Mr. Krauthoff—Well, he is a trustee of The Christian Science Publishing Society.

The Master—We all understand that. Now, I do not think you should spend time by taking the Manual and going through it, section by section. That would protract the matter too far. If there is anything special in it you want to call his attention to, I think you may do so.

Mr. Krauthoff—Very well.

Q. Now, taking up Sec. 3 of the Manual, referring to the election by the Board of Directors of the editor

and manager of The Christian Science Publishing Society.

Mr. Streeter—Whereabout is that? You say Sec. 3? Do you mean—

Mr. Krauthoff—Sec. 3 of Art. I, at the bottom of page 25.

Mr. Whipple—This is entirely different from what he has. Can't we have one with the pages the same?

Mr. Krauthoff—It is in the little black book.

The Master—That you referred to yesterday?

Mr. Krauthoff—Yes.

Q. How many letters have the trustees from the directors advising the trustees that the directors have elected the editors and the business manager?

A. I don't know.

Q. Did you not receive one in June of each year during your incumbency of the office of trustee? A. Certainly not each year, no.

Q. Not each year? A. Not that I have seen.

Q. Have you those letters here? A. I suppose they are here. All the correspondence is here.

Q. Will you produce them, please? A. Have you those?

Mr. Whipple—I will ask if Your Honor thinks those are material. Whatever was done by the directors in that respect cannot affect the clear terms of this instrument. I am merely offering this suggestion so that the issue may be clearly defined, and for the purpose of saving time, which is likely to be a good deal protracted in the examination. If Your Honor prefers to take the testimony and deal with it finally, why, we are perfectly willing, but we think that the time ought to be saved.

Mr. Krauthoff—If Your Honor please—

The Master—My view I think I have already fully stated, but it may not ultimately prevail, and I think that I can hardly, in advance of seeing the letters, peremptorily exclude them from the record.

Mr. Streeter—Will Your Honor indulge me a moment? While we occupy a rather unique position with reference to the respective claims of my brother Bates, on the one hand, and brother Whipple, on the other, there are some things in which we are directly interested, and one of them is to know what the claims of the trustees are with reference to the Trust Deed, on the one hand, and the Manual, on the other. The trustees plant themselves solidly, primarily, and fundamentally upon the Trust Deed. Now, taking their interpretation of the Trust Deed, there are tremendous inconsistencies between the Trust Deed and the Manual. We want to know, and I think we have a right to know, what the trustees' claim is as to the power and authority of the Manual over them, when the directions appear to be inconsistent with the Trust Deed. In other words, we want to know, not on the directors' account—not in that suit—nor on ac-

count of brother Whipple—we want personally to know for our client what the claim is—whether Mr. Eustace and his associates claim that they are not bound by the Manual. While they say with lip service, “We are obedient to all the writings of Mrs. Eddy,” we want to know whether they recognize the provisions in the Manual as any way binding upon them; and I hope Your Honor will permit Mr. Krauthoff, on the one hand, and Mr. Whipple, on the other, to have this witness clearly state to Your Honor what the position of the trustees is and has been on that question.

Mr. Whipple—If Your Honor please—

The Master—I have already told Mr. Krauthoff that he might go on with these letters. Ought we to go farther with this discussion now?

Mr. Whipple—My only thought is this, which I present with entire deference, that we have stated so repeatedly what our position is—we have stated it in the bill, we have stated it in the opening, the places where the claims of the parties ought to be stated, and the witness has replied to it so frequently, that it did not seem to me conceivable that anyone could be in any doubt as to what the position of the trustees was with regard to the Manual. They have said that they are bound by every provision of the Manual—first of all, by the Deed of Trust, which was declared by Mrs. Eddy to be irrevocable, and which was divine and inspired in and of itself. She knowing it to be irrevocable, any provision of the Manual that was subsequent must be construed and dealt with as a matter connected with the deed itself, which fixes the rights of the parties and their duties. Can I state it any more clearly than that?

Mr. Streeter—I think so. I do not think brother Whipple has quite stated that proposition to our country apprehension. We may not be able to understand it so well as our metropolitan friends do. He says that they are obedient, that they recognize the Manual and that they are obedient to the Manual. He says the provisions of the Trust Deed are irrevocable. It appears here that the provisions of the Manual are inconsistent with the Trust Deed. After saying that they stand on the Trust Deed, and also that they stand on the Manual, I want to know, before we get through with this, I want to know directly, and my client and my people behind me want to know, what their position is on this question—Where there is in the Manual a proposition that is inconsistent with their interpretation of the Trust Deed, do they stand on their interpretation of the Trust Deed, disregarding the provisions of the Manual entirely? That is a plain question, and it seems to me that it is capable of a plain answer.

Mr. Whipple—I have stated it absolutely plainly, and I shall not repeat it at this time.

Mr. Streeter—Then, if you will pardon me just one further statement—

The Master—Yes.

Mr. Streeter—I understand that the position of the trustees is that they stand on the irrevocable provisions of the Trust Deed as they interpret it; and where there is anything in the Manual that appears to be inconsistent with that, they reject the Manual and do not intend to be bound by it in any way or shape. That is my understanding of their position.

Mr. Whipple—That is not a correct understanding, except with the qualifications.

Q. Have you found the letters, Mr. Eustace?

The Witness (addressing Mr. Watts)—Have you found them?

Mr. Watts—I have not found any. The Witness—I think that there are some.

Mr. Watts—It will take some time to find them.

Mr. Krauthoff—The letters beginning in June, 1913. While Mr. Watts is finding the letters, let me ask you—

Q. When you became trustee of The Christian Science Publishing Society in December, 1912, who was the manager? A. Mr. Ogden. In 1912?

Q. 1912. A. Mr. Ogden.

Q. How long did he continue to be the manager? A. Up to Aug. 1, 1917.

Q. What did he then do? A. He became trustee of The Christian Science—a member of the Board of Trustees of The Christian Science Publishing Society.

Q. You have no personal knowledge of how Mr. Ogden became manager of The Christian Science Publishing Society? A. Only what he has told me, and I think I have perhaps read his correspondence on it.

Q. Yes. And what did he tell you? A. I think he told me that he had received two telegrams, one from the Board of Trustees and one from the Board of Directors.

Q. Did he tell you that he had been elected by the Board of Directors? A. I think the telegram said so.

Q. And what, if anything, did you do after December, 1912, with respect to employing Mr. Ogden as manager of the— A. Simply continued him in the employment of the Publishing Society.

Q. You took no steps one way or the other? A. No steps at all.

Q. You know his signature, of course? A. I do.

Q. Is that his signature (passing a paper to witness)? A. It is.

Mr. Krauthoff—We offer this in evidence.

“The Christian Science Publishing Society,  
“Falmouth and St. Paul Streets,  
“Boston, Massachusetts.  
“Manager’s Office.

“July 24, 1917.

“The Christian Science Board of Directors,

“Falmouth and St. Paul Streets,  
“Boston, Massachusetts.

“Dear Friends:

“Inasmuch as the Board of Trustees of this society has today been good enough to elect me a trustee to supply one of the recent vacancies on the board, I hereby tender my resignation as business manager of The Christian Science Publishing Society, to take effect Aug. 1.

“In placing my resignation, I wish to tell you that I am deeply grateful for the opportunities and blessings I have had during the past nine years as business manager, and I wish to thank you for the help you have all been to me.

“Gratefully yours,  
“(Signed) “DAVID B. OGDEN.”

[The letter of which the foregoing is a copy is marked Exhibit 37. R. H. J.]

Q. Who succeeded Mr. Ogden as manager of The Christian Science Publishing Society? A. Mr. John Watts.

Q. Mr. John R. Watts? A. John R. Watts.

Q. Were you advised of the fact that he was elected to that position by The Christian Science Board of Directors? A. Do you mean have I received any written notification of that?

Q. Yes. A. I don’t remember any.

Q. Were you ever advised of it in any way? A. We discussed it.

Q. That he had been elected? A. I don’t know that. We discussed Mr. Watts’ being business manager.

Q. Yes. Now, have you— A. I testified to that yesterday.

Q. I understand. Have you any record of your employment of him? A. I don’t know that we have. I don’t know whether the minutes show it or not.

Q. Will you be good enough to look in July, 1917, and see if there is any minute record of Mr. Watts’ being elected business manager?

Mr. Streeter—Will you let me see the directors’ records for July, 1917?

Mr. Bates—You do not want to see them now, do you?

Mr. Streeter—I would like to.

Mr. Bates—For any special reason?

Mr. Streeter—Yes, I should like to see them. There has been a reference to them.

Mr. Bates—We will give you a chance to see them, but we can’t very well do so just this minute.

A. Here is a notation in the minutes of July 28.

Q. 1917? A. 1917. “The Board of Trustees was informed that Mr. John R. Watts, at present general assistant to the business manager,

being acceptable to the Board of Directors and to the Board of Trustees, had been elected business manager of The Christian Science Publishing Society on the resignation of Mr. David B. Ogden."

Q. Had been elected by whom?  
A. It does not say.

Q. Then, what did you do after that? What further does the record show? A. There is nothing else on that question.

Q. Is there any record there of the election of Mr. McKenzie as editor?

Mr. Whipple—I would like to say, although I think our position is perfectly understood, that under the Deed of Trust there is no provision for the election of an editor, and of course the trustees would naturally not elect an editor or elect a business manager. They hire them; they employ them. Therefore we object to these inquiries as not being pertinent to any issue in the case.

The Master—This inquiry, then, will be subject to objection by the plaintiffs.

A. What was it you asked?

Q. For the record of Mr. McKenzie becoming the editor in 1917.

A. At 2:10, on July 23, 1917.

Mr. Streeter—What is the date? A. July 23; there is a minute here: "At 2:10 the Board of Directors asked Mr. McKenzie to go over to their meeting, and at 2:45 Mr. Eustace was also asked to go over. Announcement was then made that the Board of Directors had invited Mr. McKenzie to become editor of the Journal, Sentinel, and Herald. Mr. Eustace was asked whether this would be agreeable to the Board of Trustees, and the action of the Board of Directors was heartily approved."

Q. What is the next record of Mr. McKenzie becoming an editor? A. There is nothing here that I see except on a salary matter.

Q. Will you read that, please? A. "July 24, 1917."

Q. You can omit the amount if you prefer; I am not interested in the amount. A. (Reading.) "On motion of Mr. Eustace, seconded by Mr. Merritt, the salary of the editor of the Journal, Sentinel, and Herald was made" so much a year.

Mr. Streeter—Why shouldn't you state it?

The Witness—\$7500 a year.

Mr. Krauthoff—He may if he wants to.

Mr. Whipple—Why, there isn't anything about these records that ought to be kept from Christian Scientists.

Mr. Streeter—That is right.

Mr. Krauthoff—I have never thought so, Mr. Whipple.

Mr. Whipple—Then why do you suggest suppressing it?

The Witness—He did not.

Mr. Krauthoff—Mr. Eustace asked me if I wanted the record about the salary question. I said I was not in-

terested in the amount. There isn't anything that may not be fully stated.

Mr. Streeter—If Your Honor please, so far as we are concerned we want these records entirely opened up, not only to the court but to the public, and by the public I mean the Christian Science public particularly.

Q. Now, Mr. Eustace, when you became a trustee in December, 1912, you found that Mr. Archibald McLellan was the editor-in-chief of the Christian Science periodicals? Is that true?  
A. I did.

Q. And he continued to be editor, first editor-in-chief and then editor of all except the Monitor, until his passing in July, 1917? A. He did.

Q. Did you upon becoming trustee make any investigation to see how Mr. McLellan had become the editor in the first place? A. I did not.

Q. Did you employ him at any time as editor? A. I found him already employed.

Q. I mean, you made no reemployment of him at any time? A. None whatever.

Q. Nor any adjustments in his salary? A. Yes, I think there were adjustments in his salary.

Q. But no employment? A. Just continued.

Q. Whatever employment existed when you became trustee continued? A. Continued, yes.

Q. You also found that Mrs. Annie M. Knott was an associate editor?  
A. I did.

Q. And she continued to be an associate editor until March of 1919?  
A. Until April, 1919.

Q. Yes. This year? A. This year.

Q. That is true, isn't it? A. Yes.

Q. Without any employment on your part, so far as you know? A. Just as she continued in the employment.

Q. The relations continued? A. Yes.

Q. The other editor—was that Mr. Willis at that time or Mr. McCrackan?  
A. Mr. Willis.

Q. And Mr. Willis had been named before you became a trustee, John B. Willis? A. He had.

Q. And he continued as an editor without any employment on the part of the trustees? A. Without any further employment.

Q. Without any further employment, after you became trustee?  
A. Yes.

Q. Mr. Willis was succeeded by Mr. McCrackan? A. By Mr. McCrackan.

Q. Have you the record of the manner in which Mr. McCrackan became an assistant editor of the periodicals? That would be 1916, I believe, would it not? A. Yes. In June, 1916, yes.

Q. Perhaps, Mr. Eustace, Mr. Watts can find that letter while I am asking something else. (A letter is produced and handed to the witness.) A. Yes. That is, I think, the first one I saw. I remember that one.

[A letter from the directors to the trustees, June 8, 1914, is marked Exhibit 38.]

[Exhibit 38.]

"The Christian Science Board of Directors,  
Boston, Massachusetts."

"June 8, 1914."

"Dear Friends:

"At the regular business meeting of The Christian Science Board of Directors held this morning, the following officers were elected: Manager of The Christian Science Publishing Society, David B. Ogden; Editor, Christian Science Journal, Sentinel, and Der Herold, Archibald McLellan; Associate Editor, Journal and Sentinel, John B. Willis; Associate Editor, Journal and Sentinel, Mrs. Annie M. Knott; Assistant Editor, Der Herold, Theodore Stanger; Editor, The Monitor, Frederick Dixon.

"Very sincerely,

"THE CHRISTIAN SCIENCE BOARD OF DIRECTORS,

"By JOHN V. DITTEMORE,

JVD—T "Secretary."

Q. That was Mr. Dixon's first accession to the office of editor of the Monitor, was it not? A. I believe that he was associate editor, appointed by Mrs. Eddy in 1908—November, 1908.

Q. At that time he was back and forth between England and America? A. No. At that time she sent for him, through Mr. McLellan, I believe, to become editor in charge of the editorial pages of The Christian Science Monitor.

Q. In 1908? A. 1908, yes.

Q. Did he act as editor from 1908 until 1914? A. No, he did not.

Q. This was the first time, then, that he became editor of the Monitor in chief? A. Yes, that is when he took office.

Q. Now, what did you do when you were advised that the Board of Directors had elected Mr. Dixon as an editor of the Monitor? A. Simply what you see on there—approved it.

Q. Approved, June 9, 1914, by the Board of Trustees? A. Yes.

Q. And of course you understood that the Board of Trustees was acting under the Church Manual when they did this? A. Yes; and I see nothing inconsistent at all with the Board of Directors electing those officers, and if acceptable to the Publishing Society, to the Board of Trustees, I see nothing inconsistent between our duties under the Deed of Trust and their action in electing those officers.

Q. Now, Mr. Eustace, Mr. Watts tells me that the first record he can find about Mr. McCrackan was under date of July 3, 1916. Will you be good enough to read that, so far as it applies to him? A. "July 3, 1916. Conference held with Mr. McCrackan and the work of associate editor was discussed."

Q. Now, then, to recapitulate, Mr. Eustace, Mr. Archibald McLellan, Mr. John B. Willis, Mr. William D. McCrackan, Mrs. Annie M. Knott, and Mr. Frederick Dixon were the editors

of the Christian Science periodicals until Jan. 1, 1919, from the time you became trustee? A. Yes.

Q. No other editors? A. No.

Q. And the only business managers during your experience as trustee have been Mr. Ogden and Mr. Watts? A. That is right.

Q. In March, 1919, when Mrs. Knott became a member of the Board of Directors, she was succeeded as an editor by Mrs. Ella W. Hoag? A. She was.

Q. Have you the correspondence here between the Board of Directors and the trustees with respect to that incident? A. We have.

Mr. Krauthoff—There were some letters from the trustees directed to the directors. I will offer this as Exhibit No. 39.

[A letter from the trustees to the directors, dated May 6, 1918, is marked Exhibit 39.]

[A letter from the trustees to the directors, dated June 4, 1918, is marked Exhibit 40.]

These letters are read by Mr. Krauthoff, as follows:

[Exhibit 39.]

"The Christian Science Publishing Society,

"Falmouth and St. Paul Streets,  
"Boston, Massachusetts.

"Cable Address 'Science, Boston.'

"May 6, 1918.

"The Christian Science Board of Directors,

"Falmouth and St. Paul Streets,  
"Boston, Massachusetts.

"Dear Friends:

"Inasmuch as the work of Mr. Theodore B. Stanger can no longer be considered that of an editor, but is rather that of a translator of English articles into German for Der Herold der Christian Science, it is recommended that his annual appointment for editorial work shall not be made by your board as hitherto, but that this shall be left to the Publishing Society, as in the case of the translators for Le Héraut and the workers in the editorial departments other than the editors and associate editors.

"The editors and associate editors of the Journal and Sentinel now select the articles and editorials for translation and republication in Der Herold and Le Héraut each month. Hence Mr. Stanger's work is purely that of a translator.

"Yours sincerely,

"BOARD OF TRUSTEES,

(Signed) "DAVID B. OGDEN,  
"Secretary.

"Endorsed in pencil: 'Answered in person by directors, May 31, 1918.'"

[Exhibit 40.]

"The Christian Science Publishing Society,

"Falmouth and St. Paul Streets,  
"Boston, Massachusetts.

"Cable Address 'Science, Boston.'

"June 4, 1918.

"The Christian Science Board of Directors,

"Falmouth and St. Paul Streets,  
"Boston, Massachusetts.

"Dear Friends:

"Your letter of June 3, announcing the election of the editors and business manager of the Publishing Society for the ensuing year, has been received, and is appreciated.

"May we also thank you for your action regarding the question of employment of the editorial workers connected with Der Herold der Christian Science and Le Héraut, in leaving this with the Board of Trustees of this society, as is the case with other regular employees.

"Yours sincerely,

"BOARD OF TRUSTEES,

(Signed) "DAVID B. OGDEN,  
"Secretary."

Q. What control, if any, have the trustees exercised over the editorial work of Mr. Dixon as the editor of the Monitor? A. The trustees exercise, in one sense of the word, no control whatever over the editors. They leave it to their demonstration. If they do not do their work well the trustees promptly call their attention to anything that is wrong.

Q. I mean now as to the broad question of policy, not the mere question of statement, but the general policy of editorial control, as to what shall be discussed in the editorials and what shall not, and how they shall be discussed. A. That is absolutely the demonstration of the editors.

Q. The demonstration of the editors? A. Yes.

Q. And is that true with respect to all of them? A. It is absolutely true in respect to all of them. They have the absolute right to talk with us any time they want to.

Q. May I ask, are the editorial statements contained in these periodicals generally accepted by those who read them as statements of the Christian Science point of view? A. I imagine so.

Q. That is to say, these periodicals, except the Monitor, are purely religious; I mean, the articles in all of them are on religious subjects? A. They are on Christian Science.

Q. Yes, on the religion of Christian Science; and those articles are taken and accepted by followers of Christian Science as statements of Christian Science? A. I think so.

Q. And as accurate in their doctrine? A. As accurate as any one individual can state Christian Science, up to his limit of understanding of what Christian Science is.

Q. Now, then, the Monitor has each day an article on Christian Science? A. It has.

Q. That is, an article with respect to a subject treated from the Christian Science point of view, and that is taken as officially representative of the Christian Science movement? A. In exactly the same way that the others are taken.

Q. The Monitor in its secular aspect, if we may so call it, is an international daily newspaper? A. It is.

Q. It discusses the affairs of the world at large? A. It does.

Q. And in discussion of the affairs of the world at large is very generally accepted by its readers as representative of the Christian Science movement? A. As representative of a certain statement of whatever is being discussed.

Q. Of course, accurately speaking, with respect to world affairs, Christian Scientists are individual in their opinions? A. Absolutely.

Q. But many readers of the Monitor take every statement in the Monitor, like those who believe in the Bible from cover to cover, as a statement of Christian Science? A. And they are very largely enlightened by somewhat doing that.

Q. But everything in the Monitor is taken as representative of the Christian Science movement? A. Well, it is representative, as I say, of the demonstration of the Christian Science movement up to the ability of the editor to give that.

Mr. Whipple—I take it that you are referring to the editorials rather than the news articles.

The Witness—Yes, of course.

Q. Well, a great many news items are written editorially, are they not? A. In a sense.

Q. What I mean to say is, they express the views of the author of it rather than a statement of the facts? A. Of course any statement does that, must necessarily state the views of the one writing it.

Q. You stated, I believe, that the Deed of Trust and the Manual could work together on this question of editors? A. That they could not, did you say?

Q. That they could. A. Certainly they can.

Q. That is to say, it is entirely possible for The Christian Science Board of Directors to elect the editors and the manager, and it is entirely possible for the trustees to employ them in the event that, as you state it, the trustees approve the selection made by the directors? A. That is very correctly stated.

Q. Without violating any law? A. Without violating anything.

Q. Either statutory or legal or otherwise?

Mr. Whipple—But the so-called election then becomes merely a nomination, does it not?

Mr. Krauthoff—That is another question.

Mr. Whipple—No, that is the same question.

Q. Now, then, we take this next step. Have you been advised that if the Board of Trustees of The Christian Science Publishing Society accepted the election by the directors as controlling on the trustees, without regard to the judgment of the trustees, that you would be violating some law? A. Why, I don't have to be told that.

Q. You know that? A. I know that if it was a control I would be untrue to my trust.

Q. Then do you place that upon any statute of the Commonwealth of Massachusetts? A. I place it on the Trust Deed.

Q. On the Trust Deed alone? A. Yes.

Q. Calling your attention to Sec. 7 of Art. I, on page 27, with respect to the publishing buildings, who owns the publishing buildings in which The Christian Science Publishing Society conducts its business? A. The title to the property, I believe, is in the Board of Directors.

Q. And belongs to the Board of Directors? A. I don't know whether it is in the Board of Directors or The First Church of Christ, Scientist.

Q. It belongs to The Mother Church? A. It belongs to The Mother Church.

Q. You pay no rent for the buildings on Falmouth Street, between St. Paul and Norway? A. No. We pay rent for other buildings, of course.

Q. You pay rent for other buildings to an institution known as the Shawmut Real Estate Trust Company? A. Yes; and for a garage and for storage room, and so forth.

Q. All to the Shawmut Trust? A. Oh, no; outside.

Q. Those are buildings not owned— A. Yes.

Q. Under what provision of the Deed of Trust do you occupy these buildings? A. Conducting our business.

Q. I know; but what provision of the Deed of Trust gives you the right to occupy buildings of The Mother Church free of rent? A. I don't know that there is anything at all in the Deed of Trust that does.

Q. It is entirely consistent with the Deed of Trust and the Manual for The Mother Church to provide The Christian Science Publishing Society with buildings free of rent? A. Absolutely; just as it would be consistent for you to provide us a building free.

Q. That does not violate any law of any kind? A. Not that I am aware of.

Q. And you have found no difficulty in obeying that part of the Manual? A. Not the slightest.

Q. Without regard to any limitation whatever? A. I do not know of any, unless there are some that I do not know of.

Q. In passing through the Manual, I am reminded of the Board of Education. When you attended the Board of Education and became a teacher of Christian Science, the person conducting the class taught what the Manual was in Christian Science? A. I do not know that that was specifically brought up. The whole teaching was Christian Science, and of course the Manual includes that, or, rather, the Manual is included in that.

Q. And as a teacher of classes yourself you teach a class each year? A. I do.

Q. And the students that you teach become practitioners of Christian Science, many of them? A. I hope all are practitioners because they cannot be Christian Scientists unless they are practitioners of Christian Science.

Q. At all times and at all places and in every capacity? A. Exactly.

Q. But what I meant by practitioners were those who publicly followed the profession of Christian Science and were recognized as such in the Journal. A. Yes, a certain number of us do.

Q. And of course as a teacher of Christian Science you taught your classes what the Manual was in Christian Science? A. I think you would have to qualify that in this, that I never attempt to teach any interpretation of anything.

Q. I do not mean the interpretation of the Manual, but what I mean is, did you teach your classes the relation of the Manual to the Christian Science religion? A. No more so than the relation of everything that Mrs. Eddy has written.

Q. It is all part of one comprehensive whole? A. It is all a part of one.

Q. On page 43 of the Manual in Sec. 9 there is a provision with respect to the use of written formulas by practitioners, or, rather, it applies to members, and of course it includes practitioners. In passing upon the applications of practitioners for cards in the Journal what attention is paid to that part of the Manual? A. That was one of the questions asked.

Q. That was one of the questions asked? A. Yes.

Q. And it is perfectly in accord with the Deed of Trust to exclude from the list of practitioners in the Journal a person who violates this provision of the Manual? A. It is in perfect accord with the provisions of the Deed of Trust to exclude from our periodicals any advertisement that we do not think consistent with our idea of what that advertisement should be.

Q. In Christian Science? A. When you say, "in Christian Science," it includes the Monitor, too, therefore I cannot say "in Christian Science." As applied to the advertisements in the Journal, yes, in Christian Science.

Q. Haven't you, in passing on advertisements for the Monitor, also applied the rules of Christian Science to those? A. Yes, in the sense that they must be right and honest and just.

Q. And you do not accept advertisements of patent medicines, for instance? A. No.

Q. Or things which in themselves violate the principles of Christian Science? A. Not at all.

Q. So that with respect to this question of formulas the trustees may enforce that without violating the Deed of Trust or any law of the land? A. By "enforcing"—of course we do not look upon it as enforcing. It is accepting or rejecting an advertisement. That is not enforcing anything. Every Christian Scientist is free to work out the problem of being in his own way.

Q. Yes, but they are not free to use written formulas? A. I don't know. Each individual must work that out for himself.

Q. But you did make it a rule that anybody who did use written formulas did not get their card in the Journal? A. I would not accept an advertisement for the Journal if I knew that the individual was using written formulas.

Q. Now, where in the Deed of Trust is that provided? A. Not at all.

Q. You are familiar, of course, with the provision in the Manual prohibiting the publishing of profuse quotations, Sec. 10, page 43, "from Mary Baker Eddy's copyrighted works without her permission," and with respect to plagiarizing her writings? A. I am.

Q. The Christian Science Publishing Society respects that, does it not? A. It certainly does.

Q. And that is done without violating the Deed of Trust? A. I know nothing inconsistent with that in the Deed of Trust.

Q. Sec. 11: "A member of this Church shall neither buy, sell, nor circulate Christian Science literature which is not correct in its statement of the Divine Principle and rules and the demonstration of Christian Science. Also the spirit in which the writer has written his literature shall be definitely considered. His writings must show strict adherence to the Golden Rule, or his literature shall not be adjudged Christian Science. A departure from the spirit or letter of this by-law involves schisms in our Church and the possible loss, for a time, of Christian Science." Do the trustees for the Publishing Society respect that provision in the Manual? A. Certainly they do. They respect every provision.

Q. Now, let us take them up one at a time, Mr. Eustace. We will get along quicker.

Mr. Whipple—Do you think that is a good idea? His Honor has suggested we do not go through them with this meticulous discrimination.

Mr. Krauthoff—I understood the rule of the Court to be that any particular things I desired to call attention to, I could do so. I am not taking every provision in this Manual. Coming back to the one I have read—

The Master—I do not see, Mr.

Krauthoff, why you could not perfectly well put them together, these last three at any rate, into one question.

Mr. Krauthoff—You mean formulas and adulteration? If Your Honor will bear with me—

The Master—You are taking up an unnecessary amount of time.

Mr. Krauthoff—If Your Honor will bear with me, I shall be very glad to be as brief as I may, but I am necessarily dealing with a very tremendous subject, one which will unfold as it proceeds, and I am going to ask Your Honor to accept my assurance that all this is vital to our defense.

Q. Now, Mr. Eustace, for a member of The Mother Church to buy, sell, or circulate Christian Science literature which is not correct in its statement would be a violation of the Manual as I have read it to you, and the literature that is issued by The Christian Science Publishing Society is generally accepted by Christian Scientists and members of The Mother Church, as complying with this provision in the Manual? A. As nearly as it is possible under the demonstration of the editors and writers.

Q. And unless members of The Mother Church could be assured that it was in compliance with the Manual, their ability to purchase it would be very seriously interfered with? A. Their own understanding would determine for them whether it was.

Q. And you mean the Church as an organization would have no control over that? No; each individual Scientist would have to determine whether the article was satisfactory to him as a Christian Scientist or not.

Q. How would that affect his answer to a complaint to remove him from membership in The Mother Church because he was violating the provisions of the Manual? A. In circulating?

Q. In buying, selling, or circulating Christian Science literature which is not correct in its statement of a divine principle. Suppose a member of The Mother Church was proceeded against for violating this section of the Manual; who would decide that? A. Why, I suppose if the Board of Directors proceeded against an individual, the Board of Directors would decide it.

Q. Very well. So that it is necessary for a Christian Scientist to know in some authoritative manner that he is reading Christian Science literature that is authentic? A. Why, naturally.

Q. In your advertisements you continually use the phrase, "sole publishers of all authorized Christian Science literature." Who authorized you to be the sole publisher of all authorized Christian Science literature? A. We are the publishers of Mrs. Eddy's works now.

Q. Under a contract with the Trustees under the Will of Mary Baker Eddy? A. Under a contract with the Trustees under the Will.

Q. And what else makes you the sole publishers of all authorized Christian Science literature? A. We are the publishers of everything that Mrs. Eddy has authorized in the way of periodicals.

Q. Then that comes through your contract to publish Mrs. Eddy's works? A. The "sole" does, yes.

Q. Now, then, the literature that you put out in addition to the works of Mrs. Eddy, is that authorized Christian Science literature? A. You mean the periodicals?

Q. The periodicals? A. Certainly it is.

Q. Who authorized you to do that? A. Mrs. Eddy.

Q. How? A. Through the Deed of Trust.

Q. Point it out, will you, please? A. It is with the Journal. She gives the Journal authorization there, the Quarterly.

Q. She said the Journal? A. Yes.

Q. Now, what was the Journal at the time the Deed of Trust was executed? A. What was it?

Q. Yes. A. Very much as it is now, only it is enlarged now.

Q. I mean, of what body was it the organ? A. I think that it was the Christian Science Students' Association, or something like that.

Q. The National Christian Science Association? A. That is right, the National Christian Science Association.

Q. It was not on Jan. 25, 1898, the official organ of The Mother Church? A. Why, I think so.

Q. You think so? I wish you would investigate that more closely. A. I don't know. However, that is—

Q. You haven't studied that? A. No.

Q. Is there anything in the Deed of Trust which makes it the official organ of The Mother Church? A. Not that I know of.

Q. Not that you know of? What does make it the official organ of The Mother Church? A. I suppose I might correct that statement and say this: that the fact that this belonged to Mrs. Eddy, and that Mrs. Eddy was the entire Christian Science movement, as it were, so far as direction and government was concerned, that whatever belonged to her would of necessity be official, that she would use it in that capacity of being official.

Q. Now, let us get that clear. Did Mrs. Eddy ever teach that she was the entire Christian Science movement so far as government and direction were concerned?

Mr. Whipple—I pray Your Honor's judgment to that question.

Mr. Krauthoff—If Your Honor please, it is a very vital question in the case as it will proceed.

The Master—Now, I think that we shall have to stop there.

Mr. Krauthoff—Very well. We shall reserve our views on that for some other time.

Q. You are familiar with the provision in the Manual that a member

of the Church shall not patronize a publishing house or bookstore that has for sale obnoxious books? A. I am.

Q. What controls the trustees of the Publishing Society in the books that it publishes outside of the Manual?

Mr. Whipple—Will you read that question?

(The question last put is read.)

A. Which ones do you refer to?

Q. Any book. A. Do you mean "The Life of Mary Baker Eddy"?

Q. No; I mean any book that you see fit to publish. Who controls that?

A. Why, the trustees, of course.

Q. The trustees exclusively? A. Yes.

Q. And they are not limited. Were you advised that at one time in the history of the Publishing Society they published novels? A. No; I did not know that they ever did that.

Q. Is there anything in the Deed of Trust which regulates the books which you shall publish? A. Inferentially, yes.

Mr. Whipple—Now, if Your Honor please, as to these questions about the Deed of Trust, and questions like that, the Deed of Trust speaks for itself. It is elementary that a trustee must exercise sound discretion and good judgment, and this Trust Deed requires that on the part of the trustees, and it covers all these questions which counsel is putting with such meticulous nicety.

Mr. Krauthoff—Now, if Your Honor please, I have not said very much about these objections of Mr. Whipple because I felt that this was not the time to argue the case, and that we, as counsel in the trial of the case, involving very large and comprehensive issues, might be trusted to proceed to develop our case. Mr. Whipple takes the narrow proposition that this Deed of Trust—

The Master—Is there any question now pending?

Mr. Krauthoff—I understand that there is, and that Mr. Whipple objected to it.

The Master—Is there?

Mr. Krauthoff—I will not press the argument at this time.

Mr. Whipple—I think the question was answered before I had my objection fully stated.

The Master—I thought so.

Mr. Whipple—And the objection was more to the line of inquiry than to that particular question.

Q. Now, Mr. Eustace, you are familiar with Sec. 14—"It shall be the privilege and duty of every member, who can afford it, to subscribe for the periodicals which are the organs of this Church." Now, which of the periodicals published by The Christian Science Publishing Society are the organs of The Mother Church? A. Mrs. Eddy stated that she had given the names to the periodicals.

Q. Are all of them organs of The Mother Church? A. I would certainly say so.

Q. Yes. A. I understand by the term "organ" that it means that which

sounds forth that which The Mother Church stands for.

The Master—This seems to be a rather specific question, Mr. Eustace. He asks you to say which ones of the publications you issue are the organs of the Church.

The Witness—I would say all.

Q. That is, the Journal, the Sentinel, the two Heralds, and The Monitor?

Mr. Whipple—And the Quarterly.

Mr. Krauthoff—And the Quarterly.

The Witness—And the Quarterly.

Q. And your definition of an "organ" is that for which The Mother Church stands? A. That which sends forth or sounds forth the teachings of that which The Mother Church stands for; yes.

Q. —"And it shall be the duty of the directors to see that these periodicals are ably edited and kept abreast of the times." Now, to what extent does that interfere with the Deed of Trust? A. Not at all.

Q. Not at all? A. Not in the slightest; no.

Q. It is perfectly in accord with every part of the Deed of Trust, without violating any law at all, for the directors to see that the periodicals are ably edited and kept abreast of the times? A. I think that is their bounden duty, just as it is the bounden duty of every Christian Scientist to keep absolute watch of those periodicals, and insist that the trustees keep them right up to date in every possible way.

Q. And to see that they do it? A. And to see that they do it.

Q. Where is that found in the Deed of Trust? A. It is not found in it at all. It is something that is not inconsistent with it at all.

Q. At this point, Mr. Eustace, I would like to take up some documents which you have issued from time to time (passing a document to the witness). A. Yes.

Mr. Whipple—Are you proposing to offer these?

Mr. Krauthoff—Yes, I am going to offer them.

The Master—Can you do it all together, or are you going to do it one by one?

Mr. Krauthoff—I can offer them all at once.

The Master—How many of them are there?

Mr. Streeter—What is it that you are offering?

Mr. Krauthoff—Why, there are five.

Mr. Streeter—What?

Mr. Krauthoff—They are what they call "Memorandums"—there are five Memorandums—A, B, C, and D—issued by The Christian Science Publishing Society, and covering distribution of literature by churches of Christ, Scientist.

The Master—Possibly this would be a good way to begin: "I show you the five documents," mentioning what they are.

Mr. Krauthoff—Very well.

The Master—That will be the foundation of your next question, and then you may ask him about them.

Mr. Krauthoff—Very well.

Q. I show you five printed pamphlets, known respectively as Memorandum A, Memorandum B, Memorandum C, Memorandum D, and a General Bulletin, all purporting to be issued by The Christian Science Publishing Society. Were they issued by The Christian Science Publishing Society? A. They were.

Mr. Krauthoff—Now, we offer the five in evidence, and I wish to call his attention to particular parts of them.

Mr. Whipple—On what ground, may I ask, if Your Honor please, are they offered? To show what?

The Master—Perhaps we shall find that out when he calls the attention of the witness to certain things in them.

Mr. Whipple—And if he does not call his attention to anything that seems to be material, then I take it that later they may be excluded.

The Master—Yes.

Mr. Streeter—Have you copies of these that you can give to us?

Mr. Krauthoff—I have no copies of these.

The Master—They are not in evidence yet. You need not mark them as exhibits at present.

Mr. Krauthoff—The reporter is proceeding to mark them as exhibits.

Mr. Whipple—I understand that His Honor thinks that they may not be marked yet.

Mr. Krauthoff—I now offer them in evidence.

The Master—If you show nothing more about them, than that they are documents or books, or whatever they are, published by the trustees, I do not think that that makes them evidence.

Mr. Krauthoff—Well, I offer them for the purpose of showing the essential unity of the Publishing Society and the Church, and to show that the Publishing Society has always treated itself as a part of the Church.

Mr. Whipple—We say that on neither of those grounds are they admissible, because the conduct of the trustees cannot change the trust.

The Master—I think you had better go on and call attention to what you desire to get in in those publications, and then we will see about admitting them in evidence.

Mr. Krauthoff—Very well.

The Master—I do not yet admit them.

Mr. Krauthoff—You do not wish them marked as exhibits at present?

The Master—No. They may be marked for identification at present, if they need identification. But are there any other publications of a similar nature?

Mr. Krauthoff—No.

The Master—If you want them identified they may be identified.

Mr. Krauthoff—No; I do not need to have them identified.

Q. Now, referring to Memorandum A, this was issued by The Christian Science Publishing Society?

The Master—He has just said that they were all issued by that society, has he not? Why repeat it?

Mr. Krauthoff—Thank you.

Q. And sent by the trustees of The Christian Science Publishing Society to the churches composing The Mother Church and its branches—is that right? A. I suppose the business management sent them.

Q. You assisted in their preparation? A. I don't know whether I did on Memorandum A. What is the date of that?

Q. That says 1913. A. Well, that was probably issued before I came; but then I don't mind; that is all right.

Q. Now, I call your attention to this statement: "(For use of all members of distribution and of Monitor committees, and to be freely passed to all interested. Committees are requested to keep copies at hand for reference and to preserve copies as part of committee files.)" Now, these distribution and Monitor committees that are referred to in Memorandum A are the distribution and Monitor committees of the branch churches of The Mother Church? A. They are.

Q. They are not of the Publishing Society? A. They have nothing whatever to do with the Publishing Society.

Q. And you sent these to them. "We are in receipt continually of requests from our coworkers for information and direction by means of which the Monitor may be advanced in their respective communities."

Whom did you mean by the phrase "our coworkers"? A. Why, every Christian Scientist on earth.

Q. This was sent to branch churches? A. It is for free distribution, I think.

Q. For free distribution? A. Yes, I think so.

Q. All right. For everybody, without regard to the Church? A. I think so.

Q. You think so? A. I mean that if you asked for one you would not be denied a copy, whether you were—

Q. It was written for the churches, however, wasn't it? A. I think it was written for the help of anyone that wanted to see what was being done in regard to distribution work.

Q. We will get to that as we go along. "We offer these recommendations to the field generally, and invite each group of local workers to adopt and to use such as are suited to their present conditions, requirements, and equipment." The word "field" is very generally used in Christian Science, is it not? A. It is.

Q. And what does it denote? A. Every Christian Scientist.

Q. And when you speak of "local workers," whom did you mean by that? A. The Christian Scientists in the different places.



Q. Did you mean church members?  
A. Not necessarily.

Q. Not necessarily. You quote next: "In The Christian Science Sentinel of Nov. 21, 1908, Mary Baker Eddy, Discoverer and Founder of Christian Science, said: 'My desire is that every Christian Scientist and as many others as possible, subscribe for and read our daily newspaper.'" That was The Christian Science Sentinel that she was speaking of, was it not—No, the Monitor? A. The Monitor.

Q. Now, the word "our" has been referred to in statements of counsel, and when Mrs. Eddy said "our daily newspaper," whose newspaper do you think she was talking about? A. Why, the newspaper of The Christian Science Publishing Society, entitled The Christian Science Monitor.

Q. That is, when Mary Baker Eddy said "our daily newspaper," she meant The Christian Science Publishing Society? A. She meant the newspaper that she had founded.

Q. Did she mean as a newspaper of the Christian Science movement? A. She did; she meant The Christian Science Monitor.

Q. Who were "our"? A. "Our"?

Q. Yes. Whom did she mean when she said "our"? A. Anyone who wanted to accept it as their newspaper.

Q. And she did not mean the Christian Science movement? A. Why, of course it included that.

Q. "Our Leader knew better than anyone else what was essential to the welfare of man, and the purpose of her admonitions was to establish happiness among men. Christian Scientists are coming to understand better how The Christian Science Monitor can be an effectual means for blessing themselves and others.

"Distribution committees have been actively at work in the churches for many years circulating our periodicals and other literature."

Now, what did you have to do as a distinct branch of activity with churches? A. Why, the churches are our very best agents for the distribution of our periodicals.

Q. They are your agents, and without their agency what would happen to you? A. Why, we would have to find new avenues of distribution.

Q. "In some cases Monitor distribution has been made a part of the general committee work; in other cases the appointment of a special committee has been found advantageous, since the Monitor can have a somewhat wider field than our other literature.

"The Board of Directors of a local church may have to vote funds for distribution work in the beginning, but when the reports of the results of this work are frequently made to the membership of the church, so much interest is usually aroused that funds are abundantly supplied for its continuance."

Now, that paragraph, of course, was written for churches, wasn't it? A. I suppose it was written as information. I don't really know what all those things were, except for information. I suppose that they were the result of questions that had come in to the Publishing Society, and those memorandums were gotten up to avoid answering everything by letter.

Q. On page 17, I call your attention to this:

"Perhaps the first important point to be considered in committee work for the Monitor is the need of active support of this periodical on the part of the members of the local church."

That is true, is it not? A. I certainly hope it is true.

Q. Now, then, these memorandums A, B, and C, were issued in 1914, 1915, and 1916. Memorandum C was approved by the Board of Directors of The Mother Church, was it not? A. If that is the memorandum that we discussed very thoroughly with them, it doubtless was.

Q. I want to call your attention to this in Memorandum C:

"Every constituted Church of Christ, Scientist, has its reading room, where the Bible may be read and all the works of the Discoverer and Founder of Christian Science, Mary Baker Eddy. These writings are usually found in the lending library of the reading room, for those who wish to study at home, and they may be generally found in public libraries also, in so far as Christian Scientists have been successful in placing them.

"The progress of the movement is disclosed in the periodicals, which are:"

And then you go on and give the names of the periodicals, and the first is The Christian Science Journal.

"Concerning these periodicals which she established, Mrs. Eddy wrote (The First Church of Christ, Scientist, and Miscellany, page 353): 'Something in a Name.

"I have given the name to all the Christian Science periodicals. The first was The Christian Science Journal, designed to put on record the divine Science of Truth; the second I entitled Sentinel, intended to hold guard over Truth, Life, and Love; the third, Der Herold der Christian Science, to proclaim the universal activity and availability of Truth; the next I named Monitor, to spread undivided the Science that operates unspent. The object of the Monitor is to injure no man, but to bless all mankind."

"Our Leader gives the reason for church activity on page 583 of Science and Health: "The Church is that institution which affords proof of its utility and is found elevating the race, rousing the dormant understanding from material beliefs to the apprehension of spiritual ideas and the demonstration of divine Science, thereby casting out devils, or error, and heal-

ing the sick.' Our Leader was divinely led in establishing the Christian Science periodicals, and in the Manual, Art. VIII, Sec. 14, we read: 'It shall be the privilege and duty of every member, who can afford it, to subscribe for the periodicals which are the organs of this Church; and it shall be the duty of the directors to see that these periodicals are ably edited and kept abreast of the times.'" Now, you got out Memorandum D in 1919? A. That is evidently just out; yes.

Q. That was not submitted to The Christian Science Board of Directors? A. Why, I didn't know that it was a case of submitting anything. It was a case of our deep appreciation—

The Master—The question seems to be capable of a simple answer. Was it or was it not submitted?

The Witness—I don't think so. I don't know. I don't think it was.

Q. Was there any reason for not doing that? A. Not that I know of.

Q. Not that you know of? A. No.

Q. Now, I call your attention to a statement in Memorandum D: "Our Leader was divinely led in establishing the Christian Science periodicals, and in the Manual, Art. VIII, Sec. 14, we read in part: 'It shall be the privilege and duty of every member, who can afford it, to subscribe for the periodicals which are the organs of this Church.'"—

The Master—You had just read that.

Mr. Krauthoff—I beg pardon, if Your Honor please. I will ask you to bear with me just a moment.

Q. Now, why did you strike out of Memorandum D the words "and it shall be the duty of the directors to see that these periodicals are ably edited and kept abreast of the times"? A. I suppose if they were stricken out, the latter part of it hadn't anything to do with the subscription for the periodicals.

Q. I did not ask you "if they were stricken out"; I asked you why you struck them out. A. I supposed that that was the reason.

Q. That what was the reason? A. That it had nothing whatever to do with the subscription for the periodicals.

Q. You say now that a sentence in the Manual, a complete sentence—that one part of that sentence, written by Mary Baker Eddy, has nothing whatever to do with the rest of the sentence written by Mary Baker Eddy? A. I didn't say any such thing.

Q. You said that you supposed that it was stricken out because you supposed it had no bearing on the first part of it. A. I said it had no bearing in Memorandum D.

Mr. Whipple—He said that it had no bearing on the matter of subscriptions for periodicals—that is the substance of it.

Mr. Krauthoff—Wait a minute.

Q. You mean that it is no argument to a subscriber to the periodicals of

the Christian Science Church to assure them that it is "the duty of the directors to see that these periodicals are ably edited and kept abreast of the times"? A. Not in the slightest; for the Manual already does it.

Q. The Manual does it. You did quote in Memorandum C the provision of the Manual in its entirety? A. If you say so, yes, I accept it.

Q. Well, I will ask you to satisfy yourself. I do not—A. If it is there I will accept it. It does not make any difference.

Q. In Memorandum D you strike out a part of it? A. All right.

Q. And you now say you did that in Memorandum D because it was no part of the subject under discussion.

Mr. Whipple—Pardon me. He has not said he did it at all.

Q. Did you have anything to do with striking it out? A. I really can't tell you whether I did or not.

Q. You really can't tell? A. I went through them, and I suppose I saw them, but I don't know why it was done, except for the reason, as I say, that I suppose it had nothing to do—we were cutting it down; our purpose has been to keep our memorandums down all the time.

Q. Now, what else did you strike out? A. Aren't there a great many things struck out? I have not looked through it—

The Master—I think that the counsel and the witness had better avoid talking at the same time. When they are both talking at the same time I cannot tell what either says.

Mr. Krauthoff—Thank you, Your Honor.

Q. I call your attention to the fact that Memorandum C had 38 pages in it, and Memorandum D has 44. That was in the effort to shorten it? A. Other things had to go in, I suppose.

Q. Yes. And, in order to make more space in that memorandum, you struck out that part of the words of the Manual which say, "and it shall be the duty of the directors to see that the periodicals are ably edited and kept abreast of the times." Now, who participated in that striking out? A. I really can't tell you; I don't know.

Q. Will you say that you had nothing whatever to do with it? A. I don't say any such thing.

Q. Who helped you to do it? A. I don't know. I don't know that I did it.

Q. You are a member of The Christian Science Publishing Society, and you have stated in the direct examination that in everything you acted together, and were harmonious about everything you did. A. Yes; I was absolutely harmonious on having that struck out.

Q. You will take the responsibility for it? A. I will take the responsibility for it.

Q. And for issuing these to the local churches with that stricken out, without taking it up with the Christian

Science Board of Directors? A. Most certainly.

Q. I want to call your attention, Mr. Eustace, in Memorandum D, to this question: "May we all ponder Art. 8, Sec. 15, of the Manual." Now, of course the word "we" in that connection includes The Christian Science Publishing Society? A. It includes every Christian Scientist.

Q. And The Christian Science Publishing Society? A. Of course.

Q. Will you turn to Art. 8, Sec. 15? I do not want to look at your Manual. The Master—To what?

Mr. Bates—Pardon me for an interruption just a moment. Mr. Krauthoff, I want to know if you will not call attention to the date on the memorandum.

Mr. Krauthoff—Memorandum D was published in the year 1919.

Q. Do you know the date on which it was issued? A. No, I do not.

Mr. Bates—That is the present year?

Mr. Krauthoff—The present year, after this controversy in suit.

Q. Now, then, I want to call your attention to Sec. 15 of Art. 8 of the Church By-Laws, which you say in Memorandum D we are called upon to ponder:

"Members of this Church shall not unite with organizations which impede their progress in Christian Science. God requires our whole heart, and He supplies within the wide channels of The Mother Church dutiful and sufficient occupation for all its members."

Is The Christian Science Publishing Society a channel of The Mother Church? A. Why, of course it is, in that sense.

Q. It is. Now, I want to call your attention to the General Bulletin issued in 1919 to your own employees, and I wish to read to you this statement:

"Visitors: The following requirements regarding visitors have been issued to the manager by the Board of Trustees:

"At a meeting of the Board of Trustees held Thursday, Jan. 16, 1913, it was unanimously voted that all visiting in the publishing house during working hours be discontinued, except when visitors are shown over the building by the proper custodian.

"This rule will apply to each and every department, and in making it the board feels that it is only bringing into action in the publishing house of The Mother Church what has been found to be essential in every well-organized and well-conducted establishment of like character and of like proportions."

That statement is true? A. Why, certainly, we always use the term "Mother Church," as a synonym.

Q. You are the publishing house of The Mother Church? A. We are the only publishing house that The Mother Church can use.

Q. Yes; and you are the publishing

house of The Mother Church? A. Certainly we are.

Q. What control does The Mother Church have over the publishing house which is the publishing house of The Mother Church? A. It has no control whatever except to see that things are well done and call the attention of the Board of Trustees to anything that is not well done.

Q. And then the Board of Trustees use their own judgment about the recommendation of The Mother Church? A. The Board of Trustees must do so under its Deed of Trust.

Q. And that makes you the publishing house of The Mother Church? A. It certainly does.

Mr. Krauthoff—"Rule of conduct." The Master—What are you now reading from?

Mr. Krauthoff—This is the same General Bulletin of 1919:

"Rule of conduct: A framed copy of Article XXV, Section 7, of the Manual of The Mother Church has been placed in each workroom of the publishing house at the request of Mrs. Eddy, in order to remind employees of our Leader's provisions concerning the conduct which should prevail in the offices of the publishing house. Employees will profit by giving grateful heed to this quiet reminder."

"By-Law: No objectionable pictures shall be exhibited in the rooms where the Christian Science textbook is published or sold. No idle gossip, no slander, no mischief-making, no evil speaking shall be allowed."

[Manual of The Mother Church, Article XXV, Section 7.]

Q. That provision of the Manual applies to everybody in The Christian Science Publishing Society, I believe? A. It does.

Q. And that does not violate any provision of the Deed of Trust? A. Not at all; it upholds it.

Q. You are familiar with the restriction in the Manual with respect to the use of the initials "C. S.," and that rule in the Manual is observed by the Publishing Society? A. What are you referring to? I know the By-Law that you mean there, but how about the Publishing Society?

Q. (Reading) "A member of The Mother Church shall not place the initials 'C. S.' after his name on circulars, cards, or leaflets, which advertise his business or profession, except as a Christian Science practitioner." As I read that I find that that question does not arise, because you only advertise people as Christian Science practitioners. A. Yes.

Q. You would not advertise them in any other way? A. No.

Q. Is there anything in the Deed of Trust outside of the judgment of the trustees which limits the advertisements that may be placed in these periodicals? A. No, except that we must be Christian Scientists.

Q. And that would be your own interpretation? A. Would have to be, necessarily.

The Master—Let me ask, Mr. Krauthoff, whether you have now completed calling his attention to everything you want to point out in those five books?

Mr. Krauthoff—In the five books, yes, if Your Honor please.

The Master—What do you do, then, with the five books?

Mr. Krauthoff—Why, I called his attention to them; they are a series, if Your Honor please. I do not care to offer any of them in evidence except the parts I have read. I would be very glad to offer them all.

The Master—That is the end, then, for the present of the five books, is it?

Mr. Krauthoff—Yes.

Mr. Streeter—Why don't you offer them, Mr. Krauthoff?

Mr. Krauthoff—Well, I will offer the full five in evidence.

Mr. Whipple—It does not seem to me that we ought to have them put into the record.

The Master—What?

Mr. Whipple—It seems to me it will make the record unduly bulky and that there is no reason for having them put in, although we make no objection on any other ground.

The Master—I was unable to see anything material in the last one, the General Bulletin. The others I think it may be possible that—

Mr. Krauthoff—Of course, if Your Honor please, we are privileged to develop the materiality of them on our argument. I shall be very glad to develop the case as we proceed but I thought we were now introducing evidence.

The Master—Probably the best way would be to let them go in in that way, subject to objection, without stopping now to distinguish between them.

Mr. Bates—I understand Mr. Whipple objects to them.

Mr. Whipple—Well, what I should like to prevent would be the necessity of having these articles reprinted in the record, or copied in the record.

Mr. Streeter—Why can't they go in as exhibits?

The Master—They would not go in in any other way, would they?

Mr. Streeter—These extracts are being read and are being copied.

Mr. Whipple—If it may be understood that in the transcription of evidence which we are to have from the stenographer they will not be all written out, then I am content.

Mr. Krauthoff—Only the parts that we read.

Mr. Bates—Only the parts that have been read.

Mr. Whipple—And those parts written out only as incorporated in the questions which were put.

Mr. Krauthoff—Certainly.

Mr. Whipple—Very well. With that understanding I have no objection to their being marked.

[The documents above referred to are marked as follows: Memorandum A, dated 1913, is marked Exhibit 41. Memorandum B, dated 1915, is marked Exhibit 42. Memorandum C, dated 1916,

is marked Exhibit 43. Memorandum D, dated 1919, is marked Exhibit 44. General Bulletin, dated 1919, is marked Exhibit 45.]

[Short recess.]

Mr. Krauthoff—Now, shall we resume, if Your Honor please?

The Master—Yes.

Q. Mr. Eustace, you are familiar with the requirements of Sec. 22 and 23 of Art. VIII of the Church Manual, appearing on pages 46 and 47, with respect to the duties of practitioners and patients. In accepting advertisements of practitioners for cards in the Journal, what requirement did you make as to the practitioners' observing these provisions of the Manual? A. Sec. 22 of Art. VIII?

Q. Yes; page 46. A. We expected him to be obedient to them, of course.

Q. That provision of the Church Manual can be enforced with respect to a practitioner whose card appears in the Journal without in any way violating the Deed of Trust? A. "Enforced," I never use that term. We simply do not accept his advertisement, that would be all.

Q. You are familiar with Sec. 24, which refers to the testimonials to be given in Christian Science meetings? A. Yes.

Q. This by-law applies to testimonials which appear in the periodicals and those which are given at the Wednesday evening meetings and a good deal of the periodicals, especially a large part of the Journal, and the Sentinel and the two Heralds, contain testimonials of physical healing in Christian Science? A. Physical, mental, moral, financial.

Q. And other forms of healing? A. All kinds of healing, yes.

Q. And in accepting testimonials for publication in the periodicals, what attention is given to this by-law in the Manual? A. Why, we expect the editors of course to watch and see that they are very carefully complied with.

Q. And that is not in conflict with the Deed of Trust? A. No well editing of our periodicals is in conflict with the Deed of Trust.

Q. No well editing? A. No.

Q. You have on page 48 a section headed, "Uncharitable Publications." "A member of this Church shall not publish, nor cause to be published, an article that is uncharitable or impertinent towards religion, medicine, the courts, or the laws of our land." That is enforced in the Publishing Society? A. I don't like the word "enforced" at all. We hate it in the Publishing Society.

Q. Well, what is the proper word? A. We ask them to use their best understanding of the meaning of that by-law and put it into operation as nearly as they know how.

Q. How many of the employees of the Publishing Society are furnished with Church Manuals? A. Why, I suppose every wise Christian Scientist, working in the Publishing Society, has a Church Manual.

Q. What effort do you make to see that they have one? A. No more effort than I make to see that you have one.

Q. You have one, of course, yourself? A. I think so. I have one on my knee now.

Q. "Numbering the People." "Christian Scientists shall not report for publication the number of the members of The Mother Church, nor that of the branch churches." That, of course, is applied according to the understanding of your employees? A. If they have any reason to apply it, it would be, of course.

Q. Well, you do not report for publication the number of members of The Mother Church nor that of members of the branch churches in the periodicals of the Christian Science Church? A. Why, not that I know of.

Q. (Reading.) "The periodicals of our denomination do not publish descriptions of church edifices, but they may quote from other periodicals or give incidental narratives." Is there any difficulty in understanding that and applying it in the work of The Christian Science Publishing Society? A. I have never heard the editors complain of it at all or say that they found it difficult.

Q. That does not conflict with the Deed of Trust? A. Not in the slightest.

Q. Sec. 30 refers to monopoly. Would you accept for publication in the Journal the card of a practitioner who violated Sec. 30 of the Manual? A. I should have to be very careful as to saying that anyone was doing that.

Q. No, but if you found out that anyone was doing it. Of course the Manual was written for a purpose, wasn't it? A. I should have to have very conclusive and very strong evidence, without a shadow of a doubt, before I should conclude.

Q. I appreciate that, but this Manual was not written all at one time, as you understand it, was it? A. No. Mrs. Eddy says at the beginning of it—

Q. It was unfolded and written from time to time, each time to meet some need? A. Yes; not dictatorial command, she says, that one person may use upon another.

Q. Yes. Now, then, that being true, this section, of course, meets some human need, and if the occasion again arose where a local Scientist was endeavoring to monopolize the healing work in any church or locality, you would not permit that one to have a card in the Journal? A. Is that a hypothetical question?

Q. That is a hypothetical question. A. Why, I would think I could persuade them that it was better not to ask to have one.

Q. I think so. And if you did not persuade them, they would not get in. Now, with respect to Christian Science nurses, Sec. 31:

"The cards of such persons may be inserted in The Christian Science

Journal under rules established by the publishers."

There are nurses who advertise in The Christian Science Journal? A. There are.

Q. And you are careful to see that they comply with the description set out in this Manual? A. We try to be.

Q. Page 53, Sec. 10, refers to the publication of unjust articles.

"If a member of The Mother Church publishes, or causes to be published, an article that is false or unjust, hence injurious, to Christian Science or to its Leader."

That, of course, is applied in the publishing house? A. Why, naturally.

Q. Beg pardon? A. Naturally.

Q. Referring to these articles that have appeared in the Journal and the Sentinel from time to time, it is the rule, I believe, of the Publishing Society to accept those articles only from members of The Mother Church? A. No, I don't think that that has been the custom. We were speaking to our editor the other day about that. That is something that has gone into effect apparently with Mr. McKenzie, with the Journal and Sentinel. Prior to Mr. McKenzie's time I don't think there was any such thought at all.

Q. You don't think that has been the thought? A. No, I don't think so. I never heard it until we were speaking about it the other day.

Q. Well, it is your information that that is now being enforced in the Publishing Society, that practice? A. I object to the word "enforced."

Q. I beg your pardon. What do you say, applied or followed, or— A. I think so. I think it is just followed.

Q. Followed. Now, there is nothing in the Deed of Trust which restricts you as to the character of the authors of these articles? A. No, and I am not in sympathy with that rule.

Q. It is possible within the terms of the Deed of Trust, as you understand it, for the trustees to accept an article by anybody? A. Any Christian Scientist.

Q. Any Christian Scientist? A. Yes.

Q. Turn to page 65, Sec. 3, "Obedience Required."

"It shall be the duty of the officers of this Church, of the editors of The Christian Science Journal, Sentinel, and Der Herold, of the members of the Committees on Publication, of the Trustees of The Christian Science Publishing Society, and of the Board of Education promptly to comply with any written order, signed by Mary Baker Eddy, which applies to their official functions. Disobedience to this By-Law shall be sufficient cause for the removal of the offending member from office."

Do you understand this Manual to be a written order signed by Mary Baker Eddy applying to your official functions? A. I consider that the Deed of Trust is the sacred instrument signed by our Leader, that that by-law especially applies to, and one rea-

son why under no circumstances would I disobey it.

The Master—I don't think you have answered the question.

Mr. Streeter—We would like a direct answer to that question.

The Master—I am calling his attention to the fact that I do not think he has answered the question.

Mr. Streeter—If the stenographer will read that question, I would like to see what Mr. Eustace said:

[The question is read as follows: "Q. Do you understand this Manual to be a written order signed by Mary Baker Eddy applying to your official functions?"]

A. In so far as I understand it.

Q. In so far as you understand it? A. Yes. May I ask just a question here to make myself perfectly clear?

Q. Certainly. A. When I say, "In so far as I understand it," I mean as I understand the Manual in consonance with the Deed of Trust.

Q. Sec. 11 on page 74, "Teachers and practitioners of Christian Science shall not have their offices or rooms in the branch churches, in the reading-rooms, nor in rooms connected therewith." In passing on applications of practitioners for cards in the Journal, is that section in the Manual applied? A. Why, yes.

Q. And a practitioner who did not apply this provision of the Manual to his daily conduct would not have a card in the Journal? A. He would be asked in regard to it.

Q. Yes; and if he did not apply this provision of the Manual he would not get the card? A. No. I think we would not accept his card. We would not accept anyone's card who was disobedient to anything that he felt was disobedient to the Manual.

Q. Or anything that you thought was disobedient to the Manual? A. Well, I would be very careful of how I interpreted another one's disobedience to the Manual.

Q. But, after all, you would have to determine it? A. Yes, but there seems to be always a way found by which it works out without any enforcing.

Q. Yes, certainly. Now, then, Section 12: "In order to be eligible to a card in The Christian Science Journal, churches and societies are required to acknowledge as such all other Christian Science churches and societies advertised in said Journal, and to maintain toward them an attitude of Christian fellowship." At present there are about 1800 of these churches and societies, I believe you have said, in the world? A. About that.

Q. And you stated on yesterday that The Christian Science Publishing Society were the sole judges of whether anybody should get a card in the Journal as a church or not? A. Whether they should have an advertisement in our periodicals, yes.

Q. And so that when the three trustees of The Christian Science Publishing Society put a card in the Journal upon their sole responsibility, as you

say, then under this manual The Mother Church and 1800 branch churches and societies are required to recognize it as such? A. Apparently that is—I will take your word as the statement of the Manual.

Q. Well, is that correct? A. I think it is.

Q. Under what provision of the Deed of Trust do you create Christian Science churches? A. We do not. We accept their advertisements.

Q. Under what provision in the Deed of Trust do you require 1800 branch churches and societies to recognize a church? A. None whatever.

Q. Is this provision of the Manual enforced or not enforced? A. Enforced?

Q. Yes. I mean, does this provision of the Manual apply to the situation, or doesn't it apply? A. We should use our judgment on it in accepting the advertisement.

Q. Suppose you discovered that one of the 1800 churches and societies that were advertising in the Journal did not recognize one of the others, then what would you do? A. I cannot answer that question. I should have to write to them to see what it was that it was doing, and I should expect to make a demonstration of it and have them come into accord with every one.

Q. You would expect this provision of the Manual to be applied? A. I would naturally expect the spirit of that by-law to be applied.

Q. Well, up to this time, as I understand it, we have not found any conflict, have we? A. I never did find any conflict.

Q. I mean, you and I together this morning have not found any conflict up to this moment? A. I haven't found any conflict. I don't know whether you have.

Q. Well, of course, we couldn't both find it unless we both found it, could we? You haven't got any? A. I have got no conflict with the Manual at all. It is a sacred, spiritual guidance.

Q. I see. Now, then, coming down to Art. XXV, "The Christian Science Publishing Society":

"Sec. 1. The Board of Trustees, constituted by a deed of trust given by Rev. Mary Baker Eddy, the Pastor Emeritus of this Church, on January twenty-fifth, 1898, shall hold and manage the property therein conveyed, and conduct the business of 'The Christian Science Publishing Society' on a strictly Christian basis, for the promotion of the interests of Christian Science."

Now, may we agree that that was placed in the Manual with the written consent of Mary Baker Eddy after Jan. 25, 1908? A. Why, I suppose so. I don't know.

Q. It was not in the Manual on Jan. 25, 1898? A. Wasn't it?

Q. Was it? A. I think it was. I don't know.

Q. Well, we can get the exact facts about that later. A. Yes.

Q. Now, you have stated, I believe, in your communications—

The Master—Is it a matter that is easily ascertained? Does it take research to find that out?

Mr. Krauthoff—No, it does not take research.

The Master—Why can't you settle it right now, whether that was in the Manual in 1898?

Mr. Krauthoff—I should say as a fact that it was not, if Your Honor please.

Mr. Streeter—I think it appears self-evident from the article itself that it was not there. I think it appears self-evident from the article itself that it was put in after Jan. 25, 1898.

The Master—That I can hardly agree to. As a historical fact it ought not to be capable of any doubt.

Mr. Krauthoff—As an historical fact, if Your Honor please, it was not in the Manual on Jan. 25, 1898.

Mr. Whipple—Evidently this could not have been in the Manual before the deed was executed, because it refers to the deed.

Mr. Krauthoff—I have asked if the Manual is here.

Mr. Bates—We shall show that, Your Honor. The Manual is not here at present.

The Master—I thought that was a matter about which everybody would agree as an historical fact.

Mr. Whipple—I think so, yes, Your Honor.

Mr. Krauthoff—I will state as a fact from my own research that it was not in the Manual on Jan. 25, 1898.

The Master—Is that disputed?

Mr. Whipple—We will take the statement subject to investigation. If we say nothing further about it, it may be assumed to be a fact.

The Master—Yes; all right.

Q. Now, in your memorandum that we have read here in evidence you have stated that the adoption of this by-law inferentially incorporates the Deed of Trust into the Church Manual. You still say that, Mr. Eustace? A. I do.

Q. Then the next section in your Manual applies to the net profits of the business. Let me understand the manner in which this business is conducted. You print and publish the literature? A. We do.

Q. And you sell it? A. Throughout the world.

Q. At a fair price? A. We do.

Q. You don't give any of it away? A. No.

Q. You sell it to branch churches and societies and reading-rooms in The Mother Church and persons generally? A. We do.

Q. Outside of the Monitor a large part of your patronage is from Christian Scientists, is it not? A. I expect so.

Q. Practically entirely? A. We have no possible means of knowing.

Q. And the Monitor circulates generally? A. Yes.

Q. You conduct the business and then you pay the net profits over to the treasurer of The Mother Church? A. We do.

Q. Now, Mr. Eustace, we have come, I guess, to where we part company, for the present at least.

Mr. Whipple—Oh, I wouldn't be hopeless on that.

The Master—Oh, go on.

Q. "Sec. 3: The Christian Science Board of Directors shall have the power to declare vacancies in said trusteeship, for such reasons as to the board may seem expedient." That in the Deed of Trust reads just a little different, I believe. The Deed of Trust provides: "The First Members together with the directors of said Church shall have the power to declare vacancies in said trusteeship for such reasons as to them may seem expedient." A. Yes.

Q. Now, I believe that you have been advised that in that respect the Manual is in conflict with the Deed of Trust? A. That is one of the things that we are here to work out.

Mr. Whipple—Well, pardon me. We haven't said that it is in conflict with the Deed of Trust. What we have said is that the Deed of Trust is a part of the Manual, and therefore the Manual presents apparently an inconsistency.

Mr. Krauthoff—I see.

Mr. Whipple—From your human understanding of it.

Mr. Krauthoff—Thank you.

Q. That is, the Deed of Trust provides—

The Master—Can the date of the introduction of that provision into the Manual be fixed?

Mr. Bates—It will be fixed, Your Honor.

Mr. Krauthoff—It is the subject of some history—

The Master—Well, can the date be fixed? I don't care at present about the history.

Mr. Krauthoff—It was in 1901.

The Master—What day?

Mr. Krauthoff—I wouldn't undertake to say offhand, but I think in January.

The Master—Any doubt about that?

Mr. Whipple—We will accept that statement subject to investigation, and if we say nothing about it, it may be assumed that that is the correct date. Now, the burden is on us.

Mr. Krauthoff—I ought in that connection to state more fully, if Your Honor please, the history of it.

The Master—Well, not now.

Mr. Krauthoff—What I mean to say is, this provision appeared in the Manual prior to 1901, but in a different form, so it is not strictly accurate—

The Master—Well, I will take it in its present form.

Mr. Krauthoff—It appeared in 1901.

Q. Now, it also appears in Sec. 4 of Art. XXV with respect to editors and managers that that is practically a repetition of the same provision that I called your attention to earlier in the Manual, is it not? A. It is, in a way.

Q. To the extent that it is? A. Yes, to the extent that it is.

Q. So that nothing need more to be said about that? A. No.

Q. "Suitable employees." "A person who is not accepted by the Pastor Emeritus and the Christian Science Board of Directors as suitable, shall in no manner be connected with publishing her books, nor with editing or publishing The Christian Science Journal, Christian Science Sentinel, Der Herold der Christian Science, nor with The Christian Science Publishing Society." Now in what manner does The Christian Science Publishing Society apply that provision in the Manual? A. That we appreciate and invite the Board of Directors to at any time point out to us any employee in The Christian Science Publishing Society that they feel is in any way unfit to be there.

Q. And then what do you do after they point it out to you? A. We use our own judgment.

Q. You use your own judgment? A. Our own judgment.

Q. The language of the Manual is, "Shall in no manner be connected with." A. That is right. We use our own judgment as to whether they shall or shall not. In other words, whether they are fit or not, after the Board of Directors have given us their evidence, whatever it may be.

Q. So that provision of the Manual, literally stated, is not applied by the— A. Literally stated, of course, it is the Pastor Emeritus and The Christian Science Board of Directors.

Q. Yes. They have to be suitable to both? A. Yes.

Q. Section 6: "Periodicals which shall at any time be published by The Christian Science Publishing Society, shall be copyrighted and conducted according to the provisions in the Deed of Trust relating to The Christian Science Journal."

Do the trustees apply that provision in the Manual? A. We do.

The Master—What is the Deed of Trust relating to The Christian Science Journal, Exhibit "A"?

Mr. Krauthoff—Yes, that is the one.

Q. Now, in that connection, Mr. Eustace, on Jan. 25, 1898, the only Christian Science periodicals then published were the Journal and the Quarterly? A. I believe so.

Q. The rest have been started afterward? A. They have.

Q. The Sentinel. And by virtue of this provision in the Manual all of them come under the Deed of Trust, as you understand it? A. I do.

Q. This rule of conduct we have already called attention to. "Books to be Published. Sec. 8. Only the Publishing Society of The Mother Church selects, approves, and publishes the books and literature it sends forth. If Mary Baker Eddy disapproves of certain books or literature, the Society will not publish them. The Committees on Publication

are in no manner connected with these functions. A book or an article of which Mrs. Eddy is the author shall not be published nor republished by the Society without her knowledge or written consent."

Now, that was not in the Manual on January 25, 1898, was it?

A. I don't think it was, no.

Q. But under this provision in the Manual the Publishing Society of The Mother Church does exercise the power of selecting, approving and publishing the books and the literature it sends forth? A. No; under the Deed of Trust.

Q. Oh, under the Deed of Trust. What do you do with this provision in the Manual? A. There is nothing inconsistent with that in the Deed of Trust.

Q. Nothing inconsistent? If Mary Baker Eddy disapproves of certain books and literature the society will not publish them. Where is that in the Deed of Trust? A. Why, Mrs. Eddy had absolute control over everything, reserved to herself the right in the Deed of Trust.

Q. Absolute control over everything? A. In other words, if she had objected to anything, it would not be published by the trustees.

Q. In her lifetime? A. Certainly.

Q. "Removal of Cards. Sec. 9. "No cards shall be removed from our periodicals without the request of the advertiser, except by a majority vote of the Christian Science Board of Directors at a meeting held for this purpose or for the examination of complaints." What is your present understanding of the application of that provision of the Manual? A. My present understanding is this: that it is a request to the trustees under their right under the Deed of Trust to govern and to control the publications. It is a request not to remove an advertisement of a Christian Science practitioner or nurse or society without having the consent of the Board of Directors.

Q. Well, now, if the Board of Directors of The Mother Church does order the card of a branch church removed, what action do the trustees of the Publishing Society take with respect thereto? A. The trustees would naturally ask for the evidence on which they considered this card no good.

The Master—Your question was, what action do they take? That implies, I suppose, that cases have arisen.

Mr. Whipple—Well, let us inquire if that has arisen. Has such case arisen?

The Witness—Oh, many times, removals.

Mr. Whipple—Well, has the case where a majority vote of the directors has been given?

The Witness—Oh, yes.

Mr. Whipple—Well, then, what do you do? That is the question.

The Witness—Why, we have ap-

proved it and taken the advertisement out.

Mr. Whipple—Always have approved it.

The Witness—Always approved it.

Q. I am not asking whether you always approve it. I am asking you what power do you claim to have in the premises?

The Master—No. You asked him what they do. That was your question.

Mr. Krauthoff—I beg your pardon.

Q. As I understand, you pass on the question whether you will approve it or not? A. We have the absolute right to pass on whether we will approve it or not.

Q. That is, to state it clearly, if The Mother Church orders the card of a branch church to be taken out of the list of churches in the Journal, then the trustees decide upon their own responsibility whether it shall go out or not? A. Necessarily, having the governing power of the publication.

Q. And under the Manual every church in the list has to recognize every other church in the list? A. Under the Manual.

The Master—We have had that already, haven't we?

Q. So that, Mr. Eustace, it comes to this: The Mother Church may order the card of a branch church to be taken out of the Journal, the trustees may decline to do it, and the branch churches are required to continue to recognize a branch church of which The Mother Church has disapproved?

Mr. Whipple—I pray Your Honor's judgment. That is merely a hypothetical case which has never arisen; and, furthermore, he has answered it.

The Master—I think I will not draw the line at this hypothetical case. There has been a good deal of talk about hypothetical cases.

A. May I answer it in this way, that it is not an order for a removal of card but it says, "No card shall be removed," and that I take as an instruction to the Board of Trustees to request of our Leader that we shall not remove a card except with the consent of the Board of Directors.

Q. That is, the statement in this Manual is a request from Mrs. Eddy? A. It is a request from Mrs. Eddy to the trustees.

Mr. Whipple—You will notice it gives no authority to order the removal. It is a statement that it shall not be removed except upon their passing upon it.

Mr. Krauthoff—Yes.

Mr. Whipple—Haven't you seen that before? It is perfectly clear.

The Master—There cannot be any mistake about it, I think.

Mr. Krauthoff—If we may resume the trial of the case, if Your Honor please. Were you quite through, Mr. Whipple?

Mr. Whipple—Why, I am through if I am sure I have got that idea into your head, or at least have placed it before you so that you can comprehend it.

Mr. Krauthoff—Well, don't worry about that. I am not accepting your—

Mr. Whipple—I am not worrying about it.

The Master—Suppose we stop here with this discussion.

Mr. Krauthoff—May we proceed with the case?

The Master—Go on, Mr. Krauthoff.

Q. Now, Mr. Eustace, you are familiar with the advertising campaign that was started in The Christian Science Publishing Society in April, 1917. A. I am.

Q. Or I should have said August, 1917? A. I am.

Q. Will you please state how that originated. A. Well, I think the proposal came from the trustees under the will.

Q. The trustees under the will of Mary Baker Eddy? A. Yes. I think they wanted to assist in the promotion and extension, of course, of Christian Science through the larger distribution of our periodicals.

Q. For this record the trustees under the will of Mary Baker Eddy are six in number, of whom at that time five were members of the Board of Directors of The Mother Church? A. That is correct; and Mr. Fernald of Concord.

Q. And the will provides for the promotion and extension of the religion of Christian Science, just as your Deed of Trust does? A. That is right.

The Master—You mean in just the same terms as those employed by the Deed of Trust, is that your meaning?

Mr. Krauthoff—The same phrase is used, I understand. I mean the same phrase—

Mr. Thompson—I would suggest, if Your Honor please, if anything is to be made of this will it ought to be here. I don't think it is of the slightest consequence, however.

Mr. Krauthoff—I am merely stating it generally. I understand the language is exactly the same, "for the purpose of more effectually promoting and extending the religion of Christian Science as taught by me."

Mr. Thompson—Well, counsel hasn't any right to paraphrase a written document, if it is of any consequence.

Mr. Krauthoff—I have no thought of paraphrasing.

Mr. Streeter—If Your Honor please, my friend has put into the record a fact which everybody agrees to, that the trustees under Mrs. Eddy's will, it being a New Hampshire trust controlled by the probate and other courts of New Hampshire, that five of the six trustees are the five, or were at this time the five directors, Christian Science Board of Directors, and the sixth one was a New Hampshire gentleman representing the court there, Mr. Josiah E. Fernald. It also should appear in the record, which is a fact and will be agreed to, that Mr. Dittmore has been and now is the chairman of the Board of Trustees of the Eddy Trust, appointed by the Probate Court

of New Hampshire of Merrimack County.

Mr. Krauthoff—I have no personal information about it. That statement may be taken subject to any proof we offer on that subject.

Q. Now, Mr. Eustace, you say this advertising campaign was taken up by the Trustees under the Will of Mary Baker Eddy. Was it taken up with The Christian Science Board of Directors in any way? A. Why, we all discussed it together.

Q. You all discussed it together? A. Yes.

Q. Prior to that time had there been any report made to the trustees of the Publishing Society as to any plan of this advertising campaign? A. Plan on it, do you mean?

Q. Yes. A. Mr. Lesan had made a report, I believe.

Q. Mr. Lesan? A. Yes.

Q. Who is Mr. Lesan? A. Mr. Lesan is an advertising man in New York City.

Q. What is his name? A. Harry E. Lesan.

Q. Harry E. Lesan? A. Yes.

Q. Have you that report? A. No, we haven't it.

Q. Is it now in existence? A. I don't know whether it is or not.

Q. Will you look at the noon hour? A. Well, that would be difficult.

Q. Beg pardon.

Mr. Whipple—Before we go to that trouble, won't you state how it is material?

Mr. Krauthoff—I think that will appear as I proceed.

Mr. Whipple—Why not let it appear before you proceed any further? That is the way we determine the admissibility of evidence.

Mr. Streeter—Mr. Krauthoff, we suggest for your assistance, if our friend Eustace can't find a copy of that report, Mr. Dittmore has a copy and you may have the use of it, if you want it.

Mr. Krauthoff—I should be very glad to.

Mr. Streeter—That will save Eustace the trouble of looking for it this noon.

The Witness—Thank you.

Mr. Krauthoff—Thank you very much. The point I am trying to develop, if Your Honor please, is that consistently The Christian Science Publishing Society has advertised that it was a part of The Mother Church.

Mr. Whipple—We certainly claim they are a most important adjunct and activity in connection with it. That is the claim in our bill, and that Mrs. Eddy so projected it. Now you are trying to defeat her purpose.

Mr. Streeter—As I understand it, Brother Whipple, you claim that you are the whole thing.

Mr. Whipple—Oh, no. That is the claim of the directors.

Mr. Streeter—Well, they do, too.

Mr. Whipple—We claim we are what Mrs. Eddy made us, and the directors

claim that they are more than Mrs. Eddy herself.

The Master—What you want to do, if I understand you correctly, is to bring out some expressions used by the trustees of the Publishing Society in the course of its advertising campaign?

Mr. Krauthoff—Yes.

The Master—Now, can't you get at that more directly and briefly by beginning with the report of some advertising man in New York?

Mr. Krauthoff—Well, my understanding is that that report was addressed to the trustees and the directors. If I am wrong about that, why I am wrong.

The Master—If you have got anything issued by the trustees that you want to put in, why not put it in?

Mr. Krauthoff—Very well.

Q. Now then, after you took it up together what arrangement did you make with Mr. Lesan with respect to these advertisements? A. We started an advertising campaign.

Q. No, I beg your pardon. What arrangement did you make with Mr. Lesan? A. Mr. Lesan—I think I will have to refresh my memory on that.

Q. I beg your pardon? A. I would have to refresh my memory, but we gave him a retainer to conduct the campaign for us.

Q. And Mr. Lesan wrote advertisements? A. He did.

Q. And they were submitted to you for approval? A. Yes, they were.

Q. And they appeared in The Christian Science Journal and other Christian Science periodicals? A. Yes, and outside too.

Q. That is, The Christian Science Monitor was advertised generally in papers of general circulation? A. Yes, that is what I am referring to.

Q. That was the first time that such a plan of advertising had been followed? A. It was.

Q. Now, Mr. Eustace, have you the files of the Publishing Society showing these advertisements? A. I haven't them here.

Q. You have them at the— A. I suppose they are still in existence.

The Master—If there was anything published, there can't be any mistake about it. Can't you agree on that?

Mr. Krauthoff—I will come to what I want to call his attention.

Q. I call your attention to the advertisement in The Christian Science Journal for January, 1918, headed "What Is a Subscriber?"

The Master—How many different advertisements are there?

Mr. Krauthoff—I think some eight or ten I wish to call his attention to.

The Master—Are they all in the same terms, or different?

Mr. Krauthoff—No; different subjects. I have passed over several that I didn't think vital.

Q. I call your attention to that advertisement headed "What Is a Subscriber?" A. Yes.

Mr. Whipple—Would it not be well to name the periodical that it is in, giving the date of it?

Mr. Krauthoff—That is in The Christian Science Journal for January, 1918.

Mr. Whipple—On the front page, or on the inside cover?

Mr. Krauthoff—On the inside of the front cover.

Q. That was published in The Christian Science Journal with your approval? A. Yes, I guess so. I take the responsibility for everything that goes in, as publisher.

Q. Did you not personally know of that advertisement? A. I haven't a doubt I did. Let me see it. (The Journal for January, 1918, is passed to the witness for inspection.) I knew of all these, as a matter of fact.

Mr. Krauthoff—Does Mr. Whipple wish to see it?

Mr. Whipple—No, thank you. I will get it as you read it.

Mr. Streeter—Why don't you read what is material?

Mr. Krauthoff—I am going to do that now.

"What Is a Subscriber?"

The Master—Will that involve reading the whole page? Can't you read just what you claim is material?

Mr. Krauthoff—I think that the whole page is material, if Your Honor please. It is not large.

"What Is a Subscriber?"

"Christian Scientists" are told by Mrs. Eddy in the By-Laws of The Mother Church, Art. VIII, Sec. 14, that it is both their privilege and duty to subscribe for the Christian Science periodicals.

In the world of law and commerce, one who subscribes to an agreement or document of any kind, assents and agrees to its provisions, affirms his mental support of it, and then formally signs his name to it as evidence of his at-one-ment in thought with its aims and purposes. As the literal definition puts it, he "underwrites" his portion of the responsibility entailed by the document.

The Christian Science periodicals record the progressive unfoldment in human consciousness of the truth about God, man, and the universe. The Christian Science Journal, the Christian Science Sentinel, Der Herold der Christian Science, and Le Hérait de Christian Science each has its own field of usefulness in the line of spiritual activity which is clearly seen and understood by every thoughtful Christian Scientist. The Christian Science Monitor links in a common bond the progressive element in human affairs with the scientific right thinkers upon whose shoulders rest the vital issues of the hour, thus becoming an impersonal ambassador to the "Millions of unprejudiced minds" (Science and Health, p. 570) who are waiting and watching for that which will prove their deliverer.

"The true sense of being a subscriber to these periodicals includes

much more than the mere payment of the subscription fee for a designated period of time, with perhaps only a casual or perfunctory inspection of the contents.

"Subscribing to the Christian Science periodicals is having a share in 'underwriting' the future peace of the world. Each of these periodicals will produce the maximum result when every one to whom a subscription goes becomes truly a subscriber."

Now, if Your Honor please, for the first time The Christian Science Journal has been used in evidence, and I believe that it is proper to offer one Journal in its entirety as an exhibit, so that it may be before the Court.

Mr. Whipple—I do not mind its being done if it does not entail upon the stenographer copying the whole thing. If it be taken simply as an exhibit, and that part of it be copied into the record which has been read, that will be agreeable to us.

Mr. Krauthoff—That is agreeable to us, so that it can be identified as an exhibit. With that understanding—

Mr. Whipple—I do not wish thereby to admit the materiality of anything that has been read as to any issue in the case, because it seems to me as remote as anything one could imagine from any issue; but it is interesting.

The Master—One copy may be marked as an exhibit.

Mr. Krauthoff—This is the one, the Journal for January, 1918.

The Master—And in some way, perhaps, you can mark the page which you have read.

Mr. Krauthoff—Will you [the reporter] mark the inside front cover as the exhibit.

[The inside of the front cover of The Christian Science Journal for January, 1918, is marked Exhibit 46, R. H. J.]

Mr. Streeter—While that is being done, may I ask a question, Mr. Krauthoff?

Mr. Krauthoff—Yes.

Mr. Streeter—Mr. Eustace, do you know whether Mr. Dittmore personally wrote that advertisement?

The Witness—No, I do not. It is a very good advertisement, however.

Mr. Whipple—It is a good one; it is a creditable piece of authorship.

Mr. Streeter—You don't know that he didn't write it, do you?

The Witness—No, I do not. It came to us, I suppose, through the usual channel of Mr. Lesan.

Mr. Streeter—Pardon me, Mr. Krauthoff. I do not mean to interject. I was only using time while that Journal was being marked.

Mr. Bates—Just doing a little advertising yourself!

The Master—Go on, Mr. Krauthoff.

Mr. Streeter—Oh, I can't compete with you and Whipple!

The Master—Proceed, Mr. Krauthoff.

Mr. Krauthoff—I cannot proceed, Your Honor, while this discussion continues.

Mr. Whipple—I am no orator!

Mr. Krauthoff—When counsel are through, if Your Honor please, I shall be glad to resume the trial of the case.

Mr. Streeter—Brother Krauthoff, if you will prevent your junior counsel from interrupting or interjecting remarks we shall get along all right!

Mr. Bates—I am very modest in my interjections!

Mr. Whipple—You are malicious as well as sarcastic!

Mr. Krauthoff—If I may have the floor, if Your Honor please, I would like to speak to the stenographer.

The Master—Go on.

Q. Now, this Christian Science Journal has on its outside cover, the words:

"Founded April, 1883, by Mary Baker Eddy, author of the Christian Science textbook, 'Science and Health with Key to the Scriptures'"

and then the words:

"Official Organ of

The First Church of Christ, Scientist, in Boston, Massachusetts."

I call your attention also to the circle, with the Biblical inscription, and the crown and the cross, or, to state it more accurately, the cross and the crown in the center. That is put on all the publications of Mary Baker Eddy, is it not? A. Yes, it is.

Q. Including the Church Manual—I mean at present? A. It does not seem to be on there.

Q. Well, I mean at present you put it on the Church Manual? A. I think it is the idea, that it is on all of them, but it is not—yes, it is on that; that is right.

Q. There is an advertisement in here headed: "Works on Christian Science," from which I desire to read: "Church Manual. Containing the By-Laws of The Mother Church." Are you familiar with the fact that this advertisement in its original form was worked out by Mrs. Eddy? A. No, I was not.

Q. It has been continued from the time that you became a trustee? A. There have been no changes in it, I think. Have there been changes in it?

Q. I mean the general form; I do not mean the words of it.

The Master—Have you got the page on the record?

Mr. Krauthoff—It is the first printed page, i.

Q. So that from this it appears that the Church Manual is a work on Christian Science? A. Why, certainly, it is.

Q. It contains the advertisements of Christian Science periodicals, articles on Christian Science, editorials by the editors, and then announcements from the church treasurer and clerk of The Mother Church, reports from churches as to the progress of Christian Science, testimonies from the field by persons who have been healed through Christian Science, and then it has the instructions, regarding cards, a list of Christian Science

churches and societies. I desire to read the headings of this list on page iii in the back of the Journal:

"Christian Science Churches and Societies with notice of Regular Services and Reading Rooms where Christian Science Literature may be read or obtained. These are Branch Churches and Societies of The Mother Church, The First Church of Christ, Scientist, in Boston, U. S. A."

I also desire to read the instructions regarding cards, page i:

"Applications for advertisements in the list of practitioners in the Journal, Der Herold, or Le Héraut will be received only from members of The Mother Church, The First Church of Christ, Scientist, in Boston, Massachusetts. Applications for advertisement in Der Herold are received only from those able to speak and write both English and German. Applications for advertisement in Le Héraut are received only from those able to speak and write both English and French.

"Applicants are required to accept and use as their textbooks the Bible together with 'Science and Health with Key to the Scriptures,' and other works by Mary Baker Eddy (Church Manual, Art. IV, Sec. 1); and to engage in no other profession or vocation than Christian Science healing (Art. XXV, Sec. 9).

"Nurses

"Applications for advertisements in the list of nurses in the Journal will be received only from members of The Mother Church, and applicants should have the qualifications stated in Art. VIII, Sec. 31, of the Church Manual.

"Societies and Churches

"When members of The Mother Church in a community believe that the time has come for the holding of regular services, and for the formation of a Christian Science Society, or the formation of a branch Church of Christ, Scientist, if they will write to The Christian Science Publishing Society, a letter will be sent regarding the steps to be taken in organizing their work, and the rules to be observed in order to have an advertisement in the Journal.

"The Manual, Art. XXIII, Sec. 6, under the heading, 'Organizing Churches,' says of a branch church formed according to the order indicated, 'Upon proper application, made in accordance with the rules of The Christian Science Publishing Society, the services of such a church may be advertised in The Christian Science Journal.' The regular services of a Christian Science society also may be advertised.

"Reading Rooms

"For the only literature allowed to be sold or exhibited at a reading room (Art. XXI, Sec. 3, of the Church Manual), see the catalogue of the Publishing Society as published in each current issue of the Journal. Art. XXV, Sec. 7, should be also con-



sidered, as it presents a view of conditions requisite where the textbook is for sale."

Mr. Krauthoff—I desire to read from the heading of the "Practitioners."

"The practitioners whose advertisements appear in these columns are members of The Mother Church, The First Church of Christ, Scientist, in Boston, U. S. A. and are amenable to its By-Laws. They have presented testimony to The Christian Science Publishing Society showing that they are qualified to advertise in the Journal as practitioners of Christian Science."

Then notice also the further statement:

"Authorized teachers hold but one class each year, with not more than 30 pupils in a class. The teaching year begins Aug. 1."

Q. Now, in connection with that notice you speak of the teaching year. There is a provision in the Church Manual with respect to teachers holding but one class a year, is there not? A. There is.

Q. And the Board of Directors, as shown by the evidence introduced on your direct examination, requested or directed the trustees of the Publishing Society to change the advertisement so that it should appear that the teaching year begins Jan. 1. That is true, is it not? A. Attempted to direct.

Q. Well, they sent you a letter on the subject? A. Yes.

Q. You treated that in your testimony as a recommendation? A. Naturally.

Q. Was that a function of The Mother Church or a function of the Publishing Society, to decide when the teaching year would begin? A. Are you asking me that?

Q. Yes. A. I should say it was neither one nor the other.

Q. Neither one nor the other? A. Yes.

Q. The Mother Church did decide it? A. Attempted to decide it.

Q. You say "attempted," and then you pass a judgment. What did you do when you say they attempted to change it? A. What did we do?

Q. Yes. A. We said in our answer what we did.

Q. You treated it as a recommendation and asked for the reason? A. We did.

Q. So that the order or direction, or whatever it is, that The Christian Science Board of Directors makes with respect to the conduct of church affairs, appears in The Christian Science Journal, the official organ of the First Church of Christ, Scientist, in Boston, Massachusetts, as a matter of right or a matter of comity? A. It appears there as a matter of comity.

Q. That is, if you approve of it it goes in? A. We naturally would approve of anything they wanted to send in the way of an announcement to the field. That is their affair.

Q. You did not do it with that

one? A. In this instance we had carried a notice for six years which had been approved unanimously by both boards at the time it was put in, and to have it ordered out without a word of explanation, we naturally required an explanation.

Q. And it subsequently did go in? A. Subsequently we said we would put it in, and did so.

Q. In this same Journal, January, 1918, there is a reference to the advertising appearing in the Journal, or the advertising in the Monitor. What is the chief value of the Monitor as an advertising medium? A. I cannot answer that.

Q. To what extent does the fact that it is one of the official organs of The Mother Church give its advertising columns value? A. I do not know.

Q. You have never thought of that? A. No, I do not know what—I couldn't answer that.

Mr. Krauthoff—We offer the advertisement on the front inside cover of The Christian Science Journal of March, 1918, entitled "What Is Circulation?"

Mr. Whipple—Well, wouldn't it be enough to read it? You do not want another one marked, do you?

Mr. Krauthoff—Well, I thought this had to be marked.

Mr. Whipple—If you will read it into the record that will save a number on the exhibits, at least.

Mr. Krauthoff reads the following: "What Is Circulation?"

"The spiritual modus operandi is beautifully depicted by Mrs. Eddy in her definition of angels on page 581 of the Christian Science textbook as follows:

"Angels. God's thoughts passing to man; spiritual intuitions, pure and perfect; the inspiration of goodness, purity, and immortality, counteracting all evil, sensuality, and mortality."

"The highest human corporeal concept of the truth about man is expressed today in Christian Science, hence the circulation of knowledge and information about Christian Science must be the highest human concept of spiritual (and the only real) circulation.

"Every copy of Science and Health is an 'Angel.'"

"Every Lesson-Sermon, every Wednesday evening testimony meeting, every Christian Science lecture, is an exemplification of 'God's thoughts passing to man.'"

"Every Christian Science Journal, Sentinel, or Der Herold der Christian Science expresses 'spiritual intuitions, pure and perfect.'"

"Every Christian Science Monitor reflects 'the inspiration of goodness, purity, and immortality, counteracting all evil, sensuality, and mortality.'"

"As Christian Scientists perceive and embrace opportunity to encourage the circulation of these messengers of Christian Science, are they not aiding themselves and the world to entertain 'angels, the true ideas of God, the spir-

itual sense of being?" (Science and Health, p. 548.)

Mr. Krauthoff—Then in the same number, on the inside of the back cover:

"What Is Money?"

"Mrs. Eddy called the fund which Christian Scientists freely gave to build The Mother Church extension in Boston in 1906 'two millions of love currency.'" (Miscellany, p. 14.)

"Jesus, when viewing the rich men offering their gifts, said of the widow who threw 'two mites' into the treasury of the temple at Jerusalem, 'Of a truth I say unto you, that this poor widow hath cast in more than they all' (Luke 21:3).

"The widow of Judea and the Christian Scientists of 1906 grasped a high concept of Love as ever current, they conceived the commodity used by men for their medium of exchange as being a symbol of the all-currency of love, and they expressed this concept in the highest terms of service to God and to their fellow man.

"The right concept of money is strengthened by studying Mrs. Eddy's comment on the contributions made by Christian Scientists to build The Mother Church extension. She said, 'In the now they brought their tithes into His storehouse. Then, when this bringing is consummated, God will pour them out a blessing above the song of angels, beyond the ken of mortals—a blessing that two millions of love currency will bring to be discerned in the near future as a gleam of reality; not a madness and nothing, but a sanity and something from the individual, stupendous, Godlike agency of man.' (Miscellany, p. 14.)

"That which makes the giving of Christian Scientists so much more effective than the mere giving of money is the understanding with which Christian Scientists give.

"It is impossible to compute the good done for the world, or to Christian Scientists themselves, by those activities of The Mother Church and its branches, all of which are the direct or indirect results of Mrs. Eddy's revelation of God's 'infinite resources' (Science and Health, p. 60). Through these channels Christian Scientists are furnished the opportunities to give scientifically. The mere contribution of funds for any purpose without some measure of the scientific understanding of giving really nullifies the effect of the gift.

"The unselfish support which Christian Scientists are giving to all of these activities of The Mother Church and its branches cannot be computed as money; it must be measured in terms of Mind. 'Giving does not impoverish us in the service of our Maker, neither does withholding enrich us.' (Science and Health, p. 79.) True giving is a symbol of constructive spiritual building."

The Master—Are you proposing to read something of about that length

from every one of the magazines in the pile before you?

Mr. Krauthoff—Well, I had thought of it until Your Honor intimated that I was taking up too much time. I shall be very glad to try to shorten it.

The Master—J think we ought to contrive some way of avoiding that. It does not seem to me it has sufficient bearing on anything that we are investigating here. Cannot counsel agree as to all those magazines that Mr. Krauthoff may mark such extracts as he wants to have in the case, and they may be considered in and he can refer to them later in argument if he desires?

Mr. Whipple—We agree, Your Honor, to that.

Mr. Thompson—I think there is no objection from our standpoint, if Your Honor please.

Mr. Krauthoff—The understanding being, of course, that all of these advertisements in The Christian Science Journal appeared with the knowledge and consent of the trustees of The Christian Science Publishing Society.

Mr. Whipple—Yes.

The Master—That would appear, I think, from the evidence that you already have introduced, will it not? Can there be any possible question about it?

Mr. Krauthoff—I do not understand there is; I just wanted to be sure.

The Master—I do not think there is.

Mr. Krauthoff—I shall be very glad to do that.

The Master—It seems to me it is wasting our time to sit here and hear you read all of those things, and that it is filling up the record. This apparently is going into the record.

Mr. Whipple—Yes, Your Honor.

The Master—To an undesirable extent, with matter not immediately relevant.

Mr. Whipple—Mr. Krauthoff may indicate to the stenographer any parts that he desires to have marked in the entire bulk that he has there and they may be referred to in argument.

Mr. Krauthoff—If Your Honor please, if I may be pardoned, I think when Your Honor comes to understand this case in its entirety the relevancy of these articles will clearly appear.

The Master—Well, I will hear you on that later. I do not think it is necessary that they should be read in extenso now.

Mr. Krauthoff—Very well. I shall be very glad to accede to that suggestion. We have now reached 1 o'clock. May we consider all of them accessible or shall I now pick out the articles?

The Master—Oh, I do not think you need to do it this minute.

Mr. Whipple—Oh, no. We shall be content if during the next fortnight you pick out and call to our attention those parts that you desire.

The Master—Mark them, so that they will be indicated to the other counsel in the case, and then we will

have the whole batch where it can be referred to.

Mr. Krauthoff—Very well, Your Honor.

[Recess to 2 p. m.]

#### AFTERNOON SESSION

Mr. Krauthoff—If Your Honor please, at the time of adjournment we were engaged in calling the attention of the witness to some advertisements in The Christian Science Journal, and an arrangement was made whereby the Journal should be regarded as accessible, and counsel for the directors would point out the particular advertisements that they desired the Court to consider. We have here also a number of issues of the Christian Science Sentinel published by The Christian Science Publishing Society, some of which contain the identical advertisement that appears in the Journal, and also advertisements that do not appear in the Journal, and I should like to have the same arrangement with respect to the Sentinels; that is, not to duplicate advertisements, but if there is any advertisement in the Sentinel that we desire to call the attention of the Court to, that we may do so.

Mr. Whipple—We agree, if Your Honor please.

Mr. Krauthoff—And I have one or two about which I desire to examine the witness personally.

Q. (By Mr. Krauthoff) Mr. Eustace, I call your attention to the advertisement on the inside of the back cover of the Sentinel of January 5, 1918, entitled, "The Manual of The Mother Church," and I will ask you to read the advertisement and state whether you agree with the statements that are therein contained? A. The whole of it, the whole of the advertisement?

Q. Yes. A. First of all is a book, "Church Manual of The First Church of Christ, Scientist, in Boston, Mass., by Mary Baker Eddy. The Manual of The Mother Church."

Mr. Whipple—I don't understand that you request that it be read aloud?

Mr. Streeter—Yes.

Mr. Krauthoff—He may either read it aloud or silently, as he prefers.

Mr. Streeter—We can't get that. Why not read it right in. Then we will have it in the record.

The Witness (Reading):

"The Manual of The Mother Church.

"The Manual of The Mother Church by Mary Baker Eddy is a handbook for the information and guidance of every member of The Mother Church. It contains the organic law of the Church of Christ, Scientist. It also contains the Tenets of The Mother Church, an explanation of the origin of the Church By-Laws, a historical sketch, the names of church officers, and an appendix containing essential information for every active Christian Scientist.

"Mrs. Eddy has interpreted and analyzed for Christian Scientists the purpose of the Church By-Laws in two principal statements—"Mental Digestion" ("The First Church of Christ,

Scientist, and Miscellany," p. 229), and in a letter to The Christian Science Board of Directors (Christian Science Sentinel of Aug. 22, 1914). Every Christian Scientist who sees that the extension of the religion of Christian Science is the most vital necessity in the world today, requires an intimate familiarity with the Church Manual.

"The By-Laws of The Mother Church constitute a record of the answers to Mrs. Eddy's prayers for the guidance and direction of this great movement which she founded and which is rapidly encircling the globe.

"The natural inclination and desire of a Christian Scientist is to own, study, and understand the revealed law of the Church of Christ, Scientist, and gain a realization of the vital necessity for its rules and admonitions.

"Of this I am sure, that each Rule and By-Law in this Manual will increase the spirituality of him who obeys it, invigorate his capacity to heal the sick, to comfort such as mourn, and to awaken the sinner."—Mary Baker Eddy in "The First Church of Christ, Scientist, and Miscellany," page 230.

"The Manual may be read, borrowed, or purchased at any Christian Science reading room in the world."

Q. The question is whether or not you agree with the statements contained in that advertisement? A. Of course I agree with it as far as I know, unless there is something to analyze there, I agree with it.

Q. And this advertisement refers to the statement in "Miscellany," which I will read to you from page 229, entitled, "Mental Digestion," and then I will ask you a question with respect to it. In the first place, may the record show that "The First Church of Christ, Scientist, and Miscellany" is published by The Christian Science Publishing Society at the present time, I believe? A. It is.

Q. And it contains extracts from the works of Mary Baker Eddy. I mean it is not limited to that. Is that true? (No answer.)

Q. Now, may I read you this "Mental Digestion"?

"Mental Digestion

"Will those beloved students, whose growth is taking in the Ten Commandments and scaling the steep ascent of Christ's Sermon on the Mount, accept profound thanks for their swift messages of rejoicing over the twentieth century Church Manual? Heaps upon heaps of praise confront me, and for what? That which I said in my heart would never be needed,—namely, laws of limitation for a Christian Scientist. Thy ways are not as ours. Thou knowest best what we need most,—hence my disappointed hope and grateful joy. The redeemed should be happier than the elect. Truth is strong with destiny; it takes life profoundly; it measures the infinite against the finite. Notwithstanding the sacrilegious moth of time, eternity

awaits our Church Manual, which will maintain its rank as in the past, amid ministries aggressive and active, and will stand when those have passed to rest.

"Scientific pathology illustrates the digestion of spiritual nutriment as both sweet and bitter,—sweet in expectancy and bitter, in experience or during the senses' assimilation thereof, and digested only when Soul silences the dyspepsia of sense. This church is impartial. Its rules apply not to one member only, but to, one and all equally. Of this I am sure, that each Rule and By-law in this Manual will increase the spirituality of him, who obeys it, invigorate his capacity to heal the sick, to comfort such as mourn, and to awaken the sinner."

In your work as trustee of The Christian Science Publishing Society do you accept that as the guidance and direction of Mary Baker Eddy? A. I accept that in the same way that I accept everything that Mrs. Eddy has written. I understand it, and demonstrate it in proportion to my proving its truth in daily life.

Q. Now, in this same advertisement that we have called your attention to is a reference to a letter to The Christian Science Board of Directors of Mary Baker Eddy, to which I desire to call your attention, reading it from the Christian Science Sentinel of Aug. 22, 1914:

"Words of Counsel

"The following heretofore unpublished letter from our revered Leader to The Christian Science Board of Directors, is herewith shared with the whole field because of its wise counsel to all Christian Scientists.

"Pleasant View, Concord, N. H.,  
Feb. 27, 1903.

"Christian Science Board of Directors,

"Beloved Students:—I am not a lawyer, and do not sufficiently comprehend the legal trend of the copy you enclosed to me to suggest any changes therein. Upon one point, however, I feel competent to advise, namely: Never abandon the by-laws nor the denominational government of The Mother Church. If I am not personally with you, the Word of God and my instructions in the by-laws have led you hitherto and will remain to guide you safely on, and the teachings of St. Paul are as useful today as when they were first written.

"The present and future prosperity of the cause of Christian Science is largely due to the by-laws and government of 'The First Church of Christ, Scientist,' in Boston. None but myself can know, as I know, the importance of the combined sentiment of this church, remaining steadfast in supporting its present by-laws. Each of these many by-laws has met and mastered or forestalled some contingency, some imminent peril, and will continue to do so. Its by-laws have preserved the sweet unity of this large church, that has perhaps the most

members and combined influence of any other church in our country. Many times a single by-law has cost me long nights of prayer and struggle, but it has won the victory over some sin and saved the walls of Zion from being torn down by disloyal students. We have proven that 'in unity there is strength.'

"With love as ever,  
"MARY BAKER G. EDDY."

Do you accept that as the direction and guidance of Mary Baker Eddy in the discharge of your duties as trustee of The Christian Science Publishing Society? A. I consider that that is a private communication and had no right to be printed in the Sentinel of our publications.

Q. And you do not accept that, then? A. I am not at liberty to accept it or reject it, because Mrs. Eddy did not write it to me and did not give it for publication.

Q. I call your attention to a bulletin issued by The Christian Science Publishing Society of March 27, 1919. A. Oh, yes.

Q. Was that done under your direction? A. It certainly was.

Mr. Krauthoff—I would like to have it identified.

The Witness—I suppose that is a correct copy?

Mr. Krauthoff—Well, I think it is one of yours.

Mr. Whipple—Let me take it. (Inspecting the paper.) Isn't that something put out after the suit was brought?

The Witness—It is.

Mr. Whipple—Does Your Honor think that ought to be admitted as part of the record?

The Master—I didn't quite get the situation.

Mr. Whipple—This is something that was put out after the suit was brought.

The Master—Put out by—

Mr. Whipple—Put out by the trustees to guide their employees. I have no objection to its being read, and then Your Honor will deal with it, but it does not seem to me admissible.

Mr. Krauthoff—Why, if Your Honor please, it is a statement by the plaintiffs as to the Church Manual, and that is competent, whenever they made it.

[Copy of bulletin above referred to is marked Exhibit 47, W. H. M., and is read as follows:

"Copy of Bulletin

"A difference of opinion as to the interpretation of the provisions of The Mother Church Manual and of the Deed of Trust constituting The Christian Science Publishing Society having arisen between the Board of Directors and the Board of Trustees, a legal action has been started today in an honest and earnest effort to ascertain definitely the responsibility of both boards in their relation to their respective 'Deed of Trust' and to the Church Manual.

"Workers in the publishing house will readily appreciate that no

one employee or group of employees is sufficiently familiar with the details which have led to the present action to be in a position to discuss the subject.

"Consequently the Board of Trustees feel it is scarcely necessary to urge upon all employees of the Publishing Society the wisdom of refraining from gossip or discussion of the subject, and from criticism of any kind either within or without the publishing house, should there follow any publicity. However, the trustees wish to remind the employees of the Publishing Society of the following by-law of the Church Manual, Article XXV, Section 7, for the purpose of discouraging criticism and gossip:

"No objectionable pictures shall be exhibited in the rooms where the Christian Science textbook is published or sold, no idle gossip, no slander, no mischief making, no evil speaking shall be allowed. Infraction of this by-law will not be permitted.

"The Board of Trustees has confidence that the employees will carefully observe this request upon being reminded of the need of preserving silence on a subject so near and dear to every loyal Christian Scientist and so fraught with interest of the greatest moment to the Christian Science movement.

(Signed) "JOHN R. WATTS,  
"Manager.

"March 27, 1919."]

Q. In the work of The Christian Science Publishing Society is that the form letter that was sent out at one time to practitioners asking for a card in the Journal? A. It was, the preliminary letter.

Q. That is, the first letter? A. Yes.

Mr. Whipple—I should think we might save the typewriting of that and have that go in as some of your other exhibits have, Mr. Krauthoff.

Mr. Krauthoff—Why, this one I prefer to read.

Mr. Whipple—No objection to its being read, but you don't care to have it transcribed in the record?

Mr. Krauthoff—Why, there is no particular reason for that.

Mr. Whipple—Very well. We will understand that it will not be.

[A printed letter headed, "The Christian Science Publishing Society, Boston, U. S. A.," is marked Exhibit 48, WHM, and is read.]

Q. So in writing to practitioners about cards in the Journal it became necessary for the practitioners to comply with the provisions of the Church Manual,—is that true, Mr. Eustace? A. Those questions were asked with a view to seeing how fitted they were to have an advertisement in the Journal.

Q. And that depended upon their compliance in part with the provisions of the Church Manual? A. Naturally it depended upon their reply to those questions.

Q. Now, the letters that you re-

ferred to in this letter, appearing in "Miscellany"—I will read you the first one:

"Mrs. Eddy's thanks. Beloved Christian Scientists:—Accept my thanks for your successful plans for the first issue of The Christian Science Monitor. My desire is that every Christian Scientist, and as many others as possible, subscribe for and read our daily newspaper. Mary Baker Eddy. Box G, Brookline, Mass., Nov. 16, 1908."

Are you advised whether the original of that is in a letter to The Christian Science Board of Directors? A. I don't know anything about it.

Q. You don't know whether it is a personal communication, when you called the attention of practitioners to that? A. It is in her published work.

Q. Oh, I see. The other one was in the Sentinel? A. The other was a letter sent, I suppose, to the editor of the Sentinel.

Q. No; it was addressed to The Christian Science Board of Directors. A. But it got into the periodicals.

Mr. Streeter—What page were you reading from?

Mr. Krauthoff—Page 352, the bottom of the page, "Miscellany."

Q. Now, then, the next one is the article that has already been read from the "Memorandum," in which Mrs. Eddy says, "I have given the name to all the Christian Science periodicals," and so on. Then you sent an application to these practitioners, an application for an advertisement in the List of Practitioners in The Christian Science Journal. Is that the type of application you sent them? A. That is the type.

Mr. Krauthoff—Now, this need not be copied; it may be treated like the other, and if you will just take it—

Mr. Whipple—Do you think that you ought to read it?

Mr. Krauthoff—I do, yes; I want to call his attention to it.

Mr. Whipple—It is pretty long.

Mr. Krauthoff—I appreciate that, Mr. Whipple.

Mr. Whipple—Can't you omit some parts of it, just to facilitate the hearing?

Mr. Krauthoff—Yes.

Mr. Whipple—All right. They are marked as exhibits, but they are not to be transcribed.

[The printed document headed "Application for Advertisement in the List of Practitioners in The Christian Science Journal," is marked Exhibit 49. R. H. J.]

Mr. Krauthoff (reading)—

"Application for Advertisement in the List of Practitioners in The Christian Science Journal:

"Please read carefully the instructions on the back of this blank before filling it out. Write your name exactly as it appears in the records of The Mother Church."

These are questions now:

"At what date were you received into The Mother Church?"

"Are you thoroughly familiar with

the Church Manual (73d or subsequent editions), by Mary Baker Eddy, and do you accept its guidance?"

"Do you yourself use or give to patients or others any written or copied formulas, whether in the nature of so-called extracts from personal letters by Mrs. Eddy, or from letters, lectures, addresses, or talks by others? (See Church Manual, Article VIII, Sec. 9.)

"Do you use the Bible, together with 'Science and Health with Key to the Scriptures,' and other works by Mary Baker Eddy, as your only textbooks in the study and practice of Christian Science? (Article IV, Sec. 1.)"

Then follows the question as to being members of the branch church, whether they have had class instruction, etc. And then it says:

"Please fill in the space below with the names of the Christian Science periodicals for which you subscribe."

Then there is a blank space left for each one, and a space left for a statement of how long they have taken it.

Q. What effort, Mr. Eustace, in connection with this blank, was made with respect to applicants for cards as practitioners, with regard to having them subscribe for all the periodicals of The Christian Science Publishing Society? A. There was no effort made to have them do so. The effort was made (if they did not subscribe) to learn the reason why they did not subscribe.

Q. Well, in passing upon the application for an advertisement, what attention did you pay to the fact that they were not subscribers? A. Well, if their application showed that they did not subscribe for any of the periodicals, it would be prima facie evidence that they were not very active Christian Scientists.

Q. Well, in some way, Mr. Eustace, the impression has been gained by some people that unless they subscribed to all of them they could not get their card in the Journal. A. Of course there are many impressions.

Q. Did you ever make such a statement to anybody in any way? A. Absolutely never.

Q. Is this the letter that you sent to churches asking (passing a paper to the witness)— A. This is it. I don't know when this was sent, years ago, but then that is all right.

Mr. Krauthoff—Will you mark that, please.

[What appears to be a printed circular letter from The Christian Science Publishing Society, to "Dear Friends," without date, is marked Exhibit 50, R. H. J., and Mr. Krauthoff begins to read it.]

Mr. Whipple—This is not to be printed in the record?

Mr. Krauthoff—No; it comes under the same agreement.

Mr. Whipple—Yes.

(Exhibit 50, R. H. J., is read by Mr. Krauthoff.)

Q. Now, Mr. Eustace, calling your attention to this specific language:

"The Manual provides for the organizing of a branch church of Christ, Scientist, and also provides that services of a church may be advertised in The Christian Science Journal, therefore it is well for members proposing to form a church not to procure a state charter prior to making application for advertisement, as the relationship to The Mother Church is the important thing."

How did you understand that that relationship arose when you prepared this circular? A. You see, the reason of that is that some of the churches, or rather some of the bands of people forming churches, would get charters from the State, calling themselves Seventh, or Eighth, or Ninth, or Tenth Church, whatever it might be, and they would not apply for a card in the Journal.

Q. Yes. A. Some others; some other body would apply as Eighth Church, and that was put in there to avoid any complication in that field of there being two churches called Eighth Church, or whatever it might be.

Q. That is not what it says. If I may, I will read it again—"therefore it is well for members proposing to form a church not to procure a state charter prior to making application for advertisement, as the relationship to The Mother Church is the important thing." A. That is it.

Q. The question I want to bring to your attention is this: Did not the acceptance of the advertisement in the Journal establish the relationship to The Mother Church? A. It had become the custom, you see, to accept a card in the Journal as the designation of that church, and if they had applied as Eighth Church, or whatever other church might apply, and it was accepted as such, why, it was then known as Eighth Church.

Q. Coming back to the question, Mr. Eustace, the relationship to The Mother Church, not the question of numbers or names, what created the relationship to The Mother Church? A. Why, their having formed a church.

Q. What did the card in the Journal have to do with the relationship to The Mother Church? A. The card in the Journal had of itself nothing whatever to do with it.

Q. Why, then, should they apply for a card before they incorporated, if the relationship to The Mother Church was the important thing, as you stated? A. So as to avoid complication.

Q. Merely a complication of names? A. Merely a complication of names and for no other purpose.

Q. And that is the only explanation you can give of the phrase "the relationship to The Mother Church"? A. That is exactly it.

Mr. Whipple—That is the explanation; not the only one he can give.

Q. Isn't this the exact fact, Mr.

Eustace: That the fact that the card appeared in the Journal was accepted as the evidence of the relationship? A: It was the evidence of it having been accepted as an advertised church, with a certain name to it.

Q. And a Christian Science church not advertised in the Journal was not accepted as genuine by any Christian Scientist? A. Well, I cannot answer that.

Q. Did you ever hear that they were? A. No, I did not.

Q. Would you? A. Would I—

Q. Would you attend the services of a Christian Science church whose card was not in the Journal? A. Why—societies; there are hundreds of societies—

Q. I said a church. A. I would not unless their members were members of The Mother Church.

Q. And would you attend the services of a branch society, not a mere society of Christian Science, but a society claiming to be a branch of The Mother Church—would you attend the services of such a branch unless it had a card in the Journal? A. Why, certainly I would.

Q. Without regard to its card in the Journal? A. Why, yes. Societies do not have to have cards in the Journal.

Q. They do have cards in the Journal? A. Yes, they do, but they do not have to.

Q. They are branch societies of The Mother Church if they do not have cards in the Journal? A. I did not ever understand that societies were ever called branch societies.

Q. Now, I call your attention to the application from a Church of Christ, Scientist, for a card in the Journal. A. All right.

[A blank application from a Church of Christ, Scientist, for a card in The Christian Science Journal, is marked Exhibit 51.]

Mr. Krauthoff—This is a blank application from a Church of Christ, Scientist, for a card in The Christian Science Journal. It starts with the town, country or state, the title of the church, the signature of the readers, as to how many members of The Mother Church they have, the enrolled membership, the average attendance, questions with respect to church membership, the time of the services, and the address for services, and the address of the reading room, and when regularly open.

Q. I call your attention to these questions: "Is there any other Christian Science organization in your city or town? If so, please state by letter the reasons for your organization. Does the organization of this church reduce the membership of any other Christian Science organization in your community? If so, to what extent?"

Now, what did the Publishing Society have to do with those questions? You stated that the organization of the church of itself created it a branch

church without any action by the Publishing Society or the directors. So what difference does it make to the Publishing Society as to whether or not there were two churches in a town or whether the membership of one was reduced by the organization of the other?

A. In one sense of the word, not in the slightest; and then in another sense of the word it was very important to know, if we were going to accept an advertisement of a church, that it was in harmony with the other churches and was not simply trying to disrupt the Christian Science movement in that place.

Q. What did that have to do with the organization of the church? A. Nothing to do with the organization of the church, except the indication that if it was doing it to pull down some other church it would not be a good idea to take its advertisement.

Q. In The Christian Science Journal? A. In The Christian Science Journal.

Q. Is there any provision in the Deed of Trust, covering that? A. Nothing except the fact that we are to be good Christian Scientists.

Q. (Reading): "Is the organization adhering absolutely to the Church Manual, Art. III, Sec. 6, regarding readers; Art. XXXII, Sec. 4, regarding annual lectures; Art. XXI, Sec. 1, regarding a reading room; and Art. XXI, Sec. 3, regarding 'literature in reading rooms'?"

"(For 'literature published or sold by The Christian Science Publishing Society' see the Publishing Society's current catalogue published in each issue of the Journal.)"

So you did ask these churches that desired to have a card in the Journal whether or not they were adhering to the Manual? A. We always endeavored to find out from every applicant for an advertisement whether they were genuine Christian Scientists or not.

Q. That was determined by their adherence to the Church Manual? A. That was indicated by their answers to those questions.

Q. Then the question was also asked how many of them took the Journal, the Sentinel, Der Herold and the Monitor? A. That is quite right.

Q. And that was evidence of whether they were Christian Scientists or not? A. It was evidence of whether they were active workers.

Q. (Reading):

"Notice: A church card must be withdrawn if at any time the organization selects a reader who is not a member of The Mother Church."

So that if it came to the attention of the Publishing Society that a branch that had a card in the Journal had selected a reader that was not a member of The Mother Church the card went out of the Journal? A. Naturally.

Q. And that arose out of a pro-

vision in the Church Manual? A. It did.

Q. Did you state that you had never known of a society being a branch of The Mother Church? A. I have never heard that expression; I have always heard it as a branch church.

Q. That is, they speak of the society as a branch church? A. No, no. A society is called a Christian Science society, not a branch church at all.

Q. Well, you did have applications with respect to the societies for a card in the Journal? A. Oh, yes.

Q. I call your attention, Mr Eustace, to a heading in the Journal for April, 1918: "These are branch churches and societies of The Mother Church." Do you understand they are a society of The Mother Church but they are not a branch society of The Mother Church? A. Oh, I did not designate it in that way at all.

Q. Oh, I beg your pardon. A. It is simply that I have always heard the expression "a branch of The Mother Church," but not in the sense of a branch society. It is called a Christian Science society in such and such place.

Q. Well, it is a branch society of The Mother Church? A. In effect it is, of course. [A printed form letter from The Christian Science Publishing Society, relative to the organization of a society, is marked Exhibit 52.]

Q. [Reading from Exhibit 52.] "Dear Friends: As a preliminary step to the organization of a society, study of the definition of 'Church' (Science and Health, p. 583) is recommended. It is desirable that members as individual students of Christian Science should be familiar with the Manual of The Mother Church. Before making application for an advertisement as an authorized society—" I call your attention to that phrase "authorized society." What makes a Christian Science society an authorized society? A. I suppose, in that sense of the word, the acceptance of it.

Q. The acceptance of the advertisement? A. Acceptance of the advertisement, yes.

Q. And that is done by the Publishing Society, you say? A. Yes, it is.

Q. Without any action of The Mother Church? A. Without any action of The Mother Church.

Q. And in that way it becomes an authorized society of The Mother Church, as you say? A. No; it is that because of the Manual providing for it; it is only called that after it has been accepted.

Q. (Reading): "It is necessary for the members of the prospective society to sever any connection which they may have with any church organization other than The Mother Church in Boston. The signing of the Tenets of The Mother Church by a number of Christian Scientists may begin the roll of membership. In the admission of every member, Article IV, Section 2,

of The Mother Church Manual should be carefully regarded.

By-laws should be formulated applicable to local needs. These by-laws can be very simple, but are necessary to properly conduct the business of an organization, provide for the election of officers, and the admission and dismissal of members. Provision should be made in the by-laws for amending them or for adding new rules. In naming the title of a Christian Science society thoughtful attention should be given to Article XXIII, Section 2, of the Manual of The Mother Church.

Now, in this document, Exhibit 52, I call your attention to the statement that "By-laws should be formulated applicable to local needs." What did The Christian Science Publishing Society as such have to do with the by-laws of branch societies of The Mother Church? A. Nothing except in the acceptance of them as advertisers.

Q. Did you pass on their By-Laws when you accepted their card for advertisement? A. We usually saw a copy of their By-Laws; we did not pass on them, but we looked at them just as we looked at the answers to their questions to see whether they were in conformity in a general way with the teachings of Christian Science.

Q. And the Church Manual? A. Well, that is a part of the teachings of Christian Science.

Q. (Reading):

"Article III, Section 6 (Church Manual), states that 'Readers shall be members of The Mother Church'; and Article VIII, Section 17, forbids members of The Mother Church from becoming members of any church whose readers are not members of The Mother Church. This By-Law is viewed as applying with equal force to a society. Confirming this, Article XXIII, Section 10, makes it clear that if one leaves a branch church to join a society, he must give up one membership to be eligible for the other. Article XXIII, Section 12, shows that both churches and societies are under the same rule in regard to Christian fellowship.

"If you will write the Publishing Society stating in detail what progress the Christian Scientists in your community have made toward the formation of a society, a blank form for a society application can be sent in reply."

I want, Mr. Eustace, to call your attention to this language:

"A society whose advertisement has been accepted for publication has the privilege of calling a lecturer (Art. XXXII, Sec. 3)."

Q. Do you mean by that to say that a society whose advertisement is not accepted does not have the privilege of calling for a lecture by a member of the Board of Lectureship of The Mother Church? A. That is the inference from the Church Manual.

Q. So that by the acceptance of the advertisement of the society by The

Christian Science Publishing Society, the society thus accepted by the Publishing Society may, under the Church Manual, have a member of the Board of Lectureship of The Mother Church deliver a lecture in the society? A. So I understand.

Mr. Whipple—That is by virtue of the Manual, I understand, and not by virtue of anything you do?

The Witness—No.

Mr. Whipple—By virtue of the Manual?

The Witness—Yes.

Mr. Krauthoff—We object to the interpolation of Mr. Whipple—not by virtue of anything the witness did—because the witness just stated that because they did accept the advertisement they did have the lecture.

Mr. Whipple—That is right, by virtue of the Manual.

The Witness—According to the Manual, I said.

Q. In other words, because you did something, the Manual gives to that a certain force and effect? A. All right.

Q. That is your statement, but you have to do it to make the Manual operative. Now, then, it continues: "—but is not required to give an annual lecture, maintain a reading-room, nor to conduct a Wednesday evening service at the beginning of the organization. The Manual does not provide that it is necessary for the membership of a Christian Science society to include an advertised practitioner." The rest of it is the same as in the church form—

Mr. Whipple—You do not care to have that transcribed?

Mr. Krauthoff—No; only as I have asked the questions.

[A printed form of application from a society, for a card in The Christian Science Journal, is marked Exhibit 53.]

Q. Exhibit 53 is an application from a society for a card in The Christian Science Journal. It gives the town, the date, the country, or state, the name of the readers, with date of admission to membership in The Mother Church, the enrolled membership of the society, the names of the enrolled members, asks how many members of The Mother Church there are, and then this statement is made:

"Each society desiring a card in the Journal is required to have at least four members of The Mother Church."

Is that a rule of the Publishing Society, or is that provided for in the Church Manual? A. That is the rule of the Publishing Society in accepting an advertisement.

Q. For a society? A. Yes.

Q. Adopted in analogy to the one about churches, which requires four members of The Mother Church to form a branch church? A. It is.

Q. Then the question is asked as to the willingness of members of The Mother Church belonging to the so-

ciety to serve in the office of reader, whether all of the members have severed their former church membership. Was that any part of the work of the Publishing Society, to know whether the members of the society were really Christian Scientists? A. Certainly it was, in order to see whether it was a fit advertisement.

Q. Not to see whether they complied with the Manual? A. To see if they were fitted for an advertisement.

Q. Then you ask how many of them take the Journal, Sentinel, Der Herold, the Monitor, the time for the services, and then this question is asked:

"Does the society adhere absolutely to Art. III, Sec. 6, also Art. XXI, Sec. 3, of the Church Manual by Mary Baker Eddy?"

"[Art. III, Sec. 6, requiring readers to be members of The Mother Church applies to substitute readers as well as to regularly appointed readers.] Now, this Art. XXI, Sec. 3, is the one about the literature, isn't it? A. It is literature and reading rooms, yes.

Q. That is to say, before accepting the advertisement of either a church or society, you required them to comply with that provision of the Manual which limited the literature in the reading rooms to the works of Mary Baker Eddy and that published or sold by The Christian Science Publishing Society? A. We did not require it necessarily. We asked that question in order to confirm our judgment as to whether it was wise to accept an advertisement or not.

Q. And if they did not comply with that section of the Manual they did not get their advertisement? A. Well, it would be quite likely they would not.

Q. That is the reason you asked the question? A. It was to get information; that is why all those questions are asked.

Q. Then you ask this question:

"Does the formation of this society reduce the membership of any other Christian Science organization in your community? If so, to what extent? If possible, give the names, addresses, and dates of admission to The Mother Church of three persons outside of your own membership who can give good reasons for the forming of a society in your locality."

What did you have to do with that phase of the formation of societies? A. For the same reason that we did with regard to churches, to see if they were building up the movement or if it was its purpose to disrupt it.

Q. And you decided that in passing on questions for cards in the Journal? A. We certainly decided on whether it was an advisable advertisement or not.

Q. Now, you have the same provision in this application that you have in the churches, that if at any time the society selects a reader who is not enrolled as a member of The

Mother Church, then the card goes out of the Journal? A. Yes.

Q. That is because the Manual requires the readers to be members? A. That is a rule that we adopted in conformity with the Manual.

Q. You mean it is valid because you have adopted it, not because the Manual provides it? A. Well, it governs the advertisement.

Q. I want to call your attention to this advertisement, which I shall ask the stenographers to take, because I want to base some questions on it. This is an advertisement from the Christian Science Sentinel of Jan. 4, 1919:

**"Ours**

"What wealth of meaning Christian Science puts into the word 'ours.'"

"The Bible and the Christian Science textbook are our only preachers," says the 'Explanatory Note' in The Christian Science Quarterly, written by Mary Baker Eddy.

"Our churches," says the Manual of The Mother Church, the First Church of Christ, Scientist, in Boston, Massachusetts, also by Mrs. Eddy.

"Both the Manual of The Mother Church and the Deed of Trust under which The Christian Science Publishing Society was established and is conducted make it clear that all that our Christian Science Publishing Society has, or is, or is to be, is the possession of Christian Scientists."

Then comes the quotation from II Peter, first chapter, second to fourth verses, both inclusive:

"All things have been given to us in Christian Science—our preachers, our churches, our literature, our periodicals, our lectures, our reading rooms, our privileges, our responsibility, that through these we might be partakers of the divine nature."

Now, the word "ours" there, Mr. Eustace, I want to call your attention to. You say, in the first statement, that "The Bible and the Christian Science textbook are our only preachers." To whom does the word "our" refer there? A. To every one that accepts it.

Q. Does it not refer to the Christian Science churches? A. I take it in a very much broader and wider sense, that it is preaching to all mankind.

Q. And so when we say "our only preachers," what do we mean? A. Used technically, we mean the Bible and Science and Health.

Q. Oh, no. It says "are our only preachers." The word "our" refers to the people for whom they are preaching? A. Oh, yes; I see what you mean. Well, that "our" applies to every one that accepts those as their preachers.

Q. Then, "our churches." To whom do the churches belong?

Mr. Whipple—I pray Your Honor's judgment. I think I have kept correct account, that he has answered that five times, defining what "our" means in different connections. We had it

in the forenoon once or twice, and here again.

The Master—I am unable to believe there can be any possible misunderstanding about it.

Mr. Whipple—Of course, it speaks for itself.

The Master—It is merely cumulative, going on the same thing over and over again.

Mr. Krauthoff—I am sorry, if Your Honor please, that I have not made myself clear as to what I am trying to do.

Mr. Whipple—I am not claiming that you have not made yourself clear at all; I am claiming that you are repeating yourself so that it loses its force.

Mr. Krauthoff—If I may proceed, if Your Honor please, without aid from Mr. Whipple. What I am trying to do is to show—

The Master—I think you better proceed without telling what you are trying to do.

Mr. Krauthoff—Very well.

Q. Now, when the Manual says "our churches," does that refer to the churches of The Mother Church? Will you turn to page 70 there? "Our churches" says the Manual of The Mother Church," at page 70. A. Whereabouts is that?

Q. Or is that an error? A. Yes; I think it is not page 70.

Q. It says page 70 in the Manual. A. No. I do not see exactly that expression.

Q. Well, it may be an error in paging. Let me call your attention to this statement now, going further: "All things have been given to us in Christian Science—our preachers." Now, you have explained that the preachers belong to the Christian Science movement. A. To the world.

Q. To the world. In your Bill in Equity you speak of two general branches of activity. Now, in which branch of activity are the churches? That is in the first branch described in your bill, isn't it? A. Yes.

Q. "Our literature." In what branch is that? A. Why, it is the Publishing Society.

Q. "Our churches." It means the churches of The Mother Church? A. It means the churches of the Christian Science denomination.

Q. Then "our literature." What is the literature? A. The literature is the literature of the Publishing Society.

Q. Is it the literature of the Christian Science denomination? A. Certainly it is.

Q. The periodicals? A. They are the literature of the denomination.

Q. And the lectures and the reading rooms and the privileges—they are all of the denomination of Christian Science? A. Certainly.

Q. One more advertisement, and then we will pass the question of advertisements:

"Our Only Preachers.

"That Christian Science has profited

by religious history and that it is not based on the personality of any human leadership, either past or present, is proved by the following 'Explanatory Note' which is read from The Christian Science Quarterly by the First Reader at every Sunday service in Christian Science churches before beginning the Lesson-Sermon."

Then follows a statement, the explanatory note:

"Friends:—The Bible and the Christian Science textbook are our only preachers. We shall now read Scriptural texts, and their correlative passages from our denominational textbook,—these comprise our sermon.

"The canonical writings, together with the word of our textbook, corroborating and explaining the Bible texts in their spiritual import and application to all ages, past, present, and future, constitute a sermon undivorced from truth, uncontaminated and unfettered by human hypotheses, and divinely authorized."

"Thus presented in the Quarterly in the plural number, an even deeper significance and mission of these 'preachers' is presented in the singular number, under the heading, 'The Christian Science Pastor,' Article XIV, Section 1, of the Manual of The Mother Church, The First Church of Christ, Scientist, in Boston, Massachusetts, as follows:

"I, Mary Baker Eddy, ordain the Bible, and Science and Health with Key to the Scriptures, Pastor over The Mother Church,—The First Church of Christ, Scientist, in Boston, Mass.,—and they will continue to preach for this Church and the world."

"Could anything be added which would show more clearly what leads the Christian Science movement, and how and where?"

Do you agree with the statements made in that advertisement— A. I certainly do.

Q. —to the effect that what is termed "our only preachers," as created by the Manual of The Mother Church, leads the Christian Science movement? A. As created by Mrs. Eddy and expressed in the Manual of The Mother Church.

Q. And perpetuated in the Manual? A. Perpetuated, I hope, in the heart of mankind.

Q. By the Manual? A. Expressed in the Manual.

Q. What is it that requires The Mother Church and the branch churches to have the Bible and Science and Health as their only preachers outside of the provision of the Manual? A. That is Mrs. Eddy's request.

Q. Now, Mr. Eustace, this advertisement which speaks of the Deed of Trust and the Manual—have you ever published that a second time in the Journal? A. I don't know.

Q. Have you undertaken to revise it for publication? A. Not that I know of.

Q. I wish you would look when next at the publishing house at your

record of those things and see to what extent you have attempted to revise that advertisement. A. What is the name of that?

Q. The one in which the Manual and the Deed of Trust are both mentioned. A. I see.

Q. These advertisements were printed and published for the purpose of increasing the circulation of the periodicals? A. Yes.

Q. A number were written that have not been published? A. It may be a lot have been, I don't know.

Q. At the inception of these advertisements were they submitted to the directors of The Mother Church? A. At the inception they were submitted to the editors, to the directors, to the trustees—I don't know how many others.

Q. Were they always submitted to the directors? A. I think so; I think the directors always saw them.

Q. Saw all of them? A. I think so.

Q. Never by your direction was the submission of them to the directors suspended? A. I would have to look back and see if we ever had taken any action on that or not.

Q. Mr. Leeson continued in the writing of these advertisements under the arrangement made in August of 1917 for how long a period of time? A. He is still under that same arrangement, I believe.

Q. Did you not change the arrangement in March of 1918? A. You mean change the arrangement with Mr. Leeson?

Q. Yes. A. No, not that I know of.

Q. To refresh your memory, was not the arrangement that you made of August, 1917, an arrangement with the Trustees under the Will of Mary Baker Eddy, and the directors and trustees, whereby he was to get \$500 a month as advertising counsel, and then in March, 1918, you changed that to an arrangement whereby he was to get \$10,000 a year? A. No; he came then into the employ of The Christian Science Publishing Society, giving his entire time to it.

Q. That was in March, 1918? A. I do not know the exact date.

Q. When you changed that arrangement did you confer with the Board of Directors about it? A. Not that I know of.

Q. The arrangement had been made in conference with the directors? A. The original arrangements on the advertising?

Q. Yes. A. Yes; it had been made with the directors, in their capacity as directors and Trustees under the Will, I suppose, as well.

Q. You changed it without conferring with them? A. We did; at least, as far as I know. I don't remember.

Q. And what instruction did you give Mr. Leeson at the time you changed the arrangement as to what his future relations with the direc-

tors should be? A. I do not know that we gave him any instructions at all except as he came into the employ of the Publishing Society.

Q. Did you not specifically state to him that he must remember that he was in the employ of the Publishing Society and had nothing to do with the directors? A. I did not; but that would be a very natural thing, perhaps, for him to be informed of; I don't know.

Q. You have no recollection of that yourself? A. No.

Q. Among the publications of The Christian Science Publishing Society is the Christian Science Hymnal? A. There is.

Q. That is sung in the churches, the branch churches and societies of The Mother Church, and in The Mother Church? A. It is.

Q. I want to call your attention—we have referred to it in passing, but I want the record to be explicit on it—to the second verse of "Onward, Christian Soldiers":

"Like a mighty army  
Moves the Church of God;  
Brothers, we are treading  
Where the saints have trod;  
We are not divided,  
All one body we,  
One in hope and doctrine,  
One in charity."

Was your attention called to the insertion of that hymn in an article prepared by Mr. Paul A. Harsch for the Christian Science Sentinel? A. One verse of that hymn.

Q. The one I have read you? A. Yes; the second verse, isn't it?

Q. Did you order it stricken out of that article? A. I did.

Q. Why, Mr. Eustace? A. That is, I dislike— May I say that we did not order it? We spoke to the editor, who very kindly took it out. We don't order in the Publishing Society under any circumstances.

Q. It did go out? A. It went out, yes.

Q. With your advice and cooperation? A. With our advice and cooperation, if you put it that way.

Q. And why did it go out? A. Our proposal, or talk with the editor, was to the effect that we felt that at this time, when the effort was being made to say that we were divided, we did not want the idea of any division to be brought out, because we are not divided.

Q. Then the second verse was not stricken out because the statements contained in it are not true? A. It was not. It was the presenting the idea of division that we had it stricken out for or asked to have it.

Q. And the statement now of the trustees is that the hymn remains true? A. Why, of course it is always true.

Q. And there are other hymns in the hymnal that voice the same thought? A. Many, I believe.

Q. You are familiar with the state-

ment of Mrs. Eddy that "Unity is the essential basis of Christian Science"? A. I am, indeed, and I love it.

Q. And you believe in it? A. I do, indeed.

Q. Now, Mr. Eustace, I wish you would take the records of The Christian Science Publishing Society and turn to June, 1902, with respect to the choice of editors. A. What year?

Q. Beginning with June, 1902. (A book is handed to the witness.) A. Which editor were you referring to?

Q. Why, all of the editors that were elected by The Christian Science Board of Directors in that year. What does the record of The Christian Science Publishing Society show? A. (reading): "June 17th, 1902. Special meeting convened at 11:30 when the trustees met with Mr. Armstrong and Mr. Johnson of the Board of Directors who made it known that Archibald McLellan of Chicago had been elected editor-in-chief of the Journal and Sentinel, and Miss Mary Speakman, assistant. Mr. McLellan was present, and signified his acceptance of the office and indicated that a salary proportionate to his present income would be four thousand five hundred dollars."

Q. Is that all the record recites? A. (reading): "Conference was had in regard to the work and he announced his intention to return to Chicago and there terminate his business connections. These elections were accepted, but awaiting further instructions, no action was taken. Judge Hanna signified his willingness to continue at work till the new editor arrived."

Q. Now, will you turn to June of 1903.

Mr. Krauthoff—Mr. Whipple, will you have Mr. Watts please get the whole Hoag correspondence for me?

A. I don't see anything here about that.

Q. Well, you are familiar with the fact that Mrs. Annie M. Knott began her— You will possibly find it later in the month in 1903. A. Oh, yes, Mrs. Knott came later. That is right, yes—July.

Q. Will you read the record in 1903, please. A. Yes, that is it.

"July 6, 1903.

"Special meeting of the Board of Trustees convened at 11 a. m., all members present. Official notice was received from the Board of Directors of the election of Mrs. Annie M. Knott, CSD, as assistant editor of the Journal and Sentinel. A letter was received from Mrs. Knott asking that the amount of \$2500—twenty-five hundred dollars—per annum be considered as the proper return for her services. This amount was agreed upon and the following adjustment of salaries was had."

Q. Will you continue reading, please? A. (Reading):

"Mr. John B. Willis to receive \$1800 per annum, Miss Louise F. Kallmorgan \$1800 per annum, Mr. Leon Wood to receive \$20 per week. A letter was



prepared and sent to our Leader together with a copy of Mrs. Knott's letter."

Q. That is the only record you have of any election or employment at that time? A. I think it is, unless our correspondence shows something with Mrs. Eddy.

Q. Will you turn to 1904. A. I don't know. I haven't been through this to see, so I don't know what it is. In January did you say?

Q. It was usually in June, wasn't it? Mr. Whipple—Do you care to put in Mrs. Eddy's letter about Mrs. Knott in July, 1903?

Mr. Krauthoff—I should be very glad to.

Mr. Whipple—It reads as follows:  
"Pleasant View, Concord, N. H.  
"July 9, 1903.

"Beloved Student:

"It is just to pay Mrs. Knott her price and she will earn it, I trust. She is good, well educated and has been through the primary and normal classes under my instruction. A student qualified thus the directors know is needed on the staff editorial. Do not fail to secure her price and so inform her at once.

"With love,  
"M. B. EDDY."

Mr. Bates—Just a moment. Who is that addressed to?

Mr. Streeter—Won't you read the address? Isn't there something else?

Mr. Whipple—It says, "The above is in Mrs. Eddy's own handwriting, evidently to Thomas W. Hatten," who was one of the trustees, I understand?

Mr. Krauthoff—Who put the memorandum on it that it was to Mr. Hatten?

Mr. Whipple—That I don't know.

Mr. Krauthoff—That is not on the letter itself?

Mr. Whipple—No.

Mr. Bates—That is not the original letter, is it?

Mr. Whipple—No. It is just a copy.

Mr. Bates—If it has not gone in, I object to it. If you have it, put it in. I object to that going in at the present time.

Mr. Whipple—It has gone in. Your objection is ex post facto.

Mr. Bates—You said you were offering the letter. Instead of that you are offering a copy.

Mr. Whipple—I did not pretend it was the original letter, of course, and your associate was perfectly willing it should go in. You have got to have more team play. You can't one of you assent to begin with, and the other one after it is done object.

The Master—May I suggest this: Let the letter that has been read by Mr. Whipple stand as it is at present. If the original letter can be produced hereafter, some change in the record may become necessary.

Mr. Krauthoff—If Your Honor please, the point I desire to make about it is this: Mr. Whipple said he desired to offer a letter with respect to Mrs. Knott. To that I acceded. Under that permission of mine he read a

notation which is not a part of the letter, and I move that that notation be stricken from the record as not a part of the letter.

The Master—Let the record state that the notation on the letter is not a part of the letter itself. A. I don't see anything in 1904.

Mr. Whipple—I made that request in reply to a statement to state to whom it was addressed, and I find on the copy that illuminating statement, which seems to have caused some disturbance.

Q. Will you find the next year, June, 1905? A. I don't see anything in June, 1905, there.

Q. Do you find anything in June, 1906? A. No.

Q. June, 1907?

Mr. Streeter—Now, Mr. Krauthoff, let me suggest you ask him to look in September, 1906. I beg your pardon for interrupting.

Q. Will you look in September, 1906?

Mr. Streeter—And along about Sept. 25. A. Nothing on the 25th.

Q. Do you find anything in September at all? A. I will look through it.

Mr. Streeter—If you will allow me to interrupt, Mr. Krauthoff, suppose you ask him if he finds anything under date of Sept. 25, 1906, about Allison V. Stewart succeeding Joseph B. Clark?

The witness—Yes, there is.

Mr. Whipple—He is talking about editors.

Mr. Krauthoff—We are talking about editors now, in general, and we went all over that on the trustees.

Mr. Streeter—Did you have that record in?

Mr. Krauthoff—Yes. I went over that about the trustees. I am now talking about editors.

Mr. Whipple—May I suggest, if Your Honor please, that we ought not to have our time taken in examining these records, which could just as well be done outside the court, and then we could put in in five minutes what we are spending half an hour on. This preparation of the case ought to be before we come into court and not keep every one waiting.

Mr. Krauthoff—Very well. I will make this suggestion, then, that between now and our next hearing Mr. Eustace find the places in the record which relate to the election of editors.

Mr. Whipple—Or any mention of editors. Of course we say we never elected any editors, because there is no provision for it in the trust deed, or anything with regard to their employment, or communications from the august body.

The Master—If it is going to take much time to hunt that up, I think it would be better to wait till the next session.

Mr. Whipple—Your Honor sees the size of the volume, and we have only suggestions to guide us with regard to it.

Mr. Krauthoff—May I have the whole Hoag correspondence?

Mr. Whipple—Certainly. Let us see what you want. That is pretty general. I am afraid we will furnish you with so much it will take a good while to put it in. Just what do you want? The directors were never good enough to say anything to the trustees about Mrs. Hoag, as I remember it.

Mr. Krauthoff—I would like to have copies of the letters from the directors to the trustees about Mrs. Hoag. You did get some letters from the directors on that.

Mr. Whipple—Yes. Here is the first one.

Q. While that is being arranged, has the Board of Trustees of The Christian Science Publishing Society up to this time employed anybody to succeed Mr. McCrackan? A. We have not.

The Master—Will you remind me, Mr. Krauthoff, to succeed him as—

Mr. Krauthoff—As associate editor of the Christian Science periodicals.

The Master—Thank you.

Mr. Whipple—It hasn't appeared yet, Your Honor, in this hearing that Mr. McCrackan was dismissed by the Board of Trustees some time in May.

Mr. Krauthoff—According to your—

The Master—May?

Mr. Whipple—In May of the present year. That appeared in another hearing, but it has not been offered in evidence here, so that the references to electing some one to succeed him, when you have not been informed that he had been dismissed, is a little confusing.

Q. According to your records and your statement The Christian Science Publishing Society dismissed Mr. McCrackan on May 19, 1919? A. It did; at least I think that that is the date, all right.

Q. I am not now admitting, of course, that your action was valid, but that was the action on which the dismissal, or whatever it was, took effect?

Mr. Whipple—Well, I don't think that is very respectful to a decision of this Court in which it was found as a fact that the Board of Trustees did dismiss him. Now, you say you are not admitting that they did. That has been judicially determined. That is one thing, isn't it, Mr. Krauthoff?

Mr. Krauthoff—With all due respect to Mr. Whipple, it has not been judicially determined that the Board of Trustees had a legal right to dismiss Mr. McCrackan.

Mr. Whipple—Do you want the Hoag correspondence? You have asked for it.

Mr. Krauthoff—If I may have it, but I am trying to bring out this, if Your Honor please, that on May 19, 1919, Mr. McCrackan ceased to be an associate editor of these periodicals; that from that date to this these trustees have not employed anybody to succeed him, and that the periodicals are now running with one editorial short.

Mr. Whipple—One editor, you mean.  
Mr. Krauthoff—And one editorial, too.

Mr. Strawn—No more short than it was when he was nominally there.

The Master—Perhaps if there is no objection to that statement, it will save the taking of evidence to support it.

Mr. Whipple—We don't object to that, but the same condition had continued for quite a while, while Mr. McCrackan was neglecting his duties, before we dismissed him.

Q. Coming down to the 19th of May, 1919, at the present time, each number of the Sentinel contains two editorials instead of three as formerly? A. No. I think it was on May 24—what was the first Sentinel? May 24 was the first one. That—

Q. And since that time there have been two editorials in each number? A. There have.

Mr. Krauthoff—Now, if Your Honor please, we call attention to a letter from Annie M. Knott to The Christian Science Board of Directors, dated March 19, 1919.

The Master—That is a letter from Mrs. Knott?

Mr. Krauthoff—Mrs. Knott, in March, 1919, was an editor of the Christian Science periodicals and was elected a member, as we claim, of The Christian Science Board of Directors.

The Master—From Mrs. Knott to the Board of Directors, to the defendants in this case?

Mr. Krauthoff—To the defendants, tendering her resignation as an editor.

Mr. Whipple—If Your Honor please, we don't see how this correspondence between Mrs. Knott and the directors, which we could not control and which we knew nothing of, can be admitted in our case.

The Master—How can it affect the plaintiffs, the trustees in the case?

Mr. Krauthoff—Why, that letter, if Your Honor please, is only the basis of that which started the incident.

The Master—Only the basis of what?

Mr. Krauthoff—I mean it is the starting of the incident, and we merely make this statement now—

The Master—No; let us settle it about the letter.

Mr. Krauthoff—I don't offer the letter.

The Master—How can a letter written by Mrs. Knott affect the plaintiffs in the case?

Mr. Krauthoff—I don't offer the letter, if Your Honor please, if objection is made to it. I merely make this statement so that Your Honor will understand.

Mr. Whipple—Pardon me. Your statement is very likely more objectionable than your letter.

The Master—Then the letter is offered, objected to and excluded, I suppose.

Mr. Krauthoff—The letter is offered and excluded. Now, if I may state

this: On March 19, 1919, Mrs. Knott tendered her resignation to The Christian Science Board of Directors.

Mr. Whipple—That I object to and ask to have it stricken out as having no probative force. The gentleman withdraws the letter and then tries to state the substance of it orally.

Mr. Krauthoff—Then we will pass that.

Mr. Whipple—He is not a witness—at all.

Mr. Krauthoff—We will prove it independently.

Mr. Whipple—You will, if it is admissible. Otherwise, of course you won't.

The Master—We will take it for granted he won't try to, if it isn't admissible.

Mr. Krauthoff—Here is a letter to the Board of Trustees from The Christian Science Board of Directors, March 31, 1919.

[This letter is read and is later marked Exhibit 53.]

Mr. Krauthoff—Included in that letter was a copy of a notice.

[The copy of a notice dated is read and is later marked Exhibit 53a.]

Q. Did that notice ever appear in The Christian Journal? A. It did not.

Q. Why not? A. Because—what is the date of that?

Q. March 31, 1919. A. That was after our Bill in Equity was filed.

Q. Was that the only reason? A. That was the reason—the reason was that our Bill in Equity was filed and we didn't want of course to bring out any question of that character.

Q. You wrote a letter to The Christian Science Board of Directors April 1, 1919.

[The letter dated April 1, 1919, from the Board of Trustees to the Board of Directors is read and is later marked Exhibit 54.]

Q. Of course the publications, the Journal and the Christian Science Sentinel, are filled with many announcements of The Christian Science Board of Directors extending over a long period of years, inserted without any question as to their validity and effect, as you know; is that true, Mr. Eustace? A. I will take your word for it.

Q. I mean did you ever question the announcements of the Board of Directors prior to the change— A. I never filed a bill in equity before.

Q. Oh, it is all different now, is it? A. It is entirely.

Mr. Whipple—The difference is that you are enjoined from doing these things.

Mr. Krauthoff—I see.

Mr. Whipple—And you see you tried to do a thing you were enjoined from doing, although you didn't seem to know it.

Mr. Krauthoff—I see. I didn't know that. I am glad to be instructed.

Mr. Whipple—Yes; you were enjoined from electing the editor.

Mr. Krauthoff—But this happened before the injunction.

Mr. Whipple—This correspondence wasn't before the injunction.

Mr. Krauthoff—Yes, but the election was.

Mr. Whipple—Yes, but your election was a futile thing.

[Letter dated April 1, 1919, to Hon. John L. Bates is read by Mr. Krauthoff down to and including the words at the top of page 3, "informed me by telephone that it had your approval."]

Mr. Krauthoff—That is a matter not now in controversy.

Mr. Whipple—I think it is very much so. We say you also violated the injunction in that.

Mr. Krauthoff—I will be very glad to read it.

[Mr. Krauthoff continues to read the letter to the end and same is later marked Exhibit 54a.]

Mr. Krauthoff—Now, then, on April 3, 1919, The Christian Science Board of Directors sent to you a copy, wrote you a letter inclosing what purported to be a copy of Mrs. Knott's resignation to the Board of Directors. Here is a letter, April 28, 1919.

[The letter dated April 28, 1919, from the Board of Trustees to the Board of Directors is read by Mr. Krauthoff and is later marked Exhibit 56.]

Q. Now, Mr. Eustace, you state here that the election by the Board of Directors of Mrs. Ella W. Hoag as an editor of the Christian Science periodicals is "an unwarranted assumption of authority." What do you mean by that? A. Exactly what those words imply.

Q. You are familiar with the fact that for the period beginning June, 1902, the directors annually elected the editors and the associate editors; you were familiar with that fact, that those editors and associate editors were always accepted by the Board of Trustees as the editors to serve as such, and because the Board of Directors did that which they had been doing for a period of 17 years you characterize it as "an unwarranted assumption of authority"?

Mr. Whipple—That I object to, because it is an unwarranted assumption in the question.

Mr. Krauthoff—Unwarranted assumption in the first place.

Mr. Whipple—No; in your question. When Mrs. Eddy had been living she had selected a number of the directors as long as she was living, and you were fully aware of it. Somehow or other you have got it into your head these directors are paramount in authority to Mrs. Eddy; they not only succeeded to Mrs. Eddy's authority, but had greater authority, and you seem to forget that when she was on earth she was dealing with these matters.

Mr. Krauthoff—If Your Honor please, in view of that statement of Mr. Whipple's it is only fair to make this statement.

The Master—I think this discussion

is very much out of place on both sides.

Mr. Krauthoff—I beg Your Honor's pardon. I didn't know I was discussing it.

Q. You are familiar with the fact, Mr. Eustace, that from 1911, at the passing of Mrs. Eddy, until June, 1918, a period of seven years, The Christian Science Board of Directors did annually elect the editors and the associate editors, and the manager of The Christian Science Publishing Society? A. I believe that they did so.

Q. And with that knowledge in your possession, you treat their action in electing Mrs. Hoag to succeed Mrs. Knott as an unwarranted assumption of authority? A. I do.

Q. Is that based on the proposition that the Board of Directors could not fill a vacancy during the course of the year, or that they had no power to elect at all? A. They had no power, of course, ever to enforce their election—

Q. I am talking about the power of election. A. I do not know anything about their power of election.

Q. You said here that in electing Mrs. Hoag they were engaged in an unwarranted assumption of authority. A. They were. The Bill in Equity had been filed. It was an attempt to coerce the Board of Trustees on a question that we were absolutely disputing their authority on, to force an editor or anybody else on the trustees.

Q. Well, let us see—

The Master—Let me ask both counsel whether I have anything to consider in regard to the question of whether what was done was a violation of the court injunction?

Mr. Whipple—No, Your Honor. This is a matter—

The Master—Why should we go into this matter?

Mr. Whipple—There is not the slightest reason for it, but I have felt the same about some other matters as I think Your Honor has indicated that you have. These matters which have transpired since the filing of the bill and which were involved, and very critically involved, in the matter before Judge Braley, Mr. Krauthoff seems to want to rehearse. I do not think that they are admissible at all.

The Master—What have I to do, Mr. Krauthoff, with the question whether or not this action by the directors violated the Court's injunction.

Mr. Krauthoff—That is not the question to which I am addressing this evidence, if Your Honor please. We are met here by continued protestations on the part of Mr. Whipple and his clients, that in all things they are obedient unto this Manual as they understand it. We had the testimony this morning that there is nothing inconsistent on the part of the directors' electing an editor provided the trustees thereafter approve of the election and employ him. We are now offering, independent of any injunction, and as to an incident which occurred before the injunction was issued, to show

that these trustees, in writing, had notified these directors that when the directors discharged duties under the Church Manual, and elected an editor, the directors were taking upon themselves an unwarranted assumption of authority, in direct repudiation of the Church Manual and in direct denial of every protestation they make regarding it.

The Master—Now having got in that correspondence, it appears that it is all subsequent to the filing of the bill.

Mr. Krauthoff—And it indicates a state of mind of these trustees.

The Master—Isn't that another reason why I am not concerned with it?

Mr. Krauthoff—No, if Your Honor please. What a plaintiff in a bill in equity says in correspondence after the filing of the suit in respect to any subject of controversy that there is in the suit indicates what his contention is with reference to the nature of his suit, it indicates the nature of the controversy, and it is a denial of his testimony just the same as if yesterday he went and told somebody of it. This is direct evidence of a repudiation of the Church Manual by these plaintiffs under the advice of their counsel.

Mr. Whipple—We protest against any such statement as that.

The Master—That is a question to be considered later. Now you have your correspondence in, and I suppose that that is the end of it.

Mr. Whipple—Well, it has not been marked and I would suggest that all of those papers that have been read be marked in the order in which they were read.

Mr. Krauthoff—They have all been marked by the stenographer.

Mr. Whipple—I beg your pardon. I am afraid that they did not have an opportunity to mark them at all.

Mr. Krauthoff—I beg your pardon.

Mr. Whipple—You kept them in your hand, and the stenographer had no chance.

The Master—It strikes me that they can only be admissible, if at all, upon the ground that there is something in them which tends to contradict the evidence already given by Mr. Eustace.

Mr. Whipple—Yes, Your Honor, and we say that there is no contradiction in the letter, and, above all, there is no evidence, not the slightest, not a scintilla of evidence that there is any violation of the Manual.

[The letters, etc. referred to are marked as follows:

A copy of letter from Charles E. Jarvis, corresponding secretary for The Christian Science Board of Directors, to the Board of Trustees, dated March 31, 1919, is marked Exhibit 53. R. H. J.

A copy of a record of The Christian Science Board of Directors concerning the election of Ella W. Hoag, C. S. D., associate editor of The Christian Science Journal, is marked Exhibit 53a. R. H. J.

A copy of a letter from the Board of Trustees to The Christian Science

Board of Directors, dated April 1, 1919, is marked Exhibit 54. R. H. J.

A copy of a letter from "W-C" to Hon. John L. Bates, dated April 1, 1919, is marked Exhibit 54a. R. H. J.

A copy of a letter from Charles E. Jarvis, corresponding secretary for The Christian Science Board of Directors, to the Board of Trustees of The Christian Science Publishing Society, dated April 3, 1919, is marked Exhibit 55. R. H. J.

A copy of a letter from the Board of Trustees, to The Christian Science Board of Directors, dated April 28, 1919, is marked Exhibit 56. R. H. J.]

Mr. Streeter—Well, following my Brother Whipple's caveats from time to time, I do not want to be regarded as admitting the entire accuracy of his last statement.

Mr. Whipple—I presume you do not; and I assert further that it was a further instance of an unwarranted assumption of authority on the part of the Board of Directors. I suppose you will not admit that? That is the point that we are dealing with.

Mr. Krauthoff—The point that we are making, if Your Honor please, is this, that when Mr. Whipple says that the Board of Directors, in electing editors under the Church Manual, are engaged in an unwarranted assumption of authority, he thereby repudiates the Church Manual.

Mr. Whipple—May I reply to that, if Your Honor please, a moment?

The Master—The statement having gone in, I do not see how I can refuse you the right to reply.

Mr. Whipple—That is what I do want to do.

The Master—I do not think that the statement should have been made here.

Mr. Streeter—If Your Honor please, I hope you will let my friend reply, because it is so interesting to see him get between these two points that I would like to hear him state it over again.

Mr. Whipple—What do you want to hear me state now?

Mr. Streeter—I want to hear you say what you have said two or three times before, and I have not been able to understand it after you have said it.

Mr. Whipple—Now, an election, in one sense, means the installation of a person in office. What we have said is that an election which is in fact nothing but a nomination we have no objection to, the ultimate authority to employ and install in office resting with the trustees. Now, they attempted, and in that they were in contempt of Court, to elect, select and install. That they had no right to do under the Manual; and I think they know by this time that they have no right to do it, certainly, under the injunction; and that is where they were unwarranted in their action.

The Master—Now, having heard both sides so far, I prefer to leave the whole question until it comes up at the proper time.

Mr. Whipple—Yes, Your Honor.

Mr. Streeeter—It is very interesting to hear you say that.

Q. Mr. Eustace, commencing with your accession to the office of trustee, did you have any conferences with the Board of Directors of The Mother Church as to the discharge of your duties under the Deed of Trust? A. I did not. You mean—say that again, will you?

(The question is read as follows: "Mr. Eustace, commencing with your accession to the office of trustee, did you have any conferences with the Board of Directors of The Mother Church as to the discharge of your duties under the Deed of Trust?")

A. At what time?

Q. When you became a trustee, in December, 1912. A. We have had many, many conferences.

Q. To what did those conferences relate? A. Why, to countless subjects.

Q. And to what did the subjects relate? A. Why, to the Christian Science movement as a whole.

Q. And including The Christian Science Publishing Society? A. Yes. We have had a number of conferences on that particular point.

Q. In your direct examination a letter was read in which it was stated to the directors that if the directors wanted to see the trustees on any business relating to the trustees, the trustees would receive the directors at the publishing house, but that if the directors wanted to see the trustees on any business relating to the directors, you would call on the directors? A. That is correct.

Q. Now, what possible business can either of you have that does not concern both? A. Nothing, except the welfare of the movement.

Q. How could any such differentiation be made if there was no thought of separation? A. Do you wish me to tell you that we were tired of the superior air that the Board of Directors was acting in, in regard to the trustees, and that we had decided that we would not stand for that any longer?

Q. Well, I wish you to tell me whatever is true about it. A. Well, that is the truth.

Q. Then you adopted this rule, that if they wanted to see you about the business of the trustees, they must come over and see you? A. We would be very glad to see them, night or day, any time.

Q. Then you also adopted the rule for the government of the directors, that if they wanted to submit anything to you they should do it in writing? A. That we would both do so.

Q. And none of the trustees would talk to the directors unless all of them did so? A. No; that was on the particular point of the letter of Sept. 30.

Q. And at that time you stated that Mr. Rowlands was not in town? A. We did.

Q. How often had Mr. Rowlands

been absent from Boston since Aug. 1, 1917? A. I don't know.

Q. Do the minutes of the trustees record who were present at the meetings of the trustees? A. Probably they do.

Q. Will you turn to your minutes and tell me from which ones of them he (Mr. Rowlands) was absent? If Your Honor please, it occurred to me—

Mr. Whipple—We will look that up and give it to you later.

Mr. Krauthoff—That may be looked up and given at the next hearing.

Mr. Whipple—Yes. We will make a minute of that.

Q. Mr. Eustace, in your bill you make this statement:

"The directors have also insisted that the trustees should at once openly declare and agree that since the By-Laws of the Church as a whole indicated that the directors of the Church were intrusted with the business of the Church, they, the directors, were thus authorized and required to supervise and control the business of The Christian Science Publishing Society as a part of the Church"—

Do I understand that that statement that you make as to the directors' claim is denied by you,—that is, you claim that The Christian Science Publishing Society is not a part of The Mother Church? A. It is not a part in that sense of the word, that The Mother Church is under a Deed of Trust, and the Publishing Society is under a deed of trust.

Q. Well, I am not asking for deeds of trust. I am asking what your interpretation of the relation of The Christian Science Publishing Society to The Mother Church is.

Mr. Whipple—I pray Your Honor's judgment as to whether that has not been gone into ad infinitum, if not ad nauseam.

Q. You also state here: "The plaintiffs further aver upon information and belief that it is not a part of the plan of the defendants to appeal to the courts for an orderly determination of the question of their right to remove the plaintiff trustees under existing circumstances, but that on the contrary they propose to accomplish their removal by the exercise of the great and dominating influence which they carry by reason of their official position and in the exercise of their power to dominate and control members of The Mother Church by the powers of discipline which they hold, and to influence the action of other churches by refusals to grant licenses or appointments." Who told you that? A. Who told it?

Q. Yes. You say that you aver upon information and belief? A. That they had done that?

Q. Yes, or were going to do it. A. Because of the statements that we have heard.

Q. The statements that you have heard? A. The statements that the

lecturers, some of the lecturers, had made.

Q. Prior to the filing of the bill? A. Prior to the filing of the bill, I think.

Q. What lecturer said it? A. Mr.—just state what you—

Mr. Whipple—Just a moment. Should the name of the lecturer who depends for his living—I do not know that you (addressing the witness) have any objection to stating it, but I should very much doubt whether any good purpose would be subserved by having the names of the informants given, especially when they are subordinate to this Board of Directors who have indicated such a disposition of vindictiveness as they have shown.

Mr. Krauthoff—Now, if Your Honor please, as to the last statement of Mr. Whipple, the evidence will unfold itself as to that. These directors are the governing board of a great religious organization. They are charged here with oppression in office. They are charged here with bad faith—

The Master—The question here is whether you, under your cross-examination, inquiring as to the information on which these statements are made, are entitled to have the names of the informants.

Mr. Krauthoff—We say that we are entitled to have them so that we may—

The Master—Mr. Whipple, as I understand it, has gone no further than to suggest that it is not desirable to give them.

Mr. Whipple—It is not desirable, and I think that it is a matter within Your Honor's discretion. I do not know that there is any objection to it, but it seems to me that there would be objection.

Mr. Streeeter—If Your Honor please, if I were one of the persons who were going to be named, I should hope and pray that Mr. Eustace would not give my name. If I were one of the hired men of the Board of Directors, I should not want them to know that I told Mr. Eustace any such thing. I think, for the protection of those men, it is well enough to exercise Your Honor's discretion not to permit those names to be used.

Mr. Whipple—The General speaks feelingly on the subject, because he knows what the directors do under those circumstances, or his client does.

Mr. Krauthoff—May we resume the question before the Court? We are charged here, as I said, with an abuse of our official power.

The Master—No, no; the question is now whether you have a right to the names of the persons who told the trustees these things.

Mr. Krauthoff—One of our contentions is that no such statement was ever made to the plaintiffs.

The Master—In other words, that they had no such information?

Mr. Krauthoff—They had no such information; and they put this into the

Bill in Equity for the purpose of discrediting us before the Christian Science field.

Mr. Whipple—The testimony under oath is that they did have such information. I am not sure whether it came directly from the lecturers or from someone else who talked with the lecturers. We do know, and, if it is necessary to go into it, we can show pretty fully the plan and the propaganda that you had planned out, by which you were going to make this Publishing Society an empty shell, and do some other things which you have neglected to do.

Mr. Krauthoff—We challenge that statement in toto, and demand proof of it.

The Master—Never mind about that now. I do not care to go into that. I hardly think that my discretion goes so far as to enable me, or to authorize me, to tell the witness that he may refuse to state the names, or to order him not to state the names. If the defendants insist, or if the cross-examining counsel insists, on having the names, I do not see how I can direct the witness not to give them.

Mr. Whipple—If the witness should refuse to give them would he be in a position of disrespect to the Court? Because if he would, he would not like to do that thing. Would there be anything more than the inferences that might be drawn as to his failure to give the names? That we would take the responsibility of, but we would not like—

The Master—I should certainly hesitate a long time before I would take any action towards compelling him to give them.

Mr. Whipple—Well, if Your Honor thought that he ought to give them, we would not wait for any proceedings, or intimation, or order.

The Master—It does not seem to me that your objection is enough to warrant my directing the witness not to state them.

Q. Will you give the names of the persons from whom you got this information?

Mr. Whipple—May I say to the witness that, as I understand it, the matter is now left to him? A. I think that I will refuse to give the names, then.

Mr. Krauthoff—We shall ask, at the proper time, that the necessary steps be taken to compel an answer to this question.

The Master—We will take that up later.

Q. That is to say, Mr. Eustace, you filed this Bill in Equity against these directors, and made this statement under oath, on information and belief, and you have printed 140,000 copies of this bill, and circulated them, and you now refuse to tell these directors upon what basis you make that allegation.

Mr. Whipple—That is not the statement at all. He has stated the basis on which he makes it. He refuses at present to give the names of people

who have given information, to make them the subject of vindictive behavior on the part of your clients; and that is all he says.

Q. You decline to give the names of the people upon whose statements you have based these allegations against these directors? A. At present I decline.

Q. You further state here: "The plaintiffs further aver upon information and belief, that the defendants have stated to many Christian Scientists in substance that they plan to obtain control of the Publishing Society, or to destroy it."

Now, what information have you upon that subject? A. I gave it yesterday, that—

The Master—Is there anything that you want to add to what you stated about it yesterday?

The Witness—Nothing at all.

Q. That was limited to the statement that came to you from the business manager, and the inference that you drew from what the directors said to you? A. Yes, it was.

Q. And you say— A. But the inference was a very clear inference.

Q. You say further, "and to accomplish that result"—that is, the result you claim, to make it an "empty shell," as I understand your statement—as I understand your statement, that came to you directly from Mr. Watts, and not from any of the directors. A. I also said that in a conference with the directors that was plainly indicated by inference.

Q. But that phrase was not used? A. I don't remember the actual phrase, "empty shell."

Q. You say, "and to accomplish that result by using their great influence with Christian Science churches and throughout the field to induce Christian Scientists not to continue to subscribe for and support the publications published by the society established and founded by Mrs. Eddy." Now, what, if anything, have the directors done to accomplish that result? A. Whether directly or indirectly, I think that they have done a very great deal.

Q. What do you know about that?

Mr. Whipple—Do you mean since the injunction was granted?

Mr. Krauthoff—Oh, I mean at any time.

Mr. Whipple—That was a threat, that they were planning to do it then. It does not say that they had done anything. It says that they threatened it; and that is what they said practically to Mr. Eustace himself.

Mr. Krauthoff—No; it states that they said they would do it. Now, what had they done prior to the filing of this suit?

The Master—Is there any allegation that they had done anything?

Mr. Krauthoff—No, I do not think that there really is, if Your Honor please.

The Master—Then we had better pass that, I think.

Q. After this suit was filed, you issued this Bill in Equity, I understand? A. We did.

Q. You printed how many copies? A. About 140,000.

Q. And sent them to whom? A. To our subscribers, except the Monitor.

Q. Have you that many subscribers exclusive of the Monitor? A. Evidently.

Q. And how many letters have you received from your subscribers since you sent out this Bill in Equity?

Mr. Whipple—That I object to, if Your Honor please.

The Master—Why should we go into that?

Mr. Krauthoff—Why, the point we desire to make about that, if Your Honor please, is this, that the statement of the trustees, outlined in this Bill in Equity, is the most damaging thing that could have happened to this trust which they are administering. Upon the sending out of this Bill in Equity, as they did send it out, they received a great volume of protests from individuals and churches with respect to the position taken by these trustees, showing that in the bringing of this suit and the taking of the position that they now take, they themselves are the injury to the trust, and not the directors.

The Master—Now, I shall have to exclude that. I cannot see that it is admissible in this inquiry.

Mr. Krauthoff—Now, if Your Honor please, I have a number of further questions to put to Mr. Eustace about the conferences between the directors and the trustees, and that will be very much expedited by Mr. Eustace between now and the next conference taking his records and finding the dates of the conferences.

The Master—If I recollect aright, there are several points on which you have requested him to search the records.

Mr. Krauthoff—Yes. So that, if it may be understood—

The Master—Also, if I remember aright, there are certain points in regard to which you have been requested to search the directors' records.

Mr. Krauthoff—That is true, and we will have them all searched before we come here again.

The Master—Both those records had better be produced at the next hearing.

Mr. Krauthoff—We shall do that. So that if I may continue my cross-examination at that time I shall be very glad.

Mr. Whipple—Now, will you tell us a little more definitely what period you desire our investigation to cover with regard to the conferences? We have put in all that we deem material. What more do you want? Tell us specifically.

Mr. Krauthoff—I would like to have Mr. Eustace locate every conference that he had with the directors after he became a trustee.

Mr. Whipple—Every conference that Mr. Eustace had?

Mr. Krauthoff—Yes.

Mr. Whipple—Why, the records of the trustees do not show that, because undoubtedly he spoke to them as an individual.

Mr. Krauthoff—If you will pardon me, I think that the records will show that every time that they had a conference they came back and made a record of it on their books.

Mr. Whipple—Is that so, Mr. Eustace, that every time that you had a conference with the directors you went back and made a record of it?

The Witness—If the board had, but not if I did personally.

Mr. Whipple—Yes.

Mr. Krauthoff—I mean the trustees and the Board of Directors, certainly.

Mr. Whipple—What you want, then, is a record showing what conferences they had with the directors. Is that right?

Mr. Krauthoff—Yes.

Mr. Whipple—From what time to what time?

Mr. Krauthoff—From the time that Mr. Eustace became a trustee down to the present day.

Mr. Whipple—They have not had any conference since the bill was filed. Now we want your directors' records in court at the same time, covering the same period, and the same interviews. Will you have them here? Ours will be here, and we will have a memorandum of them. Will yours be here?

Mr. Krauthoff—We will give you a memorandum of all the conferences that we had.

Mr. Whipple—No, no. Will your books be here?

Mr. Krauthoff—The books will be here, subject to the order of the Court.

Mr. Whipple—Well, that is all that I want to know.

The Master—If the trustees' books are to be produced on certain points, what reason is there why the directors' records should not be produced?

Mr. Krauthoff—The directors' records will be produced under the order of the Court. The point that we make is that neither of us is expected to throw all of our records open to the other side.

Mr. Whipple—We do not ask for an order of the Court. Our records will be here, and have been here.

Mr. Streeter—Why should the records not be thrown open on both sides, the records of the two boards?

Mr. Whipple—You have nothing in your records that you do not want the public to know about, have you, Mr. Krauthoff?

Mr. Bates—It is perfectly apparent. Your Honor, that there may be in church records many matters relating to church discipline, etc., that ought not to be opened up to the public. In so far as there are any records that are material to either of these cases, they will be open to my brothers, and they know it, but they are not open for fishing expeditions.

Mr. Whipple—We do not want to fish in that muddy pond!

The Master—Mr. Whipple goes a little further than you do in his offer to produce the trustees' records. He is willing to let you go all through them. Of course, for purposes of this case, he need produce only the records relating to some points which have been mentioned. The same is true as to you. You offer to produce your records on points that have been inquired about, but you do not say that you will throw open your records to him.

Mr. Bates—I do not think that there is any real controversy between us. Let me say this also: Our records differ from his in this respect, that there is a by-law of the Church which the trustees are so anxious to sustain that particularly requires that the transactions in the board room of the directors shall not be discussed outside. So far as they bear on this case, we recognize that they should be here, but so far as they do not bear on this case they certainly are not here. They are entirely different from the trustees' records, which are merely business records.

Mr. Thompson—If Your Honor please, we want these records, too, and—

Mr. Bates—We know you do.

Mr. Thompson—Wait a minute. We would like to know whether the records of March 17 have actually been made up in permanent form, in the form that you intend to have them stay, or whether, like many of your records, they are made up subject to alterations later to suit the occasion?

Mr. Bates—I object to that statement. That is absolutely untrue.

Mr. Thompson—It is not untrue, and we can prove it. It is absolutely true.

Mr. Bates—My brother knows that he ought not to make that statement.

The Master—You will have an opportunity to prove it at the proper time.

Mr. Krauthoff—We ask that that be stricken from the stenographer's notes, and that it be left out of the record.

Mr. Thompson—I ask that it stay just where it is, and I want to ascertain now whether that record is in permanent form or not.

Mr. Krauthoff—It is only fair to advise the Court that these proceedings are being published verbatim and circulated throughout the world. Counsel does not have a right to state as the fact a circumstance of that sort.

The Master—The statement amounts only to this, that he says he will prove something.

Mr. Krauthoff—The public, which reads the report of these proceedings, will at least take it as true until it is disproved.

Mr. Thompson—It is a singular thing that when an inquiry like that is made you should talk so much about my statement, and not answer my question. Are your records made up, or are they not, for March 17th?

Mr. Krauthoff—If Your Honor please, I have not conferred with the Clerk of the Church, and I do not know how the Clerk of the Church keeps his records. When the Clerk is produced as a witness that question will be answered satisfactorily.

Mr. Thompson—Ask him now and find out about it. He is right here in court. I don't want those records tampered with.

Mr. Abbott—The records have been made, and they are here in court.

Mr. Thompson—All right. The stenographer will take that down.

The Master—That seems to settle it.

Mr. Thompson—That settles it.

The Master—Shall we pause here? We will continue the hearing, then, until Monday, June 30.

Mr. Whipple—At 10 o'clock.

[Adjourned to 10 o'clock a. m., Monday, June 30, 1919.]

June 30, 1919

FIFTH DAY

Supreme Judicial Court Room, Boston, Massachusetts, June 30, 1919, 10 a. m.

The Master—Are you all ready?

Mr. Whipple—Mr. Eustace, will you take the stand?

Herbert W. Eustace, Cross-Examination, Resumed

Mr. Krauthoff—May I proceed, Your Honor?

The Master—Yes.

Q. (By Mr. Krauthoff) Mr. Eustace, in your examination you referred to the works of Mary Baker Eddy, and they are published at the present time by The Christian Science Publishing Society? A. They are.

Q. And what is the accepted version of the Bible upon which the works of Mary Baker Eddy are based—I mean the Bible which is sold by The Christian Science Publishing Society, and which is generally in use in Christian Science churches? A. I don't think I understand your question, Mr. Krauthoff.

Q. I mean, it is the King James Version? A. Oh, yes.

Mr. Krauthoff—If Your Honor please, we may assume that the Court will take judicial notice of the King James Version of the Bible as an historical and public document, without its being formally offered in evidence?

The Master—I hear no objection.

Mr. Whipple—No objection to that, if Your Honor please. There is no need of marking it as an exhibit.

Mr. Thompson—Only for identification!

Q. I wish you would look at this and see if that is a set of what is known as "The Complete Works of Mary Baker Eddy," as published by The Christian Science Publishing Society under the contract with the Trustees Under the Will of Mary Baker Eddy (passing to the witness

eight leather-bound books)? A. I think that that is the complete set.

Mr. Krauthoff—We desire to have these identified as exhibits, if Your Honor please. I will first offer a copy of "Science and Health with—"

Mr. Whipple—If you will pardon me, I really cannot quite see how these books are all admissible; I cannot see their pertinence to the very clear issue which is submitted to Your Honor. That remark, however, would apply to a great deal of the cross-examination; and perhaps it would be preferable to take these rather than to have a ruling upon them; but they do seem so remote that possibly we might ask for some suggestion as to how they become pertinent to the issue.

The Master—I take it that Mr. Krauthoff only offers them so far as to have them marked now, and he does not intend to go into the contents at the present stage.

Mr. Krauthoff—No, not at the present time, if Your Honor please.

Mr. Whipple—When do you?

Mr. Krauthoff—Why, as the occasion may arise.

Mr. Whipple—Well, that is a little vague. Do you want to have them marked as exhibits?

Mr. Krauthoff—Yes, I would like to have the witness identify them, and I will offer them in evidence so that they may be available, and we may then in cross-examination quote from them. We may, in presenting our arguments to the Court, quote from them, and present statements of Mary Baker Eddy.

Mr. Whipple—I should think that that would be a pretty dangerous way of offering evidence. It seems to present it in no very discriminating way. It seems to savor of the shovel rather than anything else, and I do not quite see how we could argue very intelligently if we have volumes which we have never read, and which are not read to Your Honor, to deal with. If anything in them is said to be pertinent to the issue, I think that it should be pointed out; but to simply offer the Holy Bible, and then offer all the other publications that they happen to want to offer, is rather a wholesale way, and an unusual way, of putting in evidence.

The Master—Will not the best way be to let the books be marked, and then, when any particular use is desired to be made of them, we shall have a much more definite question to decide than we have now?

Mr. Whipple—I quite agree. That means that they are to be marked not as evidence, but marked for identification.

The Master—Marked for identification.

Mr. Whipple—And I understand that neither in argument nor otherwise will any parts be used as evidence in advance of calling our attention to those parts.

Mr. Krauthoff—That is agreeable.

Mr. Whipple—We are content, then.

Mr. Thompson—That applies to the other case also, so far as these documents are concerned.

The Master—Yes; I understand that it applies to all branches of the cases.

Mr. Krauthoff—And then that carries with it—

The Master—How many volumes, Mr. Krauthoff, do you now offer to have marked for identification?

Mr. Krauthoff—I have eight.

Mr. Streeter—Your Honor, should the titles of these appear in the record?

Mr. Krauthoff—Yes, I will read the titles. The first is the Christian Science textbook, "Science and Health with Key to the Scriptures," by Mary Baker Eddy, published by The Christian Science Publishing Society for the trustees under the will of Mary Baker G. Eddy, with the indorsement on it, authorized literature of The First Church of Christ, Scientist, in Boston, Massachusetts.

Mr. Streeter—What is the date on the title page?

Mr. Krauthoff—The last date, General, that appears is the statement, Copyright, 1906—that is the last date; or, Extended 1917. I am not advised as to the precise date on which this was published.

Mr. Streeter—Now, doesn't that title page show the date of publication?

Mr. Krauthoff—It does not, but it must have been quite recently, because The Christian Science Publishing Society did not begin publishing this book until—

Mr. Streeter—I am fully aware of that, and that is why I inquired. Doesn't the date show, Mr. Eustace, on these publications that you took over under the contract of October, 1917, and show when you printed it and published it?

The Witness—It apparently does not on this, General Streeter. Does it on any of those?

Mr. Krauthoff—No, I do not find it.

Mr. Krauthoff—I will ask that this be marked as an exhibit.

The Master—Why not mark these 57a, b, c, etc.? Would that not be more convenient?

Mr. Whipple—Yes, Your Honor.

[The copy of Science and Health described by Mr. Krauthoff is marked 57 for identification. R. H. J.]

Mr. Krauthoff—The next is a book containing four subjects—"Unity of Good"; "Rudimental Divine Science"; "No and Yes"; "Retrospection and Introspection."

Mr. Streeter—What is the title of the book, Mr. Krauthoff?

Mr. Krauthoff—It has all of those on the cover: "Unity of Good"; "Rudimental Divine Science"; "No and Yes"; "Retrospection and Introspection." My understanding is that originally these were published separately, but they are now published under one cover, and the four titles are retained.

The Master—Is there any date?

Mr. Krauthoff—There is no date.

[The copy of the book "Unity of

Good," and other writings, described by Mr. Krauthoff, is marked 57a for identification. R. H. J.]

The Master—Now take the next one.

Mr. Krauthoff—The next is the book entitled "Miscellaneous Writings," 1883-1896, by Mary Baker Eddy, author of "Science and Health with Key to the Scriptures."

Mr. Streeter—Any date on that?

Mr. Krauthoff—None except the one that I have given.

[The copy of "Miscellaneous Writings," 1883-1896, described by Mr. Krauthoff, is marked 57b for identification, R. H. J.]

The next is a book bearing the title "Christian Healing"; "The People's Idea of God, Pulpit and Press"; "Christian Science versus Pantheism"; "Message to The Mother Church, 1900"; "Message to The Mother Church, 1901"; "Message to The Mother Church, 1902."

[The book last described by Mr. Krauthoff is marked 57c for identification, R. H. J.]

The next is the book entitled "The First Church of Christ, Scientist, and Miscellany."

[The book last described by Mr. Krauthoff is marked 57d for identification, R. H. J.]

The next are the "Poems" of Mary Baker Eddy, or rather, "Poems" by Mary Baker Eddy.

[The copy of the book last described by Mr. Krauthoff is marked 57e for identification, R. H. J.]

The next is the poem "Christ and Christmas," by Mary Baker Eddy.

[The copy of the book last described by Mr. Krauthoff is marked 57f for identification, R. H. J.]

And the next is the "Manual of The Mother Church, The First Church of Christ, Scientist, in Boston, Massachusetts, by Mary Baker Eddy, Eighty-Ninth Edition, Boston, U. S. A., Published by The Christian Science Publishing Society for the Trustees Under the Will of Mary Baker G. Eddy, 1919."

Mr. Streeter—What is the date?

The Master—1919, I understood him to say.

Mr. Krauthoff—The date of publication.

Mr. Streeter—Yes. I meant another question. What is the date of the Manual?

Mr. Krauthoff—Well, it is published in 1919.

Mr. Streeter—I understand that; but Mrs. Eddy passed on Dec. 3, 1910.

Mr. Krauthoff—Yes.

Mr. Streeter—What was the date of the issuance of the eighty-ninth edition?

Mr. Krauthoff—Why, some time prior to her passing. I do not know the exact date. And as the Manual was reprinted from time to time I understand they kept the same eighty-ninth edition.

[The copy of Manual of The Mother

Church, described by Mr. Krauthoff, is marked 57g for identification, R. H. J.]

Mr. Streeter—Would there be any objection to Mr. Eustace's stating what the date of issue of the eighty-ninth edition of the Manual was?

Mr. Krauthoff—Not if he knows.

Mr. Streeter—If he knows.

The Witness—I think that what Mr. Krauthoff says is correct, that is, that it is a continuation of the Manual which was in existence in 1910.

Mr. Streeter—Yes, but how long before Mrs. Eddy passed on?

The Witness—I don't know that.

Mr. Krauthoff—In connection with identifying these volumes, if Your Honor please, I would like to have Mr. Eustace identify The Christian Science Hymnal, published by the The Christian Science Publishing Society (passing a volume to the witness).

The Witness—Yes, that is The Christian Science Hymnal.

Mr. Krauthoff—We would like to have that marked as an exhibit.

Mr. Whipple—Well, for identification.

[The copy of the Christian Science Hymnal, described by Mr. Krauthoff, is marked 58 for identification, R. H. J.]

Mr. Krauthoff—And I will ask Mr. Eustace to identify "The Life of Mary Baker Eddy," by Sibel Wilbur, as published by The Christian Science Publishing Society. That is the book (passing a book to the witness)?

The Witness—That is the book.

Mr. Whipple—Is that published by The Christian Science Publishing Society?

Mr. Krauthoff—Published by The Christian Science Publishing Society.

[The copy of "The Life of Mary Baker Eddy," by Sibel Wilbur, described by Mr. Krauthoff, is marked 59 for identification, R. H. J.]

Q. Now, Mr. Eustace, in referring to the eight books that I first exhibited to you, which I understand have been identified as exhibits under 57 and 57a to 57g, that set of books is what is known as "The Complete Works of Mary Baker Eddy"? A. They are, yes.

Q. And when you refer in your testimony to "the printed word of Mrs. Eddy," those are the books to which you refer? A. Those are the books to which I refer.

Q. And in passing on the application— A. May I state, however, that when I refer to the printed works, I also take in the Deed of Trust, of course.

Q. Oh, yes, I appreciate that. Speaking of the Deed of Trust as a printed work of Mrs. Eddy, have you any information that it was printed in any form in her lifetime? A. Not that I know of, except apparently—

Q. In the Manual there is a provision that the Bible, together with "Science and Health with Key to the Scriptures," by Mary Baker Eddy, together with other works by the same

author, should be the only textbook of a Christian Science practitioner for self-instruction in the principle of metaphysical healing. A. That is correct.

Q. And these are the works that you understand are referred to in the Manual? A. These are the guides of the Christian Scientist.

Mr. Krauthoff—I mean these eight books that I have shown you. If Your Honor please, I want to read into the records some dates of exhibits that were identified. I would like to have the record show that Exhibit 41, referring to "Memorandum A," was issued in 1913, and Exhibit 42, referring to "Memorandum B," was issued in 1915.

Mr. Thompson—What are these exhibits? What is Exhibit No. 41?

Mr. Krauthoff—Why, these are those memorandums that The Christian Science Publishing Society prepared from time to time and sent out for work in literature distribution.

Mr. Thompson—Won't you, when you speak of Exhibit 41, tell us what it is?

Mr. Krauthoff—I will be very glad to.

Mr. Thompson—What is Exhibit 41?

Mr. Krauthoff—Exhibit 41 is "Memorandum A," entitled "Recommendations for Advancement of The Christian Science Monitor, Presentation of Methods," printed by The Christian Science Publishing Society, and it is desired to have the record show that that was issued in the year 1913 and bears that date. Then Exhibit No. 42 is "Memorandum B, Recommendations for Advancement of The Christian Science Monitor," published by The Christian Science Publishing Society, "Presentation of Methods." The record should show that that was issued in 1915.

Mr. Thompson—That is, you are reading the dates that appear on the printed document?

Mr. Krauthoff—I am reading the printed dates that appear on the document itself.

Mr. Streeter—May I ask, does that mean that it was originally issued on the date that appears on the document?

Mr. Krauthoff—I understand it was printed in the year that I am giving.

Mr. Streeter—May I ask another question? Do you mean that was a reprint or is that the year when it was originally published?

Mr. Krauthoff—That is the year in which it was originally published; I don't know whether it has been reprinted or not.

Mr. Thompson—How do we know that, if Your Honor please? How is it pertinent to read into the record what already appears as part of the exhibit? I cannot follow that. If there is any new fact that should be proved, I should prefer to have it proved rather than to have it stated by counsel.

Mr. Krauthoff—The situation is, if Your Honor please, that these documents were identified and were not

read into the record in their entirety. Extracts from them were read, and in reading extracts I did not read the date on which they appeared. Now there is the document, Exhibit 41. All I am asking is to show that it on its face purports to have been printed in 1913.

Mr. Whipple—Do I understand you to claim, Mr. Krauthoff, that these were admitted in evidence, or merely identified?

Mr. Krauthoff—I understand these have been offered in evidence in their entirety, and that there were read into the record extracts from them. I wanted to read into the written record the dates. If the offering in evidence of them is deemed as sufficient identification of their dates, why, I have nothing further to say.

Mr. Whipple—If they are exhibits they carry whatever appears on them.

The Master—What they show on their face speaks for itself. It may be convenient, but it may not be very important, to have it specially stated.

Mr. Krauthoff—If their countenance is taken as their passport, I have nothing further to say.

The Master—But it does not follow from that that they were originally promulgated or published on the dates which they bear.

Mr. Krauthoff—Well, I will inquire further about that.

Mr. Thompson—Nor is there any admission made by counsel for Mr. Dittemore of anything more than that this document, for instance, Exhibit 41, bears on its face the figures "1913," whatever those may mean.

Q. Mr. Eustace, referring to this Exhibit 41, "Memorandum A," a presentation of methods for use in Monitor work, which bears the imprint "1913," can you tell when that was issued by The Christian Science Publishing Society? A. No, I cannot.

The Master—I suppose you mean when it was first issued?

Mr. Krauthoff—Yes.

Q. What significance does "1913" have, if any? A. Why, it certainly indicates that it was sent out in 1913.

Q. Now, Exhibit No. 42, "Memorandum B," has "1915" on there. A. That would have the same—the same indication—that it was sent out in 1915.

Q. Exhibit 43, "Memorandum C" has "1916" on it. A. That was sent out, I suppose, in 1916.

Q. Exhibit 44, "Memorandum D" has "1919" on it. A. That would indicate that that was sent out in 1919. When they were prepared I do not know. They were probably prepared quite a little time before that.

Q. Then Exhibit 45, "General Bulletin, Summary of Standing Bulletins Applicable to All Departments," has "April, 1919" on the title page. A. I suppose that is when that was printed, too.

Q. In your examination, Mr. Eustace, your attention was called to the



fact that The Christian Science Publishing Society was now being advertised and generally known as the sole publishers of all authorized Christian Science literature, and your explanation, as I recall, was that that title came to you by virtue of the contract that was made with the trustees under the will of Mary Baker Eddy in the fall of 1917. A: The "sole" part of it came there.

Q: Before that time you had advertised the literature you published as authorized Christian Science literature? A: I don't know whether we had or not, but it was because the Manual made it so.

Q: I call your attention to The Christian Science Journal for September, 1917, in the advertisement in the rear of it, page xciii, to the words at the top of the page, "Authorized Christian Science literature." A: Yes.

Q: And that is followed by a number of pamphlets and other documents. How does that become authorized Christian Science literature? A: Because the Christian Science—

Mr. Whipple—Just a moment. Isn't that clear upon the document? Can anyone say for a moment, in view of this Deed of Trust, that it is not authorized by Mrs. Eddy herself in the Deed of Trust? She transferred all these publications by the Deed of Trust and no one can interfere with them, not even the directors.

Mr. Krauthoff—If Your Honor please, this advertisement includes literature that was not in existence at the time Mrs. Eddy executed the Deed of Trust.

Mr. Whipple—That is all right. When it came into existence it came into existence as a result of the work of the trustees of the society.

Mr. Krauthoff—Well, I shall be very glad to have Mr. Whipple become a witness if he desires.

Mr. Whipple—I do not need to; you do not need witnesses to declare the obvious.

The Master—Anything further?

Mr. Bates—May I suggest to Your Honor that the witness himself said it became authorized by reason of the Manual?

The Witness—Mr. Bates—

Mr. Bates—And his counsel should not be allowed to correct him.

The Master—Mr. Witness, just a moment. I want to hear counsel through on that. Anything further?

Mr. Krauthoff—I have a question pending as to how this became authorized Christian Science literature and I submit we are entitled to have Mr. Eustace tell us.

The Master—I did not quite hear the first part of what you said.

Mr. Krauthoff—I said we had a question pending as to how this literature which they advertised became authorized Christian Science literature and I submit we are entitled to have Mr. Eustace's answer as to that.

The Master—It does not seem to the master that that is a question to be

settled by the opinion of the witness. We will get the facts and then it will be a matter for argument, and for decision, perhaps, if it is material. I shall therefore exclude the question.

Mr. Krauthoff—If Your Honor please, may I—

The Master—I have excluded it, Mr. Krauthoff, and I think I gave you a chance to say everything that was desired before I ruled.

Q: In the conference of Feb. 10, 1919, that you had with the Board of Directors do you recall Mr. Rathvon presenting a memorandum that he read to the conference? A: What date was that?

Q: Feb. 10, 1919. A: Yes.

Q: The second conference that you had. A: That was the second letter Mr. Rathvon read, I think.

Q: Yes. A: I don't just recall at this moment.

Q: I will ask you if this is what he read? (Handing paper to witness.)

A: I think that that is it, but we had the original probably, if it was handed to us.

Mr. Krauthoff—Will you be good enough to look or to have Mr. Watts look, Mr. Whipple, and see if you have the original there?

Mr. Whipple—Yes; he is looking.

Q: In your testimony heretofore, Mr. Eustace, your attention has been called to the provision in the Manual with respect to members of The Mother Church subscribing to the periodicals of the denomination, and your attention was directed to the question to what extent The Christian Science Publishing Society had applied that section of the Manual in its dealings with practitioners who were publishing cards in the Journal. I will ask you if that is a bill sent out by The Christian Science Publishing Society? (Handing paper to witness.)

A: I think it is, yes.

Mr. Whipple—When?

The Witness—May 2, 1919.

Mr. Krauthoff—May I have it identified as an exhibit?

Mr. Whipple—Do you offer it as an exhibit?

Mr. Krauthoff—Yes, I offer it in evidence.

Mr. Whipple—How is it material? I cannot see, if Your Honor please, that this is material. It is a bill rendered and paid since this suit was instituted.

Mr. Streeter—May I see it?

Mr. Whipple—It seems to me to have no materiality.

Mr. Krauthoff—This document, if the Court please—

The Master—Let Mr. Streeter look at it.

Mr. Thompson—It is immaterial to us, as far as we are concerned.

Mr. Krauthoff—If Your Honor please, this document is material because the issue is tendered in the bill that the Publishing Society is under a management separate and distinct

from that of The Mother Church, and that the Publishing Society is one of

two separate and distinct branches of activity constituted by Mary Baker Eddy. Now, here is a bill issued by the Publishing Society claiming to be a separate and distinct activity, claiming to be immune from any provision of the Manual that binds them, and at the same time requiring other people to comply with it.

Mr. Whipple—If Your Honor please, the claim has never been made that these trustees, or any one of them, are "immune,"—as I believe you call it—from the Manual, and such a statement is absolutely without foundation, because the witness has testified to the contrary. His position has been stated repeatedly and clearly, and it is not as stated by counsel.

The Master—You might let me look at the document. Will you state again just upon what particular issue you claim that is material?

Mr. Krauthoff—That is material, if Your Honor please, upon the issue whether this Mother Church and this Publishing Society are one organization or whether they are two. That is what the lawsuit is about, and there is a distinct statement by the trustees.

The Master—How does this tend to show anything about it one way or the other?

Mr. Krauthoff—It shows that the trustees, who now claim to be a separate and distinct organization, are availing themselves of the benefit of the Manual when it comes to getting subscriptions to the periodicals which they say they are publishing.

The Master—You refer to the clause in fine print at the bottom of the bill?

Mr. Krauthoff—Yes.

The Master—I suppose you gentlemen have both seen that?

Mr. Thompson—Yes.

Mr. Streeter—I would like to look at that again. I didn't read that.

Mr. Thompson—I saw that.

The Master—I have seen all I want to, and Mr. Whipple has seen all he wants to. You know the clause to which I call attention?

Mr. Whipple—Oh, yes, but I do not see that it is pertinent to the question. What we have said, and all that we say in the suit, is this—

The Master—I do not think we need to have it stated again, do you?

Mr. Whipple—I think not, Your Honor.

The Master—That clause being brought to my attention, I think I shall admit it for what it may be worth. It does not strike me as important.

[A bill from The Christian Science Publishing Society to Miss Estelle V. Simon for 50 cents, dated May 2, 1919, and stamped, "Received payment May 8, 1919. The Christian Science Publishing Society," is marked Exhibit 60.]

Mr. Krauthoff—This is a bill rendered by The Christian Science Publishing Society under date of Boston, Massachusetts, May 2, 1919—

The Master—One moment, Mr. Krauthoff. I think you have stated that before. Why repeat it?

Mr. Krauthoff—I didn't know that I had stated the details.

The Master—Can't you lend us your assistance so that the record may contain fewer words rather than more?

Mr. Krauthoff—I should be very glad to do so.

Q. This is a bill which contains the following statement. It is issued by The Christian Science Publishing Society under date of May 2, 1919:

"Each practitioner publishing a card in the Journal should be a subscriber to all the Christian Science periodicals in accordance with Article VIII, Section 14, of The Mother Church Manual."

How long prior to May 2, 1919, had that indorsement appeared on the bills sent out by The Christian Science Publishing Society?

A. I don't know, Mr. Krauthoff. I would have to look it up to see.

Q. I call your attention to one that you sent out on June 18, 1919, on which that does not appear. A. I don't know.

Q. You mean you don't know anything about this form— A. I don't know about that form of bill or the other. That is a detail of the publishing house.

Q. You mean that is a detail of the publishing house in whose charge? A. It is under the business manager.

Q. Do I understand in the system under which the Publishing Society is managed, that the manager of the Publishing Society, on his own responsibility, without consultation with the trustees, would strike a section of the Manual off of the bills that you are sending out? A. I really don't know that was done, or anything about it.

Q. Well, isn't this a fact, Mr. Eustace, that your attention was called to the fact that every time the Publishing Society mentioned the Manual it had something to do with the lawsuit and you took it off your bills accordingly? A. No. It had nothing whatever to do with it, and it was never mentioned in any way.

Q. You don't know how it came off? A. I do not.

Mr. Krauthoff—I would like to have that identified.

[A bill of The Christian Science Publishing Society to Miss Estelle V. Simon, for 50 cents, dated June 18, 1919, is marked Exhibit 61 for identification.]

Q. I wish you would look at that and see if that is a form of application that you had in use in the Publishing Society at one time. A. Why, I suppose it is. It is our printing.

Mr. Krauthoff—May I have that identified?

Mr. Whipple—If you don't offer it as an exhibit I don't care to look at it.

Mr. Krauthoff—I am going to call Mr. Eustace's attention to some language in it.

Mr. Whipple—Then I understand it is offered as an exhibit?

Mr. Krauthoff—I offer the whole document but I don't care to have the stenographer transcribe it at length.

Mr. Whipple—I don't think it can go in as an exhibit until His Honor has passed on it, or some of us have seen it. It is your privilege to have anything identified that you want to.

Mr. Krauthoff—I am having it now identified and I will show it to you in a minute.

["Application for card in the list of practitioners in The Christian Science Journal," marked "Sample," is marked 62 for identification.]

Mr. Whipple—If Your Honor please, I can't see any connection, even remote, with any issue in the case of this sample application for cards in the list of practitioners. It may be that there is some claim that the trustees did not conduct this business properly and that the directors were not satisfied with the way they were conducting it. Is that it?

Mr. Krauthoff—No, if Your Honor please. This blank is offered for this reason: On Mr. Eustace's previous testimony he said the Publishing Society did not require advertisers in the Journal to subscribe to all the periodicals. At that time we had a blank which had no reference to any requirements. We now have a blank in which that statement is distinctly made, and we are offering that statement to show that this Publishing Society required advertisers in the list of practitioners to subscribe to all the periodicals, and gave as the reason of their action the Manual of The Mother Church.

Mr. Whipple—What difference does that make, if they do? I can't see, if Your Honor please. If it is for the purpose of contradiction of Mr. Eustace, it is a contradiction on an utterly immaterial point.

Mr. Krauthoff—If Your Honor please, it goes to a very vital issue of this case.

Mr. Whipple—What is it, pray?

Mr. Krauthoff—Why, the issue is this, if Your Honor please—

The Master—Confine yourself to the admissibility of this evidence. We don't want to have the issues in the case stated too many times. I think we all must be familiar with them now.

Mr. Krauthoff—With all deference to everybody who has attempted to state them, they never have been really stated, and I find myself embarrassed when I offer this, because Mr. Whipple's theory of this case is quite—

The Master—If you offer that in contradiction of the testimony given by the witness heretofore I think I shall admit it.

[The sample copy of "Application for card in the list of practitioners in The Christian Science Journal," previously marked "62" for identification is marked Exhibit 62.]

Q. I call your attention, Mr. Eustace, to this language in Exhibit No. 62:

"All public practitioners having cards in the Journal are required to take in their own name the above-mentioned periodicals. See Church Manual, Art. VIII, Sec. 14."

And in this application "the above-mentioned periodicals" are The Christian Science Journal, the Christian Science Sentinel, Der Herold der Christian Science, and The Christian Science Monitor. Was that application blank in use and was that requirement made? A. I don't know at what period this was, but at one time this application was evidently in use and may have been in use for some time, because it was recognized, as I stated, I think, in my testimony, that the taking of the periodicals was a very good indication that the one asking for an advertisement was an active, earnest Christian Scientist.

Mr. Whipple—If you will pardon me, Mr. Eustace—the real question is whether the Board of Trustees as now constituted ever authorized or used that sample or whether it is some ancient thing that they have gotten from some other trustees.

Mr. Krauthoff—I beg your pardon, Mr. Whipple. If Your Honor please, the question is not limited to the board as now constituted. It includes the board when Mr. Eustace was a member of it.

The Master—I think the question has been answered. You asked him if that application was in use by the board. He said it was.

The Witness—No.

Mr. Whipple—That it was not in use?

The Master—I understood the witness to answer that it evidently was at some time. Now the question is answered, I think.

Mr. Krauthoff—Here is a document I have submitted to Mr. Eustace, and I will submit it to Mr. Whipple. It is evidence along the same line.

[The document is shown to Mr. Whipple.]

Mr. Whipple—Now, if Your Honor please, this is a circular letter signed by David B. Ogden, manager. He evidently was not a trustee at the time. There is no date attached to it whatever, and if it is to prove something I think Your Honor would want to know what it is to prove—whether it was issued by the Board of Trustees when any one of these gentlemen were members or not. Shall I hand it to Your Honor?

Mr. Thompson—Let us see if it proves anything against us.

[The document is shown to Mr. Thompson.]

Mr. Krauthoff—That was the first question I was going to put to Mr. Eustace.

Mr. Whipple—Why not put your question before you offer the paper, and qualify the paper before you offer it?

The Master—One moment, gentlemen. Will all the counsel in the room

look at the document now offered, and then I should like to see it myself.

[The paper is handed to counsel, and then to the Master.]

The Master—Now you desire to ask him if that was authorized by the board?

Mr. Krauthoff—By the Board of Trustees at any time that he was a member of it.

The Master—I think he may answer.

Mr. Whipple—That I don't object to, but you see he was offering this paper without any such question. Offer it and get it in and then find out whether it was ever authorized.

[The paper is handed to the witness.]

The Witness—Yes, I think this was shortly after I came here—came to Boston. I suppose it is correct.

Mr. Streeter—May I ask Your Honor—does such a document as that go into the record and is it to be printed so that we can see it, or is it not to be printed?

The Master—What do counsel desire about it?

Mr. Krauthoff—I prefer to have it printed in full in the record.

Mr. Streeter—We have no objection.

The Master—I understand the witness to answer that that was authorized by the Board of Trustees shortly after he came here. Did I get his answer correctly?

The Witness—I think that is correct; yes, sir.

Mr. Whipple—I understood him to say it was used shortly after he came.

The Master—Yes, but the question put to him was whether it was authorized. He answered that it was used. I don't know whether that means that it was authorized.

The Witness—I mean that it was used. I take it that it was authorized. I would have to look up the record to see just what we did do in regard to it.

The Master—If it was used by the board it must be assumed to have been authorized.

Mr. Whipple—I take it so. But it would appear that it had been authorized by a former board and that no authority had been revoked.

The Master—That is another thing.

Mr. Whipple—I take it it does not make any difference, but I take it the board as now constituted, a majority of them have been elected since its use.

Mr. Krauthoff—May I have it numbered?

[Circular letter on letterhead of The Christian Science Publishing Society, signed David B. Ogden, Manager, and addressed "Dear Friend," is marked Exhibit 63. See copy below.]

Mr. Krauthoff—We offer it in evidence:

"The Christian Science Publishing Society,

"Falmouth and St. Paul Streets,  
"Boston, Massachusetts—"

The Master—Will it be necessary to

take the time to read it in full? Do counsel desire to have it read?

Mr. Krauthoff—I have no desire to read it.

Mr. Streeter—We don't care for it.

Mr. Whipple—We will waive the reading of it, if Your Honor please.

Mr. Krauthoff—And the stenographers will copy it in full. I believe General Streeter desires that.

Mr. Streeter—I did not say so. I asked what you were going to do with it. If you are going to use it we desire to see what you are using.

Mr. Krauthoff—Well, it is our desire to have it copied in full.

[Copy of Exhibit 63.]

"The Christian Science Publishing Society,

"Falmouth and St. Paul Streets,  
Boston, Massachusetts.

"Dear Friend:

"Inclosed you will find two application blanks, one of which (yellow) contains questions which applicants are required to answer when desiring cards in The Christian Science Journal. The sample blank is sent you at the request of the trustees of this society for your information and careful perusal, because it is felt that it will be of great interest to you and that on becoming familiar with the present requirements for a practitioner's card, you will desire to place yourself in all respects on an equal footing with new applicants. The other blank (blue) please fill out and return to the Publishing Society to be placed on file in connection with the record of your card in The Christian Science Journal.

"You will notice the requirements relative to subscribing for the four periodicals of this movement, and in connection therewith, your special attention is called to Art. VIII, Sec. 14, of the Church Manual by Mary Baker Eddy, the first part of which reads, 'It shall be the privilege and duty of every member, who can afford it, to subscribe for the periodicals which are the organs of this Church.' Your attention is also called to Mrs. Eddy's definition of what constitutes 'the periodicals' as given by her in the first issue of The Christian Science Monitor, Nov. 5, 1903, as follows: 'I have given the name to all the Christian Science periodicals. The first was The Christian Science Journal, designed to put on record the divine Science of Truth; the second I entitled Sentinel, intended to hold guard over Truth, Life, and Love; the third, Der Herold der Christian Science to proclaim the universal activity and availability of Truth; the next I named Monitor to spread undivided the Science that operates unspent.'

"Every member of The Mother Church, and especially every public practitioner of Christian Science, earnestly desires to be obedient to the Church Manual and, in view of

this fact and of the by-law mentioned, The Christian Science Publishing Society feels that one requirement for a practitioner's card in The Christian Science Journal must be that he is a subscriber to all the periodicals. This requirement should not work a hardship on anyone, as he who is ready and able to undertake public practice with his card in The Christian Science Journal can certainly 'afford' to take all the periodicals; and this splendid supply of authorized literature arriving regularly gives the practitioner, and indeed every Christian Scientist, just the missionary material he needs for reaching and helping mankind and directing inquiry to the Christian Science textbook for information and guidance.

"If you are not already subscribing in your own name for the four periodicals, it is believed that you will conform willingly to this requirement as soon as possible; and if there are other points in the application blank which you are not conforming to, that you will also be glad to adjust your practice to them. The Publishing Society feels confident that every practitioner will comprehend, appreciate, and welcome the necessity of fulfilling all the requirements of this new blank, and to this end this letter is being sent to every practitioner whose card is in The Christian Science Journal.

"The public practice of Christian Science is one of the most sacred offices in our movement and it is essential that this public activity be safeguarded with the utmost consecration, earnestness, and unselfishness.

"With kindest wishes,

"Yours sincerely,  
"The Christian Science Publishing Society, by David B. Ogden, Manager.

"DBO-BL

"P. S. Referring again to the blank forms: The sample blank printed on yellow paper may be retained by you for future reference. The 'Blank for Card Department' printed on blue paper please fill out and return at your early convenience in the accompanying stamped envelope."

Q. Mr. Eustace, in the conduct of the business of the trustees within the last year and a half, to what extent have you borrowed money from local banks? A. From local banks, you say?

Q. Or from any source? A. To the extent, I think, of about \$200,000.

Q. From whom was that money borrowed? A. From the First National Bank of Boston.

Q. Upon the note of the Trustees of The Christian Science Publishing Society? A. On the note of the Trustees of The Christian Science Publishing Society.

Q. What was the reason for the borrowing of the money? A. To make a complete payment to the Treasurer of The Mother Church.

Q. I don't quite understand, Mr. Eustace. Under the plan that the trustees operate, the six-months period mentioned in the Deed of Trust ends on Sept. 30 and March 31 of each year. A. It does.

Q. And under the Deed of Trust you turn over to the treasurer of The Mother Church the net profits? A. We do.

Q. And those profits should be represented, should they not, by cash on hand? A. They should.

Q. Why did it become necessary to borrow money? A. Because we had turned over to The Mother Church prior to that time funds that we really should not have turned over. We were carrying our plant as cash assets, which we later discovered is not really a correct way of doing it.

Q. You mean you were carrying physical property as cash on hand? A. As a cash asset; yes, sir; in substance, that is.

Q. And when you came to turn the money over you had to borrow the money in order to make up— A. In order to make the payments.

Q. How much money did you borrow at any time for the purpose of putting in a safe deposit vault? A. Putting in a what?

Q. Putting in a safe deposit vault. The Master—Assuming that he did borrow money for the purpose that you state.

Mr. Krauthoff—I will put it in another way.

Q. Did you at any time put any of the funds of The Christian Science Publishing Society in a safe deposit box, any of the currency? A. Why, yes, we did.

Q. How much did you put in? A. I don't know. I would have to look it up.

Q. Was it in the neighborhood of \$140,000? A. I don't know. I haven't the slightest idea.

Q. Why did you do it? A. Are you referring to the time of the suit, when we filed the suit?

Q. Why did you take the money of the Publishing Society and put it in a safe deposit box? A. In the first place, we had a perfect right to keep the money of the Society in a safe deposit box if we wanted to.

Q. I am not asking you as to the right of it. I am asking when you did it and why did you do it? A. I don't know as there was any other time except the one time. There may have been other times, too. But the time you are referring to, I suppose, is the time when the suit was filed, and we felt we ought to have cash on hand in case there was any attempt to tie up the business of the Publishing Society by the directors of The Mother Church.

Q. Now, how did you get this money that you put in the safe deposit box? A. Why, we drew it out of the bank.

Q. Out of the bank. Out of which bank? A. Why, I don't know. I sup-

pose out of the First National. We have several banks.

Q. You have in mind the provision in the Deed of Trust which says that: "Said trustees shall deposit in a responsible and reliable bank or trust company all surplus funds over and above the sum necessary to defray the running expenses of the business until the same shall be paid over to the Church Treasurer." A. Yes.

Q. And you construe the word "deposit"—to put in a safe deposit vault? A. Certainly, if we want to.

Q. Not to put on deposit to your credit on the books of the concern? A. Either way.

Q. Did you have the advice of counsel on that? A. Not that I know of.

Q. Is it not true, Mr. Eustace, that you took from the funds of current business of the Publishing Society, currency at times aggregating in the total \$140,000, and placed that in a safe deposit box? A. I can't say about the amount. I didn't know it was that amount.

Q. Who did it? A. The business manager did it.

Q. Mr. Watts? A. Mr. John Watts.

Q. Under your direction? A. Under our direction.

Q. Did you make any record of it in your proceedings? A. I don't know. I would have to go back over the record to see.

Q. At the time that this money was in the safe deposit box were you paying interest at a bank on any obligations? A. I would also have to look that up.

Q. You would have to look that up? A. Yes.

Q. And of course you are familiar with the fact that money on deposit in a trust company in Boston draws interest on daily balances? A. I am.

Q. And some of the funds of the Publishing Society are so deposited? A. Well, they are all on daily balances.

Q. Drawing interest on daily balances? A. Our funds draw interest on daily balances, yes.

Q. So that the details of this currency transaction are not within your definite knowledge? A. Not at the present time.

The Master—I understand they were all subsequent to bringing this suit?

Mr. Krauthoff—No. He said about the time of bringing this suit.

The Witness—It is all since this claim has been on.

Mr. Krauthoff—He said it was since the difficulty with the directors was on, but he hasn't said it was subsequent to the bringing of the suit itself.

The Witness—I would have to look that up.

Mr. Whipple—If Your Honor please, the witness has stated in substance that it was in anticipation of complications which might arise by the intent of this Board of Directors to remove the trustees, and it was wholly under the Deed of Trust providing a sum

necessary to defray the running expenses of the business, because it was expected that the running of the business would be embarrassed by this dictatorial attitude of the directors.

The Master—Perhaps we hardly need to go into that now. I wanted to be sure I understood what he meant to say. Proceed.

Mr. Krauthoff—I have not assumed, if Your Honor please, from Mr. Whipple's statement, that he has any personal knowledge about this currency transaction.

The Master—We don't any of us assume that.

Q. I wanted to call your attention, Mr. Eustace, to another provision in the Deed of Trust:

"No authority is intended to be conferred upon the trustees to incur liabilities beyond their ability to liquidate promptly from the current income of the business."

Q. Now, when it came to the point that you were required to borrow money to make the payment to The Mother Church, did you explain to the directors that you were in the necessity of borrowing money because you had theretofore turned over more than you should have turned over? A. We did not.

Q. You did go and borrow the money? A. We did.

Q. And paid the interest on it? A. Paid the interest.

Q. Has that debt been fully liquidated? A. That debt has been fully liquidated.

Q. Out of what? A. Out of the current income of the last six months.

Q. Of the six months ending— A. March the 31st.

Q. 1919? A. 1919.

Q. Now, what were the net profits of the business for the six months ending March 31, 1919? A. I would have to look at our figures to see the exact figures.

Q. Was it approximately \$243,000? A. \$231,000, I think it was, wasn't it?

Q. Approximately \$231,000? A. I think so.

Q. Of that how much have you paid to The Mother Church? A. I think we have paid \$100,000.

Q. When is the rest going to be paid? A. It will be paid as rapidly as we can see our way to doing it safely.

Q. I don't understand again, Mr. Eustace. Did you not have on hand on March 31, 1919, these net profits in cash? A. No, we did not.

Q. How could there be net profits unless you had them on hand in cash? A. Well, I explained to you, Mr. Krauthoff, that what we had been doing in the past was carrying our plant and other accounts—which you would have to go over our balance sheet in order to see it—we have been carrying them as virtually cash. Consequently since they were not cash but were simply an asset we could not turn over the cash because we didn't have it on hand.

Q. And so the question as to when

you will pay over the net profits for the six months ending March 31, 1919, cannot be determined until you make some money in the next six months with which to pay them? A. Yes. And our purpose is from now on to get our business in such shape that we do not carry our plant as an asset at all, and then we shall have the cash on hand to turn over.

Q. In your testimony this morning you spoke of this Deed of Trust, as one of Mrs. Eddy's printed works and explained that it was not printed, so far as you know, in her lifetime. You caused it to be printed some time last fall, did you not? A. We had a plate made of it.

Q. You printed about 500 copies of it and distributed them? A. No. We printed 500. We didn't distribute them.

Q. You distributed a number of them? A. Distributed a few dozen.

Q. You personally? A. Did I personally? No. I distributed—

Q. You handed copies of it to some people? A. Oh, yes, some of my friends. I always gave copies at any time. If they were not printed they were typewritten.

Q. Then you caused it to be filed at the office of the State Capitol? A. We did.

Q. Why? A. Because we thought it was an important document, that it was an outrage that it had not been filed immediately after December the 3rd, 1910.

Q. Then you also caused it to be filed in the office of the city clerk of Boston— A. We did as—

Q. —for the same reason? A. As a second precaution for its safety.

Q. In distributing the Deed of Trust to people, did you state to them your contentions with respect to your relations as trustees to the directors, and ask their judgment about it? A. Not that I know of.

Q. Not that you know of? A. Not that I know of, unless we discussed it. We probably talked the thing over.

Q. Did you explain to anybody that under the provisions of this Deed of Trust, as you construed them, the trustees were not required to be members of The Mother Church? A. That is self-evident, of course. I should never hesitate not to state it. I don't know that I did state it. I quite possibly did explain it. I shouldn't hesitate to.

Q. You do not hesitate to say now that under the Deed of Trust they are not required to be members of The Mother Church? A. That is self-evident. It doesn't say so. They must be loyal Christian Scientists.

Q. And as you understand it they may be such without being members of The Mother Church? A. I can conceive that they might be.

Q. But you are a member of The Mother Church? A. Yes.

Q. And were when you were named as trustee—and are still? A. Yes, I am, and was.

Mr. Whipple — Aren't there hundreds of thousands of loyal Christian Scientists who are not members of The Mother Church? All these branch churches—aren't they loyal Christian Scientists?

Mr. Krauthoff—Our understanding about that is this, if Your Honor please—

The Master—Wouldn't it be better to leave it until after you get through your cross-examination?

Mr. Krauthoff—I would be very glad to.

Q. At the time that Mr. Dixon was named as editor of The Christian Science Monitor were you made acquainted with the correspondence had with Mr. Dixon in which he stated that he wanted his relations with the trustees and directors made entirely clear in order that there might be no misunderstanding about it? A. I was.

Q. And you were advised of the letter that he wrote to the directors in which he said that he would always regard the directors as the court of last resort? A. I don't know that that was said.

Q. Was that the understanding when Mr. Dixon was made editor of the Monitor? A. Never that I know of.

Q. You never heard about it? A. Not that I am aware of. I would have to see the letter again. I think I saw the letter. I am not sure that I saw the letter, but I remember the conferences that we had.

Mr. Krauthoff—I will show you the original letter. In the conferences that you had with Mr. Dixon at the time that he was made editor of the Monitor was it not stated then by Mr. Dixon that the directors were to be the court of last resort? A. Certainly not. I never heard such a statement.

Q. I am reminded that the exact language was that the directors were to be the ultimate court? A. Not that I know of.

Q. You had no such understanding with Mr. Dixon? A. Why, never.

Q. At the time that you claim that you employed him? A. Never. I never heard such a claim.

Q. In the Bill in Equity, so-called, on the cover the exact term being—the Bill of Complaint in this case—one of the things that you ask is to enjoin the Board of Directors from creating and maintaining a publishing society. How do you arrive, Mr. Eustace, at the claim that you are authorized to conduct The Christian Science Publishing Society separate and distinct from The Mother Church and without any control over the Publishing Society by The Mother Church, to publish the official organs of The Mother Church, to sell your literature in the reading rooms of The Mother Church, and at the same time to say to The Mother Church that it cannot start a publishing society of its own?

Mr. Whipple—I pray Your Honor's judgment about that. That seems to be quite a lengthy argument, and while I don't approve it, it does not

seem to be a question. It is a lot of successions of—

Mr. Krauthoff—I will state it more shortly.

Q. On what basis do you make your claim that you are entitled to enjoin The Mother Church from creating and maintaining a publishing society of its own?

Mr. Whipple—May I suggest, if Your Honor please, that we refer the distinguished counsel to the bill which the Court read and on the basis of which the Court granted an injunction. The witness is not to be asked a question like that.

The Master—It does not seem to me that that is a proper question.

Mr. Krauthoff—Why, if Your Honor please—

The Master—I don't know on what ground—how he argues it out. I don't think we want to stop for that at the present time.

Mr. Krauthoff—We are met here with a bill which asks for relief to the extent of enjoining us from erecting a publishing society. Now we are entitled to know from the plaintiff in this case upon what facts he bases any such claims for relief.

Mr. Whipple—The facts stated in the bill.

The Master—Must it not be upon the facts stated in the bill? Could it possibly be upon anything else?

Mr. Krauthoff—Then upon what facts stated in the bill does he make this claim?

The Master—No, I don't think he is required to state that now. There is the bill.

Q. Mr. Eustace, in your previous testimony your attention was called to a request, or whatever it may be called—a direction—from the Board of Directors with respect to an announcement to be placed in the Christian Science Sentinel with respect to the election of Mrs. Hoag as an editor by the Board of Directors. That notice was not published, as I understand it? A. It was not.

Q. I call your attention to the Christian Science Sentinel of May 10, 1919, and to the subject "Editorial Announcement" (passing to the witness a copy of the Christian Science Sentinel referred to). A. Yes.

Q. And that is the notice that you did publish? A. That is the notice we published.

Mr. Krauthoff—We offer that notice in evidence.

Mr. Whipple—I pray Your Honor's judgment. That all happened after the bill was filed; and the action with regard to it on the part of the directors we claim was in contempt of the order of this Court.

Mr. Krauthoff—Why, if Your Honor please, we are entitled to show the conduct of the plaintiffs in this case up to the present moment in their refusal to recognize the right of the directors of The Mother Church to put a notice in the official periodicals of The Mother Church.

Mr. Whipple—It depends on the notice.

Mr. Krauthoff—It does not depend upon a notice. When the directors of The Mother Church send a notice to be published in the official organ of The Mother Church, it becomes a notice without any further discussion.

The Master—I understand that the application and the refusal were both subsequent to the bringing of the suit?

Mr. Krauthoff—Well, I understand that the letter was mailed after the suit was brought. I am right about that, am I not? But we claim that we have the right in this case to show the continued action of these trustees in refusing to recognize the right of the directors of The Mother Church to put notices in the official organs of The Mother Church.

Mr. Whipple—We do not think so, if Your Honor please. This very thing they were enjoined from doing. They were enjoined from electing an editor; they were enjoined from interfering with the administration of its business by the publication society trustees; and what they undertook to do was to ask us to publish in one of our journals a notice of a thing which they had done in contempt of court. That is what they asked us to do. It was all after the bill had been filed and the injunction had been issued, although one would think at times that even the distinguished counsel for the defendants did not know that an injunction had been issued—not until recently!

Mr. Krauthoff—It is proper, if Your Honor please, in that connection to correct Mr. Whipple's statement. Mrs. Knott tendered her resignation to the Board of Directors before the institution of this suit. Before the institution of this suit Mrs. Hoag was elected an editor of the Christian Science periodicals by the Board of Directors under the Church Manual. After the beginning of the suit the directors sent to the trustees a notice of the election of Mrs. Hoag. The trustees did not print the notice that the directors sent. We now offer the notice which the trustees themselves printed, being an act of the plaintiffs in derogation of the authority of The Mother Church to control its own periodicals.

The Master—You offer to show it as an act by the plaintiffs subsequent to the bringing of this suit and the issue of the preliminary injunction?

Mr. Krauthoff—As a continuation of the claim that they make of separate control and a refusal to recognize the control of the directors under the Church Manual.

The Master—Is it objected to?

Mr. Whipple—Yes, Your Honor.

The Master—I think that I ought to exclude it.

Mr. Krauthoff—If Your Honor please, may I inquire if we may note an exception at this time to Your

Honor's refusal? Is that the proper practice, or are all of your exclusions excepted to without a formal exception?

The Master—I had supposed that all my rulings are subject to exception hereafter.

Mr. Whipple—I did not suppose that that was the practice. I had supposed that either counsel dissatisfied with any ruling of Your Honor should note it at the time and then—

The Master—Well, then, why not note your exception now, Mr. Krauthoff, and then you will be safe in any event?

Mr. Krauthoff—Very well. I will ask you to note my exception.

Mr. Thompson—We feel, if Your Honor please, that that rule which you have just announced should be observed, that if counsel desire to make any objection or take any exception, or raise any law point, they should do it at the time, and that we should not be confronted later with a vast mass of objections which are then brought forward for the first time.

The Master—There ought to be due notice in some form, of course.

Mr. Thompson—That is the customary form.

Mr. Streeter—I may say that that is the practice up in the country, that the exception has to be noted at the time that the ruling is made.

Q. Mr. Eustace, you stated that the manager of The Christian Science Publishing Society and the editors of the periodicals of The Christian Science Publishing Society have been employed by the trustees since you were a trustee? A. They have.

Q. I call your attention to a notice in the Christian Science Sentinel of Aug. 4, 1917, being the first five paragraphs of the notice (passing to the witness a copy of the Christian Science Sentinel of Aug. 4, 1917). A. Yes.

Mr. Krauthoff—We offer in evidence the first five paragraphs (passing to Mr. Whipple the copy of Sentinel referred to).

Mr. Whipple—Where is it?

Mr. Krauthoff—These first five paragraphs here (pointing).

Mr. Whipple—Well, I cannot see very much probative value of anything that is not already in, but if you think that they are desirable I have no objection to their going in. Don't you think that you had better cut the paragraphs off to prevent this whole paper being put into the record?

Mr. Krauthoff—That is the reason why I am offering only the first five paragraphs.

Mr. Whipple—All right. You might take a scissors or something and cut them out rather than to have the paper marked as an exhibit.

Mr. Krauthoff—It is easier to read them into the record.

Mr. Whipple—All right. That is satisfactory.

Mr. Krauthoff—Now, this is a notice in the Christian Science Sentinel of Aug. 4, 1917, under the heading "Editorial

"Notice"

"By unanimous action the following changes in the personnel of the offices of The Mother Church and of The Christian Science Publishing Society are announced:

"Edward A. Merritt, C. S. B., has been elected a member of The Christian Science Board of Directors.

"William P. McKenzie, C. S. B., has been elected Editor of The Christian Science Journal, Christian Science Sentinel, and Der Herold der Christian Science.

"John R. Watts, C. S., has been elected Manager of The Christian Science Publishing Society to succeed Mr. Ogden.

"David B. Ogden, C. S. B., and Lamont Rowlands, C. S., have been elected Trustees of The Christian Science Publishing Society to succeed Mr. McKenzie and Mr. Merritt, respectively."

Q. Now, Mr. Eustace, I call your attention to the Christian Science Sentinel for—it is the Eighteenth Volume of the Christian Science Sentinel, at page 831—

Mr. Whipple—Mr. Krauthoff, may I call the attention of the stenographers to the fact that the word "elected" in what has just been read was not underscored in the text from which it was read? They might make a mistake from your emphasis on that word.

Mr. Krauthoff—Well, I will be very glad to call attention to any italics that I may want in the record at any time.

Mr. Whipple—Well, you did then; you italicized it vocally.

Mr. Krauthoff—I see:

Mr. Whipple—And I did not want the mistake to go into the record.

Mr. Krauthoff—I call your attention to the article headed "Mr. McCrackan Elected an Associate Editor" (passing to the witness a copy of the Sentinel, who, after perusing it, returns it to Mr. Krauthoff). We offer that announcement in evidence as a part of Mr. Eustace's cross-examination.

Mr. Whipple—You need not trouble to show it to me. You may read it.

Mr. Krauthoff—"Mr. McCrackan Elected an Associate Editor. Announcement is made of the election of William D. McCrackan, C. S. B., of New York City, as an Associate Editor of the Journal, Sentinel, and Herold, to fill the vacancy caused by the retirement of Mr. Willis."

I also call your attention on the same page to the announcement, "A letter from Mr. Willis." That is Mr. John B. Willis, who up to that time had acted as an associate editor of the Christian Science periodicals. It is headed, "A letter from Mr. Willis."

"In announcing—"

Mr. Whipple—I cannot see how Mr. Willis' letter is very important. I have

not objected to the putting in of whatever was authorized by the Board of Trustees, but Mr. Willis' letter or his views or construction of this situation or the relations of the parties cannot be very important, can they?

Mr. Krauthoff—Mr. Whipple overlooks, if Your Honor please, that this notice was put in the Christian Science Sentinel, which Mr. Eustace says was being published on Mr. Eustace's sole responsibility.

Mr. Whipple—Well, if we publish a letter of somebody else it does not signify that we wrote the letter.

Mr. Krauthoff—I am not offering the letter alone; I am offering the statement which precedes it.

Mr. Whipple—Well, let me see it. You did not call my attention to that. You said that you wanted me to read the letter.

Mr. Krauthoff—The first four lines are what I want to call attention to first.

Mr. Whipple—I see nothing harmful in those first four lines. They seem a grateful expression of appreciation of Mr. Willis' services.

Mr. Krauthoff—Well, the point about the first four lines, if Your Honor please, is that it is The Christian Science Board of Directors that is announcing the retirement of Mr. Willis.

Mr. Whipple—Oh, you mean that the directors wished to—oh, they did a lot of superserviceable things.

Mr. Krauthoff—Which you published in your periodicals.

Mr. Whipple—Certainly, certainly, a great many of them.

The Master—It all comes to this, that the publishing trustees published in their periodical an announcement by the directors regarding the editorship of a Christian Science publication. Do I state it correctly?

Mr. Krauthoff—Yes.

The Master—No one disputes that they did so?

Mr. Whipple—Oh, no, Your Honor.

The Master—Why is it necessary to encumber the case with all that printed matter?

Mr. Krauthoff—Why, if Your Honor please, the statement that you make, and ask if anyone disputes that they did so, is not accurate. The bill of complaint in this case embodies the issue that—

The Master—I asked if counsel disputed it, and I understood that no one disputed it.

Mr. Krauthoff—Oh, you mean that that statement of the Master will be the evidence of the fact?

The Master—No. The witness' evidence, as I gather, is to the effect that I have just stated myself, and it is not disputed.

Mr. Krauthoff—That is, that The Christian Science Board of Directors announced the retirement of Mr. Willis as an editor?

The Master—And the trustees published it in a Christian Science publication.

Mr. Krauthoff—Yes.

The Master—Is that not the whole story?

Mr. Krauthoff—That is all of it, if Your Honor please, and that is all that I wanted to offer.

The Master—Can't it stop there?

Q. Now, Mr. Eustace, have you any explanation to make of why these were always announced as elections, and not as employments by The Christian Science Publishing Society? A. None at all.

Q. Wasn't it that the field took these editors as editors elected under the Manual? A. I have already stated in my testimony that there was nothing inconsistent with our employing some one that was satisfactory to us that was also satisfactory to the Board of Directors.

Q. Have you any further explanation to make of these announcements? A. I have no explanation whatever to make of them.

Q. In the correspondence about Mrs. Hoag's being employed by you, you stated that The Christian Science Publishing Society had accepted Mrs. Knott's resignation as an editor. Did Mrs. Knott resign in writing to The Christian Science Publishing Society? A. Where do you see that statement?

Q. Well, I won't take the time now to hunt it up. A. Well, will you state it again, so that I can get it exactly?

Q. In a letter written by The Christian Science Publishing Society to the Board of Directors, the Publishing Society told the Board of Directors that the Publishing Society had accepted Mrs. Knott's resignation? A. Yes.

Q. How did Mrs. Knott resign to the Publishing Society? A. Mrs. Knott had a conference with the trustees, and in that conference I understood her to say that she did not intend any disrespect to the trustees, and that she was not sure really to whom she had resigned, and we took that as a verbal resignation to the trustees.

Q. The position vacated by your removal of Mr. McCrackan on May 19, 1919, has not been filled? A. It has not.

Q. When do you expect to fill it?

Mr. Whipple—I pray Your Honor's judgment.

Mr. Krauthoff—Why, if Your Honor please—

The Master—I think that you will have to leave out their expectations, Mr. Krauthoff. It will take us long enough to find out what they have done.

Q. Have you found any loyal member of The Mother Church who is willing to accept a position under The Church Manual to which he has not been elected as provided by The Church Manual?

Mr. Whipple—I object to that because it is a question which has been put in flagrant defiance of the ruling which Your Honor has just made. It is not only an improper question to

put, but it is especially improper because it has just been ruled out, and it is not respectful to the Court.

The Master—If you will pardon me, I would like to hear the question read.

[The question is read as follows: "Have you found any loyal member of The Mother Church who is willing to accept a position under The Church Manual to which he has not been elected as provided by The Church Manual?"]

I do not see how I can admit that, Mr. Krauthoff.

Mr. Krauthoff — If Your Honor please, I want to say one word in response to what Mr. Whipple has said. If there is the slightest suspicion that this question is in violation of any sense of courtesy to Your Honor I will withdraw it, and I will withdraw it now, to be absolutely sure of being free of any claim of offense in that direction.

Mr. Whipple—I think that that is very handsomely and wisely done.

Mr. Streeter—He has your approbation, anyway, brother Whipple.

Mr. Whipple—Well, I think that that is all right. Everybody seems to approve it, and so we will go on merrily again!

Q. Mr. Eustace, did the Board of Trustees of The Christian Science Publishing Society in May, 1918, take up the question of the liability of The Christian Science Publishing Society to pay a federal income tax? A. I think it was in 1918 that we did that.

Q. And over the signature of Mr. Rowlands and Mr. Ogden and yourself you filed a claim of exemption? A. I think we did, yes. I would have to see the papers, but I think that that is correct.

Q. Have you your files here on that subject which show the claim which you did file?

Mr. Watts—No.

Q. Will you be good enough to have them here at 2 o'clock? A. I will.

Q. And did you also file one in 1919? A. I don't know whether we did or not.

Q. I wish you would look up as to that also, and have that here. And while you are looking for those two, will you please look for the return made for second-class postage under the act of Congress of 1917; and also the return that you made to the assessors of the City of Boston as to the ownership of the property which is in your possession? A. Yes.

Q. Now, Mr. Eustace, I want to call your attention to this statement of Mrs. Eddy in "Miscellaneous Writings," page 264, lines 10 to 13:

"Unity is the essential nature of Christian Science. Its Principle is One, and to demonstrate the divine One, demands oneness of thought and action."

Do you accept that statement of Mary Baker Eddy as a correct statement of a principle of Christian Science? A. Absolutely and unqualifiedly!

Q. Page 131, line 9: "Christian Scientists preserve unity, and so shadow forth the substance of our sublime faith, and the evidence of its being built upon the rock of divine oneness,—one faith, one God, one baptism."

A. I do.  
Mr. Whipple—Well, there was not any question, but you ask whether he subscribed to that?

The Witness—I understood so.

Mr. Whipple—Yes, that is right.

Q. Page 138 of "Miscellaneous Writings," lines 19 to 21:

"I once thought that in unity was human strength; but have grown to know that human strength is weakness,—that unity is divine might, giving to human power, peace."

That statement is also accepted?  
A. In proportion to my understanding of its meaning.

Q. On page 251, I call your attention to the address of Mrs. Eddy to the general association of teachers in the year 1903:

"You have convened only to convince yourselves of this grand verity: namely, the unity in Christian Science. Cherish steadfastly this fact. Adhere to the teachings of the Bible, Science and Health, and our Manual, and you will obey the law and gospel."

In studying these words of Mrs. Eddy have you ever given any weight to the fact that she mentions the Bible, Science and Health, and the Manual all in one and the same breath, as it were? A. Why, just as she mentioned her other works, of course. She at one time named the order of her works, the importance of them, as you are probably aware, and she named Science and Health as the first; "Miscellaneous Writings" as the second; "Unity of Good" as the third; the Church Manual as the fourth; "Christ and Christmas" as the fifth, and "Rudimental Divine Science" as the sixth. That was the order of importance in Mrs. Eddy's opinion, I believe, as she wrote to the London Outlook.

Q. And all of these are one complete whole as taught by Mary Baker Eddy?

Mr. Whipple—All of what?

Mr. Krauthoff—All of these which she has stated.

Mr. Whipple—Do you mean all of these publications?

Mr. Krauthoff—I mean all of these published books of Mary Baker Eddy.

The Witness—Certainly, they are all her writings.

Q. And no one can be a loyal Christian Scientist without accepting all of them? A. Well, he only accepts all of them in proportion to his understanding and demonstration of them.

Q. Certainly. But he starts with the proposition that all of them are true? A. Why, of course he does!

Q. You are familiar with the articles of Blanche Hersey Hogue on the Church Manual in the Sentinel of Sept. 10, 1910? A. Well, I wouldn't

like to say that I was, no. I read it, I suppose, at the time.

Q. Well, now, Mr. Eustace, I am going to leave you this pamphlet, "Fulfilling the Law," and I would like to have you read it between now and 2 o'clock, because I would like to ask you something on it then. A. I will answer anything on it now if you will read it.

Q. Oh, I thought— A. If you will ask me any question on it I will answer it now if I can.

The Master—What pamphlet is this? Is it an exhibit in the case?

Mr. Krauthoff—Not yet. I was asking him about the Sentinel, and I want to offer it as an exhibit, and then I want to offer in connection with it the statement of Mrs. Eddy as bearing upon it. While that is being found I will ask about another subject.

Q. Mr. Eustace, in the Christian Science Sentinel for Feb. 2, 1918, is the article entitled "Life," and that is the article to which you have referred in your correspondence with the directors as being an article which, in your opinion, should not have been published in the periodicals because in violation of the provisions in the Manual with respect to publishing articles of which Mrs. Eddy is the author, without her consent? A. That is the article.

Q. How did the article get into the Sentinel? A. Well, it is hearsay as to how it got in, but I suppose it was sent—

Q. What do you know about it? A. I think that it was sent—

The Master—If it is only hearsay do you want it?

Mr. Krauthoff—Well, he, if Your Honor please, is the plaintiff in this case who says that these periodicals are published upon his sole responsibility, and I am trying to find out how much that means.

Mr. Whipple—Well, you do not suppose that that means the reading over of everything before it goes in, do you?

Mr. Krauthoff—Well, it would seem that it meant that with respect to publishing a periodical.

Mr. Whipple—Don't lots of people have to do things through others who do them upon sole responsibility?

Mr. Krauthoff—I am not asking for any hearsay, if Your Honor please; I am asking only for what he knows about it.

Mr. Whipple—Well, that being so, he says that he knows only by hearsay, and your question goes by the board.

Mr. Krauthoff—Oh, I beg your pardon, then.

The Master—That is what I understood him to say.

Mr. Krauthoff—I did not so understand it.

The Master—It was for that reason that I asked the question.

Q. As you understand it, all that you know about this article appearing in the Sentinel comes to you by hearsay? A. Yes, I think that that is so.

Q. Who told you about it? A. I

think that Mr. McKenzie was the first one who told me about the article.

Q. Then afterwards the trustees took up with the directors the matter of publishing that article in pamphlet form? A. We did.

Q. Why did you take that matter up with the directors? A. Because it was at the time of the war and we thought that it was a very excellent article, and at that time we were heartily in accord with what the article said.

Q. Well, I was not speaking about the virtue of the article; I was speaking of why you took it up with the directors. A. Because we thought—we were contemplating putting it in a little vest-pocket form to send to the trenches.

Q. I will put it in another way: Why did the directors have to do with whether you published it in vest-pocket form or not? A. Well, for one thing, the directors—five of them—are trustees under the will, and we would not have thought of taking anything that Mrs. Eddy had written and putting it in pamphlet form without their knowledge and consent.

Q. Then you did not take it up with the six trustees under the will? A. No, we did not.

Q. This article is copyrighted by The Christian Science Publishing Society? A. Yes, we copyright everything.

Q. You copyright everything that goes in? A. Yes.

Q. And the directors concluded that it would not be expedient to publish that in pamphlet form? A. Well, it was a unanimous thing, after talking it over, that it was not wise to do it.

Q. And it was not so published? A. No.

Q. Referring to the annual meetings of The Mother Church, you are familiar with the fact that the clerk of The Mother Church, in making his annual report, had a chapter, if it may be so called, upon The Christian Science Publishing Society? A. No, I am not.

Q. Do you mean that you have never noticed that at the annual meeting of The Mother Church the clerk of The Mother Church refers to The Christian Science Publishing Society? A. I remember only once myself.

Q. Were you present at the annual meeting in the year 1918? A. That is the year that I was referring to.

Q. And do you not know that the clerk of The Mother Church asked the trustees of the Publishing Society for such information as they might wish to put in this annual report, and that they did furnish certain information? A. That year they asked for it. Mr. Jarvis asked. We did not know what use he was going to make of it.

Q. Didn't he tell you that he wanted it for the annual report? A. We supposed, of course, he was going—

Q. I beg pardon? A. We supposed, of course, that he was going to talk



about the growth of the Publishing Society in his report;

Q. To The Mother Church? A. To the membership, yes.

Q. Do you have any annual meetings of the Publishing Society? A. We do not.

Q. Do you make any annual reports except to this annual report of the clerk of The Mother Church? A. We do not make an annual report to the clerk of The Mother Church at all. We make no annual report whatever.

Q. And the information that you send to the clerk you send purely as a matter of courtesy? A. Purely out of courtesy.

Mr. Whipple—If you are going to take up a new subject, Mr. Krauthoff, perhaps we had better take our intermission, unless it would interrupt your thought.

Mr. Krauthoff—Oh, no, not at all.

The Master—Is that agreeable, Mr. Krauthoff?

Mr. Krauthoff—Yes, Your Honor.

The Master—How long shall we stop? Five minutes?

Mr. Whipple—Five minutes.

The Master—We will suspend, then, for five minutes.

[Recess of five minutes.]

The Master—We will go on as soon as you are ready, Mr. Krauthoff.

Q. Now, Mr. Eustace, I call your attention to the Christian Science Sentinel for Sept. 3, 1910, and to the article therein contained called "The Church Manual."

Mr. Krauthoff—If Your Honor please, this is one of two articles on this subject that I want to read to Mr. Eustace as a basis for my examination of him. I have copies of it printed in pamphlet form. Beginning there with "The Church Manual"—

Mr. Whipple—Are you planning to read the article?

Mr. Krauthoff—I want to read the article to Mr. Eustace and then make it the basis of a question.

[Copies of the pamphlet above referred to are handed to the Master and counsel.]

The Master—Will it be necessary to read the whole six pages? May we not assume that the witness has read it and couldn't you then ask him specifically what you want to ask him?

Mr. Krauthoff—It is a little difficult to do that, but if Your Honor so directs, I will do that. The whole article is one of which Mrs. Eddy directly approved in writing, and there is practically every part of it that raises a question.

The Master—Wouldn't it be well first to find out—

Mr. Krauthoff—I mean, as a basis of a question.

The Master—to find out first whether he is familiar with the article, and also with the fact, which you tell us of, that Mrs. Eddy approved of it in writing.

Q. Mr. Eustace, referring to the article on "The Church Manual" in the Christian Science Sentinel of Sept. 3, 1910, by Blanche Hersey Hogue, are

you familiar with that article? A. No, I am not familiar with it.

Q. And are you advised of the fact that in the Sentinel of Sept. 10, 1910, is a statement by Mary Baker Eddy: "The article on the Church Manual by Blanche Hersey Hogue in the Sentinel of September 10 is practical and scientific, and I recommend its careful study to all Christian Scientists."

Mr. Krauthoff—If Your Honor please, in view of Mr. Eustace's statement I would prefer to examine him about that at 2 o'clock, after he has read the article.

Mr. Strawn—Don't you intend to allow him any time for luncheon?

The Master—He hasn't answered your last question, has he?

Mr. Krauthoff—No.

Q. Please answer the last question. A. I am familiar with that statement in the Sentinel of Mrs. Eddy's.

The Master—He has now answered it.

Mr. Krauthoff—Yes. He is familiar with the statement of Mrs. Eddy, but he is not familiar with the article. Under those circumstances I would be glad to read it or I would be glad to have the witness read it at adjournment. I don't think it is as long as Your Honor thinks it is. It is rather a small pamphlet.

The Master—I see that it is pretty nearly six pages of rather small print. What would counsel suggest in regard to reading it at length?

Mr. Whipple—I hardly know what to say. I cannot see the pertinency of the examination in any way, but if Mr. Krauthoff feels as if he must cross-examine on it I should suppose it would be well for Mr. Eustace, if he is willing to, to intersperse his luncheon with a review of it.

The Witness—I will be very glad to.

Mr. Whipple—Well, perhaps that is the best solution of it.

The Master—Will that be satisfactory, Mr. Krauthoff?

Mr. Krauthoff—Oh, quite.

The Master—Let us take that course, then.

Q. Now, Mr. Eustace, I desire to call your attention to this statement by Mary Baker Eddy, on page 148 of "Miscellaneous Writings":

"The Rules and By-Laws in the Manual of The First Church of Christ, Scientist, Boston, originated not in solemn conclave as in ancient Sanhedrim. They were not arbitrary opinions nor dictatorial demands, such as one person might impose on another. They were impelled by a power not one's own, were written at different dates, and as the occasion required. They sprang from necessity, the logic of events,—from the immediate demand for them as a help that must be supplied to maintain the dignity and defense of our Cause; hence their simple, scientific basis, and detail so requisite to demonstrate genuine Christian Science, and which will do for the race what absolute doctrines

destined for future generations might not accomplish."

Now, as a loyal and consistent believer and advocate of the principles of Christian Science as taught by Mary Baker Eddy in her textbook, "Science and Health with Key to the Scriptures," do you accept that as a correct statement with respect to the Church Manual? A. I accept that as an absolutely correct statement including the Deed of Trust constituting The Christian Science Publishing Society.

Q. I am now asking you what you do with that statement with respect to the Church Manual. A. Including the Deed of Trust, I accept it.

Q. I ask you with respect to the Church Manual. A. The Church Manual? Yes, of course I accept it.

Q. With respect to the Church Manual? A. Certainly I accept it.

Q. In your direct examination you spoke of the Manual as a spiritual guide. Of course you do not mean that it is a guide to the Spirit; that is to say, Spirit itself needs no guide? A. No, of course not.

Q. You mean it is spiritual in its origin? A. I mean that it is a spiritual guide; in other words, it guides me spiritually.

Q. What does it do with respect to your human affairs? A. Do you want me to go into an explanation of how Christian Science is applied in human affairs?

Q. I would be very glad to have you.

The Master—I do not know about that. I think that is taking it a little too far.

Mr. Krauthoff—If Your Honor please, if I may be heard on that I should be very glad to state the relevancy of it.

The Master—State it as briefly as you can.

Mr. Krauthoff—The fundamental error which has caused this lawsuit is a refusal on the part of the plaintiffs in this case to accept as their guide the human footsteps that Mary Baker Eddy prescribed for Christian Scientists.

Mr. Whipple—(To the stenographer) Will you read that? I don't think I grasp it.

(The statement is read by the stenographer.)

Mr. Whipple—The human footsteps?

Mr. Krauthoff—Yes.

Mr. Whipple—Aren't you speaking a little metaphorically, if not phantasmagorically?

Mr. Krauthoff—I mean the human footsteps, and, with all deference to the situation, it is not a subject for humor, it is the basis of this situation.

Mr. Whipple—Nothing is the subject for humor except your extraordinary statements; that is the thing. Nothing in the case is a subject for humor in the slightest.

The Master—The question before me is whether it will be proper for the purpose of this hearing, or desirable, to hear a statement from the witness on that abstract question.

Mr. Streeter—If Your Honor please, may I make a suggestion? As coun-

sel for Mr. Dittmore we are not taking any large part in this particular matter, but here is a question put, and, if I understand what Mr. Krauthoff means, it is a question that we would like to have answered. Mr. Eustace says—

The Master—That is quite enough, General Streeter. If you want the question answered, and Mr. Whipple does not object, I shall not exclude it on my own motion.

Mr. Streeter—If Your Honor please, I want to state what I want answered—not a general abstract discussion. Mr. Eustace has said that he regards the Manual as his spiritual guide. I want to know, what I think Mr. Krauthoff was finding out, whether he regards that as a guide to him in so far as it gives directions as to the human affairs of the Publishing Society and the directors. It is a perfectly plain question.

Mr. Whipple—If Your Honor please—

The Master—If that is any different from what Mr. Krauthoff asked him you will have an opportunity later to pursue the inquiry yourself, I suppose. Mr. Whipple, you were about to say something?

Mr. Whipple—I cannot see how, and especially in view of what has been said, there is the remotest relation to any issue in the case, any real issue, in the answer to this question; but there is evident to my mind a studied purpose on the part of the counsel for the directors to put Mr. Eustace, or the trustees, at a disadvantage with what they call the field.

The Master—Call what?

Mr. Whipple—Call the field; that is the great body of Christian Scientists who are watching these proceedings. Therefore, in order that that may not be done I am perfectly willing, very glad to have this explanation given, because I do not want to have it possibly said that the trustees fear in the slightest the fullest exposition of their justification in this matter from every point of view.

The Master—The witness may proceed, then. (To the witness) Do you desire the question read again, or is it sufficiently present to your mind?

The Witness—I might have it read again, if you please.

(The question is read by the stenographer as follows: "What does it do with respect to your human affairs?")

Mr. Whipple—(To the stenographer) Then he read something; just go a little before that and a little after.

(The stenographer read as follows:

"Q. You mean it is spiritual in its origin? A. I mean that it is a spiritual guide; in other words, it guides me spiritually.

"Q. What does it do with respect to your human affairs? A. Do you want me to go into an explanation of how Christian Science is applied in human affairs?

"Q. I would be very glad to have you.")

The Master—Now, go on, Mr. Witness.

A. As I understand, everything that Mrs. Eddy has written and given to us as Christian Scientists is for our guide spiritually; in other words, in proportion to our spiritual understanding of what she means, and in the application of that in our daily living, do we understand exactly what she means, and our human affairs take on a higher significance.

Q. That is, in proportion as we come to an understanding of the spiritual the human disappears in the process? A. The human vanishes.

Q. But, primarily, we are dealing with a human situation? A. Never, under Christian Science.

Q. I mean, a human situation in belief? A. Never; the belief vanishes. We are dealing with Mrs. Eddy's statement that "All is infinite Mind and its infinite manifestation, for God is All-in-all."

Q. I know it; but we begin with the belief on the part of somebody in the human condition? A. We destroy that belief, we do not begin with it. We begin with that fundamental statement of Mrs. Eddy's and destroy that belief.

Q. We understand each other; I understand how you begin the treatment; but I mean when a patient comes to see you as a practitioner the patient has a belief of a condition—of a human condition. A. All right.

Q. And then you begin as a practitioner by destroying his belief in a human condition? A. In other words, my understanding of what Mrs. Eddy has given in her works enables me to destroy this human footstep, as you call it.

Q. Yes, having destroyed that human footstep, he takes another one? A. I suppose he does. I don't know what he does. He is well then.

Q. Well, you do, don't you? In your progress from one state or stage of consciousness to another you take footsteps? A. I start from the fundamental basis of what Jesus said, that the Kingdom of God is at hand.

Q. Yes. A. That we are right now in eternity, not that we are going to get there.

Q. I appreciate that. Now, none of us have demonstrated that fully in our daily living? A. That is being unfolded to each individual one every moment.

Q. In your conduct of the affairs of the Publishing Society, who is in charge of the affairs of the Publishing Society? A. We recognize fundamentally that divine Principle is in charge.

Q. And if anybody does not reflect divine Principle then what happens? A. Then the correction of whatever is wrong is made through whatever is the avenue that that correction should be made through.

Q. By some one superior in authority? A. Some one who is responsible for seeing that it is right.

Q. Some human being? A. Always.

Q. Seeing that some other human being— A. What you call human being.

Q. Yes—what you call human being—is seeing that somebody else called a human being reflects divine Principle absolutely? A. That is as it seems, yes.

Q. And in the conduct of the affairs of this Publishing Society do you find it necessary to have a center of authority? A. Naturally. God is the center of the authority.

Q. Oh, I know; but I mean in deciding whether somebody shall have a two weeks' vacation? A. Certainly; that is expressed.

Q. Who decides that? A. In Christian Science God is expressed in an infinity of activity.

Q. I appreciate that. Now, coming back, who determines the hours at which the people in the Publishing Society come to work? A. Expressed in the normal and natural way of what you call those who are responsible for that work.

Q. That is, the trustees of The Christian Science Publishing Society? A. And so on.

Q. In other words, this Bulletin that was offered in evidence shows that in the conduct of the affairs of The Christian Science Publishing Society it has become necessary to make a number of rules and regulations? A. Yes.

Q. Relating to hours of labor, conduct of employees, and all the details that are set out in that book? A. Naturally.

Q. And those rules and regulations proceed from a center of authority? A. They do.

Q. And that center of authority in the Publishing Society is the Board of Trustees? A. That is as it is expressed.

Q. Now, in the conduct of the affairs of the church it also becomes necessary to have a center of authority, does it not? A. Naturally.

Q. How about the Christian Science movement? A. The Christian Science movement—that is the cause that Mrs. Eddy established.

Q. Does that need a directing head or center of authority? A. Mrs. Eddy has directed that through her works.

Q. Through her works. And as to the Christian Science movement—this human authority of which we have been speaking, does that apply or does it not apply? A. Not to the individual Christian Scientist—not in the slightest.

Q. I understand; but I am talking about the movement as a whole. A. Well, the movement as a whole includes all Christian Scientists, affiliated or unaffiliated.

Q. And does the Christian Science movement as a whole need, or does it have, any central or controlling authority? A. Not necessarily, outside of our Leader's writings.

Q. In your communication to the directors you pointed out that in the conduct of the affairs of The Christian

Science Publishing Society you called upon every one to demonstrate Principle, and then if they failed to do it you pointed out the mistake? A. That is right.

Q. Of course, absolutely, Principle is demonstrated? A. That is right.

Q. And when a mistake happens, why, there is a failure on the part of somebody to recognize the demonstration of Principle, and it becomes necessary for some one humanly to point out the mistake? A. All right.

Mr. Krauthoff—If Your Honor please, some of the publications of The Christian Science Publishing Society were identified, that is, the Quarterly and the Journal, and I wanted to have others identified as exhibits.

Q. That is Der Herold der Christian Science? (Handing paper to witness.) A. It is.

Q. Published by The Christian Science Publishing Society, for June, 1919? A. It is.

Mr. Whipple—Let me ask if there is anything in particular in it that you attach any significance to or whether you simply offer it as a sample of a publication which is made by the trustees?

Mr. Krauthoff—This is being offered in order that the Court may have before it the character of the publications put out by the trustees.

Mr. Whipple—That being the offer, I have no objection to it, but I should think it would be much better to have one prior to the bringing of the bill, except that they are doing the same thing since; and if it was understood that this is a sample of what the trustees have been doing for a good many years we should be very happy to have it go in.

Mr. Krauthoff—Well, I will supply those prior to the bill.

Mr. Whipple—You need not if you assume that this is a fair sample.

Mr. Krauthoff—I understand that there has been no outward change in their form.

Mr. Whipple—All right; we will take that.

[A copy of Der Herold der Christian Science, for June, 1919, is marked Exhibit 64.]

A copy of Le Héraut de Christian Science, for June, 1919, is marked Exhibit 65.

A copy of the Christian Science Sentinel, of June 28, 1919, is marked Exhibit 66.

A copy of The Christian Science Monitor, of June 28, 1919, is marked Exhibit 67.]

Q. Now, Mr. Eustace, in response to our question a moment ago—I say "our question," both the question I had and a question that General Streeter had—with respect to the extent that you apply this Manual to the conduct of your human affairs, you explained your views generally upon the subject of Christian Science. Now, as applied to the conduct of the affairs of the Publishing Society, how far do

you apply this Manual? A. I apply it just as far as I understand it.

Q. Just as far as you understand it? A. Yes.

Q. Do you understand the language that The Christian Science Board of Directors shall elect editors? I mean taken by itself. A. Shall elect editors?

Q. Yes.  
Mr. Whipple—Well, now, won't you please quote it properly and fully instead of putting it in that form?

Mr. Krauthoff—Why, certainly.

Q. With respect to the provision of the Manual which provides as follows:

"The term of office for the Clerk and the Treasurer of this Church (also for the editors and the manager of The Christian Science Publishing Society, and the manager of the general Committee on Publication in Boston) is one year each, dated from the time of election to office. Incumbents who have served one year or more, may be re-elected, or new officers elected, at the annual meeting held for this purpose, by a unanimous vote of the Christian Science Board of Directors and the consent of the Pastor Emeritus given in her own handwriting."

Now, how do you apply that statement in the Manual to the conduct of the affairs of the Publishing Society?

A. Why, just in so far as any statement that Mrs. Eddy has made; that, as I understand it, in keeping with the Deed of Trust, I act in obedience thereto.

Q. I am coming back to the Manual as a Manual, now, I am not asking you about the Deed of Trust.

Mr. Whipple—I pray Your Honor's judgment. The witness has said repeatedly that the Deed of Trust is a part of the Manual, it is incorporated in it, and is referred to in it; that its inspiration is just as sacred, just as absolute—more so, because it is irrevocable; and that he construes the Manual with reference to the provisions of the Trust Deed and their irrevocability as understood by Mrs. Eddy.

Mr. Krauthoff—May I have the witness answer the question that I propounded—how he applies this statement in the Manual to the conduct of the affairs of the Publishing Society?

Mr. Whipple—That is not the question here. You are harking back to a question three or four questions back.

Mr. Krauthoff—I will state it over again.

Q. How do you apply the provision in the Manual which I have just read to you to the conduct of the affairs of the Publishing Society?

Mr. Whipple—If Your Honor please, I object to that because it has been answered already in the record.

The Master—If the witness can add anything to what he has several times in my recollection said upon that point he is at liberty to do so; I don't suppose you want him to repeat over again what he has said.

Mr. Krauthoff—No, not at all; I

simply want to get his full understanding.

The Witness—I have nothing more to say in addition to what I have already said several times.

Q. You have enjoined the directors from electing an editor?

Mr. Whipple—Just a moment; of course he has not, if Your Honor please. The Supreme Judicial Court of the Commonwealth has done it. This witness has not enjoined them, and it is just that foggy notion with respect to what the Supreme Judicial Court did that got you into trouble. You apparently thought that this gentleman had enjoined you and that it didn't make any difference what your directors would do in view of that.

The Master—You will have to change your question, I think.

Q. Adopting Mr. Whipple's form, upon your application and upon your claim that the Board of Directors did not have the power to elect editors, the Supreme Judicial Court of Massachusetts issued an injunction which has been construed to prevent the Board of Directors from electing editors?

Mr. Whipple—Now, I object to that because it is not a correct statement. The Court did not issue any injunction on any claim of the parties. The parties set forth the facts verified by an affidavit; the Court, on reading that statement of fact verified by affidavits, grants an injunction. You know that is the way things are done, don't you? It does not issue an injunction on any claim of a party. It issues injunctions upon a statement of facts which they believe to be true because they are verified.

Mr. Krauthoff—I will try to frame another question that perhaps will be more accurate in Mr. Whipple's consciousness.

Q. Upon the filing of the Bill in Equity in this case the Court did issue an injunction, and when you were advised by The Christian Science Board of Directors that they were proposing to elect a successor to Mr. McCrackan you filed a proceeding against them alleging that they had violated the injunction?

Mr. Whipple—Now, that is not a correct statement. Why don't you get the petition for contempt if you want to offer it, not this gentleman's construction of it? You know what was alleged in the petition for contempt, don't you? You ought to.

The Master—Aren't we spending a good deal of time on mere words, Mr. Whipple?

Mr. Whipple—Well, it is not a correct statement; if it were I would not mind at all. That was not the basis of the—

The Witness—That was not the basis.

The Master—Strictly speaking that is undoubtedly true but isn't it sufficiently near to correctness?

Mr. Whipple—No; it is so far from it; that is the only reason that I object

The Master—We can take the witness' answer and see what he is going to say.

Mr. Whipple—Why, he is not a lawyer; I presume he perhaps might have the same foggy notion of it that the counsel have suggested. It was an entirely different thing from that that was the basis of their complaint; and only the production of the paper itself, or some reform in your expression of it, would, it seems to me—

Mr. Krauthoff—If Your Honor please, I am not asking this man as a lawyer, I am asking him as a loyal Christian Scientist.

Mr. Whipple—Well, I think you have got to ask him as a witness.

Mr. Krauthoff—It may include a lawyer. I am asking him as a loyal Christian Scientist what application does he make of this provision in the Manual with respect to the power of The Christian Science Board of Directors in the present circumstances to elect editors to the Christian Science periodicals. I will ask him the direct question.

Q. Do you not now deny that The Christian Science Board of Directors have the power to elect editors? A. May I ask a question?

Q. Certainly. A. What do you mean by "power"?

Q. Well, the word defines itself. A. Does it mean power?

Q. Do you mean to deny that they have no right to do it, no authority to do it? You have spoken of it as an unwarranted assumption of authority. I will ask you to explain that. That is your own language; maybe you can do that. A. I thought I explained that the other day.

The Master—If you have anything to add, add it.

The Witness—I have nothing more to add.

Mr. Krauthoff—If Your Honor please, the witness did not explain it the other day.

The Master—He tells us now that he has explained it as far as he can, and he has nothing more to add. I think we will have to stop there.

Q. What application do you make of this provision in the Church Manual, Section 3, on page 80:

"The Christian Science Board of Directors shall have the power to declare vacancies in said trusteeship, for such reasons as to the Board may seem expedient."

Mr. Whipple—That I object to, because it is involved in this hearing.

The Master—That is the question we have got to settle, it is a question of law. I do not think it is open to you to discuss it with the witness.

Mr. Krauthoff—I shall be glad to be heard on that, if Your Honor please.

The Master—I hardly think that can be worth while now, Mr. Krauthoff. I will exclude that question and save your exception.

Q. You became a trustee of The Christian Science Publishing Society

in the fall of 1912? A. December, 1912.

Q. And you began to have conferences with the directors, The Christian Science Board of Directors? A. We had one conference, I think our minutes show, in 1913.

Q. Is that all your minutes show? A. That is all that our minutes show.

Q. At that time there was a good deal being done with respect to your building, was there not? A. I would have to look that up.

Q. I call your attention to a memorandum I have of the Board of Directors, Jan. 22, 1913:

"Voted, to comply with the request of The Christian Science Publishing Society that hereafter they keep no special Hymnal account; they to be able, however, at any time to render a separate account in regard to the business of the Hymnal."

Do you recall taking up with The Christian Science Board of Directors the matter of your keeping a separate Hymnal account? A. When was that?

Q. 1913. A. Well, I accept that. I am sure—we did probably talk it over.

Q. That is, at one time the copyright to the Christian Science Hymnal was in the name of The Christian Science Board of Directors? A. The copyright is still in the name of The Christian Science Board of Directors.

Q. Didn't they transfer it to The Christian Science Publishing Society? A. No; it has never been transferred that I am aware of.

Q. And The Christian Science Publishing Society is publishing the Hymnal and getting the proceeds of the sale of it? A. They are.

Mr. Whipple—That is why they had a separate account, isn't it?

Mr. Krauthoff—I beg pardon?

Mr. Whipple—Isn't that why they had the account separate?

Mr. Krauthoff—It may have been that that was one of the reasons why they had a separate account.

Mr. Whipple—It looks like a good one—a good reason.

Mr. Krauthoff—Perhaps so. I am trying to develop things here.

Q. On Feb. 5, 1913: "Voted, unanimously, that the board concur in the opinion of the trustees of The Christian Science Publishing Society that the letters C. S. can properly be used in The Christian Science Journal only following the name of a person who has received class instruction from an authorized teacher of Christian Science." Now, that refers to the list of practitioners in the Journal? A. Yes. A question arose as to what C. S. meant.

Q. And you took it up with the Board of Directors? A. Well, I wrote a sort of brief on it, as I understood it, and the matter was discussed, and it was agreed as it is being done now.

Q. Why did you take it up with the directors, Mr. Eustace? A. Why, Mr. Krauthoff, ever since I have been here I have always wanted to take up everything with anyone deeply inter-

ested, especially The Christian Science Board of Directors, on any point that is of value or interest to the Christian Science movement. That is the unity that we have spoken of.

Q. Now, the Bill of Complaint states that you have at all times conducted this business solely upon your own responsibility. A. That does not interfere with that. We can have conferences and requests and everything, and yet conduct the business on our own responsibility.

Q. How many other people did you take into your conferences on this question? A. C. S.?

Q. Yes. A. Well, I went back over all in the Journal. We discussed it with, I think, my fellow colleagues on the Board of Trustees. I don't know, I may have talked it to many. I don't know. I wouldn't like to say on that at all.

Q. On May 28, 1913, I have this memorandum:

"Voted to recommend to The Christian Science Publishing Society that its employees hereafter be granted a vacation of two weeks per year instead of one week."

Did you take that up with The Christian Science Board of Directors? A. You say that that was a recommendation from the Board of Directors to the trustees?

Mr. Krauthoff—I am reading the record of the Board of Directors, and I am asking you whether that was done or not?

Mr. Whipple—Are you reading from the original record of the Board of Directors? I think you better show that to—

Mr. Krauthoff—I am not reading from the original.

Mr. Whipple—Well, I am not going to take a statement read from a copy in that way. You must have the original records here if you are going to use them, because I am going to examine about them in redirect.

Mr. Krauthoff—I am not offering the record. I am asking this witness a question.

Mr. Whipple—You are asking to be allowed to read a record without producing the books. I can't let you do that. You must take the responsibility for them—

Mr. Thompson—We think for Mr. Dittmore that all reference to these records when made in this informal manner should be eliminated. If the records of these directors are going to play any part in this case we think they should be subjected to the strictest proof.

Mr. Whipple—Aren't they going to play a part?

Mr. Thompson—I suppose they are, but they can't play a part without being subjected to strict proof.

Mr. Whipple—They must play a real part.

Mr. Thompson—I don't care to have you get in a record through the informal reading of a memorandum.

Mr. Krauthoff—I am not offering records.

Mr. Thompson—You are in effect when you read and say, "This is the record."

Mr. Krauthoff—I will ask it in another way.

Q. Did you, in May, 1913—

The Master—Pause one moment. I think we must settle this matter first.

Mr. Thompson—I move to have every question containing the statement, "This is part of the records" or "I am reading from the records," stricken out as being impertinent, improper, and a very undesirable way in this case of proving what may be important matter.

Mr. Krauthoff—I am not offering them as statements of what the record is, but merely as memoranda to form the basis of the question, and any reference to the record may be eliminated.

Mr. Whipple—Then the answers must be eliminated, because the answers have been given upon the guaranty of good faith in the implication of counsel that they were part of the record.

Mr. Krauthoff—I will begin over again, Your Honor.

Mr. Whipple—That is right.

The Master—One moment. The questions and answers now under discussion may be stricken from the record.

Q. Did you, in January, 1913, take up with The Christian Science Board of Directors the question of keeping a special hymnal account? A. A special hymnal account?

Q. Yes, showing the receipts and—  
A. That we had kept a special hymnal account always.

Q. Did you take up the question with them of whether thereafter you would continue to keep a special hymnal account? A. I haven't a doubt we did.

Q. And you have been publishing the Hymnal and receiving the proceeds of it? A. We have.

Q. Your statement is that the copyright is in the name of The Christian Science Board of Directors? A. It is.

Q. Did you in February, 1913, take up with The Christian Science Board of Directors the question of whether the letters C. S. could properly be used in The Christian Science Journal only following the name of a person who had received the class instruction from an authorized teacher of Christian Science? A. May my former answer stand on that? I answered it. It is correct.

The Master—No. I have stricken that out. You will have to answer it over again.

The Witness—The question as to what "C. S." meant arose and I prepared a brief on the question and talked it over, I believe, personally myself with the directors. Anyway, the brief was turned over to them and we all concurred that the "C. S." should be used as it is being used at

the present time, meaning those who have had class instruction.

Q. And so in accord with that there is a statement in the Journal under the heading "Christian Science Practitioners":

"The letters 'C. S.' after a practitioner's name designate one who has had class instruction. Those without such instruction have no designation."

A. That, I think, occurred after that; yes.

Q. Now, by "class instruction" what do you mean, Mr. Eustace? A. There are certain Christian Scientists who have received the degree of "C. S. D." or "C. S. B.," who are designated as teachers of Christian Science, and they now hold one class a year consisting of not more than 30 pupils.

Q. That is done under the Church Manual? A. That is done purely as a church matter, yes.

Q. You are one of those teachers?  
A. I am.

Q. And Mr. Ogden is one? A. He is.

Q. And the "C. S." means one who has received instruction from such a teacher? A. From such a teacher, yes.

Q. Did you in May, 1913, take up with The Christian Science Board of Directors the question of giving your employees a vacation of two weeks a year instead of one week? A. I was not aware that we did, but then it would be a very natural thing that we would talk it over together—but I don't know that we did. If we have a record of it we did.

Q. Did you in February, 1914, take any steps to have the Christian Science seal protected by registration or such other means as are available in the United States and all foreign countries? A. I think we probably did. That subject came up. I would have to refresh my memory on that.

Q. Did you take that up with the directors? A. Why, it would be a very natural thing to do.

Q. By the Christian Science seal is meant this circle on these exhibits that were introduced in evidence this morning? A. Yes, and that is on our Journal and Sentinel.

Q. And upon the two Heralds? A. Yes. It is, I think, on the Heralds.

Q. Did you ever take up with The Christian Science Board of Directors the fact that you had decided to thereafter discontinue both the \$3 and \$1 editions of the Life of Mary Baker Eddy and in place thereof issue a regular edition at a retail price of \$2? A. Yes. We discussed, I think, that very thoroughly—what would be the best thing to do with that book.

Q. You took that up with the directors? A. Why, I haven't any doubt we did. As I say, we always like to discuss all those matters of interest as to the movement with the directors.

Q. Did you take up with the directors the matter of translating a Christian Science lecture or other suitable fundamental statement of Christian

Science into the Italian language? A. Well, I don't know whether it was just that, but we have talked, I am sure, about the Italian translations.

Q. And other languages? A. I think so, yes.

Q. While I am on the subject of foreign languages, Science and Health has been translated into the German language? A. It has.

Q. And is printed on opposite pages, the English text and the German text? A. That is so.

Q. And that is also true of the French language? A. It is.

Q. And these two Heralds, the German Herald and the French Herald, are published with the English text on one side and the foreign language on the other side of the page? A. Yes.

Q. On opposite pages. And you have a number of pamphlets printed in various foreign languages? A. We have.

Q. And of course you increase those languages as the movement increases? A. Just as rapidly as we can.

Q. In translating Science and Health and other Christian Science literature into foreign languages, was any practical difficulty experienced in finding suitable words to express Christian Science and to express the phrase "infinite mind"? A. I think that is a very great difficulty.

Q. And words were selected, were determined upon, I believe, both in German and French? A. You mean for the translation of Science and Health?

Q. Yes. A. I don't know. We had nothing to do with the translation of Mrs. Eddy's books. We have now.

Q. But you are familiar with the fact that certain definite translations were agreed upon as the standard form of expression? A. No, I don't think I could say that, because as I remember it we decided to use the term "Christian Science" in our publications,—nothing to do with our Leader's works,—but in The Christian Science Publishing Society's publications.

Q. What I mean is this—  
The Witness—Not a translation.

Q. You have on the Herald for June, 1919, the words in German "Christlichen Wissenschaft." A. Yes, sir.

Q. Which are the German words for Christian Science? A. Yes.

Q. And that is the word that appears in Science and Health? A. Yes.

Q. And is the standard word in the German language for Christian Science? A. I suppose it may be. I believe they have trouble with it.

Q. Well, I mean it is the— A. It is the one we have accepted for the time being, anyway.

Q. I want to call your attention to the practical difficulty, Mr. Eustace. Suppose the trustees of The Christian Science Publishing Society, upon your theory of separate control and individual management, adopt another

word. I suppose you are free to do that, as I understand it? A. In our translations?

Q. Yes. A. Oh, yes.

Q. Whenever you reach the conclusion that some other German word will more accurately represent Christian Science you feel you are free to do it? A. Certainly.

Q. Without any control of The Mother Church? A. Absolutely.

Q. What would be the practical effect of attempting to introduce Christian Science into a foreign language with two different designations for it? A. I don't think there would be any, no.

Q. You don't think it would cause any confusion in Germany to have Christian Science referred to in one part of the work of the movement as "Christlichen Wissenschaft" and in another part of the work of the movement under some other title? A. I don't think practically it would, no. But that is a hypothetical question, and it probably would not take place because the whole purpose of the two boards is to work cooperatively together.

Q. The whole purpose of the trustees and the directors? A. And the directors.

Mr. Whipple—They could not have unity otherwise. They have been working that way until recently.

Mr. Krauthoff—That is what we have been trying to prove.

Mr. Whipple—We admit it. Why try to prove it? We assert it. They have been trying to until the directors began to think they were the unit.

Mr. Krauthoff—If Your Honor please, I assume that these statements of Mr. Whipple are not evidence?

Mr. Whipple—Oh, no, not at all. They are merely helpful suggestions to the cross-examiner.

Mr. Krauthoff—And if I may resume the trial of this case I shall be very glad to put another question.

Q. Mr. Eustace, in the French *Hérait* there is also an accepted word for the thought of Christian Science in the French language?

The Master—Why can't we assume that his testimony about the words in French and Italian and all the other languages you can think of would be just the same as what he has given about German?

Mr. Krauthoff—I should be very glad to.

The Witness—Exactly.

Q. Upon your previous examination, Mr. Eustace, your attention was called to the letter of Mrs. Eddy published in the *Christian Science Sentinel* under the title of "Words of Counsel," published in the year 1914, and appears to have been written in the year 1903, and as I recall your testimony, it was to the effect that that letter should not have appeared in *The Christian Science Journal*, because under the *Church Manual* an article written by Mary Baker Eddy

could not be published without her consent. Have you any explanation of how that article got into the *Sentinel*? A. No. I have none whatever, for I don't know how it got in.

Q. You are familiar, of course, with the fact that in the *Deed of Trust* itself the fixing of the salaries is left with The Mother Church? A. Left with the church, yes.

Q. And there is no minimum, I believe? A. I don't know; the minimum is \$1000, I suppose, the original amount.

Q. Well, the *Deed of Trust* would determine that? A. States that, yes.

Q. Your salary when you first became a trustee was how much? A. I think it was two thousand.

Q. And the church has increased it from time to time? A. Has increased it from time to time.

Q. As the work of the trustees increased and developed? A. I suppose—I don't know exactly; I suppose that is the—doubtless may be it.

Q. Until now, I believe, it is \$6000 a year? A. It is six thousand a year, yes.

Q. When was it fixed at that amount? A. I think some time in 1917.

Q. There has been no decrease of it since 1917? A. Not that I have experienced.

Q. And no intimation of any that you know of? A. Not that I know of.

Q. Do you recall in January, 1915, the question being taken up with the directors as to whether or not a lady in New York, Mrs. Lillian Young Cox, was entitled to have the word "Teacher" after her name in the practitioners' list? A. I don't recall that off-hand.

Q. Well, without regard to that special incident, I will ask you generally: Many of the Christian Science practitioners are authorized teachers of Christian Science of the character that you described a short time ago? A. They are.

Q. And in this list of practitioners in the *Journal* the word "Teacher" is placed in parenthesis after the name of one— A. Yes.

Q. —who is such a teacher; and that means an authorized teacher under the *Manual of The Mother Church*. Who decides whether a person is an authorized teacher under the *Manual of The Mother Church* and has the right to have that after their name in *The Christian Science Journal*?

Mr. Whipple—You mean, I take it, who has decided it heretofore.

Mr. Krauthoff—Well, who has decided it heretofore—

Mr. Whipple—Or who has to decide it now? Which is it you want?

Mr. Krauthoff—I mean, who decides it under his theory.

The Witness—The *Manual* itself—

Mr. Whipple—Well, a single moment. That I object to. Mr. Eustace has no theory.

Mr. Krauthoff—All right, we will

get at it another way. Go ahead, Mr. Eustace.

Mr. Whipple—Well, just a moment.

Q. How is it decided?

Mr. Whipple—Well, when?

Q. Prior to the 1st of February, 1919, how was it decided?

Mr. Whipple—That is better.

A. I have always taken it that the *Manual* decided—

The Master—No, you are asked, Mr. Eustace, How was it decided—

The Witness—I don't know, Your Honor.

The Master—prior to the date named.

The Witness—I don't know anything further than having gone through the college and having your degree and being a loyal Christian Scientist.

Q. What I am trying to get at is this: Did you prior to the 1st of February, 1919, put into the list of Christian Science practitioners the word "teacher" in parenthesis after the name of anybody who was not a loyal teacher of Christian Science and a member of The Mother Church and acting in accordance with the *Church Manual*? A. No.

Q. And you would not put in such a— A. May I say, when you say "acting in accordance with the *Church Manual*," I don't know how that is defined. I would say offhand, why, no, of course; they are supposed to be doing that.

Q. What I mean by that, is a member of The Mother Church and was in good standing in The Mother Church? A. No cards—no advertisements are carried in the periodicals from any except those who are members of The Mother Church.

Q. That is, either practitioners, teachers, or nurses? A. Any way. That is a rule of the Publishing Society.

Q. What application is made or was made by the trustees of the Publishing Society prior to Feb. 1, 1919, with respect to the removal of cards of practitioners or churches when so directed by the Board of Directors? A. On receiving notice or a letter from the Board of Directors saying that they had voted in accordance with a certain article in the *Manual* that So-and-So's card should not be in, we approved that and we took the advertisement out.

Q. Did you at any time take up with the society at Brunswick, Maine, the question of their maintaining two reading rooms? A. Yes, I remember we did have some correspondence on that.

Q. Will you please state the circumstances? A. I don't know that I can recall it or not.

Q. I don't quite understand. A local society was having two reading rooms? A. A local church, I think it was, was having two reading rooms, and I think we called their attention to the fact that Mrs. Eddy used the

singular, "reading room," that a church may have.

Q. That is, as trustees of the Publishing Society, you reached the conclusion that a local church should only have one reading-room? A. Yes, only—that was advice to us. We didn't want them to be going counter to anything.

Q. That is, that was the advice that you gave the local church? A. Well, we called their attention to that and I think, if I remember correctly, they recognized that that was wise, and stopped it. However, I should want to refresh my memory on that.

Q. A good many questions have arisen prior to Feb. 1, 1919, with respect to the conduct of church affairs which came to The Christian Science Publishing Society? A. Complaints would be sent in, of course.

Q. Well, requests for information, too, would there not? A. Oh, yes.

Q. That is to say, these churches which had in a sense been attended at their birth by The Christian Science Publishing Society passing on their cards for the Journal, would turn to the Publishing Society and write letters to the Publishing Society about church matters? A. Oh, I don't know.

Q. You did not know about that? A. Oh, I suppose there may be such cases, doubtless were, but I don't know that; I can't recall just at the moment. If you refresh my memory as to some instances, maybe I can recollect.

Q. Well, I haven't the precise church in mind. I was simply asking in a general way. And did you not instruct the young lady in charge of the Journal card department to answer those inquiries in some way that would either refer the persons to The Mother Church or refer them to the Manual or undertake to give them the desired information? A. We would always help them in any way we could.

Q. About matters relating to their own church affairs? A. Anything that they asked we would always try and do the best we could to help them.

Q. You had a number of inquirers with respect to this article that has been spoken of in counsel's opinion, called "A Mad World"? A. We did.

Q. And a number of churches wrote you and asked you as to the propriety of publishing that in local papers? A. I don't know whether they asked us as to the propriety but they asked us for our consent, because it was our article.

Q. Oh, they asked for your consent, and not as to the propriety? A. I don't know that they did. They wrote letters of appreciation of it.

Q. Did you ever advise a local church that it was a good thing to publish? A. No, I don't know that we did, but we congratulated them very highly and appreciatively for having done it.

Q. For having done it? A. Yes.

Q. Individuals came to you with respect to questions arising as to their duties as true Christian Scientists—

that is, by mail? A. Oh, it may be; I suppose they did in the natural course of events; I don't know.

Q. And you gave them advice as to that, too? A. We would help them in any way we could.

Q. Do you remember the instance of Mr. Norwood coming to you and speaking to you about certain notices he desired to be put into the Monitor about some Society for Medical Freedom, and your explanation that as a Christian Scientist the broad channels of The Mother Church were sufficient to give him all the activity he needed without belonging to another organization? A. I do, very well.

Q. That was done with others? A. Well, I don't know; I don't remember any others. I had forgotten that till you recalled it to me.

Mr. Krauthoff—It is now 1 o'clock, Your Honor.

The Master—We will stop till 2 o'clock.

[Noon recess.]

#### Afternoon Session.

The Master—Proceed whenever you are ready, Mr. Krauthoff.

Mr. Krauthoff—Now, if Your Honor please, we desire to offer in evidence this article of Blanche Hersey Hogue on the Church Manual, from the Christian Science Sentinel of Sept. 3, 1910, together with the statement of Mary Baker Eddy with respect to this article in the Sentinel of Sept. 10, 1910; and I will first read the statement of Mrs. Eddy:

"Take notice—The article on the Church Manual by Blanche Hersey Hogue in the Sentinel of September 10th is practical and scientific, and I recommend its careful study to all Christian Scientists."

The article reads as follows:

"Christian Scientists have for their instruction"—

Mr. Whipple—Just a moment. Has Your Honor admitted this?

The Master—Well, in a way I have. I thought that he was now offering it.

Mr. Whipple—I must confess that I have forgotten, but I did not understand that Your Honor's ruling this morning was that you would admit it. This is the article on the Church Manual by some other person. All that Mrs. Eddy ever said about it was that it was a good thing to study; she recommended its study.

Mr. Krauthoff—Oh, I beg your pardon. The statement is that this is "practical and scientific."

Mr. Whipple—Yes; that is right.

The Master—That is this article that we have here?

Mr. Krauthoff—Yes.

Mr. Whipple—Supposing it is, that is very true; it is not a part of the Manual.

Mr. Krauthoff—It is a statement published by Mary Baker Eddy, the Leader of the Christian Science religion, as to this article being scientific, which, in the language of Chris-

tian Science, means that it is Christianly scientific. It is in accord—

Mr. Whipple—Do you mean that it stands right on a par with Mrs. Eddy's writings?

Mr. Krauthoff—In view of her indorsement, it stands in the light of the indorsement that she made of it. It is "practical and scientific."

Mr. Whipple—That is not very enlightening.

The Master—The indorsement goes no further than to recommend it and to say that it is "practical and scientific." What are you going to do? Are you going to read that whole article?

Mr. Krauthoff—May I be pardoned for a moment, if Your Honor please? When Mary Baker Eddy used the word "scientific," she did not use it in the sense in which that word is used in common parlance by persons who are not familiar with the terminology of Christian Science.

The Master—Well, very likely not, but that is as far as she goes, at any rate.

Mr. Krauthoff—The point that we desire to make in that connection is that when she says that this article is "scientific," she says that it is a correct statement of the principles of Christian Science.

The Master—Well, suppose it is, why should we have it read into the record now?

Mr. Krauthoff—For this reason, if Your Honor please, that it is an article upon the Church Manual. We are entitled to know to what extent the plaintiff agrees with this article, and to what extent he disagrees with it, as bearing upon his loyalty to the Church Manual.

The Master—Wasn't he this morning to read it over and be prepared to tell you if he was familiar with it, and then you were to ask him how far he agreed with it? Isn't that where we left it this morning?

Mr. Krauthoff—I believe so, yes.

The Master—Let us follow that course.

Q. Did you read the article on the Church Manual by Blanche Hersey Hogue, to which your attention was called? A. I have read it.

Q. Is there any portion of that article with which you are not in hearty accord? A. So far as I understand it, I see nothing objectionable about it.

Mr. Krauthoff—We offer the article in evidence if Your Honor please.

The Master—You have it here in this shape?

Mr. Krauthoff—Yes.

The Master—Very good.

Mr. Krauthoff—And, in the circumstances, it will not be necessary to read it into the record in full, but we prefer to have it written into the record in full.

Mr. Whipple—I see no reason for that, if Your Honor please, we have so many bulky things in the record already.

The Master—I think that we want to avoid as far as possible putting into the record anything which is not immediately important and relevant.

Mr. Krauthoff—This, in my judgment, is, if Your Honor please. It is a direct statement upon the Church Manual itself, and, in my judgment, is of—

The Master—I do not think that that justifies bringing in an article in extenso into the record. You may be able in your argument to refer to such portions of it as you desire to rely upon.

Mr. Krauthoff—Then we may have one of these pamphlets identified as an exhibit?

The Master—I supposed that it had already been done.

Mr. Krauthoff—I do not think so.

The Master—If not, it may be identified.

[The article entitled "The Church Manual," on page 27 of the pamphlet entitled "Fulfilling the Law, published by The Christian Science Publishing Society," is marked 68 for identification. R. H. J.]

Mr. Krauthoff—We may in argument refer to any portion of that, as I understand it?

The Master—I suppose so. You may refer to anything that you put in in a similar way.

Q. Mr. Eustace, in the bill of complaint filed in this case, at the end of paragraph 5, on page 11 of the printed book, I find this statement:

"The trustees have paid over to the defendants in these two capacities, as directors of The Mother Church and as trustees, as earnings and profits from their conduct of the trust for a period of six months ending Oct. 1, 1918, a sum in excess of \$450,000."

Now, that total sum of \$450,000 is composed of two different amounts, is it not? A. Yes, as it says there, in their two different capacities—

The Master—That is pretty plain from the bill itself, I think.

Mr. Krauthoff—Well, it says in the two capacities.

Q. And one of those amounts was paid to the trustees under the will of Mary Baker Eddy as royalties growing out of the printing of the books of Mrs. Eddy? A. Profits.

Q. Profits? A. Profits.

Q. You have a contract under which you agree to pay a royalty for the publication of her books?

Mr. Whipple—Pardon me. That is not so, Mr. Krauthoff. Haven't you ever seen it?

Mr. Krauthoff—Why, I have read it, yes.

Mr. Whipple—Well, there is not the slightest thing about a royalty in it. The trustees are allowed 10 per cent of the gross receipts for their services and expenses.

Mr. Krauthoff—Yes.

Mr. Whipple—And handling it very economically and efficiently, they made a profit out of it, which they

turned over to the directors, and the rest goes to the trustees.

Mr. Krauthoff—If Your Honor please, I will get the contract, and I will examine Mr. Eustace further when I get the contract.

Mr. Whipple—Good!

Mr. Krauthoff—My understanding of what was done was this, that they published these books for the trustees under the will of Mary Baker Eddy, and as such they paid a royalty to the trustees under the will.

The Master—That being disputed, I suppose that we will have to wait until we get the contract itself.

Q. Now, then, you paid to the directors of The Mother Church as such, under the profits, as you claim, of The Christian Science Publishing Society, approximately \$287,000 for the six months ending Oct. 1, 1918? A. I believe that is correct.

Q. I gathered from your statement this morning that you have now discovered that those were not profits?

A. No, not that they are not profits, but that in the past we have neglected to make any reservation, any cash reservation, for our plant, and also for outstanding accounts, and we carry no cash against our unearned subscriptions, which we feel is not a good way to do in our business.

Q. When was it that you borrowed this \$200,000 with respect to the bringing of this suit? A. I don't know. Nineteen—I think it was sometime this year, the early part of this year.

Q. It was before the suit was brought? A. I will have to look it up. I don't remember, Mr. Krauthoff.

Q. Did you borrow it all at one time? A. Borrowed it all at one time.

Q. In order to pay profits that you had then discovered were not in fact earned?

Mr. Whipple—I pray Your Honor's judgment.

A. I did not say any such thing. I said that they were earned.

Q. They were not on hand in cash?

A. They were not on hand in cash, which is an entirely different thing.

Q. They were not earned in cash; they were earned in profits? A. They were earned in cash, but were not visible in cash.

Q. I see. They were in the form of profits which had not been converted into cash? A. Yes, so that we couldn't turn them over to the treasury.

Q. So that the sum of money which you turned over in cash was not profits, but it was money borrowed?

Mr. Whipple—I pray Your Honor's judgment.

The Master—Haven't we got the facts about that?

Mr. Whipple—I am informed that there were over half a million dollars of receivables that were due that had not been collected.

The Master—If we haven't got the facts, let us get them, but why spend time in disputing about characterizing the facts?

Q. In your examination, Mr. Eus-

face, you were asked with reference to the character or nature of the subscribers to the several periodicals? It is a fact, as you understand it, that many of the subscribers to The Christian Science Monitor are not Christian Scientists? A. I suppose so.

Q. You have no way of apportioning them? A. We have no possible way of knowing what our subscribers are from that standpoint.

Q. The other periodicals are subscribed to largely by Christian Scientists? A. I would have to give the same answer to that.

Q. Your attention has been called to the fact that Mr. Rowlands and Mr. Ogden were chosen trustees of The Christian Science Publishing Society in July or August, 1917. You have not chosen any trustees since that time? A. We certainly have not.

Mr. Whipple. There has been no vacancy, has there?

Mr. Strawn—Not that we know of.

Q. I want to call your attention to the statement of Mr. Whipple, which he made in the hearing upon the contempt proceeding—

"May I state what is without dispute, that Mrs. Eddy herself, during her lifetime, as grantor reserved certain rights of supervision and direction, if she saw fit to exercise them? And what Governor Bates has referred to as the uninterrupted course of matters for 17 years was merely the adoption by the Board of Trustees of the Publishing Society of any suggestion or supervision on the part of Mrs. Eddy before she passed away. In other words, while Mrs. Eddy lived, there was not a trustee of this organization who would not follow out in the fullest detail, minutely, any suggestion Mrs. Eddy made. If she nominated an editor, or asked to have one elected, there would not be the slightest hesitation in every one of these trustees obeying implicitly and to the letter the slightest suggestion of the great Leader of the Christian Science movement."

You agree with that statement of Mr. Whipple? A. I certainly don't see anything to disagree with.

Q. And these provisions in the Manual which are set forth as the direction to The Christian Science Board of Directors, and with the written consent of Mrs. Eddy, to elect the editors—do you regard that as an advice and direction of Mary Baker Eddy? A. I regard that as advice. To me, that by-law is very, very clear, and very explicit, showing exactly how Mrs. Eddy wanted us to cooperate in all our work, but in no way as changing the Deed of Trust, or our duties as trustees under that Deed of Trust.

Q. What I am trying to get is this, Mr. Eustace; Mrs. Eddy was, as stated by Mr. Whipple, and correctly so, the great Leader of the Christian Science movement. A. She certainly was.

Q. And the statement is that while



she was alive, physically, everything that she suggested, or advised or directed was unhesitatingly done by everybody. A. Yes.

Q. That is because it was accepted as the statement of the Principle of Christian Science, not because Mary Baker Eddy was a person? A. Oh, yes, it was.

Mr. Whipple—That was not my statement. My statement was because it was reserved in the Deed of Trust. Very likely the other is true, but if you are quoting, I was stating it in its legal aspects.

Q. Well, it was true that in Mrs. Eddy's lifetime her statements were accepted as the statement of the Leader of the Christian Science movement? A. Certainly they were.

Q. And as statements of the principles of Christian Science? A. As far as we could understand the principles.

Q. Not because she was a person? A. Because she was the Leader of this movement.

Q. Now, then, what has her passing physically got to do with her statements being binding on people? A. Well, doesn't it say in there, what you are referring to, "with her written consent"?

Q. In the Manual? A. Yes.

Q. Yes? A. Well, didn't she put it in for a purpose?

Q. Just a minute. Don't let us misunderstand each other—

The Master—I think that you are getting rather away from the idea of cross-examination, and the answering of questions; you are getting into an argument. I hope that you will avoid that as much as possible.

Mr. Whipple—I think, if Your Honor please, that Mr. Krauthoff wants to see if the words "written consent" are not there, and if he has not discovered that it will be an indulgence to let him do it.

Mr. Krauthoff—The language of the Manual is "by a unanimous vote of the Christian Science Board of Directors and the consent of the Pastor Emeritus given in her own handwriting."

Mr. Whipple—Yes, that is the point.

Q. Now, your statement, as I understand it, in the light of Mr. Whipple's assistance, is that Mrs. Eddy, having physically ceased to exist, it is no longer possible to get the consent of the Pastor Emeritus, given in her own handwriting, and, for that reason, The Christian Science Board of Directors did not have the power to elect the editors.

Mr. Whipple—Now, if Your Honor please, I did not make that suggestion. It was not with my assistance; and it is not a proper thing to incorporate in the question of counsel. It is perfectly obvious right there, and this witness, in speaking of it, asks if Mr. Krauthoff did not think that Mrs. Eddy put that in as a stipulation; that it should be in her own handwriting, for a purpose; and it is perfectly obvious what the purpose was.

Mr. Krauthoff—May I have the question read?

Mr. Whipple—I object to the question, because it incorporates an improper statement.

Mr. Krauthoff—Very well; I will ask it in another form.

Q. As I understand it, Mr. Eustace, your statement is this: that this Manual says by unanimous vote of The Christian Science Board of Directors and the consent of the Pastor Emeritus, given in her own handwriting. Your statement is, as Mary Baker Eddy has physically passed on and hence it is physically impossible to get her consent; given in her own handwriting, it becomes impossible for the Board of Directors to elect editors? A. I see no way by which they could do such a thing.

Q. Then Mr. Eustace, as to these things that were done under the Deed of Trust of which Mr. Whipple spoke in the statement which I read to you, and to which you agreed, those are just as binding now as they were when Mrs. Eddy was physically here, except that this interferes? A. Which ones are you referring to?

Q. About the election of editors? A. There is nothing in the Deed of Trust about that.

Q. Well, I am just telling you what Mr. Whipple said.

The Master—I think that we are getting for beyond the limits of regular cross-examination, when you undertake to ask him about something that Mr. Whipple said. I do not see what we have to do with that, for the present purpose.

Mr. Krauthoff—Why, if Your Honor please, here is the position that we are claiming about that. Here are statements that counsel made—

The Master—They are not the witness' statements. Now, you may cross-examine him on any of his statements, but I think you are wasting time when you undertake to cross-examine him on Mr. Whipple's statements.

Mr. Krauthoff—You mean I cannot ask him whether he agrees to that statement of Mr. Whipple or not?

The Master—That, to my mind, is not within the limits of cross-examination.

Mr. Krauthoff—Made in another proceeding.

The Master—You have asked him that, and had it answered. And now, let us not waste time on that any longer.

Mr. Krauthoff—Well, I beg Your Honor's pardon. I have no desire to be insistent, but I was going to ask him about other statements made by Mr. Whipple. In order that I may defer entirely to Your Honor's views on that subject, these are not statements made by Mr. Whipple in this present suit, as the counsel for the plaintiff said, which they would be bound by, as a matter of law, as against them, but are statements made by Mr. Whipple in another proceed-

ing of which the Court in this suit does not take judicial notice.

Mr. Whipple—If I may suggest, Your Honor, wouldn't it be better to read those other statements and see if any objection is made? You have read one statement I made; in which the witness says he heartily concurs. Let us take another. Perhaps you will get through without much difficulty. At any rate, we shall have something to talk about, if there is an objection.

The Master—I am at a loss to see why we should have this witness interrogated about Mr. Whipple's statements at all. You are here now to cross-examine him on the evidence he has already given. I think you are getting away outside of the limits of cross-examination when you go into that sort of thing.

Mr. Krauthoff—If Your Honor please, perhaps Your Honor is referring to the federal rule which limits cross-examination.

The Master—Not at all. I do not invoke the federal rule, but cross-examination in the state courts has its limits.

Mr. Krauthoff—I appreciate that. The point I am trying to make is this, if Your Honor please. Here are certain statements made by Mr. Whipple of which the Court does not take judicial notice in this case, and contentions made by their counsel.

The Master—I think, when we have finished with the statements made by this witness in giving his testimony, we shall have accomplished all we can expect to do here.

Mr. Krauthoff—Oh, very well, then. If Your Honor please, I thought it was proper to ask him about what Mr. Whipple had said at this other time and place.

The Master—I think that takes it too far from the immediate purpose for which we are here.

Q. Mr. Eustace, your attention was called this morning as to the language in the Deed of Trust, in which it stated it did not require that the trustees should be members of The Mother Church. In that connection, have you, or any of the other trustees in your presence stated to anybody, at any time or place, that The Mother Church would cease to exist as an organization? A. I certainly have not, and I don't know anything about what my colleagues have done. They never have stated such a thing to me.

Q. That never has become the subject of discussion among you? A. Never.

Q. I want to call your attention to paragraph 3 of your petition filed, for a citation for contempt, in which you say, among other things:

"Said defendants in various ways have thus and otherwise interfered with the management by the plaintiffs of the business of the Publishing Society, under and in accordance with the terms of the Deed of Trust, under which they derive their authority."

That is correct; your statement is

that you derive your authority under and by virtue of the terms of the Deed of Trust?

Mr. Whipple—That I object to. I do not think he can be asked to interpret that, especially when, if he followed the guidance of cross-examining counsel, he would be interpreting it entirely wrongly. That sentence speaks for itself.

Mr. Krauthoff—Then I will ask him that question.

Q. That statement is true, as I read it to you?

Mr. Whipple—Just a moment. I think that you had better have the petition here. You cannot retry that petition, you know. That is all settled by the judgment of the Court.

Mr. Krauthoff—I am not attempting, if Your Honor please, to retry it.

Mr. Whipple—What is your idea, then?

Mr. Krauthoff—We do propose to hold these plaintiffs to the logical result of the contentions they made in those cases.

Mr. Whipple—Well, the logical result of the contentions in those cases was expressed in the Court's decision.

Mr. Krauthoff—Well, that does not end it.

Mr. Whipple—I think it does, for the purposes of this trial, or at least, I submit, if Your Honor please, respectfully, that it does.

Q. Now, Mr. Eustace, in your testimony in chief, you referred to the fact, as you claim, that a certain agreement made by the directors of the church with the trustees was broken within 48 hours after it was made. Now, what agreement do you refer to? A. That the trustees and directors should meet together, and work all their difficulties out through demonstration of their understanding of Christian Science, without the aid of counsel or the Court.

Q. Neither side receding from the position that they had taken? A. Neither side waiving their legal rights in the slightest.

Q. Now, in what manner did the directors break that? A. Why, by immediately handing to us a paper which brought up the entire contention again, that we had already settled to that extent, and asking us to virtually sign—turn over every one of our duties and responsibilities under the Deed of Trust, over to the Board of Directors, and constituting them the final and absolute authority in the Christian Science movement, which we absolutely refused once and forever to do, unless ordered by the Court to do so.

Q. Now, you say "immediately." When did they present you that paper? A. Why, in substance, it was presented, I think—we met on the Monday. I think it was on the Wednesday or Thursday that it was first broached.

Q. Now, to get the date clear, the conference among counsel was held on Saturday, the 1st of February, 1919? A. Yes, with the agreement that we meet on Monday.

Q. That is, that the trustees and the directors meet on Monday? A. Meet on Monday.

Q. And the trustees and the directors did meet on Monday? A. They did.

Q. That is, Mr. Dickey, Mr. Merritt, Mr. Rathvon, and Mr. Neal were present? A. No, Mr. Neal was absent in the south, but left word, as we understood it, with the directors, that he was in hearty accord, and was present at the meeting on Saturday when they agreed to do this.

Q. Mr. Dittmore was not present on the 3d of February, 1919? A. No, Mr. Dittmore was absent.

Q. Mr. Ogden and Mr. Rowlands and you were present? A. We were.

Q. And this was held at the board room of the directors in The Mother Church? A. It was.

Q. No one else was present at the conference? A. No one else present.

Q. Mr. Jarvis was not in the room? A. He was not.

Q. Now, on that occasion was the meeting harmonious or contentious? A. It was exceedingly harmonious.

Mr. Streeter—What was that date? Mr. Thompson—Feb. 3.

The Witness—It was on Monday, Feb. 3d.

Q. Were there any statements made at that time about the Church Manual? A. Why, I suppose—I can't remember all that was done, but as we had always done if the subject came up (and I suppose it probably did come up) we affirmed our unswerving allegiance to everything that Mrs. Eddy had written.

Q. You are not now able to state whether the question of the Church Manual came up on Feb. 3, 1919, or not? A. Why, if it did, it didn't come up contentiously.

Q. What was the next time; what was the first cloud on the horizon that you saw after the 3d of February, 1919? A. Well, the first cloud was on the Thursday—I think Wednesday or Thursday, when this question was broached of signing, or doing something.

Q. How was it broached, and by whom? A. Well, if it is no infringement of personal confidence, may I—Mr. Dickey and I had a conversation.

Mr. Streeter—Had what? The Witness—Mr. Dickey asked me if I would have a talk with him, and I did so.

Q. And did the question arise in that conversation? A. The question did arise in that conversation, and Mr. Dickey felt that something should be done.

Q. And when was that conversation? A. As I say, I think it was on the Wednesday or Thursday afternoon.

Q. Where did it happen? A. I think it was out at his house.

Q. How long did the conversation continue? A. I don't know; maybe an hour or hour and a half; an hour or an hour and a half; I don't know.

Mr. Streeter—Pardon me, Mr. Kraut-

hoff. Wednesday or Thursday afternoon doesn't mean much? What day in the month?

Mr. Whipple—Wednesday or Thursday after the first.

Q. The 5th or 6th? A. Yes, the 5th or 6th.

Q. The 5th or 6th of February? A. I think it was then that it occurred.

Q. Now, what was Mr. Dickey contending for, if anything, in that conversation, Mr. Eustace?

Mr. Whipple—I do not object, Your Honor, to narrating the conversation or the substance of it, but to attempt to state Mr. Dickey's contention, that I do object to.

Q. I would be glad to have you tell now just what was said and done on that occasion.

Mr. Whipple—That is right.

A. You asked about the cloud. When Mr. Dickey broached our doing anything in writing, that instantly aroused in my mind a suspicion that there was something wrong; that this meeting that we had had was, after all, not gone into, apparently, in the spirit in which we had gone in, with the determination to absolutely work things out according to demonstration.

Q. Now, Mr. Eustace, you have stated your suspicion? A. Yes.

Mr. Whipple—Well, he calls it suspicion; you called it cloud—referred to it as cloud. "What was the first cloud?"

Mr. Krauthoff—If Your Honor please, we move to strike out his statement as to the suspicion. Wait a minute; I asked for the cloud. I guess I am responsible for that. I will withdraw the reference to a cloud. Let us get back to what was said and done.

Q. What did Mr. Dickey say in that conversation, and what did you say? A. Oh, I can't repeat the conversation at all. I really don't remember enough about it.

Q. What is the substance of it? A. Well, the substance of it was, as I have stated, that we should do something; that the trustees should do something to still a supposed storm that was arising in the field.

Q. What was it that the trustees were to do? A. We were to give a written statement, recognizing in substance that the Board of Directors was in entire authority, and that we were in absolute obedience to the Manual. The disobedience to the Manual was an absurdity, because we had never admitted for one instant that we were. The other, we never had admitted, and never would admit.

Q. Did Mr. Dickey claim any authority for the directors in that conversation other than the authority that he claimed under the Manual? A. I don't know what he claimed.

Mr. Whipple—I pray your Honor's judgment as to that; anything that he said.

The Master—What he claimed, the witness may state.

Q. What did he say? What did he say about it? That is what I mean. A. I don't know. It was more what was going on in the field that he talked about, and the desire to have the storm stilled, and he thought, I think—no, I can't say what he thought.

Q. Now, this storm in the field that he was talking about, was anything said on that occasion about that having any effect upon the affairs of The Christian Science Publishing Society? A. Not at all; not that I know of, on the affairs of the Publishing Society.

Q. Well, on The Mother Church? A. No, not in that sense.

Q. What did the storm in the field have to do about it, from anything Mr. Dickey said, or you said? A. Well, that the field was getting roused up over the propaganda which we cannot help but feel the Board of Directors put forth.

Q. Now, this "propaganda" that you are talking about? A. Yes.

Q. You have it in writing? A. We have it, largely what was reported to us; some in writing.

Q. And you think that the Board of Directors as a whole were responsible for that? A. Well, I can't say anything except that the results were there.

Q. Was that discussed at this meeting on Thursday or Wednesday, Feb. 5 or Feb. 6? A. That was in substance what was referred to, of course, to still the storm.

Q. Mr. Dickey then intimated that the trustees should make some statement in writing? A. That was, as I understood it, that we should make some statement that could really be given out.

Q. Did you object to putting it in writing, or did you object to making a statement? A. Well, my objection to the whole thing was that it was a renewal of that which we had determined to do by demonstration.

Q. May I recall your attention to the question? Did you object to putting it in writing, or did you object to the statement itself as being true, or not? A. Well, of course, I wouldn't put it in writing, and neither would I affirm it in any way. I think I have said 20 times that I would never acknowledge the Board of Directors as the supreme and final authority in the affairs of the Publishing Society. Mrs. Eddy established that with the trustees of the Publishing Society.

Q. Now, you declined on that occasion to agree to this proposition in writing that Mr. Dickey made. Did he have it in writing, then and there? A. No.

Q. Or did he speak about reducing it to writing? A. No, reducing it to writing.

Q. Well, then, you separated on this occasion, I believe? A. Separated?

Q. I mean, you and Mr. Dickey? A. Oh, no. In what way do you mean, separated?

Q. I mean you went home and left him? A. Oh, yes.

Q. Then you met again on the 10th of February, the following Monday? A. The following Monday we met again, yes.

Q. And who was present at that meeting of the trustees and the directors? A. I think the date you named—I think Mr. Ditemore was present at that meeting, either that or the following one.

Q. And at that time the written memorandum that you have spoken of, was presented? A. Yes, I think that was the meeting. Things have followed very rapidly, in rapid succession, but I think that was the meeting when it was absolutely handed to us to sign.

Mr. Streeter—What was the date?

The Witness—That would be the tenth, I think.

Mr. Streeter—Feb. 10?

The Witness—Feb. 10.

Q. Mr. Eustace, referring to Mr. McCrackan, in the year 1918 you took up with the directors on many occasions the question of the manner in which he was discharging his duties as an editor of The Christian Science Publishing Society? A. Well, I don't know that on many occasions—did I say?

Q. Well, I read your testimony, to show the matter was under discussion somewhat informally a number of times. A. Yes, that is correct.

Q. Why didn't you exercise the power that you claimed you possessed of discharging him then, and why did you take it up with the Board of Directors? A. Why, Mr. Krauthoff, I have said over and over again that our one purpose and effort was to always cooperate with the Board of Directors in every possible way, and until they attempted to absolutely nullify everything, we never gave up hope of doing so.

Q. In your testimony in the contempt case, you were asked as to whether or not The Mother Church was regarded as the center of the Christian Science movement, and you said: "Yes, if you care to use such a term. I should not have applied it in that way." Is The Mother Church the center of the Christian Science movement? A. May I answer it in my own way?

Q. Certainly. A. I recognize—

The Master—Hadn't you better ask him first whether he did make such and such statements, if you expect to use it in contradiction of something he has testified to here?

Mr. Krauthoff—No; I am not using it in contradiction; I am calling his attention to it.

The Master—Then I don't think you have the right to use it at all.

Mr. Krauthoff—Very well; I will phrase the question in this way.

Q. Is The Mother Church the center of the Christian Science movement? A. If I may make an explanation, I will say yes.

Q. First answer it yes or no. Then

you can make your explanation. A. Yes. But I take the Church, The Mother Church, in two senses; one the definition of the Church given in the glossary of Science and Health, "the superstructure of Truth and Love," which is, of course, identical with the definition of man, virtually, and then The Mother Church, as established in Boston is simply the outward expression of what you referred to this morning as the human organization.

Q. Then, if we may understand you aright, the organization to which you belong as a member, and is called The First Church of Christ, Scientist, in Boston, Massachusetts, or The Mother Church, you do not regard that as the center of the Christian Science movement? A. Yes, I do, but I have an improving and enlarging sense of what that church really is.

Q. Well, as an organization, is it the center of the Christian Science movement, or is it not? A. Well, there again, I can't answer that question. Yes, it is.

Q. I call your attention to the statement of Mrs. Eddy.

Mr. Whipple (to the witness)—Pardon me; you hadn't finished.

The Witness—No, I hadn't.

Mr. Whipple—You say, "Yes," and you were about to add something.

The Witness—It is the center of the organization, symbolizing what the Church really stands for, but not in any other sense, as dominating another Christian Science church.

Q. Now, I call your attention to the statement of Mrs. Eddy in "Miscellany," page 236, line 12:

"Too many centres may become equivalent to no centre."

You are familiar with that statement? A. Yes; that is, with regard to reading rooms.

Q. And you are in accord with it? A. Yes.

Q. In exercising what you now claim to be the editorial control vested in the trustees, your attention was called to an article written by Mr. Merritt, one of The Christian Science Board of Directors? A. It was.

Q. And you directed that to be not inserted in the Christian Science periodicals? A. The trustees brought the matter to the attention of the editor and we agreed mutually that it would be wiser for neither a director or a trustee to write articles to be published in our periodicals at the present time.

Q. You received a number of letters from churches and individuals after you sent out this bill of complaint called the Bill in Equity? A. I suppose so.

Q. And you prepared a form letter of an answer to them? A. We did.

Mr. Krauthoff—I offer that form letter in evidence, if Your Honor please, from the testimony in the contempt case.

[Form letter dated May 5, 1919, from the testimony in the contempt

case, marked "Exhibit 69," being as follows: May 5, 1919. Board of Directors, Mrs. Julia S. Selover, Chairman, First Church of Christ, Scientist, 810, Sixth Street, Devils Lake, North Dakota.

"Dear Friends:—We realize and appreciate in full measure your interest in the controversy which has arisen between the directors and trustees. We tried earnestly to prevent an open break. It was only when an institution founded by our great Leader for the promotion and extension of Christian Science was threatened with destruction, and that her inspired purposes were likely to be defeated, that we did the only thing which it seemed we could do, viz.: to appeal to the highest tribunal in the Commonwealth where our Leader established her trust, to determine the controversy and instruct us as to our duty in the performance of the sacred trust and confidence with which we had been endowed.

"While this appeal is pending, it is not becoming for us to discuss the merits of the controversy. We will ask merely that all Christian Scientists will believe that we have not taken this step without a full realization of its seriousness, and in the belief that what will ultimately result will be in the best interests of the Christian Science movement.

"Meantime, we ask that you will suspend judgment while we await the decision of a tribunal in which the whole world must have confidence.

"Yours sincerely,

"BOARD OF TRUSTEES."

Q. Now, then, you say here that the "institution founded by our great Leader for the promotion and extension of Christian Science"—that refers to The Christian Science Publishing Society, and that, you say, "was threatened with destruction." In what manner? A. By destroying the purposes of the Deed of Trust.

Q. You mean it would destroy The Christian Science Publishing Society for the directors to elect editors? A. I believe that the slightest divergence from what Mrs. Eddy's intention was would eventually destroy anything that she had established.

Q. Now as to that intention; is it your statement, Mr. Eustace, that from Jan. 25, 1898, the business of The Christian Science Publishing Society was conducted in the manner in which you now claim the right to conduct it, or is the claim you now make of recent discovery? A. In substance, yes.

Q. Which? A. It is conducted now as it was then, in substance. Of course, Mrs. Eddy herself directed it very largely, as she reserved the right in the Deed of Trust to do.

Q. You are only claiming now the right to conduct the business the way it has been conducted for twenty years? A. If that way has been cor-

rect and according to the Deed of Trust, yes.

Q. And if it has not been correct and in accordance with the Deed of Trust? A. No.

Q. In which way is it correct and in accordance with the Deed of Trust, and in which way is it not?

Mr. Whipple—That I object to, if Your Honor please. I do not want everything that Your Honor has to decide to be foreclosed, even by Mr. Eustace.

Mr. Krauthoff—Now, if Your Honor please, we have the right to ask that question for this reason: this suit is brought upon the theory that for 20 years the business of The Christian Science Publishing Society has been conducted in the manner in which the counsel for the plaintiff in the year 1919 discovered that they thought it should have been conducted. The suit is brought upon the theory not that it should now be conducted differently from what it ever has been conducted, but that at all times it has been conducted in the way counsel now say it should have been conducted, and that the directors have assumed an authority and have ventured into a domain from which they were excluded, and that they have become ambitious; at one time they are charged with attempting to establish an oligarchy. Our defense is, if Your Honor please, that for 20 years, of which 10—more than 10, 12—were in the lifetime of Mary Baker Eddy, this Deed of Trust was administered precisely as we now ask it to be administered, and that during this time this Publishing Society obtained the great prosperity that is characterized in this bill of complaint. And we have the right to ask this man how much of it has been conducted in accordance with the Deed of Trust and how much of it has not.

Mr. Whipple—If Your Honor please, this suit was not brought, as stated by counsel, based on any theory at all. It was based upon a condition, not a theory—a situation which is set forth in the bill of complaint; and I cannot have Mr. Krauthoff continually stating what our theory was in drafting the bill, quite different from what anyone who drafted it ever entertained. We have set forth in the bill the facts upon which it is based, and the hypothetical questioning of a witness upon a theory which Mr. Krauthoff has entertained cannot be helpful.

The Master—Anything further?

Mr. Krauthoff—Nothing further.

The Master—You have a right to investigate with this witness the manner in which, so far as his knowledge extends, the business has been conducted, as a matter of fact, since the date of the trust deed; but I am unable to see that any good purpose can possibly be subserved by your requiring him now to point out how much has been in accordance with the trust deed and how much not. That requires too much of an opinion

to be expressed by him upon the question which, after all, is one which must be settled ultimately by the Court.

Q. Mr. Eustace, are you familiar with the incident whereby the paragraph in the editorial of Mr. McCrackan referring to the Church Manual was eliminated? A. I think I am somewhat.

Mr. Krauthoff—That paragraph was read in evidence on the hearing of the contempt case and I will not now re-read it.

Q. What did you have to do with that? A. The same thing, pointing out to the editor what seemed to us a little impropriety in that being brought into an editorial at the present time.

Q. Had you at any time prior to that time, during your entire tenure as a trustee, undertaken to censor any editorial written by an editor of the publication, and to point out paragraphs to be taken out? A. Prior to the filing of the Bill in Equity, did you say?

Q. Prior to the time you took this out of Mr. McCrackan's article? A. Oh, we had pointed out many times things. We didn't order that taken out. The editor very kindly took it out.

Q. Many times you had pointed things out? To whom did you do it? A. We have pointed it out to Mr. McKenzie.

Q. Had you ever pointed out anything to Mrs. Knott? A. No, we never did.

Q. To Mr. Willis? A. We may have pointed out to Mr. McKenzie things about Mrs. Knott. I don't know.

Q. Did you ever tell Mrs. Knott you wanted any part of her editorials taken out? A. I don't think we ever did.

Q. Did you ever tell Mr. Willis to do it? A. No, not that I know of, although there were editorials that I might have thought could be improved.

Q. I am asking you what you did? A. I don't think so.

Q. Did you ever tell Mr. McLellan that you wanted parts of his editorials taken out? A. No. I should say that we did not.

Q. When you came in as trustees you found Mr. McLellan was the editor of the periodicals? A. Mr. McLellan was editor.

Q. And he was also a member of the Board of Directors? A. He was.

Q. And a trustee of Mrs. Eddy's property. Or did you know of that? A. I believe he was. I don't know about that.

Q. And the directions that were given to Mr. McLellan with respect to the editorial conduct, were they given by the trustees to Mr. McLellan or by the directors to Mr. McLellan direct? A. Well, I can't speak for the directors. I don't know whether they gave him any instructions or not. Mr. McLellan, I believe, exercised his prerogative as editor to be editor.

Q. And as director to be director? A. I don't know anything about that.

Q. In what manner, Mr. Eustace, did the directors begin to arrogate to themselves the claim that the publications were theirs and under their control? A. Why, I think the letters that we have on file show that.

Q. Did the directors at any time claim that the publications were the personal property of the directors? A. Oh, I don't suppose so.

Q. They did claim that the publications were the publications of The Mother Church? A. I don't know what their claim was. It was very difficult for us to understand it. It seemed to be so inclusive of everything that the Deed of Trust contained.

Q. Heretofore your attention was directed to a memorandum offered in evidence as Exhibit 4a, being the letter of Sept. 30, 1918, in which you undertook to set out your views. As I understand your statement, that memorandum was correct at the time it was made and is still correct. Is that true, Mr. Eustace? A. Largely so. I see no—that is, the spirit of it is absolutely true.

Q. Then in this memorandum of Sept. 30, 1918, you refer to a certain memorandum prepared by the Board of Directors and presented to the Board of Trustees for their acceptance at certain joint conferences held by the two boards in the month of February, 1916. That, I understand, is the memorandum that is set forth in Mr. Dittmore's pleadings? A. It is, I believe.

Q. And you rejected that memorandum at the time as a contravention of the Deed of Trust and of the Church Manual? A. We did.

Q. In this letter of Sept. 30, 1918, you make this statement:

"In order to make the question perfectly clear, we wish to state, in our Leader's words, that the Deed of Trust, under which the trustees legally operate, was prepared by our Leader and given as 'a Gift to The Mother Church.'"

That is your understanding of it? A. Why, everything that induces people to accept the teachings of Christian Science must inevitably be a gift to The Mother Church, and that is the work of The Christian Science Publishing Society, to promote the interests of Christian Science.

Q. In order that The Mother Church — A. It must always inure to the prosperity of The Mother Church.

Q. And anything that interferes with the prosperity and the harmony and the efficiency of The Mother Church interferes with Christian Science? A. Any disobedience to the Deed of Trust as given by our Leader, would certainly do so.

Q. And also with the Manual? A. With anything she has written.

(Recess.)

Mr. Krauthoff—It being 3 o'clock, does Your Honor wish to take a recess of five minutes? I think that

perhaps an intermission of five minutes would be grateful at this time.

The Master—What do counsel say about it? I have no objection. If you all agree, we will stop for five minutes.

Mr. Whipple—I understand that that is not to be a precedent. We have not usually been interrupting the afternoon session, which is shorter than the morning session. If you want an intermission this afternoon, I see no objection to it, but I do not think that we ought to do it every day. If we do, we shall lose about 15 minutes in the afternoon.

Mr. Krauthoff—I do not want it on my own account.

The Master—Perhaps, when the intermission is taken, it would be well to open not only all the windows, but the doors, for five minutes.

[Recess of five minutes.]

Q. Now, Mr. Eustace, your attention was directed this morning to certain returns made by the trustees under the income tax law, and to the city assessors of Boston, and also to the matter of second-class postage. Have you found your various files on those returns? A. We have not.

Q. Did you look for them? A. We had them looked for.

Mr. Watts—We will try to have them in the morning.

Q. Will you please look those up and produce them in the morning? A. We will have another look for them, Mr. Krauthoff. We did not have very long to look this noon-time.

Q. With respect to the selection of Mr. Rowlands as a trustee, how was your attention first directed to Mr. Rowlands as an eligible one to be named as trustee? A. Mr. Rowlands I met a number of years before, and everything that I had ever heard about Mr. Rowlands confirmed me in the impression that I had when I first met him, that he was a devout, consecrated Christian Scientist, and a thoroughly alive, awake, business man.

Q. And in that way led up to appointing him trustee in 1917? A. We did.

Q. In the letter of Sept. 30, 1918 (Exhibit 4a), this statement is found: "This Deed of Trust, according to Sec. 1 of Art. XXV of the Church Manual, is inferentially incorporated as part and parcel of the Church Manual." That statement was true at the time, Mr. Eustace? A. It was.

Q. And still is? A. So far as I know, it always will be.

Q. Mr. Whipple asked you if you had written that at a time when you had consulted counsel, and your answer was that you had not. Now that you have consulted counsel, you are still of the same opinion? A. That it is inferentially incorporated in the Church Manual?

Q. Yes. A. Why, self-evidently so. It is referred to there.

Q. In consulting with your counsel, what works of Mary Baker Eddy did you submit to them? A. Any they asked for.

Q. And what was that? A. I think the Church Manual, all the history of the Publishing Society, and of course the Deed of Trust and the Church Manual.

Q. And what other history of the Publishing Society did you submit? A. Just the old incorporation papers, and anything that we had leading up to that, and the dissolution of that.

Q. Do you mean the incorporation papers of The Christian Science Publishing Society, formed in April, 1917? A. No; no; there was—

Q. 1897, I mean. A. In 1897, I suppose so, yes; I think that that was the date it was formed.

Q. You haven't the records of that society? A. Of that corporation? Yes.

Q. Yes. You say you have those records? A. Yes, we have them.

Q. And those were submitted to counsel? A. Yes.

Q. You stated, I believe, that the instrument of Jan. 15, 1898, which you had copied into the book, had not been submitted to them—the document which is headed "Gift to The Mother Church"? A. No; nothing had been submitted to them prior to that letter of Sept. 30.

Q. I mean you had never submitted it to them before their advice to you. I mean, as the basis for their advice to you, you submitted to them the Church Manual and the Deed of Trust of Jan. 25, 1898? A. And the correspondence that passed between the two boards.

Q. And then you stated that you also submitted to them the incorporation papers of The Christian Science Publishing Society, formed in April, 1897? A. That we took to Mr. Justice Hughes. I do not know that it was submitted to Mr. Strawn and Mr. Whipple.

Q. Did you submit any other of the works of Mary Baker Eddy than the Church Manual and the Deed of Trust to your counsel? A. No, not that I know of at all.

Q. Did you submit to them this letter that you had written on Sept. 30, 1918? A. Why, certainly we did.

Q. You showed them that letter? A. Yes.

Q. And did you also submit to them the letter which you had written in November, 1915, that has heretofore been read in evidence? A. No. Do you mean the one as to which you asked me if I had prepared it?

Q. Yes. A. The one that I call a brief for the Board of Directors, being the passing on the cards?

Q. Yes. A. No; we certainly did not, because that was not one of our records; it was simply a little memorandum that had never been destroyed.

Q. In your letter of Sept. 30, 1918, you speak of the power of the direc-

tors, or rather the duty of the directors, which in the Manual is stated in these terms, "and it shall be the duty of the directors to see that these periodicals are ably edited and kept abreast of the times." You speak of that as a disciplinary function. What do you mean by that, Mr. Eustace? A. I think the letter says there, but I am glad to state that I think that it is the duty of the Board of Directors, and I would like to add "of every Christian Scientist," to call the attention of the trustees to anything that is wrong, or contrary to Christian Science, in any of our periodicals.

Q. That is, after it happens? A. After it happens, always.

Q. But it is not the privilege of the directors to discipline in advance of the event? A. How could they do so?

Q. By giving directions. A. Why, certainly not! They haven't any authority to give directions.

Q. Your thought of discipline is limited to that which happens after the event? A. Why, yes. I never supposed anything else.

Q. In the opinion of your counsel that has been offered in evidence, there is a statement with respect to the direction which the directors had theretofore given about the organization and recognition of the branch churches and societies of The Mother Church. I want to call your attention to the fact that the directors sent to the trustees a notice to be put in The Christian Science Journal, the official organ of The Mother Church, over the signature of the Christian Science Board of Directors, and that your counsel, in their letter of January 27, 1919, said that that would appear in The Christian Science Journal. It did not appear. A. What was that in relation to, Mr. Krauthoff?

Q. Well, it reads this way:

"The following paragraph, together with its heading and signature, shall be printed in all issues of The Christian Science Journal hereafter printed, and shall be placed therein immediately before the matter headed, 'Instructions Regarding Cards':

"Organization and Recognition of Branch Churches and Societies of The Mother Church

"When members of The Mother Church in a community believe that the time has come for the holding of regular services, and the formation of a Christian Science Society, or the formation of a branch Church of Christ, Scientist, in accordance with Art. XXIII, Sec. 6 and 7, of the Church Manual, they should write to The Christian Science Board of Directors for information concerning organization and recognition as to a branch of The Mother Church, The First Church of Christ, Scientist, in Boston, Massachusetts.

"The Christian Science Board of Directors."

Now, in the letter of the counsel, the statement was made that it would be inserted:

"The trustees also will cause to be published, commencing with the April issue of the Journal, and in all subsequent issues, under the heading, 'Instructions Regarding Cards'"

the statement that I have read to you.

Now, I have looked in the April, 1919, Journal, and the July, 1919, Journal, and have not found that notice. A. Isn't that in substance in there? I thought it was.

Mr. Whipple—It is in July, I think, because I have it before me.

Mr. Krauthoff—May I see April?

Mr. Whipple—April is not here.

Mr. Krauthoff—May I see the July Journal?

Mr. Whipple—Yes. There it is, under "Instructions Regarding Cards."

Mr. Krauthoff—That is to say, you have it in the July Journal under the general subject of instructions regarding advertisements. "Organization and recognition of branch churches and societies of The Mother Church." And then it begins: "When members of The Mother Church in a community believe," etc. But where is the signature of The Christian Science Board of Directors?

Mr. Whipple—Well, you have the book; he cannot see, probably; but if you say it is not there, why, we accept it.

The Witness—I really do not—what has the signature got to do with it? The notice was the thing.

The Master—You agree, do you not, that the signature is not there?

The Witness—It self-evidently, Your Honor, is not here.

The Master—All right.

Q. And it is not in the place that it is stated to be—not in the place that it is requested to be? A. I think, if I remember correctly, that thing was all done by mutual—we were meeting with the Board of Directors, I think, at that time, weren't we, again? I think that those things were talked over. It is not very clear to me, but I think that thing was done very conscientiously, because we were carrying out the spirit of our agreement to the very letter in every way as far as we understood it.

Q. Now, Mr. Eustace, in your direct examination your attention was directed to the pamphlet called "Purification." What is the history of that pamphlet? A. The history of that pamphlet—

The Master—That is too general, Mr. Krauthoff; ask him something direct about the pamphlet, if you desire to.

Q. That was a pamphlet consisting of a number of articles on Christian Science? A. It was.

Q. Who directed the writing of those articles in the first instance? A. We asked Mr. Dixon if he would write them.

Q. And he did write them? A. He did.

Q. When did you first take up with the Board of Directors the matter of putting those articles in pamphlet

form? A. We didn't take it up with them about putting it in pamphlet form at all. We put it in pamphlet form.

Q. What was the first information the directors had of that pamphlet? A. I really do not know.

Q. They called your attention to it? A. They did.

Q. And asked you not to send it out? A. They asked it not to be sent out until they had had a conference.

Q. It did go out? A. After we had had a conference, yes.

Q. It went out pending the time during which they asked you to hold it up? A. No, that is not correct.

Q. You mean it was after? A. We had a conference with them when they brought up one or two statements that they felt in the pamphlet were not wise to send out. We had a general discussion of it, and when we left the Board of Directors we said that we would take it under consideration and decide what to do. We did take it under consideration and decided to make the one or two minor changes that were necessary and to put Mr. Dixon's name on the pamphlet, and then we ordered the pamphlet to go out.

Q. And told the directors what you had done? A. I think we telephoned them that we had; I am not sure whether we did or not.

Q. Wasn't that done at a time when these directors had asked you not to send that pamphlet out without their further authority? A. The last word, as I remember, of the conference was that we said we would take it under consideration and decide what to do, and then I think we telephoned them that we had decided to put the name on and make the changes, if I remember correctly.

Q. With respect to the election of Mr. Merritt as a trustee, will you be good enough to look between now and tomorrow morning and get the correspondence that passed between the Board of Directors and the Board of Trustees about that? In some way our files on that are not complete—I mean our original files. A. Did you say that passed between the Board of Directors and the Board of Trustees on the subject of Mr. Merritt's election as a trustee?

Q. In February of 1917. A. I didn't know that any had.

Q. Well, look and see, will you, please. A. All right.

Q. Now, Mr. Eustace, you recall at the meeting of Feb. 3, 1919, between the directors on the one hand and the trustees upon the other that you made a report as to the cards of the practitioners in the Journal, I mean the cards of practitioners and churches, and said this report showed that for the year 1918 you had received 698 applications from practitioners, that you had accepted 377, that 182 were deferred, and 139 pending. What is meant by a deferred application? A. Why, that the one applying is asked to wait and perhaps have more expe-

rience in practice, or for many reasons; maybe each one was a little different reason.

Q. Or more fully comply with the Church Manual? A. It might—something on that might be there, yes.

Q. And you had also deferred five applications for churches—I mean societies? A. I suppose that was so, yes.

Q. When you retained counsel and submitted to them the question of the discharge of your duties as trustees, did you do that for the purpose of finding out how you could reconcile the Manual and the Deed of Trust and comply with both, or did you do that for the purpose of seeing how you could retain your position as trustee without the directors having any control over you? A. First of all, I wouldn't give the snap of a button for my position as trustee. I am here to serve the cause of Christian Science. Therefore my only purpose was in consulting counsel to find out how we could absolutely carry out exactly what Mrs. Eddy wanted us to carry out.

Q. And as evidenced by all of her writings? A. Evidenced by all of her writings.

Q. And was your attention directed to any statute of the Commonwealth of Massachusetts that had any bearing on this question? A. Not that I remember.

Q. No criminal law was pointed out that you were in danger of violating? A. Oh, we were shown—we saw clearly of course that we could not be untrue to our trust and at the same time retain the confidence that Mrs. Eddy had reposed in us in the Deed of Trust.

Q. Now, Mr. Eustace, if under some principle of equity jurisprudence which the Court may apply it is possible for you to administer both the Deed of Trust and the Manual, reconciling them in every particular without any conflict at all, you would be very glad of it, wouldn't you? A. Why, there is no conflict in one sense of the word in my mind at the present time, and never has been. The conflict has been on the other side.

Q. I am not talking about any limited conflict in any sense of the word, I am stating the proposition openly and broadly. If it is possible for the Court to so reconcile this Manual and the Deed of Trust that you can be loyal to both of them in all their particulars, without any claim of conflict on the part of anybody, you will be very glad of it?

Mr. Whipple—Just a moment.

The Master—What difference does it make whether he would be glad or sorry?

Mr. Krauthoff—It makes a very great difference, if Your Honor please.

The Master—He will have to take what the Court says, I suppose.

The Witness—I was going to say, may it please the Court, that I shall

obey the mandate of the Court under any and all circumstances.

Mr. Krauthoff—Because the Court ultimately will pass on the question of what is wise and best for the whole situation.

Mr. Whipple—Who will?

Mr. Krauthoff—The Court will.

Mr. Whipple—Yes, that is right.

The Master—I cannot see how we are helped by inquiring as to what the witness' state of mind would be in the event of a certain supposed future decision of the Court.

Mr. Krauthoff—No; but the witness' state of mind as reflected in the action of his counsel may make it much easier for the Court to reach a right conclusion.

With that, if Your Honor please, I have no further questions to ask, except as to these documents that I have asked that the witness may produce in the morning.

The Master—Yes, you have.

Mr. Krauthoff—Expressing my appreciation of your courtesy.

The Master—Those will be forthcoming in the morning, I suppose. I suppose the next thing in order is to find out whether Mr. Dittmore's counsel desire to cross-examine.

Mr. Thompson—We would like to ask a few questions, if Your Honor please.

Cross-Examination on Behalf of Defendant Dittmore.

Q. (by Mr. Thompson) Do you feel able to be subjected to further cross-examination, Mr. Eustace? A. I should enjoy it, Mr. Thompson.

Q. Now, the source of the doctrines of Christian Science is the book called "Science and Health with Key to the Scriptures," by Mrs. Eddy? A. That is our textbook.

Q. And that book has been interpreted and written about by various loyal Christian Scientists, hasn't it, from time to time? A. They have expressed their opinion on various subjects in that book.

Q. These very periodicals that we have been speaking of are intended, among other things, for the purpose of carrying articles conveying the correct interpretation? A. I think so; elucidating it according to the writer.

Q. I suppose there is a possibility for an honest difference of opinion, isn't there, occasionally, about the meaning of Mrs. Eddy in some of her writings? A. Oh, absolutely.

Q. It isn't any sign of a man's dishonesty or faulty character that he does not agree with every other Christian Scientist's interpretation of her meaning? A. Not at all.

Q. Take, for instance, two articles that have been referred to; one I think has been called "Purification," by Mr. Dixon. I think there was another one called "Possession," by Mr. Dickey? A. There was.

Q. It is not to be supposed that every Christian Scientist would agree with every word in either of those articles, is it? A. I don't think so.

Q. As a matter of fact, there was a

good deal of difference of opinion, wasn't there, about them? A. I think so.

Q. At one time or another Mr. Dittmore has written articles, hasn't he, for some of these periodicals? A. Yes.

Q. It is not to be supposed that every Christian Scientist would agree with him, either, is it? A. No, it is not.

Q. Then we have, besides the doctrinal side, the business side of this enterprise. Although the Manual, as you say, is intended for a spiritual guide, it has certain practical aspects, too, hasn't it? A. It has.

Q. Among others the requirement that every Christian Scientist should contribute a dollar a year? A. That is one of them.

Q. And there are other equally practical suggestions in that book, are there not? A. Every member of the Mother Church.

Q. The Mother Church, I mean. And both directors and trustees are in receipt of what would very commonly be considered a very large income, are they not? A. They are.

Q. The publishing trustees have a considerable number of employees, have they not? A. Yes.

Q. Servants and agents. How many, for curiosity, are now at work for you? A. I think somewhere about 780 odd, I think it is.

Q. For the trustees alone? A. Yes.

Q. 780? A. I think something like that.

Q. Then there is this requirement in the deed that the net profits of the Publishing Society be paid to the treasurer of The Mother Church every six months? A. Yes.

Q. Subject to the order of the Board of Directors at the present time—that money, is it not—by Art. 25, Sec. 2, of the By-Laws? A. Yes, under the By-Laws. Under the Deed of Trust, it is subject to the order of the Church.

Q. It used to be subject to the order of the First Members and directors? A. I don't know about that, but I suppose whatever constitutes the Church.

Q. Well, there haven't been any First Members for a long time, have there? The old office called First Members has been abolished for a good while, hasn't it? A. As far as I know.

Q. The general understanding has been that the function formerly performed by the First Members has become vested in the directors? A. I suppose in a general sense that must be so.

Q. In a general sense. Now, you have to render accounts, do you not, or, rather, you do render them as trustees to the directors? A. We render them to the treasurer.

Q. To the treasurer, and I suppose there is a possibility of honest difference of opinion as to whether the accounts showing net profits are correctly computed or drawn on the right

theory, or what not? A. I think that is quite right.

Q. You yourself have explained one possibility of doubt here this afternoon, have you not? A. I have.

Q. Some method of bookkeeping may be in dispute? A. I feel very strongly on that.

Q. How long have you known Mr. Dittmore? Roughly—I don't care for the exact date. A. Oh, I must have known him seven, eight, or nine years.

Q. Well, perhaps more than ten? A. Maybe.

Q. Well, you have known him ever since you were in Boston? A. Of course; I have been here seven years, that is right. I must have known him two or three years before that—ten years probably.

Q. Ten years. He has been a director, I think, since May 30, 1909, if I have got the date correctly? A. I think that is correct.

Q. And you have known him pretty nearly since that time, haven't you? A. I have virtually, because of meeting him in Boston.

Q. Now, you have often had conferences with him about both classes of questions, haven't you, about these doctrinal questions and about the business questions? A. I have.

Q. And you have recognized him as a man anxious to live up to his own conception of whatever his duty may be as a director, haven't you? A. No matter how much I might differ with that, I would have to say that I think he is.

Q. That is all; I want to avoid any controversy with you at present as to which is the correct conception; I am merely trying to get from you a brief and hasty picture of Mr. Dittmore as an honorable opponent of yours. Now he has been that, has he not? A. I must say that—I must give him credit for that, as I expect him to give me credit for the same thing.

Q. I don't think you will be disappointed, sir. You have recognized him for a good many years, or, I won't say that, but for a number of years, or since this present controversy began to grow up, and for a good while before it reached its present acute stage of litigation—you recognized Mr. Dittmore as a man holding contrary views to you, and perhaps to your associates, on certain matters of doctrine and also of business management, and also this great question of the relationship of these two boards? A. I think that is absolutely correct.

Q. Did you ever find him personally discourteous, profane or abusive in his conferences with you? A. Never to me; I never have.

Q. He has conducted himself as you would feel a Christian gentleman ought to holding a violent difference of opinion from another man, has he not? A. He has.

Q. Has he ever seemed to you arbitrary or vindictive in his methods of asserting his opinions? A. He has

been strong in them, but I have been the same, so I have no—

Q. Now, this controversy began to emerge as a separate matter of controversy which was likely to lead to trouble perhaps two years ago, didn't it, or three? A. Yes; I suppose since 1916.

Q. And in the early stages of it there was a memorandum prepared, I think in 1916. You perhaps know that Mr. Dittmore himself drew that early memorandum of 1916? A. Well, I knew it for a fact when I saw it in his bill.

Q. Now, Mr. Dittmore was not a party, was he, to this attempted compromise of February, 1919? He didn't attend the meetings and refused to join in the effort to compromise, did he not? A. I should say he did not.

Q. Did not. So that any strictures that you may feel justified in making upon the action of the other directors in reference to keeping or not keeping their agreements would not apply to Mr. Dittmore? A. They could not apply to him.

Q. Now, I want briefly to run through a number of detailed questions touching them simply for identification, on which there was a difference of opinion known to you between the trustees, or yourself representing the trustees, and Mr. Dittmore, without the slightest regard to who was right or wrong on these particular matters. The first that I heard mentioned here was some question about your policy in corresponding with the field concerning Roman Catholics. There was some question long ago about that, wasn't there? A. There was.

Q. And in each case it will be understood that on these questions you held one view and Mr. Dittmore the other; I won't ask each time. A. Not always.

Q. Well, if there is any case where you held the same view let me know, please, because unless you say the contrary I will assume you and he differed. That might shorten our examination. A. Then may I say that at one time, on the Roman Catholic question, if we can call it such—

Q. Yes. A. —I thought we were quite in agreement.

Q. And at another time you seemed to fall out? A. At another time we were quite in disagreement.

Q. Then there was a question of the limitation of floor space for the sale of Mrs. Eddy's works before the contract with the Trustees under the Will, in December, 1917, wasn't there—some little discussion about whether you were allowing enough floor space for the sale of her works before that time, or wasn't there? A. I don't remember that.

Q. Wasn't that when Mr. McLellan was there? A. Mr. McLellan was there, and Mr. Stewart.

Q. Do you recall that there was some, not complaint exactly but representation made by Mr. McLellan to

the other directors about being cramped for floor space there? A. Oh, yes; Mr. Stewart made a complaint.

Q. Mr. Stewart; perhaps that is what I am thinking of. A. Mr. Stewart made a complaint.

Q. And Mr. Dittmore, as usual, took a position on that one way or the other, didn't he? A. I don't know what position he took on that.

Q. Well, then, generally, isn't it within your knowledge that Mr. Dittmore was on one or two committees to confer on some subject—it makes no difference which—with Mr. Ogden, some question of difference of opinion between the directors and some matter of policy being carried out by Mr. Ogden, and Mr. Dittmore was on a committee of two of the directors to confer with him? A. He was on with the trustees; he came as a committee from the directors a number of times to the trustees.

Q. That is what I mean. A. Yes.

Q. Then there was this question of the right of the directors to approve appointments on the Bible Lessons Committee; that was a subject of controversy on which he took a position, did he not? A. He did.

Q. You recognize that Mr. Dittmore as a director, as he conceived of his duty, thought that he ought to find out, whether you agreed with him or not—he ought to find out as much as he could about the internal affairs of the Publishing Society, did he not? A. I believe he did.

Q. He wanted rather a detailed knowledge of what was going on down there, didn't he? A. He did.

Q. He wanted to know, if any employee was discharged what the reason was? A. It may have extended to that. I think it did at times.

Q. He acted as if he felt that it was a part of his duty, didn't he? A. Always.

Q. And on one or two occasions he made himself as a director, or coming from the directors, the spokesman of the directors in reference to the dealings between the trustees and some of their employees, did he not? A. Well, I wouldn't like to say—you mean he assumed—

Q. I don't mean that he assumed any authority that he didn't have from the directors, but I mean that he appeared there as a director making investigations about the discharge of some employees. I won't go into who they were. A. Yes, I think that is perhaps correct.

Q. Without going into any details there was a question—there was a more or less constant controversy, wasn't there, between the directors and the trustees as to whether Mr. Watts was treating the employees as they ought to be treated or not? Wasn't that a subject that frequently came up? A. I think it came up several times.

Q. And on that subject, as usual, Mr. Dittmore took one side and the



trustees took the other? A. I think Mr. Watts could tell more about that than I can.

Q. I know it, but I have you on the stand now, so I want to get what little knowledge you have now. That is a fact, isn't it? A. I don't know that I can say that that is a fact, because I am not aware—

Q. Then we will pass on to something else. There was a question about the articles in the Sentinel and the news in the Monitor. There was at one time some talk about the articles in the Sentinel being stale and the news in the Monitor not being up to date? A. Well, the articles in the Sentinel being stale—I think that is correct. I don't know about the other.

Q. There was something about the Monitor not getting the current news quite as quickly as possible? A. There was one question that arose in connection with the armistice.

Q. That is, the Monitor lost the news of the armistice in the edition where it would be expected? A. They thought an edition should have been put out about that.

Q. There was an article in the Monitor about the War Relief, wasn't there, in which it was stated how much money had been sent overseas? A. Yes.

Q. And Mr. Dittmore thought that was a misleading statement, did he not? A. I have learned so since this suit began. I didn't know it before.

Q. Did you know that Mr. Dittmore, all through this controversy, took the position with the directors and trustees that there ought to be an independent audit of the books of the trustees made on behalf of the directors by some accountant selected by them? A. No, I didn't know he had said that.

Q. Did you know that any of the directors had taken that view? A. No, I didn't. That was something entirely—

Q. Something new? A. Something new to me.

Q. It was a well-understood fact, wasn't it, that Mr. Dittmore's views as to the relations between these two boards were rather, perhaps, not more extreme, but more concise and more definitely expressed than those of the other directors? A. I think that Mr. Dittmore expressed himself very strongly on those points.

Q. He stood for the supremacy of the Board of Directors in dealing with the Board of Trustees, did he not? A. He did.

Q. And on that he always seemed unwilling to make any form of compromise, did he not? A. I imagine evidently he—he didn't make any compromise.

Q. Yes, exactly. Now, then, there were some doctrines occasionally published that Mr. Dittmore thought might introduce schism or unnecessary division of opinion among the body of Christian Science people? Didn't he have a feeling that some of the articles were a little heretical

that were getting into some of your publications? A. You are referring to the article "Possession"?

Q. Well, I don't know. Was there any such article? I am a mere novice on such matters as Possession and Purification. You tell me. You know about it. A. You referred to it a while ago. There was some discussion of the article, "Possession." It was printed in pamphlet form.

Mr. Thompson—I might say something about Purification, but I should defer to Mr. Krauthoff on Possession.

Q. Now, as to the extravagance of the trustees and the employment of incompetent agents, there was some talk made by the directors occasionally about that, wasn't there? A. I don't remember—nothing that impressed itself upon me at all.

Q. I only mean the mere fact whether you were not aware of the fact that Mr. Dittmore had got that idea into his head, that there was some extravagance on the part of the trustees, and some of the people that they employed were incompetent. Weren't you aware that that idea was persisting in his mind? A. No, I can't say that I was, in one sense of the word.

Q. Well, in some sense of the word. I don't care particularly what sense it is. A. Well, of course I realized, to use a slang expression, that Mr. Dittmore "had it in for" the trustees in the way they were managing the thing.

Q. Exactly. Then take the question of selling advertising space in the Monitor. Didn't you think he had something on the brain there, about the way advertisers were perhaps being misled as to the real circulation of the Monitor? A. I was dumfounded at that. I did not know anything about it.

Q. Well, is it a fact that in April, 1918, the actual circulation of the Monitor in Boston was about 2800? A. I think it may have been somewhere around 3500, or something like that—4000.

Q. As a matter of fact, the Monitor has generally in late years shown a deficit, hasn't it? A. Well, it always showed a deficit until the last year.

Q. Until what year? A. This last year.

Q. And that is owing to war conditions? A. No, not at all.

Q. What has turned the deficit into a surplus? A. It is the increased advertising. And of course our raising the price. We were selling at \$5.00 and we increased the price to \$9.00.

Q. That has turned what had always been a deficit into a surplus? A. Yes—with the increased advertising that we have had.

Q. Well, I suppose as long as the deficit lasted, that afforded a subject of criticism to anyone disposed to criticize? A. Oh, I suppose it might, if they didn't understand the operation.

Q. Now, do you recollect a meeting of Sept. 11, 1918? A. I remember it.

Mr. Thompson—I don't know that I do myself. I want to look it up.

Q. There was a meeting between the trustees and the directors on that day, wasn't there? A. There was.

The Master—What date is that?

Mr. Thompson—Sept. 11, 1918.

Q. Before that meeting there had been some personal conferences between you and Mr. Dickey, had there not, or some members of the Board of Directors? A. There had been some conferences between the two boards.

Q. It was quite common, wasn't it, that aside from these formal meetings of the directors, which were occasionally attended by the trustees, there would be passing to and fro between the directors and trustees in the same building and personal conferences on the subject which might later come up formally? A. Might be, I suppose.

Q. For instance, as when Mr. Dickey came to see you in February, 1919. So it isn't true that the only opportunities that the trustees had to discuss these matters was when they attended these formal meetings? That isn't true, is it? A. Well, of course we wouldn't consider the others as discussions with the directors; it would merely be as friend to friend.

Q. Friend to friend? A. Yes.

Q. They might have considerable bearing, such conferences, on what later might be done in formal meetings, might they not? A. I suppose they might, yes.

Q. That is, they were attempts to smooth things over and arrange matters so that when a formal meeting came some progress might be made? A. I think when the committees met that was always so.

Q. Do you recollect that on that occasion Mr. Dickey made a strong effort to conciliate the trustees or to smooth matters over? A. I do.

Q. And on that occasion he was almost apologetic, was he not? A. Well, he was very kindly.

Q. And he expressed regret for anything that might have seemed in the past an undue assertion of the power of the directors, did he not? A. Yes. It was especially on the point of the article "Purification."

Q. Now you recollect on that occasion the trustees took the position that they didn't recognize the directors as the successors of Mrs. Eddy in the full sense of the term? A. Absolutely.

Q. You took that position on that occasion? A. Absolutely.

Q. And that caused some dissent among the directors, did it not? A. I think it did, perhaps.

Q. And possibly our friend Mr. Dittmore may then have expressed his dissent; do you think he did? A. I am quite sure that he did then or later, very strongly. I think it was at that time that he did it.

Q. Yes. Well, at that time the subject of the interpretation of the by-law was taken up which enables the

directors to declare vacancies on the Board of Trustees, was it not? There was some talk about that? A. You mean with regard to what?

Q. To the by-law that the directors may declare vacancies on the Board of Trustees. There is some by-law to that effect, is there not? A. Yes, there was a discussion of the word "expediency."

Q. You thought that it meant only for dishonesty or immorality? A. Anything contrary to the trust—the purposes of the trust.

Q. But you denied that it meant for any matter of policy which the directors didn't approve of? A. Absolutely.

Q. You thought that that power was limited to cases of absolute immorality where the trustee could be disciplined as a member, let alone being a trustee; that is, for something that would justify discipline as a member of the Church? A. Well, something that would justify any court in removing him.

Q. That is it—justify any court in removing him? A. Yes.

Q. Now there was another fertile subject of difference of opinion, wasn't there, on which Mr. Dittmore took what seemed to you an unyielding attitude, and that was on the decision of the question as to what goes out as official Christian Science literature—as to whether that decision rested with the trustees or the directors; that was always a bone of contention, wasn't it? A. I think that is correct, perhaps, to say that that always was a bone of contention.

Q. And on that, however the other directors might fluctuate from time to time, you thought Mr. Dittmore pretty unyielding, did you not? A. I don't know how the other directors—whether they fluctuated or not.

Q. You think they fluctuated on a good many other things, don't you?

Mr. Bates—I object to the question. That is characterizing.

Mr. Thompson—I press the question, and I press it in the case of Dittmore against Dickey. It is very relevant. I am asking for the conduct of the directors.

Mr. Bates—That is characterizing the action. I do not object to the fact, but I object to the characterization.

Mr. Thompson—You will find it in the bill. You will find you pressed in the Supreme Court for an order to the master which requires him to find upon several issues stated in the bill, affirmed by one party and denied by the other, regardless of its relevancy. You will find that issue stated right in the bill. I press the question.

Mr. Bates—I object to the form of the question, Your Honor. It calls for a conclusion and a description.

Mr. Thompson—I pray Your Honor's judgment.

Mr. Bates—It calls for a characterization of the action of the directors, not for what they did.

Mr. Thompson—No more than the

bill itself calls for. You used some adjectives in describing—

Mr. Bates—I am not responsible for your bill.

The Master—What do you refer to in the bill?

Mr. Thompson—Your Honor has my only copy. It is along, I think, in the 14th, 15th or 16th. Mr. Dittmore is characterized as a man arbitrary, unfair, unruly, because he is the one who stood up for the position which they are now taking and have been taking for a day and a half or three days here to defend through the mouth of Mr. Krauthoff. He is the one who furnished them the data and they have been trying to put it in here.

The Master—If you will get back, Mr. Thompson, please—you refer to something in the bill.

Mr. Thompson—It is in our bill. I haven't any copy. Have you got a copy, General?

Mr. Streeter—No.

The Master (handing copy of bill to Mr. Thompson)—Just show me what you refer to there. You did not say what bill.

Mr. Thompson—I mean our bill, the Dittmore bill.

The Master—I understand you mean the bill in your case, Dittmore against the directors.

Mr. Thompson—Yes, sir. A copy has been handed me now.

The Master—Just let me see what it is that you refer to.

Mr. Thompson—In their answer. Has Your Honor a copy of their answer?

The Master—No.

Mr. Thompson—I think I can find it quicker by seeing the answer.

The Master—Your answer?

Mr. Thompson—No, their answer. It is alleged in this bill that the directors did not consistently assert the position which they are now asserting, that the Manual supersedes the Deed of Trust wherever it conflicts with it, and that the Board of Directors is supreme—has the final supremacy over the Board of Trustees, but that from time to time they varied on that; they sought to compromise with the trustees, and that Mr. Dittmore objected to any compromise on those subjects. That is here somewhere, and if I have time I can find it.

Mr. Whipple—May I suggest you had better take it up in the morning?

Mr. Thompson—I will point that out to Your Honor tomorrow.

Mr. Whipple—If that is agreeable. It will give a little more time to look over the bill.

The Master—I don't find anything about fluctuating, and that calls upon the witness to characterize something.

Mr. Thompson—I will strike out the word "fluctuating."

The Master—It would be better to find out what they did. His answer whether they fluctuated or not would not help me any in the case as far as I can now see.

Mr. Thompson—If Your Honor looks

over the bill and the answer you would see that it is an issue that does not involve just what they did but the general attitude of mind.

The Master—The general attitude of mind can be shown only by what they did.

Mr. Thompson—I suppose if I allege an attitude of mind a man who perceived it can testify. But it is not especially important; I will alter the word.

Mr. Whipple—If Your Honor please, there is one matter that I should like to have dealt with.

The Master—I want to hear what Mr. Whipple says.

Mr. Whipple—I should like, if possible, before we adjourn to have some understanding with regard to the opportunity we are to have to examine the directors' records. I think I am not using improper terms when I say that every suggestion we have made as to looking them over has been met with a somewhat impressive silence, and still they have talked a good deal about looking over our records. Our records from beginning to end are open. Now we shall want to examine these directors at a good deal—or may—at some length, with regard to their records. Our examination will be very much reduced if we can have the records to look over, to get at the things which are pertinent, so that we shall not have to occupy Your Honor's time while we are running through them to find what is pertinent to the issue here. And I would like to know now if counsel have anything to offer with regard to permitting us to look through those records.

Mr. Dane—If Your Honor please, I had assumed that Mr. Whipple's office was well aware of the arrangement that had been made some time on Friday or Saturday—

Mr. Whipple—I can't quite hear you.

Mr. Dane—Some time on Friday or Saturday of last week we were called on the telephone by Mr. Whipple's office and asked whether or not they could have an opportunity in advance of the hearing here on Monday to examine the directors' records, and we replied that we were having large abstracts made from the directors' records of all matters that related in any way to the pending controversy and that we would be very glad to furnish them with a copy of those abstracts. Some time later—I think the next day—we received word from Mr. Whipple's office declining to enter into that arrangement and saying in effect they did not want the abstract, but that they wanted an opportunity to look at the records, and thereupon we immediately wrote them that in view of the fact that they did not care for abstracts, the offer was withdrawn and that the directors' records would be at our office at 4 o'clock this afternoon, so that at the adjournment of this hearing they might have an opportunity to examine the records for themselves and determine what was

or what was not pertinent to this case so far as their theory of the case was concerned, and that offer is still good.

Mr. Whipple—Well, now, if Your Honor please, I think that is a bit different from their letter, which is dated June 28, and which I hold in my hand, in which they say: "The records will be at our office immediately following the adjournment of court on Monday next, where they will be open to your inspection as to all matters pertaining to pending litigation." Well, now, that means that you are going to decide what you think is material to pending litigation, and let us see that. You have now said that we may examine them throughout, as I understand it, and see what we feel is pertinent to the pending litigation. That statement is entirely satisfactory. It is different, as Your Honor sees, from what is in the letter. I understand that the records are to be thrown open to us, and we will examine for the purpose of ascertaining what we would like to put in.

Mr. Dane—Of course, we had assumed counsel would not want to examine anything or would not want to put in anything into this case but what is pertinent.

Mr. Whipple—That is quite right.

Mr. Dane—I do not think there is the slightest difficulty if counsel for the directors and counsel for the trustees sit down in our office with these records, but what we can get what they are after and not have to take the time of the Court to bring the records into court.

Mr. Streeter—If Your Honor please, representing Mr. Dittmore, we want to ask a bit more. We want those records in court so that the records of specific dates which may occur to us, if we desire to submit them to the Court in comparison with some other matters, will be here, physically here, so that the Court can see them. And I will go further than what Mr. Whipple said, and ask you if without formal notice you will have the records of the directors here before the Master.

Mr. Dane—Certainly, the records of the directors will be here in court.

Mr. Streeter—That is all we want.

Mr. Whipple—Now are you going to have a representative at the examination this evening?

Mr. Streeter—I don't think so; if we want to we will go over.

Mr. Whipple—All right.

Mr. Streeter—But we have some sort of knowledge of what is in those records and what is not in them now.

[At 4:05 p. m., the hearing is adjourned to 10 o'clock a. m., Tuesday, July 1, 1919.]

July 1, 1919

SIXTH DAY

Supreme Judicial Court Room, Boston,  
Massachusetts, July 1, 1919.

Herbert W. Eustace, Resumed

Cross-Examination on Behalf of  
Defendant Dittmore, Continued

The Master—Proceed when you are ready, Mr. Thompson.

Mr. Thompson—Yes, Your Honor. I will withdraw the question, "You think they fluctuated on a good many other things, don't you?" because I do not think it is necessary.

Q. (By Mr. Thompson) We have been going over, Mr. Eustace, a few of the detailed matters on which there was a difference of opinion between the directors and the trustees, in which Mr. Dittmore took a decided opinion, and I think I got down to the question of final decision as to what goes out as official Christian Science literature; and the trustees maintained that that final decision rested with them, and the directors were inclined to maintain that it rested with them. I think you said that? A. That is true.

Q. That is correct, isn't it? A. That is correct.

Q. Then the next subject to which I want to ask your attention is this. There was a question, wasn't there, whether the trustees were obliged to employ such manager or editors as the directors might elect, or whether they were to take the election in an advisory capacity. There was an issue there, wasn't there, between the directors and the trustees? A. Not until the present difficulty, I don't think.

Q. Well, I mean during the present difficulty? A. Oh, yes, of course.

Q. I think you have mentioned that already. A. That has been rampant.

Q. That was a very important subject? A. Yes.

Q. Before proceeding with that I would like to ask you a general question about Mr. Dittmore. When it is said of a Christian Scientist that he is a progressive and consecrated student of the Bible under Mrs. Eddy's writings, that means something, doesn't it? A. It ought to.

Q. It conveys a clear idea to your mind of what sort of a man a man is who is a progressive and consecrated student of the Bible under Mrs. Eddy's writings? A. I suppose that means under the teachings of Mrs. Eddy.

Q. Under the teachings of Mrs. Eddy? A. Yes.

Q. Now, was Mr. Dittmore such a man? A. I have no reason to say that he was not, because I suppose that he studied our Leader's writings and the Bible and applied them to his understanding.

Q. The next particular subject is this. There was a question whether the power of the trustees was absolute in formulating rules for the recognition of practitioners' cards and church cards in the Journal, or whether the directors had the final say about that.

That was an issue, too, wasn't it? A. Yes; that was somewhat of an issue for some time. I think perhaps not a very defined issue, but it was probably an underlying issue.

Q. It tended to come to the surface occasionally and underlay a good many discussions as a suppressed premise, a suppressed idea? A. The directors attempted, I think, a number of times to assert authority on that question.

Q. And you recognized Mr. Dittmore as a man who stood for the assertion of power in that matter by the directors, did you not? A. He did.

Q. Then I suppose, underlying all these controversies, as the subject became more and more vital and acute, was the contention that the directors were making, that if the position of the trustees was sound on these various matters the unity of the Church, as the directors called it, would be impaired? That was a phrase frequently used, wasn't it, in these controversies? A. Only of late.

Q. Well, I mean of late. As it got worse and worse that phrase began to be used, didn't it? A. Since the suit I think it has come up, largely.

Q. Then there was a question of the language of Paragraph 6 of your Deed of Trust, requiring the trustees to employ all the help necessary, and how to reconcile that with Article 25, Section 4, of the By-Laws, authorizing the election of the editors and manager by the unanimous vote of The Christian Science Board of Directors and the consent of the Pastor Emeritus given in her own handwriting. The directors took the view that, Mrs. Eddy having passed on, that left the Board of Directors with all the authority conferred by Article 25, Section 4, and that raised the question of the possible conflict between your employing and their electing these officials, didn't it? A. I suppose that is how they argued it.

Q. You recognized that that was Mr. Dittmore's position, didn't you? A. I never heard him state that, perhaps, but I supposed that was it, because it must have been their only basis of acting the way they did.

Q. Then there was another question. Paragraph 8 of your deed gives you the direction and supervision of all the publications, as I recall it, doesn't it—words to that effect? Then there is Article 3— A. I didn't get the question.

Q. I will put it again. If you don't hear me please tell me. A. Yes.

Q. Paragraph 8 of your deed of 1898 gives the trustees the direction and supervision of all the publications of the society, doesn't it? A. It does.

Q. And Article 8, Section 14, of the By-Laws, requires the directors to see that these periodicals are ably edited and kept abreast of the times? A. That is part of that paragraph.

Q. I have just picked out the two parts that appear to me to be in possible conflict. A. Yes.

Q. Now, there was a difference of opinion as to the way to reconcile those two provisions, wasn't there, between the directors and trustees?

A. Yes; very strong.

Q. Then there was a question of Sections 6 and 7 of your deed, with regard to employing help. I have already referred to the provisions requiring you to employ the help; and Article 25, Section 5, of the By-Laws, "A person who is not accepted by the Pastor Emeritus and the Christian Science Board of Directors as suitable, shall in no manner be connected with publishing her books, nor with editing or publishing The Christian Science Journal"—you remember that provision in the By-Laws, don't you?

A. I do.

Q. Now, the question arose as to what was the reconciliation between the power apparently given to the directors by that provision of the By-Laws and the power plainly given to you by your deed to employ help, wasn't there? That would be a possible arguable question? A. Yes.

Q. Then, passing from these questions— A. That is, may I say this: That it would be from the standpoint I suppose you are speaking from. From my standpoint the Deed of Trust holds.

Q. Certainly. I am assuming here there are questions and that they have two sides. A. Yes.

Q. You have one side and the directors have the other. That is all so far. I am not going into the merits of these questions at all. I merely want to develop what the subjects of controversy were between you as a Board of Trustees and these directors, and especially what position Mr. Dittmore took in these various particular controversies that arose. Now, passing from these matters of the construction of documents, again, into matters of fact, wasn't there a question that came up pretty often about the extent to which the trustees were justified in maintaining a London bureau, and in publishing cables from London during the war? A. No, I never heard anything about that.

Q. You never heard about that question? A. Never until it came out.

Q. Did it ever come up before this suit was brought? A. Never that I know of.

Q. You don't remember that? A. No.

Q. As a matter of fact, the Monitor was paying out a very large monthly sum for cables from London during the war, wasn't it? A. No; only just for two or three months during the time of the armistice, when we had to send quite a little of our stuff under regular rates in order to get it through at all.

Q. It has been suggested to me—I do not know from what source—that in January, 1919, the cable expense was \$21,208.75. Does that correspond to your recollection? A. Well, that

wouldn't be very much. At that time, using the cables as we were, we instructed, or asked our editor, to not limit in the slightest the cables. When he went over there, we said, "If necessary, cable all your editorials. What we want to do is to publish a paper that gives the exact information and everything in connection with it, and do not hesitate to use all the money you want."

Q. And you had an elaborate London bureau maintained throughout the war, and also before the war? A. Not elaborate. You see it covers the whole of the Eastern Hemisphere.

Q. How many persons were connected with it? A. About 10 or 12, I should think—varied a little.

Q. Was there ever any question between the trustees and the directors as to the comparative expense of publishing Mrs. Eddy's works by the trustees and under Mr. Stewart, whether it was costing more when the trustees did it than it used to when Mr. Stewart did it? A. No, that has never been discussed.

Q. You don't remember that ever coming up? A. No.

Q. Now, were any questions ever raised by the directors in regard to the character of the advertising matter in the Monitor? A. I don't think of any; there may have been in some of our conferences some little thing, but I don't remember anything.

Q. Now I would like to ask you about another subject not having to do with your department at all, on which you may have some knowledge by accident. Is it a matter within your knowledge that for a year or two there has been some criticism by the directors or by Mr. Dittmore of the conduct of the treasurer's office? A. No, that is not in my knowledge at all, I don't know.

Q. Were you aware that at one time the directors caused an investigation to be made in the Publishing Society's office, by Mr. Merritt and Mr. Neal, of Mr. McCrackan's conduct? Did you know that a committee, consisting of Mr. Merritt and Mr. Neal, had been visiting your employees and making inquiries about Mr. McCrackan? A. No, I did not.

Q. You didn't know that? That never came to your attention? A. No, I don't think I ever knew of it; I don't remember it now and I think I would if I had heard of it.

Q. You knew, did you not, that in December, 1917, Mr. McCrackan had had a hearing before the board and had been exonerated from all charges? A. I knew that he had something to do with the board, that they had—

Q. They had had some sort of hearing? A. Yes.

Q. You knew that it had resulted favorably to him, did you not? A. I supposed so, in view of nothing happening.

Q. And it never came to your attention that afterward, after exonerating Mr. McCrackan, after a formal hear-

ing, these directors, Merritt and Neal, without your knowledge, had been making an investigation among your employees for the purpose of obtaining matter to renew the charges? Did that ever come to your attention? A. No, I didn't know anything about that.

Q. This is the first time, isn't it, that the directors to your knowledge have ever attempted to declare any vacancies in the trustees? A. It certainly is.

Q. And do you recollect of any other occasion when the directors have ever attempted to declare a vacancy in their own body? A. I don't know anything about that.

Q. It is not within your knowledge that there has ever been such? A. Not that I am aware of. I don't know anything—I never heard of such a thing, but then I might not have heard of it even if it had been so.

Q. Well, it would be rather unlikely that a man as prominent in the Christian Science Church as you would not have heard if the directors had before this dismissed or ejected a director, wouldn't it? It would be likely to come to your attention? A. It might or it might not. I lived in California, and it is a long way off.

Q. Mr. Rowlands had an office near Mr. Dittmore's office, didn't he, in the building there? A. I think it is an adjoining office, I believe.

Q. Aside from these official controversies the relations between the individual trustees and Mr. Dittmore were friendly enough so that you were on speaking terms, would say "Good morning," and if you happened to feel like talking with him, you would talk with him, wouldn't you? A. I am very glad to say that we are on good speaking terms with all the directors and Mr. Dittmore.

Q. Exactly. Did you ever hear Mr. Dickey, before the vote of March 17, when they undertook to dismiss Mr. Rowlands and Mr. Dittmore at the same time—before that time did you ever hear Mr. Dickey say anything about Mr. Dittmore and any purpose of the directors in relation to him? A. Nothing any more than I might have said myself about Mr. Dittmore.

Q. I am only speaking of Mr. Dickey. You don't recollect any talk that he may have made? A. No, I do not.

Mr. Thompson—There is one letter here that, if I can find it, I want to ask you to identify; it may take me a moment, if you will pardon me.

Q. I have here only a copy, Mr. Eustace, but perhaps if you will look at it perhaps you can remember it by looking at this copy. (Handing paper to witness.) It is a letter that you sent Mr. Bangs. I dare say it has gone in already, but I want to be sure, so as to show your understanding of it. A. Yes; I think that is the letter, without the underlining.

Q. Yes, without the underlining; I will see that that is eliminated.

A. Yes. That was our letter, I think. We can give you a copy of it, anyway.

Mr. Thompson—It is not important enough for that. I will show it to Mr. Whipple, and he will have no objection, I guess, to that going in without the underlining.

Mr. Krauthoff (after examining paper)—That is all right.

Mr. Thompson—I will have that marked, if Your Honor please, and I will read it.

[Letter, dated Feb. 3, 1919, Board of Trustees to Frederick A. Bangs, First National Bank Building, Chicago, Illinois, is marked Exhibit 70.]

Mr. Thompson—It is understood that in the original letters there were no underlinings or italicizings, and the exhibit is to be understood as if it did not have any underscoring. The letter is as follows:

[Copy of Exhibit 70.]

“(Copy)”

“Feb. 3, 1919.

“Mr. Frederick A. Bangs,  
“First National Bank Building,  
“Chicago, Illinois.  
“Dear Mr. Bangs:

“Your letter of Jan. 27 to the trustees of The Christian Science Publishing Society reached us this morning, and we are writing you at once in reply, to assure you that, although there have been some questions of a divergence of opinion between the Board of Directors and the Board of Trustees, these questions have all been satisfactorily and harmoniously adjusted and both boards are working in absolute harmony for that which every Christian Scientist loves more than all else—the cause of Christian Science.

“We know you will be glad to have this information, to enable you to correct instantly any impression to the contrary.

“Should you desire to write to the Board of Directors, we are sure they will verify this statement of the unified action of the two boards.

“With our kindest remembrances,

“Yours sincerely,

“BOARD OF TRUSTEES,

(Signed) “HERBERT W. EUSTACE,  
“Secretary.”

Q. Now, may I ask you, who is Mr. Bangs; or, rather, what is his connection with the Christian Science movement? A. I do not know that he has any particular connection. He wrote us from Chicago.

Q. He is a Christian Scientist? A. Evidently. He wrote as one, and I understand he is one. I do not know Mr. Bangs myself.

Q. Was that letter a stereotyped letter sent out to a good many people, or was it an individual letter sent to Mr. Bangs alone? A. It was an individual letter sent to Mr. Bangs, but the substance of it was, I suppose, embodied in other letters, if we sent any others. I don't know that we did.

Q. You haven't any recollection whether, after this compromise of

Feb. 3, 1919, you notified various persons who might be interested to the same effect? A. Anyone who wrote would be answered in that same way.

Q. I see. A. And do you know whether the directors were sending out similar letters also? A. Well, the understanding was that they would.

Q. And with whom was that understanding had? A. With the trustees.

Q. I know that, but what members of the Board of Directors particularly participated? A. Mr. Dickey, Mr. Merritt, and Mr. Rathvon.

Q. I see. You have personal knowledge that as a part of this compromise those gentlemen personally undertook to notify, wherever it might be appropriate to notify, persons inquiring in regard to the situation that the controversies had all been adjusted? A. I do not know that they undertook to do it personally, but that was the understanding between the trustees and the directors on that point.

Q. I mean, that they personally undertook that their secretary should do the notifying? A. They agreed with us that that should be done.

Q. And to that agreement or understanding, I think you have already said that Mr. Dittmore was not a party? A. Mr. Dittmore was not present at that meeting at all.

Q. In the course of your experience as a Christian Scientist, holding office from time to time in the Christian Science body, you have known of various cases of discipline, have you not, of individual members, or of minor officials of the Christian Science body, by the Board of Directors, for disloyalty or one thing and another? That is, such cases have come to your knowledge, haven't they, occasionally? A. No, they have not. I am very unfamiliar with anything of that kind.

Q. But you know of the fact that there have been in past years some such cases? A. I suppose there must have been such cases.

Q. And it is your understanding, isn't it, that under the Manual which governs these matters, persons coming up for discipline are, as a matter of common justice, and in accordance with Mrs. Eddy's wishes, entitled to be heard?

Mr. Krauthoff—If Your Honor please—

Mr. Thompson—Oh, I won't press it if you object to it. I understand you distinctly object to that question?

Mr. Krauthoff—I think I do.

Mr. Thompson—Very well.

Mr. Krauthoff—Well, we prefer to state the reason.

Mr. Thompson—I am surprised that it should be objected to, but if it is we will withdraw it.

Q. Now, I have only a few more questions in detail to ask of you. Going back for a moment to this question of the treatment of your employees by Mr. Watts, on which I understood you to say Mr. Dittmore felt it his duty, if people came to him and complained, to make some sort

of inquiry about it. A. I didn't know that I said that, because I did not intend to convey that, because that is beyond my knowledge.

Q. Perhaps you said this—that the directors felt that they had a right to know in general how the employees of your society were treated, and if they were discharged, whether they were unjustly discharged. That was one of the attitudes they took, wasn't it? A. Why, they never expressed that to me.

Q. Perhaps not; but you knew that that was their underlying feeling, didn't you? A. I think perhaps that may have been Mr. Dittmore's underlying feeling. I don't know whether the rest felt that way or not. I can't tell you how I got the impression, but it was more an impression, perhaps, than anything that was said.

Q. I would like to run over the names of a few persons concerning whom he may have had that feeling, and inquire whether in these cases there was a discharge or not. There was a Miss C. Louise Richardson, who was discharged on Feb. 14, 1918, wasn't there, or about that time? A. I would have to inquire into that.

Q. Did you ever hear her name? I am not asking you the grounds of the discharge; I am merely asking the fact whether there was such a person? A. We had several Richardsons in our employ.

Q. Well, I will pass to the next one.

Mr. Whipple—I will make this observation, Mr. Thompson, if it will affect your examination. Mr. Watts will be either the next witness or the second witness, and you may inquire from him as to all of these people, and then if you want to recall Mr. Eustace to ask him any questions about it that he may know, we will assent to that.

Mr. Thompson—I do not think it is really important enough. I will merely run through the names, and if you happen to know, tell me so, and if you do not, tell me—it is of no particular consequence. And there was a Miss Florence C. Hall who was discharged sometime in February, 1918? A. There was.

Q. And Mrs. Myra B. Lord, who was discharged sometime in 1918? A. There was.

Q. And George H. Clark, an advertising manager, who was discharged at one time? A. No; he resigned.

Q. He resigned? And John K. Allen. There was some trouble about him, wasn't there, in 1917? A. No trouble at all. The office was done away with, of advertising manager, and that left it vacant, and Mr. Allen simply went out.

Q. That is, he was in a way legislated out of office? A. Well, not in the sense of doing it to get rid of Mr. Allen, but his office was legislated out.

Q. That carried him with it? A. He went with it.

Q. Do you know whether he felt aggrieved at all at that situation? A.

No; I should say he did not. When I talked to him he took it in an exceedingly nice way.

Q. Then there was a Mrs. Mary L. Bryant, in charge of the lunch room. She was discharged, I think, in 1918, wasn't she? A. I believe she was.

Q. Then there was a Walter R. Zahler—a Hollander, a Dutchman, not a German. He was discharged, wasn't he? A. He was.

Q. And do you know that along in the early part of 1919 the directors got report from Mr. John Flinn and Forrest Price, Mr. Deland, Mr. Charles D. Warner, your Washington correspondent, in regard to the Monitor, and how it was getting on, and what changes they would suggest? A. I have heard of that to my absolute disgust.

Q. I have no doubt of that, Mr. Eustace; but I am only asking the fact. Did you know about the fact that they did have these reports from these men? A. I have learned of that, that they actually did get reports from the employees of the Publishing Society without the trustees knowing it.

Q. Then there was some question, wasn't there, about the attitude of the Monitor with respect to the packers' investigation, and Judge Hughes' connection with that? That made some talk, didn't it? A. Not that I know of, except with the packers themselves.

Q. The packers themselves? They didn't like it? A. The packers did not like it, no—although since then they have expressed, I think, a little different opinion.

Q. I am only speaking of one final editorial in which a postponement was suggested. That was what they liked, wasn't it? They wanted a little more time? A. I would have to see the editorial. I have forgotten which one it was; but they were appreciative of something that was put in.

Q. Have you sufficient knowledge so that if I should show you a column of comparative circulation of the Monitor since Sept. 30, 1912, for all these years since, you would be able to state whether it is correct or not? A. Well, we can supply you with the exact figures if you want them.

Q. I have no doubt of that. But I wondered if you carried it in your head so that if you saw this column of figures you could tell possibly? A. I might be able to.

[Paper is handed to the witness.]

Q. I do not know where it came from, but apparently it is authentic. A. No; those are not correct.

Q. Those figures are not correct? A. No.

Q. Then we won't put them in. A. But you shall have the correct figures; we will be very glad to give them to anyone.

Mr. Thompson—Perhaps Mr. Krauthoff would like them. I do not know that I care to have them. Would you be able to—

The Witness—I think I ought to be careful how I say they are not correct.

Q. I thought possibly you ought to

be a little more careful than you were, because I assume that they were taken from some source without any intent — A. There was one figure there that seemed to me to be absolutely wrong.

Q. One figure? A. Yes. And the others did not seem in keeping, but —

Q. Well, it is of no consequence. If you do not offhand recognize them, it is of no particular importance at this stage. Now, as to the deficits, I would like to show you a statement here concerning the deficits in the Monitor from 1908 down to 1918, and see if that corresponds to anything in your memory. You have said, I think, the deficits have now ceased, but this was a period when there was a deficit. (Handing paper to witness.) These figures were furnished by the trustees, I think? A. Yes, I should say that those are correct.

Mr. Thompson—I will offer that in evidence if there is no objection.

The Master—Are those figures going to be a matter of dispute?

Mr. Thompson—I doubt it, sir. I think they were furnished by the trustees themselves at one time.

The Master—It must be something that is authentic and not questioned by anybody.

Mr. Thompson—I do not believe these will be questioned, sir.

The Witness—We can verify every figure for you and will be glad—

Mr. Thompson—It is to be understood that if these are incorrect you will verify them. I merely wanted to put them in now bearing on Mr. Dittmore's attitude—

The Master—If the point is in dispute, that is hardly evidence.

Mr. Thompson—One of the allegations in the bill is that Mr. Dittmore took a certain attitude with reference to the Monitor, and possible improvement that might be made in its financial condition, and so on; that he based that in part upon the deficits. I want to show in the case of Dittmore v. Dickey that there was a certain basis of fact for Mr. Dittmore's position, so that it cannot be called, as his fellow directors have characterized it, arbitrary, capricious and vindictive—that is all. I am merely trying to show that he was basing his opinions sincerely upon what he believed to be correct statements of fact—that is all, and not making them up out of whole cloth.

The Master—You show the witness certain figures. It does not appear where they came from. You ask him merely if those figures agree with his recollection.

Mr. Thompson—He says they are a correct statement.

The Master—Until we know something more about the figures it would not seem to be very important whether they agree with his recollection or not.

Mr. Thompson—Inasmuch as he is one of the persons who managed the Monitor and as he has had occasion

to investigate the figures a good many times, when he says—and I think he goes a little farther than Your Honor suggested—I think he says it is a correct figure. Perhaps Your Honor would look at the statement.

The Master—It would not be easy for him to carry them in his head.

Mr. Krauthoff—May I see it, please.

Mr. Thompson—Certainly. If the figures are wrong they can be corrected.

The Master—If the point is to prove what the deficit was, I think there ought to be some definite way of showing it.

Mr. Whipple—May I suggest that I do not understand these percentage marks, and outside of that we can give you a more detailed statement year by year. But the figures themselves showing deficits for each year are substantially correct.

Mr. Thompson—Isn't that satisfactory to Your Honor?

The Master—You and Mr. Whipple now agree that they are correct?

Mr. Thompson—Except the percentages. We will leave out the percentages.

Mr. Whipple—Yes, leave out the percentages. And we will have one prepared which will give the annual deficit in building up this newspaper.

Mr. Thompson—Very well.

Mr. Krauthoff—May I be advised who prepared this document, Mr. Thompson?

Mr. Thompson—Possibly you may, but you can't be by me now, because I do not know. I think it was done by the trustees at the request of your clients.

Mr. Krauthoff—Well, I object to this memorandum without it being shown who made it.

Mr. Thompson—Why, you catch the point that Mr. Whipple and his clients state that aside from percentages those are correct statements of the annual deficits of the Monitor. Isn't it to your interest to show that there was a deficit?

Mr. Whipple—Let me suggest that Mr. Watts will testify—

The Master—It only goes in as the witness' testimony.

Mr. Thompson—That is all.

The Master—Those figures are, to the best of his recollection, substantially correct. You and Mr. Whipple agree that they are correct. Mr. Krauthoff is not prepared to make that admission at the present time.

Mr. Thompson—I do not ask him to make the admission. Let it stand as the witness' testimony.

The Master—It is the witness' testimony and nothing else.

Mr. Krauthoff—On which he will be subject to further cross-examination.

Mr. Thompson—Subject to further verification on the exact facts.

The Master—It is a part of the testimony.

Mr. Krauthoff—Then we object also, if Your Honor please, to these statements as being conclusions as to what

is the deficit in the operation of the Monitor, and the manner in which the business is conducted is a matter of accounting.

The Master—As long as the witness is willing to say that it is correct, I will admit it. You may cross-examine on it when the proper time comes. [Paper headed "Monitor Deficit," covering the years 1908 to 1918, inclusive, is marked Exhibit 71.]

Mr. Whipple—The computation of the total we have not verified, and I do not suppose you have, Mr. Thompson?

Mr. Thompson—No, I have not. It is a mere matter of arithmetic. It is understood that the admission made by Mr. Whipple does not cover the figures of percentage in the right-hand column. The figures themselves are correct.

Mr. Whipple—Substantially.

Mr. Thompson—Substantially. Now, this shows that beginning with 1908 and 1909—I don't know which of those years this refers to—the deficit was \$127,746.27; in 1910 it was \$73,184.96; in 1911 it was \$116,025.92; in 1912 it was \$82,457.90; in 1913 it was \$124,943.64; in 1914 it was \$137,551.89; in 1915 it was \$127,324.29; in 1916 it was \$136,887; and for 15 months, 1917 to 1918, it was \$89,099.92.

Q. Is it a fact, Mr. Eustace, that from Feb. 1, 1918, to Feb. 1, 1919, during that year the total spent by the Monitor on cable tolls was, practically, \$95,074.01? Do you remember that? A. No, I don't remember the total, but I wouldn't be surprised at all.

Mr. Thompson—I think that is all, Mr. Eustace.

Mr. Krauthoff—Now, if the brother please—

The Master—One moment. Are you now proposing to cross-examine further?

Mr. Krauthoff—I wanted to ask as to the order of examination. Mr. Thompson has asked Mr. Eustace some questions that bear upon the case of Dittmore v. Dickey—the other case.

Mr. Thompson—That was my impression.

Mr. Krauthoff—And Mr. Eustace yesterday agreed to bring some further documents this morning, and I was now asking Your Honor's direction whether I should conclude, and also inquire as to the Dittmore-Dickey case before Mr. Whipple took up the witness, or whether you desired I should follow Mr. Whipple; because if I follow Mr. Whipple, of course then Mr. Whipple will have to follow me.

Mr. Whipple—That seems like a paradox.

The Master—What does Mr. Whipple say to that?

Mr. Whipple—Well, I should think it would be perfectly proper for Mr. Krauthoff to finish up any other or further questions, but I should hope that the game of battledore and shuttlecock as between the two defendants

would not result in my failing to get any chance to redirect, because you may suggest something to Mr. Thompson, you see.

Mr. Thompson—I doubt it.

Mr. Whipple—Mr. Thompson says he does not think that is so.

The Master—No doubt Mr. Krauthoff will remember that he has already employed two whole days in cross-examining this witness.

Mr. Krauthoff—And part of the third day.

Q. (By Mr. Krauthoff) Mr. Eustace—

Mr. Whipple—Mr. Krauthoff, first we have here the papers you asked for, I think. Do you want to call for them as you asked for them?

Mr. Krauthoff—If I may, yes.

Mr. Whipple—All right. Now, if you will name what they are I will hand them out.

Mr. Krauthoff—The income tax returns for 1918 and 1919.

Mr. Whipple—I hand you a duplicate original of a statement made by the trustees, purporting according to copy to be under oath, dated May 14, 1918, apparently addressed to the taxation authorities of the Commonwealth of Massachusetts.

Mr. Krauthoff—May I have that, Mr. Whipple?

Mr. Whipple—Now wait and see if I am right on that. (Examining paper.) No; to the authorities of the United States, not of the Commonwealth of Massachusetts (handing paper to Mr. Krauthoff).

Mr. Watts—I think it was handed to both.

Mr. Whipple—I understand it was handed to both the federal authorities and the state authorities on taxation; that is, a statement similar to that and of which that purports to be a copy.

Mr. Krauthoff—That is not the one that my attention was called to.

Mr. Whipple—Well, then, perhaps you will produce the one that your attention was called to.

Mr. Krauthoff—I will. (Handing paper to Mr. Whipple.) Do you have the one on the second-class postage?

Mr. Whipple—I now hand you at your request a copy of the communication to Hon. A. M. Dockery, Third Assistant Postmaster-General, on six pages, from the business manager of the Publishing Society, dated Dec. 7, 1918 (handing paper to Mr. Krauthoff).

Mr. Krauthoff—May I have this identified and offered in evidence?

Mr. Whipple—How do you regard it as material?

Mr. Krauthoff—Why, just a moment. By the statement in the document that The Christian Science Publishing Society is maintained by and in the interest of a religious organization, namely, The Mother Church.

Mr. Whipple—How is that material? There has never been any question about that; it is perfectly elementary. Under the Deed of Trust we are bound to use all our revenues for the spread of the Christian Science movement. A part of them goes to The

Mother Church to be used by them, and part to the trustees under Mrs. Eddy's will, and these are the results of efforts by the trustees themselves to spread Christian Science throughout the world. Now if that is not plain, I do not think any statement to the Third Assistant Postmaster-General of the United States can make it plain.

Mr. Krauthoff—Now, if Your Honor—

Mr. Whipple—There isn't any question about it, and why should we lumber up the record with six or seven pages of argument upon the question to the Post Office Department?

Mr. Krauthoff—If Your Honor please, the bill of complaint in this case tenders the distinct issue that The Christian Science Publishing Society is under a management separate and distinct from that of The Mother Church. This document shows that for the purpose of getting the second-class postage the trustees stated that it was maintained by and in the interest of The Mother Church, and—

Mr. Whipple—Now point out where they said that, please.

Mr. Krauthoff—and referred to the Church Manual.

Mr. Streeter—Mr. Krauthoff, may Mr. Dittmore's counsel see that document?

Mr. Krauthoff (reading)—"Were any further evidence needed that The Christian Science Monitor is maintained by and in the interest of a religious organization, it may be found in the Manual of The Mother Church," and so on.

Mr. Whipple—Certainly, but that does not show that the directors are justified in attempting to assert such authority as they have been attempting to assert.

Mr. Streeter—Let me see it, please. (Letter handed by Mr. Krauthoff to Mr. Streeter.)

Mr. Whipple—It adds nothing, if Your Honor please, to what is plainly stated in the bill. We care nothing whatever about it, except for the sake of keeping this record within reasonable proportions, because the issue is not at all as Mr. Krauthoff has stated it here—not, at least, in our conception of it.

Mr. Krauthoff—If Your Honor please—

The Master—One moment. While Mr. Streeter is examining this, wouldn't it be well to wait and see what he has got to say, and then you can answer them both?

Mr. Krauthoff—Certainly.

Mr. Streeter (after a pause)—We have nothing to say, Your Honor.

The Master—You have nothing to say? Then, Mr. Krauthoff, you will proceed, please.

Mr. Krauthoff—The point that we make, if Your Honor please, is—

The Master—Oh, no, I don't want to know the point you make. I want to know what you have to say in reply to Mr. Whipple's objection. I wouldn't go over and state again what

point you make in the bill. We understand that. Now I want to know, how does this bear upon the issue raised by the bill?

Mr. Krauthoff—Well, may I read one clause from the bill?

The Master—If it has not been read—if you think we are in danger of forgetting it, you may read it.

Mr. Krauthoff—I would prefer to read it in view of Mr. Whipple's statement. The bill states that the purposes of the donors of the trust—on Page 33, in Paragraph 18 of the bill—were: "To provide a management and control of the Publishing Society, separate and distinct from the management and control of The Mother Church." That is the allegation in the bill.

Mr. Streeter—What is the page of that?

Mr. Krauthoff—Page 38, Paragraph 18. This document which we offer in evidence has the distinct statement that The Christian Science Monitor is maintained by and in the interest of a religious organization, namely, The Mother Church.

Mr. Whipple—Where does it say that?

Mr. Krauthoff—It goes on and says: "It may be found in the Manual of The Mother Church."

Mr. Whipple—Then you ought to have some way provided of putting in oral quotation marks.

Mr. Krauthoff—I am now stating—I am not reading the document in evidence.

The Master—Why do we need the whole document in order to get that part of it in? There must be a great deal in the document that nobody cares about.

Mr. Krauthoff—Well, if Your Honor please—

The Master—Can't you agree that a certain answer was made to a certain question?

Mr. Krauthoff—In my judgment, the question cannot be accurately understood without taking the whole letter. It refers to the law under which it is being done; it states the argument of the trustees as to what they are; it quotes from the Church Manual in support of their right to reduced postage; it quotes from Mary Baker Eddy, and we offer the document as a whole document. I have no desire to have it made a part of the record if that is meant in the sense of spreading it in full; but as an exhibit, to be here for the purpose of referring to any and every part of it I offer the document.

Mr. Whipple—Now, if Your Honor please, if it will be satisfactory to distinguished counsel, I would offer this suggestion: the point I have in mind is more economy of printing and type-writing than economy of speech on the part of Mr. Krauthoff or other counsel. Therefore let it be marked, if you please, as an exhibit, with the

understanding that it shall not be printed; but it may be read by Mr. Krauthoff to Your Honor, and I will ask him to point out then, when he does read it, the particular things that he thinks sustain any such thing as he has been saying to Your Honor, because it seems to us distinctly to show the other thing. And perhaps I may have the privilege of pointing out the other thing that it really does show.

Mr. Krauthoff—That is the reason that I wanted to offer it in its entirety.

Mr. Whipple—All right.

The Master—Mark it; let us get on.

Mr. Krauthoff—Now I inquired for your files on the election of Mr. Merritt as trustee—

Mr. Whipple—Aren't you going to read this?

Mr. Krauthoff—Oh, I will be very glad to.

Mr. Whipple—You did not read it, but I simply said I did not want to prevent your reading it, I only wanted to prevent the expense of its being printed, so I thought I did not want to deprive you of any privilege or right that you had.

Mr. Krauthoff—I have no desire to read it in full at this time, if Your Honor please. At the argument we will call your attention to such parts of it as we think are pertinent.

Mr. Streeter—Well, now—

Mr. Whipple—You don't want to read any part of it now that you think sustains this suggestion?

Mr. Krauthoff—I think all of it does. I will read all of it.

Mr. Whipple—Suit yourself, Mr. Krauthoff. I merely want to give you the opportunity to make intelligent your contention.

The Master—Now, Mr. Streeter.

Mr. Streeter—If Your Honor please, this record seems to be extending beyond all reason, so far as the expense is concerned. I may remind Your Honor that, as representing Mr. Dittmore, we are not in the position of our rich opponents. The directors, having, I am told, \$1,000,000 cash balance in the bank, and the trustees with their large resources, can very well have all this stuff printed; but so far as Mr. Dittmore is concerned, he has to depend upon his own somewhat small resources and the resources of his friends. I want to make a protest at a proper time against extending this record at such enormous expense, so far as Mr. Dittmore is concerned. At the same time I do not want to undertake to keep out anything that ought to be put in here, and the arrangement that is already made is satisfactory to us, providing Mr. Krauthoff will furnish us a copy of this letter. This may be marked as an exhibit and not be printed, but he to furnish us a copy of it so that we shall have it, and then, not at the argument but before the argument—

Mr. Whipple—General Streeter, we will furnish you a copy now.

Mr. Streeter (continuing)—before the case is closed, Mr. Krauthoff, and Mr. Whipple, if there is anything in here that he wants, shall call attention on the record to what they propose to discuss. That will protect the rights of everybody, won't it, Mr. Thompson?

Mr. Thompson—It seems to me so.

The Master—You now have a copy?

Mr. Streeter—Mr. Whipple is going to give me a copy. Here is your document (returning paper to Mr. Whipple). We have a copy, and the understanding will be that it will be printed but that we are to be informed before this hearing closes what proportion of this unprinted document is to be relied on in argument by anybody.

Mr. Thompson—And all similar documents

Mr. Streeter—And all similar documents, of course, if there are others not printed.

Mr. Krauthoff—If Your Honor please, this letter has just been handed to me, and I will do this: at 2 o'clock I will ask the permission of the Court to read into the record the parts of it upon which I rely.

The Master—That ought to be satisfactory, I think.

Mr. Streeter—Perfectly satisfactory to us.

[The letter above referred to, being a communication from the trustees to Third Assistant Postmaster-General dated Dec. 7, 1918, is marked Exhibit 72.]

Mr. Krauthoff—I may keep this for the present, Mr. Whipple?

Mr. Whipple—Oh, certainly.

Mr. Streeter—Now, what has become of the tax returns? Have those slid out of sight, or are they in?

Mr. Whipple—Not permanently, because we are going to put them in.

Mr. Streeter—Oh, yes.

Mr. Whipple—Mr. Krauthoff has laid them aside temporarily.

Mr. Krauthoff—Now the Merritt correspondence?

Mr. Whipple—I hand you a copy of a letter dated Jan. 5, 1917, addressed to The Christian Science Board of Directors by the secretary of the Board of Trustees.

[Marked Exhibit 73.]

Mr. Whipple—The next is an original letter of Charles E. Jarvis, corresponding secretary of the Board of Directors, to Mr. Eustace, secretary of the trustees, dated Jan. 5, 1917.

[Marked Exhibit 74.]

Mr. Whipple—The next is a copy of a letter from the secretary of the Board of Trustees to The Christian Science Board of Directors, dated Jan. 10, 1917, bearing the stamp: "Approved Jan. 10, 1917, by the Board of Directors."

[Marked Exhibit 75.]

Mr. Krauthoff—Now, we offer in evidence Exhibit 73.



[Exhibit 73]

"Jan. 5, 1917.

"The Christian Science Board of Directors,

"Boston, Massachusetts.

"Dear Friends:

"Mr. Thomas W. Hatten has informed the Board of Trustees that he has decided to resign his office of trustee, his resignation to take effect February the first, 1917.

"The remaining members of the board have interviewed Mr. Edward Merritt of Cleveland and feel that he is just the man for the office, and he is willing to serve on the Board of Trustees. They have therefore decided to fill the vacancy by electing Mr. Merritt a member of the Board of Trustees, but first would like to know if the Board of Directors knows any reason adverse to Mr. Merritt's election.

"Thanking you for as early a reply as possible,

"Very sincerely yours,

"BOARD OF TRUSTEES,

"Secy."

Q. (By Mr. Krauthoff.) On that date, Mr. Eustace, Jan. 5, 1917, you were secretary of the board? A. I was, yes.

[Mr. Krauthoff also reads Exhibit 74 and Exhibit 75, as follows:]

[Exhibit 74]

"January 5, 1917.

"Mr. Herbert W. Eustace, Secretary,

"Trustee of The Christian Science Publishing Society,

"Boston, Massachusetts.

"Dear Mr. Eustace:

"I am instructed by The Christian Science Board of Directors to say in reply to your letter of even date advising the board of your intention to elect Mr. Edward A. Merritt of Cleveland to fill the vacancy on your board caused by the resignation of Mr. Thomas W. Hatten, that, not only have the directors no objection to the election of Mr. Merritt, but they feel that he will be a distinct addition to our Cause at headquarters.

"Sincerely yours,

(Signed) "CHAS. E. JARVIS,

"Corresponding Secretary for The Christian Science Board of Directors."

[Exhibit 75]

"January 10th, 1917.

"The Christian Science Board of Directors,

"Boston, Massachusetts.

"Dear Friends:

"In acknowledging your letter of January 5th, in reply to ours of the same date, we are glad to advise you of the election on Saturday, January 6th, of Mr. Edward A. Merritt of Cleveland, as a member of the Board of Trustees and of his acceptance of said office to take effect Feb. 1st, 1917.

"Very sincerely yours,

"BOARD OF TRUSTEES,

"Secy."

Mr. Krauthoff—In this connection, if Your Honor please, we desire to point out that Exhibit 74, being the letter from the Board of Directors to the trustees, is stamped "Approved, Jan. 6, 1917, by the Board of Trustees." The answer, under date of Jan. 10, 1917, has stamped on it "Approved, January 10, 1917, by the Board of Trustees."

Q. Mr. Eustace, Mr. Thompson asked you something about the expense of cable tolls from London in the office of The Monitor, and you stated that you had instructed your editor to cable his editorials? A. Yes; if anything of sufficient importance arose to not hesitate to cable his editorials, or anything else.

Q. And who is the editor of The Monitor? A. Mr. Frederick Dixon.

Q. Was he in London at the time? A. He was in London. Of course he was in Boston when we gave him those instructions before he went over.

Q. I mean with respect to the time of these cable tolls. A. Yes, he was.

Q. You stated something about reports being secured from the employees of the Publishing Society by the directors. Did you refer to any particular director, or what director procured those reports?

Mr. Whipple—Why, if you will pardon me, what he said was that he had known that these reports were being secured today for the first time—

The Witness—No.

Mr. Whipple—Or, at least, since the suit was brought.

Mr. Krauthoff—I misunderstood him.

Mr. Whipple—And spoke of it as a proceeding on the part of the directors with which he was disgusted, that they should be meddling around among the employees of the Publishing Society without the trustees knowing it.

Q. Let me get that quite clear, Mr. Eustace. What report did you refer to in your testimony? A. The calling in of employees, especially in the editorial department, before the Board of Directors, and talking to them, and also Mr. Dittmore's activity with regard to employees of the Publishing Society in the editorial department, also.

Q. Now, when did the activities of Mr. Dittmore take place? A. Why, I suppose it was all taking place at the same time. It came on us as an absolute surprise, and seemed to be a regular conspiracy to undermine The Monitor.

Q. When did you first learn of Mr. Dittmore's activities? A. Since this suit, I think, was filed. It was all at the same time.

Q. Have you any knowledge at first hand of these activities? A. Only the knowledge that we have received resignations from certain employees, and their appearance—they gave us testimony as to some of the things that had been done.

Q. And this calling by the Board of

Directors of the employees of the Publishing Society, as you term them—the editorial department—before the directors, when did that occur? A. I suppose at the same time, during the absence of the editor in Europe.

Mr. Whipple—Mr. Krauthoff, perhaps it will help you to know that the record of all this business is in your directors' records. You do not need to ask at second hand about it.

Mr. Krauthoff—Well, I was asking Mr. Eustace what he was testifying about.

Mr. Whipple—Well, he wasn't testifying; he was responding to Mr. Thompson's statements—

Mr. Krauthoff—I thought all of his statements were testimony.

Mr. Whipple—And his knowledge.

Mr. Thompson—In so far as he undertakes under your guidance, Mr. Krauthoff, to say that he knows that this was done by Mr. Dittmore, I should move to have it struck out, because as a matter of fact, the record shows it was a unanimous vote of the Board of Directors, so that Mr. Dittmore is no more responsible for it than anybody else.

Mr. Whipple—Apparently, as I understand, Mr. Dittmore was making the inquiries, but I think the Board of Directors' records, which we got at last night for the first time, show that the conspiracy, as it has been suggested, was hatched in the Board of Directors.

Q. Now, Mr. Eustace, coming back to the evidence, you spoke of The Monitor deficit, and you identified certain figures here as being, as you understand it, relatively correct. The Monitor is a part of the business of the Publishing Society? A. It is, absolutely.

Q. And in order to ascertain what it costs to publish The Monitor a somewhat elaborate accounting would be necessary, would it not? A. Yes; and furthermore, that deficit is a purely fictitious deficit from our standpoint. From the standpoint of the trustees, it is really not a deficit at all, in one sense of the word, because we take the business as a whole, and it would be impossible to determine, without a most elaborate system, as far as I am aware of bookkeeping, and know exactly what The Monitor was doing. And, if it is right, right here I would like to say, in connection with that deficit, that The Monitor was started at the request of Mrs. Eddy, without one cent of capital, and that deficit is therefore not any deficit at all; it is simply money that we have put in from our other periodicals, into establishing The Monitor of today.

Mr. Whipple—And its plant? Does it have any plant for printing it?

The Witness—Yes; plant and everything.

Mr. Whipple—Do these figures represent the cost of the plant?

The Witness—They do. They represent everything that has gone into

The Monitor, to make The Christian Science Monitor what it is today.

Mr. Krauthoff—May I suggest, if Your Honor please, that Mr. Whipple defer his questions until I am entirely through, because each of his questions opens a new line of inquiry for me and makes me talk longer.

Mr. Whipple—That is why I do it.

Q. Now, Mr. Eustace, in establishing a paper of the character of The Monitor, what is the practical experience in the earlier years of its history? A. Why, I think that it costs millions to do such a thing.

Mr. Thompson—Just a moment. If Your Honor please, if this is offered against Mr. Dittemore we object to it, because it is not shown that Mr. Eustace has ever been in the publishing business outside of The Christian Science Publishing Society, and if we are going to put him on as an expert on what it costs to start a newspaper, I think he, himself, would say perhaps he might not be wholly qualified to act as an expert on that topic.

The Witness—Modesty ought to make me say so, anyway.

Mr. Thompson—Therefore if you will be kind enough when you are urged to go into the realm of imagination to check counsel, I won't object.

The Witness—I will.

Mr. Whipple—If Your Honor please, that matter appeals to me in a different aspect, and for that reason we do not object to the question, but ask to have it allowed. The administration by the trustees of their great trust is involved in this hearing; and if as a result of Mr. Thompson's cross-examination there is any evidence that the building up of The Monitor has been an unwise piece of business administration, why, we want to show that these trustees at least have done their best; that they have acted in accordance with what they conceived to be good business administration. It has appeared from the testimony that it was at the specific request of Mrs. Eddy that The Monitor was started. Furthermore, we shall want to put questions ourselves to show that the enterprise of The Monitor is not to be judged by any pecuniary returns, because in accomplishing the great purpose of the trust it is one of the most effective agencies and of a benefit to the movement which is not easy to estimate. I mean, aside from any financial loss, if there really is any financial loss, in the establishment of the paper.

Mr. Thompson—I do not essentially differ from Mr. Whipple in regard to this matter. I offered, as I distinctly stated, this evidence about the deficit, not as against the trustees in the controversy between themselves and the directors, from which the directors have ejected us by expelling us from the board, or trying to expel us, but rather to show or disprove allegations of the directors in their bill in the case of Dittemore v. Dickey; that when we undertook to comment on what ap-

peared to be a deficit in the running of The Monitor, on figures furnished by the trustees, we were actuated, not by an honest desire to do our duty, but by malice and a desire to build up a personal following, as it is stated, and other improper and ulterior purposes. The evidence was offered by me merely to show that a rational man in the position of Mr. Dittemore might rationally, sincerely, and honestly criticize and hope to improve the financial situation of The Monitor by reducing the deficit. Now I am a little surprised to see Mr. Krauthoff take up that testimony and endeavor to show that either that deposit did not exist or is justifiable. It would seem that that was Mr. Whipple's point rather than Mr. Krauthoff's point to make in this case, and would indicate that the directors are not very anxious to investigate the affairs of The Monitor, which is what we have always contended.

Mr. Whipple—I thought that was my job, but Mr. Krauthoff, anything that he does—and he has done a great deal to help me in the discharge of my job—is welcomed cordially.

Mr. Krauthoff—If Your Honor please, inasmuch as Mr. Thompson and Mr. Whipple have been good enough to refer to me, it is proper that I should state what it is that I am trying to do at the present moment. Mr. Dittemore claims that the directors of The Mother Church have acted improperly in that a large deficit, as Mr. Dittemore claims, resulted from the operation of The Monitor, and in that the other directors of The Mother Church refused to take cognizance of any such deficit. Now, I am trying to find out whether there was a deficit, and how it arose, and what there is to be done about it. I am not trying to prove that there is or that there was a deficit, or anything of that kind. I was trying to find out the truth about it, whatever way it operates.

Mr. Thompson—I cannot let that statement of our position go by unchallenged. Mr. Dittemore, for present purposes—

The Master—No one supposed you agreed to it. It does not seem to me we ought to listen to statements of that kind, and counter-statements, all through the case.

Mr. Thompson—I hope not, Your Honor; and if Your Honor feels that I ought not to reply to that, I will not, but I do not think there ought to be any confusion between objection to expelling a man because he differs with you in opinion and the question which of the two opinions is right. There is a vast difference between the two things.

The Master—You have stated the purpose for which you offered the evidence, and your view of it here, and there is no fault to be found with that.

Q. Now, Mr. Eustace, do you know of any fear in which the directors of The Mother Church stand with respect

to the trustees of the Publishing Society?

Mr. Thompson—I pray Your Honor's judgment of that question, if that is offered against Mr. Dittemore.

The Master—We haven't got the question yet.

Mr. Thompson—I thought he had finished it.

The Master—Complete the question, please, Mr. Krauthoff.

Q. Do you know of any fear in which the directors of The Mother Church stand with respect to the trustees of the Publishing Society?

Mr. Thompson—I pray Your Honor's judgment, as against Mr. Dittemore.

Mr. Krauthoff—The allegation of the Dittemore bill, if Your Honor please, is that the directors have failed to take any effective action in the premises, "one reason for such opposition being that they stood in fear of the trustees of the Publishing Society."

Mr. Thompson—You don't ask that. You have asked Mr. Eustace. How does he know whether the directors were afraid of Mr. Dixon or not?

Mr. Krauthoff—I said in fear of the trustees of the Publishing Society.

Mr. Thompson—How does he know whether the directors were afraid of him?

The Master—I do not see how you can get at the directors' state of mind from this witness.

Mr. Krauthoff—This is the man of whom they are supposed to be in fear.

Mr. Thompson—I think they might well be.

The Master—It does not seem to me that that alters the case.

Mr. Krauthoff—It would seem that he would know if there were any such state of fear in his dealings with them; they have been rather elaborate.

The Master—It does not seem so to me.

Q. Do you know of any negotiations for any collusive settlement of this controversy between the trustees and the directors?

Mr. Thompson—I pray Your Honor's judgment, against Mr. Dittemore. I do not care about Mr. Whipple.

Mr. Krauthoff—The bill alleges, if Your Honor please, that Mr. Dittemore has reason to believe that a collusive settlement is about to be taken up between the directors and the trustees, and that certain private dealings are on hand between the directors and the trustees.

Mr. Whipple—There is in the Dittemore suit an allegation that he has reason to believe that a collusive settlement is likely to be made between the trustees and the directors in the suit in which the trustees are the plaintiffs. We are not in that suit at all, but of course if our people have entered into any negotiations for a collusive settlement they are not fit to be trustees, and it is only in that aspect that I should be very glad to have that question answered.

Mr. Thompson—Our objection to

that word "collusive" is that it is a conclusion. If negotiations for a settlement are pending, that fact may be inquired about. Mr. Eustace's opinion as to whether any such negotiations are collusive or not is a matter for Your Honor and not for him or anybody else. I don't think you can put a conclusion like that to a witness. He is no authority on the subject, and I don't think he would pretend to be.

The Master—Why can't you ask him if there have been any negotiations regarding settlement, and we will judge for ourselves whether they are collusive or not.

Mr. Krauthoff—All right. I was using Mr. Thompson's language when I said "collusive settlement."

Mr. Streeter—Your Honor, it has already appeared that on Feb. 3, Dickey and Merritt and Neal did enter into a compromise, and they wrote all over the world that they had settled, and one of the letters has been—

The Master—I think it already appears. Is there anything further that needs to be brought out?

Q. Mr. Eustace, do you know of any efforts of settlement or any negotiations for settlement or adjustment, whatever it may be called, as between the directors and the trustees which have not been disclosed in your testimony? A. None whatever.

The Master—He says "none whatever"?

Mr. Krauthoff—He said "none whatever." And that is all, if Your Honor please.

#### Re-Direct Examination

Q. (By Mr. Whipple.) Mr. Eustace, while there have been, as you say, nothing that could be called negotiations for settlement since that time, I want to ask whether there have been overtures to the Board of Trustees purporting to come from the directors, as to whether some method could not be devised to have this controversy adjusted without a full hearing before the Court? A. Various friends of both boards have spoken to us, and I suppose have spoken to the Board of Directors, but—

Q. And have you or have the trustees stated always just your position and what could be done in that respect? A. Always.

Q. Have you concealed from anyone the terms upon which the trustees would make an adjustment? A. Never.

Q. I will ask whether it has been in substance that the Board of Trustees would do or assent to anything which enabled them properly to perform the trust upon their own responsibility, which was committed to them by Mrs. Eddy, the Leader of your movement? A. Those are the terms that we have always stood on.

Q. That is, simply that her great trust on the Board of Trustees should not be betrayed? A. That we must be faithful to our trust always.

Q. And under the terms of the trust? A. Under the terms—

Q. As she declared them? A. As she declared them.

Q. And anything short of that you would not listen to? A. We would not listen to for one instant.

Q. And anything that would give you the power to carry out that great trust as she laid it out—you would assent to anything else that they desired? A. Yes.

Q. I mean, you would make any concession? A. Anything right.

Q. Now, while it is perhaps out of order, something has been said about the announcement of this adjustment that you thought had been reached in February. My attention has been called to the April number of The Christian Science Journal, on page 41—a Special Announcement. Was that put out by the authority both of the directors and the trustees? A. That first of all appeared, I think, three times in the Sentinel preceding that April number. It was jointly agreed to by the two boards.

Q. I should have perhaps called attention first to the issue of the Sentinel of Feb. 22, 1919. Was that where it was first published? A. That was the first one.

Mr. Whipple—May I show it to Your Honor? It is the same in both papers. Attention has already been called to its inclusion under the heading, "Instructions regarding advertisements" in the July number. And it appears in the back of this April number of the Journal. Would it meet Your Honor's approval if I read it into the record rather than to have it marked as an exhibit?

Mr. Streeter—It seems as though that would be the best way. It is brief.

The Master—I hear no objection.

Mr. Whipple (Reading from page 41 of The Christian Science Journal for April, 1919)—

#### "Special Announcement

"The Christian Science Board of Directors of The Mother Church, with the concurrence of the Board of Trustees of The Christian Science Publishing Society, announces that from this date all new applications of branch churches and societies, practitioners, and nurses, for advertisement in The Christian Science Journal, Der Herold der Christian Science, or Le Héraut de Christian Science, shall be made for recognition directly to The Christian Science Board of Directors of The Mother Church.

"The Christian Science Publishing Society has accordingly adopted a rule that only those cards which have first been approved by the Board of Directors of The Mother Church will from this date be accepted for advertisement in the Christian Science periodicals. Please, therefore, in future address all initial correspondence on this point to The First Church of Christ, Scientist, Department of Branches and Practitioners, 236 Huntington Avenue, Back Bay, Boston, Mass.

"Correspondence relative to payment for advertisements, renewal of cards, or changes of address should be sent as heretofore to The Christian Science Publishing Society."

The Master—What is the date?

Mr. Whipple—It is not dated, but the first publication of it was Feb. 22.

The Master—How is anybody going to tell what the words "from this date" mean?

Mr. Whipple—Simply by looking at the date of the paper in which it is published.

The Master—What is that?

Mr. Whipple—April, 1919, this is.

The Master—April what?

Mr. Whipple—It is The Christian Science Journal.

The Master—What day in April?

Mr. Whipple—No day is mentioned.

The Master—Then there is no date?

Mr. Whipple—No, Your Honor, except the month. The Christian Science Sentinel, in which it was first published, was on Feb. 22, 1919.

The Master—What do counsel understand "from this date" means there—April or February, or what?

Mr. Whipple—Well, we have always understood that whenever anybody saw the notice they would then send in their applications to the directors instead of to the trustees. We did not regard the date at the time we made the agreement as of any particular importance, because it was no financial gain, one way or the other. If they came to the Board of Trustees instead of to the directors the trustees turned them over to the directors. That was all that it amounted to.

The Master—It seems as if in publishing an announcement like that, using the words "from this date," some definite date should be stated.

Mr. Whipple—It wasn't very definite, but it was understood between the parties that the subject matter, after the date of the agreement between the parties, should be dealt with by the directors instead of by the trustees.

Mr. Streeter—Let me ask you, brother Whipple—was Feb. 22 the first date at which this announcement was published?

Mr. Whipple—I so understand it.

Q. Now, Mr. Eustace, prior to this arrangement which was reached on Feb. 3, the applications (new applications) for branch churches and societies—that is, Christian Science Societies—practitioners and nurses, for advertisement in your publications, had been all dealt with by the Board of Trustees? A. Always, except for two weeks or three weeks once.

Q. Well, now, always as long as you had been a member of the board, had they not? A. Always, yes.

Q. That is, in what distinguished counsel have called an uninterrupted practice? A. An uninterrupted practice.

Mr. Whipple—All the time you have been there. Now you spoke of a little interruption that you find in the rec-

ords. I would like to offer, if Your Honor please, the correspondence on that subject. I have a copy of a letter to the Board of Directors dated Jan. 14, 1908, in which the Board of Directors who had—

The Master—Pardon me, Mr. Whipple. Have you got the whole correspondence right there?

Mr. Whipple—Yes, Your Honor.

The Master—If you are going to offer it wouldn't it be well to show it to counsel on the other side?

Mr. Whipple—I was about to. I wanted to identify it.

The Master—Why not get it all together so that we can deal with it at once?

Mr. Krauthoff—We have no objection to that.

Mr. Whipple—I will first read the copy of the letter, dated Jan. 14, 1908. (Reading)—

[Copy of Exhibit 76.]

“Jan. 14th, 1908.

“To the Christian Science Board of Directors,

“Dear Brethren,

“We have today unanimously voted not to publish hereafter in the directory of the Journal any notices of churches or societies until the question of their recognition has been decided in each case by the Board of Directors. We therefore send to you applications which we have on hand, for your authorization to publish in the Journal directory.

“Since the Board of Trustees was organized this responsibility has been accepted by them, but a close study of the Manual shows that there is no warrant for placing this responsibility upon the trustees. If you should desire further information in this connection we shall be glad to furnish it.

“Yours fraternally,

“The Board of Trustees of The Christian Science Publishing Society.”

[The copy of letter read by Mr. Whipple, being a letter from the Board of Trustees of The Christian Science Publishing Society to The Christian Science Board of Directors, dated Jan. 14, 1908, is marked Exhibit 76.]

Q. Now, after that for about two weeks you said the directors did perform the duties there referred to? A. Two or three weeks, I think, yes.

Q. At the request of the Board of Trustees? A. I think that is as it was.

Mr. Krauthoff—We object to that question.

Q. Well, this is the request following upon this letter? A. Following upon that letter.

The Master—Why not leave the letter, then, together with the fact that thereafter the trustees did act—

Mr. Whipple—I did, Your Honor. I said—following upon this letter.

Q. And your records show that up to that time uninterruptedly the trustees had always done it from the beginning? A. They do.

Mr. Whipple—I offer now the letter of Jan. 25, which Your Honor will see is 11 days later.

The Master—This is more of the same correspondence?

Mr. Whipple—Yes, Your Honor—1908. On the same subject matter. (Reading):

[Copy of Exhibit 77.]

“The First Church of Christ, Scientist, “Falmouth and Norway Streets, “Boston, Massachusetts.

“Jan. 25, 1908.

“Board of Trustees of “The Christian Science Publishing Society,

“250 Huntington Avenue,

“Boston, Massachusetts.

“Brethren:

“In the absence of a by-law which sets forth the requirements for a practitioner's card to appear in The Christian Science Journal, the directors believe it is the province of the Board of Trustees to decide the conditions under which cards shall be published in The Christian Science Journal. They think the instructions on the back of the application blanks are very good, as are also those on the back of the applications for church notices.

“Sincerely yours,

(Signed) “WILLIAM B. JOHNSON, “Secretary for The Christian Science Board of Directors.”

[The letter read by Mr. Whipple, being a copy of letter from William B. Johnson, secretary for The Christian Science Board of Directors, to the Board of Trustees of The Christian Science Publishing Society, dated Jan. 25, 1908, is marked Exhibit 77.]

Q. Then from that date does it appear in your records that the trustees resumed what they had been doing? A. It does—that there seems nothing to indicate anything else.

Q. And continuously did it from that time up to the time of your compromise agreement with the present Board of Directors in February of this year? A. That is correct.

Mr. Krauthoff — If Your Honor please, we object to the term “compromise agreement.”

Mr. Whipple — Agreement, then. Strike out the word “compromise.” I should not suppose you would object to what appears in your own records.

Q. So that as you stated a moment ago, with the exception of those 11 days, the work of dealing with the cards of the churches and societies and nurses and practitioners has always been done by the trustees and not by the directors? A. It has, as far as I know.

Q. And from the very beginning? A. From the beginning as far as I know.

Q. And last February at the request of the directors and as a part of the agreement—as we claim compromise agreement—the trustees gave it up to the directors? A. We did.

Q. Have they ever done it since? A. No.

Q. You are still doing it ever since? A. No. I beg your pardon. I thought you meant—

Q. Oh, they are doing it? A. We approve everything.

Q. Beg pardon. A. The trustees still approve everything before accepting the advertisement.

Q. It goes to the directors? A. It goes to the directors and they do the work on it.

Q. Now, prior to the time when the directors took that work over, with the assent of the Board of Trustees, did the trustees confer with the directors with regard to those questions when they arose—that is, what cards you should put in—both of practitioners and— A. Not at all.

Q. Were any objections made by the directors as to the manner in which that work was administered by the Board of Trustees? A. Occasionally in conferences they expressed the—they indicated that they thought we were pretty strict sometimes.

Q. Other than your being somewhat strict, did they criticize in any way the manner in which you administered that work? A. Not at all that I know of.

Q. I will ask whether or not you gave heed to suggestions which you did receive from the directors on any of those subjects matter? A. We were always glad to give heed to any of their suggestions.

Q. Well, that leads me to ask you the general question: Attention was called throughout the examination by Mr. Krauthoff to the multiplied number of instances in which the trustees seemed to have conferred with the Board of Directors in the administration of their own, the trustees', duties. You noticed that, did you not? A. Yes.

Q. I will ask you whether or not that was generally your custom, to confer with the directors upon matters which affected the general lines of policy? A. As far as our records show we had one meeting with them, I think, in 1913, two in 1914, and our records apparently show no meeting in 1916.

Q. Well, did you have conferences with the individuals? A. No, not—

Q. None at all? A. Not that I remember.

Q. Well, there is some correspondence to which you have referred? A. There is some correspondence, I think.

Q. Why did you confer with them at all? A. I forget what the particular point was.

Q. I said why—not what about. A. I suppose to cooperate more closely.

Q. Well, you say you suppose so. Have you any doubt about it? A. No, I have no doubt.

Q. Did you feel it a duty, administering this great trust which was for the same purposes as their trust, to cooperate with them? A. Absolutely a duty.

Q. And in every way that you possibly could? A. In every possible way.

Q. Do you remember an instance in which you have ever failed to cooperate with the directors upon their request, upon any actual circumstance, upon any actual policy to be adopted? A. Not any of any kind that I know of.

Q. Have you disagreed with them in any respect as to what should be done in a particular instance or under a particular set of circumstances in the administration of your own trust? A. I think I can say no, in a general way.

Q. In other words, have you differed with them in any way except in declining to sign a paper which they asked you to sign saying that in the future you would do whatever they said and not what you thought best in the administration of your trust? A. No.

Mr. Krauthoff—Now, if Your Honor please, we object to that question. The paper does not state that at all.

Mr. Whipple—Well, all right.

Q. Nothing except signing the paper which probably says what Mr. Krauthoff has in mind—except refusing to sign that paper? A. Well, that which led up to it; the various correspondence.

Q. Or anything further than from your point of view declining to abdicate your trust? A. That is exactly the term—to abdicate our trust, which we would not do.

Q. Now, referring for a moment to this matter of the administration of The Monitor, I understood you to say, and I will ask if it is a fact, that The Monitor was instituted at the personal request of Mrs. Eddy? A. It was, at her personal request.

Q. Did she outline the character of the paper that she desired published?

Mr. Krauthoff—One moment. The witness on direct examination stated that he never spoke to Mrs. Eddy, and whatever Mrs. Eddy did of which he knows is in writing.

Q. Did you find this paper in the archives of the Board of Trustees (holding up a paper)? A. I did; I can see through it from the back; I recognize it.

Mr. Streeter—What is the date of that?

Mr. Whipple—Aug. 8, 1908.

[Paper shown to counsel.]

Mr. Whipple—I am going to ask that this paper, which the Board of Trustees deem not only a paper of great importance, but of a peculiar sacredness, be not marked, and that we have marked instead a typewritten copy of it, but I will read it. "Box G, Brookline, Massachusetts."—under the crest which was the crest that Mrs. Eddy used, as you understand it, on her paper?

The Witness—I believe so.

Mr. Whipple (Reading):

"Aug. 8, 1908.

"Christian Science Board of Trustees, Boston, Massachusetts.

"Beloved Students:

"It is my request that you start a daily newspaper at once, and call it

The Christian Science Monitor. Let there be no delay. The Cause demands that it be issued now.

"You may consult with the Board of Directors, I have notified them of my intention.

"Lovingly yours,

"Mary B. G. Eddy."

The words, "Lovingly yours, Mary B. G. Eddy," being in what I think there is no doubt is her original handwriting.

Mr. Streeter—There is no doubt about it.

[Copy of above letter is marked Exhibit 78, R. J. M.]

Mr. Whipple—I desire now to offer a letter from Mr. C. A. Frye, in his handwriting, from Pleasant View, Concord, New Hampshire, dated March 12, 1901, addressed to Mr. McKenzie, who was at that time one of the Board of Trustees. It has to do with the Bible Lesson Committee. Do you want to look at it (showing letter to Mr. Krauthoff)? I will have the copy of it marked. Where it is not in Mrs. Eddy's handwriting it comes directly as a message from her through a gentleman who was at that time her private secretary.

"Pleasant View, Concord N. H.,  
"March 12, 1901."

Q. Pleasant View was at that time the residence of Mrs. Eddy? A. I understand so, yes.

Mr. Whipple (Reading):

"Dear Bro. McKenzie:

"In reply to your letters of recent date, Mother requests me to say, at the time she sent in the name of Mr. Willis for a member of Bible Lesson Committee she did not remember that said Com. [Committee]"—

"Was" is evidently left out—

"elected by trustees."

[A copy of above letter is marked Exhibit 79, R. J. M.]

Q. You were asked in cross-examination whether you claimed authority by the Board of Trustees to select the Bible Lesson Committee, which writes up the sermons which are read in all the churches throughout Christendom—Christian Science churches, were you not? A. I was.

Q. And you stated that that was a part of the duty of the trustees? A. Was specifically stated in the Deed of Trust to be such.

Q. I noticed that Mr. Krauthoff and some others showed some signs of disbelief and some merriment when you stated that. Is that the message directly from Mrs. Eddy herself—that the trustees shall be responsible for those who are to prepare the sermons read in all her churches throughout the land?

Mr. Krauthoff—I object to that. It speaks for itself.

Mr. Whipple—Yes, it does speak for itself, better than anything I can say about it. But I should think that you would feel that you ought to do something about the attitude you took in regard to it, when you find that it is not only in the Deed of Trust but in this letter, although more limited.

Mr. Krauthoff—That attitude will be taken at the proper time.

Mr. Whipple—I wish you had kept it for the proper time.

Now, I wish to offer, if Your Honor please, two telegrams which are in the archives of the Board of Trustees. Here is one, which is probably a copy of one sent to the Rev. Mary Baker Eddy, Pleasant View, Concord, New Hampshire, dated Feb. 2, 1898; and this other is a copy of the reply. (Handing both papers to Mr. Krauthoff.) The first telegram from Mr. McKenzie to Mrs. Eddy, dated Feb. 2, 1898, reads as follows:

"Telegram received; office of assistant publisher was abolished. We can only establish new office and appoint incumbent. Shall we do so?"

(Signed) "Neal McKenzie."

[A copy of the foregoing telegram is marked Exhibit 80, R. J. M.]

Mr. Whipple—The answer reads as follows:

"Concord, New Hampshire, Feb. 4.

"W. D. McKenzie,  
"99 Falmouth Street,  
"Boston.

"She cannot further direct that business. Follow Deed of Trust. Has Mr. Bates handed it and mortgage to you?"

(Signed) "C. A. Frye."

[A copy of the foregoing telegram is marked Exhibit 81, R. J. M.]

Mr. Whipple—We will keep the originals, if we may, and let you take the copies.

Q. Have you had in mind and tried to follow that direction from Mrs. Eddy in regard to the question of editorships, as well as other matters connected with your press?

Mr. Krauthoff—May I ask to have the question read? (Question read.) That is the question, if Your Honor please, which relates to the whole case, and we object to it.

Mr. Whipple—Why, you say that these gentlemen have not been behaving in accordance with Mrs. Eddy's direction, and here is Mrs. Eddy's direction, "Follow the trust."

Mr. Krauthoff—We object—

Mr. Whipple—Isn't that just as sacred as any declaration as you have offered with regard to Mrs. Eddy's statements?—"Follow the trust"?

Mr. Krauthoff—We object, if Your Honor please, to what Mr. Eustace had in mind and as to what Mr. Eustace has said and done. The evidence is exhaustive on that subject.

The Master—I think he may answer.

A. I certainly have had in mind the spirit of that always.

Q. That is, Mrs. Eddy's own direction outside the trust itself? A. Her own.

Mr. Whipple—That is all.

Mr. Streeter—Mr. Whipple—

Mr. Whipple—If Your Honor please, I have a number of questions which have been suggested by the cross-examination. I would like to suspend for five minutes, because I am re-

requested to go before Mr. Justice Pierce on a matter for a few minutes.

Mr. Streeter—Mr. Whipple, before you do suspend, doesn't the telegram of McKenzie of Feb. 2 refer to a telegram received from Mrs. Eddy?

Mr. Whipple—Yes.

Mr. Streeter—Now have you that telegram?

Mr. Whipple—Apparently there was a suggestion about reestablishing the assistant editorship.

Mr. Streeter—Let me see the one of Feb. 2.

[Exhibit 80 handed to Mr. Streeter.]

Mr. Whipple—I will offer this.

Mr. Streeter—Is that the one referred to there?

Mr. Whipple—Oh, yes, no doubt of it. See, it is the same day. You let me just read that, and then I would like to suspend.

This is an earlier telegram:

"Feb. 2, 1898.

"Concord, New Hampshire.

"Rev. W. P. McKenzie, 99 Falmouth Street, Boston, Massachusetts.

"Be conciliatory till you get business into your hands. Papers are returned to him. She says let him be assistant P [publisher] now confidential. C. A. FRYE."

[The above telegram is marked Exhibit 82, R. J. M.]

Mr. Whipple—We may suspend?

The Master—We will suspend, then, a few minutes.

[Recess.]

Q. (By Mr. Whipple.) Reference has been made to certain correspondence in connection with the election of Mr. Merritt to the Board of Trustees. It appears that you wrote the letters? A. I did.

Q. Did you understand that the directors had any authority whatever with regard to the appointment of a trustee? A. None whatever. Mr. Merritt was at that time a lecturer, and in courtesy to the Board of Directors we naturally wrote them and asked them, not that we would not gladly consult with them on any question, whether a trustee or anything else, but not as having any authority whatever in the matter; and that was a matter of courtesy that we wrote to them about.

Q. Were you anxious that any trustee that you selected should be agreeable to and approved by the directors? A. Always, of course.

Q. Or that any editor that you employed should be agreeable to them. A. Absolutely. We wanted it so.

Q. Let me ask you whether you, in all these matters, attempted to comply strictly with the Manual so far as you could carry out the specific terms of the Manual? A. Always, in so far as we could do so.

Q. You said you had a good many meetings with the directors in 1917 and 1918? A. Yes. In 1916 we had I think 19 meetings, and in 1917 19, and in 1918 24, I think it was.

Q. You were shown an unsigned

memorandum dated Nov. 20, 1915. You have the paper in mind? A. Yes.

Mr. Whipple—Have we that exhibit here, Mr. Krauthoff?

Q. Meantime, can you state, without looking at it, what you wanted to state on your cross-examination when you were interrupted? A. With regard to that memorandum?

Q. Yes; how that paper happened to be drawn, what the purpose of its being drawn was. A. Yes.

Q. All right; state it. A. The question of the cards, whether it was the duty or privilege or right of the Board of Directors to pass on them for insertion in the Journal and Herald, had come up with the Board of Trustees, and I said that I would try, from the Manual and the Deed of Trust, to see whether it was possible for them to do that.

Q. For whom? A. For the Board of Directors to do it or not; and I dictated one afternoon to a stenographer just what Mr. Krauthoff read here. I do not think I saw that paper afterwards. I never corrected it until quite a long time afterwards.

Q. Did you correct it? A. Well, I just—in running over it once, I drew my pencil through two or three places that were self-evidently not correct.

Q. When? A. I can't tell you; it was some time afterwards.

Q. Not recently? A. Not in the last few months at all. I don't know when it was. I can't remember anything about it.

Q. Have you the corrected copy? A. I have the copy that I did that with. I made the statement at the time Mr. Krauthoff was questioning me that I made one or two changes in it. I never went through it to change it, to carefully take care of it.

Q. Will you let me take the copy that you did change? Are these red pencil marks your changes? A. Those are just the changes I made in it. There is only one that is of real importance.

Q. It appears that on page 6 in the third line of the first whole paragraph the word "Church" is inserted between the words "Science" and "organization," so that the sentence will read:

"In connection with this point, there is also to be remembered that The Christian Science Board of Directors is the governing power of the Christian Science Church organization." And that correction was made before any controversy came up here? A. Oh, yes.

Q. I mean such as we are now dealing with? A. Yes.

Q. The word "Church" was inserted by you— A. The word "Church" was inserted.

Mr. Whipple—I will call your attention to the other, and ask Your Honor to look at that at the same time.

Mr. Krauthoff—Now, if Your Honor please, we formally object to any

alterations that this witness made in this document. It was a document that he prepared and it speaks for itself.

The Master—Just remind me what the evidence about the document is. It is a little dim in my recollection.

Mr. Krauthoff—Well, it is a document which was delivered to The Christian Science Board of Directors, as this witness says, as a statement of the position of the trustees.

Mr. Whipple—Unfortunately the sworn testimony is a direct contradiction of that. Mr. Eustace testified that he did not deliver it and he did not know how it got into your hands. He said that it was something that he prepared for use which was not complete and which he subsequently corrected, and he was not permitted at that time to bring his corrected copy, and his testimony was that he did not know how you people got hold of it. And you see he has the advantage because he is really testifying under oath.

The Master—That being the fact, if you got his first draft by some means, why shouldn't he be allowed to say what his second was?

Mr. Krauthoff—Well, we have nothing to add to what we have said.

Mr. Whipple—Then on page 7, in the eighth line—

Mr. Krauthoff—Now, if Your Honor please, there is one other question, before Mr. Whipple proceeds. May I inquire of Mr. Eustace when he made those changes?

Mr. Whipple—I have inquired.

The Master—That has been brought out so far as the witness recollects.

Mr. Krauthoff—I did not remember that he stated when he did it.

The Witness—I said I did not know.

The Master—He can't remember.

Mr. Whipple—But he said it was not recently.

Q. Did you speak of months after the original? A. Oh, yes; it was some time after. I did not see the original for—I did not see it to pay any attention to it after it was dictated.

Q. I do not mean, to see the original, because it was what you spoke of as a draft. A. That is all; it was nothing but a draft, never intended for anything else.

Mr. Bates—May I call your attention, Your Honor, to the evidence, which shows that so far as Mr. Eustace stated, these have been made within a few months, and apparently since this dispute arose.

Mr. Whipple—He has specifically stated they were not.

Mr. Bates—And are self-serving corrections, and until we know definitely when they were made I do not think they ought to be allowed in evidence.

Mr. Whipple—He has said specifically that they were not.

Mr. Bates—You have put that into his mouth since.

Mr. Whipple—Oh, no, I did not.

Mr. Bates—If you can fix the time when he made them, all right.

Mr. Whipple—I put all these questions before you or Mr. Krauthoff seemed to arouse yourselves to listen to the evidence at all, and he stated that he could not tell us just when it was, but it was before any of these subjects were put in controversy which are now in controversy.

Mr. Bates—Your Honor, I understood the evidence to be just the contrary—that he could not fix it as being before this time. I am willing to leave it to the record.

The Master—Suppose we let him try now and see what he says about it.

The Witness—I have not the slightest idea when I made those corrections, but it certainly is not this year, and I do not know that it was last year. It may have been sometime last year—I do not know; but it certainly is not this year.

Q. Were they made at all with reference to these proceedings, as the Governor has intimated, as self-serving declarations, to bring in here?  
A. Nothing to do with this suit.

Q. Nothing whatever? A. I just simply ran through it, and I drew my pencil through what seemed to me self-evident things. It is not made for any purpose, anyway.

The Master—The point is to find out as nearly as you can when you did that.

The Witness—I am afraid, Your Honor, I can't say.

Q. Well, it was before the present year? A. It was before the present year, absolutely.

Q. What is your best recollection as to whether it was any time last year? A. Well, I do not know; I really have not the slightest remembrance. I know it was not this year.

The Master—It was not in 1919?

The Witness—It was not in 1919.

Q. Was it in 1918? Well, you have said as to that. You can't tell whether it was or not? A. I can't.

Q. But not in any way with reference to this controversy, as you have said? A. No. It is not worth while, anyway.

Mr. Whipple—Page 7, in the eighth and ninth lines, the words "would be" are stricken out, and in red pencil "might be" are written, so that the sentence will read: "And while it might be thoroughly within the province of the Board of Directors to request the removal of an advertisement, even one in The Monitor, or at least to discuss why the advertisement was in The Monitor," and so forth. Then on page 8, in the first full paragraph on that page, the words "subject to the final analysis, in any instance, of The Christian Science Board of Directors" are stricken out with a red pencil. Between the words "final" and "analysis," in red pencil is written the word "disciplinary." That was evidently an amendment before the whole thing was stricken out. That is erased with red pencil. So that the

sentence as it originally read was this:

"It seems difficult to draw any other conclusion from the Church Manual and the Deed of Trust than that the entire selection, approval, and issuance of everything going forth from The Christian Science Publishing Society primarily rests with the Board of Trustees, subject to the final analysis, in any instance, of The Christian Science Board of Directors." Then the word "disciplinary" was inserted, so that it read: "Subject to the final disciplinary analysis, in any instance, of The Christian Science Board of Directors." Then the word "primarily" was stricken out with red pencil, the words "subject to the final disciplinary analysis, in any instance, of The Christian Science Board of Directors," were stricken out, so that the sentence read in this way: "It seems difficult to draw any other conclusion from the Church Manual and the Deed of Trust than that the entire selection, approval, and issuance of everything going forth from The Christian Science Publishing Society rests with the Board of Trustees." That is the way the sentence was left. Then the next sentence, as it originally was written, was this: "This conclusion seems to apply equally on all advertisements," and so forth. The words "seems to" were stricken out and "must" was written in, so that the sentence would be: "This conclusion must apply equally on all advertisements."

Now, I should like to have that paper marked the same number as the original exhibit, only having the letter "A" follow it, but I do not think that it ought to be printed again in the record.

Mr. Krauthoff—That is Exhibit 36.

Mr. Whipple—All right; mark it Exhibit 36-A, if you please, so that they can be compared.

[Revision of memorandum is marked Exhibit 36-A.]

Mr. Whipple—Now, may I exhibit it to Your Honor? That is the Page 7 which shows the first correction, and then the others appear on the following page. (Handing document to Master.)

Q. I think you have been permitted to state in your cross-examination your conception of the meaning of the words "The Mother Church" as distinguished from the directors of The Mother Church? A. I have.

Q. You have nothing to add on that subject? A. Nothing except that I wholly differentiate between The Mother Church and the directors of The Mother Church; in other words, The Christian Science Board of Directors.

Q. Did you find in the archives of the Board of Trustees certain rules which Mrs. Eddy had addressed in her own handwriting to the Board of Trustees? A. I did learn of those rules very shortly after I came here, and they were of immense importance to me.

Mr. Whipple—I want to put them in evidence. Do you object to my asking General Streeter if there is any question that these are in Mrs. Eddy's handwriting?

Mr. Krauthoff—No, I think not.

Mr. Whipple—I suppose the General knows her handwriting better than perhaps anybody else here.

Mr. Bates—I do not think so. We have some of her secretaries here.

Mr. Whipple—Beg your pardon.

Mr. Bates—We have some of her secretaries here.

Mr. Streeter—There is no doubt about that being in her handwriting—that first page.

Mr. Whipple—How about the second? A. The second is Mr. Frye.

Mr. Krauthoff—You may offer it in evidence.

Q. Will you read these—unless you can state them (handing papers to the witness)? First read the letter, if you please, from Mrs. Eddy's secretary, in which she transmitted the rules. A. This is—

"Pleasant View,  
"Concord, N. H., Feb. 4, 1898.

"Dear Bro. McK.:

"I send you herewith a sheet which Mother wrote a few days ago for the trustees, but wanted to send by messenger.

(Signed)

"C. A. FRYE.

"Rules

"1. When Mother foils a demon-scheme do not mar her success. The hardest battle is the last one.

"2. Never act on first thoughts unless they be of Good, God, but watch and separate the tares from the wheat. Learn by experience and careful comparison to know whence cometh your conclusions. "Try the spirits" before acting, look over the purpose that the enemy might be trying to accomplish and so avoid the snare.

"3. Have the bird in your hand before disturbing the bush that he hangs upon."

Written on the back are the words. "For the Board of Trustees."

[A copy of the foregoing letter and inclosure is marked Exhibit 83. R. J. M.]

Mr. Whipple—I will now offer a letter from one of Mrs. Eddy's secretaries to The Christian Science Board of Directors, dated Dec. 7, 1904 (handing letter to Mr. Krauthoff).

Mr. Krauthoff—Have you the letter to which this is an answer?

Mr. Whipple—We have not.

The heading is, "Works on Christian Science by Rev. Mary Baker G. Eddy. Address all inquiries to Joseph Armstrong, C. S. D., Publisher, 250 Huntington Avenue, Boston, Mass.," with a cut of the entrance to Pleasant View in Concord. This letter is typewritten. (Reading):

"Pleasant View,  
"Concord, New Hampshire.  
Dec. 7, 1904.

"Christian Science Board of Trustees,  
"Boston, Mass.

"Dear Brethren:

"In reply to your letter of 6th inst., our dear Leader directs me to write you as follows: 'Answer for me that I say do what they, the trustees, think is best on this subject; I like their decisions.' The letter, as your copy will show you, relates to the subject of taking the institute's cards out of the Journal. In our Leader's behalf, I remain,

"Sincerely yours,

(Signed) "GEO. H. KINTER.

"Thos. W. Hatten, C. S. D., Secretary."

[A copy of the foregoing letter is marked Exhibit 84, R. J. M.]

The communication submitted by the trustees to the authorities charged with the duty of collecting the federal and the state income tax was asked for and handed to counsel. It was not offered. We now offer it as showing the opposite to what counsel claimed it would show. (Reading):

"Commonwealth of Massachusetts.

Suffolk: ss. Boston, May 14, 1918."

Mr. Krauthoff—One moment, if Your Honor please. We asked for—

Mr. Whipple—You mean you don't want to put in what you asked for?

Mr. Krauthoff—We asked for the document upon information as to its contents. Now that it does not measure up to our information of its contents, it is not evidence of anything, I understand.

Mr. Whipple—That is, I understand, that counsel thinks he can speculate and call for something that he thinks will help him, and when he finds that it does not help him, that it is the other way, that he can get rid of it. I do not so understand the law.

Mr. Krauthoff—Well, we object to it.

Mr. Whipple—I understand that he has got to take what he asks for, whether it helps him or whether it hurts him.

Mr. Krauthoff—We do not make the objection on the ground of helping or hurting. We simply make the objection on the ground that statements of the trustees made in their own favor are not evidence.

Mr. Whipple—You make them evidence by calling for them.

Mr. Krauthoff—We have not offered them in evidence.

Mr. Whipple—No, of course you haven't. You have taken mighty good pains not to.

The Master—You having called for them, they having been produced, doesn't that make it the right of the trustees to offer them?

Mr. Krauthoff—I did not so understand the law. I understood you had the right to inspect the document and if you wanted to offer it you might, but the document is immaterial one

way or the other and I will not press it further.

Mr. Whipple—You waive your objection?

Mr. Krauthoff—Yes.

Mr. Whipple (reading): "We, Herbert W. Eustace, David B. Ogden, and Lamont Rowlands being first duly sworn do hereby depose and say as follows:

"That we are the trustees of The Christian Science Publishing Society, which is an unincorporated association organized for the purpose of publishing Christian Science literature; and that as trustees as aforesaid our principal place of business is in Boston, County of Suffolk and Commonwealth of Massachusetts;

"That the source of income of said The Christian Science Publishing Society is the money which it receives for the periodicals, books, and pamphlets which it sells, the money which it receives for advertisements in the periodicals which it publishes, and the interest which it receives for money on deposit in bank between its semi-annual accountings;

"That disposition is made of the entire income of said The Christian Science Publishing Society above legitimate expenses by accounting for and paying the same semi-annually to the treasurer of The First Church of Christ, Scientist, in Boston, Massachusetts, for the support of said church;

"That said The Christian Science Publishing Society was instituted by a certain Deed of Trust executed by Mary Baker Eddy, and has no charter and no articles of incorporation;

"That all of the receipts, profits, and resources of said The Christian Science Publishing Society are used for religious, charitable, scientific, or educational purposes and no part of the net income of said organization inures or may inure to the benefit of any private stockholder or individual.

"That by reason of the aforesaid facts the said The Christian Science Publishing Society is an association exempt from taxation under the Federal Income Tax Act of Sept. 8, 1916, as amended by the Federal Income Tax Act of Oct. 3, 1917.

"HERBERT W. EUSTACE,

"DAVID B. OGDEN,

"LAMONT ROWLANDS.

"Subscribed and sworn to before me,

"Notary Public.

"My commission expires Feb. 27, 1919."

The name of the notary is not given, this being a copy. (Marked Exhibit 85, R. J. M.)

Mr. Whipple—I think we have finished the examination. It may be that between now and 2 o'clock we may think of a single question or so which we desire to put. We have practically—

The Master—Shall we stop? Two o'clock, then.

[Recess at 1 p. m.]

#### AFTERNOON SESSION

Mr. Whipple—We have no further questions, if Your Honor please.

Mr. Thompson—I have just one question I would like to put.

#### Re-Cross-Examination

Q. (By Mr. Thompson) Mr. Eustace, the fact that the trustees maintain what might be called an irreducible minimum of terms, that is, below which they would not listen to any suggestion of compromise, was a perfectly well known fact among the directors and everybody concerned, was it not? A. I think so; we tried our best to let it be known.

Q. And it has been known for several months, has it not, that that was the unalterable attitude of the trustees, that they would not do anything or consent to anything which would bring about any alteration in their fundamental views of their duties under that Trust Deed? A. That we would not change our fundamental views in any way.

Q. So that my question is this, that being the fact. In spite of that fact, in spite of its being perfectly well known, these suggestions of possible compromise kept coming to the trustees, didn't they? Yes, or No, please. That is a fact, isn't it? A. Yes.

Mr. Thompson—That is all.

Mr. Krauthoff—If Your Honor please, this morning it was understood that I was to point out the parts of the letter, Exhibit 72. I have marked it in lead pencil with brackets on the side. Shall I read the parts that I want?

The Master—What do counsel desire?

Mr. Streeter—I should think you better; I should think you better have those parts in. That would be my motion, and then we shall have it.

Mr. Krauthoff reads the following extracts from Exhibit 72, a letter from Mr. J. R. Watts, business manager of The Christian Science Publishing Society, to the Hon. A. M. Dockery, Third Assistant Postmaster-General, Washington, District of Columbia:

"Dec. 7, 1918.

"Hon. A. M. Dockery,

"Third Assistant Postmaster-General,  
"Washington, District of Columbia.

"Dear Sir:

"On Dec. 4, a hearing was had in your office relative to the position taken by this society that The Christian Science Monitor is entitled to be mailed at the special rate of postage provided by Sec. 1103, of the War Revenue Act of Oct. 3, 1917, Paragraph 4, Sec. 429, Postal Laws and Regulations, part of which reads as follows:

"Newspapers and periodicals entitled to be entered as second-class matter and maintained by and in the interest of religious, educational, scientific, philanthropic, agricultural, labor or fraternal organizations or associations, not organized for profit and



none of the net income of which inures to the benefit of any private stockholder or individual.'

"Your office accepts the fact as established, that The First Church of Christ, Scientist, in Boston, and The Christian Science Publishing Society are religious organizations. The Christian Science Monitor is an organ of the Christian Science religion. It is subscribed for and read by Christian Scientists throughout the entire United States of America, and in all parts of the world, and the Christian Scientists, as a religious denomination, through their support of The Monitor, maintain its publication, and the publication of The Monitor would be impossible except for the support and maintenance given to it by the Christian Scientists.

"A hypothetical question was put by the solicitor, and was in effect this: What is to prevent the Washington Star owners from deciding to give the Washington Star to the Methodist or some other church, thereby escaping the effect of the zone system postage rate and obtaining an advantage over other Washington newspapers?

"Our response to this question is that there is nothing to prevent the Washington Star from doing so, excepting the fact that the owners of the Washington Star would not make such a transfer merely for the purpose of evading the increased postage rate under the zone system, nor for the purpose of taking any advantage under that law. Of course, if the law as made proved sufficiently alluring to justify the owners of the Washington Star making the transfer, in so doing it would doubtless bring one of the greatest blessings that could come to the Washington Star, in the event it should be maintained by and in the interests of a Methodist church. The one thing that would prevent such a transfer, would of course be the unwillingness of the owners to divest themselves of their ownership, and Congress well knew, as do the solicitor and ourselves know, that in making such a law the religious denominations would not find either a great number or any of the newspaper ownerships given to them. Furthermore, Congress could of course repeal the law with reference to this special provision at any time it felt some improper advantage was being taken by it.

"The Christian Science Monitor has been maintained for the past 10 years at a cost very considerably in excess of all its income, and it is incredible to believe that this Christian Science organization would so maintain at a loss to itself a publication if that organization did not consider such a publication as in the interest of its religion. The fact that this religious organization does so maintain The

Christian Science Monitor, regardless of income, is conclusive evidence that it as a religious organization considers this publication in the interest of its religion.

"You will observe that we have acquiesced in the statement that the printed word of The Christian Science Monitor is not devoted 'exclusively' to the Christian Science religion. The fact is, however, that the only true value of any religion is the truth which it expresses, and the value of that truth to all mankind is measured exactly in proportion to its practicability, its availability, its proof, and demonstration in our daily living. You will agree with us, we believe, that The Christian Science Monitor is publishing the truth about the current world affairs, furnishing a correct basis for intelligent thinking, is blessing the world and making it a better place to live in, and thereby approximating the highest possible concept of true religion.

"Upon the question of whether The Christian Science Monitor is maintained by and in the interest of the Christian Science religion, the words of Mary Baker Eddy, Discoverer and Founder of Christian Science, are of deep significance. In the oral statement in your office you were referred to the writings of Mrs. Eddy, as contained in her printed works, as follows:

"On page 4 of 'Miscellaneous Writings' Mrs. Eddy wrote,

"At this date, 1883, a newspaper edited and published by the Christian Scientists has become a necessity.'

"Again, on page 7:

"Looking over the newspapers of the day, one naturally reflects that it is dangerous to live, so loaded with disease seems the very air. These descriptions carry fears to many minds, to be depicted in some future time upon the body. A periodical of our own will counteract to some extent this public nuisance; for through our paper, at the price at which we shall issue it, we shall be able to reach many homes with healing, purifying thought.'

"On November 25, 1908, the desire to publish a Christian Science daily paper was manifested in the physical appearance of The Christian Science Monitor. The leading editorial of that first issue was the following paragraph, now quoted from 'The First Church of Christ, Scientist, and Miscellany,' page 353:

"SOMETHING IN A NAME"

"I have given the name to all the Christian Science periodicals. The first was The Christian Science Journal, designed to put on record the divine Science of Truth; the second I entitled Sentinel, intended to hold guard over Truth, Life, and Love; the third, Der Herold der Christian Science, to proclaim the universal activity and availability of Truth; the next

I named Monitor, to spread undivided the Science that operates unspent. The object of the Monitor is to injure no man, but to bless all mankind.

"MARY BAKER EDDY.'

"Were any further evidence needed that The Christian Science Monitor is maintained by and in the interest of a religious organization, it may be found in the 'Manual of The Mother Church,' The First Church of Christ, Scientist, in Boston, Massachusetts. On page 79, Art. XXV, Sec. 1, there is a by-law which reads as follows:

"The Board of Trustees, constituted by a Deed of Trust given by Rev. Mary Baker Eddy, the Pastor Emeritus of this Church, on Jan. 25, 1898, shall hold and manage the property therein conveyed, and conduct the business of 'The Christian Science Publishing Society' on a strictly Christian basis, for the promotion of the interests of Christian Science.'

"That none of the net income of The Christian Science Monitor 'inures to the benefit of any private stockholder or individual' is proven in Sec. 2 of Art. XXV of the Manual, which states:

"Disposal of Funds. Sect. 2. The net profits of the business shall be paid over semi-annually to the Treasurer of The Mother Church. He shall hold this money subject to the order of the Christian Science Board of Directors, which is authorized to order its disposition only in accordance with the By-Laws contained in this Manual."

Mr. Whipple—I think I would read the rest of it; there is very little of it.

Mr. Krauthoff—I beg pardon?

Mr. Whipple—Won't you read the rest of it? There is very little of it. In other words, I want to bring out, Mr. Krauthoff, that this is a letter, not signed by Mr. Eustace, not signed by any one of the trustees, but it is a letter of the business manager, employed by them.

Mr. Krauthoff—You mean you want me to read the omitted parts or the signature?

Mr. Whipple—Just this: "Sincerely yours, Christian Science Publishing Society, by J. R. Watts, Business Manager." It is his letter.

Mr. Krauthoff—Then may I ask, Mr. Eustace, if you knew of that letter being written before it was sent?

The Witness—I did.

Mr. Krauthoff—And approved of it?

The Witness—I approved of it.

Mr. Krauthoff—That is all, if Your Honor please.

Mr. Whipple—You may step aside, Mr. Eustace. Mr. Rowlands, will you testify, please?

Lamont Rowlands, Sworn.

Q. (By Mr. Whipple) Will you state your full name, Mr. Rowlands?  
A. Lamont Rowlands.

Q. Where do you live? A. I live at 68 Beacon Street, Boston, my apartment here; my residence is Picayune, Mississippi.

Q. That is where you are legally domiciled? A. Yes, sir.

Q. How long have you been resident in Boston? A. Well, I think we moved here, took our apartment, in October, 1917. I became trustee the first of August, 1917.

Q. And shortly after that you removed to Boston? A. Yes.

Q. For a temporary residence, but not giving up your legal domicile in the South? A. No, sir.

Q. How long have you lived in Picayune, Mississippi? A. Well, I removed to Picayune in the summer that I was called here—early in the spring.

Q. Where were you born, Mr. Rowlands? A. Born in Michigan—Tecumseh, Michigan.

Q. Is that where you spent your childhood and youth? A. Well, a part of it.

Q. And where else, if you will tell us where you spent your early years. We are going to get a little history from you. A. I spent some time in Chicago, Illinois; some time on the Pacific Coast, some time in Alaska.

Q. Where did you begin your business career? A. Why, I—

Q. Or did you begin it so early you can't remember? A. I think I began quite early to make my own living, yes, sir.

Q. How early was that, Mr. Rowlands, when you were thrown on your own resources? I am not asking these questions expecting a punctiliously accurate statement as to the date. A. It is hard for me to say.

Q. If you will tell us in a general way. A. About 14 years old, I think.

Q. I beg pardon? A. About 14 years old when I started to make my own living.

Q. Where? A. In Tecumseh, Michigan.

Q. In Michigan? A. Yes.

Q. Then where did you remove to from Tecumseh, Michigan? A. To Chicago.

Q. What was your business there? A. Well, it varied.

Q. Had you attained your majority when you went there? A. No, sir.

Q. Then I suppose you followed different employments? A. Yes, sir.

Q. When did you go into business on your own account, and where? A. Well, what do you mean, establish a business of my own?

Q. Yes. A. Well, I had a business of my own in Chicago in—I am not sure about dates—I had no idea that I was going to be asked these questions. In 1903, I think.

Q. In 1903? A. Yes, sir.

Q. What was that business? A. The brokerage business.

Q. How long did you follow that? A. I followed it for about a year.

Q. And then what?

Mr. Streeter—How old is he?

Q. The General wants to know how old you are. A. I am either 42 or 43, I am not sure.

Q. Forty-two or 43. Tell us in a brief way of your business career

after you were a broker in Chicago. What did you go into next? A. Why, I gave up that business and went with a firm by the name of Everz & Co., bond brokers, and stayed with them for a time. That is after I came out of Alaska. While I was in Alaska I was in the banking business there; I was connected with a bank in Nome for some time as assistant manager.

Q. Yes. A. Then I worked, as I say, for Everz & Co., and then from that I went into the lumber business.

Q. When did you go into the lumber business; about when? A. Well, I think it was 1904 or 1905.

Q. Have you been in that ever since? A. Yes, sir.

Q. Up to the time you became a trustee? A. Yes, sir.

Q. Where were you when you went into the lumber business? A. I was in Chicago.

Q. Where did you conduct that business—always from Chicago? A. Well, I lived in Chicago at the time I entered into business, but I went to Wisconsin to live; I lived in Wisconsin for a number of years.

Q. In the conduct of your lumber business? A. Yes, sir.

Q. Where was that business? A. At Tomah, Wisconsin. That was one of our mills, and I lived there, as one part of the activity.

Q. What organization were you connected with? A. With the C. A. Goodyear Lumber Company. It was not the Goodyear Company when I started in.

Q. Were you instrumental in organizing that company? A. Yes, sir.

Q. And a stockholder in it? A. Slightly.

Q. Is it in connection with that company that you have always done business since? A. More or less; yes, sir.

Q. You have had interests outside of that in the lumber business? A. Well, a very slight interest.

Q. Where have you conducted the lumber business? I mean, has it always been in Wisconsin? A. Oh, no.

Q. Where? What part of the country? A. Well, it is all confined to the United States, but in different parts of the United States. Washington, for instance—we own some holdings there and a logging operation. We have a mill, lumbering and logging operations, in Greenwood, California.

Q. The business consists of cutting lumber in different sections of the country where the lumber grows and preparing it and distributing it for the market? A. Yes, sir.

Q. Was it in that connection that you moved to Picayune, Mississippi? A. Yes, sir.

Q. To start the lumbering business there? A. Yes, sir.

Q. Have you still interests in this organization that you have spoken of? A. Yes.

Q. And you have not had active connection with the lumber business

since you became trustee; or have you been active since that time? A. Yes. As soon as I could conveniently do so and not embarrass my associates, I resigned my activities with the C. A. Goodyear Lumber Company of Delaware—that was more or less of a parent organization—I had been looking after the management of that company, and I gave that up at the next meeting after accepting the trusteeship.

Q. Let me ask you about it, while I am on the subject: Were the operations of that company, or the companies with which you were connected in the lumber business pretty extensive? A. Of course that all depends upon what a person might consider to be extensive.

Q. What do you think about it? A. To my mind they were fairly large; yes, sir.

Q. Would you mind stating the overturn annually? I mean, in a general way. A. That would be rather hard for me to do, because—

Q. I want to get some idea of the business interests you gave up, and I agree with you that the term "large" or "small" is relative and does not give much of an idea. A. We have a Chicago office, a central office, through which we market a great deal of our lumber.

Q. From all over the country? A. Yes.

Q. How much do you market in the course of a year, approximately? A. Approximately, I should say at the present time we are marketing somewhere—

Q. Well, 1917 is more important? A. 1917?

Q. Yes. When you gave up your connection. A. This is just an estimate—

Q. Certainly, certainly. If you should be a few thousand feet out of the way I do not think it would be serious. A. It is likely to be more than that. I should say somewhere—the allied mills that we represented, probably between 75,000,000 and 100,000,000 of timber, or lumber.

Q. And the value of which was approximately— A. Well, I should say \$25 a 1000 at the mills. A hundred million would be how much?

Q. Some of these business men will have to figure it. A. Would be about—I will figure it up for you if you want me to.

Q. Never mind. We will figure it up and hand it in a little later. How many different mills were in operation at that time? A. Well, we had three mills and a logging operation.

Q. And where? A. And then we were sales agents for—Oh, I suppose six or seven other mills.

Q. When did you take up Christian Science? A. About 15 or 16 years ago, when I first commenced to read Science.

Q. Did you at some time become a member of The Mother Church? A. Yes, sir.

Q. When? A. In 1905 or 1906. I am not certain which.

Q. Did you do anything in Christian Science by way of lecturing, or anything of that sort? A. I never did any lecturing.

Q. Yours was purely a membership in the church, without making Christian Science your calling, in any way? A. Yes, I served as an officer of the church, and I—

Q. What church? A. Well, the church in Wisconsin where I went to live, that church that started there.

Q. That is what I wanted to get at. You were connected with branch churches in Chicago and in Wisconsin? A. Yes, sir.

Q. Have you held any office either in The Mother Church or in the publication society before you were elected trustee? A. No.

Q. At the time of your election as trustee, what, if anything, was said in reference to your feeling with regard to your large business engagements? A. Do you mean, as to how I was to handle them?

Q. What was to be done? Were you to continue right along in your business, as you had done? A. No, not in accepting the trusteeship. I thought that as soon as I could do so I would give up my other activities.

Mr. Bates—I suggest that my friend Whipple should identify this subject. I do not know whether he is talking about his arrangement with his lumber companies, or what it was.

Mr. Whipple—Both.

Mr. Bates—Well, suppose we have it so we can know what he is talking about.

Mr. Whipple—Oh, no, I want the whole situation.

Mr. Bates—I object to it, then.

Mr. Whipple—Both his relations to the trustees and what he did about freeing himself from his business arrangements. Both of them.

Mr. Bates—I wanted to identify his conversations.

Mr. Whipple—I will be glad to have him.

The Master—There is no dispute, apparently, between you.

Q. Do you understand, Mr. Rowlands? A. Beg pardon?

Q. Do you understand what has been said? A. Well, I am not sure whether I clearly understand it.

Q. Governor Bates wants you to be a little more specific when you are giving conversations, whether you are talking about conversations—

Mr. Bates—I suggest you should be more specific in your questions.

Mr. Whipple—With your trustees.

Mr. Streeter—I would like to have you speak a little louder.

Mr. Whipple—And General Streeter wants you to speak a little louder; and I want you to talk a little more promptly, if you can. Now, if there is anyone else who wants to express any wish about it, I will interpret theirs. With all this help now you ought to get on.

Q. What arrangement was made with the trustees, if any, about what you should do with your business arrangements? A. Why, if I do not answer properly the question—

Q. Do not disturb yourself about answering properly; just answer as promptly as you can, and as fully, and you leave it to these vigilant gentlemen, and if you are not answering right you will know it right away. A. Why, the understanding that I had with my associates was that I should have what time I needed to devote to my business interests until I could take care of them comfortably, and there was no limitation of any kind placed upon me.

Q. That was the arrangement, I understand, under which you took the position as trustee? A. Yes, sir. I told them I would always make it a point to be here any time they wanted me.

Q. Now, since you took the office, what part of the time have you devoted to the work as trustee? A. Well, I have not made a record of that—

Q. Well, I do not want a record of it; I just want a general idea about it. A. Oh, I should judge that I have been here, devoted—just an estimate—60 per cent of my time to it.

Q. Sixty per cent? It was in August, 1917—am I right?—that you were elected? A. Yes, sir. That is just an estimate, however. It would be very hard—

Q. Yes. Have you been conscious during this time that you have been trustee of neglecting any of the work required of you by the board or by the Deed of Trust? A. I have not.

Q. Beg pardon? A. I have not been conscious of neglecting anything that was required of me.

Q. Has your work been so adjusted that it could be done during the time that you were here? A. Yes, sir.

Q. Has there been any complaint on the part of the Board of Trustees or anyone else, so far as you know, that you have failed to devote to the work of the trust all the time that was necessary? A. Not that I know of, up to the time of the suit.

Q. Did you ever hear that suggestion before you saw it in the answer to the Bill in Equity? A. Why, at one time one of the directors asked me several times about my business affairs, and I thought it might be a criticism.

Q. When was that? A. That was—oh, I don't know; probably six or eight months ago.

Q. Who was the director? A. Mr. Merritt.

Q. What did he say about it? A. He did not say anything special, only asked me about my business, and then I asked him one day if it was a criticism, and he said, "No, none at all."

Q. Well, that seems to settle that. A. Those were not his exact words, if you want them.

Q. Was that the substance of them? A. Yes, sir.

Q. Now, did anyone else voice any criticism before this answer, that you had other interests which prevented your giving sufficient time and attention to the business of The Christian Science Publishing Society? A. Not from that standpoint. I think in one of my talks with Mr. Dittmore he expressed some anxiety that I could not spend more of my time here, but I do not think it was a criticism.

Q. Have you read this notice of dismissal that was served on you as a trustee of The Christian Science Publishing Society? A. Yes, sir.

Q. Well, now, let me ask you in the first place, whether you have ever been conscious of not in every way conforming to the rules which are required of a good Christian Scientist? A. Why, I have thought I have conformed to those rules; I feel that I have.

Q. Both as an individual and as a trustee? A. Yes, sir.

Q. Have you, to your knowledge, failed to understand or recognize the importance and necessity of promoting the interests of Christian Science by following these directions given by Mrs. Eddy in the Church By-Laws? A. No.

Q. Have you been conscious of inventing or adopting interpretations of the Church By-Laws that pervert their meaning and annul their effect? A. Not conscious of it.

Q. Have you been conscious of standing by those By-Laws according to their real and true meaning and construction? A. As I understand them, yes, sir, I have.

Q. Have you been conscious of trying to change the relation which always has heretofore existed between The Christian Science Publishing Society and its Board of Trustees on the one hand, and The Mother Church and its proper officers on the other? A. No, sir.

Q. Or have you in any respect consciously tried to convert and enlarge said trusteeship into an office or function of a new and different character? A. No, sir.

Q. Have you done anything consciously, otherwise than to attempt in good faith and honestly to protect the great trust that was committed to you and your associates by Mrs. Eddy? A. I have tried to fulfill the requirements of the trust to the best of my ability and understanding of Christian Science.

Q. It says here:

"Whereas Mr. Rowlands and other persons acting with him, including several eminent lawyers wastefully employed have set up said Deed of Trust against the By-Laws and government of The Mother Church."

Have you been conscious, either in company with eminent lawyers wastefully employed, or otherwise, of setting up the Deed of Trust against the

By-Laws and government of The Mother Church? A. I have not.

Q. This Deed of Trust that is referred to, you have been conscious, was made by Mrs. Eddy herself? A. Yes, sir.

Q. That is, it is a trust creating the duty imposed upon the trustees by the great Leader of the Christian Science movement? A. It is.

Q. Are you conscious of allowing a sense of self-interest to interfere with the interests of Christian Science, your selfish interest interfering with the interests of Christian Science? A. No; I thought it had been just the contrary. I had been trying to give up a great many of my interests in order to devote more of my time to Christian Science.

Q. Are you conscious of having done anything, as a trustee or otherwise, except for the promotion of Christian Science? A. No; that has been my purpose.

Q. Have you consciously become self-assertive, contentious, or disposed to make trouble without regard to consequences? A. No. I feel that I have been firm in trying to carry out the provisions of the trust, and wherever the trust needed to be defended I felt it was my duty to do so.

Q. Well, do you think you have been in any sense self-assertive or contentious, or disposed to make trouble? A. No. Not unless the trust were attacked.

Q. I mean, to make trouble for the sake of trouble. A. No, sir.

Q. Or contentious about a thing that was of no consequence? A. No, sir.

Q. You have, you say, firmly defended your trust? A. Yes, sir.

Q. Have you any purpose or desire, either in connection with what you have done or in connection with this bill which has been filed, to hold your position otherwise than for the promotion of the best interests of Christian Science and the spread of the doctrine throughout the world? A. No other desire whatever.

Q. And in accordance with the solemn wishes of your great Leader? A. Yes, sir.

Mr. Whipple—If Your Honor please, I do not propose to ask Mr. Rowlands the series of questions which I put to Mr. Eustace with reference to the administration of the trust, because it seems to me it would be simply duplicating the record in that respect. I therefore shall ask no other or further questions at this time.

#### Cross-Examination

Q. (By Mr. Bates.) Mr. Rowlands, who first spoke to you about becoming a trustee? A. You mean how was the information conveyed to me?

Q. Yes. A. Well, I received a telegram from Mr. Jarvis, signed by Mr. Jarvis.

Q. Secretary of the Board of Directors? A. Yes.

Q. And have you the telegram here? A. I have not; I destroyed it.

Q. What did it say? A. Well, as well as I can remember, he asked me if I would consider becoming a trustee and asked if I could come to Boston.

Q. Do you remember your reply? A. I do not.

Q. Did you go to Boston? A. Yes, sir.

Q. In response to that telegram? A. Yes, sir.

Q. You saw Mr. Jarvis? A. Yes, sir.

Q. And the directors? A. Yes.

Q. And had a conference with them in regard to becoming a trustee? A. Yes, sir.

Q. And how long was that before you were appointed? A. Well, it was at the same time—in the same few days that I was appointed.

Q. It was about the time of your appointment? A. Yes, sir.

Q. Had you ever had any conference with any of the directors before that time in regard to becoming a trustee? A. Not that I remember. No conference, no.

Q. So that your first intimation that you were being considered for a trusteeship was the telegram from the secretary of the Board of Directors? A. Yes, sir.

Q. And then you came on and consulted with them? A. Yes.

Q. And shortly afterward, almost immediately, you were appointed? A. Not by the board.

Q. Well, you were appointed almost immediately afterward? A. Yes, sir.

Q. Now, you say you had an understanding with some one that you were not to give your entire time— A. I didn't say that.

Q. —to the work. What did you say? A. I said I had an understanding that I could devote as much of my time as seemed necessary—that was the substance of it—until I could get my business in shape, in proper condition, so that I could leave it.

Q. Then your understanding was that you were to give up your business? A. Not that. I never was asked to give up my business. I felt that that was a part of my coming here, that gradually I would have to get my business in such shape that I would not have to give it much personal attention.

Q. You thought that the acceptance of the trusteeship involved the giving up of your regular business, did you? A. Active business.

Q. As soon as you could get out of it? A. I want to qualify that statement. I don't believe that any man of affairs could give up all his business, because it would necessitate him serving on some boards of directors in order to protect his interests.

Q. Well, so far as any active interests in business were concerned, you expected to give them up? A. I expected to; yes, sir.

Q. And such understanding as you had was that you were to be allowed

such time as might be necessary to get out of active business? A. Yes, sir.

Q. And was there any time specified? A. None.

Q. Who was that understanding with? A. The Board of Trustees.

Q. And to whom did you talk on the Board of Trustees in regard to it? A. Mr. Ogden and Mr. Eustace, and I think that Mr. McKenzie was there at one time when we had a talk, but I do not think he was a trustee at that time.

Q. And with them you came to an understanding that you would get out of active business as soon as you could reasonably— A. No.

Q. —and devote your time to the trusteeship? A. I say it was not an understanding of that kind at all.

Q. I understood you to state it so. A. No. I didn't say that we had an understanding. I said they said that I might have as much time—

Q. Didn't you say that you had an understanding? A. Well, if I did, I withdraw that word.

Q. What word do you wish to use now? A. The trustees told me that I might have as much time as I needed to devote to my business.

Q. In order to wind it up? A. Yes—I don't think they said "Wind it up."

Q. No. I am not quoting the particular words; I haven't understood you were, but the effect of them. A. Yes. What are you driving at? What do you want me to say? Then I will say it.

Q. Oh, I don't want you to say anything except tell us the story as it happened. A. That is what I am trying to do.

Q. You wouldn't say anything because I wanted you to? A. Oh, I might help you out.

Q. I don't need your help except to answer my questions. A. I see; thank you!

Q. With that understanding you began your service on the Board of Trustees? A. Yes.

Mr. Whipple—If you will pardon me, he has said there wasn't an understanding. I think, Governor Bates, you misquote him. He said that he felt himself when he accepted the position that it would involve a gradual withdrawal from active duty, and I don't remember that he said that there was any understanding or agreement, but at any rate, if he did say so, he withdrew it and qualified it, and still you persist in calling it an understanding.

Mr. Bates—I have fallen into the grievous error of quoting the words of my brother Whipple, who asked the question whether or not there was an understanding, and also of quoting the witness, who several times used the word.

Mr. Whipple—You have no excuse for being misled by me. You ought to be able to stand on your own foundation.

Mr. Bates—I don't propose to be

misled by you, or by your interruptions.

Mr. Whipple—You now say you have fallen into a grievous error.

Mr. Bates—The "grievous error" was somewhat sarcastic. It does not seem to be such to you.

Mr. Whipple—Explain your jokes. We take them seriously if you don't explain them.

Mr. Bates—I can't explain them to you; I think the rest of them understand it.

Mr. Streeter—Do you gentlemen always quarrel this way?

Q. Mr. Rowlands, was there any definite date fixed when you were expected to be out of active business? A. No, sir.

Q. There was no date set about the 1st of January—nothing said about the 1st of January? A. Not as I remember it.

Q. Are you certain of it? A. No; I am not certain. Well, I think I can be reasonably certain that there was no date set.

The Master—That would be the 1st of January of what year?

Mr. Bates—The following year, 1918. The Master—1918?

The Witness—I can qualify that statement, if you would like to have me.

Mr. Bates—If you wish to.

The Witness—I was asked by some one how long it would take me to get my affairs into shape so I could spend a good part of my time here, and I said I thought about a year.

Q. Who asked you that? A. I can't remember, but I remember making that statement.

Q. Now, you recognize the Manual as binding upon you—the Manual of The Mother Church. A. Yes, sir.

Q. And you recognize that Mrs. Eddy was its author? A. Yes, sir.

Q. And that it was written for the purpose of being a guide for all Christian Scientists? A. Yes, sir.

Q. And that they are all bound by it, all loyal Christian Scientists feel that they are bound by it, do they not? A. They should be to the extent of their understanding.

Q. Is there any part of it that you cannot support or that you find is not binding upon you? A. Not from my understanding of it.

Q. And you recognize that The Christian Science Board of Directors is the governing body of The Mother Church? A. Yes.

Q. It is the only governing body there is in the Church, is it not? A. Well, that depends upon what you mean—"in the Church." It is a Church organization.

Q. Is there any other governing body in The Mother Church? A. Why, from the standpoint of the Church Universal, I should think that God or the Principle was the governing influence.

Q. There is no other human gov-

erning body? A. Do you mean the Church organization?

Q. Certainly. A. Well, in so far as their duties are set forth under the Deed of Trust and the Manual, yes.

Q. They are the governing body of the Church? A. In so far as that gives them power.

Q. Yes, exactly. And the Board of Directors is also bound by the Manual, is it not? A. The Board of Directors?

Q. Yes, of the church. A. Yes.

Q. And, therefore, if there are any duties laid upon the Board of Directors by the Manual, they must discharge those duties? A. Yes, by way of demonstration.

Q. And if they do not discharge them they are guilty of neglect of the rules laid down by Mrs. Eddy?

Mr. Whipple—Just a moment, just a moment. If Your Honor please, we shall not object to an examination on these subjects so far as is necessary to determine whether the trustees are good Christian Science members—good Christian Scientists or not. But I do not see that their conception of the duties of the trustees is important in that respect, and I am going to seasonably object to any such repetition of the catechism as Mr. Eustace was subjected to, and I am going to ask that the questions put to the other witnesses, the other trustees, be limited to determining whether they are good loyal Christian Scientists or not. This question as to the duties of the directors is not a question which is pertinent to that issue.

Mr. Bates—No, and that is not the issue that we asked it in regard to either.

Mr. Whipple—I beg pardon?

Mr. Bates—That is not the issue that we asked it in regard to.

Mr. Whipple—What is the issue regarding which you asked? Perhaps we can have a ruling on that.

Mr. Bates—No, I think there is no question that is before us; it is simply one of your remarks.

Mr. Whipple—I have objected to your question.

Mr. Bates—But the question was answered before you objected.

Mr. Whipple—No, I don't think so. If so, I ask that the answer be disregarded and objection be sustained.

The Master—Anything further, Governor Bates? I mean anything further in reply to Mr. Whipple?

Mr. Bates—I would like to have the stenographer read the question and the answer, if it was given.

The Master—Yes.

Mr. Whipple—The stenographer says there was no answer.

[Question read, as follows: "And if they do not discharge them they are guilty of neglect of the rules laid down by Mrs. Eddy?"]

The Stenographer—There was no answer.

The Master—You press that question?

Mr. Bates—I do; in cross-examina-

tion I have the right to ask the question and get his views.

The Master—Yes, I understand.

Mr. Bates—Because we are accused, bear in mind, Your Honor—we are accused of acting in bad faith and arbitrarily in this removal. Now, if we are carrying out the injunctions given to us in the By-Laws, then we have a right to show it, and we have a right to cross-examine this witness as to whether or not that is true.

The Master—I think I shall have to allow the question to be put subject to objection. I do not see my way at present to draw the line indicated by Mr. Whipple. I think it would be better to take the evidence subject to objection and consider the matter later.

Q. You may answer the question.

The Witness—Will you please have it read again?

[Question read]

A. I do not feel that I am called upon to answer a question of that kind, because then I am judging the directors—

Q. His Honor has ruled—the Court has ruled that you may answer the question. I ask you to answer it, yes or no. A. That is the best answer I can give; I cannot answer it yes or no.

Q. And do you recognize that the Board of Directors has any authority over the trustees whatsoever? A. None at all.

Q. And that all of those paragraphs in the Manual which seem to indicate that it has, you do not recognize? A. Not from my standpoint.

Mr. Whipple—Just a moment. That I object to, because we are not agreed as to what the Manual means. He says those—

Mr. Bates—I am only asking him as to how—

Mr. Whipple—He says those indicate that the directors have authority over the trustees. I do not think there is a thing in the Manual, properly construed with the Deed of Trust, that indicates any such thing.

The Master—That is a question we shall have to consider later.

Mr. Bates—Yes, but I wait to get at this question.

The Master—You do not agree as to what the Manual means, and that is the trouble with all these questions. You may put your question in one sense, and he may answer it in another. I think I have intimated before, I do not see what good can come of arguing the question out with the witness, because the Court will have finally to determine in the best light it can what the correct meaning is of any disputed point.

Mr. Bates—If Your Honor pleases, Mr. Whipple asked the witness as to whether or not he was conscious of having disobeyed any by-law in the Manual. I think that opens up the door for me to ask him in regard to the special by-laws which prescribed

the duties of the Board of Directors in regard to this board.

The Master—You may go on subject to objection.

Q. You are familiar with Sec. 3 of Art. XXV of the Church Manual, which reads as follows:

“The Christian Science Board of Directors shall have the power to declare vacancies in said trusteeship, for such reasons as to the Board may seem expedient.”

Are you familiar with that? A. What page is that on?

Q. Page 80. A. I am familiar with it.

Q. And do you recognize that The Christian Science Board of Directors have that power to declare vacancies?

Mr. Whipple—Well, now, just a moment, if Your Honor please. There is a provision in the Deed of Trust with regard to that, and it ought to be reasonably clear that the two statements of Mrs. Eddy, equally divine and equally inspired, ought to be considered together. Now it is not fair to the witness and it is not promoting the case in any respect to rip one of those things away from the other and ask the opinion of a layman with regard to one provision divorced from the other. We shall not get anywhere by doing it, and I respectfully object.

Mr. Bates—In view of the questions asked by my brother as to whether or not he had any consciousness of having disobeyed the By-Laws, I have a right to ask him as to how he arrived at such serene consciousness which he seems to possess in view of that specific by-law.

The Master—I do not see my way to exclude the question. It may be put on the understanding that I have already stated.

Mr. Bates—Will you read the question, Mr. Burt.

[Question read: “And do you recognize that The Christian Science Board of Directors have that power to declare vacancies?”]

The Witness—Am I called upon to answer that question?

Mr. Bates—Yes, the Court has ruled that the question should be answered. A. Wherever—

Q. No, I ask you to answer that question, yes or no. It is a simple question.

Mr. Whipple—I pray Your Honor’s judgment.

The Master—No, I should not require him to do that. A question of that character I think he has a right to answer in his own way.

The Witness—I cannot answer it yes or no.

Mr. Whipple—Just a moment.

Q. Answer it in your own way, then.

Mr. Whipple—May I suggest, when the Master is speaking, please do not interrupt.

Q. Mr. Rowlands, will you answer it in your own way? A. (After a pause.) Wherever there is a conflict in the Manual and the Deed of Trust

I will have to look to the Deed of Trust for my instruction and authority, and that is the basis of this case.

Q. Is that your whole answer? A. Yes, sir.

Q. Do you consider that that paragraph is in conflict with the Deed of Trust? A. Yes, sir.

Q. To what part of the Deed of Trust?

[Copy of Deed of Trust handed to witness.]

Mr. Whipple—Let Mr. Rowlands take one of the printed copies of the Deed of Trust; it is a little easier to read.

[Pamphlet containing Deed of Trust handed to witness.]

The Witness—This is better. Thank you. Page 8 of the Deed of Trust—I think this is Section 10. Would you like to have me read it?

Mr. Whipple—You better read it so as to make it clear.

Q. Read the part that you claim to be in conflict. A. (Reading): “Whenever a vacancy shall occur in said trusteeship for any cause, I reserve the right to fill the same by appointment, if I shall so desire, so long as I may live; but if I do not elect to exercise this right, the remaining trustees shall fill said vacancy. The First Members together with the directors of said Church shall have the power to declare vacancies in said trusteeship for such reasons as to them may seem expedient.”

Q. Do you regard that last sentence as in conflict with this paragraph in the Manual? A. I do.

Q. The First Members passed out of existence long ago, did they not? A. That I cannot testify to.

The Master—Is there any dispute about it? We all agree that they did, don’t we?

Mr. Bates—I don’t know whether my brother does or not.

Mr. Whipple—I understand the fact to be that people who used to be First Members are still living, and quite a number of them; but I also understand that their function in the church organization has been changed, that in the church discipline the First Members do not any longer do the things that they used to do. They were a self-perpetuating body, as I remember it, and their self-perpetuation has ceased.

The Master—Would the result of that be that although the persons are still living they are no longer First Members for our purposes?

Mr. Whipple—I think Your Honor has put a very perplexing question, and being merely a lawyer with a judgment about it, I should prefer to refer it to Mr. Rowlands, if I could, because it has given to all the counsel in the case a very great cause of study. Mr. Justice Hughes, as Your Honor will observe in the opinion which was referred to, considered it at length; and our opinion, the opinion of counsel, as far as they have any, is stated in that letter of opinion which is quoted in the bill.

The Master—I understand there is no dispute about the fact; nothing that you say shows me that there is any dispute about the facts of the case.

Mr. Whipple—No; I think the facts are all agreed.

The Master—There were persons who were First Members holding an office in the church, described in that way, as First Members.

Mr. Whipple—Yes, Your Honor.

The Master—Those persons are still living but the office no longer exists.

Mr. Whipple—I beg pardon?

The Master—The office has ceased to exist. Am I right?

Mr. Whipple—I think that the Church Manual has so been changed as to take away certain functions or perhaps all the functions that they formerly used to discharge in the church organization. I think that would be a correct statement.

Mr. Bates—If I may make the statement as I understand it, I think there can be no dispute about it. The powers of the First Members were transferred by a by-law under Mrs. Eddy’s direction to the directors of the church. Subsequently the by-laws in regard to First Members were eliminated, under her direction, from the Manual. Since that time they have ceased.

The Master—So far as I can understand it that comes to about what I stated.

Mr. Bates—That is exactly Your Honor’s statement.

Mr. Whipple—If I may be permitted to make a suggestion, their powers with regard to removal under the terms of the trust deed could not be transferred to either the directors or anybody else because that would be an attempted modification of the Deed of Trust, which was irrevocable. If there was an attempt to do it it could not be done.

The Master—That leads us into an argument which I did not want to set going at present.

Mr. Whipple—If Your Honor please, we did not, either; but we thought that poor Mr. Rowlands, who is not a lawyer, ought to be spared arguing that with Governor Bates, because of the very manifest advantage that the Governor would have with Mr. Rowlands on that subject.

The Master—There is as much as this without any dispute, that there are no church officers now recognized as First Members.

Q. And you agree to that, Mr. Rowlands, do you not?

Mr. Whipple—Well, one moment. It doesn’t make any difference whether Mr. Rowlands does or not.

Mr. Bates—Well, it does; I want to get at his construction.

The Master—Whether it makes any difference or not we will consider later, but that is the fact.

Mr. Bates—That is the fact, as I understand it.

Mr. Whipple—Yes.

Q. Now, Mr. Rowlands, with the First Members eliminated and the Manual transferring their powers to the Board of Directors, do you still consider that that is in conflict?

Mr. Whipple—That I object to, if Your Honor please, because I have already said that the power of removal of a Board of Trustees cannot be transferred. You are asking a hypothetical impossibility under the law, and what is the use of putting a question of that sort and trying to puzzle a poor layman with it? It is bad enough for Judge Hughes.

Mr. Bates—The layman does not seem to be so much puzzled as his counsel, nor so much troubled either.

Mr. Whipple—That is just right, because he does not have the responsibilities of the legal aspect of it.

The Master—I am wholly unable to see that any useful purpose can be served by getting the answer of this witness to this question.

Mr. Bates—I will waive that question.

Mr. Whipple—So the responsibility is right back on you now, to solve it.

Mr. Bates—No; I think we have all the information that we want on it.

Q. Mr. Rowlands, I will read to you from Section 4 of Article 25 of the Manual, which is entitled, "Editors and Manager."

"The term of office for the editors and the manager of The Christian Science Publishing Society is one year each, dating from the time of election to the office. Incumbents who have served one year or more can be re-elected, or new officers elected, by a unanimous vote of the Christian Science Board of Directors, and the consent of the Pastor Emeritus given in her own handwriting."

Do you recognize that as binding upon the Publishing Society? A. In what way do you mean?

Q. Why, in every way that it could, reasonably. A. If it conflicts with the authority vested in the trustees under the Deed of Trust, I should say—

Q. Do you claim that it does? A. Yes, if it conflicts; but I do not see why it should if it were rightly exercised.

Q. Did you hear Mr. Eustace's explanation that he considered that that was not operative so far as the trust deeds were concerned because the consent of the Pastor Emeritus could not now be given in her own handwriting? A. I think that legally, if you try to make a legal document out of the Manual, that would hold.

Q. If you carried that out would it not lead to the extinction of the whole cause? A. Not at all.

Q. Are there not a great many of the By-Laws where the consent of Mrs. Eddy is required in order to make them operative, or appointments under them?

Mr. Whipple—I pray Your Honor's judgment as to that. Why should he be entitled to interpret the By-Laws in that respect? Counsel is simply conducting what might be called a con-

tentious argument with the witness on very perplexing legal questions.

Mr. Bates—I want merely to show the inconsistencies.

Mr. Whipple—Oh, you cannot do that; you are trying to show an impossibility.

Mr. Bates—I could, probably, if you didn't interrupt so often.

Mr. Whipple—Then I ought to interrupt, to prevent it.

The Master—Of course you will have a full opportunity to point out any asserted inconsistencies; no doubt about that.

Q. I want to know now, Mr. Rowlands, as to whom you pay over the net profits of the Publishing Society? A. To the treasurer of The Mother Church.

Q. The treasurer of The Mother Church? A. I think so.

Q. And how is the treasurer of The Mother Church elected? A. I think it states in the Manual, doesn't it?

Q. Yes. Section 3, pages 25 and 26. A. Yes.

Q. I will read it:

"The term of office for the Clerk and the Treasurer of this Church (also for the editors and the manager of The Christian Science Publishing Society, and the manager of the general Committee on Publication in Boston) is one year each, dating from the time of election to office. Incumbents who have served one year or more, may be re-elected, or new officers elected, at the annual meeting held for this purpose, by a unanimous vote of the Christian Science Board of Directors and the consent of the Pastor Emeritus given in her own handwriting."

Is the present treasurer of the Church elected with the consent of the Pastor Emeritus given in her own handwriting?

Mr. Whipple—I pray Your Honor's judgment. He has no participation in that election.

Mr. Bates—Well, he knows.

Mr. Whipple—It doesn't make any difference whether he does or not, that isn't of any consequence.

Mr. Bates—I want to ask him the question to find out about it.

Mr. Whipple—I object to it, if Your Honor please.

The Master—I think it may be put. A. Well, I cannot tell you.

Q. Don't you know, Mr. Rowlands? Don't you know the present treasurer has been elected since Mrs. Eddy passed on? A. Well, it depends upon the construction of the Manual.

Q. Don't you know that he has? A. I couldn't say that I know, whether the provisions of the Manual have been carried out—if you are going to make a legal document out of this.

Q. Do you know whether or not the Pastor Emeritus has given her consent in her own handwriting to the election of the present treasurer? A. I do not know.

Q. Do you not know that she has not? A. I could reasonably believe that.

Q. Have you any doubt of it? A. Yes.

Q. You have doubt of it? A. That she has not.

Q. You haven't any doubt that she has not? A. Yes.

Q. And yet you recognize that the treasurer is properly elected, do you not, and you turn over to him hundreds of thousands of dollars a year? A. Well, I don't know whether that is a question for me to answer.

Q. Well, I am asking for the fact. Aren't you turning over to him hundreds of thousands of dollars a year? A. Yes; I will answer that.

Q. Because you recognize him as the treasurer of the church? A. Yes. I will answer that question.

Mr. Whipple—Treasurer de facto, at least.

The Witness—Yes.

Mr. Bates—Wait a minute. I object now. Let your witness answer the question without assistance, if you please. I want to shorten the record, and I find on looking it over that there is more of Mr. Whipple in it than anything else.

Mr. Whipple—Well, that shows it is a good record.

Mr. Bates—That is a modest assertion with which I cannot agree.

Mr. Streeter—You are very interesting in your quarrels—you two gentlemen.

Mr. Whipple—But it needs a finishing touch, to have the General say something in it.

Q. Section 5, Article 25, which is the article of the By-Laws on The Christian Science Publishing Society, reads as follows, page 81: "A person who is not accepted by the Pastor Emeritus and the Christian Science Board of Directors as suitable, shall in no manner be connected with publishing her books, nor with editing or publishing The Christian Science Journal, Christian Science Sentinel, Der Herold der Christian Science, nor with The Christian Science Publishing Society." Have you been accepted by the Pastor Emeritus as suitable? A. I couldn't tell you; I hope so.

Q. Have you been accepted by her as suitable so far as you have any evidence? A. I cannot answer that. I can from my own standpoint—I feel that I have been.

Q. You have a metaphysical answer, but you haven't a business man's answer, have you? A. Not that I know of, no, sir.

Q. Because Mrs. Eddy passed on before you became a trustee or were ever considered? A. I have never acknowledged that she has passed on.

Q. That is your answer? A. Yes, sir. I never have acknowledged the passing on of Mrs. Eddy, or anyone, as far as that is concerned, because the basic principle of the teaching of Christian Science is that there is no death.

Q. Well, then, I should think that it would be necessary for you to show that you have been accepted as suitable. Can you do that? A. I hope

to be able to do that; that is what I am trying to do.

Q. Well, can you, here? A. What?

Q. Can you, here in court? Have you any evidence of it, any document? A. Not on me, no.

Q. Any letter? A. No, sir.

Q. Don't you think that your interpretation of these By-Laws annuls or perverts their meaning? A. From the way you are putting your questions it might, but I want to make this statement: That there isn't anything about the Manual of The Mother Church or the By-Laws from the standpoint of the trustees but what we could put into full effect, be obedient to them, work in harmony with the Board of Directors and carry out the purpose of Mrs. Eddy; and there has never been a question in my mind but what we could do it. We always have been ready to cooperate with them from every standpoint; our effort and desire has been to do that, and through all this testimony I quite agree with Mr. Eustace. I accept his testimony.

Q. I think you are not answering the question.

Mr. Whipple—Oh, yes, he is.

Mr. Bates—I think you have gone away beyond the limits of it.

Mr. Whipple—Oh, no; he is doing finely.

Mr. Bates—I have let you discourse for a while.

Q. Mr. Rowlands, you have been a member of the Board of Trustees since Aug. 1, 1917? A. Yes, sir.

Q. Two years lacking one month. Since you have been a member of the Board of Trustees have the trustees elected an editor? A. No, sir.

Q. And when first, so far as you recall, did any dispute arise between you or the trustees and the Board of Directors in regard to their supervisory powers? A. I think it was in 1918. I can't remember the date or just at the time.

Q. 1918? A. It is when the memorandum was brought up that has been spoken of here, and which is in Mr. Dittmore's bill.

Q. In September, 1918? A. Well, I couldn't tell. Oh, no; I would have to look up the record on that.

Q. At any rate, your best recollection is it was some time in 1918? A. I think that it was, because I came in 1917, and it seems to me as if it must have been in 1918, early.

Q. Now, since you have been serving as trustee have you made any radical changes in the publishing house? A. In what way?

Q. In any way. A. I should say not, otherwise than in changing—we have changed the paper over from an afternoon to a morning paper.

Q. That is, you have changed The Monitor from an afternoon to a morning paper? A. Yes.

Q. Anything else? A. We have tried to readjust the institution and put it on a better basis all the time, by putting in new machinery and such things, for facilitating—

Q. No radical change of any kind? A. Nothing that I can recall at the present time.

Q. Did you consult with the Board of Directors before changing the paper from an afternoon paper to a morning paper? A. We presented to them our recommendations in regard to it, told them what we intended to do, and they agreed with us and thought it would be the right thing to do.

Q. Have you had anything to do with the changes in bookkeeping that have taken place, that Mr. Eustace referred to this morning? A. There haven't been very many changes in bookkeeping, if you mean the methods. The method is practically the same. The change in the making of deductions in regard to our reserves—I think I have taken my share of responsibility in regard to that, yes, sir.

Q. You approved of it? A. Quite approved of it.

Q. Who suggested it first? A. Well, I think I made the recommendation—I am not sure—that we should during this time make liberal allowances and deductions.

Q. And do you recall what deductions you did make? A. Well, I cannot give them in detail, but I know that we installed a great deal of new machinery to facilitate the mailing out of The Monitor, and, making that displacement of machinery, we charged to the current period the cost of the machines. Then we also made a deduction, an extra deduction, some \$50,000—I am not sure that these amounts are right—to protect our inventories, because we were forced, in order to supply the extra Monitors that were called for by the Welfare Committee, to lay in additional stocks, and at prices that we would not have had to pay had they not given us that order without much warning, because they did not know how many papers they would need. So we set aside a reserve to protect that inventory, which had grown quite large.

Q. How large a reserve? A. I think it was \$50,000, or somewhere between \$40,000 and \$50,000, if I remember.

Q. How much have you set aside out of the net profits for a reserve during the past year in one way or another? A. Well, I should judge about \$200,000.

Q. And if you had not established those reserves that \$200,000 would have been turned over under your Deed of Trust to the church treasurer, would it not? A. There is a question about that, as to whether or not—

Q. If it was net profit it would have, wouldn't it? A. Well, I say there is a question about that, Governor.

Q. Well, that is what the deed requires, is it not? A. Mr. Eustace spoke of our bookkeeping. That is a thing that should be considered, because some time ago the Publishing Society, before I came, went on to a basis of giving credit to all the churches throughout the field, and before that time they had been doing it

on a cash basis, which necessitated their carrying very large accounts with the churches, running up into I think something like \$200,000 or \$300,000; and we felt that, and of course, that had a tendency to deplete our cash reserves, and there has been a great deal of talk of late that we ought to build up our reserve on that account.

Q. Do I understand you that during the past year you have set aside \$200,000 out of the net profits as reserves that previously had not existed, or as reserve funds that previously had not been in existence? A. Well, they couldn't have been in existence if we had not set them up.

Q. You had no similar fund in existence? A. Why, similar, but not similar amounts, perhaps.

Q. How does the amount compare that you have set aside for reserves this year with what you set aside the year before? A. I think it is some larger, but I wouldn't want to make the statement until I looked that up.

Q. Isn't it very much larger? A. Perhaps so, yes.

Q. And isn't it so much larger that it is a good deal over \$100,000 larger? A. Well, I wouldn't call that large.

Q. Well, isn't it? A. What do you mean by "isn't it?"

Q. I ask if it isn't more than \$100,000 more than you have set aside in any previous year? A. I wouldn't want to say that it is \$100,000 more, because I am not sure—I don't think it is—than any year in the last five or six years. It may very likely be so.

Mr. Bates—Mr. Whipple, have you the books here?

Mr. Whipple—No; we haven't the books in court. I received your notice this morning a few minutes before I came into court, and we are going to ask you to point out a little more definitely what books you want, because if we should bring down all that you have notified us to produce it might seriously impede our business. We need our books. Mr. Watts will be put on as the next witness and you can make such examination as you want of these accounts. It will be a great deal better to have a man who is responsible for the accounts testify about it than a man who is not.

Mr. Bates—We want the books of the last three years, showing the balance sheets, and also showing the expenses, and we want the auditors' or accountants' reports in and for the last three years.

Mr. Whipple—Mr. Watts will have them here tomorrow—those things that you have specifically mentioned.

Q. Now, Mr. Rowlands, up to some time in 1918 your relations with the board had been pleasant? A. Yes, sir.

Q. And by "the board" I mean the Board of Directors? A. Yes, sir.

Q. And there had been no trouble between the trustees and the directors of any consequence? A. No. And I might add—our relations have not been unpleasant—



Q. Since that time? A. Since that time. We are, I think, able to recognize one another—

Q. You have a sort of mutual respect for each other? A. I know I have for the Board of Directors and I hope they have for me.

Q. You have respect for all the Board of Directors? A. Yes, sir.

Q. You think they are men who are trying to do their duty as they see it? A. Why, I try to think that way; yes, sir. I don't always agree with them.

Mr. Bates—That would hardly be expected.

Mr. Whipple—Why not?

Mr. Bates—Well, because such good fellows as you and I can't always agree.

Mr. Whipple—That doesn't show anything.

Mr. Streeter—That is camouflage, apparently, with you and Whipple.

Q. Mr. Rowlands, you have stated in your bill that the directors have changed their course of conduct in regard to the trustees. I want to know in what respect they have changed their course of conduct in regard to the trustees? A. Specifically—can you give me anything?

Q. Specifically. A. I mean, can you ask me anything—

Q. No. I want you to give me the specific instances where they have changed their course of conduct in regard to the trustees of the Publishing Society. A. The first intimation I had was in the memorandum the agreement, as I remember—

Q. When was that? A. As I stated a while ago, I think that was early in 1918 sometime.

Q. That was in regard to the relative authority of the two boards? A. Yes.

Q. And is there anything else? A. Well, that, I think, is basically—

Q. If there is anything else let us have it. A. I stated practically all the reasons—but our correspondence, in the records, I think, shows all the rest of the—

Q. You don't recall anything else? A. Nothing that I think worth relating.

Q. The directors have not done any act inconsistent with what they had done before, have they?

Mr. Whipple—You mean up to the time they attempted to remove—

Mr. Bates—I think the witness understands. If he doesn't he will ask me.

Mr. Whipple—Well, it is proper that I should understand it, if what you ask is understandable.

Mr. Bates—Will you read the question, Mr. Stenographer? I want to see if my question is understandable.

[The last question was read by the reporter.]

Mr. Whipple—What time do you refer to?

Mr. Bates—I refer to the time since 1918 when your bill says they changed their course of conduct in regard to the trustees.

Mr. Whipple—You mean up to the present time or up to the time—

Mr. Bates—Up to the time of the bringing of your bill.

Mr. Whipple—Now you see you knew how to state that question and you have now stated it.

Mr. Bates—But that was a much more perfect question than those you have stated and that I objected to.

Mr. Whipple—The tu quoque argument doesn't get you anywhere, Governor.

Q. Will you answer the question? A. The litigation and all of the evidence, I should judge, would be the answer without my going into it.

Q. But you brought the litigation, didn't you? Didn't you? A. Yes. They forced it.

Q. Now, I want to know if there is any act of theirs that they have done in connection with the publishing house prior to your bringing of this bill that was inconsistent with their former action? A. Yes. I think there were lots of them.

Q. What was it? A. One of them was the very—seemingly, to me, very underhanded way in which they attempted to undermine the editorial department of The Christian Science Monitor.

Q. What have you reference to? A. I have reference to—

Q. Don't tell us now anything except what you know yourself. A. Did you have any idea I was going to?

Q. Yes. I thought you were going to tell us something you heard somebody say—some rumor or something of that kind. A. Well, I will try to.

Q. Now, what have you seen them do or heard them do in connection with the undermining of the editorial policy? A. I have got to say what I heard and saw them do?

Q. Yes. A. I have not been watching them all the time because I have great respect for them.

Q. Have you any facts? A. Yes.

Q. What are they? A. Why, the facts are that they called some of our men over there, and, as these men have stated to us, told them that their allegiance was to the Board of Directors.

Q. Wait a minute. A. I know, but let me tell this now.

Q. Are you telling now what some men have told you? A. Yes, men in our employ.

Q. But nothing that you have seen or know anything about?

Mr. Whipple—Oh, pardon me. He knows about it.

Mr. Bates—Except from what you describe as told you.

Mr. Whipple—He knows about it from the demoralization of his force.

Mr. Bates—If there is anything of that kind you can put it in in the proper way.

Mr. Whipple—We have, or, at least, Mr. Krauthoff did. We did not need to.

The Master—You better go on and state what you have known and seen personally.

The Witness—How far does that go, Judge, please? Our employees have come to us and told us about these conditions. That is the only way we could testify about it, because we haven't watched the directors or—

The Master—You have stated that once. Is there anything else?

The Witness—Yes. We were informed that the—

Mr. Bates—Wait a minute.

Q. Who informed you? A. Do I have to give the names?

Q. Yes. A. Why, Mr. Warner, our Washington correspondent, came before us and told us some of the conditions under which he had been laboring.

Q. Well, that isn't anything you knew of yourself—except what Mr. Warner told you—and I assume you can bring Mr. Warner if you want him as a witness? A. Why, I don't know.

Q. Is there anything else you know of yourself? You know the difference between hearsay testimony and what you yourself have seen? A. Yes.

Q. Have you seen the directors do anything, or known of their doing anything, except presenting to you this statement, which they thought set forth the relative authority of the two boards—have you seen them do anything else that was inconsistent with their former course of conduct? A. Well, other than—

The Master—Have you seen them? Answer that first.

The Witness—No, I haven't seen them. Can't I qualify that statement?

The Master—You have answered that question. I think you better stop there until another one is put. He has not seen the directors do it.

Q. Well, have you heard them say anything except in connection with this statement which they thought you should recognize? A. Yes. I have heard them say—

Q. What have you heard them say? A. I have heard them make remarks which would lead me to believe that they were going to—

Q. What were the remarks? A. You want the remarks?

Q. Yes. You can't tell us what they led you to believe.

Mr. Whipple—Why can't he?

Mr. Bates—He can tell us the substance of it.

The Master—State what was said to you, if you can, and as far as you can. If you can't do that, state the substance, but try first to say just what was said to you.

Mr. Thompson—Just a moment. In regard to this matter, unless it is true that Mr. Dittmore participated in these remarks, eliminate him from them except so far as what he himself said. We don't care to be bound by the remarks of other parties.

Mr. Bates—There would be nothing to be said if you eliminate Mr. Dittmore.

Mr. Thompson—Perhaps not. We will find out about that later.

The Witness—Well, in our negotiations at some of our meetings, it seemed to me from the attitude of the directors, they were quite threatening.

Mr. Bates—Wait a minute. Not what it seemed to you.

The Master—Now you were going to try, Mr. Rowlands, to state what was said to you and who said it. Go as far as you can on that line, and then we will see what next. What was said to you and who said it?

The Witness—Well, Mr. Dickey, for instance, in a meeting said to the trustees when this situation was up, that he—and he pointed his finger at us and said, "I wouldn't be in your place for anything under the sun."

Q. Did that indicate something that they had done which was a change in their course of conduct? A. Well, it seemed to me that it was an indication that something was going to happen if we didn't come over to their way of thinking.

Q. Is that all you have in answer to the question? A. Well, that is about the way the conversation always worked out. We didn't have much time or opportunity to say anything.

The Master—Now I think, Mr. Rowlands, that I would go on and state all that you remember being said to you by any of these directors—by whom it was said and what was said. Complete that before you go off on to anything else.

The Witness—I can only give the substance of our meetings, and that was that we were always made to feel that if we were absolutely disobedient to the By-Laws of the Church and that if we did not become subservient to the Board of Directors and follow their dictation, we would have everyone against us and that they always asked us and tried to force us to take that stand.

Q. Now, what was said that made you think that, Mr. Rowlands? A. Just what I stated.

Q. Well, was that said?

Mr. Whipple—Said in substance.

The Witness—The substance of it.

Q. Did anyone ever use the word "subservient"? A. Why, I think Mr.—

Q. No, not unless you can tell actually. Don't say, "I think."

Mr. Whipple—Can't he think?

The Master—Give your best recollection.

The Witness—Well, I will have to use the word "amenable."

Q. That is entirely different from "subservient," isn't it? A. Then it seems to me that the correspondence submitted here shows that we were supposed to be subservient to them.

Q. I am not asking you what your supposition is. The correspondence speaks for itself. I asked you for conversations. If you have given us all the conversations you remember that made you think that, we will stop right there. A. I can probably think of more.

Q. Let us have them.

The Master—Go right on, Mr. Rowlands. That is what we are trying to have you do.

The Witness—I can, as I said before, give the substance.

The Master—We understand that. Now go on and give the substance, and with whom the conversation was.

The Witness—I can't give the exact conversations because I can't remember them.

The Master—We understand that you are only going to try to give the substance, but go on and give it and tell us who said it.

The Witness—Well, I would have to say that they all had a voice in the conferences. I can't say just who said it because I didn't keep a diary or have any idea that it was going to be a matter for me to testify on in court.

The Master—Now, is that as far as your recollection goes?

The Witness—Yes, sir.

Q. Now, Mr. Rowlands, when the word "amenable"—

The Master—One moment. Is that as far as your recollection goes?

The Witness—On the statements—

The Master—On the question of the conversations and statements made to you by the directors—have you now told us all you can recollect?

The Witness—All at this time, yes.

Q. When the word "amenable" was used, was it suggested that you were amenable to the By-Laws or to the Board of Directors? A. Board of Directors.

Q. Are you sure? A. Yes, sir.

Q. You think that is a proper word to use in connection with the board, do you?

Mr. Whipple—He didn't say he used it. He said your people did. Of course he is not guardian of their English.

Q. Now, has there been any change in the conduct of the directors in regard to the election of editors down to the time of the bringing of this bill? A. Not that I know of.

Q. And their previous conduct. Has there been any in regard to their election of managers of the Publishing Society? A. Not that I know of.

Q. And as a matter of fact, they have always, since 1902, elected the editors and the business manager?

Mr. Whipple—Just wait a minute. I object to that question. There is no provision in the Deed of Trust for an election of a business manager. An election means or implies not only a selection but the installation of the person selected in an office. There isn't any office of director. The director is an employee of the Publishing Society.

Mr. Bates—Manager, you mean.

Mr. Whipple—And the manager in the same way. They are employees. This is not a corporation. This trust is composed of three trustees, and they do not elect—they employ people. Now, to put a question as to the election—to say that they have been elected by the directors—doesn't mean any-

thing in view of the terms of the trust. What has been done has been put in and it has been reiterated day after day here in the cross-examination conducted by Mr. Krauthoff. Whatever they wanted to produce in regard to each one is in evidence. Now what that is, what its significance is, and what it amounts to, is for Your Honor. Why should this witness be called upon with reference to it?

The Master—I didn't understand that the question called upon him to do anything more than to tell what the usual course of procedure had been since 1902.

Mr. Whipple—May I have the question read? I did not object to that. This is another question.

Mr. Bates—No, that was the question. You stated it right, Your Honor, as I remember it.

The Master—Didn't I state it right? [The question is read as follows:

"Q. And as a matter of fact, they have always since 1902 elected the editors and the business manager?"]

Mr. Whipple—There is the question: "They have elected him." Now he has asked if there is any change, and the witness has said no, but whether what they have done amounts to an election in any true sense—

The Master—I don't think we will be misled, will we, by that?

Mr. Whipple—I feel very sure that Your Honor will not be, but that, of course, is not a legal ground of putting in an improper question.

The Master—Do you desire to change the question?

Mr. Bates—No, Your Honor.

The Master—Do I understand that he has answered it?

Mr. Bates—No, he has not answered it. In view of the pleadings I think we have a perfect right to ask that question.

The Master—He may answer it. We all understand that Mr. Whipple objects to the word "election."

Mr. Whipple—I do not object to what has been done, and that has been gone into at length.

[Question read: "And as a matter of fact, they have always since 1902 elected the editors and the business manager?"]

A. As far as I know, in connection with what they do, yes, sir—

Q. Will you answer louder? I can't hear you. A. I say, as far as I know, in connection with their affairs, I can't state; I suppose they have.

Q. You suppose they have. A. But that does not mean an induction into office—

Q. Never mind— A. (Continued)—or employing them.

Mr. Whipple—I think he should be entitled to qualify his answer. What was that? What did he say?

[Answer read: "But that does not mean an induction into office—"]

The Witness—Or employing them.

Mr. Whipple—Or employing them.

Q. And these editors and business managers have been elected annually

by the Board of Directors? A. I can't testify as to that.

Q. Haven't you been present at the meetings of the Board of Trustees when you have received notice of the annual election from the board? A. I don't remember of being at a meeting of the board when that took place.

Q. You were not present at all the meetings—

Mr. Whipple—Now, if Your Honor please, I am sure that Governor Bates put that question in good faith, but we have the records of the directors, and they do not sustain at all the state of facts that the Governor is assuming. In nineteen years there are accounts of five meetings in which they have gone through a process purporting to be an election. Now, of course, you do not mean to ask this witness to assent to a proposition that is not sustained by the facts on your own records?

Mr. Bates—No, absolutely not.

Mr. Whipple—I knew you did not.

Mr. Bates—The records sustain the whole question, and your statement of it is incomplete and incorrect, and when we get to putting in the records we shall show how complete they are.

Mr. Whipple—Why not put in your records?

Mr. Bates—Because it is not our turn to put in the records. I am cross-examining your witness. When the time comes for us to put in our case we shall put them in.

Mr. Whipple—I should hardly call it cross-examination. It seems to me more like something else.

Mr. Bates—I didn't ask you to call it anything.

Mr. Whipple—No, but you assert it to be such.

Mr. Bates—No, I didn't.

The Master—Go on and put the next question, Governor Bates; we shall not make any progress this way.

Q. Has the Board of Trustees since you have been a member of it ever written any letter or in any way claimed to the Board of Directors that they had no right to elect the editors and the manager of the Publishing Society? A. I think of one that was written either by the trustees or by the counsel since the bill was filed.

Q. Before the bill was filed? A. You didn't say that, did you?

Q. Yes. Kindly consider that all my questions—I am not sure that I did, Mr. Rowlands, but all my questions apply to what was done before the bill was filed. A. Why, the letter of Sept. 30 qualifies the situation as to what we considered an election.

Q. Did you in that letter anywhere object to the election of editors or to the election of the business manager by the Board of Directors?

Mr. Whipple—Doesn't that letter speak for itself?

The Witness—Yes.

Mr. Bates—He says it does; I am asking him. I want to make sure.

Mr. Whipple—I pray Your Honor's judgment.

Mr. Bates—If you will admit that it

does not, well and good; but I am going to leave it on the—

Mr. Whipple—I am not going to admit anything of the sort. The letter speaks for itself.

The Master—I think we had better see what the witness has to say about it.

The Witness—I would rather refer to the letter, because that states clearly.

Q. Well, so far as you know, there is nothing unless it is in that letter?

A. That is the only statement that I know of where that—

Q. Is there anything on record in the trustees' records showing that they have at any time prior to the bringing of this suit ever protested against the directors' electing the editors and the business manager? A. Well, ever since I have been on the trustees, or shortly after that, and since understanding the Deed of Trust as I do now, there has always been the objection to them employing or inducing into office—

Q. Mr. Rowlands, you have not answered my question. A. That is the best—

Q. I ask you if there is anything in the records of the trustees showing that they have ever at any time in any way objected or protested against the Board of Directors' electing the editors and the business manager? A. I think not.

Q. Your right to occupy the buildings as the Publishing Society that you occupy comes to you because of the provisions of the Church Manual?

Mr. Whipple—I pray Your Honor's judgment.

Q. Is not that a fact?

Mr. Whipple—I object. Why should he be called upon to construe how he gets the tenancy of the building?

The Master—Should it turn out that he is undertaking to construe anything, we will see. I think that the cross-examining counsel is entitled to get what he knows about it.

Q. Are the buildings owned by The Mother Church? A. Yes, sir.

Q. That you occupy? And they were built by The Mother Church for the Publishing Society's use? Is that right? A. I am not sure about The Mother Church, but I think the field, —the members of the Church—contributed. I don't know whether they were all members of The Mother Church or not.

Q. Didn't they contribute to the church treasury? A. I am not sure.

Q. And weren't the buildings built by reason of the payment from the church treasury? A. I think they were; yes, sir.

Q. Yes. And their value is very near a million dollars, is it not? A. I am not competent to pass on that.

Q. Haven't you as a business man any knowledge of the value of the buildings you occupy? A. Why, no, because—I might have some idea about the buildings, but I wouldn't say about the property, because—

Q. Never have considered that at all? A. Somewhat, yes.

Q. Well, what is your own opinion? A. I have had an idea that that property was worth somewhere between \$300,000 and \$500,000.

Q. Do you know what it is assessed for? A. I do not, no.

Q. Did you know it was assessed for \$700,000? A. I did not.

Q. The land on which the buildings are built is also the property of The Mother Church, is it not? A. I think it is; yes, sir.

Q. And the Publishing Society does not pay any rent to The Mother Church for the buildings? A. Not the—we pay rent, however, but not—

Q. Not to The Mother Church for the use of those buildings? A. No.

Q. Not for the use of those buildings. Now, the controversy that arose in 1918, about September, somewhere along that time, as you recall it, was in regard to a fundamental question of principle as to whether or not the Board of Directors had any supervisory powers over the Board of Trustees, was it not? A. As stated in the memorandum.

Q. Well, that is substantially it? A. I think so.

Q. And the Board of Trustees claimed that the Board of Directors had no power over them whatsoever? A. I think that is substantially so.

Q. And the Board of Directors claimed that both under the deed and under the Manual they had certain supervisory powers which they must discharge or duties which they must discharge? A. Well, I should judge that they are more than supervisory powers; absolute powers, they claimed.

Q. Well, that was their claim? A. Yes, sir.

Q. And that was fundamental? A. I think so.

Q. And if that claim was recognized, why, then you realized that you came under the board of government of The Mother Church? A. I couldn't say the board of government of The Mother Church.

Q. Well, the Board of Directors of The Mother Church? A. Well, yes.

Q. And if it was not recognized, why, then you were independent of them absolutely? A. Well, I think that we are independent of the Board of Directors.

Q. And you now claim, of course, that you are absolutely independent of the Board of Directors? A. Yes, but that does not mean any separation of the church or the activities of the society.

Q. No, but you claim, as far as your actions are concerned, that you are absolutely independent of the Board of Directors?

Mr. Whipple—Just a moment. Isn't that set forth in the bill? Isn't that the proper place for the claim, if Your Honor please? I object to the question.

Mr. Bates—Well, I think it is a proper question.

The Master—The best way will be to have him answer, I think, if he can.

Mr. Bates—[To the stenographer] Will you read the question.

[Question read.]

A. Under the Deed of Trust, yes, with a due regard—

Q. And this— A. May I qualify that statement, because you are asking that so many times in different ways. But always with a high regard for the office of the Board of Directors and a desire to cooperate with them and consult with them in every way and to work out the purposes of the movement as we understand it.

Q. That was a vital question as between the Publishing Society and the Board of Directors? A. Yes, but it has been stated—

Q. It was an important question? A. Yes.

Q. And it was not merely an ephemeral difference that existed between the two boards, was it? A. I should not call it ephemeral.

Q. And if the Board of Directors recognized your contention, then it meant that they as the Board of Directors of the Christian Science Church had no authority over the organs which were being published as the organs of The Mother Church of Christian Science?

Mr. Whipple—Does Your Honor think that that argumentative question ought to be answered?

The Master—I didn't hear.

Mr. Whipple—Does Your Honor think that that argumentative question ought to be answered? We object to it. But if Your Honor thinks that all questions of this sort might better be answered, then I do not want to keep repeating the objection. It seems to me that cannot be helpful in any way.

Mr. Bates—I think it is very helpful on the question of good faith of these directors.

The Master—The question of the good faith of the—

Mr. Whipple—I do not see that the good faith of the directors is involved here.

Mr. Bates—As showing the importance of this question and the necessity of its settlement for the perpetuation of the cause and of The Mother Church and of its organs, it is fundamental.

Mr. Whipple—There isn't any question about the importance of the question.

Mr. Bates—Oh, yes, you alleged that we discharged—

The Master—I do not see how the witness' opinion about it is going to signify. This is cross-examination, and if you think it bears on somebody's good faith I think I ought to let you ask it.

[Question read.]

Q. Answer it, please.

The Witness—May I qualify that, Your Honor?

Mr. Bates—I should like for you to answer the question, and then you can qualify.

The Master—Answer it the best way you can.

The Witness—I should say they had no authority over the organs of the Church, but they had the privilege to use them to the utmost of their capacity.

Q. Subject to your approval? A. Yes.

Q. And therefore they could not put in anything, either by way of notice or otherwise, unless you approved it, under your theory? A. If you want to state it that way, yes, but we have never made that contention.

Q. If the directors were right, that the deed and the Manual made incumbent upon them certain duties of supervision of the Publishing Society and the publications, then the Board of Directors were fully justified in dismissing anybody on that board who disagreed with them, were they not? A. Well—

Mr. Whipple—I pray Your Honor's judgment as to that.

The Master—That assumes.

Mr. Bates—I think perhaps that is argumentative.

The Master—That assumes their authority to dismiss.

Mr. Bates—I withdraw that question.

Q. You are a business man? A. Well—I have tried to be one.

Q. Interested in several lumber mills? A. Yes, sir.

Q. And railroads? A. Yes, sir.

Q. And development of vast properties? A. Well, that is a question, about whether they are vast or not.

Q. Relatively? A. Relatively large properties, yes, sir.

Q. And have some holding corporations in connection with your business—some sub-corporations if you please? A. We have; perhaps you would call them that.

Mr. Whipple—I am sorry but we can't hear.

The Witness—I suppose— I didn't just understand what Governor Bates meant. You meant holding—a parent company, something of that sort?

Q. Yes. A. I think perhaps they might be called that.

Q. You would think it was very important that your superintendent in any of those lines of business was one who recognized the authority of your board of management, would you not? A. That all depends upon what you consider board management.

Q. Oh, if you don't think it would be just say so. Wouldn't you consider it so? A. Well, I said if you thought—it depends on what the management is because management is changing very materially these days.

Q. Mr. Rowlands, you wouldn't care how honest your superintendent was in his belief that he owned the corporation; you would get rid of him just the same wouldn't you if he insisted he owned it when he didn't? A. That

all depends upon what the condition was.

Q. It all depends, does it? A. Yes. That is a hypothetical question as to what I should do—

Q. Oh, yes. A. I never had that to face.

Q. I wanted to see whether or not— A. I have seen some corporations I would give to him.

Q. In accordance with Article XXXV, Section II, you keep the copy of the Manual in the publishing house? A. Yes, sir.

Q. You recognize that Mrs. Eddy reserved in the deed the right to give directions to her trustees? A. Yes.

Q. And the right also to make changes? A. I don't understand that. Perhaps that is so. An irrevocable trust—I don't see how it could be changed.

Q. Do you remember the words in there in regard to making changes?

Mr. Whipple—Please point them out; wouldn't that be better?

Q. You remember that General Streeter made the statement that the words in clause 8, at the end: "Reserving the right to make such changes as I may think important," were inserted by him and in his handwriting at Mrs. Eddy's request? A. I took it that it meant perhaps that—

The Master—You remember the testimony about that—

The Witness—No, I do not.

The Master—That is the question.

Q. Well, if Mrs. Eddy did give any directions in regard to the management of the trust, you would consider them binding upon you? A. The trustees certainly would.

Q. And you would consider them binding just the same now that, as we term it, she has passed on, as you would when she was here and was visible to us? A. Anything that she gave to the trustees; yes, sir.

Q. Therefore, her passing on, as we call it, did not in any way interfere with the force of the directions that she had given? A. Not at all.

Q. And she did give certain directions in regard to that trust in the form of by-laws, did she not?

Mr. Whipple—I pray Your Honor's judgment. How can that be of the slightest use? Your Honor will notice that what Governor Bates refers to here, "reserving the right to make such changes as I may think important," does not refer to the Trust Deed; it refers to the "direction and supervision of the publication of said Quarterly, and also of all pamphlets, tracts, and other literature pertaining to said business, using their best judgment as to the means of preparing and issuing the same, so as to promote the best interests of the Cause, reserving the right to make such changes as I may think important"—meaning, of course, the right to make such changes in the literature, tracts, pamphlets, etc., as they thought important. And then counsel seriously rip those words out of their connection and attempt to

July 2, 1919

SEVENTH DAY

Supreme Judicial Court Room, Boston,  
Massachusetts, July 2, 1919.

Lamont Rowlands, Resumed

Cross-Examination, Continued

The Master—Whenever you are ready you may proceed, Mr. Bates. You don't want to wait for General Streeter?

Mr. Thompson—I don't believe it is necessary, sir; I think he will be coming in in a minute.

Q. (By Mr. Bates) When did you first consult counsel in regard to your duties as a trustee? A. I can't just remember the date but it seems to me it is the latter part of 1918—not as a trustee, or any authority of the trustees that I take up the question, but I did speak to Mr. Strawn at one time when I was in Chicago about the Deed of Trust.

Q. And do you remember when that was? A. I do not.

Q. Was that under the authority of the Board of Trustees? A. Not at that time, no, sir.

Q. And Mr. Strawn was your personal counsel? A. Yes, sir.

Q. And also the counsel of the Goodyear Yellow Pine Lumber Company? A. Yes, sir.

Q. Which is your company? A. I am interested in it, yes, sir.

Q. Did the trustees know that you were going to consult Mr. Strawn at that time? A. Not at that time, I don't think they did.

Q. Can't you fix the time a little more definitely? A. Well, I couldn't without referring to—I suppose I could work it out by some of the trips that I took to Chicago and give you a definite idea a little later.

Q. Well, how came you to consult with Mr. Strawn if the Board of Trustees had not authorized you to do so? A. Why, I have done a great many things that the Board of Trustees have not authorized me to do.

Q. Did you show Mr. Strawn the Deed of Trust at that time? A. I did, I think.

Q. Did you show him the Church Manual? A. I think I did.

Q. And did you ask him for a written opinion? A. Not at that time.

Q. And did he give you an opinion at that time? A. Well, no, not at that particular time; he did later.

Q. Was that about the first of October, 1918? A. I think it was later than that.

Mr. Bates—I offer at this time an extract from the trustees' records, under date of Oct. 1, 1918.

Mr. Whipple—Just at the moment I do not see the materiality of the question at all as affirmative proof of anything.

The Master—I suppose we could only tell about that when we know what the record is. Perhaps if you are going to offer it it would be well

to show it to counsel before you offer it.

Mr. Whipple—I assumed it had relation to the subject matter as to which counsel was interrogating, that is, with regard to the opinion of Mr. Strawn, and I do not readily see how it is material. (The record is shown to Mr. Whipple.) I withdraw my objection, not admitting that it is material, but it is the easiest way out of it.

Mr. Bates—I thought so.

Mr. Bates reads extract from the records of the trustees, under date of Oct. 1, 1918, as follows:

"It was moved and seconded that Mr. Rowlands, when in Chicago on Thursday, engage the services of Mr. Silas H. Strawn, attorney, to give the Board of Trustees a careful interpretation of the Deed of Trust, and the correlative sections of the Manual, which would definitely set forth the rights of the Board of Trustees from a legal standpoint."

Mr. Bates—I think I have stated that the date of the meeting was Oct. 1, 1918.

The Witness—Yes.

Q. Was it at your suggestion that that action was taken? A. I don't know. It might have been, yes, sir.

Q. The trustees had never met Mr. Strawn, had they? A. Well, I couldn't testify as to that.

Q. Don't you know? A. Why, no, I don't know.

Q. The other trustees? A. I am not sure. I think Mr. Ogden might have met Mr. Strawn at some time when he was in Boston.

Q. So far as you know they had no acquaintance with him? A. No, not so far as I know.

Q. And at that time you were seeking this legal advice so as to sustain the position which the trustees had taken?

Mr. Whipple—I pray Your Honor's judgment. The resolution says what they ask.

Mr. Bates—Well, I am asking him if he was.

The Master—Make it a little more clear that you are asking him that.

Q. Were you seeking legal advice to sustain the position of the trustees at that time? A. I was seeking advice in connection with our duties under the Deed of Trust, as to what the law was.

Q. And this was done, so far as you recollect, on your initiative? A. I think so.

Q. And you do recall that you stated yesterday that you were very firm, in all of your conferences with the board, in your insistence on your views as to the Trust Deed? A. Not my views wholly.

Q. Well, whose views, then? A. The views of the trustees.

Q. You were very insistent on them? A. I shouldn't say very insistent. I simply—if I remember my testimony I said that I was firm in

make them mean an utterly and entirely different thing, and cram the words down the throat of a helpless witness to assent to.

Mr. Bates—I entirely disagree with Mr. Whipple's interpretation, and I realize that the interpretation of that deed is something that is not expected from the witness. But he has testified that he considers, and the trustees, I assume, consider, that the directions given by Mrs. Eddy are binding upon them, and I am asking him in regard to those directions.

Mr. Whipple—What directions?

Mr. Bates—Well, I am so amazed at certain of your statements—

The Master—The particular clause to which you refer in paragraph 8 of the Deed of Trust seems to relate only to the direction and supervision of the publication of the Quarterly, etc., doesn't it?

Mr. Bates—It relates to the whole business, you will find that paragraph does, and also the third paragraph. You cannot construe it in any way except in terms that relate—I mean, the paragraphs themselves cover the whole business of the Publishing Society.

The Master—I am talking only about paragraph 8. I have not got to the third paragraph.

Mr. Bates—Well, the third paragraph is the one which specifically says—

The Master—There has been no reference in your examination so far to the third paragraph, but there has been to the eighth.

Mr. Bates—(To the stenographer)—Will you read that last question? I forget what it was.

[Question read.]

Mr. Whipple—Well, just a moment. I didn't understand His Honor to rule it in.

The Master—I think he may answer.

The Witness—(To the stenographer)—Just read that again, please.

[Question read: "And she did give certain instructions in regard to that trust in the form of by-laws, did she not?"]

A. Yes. May I qualify that answer?

The Master—Go on. Complete your answer, if there is anything more you desired to add.

The Witness—I feel that any direction that Mrs. Eddy gave in the Manual is for the individual to demonstrate, and he applies it in so far as he has an understanding to Christian Science, and we could not do anything in connection with the by-laws that conflicted with our Deed of Trust.

[At 4 p. m. the hearing is adjourned to 10 o'clock a. m., Wednesday, July 2, 1919.]

defending the trust whenever it came up for consideration.

Q. And you were following it up by taking legal advice? A. Yes.

Q. And were a little bit inclined to be contentious on the subject, I assume? A. When the directors said that the Deed of Trust was practically a scrap of paper and that Mrs. Eddy had no particular—

Q. Now, wait a minute. Did the directors ever say that? A. Yes, sir; they practically said that.

Q. No, I don't want that. A. Yes, they did, they said that absolutely.

Q. Mr. Rowlands, I want you to give the exact words that they stated. Did the Board of Directors or any one of them— A. The directors, yes, the Board of Directors, made that remark, practically that remark, and said that when Mrs. Eddy—

Q. One moment. A. —signed the Deed of Trust that she didn't any more think—think any more of it than signing a check.

Mr. Bates—I pray Your Honor's judgment.

The Master (to the witness)—You must wait until you have a definite question to answer.

The Witness—I know; but his questions are so vague—

The Master—Pause one moment. Don't say anything more now until you get the question, and then answer it, and then stop. Don't talk while counsel are talking.

The Witness—Well, then, he mustn't talk when I talk.

The Master—Wait one moment; pause one moment. (To Mr. Bates) Put your question.

Q. Did any member of the Board of Directors ever use the words with regard to the Deed of Trust that it was nothing but a scrap of paper? A. Practically those words, yes.

Q. I don't ask you practically. Did they use those words? A. Not those words. In substance.

Q. They did not use those words? A. In substance, yes.

Q. I ask you for the exact words. A. I said, in substance, yes.

Q. Did they use those words? A. Not those words, but in substance they did.

Q. Then you have put words into their mouths that they did not use? A. In substance, they used those words.

Q. Do you remember the exact language to which you refer that any director used? A. I think I can state it.

Q. Well, I don't want you to state it practically now, I want the exact language. A. In substance, I will state it.

The Master—No.

Q. No; I want you to state the exact language. A. I can state it in substance, as I have stated before.

Q. But you do say now that they did not use the words "a scrap of paper"? A. I said in substance they said that.

Q. No. They did not use the words? A. In substance they said that.

Mr. Bates—I pray Your Honor's judgment.

The Master—I think the witness is entirely wrong in putting in the words "in substance"—

The Witness—Well, I didn't—

The Master—under the present circumstances. You are asked now a definite question: Can you remember and state the exact words used? Now, it is no answer to that question to say what they were in substance. Can you state the exact words? Yes or No.

The Witness—No; I cannot state the exact words.

Q. Have you, Mr. Rowlands, made any efforts to get an editor to fill Mr. McCrackan's position? A. No, sir.

Q. And how long has his position been vacant? A. Since the day the trustees dismissed Mr. McCrackan. I can't give the exact date; it is in the records.

Q. It is a matter of several weeks? A. Yes, sir.

Q. And do you know what are the duties of the editors of your publications, or of the publications of The Christian Science Publishing Society? A. Why, I think so.

Q. Are they each supposed to write editorials? A. Yes, sir.

Q. Is it a fact that the papers are now running one editorial short by reason of Mr. McCrackan not being on the board and his place not having been filled on the board of editors? A. Yes. I do not consider that any shortcoming of the periodical at all.

Q. That is, you do not consider that the additional editorial would be of any special advantage? A. It might be of advantage if the position were properly filled but I think without Mr. McCrackan it is better off.

Q. Is the reason you haven't filled it because you have not been able to obtain any proper person to fill it? A. Not at all.

Q. Then why haven't you filled it? A. Why, I do not—

Mr. Whipple—Just a moment. I pray Your Honor's judgment as to that. This is a matter that has happened since the filing of the bill, and I think it is perfectly obvious that with a dispute or controversy between these boards as to the election, when the directors are under the injunction of this Court against taking any action in connection with it, and while the propriety of that injunction is being determined by the Court, it would seem perfectly proper that the trustees should not proceed. Now, why ask about that when it is a matter that has arisen during the pendency of the suit? It has nothing to do with the proper administration of the trust prior to the time the suit was brought; it is not a basis of the attempted removal of Mr. Rowlands at all.

Mr. Bates—What was the question? [The question is read by the stenographer.]

The Master—It all relates to something that has come up since the suit was brought. I think I will exclude inquiries about what they have done since the suit was brought.

Mr. Bates—Your Honor, it is not introduced for the purpose of showing something that they neglected to do since, as a matter of neglect. It is introduced for the purpose of showing that they cannot fill the vacancy because they are not proceeding in accordance with the Manual, and that a Christian Scientist who is loyal to the Church and the Manual will not accept the position.

The Master—I hardly think we ought to go into that. What they have done pending the suit does not seem to me to have a proper bearing upon the issues presented by the bill and answer in the suit.

Q. Mr. Dixon is editor of The Christian Science Monitor? A. Yes, sir.

Q. And Mr. McKenzie is editor of the other periodicals? A. Yes, sir.

Q. And Mrs. Hoag is assistant or associate editor? A. Mrs. Hoag, yes.

Mr. Whipple—But not of The Monitor, as I understand.

Mr. Bates—No, the other periodicals.

Mr. Whipple—You mean the other periodicals, yes.

Q. And the position that Mr. McCrackan filled was that also of associate editor? A. Yes.

Q. And that is the position which has not been filled? A. Yes, sir.

Q. In other words, there has been previously for all the papers a staff of four editors, and they are now with only three editors? A. At the present.

Q. Do you know how long they have had three editors up to the time of bringing this suit?

Mr. Whipple—That question has been answered, if Your Honor please. He says that since Mr. McCrackan was discharged, which is admittedly since the suit was brought, and that he cannot remember just when Mr. McCrackan was discharged. Now, why waste time asking that again?

Mr. Bates—You have mistaken the question.

Mr. Whipple—What is your question?

Mr. Bates—The question I asked was whether or not they had always had four editors for these papers prior to the time of Mr. McCrackan's dismissal.

Mr. Whipple—Pardon me. (To the stenographer) Read the question; compare it with what Mr. Bates thinks it was.

[The question is read by the stenographer, as follows: "Do you know how long they have had three editors up to the time of bringing this suit?"]

Mr. Whipple—How long they have had three editors up to the time of bringing this suit.

Q. Did you understand the last question, Mr. Rowlands? A. Well, now you asked me about the number

of editors. As far as I know, there might not have been that number throughout the history of the movement. I am not familiar enough with the number of editors to make a definite statement, but I do know that there are only three now.

Q. And at any rate, all the time that you have been trustee prior to Mr. McCrackan's dismissal there had been four? A. Yes, sir. Well, there was another associate editor, I think, in connection with the German periodicals at one time, but that office was abolished.

Q. That was because it was not an editor but a translator, wasn't it? A. Yes, sir, as I understand it.

Q. And your board asked the Board of Directors to assent to that party being considered a translator instead of an editor, did you not? A. Yes, sir.

Q. And the Board of Directors assented? A. Yes.

Q. And thereafter that party was called a translator and not an editor? A. I don't know that he was called that, but that is the practical activity of the office, as I understand it.

Q. Did you ever hear any of the directors threaten to make the publishing house an "empty shell"? A. In substance.

Q. I am not asking you for the substance. Did you ever hear them use those words? A. Not those words.

Q. And do you know why those words were put in quotations in your bill? A. Yes.

Q. Why? A. Because they made that statement to the manager of the Publishing Society.

Q. I understood you to say that you did not know of their ever making it.

The Witness—I didn't hear it said.

Mr. Whipple—Pardon me. He said he didn't hear them say those words. He heard them say that in substance himself.

Q. Did you ever hear any of the directors use those words? A. No, sir.

Q. Not in all of your conversations or contentions with them—they never used those words? A. Not those exact words.

Q. Now, do I understand you to say that Mr. Watts informed you that they had used them? A. Yes, sir.

Q. Did he tell you who had used them? A. I can't just remember whether he told us the name of the director.

Q. Are you certain he used those words? A. Yes, sir.

Q. And you didn't think it of enough consequence to ask what director used them? A. Well, I may have at that time.

Q. Well, did you? A. I don't remember doing it.

Q. It was not of enough consequence to impress your memory as to the fact who it was, whether you asked or not? A. They said so many things that we didn't put any particular emphasis on that one point.

Q. As a matter of fact what would be the effect on the periodicals if they were not understood to be the organs of The Mother Church and published under the authority of The Mother Church?

Mr. Whipple—I pray Your Honor's judgment.

The Master—Can't we tell as much about that as he can?

Mr. Bates—I didn't know but what he might be able to help Your Honor in arriving at that suggestion. I think it is largely a question that is self-evident.

Mr. Whipple—We think it is, the other way. We think Mrs. Eddy constituted these the organs of The Mother Church and that the directors cannot take away what power Mrs. Eddy gave if they try to.

Mr. Bates—I assume that occasionally you will allow me to reply to the Court without being interrupted.

Mr. Whipple—It depends on how you reply. If you put on that smug attitude, as if the Court had replied in your favor—

The Master—I think we better get on with the examination.

Mr. Bates—I understand that Your Honor thinks that the question of the effect upon these publications is something we do not need to go into as a matter of evidence; that it is something that the Court would naturally take notice of—the effect of their being taken out from under the Manual, as the trustees propose and as they admit, and publishing them entirely apart from Mrs. Eddy's instructions as stated in the Manual.

The Master—I am not sure that I should put it in that way, but I don't think the witness' opinion as to what would happen in the future in a given contingency can assist us.

Mr. Bates—I submit, Your Honor, that if it is a question for expert testimony, the witness ought to be able to give it. I am not certain that it is. I think it is largely a question of argument. But on the other hand, if Your Honor does not think that that is something you could take into consideration without evidence, then I think Mr. Rowlands as a trustee and interested in these papers would be qualified to give his opinion in regard to it.

The Master—The question being objected to I shall be obliged to exclude it, I think.

Mr. Bates—And I ask Your Honor to save my exception in that matter. And in that connection, may it please the Court, in order that the record may be complete, we offer to prove by persons who are familiar with these publications and with the whole conditions under which they circulate, that the attitude of the trustees, if sustained, thereby taking all these publications out from under the authority of the Church and from under the authority of the Manual, would result most disastrously, and would practically wipe them out of existence.

Mr. Whipple—I cannot accept that offer of proof because it is not proof; it is a prediction founded upon error. The way in which these papers shall be published, the ownership of them, and the authority in connection with them, was stated by Mrs. Eddy herself, and these directors are attempting to subvert and destroy a sacred trust of Mrs. Eddy; and we do not assent that any action on the part of the trustees in supporting and defending that trust would have any such result as you indicate.

The Master—I think no ruling is called for at present on that offer of proof. I exclude the question asked this witness in cross-examination. If the evidence should be offered again I think that would be a better time to rule on it. The evidence which you refer to in the offer of proof may be offered hereafter.

Mr. Bates—Then I understand you do not exclude that line of evidence?

The Master—I don't think I am called upon either to exclude or admit it at present.

Q. Now, Mr. Rowlands, you have averred in your bill in equity that the directors are attempting to carry out a plan, and that said plan involves a deliberate attempt by the directors to force the trustees out of their offices in order to place therein either three of the directors themselves or three persons who will be subservient to the directors and manage said trust and the affairs of the Publishing Society in subserviency to the defendants. What made you aver that the directors themselves were seeking to put themselves in those positions? A. That statement is qualified—"or some one to represent them."

Q. Well, do you believe that they wished to place themselves in those positions? A. Or some one to represent them.

Q. Do you believe that they wished to place themselves in those positions?

Mr. Whipple—I pray Your Honor's judgment. It has been answered. He believes that they either intended to put themselves there or some one subservient.

Mr. Bates—I don't think he has the right to answer in the alternative. I want to know if he believes the first part of that allegation.

Mr. Whipple—Why not?

The Master—He hasn't made that allegation distinct and by itself. He has made it only in conjunction with the alternative. I hardly think that is warranted.

Mr. Bates—Well, I will ask Your Honor to save my exception.

Q. Mr. Rowlands, I understood you to say that you had been about a 60 per cent trustee—or that you had given about 60 per cent of your time to the business of the trusteeship.

Mr. Whipple—I move, if Your Honor please, that the first part of that question be stricken out. It has not been testified to at all.

The Master—I do not understand

that Governor Bates insists upon it at all.

Mr. Whipple—All right. The latter part is a perfectly proper question.

The Master—Put the latter part of the question.

Q. You have given about 60 per cent of your time, you think, to the trusteeship? A. I did not say that I was a 60 per cent trustee. I said that, estimating it, I had given about 60 per cent of my time since accepting the trusteeship, and felt that I had fulfilled it and had always been subject to call at any time when I was needed.

Q. There are a great many matters that come before the Board of Trustees at their meetings? A. A number; yes, sir.

Q. And meetings are frequently held, I assume? A. Yes.

Q. And those matters are matters of sufficient importance to engage the trustees' attention? A. Yes.

Q. And sometimes they hold several meetings on a day, do they not?

Q. Well, rarely several meetings, but that has been the case, yes.

Q. And they find it necessary, in order to discharge the duties of their trust, or to carry on the business, to hold a great many meetings during the course of the month? A. That does not mean that absolutely all the trustees must be present at every meeting.

Q. I am not asking you what it means, but what they do. Might it not be necessary to hold the meetings very often? A. To facilitate business; yes.

Q. Do you know how many meetings have been held by the trustees since your appointment and up to the time of the bringing of this bill? A. I do not.

Q. Well, you wouldn't be surprised, would you, if I should ask you if it was not several hundred? A. No.

Q. And when I tell you that we have gone through your records and find that there were—I will not say that it is absolutely exactly the number, but it is as nearly exact as we could make it—that there have been 407 meetings of the trustees held from the time of your appointment down to the beginning of this suit—you would have no reason to doubt that statement, would you? A. No, sir.

Q. And I may say that you may verify it if you wish to, and if you find that it is incorrect you can show where the correction should be made. A. Very well.

Q. Now, if I should tell you that out of those meetings, according to the record, you were absent from 192 of them, would you have any reason, from your recollections, to doubt that statement? A. No, sir.

Q. So that probably, then, our computation is correct, that since you became trustee out of 407 meetings you have been absent 192? A. I don't think that has anything to do with my fulfilling the office of trustee, however.

Mr. Bates—I am just asking you

about your absence from those meetings.

Q. Now, Mr. Rowlands, you have said that you gave up some business in order to discharge your duties as trustee. Will you tell us what you gave up? A. You mean specifically?

Q. Specifically. A. I gave up the general managership of the C. A. Goodyear Lumber Company of Delaware. I was vice-president and treasurer. I resigned from that activity.

Q. What company was that? A. The C. A. Goodyear Lumber Company of Delaware. That is a parent corporation.

Q. When did you resign from that? A. I can't tell you, but last year some time.

Q. About when? A. I think it was in the middle of the summer. Their regular meeting was in January, but it was deferred until—I can't tell you just the date.

Q. What was your position? A. I was vice-president, treasurer, and general manager.

Q. And it was the C. A. Goodyear Lumber Company? A. Yes, of Delaware.

Q. What other position have you given up? A. I gave up the position of vice-president of the Goodyear Redwood Company.

Q. When did you give that up? A. Well, I can't remember. I gave that up when they had their annual meeting. I asked to be relieved of my duties.

Q. Well, can't you give us approximately the time? A. No, I can't.

Q. Was it within the last month? A. Oh, no, it was, I think, some time last year. It has not been this year.

Q. You were vice-president of that company? A. Yes, sir.

Q. And have you given up any other positions? A. Well, I gave up—that is, I asked to be relieved as an officer, as a vice-president, as I remember it, of the Goodyear Yellow Pine Company. I can't just remember—I think I was the vice-president and treasurer of that company, and I asked to be relieved of all the offices, but they insisted upon me staying as treasurer, for reasons, a little longer, so I am treasurer yet.

Q. The treasurer, I assume, is the important position in the company—not the vice-president? A. Not actively, no. There are several matters in connection with the financing of the institution that I had in charge, and they wanted me to fulfill them.

Q. You are still treasurer of the Goodyear Yellow Pine Company? A. Yes, sir.

Q. Is there any other position you have given up? A. I think that is all. That is all.

Q. When did you first become vice-president of the C. A. Goodyear Lumber Company? A. Well, let me see; on the incorporation of the C. A. Goodyear Lumber Company; I can't tell you just the exact dates, but that was a great many years ago. I should say

some eight or ten years ago. That is not exact.

Q. When did you become treasurer of it? A. Well, I think about that time.

Q. That I understand is merely a holding company. A. Well, it is an operating company and a holding company.

Q. And where does it operate? A. Well, at the present time it is practically a holding company, because I do not believe that we have any active saw mill plants open at the present time, but we did operate in Wisconsin up to a short time ago.

Q. Then it is not an operating company at the present time? A. Not an operating company from the standpoint of sawing lumber, but it really supervises other companies.

Q. Its subsidiary companies? A. Something like that.

Q. What are these subsidiary companies? A. We own the control of the Goodyear Redwood Company and considerable stock in the Goodyear Logging Company in Washington. We own, I think, some stock in the Moore Box Company, and have stock in the Goodyear Yellow Pine Company.

Q. Is the Goodyear Yellow Pine Company a subsidiary company? A. Well, I am not—I couldn't say that it is. We are interested in it. The Goodyear Lumber Company is interested in it.

Q. Is the Goodyear Redwood Company an operating company? A. Yes, sir.

Q. And where does it operate? A. At Greenwood, California. The post office is Elk, California.

Q. And the Goodyear Yellow Pine Company operates where? A. At Goodyear, Mississippi—it is a new town we are building there. The post office is Picayune City.

Q. And the Goodyear Logging Company operates where? A. At Clallam Bay, Washington.

Q. And the Moore Box Company? A. That operates at Jackson, Mississippi.

Q. Have the Goodyear Logging Company and the Moore company all been organized since the Goodyear Yellow Pine Company? A. No. The Goodyear Logging Company was organized—oh, I guess about five years ago.

Q. But the Moore Box Company has been organized— A. I think it was organized about that time—no, later than the Goodyear Yellow Pine Company.

Q. Are you in any partnership, Mr. Rowlands? A. Yes, sir.

Q. What partnership? A. I have a partnership with a man by the name of L. O. Crosby.

Q. How long have you been in that partnership? A. I can't give you the exact date, but it started late in 1916 or early in 1917.

Q. Are you connected with the Great Southern Lumber Company? A. Well, not at the present time.



Q. What was your connection with that company? A. Well, we owned—I say “we”—the C. A. Goodyear Lumber Company owned considerable stock in the Great Southern Lumber Company, and at one time we were their sales agents in the northern territory.

Q. What was your position? A. Why, I had no particular position with that company, only in an advisory capacity. I helped them to get their organization under way, and a great many of my friends were interested in it also.

Q. Had that any relation to the Goodyear Lumber Company? A. The Goodyear Lumber Company of Delaware? Not at the present time, no sir.

Q. As a matter of fact, it is a rival company, is it not? A. Well, they are competitors.

Q. Yes. A. Yes.

Q. Doing the same business? A. Yes, sir.

Q. And you are not connected, you say, with that company now? A. Not at the present time, no, sir.

Q. You were up to 1916? A. Yes.

Q. Now, Mr. Crosby is your partner? A. Yes, sir.

Q. That is Lucius O. Crosby? A. Yes.

Q. And you know John W. Blodgett? A. Yes, sir.

Q. And did Mr. Blodgett own a large acreage in Mississippi? A. Yes, sir.

Q. And did Mr. Crosby obtain an option from him for that acreage? A. Yes, sir.

Q. And that was lumber land? A. Pardon me?

Q. Lumber land? A. Well, timber lands, yes.

Q. About 42,000 acres? A. Between 42,000 and 43,000 acres, yes, sir.

Q. And that is all located in Mississippi? A. Yes, sir; Pearl River County.

Q. And did you and Mr. Crosby enter into partnership so as to promote the development of that timber land? A. Yes, we bought it.

Q. And you bought it on Feb. 1, 1917? A. Well, I should judge about that time. The papers were passed.

Q. Just six months before you became a trustee? A. I think that is right.

Q. And did you also buy up another lumber company at about the same time that had about 3000 more acres of land down there? A. Yes, sir.

Q. And what was the name of that company? A. Rosa Lumber Company.

Q. So that after you had bought those two, you and your partner, you had the control of 45,000 acres of lumber land? A. Yes, sir.

Q. That you were proposing to develop? A. Yes, sir.

Mr. Whipple—If you will pardon me, was the 45,000 in this new Rosa Lumber Company?

Mr. Bates—No, there were only 3000.

Q. How much was there? A. I

think your statement is right. I think there were about 45,000 acres all together. I think that the Rosa tract had about, when we bought it, not 3000, a little over 2000 acres.

Q. Now, under your contract with Mr. Blodgett you were obliged to pay a certain amount in cash? A. Yes, sir.

Q. And the rest in a series of years? A. Yes, sir.

Q. In all amounting to something over \$3,000,000? A. Yes, sir.

Mr. Whipple—The 42,000 acres cost over \$3,000,000?

The Witness—I think the 42,000 acres cost \$3,200,000.

Q. \$3,385,000, was it not? A. Oh, I beg your pardon; \$3,385,000.

Q. Wasn't that correct? A. I think you are right, yes.

Mr. Whipple—You want to get some of these gentlemen as your secretary so as to give you the figures.

The Witness—I have the book at home.

Q. Did you, after getting this option, make some arrangement with the International Harvester Company in regard to financing you in your development of it? A. Yes.

Q. And what arrangements did you make with them? A. Well, I would be glad to tell. If it is not necessary, I would not like to give all of the—

Q. Did they advance \$500,000?

Mr. Whipple—Well, just a moment. Does Your Honor think this is material? So far as it bears upon its engaging Mr. Rowlands' activities and taking him away from the trusteeship, of course, it is all material. But, of course, Governor Bates knows that some people can do great things in short periods of time if they have the capacity to do it, while other people may work 24 hours a day and cannot accomplish the same results, and we may have the case here of a man of very large business ability that this trust ought to be thankful that it has to serve it.

Mr. Bates—Well, I am helping you to show that.

Mr. Whipple—In spite of the fact that he has had to borrow \$500,000 on account of a \$3,000,000 obligation. I mean the details of it, it does not seem to me, ought to be asked.

Mr. Bates—I think that is fairly open to argument, when he comes to argue; but as for showing the interests of this trustee and the necessity for his absence, and, therefore, his inattention, as we allege, to the business of the trusteeship, I think it is competent.

The Master—Without denying that that is open to you, we do not, of course, want any detailed inquiry into all his business arrangements.

Mr. Bates—Certainly not. Your Honor; but I do want them sufficiently to show the conditions under which he was working.

Q. Now, will you answer the question, Mr. Rowlands?

Mr. Whipple—This particular question I object to, as to what arrange-

ments either he or his partner made with the Harvester Company to finance this obligation. It affects interests entirely outside of those of this Board of Directors.

The Master—I do not understand that Governor Bates is requiring him now to set forth all the arrangements in detail. Am I right?

Mr. Whipple (to the stenographer)—May I trouble you to read the question?

The Master—Am I right?

Mr. Bates—I do not want all the details. I only want those which have a direct bearing on the question of his ability under those circumstances to give his attention to the trusteeship.

The Master—You followed that with another question, if my memory is correct.

Mr. Whipple—May I have the question which has been put?

[Question read as follows: “Did they advance you \$500,000?”]

Mr. Whipple—Does Your Honor think that that is material? How does that affect the time that he put into his trusteeship?

Mr. Bates—I think it will appear that it affects it.

Mr. Whipple—Let it appear so. Don't keep it so far back in the cloud of mystery. If you cannot see how that—

The Master—I am afraid that I am not quite prepared to say that it may not become material. I shall have to trust Governor Bates not to ask it unless he deems it material.

Mr. Whipple—Very well.

Mr. Bates—I will not abuse your confidence.

Q. Now, Mr. Rowlands, did you? A. No, I did not borrow the \$500,000 myself. Mr. Crosby borrowed it for the Goodyear Yellow Pine Company. The money was loaned to them, I think. I could give you the details if I had my contract book here.

Q. Was the Goodyear Yellow Pine Company organized by you and Mr. Crosby? A. Yes, sir.

Q. In order to help finance this proposition? A. Yes, sir.

Q. And the capital of it was \$1,500,000? A. Yes.

Q. Of which \$500,000 was preferred stock? A. Yes, sir.

Q. And of that \$500,000 preferred stock, \$400,000 went to the Goodyear family? A. Yes, sir.

Q. And \$100,000 to Mr. Crosby? A. Yes.

Q. And none to Mr. Rowlands? A. None to Mr. Rowlands.

Q. And Mr. Rowlands had a share of the common stock? A. Yes.

Q. And the common stock did not represent cash put into the property? A. I would not say that.

Q. Well, you received the common stock because of the time you were going to put into the property? A. No, sir.

Q. Was there any cash paid for it?

The Witness—Do I have to answer questions of that kind?

The Master—You have either to answer or to say that you prefer not to answer.

The Witness—I prefer not to answer.

Mr. Bates—I propose to show, Your Honor, that Mr. Rowlands received a large share of this common stock because he was going to devote his time to it.

The Witness—That is not so; absolutely untrue.

Q. Then why cannot you answer my questions? A. That statement is untrue absolutely, and you can't produce anything to show that is a fact.

The Master—One moment, one moment.

Mr. Whipple—Just a moment, Mr. Rowlands.

The Witness—Well, I know!

The Master—You have said that is not a correct statement. Now you have answered the question, I think.

Mr. Bates—No, that was not an answer to the question which I asked.

The Master—Let us see how near it comes to being an answer.

[The question is read as follows: "Was there any cash paid for it?"]

The Master—What do you say to that? The answer to that is that he prefers not to answer.

Q. Well, is that where you leave it—that you prefer not to answer? A. Yes, sir.

Q. How much of it did you receive?

Mr. Whipple—What was that question?

Q. How much of the common stock did you receive?

Mr. Whipple—I pray Your Honor's judgment.

The Master—If the inquiry is proper at all, it is proper, I think, to have him state how much common stock he received.

The Witness—Shall I answer? Half a million dollars.

Q. And did Mr. Crosby receive the other half million? A. Yes, sir.

Q. So that you two partners received the whole of the common stock? A. We have it in our possession at the present time.

Q. By the way, you married a daughter of Mr. Goodyear, did you not? A. Mr. C. A. Goodyear, yes, sir.

Q. After you had made the contract with Mr. Blodgett to take this property, and after you had organized the Goodyear Yellow Lumber Company— A. Goodyear Yellow Pine Company, not Lumber Company.

Q.—Goodyear Yellow Pine Company, to help finance and develop the property, you then made a contract with the International Harvester Company?

A. Yes, sir; those were all made about the same time.

Q. The parties to that contract with the International Harvester Company were yourself and Mr. Crosby? A. Yes.

Q. And the Goodyear Yellow Pine Company? A. Yes, sir.

Q. So you were all three partners to it? A. Yes, sir.

Q. Not only the corporation, but you and Mr. Crosby as individuals or as partners? A. Mr. Crosby and myself practically guaranteed the whole proposition.

Q. That is, you guaranteed, you and Mr. Crosby, that the contract with the International Harvester Company should be carried out? A. Practically.

Q. And that contract involved your supplying from that property, or from somewhere, 200,000,000 feet of yellow pine a year? A. Yes, sir.

Q. And that was subsequently changed so that you were to supply them with 400,000,000 feet a year? A. Yes, sir.

Q. Have you been able to keep that part of the contract? A. Agreeable to the Harvester Company, yes, with some modifications.

Q. You have not been able to keep it, have you, entirely? A. With some modifications; we have not delivered the full amount.

Q. Did you go to the Harvester Company and say to them that in order to carry on that contract you would have to have a further advancement? A. Yes, sir.

Q. Of a half a million dollars? A. Yes, sir.

Q. And they finally let you have half a million dollars extra? A. They did.

Q. That was not called for in the contract, was it? A. No.

Q. And you found it necessary in order to carry out your contract? A. Yes, sir.

Q. You would not have been able to have done it if the Harvester Company had not helped you out? A. Yes, sir, we would have.

Q. At any rate, you thought it was best to get it from them, I assume? A. Naturally, because they were the people most interested in our welfare and had never refused to give us assistance, but always asked us to come to them when we needed it. They were in honor bound to do it.

Q. Up to the present time have they advanced you anything except the \$500,000 in addition to what the contract called for? A. I think they have. I am not sure.

Q. You think they have? A. Yes, sir.

Q. How much more? A. I can't tell you, because I would have to refer to my book.

Q. It is a matter of several hundred thousand? A. Yes, sir. I will have to refer, Governor Bates, to my books, my accounts.

Q. Did you personally have anything to do with borrowing that money? A. Yes.

Q. You talked with the officers of the company? A. Yes, sir.

Q. Did you assure them that you and Mr. Crosby were giving your time and attention to this business and that you would see that the contract

was carried on? A. Well, not any more than any other activity.

Q. Wasn't there that conversation between you? A. Not that I should give time to it, no, sir.

Q. What were you to give to it? A. I would give to it my attention, see that these companies fulfilled their contract, the same as any other—

Q. Did the Harvester Company know that you had accepted this position as a trustee of the Publishing Society? A. Why, the men that I was dealing with did, yes, sir.

Q. And did the Harvester Company send some men down or some of their officers down to Mississippi to investigate and find out, and did you then assure them that you would give your time to it? A. No, sir, not all of my time. I never have made that statement.

Q. I didn't say all your time. Did you assure them that you would give the time to that proposition that was necessary to carry it through? A. I assured them that I would give it all the attention that it needed to carry it through.

Q. All the attention? A. All the attention that it needed, yes, sir.

Q. Now, in connection with that transaction you took over in that territory some lumber mills? A. As I stated before, yes.

Q. How many? A. Well, we have—You mean Crosby & Rowlands?

Q. Yes. A. I think we have four mills operating there at the present time. That is, the Goodyear Yellow Pine, the Rosa Lumber Company, and we have another mill cutting on contract, a lofting mill, and another one—let's see—well, another mill; I can't think of the town now.

Q. There are four operating at the present time? A. Yes.

Q. And how long have they been operating? A. Since—well, I can't give the dates that they started operating, but they have been operating more or less since we went down there, at the time we started operations and bought the Rosa plant.

Q. When did you start operations down there, having in mind that your contract with the Harvester was made Feb. 8, 1917? A. Well, 1917, Feb. 8—I think we took over the Rosa plant some time in May, 1917.

Q. And when did you go down there and begin operating? A. We were down there early in 1917 from February on, working out that problem.

Q. What was it necessary to do in order to get ready to work out that problem? A. Well, build another sawmill, a railroad—

Q. You did build another sawmill? A. Yes, sir.

Q. And what was its capacity? A. A year?

Q. Yes. A. Why, I think, conservatively speaking, running night and day, which we will run it later, between eighty and one hundred millions a year.

Q. And when was that completed?  
A. I think about March, this year.

Q. About March of this year? A. Yes.

Q. Is there any other mill that you have built there since you took over the property? A. No, we doubled the size of the Rosa plant. The Rosa Lumber Company only had what we call a single band mill.

Q. A single what? A. A single band mill. That is, one mill, and when we bought it we doubled the capacity by putting in another band mill and what we call a re-saw. That ought to increase the capacity over 100 per cent of that mill.

Q. That was practically making a new mill, was it? A. Yes, sir.

Q. Is there any other mill that you have constructed down there? A. Well, no.

Q. When did you complete this addition or doubling the capacity of the Rosa Lumber Company Mill? A. Well, I can't remember just when that was completed.

Q. About when? A. It was in the summer of 1917, I think.

Q. Now, did it necessitate building any railroads? A. Yes, sir.

Q. And how many railroads have you built there, or what length of railroad? A. There is another company, the Pearl River Valley Railroad Company is another corporation, owned by other people. We sold out everything to them, but before we did it we bought—we built—bought the Cybur & Gulf Railroad.

Q. You bought the Cybur & Gulf Railroad? A. Yes.

Q. Do you still own that? A. No; we sold it to the Pearl River Valley Company, as I remember.

Q. Well, did you build any railroads? A. Yes; we built—well, we are building railroads all the time in the woods, but we have no active interest now in this railroad that served our mill. We sold that out to other parties.

Q. You are building branch railroads for the purpose of getting the lumber out? A. Yes.

Q. And that is, you say, a case of constant building? A. Yes, sir.

Q. And you have perhaps a hundred miles or more of railroad built there? A. You mean the Pearl River Valley and other activities?

Q. No; I mean what you have done. A. No; I think we have probably in the woods laid down all the time—probably about, our own road, steel—I should judge maybe twenty-five or thirty miles.

Q. How long were the railroads which you sold to this company? A. Not very long. One was 12 miles long.

Q. When did you make the sale? A. Well, I can't tell you the detail of that.

Q. How recently? A. Well, it was early in the formation of the companies, as I remember it. I didn't attend to it.

Q. Can you fix it any more defi-

nitely? A. No, I didn't attend to the detail of that; I had nothing to do with it.

Q. Did you also have to construct a logging road down there something like 100 miles long? A. No.

Q. You don't remember anything about that? A. No. That information is wrong, I guess.

Mr. Whipple—He remembers right, and your informant don't remember that.

Q. Now, Mr. Rowlands, this is one of the largest lumbering operations that has ever been undertaken in the South, is it not? A. Yes, sir.

Q. And you and Mr. Crosby are personally responsible for carrying it through? A. Yes, sir.

Q. Not only to Mr. Blodgett, to whom you have agreed to pay something over \$3,000,000, but also to the International Harvester Company? A. Yes.

Q. Who have advanced you \$1,000,000 more or less, and with whom you have a contract to supply large amounts? A. They have value received for that contract in loaning us some money.

Q. Do you consider that that is a contract or an undertaking that does not require a large portion of your time? A. I do, for the reasons that I have a very good organization there. I have men fully competent to carry the institution along as it should be carried along.

Q. When did you move to Picayune, Mississippi? A. I can't tell when we moved our furniture; we moved the home that we had in Wisconsin, my home there, moved it to Picayune.

Q. When was it? A. Well, I can't tell. It is about the time that I went to—our furniture went down about the time that I went down there, a little later. It was in the summer of 1917 some time. I didn't attend to the details, so I can't tell you.

The Master—About the summer of what year? I didn't get that.

The Witness—I think it was 1917.

The Master—1917?

The Witness—Yes.

Q. Is it possible, Mr. Rowlands, that you cannot remember when you moved down and took your official residence in Picayune, Mississippi? A. Well, the records will show.

Q. I understood you to say yesterday that it was along in 1918? A. Well, it might have been, I don't know. Immediately that I went into that operation I decided to make my residence in Picayune, and that was the understanding, and to build a home there, and I proceeded along those lines, but I never voted anywhere after that.

Q. And have you ever voted there? A. No.

Q. Is the reason that you have not voted there because you have not been there long enough to vote in the last election? A. That might have been so; I have not inquired.

Q. Can't we agree, then, that you

did not move down there until 1918? A. No; I wouldn't say that because I had decided that that was my place of residence, as soon as I made that undertaking, because at the time I didn't know that I was coming to Boston.

Q. You had decided that that was to be your place of residence as soon as you entered into these big contracts in connection with this lumber business? A. Practically.

Q. Because you considered that your attention would be required down there for that purpose, I assume? A. Well, if you put it that way, yes.

Q. Were you giving up your home in Wisconsin for any other reason? A. Well, my brothers and part of my family lived there, and they all went south to help me in this undertaking—practically our whole organization—they lived in my home, and I just moved my home south.

Q. Not only the Goodyear family, but the Rowlands family then considered it of such great importance to carry on this business that they all moved down to Picayune, Mississippi? A. Yes.

Q. And you built a house there? A. Yes.

Q. And had your furnishings carried down there? A. Yes.

Q. And had it decorated by a Chicago decorator? A. Yes.

Mr. Whipple—Why—

Q. And came prepared for permanent living in Mississippi? A. Pardon me?

Q. Prepared to live permanently in Mississippi? A. Yes.

Mr. Whipple—My only comment was that I wondered that he did not employ Boston decorators. I suppose that makes a difference in the issues of this Christian Science case.

Q. Now, Mr. Rowlands, this proposition has been pretty near to failure several times, hasn't it? A. Never.

Q. Didn't you consider it so when you had to go to the International Harvester Company? A. No, sir.

Q. And ask them for help? A. No, sir.

Q. To the extent of a million dollars more or less? A. No, sir, and they never did.

Q. Have you borrowed any money in Boston to carry on this proposition? A. Haven't tried to.

Q. Now, Mr. Rowlands, is it not a fact that you moved to Mississippi after you had been appointed a trustee?

Mr. Streeter—One moment. Any reason why he shouldn't? A. No.

Q. Did you not consult the trustees in regard to moving down there? A. No, not that I remember of.

Q. Can you find out the date when you did move there? A. Yes.

Mr. Whipple—I pray Your Honor's judgment. He has said that when he decided to go into this enterprise he elected that as his domicile. What difference does it make when he moved his laundress down there? I suppose that is one of the determin-

ing factors as to a man's establishing his domicile—where he has his laundry done. What difference does it make when his household goods went down, or his servants, if he took any? Isn't it too trivial to be of very much consequence?

Mr. Bates—My brother knows that it is not trivial, and all the camouflage of his statements will not make it trivial. He knows Mr. Rowlands moved down there after having accepted this trusteeship because his main business was there, and he seeks to divert attention from it. Fortunately, this is not a jury case.

Mr. Whipple—I still think it is very trivial, and your resounding voice does not make it any different.

The Master—He appears to have changed his residence, in one sense, at one time, and to have made his actual move of himself and his belongings at another time. Do I understand you want the date?

Mr. Bates—I want the date.

The Master—Of all these different things?

Mr. Bates—The date when he actually moved there and took up his official residence there.

Mr. Whipple—Those are two different dates.

Q. Perhaps I can revive your recollection, Mr. Rowlands. It was after the declaration of war, was it not? A. That I decided?

Mr. Whipple—What was after the declaration of war?

Mr. Bates—That he moved to Mississippi.

Mr. Whipple—Now, what do you mean—moved his household goods and kitchen utensils down?

The Master—I think you will have to be more specific or we shall waste time.

Mr. Bates—There was a time when Mr. Rowlands took up his residence as a citizen in Picayune, Mississippi, built a home, and then moved into it. I want to know when that took place.

Mr. Whipple—Well, which?

The Master—It might well be pretty difficult to find out exactly when that date was.

Mr. Bates—And then he can give the dates when he went down there and considered that he had begun his residence.

Mr. Whipple—Well, he gave you that. He says that when he undertook the enterprise he did that.

The Master—I understood his statement as to that to be that it was during the summer of 1917.

The Witness—Yes.

The Master—Is that right?

Mr. Whipple—Yes, Your Honor.

The Master—Then Governor Bates asked the further question, Was it before the declaration of war?

Mr. Bates—I thought perhaps that might serve to help him.

The Master—By the declaration of war, you mean the declaration of war by the United States with Germany?

Mr. Bates—Declaration of war with Germany.

The Master—Perhaps you had better give him the date of that.

Q. Do you remember that date? A. No, I do not.

Mr. Bates—April 6, 1917.

Mr. Streeter—First-rate!

The Witness—As I remember, Governor Bates, I made an income tax return—I am a little hazy in my mind—for 1916—this may be wrong—from Chicago, and in 1917 from the south, but I am not sure about that, because that was taken care of by our office.

Q. The 1917 return was made of course in 1918. A. No. Well, I am not sure about that. That is the way it appeals to me, but I think I could verify all those things if you want them.

Q. Do you have an apartment in Boston? A. Yes, sir.

Q. How long have you had that apartment? A. Well, as I remember it, we moved in in October, or November, somewhere about that time, in 1917.

Q. What year? A. 1917.

Q. And in November, 1917? A. I am not sure about that.

Q. Now, was it not after that that you moved down to Mississippi? A. No, I don't think so, not from the standpoint of my deciding to live there, to make that my residence.

Q. Well, I understand you that you decided to move down there because the interests were going to be so great as to demand your attention at the time you entered into these contracts, and in carrying that out you did move there, but the actual moving took place after you became a trustee? Is that correct? A. I couldn't testify to that—my household goods going. I can ascertain and let you know.

Q. Will you look it up and let us know? A. I will try to; yes, sir.

Mr. Whipple—Get the freight bill, that will fix it; and then put a tracer on so as to show when they started and when they got there, because I suppose it is the time when they got there you would think was the time he established his residence, or after they had moved into the house.

Mr. Bates—I think if he will give us the facts we will be able to decide for ourselves when he moved.

Mr. Whipple—I am not so sure of that; you asked him for that.

Q. Now, Mr. Rowlands, there is another allegation in the Bill in Equity to the effect that the directors intended to use their great and dominating influence which they carried by reason of their official position, and by their powers of discipline, to influence the action of churches, by refusal to grant licenses and appointments, so as to injure the Publishing Society. Do you remember that allegation in substance, in the bill? A. Yes, sir.

Q. Did any director ever say anything of that kind to you? A. No.

Q. And did anyone ever tell you

that any director had told him that that was to be done? A. I think, in substance, yes.

Q. What do you mean by "in substance"? A. Why—

Mr. Whipple—I pray Your Honor's judgment. Don't we all know what "in substance" means?

Mr. Bates—I want him to give the language if he recalls.

Mr. Whipple—He says he can't give the language.

Mr. Bates—Well, he hasn't said so yet.

Mr. Whipple—He says, "in substance, yes."

The Master—Why not let him give all that he can recollect about it? That will be the best way.

A. Why, in substance, the action of the Publication Committees in spreading propaganda, as I call it, and influencing the people to stand with the directors regardless of Principle, seemed to be—

Q. That is the only thing you have in mind? A. Well, that is a very large thing, it seems to me.

Q. Now, have you any evidence of any such propaganda? A. Why, yes.

Q. What is it? A. We had one letter from a man in the west, in which Judge Smith—

Q. Wait a minute. A. —tried to line him up with the Board of Directors.

Mr. Bates—One minute. Let us have the letter if you are basing any testimony on that.

Mr. Whipple—Do you want us also to get those communications with regard to meetings that were being held, and what was being done?

Mr. Bates—We will tell you. Mr. Whipple.

Mr. Whipple—If you will tell us a little in advance then you wouldn't have this delay while we are looking it up. It is only to save time. We could be looking it up while you are looking your notes over.

Mr. Bates—Thank you, brother Whipple, for your kind suggestion; I cannot adopt it.

Mr. Whipple—You evidently do not want to save time.

Mr. Whipple—There is quite a succession of this correspondence.

Mr. Bates—We are only asking for one letter which he referred to.

Mr. Whipple—Oh, no.

Mr. Bates—That is all I have asked him for.

Mr. Whipple—Oh, no. Well, it doesn't appear.

The Master—My recollection is that the witness said they had seen or received a letter from somebody in the south, and then he was asked—

Mr. Bates—West.

The Master—In the west? The west. Governor Bates then asked him if he would produce the letter.

Mr. Whipple—Then you will have to describe it a little better.

The Witness—It was a copy of the letter that Judge Smith wrote to Mr. Paine.

Mr. Whipple—The original of it, was it?

The Witness—Well, I thought it was a copy made from the original. It may have been the original.

Mr. Whipple—Now, I have that for you if you want it.

Mr. Bates—Let me see it.

Mr. Whipple—I hand you a letter—

Mr. Bates—No; wait a minute. Won't you let me see it?

Mr. Whipple—I am going to identify it.

Mr. Bates—I guess I have a right to identify it.

The Master—Wait a minute.

Mr. Bates—I object to the way in which Mr. Whipple proceeds.

The Master—The letter having been called for and the witness undertaking to produce it, ought he not to identify it first?

Mr. Whipple—I will have him do it. Is this the letter which you referred to?

The Witness—Yes. One of them.

Mr. Whipple—The witness says that is one of them. Is that the first in the series?

The Witness—Yes.

The Master—If there are others do you ask for them?

Mr. Bates—If there are others on which he bases his statements.

The Witness—Yes, there are.

Mr. Bates—All right.

The Master—Now, I will let him identify all that he desires to produce.

Mr. Whipple (after conference with associates)—This is correspondence between Judge Smith and somebody else that was sent to you?

The Witness—Yes.

Mr. Whipple—That is what it was. Now, is this letter dated May 27, 1919—

Mr. Bates—Wait a minute. I object, if Your Honor please, to Mr. Whipple interfering in this way. He knows he has no right to do this.

Mr. Whipple—On the contrary—

The Master—Mr. Whipple, as I understand it, is now trying to have the witness identify the letters he desires to produce in answer to your inquiry.

Mr. Bates—I would not object to his asking the witness what letters he has reference to, but for him to take up a bundle of letters and ask him if those are the letters, or if that is the letter, reading it off, and suggesting the answer to him—that is entirely improper.

The Master—Suppose, Mr. Whipple, you just put the letters before the witness and let him pick out the ones he desires to produce in answer to Governor Bates' question.

Mr. Whipple—If Your Honor please, I understand that it is customary in handing over letters to identify them on the record so that the record will show once for all what letter it was that was handed over, giving the date, the person who purports to have written it, and the person to whom it is addressed.

The Master—Well, we will try to do

that, but let the witness pick out the letters and get them together, and then we will see what we will do next.

Mr. Whipple—Is that the next one in order?

The Witness—I should judge so.

[Mr. Whipple confers with his associates.]

The Master—How many in number are there there?

Mr. Whipple—Four, if Your Honor please. Not all of them are originals. Judge Smith has the originals. I have four, if Your Honor please.

The Master—The witness identifies those as the ones he desires to produce, does he?

Mr. Whipple—Yes, Your Honor.

The Witness—Yes.

Mr. Whipple—And there is also here an affidavit of Mr. Paine.

The Master—Unless that is a part of the correspondence I do not understand that it is called for.

Mr. Whipple—Is that?

The Witness—Yes.

Mr. Bates—I take an exception to the manner of Mr. Whipple presenting this matter.

The Master—Let us wait until we get through.

Mr. Bates—No; I take an exception to it now. He is asking him for an affidavit. Nobody has said a word about an affidavit. In other words, he is prompting the witness, and standing there for that purpose.

The Master—We are only trying now to get the correspondence together, and I have suggested that unless the affidavit was a part of the correspondence it was not called for by this question.

Mr. Bates—But he, notwithstanding that, persisted in asking Mr. Rowlands if it was.

Mr. Whipple—Now, he has asked, if Your Honor please—

The Master—I think we might cut this short.

Mr. Whipple—I will take Your Honor's direction.

The Master—Has the witness got through identifying the papers which he desires to produce in answer to the question?

Mr. Whipple—I understand not, because he has been subjected to so many interruptions by Governor Bates that he—

The Master—Now, let us get through.

Mr. Whipple—I am trying to, but every time I start to do it, Governor Bates makes an objection and takes an exception. Now, I will ask you to look at the five papers which I hand you, two original letters, two copies of letters, and an affidavit—

The Master—Before you state what they are, Mr. Whipple, let him see whether those are the papers which he desires to produce.

Mr. Whipple—I am asking if those are the—

The Witness—They are.

Mr. Whipple—The papers?

The Master—They are?

The Witness—Yes.

The Master—Governor Bates, now he has produced them, what do you desire to have done with them?

Mr. Bates—I would like to look at them.

Mr. Whipple—Now, I propose, if Your Honor please, to announce what they are as I hand them over to Mr. Bates, so that the record will show what I have handed him.

The Master—One moment. Is that course objected to?

Mr. Bates—It is—as being irregular.

Mr. Whipple—I submit that it is the only regular course, because it is the only way in which there can ever be any proof as to what I have handed to counsel.

The Master—Well, if Governor Bates insists upon it, we might have the witness put his initials on each one, or identify them in some way like that.

Mr. Whipple—I understand that the usual course is, in handing them over, to announce what they are, giving the date and other identification of the papers.

Mr. Bates—If you limit it to the date and the parties, I do not object.

Mr. Whipple—No; I shall state from whom the communications came and to whom they are addressed.

Mr. Bates—I said, if you would limit it to the date and the parties I do not object.

Mr. Whipple—That is all that I have ever suggested.

Mr. Streeter—If you are all agreed, why not go ahead?

Mr. Whipple—Well, it is not a matter of agreement; it is a matter of orderly procedure. I will hand you the affidavit of Gustavus S. Paine of Reno, Nevada, subscribed and sworn to on the 17th day of April, 1919; a letter purporting to be an original from Clifford P. Smith to Gustavus S. Paine, Reno, Nevada, on the 20th of May, 1919; a copy of a letter in reply, purporting to be from Mr. Paine to Mr. Smith, May 27, 1919; I hand you what purports to be an original letter from Clifford P. Smith to Gustavus S. Paine, dated June 5, 1919, and a copy of letter dated June 13, 1919, from Paine to Smith.

Mr. Bates—Now, I submit, Your Honor, that every one of these is dated long since this bill was brought, and therefore no one of them is responsive to my question or admissible in evidence.

Q. (By Mr. Bates) Now, Mr. Rowlands—

Mr. Whipple—Then will you hand them back, please?

Mr. Bates—With great pleasure (handing papers to Mr. Whipple).

Mr. Whipple—I am glad that there is something that gives you pleasure.

Mr. Bates—Oh, a great deal does here.

Mr. Whipple—You appear to have been in distress.

The Master—What is the next question?

Mr. Bates—Is that all?

Mr. Whipple—Oh, pardon me. Just pardon me for a moment. I have just had handed me a still earlier letter to Mr. Eustace from Mr. Paine, dated March 4, 1919. Let me ask if that was one that you referred to also?

The Witness—Yes.

Mr. Whipple—Now, I will hand you a letter from Gustavus S. Paine, Reno, Nevada, dated March 4, 1919. Now, do you want that?

Mr. Bates—Well, I will tell you after I have seen it.

Mr. Whipple—Well, no, if you take it and look at it I am going to put it in.

Mr. Bates—Oh, I shall not object to your putting it in.

Mr. Whipple—All right. I do not think you can.

Mr. Bates—When you get to it, if you think it is competent.

Mr. Whipple—Certainly not. I should not put it in if it was not competent.

Mr. Streeter—That is more cheerful.

Mr. Whipple—General, you always contribute cheerfulness to any assembly that you decorate by your presence.

Mr. Streeter—You might as well go along without getting all stirred up here. There is trouble enough without stirring up trouble unnecessarily.

Mr. Whipple—But you will agree with me that the Governor is an agitating factor.

Mr. Streeter—I do not want to characterize him.

Q. (Showing paper to witness) Mr. Rowlands, do I understand you to identify that letter as the one upon which you based your charge that the directors were going to use their authority?

Mr. Whipple—Pardon me; he has not said that he based the charge on that letter.

Mr. Bates—That is what I asked him to produce.

Mr. Whipple—No. He has already stated other things on which he based it, and he mentioned that he had received one letter. He did not state he had not received others, but he mentioned he received one. Now, I object to a misstatement—unintentional, of course—of what the evidence has been and what the witness' position is.

Mr. Bates—I will leave it to Your Honor's recollection.

The Master—My recollection is that the witness referred to one letter and after it appeared that there might be others, and a number were offered, it appeared that they were subsequent to the date of the suit, and you rejected them as not responsive to your question. I think they were not. Now, another letter is produced which appears, as I understand it, to be the one letter which he at first referred to.

Mr. Whipple—But not as the basis of his allegation altogether, because he has stated other bases.

The Master—Yes.

Mr. Bates—I did not say "altogether."

The Master—No; he talked about one letter. That is the letter.

Mr. Whipple—And all I was objecting to was the statement by the Governor that he had suggested that this one letter was the basis of his allegation. He has stated other facts which were the basis of his allegation and mentioned that they had received one letter.

The Master—I think that the utmost that can be gathered from the statement of the witness up to now is that that is the letter to which he referred before.

Mr. Whipple—That I agree to.

Q. Is that the letter you referred to? A. I meant to refer to the file with Mr. Paine. The file of letters—

Q. Well, this is not the letter you referred to? A. To the file of letters.

Q. Did you refer to that letter at all? A. Yes, and others.

Q. Is that one of the letters? A. Yes.

Q. Are there any others? A. I can refer you to other letters that would be called into account—the letter of Mr. Dittmore.

Q. I wish you would. A. I have the letter in my pocket, the letter that Mr. Dittmore wrote to Paul Harvey on Jan. 25.

Q. Is that the original? A. No; that is a copy.

Q. Where is the original? A. I think we have it.

Mr. Bates—Will you produce it?

Mr. Whipple—Suppose you use the copy temporarily, subject to verification.

Q. While he is looking for that, Mr. Rowlands, I want to ask you in regard to this letter of March 4 that your counsel has produced and that you identify as one upon which you based your opinion—as to whether or not there is anything in that letter that in any way justifies your claim that the directors were by propaganda seeking to discipline or to threaten, or to in anywise influence the Christian Scientists in their attitude? A. I should not say that this one letter carried out that—

Q. Then the only letter that you identify, apart from this one of Mr. Dittmore's that you are looking up, you now say does not justify that conclusion? A. I say that one letter does not.

Q. There is nothing in that letter about it, is there? A. Let me read it, and see. (Paper is handed witness.)

Mr. Streeter—Governor, what is the letter he is looking at? Is it Dittmore's letter or somebody else's letter?

Mr. Bates—It is a letter which he identified at Mr. Whipple's presentation as the one upon which he based his charge that the directors were going to use disciplinary methods for the purpose of—

Mr. Whipple—Let me correct you again, Governor. You have said again that that was the one on which he

bases his charge, which I stated that is not the testimony.

Mr. Bates—I asked him to produce the one, and this is the only one that has been produced.

Mr. Whipple—He said there were other things upon which he based his charge, but referred to one letter among other things.

Mr. Bates—I trust you take consolation from your reiterated statement.

Mr. Whipple—It is never consoling to have to correct you. I would not get consolation from it, or even satisfaction.

Mr. Bates—Then don't do it, because it doesn't do me any good.

Mr. Whipple—I have another emotion in regard to it, Governor. It may be more sympathy than anything else.

Mr. Bates—Your sympathy is misplaced; you need it at home.

Mr. Streeter—If Your Honor please: We are now taking an interest, Governor Bates. You brought out here and got into the record a letter of Mr. Dittmore's under date of Jan. 25. Now, having brought that out, I want to ask you if you are going to put that in or not?

Mr. Bates—I have asked him to produce it. I have not seen it yet.

The Witness (Returning letter to Mr. Bates)—I don't think that letter does.

Mr. Streeter—We certainly will produce it, and you having taken it we know that you will have to put it in.

Q. Mr. Rowlands, you have further examined this letter of Mr. Paine, and you now say that you do not think that that justifies the allegation in the bill? A. That particular letter, no; but the file of letters does.

Q. Will you produce the file that does? A. Why, it has been produced, and as far as I understand it, on account of being subsequent to the suit you did not wish it.

Q. Well, now, Mr. Rowlands, you do not mean to say that by any interpretation that you could put on it that you were influenced to make that charge in your bill that you filed in March, because of letters which were written long afterward? A. No, but that was the attitude of Judge Smith.

Q. I didn't ask you about the attitude. A. I know; but I have a right to say it.

Q. I asked you what influenced you to make that charge? A. And I think when we search his records we will find his attitude clearly set forth.

Q. It is not a question of his attitude we are asking for, I suppose, Mr. Rowlands.

Mr. Whipple—Well, that is subject to inquiry, certainly, Governor.

Mr. Bates—At the proper time, perhaps. Will Your Honor take a recess for a few minutes?

Mr. Whipple—Are you going to use that letter?

Mr. Bates—I was suggesting a recess. I thought it might save time if we could look over the letter during the recess.

Mr. Whipple—You mean, you want to look it over some more?

Mr. Bates—I have not seen it yet.

Mr. Whipple—I am talking about the Paine letter.

Mr. Bates—Oh, that Paine letter is absolutely inconsequential. If you want to lumber the record with it you are at perfect liberty to do it.

Mr. Whipple—Now, it is not inconsequential; it is very important, Governor. I am sorry that you lack discrimination. But whatever it may be, of trifling value or otherwise, I want it back.

Mr. Bates—You may have it.

Mr. Whipple—Thank you.

The Master—Has it been marked?

Mr. Whipple—Well, the Governor has not offered it, he spurns it. I am going to offer it a little later.

The Master—Shouldn't it be identified in some way?

Mr. Whipple—I am going to offer it a little later and put it in with a lot of other evidence which will show the basis upon which we made the charges which his clients will never deny when we get them on the stand.

The Master—Shouldn't it be now identified here?

Mr. Whipple—It has been identified as the letter of March 4, 1919, from Gustavus S. Paine to Mr. Eustace.

The Master—Oughtn't it to be marked?

Mr. Bates—Would you like it in, Mr. Whipple?

Mr. Whipple—I am not communicating my wishes to you at all.

Mr. Bates—Well, if you would, I would just as soon put it in.

Mr. Whipple—Oh, do not bother yourself to accommodate me; I can conduct my own case.

Mr. Thompson—Governor Bates, I would like to communicate a wish to you. That you would return, sooner or later, a document that you took from one of us, called a copy of a letter from Mr. Dittimore.

Mr. Bates—Mr. Dane is reading it. Do you object?

Mr. Thompson—No, but I want to get it back.

The Master—My suggestion that it should be marked is in order to avoid any possible dispute hereafter as to whether it is the same letter or not. You have so many letters here that it seems to me it would be better to identify it in some way on the paper itself.

Mr. Whipple—Will you mark that as the next exhibit, for identification, because I want the honor of offering it, at least.

[Letter from Gustavus S. Paine to Mr. Eustace, dated March 4, 1919, is marked 86 for identification.]

The Master—Is Governor Bates' suggestion that we take a recess acceptable to counsel?

Mr. Whipple—Yes, Your Honor.

The Master—We will stop for a few minutes, then.

[Recess.]

Mr. Bates—Have you that original letter?

Mr. Whipple—Which one?

Mr. Bates—Of Mr. Dittimore's?

Mr. Whipple—There are two letters that go together. One is a letter from Mr. Harvey to Mr. Watts, and the other from Mr. Dittimore to Mr. Harvey on the following day. Of course, the letters will have to be taken together to make much sense.

Mr. Bates—I want the one of which this is a copy which your witness has taken from his pocket and says is the one upon which he based his opinion.

Mr. Whipple—Pardon me. Again I must correct you. He has not said that. He is giving you some little items at a time—

Mr. Bates—Will you accommodate me with the original of this?

Mr. Whipple—I will, if you will quit making that erroneous statement.

Mr. Bates—I know you do not like it, but it is a fact.

Mr. Whipple—I do not like your erroneous statements. Anything that you state intelligently and correctly I accept always.

Mr. Thompson—Just a minute. Inasmuch as Governor Bates has called upon us to produce that so-called copy and has taken it and examined it, we have a right in that copy irrespective of the trustees' rights. I do not think you can look over a document and then say it is not a copy.

Mr. Bates—I did not understand your trouble, Mr. Thompson.

Mr. Thompson—I say, you called on us to produce that paper and we have produced it and you have examined it. That gives us, of course, the right of reading from it as an original if we desire. It does not affect Mr. Whipple's rights, but it does affect ours.

Mr. Bates—You mean the one—

Mr. Thompson—That General Streeter produced yesterday. General Streeter handed it to you and you have examined it.

Mr. Streeter—That is the original.

Mr. Thompson—No, that was the copy handed to you by Mr. Watts.

Mr. Bates—This is the copy I understood Mr. Strawn took out of his pocket. (Handing paper to witness.)

Mr. Whipple—Mr. Strawn? You are not examining Mr. Strawn.

Mr. Bates—I beg your pardon. We both feel complimented, so there is no trouble in that.

Mr. Whipple—Well, people may be complimented by errors, but they don't help to get the truth.

Q. Didn't you take that from your pocket, Mr. Rowlands? A. Yes.

Mr. Bates—This is Mr. Rowlands' copy and he took it from his pocket.

Mr. Thompson—If any letter purporting to have been written is going in by copy, we prefer to have the copy that we produced go in as the authenticated copy, not a copy that somebody else produced; that is all.

Mr. Bates—This is the copy upon which Mr. Rowlands acted.

Mr. Thompson—That does not make it evidence.

Mr. Bates—But, nevertheless, Mr. Whipple has produced the original and I assume there is no objection to putting it in.

Mr. Whipple—No, you will find, I guess, that that is a copy, too.

Mr. Thompson—When you get through with our copy let us have it back, that is all.

Mr. Bates—Is it a copy?

Mr. Whipple—I do not know.

Mr. Watts—That is the original.

Mr. Bates—Mr. Watts says that is the original. Are you satisfied with that?

Mr. Whipple—Certainly, because Mr. Watts is always correct.

[Letter, dated Jan. 25, 1919, from Mr. Dittimore to Mr. Paul Harvey is marked Exhibit 87, R. J. M.]

Mr. Thompson—Let us have the copy which you took from us, because we do not want our files depleted.

Mr. Bates—You are in error, Mr. Thompson; I took no copy from you.

Mr. Thompson (to Mr. Streeter)—Didn't you give him a copy?

Mr. Streeter—I certainly did.

Mr. Bates—This is the copy that came from Mr. Rowlands.

The Master—Let us put the original letter in. Have you got your copy back?

Mr. Thompson—No, I have not, sir. Mr. Streeter—We would like it.

Mr. Thompson—We would like it back.

The Master—Why not return his copy to him?

Mr. Bates—The original letter?

Mr. Thompson—No, we want our copy.

Mr. Bates—I beg Your Honor's pardon.

The Master—Why not return it to Mr. Thompson.

Mr. Bates—I don't know of any copy that Mr. Thompson had. This is Mr. Rowlands' copy and I can't take this from the witness.

Mr. Thompson—Just a minute, Mr. Bates. I saw General Streeter take the copy from Mr. Dittimore, and I saw you read it and I saw Mr. Dane reading it. I got it from you a few minutes ago and handed it back within three minutes.

Mr. Bates—You are entirely mistaken.

Mr. Thompson—I want it.

Mr. Bates—This is the copy that Mr. Rowlands had. I suppose that is the one you wanted.

Mr. Thompson—I don't care anything about the copy. I want that one you have. It belongs to me. It is all confusion. Let me have it, will you, please, Mr. Rowlands?

Mr. Bates—Wait a minute.

The Master—There have been two copies here.

Mr. Bates—I haven't seen but this one.

The Master—One belongs to Mr. Thompson. He wants it back.

Mr. Bates—Mr. Rowlands identified it.

The Witness—I can see that that is my copy.

Mr. Thompson—How can he tell whether it is?

Mr. Bates—Why not leave it until recess?

Mr. Thompson—Because when our files are depleted, we want it back again.

Mr. Bates—Pardon me; this isn't yours.

Mr. Thompson—Pardon me, it is. That belongs to me and I would like it back now.

Mr. Strawn—I suggest you take the copy, Mr. Rowlands. We will get another copy at lunch. It is not so sacred.

Mr. Thompson—Thank you very much. Go ahead with the original.

Mr. Bates—Are you through?

Mr. Thompson—I have got my papers, that is all.

Mr. Bates—This is marked Exhibit 87. It is on the letter paper of John V. Dittmore, C.S.B., 236 Huntington Avenue, Boston, U.S.A., a member of The Christian Science Board of Directors, and is dated Jan. 25, 1919, and is addressed to Mr. Paul Harvey, 21 East 40th Street, New York City.

[Mr. Bates reads the letter, as follows:]

[Exhibit 87]

"January 25, 1919.

"Mr. Paul Harvey,  
"21 East 40th Street,  
"New York City.

"My dear Mr. Harvey:

"I have before me a copy of your interesting letter of January 24th to Mr. John R. Watts, which was read to the members of The Christian Science Board of Directors and to Judge Smith yesterday afternoon. I must be the mysterious director who dined with two New York Christian Scientists and who is apparently being made responsible for all of the excitement in New York which your letter describes.

"About two months ago, when in New York, I accepted an invitation to dine one evening with two friends. During the time we were together there was a free discussion of the very obvious needs in connection with Monitor circulation, and also in connection with the business policy of The Christian Science Publishing Society as it relates especially to The Monitor. As I remember the conversation, little was said that is not a matter of common knowledge among those who have come in close touch with the situation. I listened with much interest to the very intelligent discussion of these gentlemen, especially on The Monitor circulation needs of New York City. I am very strongly convinced, from my past experience with newspapers and other publications of general circulation and also from my close study of The Monitor and its needs during the past few years, that the Christian Scientists of New York and The Christian

Science Publishing Society in Boston would all have been much benefited if they had heard the views of these gentlemen.

"I have never instructed anyone to carry out any 'purpose' in connection with this matter, much less made an attack on the trustees of The Christian Science Publishing Society. I shall hope to learn promptly who is responsible for this statement. I know nothing of the private meetings your letter mentions. Neither do I remember having given but one piece of advice, and that was in reply to a letter asking what I thought would be the best way to get a new and practical Monitor circulation plan for New York considered. My advice, given in a letter sent on Dec. 28, was as follows:

"'You and the others have earnestly sought to develop something which will meet a need which is obvious to every one who analyzes the present situation. I believe that it would be well if you would carefully set forth the whole matter, both as regards the need and the proposed remedy, and send it over to the trustees of the Publishing Society. You could also quite properly propose to send to Boston an unofficial committee of one or more, to go into the subject in greater detail at such time as the trustees would suggest as appropriate for such an important conference.'

"I sincerely hoped for the good of the Cause that the initiative of the New York churches would not be throttled, but that step by step, through cooperation, without sentiment or tradition, and with a recognition of the facts, the great potential force for good represented by the New York Christian Scientists would be gradually put in motion on a broader and more far-reaching basis than ever before.

"It is true that The Monitor has lost over \$1,000,000 of the funds of The Mother Church, a large part of which has been lost through failure to observe some of the simple rules of Christian Science and of good business.

"It is also true that the last annual statement rendered to the directors of The Mother Church showed a deficit of about \$75,000, and a continuous loss averaging at that time \$6000 per month.

"The circulation record of The Monitor is certainly as far from being a success as could well be imagined. Its last published circulation statement, published without qualification or explanation as 123,080 daily, is misleading. About 50,000 of these copies were at the time being given away to soldiers in camps. It is also estimated that the average number of copies used daily by local distribution committees throughout the world for samples and free distribution, is about 20,000. In other words, the actual bona fide circulation of The Monitor throughout the world, after over 10 years of effort, is about 50,000

among those who are sufficiently interested in it to pay for it themselves.

"Although the Monitor was provided primarily as a 'light to the Gentiles,' it is interesting to note that its circulation is only equal to 5 per cent of the estimated number of avowed Christian Scientists. The true circulation of the Monitor in Boston, including thirteen towns or municipal divisions, according to the last statement I have seen, was 2276. It is generally believed that the circulation in Boston is much larger than that of the Boston Transcript, and this statement was formerly made by Christian Scientists connected with the Publishing Society. At this same date the Monitor had 3092 subscriptions in Greater New York and 1990 other copies presumably for reading rooms and free distribution. Selling advertising space with circulation facts misunderstood by the advertiser, regardless of what arguments are used as to quality of circulation, constitutes a form of indirect misrepresentation which is entirely inconsistent with what should be the Monitor's ideals.

"An example of Monitor publicity policy can be found on the inside back cover of the current issue of The Christian Science Journal. Other copy in magazines of general circulation tending to emphasize religious viewpoints, has done much in the wrong direction.

"It will be interesting to learn why the board of Fifth Church, New York, became so 'incensed' by what it considered 'an open attempt to discredit the Board of Trustees' that it refused to ratify a resolution that the other churches had ratified. Somehow I feel that this church board is laboring under a misapprehension of some kind.

"I did not tell either of the New York gentlemen that the removal of one or more of the trustees was contemplated. While I do not feel that it is necessary to attempt to go into the details of the subject of publishing house conditions in this letter, it may be said that the evidence is more than abundant to show that a general renovation has already been much too long delayed.

"No one familiar with my views would say that I favor a policy of management based upon business efficiency independent of Christian Science demonstration. But arrogance, fanaticism, and a form of ecstasy of the senses misnamed demonstration, cannot be made to take the place of that calm, poised understanding of Principle which is also Love and which brings forth the fruits of confidence, justice, mutual respect, and a true efficiency based upon Science and not upon fear and aggressive self-will.

"I did not explain to the New York gentlemen the present effort to destroy the integrity of The Mother Church and of Mrs. Eddy's life work. I did not mention the juggling of the meaning of Mrs. Eddy's words and the various forms of mental gymnastics intended to explain away stubborn facts



in connection with the present situation. Neither did I describe any of the arguments in use to justify the repudiation of such of Mrs. Eddy's by-laws as prove inconvenient to the accomplishment of the scheme which the trustees of The Christian Science Publishing Society are trying to force on the Christian Science movement through threatened legal action and otherwise. If you as a member of The Mother Church wish to be accurately informed on this subject, there are many persons in New York and Boston who are familiar with the current propaganda in connection with this effort, but who have investigated the matter for themselves and who are therefore in position to speak with some authority.

"The fact is that it is time that the few who are giving aid and comfort to the indefensible efforts of a small handful of misguided men should arouse themselves to the true situation and without equivocation 'do their bit' to stop the effort which would have for its ultimate result nothing less than the destruction of Mrs. Eddy's life work and the disintegration of the Christian Science Church. If the Christian Scientists of the world will countenance this scheme, now is the time for us to find it out. I strongly suspect, however, that when the facts are known there will be quite a healthy and much-needed purifying process set in motion in the Christian Science movement and a support given in no uncertain terms to those who with a firm hand have taken hold of this effort of reaction and disloyalty to Mrs. Eddy's established church government.

"I cannot refrain from speaking with all possible earnestness on this vital subject.

"With kind personal regards, I remain

"Very sincerely,

(Signed) "JOHN V. DITTEMORE."

"P. S. Before sending this letter I have read it to The Christian Science Board of Directors. I am also sending a copy of it to Mr. Watts, and copies, together with copies of your letter, to the two New York gentlemen concerned.

"I shall be glad to have you let Mr. Flory read it. "J. V. D."

Q. Now, Mr. Rowlands, is there any other letter or fact that you can testify to upon which you base your claim— A. There is one more that I would like to speak of. That is—

Q. Wait a minute; I haven't finished my question. A. Pardon me; I beg your pardon.

Q. —upon which you base your claim that the directors were intending to use their power to dominate and control members of The Mother Church by the powers of discipline which they hold to influence the action of other churches by refusals to grant licenses or appointments? A. Yes.

Q. What is it? A. A conversation

that I had with Mr. Coonley of the Publication Committee in Washington.

Mr. Streeter—Mr. who?

The Witness—Coonley.

Q. Did Mr. Coonley state that they were attempting to do anything of that kind? A. He stated what Judge Smith had told him.

Q. Do you understand Judge Smith is a member of the Board of Directors? A. No. Well—

Mr. Whipple—Of course he is not; he is nothing but their counsel.

The Witness—He is their counsel and the Committee on Publication.

Q. I am asking you for anything from the Board of Directors that justifies your statements. Is there anything?

Mr. Whipple—I pray Your Honor's judgment, as to that. When their counsel and their Committee on Publication make a statement, isn't it a fair inference that that is from the Board of Directors?

The Master—Governor Bates, I think, may exhaust the witness' knowledge first as to anything concerning the directors themselves, but that does not prevent you from going into what, if anything, was said by their counsel.

Q. Was there anything else, Mr. Rowlands, that came to your personal attention? A. That is all I think of at this time.

Mr. Whipple—You mean from the directors personally?

The Master—The directors individually.

Q. From the directors? A. Nothing that I remember of at this time.

Mr. Whipple—The directors individually. This came from the directors, and your records show it.

Mr. Bates—I think that is all.

Mr. Whipple—Do you mind my examining first.

Mr. Thompson—No.

Mr. Whipple—Thank you.

#### Redirect Examination

Q. (By Mr. Whipple.) Now, when you were asked about things that had been called to your attention, you referred to the Dittimore letter, but that letter says, "I have before me a copy of your interesting letter of January 24 to Mr. John R. Watts." Now, did you see the letter from Harvey to Mr. Watts, the business manager? A. Yes, sir.

Q. Well, didn't you take that into consideration— A. Yes.

Q. —among other things? A. Yes, sir.

Q. I will ask whether there was more than one letter or more than one thing on which you based your statement of belief that the directors were using propaganda throughout the country, intending to make your position untenable? A. There was more than one.

Q. Is this the letter to Mr. Watts? I hand you one dated Jan. 24, of the present year. (Handing letter to witness.) A. Yes, that is the letter.

Mr. Whipple—That I offer. Do you want to look at it, Governor?

Mr. Bates—If you please.

Mr. Whipple—That is the letter to which the one you put in is the reply. This letter, if Your Honor please, is dated Jan. 24, 1919. It is addressed to John R. Watts, Business Manager, Christian Science Publishing Society, Falmouth and St. Paul Streets, Boston, Massachusetts. It is a letter from Paul Harvey, who is the gentleman to whom Mr. Dittimore sent his letter on the following day.

Q. Now is it a fact that as soon as you got the Harvey letter you called it to the attention of the Board of Directors? A. Yes sir.

Q. And then Mr. Dittimore's letter was sent after you had called the Harvey letter to the Board of Directors' attention?

A. As I remember it, yes.

Mr. Bates—Board of Directors?

Mr. Whipple—Yes, Board of Directors.

Mr. Bates—Mr. Rowlands called it to their attention?

Mr. Whipple—I understand so, yes.

The Witness—No, the trustees called attention—I am not sure the Harvey letter. But I know the letter Mr. Dittimore wrote to New York.

Q. Yes. Didn't they call his attention to the Harvey letter, and therefore Mr. Dittimore wrote to Mr. Harvey a reply to the letter that Harvey had sent? A. Yes.

Mr. Whipple—Of course he had it, because the letter shows that it was a reply.

The Witness—He did that through Mr. Watts.

Q. Then later did you ask the directors to repudiate the Dittimore letter? A. Yes.

Q. And did they ever do it? A. No, sir.

Q. Before your bill was brought? A. No, sir.

Q. That is when the Dittimore letter in reply to the Harvey letter was called to your attention? A. Yes.

Mr. Whipple—I think I have made that clear, Your Honor, have I not? Now, I will read this Harvey letter which started the proceedings. (Reading):

"Jan. 24, 1919.

"Mr. John R. Watts, Business Manager,

"The Christian Science Publishing Society,

"Falmouth and St. Paul Streets,

"Boston, Massachusetts.

"Dear Mr. Watts:

"It appears an attempt has been made to openly discredit the Board of Trustees, and those who are making the attack say they are doing so at the request of 'one of the directors.'

"It is said that 'one of the directors' recently made a trip to New York, and invited those to dinner whom he instructed to carry out these purposes. Those with whom he talked

are openly stating that there is a difference between the Board of Trustees and the Board of Directors as to the management of The Christian Science Monitor.

"Immediately following this visit a meeting was called of the boards of the churches of Greater New York, to ratify the action taken at a previous meeting to appropriate \$1000 a month by the branch churches, to be applied to circulating The Monitor in New York. A member of one of these boards who was present at this meeting says that one of these men, who had dined with this director a few nights before, made the following statements before the meeting:

"That The Christian Science Monitor was a splendidly edited paper and had a remarkable news-gathering service, but that the Board of Trustees had no understanding of salesmanship and had made a failure of promoting the circulation of The Monitor. That when Mrs. Eddy wanted some carpenter work done, she sent for a carpenter, not a metaphysician, whereas the trustees were depending upon metaphysicians instead of employing men who had had experience in circulating other newspapers.

"This member of the board of one of the local churches reports that since this director's visit there have been five private meetings at a certain office in the interest of Monitor circulation, and that it is claimed that these meetings are held at the request of 'one of the directors,' and that they have employed one or two circulation men who it is understood were formerly connected with the Hearst papers, who are not Christian Scientists, but who are now somewhat interested and going to church.

"One of these men who claims to be acting under instructions from 'one of the directors,' had invited a number of persons in the field to join a 'little group,' who are meeting at his office and who had put up \$500, to employ some experienced men who are soliciting subscriptions for The Monitor. When the question arose as to whether such an activity would not act as a counter to progress being made by the local churches toward providing means for establishing Monitor circulation in New York on a right basis, the statement was made that this 'little group' had been asked to undertake this plan by 'one of the directors.' This 'little group' has spread through the New York field the statement, which they say was made by one occupying a high position in The Christian Science Publishing Society, that the circulation of The Christian Science Monitor as given out by the Board of Trustees is 123,080 copies, that the accredited circulation is 93,000 copies, but that the 'honest to God' circulation is 63,000 copies. This remark has spread, not only throughout the movement, but through the business world, and has

now reached the point where it is openly stated in the business world that The Monitor circulation is only 58,000, and that its 'honest to God' circulation in the city of Boston is 2200 copies.

"At the meeting of the representatives of the boards of trustees of the twenty branch churches of Greater New York, the resolution which had been drafted to send to the Board of Trustees, to say that the branch churches were ready to make a per capita tax upon their members which would aggregate about \$1000 a month, was again considered. One of these men, who stated that he was acting under the instructions of 'one of the directors,' after openly announcing that there was a difference between the Board of Trustees and the Board of Directors as to the management of The Monitor, moved that the name of the Board of Trustees of The Christian Science Publishing Society be stricken from the resolution and that they substitute therefor 'Boston authorities,' and that the resolution be sent to the Board of Directors and not to the Board of Trustees. A copy of this resolution, marked 'Exhibit A,' is herewith inclosed.

"The board of one of the churches was so incensed at this open attempt to discredit the Board of Trustees that it refused to ratify the resolution, and substituted the inclosed resolution marked 'Exhibit B.'

"One of these men, who had dined with this director, when called upon by a local Christian Scientist, openly volunteered the following information: That the Board of Trustees was about to be removed by process of law. When asked why, he said that 'we' could not stand idly by and see The Christian Science Monitor impoverish the movement; that up to the present time The Monitor has cost 'us' over \$1,000,000. When it was said to him that it was not surprising that to establish a daily newspaper as the Monitor had been established would require a large expenditure of money during the first years, but that now it was understood The Monitor was reaching, if it had not reached, a self-supporting basis, he claimed that this was due to the fact that 'we' had given them 40,000 subscriptions to be distributed for camp welfare work.

"As a trustee of one of the local churches has said: In our church there are 135 active members of the distributing committee. In each of the other New York churches there are large active distribution committees. We in New York have realized that the circulation of The Monitor in our field was properly the demonstration of our branch churches. We have realized that no thinking person would expect the Publishing Society to undertake the circulation of The Monitor in the thousands of cities which it serves; that this is the privilege of the branch churches and one of their greatest opportunities for growth.

"The method which this 'little group' is attempting toward Monitor circulation in New York was characterized as an attempt of 'business efficiency' to take the place of demonstration, which if put through would immediately result in the branch churches discontinuing any effort toward distribution and circulation, and so the loving, thoughtful interest of these hundreds of workers would be dropped. It is this interest which the Board of Trustees has so carefully nurtured and has always encouraged.

"Inasmuch as this talk about there being a difference between the Board of Directors and the Board of Trustees has become current in New York, and is circulating throughout the entire New York field, and the talk about removing the Board of Trustees is openly and freely discussed amongst Christian Scientists in New York, it seemed to me that you, as business manager, should know of the situation, so that you may, if you feel it right, present it to both boards, or do with the information whatever seems wise to you in that connection.

"Sincerely yours,  
(Signed) "PAUL HARVEY."

Q. Now, that was called to your attention? A. Yes, sir.

Q. With the statement that the directors, or some of them, were openly stating a purpose to remove all the trustees? A. Yes, sir.

Q. Did you have that in mind when you testified as to the propaganda that you knew were being put out? A. Yes, sir.

Q. And especially this statement from Mr. Harvey, that "The talk about removing the Board of Trustees is openly and freely discussed among Christian Scientists in New York"? A. Yes, sir.

Q. And did you find that the same talk was current in other sections? A. Yes.

Q. And had you heard from representatives in different fields of that thing—I mean of a similar state of affairs? A. Yes.

Q. Now, then, you said that you also had a talk with Mr. Coonley in Washington. Who is Mr. Coonley? A. Mr. Coonley is the Publication Committee in Washington. I didn't have the talk with him in Washington; I had the talk with him in Boston.

Q. When was that, or about when? A. That was prior to the filing of the suit.

Q. What was that conversation in substance? A. Mr. Coonley and I have always been very great friends. We worked together for a great many years. And he came here to Boston—I don't suppose especially to see me—but he asked to see me. I went to the Copley Plaza to see him, and he brought up the subject of the controversy between the trustees and the directors.

Q. Had you informed him of it? A. I had not.

Q. What did he say? A. Well, he

immediately took the side of the directors and did not seem to want at that time to consider that I had any rights. He thought I was in open rebellion against the directors. And I asked him if he had read the Deed of Trust. He told me he had consulted with Judge Smith, and I asked him if he had read the Deed of Trust, and he said he hadn't.

Q. Then let me ask—Was he under Judge Smith? A. Yes.

Q. That is, Judge Smith is the superintendent of the circulation? A. He is the Committee on—

Q. Committee on Circulation?

Mr. Streeter—Publication.

Q. Publication. And this was one of his subordinates? A. Yes, sir.

Q. Did he tell you anything about what was being done in the field with reference to you? A. No.

Q. Did you infer from the fact that one of Judge Smith's subordinates came to you in this way, what was being done? A. Yes, because I—

Q. I don't ask "because." You did infer what was being done in the field? A. Yes.

Q. That was one item in connection with it? A. Yes.

Q. Now, then, you have said, I think, that in your conversations with the directors Mr. Dickey said something—"I would not be in your shoes for a good deal," or something of that sort, "if you do this." A. Yes.

Q. How did you construe that?

Mr. Bates—I object.

The Master—We have got what was said. Isn't that the important thing?

Mr. Whipple—No, Your Honor. They are attempting to impeach the good faith of these trustees in the allegations of what they believed was the situation. And now among Christian Scientists that thing had a significance I do not think Your Honor would understand until it was explained. I mean what he construed that to mean.

Mr. Bates—I certainly object to his construction of what the words meant. They speak for themselves. There is no special Christian Science doctrine as to what those words mean.

Mr. Whipple—When a man's good faith is impeached he has a right to say what inferences he made from what things were said.

Q. Let me ask this: Who has the power, in the Christian Science Church, as you understand it, to turn people out of the church, to un-church them? A. Under the Manual the right is, I think, in the Board of Directors.

Q. Well, the Manual couldn't do it without somebody's acting. Is it the Board of Directors? A. Yes.

Q. Now, I will ask you if that suggestion of Mr. Dickey, carrying the power, as he did, to un-church these trustees,—his suggestion and his significant look at you made any impression on your mind with regard to what he meant about not wanting to be in your shoes.

Mr. Bates—I object.

The Master—I think I shall admit it subject to your exception.

Mr. Bates—Save my exception.

A. Well, we gained the impression that the directors would probably try to un-church us.

Q. And without any hearing? A. Yes.

Q. I mean—you hadn't any notice of any hearing? A. Yes.

Q. The habit seems to be—

The Master—I don't quite see how he could have gone so far as that upon impression merely.

Mr. Whipple—Well, it shows, if he had that impression, that it was justified by their immediately subsequent action, because they didn't give him any hearing, when they attempted to remove him—or Mr. Dittmore, did they?

Mr. Thompson—About three minutes I think.

Mr. Whipple—Well, they didn't give us that. I guess that is because Mr. Dittmore actually was present.

Q. Now, then, had you heard Mr. Eustace refer to some California manifestation out there? Do you remember whether you had heard of that before the bill was filed? A. I can't say that I do.

Q. You heard of it subsequently, anyway? A. Yes.

Q. The Strickler matter? A. Yes.

Q. Did you learn of movements in different sections, as to what the churches were doing? A. Yes, sir.

Q. Without remembering exactly the source of your information? A. Yes, sir.

Mr. Whipple—I neglected to read in this letter, if Your Honor please, what I will now read—the Exhibit A and the Exhibit B—the resolution which was passed at a conference of the trustees of all the churches and societies of Greater New York was this (reading):

[Exhibit A]

"Resolutions passed at conference of trustees of all churches and societies in Greater New York and environs supporting The Christian Science Monitor Circulation Committee work.

"Resolved: after much friendly and constructive discussion: That it is the sense of this conference, that the question of the promotion of the circulation of The Christian Science Monitor in this field should be put up to the Boston authorities, and that they should be requested to formulate plans, and to appoint, direct, and maintain a Christian Science Monitor circulation manager for Greater New York and vicinity, and if the Boston authorities accept this plan, that the Christian Science churches and societies of Greater New York are herewith asked to pledge themselves to a per capita tax sufficient to raise, if necessary, such a part of \$12,000 per year or more for two years, for the carrying on of this work by Boston. This tax to become

binding when churches comprising a membership of a majority of the members in Greater New York have ratified it.

"Resolved: That as fast as the preceding resolution is ratified by the Christian Science churches and societies of Greater New York and environs, they are requested to notify Second Church of Christ, Scientist, of New York City, and when the churches comprising a majority of the membership have so ratified, Second Church is requested to notify the Board of Directors in Boston."

Exhibit B is:

"It is the sense of the Board of Trustees of Fifth Church of Christ, Scientist, New York City, that if the Board of Trustees of The Christian Science Publishing Society should deem it wise to establish in New York a Christian Science Monitor Circulation Manager for this field, that the Christian Science churches and societies of Greater New York would guarantee the support of such an office financially and metaphysically.

"And that the above statement should be sent to the Board of Trustees of The Christian Science Publishing Society in substitution for the resolution accepted by the Conference of Trustees of All Churches and Societies in Greater New York, held at First Church of Christ, Manhattan, Jan. 2, 1919."

[The foregoing letter is marked Exhibit 88, R. J. M.]

Mr. Whipple—The first of those, I understand, was passed at a meeting of all the churches, and this particular church revolted and communicated with the Board of Trustees with regard to the matter under their trust.

Mr. Bates—What is this—evidence that you are putting in yourself?

Mr. Whipple—Yes, I am engaged in putting in evidence; that is our function.

Mr. Bates—Are you testifying?

Mr. Whipple—Oh, no, that is a different question, not at all.

Mr. Bates—Then I object to it.

Mr. Whipple—I am putting in evidence that makes you very touchy.

Mr. Bates—Not at all. I think it would be better for you to ask the witness questions rather than testify for him.

Mr. Whipple—Do you want me to have him read the letters?

The Master—The letters have been read. I suppose that is all we have got in the way of testimony.

Mr. Bates—It was Mr. Whipple's statement in regard to what he understood was done with it that was not proper.

Mr. Whipple—Oh, no, I was referring to the gossip.

The Master—There is no danger, Governor Bates, that I shall take that as evidence.

Mr. Bates—No, I don't think you will

The Master—It will appear on the record fully what it is.

Mr. Whipple—Then I understand that your remark was omitted without any fear of any danger. It must have been for the sake of making it.

Mr. Bates—No, I have no fear of any danger so far as the cause is concerned, but I object to your putting so much in this record that is being published in your papers every day that is not proper.

Mr. Whipple—I thought you thought they were your papers. Thank you, they are ours.

Mr. Bates—They are our papers, too. They have been temporarily confiscated.

Mr. Whipple—Well, I am glad you recognize the confiscation at least. I now offer the paper marked Exhibit 86 for identification. This was handed to Governor Bates and by him returned. (Reading):

"2 Herz Building,  
"Reno, Nevada,  
"March 4, 1919.

"Dear Mr. Eustace:

"Of course I understand all that you said about class instruction and applicants. I just have a feeling that, when one comes to talk with me who has talked with you or wants to talk with you, I want you to know it. My work is not a competition with anyone else but rather a broadening of the unfoldment of metaphysical work.

"Yesterday Mr. Graham lectured here."

Q. Who is Mr. Graham? A. He is one of the lecturers of The Mother Church.

Q. Appointed by one of the directors? A. By the Board of Directors.

Q. By the Board of Directors, I mean. A. Yes, sir.

Q. And therefore under them? A. Yes.

Mr. Whipple (reading)—

"In the morning I went to the hotel to see him, as I was to introduce him in the evening. He asked me how the work was going here, and I said very well indeed. Then he asked me if the thought was disturbed by the difficulty in Boston between the Board of Directors and the Board of Trustees. I said that nobody here knew anything about any such thing. Then he went on to say that the Board of Directors had asked for the resignations of the trustees, that the trustees had refused and had engaged counsel including Charles E. Hughes and Sherman Whipple. He said that as he went around the country he found the feeling to be that the Board of Directors should be supported.

"Now, of course, the Board of Directors has to be supported but so does every activity that Mrs. Eddy's vision saw rightly unfolding. Divine Principle is my Board of Directors and my Board of Trustees. I am constantly grateful for the copy of the Deed of Trust. Through this in connection with the Manual we can see

more of what really democratic government is for our church.

"I was interested in the recent announcement in the Sentinel. Of course the Board of Directors can pass on the cards but the Board of Trustees has the final word in that case. The Church and the Publishing Society are distinct but interdependent.

"It is just that men do not see clearly that consciousness is all there is that tries to blind them to the joyous unfoldment going on in spite of any seeming.

"With kindest regards to Mrs. Eustace,

"Sincerely yours,

"GUSTAVUS S. PAINE."

Q. Now that came in from Nevada. Had the Board of Trustees communicated to anyone anything about this difficulty? A. Not to my knowledge.

Q. I mean any one in the field—in that sense. Mr. Paine apparently states here that Mr. Graham, who was under the Board of Directors, was the first to mention it there. A. Yes.

Q. Did you note this part of it—that Mr. Graham claimed "that as he went around the country he found the feeling to be that the Board of Directors should be supported"? Did you regard that as propaganda? A. I did.

Q. That was being put out by this Board of Directors through their lecturers throughout the country?

Mr. Bates—I object to that question.

Mr. Whipple—Isn't that exactly what we have a right to show? If a man's good faith is impeached he has a right to show that he regarded that as evidence of propaganda that was being put out by the Board of Directors through their lecturers throughout the country. What could be more insidious than to go everywhere throughout the country and say, "I have been traveling around; here is a trouble between the Board of Trustees and the directors; I find the sentiment is all in favor of the directors." Nothing more insidious as propaganda than that, as we say; at least we so regard it.

Mr. Bates—I object to the question as being in its every word absolutely leading and improper to be put on examination.

Mr. Whipple—I don't think it is leading. I think it is a direct question calculated to bring out a direct answer.

The Master—Under the circumstances and for the purpose stated before, I think I shall allow it to be answered. (Question read.)

A. We did.

Q. Did you subsequently, and before the suit—(pausing).

Mr. Bates—Let me see the affidavit of Mr. Paine.

Q. You subsequently got an affidavit? A. Yes, sir.

Q. Asked Mr. Paine to make an affidavit? (Paper handed to Mr. Whipple.)

Mr. Bates—I think there is nothing

in the affidavit that the letter does not contain.

Q. Now I want to call attention to Mr. Dittmore's letter to Mr. Harvey which has been read by Governor Bates. In one of his closing sentences Mr. Dittmore says—No. I want to call your attention to the last paragraph of the letter—the last full paragraph:

"The fact is that it is time that the few who are giving aid and comfort to the indefensible efforts of a small handful of misguided men should arouse themselves to the true situation and without equivocation 'do their bit' to stop the effort which would have for its ultimate result nothing less than the destruction of Mrs. Eddy's life work and the disintegration of the Christian Science Church. If the Christian Scientists of the world will countenance this scheme, now is the time for us to find it out. I strongly suspect, however, that when the facts are known, there will be quite a healthy and much-needed purifying process set in motion in the Christian Science movement and a support given in no uncertain terms to those who with a firm hand have taken hold of this effort of reaction and disloyalty to Mrs. Eddy's established church government."

You read that, also, in January? A. I did.

Q. And was it that that you asked the other directors to discountenance? A. Yes, sir.

Q. And disavow; and they did not do it? A. They did not.

Q. What did you infer from Mr. Dittmore's statement "that when the facts are known" certain things would happen with reference to what the directors were doing and were proposing to do about making what they called the facts known? A. The only inference would be that they were going to spread propaganda.

The Master—I understand this is subject to your objection.

Mr. Bates—I didn't catch the question; will you be kind enough to repeat that question?

Mr. Whipple (To the stenographer)—Will you read it?

[Question read.]

Mr. Bates—I object to the question being answered.

The Master—The same ruling, subject to objection. (To the witness) Answer it.

A. I took it that they intended to spread propaganda throughout the field.

Q. And what did you infer as to whether they were doing it? A. Inferred that they were doing it as a fact, from Mr. Dittmore's letter.

Q. That is, that it was common talk in New York— A. Yes.

Q. —all the New York churches. I assume that you did not agree with Mr. Dittmore's suggestion that what you were doing for the protection of your trust was "an indefensible effort

of a small handful of misguided men"?

A. I did not agree to that.

Q. Or that anything you were doing in an attempt to maintain and support a trust which Mrs. Eddy herself signed and gave to you was in any way disloyalty to Mrs. Eddy? A. We did not feel so.

Q. Now will you be good enough to let me read to you a little of the financial information as to your lumber business. I understand you to say that the enterprise upon which you had just entered just before you were asked to be a trustee of this church was one of the greatest lumber enterprises, or the greatest that had ever been entered upon in the south? A. Not the greatest, but one of the largest activities.

Q. One of the largest? A. Yes, sir.

Q. And you and your partner, Mr. Crosby, were undertaking it together? A. Yes, sir.

Q. It was perhaps the largest business enterprise that you had undertaken in your life time? A. Yes, sir.

Q. It was the climax of the increasing magnitude of enterprises that you had dealt with? A. I felt that way, yes, sir.

Q. You were at that time vice president when you were invited to be a trustee? A. Yes, sir.

Q. A vice president, treasurer, and general manager of the Goodyear Lumber Company? A. Yes, sir.

Q. Did those positions, or any of them, carry a salary? A. They did.

Q. How much? A. The Goodyear Lumber Company—

Q. I am now talking about the position of vice president, treasurer and general manager of the C. A. Goodyear Lumber Company. A. \$15,000 a year.

Q. And you were in receipt of that income? A. Yes, sir.

Q. Was that made known to this Board of Directors when you were summoned on here to Boston to accept this \$6000 position as trustee? A. It was not.

Q. You did not state that at all? A. I did not.

Q. But you knew that the acceptance of this position involved the giving up of those positions and the emoluments from those positions? A. I did.

Q. \$15,000, yes. Did they know that you were a man accustomed to deal with affairs in the business world of magnitude? A. Yes, sir.

Q. And that you had created and built up an organization to do it? A. I felt that they did.

Q. I do not suppose you bragged about it, but you tried to make known something of your obligations in finance and to the financial world? A. In a general way.

Q. Did they say why—these directors, in the talk you had with them—why they wanted you? A. Well, they did not express any particular reasons.

Q. Didn't they? Didn't they speak

as to what it would mean to the Board of Trustees if a man of your dignity and standing in the business world, accustomed to deal with large affairs, would come to them to discharge these duties?

Mr. Bates—I pray Your Honor's judgment.

Mr. Whipple—What is it?

Mr. Bates—He said that they did not. Now Mr. Whipple is putting a leading question in which he is putting certain statements into his mouth.

Mr. Whipple—Oh, I do not think that is a fair comment.

The Master—That is objected to. I do not suppose it is hardly admissible, Mr. Whipple.

Mr. Whipple—Very well.

Q. Now, when did you resign those positions with the Goodyear Company? A. Just as soon as I could do so without embarrassing any of the activities.

Q. Yes. Do you remember—was it a matter of a month or two, or more? A. Oh, it was some considerable time afterwards; the next regular meetings that they had.

Q. Did you make known to the trustees that it would be necessary—that you held these positions and it would be necessary for you to effect your retirement gradually? A. I did.

Q. Did you make known to the trustees the financial sacrifice that you were making to accept this position? A. I did not.

Q. Were you influenced in accepting the position by financial considerations or ambition to get this salary? A. Not at all.

Q. Or anything other than to discharge your duty as trustee as a duty to the great Cause? A. Yes; to serve God and serve the Cause.

Q. It was a devotion to what you regarded as a divine mission? A. I felt absolutely that way.

Q. And a surrender of your material welfare?

Mr. Bates—I pray Your Honor's judgment.

A. Yes, sir.

Mr. Bates—These are very nice statements that are being made by Mr. Whipple.

Mr. Whipple—Well, aren't they nice? Aren't they nice?

Mr. Bates—Yes, very nice.

Mr. Whipple—And I should think you would be ashamed of being in the position of discrediting or attempting to discredit a man who has done such a thing.

Mr. Bates—I wish you were on the stand.

Mr. Whipple—I wish I was, because this man is more of a business man than he is a talker and you have the advantage, because you are more of a talker than you are a business man; but if I was on the stand I would answer your questions so it would make you tingle for having attempted to discredit this man whom you sought to get here under such circumstances.

Mr. Bates—I would like to ask if my brother is through?

The Master—I think it would be better, Mr. Whipple, to avoid that method of examining the witness.

Mr. Whipple—I would, if Your Honor please—

The Master—For the sake of saving time if for no other purpose.

Mr. Whipple—Very well. Yes, I quite agree with that; but I am having my tribulations with the Governor. I feel a little as if he was sacrificing the dignity of his profession to the exigencies of his case.

Q. Now, the Goodyear Redwood Company; you were vice-president of that. Did that carry a salary? A. It did not.

Q. And you resigned that, as I understand? A. I did.

Q. And then the Goodyear Yellow Pine Company; that was a corporation you organized? A. Yes, sir.

Q. And you had recently organized it for caring for this great financial enterprise? A. I had.

Q. And have you resigned from that yet? A. I have resigned as vice-president. I am still treasurer.

Q. You are still the treasurer? A. Yes, sir.

Q. Did you make known to the trustees that it was necessary for you to carry out these pledges to your financial associates? A. I did and they told me I should take all the time I needed in order to carry out these activities, not to feel limited in any way in working it out, to give them all the time I could consistently give them, but not to neglect my other activities.

Q. You have mentioned some other organizations with which you were concerned. Did you have for your personal services compensation from any other than this \$15,000 salary? A. I did not.

Q. So that the financial sacrifice, except that sacrifice that was involved in not attending to these great business operations—the financial sacrifice was the difference between your salary of \$15,000 and the \$6000 which was offered here? A. Yes. I might say that Crosby & Rowlands have an account in which they receive partnership funds which are divided on their books; but I cannot give you any definite information in regard to that because—but that is my private income.

Q. Well, that would be a matter of adjustment between yourself and your partner with reference to your giving time to some outside enterprise? A. Well, his talk about it when I came down here was that he would not in any way ask to have a division, because he felt that it was working out the good, the welfare of humanity, and he would take the brunt of the activity there.

Q. In other words, he wouldn't ask you to diminish your proportionate income? A. No.

Q. Because that would be his contribution to the Cause to which you

had dedicated yourself? A. That is what he said.

Q. Have you since you came with the board taken any vacation, either from your business or your work as trustee? A. Oh, probably a week-end, that is all.

Q. But nothing except the rest of a week-end? A. No, sir.

Q. Have you devoted any of your evenings to the work of your business or the work of the Board of Trustees? A. Yes, sir.

Q. To what extent? A. Why, I have spent a great many nights, all night long, at the publishing house; and when they were making the change in the paper I stayed there, I guess, an average of 20 hours almost out of the day for a number of days. I go there very frequently in the evening and stay until 12 or 1 o'clock.

The Master—You may pause when you get to a convenient point.

Mr. Whipple—We shall ask no further questions of this witness.

The Master—We shall stop here until 2 o'clock, then.

[Recess till 2 p. m.]

#### Afternoon Session

#### Cross-Examination on Behalf of Defendant Dittmore

Q. (By Mr. Thompson.) Mr. Rowlands, you have known Mr. Dittmore for a great many years, haven't you? A. Yes, sir.

Q. Can you give us any estimate how many; ten years, or more? A. Let me see—

Q. Accuracy is not required. A. I think I have known Mr. Dittmore about eight years; eight or ten.

Q. You knew him in Chicago, didn't you, when you were out there? A. Yes.

Q. And you have come to be on personally friendly terms with him, haven't you, in all these years? A. Yes, sir.

Q. Now, you heard the testimony of Mr. Eustace on all these differences of opinion in detail between the trustees and the directors, so far as Mr. Dittmore represented them. I think there were about 28 different topics on which some differences of opinion had developed from time to time, aside from this underlying difference. I won't go all over that again with you, but in general you would say the same thing, wouldn't you? A. Yes, sir.

Q. You have found Mr. Dittmore to be a man sincere, in the first place, haven't you; a sincere advocate of his own opinions? A. A very sincere advocate of his own opinions, yes, sir.

Q. You have not ever, in your relations with him, or in your discussions with him, detected him in any double dealing or hypocrisy, have you? A. No, sir.

Q. He has been in the habit of stating frankly and earnestly his position, whether it differed from yours or not, and expecting the same treatment from you, hasn't he? A. Will you state that again?

Q. I mean, his habit of dealing with his fellow men, so far as observed by you, has been to state earnestly and frankly and forcibly his own views, and expect other people to do the same thing? A. Well, I don't know what he expects other people to do, but he states his ideas very forcibly, yes, sir.

Q. He does so without personal rancor or vindictiveness, doesn't he? What I mean is introducing into the discussion on matters like this an element of personal rancor, or personal hatred or dislike? A. Well, I think he is not immune from that, any more than any one else.

Q. In your discussions with him, have you noticed the element of personal abuse? Has his language been abusive with you in the discussion of these questions, or has it been that of a gentleman? A. Well, I would have to say Mr. Dittmore has always been a gentleman in his attitude toward everything that I know of.

Q. Exactly. That is, it has never got to the point where your differences of opinion degenerated into such relations that you could not have any further dealings with him, personal relations? A. No, I have always considered Mr. Dittmore a man that I could get along with.

Q. You have known him well enough to know what his attitude in regard to being a sincere believer in the doctrines of Christian Science is, haven't you? A. Please state that again.

Q. You have known him well enough to become aware of whether or not he is a sincere believer in Christian Science, haven't you? A. I think he is, yes, sir.

Q. And you have never observed in him any willful departure from the doctrines that make up Christian Science, have you? A. Well, I don't agree with his attitude on lots of points.

Q. That may be on theoretical matters, but I mean in the character of his personal life and conduct? A. I have no criticism of his personal character.

Q. None whatever. You had an office next door to Mr. Dittmore, didn't you, for a long time up there? A. I still have one.

Q. You still have one? A. Yes, sir.

Q. So you have been in a way of seeing him quite frequently? A. Quite frequently.

Q. Have you and he argued these questions out among yourselves quite often, these fundamental differences? A. Not of late.

Q. Well, at any time in the past? A. Well, at times we have talked. In the early days we used to have lots of talks.

Q. You found him a man willing to listen to his opponent, and open to conviction if he were convinced, didn't you? A. Well, I have found him a man willing to listen, but I don't know as he was always open to conviction.

Q. He didn't shut his ears to what you had to say to him? A. Well, I don't know about that. I couldn't testify to that.

Q. Now, do you recollect, I think it was in the month of June, 1918, that you had a friendly little talk with Mr. Dittmore as to the situation as it then existed between the two boards? I won't ask what was said; I merely want the fact that there was such a conversation. Perhaps you can answer that yes or no. A. Well, I had—I don't know—I know that I saw him a number of times in 1918 in June, undoubtedly, if I were here.

Q. I will identify the conversation a little more particularly, so that perhaps it will come to your mind more readily. The conversation to which I refer was the conversation in which something was said in regard to the attitude of his fellow directors toward him. Now, do you remember such a conversation? Yes or no. I don't ask what was said at this stage. A. Will you please state that again; I am sorry.

Q. Do you recollect a conversation sometime before this suit was brought; I think it was nearly a year ago, but it may not have been quite so long ago as that, in which the subject talked about was the attitude or purposes of his fellow directors toward him? Please answer that yes or no if you can; merely the fact, if you remember such conversation. A. I remember something of a conversation that I had with Mr. Dittmore, yes, sir.

Q. On those general subjects? A. Yes, sir.

Q. That was a friendly conversation, was it not, between you and him? A. Very.

Q. And it was a conversation in which you felt inclined and did try to give him some help or warning in relation to what was likely to come, didn't you? Perhaps you could answer that, if you can, yes or no. A. Well, I cannot—I was with Mr. Dittmore a number of times during that, and I talked with him generally about Christian Science affairs, but I don't know as I could say anything special.

Q. I want to direct your attention to one particular conversation. Perhaps I will come at it a little more definitely. Didn't you have a talk with him about a year ago (the exact time is unimportant) in which you expressed to him the opinion in substance that his fellow directors, perhaps especially Mr. Dickey, were likely to take some steps against him unless he changed or altered his attitude in some respects? Yes, or no, in substance, that is all. A. Why, I will have to say yes.

Q. I thought so, because we have been advised that that actually occurred, but didn't it go a little farther than that? Didn't you feel moved to advise him, and did you not in fact advise him that, without his knowledge, unknown to him, preparations were likely to be made, or were per-

haps already being made to separate him from the Board of Directors, in substance? Yes or no. A. It is hard for me to answer such questions, unless I could qualify it.

Q. I know it is hard, Mr. Rowlands, but perhaps you will realize this is rather a serious situation. A. Yes.

Q. And that personal feelings are not to be taken into account here, in view of the necessities of justice. Isn't that the real truth, Mr. Rowlands? A. Well, in substance, yes.

Q. So that the fact is that as long as a year ago you were in a position to advise Mr. Dittmore, and did in fact advise him, as a friend, however you may have differed with him in opinion, that his fellow directors, under the lead of Mr. Dickey, were getting ready without his knowledge a scheme to eject him from that board? That is the honest, solid truth, isn't it, Mr. Rowlands? A. I cannot answer that question the way you put it. Mr. Dickey didn't say anything to me about it.

Q. I have not asked you that. If you will just notice, I have carefully avoided committing you to who told you about it. I knew you would not want to say that. I have tried to avoid it. I have tried to drive right at the substantial point without involving particular persons. I ask you if that question does not substantially express the real truth of this situation? A. May I have that question read?

Q. Certainly. Please note what is omitted, as well as what is stated in that question.

[The question is read by the stenographer.]

Q. Yes or no. A. I should say in substance, yes.

Q. I wonder, to change the subject, whether you ever made any investigation at the office of the treasurer of the Christian Science Church? A. I have not.

Q. You don't know what the conditions may be there? A. Nothing at all.

Q. In answer to one of Mr. Bates' questions, I understood you to give all the directors a personal indorsement; that is, you said you were on friendly terms with all. If it were necessary, you might be obliged to discriminate between the directors in reference to your regard for them, might you not? A. Well, I would hate to say that, but I have known some of them longer than others, but I would not want to make any discrimination.

Q. Now, it is a fact, isn't it, Mr. Rowlands, that ever since Jan. 1 of this year, and even after this lawsuit began, although the attitude of the trustees in this matter had been perfectly well known and unaltered, Mr. Neal has been coming to the trustees right along with various propositions for a proposed accommodation. Isn't that true?

Mr. Bates—Proposed what?

Mr. Thompson—Accommodation or compromise of this matter.

Q. Trying to get the trustees to listen to propositions of compromise on the part of the directors. That is true, isn't it? The records show it, don't they? A. I wouldn't say right along; we have had some talk with Mr. Neal.

Q. The point of my question was that the approaches had been made, not by you or the trustees to the directors, but by the directors, generally acting through Mr. Neal, to the trustees. That is a fact, isn't it? A. No, they have not acted generally through Mr. Neal.

Q. Well, through him or somebody else; some one of their number? A. We have had a number of conferences, yes, sir.

Q. And the initiative has come from the directors, has it not? A. Well, I couldn't say that it has come from the directors, but the people we have talked to intimated that they knew something of how the directors felt about the situation.

Q. Is it true that since the attempted compromise of Feb. 3 broke down the trustees have themselves taken the initiative and gone to the directors, proposing some modification of their views? A. They have not.

Q. So that any propositions of compromise that have come and been taken up since that time have come from the directors to the trustees, haven't they? A. If any, yes.

Q. That is what I was coming at. Do you recollect; can you summarize, state briefly and clearly, the successive concessions that Mr. Neal has suggested the directors would make, as he found that you wouldn't change your attitude? Can you give us a hint or a statement of what the successive contentions were that he made in his efforts to reach a compromise? How many of the powers of the directors that they had previously claimed was he willing to give up for the purpose of compromise? A. There was never anything definite stated in their talk.

Q. I dare say. Wasn't a suggestion made by him, in substance, that in view of the difficulties that the directors had got themselves into here by expelling Mr. Dittmore, who was the one person that maintained that position consistently, who understood the case, and got all the evidence together, and whom they had expelled without cause—in view of the difficulties they had got into by that course of conduct, they would be ready to concede almost the entire position of the trustees, provided only that the concession was not disclosed to the field? Isn't that the real truth, Mr. Rowlands, yes or no? Isn't that the honest truth, sir? A. Well, I couldn't say.

Q. You wouldn't want to deny it? A. Well, I mean that is not stated. I had some very friendly conferences with Mr. Neal, but not—

Q. I want to know; I have put the

question generally, so as to avoid entangling you in any particular specification. I have put the general idea to you, and I ask you, honestly, whether that is a fair statement of the attitude of Mr. Neal? A. No, it is not.

Q. I would be glad if you would give me the answer, yes or no. A. It is not.

Q. It is not? A. No, sir.

Q. In what respect, if at all, isn't it the fact? A. I will have to ask that the question be read again.

Q. Well, I will tell you. Instead of taking the trouble to do that, I can always rephrase a question, and that is always the quicker way. Hasn't something—I don't care what—but hasn't something been said by Mr. Neal in these conferences that he has talked with the trustees, to the effect that the expulsion of Mr. Dittmore by the directors at the particular that they did expel him and under the particular circumstances under which they expelled him had caused embarrassment to these directors, yes or no? A. Intimated that, yes.

Q. Hasn't that fact been used by him in argument, or as a reason why the directors might not be willing to go farther in meeting the views of the trustees than they would have been willing, if they hadn't expelled Mr. Dittmore? Isn't that the real truth? A. No, it is not.

Q. Haven't you got that impression?

Mr. Bates—May I ask for information? I have not objected to any of these questions, and they have all been answered satisfactorily to us.

Mr. Thompson—I am very glad to hear that.

Mr. Bates—But I want to suggest that Mr. Thompson, under the guise of the cross-examination, is really putting this witness on in his own case, and I appreciated that this complication might arise when the two cases were tried together. I want to ask Your Honor's judgment as to whether or not he should be allowed to put leading questions to a witness who is his own, merely because he happens to have been put on in the other's case by Mr. Whipple.

Mr. Thompson—Now, Your Honor has suggested to me that it is inadvisable, when meeting statements of counsel, to make any unnecessarily protracted remarks, but I hope Your Honor will bear with me when I denounce with all the force at my command the statement that Mr. Rowlands is my witness, or that there is anything improper in what I have done, or what is not in exact accordance with what is recorded in the minutes of the first meeting here. Governor Bates went into this with his eyes wide open, and nothing has occurred in the slightest degree different from what counsel deliberately agreed upon on that occasion. Mr. Rowlands is not my witness; my client has opposed him, as shown by that letter, from top to bottom, and my client proposes to fight fair in this case and

not strike under the belt, but I can't say as much for your clients.

The Master—Do you think, Governor Bates, that it is likely much harm will be done here by leading questions, merely because they are leading?

Mr. Bates—Well, I assume that when he leads the witness in the way in which he is endeavoring to lead him—I rose merely for information; I call Your Honor's attention to that—I assume that if he does that, when similar circumstances may arise in connection with witnesses hereafter, we will have a similar privilege in regard to the Dittmore case.

Mr. Thompson—I will make no concession. I do not propose to allow you to have any concession from me at all. You will have what the law allows you, and not one hair's breadth beyond.

Mr. Bates—Then I understand you do not propose to allow us a similar privilege to what you are now claiming?

Mr. Thompson—I am not here to allow or disallow anything. I am here as counsel, to exercise my legal rights.

The Master—We shall have to be guided by the circumstances as they arise. If there is going to be any trouble or dispute about it, I am going to ask Mr. Thompson to avoid leading questions, so far as possible. They lead to dispute, and there is no use in putting them. You can examine your witness perfectly well without asking them.

Mr. Thompson—Pardon me; he is not my witness, sir.

The Master—I should have said, you can cross-examine this witness perfectly well.

Mr. Thompson—This witness is not inclined to give me any more evidence than he honestly has to. If I put him on myself, by this time I should be in a position to ask Your Honor's permission to cross-examine him, to ask him leading questions. He is perfectly honest, but he is not there to help me, and he didn't go there for that purpose, and he does not want to do anything more than he can to help.

The Master—It seems to me, even though you are cross-examining, and even though this may not be your witness in a strict sense, that the circumstances are such as to justify me in asking you to avoid leading questions as far as possible.

Mr. Thompson—Very well. Anything Your Honor suggests I will try to follow. I can't avoid them entirely, sir. I will do the best I can.

Q. Was anything said by Mr. Neal in any of these conferences with you, Mr. Rowlands, on the subject of its being undesirable to disclose to the field the fact that a compromise was being suggested—yes or no. I have not said, what was said; but was anything said on that subject? A. No.

Q. Was anything said by any of the directors or their representatives in

conversation with the trustees, to your knowledge, about its not being desirable to have it admitted or known to the field that these efforts were being made by them to compromise the case? Yes or no. A. It was not discussed, I think.

Q. Beg pardon? A. I do not remember of a discussion of that kind.

Q. You don't remember it? A. No, sir.

Q. Do you recollect that just before March 17 Mr. Dickey developed a plan of compromise and had the typewriting done in the trustees' office on it? A. Yes.

Q. And do you recollect the reason he gave why he wanted that typewriting to be done by the trustees and not by his own numerous corps of stenographers? A. Well, I can't tell the reason, but I remember he did—

Q. Let me see, then, if, with His Honor's permission, I cannot slightly assist you by a leading question: Wasn't it in order that Mr. Dittmore, who was still then a director, might not become aware of the fact that these propositions were being made? Isn't that the truth, sir? A. I could not testify as to that.

Q. You would not want to say it was not, would you? You would not want to deny that, would you? A. I could not affirm or deny it. I don't know.

Q. Isn't it true that he asked that only four copies of that should be sent to him? A. I can't remember. I know we sent him some copies to his house.

Q. And didn't you send them to his house and not to his office? A. Yes.

Q. Now, won't you try to think for a moment and refresh your mind, if you can, and see if it is not true that he made a complaint that he did not want five copies and only did want four copies of that plan made? A. I don't remember anything about it at all.

Q. You don't remember? A. No, sir.

Q. Do you recollect a conversation you had with Mr. Dickey after Mr. Dittmore, and you too—they had attempted to dismiss you and had attempted to dismiss Mr. Dittmore on March 17—on the subject of a contract between the trustees of the Publishing Society and the Trustees under Mrs. Eddy's Will? A. State that again, will you, please?

Q. Do you remember any conversation between Mr. Dickey and yourself, or at which you were present, occurring after March 17, 1919, on the subject of a contract between the Publishing Society trustees and the Trustees under Mrs. Eddy's Will? I have not asked what was said, but merely do you remember such a conversation? A. Well, I remember that there was some conversation, but I am not sure that I was present.

Q. You are not sure? A. There was some discussion of the contract.

Q. You knew, at any rate, that that

subject was taken up by Mr. Dickey? A. Yes, sir.

Mr. Thompson—Now, do you happen to have here, any of you gentlemen, the trustees' records for March 6, 1919?

Mr. Withington—Governor Bates, I think, has them.

Mr. Thompson—Will you let me have those trustees' records for March 6, 1919?

Mr. Bates—The trustees'?

Mr. Thompson—The trustees' records. (Volume is handed Mr. Thompson.)

Q. Will it be too much trouble, Mr. Rowlands, for you to turn to the records of March 5 and 6 in this book, if you can find them? A. That is, 1919?

Q. 1919. This last March. A. March—

Q. March 5 is the first one. Now, won't you be kind enough to read to yourself first, not aloud, the records of that meeting, so as to refresh your mind so as to answer one or two questions I desire to put. A. Yes (referring to volume).

Q. Now, have you read the records of March 5? A. Yes, sir.

Q. If you have the facts there recorded in mind I would like to ask you whether or not on that day Mr. Dickey did not attend at his own request, a meeting of the trustees—yes or no. A. Yes, sir.

Q. Didn't he state that he came on his own responsibility? A. Yes, sir.

Q. And how long a conversation was had with him at that time? A. Nearly two hours.

Q. What was the subject of that conversation? A. Relative to the situation concerning the two boards. The whole conference was one looking to a solution of the problem which concerns the Board of Directors, the Publishing House and the field at large through demonstrations.

Q. And the way to put that, from the standpoint of what is called mortal mind, would be that it was looking toward a compromise—in plain English? A. Well, I wouldn't say that.

Mr. Bates—Doesn't the record speak for itself, Your Honor? I object to the characterizations.

Mr. Thompson—I think it does. It speaks rather unnecessarily profusely. The Witness—It would not necessarily be a compromise.

Q. Call it a solution. A. A demonstration.

Q. But a demonstration would result in a solution, wouldn't it? A. Well, it would result in harmoniously adjusting any differences that might come up.

Q. And inasmuch as the trustees made it a matter of principle not to surrender the rights or the duties imposed upon them by the Trust Deed of Mrs. Eddy, such a solution would necessarily involve a surrender by the directors of some part of their contention, wouldn't it—to come right down to it? A. I would not care to testify to that.



Q. Very well. Now, will you kindly glance over the records of March 6 for the same purpose—first, to get them into your mind so that I can examine you about the facts therein recorded. A. I have read them.

Q. Now, on that occasion also—namely, March 6, 1919—Mr. Dickey came to one of your meetings at his own request for the purpose of discussing, and did discuss, some plan for a solution of these difficulties, didn't he? A. Yes, sir.

Q. Have you any idea how long that discussion occupied? A. It doesn't say here, but I—

Q. Have you any memory of it outside of what is said? Two or three hours was it? A. Well, perhaps two hours.

Q. And he had a paper with him that time, didn't he? A. Yes.

Q. And that paper was the memorandum originally written by Mr. Dittmore, wasn't it, concerning the proper relations of these two boards? A. I think it was. I couldn't testify—

Q. Isn't that recorded right in there, that it was Mr. Dittmore's memorandum? A. Well, it says the directors' memorandum. I should judge that that was the—

Q. That is the one? A. Yes.

Q. Didn't he then ask you as trustees to state what modifications would be acceptable to you in that memorandum? A. In substance, yes.

Q. And the trustees thereupon acceded to his request and did take this memorandum and express such modifications as would be acceptable to them, didn't they? A. They did.

Q. And then four copies of that modified memorandum were made by the trustees at Mr. Dickey's request through their stenographer, weren't they?

Mr. Bates—You mean the trustees' stenographer?

Mr. Thompson—Yes, that is what I mean.

A. Yes, sir.

Q. And those four copies were sent to Mr. Dickey's house, weren't they? A. Yes, sir.

Q. That was by agreement with Mr. Dickey, wasn't it? A. Well, it says it was an understanding—that we offered to do that for him.

Q. Well, the making of only four copies and the sending of those four copies to Mr. Dickey's house was at his request? A. Well, I should judge so.

Q. You would have no interest in making any such request, would you? A. No, sir.

Q. You had no interest in concealing from Mr. Dittmore what was going on, had you? A. Why, no.

Q. Of course not. That is in the record of March 6, 1919. That is the date of this meeting? A. Yes, sir.

Q. That was 11 days before the expulsion of Mr. Dittmore. Now, will you turn to the record of March 17, of that same year. That is the day when the votes were passed attempting to

dismiss you and to dismiss Mr. Dittmore? A. I have finished the records.

Q. Now on that occasion there was a meeting of the trustees, was there not, on March 17? A. Yes, sir.

Q. And it was attended by Mr. Dixon, was it not? A. Yes.

Q. He is the editor-in-chief, isn't he? A. He is the editor of the Monitor.

Q. And he came there at the request of the directors, did he not? A. May I read this?

Mr. Thompson—Read it to yourself. It is not technically quite right at this stage, perhaps, to read that in. Perhaps later, if there is no objection, we can read it all in.

Mr. Streeter—What is the objection, Mr. Thompson, to reading that record right in?

Mr. Thompson—There isn't any later, but at this stage I would prefer not to, if you don't mind.

The Witness—What is the question? Q. Mr. Dixon attended that meeting? A. He did.

Q. At the request of the directors? A. Yes, sir.

Q. And he attended it for the purpose of trying again to see if some compromise could not be made? A. So it states here; yes, sir.

Q. Beg pardon? A. It states in the minutes.

Mr. Bates—Will you give me the date of that again?

Mr. Thompson—That is March 17, 1919.

Mr. Streeter—Does that appear to be in the afternoon after they had expelled these two men?

Q. That was in the afternoon after you and Mr. Dittmore had been—I won't say expelled, because we don't admit any expulsion, but after this attempt had been made to expel both of you? A. Yes, sir; 4:30 in the afternoon, this meeting was.

Q. You were right there, and after your expulsion, or attempted expulsion, Dickey came around, or sent around, to talk to you just as before you were expelled? A. I wouldn't say talk. There is nothing here—

Q. This time it happened to be Dixon, but there were other times when Dickey came around and discussed it with you, weren't there? A. Before that time, yes, sir.

Q. He wasn't worried about your having been expelled, was he?

Mr. Bates—He says it was before that time.

Mr. Thompson—Afterwards, too, he said.

Mr. Bates — I didn't understand him so.

Q. After March 17 Dickey came around to some of your meetings of trustees, didn't he? A. I can't remember. He might have.

Q. We will go right through and find out. Neal did, didn't he? The record is right here down to May, when Neal has been here. A. If they are in the record, yes.

The Master—Wouldn't it be better to get all there is about March 17 first?

Mr. Thompson—I think it would, decidedly; yes, sir.

Q. Did the trustees explain on March 17, taking up that memorandum of Mr. Dittmore, what changes they thought ought to be made in it before they could consider a compromise? A. Yes.

Q. They sent him back with that message, whatever it was, didn't they? A. Whatever it was, yes, sir.

Q. Now, take March 18, the next day. Mr. Dixon came again that day from the directors, didn't he? A. Yes, sir.

Q. And there was further discussion about it?

The Master—I didn't hear that. Who was there March 18?

Mr. Thompson—Dixon, the editor, came again representing the directors. Mr. Bates—One moment.

Mr. Thompson—That is the question. Is it objected to?

Mr. Bates—If you put the question whether or not he did represent the directors, all right. I don't like your assumption.

Mr. Thompson—The assumption is stated right here in the records.

Mr. Bates—Well, read the records.

Mr. Thompson—No, I will not.

Q. I will ask you whether or not Mr. Dixon came again representing the directors—yes or no.

Mr. Bates—I object.

The Master—If he knows whether he represented the directors or not.

Mr. Bates—If he will ask him that question all right.

Mr. Thompson—That is the very question—no other question. I haven't asked a word Dixon said—simply did he come there that day to that meeting representing the directors—yes or no. The record will show you what the answer is.

The Witness—I will have to say he represented them for that purpose in that part of the meeting.

Mr. Thompson—That is all I have asked.

Q. The answer is, yes, then, isn't it? A. Yes.

Q. And there was further talk about this subject of compromise, wasn't there? I don't care what it was. A. Yes.

Q. Now, it has been questioned here whether, after March 17, any director or representative of the directors ever came to see the trustees, and I would like to take that matter up next. Now look at the record of April 2, will you, please? A. April 2?

Q. Yes. If you don't mind glancing that over to yourself, I will put a few questions to you. Under a date at 11 o'clock at night this is—11 o'clock in the evening. A. Do you want me just to read that part?

Q. Just get it into your mind. A. Do you want me to read the whole record of that day or just that part?

Mr. Thompson—Just that 11 p. m.

What takes place just before midnight is often important.

Mr. Bates—Mr. Thompson, did this 11 p. m. have a day of the month?

Mr. Thompson—It seems to have April 2. It may have been April 1, but it is put down here April 2.

Mr. Streeter—The paragraph before that is dated at 4:30, Governor Bates, and then under this same date the next proceeding is 11 p. m.

The Witness—Yes, I have read that.

Q. Well, at 11 o'clock in the evening Mr. Dixon came again, this time representing Mr. Neal, didn't he? A. I will have to ask the instruction of the Court as to that. Mr. Dixon came from a conference—said he had had a conference with Mr. Neal—but I couldn't say that he represented him.

Q. Let me ask you to read at this point beginning with the words "eleven p. m."—read the record, will you? A. (The Witness reading from the record): "Mr. Dixon said he had told Mr. Neal earlier in the evening of the recent entrance of General Streeter into the case as Mr. Dittmore's chief counsel. This led Mr. Neal to ask Mr. Dixon if he thought the two boards could get together for a conference to possibly avoid further legal proceedings. He said he would be willing to talk with the trustees this evening on his own responsibility if such a step was thought possible. The trustees told Mr. Dixon that while they appreciated his interest and help as well as the motive which prompted Mr. Neal's inquiry, the whole question was now in the hands of counsel and they felt no action could be taken in trying to get together except through their counsel. It was stipulated that Judge Smith must be eliminated from any conference because of his failure to observe the agreement of counsel made at their conference Feb. 1, which failure was considered unethical. Mr. Dixon said he would be glad to communicate this to Mr. Neal and left immediately for his home to do so."

Q. Was this the same Judge Smith who has been spoken of as having been counsel for the directors for so long a time? A. Yes, sir.

Q. He is the man who was counsel of record in the contempt proceedings, wasn't he? A. Yes, sir.

Q. And he is in court here now and has been through these proceedings? A. Yes, sir.

Mr. Thompson—I would like to have him stand up and be identified. Judge Smith. I want everybody to see him. Is he here?

Mr. Bates—There is no occasion for him to stand up.

Mr. Thompson—I would like to have him seen.

Mr. Bates—You are examining the witness.

The Master—I don't see any occasion for that procedure, Mr. Thompson.

Mr. Thompson—Very well. There will be occasion for it later.

Q. Now, then, I would like you to turn to May 6. A. April 6 or May 6?

Q. May 6, if you please. A. Would you tell me what part to read?

Q. I would like to have you read the part about the letter from Mr. Dixon embodying the plan of reconciliation between the two boards. A. Shall I read those?

Mr. Thompson—Yes, you might just read that part of the record, please.

The Master—We have now got to a date subsequent to the filing of the bill, I think.

Mr. Thompson—Yes. I was challenged by Governor Bates to produce any evidence that there had been any approaches subsequent to the filing of the bill. I am now doing it.

Mr. Bates—What is the date of the record?

Mr. Thompson—May 6, 1919.

Mr. Bates—And where is the challenge?

Mr. Thompson—You said a little while ago that they never came after a certain date, which is much earlier than this. I am showing that they did.

Mr. Bates—I don't know what my brother refers to, but I object to his putting in evidence of anything subsequent to the filing of the bill.

Mr. Thompson—The difficulty is I do know what I refer to and you don't remember it.

The Master—I think we have thus far excluded what took place subsequent to the filing of the bill.

Mr. Thompson—Very well, I won't press it. I would like to call your attention to the entry of May 9, however, for a different reason. What is the date of the filing of our bill?

Mr. Bates—April 29th.

Mr. Thompson—Then this is all before the date of the filing of our bill.

Mr. Whipple—The April date was—

Mr. Thompson—April 29th our bill was filed.

Mr. Streeter—That lets in the May 6th date.

Mr. Thompson—No, not on that ground. It is admissible on another ground, but is not important. But May 9th is important.

Q. I should like to have you read the first paragraph in that entry of May 9th.

Mr. Bates—I object.

Mr. Thompson—And I offer it. I would like to have this heard and then His Honor can pass on it. I offer it on various grounds. I offer it on the ground of good faith. And I do not see how Your Honor can determine its admissibility without hearing what it is, and I doubt if it will do any harm for you to hear it. There is no jury here. The entry as I have it, and I believe as the witness has it quoted, is as follows:

Mr. Bates—I object to it, Your Honor.

Mr. Thompson—Don't you dare to have the Court hear it even to pass on it?

Mr. Bates—Why, it is not admissible under the rules of evidence. I have no knowledge what it is, but it occurred after you filed your bill.

Mr. Thompson—How do you know it isn't admissible if you haven't seen it?

Mr. Bates—Because you have admitted that it isn't.

Mr. Thompson—I haven't admitted any such thing. It is one of those facts the time of which has nothing to do with its admissibility.

The Master—I don't see how we can tell till we hear it.

Mr. Thompson—You can't tell till you hear it.

Mr. Bates—We haven't even had the opportunity to look at it, Your Honor.

Mr. Thompson—You have had these records right along.

The Master—Well, I think you ought to show Governor Bates the entry first.

Mr. Thompson—There it is (showing entry to Mr. Bates).

Mr. Bates (after examining entry)—I object to it as being immaterial and having no reference to the case.

Mr. Thompson—I will read it, if Your Honor please:

"Mr. Watts reported that Mr. Dickey had telephoned him today and sent a message by him to Mr. Eustace, saying that, while he felt there should be some changes made in the contract between the publishing house and the Trustees under the Will for the printing of Mrs. Eddy's works, he believed it inadvisable, on account of Mr. Dittmore's presence on the board, to meet collectively, and he would advise that Mr. Eustace confer with Mr. Fernald instead. As decided yesterday, no further action will be taken in the matter before opportunity is had to confer with Mr. Whipple."

I may say for the purpose of elucidation that Mr. Dittmore at that time was and still is one of the trustees under Mrs. Eddy's will.

Mr. Streeter—Chairman.

Mr. Thompson—He is the chairman of that board, and when it is alleged as it is here in the answer in Dittmore v. Dickey that Mr. Dittmore was a man whom it was impossible to get along with, and who was arrogant, arbitrary, unreasonable, unfair, I want to show that the general plan and the scheme, starting way back in June, 1918, as testified to by Mr. Rowlands, of these men, was for themselves, by secret, underhand, grossly improper methods, deceptive to the last degree, to keep him, first, in ignorance of the business going on in the directors, and, secondly, as a trustee under that will, and finally, to expel him, undermine him and discredit him. And this bears directly on the general scheme of conspiracy of which this man Dickey is the head and front, to discredit my client as well as to do various collateral damage wherever he can get a chance.

Mr. Whipple—Mr. Thompson, you do not include either this witness or any of the trustees in that?

Mr. Thompson—Certainly not.

Mr. Whipple—I merely wanted that clear on the record.

Mr. Thompson—Certainly not. While they were conducting what they thought an open controversy with these directors, they were being victimized in the same way my client was. Not that I think their views are sound, for I do not; but they are entitled to fair treatment just the same.

Mr. Streeter—If you will pardon me, there is another view which Mr. Thompson is not so familiar as I am, with reference to this particular subject. When Mrs. Eddy's will, after a contest, was established by the New Hampshire Supreme Court, and it was held that The First Church of Christ, Scientist, here in Boston, could not hold the residuary estate as trustee, but that that estate should be held in New Hampshire under the jurisdiction of New Hampshire courts, and that the fund, which amounted to the sum of nearly \$3,000,000—and that fund remains intact at the present time in the New Hampshire trust—should be preserved in New Hampshire, and that a New Hampshire trustee should be appointed who would represent the court in New Hampshire, particularly represent the court, with an order that the corpus of that property—of that trust property—should be held in New Hampshire under the jurisdiction of that court. The court appointed Mr. Josiah E. Fernald as one of the trustees, and also at our very earnest solicitation, appointed the five directors of The First Church of Christ, Scientist, down here, as the other trustees, they all receiving their appointment from the New Hampshire court, the trust being a New Hampshire trust and the corpus of the property being kept within that jurisdiction. The men first appointed were Mr. McLellan, Mr. Stewart, Mr. Neal, Mr. Dittmore, and Mr. Dickey, as they were the directors of The First Church of Christ, Scientist, here. Upon the death or deaths of these directors here and the appointment of their successor the court appointed the same man successor in New Hampshire—successor of the New Hampshire trust. So that, as that trust now stands there is a principal sum of somewhat more than \$2,500,000, with a very large income, and the New Hampshire trustees are Mr. Dittmore, chairman of the board, Mr. Dickey, Mr. Merritt, Mr. Neal, Mr. Rathvon, and Mr. Fernald. So that, as the matter stands now under the New Hampshire trust, Mr. Dittmore, being the chairman of that board and being responsible as the chairman, has a very high duty to perform.

Now there is another fact that has got to be stated a little later and might as well be stated now—

The Master—There is nothing in the pleadings about this that you have been stating. There are a few references, if I remember right, to Mrs. Eddy's will, as if it was something that everybody knew all about, but none of these facts that you have been

telling us now are set forth in the pleadings.

Mr. Streeter—No, they are not in specific terms. There are some general statements in the bill under which these facts can be introduced so far as they are necessary.

Now with reference to that trust. In October, 1917, an arrangement was gotten up whereby the trustees of the Mrs. Eddy trust, who up to that time had had absolute control of the publishing of all of Mrs. Eddy's works—those works belonged to the residuary estate and the publication was in their hands, and up to that time the trustees retained possession of those works and published them themselves through their own publisher.

The Master—The Trustees under the Will?

Mr. Streeter—The Trustees under the Will, the residuary trustees. They were the books, Mrs. Eddy's books, as distinguished from the periodicals, all the books that Mrs. Eddy had written, and the publication of those books was a source of very large profit to the residuary trust. Now, without going into it at great length, I think the thing will probably have to be developed; but, giving Your Honor just an outline, in October, 1917, Your Honor will remember that the five directors of the church over here were five of those trustees under the New Hampshire trust. Mr. Fernald was the other one. They arranged a contract between the Eddy trustees and the trustees of the Publishing Society, whereby the Eddy trust gave up and turned over to the Christian Science trustees here the publication of Mrs. Eddy's works for 27 years; and they did that at a meeting when Mr. Dittmore was not present, not when it was arranged—

Mr. Bates—But he was there when it was done.

Mr. Streeter—Yes; he was there when it was signed. That contract will cut a very important figure here before this matter is over, and not only here but elsewhere. It was signed on the promise of the trustees of the Publishing Society that it should not cost the Eddy trustees any more than it had cost them theretofore. It turned out that that was entirely a misrepresentation, and that the Eddy estate has been mulcted under that contract of a very, very large sum of money.

On January 15th last Mr. Dittmore, as soon as he found out what the effect of that was, and that the estate was being mulcted for the benefit of the Society, filed a letter with the trustees in which he pointed out all of the pernicious results which grew out of that contract. He stated himself very plainly, that in order to protect the Eddy estate, the trust estate, that that contract must be broken; it must be given up. It is very likely—while Your Honor cannot pass on that question—it is almost certain that the courts of New Hampshire will investigate that, it being a New Hampshire trust, and proceedings will be had.

Now, why do I make all this statement with reference to this piece of testimony? I will call your attention to it. This trouble about the contract which they procured absolutely improperly, we believe—

The Master—When you say "they"—

Mr. Streeter—I mean The Christian Science Publishing Society, my friend Whipple's clients—with the aid of the four directors of the Christian Science Church, both of them together. I can understand why the Publishing Society trustees should want it, because they are making an almighty lot of money out of it. I cannot understand why the Christian Science directors should have desired to enter into that contract. But that is a matter that will be investigated. Now, the reason I am—

Mr. Bates—Your New Hampshire trustee, Mr. Fernald—why should he have been desirous of entering into the contract?

Mr. Streeter—What?

Mr. Bates—Why should he desire to enter into it?

Mr. Streeter—Because he was cheated, and he says he was cheated.

Mr. Bates—And he is your client?

Mr. Streeter—He is not my client. He says—if you ask the question—he says he was cheated; that when they asked him, when he agreed to execute that contract, that it was done upon the representation and the promise that the Eddy trust should not be hurt by it, and he finds that they are being hurt from \$25,000 to \$30,000 a year, and he is on the anxious seat just now with reference to that matter.

Now, to go back to the point where we started—

Mr. Whipple—I told you, General, we should want the officers when you once got into action.

Mr. Streeter—Well, I tell you, brother Whipple, we will be good-natured about it, anyway; we won't scold each other.

Mr. Whipple—Oh, we are.

Mr. Streeter—Of course. To get back here, this is, we think, rather important, as showing how Mr. Dickey and the others were dealing with Mr. Dittmore with reference to a very important controversy here between them. Mr. Watts reported that Mr. Dickey had telephoned him, and sent a message by him to Mr. Eustace, saying that while he felt there should be some changes made in the contract between the Publishing House and the trustees—that is the one I am referring to—for the printing of Mrs. Eddy's works, he believed it inadvisable, on account of Mr. Dittmore's presence on the board, to meet collectively, and he would advise that Mr. Eustace confer with Mr. Fernald instead. In other words, Mr. Dittmore was chairman of that board—

The Master—All this is on the 6th of May?

Mr. Streeter—Yes, Your Honor.

The Master—After this litigation had begun?

Mr. Streeter—After this litigation had begun. But it seems to us that it is entirely competent as showing what they were trying to do and how they were trying to do it. It seems to me that as bearing on the whole general question of the good faith of these directors' in expelling Mr. Dittmore that all this is competent.

Now, I will call Your Honor's attention directly to the issue as between Mr. Dittmore, in the Dittmore bill and the majority of these directors, who on St. Patrick's Day last began to exercise power by first kicking one man off of one board and then kicking another man out of another board.

Mr. Whipple—Or trying to.

Mr. Streeter—Well, they tried to. They kicked him, anyhow; and I am informed that the resolution provides, and that they put on their record a resolution, that they would not kick him off of the New Hampshire trust, as chairman of the New Hampshire trust, but they would defer that to a more opportune time; and I give them notice that they cannot put him off the New Hampshire trust without getting the approval of the courts of New Hampshire.

Mr. Bates—Do I understand you to say there is a record of that?

Mr. Streeter—Mr. Thompson says so.

Mr. Thompson—We are so advised, that there is a record of it, and that a motion was made to defer action against Mr. Dittmore until a more opportune time.

Mr. Streeter—Well, we are going to see your records, we will find out.

Mr. Bates—We won't object to any testimony you can put in, but it seems a little unusual for counsel to be making a statement in regard to a case which he says or threatens he is going to bring in New Hampshire some time because of a contract by which he claims the Publishing Society is making \$25,000 a year more out of than what they ought, and overlooks the fact that the beneficiary under both instruments is The Mother Church, and if the Publishing Society were making the money they will get it.

Mr. Streeter—That reminds me that under paragraph 6 of your answer you deny that the members of The Mother Church are the beneficiaries.

Mr. Bates—And I have not said that the members were now. I said The Mother Church was.

Mr. Streeter—While we are about this we might as well have Your Honor understand just the provisions of the bill on which we are relying. It is Section 34 of our bill.

Mr. Bates—Are you opening your case now?

Mr. Streeter—No; but I am telling the Judge why I think that this piece of evidence that Mr. Thompson started on is competent.

"34. The defendants, Neal, Dickey, Merritt, and Rathvon, on the other hand, in their conduct toward the

plaintiff, and particularly in their attempted dismissal of the plaintiff from said Board of Directors, and in their attempt to obtain from the plaintiff the said documentary evidence in his possession, have acted irregularly and in violation of the essential formalities of due notice and hearing required by said by-laws, by natural justice, and by the law of this Commonwealth, and for causes not sufficient either in law or fact to warrant his dismissal, and alleged in bad faith; and they have not acted in good faith and in the exercise of sound reason, but capriciously and arbitrarily, and have been actuated simply by a desire to get rid of the plaintiff as an inconvenient obstacle to the carrying out of certain plans and purposes entertained by them, the said Dickey, Neal, Merritt, and Rathvon, inconsistent with the tenets and by-laws of said church," etc.

Now, in their answer, the directors' answer, they put that in issue in about the simplest possible language:

"34. Said defendants deny the allegations contained in the thirty-fourth paragraph of the Bill of Complaint."

So that the question, the fundamental question, in Mr. Dittmore's case, is whether these defendants, headed by Mr. Dickey—I ought to say three, because there were only three who participated, Dickey, Merritt and Rathvon, for Mr. Neal was sick, he was not there—the question is whether they acted in good faith or capriciously and irrationally and without sound reason; and as your court, the Massachusetts court, says, whether they acted in good faith or capriciously or otherwise.

Now, Judge Dodge, I am perhaps led to take too long a time here, but this has been on my system for some time, and I wanted you, as the Court here, to see what the foundation was on which Mr. Dittmore's case rested, and to see that this—I would like to use a perfectly inoffensive adjective, but none occurs to me here at the moment—this attempt on their part in connection with the Eddy trust, of which he was chairman, to not have a meeting when he was present, is simply a strong piece of evidence bearing upon one of the vital issues in this case.

Mr. Thompson—That is to go in in connection with our offer to show by their records as directors in this case that the records show something—

The Master—I did not quite hear what you said, Mr. Thompson; speak a little more slowly.

Mr. Thompson—The General's offer must be taken particularly, I suppose, in connection with the further offer to show from the directors' own records with reference to the purpose concerning the expulsion of Mr. Dittmore from the Board of Trustees under Mrs. Eddy's will; and the evidence is offered, as General Streeter says, on the general issue of bad faith; and further to show—

The Master—Let us see what we are talking about, just what evidence is offered.

Mr. Thompson—The evidence offered is that on one occasion, in dealing with him as a member of another trust—

The Master—The evidence you refer to is this record of a trustees' meeting, is it?

Mr. Streeter—Which I read here, yes.

Mr. Thompson—The record, I understand, it has been agreed to here, having been called for and produced and examined, goes in any way, and the relevancy—

Mr. Bates—That is not our understanding.

Mr. Thompson—We understand it so, if relevant to any issue in the case. The point to which it is relevant we say is this: We have alleged here that these men in the particular act which we question in our bill, namely, expelling us without any notice or hearing or any warning from their own board, did not do it sincerely, honestly, from a desire to benefit the trust.

The Master—Your claim is that they did not do it in good faith? Isn't that enough to say about it?

Mr. Thompson—Didn't do it in good faith. We say that that act was the part of a general plan and scheme, knit together, or parts of one plan, first, to deceive him, keep back from him, and to get rid of him, not merely in this trust but in another trust, so as to eliminate him from both trusts and from the entire Christian Science movement. It was part of a general plan and scheme, only one act of a general plan and scheme, to discredit and destroy Mr. Dittmore. Another part of it was to do the same thing to Mr. Rowlands.

The Master—It would seem from what you say that this record of the trustees' meeting had got to go in at some time, in some connection.

Mr. Bates—No, Your Honor, I think not.

Mr. Thompson—I should think it had.

Mr. Bates—If I may be allowed to make my statement. This is a record, as I understand it, of May 6, after this Bill in Equity was filed. It is a record of what purports to be a statement of Mr. Dickey's, made by the trustees. Such a record certainly cannot be introduced as against the directors. If Mr. Dickey made any such statement it is possible to put in the evidence of it in the proper way. The proper way is not through a record made by the plaintiffs in this suit after suit had begun. So far as its being admissible at any time, it seems to me it may bear on this supposititious case that General Streeter has in view in New Hampshire, but it certainly does not bear on this case because it could not have been anything that actuated Mr. Dittmore in bringing his bill; anything that occurred on May 6 could not have been the basis of any of his

claims in his bill, and therefore it certainly could not be considered relevant to any of those issues which he raised. I may say that the statement made by General Streeter is a part, I assume, of a statement which he might have made in connection with an opening. It is a statement that gives the facts, I have no doubt, as he thinks they are, but the facts in many instances are stated not in accordance with our understanding of them, and I do not wish his statement to pass, therefore, as one which we accept or agree to.

Mr. Streeter—I am sorry you misunderstand the facts.

Mr. Bates—Quite on the contrary. We differ from him essentially in regard to them all.

Mr. Streeter—Your Honor, just one word more, if I may. Talking about the fact that this evidence turns up after the bill has been brought, I submit, Your Honor, that that is absolutely unsound. Suppose we discovered an admission by Dickey and the others made in June, of just what he has undertaken to do in March.

The Master—Oh, yes. I think we shall all agree there that, generally speaking, transactions between the parties litigant subsequent to the date of the bill are inadmissible. There may, however, conceivably be certain statements and transactions which would be admissible. The question is whether this is one of them.

Mr. Thompson—Now I should like to renew the call for the directors' records which have to do with the proposed action against Mr. Dittmore under the New Hampshire trust. I should rather get it from the directors than from any other source, but if they refuse it I think I can get it elsewhere.

Mr. Bates—I assume Your Honor wants to settle one question at a time.

The Master—Certainly.

Mr. Streeter—This is one of the things which may assist Your Honor in settling this question.

The Master—I want to settle at this time the question whether I ought to admit this extract from the trustees' record at present.

Mr. Streeter—Yes, Your Honor. But suppose that the record which Mr. Thompson calls for, the directors' records, shows exactly what he says; that they have brought this up and voted to postpone it to a more convenient time. It would be a piece of evidence that would aid Your Honor, I submit.

The Master—I think if counsel have got through saying what they have to say that I shall exclude the evidence at present. It seems to me that the foundation which I have for it now is only a statement of counsel, and not the foundation which I should have for admitting it now, showing it to be a piece of evidence which, although of events subsequent to the date of the bill, is yet for special reasons admissible in this case.

Mr. Thompson—We accept that. Now I will call—

The Master—One moment. The ruling, however, is without prejudice to the evidence being offered under other circumstances and in a different connection; when you come to put in your case, perhaps, or possibly at some other stage, we may see reasons for a different course of action. For the present I exclude it.

Mr. Thompson—I should like now to make a formal call for the records of the directors bearing on this same subject.

The Master—Well, they will be subject to the same ruling at present.

Mr. Thompson—I should like to have them marked for identification.

The Master—We don't want to go into that part of it now.

Mr. Thompson—Can't they hand them to me? It won't take them but a moment; they must know the passage I mean. I would like to have the passage identified and marked.

Mr. Bates—Personally I have no knowledge of any such record, and inasmuch as His Honor has said that it is ruled out in his present ruling, I do not see any occasion for it.

The Master—Well, haven't you agreed that the records should be mutually produced when called for?

Mr. Thompson—Mr. Dane, I think, knows where the record is.

Mr. Dane—If Your Honor please, I have no knowledge of any such record and I understand there is no such record in the directors' books. If Mr. Thompson has any idea where it is, if he will let us know what date that record was supposed to be made we shall produce it.

The Master—I think it would be better, if you are going to call for an extract from the directors' records, for you to call for it specifically.

Mr. Thompson—It would be if I knew where it was.

The Master—I thought counsel had spent an evening on it.

Mr. Thompson—Personally I have not. I have been advised by a person who has seen the records that there is such a record.

Mr. Streeter—I am advised by my Boston associate that I used too strong a word when I used the word "cheating" in connection with what was said to Mr. Fernald. I think that is probably a little ungentlemanly. All I mean to say—and I say it to these gentlemen here—is that the language which they used was not understood by Mr. Fernald or turned out to mean something different from what Mr. Fernald, our New Hampshire trustee, understood it meant at the time the statements were made.

Mr. Bates—Understood who made?

Mr. Streeter—The parties who negotiated this transfer of the publication of all of Mrs. Eddy's works from the different trustees to The Christian Science Publishing Society. And I withdraw the word "cheating," and if anybody's sensibilities are offended I apologize.

Q. Now that leads me to ask you to turn to the entries of May 27, Mr. Rowlands, if you will, please. A. I have it.

Q. On that day did you get a request from Mr. Neal for a conference on the subject of compromise? Yes or no.

Mr. Bates—Does Your Honor think this material?

Mr. Thompson—I am not asking what the conference was. I have alleged in my bill something about an attempt to compromise.

Mr. Bates—But you characterize—

The Master—Let Mr. Thompson finish. I have difficulty in hearing what he says.

Mr. Thompson—One of the allegations in the bill is that Mr. Dittmore has felt obliged to bring this bill to prevent what he calls in his bill a collusive compromise. A collusive compromise would be one in which both parties surrender more than they know they ought. Now the evidence at present shows that one of these parties has been in an attitude entirely uncompromising—standing on direct, fixed principles—namely, the trustees. My allegation must therefore be construed to mean—and would be more disastrous to the directors as meaning—that they were prepared to yield what Mr. Dittmore has always consistently maintained, and what they at this time and during this hearing have been maintaining, were principles essential to the existence of the Christian Science Church. And I am offering to show now that Mr. Dittmore's fear—apprehension was the word used, which is a word looking in futuro—that that apprehension came pretty near being justified on May 27th by a proposition made by Mr. Neal.

Mr. Bates—I object. It is a matter of a record which has been made since the bringing of the bill and in regard to a matter that has occurred since the bringing of the bill.

The Master—I would like to refer, Mr. Thompson, to the allegation of your bill that you mention. I don't carry it all in my mind. Where do we find it? Page 25, is it?

Mr. Thompson—It is along there somewhere.

The Master—Yes, the middle of page 25 I think must be what you refer to. (Summarizing from the Bill of Complaint.)

"And he apprehends that if he fails to assert his legal rights and certain defendants are thereby enabled to get possession of certain papers, such a collusive settlement will at once be effected."

Mr. Thompson—It all looks in futuro. There is another place somewhere also where he speaks of his fears for the future.

The Master—Yes, right above: "fears that negotiations will soon be taken up."

Mr. Thompson—All that looks in futuro. And it turns out that his fears

are happening in a worse sense than he anticipated.

The Master—Before we have got any evidence that he had such fears isn't it rather putting the cart before the horse to show that there was ground for the fears?

Mr. Thompson—It would be only that is a matter of order of proof, and I am cross-examining when I have to, when the witness goes on. I can't show what fears he had until he goes on, which may not be until the end of the case under the arrangement we have made. And if I am limited in cross-examination in connection with that to the end of the case it would exclude a large part of the cross-examination. I must continually put the cart before the horse because the horse is Mr. Dittmore for these purposes, and he will not go on until the very end of the case, to pull the thing out of the slough.

Mr. Bates—I assume if he goes on at the end he will back it out.

Mr. Thompson—I think he will be more likely to pull it out than your clients will.

The Master—I have a good deal of doubt about it, but I think I will allow it to be put in subject to exception. Once we get it in we shall not have to spend time putting it in again.

Mr. Bates—Now may I look at the records, please.

Mr. Thompson—I haven't asked for the record yet.

[The last question is read by the reporter as follows:

“Q. On that day did you get a request from Mr. Neal for a conference on the subject of compromise? Yes or No?”]

Mr. Thompson—You see I only asked him a preliminary question.

Mr. Bates—If you asked if he got a request for a conference I should not object.

The Master—You may answer it.

Mr. Thompson—On the subject of compromise.

The Witness—I do not get that. On the subject of compromise?

Mr. Thompson—On the subject of compromise between the two boards.

The Witness—That was not the request, no.

Q. What was the request?

The Master—What is the answer, no?

The Witness—Yes.

Q. What was the request? A. To meet with the board, or to meet with one of the boards.

Mr. Thompson—Perhaps you had better read that again to yourself, because in this confusion you may forget the details. To save time will you please read that record right in.

Mr. Bates—May I see it first?

Mr. Thompson—All right (showing the record to Mr. Bates). And the next one also, Governor, May 28—I shall offer that also, the same subject.

Mr. Bates—We do not object to those two records.

Q. Now if you will read those two

records, please? A. (The witness reading):

“Mr. Dixon came to the meeting and said that he had just come from Mr. Neal's office where he had gone at Mr. Neal's telephone request, and that Mr. Neal would like to meet the Board of Trustees privately on his own behalf if this could be arranged. After considering the question it was decided that it would be best to have Mr. Rowlands individually meet Mr. Neal in Mr. Rowlands' private office rather than to have Mr. Neal meet with the full board. Accordingly, Mr. Rowlands made an appoint to meet Mr. Neal at 4:15.”

The Master—What date is that?

The Witness—May 27.

Mr. Thompson—Now May 28.

The Witness (reading):

“Mr. Rowlands reported that he had had two conferences with Mr. Neal and that Mr.—”

I have a personal reason that I would like to explain: these conferences that I had with Mr. Neal, we had an understanding that they were purely personal and not to be used in any way in connection with this case.

Mr. Thompson—All that is being used is the formal records of the trustees.

The Witness—I don't want to betray a confidence.

Mr. Thompson—I don't ask a word outside of the records of the trustees. That is not a private conference. The formal record of the trustees becomes part of the record.

Mr. Streeter—Won't you begin that over?

The Witness—(Reading):

“Mr. Rowlands reported that he had had two conferences with Mr. Neal and that Mr. Neal was very earnestly desirous of finding some basis on which the controversy between the two boards could be settled before the time of the annual meeting. Mr. Rowlands was to see him again early in the afternoon, and the trustees adjourned to meet at Mr. Whipple's office at 4:00 p. m.”

Do you want the rest of it?

Mr. Thompson—Yes, go ahead, please. “Later.”

The Witness—(Reading):

“The trustees and the business manager were with Mr. Whipple until 6:30. Later they met at the publishing house at 11:30 p. m. to talk over with Mr. Rowlands regarding his conferences with Mr. Neal. Mr. Neal had not yet had an opportunity to discuss any definite plans with his colleagues and he was to do this tomorrow and then see Mr. Rowlands again. Mr. Rowlands had emphasized to Mr. Neal that if anything was to be done it must be done quickly as no stay could be made in any of the operations now in preparation on the part of the trustees.”

Mr. Thompson—That is all I intend to ask you from your records, and

there are only one or two questions on another topic.

Q. Now, Mr. Rowlands, I won't bother you any more about the records at all. I want to ask you one or two questions about this Harvey business. Mr. Harvey came up from New York, didn't he, and reported personally to the trustees first about these conversations that have been said to have taken place in New York? A. As I remember it, yes.

Q. And after he had told his story, and said what he had to say, he was asked by the trustees to sit down and put it in writing, wasn't he? A. I couldn't testify as to that.

Q. That letter was written by him in Boston, wasn't it, in the trustees' rooms? A. No.

Q. It didn't come through the mail from New York, did it? A. I think it did.

Q. Are you pretty sure of that? A. No, I am not absolutely sure, but I always accepted it as a letter written by Mr. Harvey from his New York office.

Q. Isn't it a fact that he did come to Boston and was asked by somebody, very properly, after he had given all this oral statement, gossip, and so on—asked to sit down and dictate that to a stenographer, and didn't she write it in Boston? Isn't that true? A. It is very likely that she did that, but I couldn't testify.

Q. Very likely true. You don't know anything to the contrary, do you? A. No.

Mr. Whipple—I think that is the fact.

Mr. Thompson—We may assume that is the fact.

Mr. Whipple—But I think Mr. Eustace is the only one that knows.

Mr. Thompson—Very well; it is immaterial.

Q. That idea we can assume to be the fact? A. Yes.

Q. And then Mr. Watts—

The Master—Well, who is going to assume it? Pardon me, Mr. Thompson; have you ground for the assumption by the Court of that fact?

Mr. Thompson—No, sir; simply Mr. Rowlands is prepared, having been advised by persons who have personal knowledge of it, to assume the responsibility for saying that it is true. I don't think—I haven't heard anyone dispute it.

The Master—All right.

Mr. Bates—That is, that it was written out in the trustees' office?

Mr. Thompson—Yes.

Mr. Bates—At the trustees' request?

Mr. Thompson—At the trustees' request, to crystallize in writing—

Mr. Bates—That is our understanding.

Mr. Thompson—Everybody agrees to it sir—to get in definite shape this gossip that Mr. Harvey had been bringing on from New York.

Q. Now, Mr. Watts took that letter over to the directors, didn't he? A. Yes.

Q. And read it to the directors? A. I couldn't say.

Q. You don't remember? A. I think he read it to the directors.

Q. Yes. A. I know he presented it to them.

Q. Now, you heard Mr. Dittmore's reply to that—to the letter—not reply, but you heard Mr. Dittmore's letter to Mr. Harvey in which he took up the points made by Mr. Harvey in that letter, didn't you? A. Yes.

The Master—That is the one that has been read?

Mr. Thompson—Yes, sir; yes, sir.

Q. And Mr. Harvey made the statement, and afterwards incorporated it into his letter, that he understood that this interview in New York by the mysterious director had been requested by him or that he had gone down there requesting it; you understood that from Mr. Harvey, didn't you, that the director had gone to New York to stir things up? A. Yes.

Q. But you found out afterward that that wasn't so, but it had happened just as Mr. Dittmore said, didn't you—that he went there for other reasons and was spoken to by these two men? A. Mr. Dittmore's statement is all I had.

Q. You never had anything contrary to Mr. Dittmore's statement on that, did you?

Mr. Whipple—Except Mr. —

Mr. Thompson—Mr. Watts' hearsay?

Mr. Whipple—Mr. Harvey's.

Mr. Thompson—Mr. Harvey's hearsay?

Mr. Whipple—Yes.

Q. Those two men that Mr. Harvey refers to are Mr. Gilmore and Mr. McLellan, weren't they? A. Mr. Gilmore was one; I am not sure of McLellan. That isn't the name; McCullough.

Q. McCullough? A. Yes.

Q. You were satisfied afterward that Mr. Dittmore's trip there was not part of any scheme or plan, were you not, on his part? A. No, I couldn't say that.

Q. You don't believe that it was, do you? A. Well, I—I don't know about his trip, but from his letter that he wrote it seemed to me that he set forth all of the—

Q. That is, you accept his letter as he wrote it? A. No, I don't accept it because I don't think the statements made are right.

Q. I mean the statements of fact, not the opinions; the statements of fact in regard to his trip to New York? A. As to what he did there?

Q. Yes. A. I know nothing now to the contrary.

Q. Exactly. That is all I am trying to get at. Do you know where Mr. Bates got hold of that information which he detailed to you at such great length this morning about your lumbering operations and contracts? A. I do not.

Q. Have you any idea where he has been to get that—who has been furnishing him with all the information?

Mr. Bates—Does Your Honor think that is material?

Mr. Thompson—I think it is.

Mr. Bates—Well, I object to it.

Mr. Thompson—And I press the question on the ground that it is a fair illustration of the methods of these directors in getting at testimony about people.

The Witness—Well, I regret they had to go that far.

The Master—For the moment. If they did get that information, is that anything to their discredit?

Mr. Thompson—No, sir, but how they got it may be. I won't press it if they are going to object to it.

Mr. Bates—No, your client objected to it; you shouldn't press it.

Mr. Thompson—My client hasn't objected to it.

Q. You know a man named Hess in Chicago? A. Slightly, yes, sir.

Q. He is the counsel for one of the companies, isn't he—the Harvester Company? A. Well, I think he is an associate counsel, yes, sir.

Q. Associate counsel. He is a Christian Scientist, isn't he? A. Yes, sir.

Q. You were asked at one time to be a director of the First National Bank of Chicago, weren't you?

The Master—I am sorry, I didn't hear that.

Mr. Thompson—He was asked at one time to be a director of the First National Bank of Chicago.

The Witness—No, I don't remember of being asked.

Q. You don't? A. No.

Q. I understood that you had been. A. No.

Q. I will put this question to you in common fairness; it may be objected to, but I am going to put it on behalf of Mr. Dittmore. It is a fact, isn't it, that before you took this position of trustee under this Publishing Society, these directors—not your fellow trustees, but these directors, every man of them—knew fully the businesses that you were connected with, the fact that a certain amount of your time would be required in those businesses, and said to you in substance that they were glad to get you on those terms, a man of your business experience? Isn't that the solid truth?

Mr. Bates—I object to the question.

Q. That is a fact, isn't it?

The Master—I think he may answer that.

A. Well, I would have to answer it in this way: that they knew all of my business activities—I think the majority of the directors—but in connection with my trusteeship I never asked them to express any—

Q. You continually answer something I don't quite ask. A. Yes.

Q. I haven't asked what you asked them. I put it in very general terms. It has been suggested here this morning that the trustees and the directors discovered that you were spending some of your time on your own business—an attitude of surprise. I wish

to dissociate publicly Mr. Dittmore from any such intimation or suggestion as that by this question to you. Isn't it a fact, no matter how much he differs with you—and he does on your views on these trusts and declarations—isn't it a fact that Mr. Dittmore, Mr. Dickey, Mr. Neal, Mr. Rathvon, and Mr. Merritt, every one of them, not only knew when you took that position as trustee, that you had got to devote a considerable amount of time to your business affairs, but expressed great gratification that they could get a man on that board who had business affairs of that magnitude to attend to and the capacity to attend to them? A. Yes, they did; yes, sir.

Mr. Thompson—That is all.

Mr. Whipple—You may step aside, Mr. Rowlands, if you please.

Mr. Bates—Well, just a moment.

Mr. Whipple—Oh, pardon me. (To the witness.) You need not step aside.

Mr. Bates—Don't be in such haste.

Mr. Whipple—Oh, he is not in any haste at all. He is growing every minute!

Q. (By Mr. Bates) Mr. Rowlands, you gave up a salary of \$15,000? A. Yes, sir.

Q. Who was paying you that salary? A. C. A. Goodyear Lumber Company.

Q. And for what? A. For managing their affairs.

Q. And what affairs? A. Why, the affairs of the C. A. Goodyear Lumber Company.

Q. When did you give it up? A. I gave it up when I resigned my position.

Q. When was that? A. Well, I can't tell you, as I said this morning.

Q. How long had you been receiving it? A. Oh, I should judge ten years.

Q. Did you not give it up in connection with your work with the Yellow Pine Company? A. No, I did not.

Q. Then, the fact that you had entered into a partnership for the development or promotion of the development for 45,000 acres of land, with all the lumber interests involved, and the contracts with the Harvester Company amounting to 400,000,000 feet of lumber a year, wasn't any reason why you gave up your position with the parent company? A. That was not my reason, no, sir.

Q. Could you have run the C. A. Goodyear Lumber Company and the Yellow Pine Lumber Company and your partnership business at the same time? A. I could if called upon to do so, yes.

Q. Well, would they have expected to pay you a salary of \$15,000 in the C. A. Goodyear Company when you were devoting yourself as a partner with Crosby to making millions or possible millions out of this lumber company development? A. They would if I delivered the services that they required.

Q. But, as a matter of fact, you

are still treasurer of that company?  
A. Of the Goodyear Yellow Pine Company, yes, sir.

Q. But not of the other company?  
A. No, I resigned; I am a director.

Q. You didn't give up any salary in connection with the Goodyear Yellow Pine Company? A. No, I didn't have one with that company.

Q. You owned a half of the common stock— A. Well, I held a half of the common stock; I don't claim to own it.

Q. Who was put in your place in the C. A. Goodyear Company? A. Let's see; (pausing) I think Mr. Lightner—H. A. Lightner—was elected the treasurer, made treasurer, and Miles A. Goodyear took my position as the manager.

Q. Now how long does your contract run with the Harvester Company? A. Eight years; that is—

Q. Eight years? A. Or until the contract is completed.

Q. Well, what will make a completion of the contract? A. Well, the delivery of the amount of lumber that is required under the contract.

Q. Well, I understood that was 400,000,000 feet a year? A. No; 400,000,000 feet in all; 50,000,000 feet a year. Eight years would be 400,000,000 feet.

Q. Then it will be about eight years, as you figure, before your contract will be completed? A. I should think so, yes, sir.

Q. And have you since you have been trustee been out to California on account of interests which you have out there? A. I made one trip, yes, sir.

Q. How long were you gone? A. I can't say. It generally takes me about a month to take a trip of that kind.

Q. And have you been out to the State of Washington also on business? A. No, I didn't go there.

Q. Did you ever have any difference with Mr. Dittemore because of suggestions which he had made to you in regard to things that you should do which you regarded as being disloyal to your co-trustees? A. Yes, sir.

Q. When was that? A. Well, I don't—I can't tell the dates, because I don't remember dates.

Q. That caused considerable breach between you and Mr. Dittemore? A. Why, I don't think it was a breach. It was—he asked me for some information which I thought ought to come through the trustees, and I told him so, rather than anybody else.

Q. Did you tell him so rather emphatically? A. Well, yes.

Q. And did you ever ask Mr. Dickey as to why the board did not get rid of Mr. Dittemore? A. I don't know as I ever did.

Q. Did you, in effect, or in substance ask that question? A. I can't remember of asking him that.

Q. Didn't you make complaint to Mr. Dickey in regard to Mr. Dittemore's action? A. I think so.

Q. But you don't recall that you asked him why the board did not dismiss him? A. I don't believe I do or know.

Q. Will you say that you did not do it? A. No, I will not.

Q. Now, in the record of March 5th—have you that record of March 5th? A. Do you mean our records?

Q. Yes. A. (Witness shows entry in trustees' records to Mr. Bates.)

Q. Will you point out the parts that you read? A. (Witness indicates.)

Mr. Bates—This record was referred to by brother Thompson, but was not read into the record. It is brief, and I will read it. (Reading):

"Mr. Dickey came to the meeting by appointment at his request, and stated that he came on his own responsibility. He made inquiry whether Miss Wright would be available for employment by The Mother Church, in the event they needed her for their new department. The trustees told him that they desired to retain Miss Wright for the advertising department here, but would be glad to spare her for as much time as was necessary to instruct someone to take charge of their new department."

Q. What new department was referred to? A. It is the Journal cards that were transferred to the Board of Directors. They took that over.

Mr. Whipple—Just a little louder, if you please. It gets a little confidential.

Q. Won't you repeat your answer louder so that the Court can hear it? A. It was the Journal cards department—I think that is what they call it. It was transferred under the agreement of Feb. 3 from the trustees to the directors of the church.

Q. Well, that paragraph had nothing to do with any collusive settlement between the trustees and the directors, did it? A. I think not.

Mr. Bates—Now the next paragraph is this. (Reading):

"General conversation was had with Mr. Dickey for nearly two hours relative to the situation concerning the two boards. The whole conference was one looking to a solution of the problem which concerns the Board of Directors, the publishing house, and the field at large, through demonstration."

The Witness—Yes.

Q. And that is all that the record says in regard to anything that took place or in regard to any conversation with Mr. Dickey? A. Yes, sir.

Q. And there is nothing in that that, to your mind, indicates any collusive arrangement between—

Mr. Thompson—Just a moment, I pray Your Honor's judgment. In the first place, here is what he thinks was collusive. His judgment on that is not material.

In the second place—

Mr. Bates—I will not discuss it; to save time, I will withdraw the question.

Mr. Thompson— —I now contend

and have contended that it is not collusive but a distinct surrender by you of what you have been calling vital rights here.

Q. Now you turn to the record of March 6. (Witness indicates.)

Mr. Bates—And the entry of March 6, which my brother has expatiated on without reading, is as follows—

Mr. Thompson—Will you read it, please, slowly, so that we can get it?

Mr. Bates—(Reading):

"Mr. Dickey came to the meeting at 3:40 to further discuss the question of the relationship of the two boards, and some plan for working out unity of action."

"After more or less discussion, Mr. Dickey read section by section the draft of the directors' memorandum which has been under consideration a number of times during recent years, and asked the trustees to express such modifications as they felt would be acceptable to them, in order that he might present these to his colleagues. The question was tentatively discussed and a number of changes made, and it was agreed that the publishing house should make copies of the corrected memorandum and send four of these to Mr. Dickey, and keep copies for themselves, in order that it might be given earnest and thoughtful consideration before making any decision. Miss Farr was asked to make these copies, and later in the evening, Mr. Rowlands and Mr. Ogden compared them with the original and sent the four copies to Mr. Dickey's residence."

That is all there is in that meeting in regard to any alleged compromise.

Q. As a matter of fact, do you know whether or not the original was also sent back with those four copies? A. I do not.

Q. And you did not have charge of sending the copies? You know nothing about that except what you see in the record? A. Not that I remember, the detail of that.

Q. Mr. Dickey did bring to that meeting a memorandum, and as he read it section by section he minuted on there such suggestions as the trustees made? A. Penciled them.

Q. Yes, and left that memorandum with your board for copies to be made? A. I think he did.

Q. And the meeting extended until about 6 o'clock that night, did it not? A. Rather late.

Q. And he then left it with you at your request? A. Yes.

Q. In order that you might make copies of the suggestions as they had been made by your board at the meeting? A. He did.

Q. And you offered to make the copies and to send them to him? A. I—

Q. By you, I mean the trustees. A. Either he requested it or we offered to accommodate him.

Q. Now, referring to the record of March 17, if you please, will you show me that? (Witness does so) The re—



Mr. Bates—The record to which my brother referred to is this:

"Mr. Dixon came to the meeting about 4:30, and reported that he had been two hours with the directors discussing the action of this morning, and that they had requested him to confer with the trustees with a view to ascertaining if some agreement could not be reached regarding the situation between the boards. They stated to him that they were willing to agree to the memorandum last submitted by them. The trustees explained to Mr. Dixon, paragraph by paragraph, why they felt it was necessary to make changes in the directors' memorandum as submitted by the trustees to the directors at their meeting last week. Mr. Dixon took both copies for consideration, with a view to discussing the question fully with the directors tomorrow."

Q. Mr. Dixon was editor of The Monitor? A. Yes.

Q. And had come here from England to take that position? A. Yes, sir.

Q. Some years before; and was regarded as a most able editor, I assume? A. Yes, sir, we regarded him so.

Q. And was greatly troubled by reason of this controversy which had arisen between the two boards? A. I believe so.

Q. And for a long time had been endeavoring to bring about some adjustment of the difficulty— A. Yes, sir.

Q. Had he not, on his own initiative? A. I would say that he had been trying to bring about a settlement.

Q. Because of his own interest in the case? A. Yes.

Mr. Bates—Does Your Honor wish to stop here?

Mr. Whipple—How much longer are you going to take?

Mr. Bates—Oh, not much longer.

Mr. Whipple—Would Your Honor mind finishing with this witness?

The Master—I am perfectly willing to if counsel are ready to go along.

Mr. Thompson—I would like to go on.

Mr. Whipple—I would like him to clean up the job if he could.

Q. Now, did Mr. Dixon come back the next day? (Handing trustees' record to witness.)

[No answer.]

Mr. Bates—And that record reads as follows (reading):

"Mr. Dixon came to the meeting"—

Mr. Thompson—What record are you reading now?

Mr. Bates—This is the record of March 8, 1919. (Reading):

"Mr. Dixon came to the meeting at 3 p. m., also the business manager, and reported that he had been in conference with the Board of Directors, and that the directors had refused to accept the draft of the agreement which he had taken from the trustees yesterday. They gave him the following

as the only basis upon which they would agree:

"Final authority as to the editorial policy of the official organs of The Mother Church and the general supervision of the general affairs of The Christian Science Publishing Society as set forth in the Manual of The Mother Church."

"The trustees considered this memorandum, but felt that under no circumstances could they accept it, because this would be an absolute violation of the Deed of Trust."

Q. So that as a result of these conferences with Mr. Dixon both parties stood on what they considered the principle involved, did they?

Mr. Thompson—One moment. That is a very unfair question. You know he has read the records way down into May, where the men kept returning to the topic, offering to take back one thing and another. That was not the final result of it by a good deal.

Q. I will ask you, Mr. Rowlands, if there was any giving up of any principle, or any suggestion of giving up any fundamental principle in controversy by either board?

Mr. Thompson—One moment. How does he know what the other board regarded as fundamental? Nobody knows that. You have fluctuated all over the lot.

The Master—He may state as far as he knows.

Q. You may answer the question.

The Witness—Will you read it?

[The last question is read.]

A. Not as far as we were concerned, but I cannot testify as to the Board of Directors.

Q. Do you recall that they offered to give up any fundamental principle involved in the matter?

Mr. Thompson—I pray Your Honor's judgment. That requires him to pass judgment upon what the directors, at least all except Mr. Dittmore, regarded as fundamental. He is incompetent, and every other man is except the directors themselves, to say what they regarded as fundamental, because they regarded, according to the chairman, half a dozen different things at one time as fundamental and at another time not.

The Master—Of course, his testimony can be only so far as indicated to him. No one would take it in any other sense. (To the witness) Answer it.

The Witness—Well, from the Board of Directors, no, as a board.

Mr. Thompson—I would like him to explain that a little further. You mean individually?

Q. There was none came from the Board of Directors, you say? A. Not that I remember.

Q. As a matter of fact, it was regarded by every one who was interested in the cause of Christian Science that this dispute which had arisen between the two boards ought to be adjusted if it could be, was it not?

Mr. Thompson—How can he tell that? How can he tell that?

A. I couldn't say everybody, but I should think all would be interested in seeing a harmonious—

Q. You would say yourself that it was an eminently desirable thing, wouldn't you? A. If it was settled satisfactorily.

Q. And you would think that the Board of Trustees and the Board of Directors ought in every way to try to bring about a satisfactory adjustment before proceeding to the Court?

Mr. Thompson—One moment. Satisfactory to whom?

The Witness—Satisfactory to the Court.

Q. You would think they ought to endeavor in every way to bring about an adjustment before going to the courts, would you, if it was possible to do so without waiving any principle? A. I don't want to speak for them, but I think they should do so.

Mr. Thompson—Think what?

Q. I was asking you to speak for yourself then. A. Pardon me.

Q. And Mr. Dittmore always assumed the attitude that no settlement or adjustment could be made, did he?

Mr. Thompson—Well, now, one moment.

A. I can't testify to that.

Mr. Bates—Well, I thought perhaps Mr. Thompson would admit that.

Mr. Thompson—Do you think I would admit that? Mr. Dittmore is the only one who maintained a perfectly definite, although perhaps erroneous, and perhaps not erroneous view. He is the only one that has not wavered, and in that sense he regarded his views just as sacred as Mr. Rowlands regarded his. The only difference between him and your clients is that he was consistent, self-respecting, and not insulting.

Mr. Bates—I object to the counsel's statement. It is entirely irrelevant and improper, and I ask that it be stricken from the records.

Mr. Thompson—I ask it to stay. He did not vote to expel anybody.

Mr. Bates—I ask that it be stricken from the records.

Mr. Whipple—I am in favor of it staying, if I am permitted to vote.

Mr. Bates—Naturally! I submit that that statement is not justified when made in regard to the directors, and that it ought to be stricken from the record.

The Master—Well, without undertaking to pass on the question of whether it is justified or not, with which I have nothing at present to do, I think I shall order it stricken out, because I do not think it assists the progress of the case at all.

Mr. Bates—There are two or three questions I may want to ask Mr. Rowlands in regard to those records that were put in subsequent, but I do not think I ought to take the time to do it now. I prefer to do it in the morning.

Mr. Thompson—Are you willing that I should put one or two questions to him before we adjourn?

Mr. Bates—I prefer you to wait until we get through cross-examination.

Mr. Whipple—I am willing.

Mr. Thompson—I want to put one question to this witness before we adjourn.

Mr. Bates—I think you can do it in the morning just as well.

Mr. Thompson—You would rather have the impression go out just as it is? All right.

Mr. Bates—Do you object to the impression?

Mr. Thompson—You did not allow him to explain one answer that he started to explain. I ask him to finish that answer.

Mr. Bates—I object to the asking of the question.

The Master—If the witness was interrupted and not allowed to finish something he wanted to say, he may have an opportunity.

Mr. Bates—The witness has not asked any such opportunity.

Mr. Thompson—I know he has not, because he did not know his rights. The question I had in mind was this: You asked him if the board, as a Board of Directors, ever changed its position. He said as a board, no. Then he was going on to say, "But as individuals," and you stopped him, and cut him right off.

Mr. Bates—No—

The Master (to the witness)—What were you going to say about individuals?

The Witness—Well, I felt in talking to some of the individuals—

Mr. Bates—No, I object.

Mr. Thompson—You object to what he felt?

Mr. Bates—Certainly, I object to his feelings. I am willing he should state what was said, but I don't want his feelings.

Mr. Thompson—Very well. Well, I said what he thought about individual members. You asked him for his opinion.

Mr. Bates—No.

Mr. Thompson—Yes, you did. "Did the board as a board ever change its opinion?" Of course, knowing that they had never voted to change it and adopt any one of these 20 or 30 propositions, he had to say no. Then he went on to tell the truth, which relates to the public attitude of the members before they could take a vote, and you stopped him, and you stop him now.

Mr. Bates—I did not think that he answered Your Honor's question.

The Master—If he wants to add anything further about what individuals did or indicated to him, he may answer it.

The Witness—Well, there was indication that some of them would make concessions in order to settle it.

Mr. Thompson—Exactly.

Mr. Bates—Does Your Honor think

that is a proper statement made in answer to your question?

The Master—I can't see why not, Governor.

Mr. Bates—Well, then I want to ask—

Mr. Thompson—We will wait until tomorrow now.

Mr. Bates—No. I want to ask Mr. Rowlands upon what he bases the statement he has just made, upon what conversation and with whom.

The Witness—Well, the conversation—

Mr. Thompson—He has already stated half a dozen times.

Mr. Bates—No, I don't want you to tell it, Mr. Thompson.

Mr. Thompson—Very well.

The Master—No, I think, Mr. Thompson, you will have to be quiet a moment or two—

Mr. Thompson—Very well.

The Master— — and let Governor Bates get the answer to the question.

Mr. Thompson—The situation is very satisfactory to me. A. The conversation I had with Mr. Neal, for one.

Q. And when? A. I can't tell you just when.

The Master—He has already stated it.

Mr. Bates— I didn't understand him to say when.

The Master—All right. Go ahead.

Q. Can you give the date? A. Why, I can look it up in the records.

Q. Can you tell us about when it was? Do you refer to one of these conversations that was mentioned in the recent records? A. Yes.

Q. Of the board? A. Yes.

Q. And what was Mr. Neal's statement to you? A. Well, I can't recall just his statement.

Q. Well, give us the substance of it. A. The substance of his attitude was that they would be willing to make some concessions if necessary to bring about an understanding; that that would be his attitude.

Q. And that had been his attitude all the way along, hadn't it—so far as he could he would make concessions in order to bring about an adjustment of this dispute? A. Yes, I think that is Mr. Neal's attitude.

Q. But he never suggested to you that you would make any improper concessions, did he?

Mr. Thompson—Oh, pardon me, pardon me. Of course not.

Q. Did he, Mr. Rowlands? A. No, never.

Mr. Bates—That is all.

[Adjourned at 4:15 p. m. to 10 a. m. July 3, 1919.]

July 3, 1919

#### EIGHTH DAY

Supreme Judicial Court Room, Boston, Massachusetts, July 3, 1919

Mr. Thompson—If Your Honor please, I would like at this stage to introduce the passages from the records of the directors to which I re-

ferred yesterday, it having been denied by two of the counsel, as I recollect it, that there was anything in these records supporting my assertion. The first is a record of March 19, 1919, which Your Honor will recollect was two days after the expulsion or attempted expulsion of Mr. Dittmore and Mr. Rowlands. It reads as follows, page 315 of their records:

"The directors had an interview with Judge Clifford P. Smith, who was requested to confer with Attorneys John L. Bates and Leon M. Abbott, with reference to the possible retirement of Mr. Dittmore as Trustee under the Will of Mary Baker Eddy."

Then the next entry on the next day, March 20, concerning the matter:

"The directors had an interview with Judge Clifford P. Smith, who reported an interview with Attorneys Bates and Abbott, who saw no reason why a vacancy should not be declared in the directorate of the Benevolent Association in case Mr. Dittmore should refuse to resign—"

The Benevolent Association is another subordinate body of this Church:

"—but they advised waiting a while before taking any action to affect a change of his trusteeship under the will of Mary Baker Eddy, so as not to have too many contests on hand at the same time. Counsel advised that when the time comes to make the request, it had better come from his co-trustees instead of from this board."

I further understand that there are other subsequent references to these two matters in these records and I reserve the right, if I may, upon discovering such entries to introduce them in evidence in the case. I submit that my statement of yesterday is entirely supported by the records of these gentlemen.

Mr. Bates—My brother is a trifle irregular in making his statement; I assume, therefore, that he won't object to my making a statement. At this same time he was endeavoring to make some arrangement with us as counsel for the board whereby Mr. Dittmore might retain those very positions.

Mr. Thompson—Now, as long as you have seen fit to go outside of anything introduced in evidence in this case, I will make a statement which is to the effect that I told you, not once but three times, that you had made a serious blunder, that you had impaired your chance of maintaining the rights of the Christian Science Church in this Board of Directors by expelling the only man who had sincerely maintained them, and knew the evidence, and that you ought to consider seriously whether you would not retrace your steps before it was too late and you had got plunged into this litigation, revoke your vote, put Mr. Dittmore back on that board, and try to conduct your affairs with common sense as well as with zeal. That is the proposition I made to you.

Mr. Bates—I admit you were very anxious to make some arrangement by

which Mr. Dittmore could be put back on the board, but your efforts were not successful.

Mr. Thompson—And your efforts now to maintain your case are not successful for the very reason that you have expelled the only man who knows enough to do it.

Mr. Bates — Fortunately, counsel does not have the decision of the case.

## Lamont Rowlands, Resumed

### Re-Cross-Examination, Continued

Q. (By Mr. Bates.) Now, Mr. Rowlands, I understood you to say yesterday that you had spent many nights at the publishing house? A. Yes, sir.

Q. When did you spend the nights at the publishing house? A. Well, I was there during the time that The Monitor was changed over to a morning paper. I stayed there all night long several nights, until early in the morning.

Q. And when was that? A. Well, I can't remember the date.

Q. Was there any other time when you stayed there all night long? A. Well, I have stayed there a number of times till the early hours of the morning.

Q. Are there sleeping accommodations there? A. None that I know of.

Q. What do you mean by saying you stayed there all night long? Do you mean that literally? A. Yes; I worked in the mailing room until the paper was off a great many times, helping down there.

Q. What do you mean by a great many times? A. Well, I was there at one time practically every night for a week.

Q. This was at the time when the paper was changed from an evening edition to a morning edition? A. Yes.

Q. And that involved some extra labor, did it? A. Yes.

Q. But you don't remember when it was? A. Well, I can't tell the date. The records will show if it is important.

Q. Was there any other time that you remember?

The Master—Now, I suppose you want to know that date, Mr. Bates; there is no dispute about it. Wouldn't it be useful to have it now if his evidence is useful?

Mr. Whipple—We shall show by the next witness when he did it.

The Master—There cannot be any dispute about it.

Mr. Whipple—It was along in November, 1918—August to November, was it? The latter part of August, 1918. (To the witness.) Does that accord with your memory?

The Witness—As I remember it, yes, sir.

Q. Was there any other occasion except when this paper was changed over that you recall staying there late at night? A. Why, whenever I am in town I go there in the evening very often and stay until the paper comes off, until 12:30 to 1 o'clock. I go

home, leave there, between twelve and one.

Q. What time do you go down there? A. Why, I go down anywhere from 8 to 9 o'clock.

Q. In the evening? A. Yes.

Q. Then your duties on these days when you stayed all night were from 8 or 9 o'clock in the evening, were they? A. No; I always attended the conferences in the afternoon and occasionally went there in the morning to the publishing house.

Q. Occasionally? A. Yes, sir.

Q. But as a matter of fact, these evening times that you speak of were times when you went in at 8 or 9 o'clock in the evening and stayed until the paper came off the press? A. Yes.

Q. Which was about 12 o'clock? A. Goes to press at 12:30, as a rule.

Q. What was the necessity of your being there to watch that paper come off the press? A. Why, as a trustee I felt that I have an interest in the work; I don't know as there is an absolute necessity, because the organization is such that it could have been done very well without me, but I have a very keen interest in the paper, and I enjoyed attending the editorial conferences, which I have done many times.

Q. Yes; but those are not held between eight o'clock and midnight, are they? A. Yes; at 8:30 the editorial conference is held, the news editorial, at 8:30 every evening.

Q. Is that a conference with the trustees? A. No, it is a conference of the editors.

Q. Do the trustees as a rule meet with them? A. Well, occasionally we do.

Q. Just occasionally? A. Yes.

Q. Do you recall anything special that you did on any of these night sessions that it was necessary for you to do? A. At one time we had considerable trouble in our mailing room, because we completely changed or quite changed our system in the mailing room, and from the standpoint of bringing out harmonious action it was felt that some one ought to be in the mailing room to help from a mental standpoint as well as physical, so I volunteered to go into the mailing room and stay there until that was worked out.

Q. And what did you do? A. Well, I did the best I could from a mental standpoint, working from the standpoint of Christian Science; and I also helped to wrap up papers, count them, and do the same labor that anyone else did.

Q. Was it necessary for you to wrap the papers? A. Not at all.

Q. Did you consider that your engagements as trustee were so that you could go in and wrap papers and make out the mailing list? A. Well, I never considered that a trustee was any more important than any other part of the institution, that it depended upon every man to live up to his highest ideals of what was right.

Q. Didn't you consider—

Mr. Whipple—Finish your answer.

A. Well, I feel every man in the institution, from the standpoint of Science, has as important a position as a trustee in working out the salvation of man and the good of the cause.

Q. You consider, you say, that every man has as important a position as the trustees? A. I think so, from the standpoint of Christian Science, yes, sir.

Q. But when you come to fix the salaries you don't consider that, do you? A. No; we—

Mr. Whipple—He doesn't seem to be so much on the salary question as some people are.

Q. How many people in the publishing house receive a salary of \$6000 or over? A. Well, I couldn't tell you that.

Q. Well, you don't know, as a trustee? A. I couldn't tell you how many.

Q. You can't tell, as a trustee of the Publishing Society, how many employees you have that have a salary of \$6000 or more? A. I wouldn't attempt to say exactly; I could give you an estimate.

Q. No. If all you have is an estimate, after spending nights at the publishing house, I don't think we want the estimate. As a matter of fact, you were away not only 192 meetings during the 18 months before these proceedings were brought, but you were away at times as much as a month at a time, were you not? A. Yes.

Q. And because of your business engagements in the south and elsewhere? A. Not always.

Q. Well, sometimes you were away as much as a month or more on that account? A. Yes.

Q. And as a matter of fact in September and August, very soon after this change of the paper from a night edition to a morning edition, you were away over four weeks, were you not? A. I think so.

The Master—September, 1918?

Mr. Bates—1918.

The Witness—Yes, I felt I had a right to be, too.

Q. Yes? A. Yes.

Q. I am not saying anything about that, but you were away? A. Yes.

Q. About that time, over four weeks at a time? A. I was entitled, according to the trustees, to four months of vacation in two years and I have never taken that; I have never asked for a vacation.

Q. Can you tell anything else that you did in the publishing house on those nights except to mentally help out and to fold some of the papers—wrap them up? A. Why, I don't place any particular emphasis on wrapping the papers. I only tried to show by—

Q. Can you think of anything else you did? A. — to show that I could do that as well as anything else and be of assistance wherever there seemed to be need of it.

Q. Well, you had people employed for that special purpose, did you not?

A. Why, yes, we did, and they did, the work very well, but I do not consider it beneath the dignity of a trustee to do anything that is needed to be done.

Q. If you were away, over four weeks at a time as late as August and September of last year, or as late as September of last year, that was more than a year after you had accepted your position, wasn't it, as trustee?

A. I think so.

Q. And you do not deny that you were away on account of business, do you—other business, I mean, than a trustee? A. No.

Q. That is, you were not away on a vacation? A. No, I was not.

Q. It was because of interests outside the publishing house? A. No, not altogether; because when I went to Chicago, many times they asked me to look after different matters in connection with the Christian Science cause, which I did. We opened new offices there, engaged new offices. We consulted people in Chicago. I made trips to New York in connection with closing contracts for paper. I was away a great many times on behalf of the Publishing Society.

Q. And there were times when you went to Chicago on your personal business and never went into the office at all? A. Yes, a number of times.

Q. Of the Publishing Society? A. Yes, sir; a number of times, yes, sir.

Q. And, as a matter of fact, while there were times when you might have stepped into the publishing office in Chicago, or consulted Mr. Strawn in regard to your legal rights, in Chicago, you were nevertheless away primarily on your own business, were you not? A. Why, yes, I will say that.

Q. And there is no publishing office down in Picayune, Mississippi? A. Not of The Christian Science Publishing Society, no. They publish a paper there.

Q. Do you remember sending a telegram to the trustees in September of 1918, that your business would require you to stay in the south for at least four weeks more? A. I might have sent a telegram; I don't remember just the words of it.

Mr. Bates—Do you wish to see this record before I read it?

Mr. Whipple—What is it? I have no objection to your reading any record of the Board of Trustees.

Mr. Bates—This is a record from the Board of Trustees.

Mr. Whipple—Subject to our objection if it does not seem to be material, but we have no records which we desire to have concealed.

Mr. Streeter—You did not offer to show it to Mr. Dittmore's counsel, Governor Bates.

Mr. Bates—I was addressing you all.

Mr. Streeter—Oh, were you? Well, we have no objection.

Mr. Bates—Yes, sir.

Mr. Streeter—And we believe that all the records of all the parties here

should be put into this case; we have no objection to anything in the way of official records.

Mr. Thompson—Provided it is fully put in.

Mr. Bates—This is a record of Sept. 3, 1918, of the Board of Trustees:

"A telegram from Mr. Rowlands was repeated by Mrs. Rowlands to the trustees, in which he stated that the demands of his business would probably necessitate his remaining in the south for at least four weeks more, and asking whether this arrangement would be agreeable to the trustees. The trustees wired Mr. Rowlands that they believed he should take such time as he deemed necessary for the adjustment of his affairs; that this would be satisfactory to them. They asked, however, inasmuch as he expected to be in Chicago next Saturday, whether it would be practicable for him to come to Boston for a meeting Monday afternoon and Tuesday morning, as there were a number of important questions to be disposed of."

Q. Did you send such a wire as the record states? A. Well, I must have, yes, sir.

Q. And did you come on to Boston for a day or two? A. Well, I can't remember, but I am sure I did if they asked me to come.

Q. And do you know how long you had been in the south when you sent the wire that you would have to stay there four weeks more on account of your business demands? A. I do not.

Q. Now, as a matter of fact, because of these pressing matters they did send for you and you came back to Boston and were there on Oct. 1, were you not?

Mr. Whipple—There on the 26th, I guess, of September, if you will look it up, Governor.

A. Yes, I think so; the records will show.

Q. Now, on Oct. 1, having come back to Boston for these important matters which were needing attention, you again left for Chicago and the south, did you not? A. Well, I have led such an active life that I can't remember dates, but if you will let me refer—

Q. That is, you have been going so much you can't remember? A. No, not at all; I didn't say that, Governor.

Q. Well, I do not wish to put anything into your mouth that you do not intend. A. I hope you won't.

Q. But I understood you had been living an active life and going a great deal. Is that right? A. Yes, I hope that I have. I did not come down here to go to sleep.

Q. And no man could be looking after, no matter how able he was, all the interests that you were looking after, and not be a pretty active man, could he? A. He ought to be, if he lived up to his job.

Q. It would require a great deal of activity, wouldn't it? A. Yes. I don't think any more than I possess, however.

Q. Well, I am assuming that.

Mr. Whipple—No, you are trying to assume the other thing.

Mr. Bates—No; I am assuming that it does not take any more than what he thinks he possesses.

Q. Now, Mr. Rowlands, let me refresh your memory by reading this record of Oct. 1, 1918, which was a year and two months after your employment as trustee. A. Yes. Well, I accepted the position—

Q. This is the record of the trustees of Oct. 1, 1918:

"Mr. Rowlands left on the night train for Chicago via New York, and after conferring with Mr. Strawn in Chicago will continue to Picayune, where his individual business affairs will require his attention for several weeks. Under the circumstances this absence was heartily granted and approved of by the Board of Trustees."

A. Yes.

Q. These important matters that you came back for included the sending of the memorandum or statement, I assume, that the trustees sent to the Board of Directors on Sept. 30? A. Yes.

Q. Now, are you a practitioner of Christian Science? A. Why, I try to be; yes, sir. I try to practice the principles of Christian Science.

Q. If I am wrong, set me right, but doesn't that term have a certain definite meaning to Christian Scientists? A. Yes.

Q. And what does it mean? A. Why, a Christian Science practitioner is one who gives his time to Christian Science practice.

Q. And what is the Christian Science practice; what do you mean by that? Healing and treating cases? A. Yes.

Q. And you do that, do you? A. Yes.

Q. And no person except those who are healers or practitioners are allowed to have their cards in the Journal? A. I should say, yes.

Q. And you have your card in the Journal? A. Yes.

Q. And how long has it been in the Journal? A. Oh, I think about—I am not sure; I should judge eight months.

Q. Eight months? You mean— A. I am not sure.

Q. You mean the past eight months? A. Yes.

Q. And how much of the time have you given to your occupation or business as a practitioner or healer during those eight months? How many cases have you treated? A. Well, I could not tell you how many I have treated.

Q. Well, do you have regular office hours for the treatment of cases? A. No; by appointment.

Q. By appointment? A. Yes.

Q. And by appointment where? A. In Boston at 236 Huntington Avenue I have an office which I pay for myself, without any assistance from The Christian Science Publishing Society or The Mother Church.

Q. And how much time do you

spend at that office? A. Well, I have spent very little since this litigation has come up, or the misunderstandings.

Q. Well, how much did you spend there before? A. Well, I used to go there, when in town, every morning—tried to be there every morning.

Q. And for how long a time? A. Well, I had no special time.

Q. Had no special time? A. No.

Q. No special office hours? A. No.

Q. And you do not remember how many cases you have treated? A. Had very few there.

Q. And could you say how many times you have been in your office—that office I refer to—as a practitioner during the last eight months, say? A. Whenever I was in the office I felt that I was there as a practitioner, if anyone called on me for help.

Q. How many times have you been in the office, then? A. I can't tell you that. I believe you can tell better than I can, you have been keeping such close track of me.

Q. Are you willing to take my testimony? A. I am willing to assume you are an honest man, but I do not take your methods as honest the way you have been operating.

Q. Were you asked that question? A. No.

Mr. Bates—Then I ask it be stricken from the record.

The Master—I think we may leave it out.

Mr. Whipple—Well, if Your Honor please, the beginning of the colloquy, which was by the Governor himself, ought to go out too.

The Master—Well, very likely it was, but I do not think it has given us very much information—additional information regarding the case.

Mr. Whipple—Quite so. But if the interchange goes out, the whole interchange should, and I quite agree that if the method of putting questions and getting answers is followed it will be an advantage to all of us.

Q. Are you familiar with Section 9 of Article XXV of the Manual, which provides as follows— A. What page is that?

Q. Page 82. A. Yes.

Q. "Members of this Church who practice other professions or pursue other vocations, shall not advertise as healers, excepting those members who are officially engaged in the work of Christian Science, and they must devote ample time for faithful practice."

A. Yes.

Q. You are familiar with that, are you? A. Yes.

Q. Then you had not only your business duties and responsibilities to attend to relating to the lumber business and these various partnerships and corporations, but you have also had the business of a healer, which the Manual requires you to give ample time to, to take up your time in addition to your duties as trustee? A. Yes.

Q. By the way, Mr. Rowlands, that copy of the letter that you pulled out

of your pocket yesterday on the stand, of Mr. Dittimore's letter—how did you happen to have that copy of that letter in your pocket? A. How do you mean, Governor?

Q. Where did you get it? A. Why, I got it from Miss Farr.

Q. From whom? A. Miss Farr.

Q. Miss Farr? A. Yes. Our secretary.

Q. And when did you get it? A. The night before.

Q. And was it Judge Thompson's copy? A. Well, I didn't think it was Judge Thompson's—

Q. You did not understand why he appropriated it, then? A. Pardon me?

Q. He took it, then—you let him have it?

Mr. Thompson—Just a moment. I am flattered by the designation "Judge," but it is as erroneous as the other. I did not take this witness' copy; I took one which you took from me which I got from Mr. Dittimore.

Mr. Bates—I thought no one would speak with such assertion as you have around here unless he was a judge.

The Master—Can that be important?

Mr. Bates—No; I am willing to withdraw that, Your Honor.

Q. There was just one more question. The letter of Sept. 30, which was sent by the Board of Trustees to the Board of Directors, stated the position of the trustees in regard to what they considered the relationships of the two boards, did it not? A. Yes, sir.

Q. And you agreed to it? A. Yes, sir.

Q. And one reason why you came back from Mississippi was in order that they might have your agreement to what they stated in that letter? A. Well, the substance of that letter, and the understanding of it—we had talked it over long before Sept. 30.

Q. Well, you agreed to all that was in the letter? A. Yes, sir; heartily agreed to it.

Q. And you agree to this statement that is in the letter:

"The Board of Directors elect the editor and associate editors of our weekly and monthly periodicals, the editor of our daily newspaper, and the business manager; but the trustees employ the officers and determine their salary."

Is that a correct statement? A. A correct statement in this way: we extend the courtesy to them to take that action, but when it comes to final responsibility of employing and inducting the employees into our establishment, that is our province.

Q. Then when you were construing, as you were in this paragraph, the Manual, in Section 14 of Article VIII, in regard to the duties of the two boards, and particularly in regard to the provision therein made that the editors and business manager shall be elected by the directors, you mean to say now that you put in an assent to that statement merely as a matter of courtesy

and not because the Manual so provides? A. I will not say that, because at that time we had not consulted or had an opinion from our attorneys.

Mr. Whipple—Just a moment.

Mr. Bates—I think there is nothing else.

The Master—What is that, Governor Bates?

Mr. Bates—That is all.

Mr. Whipple—Is that a proper question, if Your Honor please?

The Master—I think there might be, perhaps, some doubt about it, but the witness says no, he does not accept that interpretation of the letter.

Mr. Whipple—I move that the answer be stricken out. I tried to object seasonably, because I do not think it is helpful, and I do not think we ought to have in the record—

The Master—If I strike out everything that I did not consider helpful, I might have to do a great deal of striking out.

Mr. Whipple—Well, I think Your Honor feels you must do that sometime; it is only a question of when.

The Master—It may be partly a question of interpretation.

Mr. Whipple—Very well.

The Master—Governor Bates suggested to the witness a certain interpretation which he declined to accept. I think that that might properly enough remain on the record.

Mr. Whipple—Very well. My chief objection to the question was that he was assuming something the witness had not said. The witness did not say that they extended it as a matter of courtesy.

The Master—No, he did not say so.

Mr. Whipple—It was the interpretation—

The Master—Placed upon his words, yes.

Mr. Whipple—That the election by the Board of Directors was not an election in the sense of the term that involves an installation of the person so selected in any office or position; it was more in the sense of a nomination, and that that was his construction of the Manual and the provision of the Manual when construed in connection with the Trust Deed. If it stands in that way I have no objection to the episode resting in the record as the Governor saw fit to make it. That is all, Mr. Rowlands.

Mr. Thompson—Just a moment.

Mr. Whipple—I beg your pardon.

Re-Cross-Examination on Behalf of the Defendant Dittimore

Q. (By Mr. Thompson.) Mr. Rowlands, there are one or two records which I have discovered since last night of the trustees which I want to refer to briefly. The first is April 10 and 11, 1918; also the record of May 27, 1918.

The Master—Haven't you had those in once?

Mr. Thompson—No, sir, they are not, I think.

Q. Pages 393 and 394. Just that

part, Mr. Rowlands, relating to The Monitor circulation as reported to the trustees themselves. I want to get those four sets of figures in. A. April 11, 1918, the circulation?

Q. Yes, The Monitor—

Mr. Streeter—Have him read the record.

Mr. Thompson—That is what I am going to have him do, General.

Q. "Monitor circulation reported April 11 to be"—Now, if you will, just read those four sets of figures "International"? A. (Reading):

"The following report of the circulation of The Monitor according to editions was submitted and it was decided to let this arrangement continue until further notice: International, everywhere except New England, 83,000. City—New England except Boston Postal District, 6600. Last—I suppose that is the last edition—

"All adjacent towns, 3200. Star edition—that is the very last edition—"Boston, 2900." Making a total of 95,700.

Q. Now, will you turn to the records of May 27, page 444? A. Yes.

Q. Will you read that, beginning: "Met directors as arranged at trustees' request." That is May 27, 1918. A. Meeting with the directors May 27?

Q. That is it, yes. A. (Reading): "At 12 o'clock on Monday, May 27, 1918, the Board of Trustees met with The Christian Science Board of Directors as arranged at the request of the trustees, to consider a letter from the directors dated May 21, 1918, referring to Section E of Paragraph 7 of a memorandum considered jointly by the directors and trustees in February, 1916. The trustees wished to talk this subject over with the Board of Directors rather than to reply by letter, as they felt there should be a thorough understanding between the two boards relative to their relations to the work of the Christian Science movement." Farther?

Q. Yes, will you please? A. (Reading):

"The trustees stated that there never had been any record in the trustees' files in regard to the memorandum referred to, and that in considering this memorandum it was the unanimous conclusion that there was nothing in this recorded memorandum that was not already in the By-Laws of The Mother Church and in the Deed of Trust, and that it would not be right to attempt to supplement that by recorded interpretation; that the Manual was provided by Mrs. Eddy as being sufficient, and that the provisions contained therein would continue to unfold through further demonstration. The trustees assured the directors of their most hearty cooperation and support, and this was reciprocated on the part of the directors. It was finally decided that the memorandum should be destroyed."

Q. And that was Mr. Dittimore's original memorandum of February, 1916? A. Yes, sir.

Q. May 27, 1918. A. May 27.

Q. Governor Bates put to you the question yesterday about an alleged desire on the part of yourself and perhaps some of the other trustees to get rid of Mr. Dittimore from the Board of Directors. I understood you to say that you couldn't recollect ever having expressed any such desire yourself? A. I said I couldn't testify to the fact of getting rid of him.

Q. Getting him in some way separated from his position, to put it in the mildest possible form. A. Yes, I criticized him.

Q. Yes, I am not speaking of that. I want to direct your attention strictly to the question of getting him out of the Board of Directors. Now, my question is, do you know whether any of your colleagues on the Board of Trustees ever expressed to Mr. Dickey or to any other director, the idea, in substance, no matter what form of words was used, that it would be a desirable thing to separate Mr. Dittimore from the Board of Directors? A. I couldn't testify as to that.

Q. Have you any recollection of it? Isn't it very likely the fact that occasionally the trustees may have suggested to Mr. Dickey that it would be a good thing to separate Mr. Dittimore from the board?

Mr. Bates—I pray Your Honor's judgment.

Mr. Thompson—You yourself just asked the question—

Mr. Bates—No; he has already stated that he can't testify as to that.

Mr. Thompson—Well, it is very singular that I can't—

Mr. Bates—You asked him what may very likely have been the fact; you are not asking him as to his knowledge.

Mr. Thompson—It seems very singular, when you pressed him on the same thing yesterday, that you should now object to my asking him that question.

Mr. Bates—I object to the form of the question.

Mr. Thompson—I put the question simply for this reason: I am not interested in obtaining a partial view of the facts here. If it is a fact that in the course of these controversies, Mr. Eustace, or Mr. Ogden, or even Mr. Rowlands, expressed to Mr. Dickey the idea that it would be a good thing to get Mr. Dittimore out of the board, that does not carry with it the implication that it would be a good thing to do it in a tricky or unfair or deceptive way. They had the right to their opinions. But it would have a marked bearing on the attitude of Mr. Dickey later if that was the fact, if these gentlemen thought that it would be a good thing to get Mr. Dittimore out of the board; and if that is the fact I would like to hear him say so.

Mr. Bates—Will Your Honor have the question read?

The Master—Yes. Read the question.

[The question is read by the reporter.]

I think that he may state whether there were or not, to his knowledge, any such expressions by his co-trustees to Mr. Dickey.

Mr. Thompson—Yes, sir.

The Master—State it. Were there or not?

Mr. Bates—I do not object to that.

A. I couldn't testify to that. We might have held opinions, but whether we expressed them one way or the other I couldn't testify.

Q. Now, Governor Bates asked you whether you didn't at one time decline to give Mr. Dittimore certain information that he asked for. I want to ask whether the information that he asked for was not certain facts about the circulation of the Christian Science publications? A. Yes, and other information, I think, general information.

Q. Relating to the business affairs of the Publishing Society? A. Yes, sir.

Q. And didn't he state in substance that he thought that it was his duty as a director, whatever you might have thought, to get that information? A. Yes.

Q. You didn't agree with him? A. I didn't agree that I should give it to him, from that standpoint, but I told him that if he asked for it from the standpoint of the Board of Directors, it would be forthcoming; but I thought that the boards should work together harmoniously rather than that individuals should pass information from one to the other, because I was afraid, that, sooner or later, it would lead to misunderstanding.

Q. Didn't he explain to you at that time that he had tried to get it through his board, but had failed to do so? Isn't that the fact? A. Well, I can't remember just that. I know he made some remarks about not being able to get information, but I can't remember whether he said it was from the board or from the trustees.

Q. Well, at any rate, he conveyed to you the idea that he was coming to you as a last resort, because he failed elsewhere, to get the information—isn't that the substance of it? A. No; I didn't understand it that way.

Q. He did convey to you the idea that he had tried, before he came to you, to get it from other sources, and that he had failed? A. As I understand it, he seemed to think that it was hard to get information, but I didn't understand it fully.

Q. I won't press you further on that. Now, there is one other subject that has been called to my attention that I should have questioned you about before. You have spoken of the time when the trustees found it necessary to formulate definitely their position in regard to this Trust Deed and the relation between these two boards. Did these trustees, before taking a definite stand on that, and putting it in writing, as they did, consult with any other Christian Scientists not connected with the Board

of Directors, not members of the Board of Trustees or of the Board of Directors? I won't ask you who they were, but just the fact. A. Will you state your question again, please?

Q. Did the trustees, before putting their position in definite form, as it has been put in one of these letters that have been put in, concerning the relations of these two boards—the position that has been maintained throughout this case by the witnesses and by Mr. Whipple—did they, before taking that definite position, take any advice from other Christian Scientists outside of these two boards, confer with them, to see whether they would justify that position, or see what they would say about the matter? A. Why, we might as individuals have said something to, probably, our wives, or some very intimate friends; but very little was said to anyone.

Q. Wasn't Mr. Dixon consulted about it before you took the definite and final stand that you did take? A. I couldn't testify as to that, because we tried to keep Mr. Dixon out of this as much as possible in every way.

Q. He seemed to have got into it pretty prominently later as a representative of these directors in this contention, didn't he? A. I couldn't say.

Q. About Mr. McKenzie, didn't you take the matter up with Mr. McKenzie and get his views on the subject? A. Mr. McKenzie was a former—

The Master—Supposing you answer that question, Mr. Witness? Did you or did you not consult with Mr. McKenzie?

The Witness—Not from the standpoint of consulting. I wouldn't say that we consulted with him; but he knew something of the conditions.

Q. I won't stand on mere words, but didn't you take the pains to ascertain his views? A. Yes.

Q. And the same way with Mr. Watts; naturally, his views were ascertained on this matter? A. Yes.

Q. And Mr. Dixon and Mr. McKenzie and Mr. Watts agreed with the position taken by the trustees, did they not? A. We didn't ask them for their approval.

Q. I know you didn't. A. And no agreement of any kind—no, sir.

Q. That was an unfortunate word that I used. As a matter of fact, their views coincided with the views of the trustees? A. No, I am not sure of that. They never gave me that understanding.

Q. Did you consult with Mr. Thomas W. Hatten? A. We asked Mr. Hatten, I think, to make a statement of his position as he understood it.

Q. And it coincided with yours? A. Yes.

Q. And Mr. Bicknell Young also? A. As trustees, no. I think that Mr. Eustace talked with him at one time.

Q. And his views coincided with yours? A. No; I couldn't say as to that.

Q. I am asked, Mr. Rowlands, to trouble you a little further about this. It seems that on all these matters there are records, and I am sorry to take the time to go into them, but perhaps it will not take very much time. In the records of the Board of Trustees, the record of Sept. 30, 1918, page 609, I think it refers to Mr. Dixon, Mr. McKenzie, and Mr. Watts. Perhaps that may refresh your recollection (passing the volume of records to the witness). Doesn't that say something about consulting these men? Perhaps the quickest way, Mr. Rowlands, will be for me to ask you to read this paragraph from the record of Sept. 30, 1918. A. Very good.

"Sept. 30, 1918.

"The meeting of the Board of Trustees convened Monday, Sept. 30, 1918, at 10 a. m., with Messrs. Eustace, Rowlands, and Ogden present.

"The meeting opened with the usual prayer.

"The trustees spent the morning session considering the draft of a letter to The Christian Science Board of Directors, reaffirming and amplifying the statements made to the directors relative to the Deed of Trust at the time of their conference Sept. 11.

"After drawing up the first copies of this letter, it was given to Mr. McKenzie, the editor of the Journal and Sentinel, who was one of our Leader's original appointees on the Board of Trustees and who served for 19 years on that board. A copy was also given to Mr. Dixon, the editor of The Monitor, and to Mr. Watts, the business manager, so that each of these officers were fully conversant with the text of the letter. Each assented to and approved of the contents."

Q. Now, on page 616, there is a little paragraph there. Will you read the paragraph that I am now pointing out from the record of the meeting of Oct. 2, 1918? A. "The trustees consider the statement made by Mr. McKenzie, one of the original publishing committee appointed by Mrs. Eddy, a former first member and a member of the Board of Trustees from the time of the institution of the Deed of Trust for 19 years following, to be of great value for historic purposes, and they expressed their gratitude and appreciation to Mr. McKenzie for telling us these incidents, that they might be made a part of the trustees' record."

Q. Does that refer to this attitude that was taken? A. It must have.

Mr. Streeter—Mr. Thompson, there is something more in the records that you have not got yet.

Mr. Thompson—This is the page, General, that I have been referred to.

Q. That information that Mr. McKenzie furnished, referred to in the paragraph of the record of Oct. 2, 1918, that you have just read, was information tending to support the position taken by you with the directors, was it not? A. As I remember it, yes, sir.

Q. Now, the next is page 643, the record of Oct. 24. Perhaps I can look it through and pick out what I want. In the record of Oct. 24, 1918, page 643, will you kindly read the paragraph marked with a check-mark there, beginning with "Mr. Watts came to the meeting"? A. "Mr. Watts came to the meeting and the trustees discussed with him a private letter written by Mr. Eustace to Mr. Rowlands regarding the Deed of Trust. Later Mr. Dixon came to the meeting and the letter was discussed with him. It was agreed by all that it covered the points well."

Q. That was a letter affirming the position that is now maintained by the trustees, was it not? A. I think it was.

Q. Yes. Now will you turn to page 665, a meeting of Nov. 14? Perhaps if you will let me take the records half a minute I can find what I want read (taking the records). Will you just read the single sentence at the bottom, under the heading "Judge Hughes"? This is the meeting of Nov. 14, 1918. A. "The trustees told Mr. Dixon of their conference with Judge Hughes."

Q. Now will you turn to page 673, Nov. 22? A. Yes.

Q. Will you be kind enough to read the paragraph opposite the words "Mr. Hatten," beginning, "Mr. Hatten came to the meeting"? A. "Mr. Hatten came to the meeting to pay his respects, and conversation was had with him relative to the Deed of Trust, and inasmuch as Mr. Hatten had served long and faithfully on the Board of Trustees, the recent stand of the trustees, expressed in their letter of Sept. 30 to the Board of Directors, was read to him and he emphasized his gratification and approval."

Q. Now, page 719, if you please. Will you be kind enough to read—this is the meeting of Jan. 6, 1919—the paragraph opposite the name of Mr. Young? A. The whole paragraph?

Q. Yes.

A. "Mr. Eustace reported a conference that he had had with Mr. Young at Mr. Young's request, last evening, at Mr. Young's home, at which time he thoroughly reviewed to Mr. Young the whole situation relative to the Deed of Trust and the Board of Directors. At the conclusion of their visit, at 3:30 a. m., Mr. Young expressed himself as heartily approving the course which had been taken by the Board of Trustees."

Mr. Whipple—Three-thirty a. m.?

The Witness—Yes, sir.

Mr. Thompson—Most of this was done in the early hours of the morning. Mr. Whipple—Yes.

Q. Page 723 next. Now, if you will be kind enough to read the paragraph opposite the name of Mr. McKenzie, beginning with "In response."

A. "In response to an inquiry, Mr. McKenzie admitted that he had received a letter from the Board of Di-

rectors, evidently similar to that received by the business manager. He stated that he did not wish to discuss it, and that he was working the question out and had made no reply. The trustees then talked with Mr. McKenzie and told him of the recent developments in connection with the Deed of Trust, and he was wholly in accord with the position taken by the trustees."

Q. And now the last one, page 786. Now, will you read this memorandum marked with a cross there, opposite the words "Mr. McKenzie"?

A. "Mr. McKenzie came to the meeting and general questions relative to the editorial work were discussed. In the course of conversation Mr. McKenzie brought up the question of his desire to enter a protest against an action taken by the Board of Directors of The Mother Church three years ago in recording the directors' memorandum which was under consideration and had been rejected. Mr. McKenzie stated that in one of his recent conferences with the Board of Directors they had read to him the minutes of a meeting held in 1916 in which the Board of Directors had included the contents of a memorandum which had been presented to the trustees, and which, as Mr. McKenzie stated, had been rejected by the trustees, and it had been agreed by Mr. Dickey, Mr. Dittmore, and Mr. Neal, as the members of the Board of Directors present, and Mr. McKenzie, Mr. Hatten, and Mr. Eustace as members of the Board of Trustees of the Publishing Society, that everything in connection with the memorandum should be in substance wiped out, and that we would all work together as Christian Scientists under the spirit of the Manual and the Deed of Trust. This was unanimously agreed to by the six present, and as Mr. McKenzie said, it was an absolute breach of confidence, to say nothing of its being untrue, to have the memorandum recorded in the minutes of the Board of Directors when it had in substance been settled to consider it torn up."

Q. Now, you afterwards learned that so far as Mr. Dittmore was concerned Mr. McKenzie was in error there reporting that Mr. Dittmore had ever agreed to have this memorandum wiped out, didn't you? A. Well, from this statement.

Q. That statement is that Mr. Dittmore joined with Mr. Dickey in agreeing to have this memorandum wiped out. You afterwards learned that Mr. Dittmore was insisting on that memorandum and that Mr. McKenzie was in error in reporting to you that Mr. Dittmore had joined with Mr. Dickey in agreeing to have his own memorandum wiped out? A. My understanding was that at that time they all agreed to have it wiped out.

Q. That understanding came wholly from Mr. McKenzie, didn't it, in that

report? A. All I know is tradition and history, and I have always been told that at that meeting—

Q. Excuse me; never mind what you have been told. But your understanding was founded upon that original report made by Mr. McKenzie, wasn't it?

Mr. Bates—It is not his memorandum.

The Witness—That is before my time; I cannot testify.

Q. Very good. At any rate, you became thoroughly satisfied when your own knowledge of Mr. Dittmore's attitude began here after your election to the Board of Trustees, that Mr. Dittmore was consistently maintaining the position taken in his original memorandum of 1916, did you not? I think you have so testified. A. Yes, sir.

Mr. Thompson—That is all.

#### Redirect Examination

Q. (By Mr. Whipple.) I will just put a single question for fear you might feel slighted. In your administration of the trust have you had anything to do with the purchase of supplies and the conduct of this very large business? A. Yes, sir.

Mr. Thompson—I do not quite hear.

Mr. Whipple—He says he has had to do with the purchasing of supplies for the conduct of this very large business.

Q. And have you been consulted and given your opinion and aid in the matter of business transactions? A. Yes.

Q. Of major importance? A. Yes.

Q. That is, by the business manager? A. Yes, sir.

Q. Have you ever failed—

Mr. Bates—These are questions you forgot, Mr. Whipple?

Mr. Whipple—No, I don't think I forgot them except so far as my memory was stimulated by your cross-examination.

Mr. Bates—If you forgot them—

Mr. Whipple—I thought there were these two or three small points in our interest that your cross-examination had failed to develop and I wanted therefore to develop it myself. You didn't overlook much in our favor.

Mr. Bates—If you forgot it I am willing you should put it in, although it is irregular.

Mr. Whipple—No, I couldn't say that I had forgotten it, I think it is a matter of redirect properly.

Q. Did you ever fail to give your advice and helpful services when called upon in those business matters? A. Never.

Q. And they were business matters of major importance? A. Some of them, yes, sir.

Mr. Whipple—That is all.

Mr. Bates—No questions.

Mr. Whipple—Mr. Watts—

Mr. Dane—Mr. Whipple, will you pardon me one moment? I want to bring to the attention of the Court an important matter, and it is this. Counsel for Mr. Dittmore have requested

us to arrange so that they might take the deposition of John W. Doorly, who is now the president of The Mother Church, because they wanted his testimony in the case of Dittmore v. Dickey. Mr. Doorly has engaged his passage to England, where he resides, and is scheduled to sail—at least I mean to leave Boston—on Monday. In view of the fact that it is likely that the hearings will be adjourned today until Monday, it seems desirable, if counsel for Mr. Dittmore desire to use Mr. Doorly, that they should do it at this time, and I ask Mr. Whipple to extend to Mr. Doorly the courtesy of allowing his testimony to go in in this irregular way, so that he may not be kept here and lose his passage that he has engaged to England, which is of first importance to him.

Mr. Whipple—I should be very glad, if Your Honor please, to extend every courtesy to Mr. Doorly, but we all of us have our duties to the administration of justice in this cause. Mr. Doorly is not a witness in our case at all. We have not thought of calling him and it would very much interrupt the proper procedure, as I think, in our case, to have it suspended for the purpose of taking his evidence as a deposition, and it is practically that. I should be very sorry to interrupt any further the procedure of our case. Your Honor will remember that it was—

The Master—One moment, Mr. Whipple. I don't quite understand your proposition. When do you want to take his deposition?

Mr. Dane—He is here in court, Your Honor; we will take his testimony.

The Master—All right. Then your suggestion is that you want to call him now and examine him as a witness here?

Mr. Dane—I understand Mr. Dittmore's counsel want to use him, and if they want his testimony I thought that this would be the only opportunity they would have to get it, if Mr. Whipple would be willing.

Mr. Whipple—Well, I am very, very sorry—

Mr. Dane—I don't think it is very long.

Mr. Whipple—Well, I of course know nothing about it, but I cannot have Mr. Doorly's testimony injected into our case. I feel very strongly about it.

The Master—If his testimony is to be taken in the other case it will I suppose at some time or other get into the record.

Mr. Whipple—But not of our case, if your Honor please.

The Master—It won't appear that you have examined him as a witness. That will be clear on the record.

Mr. Whipple—Yes; but—

The Master—At some time or other we have got to take it.

Mr. Whipple—Yes, your Honor.

The Master—Now, if the man is anxious to sail for England on Monday it would seem that we ought to



do all we can properly to accommodate him.

Mr. Whipple—But my point is this, if Your Honor please. We have no interest in that, and we understand that we have the right to go on and finish our case, and then counsel for the trustees will not be obliged to sit by and hear the evidence in the other case. We are not parties to it. We are not interested in it at all. If we can get our own case heard, then the evidence which has been taken in this case that bears upon the other will fit into it, but we may be dismissed from further attendance.

Mr. Streeter. I think I can relieve you, Mr. Whipple, on that question.

Mr. Whipple—Oh, good!

Mr. Streeter—I want to ask you, Mr. Dane, if you propose to put John Doorly on the stand yourself?

Mr. Dane—Mr. Doorly is here at your suggestion.

Mr. Streeter—That is not the question I am asking you. Do you propose to put John Doorly on the stand yourself?

Mr. Dane—I think Mr. Doorly has testimony that we will want in the case of Dittmore v. Dickey.

Mr. Streeter—Do you propose to put him on the stand?

Mr. Dane—If you do not take his testimony we shall.

Mr. Streeter—Well, then, that will dispose of the whole situation.

Mr. Dane—It will if Mr. Whipple will consent to it.

Mr. Streeter—It will dispose of the whole situation. I will explain that to you. In going over this preparation we found letters, there were laid before me letters, from John W. Doorly, the recently elected president or appointed president by the directors, most severely criticizing in a specific way the action of these directors and also of the trustees. Now, when I saw them I said we wanted Mr. Doorly's testimony; and, knowing that he was going away, or going to sail, I sat down in Concord and wrote a letter to my friend Whipple and my friend Governor Bates, and I was perhaps incautious enough, or too innocent, to refrain from telling them just what I wanted. I quoted in the letter to them from Mr. Doorly's letters, where he pounded away at the directors, who had just appointed him, and also at the trustees. My friends, Mr. Whipple and Governor Bates, have that, and they knew that we wanted the testimony of the president of The Christian Science Church, who had put himself in writing so vigorously against the directors and the trustees. I asked them if they would arrange to take his deposition. Mr. Dittmore wrote to Mr. Doorly, who was west, telling him just what we wanted him for, we wanted the facts in those letters, and telling him that we wanted to take his deposition. A copy of that letter I sent to Governor Bates and Mr. Whipple, so they knew all about what he wanted. We had a telegram from Mr.

Doorly saying that he would be here in Boston for two or three days, I believe, and we supposed that the president of this Christian Science Church, recently appointed by the directors, would come and see us.

After we got his telegram we saw him in court here yesterday—I think it was yesterday—and he informed us, or informed Mr. Dittmore, that anything that he did would be done through Mr. Abbott, his counsel. I am perfectly free to say that we do not propose to put on the stand your witness, and as you say you are going to put him on we will wait and cross-examine the gentleman. So I do not see that you need to be troubled, Mr. Whipple; they are going to put him on and they can arrange with you when.

Mr. Dane—Of course all I ask is a courtesy from Mr. Whipple. I realize that he has a right to proceed with his case. This is unusual and irregular; it rests in Your Honor's discretion as to whether the accommodation shall be extended to Mr. Doorly or not. I had assumed, and I assume from what General Streeter has just said, that he would desire to use Mr. Doorly as his witness, but if he does not, I offer to call him now.

Mr. Streeter—Now, you know better than that, Mr. Dane.

The Master—Well, it is settled now that he does not.

Mr. Dane—I desire to offer him, to put him on the stand, and get his testimony at this time, and I ask Mr. Whipple to waive his objection.

The Master—I do not see how I can interrupt the order of the case to do that against objection. I think it might be properly enough done by consent of counsel, but I should not feel justified in making that order against objection.

Mr. Dane—Do I understand that Mr. Whipple now objects to our putting Mr. Doorly on the stand and taking his testimony at this time, in view of the representations that have been made as to Mr. Doorly's necessity for sailing on Monday?

Mr. Streeter—I ought to say, in reply to that, that I understood Mr. Doorly to have represented that he should not sail for two or three weeks, although he had arranged to sail, I think, on the 8th.

Mr. Dane—I think he is sailing on the 8th, but under certain regulations he must be in New York a certain number of days before sailing. You realize, of course, in these days it is very difficult to get passage, and many obstacles are thrown in the way that ordinarily are not encountered.

Mr. Whipple—Has he tried to get a later passage?

Mr. Dane—I do not know.

Mr. Streeter—So far as we are concerned, we are entirely indifferent so long as you put Mr. Doorly on the stand as your witness.

Mr. Dane—That is what I offer to do now. Of course we cannot agree to hold Mr. Doorly. He is here now,

and we want to get his testimony. It seems to us, Your Honor, that, the cases being tried together, the situation is somewhat different.

Mr. Whipple—You will pardon me a moment, I desire to put on a short witness, and we shall then close our case. I would like to do it today. Then if you want to call Mr. Doorly as your first witness you will be at liberty to do it; you can do that before you make your opening. The next witness I can examine in 15 minutes, I think, or 20 at the outside.

Mr. Dane—So that there is a reasonable assurance that you will close your case in time for Mr. Doorly's testimony to go in today?

Mr. Whipple—Unless we should be betrayed into an extraordinarily long examination.

Mr. Dane—I understand that you agree that his testimony may be put in advance of the opening?

Mr. Whipple—Oh, yes.

Mr. Dane—I think that is satisfactory.

John R. Watts Sworn

Q. (By Mr. Whipple.) Mr. Watts, will you state your full name? A. John R. Watts.

Q. Where do you live? A. 339 Clark Road, Brookline.

Q. What is your occupation or profession? A. I am at present business manager of The Christian Science Publishing Society.

Q. How long have you held that position? A. Since Aug. 1, 1917.

Q. You came in then as business manager at just about the time that two of the trustees were elected to that position? A. At the same time.

Q. Had you been connected with the Christian Science organizations, or any of them, before that? A. I had been connected with the Publishing Society.

Q. In what position? A. As assistant to the business manager.

Q. For how long? A. I have been there six years this month.

Q. You are a lawyer by education and profession? A. I am, sir.

Q. And a member of this bar, of Massachusetts? A. I am.

Q. When were you admitted to the bar? A. In 1897.

Q. Where were you educated for your admission to the bar? A. At Louisville, Kentucky.

Q. Did you graduate at any institution or just study and get your admission? A. I graduated at one of the colleges, the Louisville Law School.

Q. Did you practice outside of Massachusetts before you came here? A. I practiced in New York City.

Q. And then you removed to Boston? A. Then I came to Boston.

Q. And were admitted to the bar here? A. Yes.

Q. Did you practice at the bar here before being affiliated with Christian Science work? A. No.

Q. You have then been a resident of Boston for about— A. Six years.

Q. Six years. A. Yes.

Q. What are your duties as business manager? A. As the title implies, to manage the business.

Q. That is, of The Christian Science Publishing Society? A. Yes, sir.

Q. I think that has perhaps been sufficiently explained, but, in general, it is the publication of a daily newspaper and various periodicals and the publication of the works of Mrs. Eddy? A. Yes, sir.

Q. Does that cover the thing in a general way? A. I think it does.

Q. Are you a loyal believer in Christian Science? A. I am.

Q. Are you a practitioner? A. I am.

Q. And have been for how many years? A. I have been a practitioner for, I should say, five or six years, but I have only been in the Journal as a practitioner a shorter period of time.

Q. You are a member of The Mother Church? A. I am.

Q. Were you a member of branch churches or a branch church before that? A. I was a member of First Church of Christ, Scientist, at Brooklyn.

Q. Has your administration of your office as business manager brought you into contact with the directors from time to time? A. Yes.

Q. Do you know them all as individuals? A. I do.

Q. And of course you were employed by and are under the Board of Trustees? A. I am.

Q. Let me ask you first, and perhaps as a preliminary question, whether Mr. Rowlands has participated at all in the administration of the business of the Publishing Society? A. Very actively, yes.

Q. Can you state anything if there is anything, notable in what he has done, to His Honor, as a specific instance or instances of what he has done? A. I think his larger viewpoint and his larger experience have been very helpful to us in some of our larger transactions.

Mr. Thompson—If you could speak a little louder. It is pretty difficult to hear from here.

The Witness—I will try to, Mr. Thompson.

Q. Have you anything particularly notable that you have in mind? A. One of the things that stands out to me is the assistance that he gave us in connection with our paper contract.

Q. Will you tell His Honor about that? A. We were disturbed somewhat over the shortage during the so-called white paper or print paper famine, as to whether we could get paper to print our Monitor. We at times were quite low on that paper; and when the time came to make a new contract for the coming year, the purchasing department was unable to get any bid or help from the Interna-

tional or the other companies. I took up the situation, as business manager, with the trustees, and particularly with Mr. Rowlands, and through his assistance we not only secured a contract, but a contract which, when we were finally ready to close it, instead of being an advance that we had thought we should have to pay, it netted us a saving of practically \$41,000 for that year.

Q. Did you attribute to his assistance that financial result? A. It was all due to Mr. Rowlands' assistance.

Q. I take it from what you say he took the leadership in the negotiation as soon as it was put up to him? A. He took almost the entire responsibility.

Q. I will ask you whether that is illustrative of other assistance which he has rendered to you—

Mr. Bates—I object.

Q.—especially in financial administration, but with less important financial results?

Mr. Bates—I object to the question.

The Master—Will you read me the question? I lost the question.

[The question is read by the stenographer.]

The Master—I am afraid if it is objected to you will have to ask directly as to other instances.

Q. Well, I will ask whether there are other similar instances? A. Not that stand out as clearly as that.

Q. But has he rendered assistance in other matters? A. In a great many instances. For instance, as he stated on the stand, with relation to the mailing room. Mr. Rowlands was able to take up the question of the mailing room, the mailing machines, and he took the responsibility for cleaning up the mailing room and putting it in shape, such a condition as the mailing room has never been in in the experience of The Christian Science Publishing Society.

Q. And was that question an important one in the administration of the work? A. It was very important.

Q. He spoke of his assistance mentally. Was it a situation where the straightening out of the mental condition of the people who were employed was important? A. There was in the mailing room a great deal of confusion due to the change of mailing machines. The old style of machine would not permit of our catching trains with a morning edition of the paper, and in the introduction of the new machines, with the confusion due to green and new help brought about by the war conditions, the state of mind of the mailing room was one of very great confusion, and many times the employees would get out of temper and indicate it in many ways; and Mr. Rowlands was there, and I think he had about 16 hours' sleep out of that week; he was there day and night keeping the conditions right, and when a man was operating a machine and the papers would go through and all go wrong, he would

give the man a word of encouragement, and in order to do that he put on an apron so as not to attract special attention to himself, and worked about the room.

Q. And worked with the men? A. Worked with the men.

Q. Showing them an example of leadership? A. Yes.

Q. Do you remember other instances in which he has exercised a similar helpfulness? A. He was very helpful to us in getting the mailing machines. He was very helpful to us when we had a question between the Associated Press and the United Press, and we could not get the Associated Press service, in order to handle the morning paper; and it was through Mr. Rowlands' instrumentality that in a day we secured not only the United Press arrangement, but we had the wires all in, the machines in, the operators there, and the service in operation that night.

Q. Was that an acquisition of importance to your daily paper? A. It was, one might say, of almost vital importance.

Q. What have you observed with regard to his administrative and executive capacity in dealing with matters of large affairs, whether he is a slow-minded or active, quick mind? A. He is active.

Q. Does he deal with large affairs easily or with difficulty? A. Very easily.

Q. Do you notice a difference in men in the way in which they deal with large problems? A. I have, indeed.

Q. Both in the manner in which and in the capacity they have to deal with them? A. Yes.

Q. Is he a man who has capacity, within your observation, to deal with administrative questions of major importance? A. Yes.

Q. In a man dealing with large affairs, and in that way, is the question of the time that he spends at it, so far as you can observe, of very much consequence?

Mr. Bates—I object.

Mr. Whipple—You do object to that?

Mr. Bates—Isn't that for the Court?

Mr. Whipple—Why, I thought you would get a sort of fundamental education by the reply.

Mr. Bates—Well, don't bother to educate me, Mr. Whipple.

Mr. Whipple—Well, I have been hopeful before—

Mr. Bates—Give it up.

Mr. Whipple—But if you get in that state of mind I don't believe I can do a thing and I give up hope. I will waive the question. I guess you are impossible, and I am sorry, because you know I think so much of you, I thought I would give you a conception of big affairs.

Mr. Bates—Yes, I know you do; I appreciate those kind words.

Mr. Whipple—I thought the way to deal with big things would be really helpful to you, but I won't press it.

Q. Have you had interviews with the directors, or some of them, since these matters of controversy have arisen, with reference to the matters involved? A. Yes.

Q. Now, take for illustration this Harvey letter. You received that from Mr. Harvey? A. Yes.

Q. It is a letter addressed to you? Mr. Bates—Mr. Whipple, I can't quite hear you.

Mr. Whipple—The Harvey letter.

Q. I won't read the exhibit, but you bear it in mind? A. I do.

Q. That was addressed to you? A. Yes, sir.

Q. Why? A. Mr. Harvey was the representative of The Christian Science Publishing Society in charge of the New York office, under the business manager.

Q. Then he was under you? A. Yes, sir.

Q. And therefore it would naturally come to you? A. Come to me.

Q. As his administrative superior. What did you do with that letter after it had been transcribed and signed? A. I asked the Board of Trustees for a meeting, and I presented that letter to them, and asked them if I might have the privilege of taking it over to the Board of Directors, and, from the standpoint of business manager, as well as from their standpoint as trustees, asking the Board of Directors to repudiate that letter—the information that had been given as indicated in that letter.

Q. Did you do it? A. I did.

Q. Thereafter did they, or any of them, at any time repudiate the letter? A. No, sir.

Q. In any form. You received a copy of a letter—which Mr. Dittmore had sent, which is in evidence? A. Yes, sir. I went through the letter, Mr. Whipple, reading it to them, calling their attention to its untrue statements.

Mr. Thompson—What is that, please? Mr. Whipple—To the untrue statements.

Mr. Thompson—In whose letter?

Q. This is in the letter which you received? A. Mr. Harvey handed to me.

Q. Yes, the Harvey letter. It wasn't untruths that had been stated by Mr. Harvey? A. No; untruths that were reported to have been spread in New York.

Q. That is, the want of foundation in the statements that had been made in New York, and you pointed those out? A. I did, sir.

Q. And did you later have conferences with the directors or a conference, as the situation grew more acute, with reference to what intentions or purposes the Board of Directors had with regard to the Publishing Society? That is, the trustees did not submit to the proposals of the directors? A. Yes, sir.

Q. Will you tell us what was said on that occasion? A. They asked me to come over, Jan. 27, to attend a meet-

ing. Mr. Merritt said to me that the Board of Directors wished to know where the business manager stood on this controversy between the Board of Directors and the Board of Trustees.

Mr. Whipple—Can Your Honor hear?

The Master—I will let you know—I think I can.

Mr. Whipple—I notice the stand is a little back too far; I think it would be a little easier, perhaps, for His Honor to hear if you would sit nearer.

[The position of the witness stand is changed.]

Q. Which one of the directors asked you where you stood? A. Mr. Merritt.

The Master—What was the name?

The Witness—Mr. Merritt.

Q. Now, will you give the conversation that followed, as you remember it? A. I said to Mr. Merritt that I stood, to the best of my understanding with Principle, and that I could not express myself as standing either with the Board of Trustees or the Board of Directors. And Mr. Merritt said, "Well, we hear that you are with the Board of Trustees—that you are in consultation with them." And he said, "Are you the attorney for the Board of Trustees?" And I said, "No, Mr. Merritt, they have better counsel than I am." And he said, "Well, we should like to know where you stand." He said, "We have had Mr. McKenzie over here and he has given us a letter showing that he stands with the Board of Directors, and Mr. Young has written us a letter to the same effect." He said, "I would like to read you Mr. McKenzie's letter." And he said, "Now we would like to have a letter from you, Mr. Watts." And I said, "I am not much of a hand at letter writing, and I would rather not write a letter. I think you understand that I have expressed all that I can express when I say that I am standing squarely with Principle." And some of them said, "Well, Mr. Watts, if we should send an order over to the Board of Trustees declaring a vacancy, and give you such a notice, would you obey our order?" And I said, "I should have to first ask you on what basis the vacancy had been declared." Mr. Dittmore said, "What right, Mr. Watts, have you to question any order from this board?" And I said, "Simply the right of a thinking man." Mr. Dittmore said, "Mr. Watts, if the trustees persist, don't you know that the movement"—no—"where do you think the movement will stand on this thing?" And I said to them, "On the go-off I assume the entire movement will be with the Board of Directors." I think Mr. Dickey said, "Mr. Watts, don't you know we own that building over there and can put those gentlemen out?" I said, "I understand you own the building." Mr. Dittmore said, "Mr. Watts, the movement will not stand by the trustees even if they win their suit, and the Church will start its own publications, and we shall make an empty shell of

that place if they persist." I said, "Mr. Dittmore, if, through pride of power and human will, the time ever comes that that splendid business is made an empty shell of and the movement awakens to a realization of the fact that the Publishing Society, which was founded by our Leader, and the periodicals which were founded by our Leader, are destroyed, they will rise up and destroy you." Mr. Rathvon said, "Well, Mr. Watts, what can we do?" I said, "Stop writing peremptory orders and letters to the Board of Trustees." I said, "Is there anything wrong with the business?"—and they indicated—I don't know that any word was said, yes or no, but they indicated that nothing was wrong with the business. I said: "May I be so bold as to read to you gentlemen my idea of this situation? May I read the Bible to you?" And they said, "Yes," and I turned to the twelfth chapter of First Corinthians and read the entire chapter, and several verses in the thirteenth chapter.

The Master—What book is that?

The Witness—The Bible—First Corinthians, twelfth chapter.

Mr. Whipple—And part of the thirteenth chapter.

The Witness—And as I finished that, Mr. Rathvon said, "Well, Mr. Watts, but supposing the eye should try to take over the duties and responsibilities of the ear—what would happen?" And I said, "Inasmuch as it is not the province of the eye to hear, it not only would not hear, but it probably would lose its sense of sight in the transaction." And as far as I recall, that was practically all. I said, "Well, we are all friends and God reigns," and I excused myself. Oh, yes, Mr. Merritt said, "Well, will you write us a letter?" And I said, "Yes, I will write a letter." And I wrote them a letter on Jan. 28.

Mr. Whipple (to Mr. Bates)—Have you that letter of Jan. 28?

The Witness—I have it.

Mr. Whipple—You have a copy?

The Witness—A copy only.

Mr. Whipple—I take it you have the original, Governor?

[A letter is produced by Mr. Bates.]

The Witness—I have a copy of the letter, sir.

Mr. Whipple—The letter, if Your Honor please, which I will now offer, is dated Jan. 28, 1919. It is stamped, "Read, Jan. 28, 1919, C. S. Board of Directors." It is from the office of the business manager of The Christian Science Publishing Society.

[Copy of Exhibit 89]

"Jan. 28, 1919.

"The Christian Science Board of Directors,

"The First Church of Christ, Scientist, Falmouth and St. Paul Streets,

"Boston, Massachusetts.

"Dear Friends:

"At the meeting of your board yesterday, which I was requested to attend, the differences between your

board and the Board of Trustees were referred to, and I was requested by your board to state definitely whether I was 'with the Board of Directors or with the Board of Trustees,' and, in the event of an order issuing from your board to me advising me that you had declared a vacancy in the Board of Trustees, whether I would comply with orders from your board relative to such declaration of vacancy.

"Being somewhat advised as to the questions at issue between the two boards, and deploring the situation because of its effect on the business of the Publishing Society, I can but urge, in view of the absolute honesty of purpose expressed by both boards in their loyalty to the Manual and The Mother Church, what I believe would be the prayer of every loyal Christian Scientist—that such a controversy be kept out of the courts, and be settled by both boards from the standpoint of demonstration as Christian Science practitioners and teachers, and as loyal members of The Mother Church.

"In the event the two boards are unable to make this demonstration, I should feel it my duty to the office of business manager to refuse to pledge in advance my loyalty to either board. This, as you know, I have consistently refused to do. I recognize that the Board of Directors is charged with the responsibility of government in full charge of the affairs of The Mother Church, but I recognize, also, that the Board of Trustees has its responsibilities under the Manual and the Deed of Trust, both of which must be used to a proper ascertainment of the responsibilities of both boards, and neither of which can be ignored. I refuse to believe that the two instruments given by our Leader are irreconcilable.

"The office which I hold makes it my duty to protect the business of The Christian Science Publishing Society, and inasmuch as the differences between the two boards necessarily affect this business, possibly to its injury, I feel it my duty to decline to state in advance what, if anything, I should do in the event your board should declare a vacancy.

"With cordial good wishes,

"Very sincerely yours,

(Signed) "JOHN R. WATTS,  
"Business Manager."

[An original letter, dated Jan. 28, 1919, signed "John R. Watts, Business Manager," addressed to The Christian Science Board of Directors, is marked Exhibit 89.]

Q. Mr. Watts, you have used the term, or you have used the expression, in quoting your conversation with the directors, that you stood by Principle or stood upon Principle? A. Yes, sir.

Q. I understand that that term in Christian Science is used somewhat differently from the ordinary current meaning of the word? A. Yes.

Q. Will you explain to His Honor

what is meant by "Principle" used as you used it, and perhaps used as Mrs. Eddy used it? A. I shall endeavor to do it. The word "Principle," as used by a Christian Scientist, is synonymous with God.

Q. And that practically is the definition of it? A. Yes, sir.

Q. You used the term in this letter "demonstration" in this connection—"and be settled by both boards from the standpoint of demonstration as Christian Science practitioners and teachers, and as loyal members of The Mother Church." That term has been used in the testimony but I do not think that an explicit statement has been made of just what it means among Christian Science followers and believers. Will you state that? A. Why, demonstration—one hesitates to make a statement in connection with that.

Mr. Streeter—I can't quite hear you.

The Witness—I say one naturally hesitates to make any statement in connection with words in Christian Science because our Leader has so aptly and well covered everything of that nature in her works, but "demonstration" with Christian Scientists is one of the most important phases of Christian Science in that we take the position that words are of no avail unless your words are subject to demonstration or proof of what you are doing. In other words, a demonstration in connection with a healing is the man getting well.

Q. In a certain measure, judging by the results and by the fruits? A. By the fruits.

Q. And when you speak there of its being settled by demonstration it means that they should get together and do it? A. It means not only to get together and do it but not to depend upon material means and measures any more than you would in a sick case depend upon material medicines or remedies or things of that sort.

Mr. Whipple—Of course the Court takes judicial notice of the contents of the Bible?

The Master—We have agreed to that, I think.

Mr. Whipple—And I therefore do not need to make it a part of the record unless some one asks to have it read.

The Master—You might hand it to me if you have got it there.

Mr. Whipple—Yes, Your Honor. Chapter xii.

The Master—These verses that I see marked here are the ones that the witness says he read, are they?

The Witness—No, I read the entire chapter.

Mr. Whipple—He read the entire Chapter xii and the first part of Chapter xiii. Those marks were put on, evidently, by the owner of the copy which Your Honor has for some other purpose—for emphasis of those particular phrases.

The Master—All right. All of

Chapter xii and certain verses of Chapter xiii?

Mr. Whipple—Yes, the first verses of Chapter xiii.

Mr. Bates—How many verses?

The Witness—I think it was six, sir.

Mr. Whipple—He thinks the first six verses of Chapter xiii.

Q. You said you asked if there was any complaint of the business administration of the affairs of the trust, and while you could not say the words in which the assent was given, there was an assent that there was no complaint? A. Yes, sir.

Q. Let me ask you whether up to that time any one of the directors since you had been the business manager of the trust had complained with regard to its administration to you? A. Never a single time.

Q. Had you heard of any complaint being made which was brought to you from any other source? I mean any complaint by the directors? A. Yes, once.

Q. What? A. I was told at one time that Mr. Dittmore was complaining, and I went over and I called at Mr. Dittmore's office and spoke to him about it, and I said to him that I had heard something of that nature and that I wanted to come over and look at him and have him look at me as man to man, and if there was anything that was not entirely right in connection with the publishing house I ought to be gladder and more alert to learn it than anybody else—and if there was something I would be awfully glad to hear it. Mr. Dittmore said to me, "Mr. Watts, I have never said a word about you or against the management of the Publishing Society. I have at some times thought maybe you were introducing a lot of efficiency in the publishing house without a proper degree of demonstration and practice of Christian Science, but," he said, "I have not expressed that to anybody and I have nothing to criticize you for, or the management of the Publishing Society for."

Mr. Thompson—Will you give me the date of that?

Q. What was the date of that? A. I don't know. Mr. Dittmore may be able to recall.

Q. Can you give me approximately the date? A. Anything I should say would be a guess on that.

Q. All right, guess. You are the best guesser there is on that subject. A. I should say about November.

Mr. Thompson—What year?

The Witness—Of 1918.

Q. Of 1918? A. Yes, sir.

Q. Had you heard any other criticisms than that, either directly or indirectly? A. Not one word, so far as I know.

Q. Now, in point of fact, what had been the results of the business while you were administrator, administering it, from year to year? Have you the figures that will show what the profits were? A. Yes, sir.

Q. What were they? Just state

them in either six-months or annual periods. All I want you to give is just the result in figures. That looks pretty menacing (referring to a black portfolio produced by the witness). A. No, sir; I promise not to occupy many moments. Our profits for the year of 1913 were \$94,916.33.

Mr. Bates—I could not hear the answer.

Mr. Whipple—Just a moment. A little louder and a little clearer.

The Witness—I beg pardon. Let me correct those figures. Strike that out. The profits for the year ending Dec. 31, 1913, were \$164,000. I am going to leave the cents off. Is that all right?

Mr. Whipple—Yes.

Mr. Bates—What year was that?

The Master—I understood that to be 1913.

The Witness—1913.

Mr. Whipple—Yes. Now 1914.

The Witness—1914, they were \$135,000. I am going to leave off the cents.

Q. Yes. 1915? A. \$224,700.

Q. 1916? A. \$258,900.

Q. 1917? A. For the year 1917 we did not take an inventory until March 30th, so as to throw it past the holidays. That was by agreement with both boards. And for the period of 15 months our net profits were \$513,869. That is for the year of 1917 and for the first three months of 1918.

Q. That covered about— A. Fifteen months.

Q. About nine months of your administration as business manager? A. Yes. I should say, rather—

Q. And six months as assistant business manager. And that is the first nine months of the administration of the present Board of Trustees? A. Yes, sir.

Q. All right. 1918. A. 1918, \$518,999, for the period of 12 months.

Q. For the period of 12 months. So far as your figures for a year later than that are concerned, of course you have only entered upon it? A. Yes, sir.

Q. Tell us about The Monitor, whether it has been improving in prosperity or otherwise? A. Yes, sir.

Q. Without going into specific figures, you may—

A. The Monitor went on—

Q. —give us the principal figures that are indicative of that— A. I will try to.

Q. —to you as a business manager. A. The figures yesterday, as I remember it, were approximately correct relative to The Monitor and—

Q. Let me ask whether The Monitor is now, as you view it, on a paying basis? A. It is on a paying basis.

Q. How long has it been so? A. Since February, 1918. The month of March, 1918, we had a profit from the Monitor.

Q. Is it increasingly so? A. Well, the conduct of a newspaper is not a proposition of "increasingly." One month you will be above, and another month you will be below. You have

to take it on a yearly average to get a true basis for a newspaper.

Q. Let me ask you if there is any such paper as The Monitor published in the United States, other than The Monitor? A. I am sure there is not, sir.

Q. Its chief feature is what? A. In its publication of—in its international aspect.

Q. Well, that is what I wanted to get at—in its international aspect. A. Yes.

Q. That is, international news, from every part of the world? A. It is international in its circulation; it is international in the news it gathers; and it is the only paper in the world that is international in the treatment of the news which it publishes. In other words, news that might be very interesting to Boston people would not be interesting to New York people, necessarily. The treatment of the news must be so that the thing that occurs in Boston must be of interest to the entire world to make it international in its scope.

Q. The ultimate object of the paper, besides becoming a great newspaper internationally, is to promote the Christian Science movement? A. I think that Mrs. Eddy's statement of that, that it is to spread the science which operates unspent and to injure no man, but to bless all mankind, is my best statement of the purpose of The Monitor.

Q. And that is printed as the watchword of The Monitor, is it not? A. Yes, sir.

Q. That saying of Mrs. Eddy, which all Christian Scientists believe to have been inspired? A. That is in her works, and was the first editorial in the first edition of The Monitor by Mrs. Eddy.

Q. Something has been said about a withdrawal of money from the accounts in the banks, and putting it in a safety deposit vault. Do you know about that? A. Yes, sir.

Q. That was an administrative matter, was it? A. Yes, sir.

Q. Will you tell His Honor all about it? A. As the business manager, when I found this controversy becoming somewhat acute, I requested the chief accountant to withdraw from our bank, the First National Bank, or any of the others where the accounts justified it, amounts in lots of \$10,000 or \$15,000. She accumulated previous to Feb. 1 \$60,000, all of which I think she drew from the First National Bank. That was all put in a safety deposit box.

Q. In cash, or certified checks? A. Cash.

Q. Cash? A. The purpose of that was, in the event of an injunction by either of the boards, or any interference in any way by anybody, the business manager would be able to take care of the pay roll of the employees, our pay roll being about between \$13,000 and \$14,000 a week. On Feb. 1 I was notified by the Board of Trustees,

and following the attorneys' conference, that the whole thing was disposed of, and that both boards had agreed to settle their differences. Whereupon I instructed the chief accountant to deposit that money immediately in the bank, which she did. Later on, with the reopening of the controversy, I didn't know where it might lead to, and I again asked the chief accountant to accumulate some funds, and she then accumulated \$80,000, which she carried in a safety deposit box. When the injunction was granted by this court, preventing any interference with the business, within a day or so afterwards the money was all redeposited back in the First National Bank. None of it was borrowed, however. It was our own money.

Q. You had access to the box yourself? A. Yes, sir.

Q. And perhaps you were the only one? A. No; the chief accountant and myself.

Q. It was an administrative measure to prevent the interruption of your business? A. Yes.

Q. The advertising in The Monitor, has that been increasing? A. Constantly, both in—

Q. A steady increase? A. Yes, a very happy increase.

Q. Some suggestion has been made, perhaps, rather, a query has been suggested, as to whether your representations of circulation on which you asked for advertising are absolutely correct. What do you say to that? A. We never have, so far as I know, received knowingly, and certainly never have solicited, a dollar's worth of advertising on the basis of circulation. We have consistently refused to do it. But the figures of our circulation as published are as nearly true as it is possible for us to ascertain that fact with our accounting department.

Mr. Whipple—You may inquire.

Mr. Bates—Does Your Honor wish to take an intermission here?

The Master—We will pause here for a few minutes.

[Recess from 12:02 p. m. to 12:15 p. m.]

The Master—Mr. Whipple, you are through with your examination?

Mr. Whipple—Yes, Your Honor; we are waiting for Governor Bates to go forward.

Mr. Bates—May I state to the Court the reason for the delay? General Streeter would like to be away this afternoon, but he wants to be here when Mr. Doorly testifies. We would like very much to accommodate him, but Mr. Doorly, if he stays, has got to stay here in Boston until Monday morning, giving up several days that he would like to spend in New York. Therefore we do not feel that we have any right to agree, in case he could be reached this afternoon, that he should not be put on at this time, although we would like to accommodate General Streeter. The only way we could accommodate him would be to agree that he might be put on now, if

Mr. Whipple would consent to it, and then General Streeter could get away this afternoon if he wanted to.

Mr. Whipple—Let us go right ahead and take our chances; you may be able to finish him this afternoon.

Mr. Bates—Yes; but that does not allow General Streeter to get away this afternoon, that is the trouble.

Mr. Whipple—The General is more interested in the orderly progress of the case than in getting away.

Mr. Streeter—I understand, Governor Bates, that if this arrangement is made that Mr. Whipple will agree we may put Mr. Doorly on Monday morning.

Mr. Bates—Yes; but you ask us to keep Mr. Doorly here until Monday morning in order that you may get away this afternoon.

Mr. Streeter—Well, all right, I will stay here. The result will be that you won't get at Mr. Doorly this afternoon.

Mr. Bates—If you feel confident of that why don't you just go away?

Mr. Streeter—Well, I don't know what you would do if I went away; I am not wholly onto you.

Mr. Bates—Well, I will protect you as far as possible, General.

#### Cross-Examination

Q. (By Mr. Bates) Mr. Watts, you may have answered one or two of these questions that I will ask you in connection with Mr. Whipple's preliminary examination, but there was a good deal of noise outside and I could not hear all of your answers. You were educated for a lawyer? A. Yes.

Q. And are a member of the bar? A. Yes.

Q. What bar? A. The bar at Louisville, Kentucky, the bar at New York City, and at Boston. I have been admitted to all three of them, and am a member in each of those states, yes.

Q. You are a member of the Suffolk bar? A. Yes; and also of the United States—several of the Circuit Courts and Courts of Appeal, and of the United States Supreme Court.

Q. And when were you admitted to the practice of law first? A. I think, sir, it was in 1897.

Q. And have you ever practiced law? A. All my life until I came here, sir.

Q. All your life until you became connected with the Publishing Society? A. Yes, sir.

Q. And have you at times acted as counselor and adviser of the Board of Trustees? A. Never once, sir, in this particular controversy.

Q. Well, have you in other things? A. Once or twice, where we had a question of a patent, a claim of infringement by some wood machinery corporation, or something of that sort, on the machine that we bought from the Goss printing plant. I took quite an active interest in that, in trying to protect the Publishing Society, with other counsel of course.

Q. Well, in general, I assume as

you have consulted with the trustees, being a lawyer by education, you have given them such advice as you could when they asked for it? A. No, I don't take it as advice. I have consulted with them and we have talked over things generally from the standpoint of the trustees and the business manager.

Q. Have you advised them in regard to what you thought should or should not be done? A. I suppose I have. I thought you meant as a lawyer. I have tried to keep away from that since I have been business manager.

Q. Was it necessary when you became a Christian Scientist for you to forget all that you had learned as a lawyer? A. No. I said since I had become business manager.

Q. Well, was it necessary, in order to discharge your duties as business manager, to forget all that you had learned as a lawyer? A. No.

Mr. Whipple—I pray Your Honor's judgment. Isn't it a futile waste of time to put such questions? They seem to be satirical, but they are not even that.

Q. Mr. Watts, you were consulted in regard to this controversy, were you not? A. As business manager, of course, I was consulted.

Q. And did you think that, as business manager, rather than as a lawyer, you could put your interpretation upon the Deed of Trust and the effect of the Manual? A. Oh, no. I, of course, used my whole experience as a lawyer.

Mr. Streeter—I don't quite hear you, Mr. Watts. A. I, of course, used my whole experience as a lawyer and what I knew as to the law in connection with my attitude on the Deed of Trust.

Q. Then you were consulted in regard to it? A. No, I don't think they consulted me as a lawyer, if that is what you mean.

Q. Well, they knew you had been a lawyer, did they not? A. Yes, sir.

Q. And they consulted you in regard to the matter? A. Yes, sir.

Q. And their records show that you were consulted in regard to this letter which they sent on Sept. 30, 1918? A. No, sir.

Mr. Whipple—That I object to.

The Witness—No, sir; they do not.

Mr. Whipple—The records do not show any such thing.

Q. Doesn't the record show it was read to you? A. Yes, sir.

Q. And you approved of it? A. Yes, sir.

Q. You don't call that a consultation? A. Why, they simply read the letter, handed us the letter, and said that the editors and business manager should be acquainted with the position that had been taken by the Board of Trustees; and we all of us read the letter, and, so far as I was concerned, I approved of it heartily.

Q. Did you approve of the contents of the letter? A. Yes, sir.

Q. And it expressed your views? A. I don't know that I did that.

Q. Well, I said, the letter expressed your views then? A. I should not say definitely that it did.

Q. Well, what did your approval, then, amount to? A. That I approved of the position that they were taking and approved their sending that letter as an expression of their views.

Q. But not as an expression of your views? A. I think they were my views but I did not approve it on that basis.

Q. Didn't they understand that it agreed with your views? A. I don't know.

Q. Wasn't that what they asked you in regard to it? A. No, sir; I don't think it was.

Q. You didn't think they asked your permission to send it out as an expression of their views, did you? A. No.

Q. What did you think they asked you for, then? A. I thought they submitted it to me as business manager, so that those occupying the important position of editors and business manager should know of the controversy and the stand in this matter taken by the trustees.

Q. Well, if it was merely to give you information they wouldn't have asked for your approval, would they? A. I don't know that they asked for my approval.

Q. Doesn't the record state that you approved it? A. I assume that it does, but I don't remember—

Q. Didn't you hear the record read this morning? A. Yes, sir; but I do not know that they asked for it.

Mr. Bates—Can't we agree that the record so states?

Mr. Whipple—The record does not state that they asked for his approval. The record says that they approved it, but it does not say that the trustees asked for their approval. You ask one question and then slide on to another as if you asked a different question.

Mr. Bates—It is immaterial to me.

Q. If the record says that they approved it, is it a fact or isn't it? A. Surely.

Q. Then it is a fact. Then at the time that you met with the directors, about which you have told, when they sent for you and asked if there was not some way which you could suggest by which this could be arranged, you told them you were going to assume a neutral attitude, didn't you? A. No.

Mr. Whipple—Just a moment. You have not quoted at all what he said the directors said to him.

Mr. Bates—Will you give me the letter which I let you have and which you put in as an exhibit?

Mr. Whipple—Certainly. But there is not any such testimony as to what the directors asked him. He said the directors asked him how he stood on the matter.

Mr. Bates—You put in that letter, the substance—

Mr. Whipple—Not that they wanted to arrange something.

Q. You put in the letter the substance of your statement to the directors, did you not? A. No. That letter is not the substance of my statement to the directors. That is a part of it, but it is not my first statement to the directors.

Q. Did you not testify that you made the statement that you would not declare in advance what your position was going to be? A. Yes, sir.

Mr. Whipple—I pray Your Honor's judgment. The record is open here.

Mr. Bates—I have a right to ask him if there is any question about it.

Mr. Whipple—You have within a certain limit, but when it is simply occupying time—

Mr. Bates—You are occupying time, Mr. Whipple, and I will ask you to kindly refrain from it. You said you would take 15 minutes, and it is nearly 50.

Q. Now, Mr. Watts, I ask you if you did not state, in substance, that you said to the directors that you were not going to commit yourself on either side of the controversy, that as business manager you did not think you ought to? A. I said I was going to stand with Principle.

Q. Didn't you testify substantially to what I have said? A. I thought I could not take a position—

Q. You are not answering my question. Didn't you testify substantially what I have stated? A. If you bring into the statement that I said—

The Master—No, Mr. Witness—

A. (Continued) No, I did not state, in substance.

Q. Tell me what you did say, because I certainly understood you to so state. A. I said to the Board of Directors that I could not take a stand on either board and that I should have to stand with Principle.

Q. And at the time that you made that statement to them you had already committed yourself by approving the letter of the trustees on Sept. 30, hadn't you? A. Not at all.

Q. Well, the record seems to indicate it.

Mr. Whipple—I move that remark be stricken out.

The Witness—May I explain, sir?

Mr. Whipple—The record indicates no such thing.

The Master—What the record indicates is a matter of argument later. I do not think we need to have it stated now. We will strike it out.

Mr. Bates—It may be struck out.

Q. Did you tell the Board of Directors that you had been called in and that that letter had been read to you and that you had approved it on Sept. 30, as the attitude of the trustees? A. No. That is—

Q. That is all; you have answered my question. A. May I add to that—

The Master—I think you have answered it.

Mr. Whipple—He desires to make an explanation or qualification.

A. (continued) I had theretofore, on Jan. 2, told the Board of Directors exactly where I stood on this proposition.

Q. Well, then, your statement that was made on Jan. 27 was inconsistent with the statement that you had made previously to the board? A. Not in the slightest.

Q. Well, I wish you would explain to me, Mr. Watts, how you approved of the letter stating the trustees' position on Sept. 30, and then stated to the Board of Directors on some date in January you approved of the trustees' position, and then on Jan. 27 stated that you had not taken and was not taking either side and did not propose to?

Mr. Whipple—I object, if Your Honor please, because he has stated no such thing as Governor Bates has now narrated. And of course he can't explain Governor Bates' misconception. All he could explain would be his own testimony.

Q. I find your testimony irreconcilable as I hear it, Mr. Watts. A. I shall be glad to explain my view of it if—

The Master—Suppose you let him try.

A. (continued) Mr. Bates, there is a vast difference between a position called neutral and the position called "standing with Principle." One can well stand with Principle and agree with right viewpoints of one board and right viewpoints of another, but not expressing to either board approval or disapproval of one thing or the other. I never approved—I have never stood with the Board of Trustees, and the Board of Trustees have consistently said to me, "We do not want anybody to stand with us; stand with Principle, with the highest that you know of right, and to the extent we are standing with Principle we will find ourselves together; but do not stand with us," and they have said exactly the same thing to the entire Publishing House. I do not know how better to explain it.

Q. When you say you are standing with Principle, under your definition you are, of course, standing with God?

A. My highest concept of right, of justice, and honesty, and intelligence.

Q. Then the statement in the record that you approved the letter has no significance? A. Not for the purposes of this statement—I should not think so.

Q. It has no significance as indicating that you approved the views therein stated? A. I did approve the views therein stated.

Q. Well, you did approve them? A. Yes.

Q. And you told the trustees you did? A. No, not that I remember. I may have said I approved the letter, but it was not on the basis, Mr. Bates, of approving—I wonder if I can differ-

entiate there clearly. A letter written by the Board of Trustees was their own demonstration, and they had their right to take their own position and send the letter. What I was doing, and I believe the two editors were doing, was approving the position taken by the Board of Trustees for themselves—not for us at all.

Q. Then all your approval meant was that you saw no objection, if that was their view, to their sending the letter? A. No; it also—when I said I approved the thing, that indicated that I believed the statements they were giving were true.

Q. That is what I had supposed. Then when you had your conference with the directors on Jan. 27 you were in the position of the man who had approved of the position taken by the trustees? A. I had so told them on Jan. 2.

Mr. Whipple—Told the directors?

The Witness—Yes, sir.

Q. You did not tell them so on the 27th? A. No; because I had gone into the thing quite fully by illustration on Jan. 2. I did not repeat it.

Q. Was it the fact that you believed the two instruments given by Mrs. Eddy are reconcilable? A. Yes, sir.

Q. And you still believe them to be? A. I do, sir.

Mr. Whipple—Do you want to define what you mean by the "two instruments given by Mrs. Eddy"? What you referred to?

Mr. Bates—I refer to this statement in the letter, "I refuse to believe that the two instruments given by our Leader are irreconcilable."

Q. You understand what two instruments I refer to? A. Yes, sir. The Manual and the Deed of Trust.

Mr. Whipple—What is that?

The Witness—The Manual and the Deed of Trust.

Mr. Whipple—That is right. That is what I wanted to get clear on the record. You mean the Manual and the Deed of Trust?

The Witness—Yes, sir.

Q. Now, what was your first connection with the Publishing Society? A. I was employed in the credit department.

Q. And when? A. 1913. June 20, I think it was.

Q. In what capacity? A. In charge of the Credit Department.

Q. And how long did you continue in that department? A. Well, I had more or less supervision of the department clear up to the time that I accepted the office of business manager.

Q. Is there an assistant business manager? A. There was—no, not carrying that title.

Q. Were you ever assistant business manager? A. No, sir.

Q. Then when Mr. Whipple asked you if a part of these approvals were made while you were business manager and the rest while you were assistant business manager, he was ill advised, I assume.

A. No. I was in effect assistant business manager, but the title was "assistant to business manager."

Q. Oh, you make a distinction? A. I did not; the trustees have made the distinction.

Q. Between an assistant business manager and the assistant to business manager? How long were you assistant to business manager? A. Oh, I should guess about three years. Two or three years.

Q. Then you were promoted to business manager? A. Yes, sir.

Q. When were you made business manager? A. Aug. 1, 1917.

Q. That is when you began your duties? A. Yes, sir.

Mr. Bates—I offer a letter from Mr. Watts under date of July 28, 1917.

Mr. Whipple—I won't stop to read it, because I shall hear it when you read it. I have no objection to it.

Mr. Bates—The letter is signed by Mr. Watts, dated Brookline, July 28, 1917, to The Christian Science Board of Directors, Boston, Massachusetts. (Reading):

[Copy of Exhibit 90.]

"Brookline, Mass., July 28, 1917.

"The Christian Science Board of Directors,  
"Boston, Massachusetts.  
"Gentlemen:

"Your letter of July 24, stating the action of your board in electing me to serve as business manager of The Christian Science Publishing Society, beginning Aug. 1, 1917, was received. This position I accept gratefully, and thank you for your confidence in giving me this important work.

"The past four years' association with this office impresses upon me its responsibility. My constant effort shall be to keep so close to God that my footsteps shall be in accord with His teachings and those of our Leader, and that I may always 'follow and rejoice.' It is my Father's business 'and the government shall be upon His shoulders' (Isalah 9:6.)

"Sincerely,

(Signed) "JOHN R. WATTS"

Q. And you were elected by the directors as business manager of the Publishing Society? A. I was notified by them of my election.

Q. You were elected by the directors as business manager—

Mr. Whipple—I pray Your Honor's judgment.

A. They notified me they had elected me.

Q. They notified you they had elected you? A. Yes, sir.

Q. And then you sent them this letter? A. Yes, sir.

Q. And then you began your duties about the 1st of August?

Q. And you were elected by the directors also in 1918,—reelected? A. They notified me that they had reelected me.

Q. And the elections have always been annually, have they not, so far as your knowledge goes?

Mr. Whipple—You mean, the notice of elections?

Mr. Bates—The elections.

Mr. Whipple—That I object to. He knows nothing about your records except by hearsay. The notices have come.

Q. Do you know, Mr. Watts, whether or not the directors have reelected you annually up to the present year when the controversy was on?

A. There was only the original election and the reelections, as you term them, once, because it was August, 1917, and then the following July, 1918, and I have had no notification since then.

Q. Well, you were reelected in June, 1918? A. Mr. Bates, you want me to use the word I was "elected." I am saying to you frankly that I was notified that I had been elected, and I have no doubt that I was. But I do not know it of my own knowledge.

Q. Notified that you had been elected by the Board of Directors?

A. Yes, sir.

Q. Now, what was your salary when you first became business manager? A. I think it was \$7200.

Q. And was that the same as your predecessor had had? A. I am not quite clear on that. I think it was.

Q. And has it been increased since? A. Yes, sir, to \$10,000.

Q. Has there been more than one increase? A. I think not.

Q. And when was the increase made to \$10,000? A. May I answer in just a moment? I can give it to you accurately then.

The Master—Is there any question pending?

Mr. Bates—He is looking up the information for the answer.

The Master—Don't you all know when it was? Can't we shorten it?

Mr. Bates—I know, and if they will accept my statement—

The Master—Is there any dispute about it?

Mr. Whipple—I don't know the first thing about it, if Your Honor please. There is not any dispute about—

The Witness—Oct. 1, Governor Bates, 1918.

Q. Now, I read from the record of Sept. 30, 1918—

Mr. Streeter—Is that the directors' records, Governor Bates?

Mr. Bates—The trustees' records.

Q. I am reading from the record of the Board of Trustees, under date of Sept. 30, 1918. The first three paragraphs have no bearing. The next paragraph, the fourth paragraph, reads as follows: "After drawing up the first copies of this letter (which refers to the memorandum that the trustees sent under date of Sept. 30 to the directors, stating their position, which has already been referred to) it was given to Mr. McKenzie, the editor of the Journal and Sentinel, who was one of our Leader's original appointees on the Board of Trustees and who served for nineteen years on that board. A copy was also

given to Mr. Dixon, editor of The Monitor, and to Mr. Watts, the business manager, so that each of these officers were fully conversant with the text of the letter. Each assented to and approved of the contents." There follow three or four paragraphs, and then this is written: "On motion duly seconded, a change of rate was made in the salary of the business manager, beginning from the first of October, to \$10,000 a year."

The Master—The first of October, 1918, that would make it?

Mr. Bates—That is the date.

The Master—I guess we have got that date fixed.

Q. The trustees have a salary of \$6000 each, as has been stated? A. Yes, sir.

Q. Do you know what salary Mr. Dixon gets as editor of The Monitor? A. I think he receives \$15,000 a year.

Q. \$15,000?

Mr. Streeter—What was that?

Mr. Bates—The salary of Mr. Dixon as editor of The Monitor.

Q. And how long has he received a salary of \$15,000 a year? A. I can tell you in a moment. January, 1918.

Q. And what was his salary prior to that time? A. \$12,000.

Q. And what is Mr. McKenzie's salary as editor of the other publications?

Mr. Strawn—Perhaps this would facilitate the movement if I gave you that list (passing a paper to the witness).

The Witness—I thought that there was something that would facilitate it. Mr. McKenzie's salary is \$9,000 a year.

Q. And how long has it been \$9,000? A. Since Feb. 1, 1917.

Q. And whether or not, if you know, the Board of Trustees voted to increase his salary?

Mr. Strawn—That was in 1918, was it not, instead of 1917?

The Witness—It must be 1918. Yes, it is 1918. I beg your pardon, Governor Bates. What was that question?

Q. How did you leave the date, Mr. Watts? A. 1918, Feb. 1, 1918.

Mr. Bates—Will you read the question?

[The question is read as follows: "And whether or not, if you know, the Board of Trustees voted to increase his salary?"]

The Witness—Read the whole, will you, read what comes ahead of that?

[The reporter reads as follows: "Q. And how long has it been \$9,000? A. Since Feb. 1, 1917. Q. And whether or not, if you know, the Board of Trustees voted to increase his salary?"]

A. Yes, it wouldn't have been done except upon their vote.

Q. I don't refer to the increase to \$9,000; I refer to a vote that has been passed since. Do you know whether or not they have voted to increase his salary since? A. Oh, no, they have not, so far as I know.

Q. You are not aware of any letter that he sent declining an increase since this controversy began? A. No, sir.



Q. What was this contract for paper that you have referred to that Mr. Rowlands helped you on? A. A contract with the—I have forgotten the name of the company at this moment—we call it at the office the Lawrence Company, but I don't know the name—oh, it is the Canadian Export Company.

Q. And when was it made? A. In the latter part of 1917, as I remember it.

Q. And was the difficulty that had arisen one because of the war conditions? A. Well, it was what was called the print paper shortage, famine. All the newspapers were having all that they could do to get along.

Q. All the newspapers were finding difficulty in getting their paper? A. Yes.

Q. And I assume that it was your duty, as well as the duty of all the trustees, to make the best contract possible? A. Indeed it was.

Q. And Mr. Rowlands did help you to get a good contract for paper? A. Yes, sir.

Q. There has been some reference made to the Harvey letter. Mr. Harvey was an employee under you? A. Well, we don't define it as an employee under me, but he was an employee of the Publishing Society—yes, you could call it under me.

Q. Well, don't all employees of the Publishing Society come under the business manager? A. Well, we don't use the term "come under," but I suppose that in the ordinary acceptance of the words they do, yes.

Q. Well, you know we have to use words in the sense of their ordinary acceptance sometimes. A. I know you do, and I should remember that. I beg your pardon.

Q. And his office was in Washington? A. In New York.

Q. In New York. And did he come on to Boston at your request? A. I think not.

Q. Well, at any rate, the letter which has been offered in evidence was written in your office? A. Yes, sir; he had stated—

Q. And at your request? A. Yes.

Q. And after he had written it you took it to the trustees? A. Well, I wanted to be able to show the trustees and the directors—

Q. I am not asking you that. A. Oh, I beg your pardon. What is your question?

Q. After he had written it in your office you took it to the trustees? A. Yes, sir.

Q. And later on you took it over to the directors? A. Yes, sir.

Q. Whom you had thanked for your position, in the letter which has been read? A. Yes, sir.

The Master—Your answer is yes?

The Witness—Yes, sir.

Q. And do I understand you that you asked them to repudiate Mr. Harvey's letter? A. No; I asked them to repudiate the statements that were credited to one of the members of the

Board of Directors. I didn't believe those statements had been made.

Q. What member of the Board of Directors? A. At that time we didn't know, but, Mr. Dittmore's letter called out the fact that he must have been the man to whom the letter referred.

Q. And did you use the word "repudiation" in that interview? A. Yes, sir.

Q. And then you asked the directors to repudiate the statements made in that letter? A. Yes, sir.

Q. Who was it that it was reported had spread untruths in New York?

Mr. Thompson—Reported by whom?

Mr. Bates—I am quoting him in his statement.

A. I assumed that it was Mr. Dittmore.

Mr. Thompson—You mean that Mr. Harvey reported that Mr. Dittmore had told untruths in New York?

The Witness—No, no. Is that the question that was asked? I may have misunderstood it.

Mr. Bates—No, that was not the question. Mr. Thompson will have a chance to clear it up later on.

The Witness—I don't mean that.

Mr. Thompson—You don't mean that?

The Witness—May I get that question and answer, so that it will be clear?

[The question is read as follows: "Who was it that it was reported had spread untruths in New York?"]

The report was that one of the directors had made these statements which I characterized to the Board of Directors as untrue in certain phases of it.

Q. Well, you made the statement before that you supposed it was Mr. Dittmore? A. Yes, sir.

Q. And did you have any reason for that supposition? A. Only from Mr. Dittmore's letter, as I remember it, saying—

Q. That is, his reply? A. Yes, sir.

Mr. Thompson—Just a minute. Do you expect this evidence to go in as against Mr. Dittmore?

Mr. Bates—I don't know, I am sure.

Mr. Thompson—Then I think that I will find out. It is double-distilled hearsay. Some one reported to Harvey that some one had said that some one of the directors had made certain statements in New York. Now, if that is to go in as any evidence that Mr. Dittmore in fact made any of those statements, which it is said were erroneous, I object to it. Mr. Dittmore's own letter, written subsequently, absolutely clears that matter up. It turns out that he did not make the statements, and what he did state appears. I do not want it to appear in indirect fashion that Mr. Dittmore went to New York and engaged in scandalous gossip.

The Master—The last inquiry was, who did you understand had spread the statements in New York.

Mr. Thompson. I beg pardon?

The Master—The last inquiry of the witness was, who did you understand had spread the statement in New York.

Mr. Thompson—I do not want even his understanding of it to go in as any evidence that Mr. Dittmore did in fact make these statements. I think if Governor Bates would ask him further whether the two men with whom Mr. Dittmore talked did not repudiate the statement—

The Master—I quite agree that it is very small evidence that Mr. Dittmore did in fact make the statements.

Mr. Thompson—I think it is, but still I want to avoid having anything get in in that way.

Q. What were the statements that you in fact characterized as untrue? Those in reference to the circulation of The Monitor? A. I should have to look at the letter, Governor Bates, in order to answer that.

Mr. Bates—Well, then, perhaps we had better stop here, if Your Honor please.

The Master—We will stop until 2 o'clock now.

[Recess until 2 o'clock p. m.]

#### Afternoon Session.

The Master—You may go on when you are ready, Governor Bates.

Q. (By Mr. Bates.) Have you found the statements in the letter that you characterized as untrue? A. I had not known I was to look for them. May I have the letter? Somebody has the exhibit.

[The letter is handed to witness.] Shall I read those statements? This is read from Mr. Harvey's letter.

Mr. Whipple—The number of the exhibit is what, so as to identify it?

The Witness—Exhibit 88.

Mr. Whipple—Yes.

A. (Reading):

"That the Board of Trustees have no understanding of salesmanship, and have made a failure of promoting the circulation of The Monitor." That is one of them.

Q. Yes. What other one? A. I will give you the other one.

"This 'little group' expressed to the New York field the statement, which they say was made by one occupying a high position in The Christian Science Publishing Society, that the circulation of The Christian Science Monitor as given out by the Board of Trustees is 123,030 copies, that the accredited circulation is 93,000 copies, but that the 'honest to God' circulation is 63,000 copies. This remark has spread not only throughout the movement, but through the business world, and has now reached the point where it is openly stated in the business world that The Monitor's circulation is only 58,000 copies and that its 'honest to God' circulation in the city of Boston is 2200 copies."

Mr. Thompson—I understand this is not to be treated as any evidence against Mr. Dittmore, because if it is, I should object to it, he never hav-

ing made that statement, but it having come from a man named Gleason, as I understand it.

Mr. Whipple—Now I understand you are merely pointing out the statements of fact in the letter.

Mr. Thompson—Yes.

Mr. Whipple—Statements of fact by others in New York, which are untrue.

The Master—As I understand it, he has called certain statements in that letter untrue, and he is now asked to specify which ones.

Mr. Whipple—Yes.

The Master—He has mentioned two. Are there any more?

The Witness—Yes, sir.

The Master—Please go on, as quickly as you can.

The Witness (reading)—

"That the Board of Trustees was about to be removed by process of law. When asked why, he said that 'we' could not stand idly by and see The Christian Science Monitor impoverish the movement; that up to the present time The Monitor has cost 'us' over a million dollars. When it was said to him that it was not surprising that to establish a daily paper as The Monitor had been established would require a large expenditure of money during the first years, but that now it was understood The Monitor was reaching, if it had not reached, a self-supporting basis, he claimed that this was due to the fact that 'we' had given them 40,000 subscriptions to be distributed for camp welfare work." That is all, sir.

Q. The statements which you characterized as untrue as to facts are statements which Mr. Harvey put into the letter which he wrote in your office and directed to you? A. Yes, sir.

Q. And they are statements of what was being talked in New York City? A. Yes.

Q. Since the alleged visit of one director there? A. Yes.

Q. Therefore they are a statement of rumors which he had heard in New York City, expressed by various persons? A. The letter speaks for itself on that, Governor.

Q. The circulation of The Monitor has not been entirely satisfactory, has it? A. It was constantly increasing, but it never would be satisfactory to one interested in Christian Science even if it had been a half a million.

Q. It had been a disappointment, had it not? A. No, sir.

Q. And I suppose that is really a question of opinion? A. Surely.

Q. And the question as to whether or not your Board of Trustees had an understanding of salesmanship is a question of opinion? A. Certainly.

Q. Therefore, if somebody in New York did say that your board had no understanding of salesmanship, it was their opinion, I assume? A. Wasn't there some other phrase there besides "salesmanship"? I am not sure.

Q. "Had no understanding of salesmanship, and had made a failure of

promoting the circulation of The Monitor." A. Yes, sir.

Q. They had made a failure of it from the standpoint of its success financially, had they not? A. Why, they had made a splendid success of it financially.

Q. From the standpoint of its showing any profit? A. I am talking about these trustees, yes.

Q. Well, I am talking about The Monitor itself, and the Board of Trustees, and throughout the history of The Monitor. A. Now, what was your question?

Q. I am asking you as to whether or not it had not been a failure from the standpoint of paying its expenses? A. Why, it cost a million dollars to establish it.

The Master—Can't you answer his question directly?

A. No, it had not been a failure.

Q. Is it not a fact in every year except one your books show there was a deficit? A. Except the last two, I should say.

Q. Except the last two? A. Isn't that right?

Q. Will you look at your books for the year ending March 31, 1918, and see if it did not show a deficit? I am perfectly willing, Mr. Watts, that you should have your assistant help you find the place, if you wish to. A. Thank you. March, 1919, it showed a profit of \$70,699.88.

Q. What year was that? A. That was last year.

Q. That is not the year I asked you for. A. Well, that is the one I am giving you. The others—

Q. Just hold that a minute; I may want that. A. Yes, 1918 shows a loss of \$89,000.

Q. A loss of \$89,000? A. That The Monitor went on—

Q. Wait a minute; I am only asking you as to whether or not your books do not show a loss of \$89,000 for the year ending March 1, 1918? A. Governor, I beg your pardon; it is for 15 months, ending that time.

Q. For the 15 months, it shows a deficit of about \$89,000? A. Yes, sir.

Q. Now, is there any year prior to that time when it shows a profit? A. No, sir.

Q. Then your whole statement in regard to its being a success from the standpoint of net profits in cash is based on what it did in the past year ending March 31, 1919? A. Before that time.

Q. The year ending March 31, 1919. A. Your statement is practically correct, I believe, Governor.

Q. Now, what do you show as a profit during the year ending March 31, 1919? A. \$70,699.66.

Q. Were there any unusual sources of income for The Monitor during that year? A. None that I know of, sir.

Q. What is the Camp Welfare work in which the movement has been engaged? A. That is an activity sending to the camps at home and abroad Christian Science literature, largely.

Q. And whom has it been sent by? A. The Camp Welfare Committee.

Q. Who has paid for it? A. The Mother Church.

Q. Through the action of the Board of Directors? A. Through the treasurer; I assume the Board of Directors.

Q. That was war work, was it not, in connection with the war? A. Yes, sir.

Q. To what extent did that figure in that year, the receipts from the papers that were sent to the camps by the purchase of The Mother Church? A. Why, that was an expense to the Publishing Society.

Q. I assume so; but to what extent does it show that you have charged, or that you received from that work money? A. There is nothing here to indicate that.

Q. Well, don't you know? A. No.

Q. Doesn't your statement show? A. No, sir.

Q. Now, you stated that this little group—or, rather, you say this statement was untrue, which says, "This little group has circulated"—well, the substance of it was, as I have put it down here—this little group has circulated the story as to the circulation of The Monitor; The Monitor's circulation is only certain figures. A. Yes, sir.

Q. Now, you do not know who is meant by "this little group," do you? A. No, except as indicated—

Q. But it was some little group in New York? A. Yes, sir.

Mr. Whipple—Well, was it some little group in New York as he stated?

The Witness—Yes, sir.

Q. It was a little group in New York, was it not? A. I think so.

Mr. Bates—The letter states so.

Mr. Thompson—Just a minute. I do not want him to be allowed to testify that he knows it was a little group in New York that ever started a single story. He knows nothing about it, and for all we know it may be a matter of his imagination.

Mr. Bates—Well, what I am trying to show is that it is an indefinite group nobody knows anything about.

Mr. Thompson—We do not know even that much.

Mr. Bates—That somebody is trying to blame your client and our clients for.

The Master—I do not take his evidence in any such sense, Mr. Thompson.

Mr. Thompson—Very well, sir.

The Master—We are talking about what was said in a certain letter.

Mr. Thompson—I think he went a little beyond that.

The Master—Let us see if we have. The letter says, a certain group in New York circulated a certain statement.

Mr. Thompson—Yes, sir. And he says, "Now, it is true, isn't it, that it was a little group in New York," and the witness says "yes," following along after this question, whereas he can't possibly have knowledge of the statement.

Mr. Bates—You misunderstood my question.

Mr. Thompson—I think you misstated it inadvertently and asked him what you didn't mean to ask.

The Master—If you mean anything other than that, Governor Bates—

Q. I had reference, and I think my questions so indicated, to the fact that this charge which you say was false was made, you allege, by some unknown group in New York. That is all there is to it. A. All I know is what the letter indicates.

The Master—Who alleges it was made by some group in New York?

Mr. Bates—Mr. Harvey's letter, which was written—

The Master—If I follow it correctly, that does not make the witness say it was.

Mr. Bates—I do not understand so, no. It is only to show that he was apparently asking us to deny statements that we knew nothing about, made by some unknown parties in New York.

Q. Now, Mr. Watts, the statement with regard to The Monitor having cost over a million dollars was true, was it not? A. Yes.

Q. So that you withdraw your statement that that was false, whoever made it? A. Was that the only statement there?

Q. Well, that is what you repeat. A. Well, there is something more, possibly, in the letter I have forgotten.

The Master—That statement was made in connection with something else. I don't know how far you can separate them.

Mr. Bates—When asked why, he said he couldn't stand idly by and see The Christian Science Monitor impoverish the movement; that up to the present time The Monitor had cost us over a million dollars.

The Witness—The impoverishing the movement is the objectionable—

Q. Well, that is an expression of opinion, too, isn't it, as to whether a million dollars would impoverish the movement? A. Why, no, it hadn't cost the movement anything.

Q. Well, it had cost somebody a million dollars, hadn't it? A. It had cost the Publishing Society a million dollars.

Q. It came out of the profits of the Publishing Society? A. Yes, sir.

Q. And profits which otherwise would have been net profits and devoted to The Mother Church under the Deed of Trust? A. Yes.

Q. That is correct? A. Yes. Governor, I can give you an answer on that Camp Welfare. The total sales of literature for the year ending March 31, 1919, was \$229,762.

Q. That was for the Camp Welfare literature? A. Yes, sir.

Q. That was paid for by The Mother Church? A. Yes, sir.

Q. And out of its treasury? A. Yes, sir.

Q. And in addition to that, during that year the directors were sending out notices to all the churches and

asking them on their own responsibility to buy the periodicals in bulk, and particularly The Monitor, and send them to the camps, was it not? A. I thought just to the contrary.

Q. You don't know that? A. Certainly not.

Q. How much was that amount you read? A. \$229,762.

Q. Now, if you had not received that \$229,000 from the treasury of The Mother Church for special work, which applied only to war times, your balance sheet would have been entirely different, would it not? A. No, sir. Yes, it would, but it would have been in our favor.

Q. That is, as you figure it? A. No; it is not a question of figures. The Monitor costs—every subscription costs us \$13, and we sell it to the Camp Welfare or to anybody else at \$9.

Q. Did you not receive 3 cents a copy, less 10 per cent, for all The Christian Science Monitors? A. Yes, sir.

Q. And do you maintain that you were running the publishing house in such a way that it cost you more than 3 cents a copy? A. No, sir.

Q. Less the 10 per cent discount, to get out those extra papers? A. No, sir. Advertising at a certain point—you understand, I believe, that every newspaper sells its paper to the reader at a cost less than its cost to produce, but they make up the deficit on advertising. Now, at a certain point, as I explained to the Board of Directors, the advertising balances exactly with the circulation, and the figures go rightly. If the circulation exceeds that sum, then your balance is on the wrong side of the ledger. In other words, our advertising was not increased. We did not get a dollar more for advertising during that time, and yet every paper that we sent forth for Camp Welfare cost us about \$13 apiece per year, whereas we received from the church \$9 per year.

Q. What do you receive from your regular subscribers? A. \$9 a year.

Q. So that the church paid the same as the regular subscribers, less 10 per cent? A. Less 10 per cent.

Q. And you do not expect to get any more from your advertising because of an increase in your circulation to the amount of \$279,000 worth of copies? A. We had shortly theretofore increased our rates, and of course when that came about we did not think to increase them further.

Q. You had shortly before increased your rates, I understand, for advertising? A. Yes.

Q. And you do assume that the larger your circulation the more you can recover or obtain for your advertising? A. I do not believe we put it on that basis, Governor.

Q. Well, but that would be the natural average expectation in business? A. That would be the average newspaper expectation.

Q. And they sell their advertising

on the basis of their circulation, not on the basis of what they do not circulate? A. We never have.

Q. Well, ordinarily newspapers do, don't they? A. Yes.

Q. And the business man naturally buys on the information which he has in regard to the circulation? A. They are learning not to do that today, Governor.

Mr. Streeter—What is that last answer?

The Witness—I say, the business man is learning not to buy his advertising on the basis of circulation alone.

Q. I did not say anything about "alone," Mr. Watts. I asked you if that was not one of the things, or if it was not something that they base the value of the advertising on? A. Yes, sir.

Q. The more the circulation the more valuable the advertising? A. Yes, sir.

Q. Now, I understood you that when you went to the board meeting on the 27th of January you went because you were asked to come over, because the board, as some one stated, wished to know where you stood as the business manager? A. Yes.

Q. In the controversy? A. Yes.

Q. Now, you did not tell them that you had told them where you stood on the 22nd, did you? A. On the 2nd.

Q. On the 2nd of January. A. No. I did not repeat it. They knew where I stood.

Q. But you did put your position in writing? A. Yes, sir.

Q. Now, may I ask— A. May I qualify that? I have never changed my position from the beginning, and it was exactly as quoted in my letter there of the 23th.

Q. You stated that they asked you what you thought the effect would be on the movement if the contention of the trustees was allowed.

Mr. Whipple—I do not think there is any such statement.

Q. Well, I will ask you what your statement was in regard to the effect on the movement. What did you say? A. I was asked if I did not know that when the movement learned of the position taken by the trustees—I was asked where I thought the movement would stand on that question, and I said I thought the movement would be against the trustees.

Q. As I have you quoted here—"I assume the entire movement would be with the Board of Directors." A. On the go-off, I said.

Q. By "the movement" you meant the field or the Christian Scientists throughout the world.

Mr. Whipple—He said on the "go-off."

Q. Now, Mr. Watts, after the trustees filed their Bill in Equity did you send out a copy of that Bill in Equity? A. Yes.

Q. A printed copy? A. Yes.

Q. And to whom did you send it? A. To the subscribers on our records

—to the Quarterly, Journal, and Sentinel, as I remember it.

Q. To the subscribers of all your periodicals except The Monitor? A. I think so.

Q. And the subscribers of those periodicals are all assumed to be Christian Scientists, are they not? A. Yes.

Q. And in that copy you put on the last page a partial copy of the injunction? A. Yes, sir.

Q. That had been issued ex parte? A. I don't know how it was issued. I assume it was.

Q. Issued without a hearing? A. Yes, sir.

Q. You understood that? A. Yes, sir.

Q. And the copies that you sent out were the same as the ones which His Honor has in his hands at the present time? A. Yes, sir.

Q. And you sent those out at the request of the Board of Trustees? A. Yes, sir.

Q. And immediately, as soon as the bill was filed? A. No. It was filed in the morning, my recollection is, of March 25, and we did not send them out—I wonder what day that was. Might I inquire if anybody knows what the day was?

Mr. Bates—No. I want your testimony.

The Witness—All right. We sent them out beginning on the Friday following the day the bill was filed. It was two or three days afterward.

Q. That is the best information you can give? A. I know that was correct.

Q. Were they in press at the time that the bill was filed? A. On the morning before or after the bill was filed?

Q. On that date? A. No, sir.

Q. Are you certain that you had not furnished copies to your counsel or to the counsel of the trustees, to be furnished to the newspapers on the very day and at the time it was filed? A. No, sir, it was not.

Q. You are sure about that? A. Yes, sir, because they were furnished the following day in the evening.

Mr. Bates—Mr. Whipple, I don't want to ask you for anything you don't want to answer, but isn't the witness mistaken as to that?

Mr. Whipple—No, he is absolutely right. You are mistaken. I furnished you with a copy later in connection with our negotiations, to see whether the bill would have to go through. There was nothing printed at that time.

Q. Was the Bill in Equity in type at that time? A. No, sir.

Q. Do you know what the date was, Mr. Watts?

Mr. Whipple—I am speaking from my own memory.

Mr. Bates—Will you look at the bill and give us the date?

The Witness—Don't your bill show it was filed March 25?

Q. I mean the date when you printed it. A. I will furnish you the

records to show when it was done, Governor, later.

Q. Have you the records here? A. No. I have nothing to indicate here.

Q. There is nothing on your books that we asked you to produce which shows? A. No, sir.

Q. Nothing on your account books which shows? A. No, sir.

Mr. Bates—The bill, I understand, was filed March 25.

Mr. Whipple—It was, but no publication occurred until one, two, or three days later.

Q. Now, Mr. Watts, how many copies of that Bill in Equity did you send out—printed copies? A. Approximately 140,000. I think the correct number was 138,000.

Q. 138,000 copies? A. Yes, sir.

Q. And that included all the subscribers to your periodicals except The Monitor? A. I think it did.

Q. Now, did you at some time send out telegrams? A. We did, the night of the 26th.

Q. The night of the 26th? A. Yes, sir.

Q. And have you a copy of that telegram here?

Mr. Whipple—I would like to suggest, if Your Honor please, that a criticism of what was done by the trustees, and a very bitter one, was made before Mr. Justice Braley in the contempt proceedings. It was a part of his statement in delivering his judgment in those proceedings that there was nothing that could be criticized in that respect with reference to the conduct of the trustees—that they did what they were entitled to do—namely, to issue, for the purposes of accuracy, the printed copy of this bill, and send it to every one that they wanted to have know about it. Now, that having been adjudicated by a justice of the Supreme Judicial Court, aren't you satisfied with that? Do you think you want to try it again?

Mr. Bates—I am not satisfied with your statement of it.

Mr. Whipple—Didn't Justice Braley state that there was nothing that was said or done by the trustees or their counsel in promulgating this bill that could be criticised? If there is any doubt about that I would like to read what Justice Braley said. Do you object to it?

Mr. Bates—I object to it. You have asked me whether I agree with your statement. I don't agree with it.

Mr. Whipple—I asked whether it was any use searching any longer in a last year's bird's nest to find something.

The Master—I take it you can hardly ask me to find as to the contrary on anything that Judge Braley has distinctly passed upon.

Mr. Bates—I am not going to. All that Judge Braley decided was, on our motion to change the injunction on the ground that they had violated the spirit of it, that inasmuch as they had only sent out the Bill in Equity without making any comments, they

were within their rights. But that is not the purpose for which I am offering it.

Mr. Whipple—May I read what Judge Braley said? I have a printed copy here.

Mr. Bates—No, I object to your reading it.

The Master—I don't think I would read it, Mr. Whipple, if it is objected to.

Mr. Whipple—Now, how is Your Honor going to determine whether this has been decided or not?

The Master—I am not clear that I shall ever have to determine, and I will wait until I see that I must before I do.

Mr. Whipple—I thought that there was an issue between us as to what Judge Braley said.

Mr. Bates—There is not properly. You made your statement. All I am asking is a question which has nothing to do with this.

Mr. Whipple—I didn't know that you had abandoned that quest. Perhaps you have.

Mr. Bates—No. I am asking the question.

Mr. Whipple—Let me hear it.

Mr. Bates—I thought you had forgotten.

Mr. Whipple—I hadn't forgotten. I was engaged in following down your last error and therefore hadn't gotten to your new one. What is the last question?

[The last question is read as follows:

“Q. And have you a copy of that telegram here?”]

Mr. Whipple—Now, I will raise the question—how is it important what that telegram is?

The Master—I am entirely unable to see how it is important at present. I am relying on Governor Bates to do something to make it important.

Q. Have you a copy of the telegram? A. I have not, sir. It ought to be here but I don't know where it is. Can you furnish me with a copy, Governor?

Mr. Whipple—It is in the record of the contempt proceedings.

Q. Well, you did send out a telegram? A. Yes.

Q. To all the Associated Press? A. Oh, no.

Q. Well, to four or five hundred newspapers? A. Yes.

Q. In this country? A. Yes.

Q. And in Canada? A. Yes, I think there were a few in Canada.

Mr. Bates—The telegram we will produce later.

Q. Now, as a result, or if not as a result, at least very soon after you had sent out your Bill in Equity, you began to receive letters from the field, did you not, in regard to it? A. Yes.

Q. And resolutions of Christian Science churches? A. Yes.

Q. And were they in general condemnatory of the position which the trustees had taken?

Mr. Whipple—Just a moment. How

is that of any consequence—especially in view of the fact that we allege in this bill that these directors had instituted a propaganda which evidently after the injunction they took no pains to stop. And here they come in and ask, in substance, for the results of the virus that they had been putting out.

Mr. Bates—Propaganda of which you have introduced no evidence. This is your last witness, you say.

Mr. Whipple—We have introduced evidence of the propaganda, clear evidence of it. We will have more when we get your friends on the witness stand and ask them some questions.

Mr. Bates—Then wait until you have introduced it, if you are depending on my clients.

Mr. Whipple—Oh, no, that is going to be more. We have got enough for the present.

The Master—What is the inquiry you want to make now, exactly?

[The last question is read.]

The Master—I am unable to see what good it can do in this case to inquire into the question of whether they were generally condemnatory or not. It might require the examination of a great many telegrams, might it not, to find out whether there were more condemnatory or more approving?

Mr. Bates—I think, Your Honor, that they might run into the thousands, and therefore I will withdraw that question for the present.

Mr. Whipple—Has your committee on publications sent as many as thousands of them, to get them ready?

Mr. Bates—Do you want me to answer your question?

Mr. Whipple—Yes, if you don't mind.

Mr. Bates—I will state that we are informed, by reason of resolutions which have come to us without any solicitation from us, direct or indirect, or any suggestion, direct or indirect, from the directors, that we have had from over a thousand churches resolutions condemning the action of the trustees, and those resolutions began to come immediately after the sending out of the Bill in Equity.

Mr. Whipple—Now, will you explain how they happened to be all just alike, or practically alike, if they were not inspired and drawn up by one source here in Boston? Perhaps you will answer that.

Mr. Bates—You have assumed that they were alike, or practically alike. If you wish to show it, put it in evidence.

Mr. Whipple—No; I am asking you; you are a volunteer witness.

Mr. Bates—Our information is that they were not alike, or practically alike, except as against your clients. If you wish to prove it, you can put them in.

Mr. Whipple—You had better be getting your directors ready for an examination on them.

Mr. Thompson—I think that it is

only appropriate that a similar question should be put to us as to how many condemned the conduct of Mr. Dittmore; and if such a question were put I should like to make a statement on that subject.

Mr. Whipple—There would be a difference in the tone of those telegrams if they knew the facts, as they will know them when this case is through.

Mr. Bates—I shall not object to your putting them in.

Mr. Strawn—We have them here, plenty of them.

Mr. Bates—I know you have.

The Master—I hope that you will not put them in in view of the fact that they are all subsequent to the bringing of the Bill in Equity.

Mr. Whipple—Yes, Your Honor. This is after the litigation was begun.

Mr. Streeter—Doesn't Your Honor think that these colloquies between Governor Bates and Mr. Whipple are interesting, even if they are not judicious?

Mr. Bates—Well, I regret them; but Mr. Whipple, if he does not see a point, always feels it, and it starts him up.

Q. Now, Mr. Watts, Mr. Rowlands was not able to tell us how many employees in the Publishing Society had a salary of \$6000 or over. A. I can tell you, sir.

Q. Can you tell me? A. You say \$6000 or over. Mr. Watts, Mr. Dixon, Mr. McKenzie, Mrs. Hoag, and the three trustees.

Q. That is all? That is, the editors, the business manager and the trustees? A. That is all I see.

Q. I understand you to say that at this meeting that you had with the directors, Mr. Dittmore was the one who used the words "empty shell"?

Mr. Thompson—Pardon me. I did not understand him to have said that definitely, but I understood him to say that he thought so. Is that the fact?

Mr. Bates—Well, I want to find out. Q. Is it a fact? Did Mr. Dittmore make that statement? A. Mr. Dittmore made that statement.

Q. Did he use those words? A. Yes, sir.

Q. You found in your conferences with both boards that they were serious, and honestly desirous of coming to an adjustment, an honorable adjustment of all their difficulties, didn't you?

The Witness—Let me hear that question again.

[The question is read to the witness.]

A. Yes.

Q. It was recognized as a very serious question in its effect upon the movement? A. Yes. May I just add to those salaries that Mr. Seeley, in the editorial department, also receives a salary of \$6000?

Mr. Whipple—Doesn't Mr. Lesan of New York also?

The Witness—Not now. Yes, he does also; Mr. Lesan of New York does now, too. I thought that that had been changed.

Q. And who is Mr. Lesan? A. Our advertising counselor.

Q. In New York City? A. Yes, sir.

Q. As a matter of fact, after these rumors which came to you in Mr. Harvey's letter, you did send some one to New York City to represent The Monitor, did you not? A. No.

Q. A circulation man? Didn't you appoint one in New York to represent The Monitor? A. No.

Mr. Bates—Have you the records of June 8, 1914, of the trustees?

[Mr. Withington passes a book of records to Mr. Bates, who proceeds to examine the same.]

Have you the records for July 23, 1917?

Mr. Withington—It is there.

Mr. Bates—I read from the record of the meeting of the Board of Trustees of July 23, 1917:

"At 2:10 the Board of Directors asked Mr. McKenzie to go over to their meeting, and at 2:45 Mr. Eustace was also asked to go over. The announcement was then made that the Board of Directors had invited Mr. McKenzie to become editor of the Journal, Sentinel, and Herald. Mr. Eustace was asked whether this would be agreeable to the Board of Trustees, and the action of the Board of Directors was heartily approved."

Now I read from the record of the meeting of the Board of Trustees of July 25, 1917—

Mr. Whipple—Just a moment. I pray Your Honor's judgment. What has this to do with the cross-examination of Mr. Watts?

Mr. Bates—Well, I assume that we can put in your records at this time if we wish to.

Mr. Whipple—Why, I do not understand so, unless they are a basis of some question. Mr. Watts does not keep the records or know anything about them. Why not finish the cross-examination? Those records you can put in at any time.

Mr. Bates—We will not stop to do it now if you object, because we would rather go on than take the time by listening to your objections.

Mr. Whipple—I think that it is not very good procedure. Then, you know, we are trying to hurry up for Mr. Doorly, don't you know!

Mr. Bates—In view of what has been said I think I will take your record on page 74 and read a portion of that.

Mr. Whipple—Well, poor Mr. Doorly will miss his boat while you are reading trustees' records, which you could read two weeks from now, if you want to.

Mr. Bates—This is from the record of the meeting of the Board of Trustees of July 25, 1917, on page 74:

"The Board of Trustees was informed that Mr. John R. Watts, at present general assistant to the business manager, being acceptable to the Board of Directors and to the Board of Trustees, had been elected business manager of The Christian Science Publishing Society on the resignation of Mr. David B. Ogden."

Q. Have you your account books here, Mr. Watts? A. Yes, sir.

Q. Or the account books of the society for the last three years? A. I don't know about that. Yes.

Q. Have you had them audited? A. Yes, sir.

Q. How often do you have them audited? A. Once a year.

Q. And whom is that done by? A. Harvey, Chase & Company.

Q. The public accountants? A. Yes, sir.

Q. And do they make an annual report to you? A. Yes, sir.

Q. Have you their reports here for the last three years? A. Yes, sir.

Q. Will you let me take them, please?

[Certain documents are passed by the witness to Mr. Bates.]

Mr. Whipple—Now, let us put on the record what you have, won't you, Governor Bates? Just enumerate them, please.

Mr. Bates—I have what purports on its face to be a document from Harvey S. Chase & Co., entitled, Christian Science Publishing Society, March 31, 1917. June 15, 1917.

Also a document from Harvey S. Chase & Co., entitled, Christian Science Publishing Society, Report Upon Balance Sheets. Audit as of March 31, 1918.

Also, from Harvey S. Chase & Co., a report entitled, Report Upon an Examination of the Books and Accounts of The Christian Science Publishing Society for the fiscal year ended March 31, 1919. June 26, 1919.

Will Your Honor pardon me just a moment so that I may look at these?

The Master—If Governor Bates has never seen them before, it would seem that it would be necessary to take a good deal of time to examine them. Can't you arrange so that that might be done—

Mr. Whipple—I understand that copies have been sent to the directors, have they not?

Mr. Rowlands—No.

Q. Have copies of these reports been sent to the directors? A. I don't think that copies of the auditors' reports have.

Mr. Whipple—Have your own reports been sent?

The Witness—The sheets have been.

Mr. Whipple—The sheets from which they have been made up?

The Witness—Yes, sir.

Mr. Whipple—But they have always been accessible to the directors and their counsel, just as all the papers have that we have, and as all the records that we have are, and have been.

Mr. Bates—I offer these documents as exhibits.

Mr. Whipple—We shall be very glad to have them marked.

The Witness—Wait a minute.

Mr. Whipple—Oh, have you copies of them?

The Witness—I do not feel that we ought to part with those as exhibits.

Mr. Whipple—I think that you must do it if you haven't copies of them.

Let them be marked and then restored to our possession, because we may need them.

[The documents described by Mr. Bates are marked respectively, Exhibit 91, R. H. J., Exhibit 92, R. H. J., and Exhibit 93, R. H. J.]

Q. What were the net profits of the Publishing Society for the year ending March 31, 1919? A. March 31, 1919, \$513,999.69.

Q. And how much of those net profits have been paid to The Mother Church? A. \$387,103.11.

Q. And how much is still to come to them on account of that year? A. \$131,896.

Q. And those are profits that had accrued up to the first of April, that have not yet been turned over to The Mother Church? A. Yes, sir.

Q. Has it not been customary to turn those profits over more promptly? A. Possibly so. I hadn't known it if it had been.

Q. Do you know of any reason why they have not been turned over? A. Yes.

Mr. Whipple—If Your Honor please, this is all after the bill was filed, and in this connection I want to give notice.

Mr. Bates—The net profits in this society for the year that ended on March 31, and it was all, therefore, before one of the bills was filed, and it was all before Mr. Whipple's bill was filed, with the exception of 5 or 6 days.

Mr. Whipple—The payments regarding which you are inquiring have all been since. You must know, if you have any familiarity with it, that it is a perfectly legitimate thing. But I want to make this suggestion: I have been asked to agree that this witness may be suspended, if there is only a little to do, for Monday morning, to accommodate your London gentleman and the president of your church. I want now to give notice that I shall withdraw that assent if the time is wasted in an examination which has nothing to do with Mr. Watts, and which is on the books on bookkeeping matters, which can be put in at any time.

Mr. Bates—We understand that your assent is withdrawn.

Mr. Whipple—It is. I withdraw it.

Mr. Bates—It comes too late to be of any service to us. The gentleman has already arranged to stay here until Monday morning.

Mr. Whipple—Well, the arrangement that I had made was to suspend on Monday, and I shall not do that. I shall insist, if I am within my rights, that you finish with this witness: if you want to put these bookkeeping questions, you have got to put them before Mr. Doorly goes on.

Mr. Bates—I do not understand my brother's position, but it looks as though, if I am going to examine him in regard to the business of the Publishing Society, then he is going to make Mr. Doorly miss his boat and

stay in America a longer time. That is his position, why—

Mr. Whipple—That is not my position. You have stated it as uncorrectly and unfairly as you have made several statements. I thought before that it was because you did not understand what was said to you, and I hope to continue to think so.

Mr. Bates—My attention is called by associate counsel to what is confirmed by my recollection—that when I started to ask Mr. Eustace these questions when he was on the stand, that my brother objected on the ground that Mr. Watts was more familiar with them, and that he was going to put him on, and therefore we waived asking Mr. Eustace the questions.

Mr. Whipple—You have all the papers, you have all the accounts, you might put these questions and argue about them at any time, but you are simply wasting time here on bookkeeping questions and asking me to suspend our case to accommodate Mr. Doorly. That is not the way to conduct a cross-examination, putting in a lot of things that have nothing to do with this witness. You have all our books and papers and they are accessible at any time.

Mr. Bates—This man is business manager and I wish to ask him a few questions about these books and the way they have been kept.

Mr. Whipple—Well, go ahead and ask them.

Mr. Bates—Well, that is what I am trying to do.

Mr. Whipple—No, you were not; you were pausing and taking more time to look over accounts, bookkeeping accounts, than was necessary, and His Honor noticed it and called your attention to it.

Mr. Streeter—I thought he was pausing to have a quarrel with you.

Mr. Whipple—Oh, I don't think he could have been, because I don't see why he should want to have one.

The Master—If you desire to ask him questions in regard to the way those books are kept wouldn't it be possible to get at it a little more directly?

Q. You have stated, Mr. Watts, that the profits, the net profits of the business, in 1916, were \$258,900? A. Yes, if that is what I stated.

Q. And you have stated that the net profits for the 15 months ending March 30, 1917, were \$513,869? A. Yes, sir.

Q. Have you any explanation, apart from your efficiency as business manager, of the rapid increase in the net profits during that time? A. I don't pretend in any way that my own efficiency had anything to do with it.

Q. Well, will you answer my question, then? What did have anything to do with it? A. I think the natural growth of the business, the increase in the subscriptions and the increase in our advertising rates, together with the general efficiency of the whole

publishing house, is what accounts for that.

Q. Was it not during that time that you took over the publication of Mrs. Eddy's works under the contract with the Trustees under the Will? A. We took them over in November, 1917.

Q. So that from November, 1917, to March 30, a period of five months, you were receiving, in addition to the profits from the regular publications of the business, the profits from the publication of Mrs. Eddy's works, which you had not previously received? A. Yes, sir.

Q. And that was a considerable and large amount, was it not? A. Well, I shouldn't call it a large amount; it was considerable.

Q. Well, can you tell us how much it was? A. Yes, I think I can.

Mr. Streeter—Is that for the five months, Governor Bates—the first five months?

Mr. Bates—The first five months.

Mr. Streeter—From November, 1917, to March, 1918. A. The commissions for November, December, January, February, and March, of 1917 and 1918, were as follows: November, \$8413; December, \$11,488; January, \$6995; February, \$5521; March, \$7026.

Q. About \$40,000 in the aggregate?

Mr. Whipple—But those are not profits, those were merely commissions.

Q. Were you giving me the profits from that business? A. They were the commissions.

Q. Well, they are profits, are they not? A. No, they are not profits. \$36,000 or \$37,000.

Q. What were the profits from that business? A. I don't know, sir.

Q. Doesn't your bookkeeping show? A. It is an estimate of profits. I don't know, sir.

Q. Aren't your books kept in such a way that you can show the profits from the publication of Mrs. Eddy's works? A. Yes.

Q. Well, what were the profits, then, during that period? A. As nearly as the thing can be stated, part of our computation being estimates, the net profits for those months were: November, \$4900; December, \$7500; January, \$1500; February, \$1900; March, \$3300.

Mr. Whipple—A total of what?

The Witness—A total of, I assume, about \$18,000.

Mr. Whipple—Out of more than half a million profits.

Q. You say those are estimates? A. \$19,355, for the period of time.

Q. Mr. Watts, I understand those are estimates? A. No; they are as nearly as we can arrive at it, excepting that we have got to charge to some extent—

Q. Are they estimates that appear on your books?

Mr. Whipple—Just a minute. Let him finish his answer.

Mr. Bates—I want to shorten this.

Q. Are they the estimates as they appear on your books? A. Yes, sir.

Q. During that same period, 1917, the period when there was such a large increase, you did increase the price of The Monitor, did you not—the subscription price? A. July 1, 1917, was the increase in subscription.

Q. And it was increased from \$5 to \$9 a subscription? A. Yes, sir.

Q. And you also increased the price of the Journal, did you not? A. Yes, sir.

Q. And how much was that increased? A. To \$3. It was \$2.

Q. And you also increased the price of the Quarterly? A. Yes, sir.

Q. And how much was that increased? A. From 50 cents to \$1.

Q. And how many copies of that are circulated? A. About 450,000.

Q. So that your income from that alone would be about \$450,000? A. Gross income. Not quite that. There is a discount of 10 per cent and so on.

Q. And if you increased the price of 450,000 copies from 50 cents to \$1 that would account for \$225,000 increase, would it not? A. Yes, sir.

Mr. Whipple—Increase of what?

Mr. Bates—In his receipts.

Mr. Whipple—I thought you were talking about profits. You seem to forget there was any increase of cost.

Mr. Bates—I am helping you to find out how these profits were increased so much.

Mr. Whipple—Well, you are bigger on eloquence than you are on finance, it seems to me.

Mr. Bates—It seems to trouble you.

Mr. Whipple—Not in the slightest; it amuses me.

Mr. Bates—Then try and be calm.

Mr. Whipple—It amuses me.

Mr. Streeter—It amuses everybody.

Q. Now, Mr. Watts, you not only increased the prices of these magazines, but you also increased the price of the Sentinel, didn't you? A. Yes, sir.

Q. How much was that increased? A. A dollar a year.

Q. From what? A. Two dollars to \$3.

Q. From \$2 to \$3 a year. And you also at the same time increased the advertising rates, didn't you? A. Yes, sir.

Q. A percentage? A. Yes, sir.

Q. How much? A. I don't know the percentage, but the increase was on display from 30 to 50 cents, and on classified from 20 to 30 cents.

Q. Well, it was an increase of 33 to 50 per cent? A. Pretty nearly.

Q. And you admit, I assume, that all those increases had something to do with the increased profits in that year? A. Why, certainly, they would enter in; but, Governor, I would like to explain one question; that is, that none of those increases went into effect instantly. We had subscriptions on our books running for a year, and the new rates didn't go into effect until the old subscriptions—

Q. They all began to operate as soon as the subscriptions ran out?

A. Yes, sir. The same thing on advertising. We had many, many contracts. There was hardly a dollar of immediate income, because all of our advertising contracts ran up to the period of its terminating, before the increase went into effect.

Q. Now, when you are figuring up the profits which you are turning over to the Church, you do not make any allowance on account of receiving the rent of the Publishing Society building free, do you? A. No, sir.

Q. And you don't pay anything as rent for those buildings? A. Not for the immediate publishing house.

Q. You not only increased the rates for the advertising, but you increased the rates for putting the cards in the Journal? A. Yes.

Q. And how many cards are there published in the Journal, roughly speaking? A. Well, I have known—I should say about 8000.

Q. 8000. And how much did you increase those rates? A. I believe I have forgotten. Just this moment I don't remember just what that increase was, Governor.

Q. Can't your assistant give you that information? A. No. I will be glad to ascertain and advise you.

Q. But they were substantial increases? A. Yes.

Q. What had they been previously, do you remember? A. They were increased on simply the churches and societies, as I remember it, but not on the practitioners; and the practitioner is, of course, 6800 as against 1800.

Q. Is it not a fact that you doubled the rates on those cards? A. On the churches I think we did, sir. From \$3 to \$5, that was the increase.

Q. And, in addition to all of these reasons for the increase, it is the fact that the Christian Science movement is constantly progressing and enlarging and the number of Scientists is increasing throughout the world? A. Indeed it is.

Mr. Whipple—As a result of the periodicals.

Q. Now, will you explain, Mr. Watts, about that borrowing of \$200,000? A. Yes, sir.

Q. Will you tell us how that occurred? When was it? A. Part of it is hearsay. In my recollection, it was in November, but I will give you the information in just a moment.

Q. November of last year? A. Yes, sir.

Q. And the amount was \$200,000? A. Yes, sir.

Q. And how long did you keep it? A. At just this moment I do not know, but I think it was until some time in January; but we paid back \$50,000 within a few days, and in a few days longer another \$50,000, and in a little while longer another \$50,000, and in January, I think it was, another \$50,000.

Q. Whom did you borrow the \$200,000 of? A. The First National Bank.

Q. And for what purpose did you

borrow it? A. To pay the Church the balance of the payment that was due to it.

Q. Then of the \$337,000, if that figure is right, that you paid the Church out of the net profits of the last fiscal year of the society, \$200,000 of it you had to borrow in order to make the payment? A. We borrowed \$200,000.

Q. Where do you keep your bank accounts, of the Publishing Society? A. The First National Bank, the Dorchester Trust Company, the State Street Trust Company, principally. We have a small account with Mr. Fernald's bank up in New Hampshire.

Q. Do I understand you to say you have an account with the Dorchester Trust Company? A. Yes, sir.

Q. And that is located out in Dorchester? A. Yes, sir.

Q. Did you attempt to borrow this \$200,000 of the Shawmut National Bank? A. Yes.

Q. And were you keeping an account there at the time? A. Yes, sir.

Q. And did the bank refuse to loan you the money? A. Yes.

Q. And on the ground that it was in violation of your Trust Deed to borrow money? A. No, sir.

Q. Did they not state to you that you had no legal right to borrow money under that Trust Deed? A. No, sir; they said that they were not satisfied that we did have that right, but not that we didn't have the right.

Q. And you took your account away and went to the First National? A. No, sir. We borrowed the money from the First National. They gave it to us instantly, upon submitting our Deed of Trust to counsel, and then, of course, we went to the First National.

Q. And you took your account away from the Shawmut? A. Yes, sir.

Q. Whom did you talk with at the First National? A. Mr. Wing, the president.

Q. And did you do the talking personally? A. I think I called on Mr. Wing and asked him if I could arrange for an interview for the trustees, and he made the arrangement.

Q. Did you submit to him your document also? A. Yes, sir.

Q. The Trust Deed. And you had submitted it to the Shawmut Bank also? A. Yes, sir.

Q. And did Mr. Wing give you an immediate answer? A. Yes, sir.

Q. Did he tell you, in substance, that he questioned your right, but you were good fellows and he guessed he would let you have it? A. No, sir; he did not. He said—

Q. What did he say? A. May I state what he did say?

Q. Yes. A. He said, "On a showing like that, with such assets as you have got there, millions against practically little or no liability, I assure you in advance you can have the money, but I will submit it to counsel and ascertain from our counsel whether we are correct in making you that statement."

Q. Whom did you talk with at the Shawmut Bank? A. I don't know his name, sir.

Q. You don't know his name? A. Not at this moment, sir.

Q. Was it the president of the bank? A. You said Shawmut, didn't you, Governor?

Q. Yes. A. Did you ask me his name?

Q. Yes. I asked the name of the officer whom you talked with at the Shawmut National Bank. A. At this moment it has passed from my memory.

Q. Do you know what office he held? A. Why, I thought he was a cashier.

Q. Was it Mr. Murdock? A. I think not.

Q. Was it Mr. Gaston? A. No.

Q. Was it Mr. Adams? A. Yes—the credit man, as I understand it, of the bank.

Q. Do you know how much interest you paid on account of that loan before it was finally adjusted? A. I think approximately \$2600.

Q. And in what safety deposit box did you deposit the currency that you drew out of the bank? A. Massachusetts Trust Company.

Q. You deposited there \$60,000 at one time, of currency? A. Yes, sir.

Q. And \$30,000 at another? A. Yes, sir.

Q. I understood you to state that you requested your chief accountant to withdraw the cash from the banks and to make the deposits in the safety deposit vaults? A. They send their automobiles to our office every day—the banks do.

Q. Who does? A. The First National Bank. And we just ask them to leave that money. They often leave us like sums to take care of our pay rolls, and so forth.

Q. Did you yourself deposit the money in the safety box? A. No, sir.

Q. Who did that? A. Miss Mary Bartlett, the chief accountant.

Q. Do you know how she got the money? A. The bank brought it to her. That is all I know, sir.

Q. You never saw it? A. Yes, I saw it.

Q. Well, you didn't deposit it in the box? A. No, sir.

Mr. Bates—I wish to direct Your Honor's attention at this point to Section 4 of the Trust Deed, which says: "Said trustees shall keep accurate books of account of all the business done by them, and shall deposit in a responsible and reliable bank or trust company all bonds, mortgages, deeds, and other documents or writings obligatory of every kind and nature for safe keeping; also all surplus funds over and above the sum necessary to defray the running expenses of the business, until the same shall be paid over to the church treasurer, as herein provided. No papers or monies shall be taken from said bank or trust company excepting by and in the presence of a majority of said trustees."

Also to a further provision in the same paragraph:

"No authority is intended to be conferred upon the trustees to expend the money of the trust for property not necessary for the immediate successful prosecution of the business, or to invest the same for purpose of speculation, or to incur liabilities beyond their ability to liquidate promptly from the current income of the business."

The Witness—Might I explain to the Governor why we borrowed?

Mr. Whipple—No. I shall examine you in a moment. And besides, I don't think there is anything to explain. It is perfectly obvious to anybody. Mr. Bates is now reading our bill.

Mr. Bates—Mr. Watts, your counsel prefers that you should not and it is immaterial to me.

The Witness—Thank you.

Mr. Bates—I haven't had the opportunity, Your Honor, to examine this statement to see how it compares with the statement that was furnished the directors. I notice some things which appear to me to be discrepancies or certainly differences, but I won't ask for an explanation of them until I have had more time to examine them. I do wish, however, to read into the record from Exhibit 93, which is the report of Harvey S. Chase & Co., certified public accountants, 84 State Street, Boston, to The Christian Science Publishing Society for the fiscal year ending March 1, 1919, of their examination of the books and accounts of the society.

Mr. Whipple—That I object to, if Your Honor please. There is no reason why exhibits should be read into the record, as far as I can see.

The Master—Why is it necessary? If the exhibit is here why is it necessary to put that into the record?

Mr. Bates—Well, then, I wish to direct Your Honor's attention to it, and I will submit that it ought to go into the record when Your Honor has heard it.

The Master—That title page doesn't need to go into the record.

Mr. Bates—That is for the purposes of identification.

The Master—You can identify it by the exhibit number, can't you?

Mr. Bates—Well, I will strike out the title page, if Your Honor thinks—

The Master—Oh, well, go on.

Mr. Streeter—Your Honor, is there any objection to this short letter going in? It would be a great deal more convenient for us if it were in the record where we could see it.

The Master—I don't know what it is.

Mr. Whipple—It doesn't have to be read in order to get into the record. If you all want to go to the expense of having it typewritten in the record we have no objection.

The Master—Why take time to read it?

Mr. Bates—I think, Your Honor, it is very important. It is as important as any evidence that has as yet been introduced into the case.



The Master—It is there.

Mr. Streeter — Your Honor, we would like very much to hear it now.

Mr. Bates—I am not going to read it all, Your Honor—just sections of it.

The Master—Go on—read it.

Mr. Whipple—No. If it is going to be read it should all be read. What in the world is the use here, when you have got a man who wants to sail for Europe and you have got an exhibit here, to read that in?

Mr. Bates—Don't be disturbed about it.

Mr. Whipple—I am not disturbed about it. You are the man who was disturbed about your man wanting to go to Europe. Now we know how much danger there is about it.

The Master—Two of the counsel want it read. I think we will have to have it read. As far as I can see it might just as well stay where it is, an exhibit to be referred to hereafter in arguments, but if counsel desire, it may be read.

Mr. Bates—I read from the first page:

"Some years ago we installed for the trustees a system of costs and a system of double-entry accounts with suitable 'plant and furniture' depreciation, reserve accounts, etc. Regular and reasonable rates of depreciation have been allowed upon the books annually since that time and we have audited these accounts with care annually.

"This year, however, there has been a marked departure from the methods installed by us and in vogue heretofore, and it is evidently our duty as your auditors to point out what the result must necessarily be if these changed methods are continued.

"While depreciation allowances have been charged to 'expense,' your bookkeepers, under the trustees' instructions, have also charged off to 'expense' this year all expenditures for additions to plant and furniture accounts. This means that 'expense' has borne a double charge this year and the statement of profits reduced accordingly, and likewise the total of plant assets.

"As certified public accountants, we cannot agree that such accounting is correct, and, therefore, our balance-sheet differs considerably from the balance-sheet taken directly from the society's books as they now stand.

"We advise strongly that proper journal entries be made now in the books so that the present balances may be corrected and the books brought into agreement with the exhibits submitted herewith.

"We have also prepared a revised income-and-outgo statement in which the same corrections are made as upon the balance-sheet, though of course upon the reverse side of the accounts. The changes which we have introduced are explained in the 'Comments' following exhibits."

"These items"—I will read the items just above. "This increase"—of \$121,-

045.93 — "consists of the following items."

Mr. Whipple—Increase in what?

Mr. Bates—Plant accounts.

"Additions to plant and furniture .....	\$109,898.67
Stencil system installation.	7,562.38
Construction, Norway Street building and garage ....	3,584.88
	<u>\$121,045.93</u>

"These items in the books had been charged off to 'expense,' and in addition to this total, \$50,000 more had been charged off to 'expense' in lieu of depreciation and \$47,324.18 had been charged off against inventories of 'stock and stores.' In this way a total \$218,370.11 had been charged off for depreciation and correspondingly reduced profits.

"While it is true that some proper charge should be allowed annually for depreciation at regularly established percentages depending upon the estimated life of each class of assets, the total arbitrarily charged as above is a wholly unreasonable one in our opinion, especially as \$193,106.31 had already been set aside as a reserve for depreciation during prior years, leaving only \$171,102.64 to represent the book value of all the plant and furniture at the beginning of the year. A charge of \$50,000 against this in the first six months is wholly disproportionate and unreasonable in our opinion. A similar charge of \$50,000 for the second six months was ignored by the bookkeepers, although we saw written instructions from your board that such a charge be made. A total charge of \$100,000 per annum as depreciation on plant assets of \$171,102.64 is preposterous from an accountant's viewpoint.

"It is true, of course, that your board has had the advantage for many years of using the cash 'subscriptions outstanding,' and 'card contracts outstanding'—amounting this year to about \$670,000—as 'working capital' to carry on the business; otherwise it would have been impossible for you to have financed your transactions without resort to loans at the bank, or to special capital furnished by The First Church or to the Trustees under the Will, or otherwise. Indeed, this year we find for the first time that a loan of \$200,000 was negotiated at the First National Bank, Boston, on which interest of \$2,623.61 was charged and paid.

"19. Reserves: These items explain themselves, except that we should mention that on the books there is a reserve against inventories of stock and stores amounting to \$47,324.18, which we have not allowed in our statements for the reason that if such an allowance be made at the end of the year a similar allowance should likewise be made at the beginning of the year, and as the inventories at both periods were about the same figures, there would be no effective re-

sult. To set up a reserve on the books of \$47,324.18 at the end of the year only, would reduce the book profits by that amount with nothing to offset it and be, once more 'preposterous' from a correct accounting standpoint.

"Your trustees should bear in mind that all of these matters of reserves, and of depreciation, of 'invested capital,' etc., have been recently thoroughly threshed over by the United States Government in connection with the income and war profits tax returns, and that Treasury rulings have been promulgated concerning what is true and what is false accounting in relation thereto. It would, therefore, be not only bad judgment but might be highly dangerous, particularly in the present state of affairs, for your trustees to depart arbitrarily from accepted canons of good accounting as has been, perhaps thoughtlessly, done during the past year in your books.

"If you desire, we shall be pleased to prepare proper journal entries whereby these incorrect balances may be made correct."

I find under the statement the following items for this year—that is, ending March the 31st:

"Loss, exclusive of 'Camp Welfare' sales, \$209,954.98"—in red ink. Adding Camp Welfare sales makes a net gain for The Monitor of \$19,807.19.

Q. Did the Publishing Society, the trustees, or the manager, consult with the directors in regard to these changes in accounting, that are referred to in this report? A. No.

Mr. Whipple—There are no changes of accounting.

Mr. Bates—The report says there are. That is all.

[Redirect Examination.]

Q. (By Mr. Whipple.) Mr. Watts, do you as a business man or an accountant agree with these criticisms? A. Not in any way.

Q. That is, here is a certified accountant who criticizes the amount you have put on for depreciation—the amount that you have taken off, at least, for depreciation? A. Yes.

Q. Now, he calls attention to the rulings of the Treasury Department in that connection, as to what is proper depreciation. You are not subject to those at all, I understand? A. No, sir.

Q. That is, you pay no income tax? A. No, sir.

Q. Being the kind of organization that you are? A. Yes, sir.

Q. And the question involved between this accountant and your own accounting system is merely how much shall be charged for depreciation? A. Another question that the chief accountant called my attention to,—he has deducted the entire \$472,000, as I understand it, from the gross income on The Monitor and failed to take from the outgo the expenses of the production of the Camp Welfare. I would like to explain that. May I?

Mr. Whipple—I wish you would, yes. Go ahead and do it.

The Witness—The difficulty with the accountant there and our viewpoint is to me quite clear. He is dealing as an accountant with businesses generally and fixed rules. He overlooks entirely the fact that The Christian Science Publishing Society runs without capital, and that every dollar of our profits is to be accounted for to The Mother Church, which, if it happened on a day set, would leave the Publishing Society without a dollar in its treasury, saving and excepting the money that has been paid to us for unearned subscriptions. Now, running a business of this nature, some two years ago it was found absolutely necessary, because of the confusion with church accounts, to extend credit to the churches, so that they could buy ad libitum during the month, and at the end of the month we would send them a statement for the amount they were owing us on that day. These churches receive these statements and they have to go through the routine of being submitted to their Boards of Directors or Trustees, and finally approved, and the money sent back to us. It means a delay on the average of from 60 to 90 days. It is absolutely good business and the best accounts in the world, but they are from 60 to 90 days in coming to us. Therefore until that money comes to us of course we find ourselves with a great amount of accounts receivable and, with the ordinary course of business, of accounts payable, we must keep some cash on hand. Therefore, when, for instance, the day we sent them the \$100,000—or today, for instance, we have got from \$150,000 to \$175,000 in bank—we have got approximately \$320,000 in accounts owing to us. That is made up of such accounts as \$11,000 from The Mother Church, \$3500 from the Trustees under the Will, \$171,000 from the banks, etc. The moneys owing to us are temporarily tied up until The Mother Church and Trustees under the Will and these branch churches send it in to us. In the interim, although we had in our hands possibly, as we have today, from \$150,000 to \$175,000, we did not remit. We owe them today \$131,000. And we have got \$150,000 to \$175,000 in bank. But we carry that money to keep up our current expenses, and as the trustee deed requires, and as the money comes in from the branch churches and The Mother Church and the Camp Welfare, etc., we accumulate it and pay it over to The Mother Church. We have done that for two years, and it is perfectly good banking, but it leaves us in that state where we have those unearned subscriptions, as appears here, \$620,000. We have that money, but we couldn't buy plant. At one time when The Mother Church needed money we treated our plant as an asset and credited it against the liability on the unearned subscription. We found that was not proper business, because we have no right to treat a dead asset like a plant and hold that against the unearned subscription.

Q. That is, in banking, it is only your net assets that are of any consequence? A. Well, it is our quick assets.

Q. I mean your quick assets. A. Yes, our quick assets, that are of any consequence. So that this year, instead of doing as we might ordinarily have done, charging off \$50,000 to plant account, we simply made it a rule that we would not carry plant any longer, because of its being a dead asset. Those things that are in there, like repairs, garage, fixing up a lunch room, things of that sort—instead of treating them as an asset against the unearned subscription, we charged them off, because those things were all absolutely necessary under the Deed of Trust to conduct the business.

Q. And you regard it as perfectly good bookkeeping? A. Absolutely good bookkeeping.

Q. But the dispute is only about a question of bookkeeping? A. Yes, sir.

Q. And not about the real soundness of the situation? A. The dollars and cents are exactly the same as I have furnished them here in these auditors' reports.

Q. If you didn't charge off as much as you have charged off, your profits would show more? A. Yes, sir.

Q. And it is a question merely of estimating the depreciation on the plant? A. Yes, sir.

Q. And a reorganization of your system of charging off? A. Yes.

Q. Now, you spoke of borrowing \$200,000 and keeping it for a season. How much was due to you from the branch churches and The Mother Church, perhaps, at that time when you borrowed \$200,000? A. Oh, I should say approximately from \$300,000 to \$350,000.

Q. That is, you had due to the Publishing Society from the branch churches, who took 60 to 90 days to pay their bills, some \$300,000? A. Yes, sir.

Q. Was there any question but what it would be paid? A. None whatsoever.

Q. And then instead of keeping The Mother Church waiting for the profits which were really in the hands of the treasurers of the branch churches, you went to the bank and borrowed money enough to pay them, did you? A. Yes, sir.

Q. Against the \$300,000 that the branch churches owed you? A. Yes, sir.

Q. That you understand is the thing that the directors are criticizing because you have borrowed the money and paid them the profits before you otherwise could have done? A. Yes, sir.

Q. Is that it? A. Yes, sir. I have overstated to some extent that amount. I said three hundred to three hundred and fifty thousand dollars. There was owing at that time from the branch churches \$162,000; from The Mother Church, \$27,000; from the

Trustees under the Will of Mrs. Eddy, \$18,000.

Q. How much from The Mother Church? A. \$27,000.

Q. \$27,000 that they owed you that they hadn't paid? A. \$200,000 instead of \$300,000.

Q. Then you borrowed about the amount that was outstanding with these churches? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. I understand that when you talked with Mr. Wing, he said that with the showing of assets that you had, he would not hesitate to advance the money at all. A. Yes, sir.

Q. Now, if you hadn't borrowed that money, would it have meant anything more than that The Mother Church would have been postponed in getting their \$200,000? A. Possibly 60 days.

Q. Possibly 30 to 60 days, while The Mother Church was paying her bill to you—she would have to pay—some \$27,000, or something like that, was it? A. Yes, sir.

Q. And until the others, the branch churches had paid their bills? A. Yes, sir.

Q. Something has been said about this money that you took out so that it wouldn't be tied up in this litigation. Was that anything more than in your judgment was needed for the running expenses? A. Well, of course it was for the immediate running expenses then, but it would all have been needed for the period—as I figure it—the period of 30 days, while the injunction was being determined one way or the other.

Q. That is, for the running expenses during the period when your finances might be interrupted by the litigation? A. Yes, sir.

Q. Why did you increase the prices on the periodicals and the newspaper? Have you heard of anybody else's increasing prices along during these times? A. I think that all the publishers have done the same thing, as a rule.

Q. Publishers, grocery men and others, as well as laborers? A. I don't know of anything that has not increased, hardly.

Q. Then you keep up with the fashion? A. No, it was not that basis. The cost of white paper—could I give you some of those figures?

Q. I don't care to go into that. A. The cost of white paper, labor and everything increased altogether in proportion to our increase on the subscriptions.

Q. Well, then, I will ask whether the increases were reasonable, in the exercise of your business judgment, as compared with the increased cost? A. Yes, sir.

Q. And were they in your judgment more than reasonable, in view of the increased cost of the commodities which you had to buy? A. No, sir.

Q. And were they made in the ordinary course of business? A. Yes, sir.

Q. I wonder if the directors knew

that you had increased these prices or was it a surprise when Governor Bates brought it out today? A. My recollection is that the figures were all gone over very carefully with the directors, and that at their conferences between the trustees and the directors they all agreed that something should be done to meet the conditions.

Q. That is, it was all discussed with the directors? A. I think it was.

Q. Now, if you hadn't increased your prices, would you have had any profits to pay over to The Mother Church at all? A. No, sir. They were increased because we saw that we would be publishing at a loss.

Q. Now, let me ask you whether out of this increase of prices these trustees themselves got any increase in salary? A. No, sir.

Q. Do they themselves have any personal interest in the increase? A. No, sir, none whatsoever.

Q. That is, if the increase of prices is unreasonable, and gives you more than a reasonable profit, who gets the benefit of it? A. The Mother Church.

Q. That is, these directors who are now criticizing you get the benefit of it? A. Yes, sir.

Mr. Bates—No, we have not criticized them at all.

Mr. Whipple—Oh, haven't you? I thought you were criticizing.

Mr. Bates—No; you don't understand.

Mr. Whipple—Oh, didn't you? We thought you did.

Mr. Bates—You understand altogether too well.

Mr. Whipple—Well, few do understand you, except that you are a very agreeable gentleman, but you don't make your questions altogether clear.

Mr. Bates—I think you understand all right.

Mr. Whipple—Well, sometimes I think I do understand you, and then again you mystify me.

Mr. Streeter—I should hate to have this meeting adjourned for a week, or to next Monday, without having two or three more passages between Governor Bates and Brother Whipple.

Mr. Bates—That is all, Mr. Watts. Cross-Examination by Mr. Thompson.

Q. (By Mr. Thompson.) Do you remember saying to somebody here that in November, 1918, Mr. Dittmore said to you that he hadn't a word of criticism to make? Haven't you got that at least a year too late, and wasn't it more likely to have been November, 1917, or even 1916? If you can't answer that right away, perhaps I can refresh your recollection so as to enable you to answer it. Do you recognize yourself as having made a mistake of at least a year in that date? A. I don't believe I remember the date clearly enough to state what year it was.

Q. All we are talking about now is this: You didn't mean to inform His

Honor that that was in the year 1918, and have that taken as a fact? A. I believe I shouldn't want it taken as a fact just at this moment until I am clear on it.

Q. Perhaps I can make it even clearer to you. Now, you heard the testimony of Mr. Eustace and Mr. Rowlands, didn't you, and especially the testimony of Mr. Eustace, as to the various subjects of controversy between Mr. Dittmore and the trustees, as known to him—you heard those 28 or more topics mentioned? A. Yes.

Q. And you heard him say that those questions were under discussion from the time when the controversy became more or less acute between the directors and the trustees? A. Yes.

Q. Now, that controversy became more or less acute, or rather it became very prominent, away back in 1917, didn't it? A. Yes, I think it did.

Q. Yes. So that it couldn't be true, could it, that after Mr. Dittmore had been raising at least 28 different topics of discussion with Mr. Eustace and Mr. Rowlands, several of which, as stated here, related to the Publishing Society affairs—you wouldn't want to say that while all that was going on between him and Mr. Eustace and Mr. Rowlands, he said to you that he hadn't the slightest criticism to make—there is evidently a mistake as to time, isn't there? A. I don't know. I don't follow you entirely, because I don't understand that in those 28 items that you mention there was any criticism.

Mr. Streeter—Why don't you talk louder? Can't you speak a little louder?

The Witness—I think that I am talking loud. Possibly there are some here that can't hear me. Excuse me.

Q. Then you have forgotten what they were. Let me refresh your mind. A. I shall be glad to have you do so.

Q. Well, one of the subjects which both your employers, if I may so call them, the trustees, stated was under discussion between Mr. Dittmore and themselves, related to doctrines, the publishing of certain doctrines in the periodicals, that he did not think correctly expounded— A. That is not a business matter.

Q. That is not business. Another one was that the expenses of The Monitor were too great. Do you recollect that? A. Oh, I didn't remember that.

Q. It comes back to you now, doesn't it? A. I never knew there was any criticism on the expenses of The Monitor. They have never been made to me.

Q. I know; but when you say—I don't think you quite get the question yet—you undertook to tell the Court definitely that in November, 1918, long after Mr. Eustace and Mr. Rowlands state and truly state that Mr. Dittmore was disputing with them about these matters, Mr. Dittmore told you that he hadn't any criticism to make.

Now my question is, doesn't that fact show you that you put that date a year too late, and that Mr. Dittmore told you that, not in November, 1918, but probably in November, 1917, or even earlier? That is all there is to it. A. That is probably correct. It may possibly have been 1917.

Mr. Thompson—Now, I think I would rather let the rest of this go until Monday morning. There are a few more questions, perhaps, and perhaps I shall not have anything more to ask, but I would rather like to look over my papers a little bit and see.

Mr. Whipple—I can use the two minutes remaining before 4 o'clock by putting in a little more evidence.

Mr. Thompson—You will have him back again?

Mr. Whipple—Yes. (To the witness) You may step aside. You will be in here Monday morning so that questions may be put to you if there are any to be put to you.

Now I would like to take two minutes in reading from the minutes of the meeting of the directors on Jan. 13, 1919 (the present year), page 226 of the records:

"At a regular meeting of The Christian Science Board of Directors held at 9:30 a. m. on above date (Jan. 13, 1919), in the directors' room of The Mother Church, there were present Messrs. Dittmore, Neal, Merritt, and Rathvon. . . .

"Letters were read from Director Adam H. Dickey, dated Savannah, Georgia, Jan. 10, urging the directors to request that all advertisements on inside covers of the Christian Science periodicals be submitted to the directors before printing; and dated Jan. 11, recommending that we proceed slowly in the situation now existing between the directors and the trustees of The Christian Science Publishing Society, and recommending that one trustee be dismissed rather than ask for the resignation of all of the trustees."

Will you be good enough to have that letter here in the morning, Monday morning, the letter of Jan. 11 from Director Adam H. Dickey, who was apparently away, on business, undoubtedly, in Savannah, Georgia?

There is one other record that I can read bearing upon the records. Where is that record where they consulted Mr. Smith as to what to put in the records?

Mr. Withington—Page 121.

Mr. Whipple—Then it is in another book; it cannot be in this one.

Mr. Withington—No; it goes this way.

Mr. Whipple—Oh, then it goes backwards. Will you find it?

Mr. Withington—There it is, on page 121.

Mr. Whipple—On page 121, at a meeting held on Tuesday, Oct. 1, 1918, this is the record:

"At a regular meeting of The Christian Science Board of Directors held at 9:30 a. m., on above date (Oct. 1,

1918) in the directors' room of The Mother Church, there were present Messrs. Dittmore, Dickey, Neal, Merritt, and Rathvon."

Then this record was made:

"The minutes of the directors' meeting of Sept. 11, relating to a conference with the trustees of The Christian Science Publishing Society on that date, were again taken up for consideration. To be referred to Judge Clifford P. Smith for an opinion as to what it would be best to include in the minutes and an opinion on the position of the trustees of The Christian Science Publishing Society as outlined in their letter of Sept. 30, Judge Smith to be furnished all information on the subject which will be helpful to him."

Mr. Thompson—Now, does that show—

Mr. Whipple—Now, if you will pardon me a minute.

Mr. Thompson—Excuse me.

Mr. Whipple—In connection with that record we will ask to have produced on Monday morning the real records of that meeting of Sept. 11, all the material and data which were given to Judge Smith for his opinion as to what it would be best to include in the record of that meeting.

Mr. Thompson—And also, will you be good enough to include in that call the several letters of protest written to the directors by Mr. Dittmore against this improper and misleading method of keeping the directors' records? You will find that they ought to have those protests included in the records themselves, but I don't believe that you will find them there. If they are there, they will be in the form of letters.

Mr. Bates—I object, Your Honor, to Mr. Thompson's statement characterizing this as an improper method. If Mr. Thompson does not know, everyone else knows, that all bodies have their records read at subsequent meetings, for the purpose of determining whether or not they are correct, and whether or not they shall stand without correction. If there are no objections, then they are approved. If there are corrections to be made, then they are made. And the question of how much is to be put in of a conference with the trustees is certainly nothing which authorizes you to say that it is an improper method, and I ask to have that stricken out.

Mr. Thompson—One moment. I will connect with that a call—

The Master—I understood that Mr. Thompson wanted certain letters of Mr. Dittmore, in which Mr. Dittmore expressed the view that that was an improper way of keeping the records.

Mr. Thompson—And also I will ask that now—

The Master—That, I think, is as far as his statement went.

Mr. Bates—He characterized the records themselves as being improper.

Mr. Thompson—No; pardon me.

Mr. Bates—And that is what I wish to have stricken out.

Mr. Thompson—I will ask my call now—

Mr. Bates—Just a minute.

Mr. Thompson—You will find that I never made any such statement; you will not be able to find it in the record.

Mr. Bates—Then that is satisfactory.

Mr. Thompson—I offer to show later that that statement is in the letter.

Now, I add to my call for Mr. Dittmore's letters, unless they are recorded in those records as they should be, a report made by Judge Smith himself to the effect that the methods by which these records had been kept was an improper method. You either have got it on your records or you have it in your independent papers. We have it in our diary here, and we have evidence of it.

Mr. Whipple—Now, if Your Honor please, in that connection, having read the record, and having listened to Governor Bates' suggestion as to what is well known as to the method of keeping these records, that they are read at the next meeting and approved, I want to call attention, in emphasizing the call, to the fact that the excerpt which I read is from the record of Oct. 1, 1918, which refers to the minutes of the directors' meeting of Sept. 11, which I take it preceded the other. That meeting was not the one immediately before, but it is the meeting which in the ordinary course we would expect would have already been recorded, and its minutes approved, because that appearing on page 97, it appears that on Sept. 12 there was another meeting of which we have a record, one on Sept. 16, and one on Sept. 17.

Mr. Bates—I would suggest, Your Honor, that there is no question which allows Mr. Whipple at this time to make an argument.

Mr. Whipple—One on—

Mr. Bates—I am objecting to your statement, Mr. Whipple.

Mr. Whipple—It must impress you!

Mr. Bates—I object to your statement. If there is anything in the records that you wish to read in, we are satisfied to have you do it, but we object to your statement.

The Master—Well, it comes to this, Mr. Whipple—you want him to produce the original minutes of that meeting of Sept. 11?

Mr. Whipple—More than that, if Your Honor please. I want, having refuted the possible suggestion of the learned counsel that this might be, possibly, merely a question of approval—I want to show the original minutes and all the memoranda which were given to Judge Smith from which to make his selection as to what he would put in the records.

Mr. Bates—I so understood you to state before.

Mr. Whipple—And also his "opinion as to what it would be best to include in the minutes," because that was a

written opinion, and if he gave a written opinion as to what should be included, it would doubtless involve also an opinion as to what should be rejected. That will help us to see how this record is made up.

Mr. Thompson—And the records of the intervening meetings, containing requests by Mr. Dittmore that the record of the meeting of Sept. 11 should be accurately entered, and a postponement of a compliance with that request until Judge Smith made his report.

The Master—Are we to hear anything further this afternoon?

Mr. Whipple—No, Your Honor. (To Mr. Watts) I understand that you will not be questioned further unless Mr. Thompson desires to ask you some questions Monday morning.

[Adjourned to 10 o'clock a. m., Monday, July 7, 1919.]

July 7, 1919

NINTH DAY

Supreme Judicial Court Room, Boston, Massachusetts, July 7, 1919.

The Master—Are you ready to go on?

Mr. Whipple—Yes.

The Master—Are you through with Mr. Watts?

Mr. Whipple—There is a single question that I want to put to Mr. Watts which I omitted, and I understand from counsel for Mr. Dittmore that they desire to use Mr. Watts' knowledge to identify certain signatures. However, I will put the question that I have in mind, if I may. That is all I find that I have omitted.

John R. Watts, Resumed

Re-Direct Examination, Continued

Q. (By Mr. Whipple.) Mr. Watts, what was the overturn last year in the business of The Christian Science Publishing Society, or, in other words, the amount of business that you did? A. The gross business was \$4,173,429.

Q. Was that the largest business that you have done in any single year? A. Yes, sir.

Q. What had it been in previous years? A. It had been something a little in excess of \$2,000,000 the previous year.

Q. The previous year? A. Yes, sir.

Q. And had it averaged about \$2,000,000 for some little time or had it been less? A. No, sir; it was less, it had been increasing constantly.

Mr. Whipple—Those are the only questions which I desire to put. (To Mr. Thompson) Do you now wish to identify the letters?

Mr. Thompson—Possibly we should like to, but perhaps in view of the fact that Mr. Doorly is going to leave it might be well to suspend the cross-examination of Mr. Watts for a little while, so as to allow Governor Bates a chance to put on Mr. Doorly and others to cross-examine him who desire to do so.

Mr. Bates—I understand, Your

Honor, that Mr. Doorly has canceled his sailing arrangements and is going to stay, so that he can be put on in regular order.

Mr. Whipple—Well, that is very gratifying. I have finished with Mr. Watts.

Mr. Thompson—There are a few minor questions that I desire to put to Mr. Watts; and then, if Your Honor please, you will find in paragraph 25 of our bill the allegation that there are a number of letters in our possession which the directors have been anxious to get, and we seek an injunction against their disturbing our possession of those letters. They are alleged to be letters of great importance, throwing light on the issues in *Eustace v. Dickey*.

Mr. Bates—Who made the allegations?

Mr. Thompson—We have made the allegation.

Mr. Bates—That is all right.

Mr. Thompson—And it has got to be proved; having been made, it must be proved. It happens that among those letters are a certain number the signatures of which Mr. Watts is familiar with and can identify. I should like during his cross-examination to introduce those letters through him, identifying them, not as evidence against the trustees, because I am well aware that they are not legally admissible against the trustees, being mere hearsay so far as they are concerned; but in the case of *Dittemore v. Dickey* it seems to us that that is the fairest thing to do, because if the directors sincerely desire to avail themselves of this evidence it gives them an ample opportunity to summon the writers of the letters. If they do not, that fact also will appear. If they do, it also gives the trustees a reasonable chance to see the nature of the evidence that is going to be introduced. So I think from every standpoint it is desirable that those letters should go in at this stage, but before introducing them I should like to put a few preliminary questions to Mr. Watts.

#### Re-Cross-Examination

Q. (By Mr. Thompson.) So far as you had any personal dealings with Mr. Dittemore during these years of controversy you found him personally courteous although firm in his views, did you not? A. Always.

Q. Now, speaking of the "empty shell" conversation, you remember that conversation that you testified about? A. Yes.

Q. When was that, by the way? A. Jan. 27.

Q. As I understood it, Mr. Dittemore, being present with the other directors, called your attention, or, rather, asked you what you supposed would be the result of the attitude taken by the trustees in regard to subscriptions to these various periodicals? Did he not put that question in substance? A. No.

Q. Didn't he suggest to you that

one result might be and very likely would be a falling off in support by the field? A. No; he said the movement would not support the trustees.

Q. Well, that is another way, isn't it, of saying the same thing; the movement not supporting the trustees would mean the way they would show their lack of support according to his views, among other ways, would be a failure to support the periodicals published by the trustees? Isn't that the natural significance of that statement? A. That would be natural to suppose, that that would be one of the ways of looking at it.

Q. One of the consequences. And you realized at the time that that was one of the ideas that he was intending to convey—that a result, one result, of this controversy would very likely be, and in fact in his opinion certainly would be, that the field would show its disapprobation, at least at the outset, of the trustees, by refusing to take the periodicals any more? Isn't that one of the ideas he conveyed to you? A. No, it was not.

Q. Well, Mr. Watts, isn't it very— A. The idea that I had from their conversation was that the Church would start publishing its own periodicals.

Q. I beg pardon? The Church would what? A. Would start publishing periodicals.

Q. Just a minute. Will you be kind enough to get your attention a little more clearly on the question I put. A. I beg your pardon.

Q. He was trying to convey to you the idea that in some way or other one result of that controversy would be that the field would withdraw, in whole or in part, its support from the trustees? Yes or no. A. Yes.

Q. And in that idea you understood him to include the notion that the field would carry out that determination by dropping off in their support of the periodicals? I would like that, if you can answer it— A. Yes.

Q. And you understood, did you not, that the result if the field should stop supporting the periodicals, stop subscribing for them—that such a result might metaphorically be described as reducing the trustees to an "empty shell," isn't that true? That is what would happen, wouldn't it? If the field stopped subscribing, the Publishing Society would be what might be metaphorically described as an "empty shell"? A. No; I don't believe that would naturally follow.

Q. Don't you think so? You think even if the field should refuse to subscribe any more to any of these periodicals the condition of the Publishing Society would not be such as would popularly be called an "empty shell"? A. Not in any sense. May I state why?

Q. No, pardon me just a moment. They would keep right on publishing whether they sold or not? A. Yes.

Q. Or whether they were read or not? A. I didn't catch that.

Q. Whether the field read the periodicals or not, still the trustees would keep publishing them? A. The present subscribers, if I may state—

Q. Well— A. All right.

Q. I am going to give you an ample opportunity after I get through. A. Oh, I beg pardon.

Q. My impression is the better way to get at a fact is to stick to the question and then afterward make the explanation. A. Will you read the question again?

Q. I will repeat it; it isn't worth while to read it. Strike it out, Mr. Stenographer. I am asking you to make a supposition. Suppose that Mr. Dittemore's prediction had turned out to be true—I don't know whether it has or not—but suppose it had; suppose that the subscriptions from the field to the periodicals had dropped off, we will say, 90 per cent, so that 90 per cent of the Christian Scientists who were formerly paying for those periodicals stopped paying and ordered them discontinued. Now, wouldn't that situation be fairly described as reducing the Publishing Society to an "empty shell"? Isn't that a fair description of it, if it occurred? A. Yes.

Q. That is all I want. A. I want to explain that answer, though.

Q. Very well. Now, then, you may explain it. A. Mrs. Eddy having established these periodicals for the purposes for which she established them, and established the Publishing Society for the purposes for which it was established, if the entire present subscribers, the entire list of subscribers, canceled their periodicals, I haven't any feeling at all that that would stop the publication of those periodicals, because I believe their value to the world and to mankind would be recognized by as many other subscribers, and that other channels would be found through which those periodicals would continue to circulate throughout the world.

Q. So that your idea is that even if all the Christian Scientists in the world who are supposed to be primarily interested in these periodicals, should stop reading them, another assemblage of people would rise up, hitherto not Christian Scientists, and become such, in order that they might take the periodicals and support the Publishing Society? A. Because I believe that this work that is established by Mrs. Eddy can never be destroyed.

Q. That was the idea you received? A. Yes.

Mr. Whipple—But perhaps the central idea is that the work and the project established by Mrs. Eddy could never be defeated.

Mr. Thompson—I haven't any doubt of that.

Mr. Whipple—That is the implicit faith of the Christian Scientist.

Mr. Thompson—But I was speaking merely of this concrete proposition about these particular periodicals.

Q. Now, if it should happen that

all the Christian Scientists in the world, being dissatisfied with the attitude of the trustees, should cancel their subscriptions, then it would be natural, and the next idea that would naturally occur to the authorities of the Church would be, to publish them under different auspices, wouldn't it, so as to perpetuate the names and the periodicals, and to have them circulate among those who desire to read them? A. Yes; but that was not the purport of his statement to me.

Q. Very well. Perhaps it may not have been the purport as you understood it, but I am only trying to bring out the natural import of the words. A. Yes, sir.

Q. As they might have been understood by another bystander? A. (No answer.)

Mr. Thompson—Now, I do not know whether this letter has gone into the case yet or not. It is a letter of Mr. Watts to the trustees, dated Feb. 17, 1919, and a copy was sent to the directors. Mr. Dittmore has marked his copy with his stamp.

Q. Do you remember any such letter?

Mr. Strawn—I don't think it has gone in, Mr. Thompson.

Mr. Thompson—There it is. It is a contemporaneous statement.

Mr. Whipple—That has not gone in.

Mr. Thompson—It has not gone in. Would you like to see this, Governor Bates? (Handing letter to Mr. Bates.)

Mr. Bates—If you please.

Q. You recognize this, don't you, Mr. Watts, as a letter that you wrote upon request to the trustees, and a copy of which was sent to the directors? (Handing letter to witness.) Perhaps you have got your own copy to compare it with. A. No, I have not.

Q. That came through the regular official channel? A. I do not seem to recognize the letter at all.

Q. Will you look up your letter book or your copy and see if you haven't a copy of your letter of Feb. 17, 1919, addressed by you to the Board of Trustees, about these matters?

Mr. Thompson—Perhaps the easiest way is to ask Governor Bates. Governor Bates, have you a letter addressed by the corresponding secretary of The Christian Science Board of Directors to the Board of Trustees, dated Jan. 28, 1919, asking them to furnish the directors with the present actual paid circulation figures of each of the publications, and an original letter from Mr. Watts—a copy of a letter from Mr. Watts to the trustees—containing the information, with a letter from the trustees to the directors forwarding a copy of Mr. Watts' letter?

Mr. Bates—I assume the trustees' letters are in the possession of the trustees.

Mr. Thompson—But you must have the letter here addressed to the directors.

Mr. Bates—I mean the letters addressed to the trustees.

Q. Do you recognize that letter, Mr. Watts? It is hardly worth while spending much time on it. I have no doubt it is, it came through the official channels. A. No, I do not, sir.

Mr. Thompson—Then I will have to ask you to look up your part of the correspondence.

Mr. Whipple—We will look it up.

The Witness—I shall be glad to look it up; I do not remember it.

Mr. Thompson—See if you have, Governor, the letter of the trustees to the directors containing Mr. Watts' information? That will settle the matter if you have it. It is dated Feb. 17, 1919.

Mr. Bates—I will see if I can find it.

Mr. Thompson—I wish you would; I would like to get that in.

The Witness—The accounting department calls my attention to the fact that they have a copy of that letter.

Q. Can you authenticate it enough for me to get it in now? That is all I want. A. Yes.

[Copy of letter, John R. Watts, business manager, to Board of Trustees, dated Feb. 17, 1919, is marked Exhibit 94.]

Mr. Thompson—From Mr. Watts to the trustees, sent by the trustees to the directors in response to the letter of Jan. 28, asking for the information therein contained. And the letter of Jan. 28 is annexed to it as part of the exhibit.

Mr. Streeter—Is the letter of Jan. 28 in?

Mr. Thompson—Yes, that is part of the exhibit.

Mr. Whipple—That should be "a," then, shouldn't it?

Mr. Thompson—Yes, you might mark this as Exhibit 94a.

[Copy of letter from corresponding secretary for The Christian Science Board of Directors to Board of Trustees, dated Jan. 28, 1919, attached to Exhibit 94, is marked Exhibit 94a.]

Mr. Bates—Mr. Thompson, we have found the original, if you desire it.

Mr. Thompson—If you will hold it there a minute, in case Mr. Watts' recollection should get dim at any stage, we could refresh it by the original. The original letter of Jan. 28 I will read.

[Mr. Thompson reads the latter dated Jan. 28, 1919, copy of which was marked Exhibit 94a, as follows]

[Copy of Exhibit 94a]

"Jan. 28, 1919.

"Board of Trustees,  
"The Christian Science Publishing Society,

"Falmouth and St. Paul Streets,  
"Boston, Mass.

"Dear Friends:

"I am instructed by the Christian Science Board of Directors to ask you to kindly furnish them with the present actual paid circulation figures of

each of the Christian Science publications.

"In the case of The Monitor, will you please divide or group the figures so that individual paid subscriptions, free distribution copies and any other special classifications will be shown separately. The directors would also be interested in seeing the national circulation for the United States, France, Germany, Italy, and Great Britain and her colonies respectively.

"Thanking you in anticipation of your courtesy,

"Sincerely yours,

"Corresponding Secretary for The Christian Science Board of Directors."

Mr. Thompson—The information asked for is furnished in the following letter from Mr. Watts to the trustees, dated February 17. (Reading):

[Copy of Exhibit 94.]

"The Christian Science Publishing Society, Boston, U. S. A.

"February 17, 1919.

"Board of Trustees,

"The Christian Science Publishing Society,

"Boston, Massachusetts.

"Dear Friends:

"In response to your request for data in connection with circulation, the following is offered: Actual paid circulation of each of the Christian Science periodicals Jan. 31, 1919:

Journal .....	95,000
Sentinel .....	152,585
Quarterly .....	435,181
Der Herold .....	13,315
Le Héraut .....	9,847
Monitor .....	108,288

"The average circulation of The Monitor for the last three months of 1918 was 128,853, of which 37,167 was for camp welfare work, while 80,780 were subscriptions by mail and newsdealers, and 10,906 were for the Trustees under the Will of Mrs. Eddy, distribution committees, and miscellaneous orders.

"Following is the national circulation by count Jan. 31:

United States and Canada ..	94,942
British Isles (outside London)	4,400
London .....	3,136
Tennant .....	4,343
Switzerland .....	110
Continental Europe .....	271
Paris .....	90
Asia .....	181
Africa .....	295
Australia .....	321
New Zealand .....	54
South America .....	145

108,288

"You may be interested to know that our print of Monitors on Feb. 17 was 114,500, of which 6545 were for camp welfare work. The remainder compose approximately our subscriptions and orders. Camp welfare orders have been decreased about 40,000 during the last two months.

(Signed) "JOHN R. WATTS,  
"Business Manager."

"To the business manager:

"Please send copy of memorandum to the Board of Directors:

(Signed) "Board of Trustees."

Q. Those figures were accurate, were they, Mr. Watts? A. Yes.

Mr. Thompson—Now, I would like to introduce this column of comparative circulation of The Christian Science Monitor since they began to publish circulation figures. This appears to have been furnished November, 1918.

Q. Perhaps you recognize the origin of that set of figures and can throw some light upon it. I think you identified it when I had it in my hand before, in the examination of Mr. Eustace. It may have gone in before; I do not think so; it is not marked. A. I think it is all correct.

Q. Is there any reason why that should not go in as a fairly accurate summary of some of the facts that we want here? A. You mean, the card?

Mr. Thompson—Yes, I am going to ask you about the marginal comment later. I am only speaking of the card now. There is a marginal comment there by somebody. Have you any objection to this, Governor Bates? It is a column of figures from 1912 to 1918, showing comparative circulation of The Christian Science Monitor since they began to publish the circulation figures.

Mr. Bates—No objection.

[Card containing comparative circulation figures of The Christian Science Monitor from 1912 to 1918, with memorandum attached dated November, 1918, is marked Exhibit 95.]

Mr. Thompson—It seems to me this may be useful sometime as a summary.

Q. Now, I will ask you about this comment here. Do you know in whose handwriting that is under date of November, 1918? Perhaps you will read it to yourself and familiarize yourself with the facts stated in it. A. No, I can't identify the writing.

Q. Well, is it a fact that in November, 1918, you were wrapping and mailing about 50,000 to 55,000 individual Monitors daily? A. I could not state without going to our records.

Q. Does that strike you as about right? A. I do not know.

Q. Were about 50,000 going to camps at that time, in the United States and abroad? A. No, I thought not so many. About 40,000, I think.

Q. There were a good many gift subscriptions, weren't there, at that time? A. What do you mean by "gift subscriptions"?

Q. Why, people giving other people copies, subscribing for the benefit of other people? A. No more so than throughout our experience with the Publishing Society.

Q. Well, there are such things? A. A few.

Q. It is an important factor, isn't it?

A. It is a factor, but it is not an important factor.

Q. Isn't it true, as stated here, that the estimate given at your office was that at that time the net paid subscription was about 50,000 per day in all countries? A. Certainly not; not so.

Q. It is not so? You count as paid everything that is paid to you, whether the payment is by a church for a thousand copies to give away, or a thousand individual subscriptions? A. Yes.

Q. It makes no difference to you? A. No.

Q. Now, about cable tolls. There was a good deal of criticism from time to time from various sources about the amount that The Monitor was spending in cable tolls from London, wasn't there? I am not asking whether it was justifiable or not, but that subject was under discussion, wasn't it? A. Not until this trouble became acute.

Q. Well, I haven't asked when. At one time that was a subject of criticism, wasn't it? A. Yes.

Q. And how many people did you have in your London Bureau at that time? You must have the names there. I have them somewhere. A. I have a record in—

Q. Wasn't the number 17, Mr. Watts? Here it is; I have it here (producing paper). Wasn't the number 17, Mr. Watts? A. I think it was 12; it may have been 17.

Q. It may have been 17? Now, isn't it a fact that very frequently during the war those people took the London morning papers and re-wrote condensed articles for cable from the London papers, and sent them over by cable? A. Mr. Thompson, the business office is not in touch with, nor in charge of the editorial or news end of the business.

Q. Who would know? Who would be able to answer that question definitely? A. The editor, Mr. Dixon.

Q. And nobody but the editor? A. Nobody but the editor, I think.

Q. All right, then; we won't bother you about it any more. Now, here is a paper furnished from some source—"Cable Tolls." See if you can identify that paper and the information in it as accurate (handing paper to witness). A. I could not without going to the records; but if you wish me to I will—

Q. You are in possession of information which would enable you to verify that in some way? A. Yes.

Q. You can't offhand? A. Offhand I can't.

Q. Will you sometime do that? A. Yes. May I keep it temporarily?

Q. Yes; I will take off this stuff. I don't know what it is. A. I may do it in a few minutes.

Q. All right; leave that on. If you will return it to me later. A. Yes.

Q. Now, here is a statement of "The Monitor local circulation," apparently emanating from your office—comparative statement of March, 1917, and

March, 1918, very much in detail. Can you identify the source of that and verify it? A. Just this one sheet?

Q. Yes. A. No; I have never seen it before. I do not know its source.

Q. You do not know? A. No, sir.

Q. You could furnish the information therein stated if asked for? A. Yes, sir.

Q. And the next paper is "Monitor average expense for year 1917," figured as an average for a period of 15 months, January, 1917, to March, 1918, inclusive. Does that arouse any answering ray of memory, either in its source or the information therein contained? A. No, not the slightest.

Q. Can't you recollect that these papers were furnished by you, or by your office, in response to various requests for information? A. If you mean those papers there, I know they were not, because they are not our typewriting in any way.

Q. They are not? A. No.

Q. How much were you paying for editorial writing a week on The Monitor at this period in 1918? A. I do not carry those figures.

Q. Would it be \$2116.71 a week? A. I do not know. The editor can give you those figures.

Q. The editor can give me those? The European Bureau—do you know who were employed there, the amount of weekly salaries? A. I can ascertain if that is correct.

Q. You can verify it? You do not know it now? A. No, sir.

Q. I won't trouble you about it. Now, will you take those papers, if it is not too much trouble, and find out whether they are true, and be responsible for returning them to me sometime? A. Indeed, I shall.

Mr. Whipple—Would you like to have them marked provisionally with exhibit numbers?

Mr. Thompson—Yes; we might have them marked for identification, although I have not any doubt we shall get them back all right.

Mr. Whipple—Then we will have on the record just what we have become responsible for. That will be Exhibits 96 and 97 for identification?

Mr. Thompson—Mark them for identification, Exhibits 96 and 97.

[Statement of "Cable tolls" is marked 96 for identification; "Monitor local circulation, March, 1917, and March, 1918," is marked 97 for identification.]

Q. You said in your examination by somebody that you kept some money in the Concord Bank? A. Yes, sir.

Q. Can you give me any idea, roughly, how much that is? A. Oh, a thousand dollars or two, I think, balance.

Q. A small amount? A. We have had a larger balance at times.

Mr. Streeter—I can't quite hear you.

The Witness—A thousand or two dollars, General.

Mr. Streeter—I know; but the last?

The Witness—At one time it was a

little larger than that; I think as high as \$10,000.

Q. Now, referring to the paragraph No. 11 of our bill in *Dittemore v. Dickey*, before coming to the question of the letters, I think perhaps you can throw some light on some of the issues there. To what extent has there been, in fact, an accounting by the trustees to the directors for the two years ending Oct. 1, 1918, showing that the directors have got the amount of profits they are entitled to under the deed and under the by-laws? A. Only the reports of the auditors.

Q. Have you ever furnished to the directors the reports of Chase, for instance?

The Master—Furnished what?

Mr. Thompson—The reports of Harvey Chase & Co., the public accountants that they have had.

Mr. Streeter—You mean the auditors' report?

Mr. Thompson—Yes.

A. No, not that I know of. They have never inquired for them.

Q. I haven't asked you that; merely the question whether you have ever furnished them. Now, what is this audit that you speak of with which you have furnished them? A. The statement from our books. The statement we have made, having been verified by the auditors.

Q. Who are the auditors? A. Harvey Chase & Co.

Q. That is, you have condensed or abbreviated or abstracted Harvey Chase & Co.'s reports and furnished your digest to the directors? A. No, sir; we have made our own statements and Harvey Chase & Co. have verified our figures.

Q. But have you sent to the directors Harvey Chase & Co.'s—over their own signature any verification by them? A. None that I know of.

Q. Have the accounts of the trustees been examined, audited and verified by public accountants at the end of six months' periods ending March 31, 1918, and Sept. 30, 1918, as well as for such periods in other years? Can you answer that yes or no? A. Yes.

Q. Have the accounts or audits, or whatever statement of accounts you have furnished with the check to the directors—have those statements been given to the directors at about the time of the semi-annual remittance of net profits? A. Yes.

Q. Were the net profits, as stated by the trustees for the two years ending Sept. 30, 1918, more than \$760,566.20? A. I will answer you on that in just a few minutes; I can't tell you.

Q. It merely says "more than"; it does not say the exact amount, so that I presume you could answer that? A. Oh, yes—"More than \$760,000."

Q. You do not know what the gross income of The Mother Church was? A. No, sir.

Q. Now, passing to paragraph No. 16 of our bill.

Mr. Streeter—Mr. Thompson, may

I, with the permission of everybody, ask a single question?

Mr. Thompson—Yes, sir, by all means.

Mr. Streeter—Mr. Watts, is there any published account of the gross income and expenses of The Mother Church, so far as you know?

The Witness—Never heard of that.

Q. Now, speaking of the trustees, the member who has been longest on the board is Mr. Eustace. Is that not so? A. Yes, sir.

Q. And he naturally has had much more experience in the history and management of the society than either of his associates, has he not? A. No more than Mr. Ogden. Mr. Ogden was there before Mr. Eustace came.

Q. But Mr. Eustace has been for the longest single term? A. A trustee, yes.

Q. He also has literary qualifications and is a writer of some distinction in your denomination, isn't he? A. I haven't known it.

Q. Doesn't he write himself occasionally? A. I don't know of that of my own knowledge.

Q. He has had a course at the Metaphysical College, hasn't he? A. Yes, sir.

Q. And he is a man of rather large reading and great acuteness in the doctrines of Christian Science, isn't he? A. He is a man of very splendid understanding as a Christian Scientist.

Q. And powers of expression also? A. Yes, sir, he expresses himself intelligently.

Q. Able to argue and enforce his views by argument with great ability, isn't he? A. I should not say "enforce" them.

Q. I do not mean "enforce" in any invidious sense; but able to present his views forcibly and clearly in argument or exposition? A. Yes, sir.

Q. And you would say that in those respects, perhaps in point of capacity for exposition and forcible exposition, not coercive exposition but forcible exposition of his views, he perhaps would be in that respect superior to his two associates? A. No, I should not.

Q. You would not say so? Is there any one of those people more than another of those three trustees that you would think had a larger influence than another on the Board of Trustees? A. No, sir.

Q. You think they are exactly equivalent? A. That has been my experience.

Q. You have never detected the slightest difference in their superiority in business affairs or literary affairs or any other aspect of ability among those three men? A. They are as nearly matched in those qualities as any three men you could find.

Q. Do you think Mr. Eustace is the equal of Mr. Rowlands in business ability, and that Mr. Rowlands is the equal of Mr. Eustace in literary ability

and power of exposition? A. If there is a difference it is not appreciable to me.

Q. Now I will come to taking up paragraph 25 of our bill, and there are some letters here that I want you to identify the signatures to, and I think you will be able to do it without any trouble. The first letter I desire to call your attention to is dated March 15, 1919, signed by Miss C. Louise Richardson. You know her writing, don't you, and her signature (passing a paper to the witness)? A. No, I don't know her writing.

Q. She was one of your employees, wasn't she? A. Yes, sir.

Q. You can't tell whether that is her signature or not? A. No.

Q. She was discharged at one time, was she not? Yes or no on that, please. A. She was dismissed.

Q. Dismissed. Well—

The Master—Let me see if I understand what you are doing now, Mr. Thompson. If I have followed you correctly, these are some of the letters to which you refer in paragraph 25 of your bill?

Mr. Thompson—Yes, sir.

The Master—That means that they are letters contained in Mr. Dittemore's files?

Mr. Thompson—Yes, sir.

The Master—And his files are now in the possession of the directors.

Mr. Thompson—No, sir; he has still retained them under the injunction. The bill was brought partly in order to prevent him from losing control of these letters. There were two purposes in his bill. One was to prevent him from being ejected from his office; the other was to prevent his papers from being taken away from him.

The Master—These are the files which the directors requested him to surrender?

Mr. Thompson—Yes, sir, and he has made certain allegations about these letters. He has said—

The Master—You are now trying to show by this witness what?

Mr. Thompson—That certain of the letters—not all, but some of these letters—produced by me, and therefore, naturally, coming from Mr. Dittemore's possession, are letters of the kind described in that bill, namely, letters having an important bearing in the controversy in *Eustace v. Dickey*, letters which it is alleged in our bill there is danger might be suppressed by the directors unless they were delivered up to them. I wish to make these letters public at the present time.

The Master—Once you get the letters, that question can be settled by their contents. They will speak for themselves.

Mr. Thompson—Yes, sir.

The Master—What further are you trying to show by this?

Mr. Thompson—I am trying to show the signatures on these letters, that is all. The letters I now have are letters



written by people presumably known to Mr. Watts as having been in his employ formerly. The first one is rather discouraging, because he does not remember the handwriting, but I hope to have better luck with some of the others.

The Master—Are you now offering to prove the genuineness of the signature?

Mr. Thompson—Yes, sir, that is all.

The Master—Can there be any question about that? The alternative of their not being genuine is that they were fabricated. If there is a letter there purporting to be signed by somebody, can we not assume that the signature is genuine until it is questioned?

Mr. Thompson—I should hope so, yes, sir. There is no question of fabrication. There is no doubt that this is a letter from Miss Richardson, and Mr. Watts has testified that she was at one time in his employ, and was dismissed. That is what I want to produce it for. Mr. Dittmore alleges among other things that there were many complaints brought to him by individuals which led him to investigate.

The Master—Can it be that we have got to investigate the genuineness of those signatures?

Mr. Thompson—I think that other counsel might answer that better than I.

Mr. Bates—We know nothing about the letters, Your Honor. The only letters that we asked them, prior to the bringing of this suit, to turn over to the directors, were letters which he had belonging to the directors. As to what these papers are we know nothing.

Mr. Thompson—You will probably claim that these letters belong to the Board of Directors because they were written—

Mr. Bates—I don't know what that letter is.

Mr. Thompson—I will tell you what it is.

The Master—I am talking now about the genuineness of the signature. Why can we not have it assumed that the signature is genuine until somebody questions it?

Mr. Thompson—I think that that is the safest way, because I am giving Your Honor my assurance based on Mr. Dittmore's statement that they were received by him, and they were produced by him and given to me, and they have been in my possession a long time. I think that they are genuine letters, written to him, and signed by the parties purporting to sign them. Many of them are written with the pen, some of them are in typewriting and signed by the person sending it, but they are all original letters; and I will ask Mr. Watts one or two questions about them.

Mr. Streeter—Pardon me, Your Honor. The answer to this question must depend on what Mr. Bates or Mr. Whipple says.

Mr. Bates—I think, if Your Honor please, that if he wants to introduce those papers, he should submit them to us, and then perhaps we can tell whether they are genuine or not.

Mr. Thompson—I do not think that Governor Bates understands the point to which I am offering these letters. I am not offering them in evidence, in the first place, against the trustees, because I am well aware that I have no right to do so. They are hearsay as against the trustees. I am offering them to sustain a substantive allegation in our bill against the directors, namely, we have in our possession important letters, having an important bearing upon the issues of fact between Eustace and Dickey, which the directors have been trying to get away from us, we claim, in order to suppress them, so that the case may not be tried properly against the trustees; and we say that we are not in a position to use them ourselves, but that it is the fairest thing to do to put them in now, and the directors, if they want to use them, can summon the writers of them as witnesses. If they do not, our allegation is proved.

The Master—Now, Mr. Thompson, you have told us that once before.

Mr. Thompson—I am sorry for that, sir.

The Master—Now I should like to come back to the question of the genuineness of these signatures. Have we got to spend time in having the witness say that he is familiar, and how familiar, with the handwriting? It seems to me to be a waste of time.

Mr. Thompson—Let me pass this first letter to Mr. Whipple, and then to Mr. Bates, and ask them, after having read it, whether they have any doubt that that is a genuine letter. I do not believe that anybody will want to contest that.

Mr. Whipple—If Your Honor please, these are not offered in our suit, and we are not parties to the other suit, so that we have nothing that we care to say.

The Master—Oh, I quite understand that.

Mr. Bates—I understood that we were accused of suppressing them for fear that they would bother you in your suit.

Mr. Whipple—We will deal with that when we get to it.

The Master—Not, I understand, with suppressing them, but of a design to suppress them.

Mr. Bates—Yes, if we could get them!

[The letter purporting to have been written by Miss Richardson is passed to Mr. Bates for inspection.]

Mr. Bates—All I have to say, if Your Honor please, is that this is a letter which is entirely inadmissible under the rules of evidence. It is a private letter to Mr. Dittmore from Miss Richardson, and it states that it is written at his request. On the other hand, there is absolutely nothing in it that we object to, and if Mr. Thomp-

son wants to offer it I have no objection to it.

Mr. Thompson—That is all, then, that it is necessary to say. Will you mark this?

The Master—Do you make any question as to the genuineness of the signature?

Mr. Bates—No.

The Master—Then it is a letter produced from Mr. Dittmore's files, and it is one of the letters referred to in paragraph 25 of the bill?

Mr. Thompson—Yes, sir. I might just say that it is not a private letter in the sense that it is written to Mr. Dittmore personally. It is addressed to him, but it is written to him in his official capacity. Mark it, will you?

Mr. Whipple—Now, if Your Honor please, this letter not being offered in the case of Eustace V. Dickey, what shall be the course pursued with reference to its serial number as an exhibit? Should it go right ahead in sequence, or should there be some distinguishing mark between those exhibits which are offered in the case between Mr. Dittmore and the directors? Otherwise, there might be a little confusion. Possibly it is enough to have it appear on the record, as it now does distinctly, that this letter is not offered in any way upon the issues in the case of Eustace and Dickey, and possibly with that statement with regard to each one of them, with Your Honor's ruling in case there should be any dispute, the sequence of numbers can be preserved. I merely offer the suggestion. I am not pressing anything one way or the other.

Mr. Thompson—I am perfectly agreeable to have it done in any way.

The Master—How would it be to have the letters offered marked by the serial number, and then have also a mark showing that they were offered in Mr. Dittmore's case and not in the other case? That, I think, might be very briefly indicated by putting on the number of the case. Mr. Dittmore's case has one number on the docket, and the other case has a different number on the docket, so that if you marked that exhibit with the consecutive serial number, exhibit number, and then add in brackets the number of the particular case, that would seem to distinguish them sufficiently.

Mr. Whipple—This, then, will be Exhibit 98. Have you the number of that case on your copy of the pleadings, General?

Mr. Streeter—No, it is not on this copy.

Mr. Whipple—Then would it be better to have it marked "Dittmore v. Dickey"? Let us just call it "Dittmore v. Dickey."

[The letter described, from Miss Richardson to Mr. Dittmore, dated March 15, 1919, is marked Exhibit 98. Dittmore v. Dickey. R. H. J.]

Mr. Thompson—I will not read any of the letters until I get them all

marked. The next one is a letter from Mrs. Florence Clextan Hall to Mr. Dittmore, as one of the Board of Directors, dated Feb. 19, 1919. Please mark that in the same way.

Mr. Bates—One moment. I have only assented, Your Honor, to one letter.

Mr. Thompson—Mr. Watts identifies that as the signature of Mrs. Hall.

Mr. Bates—I should like to see the letter. I have examined only one. I assume that there are differences in them?

The Master—Why don't you offer them all together and let Mr. Bates see them all together?

Mr. Thompson—I guess that I would a little rather do it this way.

The Master—When you get them in, I take it that they will not be evidence of much of anything. We shall have to judge from their general tenor whether they can be supposed to be such letters as the directors might wish to suppress. That would be the whole story.

Mr. Thompson—That story will not be told, however, if Your Honor please, until the case is all over, because the best evidence of what they intend to do will be what they do with the writers of those letters after they have learned of their contents.

Mr. Bates—Can I look at the next one?

Mr. Thompson—Yes, take the next one (passing a paper to Mr. Bates).

The Master—I think that some short way ought to be adopted of dealing with all of them.

Mr. Thompson—I will try to hasten it, sir, but I really think that some of these letters ought to be introduced now, and ought to be read, so that there will be notice given at this stage of the case of what the letters really are. I do not desire to waste time, and I think that Your Honor appreciates that. I should not press the matter at this stage of the case unless I thought that it was really important for various reasons.

The Master—I understand that you think it is important, but I do not think that we need have gone into it at present.

Mr. Thompson—I want to make a public disclosure of those things now.

The Master—This hearing is hardly for the purpose of making any other public disclosure than such as is strictly necessary for the purposes of the case.

Mr. Thompson—Certainly, and I haven't any desire to make any that is not necessary.

The Master—I think that you had better pick out one or two of what you think are the strongest evidence of the supposed or alleged purpose of the directors with regard to suppression, and read those only.

Mr. Thompson—If Your Honor please, I have already picked out of a large mass of letters five or six on that very basis, and I have already

done the very act which Your Honor suggests, of selection. I am not loading the case with all the letters that we have, but only with the most striking ones, and I do not think that it will take a great amount of time.

[The letter described, from Mrs. Hall to Mr. Dittmore, dated Feb. 19, 1919, is marked Exhibit 99. Dittmore v Dickey. R. H. J.]

Mr. Bates—This, if Your Honor please, is a typewritten statement eight pages long, closely written. I haven't had time to look it over. It purports to be the statement of Myra B. Lord, and is dated March 5 of the current year, and was apparently taken on Sunday, March 2, 1919, at Newton. Of course we object to any statement of that kind. There is nothing in it, so far as I know, but at the same time we object to it. It is a cluttering of the record with something that is absolutely worthless as evidence and has no bearing on the case.

Mr. Thompson—Pardon me; I thought that would come by and by. Mr. Dittmore has alleged here that among the grounds of his opposition to the trustees was their method of dealing with their employees, to which he had called the directors' attention, and which had not received their proper attention, and he had procured evidence on that topic which he says the directors did not propose to use. That is, Mr. Dittmore felt that his information called for action on the ground that it indicated oppressive and tyrannous conduct by the trustees, or some of them, toward their minor employees. Now, here is the evidence; here is the evidence that he sought to have you act on, and that you would not act on, and that you expelled him for maintaining. I want to have the Court know what that is.

Mr. Bates—There is absolutely no evidence, Your Honor, that this ever came to the attention of the Board of Directors, or either of these letters, in any way, shape or manner.

Mr. Thompson—Governor, you cannot expect me to try my whole case at once. There will be evidence—

Mr. Bates—If they ever do it will be possible for you to produce the proper evidence through Mr. Dittmore at the proper time.

Mr. Thompson—I press my offer of the evidence; it is strictly logical and exactly bears out the allegation in my bill; I couple with it the offer of the necessary further links of proof through Mr. Dittmore.

Mr. Bates—I submit to Your Honor that certainly this has nothing to do with Mr. Watts' cross-examination or his examination in chief.

Mr. Thompson—I will get this identified.

Mr. Bates—In so far as these indicate anything they are sort of shadowy or watery complaints against the trustees, and if you want to introduce them for that purpose I assume you would have the witnesses here. The

fact that you do not have the witnesses here indicates that you do not rely upon that yourself.

Mr. Thompson—That is the way you want to characterize them; if you could only suppress the originals, as watery complaints against the trustees. We will see whether they are watery when they are read.

Q. (Handing paper to witness.) Is that Mrs. Lord's signature? A. I think that is her signature.

Mr. Thompson—I will offer that letter.

[Statement by Myra B. Lord, dated March 5, 1919, is marked Exhibit 100, for identification.]

Mr. Bates—We wouldn't object to it if you had left it in the other case, but you have expressly taken it out of the case it applies to and are trying to put it in in the other case.

Mr. Thompson—I am not in charge of that case; you have done your best to get me out of it. I am furnishing you evidence, however, which, if you want to try that case sincerely, you will use. I will ask that that be marked.

The Master—I have not admitted as yet any of these; I am letting the witness identify them.

Mr. Thompson—Yes.

Mr. Whipple—These are all for identification.

The Master—At present all for identification.

Mr. Thompson—Now, I show you, Governor Bates, a letter from Mr. George H. Clark, dated Feb. 15, 1919.

Mr. Whipple—May I see it?

Q. What connection did Mr. George H. Clark have with the Publishing Society at any time? A. He was connected with the hotel and travel department of The Monitor.

Q. What were his duties in that capacity? A. In the advertising department.

Mr. Whipple—What is the need of showing them to Governor Bates now if you are only identifying them?

Mr. Thompson—To see if he identifies them. Do you want to take the trouble to read this, Governor, or don't you?

Q. Who was Mr. John J. Flinn? A. He was one of the assistants in the editorial department of The Christian Science Monitor.

Q. Is he connected with The Monitor now? A. No, sir.

Q. When was his connection terminated? A. A short time ago, I don't know, I don't recall the exact date.

Q. Approximately how long was he connected with The Monitor? A. For a great many years.

Q. And is that his signature? (Showing paper to witness.) A. I think it is.

Mr. Thompson—I will have that marked for identification.

[Statement by John J. Flinn is marked Exhibit 101, for identification.]

Q. Who was Mr. Paul S. Deland? A. Mr. Deland was one of the assist-

ants in the news room of The Christian Science Monitor.

Q. Is he still connected with it? A. Yes.

Q. How long has he been connected with The Christian Science Monitor? A. A number of years.

Q. Is that his signature? (Showing paper to witness.) A. I believe it is.

Mr. Thompson—I would like to have that bunch of papers marked, marking it on the part containing Mr. Deland's signature.

[A statement, etc., by Paul S. Deland, is marked Exhibit 102, for identification.]

Q. Now, do you remember a Walter R. Zahler, who was once in the employment of the Publishing Society? A. Yes, sir.

Q. What was his connection with the Publishing Society? A. He was in the translation department of Der Herold, the German translation department.

Q. He was not a German himself, was he? He was a Dutchman, wasn't he? A. I don't know.

Q. When was his connection with the society terminated? A. A few months ago.

Q. He was dismissed, wasn't he? A. Yes.

Q. That is his signature? (Showing paper to witness.) A. I think it is.

Mr. Thompson—I will have that marked.

[Statement by Walter R. Zahler is marked Exhibit 103, for identification.]

Mr. Thompson—Meantime, Governor Bates, if you have finished examining Mr. Clark's document.

Q. Will you see if that is Mr. Clark's signature and handwriting? (Showing paper to witness.) A. I think it is.

Mr. Thompson—I would like to have you mark the Clark letter next, if you will, Mr. Stenographer.

[A statement by George H. Clark is marked Exhibit 104, for identification.]

Mr. Thompson—Is there any objection, Governor, to the Clark letter?

Mr. Bates—Only in the interest of the court, that is all. We do not object.

Mr. Thompson—You do not object? Mr. Bates—No.

Mr. Thompson—Then this may be marked not merely for identification but introduced as an exhibit?

Mr. Whipple—Well—

Mr. Thompson—I mean against the directors, not the trustees.

Mr. Whipple—Just a moment as to that.

The Master—At present I am only permitting Mr. Thompson to identify those letters and to ask the witness about the position of the writer. I have not gone any further than that yet in regard to any one of these letters.

Mr. Thompson—I did not know but Your Honor might, in regard to one or two of them, where the Governor makes no objection.

The Master—I think we had better, having begun in that way, follow it through.

Q. Now, Mr. John K. Allen, who was he, and what was his connection with the Publishing Society? A. He was in charge of the advertising department of The Christian Science Monitor.

Q. For about how long, approximately? A. A number of years.

Q. When was he dismissed? A. I don't know that he was dismissed.

Q. Or legislated out of office? A. I don't know that.

Q. Well, how long is it since he has not been connected with the society? A. It has been, I should think, three years.

Q. And he has recently been chairman of the Liberty Loan Committee of New England, hasn't he? A. I don't know.

Q. That is his signature, isn't it? (Handing paper to witness.) A. Yes, sir.

Q. And that is on the letterhead of the Liberty Loan Committee of New England? A. Yes.

Q. Does that refresh your recollection about his being chairman? A. Why, I assume he is.

Mr. Thompson—Yes; there is no doubt he is chairman.

[A statement by John K. Allen, is marked Exhibit 105, for identification.]

The Master—I understand these are being shown to you, Governor Bates?

Mr. Bates—Part of them. Three, I think, have been shown to me, or four.

Mr. Thompson—I think more than that, Governor. I will show you this one now.

The Master—I understand you will have an opportunity to see any of them that you want to, that have been offered.

Mr. Thompson—Oh, absolutely. I think you had better see this one. I strongly advise you to read it, if you will take my advice on it. (Handing paper to Mr. Bates.)

Q. Now, coming a little more definitely to the question of employees dismissed recently by you, I just want to get a list of them here. Miss or Mrs. Louise Richardson was dismissed, wasn't she? A. Yes.

The Master—Have you got through with the letters?

Mr. Thompson—I am through with the letters for the present, yes, sir, except in so far as this information now called for includes the writers of these letters, or some of them.

Q. Louis Lawrence was dismissed? A. Well, yes, in effect, although he agreed that it was better for him to get another position for himself.

Q. Now, so far as you can, please answer these questions categorically. Miss Gowdy? A. Yes.

Q. Miss Emily Henderson? A. Yes.

Q. Miss Beggs? A. Yes.

Q. Miss Belmont? A. Yes.

Q. Miss Baxter? A. I don't remember.

Q. Miss Lovell, a proofreader—both of them proofreaders? A. I don't remember.

Q. Franklin Blake, purchasing agent? A. Yes.

Q. Harry Van Gelder, head of department? A. No, he was not dismissed.

Q. He has left? A. He has gone, yes.

Q. Miss Palmer, clerk? A. Yes.

Q. Miss Higgins, editorial department? A. I don't know.

Q. Miss Dunnell had a variety of positions, stencils chiefly? A. Yes.

Q. Miss Hadck, who was on The Monitor? A. I don't know.

Q. Now, Mrs. Richardson, Miss Gowdy, and Miss Dunnell had served the publishing house a good many years, hadn't they? A. Yes.

Q. Miss Dunnell and Mrs. Richardson had been there since the time you were on Huntington Avenue, hadn't they? A. I don't know, but for many years, anyway.

Q. Now, you knew, didn't you, that there was a question recently, after these difficulties became acute—a question was being raised whether some of these dismissals were proper dismissals or improper dismissals in the sense that the motives which led to the dismissals were not creditable? You knew that question had been raised, didn't you? A. I had never heard it raised.

Q. Well, it has been recently, hasn't it? A. Only since the trial of this case, the first I have heard of it.

Q. Hadn't some of these people, when you dismissed them, when they were on their vacations, for instance—hadn't they complained to you that it was unjust to be treated in that way? A. I have never heard any criticism from any of them that it was unjust, and, so far as I know, they were not dismissed on their vacations.

Q. That is, in regard to all these people dismissed, they all acquiesced in the justice of their dismissal? A. To those to whom I talked in every instance where I was able to do it, and where it was in my department, I always called the employee in and reasoned it out with him.

Q. Well, the question is rather more particular than that. A. Oh, excuse me.

Q. Do you want it to be understood here that in regard to all these dismissals, the people dismissed, after you had explained to them the ground of the dismissal, acquiesced in the justice of your views and confessed that you were right and they were wrong? Yes or no. A. No, I don't want to convey that impression.

Mr. Thompson—Now, if Your Honor please, I should like to read these letters; they won't take long, and I have carefully selected them. I should like to read them.

Mr. Bates—I do not see, Your Honor, that this is material. I want to say that we shall not object to any

of them, but we shall ask that they be considered in both cases, in so far as they were brought to our attention.

The Master—All we have got on this matter appears to me to stand in this way at present. With regard to these letters, the allegation is that the directors have a purpose to suppress them, which purpose the directors deny. If the letters are read we shall not be any further along on that issue, as far as I can see, and perhaps we might gather from the contents of the letters—

Mr. Thompson—I think what Your Honor will gather from the contents of the letters will advance the case a good deal in that direction.

The Master—what we might gather from the letters would be that the directors might conceivably desire to suppress them, notwithstanding they deny that they have any such purpose. Ought we not to have some evidence directly tending to show a purpose on the part of the directors to suppress the letters before we have their contents put into this case?

Mr. Thompson—It seems to me, if Your Honor please, that question can be answered in the affirmative, and also this can be said, that Your Honor has some such evidence. The allegations in the bill relating to these letters are, first, what Your Honor has mentioned, and what I have mentioned, Section 25, and then the further allegations in the bill to the effect that Mr. Dittmore was led by various complaints reaching him to believe that Mr. Watts had treated many of his employees in an arrogant and oppressive manner; that that was one of his grounds of complaint against the employers of Mr. Watts; that was a matter which legitimately ought to have been taken into account in determining the relations between the directors and the trustees and what should be done by the directors—what action should be taken. Now, you have the evidence that Mr. Neal, after the expulsion of Mr. Dittmore, after Mr. Dittmore had been put in a position where he could not make his views felt in the case of Eustace v. Dickey—Mr. Neal goes round and tries to settle this case with the trustees, and Mr. Dickey does the same thing, and that the efforts to settle were concealed from him. That raises a strong antecedent probability when you come to take it in connection with the contents of these letters, that the directors did not want to face a situation that would arise if they took these letters into account. Consequently, they knew they could not settle if these letters were made public. They thought that by expelling Mr. Dittmore and getting his papers they could make what he, perhaps erroneously but still firmly, thinks is a sacrifice of the cause of Christian Science. I do not see how Your Honor can pass on it until you hear them.

I will couple with that the offer from Mr. Dittmore himself, when he goes on the stand, to supply the missing links, and it seems to me that if these letters are ever going in they ought to be put in now, so that Your Honor may know, and everybody concerned may know, whether the directors, now having forced upon their attention this vital evidence, intend to use it in a legal way by summoning the writers or not. If they do not, the inference will be clear that the allegations in Mr. Dittmore's bill about the attempt to surrender their alleged rights are true allegations.

The Master—Why should I credit the directors with a purpose to suppress letters inconvenient to them or adverse to their contentions in the controversy, or adverse to their side of the controversy?

Mr. Thompson—I don't know, sir, why you should do it unless the evidence warrants it.

The Master—Well, the fact that the letters are inconvenient or adverse to their contentions does not seem to me to be sufficient.

Mr. Thompson—But does not Your Honor feel that the other evidence to which I have called attention, that has already gone in here, namely, that—putting two and two together—directly they expelled Mr. Rowlands and Mr. Dittmore, they continually run around trying to see how little they can get off with, by surrendering this, that, and the other right, the trustees making it obvious that they won't yield a hair's breadth—when you take that in connection with the evidence of three witnesses, or of two at least, that Mr. Dittmore never offered to surrender any of the essential positions he had taken in that memorandum of 1916, any more than the trustees did, it seems to me you have a set of circumstances which raises a strong presumption that the directors, when they demanded of Mr. Dittmore, as is alleged here, that he produce and surrender to them all letters in his possession obtained by him while holding the office of director, had these letters, among other letters, in mind; and when you read the contents of these letters and see how impossible they would make it for the directors if any credit at all were given to these letters—how impossible it would be for any men holding the position of these directors and desiring the respect of their fellowmen, Christian Scientists or not, to settle and surrender without a trial—and seeing whether these statements are true or not—then I think Your Honor will see that there is a good deal of antecedent probability and direct proof that these were letters they wanted to—I won't say suppress, because that is a hard word—

The Master—It is the word used in your bill, I think.

Mr. Thompson—I stand by it—to

have them drop quietly out of sight so that they would not hamper the efforts to settle this case by giving up some of the rights which Mr. Dittmore thought vital.

The Master—Do I understand that these are all letters written by dismissed employees?

Mr. Thompson—Not all of them. Some of them are employees, Mr. Watts says, who severed their connection without actual dismissal. For instance, Mr. John K. Allen, a man of great prominence in this community.

The Master—Most of them, then, are letters of dismissed employees—letters complaining—

Mr. Thompson—Yes, of their treatment.

The Master—I could never presume or infer, without more evidence than you have indicated, a purpose on the part of the directors to suppress the letters.

Mr. Thompson—Well, Your Honor is not going to preclude me, I should suppose, naturally, from introducing that further evidence when I offer it; and, secondly—

The Master—Not at all; I am only dealing with what I have now before me.

Mr. Thompson—Secondly, Your Honor is not going to say that because I can't introduce it all at once I shall not introduce it step by step. I offer to show Your Honor later, by Mr. Dittmore, evidence which, if believed, will make it sure that they desired to suppress these letters.

The Master—More than desire; intent, you have got to show.

Mr. Thompson—Intent if they got them. Your Honor will observe that one of the grounds of our bill on which we sought an injunction was to prevent them from getting them. And we got the stipulation from the Supreme Court approved by Judge Bralley in lieu of an injunction. It is simply a question of the order of proof, I think. It is within Your Honor's discretion.

The Master—Have you anything more you want to say, Governor Bates?

Mr. Bates—I have nothing further to say, Your Honor, except to suggest that Brother Thompson is trying continually to read into this record his contentions in regard to this case. He continually states that there have been attempts—

The Master—Isn't that a very natural purpose and intent on the part of all the counsel?

Mr. Bates—Well, I should not like to speak for anybody but myself. I am not conscious of any such intention. I have endeavored to correct some statements that they have made.

The Master—It seems to me I have noticed some indications of it not on the part of Mr. Thompson alone.

Mr. Bates—I submit that we are all of us frail human beings and are very apt to see the errors of the others rather than ourselves, but most of

mine have been in reply to misstatements that have been made by counsel, and that has been the only occasion for making them. So far as these letters are concerned, if Your Honor should hear them read I am confident Your Honor would say it was absurd that we should have any desire to suppress them—that they could be against our interests in any way, shape, or manner.

Mr. Thompson—Then why do you object to them?

Mr. Bates—I have not objected to them except in the interests of the court.

The Master—I must assume the responsibility for objecting to them. He does not now object. He did object at first.

Mr. Bates—I did until I had seen them. I did not know what they were. They are complaints entirely, so far as handed to me, of discharged employees of the Publishing Society, making charges against the Publishing Society. That is why I said that if they are read and admitted I should claim that we have the right to use them as part of the justification for the action we took in regard to the trustees—that is, in so far as it is shown that they came to our attention. I suspect that some of them never did.

Mr. Thompson—Just one word in reply. Mr. Allen's letter hasn't any of the characteristics that Governor Bates has pointed out. It is a very careful, able discussion of the business of the Publishing Society, of the difficulties with The Monitor and other publications, and suggestions as to the—

The Master—I don't think you ought to get the contents in in that way.

Mr. Thompson—It has been characterized as a letter of discharged employees complaining. It is not so. It is a very able—

The Master—Is it a letter of a discharged employee?

Mr. Thompson—Mr. Watts says he was not discharged.

The Master—That is one of those cases where the writer was not a discharged employee, but an employee who had resigned or withdrawn or something of that kind?

Mr. Thompson—His position was abolished.

The Master—It seems to me that, strictly speaking, I ought to have the evidence which you are going to claim will indicate a purpose to suppress on the part of the directors before I admit the letters, but there being now no objection to them you may read them.

Mr. Whipple—If Your Honor please, I should like to be heard upon the question of order of proof. They are not offered in our case and we can't object to their admissibility in the other case, but why should they now be read? Having been identified, why should they not be read at some later time when we are more busily engaged in the case of Dittmore v. Dickey and others?

Mr. Thompson—They won't take very long.

Mr. Whipple—The letters might have some prejudicial effect upon the case which we are trying, and it would be as if just at this time in some other case matters prejudicial to the trustees, which they could not reply to, were published in the newspapers and circulated broadcast throughout the community. Here are papers which are largely the complaints of discharged and dissatisfied employees, being spread not only before the Court but in all the newspapers, with perfect helplessness on the part of the trustees to reply to them because they are not offered in our case. Now why shouldn't we be permitted to finish out our case, they having been identified, without having this side issue, as it is with reference to our case, now raised? I can understand the position of Mr. Dittmore's counsel. What they say is this: We have dug out information which the directors might use, and we claim it was their duty to use, with regard to the trustees in this suit, and here it is. You, the directors, have not seen fit to use it heretofore. Non constat that you will, but we are going, so to speak, to pin it on to you, so that if you don't use it your behavior in declining to use information of this sort will be made known to the court and made known throughout the field. Now that can just as well be done a little later, because neither the directors nor Mr. Dittmore have yet had their show. When they do and when they get at it we shall not be interested because we are not parties to that suit. I mean, we shall not have that thrilling interest that we have in the controversy to which we are parties. Nothing that they could do or say in the controversy between themselves would not be of interest to us, but I mean we would not have that interest that parties to the litigation have. I, therefore, respectfully request that as a matter of order of proof, and as a matter of discretion on the part of Your Honor, the letters be not read until the parties get more actively into the trial of that case in which we are not engaged.

The Master—My former ruling was made on the understanding that you did not desire to say anything or be heard on this matter.

Mr. Whipple. Perhaps I made a mistake. I felt I had no right to say anything in regard to their admissibility. I haven't anything now to say in regard to their admissibility. I can't object to their being introduced in some other suit. But the extent of my objection is that I ask not to have them introduced while our case is going in. If they were proper evidence in our case I should quite agree that they might go in now. It is all a matter of discretion, all a matter of the order of proof, as Mr. Thompson has already indicated in what he has said to Your Honor. I appeal to the

exercise of that discretion, not on the question of their admissibility but on the question of whether they should go in now or not—and that is all I have a right to ask.

Mr. Thompson—In regard to that may I suggest that the letters ought to go in and doubtless will be read at some stage of the case? As this is the last witness—

The Master—I don't feel so sure of that. Suppose after you tell me you have got all the proof that you have, independent of the letters themselves, of a purpose on the directors' part to suppress them, suppose I should be obliged to rule that the evidence was not enough to show any such intention; then I should exclude the letters entirely.

Mr. Thompson—Suppose then I should offer the letters on another ground, namely, that there was evidence independent of this allegation, written evidence, there was evidence in the case between the directors and the trustees which the directors had deliberately ignored, and I should offer that evidence on the issue of good faith in the discharge of Mr. Dittmore, who can be shown to have urged them—

The Master—We are not at that point at present.

Mr. Thompson—They might still be admissible. There are a good many grounds on which, the more I reflect, it seems to me that they are admissible. It is a complicated situation. As long as Mr. Bates has withdrawn his objection, in regard to Mr. Whipple's point I only suggest that if we would be assumed that they are going to be read, isn't it fairer to have them go in now, this being Mr. Whipple's last witness, as I understand it, so that there may be ample knowledge on the part of the people whom they affect, on the part of Governor Bates, as to what they are; also that Mr. Bates, when he opens his case, may know what these letters are and be advised as to whether he will or will not use this evidence. It is rather unfair to him, after he has opened his case, to spring it on him. General Streeter and I selected this particular occasion as the proper occasion from every standpoint to read these letters.

Mr. Whipple—I might reply to that that the information is now all given to Governor Bates, and his opening is now imminent, and we may say that he is fully advised, just as fully advised as if they were publicly read.

Mr. Thompson—I think the court ought to know before Governor Bates opens whether he is going to make any use of this material or not, bearing on the general issue of good faith in our case, which is being tried by agreement with this case. I don't believe the order of proof under that agreement ought to be very material.

The Master—It seems to me clear that the reading of those letters is not a proper part of the cross-examination of this witness. I think I shall have

to adhere to that view of the matter and direct that the letters be not read at present,—without prejudice, however, to your right to offer them later.

Mr. Thompson—I assume that when I do ask Your Honor again, later, it will be remembered that Governor Bates has once withdrawn his objection. That position, I suppose, will be adhered to.

Mr. Bates—I withdrew my objection with the understanding that these letters, in so far as they were material, if they were admitted, could be used in the other case, and I still stand on that position.

Mr. Thompson—That is just the trouble, if Your Honor please. Governor Bates has taken a position which involves this: either they are read now or they are never read. Probably there is some logic in Mr. Whipple's position, but by taking it he has put Governor Bates in a position whereby he can indirectly get rid of this evidence.

The Master—If you make the letters material in my view you will certainly have an opportunity to read them.

Mr. Thompson—There are two or three more questions raised by the trustees' records. The record of September 11, 1918.

Q. It is stated that the directors notified you not to ship the article on "Purification," and that you did so in spite of their letter. Is that true? A. The article does not state that I did it in spite of their letter.

Mr. Thompson—May I have the trustees' records for Sept. 11. The first paragraph I will read in:

"The business manager came to the meeting and reported that after very earnest consideration he had decided it was his highest understanding of Principle to follow the original order of the trustees relative to the shipping out of the pamphlet 'Purification,' notwithstanding the letter he had yesterday received from the Board of Directors requesting him not to ship out any of the pamphlets till authorized by the Board of Directors to do so, and that he had consequently notified the shipping room first thing this morning to send out the pamphlets. The trustees expressed their approval of his decision, feeling that he had made it wholly without influence from them, being guided solely by his own understanding of what Principle demanded of him to do."

Q. So that you did ship out that article? A. That is correct.

Mr. Thompson—Sept. 20.

The Witness—Might I add to that other statement. Mr. Thompson, that contemporaneously and on the same morning the directors notified me that it was proper to ship those pamphlets out?

Q. But after you had decided to do it yourself? A. Yes.

Q. Sept. 20. The paragraph of the meeting of Sept. 20 is as follows:

"The business manager came to the meeting and was instructed from this

time on to have all advertising features go to him after their preparation in type, and then through him to the Board of Trustees, after which they were to be sent by him to the printing department. This plan discontinues the sending of these features to the Board of Directors for their approval." And that plan was never taken up afterward, was it? A. No, sir.

Q. What was that feature advertising? A. Advertising on the cover pages, the inside cover pages of the Sentinel and Journal and other publications.

Q. Before that time that advertising had been submitted to the directors, had it? A. Yes, sir.

Q. The next note I have is October 28th, the last paragraph—meeting of October 28th:

"In connection with the figures for the semi-annual accounting Miss Bartlett was asked to come to the meeting with Mr. Watts—" Who was Miss Bartlett? A. Our chief accountant.

Q. —and the whole question of depreciation and the carrying of accounts was gone into. The chief accountant submitted a preliminary figure indicating that it would be necessary to borrow \$250,000 in order to make an immediate payment in full to The Mother Church treasurer. Definite steps were taken, and the business manager and the chief accountant were asked to prepare memoranda for approval at tomorrow's meeting. The business manager was also asked to prepare a resolution of the Board of Trustees to be shown the Shawmut National Bank, tomorrow, authorizing the loan. The business manager had postponed the appointment with the bank until tomorrow, Tuesday."

The amount actually borrowed was \$200,000 or \$250,000? A. \$200,000.

Q. Under this resolution? A. Yes, sir.

Q. It was borrowed, however, from the First National Bank? A. Yes, sir.

Q. But on the next day this vote was passed, was it not, being a record of the meeting of Oct. 29th:

"Resolved, that Herbert W. Eustace and David B. Ogden, trustees of The Christian Science Publishing Society, be and they are hereby authorized to arrange for a loan from the National Shawmut Bank of Boston to The Christian Science Publishing Society amounting to \$250,000, and that they execute and deliver the promissory note of the Publishing Society for that sum, payable on or before 90 days after this date."

You knew of that? A. Yes, sir. I think the reason that was reduced to \$200,000 was because the Church paid its account then, amounting to something like \$47,000, which enabled us to reduce it.

Q. In the last paragraph of that meeting—or, rather, a subsequent paragraph of that meeting of Oct. 29th—I want to ask you about this:

"In connection with the question of

the taking on of employees by the employment department, the business manager was asked to notify Miss Thomas that the trustees desired to be informed before any person was employed who had gone through class with anyone officially connected with the Christian Science movement." What does that expression "gone through class" mean? A. Gone through class with some teacher of Christian Science.

Q. That is, the parties wanted to be informed before any such person was employed? A. Yes, sir. We want to know who the teacher was.

Q. Who the teacher was? A. Yes, sir.

Q. And did that have any bearing upon your business policy, who the teacher was? A. Yes, in some instances.

Q. What was the bearing? A. It would have some bearing.

Q. Well, how would that affect the competency of the person to perform the various duties— A. Only to this extent, that some teachers have a desire to get a great many of the Christian Scientists, who have gone through class with them in the publishing house, and we try to be careful not to have too many there at any one time—

Q. So that that teacher having a lot of her former students, can have influence in the Publishing Society, isn't it? A. I don't know what the purpose is, but we try to be careful on things of that nature.

Q. I find this in the meeting of Nov. 4, 1918, which I would like to ask you about a moment:

"A letter was received from the Christian Science Board of Directors requesting that we allow their attorney, Mr. Norwood, to borrow correspondence from the publishing house files in connection with his work for the Board of Directors. The trustees asked Miss Wright to come to the meeting—"

and who is she? A. She is the assistant in charge of the Journal Card Department.

Q. —"and told her of the directors' request, and asked her, in the event of giving correspondence to Mr. Norwood, to remove all memoranda and special notations from the correspondence, and to keep an accurate list of the letters given."

Now, what was the purpose of removing the memoranda and special notations? A. They were special memoranda from one trustee to the others. The three trustees looked over all those things at night, and at other convenient times, and they would make a memorandum for each other in handing their bundles of correspondence from one to the other.

Q. In the meeting of Jan. 23, 1919, the records of the meeting show this:

"Mr. Watts was called away from the meeting for a brief period, and on returning stated he had been called to Mr. Dickey's office for a few mo-

ments, and told of a conversation he had had with Mr. Dickey, in which he, as a lawyer, had emphatically expressed to Mr. Dickey the seriousness of the course he felt the directors were pursuing.

Q. What did Mr. Dickey say on that occasion?

Mr. Bates—What is the date?

Mr. Thompson—Jan. 23, 1919.

Q. What did Mr. Dickey say on that occasion when you, as a lawyer, advised him that he was taking a serious position? What did he say? A. I don't remember that particular conversation sufficiently well—

Q. Haven't you any recollection of that conversation, and of what reply he made when you as a lawyer told him that he was going to get himself into trouble, if he did not look out? A. I didn't say that.

Q. That in substance, or words to that effect? A. No; I didn't say that at all.

Q. It says here that you advised him as a lawyer, "emphatically expressed to Mr. Dickey the seriousness of the course he felt the directors were pursuing." I don't think that my paraphrase is very far out of the way. A. The seriousness was, as I understood it at the time, the seriousness in which the Christian Science movement would find itself involved in the trial of a lawsuit, as we are here between the two most important boards, the Board of Directors and the Board of Trustees, and I was trying to show what a deplorable thing that would be, just as I have stated in the letter.

Mr. Streeter—You were trying to do what?

Mr. Whipple—To show what a deplorable thing that would be.

Q. And you didn't have in mind the seriousness from Mr. Dickey's standpoint at all? A. Oh, not at all.

Q. You were a student with Mr. Dickey? A. Yes, sir.

Q. And up to a time quite recently, when this controversy became acute, you were on such friendly terms as might be implied by having been a former student? A. I believe I am still on those terms of friendship with Mr. Dickey.

Q. Did you ever point out to him the seriousness of his dismissing Mr. Dittmore? A. No, sir.

Q. Do you know whether any of the trustees ever suggested to the directors, or to any director, that it would be a good idea to dismiss Mr. Dittmore? A. No.

Q. You don't know one way or the other? A. No.

Q. Did Mr. Dickey or any of these directors ever mention to you the subject of the dismissal of Mr. Dittmore? Yes or no. A. Yes.

Q. Which one mentioned it? A. The directors in a meeting.

Q. Which director in particular? A. I think Mr. Dickey, as chairman, told me after he had been dismissed that he had been dismissed.

Q. And is that the only time that you recollect of any director ever mentioning the fact of his dismissal?

A. That is the only time that the directors have ever spoken personally to me on that subject.

Q. I said "any director." A. Yes, any director.

Q. Was that on March 17th, the day he was dismissed? A. No, sir; it was a day or so afterward, and I don't know how much.

Q. And didn't Mr. Dickey on that occasion suggest to you in substance that it would now be possible, he hoped, to make some compromise of this difficulty? Yes or no. A. No.

Q. Did he say that the position of the directors would be just as uncompromising as the position of Mr. Dittmore? A. No, sir; he didn't go into that subject at all with me.

Q. He just mentioned the fact of the dismissal? A. Yes, sir.

Q. You knew that from other sources, didn't you? A. Yes, sir.

Q. Now in the minutes of the meeting of June 3, 1919, I find this entry, which I would like to ask you about:

"Mr. Watts reported that this morning Mr. Seeley had brought to his attention the fact that Miss Anderson had recently given a copy of Mr. Dittmore's recent letter to Mrs. Carter in the editorial department and advised her to read it, whereupon Mr. Watts called Mrs. Carter and Miss Anderson to his office, with Mr. Seeley, and inasmuch as this action on Miss Anderson's part was a direct violation of the bulletin issued by the business manager at the time of the filing of the Bill in Equity, and as Miss Anderson did not appear to realize the seriousness of the mistake, he had put her under suspension pending opportunity to report the occurrence to the trustees. The trustees approved Mr. Watts' action, but inasmuch as they had other business on hand today, they told Mr. Watts to continue the suspension at least until tomorrow, when they might have opportunity to talk with him and Miss Anderson together."

Now, what Miss Anderson did was to take a copy of a letter written by Mr. Dittmore and show it to a Mrs. Carter? A. No, sir; that was not what she did.

Q. What did she do? A. She went over to—am I to state that situation? I would rather not.

Mr. Whipple—In view of the fact that this happened some time after the filing of both bills, perhaps it would be better—

Mr. Thompson—I will not press the inquiry.

Q. As a matter of fact, the trustees have not intended during all this controversy to have in their employ any person, in however subordinate a capacity, who showed any sympathy with the views of Mr. Dittmore or the views of the directors, have they? Yes or no. Please answer the question yes or no, Mr. Watts.

The Witness—Read the question, please.

[The question last put is read to the witness.]

Mr. Thompson—Isn't that the solid fact, Mr. Watts?

A. No, it is not the fact.

Q. You are willing to take the responsibility of swearing that that is not the fact? A. Absolutely willing to take the fullest responsibility of saying that that is not the fact.

Q. You understand the question? A. Yes.

Q. Do you say that it has been immaterial to the trustees whether their subordinates have or have not sympathized with the views of Mr. Dittmore or the views of the directors? A. I don't know how it has been with the trustees, but they have never indicated an opinion either way to the employees, so far as I know.

Q. Have you personally indicated to any of your subordinates how you felt? A. Yes.

Q. Wait a minute—about subordinates having or expressing sympathy with the position taken by Mr. Dittmore or the directors? A. No, sir, not Mr. Dittmore.

Q. Or with the directors? A. I would like to get that—

Q. I wish you would do a little thinking on that. Haven't you made it perfectly apparent to your subordinates that sympathy, at least openly expressed, on the part of any one of your several hundred employees, with the position taken by Mr. Dittmore in this controversy, while he was still a director—in this controversy with the trustees—would result in discipline? A. Not at all, sir. I have done this on the call—

Q. You have answered the question. A. May I offer an explanation now?

Q. I don't exactly see how it is necessary, when you say that you have not done it at all. I do not see how any explanation is required. However, if you think it is, go ahead.

A. I have called the heads of the departments in and read to them Mr. Dittmore's answer relative to our circulation and our advertising and other questions, and asked them, from their viewpoint, if those statements of Mr. Dittmore were true; and the department said No.

Q. I won't ask you to go further than to state what they said, because that is a little remote.

Mr. Whipple—We should not press that, then.

Q. Now, in the record of the meeting of Jan. 29, 1919, I find this, and see if it brings anything to your mind:

"Mr. Watts came to the meeting and reported a conversation he had had this morning with Mr. McKenzie, in which Mr. McKenzie made the statement that hereafter he was going to be editor, inasmuch as hitherto he had not been, because Mr. Eustace has really been the editor, through influencing him on the subject of the per-

odicals. To this statement Mr. Watts offered a protest, inasmuch as he knew from his own observation and experience that this could not be true."

Do you remember that episode? A. I do, sir.

Q. Mr. McKenzie had been one of the editors, hadn't he? A. He is one of the editors.

Q. He said to you in substance that he had been under the practical domination of Mr. Eustace, and that he was going to shake it off, didn't he—that was the gist of it? A. No, he didn't.

Q. He said "inasmuch as hitherto he had not been" editor, although holding the position, "because Mr. Eustace had really been the editor, through influencing him on the subject of the periodicals"—that was what he said, wasn't it? A. Yes; that is what he said.

Q. And you say that that is not true? A. No; you used the word "domination," and the word that appears there is "influencing."

Q. Do you draw any great distinction between those two words? A. Considerable, yes, sir.

Q. You thought that he had not been influenced, didn't you? A. No. He had been influenced to some extent by Mr. Eustace on things that were called to his attention, and he agreed that they should be corrected.

Q. Why did you protest and say that from your own observation and experience this could not be true? A. Because he made the statement that he had not been editor.

Q. Not what? A. That he had not been editor.

Q. You simply now take the technical position that he had not held the position of editor, is that it? You don't mean that, do you? A. No, not at all.

Q. You don't mean that you intended to deny, when he said, I have not been editor, that he had been editor, that he had been elected editor, and therefore he held the position—is that what you intended to deny? A. No, that I didn't intend to deny.

Q. Now, I find in the record of Oct. 21, 1918, and I am asked to call your attention to it, the following:

"Mr. McKenzie was asked to come to the meeting in connection with an article by Henry Deutsch, proposed for the Sentinel of Nov. 16. Mr. McKenzie was told of the situation in Minneapolis as it had been revealed through Mrs. Ritchie's recent visit to that field, and it was finally decided that it would be best not to have Mr. Deutsch's article appear at the present time."

Now, who was Mr. Deutsch, if that is the way you pronounce it? A. Why, he is a gentleman who is more or less prominent in Christian Science circles in Minneapolis.

Q. Do you know what the situation was that was revealed by Mrs. Ritchie's recent visit? A. No, I do not, sir.

Q. You don't know anything about it yourself? A. I do not.

Q. Did Mr. Deutsch's article ever get in? A. I don't know, sir.

Mr. Thompson—I think that that is all, Mr. Watts.

Mr. Whipple—At the close of the hearing on Friday I asked for a letter from Mr. Dickey to his associates, in which Mr. Dickey outlined the thought that they might go rather slowly on the question of removal of the trustees. Have you that letter? As I remember it, it was dated at Savannah, Georgia. Can you remember that date?

Mr. Withington—Jan. 13.

Mr. Strawn—The meeting was had on Jan. 13, at which time the letter was read.

Mr. Bates—There are two letters, one of Jan. 10, and one of Jan. 11 (passing papers to Mr. Whipple).

Mr. Whipple—Which one was read? Both of them?

Mr. Bates—I don't know.

Mr. Whipple—I also asked for the data or records of the Board of Directors for a meeting of Sept. 11 of last year, out of which it was suggested in the vote that Judge Smith should select what was proper to make a part of the record. Have you the record of the full meeting?

Mr. Bates—Your statement of it is not correct, but we have the minutes which you asked for.

Mr. Whipple—In what respect was my statement not correct?

Mr. Bates—Your statement that Judge Smith should select.

Mr. Whipple—Isn't that what the vote said? Let us see. I would like to be accurate about it. What was the date of the vote?

Mr. Withington—Oct. 1.

Mr. Whipple—Oct. 1. What page?

Mr. Withington—It is page 121.

Mr. Whipple—Yes. I will re-read, for the sake of accuracy, the record on page 121, under date of Oct. 1:

"The minutes of the directors' meeting of Sept. 11, relating to a conference with the trustees of The Christian Science Publishing Society on that date were again taken up for consideration. To be referred to Judge Clifford P. Smith for an opinion as to what it would be best to include in the minutes."

I think that is substantially what I said.

Mr. Bates—No; you said what he had selected.

Mr. Whipple—Well, if you get any comfort as between what he selected to go in and what should be included you may take such comfort as you get from that distinction.

Mr. Bates—I am not looking for comfort and don't need any, but I want you to be accurate in your statement.

Mr. Whipple—Well, you may not be looking for it, but you are going to need it.

Mr. Bates—We shall not come to you for it if we need it.

Mr. Whipple—Perhaps not, but perhaps I will be the very one you will come to for comfort after brother

Thompson gets through with you, and General Streeter, you will be running to us.

Mr. Bates—No; there will be no collusion of that kind between us.

Mr. Whipple—Well, what kind of collusion will it be, if it is not that kind? Now, having acquired these papers, which I want to look over, I would suggest that we take five minutes, if Your Honor please.

The Master—We will stop here for a few minutes.

Mr. Whipple—Five minutes. We will try to limit it to that period of time.

[Short recess.]

Mr. Whipple—May it please Your Honor, I offer a letter of Jan. 11, 1919, from Mr. Dickey to the Board of Directors, a letter which was handed to me immediately before the intermission. It is on the heading of the Savannah River Lumber Company, manufacturer of short and long leaf yellow pine, cypress and hard wood, Savannah, Georgia. It is denoted on the letter that it was read on Jan. 13, 1919, in The Christian Science Board of Directors. It was acknowledged Jan. 15, 1919. (To Mr. Bates) I will ask you to be good enough to produce that acknowledgment, or a copy of it.

[Exhibit 106]

"Savannah, Georgia,

"Jan. 11, 19—

"Board of Directors, Boston.

"Dear Friends:

"It seems to me we would impair our own position and irreparably injure our case if we insist on all three of the trustees of the Publishing Society sending their resignations to the directors of The Mother Church. This supreme request made by us will have the immediate effect of arraigning them all against us. Wisdom should deter us from precipitating a lawsuit that will be 'heard round the world.'

"I think the situation demands that we go slowly and instead of demanding the resignation of all three trustees, we should act under the Manual and dismiss the last man appointed on the Board of Trustees. We should not ask for his resignation, thereby giving him a chance to refuse. We should dismiss him at once and ask the others to appoint a successor that will be acceptable to the directors. It will then be their next move and there will be much less likelihood of their refusing this than of refusing to all three resign.

"This is a history making epoch and I feel that God will hold us directly responsible for acting wisely.

"Sincerely yours,

(Signed) "ADAM H. DICKEY."

Mr. Whipple—There is a copy attached for ease in the reading. Your letter of Jan. 10 does not seem to be pertinent to the subject and I return it.

Mr. Bates—Won't you just put in



the copy as the exhibit, and not the original?

Mr. Whipple—I am perfectly willing.

[A letter, Adam H. Dickey to Board of Directors, dated Jan. 11, 1919, is marked Exhibit 106.]

Mr. Whipple—I have not yet had an opportunity fully to compare the record of the meeting with the changes in the record, the meeting of Sept. 11. I will not attempt to deal with it at the moment, but I should like to offer one or two other minutes from the record of the Board of Directors, and return that original letter, Exhibit 106.

Mr. Streeter—Do I understand, Mr. Whipple, you are going to put in the reply of the directors to Mr. Dickey?

Mr. Whipple—Yes, if they have it.

Mr. Bates—We haven't it here.

Mr. Whipple—We offer now the minutes of the Board of Directors as of Tuesday, Feb. 25, 1919. This is on page 280: "Letters were read from the following:

"Mr. Dittmore, dated Boston, Feb. 24, calling attention to his efforts to secure action in the situation between the directors and the trustees.

"Mr. Dittmore, dated Boston, Feb. 25, offering the following resolution: Whereas, The By-Laws of The Mother Church (Article XXV, Section 3) provide that 'the Christian Science Board of Directors shall have the power to declare vacancies in said trusteeship (of The Christian Science Publishing Society), for such reasons as to the board may seem expedient,' and

"Whereas, The trustees of The Christian Science Publishing Society have for many months followed a course of action exceedingly detrimental to the cause of Christian Science,

"Now, therefore, Be it resolved that the directors shall and do hereby declare vacant the trusteeships held by Herbert W. Eustace, Lamont Rowlands, and David B. Ogden, and that this course be followed by such legal steps as we are advised are necessary to confirm the proper appointment of those persons who are named as successors to these officers.

"Mr. Rathvon seconded Mr. Dittmore's motion, and after discussing the question a roll call resulted in the following vote:

Mr. Dittmore .....Aye  
Mr. Merritt .....No  
Mr. Rathvon .....No  
Mr. Dickey .....No

"Mr. Rathvon stated that his purpose in seconding the motion was to secure discussion. Mr. Dickey explained his negative vote by saying that if the action proposed in Mr. Dittmore's resolution was followed, it would necessitate our making an appeal to the courts to sustain our action and appoint new trustees, and that he felt

this was not a wise thing to do at this time.

"The directors had an interview with Judge Clifford P. Smith with regard to the situation between the trustees and the Board of Directors, particularly with reference to the removal of one or all the trustees."

Mr. Bates—What page are you reading from?

Mr. Strawn—Page 282.

Mr. Thompson—Mr. Whipple, there should be in those records a statement of Mr. Dittmore's reasons for opposing the removal of Mr. Rowlands, and Mr. Dickey's reasons for favoring it.

Mr. Whipple—Well, we haven't got to that yet, because this was a vote on a motion to remove them all.

Mr. Thompson—I think right after that there is some talk; there should be.

Mr. Whipple—Not in these records. The next thing that we wish to offer is a vote in the record of Feb. 26, at a regular meeting of the directors, held at 9.30:

"On motion of Mr. Rathvon, seconded by Mr. Merritt, it was voted that each member of the board in compliance with the suggestion of our counsel prepare reasons why one of the trustees should be removed. These reasons to be submitted to our counsel tomorrow that they may advise the board how to proceed legally to remove one of the trustees at once."

Mr. Whipple—Do you understand that these reasons were submitted, Governor Bates?

Mr. Bates—I do not know, sir. I have had many conferences with the board, and I assume that we talked over many reasons for removing them. A great many were in existence.

Mr. Whipple—I don't find that you were counsel at this time.

Mr. Bates—I don't know about that record; I have not seen it. We had several conferences with our clients at which we talked over the reasons for dismissing them.

Mr. Whipple—We think it is rather important to find out what unanimity there was among them as to the reasons, because it does not seem to be a case where there were plainly reasons for removing anybody, but, having desired to remove them, somebody was desired to hunt up reasons.

Mr. Bates—You will probably discover before you get through.

Mr. Whipple—Well, I may discover something, but not from you.

Mr. Thompson—May I ask, Mr. Whipple, if there is not something in that record that Mr. Dittmore refused to sanction that action and stated his reasons?

Mr. Whipple—No; there is nothing as far as I have seen.

Mr. Thompson—Well, we have his diary.

Mr. Whipple—It says, "On motion of Mr. Rathvon, seconded by Mr. Merritt,

it was voted." It does not say who voted.

Mr. Streeter—Very likely Judge Smith didn't want to put that in.

Mr. Whipple—On page 286, of Feb. 27, there is this vote:

"Proposed letter to the Board of Trustees of The Christian Science Publishing Society requesting detailed itemized statements of monthly outlay and expenses was approved."

Then at the same meeting, page 287, was this:

"The directors had a conference with Judge Clifford P. Smith, ex-Governor John L. Bates, and Mr. Leon M. Abbott, in connection with the next step to be taken by the directors toward the removal of one or all of the trustees of the Publishing Society. Governor Bates was of the opinion that the board ought not to do anything for the present in the way of dismissing the trustees, lest this action might throw the directors into court unprepared. He advised the board to prepare its case in such a way that if brought into court the board would be prepared to give its reasons for removing one or all of the trustees of the Publishing Society. The counsel encouraged the directors to continue to make requests of the trustees for the proper fulfillment of their duties."

Mr. Thompson—Isn't there something there about Dittmore? This doesn't correspond with the diary entries of the meeting taken at the time.

Mr. Whipple—I am sorry for that, Mr. Thompson, but you see I am not privileged to see your statement of what the true record is. But we were interested in the fact that the Governor was apparently anticipating litigation and wanted to be prepared for it.

Then on March 3 there is this record, page 288:

"The directors had an interview with Judge Clifford P. Smith, who read to the board two letters from himself to the board, both dated March 1, one recommending the Board of Trustees of the Publishing Society to be composed of three editors, and recommending that an early selection be made of a business manager for the Publishing Society; the other conveying an opinion expressed by ex-Governor Bates in a conversation with Judge Smith, that the board make frequent demands upon the trustees for information."

Page 294, March 6, 1919:

"On motion of Mr. Merritt, seconded by Mr. Dickey, it was voted that any copies of resolutions or minutes of this board which are given to the members thereof be returned to the corresponding secretary to be destroyed by him within one month of the date they were given out without their having been copied. A roll-call on the above motion resulted as follows:

Mr. Dittmore, No  
Mr. Dickey, Aye  
Mr. Merritt, Aye  
Mr. Rathvon, Aye

"Mr. Dittmore said he would file a letter reviewing the situation and explaining why he voted against this motion. Mr. Merritt declared that he offered the resolution in loyalty to the Board of Directors that their proceedings should not go beyond the board."

Mr. Thompson—Isn't there a statement there about a formal opinion by General Streeter against refusing to give a member a copy of anything that he might want in the records of the board?

Mr. Whipple—No. Well, let us see—there is this vote on March 6, page 294:

"Mr. Dittmore asked the corresponding secretary for copies of the informal notes made by Mr. Merritt and Mr. Rathvon of the two conferences between the directors and the trustees of the Publishing Society when he was not present. The chairman entered an objection to Mr. Dittmore's taking copies of any of the memoranda on file in our church with reference to the transactions of this board. Mr. Dittmore requested that the board be asked to sustain or not sustain the chair, that a roll be called. Mr. Merritt left the room. The roll-call resulted as follows:

Mr. Dittmore, No  
Mr. Rathvon, No  
Mr. Dickey, Aye

whereupon the corresponding secretary had copies made and given to Mr. Dittmore of the informal memoranda prepared and filed by Mr. Merritt and Mr. Rathvon of the meetings of Feb. 24 and March 3 with the trustees."

I desire with Your Honor's permission to recall Mr. Eustace for questions as to a subject matter which was brought up in Mr. Rowlands' examination, regarding which I had no opportunity to examine Mr. Eustace.

Herbert W. Eustace—recalled

Q. (By Mr. Whipple.) Mr. Eustace, do you remember the circumstances of the selection of Mr. Rowlands to become a member of the Board of Trustees? A. I do.

Q. Do you remember from whom the suggestion came? A. Mr. Merritt was then a member of the Board of Trustees, and also a member of the Board of Directors. He and I had been in conference in the afternoon, and Mr. Rowlands' name had been carefully discussed and his qualifications. Mr. Merritt said to me in substance, "Now, you think it over, and if you feel like it you telegraph him to come to Boston for a conference."

Q. What next happened? A. That evening after thinking it carefully over I decided the thing to do would be to telegraph Mr. Rowlands and ask him if he would come to Boston for a conference. I called up Mr. Merritt to get Mr. Rowlands' address, for we knew he was not in Chicago—that he was down south somewhere. And Mr. Merritt—I spoke to him over the phone and said what I felt was the proper thing to do, and asked him if

he knew the address of Mr. Rowlands. He said no, he did not, but that Mr. Dittmore was visiting him that evening and he felt sure that Mr. Dittmore would know it and he would ask him. And I said immediately, "No, leave it alone then; don't bother anything about it. We will take it up in the morning." I did that—

Q. I anticipate you are going to give your reasons, and those would not be admissible. What happened the next morning? A. The next morning—the next day I discovered they had sent—Mr. Dittmore and Mr. Merritt had sent a telegram through Mr. Jarvis to Mr. Rowlands.

Q. Mr. Jarvis is the employee— A. Corresponding secretary.

Q. Corresponding secretary of the directors? A. Yes. And when I saw Mr. Merritt I was not slow to express my disgust at what had been done.

Q. Well, will you state what you said to him. A. Well, I used Caesar's statement, "Et tu, Brute," and he knew I was very much disturbed at their having butted in on a thing that was none of their business except in so far as we are always glad to have them in accord with whatever we do.

Q. That is, the communication by Mr. Merritt to Mr. Rowlands asking him to come to Boston was not with your consent? A. Not through Mr. Jarvis at all. If Mr. Merritt had sent it as a trustee it would have been an entirely different thing.

Q. But not as a director? A. Not at all. And he had no right to do it.

Q. Now, what next happened in this matter? A. In a few days—in a day or two—Mr. Rowlands arrived in Boston and Mr. Merritt called me up in the trustees' room from the Board of Directors and said, "Is that you, Eustace?" And I said, "Yes." He said, "Have you seen Rowlands yet?" I said, "No. Is he in town?" He said, "Yes, I understand he is." And that was the substance of it.

Q. And you subsequently saw Mr. Rowlands? A. Subsequently saw him.

Q. Did you learn subsequently that Mr. Rowlands was right there in the room when Mr. Merritt asked if you knew he was in town? A. I did indeed, and I was disgusted.

Q. That is, you learned from Mr. Rowlands that he was right there when Mr. Merritt was calling you up to ask you? A. If he was in town.

Q. He didn't disclose to you that he was in the office of the directors at all? A. He did not—not one word.

#### Cross-Examination.

Q. (By Mr. Krauthoff.) Mr. Eustace, you had the telephone message from Mr. Merritt asking you if you had seen Mr. Rowlands? A. Yes.

Q. And your answer was that you had not? A. Yes.

Q. And you now state that at the time that that telephone message came to you Mr. Rowlands was in the room where Mr. Merritt was? A. I understand that that was so.

Q. That comes to you from Mr. Rowlands? A. Mr. Rowlands.

Q. When did you see Mr. Rowlands after that? A. I should say within half an hour or three-quarters of an hour.

Q. Where? A. In the trustees' room.

Q. And who was present? A. Why, I don't know. I think Mr. Merritt. I don't know whether Mr. McKenzie was there or not.

Q. Mr. Merritt and Mr. Eustace and Mr. Rowlands; and you think Mr. McKenzie? A. I am not sure whether Mr. McKenzie was. I would have to look up the records to see who was present.

Q. Well, of course, Mr. Rowlands succeeded Mr. Merritt? A. Well, not until August the first.

Q. I mean when the election took place Mr. Rowlands succeeded Mr. Merritt? A. Well, Mr. Merritt voted on that. Mr. Merritt's resignation was to take effect August the 1st. This was at the end of July.

Q. When did you discuss the matter with the Board of Directors, of Mr. Rowlands being a trustee? A. I don't remember discussing it with the Board of Directors.

Q. You had some conferences with the Board of Directors at that time? A. Yes, but I don't think there was any—I never remember any on Mr. Rowlands. Mr. Merritt was, of course, on the Board of Trustees, too.

Q. So that we may get the situation clearly, in July, 1917, the trustees were Mr. McKenzie, Mr. Merritt, and Mr. Eustace? A. That is correct.

Q. And Mr. McLellan was the editor-in-chief of the periodicals except The Monitor? A. He was editor of the periodicals except The Monitor.

Q. And also a member of the Board of Directors? A. Yes, sir.

Q. And Mr. McLellan passed on about the 17th or 18th of July, 1917? A. He passed on in July. I don't know the date.

Q. And that resulted in a rearrangement whereby Mr. Merritt ceased to be a trustee and became a director? A. No. He was elected on the Board of Directors, I understand, but he did not resign from the Board of Trustees. He held the two offices, one on the Board of Trustees and one on the Board of Directors.

Q. For about 10 or 12 days? A. Something like that.

Q. And Mr. McKenzie, who had been a trustee, became the editor of the periodicals except The Monitor? A. That is right.

Q. And Mr. Ogden, who had been the business manager became a trustee? A. Not until August 1st.

Q. But I mean in this rearrangement? A. Oh, yes, later.

Q. And Mr. Watts, who had been assistant to Mr. Ogden, became the business manager? A. That is right.

Q. Now, weren't all of these things taken up between the trustees and the

directors? A. No, not all at the same time at all.

Q. I called your attention, you remember, to the notice that was put in the Journal,—"By unanimous consent the following changes"—was all of it done by the unanimous consent of all of you? A. Why, we had nothing to do with the election of the directors.

Q. With the election of the directors? A. No.

Q. I know, but wasn't the whole subject discussed among you all? Didn't Mr. Merritt ask you about giving up his position as trustee and becoming a director? A. No, not in that sense. He informed us that he had been invited to become such and had accepted it.

Q. At any rate, the notice was by unanimous consent? A. Yes. That means, of course, that the trustees did everything except the directors.

Q. And after you discovered that this telegram had been sent to Mr. Rowlands, asking him to come to Boston, you did name him as a trustee? A. Oh, yes. We elected Mr. Rowlands on that same day, I think, he reached Boston, or the following day.

Q. After you knew the telegram had been sent? A. Yes. Of course it was after the telegram, because he came on that telegram.

Q. After you had quoted to Mr. Merritt this quotation from Cæsar on the telegram, you proceeded to elect Mr. Rowlands trustee? A. Yes. I let my annoyance get the better of my kindness, perhaps.

Q. Your judgment overcame your annoyance? A. Maybe it was good judgment.

Mr. Krauthoff—That is all, thank you.

Mr. Whipple—That is all, thank you.

If Your Honor please, the third trustee, Mr. David B. Ogden, is in court, and has been in court throughout the trial. He will continue to be in court as his duties as trustee permit. He knows nothing and can add nothing except confirmatory evidence to what has been stated by the other trustees and Mr. Watts, and therefore it has not seemed to us best to ask him to take the stand for merely cumulative evidence—for the purpose of putting in merely cumulative evidence. He is here ready for cross-examination if anyone desires to cross-examine him or to elicit any information from him, but I shall not offer him technically as a witness unless requested so to do. With that statement, if Your Honor please, the trustees rest their case.

Mr. Bates—I understand that you rest your case here?

Mr. Whipple—Yes.

Mr. Bates—Now, if Your Honor please, we would like directions as to the procedure. Of course, we realized at the start that there would be some inconvenience and some possible confusion by reason of the fact that there was the attempt to try the two cases together, but I understood it to be Your Honor's determination that the

two had better be tried together, and I should therefore assume that General Streeter and Mr. Thompson would go ahead now and open their case, so that when we, as defendants, open our case we may reply as to both of them at the same time. I think it would lead to less confusion. We would be in a better position to know exactly what is claimed by Mr. Thompson and General Streeter and their associates, and we would be in a better position in the examination of our witnesses than we can be if they defer their opening until after we have made an opening in one case, and then attempt to put in evidence on it and find that they are trying the other case. So that I suggest that in the end it would probably save time and lead to less confusion if they should open now and put in their case, after which we would open and reply to both.

Mr. Whipple—Does Your Honor think it proper that I be heard on that at some time?

The Master—I think so. All counsel who desire to be heard, I think, ought to be heard on that question.

Mr. Whipple—I do not want to press myself forward except to make this suggestion which I have already made and perhaps need not repeat it.

We are not interested in the suit which Governor Bates now asks to have opened. We are interested only in the trustees' suit. We are not parties to the other suit at all, nor do we expect that any evidence there introduced is likely to be used in our own case. We should like it, therefore, if Your Honor thought we were entitled to have our own case heard, being the first brought in point of chronology, so that we—meaning the trustees and counsel for the trustees—might be dismissed from attendance while the suit is being tried as between the directors and Mr. Dittmore, or rather Mr. Dittmore and the directors. It seems to me that it would serve no useful purpose that we should be held here during a period which is likely to be prolonged, if at least the superficial appearance, superficial indications are correctly interpreted by us. We should, therefore, be very much pleased if you felt that we were entitled to have our case tried out. Whatever evidence is offered in our case that is applicable in the Dittmore suit I understand will be taken; but I do not understand that there is any evidence in that suit that will be taken in ours, or that there is any issue there involved which interests us; and if we could escape attendance upon what seems to be a long trial, if we are entitled to, we desire to insist upon it.

Mr. Streeter—If Your Honor please, my friend, the Governor, looks finely sincere.

Mr. Bates—It is a reflection!

Mr. Streeter—No, no. He knows perfectly well that the arrangement is other than he now suggests, and I do not know any real good reason why

he should make this suggestion. This was all gone over at the hearings in some other room or where we were the first morning—all fully arranged and discussed, and it was decided that Eustace v. Dickey should go on first. We even discussed about the opening. The defendants were to put in their evidence in Eustace v. Dickey and then we should open in the Dittmore case and proceed to the end, and so far as any testimony in Eustace v. Dickey was put in either by the plaintiff or the defendant that was competent in the Dittmore case, it should be available.

The Master—So as to avoid taking it twice?

Mr. Streeter—Yes. I wanted to be sure about this and so I examined the record, and in my copy, which is at the club and not here, I had the record of that day so marked that I could refer Your Honor right to the pertinent things in the record immediately, showing that we are right. In this printed copy that I have here, after the discussion, the Master says:

"I understood you, Mr. Whipple, that your suggestion was that your case being the first one on the docket, Eustace et al. v. Dickey et al., you being the plaintiffs in that case, that you begin, according to the usual rule. Is there any objection to that?"

"Mr. Bates—No.

"The Master—Very good. The plaintiffs will then begin in that case and put in their evidence, and then the defendants, first those represented by Governor Bates and his associates, and then those represented by General Streeter and his associates. Is that right?"

"Mr. Whipple—Yes."

Then the Master, evidently looking towards Mr. Thompson, says:

"And then after we get through with that you probably can tell better what ought to be done in the other case than you can now.

"Mr. Thompson—Then after Governor Bates has put in such defense as he cares to put in, if there should seem to us to be anything left over which is material to Mr. Dittmore to put in, I suppose that would be the proper time for us to put it in."

That is, in Eustace v. Dickey. The whole discussion was to that effect, and in our preparation, if we had not understood that it was absolutely clearly settled by the Master, with the approbation of my honest looking friend over there, Governor Bates, that it should proceed in that way, we should have raised the question and been prepared to open; but we have gone on the theory that the record meant what it said and that the Master and Mr. Bates meant what they said. Now, we understand that Governor Bates will open his case and put in his evidence, and we shall cross-examine to such extent as may be necessary to bring out the facts in the Dittmore case. It may be that when he is through that a very large por-

tion of our second case will be in. Then we will open and finish it up. That is the way the record shows it was left; that is the way we are prepared to go on.

Mr. Bates—I am entirely content either way, Your Honor. I merely want the way that will be the most expeditious and the simplest and leading to the clearest results. I understood that it was left open that we would sort of proceed step by step as the cases might develop; but that the two cases were to be tried together was distinctly understood from the first among the counsel, against my objection, and I finally acceded to their suggestion. They have been tried together so far as the plaintiffs' case is concerned in the Eustace case; that is, General Streeter and Mr. Thompson have gone on and cross-examined in regard to the Dittimore case as much as they pleased, and up to the present time it has been apparent that there has been an attempt to try the two cases together. If Mr. Thompson or General Streeter should now make their opening, then both cases would clearly be before Your Honor, and we, in examining our witnesses, would know just what to do, because it is apparent that when we put on the directors and the editors as witnesses, when we are through with them, if we examine them in regard to both cases, our evidence in both cases will be practically complete, so that my friend Whipple would have to stay here as long as though the opening was now made in the case of Mr. Dittimore. If Mr. Dittimore's counsel are willing to waive cross-examination of our witnesses on any matters except those which relate to the Eustace case, in which they are also defendants—if they will waive the cross-examination so that we shall not feel compelled to put in evidence in their case, then I am certainly content to have that understanding; but I think the understanding should either be that they open now so that we can put in evidence on both cases, or else that they do not cross-examine in regard to both cases until they have opened their case. It seems that that is a perfectly fair proposition, and either one is satisfactory to us.

Mr. Streeter—That is exactly contrary to the agreement that was made, and we shall not make any new agreement now to waive cross-examination of your witnesses with reference to the Dittimore case. In fact, the great thing in the mind of the Court in putting these cases together was that the evidence brought out in one of the cases should be used in the Dittimore case. My friend, Mr. Thompson, calls my attention to this in the record:

“The Master—As I understood it, we had already agreed that the evidence in one case was to be evidence in the other. I suppose, therefore, that when we have got the evidence all in in the case of Eustace v. Dickey

we shall have already in a very considerable portion of the evidence that belongs to the second case. . . . And it will not be necessary to put it in all over again.

“Mr. Bates—I assume that in examining witnesses who are offered in one case that it will be proper at the time of their original examination to also examine them in regard to matters which they may know which may affect the second case.”

It has all been settled, fully settled, and we prefer to go on in accordance with the ruling of the Master and the agreement.

Mr. Bates—Let me make one more suggestion, if Your Honor please, and it comes with the other suggestion, that whatever we have decided on is immaterial to us so long as it is distinct and clear. If, of course, my brother is going to cross-examine witnesses whom we put on on matters relating to his case about which they have not testified—

Mr. Streeter—About what?

Mr. Bates—About which they have not testified in the direct examination, then it should be understood that in our direct examination we shall have the right to question those witnesses the same as though the opening had been made, which will mean, of course, that each of those witnesses, taking them on the average, will have to spend as much time on examination in chief in connection with the Dittimore case as they would on the other case; but we certainly ought not to be put in the position of having our witnesses cross-examined on a part of the case, or on a separate case, about which they have not been questioned in chief. I am willing to do either way, only I want it definitely understood, and if we examine them on that it is the same as though their opening had been made; and I assume that, under those circumstances, they have waived their opening.

Mr. Thompson—The trouble is that what you want understood now has been definitely understood the other way for two or three weeks. That is why we spent all that time going into the matter. Apparently the significance of trying these cases together did not, in all aspects, dawn on your mind until now. The significance of the agreement made is this, and it has been carried out thus far on Mr. Whipple's part just exactly as I expect it will be with your witnesses. Any witness who goes on is open to cross-examination on either one of the two cases. That necessarily carries with it, and it has in the case of Mr. Whipple's witnesses, a cross-examination, and all of his witnesses have been examined before any opening was made by General Streeter in the case of Dittimore v. Dickey: all of them have been examined on the issues in the case, and have been cross-examined by you. There has been no difficulty thus far in carrying that course. That is exactly the same way that we expect to deal with your

witnesses that you are now putting in on your defense, as you agreed to do in Eustace and Dickey. The fact that we have cross-examined them gives no right to you to require us to make an opening, or give the master a ground to require us to do so. That is a direct violation of the agreement. Nor does it give you any right, while putting in your defense to Mr. Whipple's case, to anticipate your defense to our case which we have yet to put in through Mr. Dittimore and which we do not have to put in until you complete your defense in Eustace and Dickey. You are asking for an opportunity to anticipate a plaintiff's case that has not yet been put in, the reason given being that we, in effect, are anticipating our direct case by cross-examining your witnesses. That is perfectly proper for us to do, but it would be grossly unfair for you to go ahead and meet a case that has not been put in by an interested party, namely, Mr. Dittimore.

The Master—It does not seem to me, gentlemen, that we are likely to get into any serious difficulty. Nobody is going to be cut off or taken at a disadvantage merely on account of any order of procedure. My understanding up to this point has been in accordance, generally speaking, with what Mr. Whipple and Mr. Thompson now state: that at the conclusion of the plaintiffs' evidence in the first case, Eustace v. Dickey, we should then hear the evidence of the defense in that case. And the defense should open and put in their evidence. Now I find it a little difficult to believe that you will get into any serious problem by reason of cross-examination on matters which may be material in Mr. Dittimore's case. I think, at any rate, that we can deal with that when it comes up. If there should be an attempt to cross-examine your witnesses on matters which would have no possible bearing in Eustace v. Dickey but which would only have a bearing in the Dittimore case, and that you will be put to any disadvantage by reason of that fact, I think we can protect you from any serious consequences of that kind.

Mr. Bates—My suggestion is that we certainly should have the right to put our evidence on in that case, and to put it on complete and whole, and that we should not, or at least Mr. Dittimore's attorneys should not have the right to cross-examine witnesses in regard to it before the time comes. If they are limited in their cross-examination to matters which apply to the Eustace case, we haven't any objection.

Mr. Thompson—We have certainly not been limited thus far.

Mr. Bates—But these are the main witnesses in the case. I can see your purpose; of course every one can; but everybody knows that is not the way to try a case.

Mr. Thompson—Everybody knows that when counsel spend two hours

deliberately making an agreement and have it recorded in writing, they ought to stand by it, and not try to change it later because they later have for the first time begun to realize the significance of what they did. I stand on the agreement; it is plain.

The Master—I think that we had better proceed in accordance with the plan as we have understood it so far, and when we get up against the real difficulty arising from these questions which have been suggested, we will see then what it is best to do. It is pretty hard to draw the line between what is admissible in one case and not at all in the other, and what is admissible for the purposes of both cases.

Shall we stop until 2 o'clock?

[Recess until 2 o'clock p. m.]

### Afternoon Session

Opening statement on behalf of Defendants Dickey, Neal, Merritt, Rathvon, and Knott by Walter A. Dane, Esq.

May it please the Court, in opening these defendants' case in *Eustace v. Dickey*, I desire, by way of preliminary statements, to call attention to certain fundamental inaccuracies of the Bill of Complaint. The first is that the bill, in setting out the course of conduct of the parties under it, is based upon a false premise of fact. In paragraph 7, which is on page 29 of the volume which Your Honor has, where the bill and the answer are set forth on opposite pages, it is alleged that "In recent years, since the passing on of Mrs. Eddy, the directors have been gradually endeavoring to assume and exercise powers with regard to the Publishing Society which the directors never assumed or attempted to exercise during the lifetime of Mrs. Eddy."

Again, in paragraph 8, on page 31, it is alleged that "During the month of October last past, the defendants Dickey, Neal, Merritt and Rathvon, and Dittmore made formal demand upon the trustees that thereafter the trustees should in general no longer conduct the business of The Christian Science Publishing Society as they had theretofore conducted said business and performed their duties as declared and defined by the provisions of the trust instrument."

In other words, the Bill of Complaint alleges that up to the time of the dismissal of Mr. Rowlands the business had been conducted in the way which the plaintiffs in their bill say that it has been conducted, whereas as a matter of fact that is not true, but the very reverse of those allegations is true, namely, that ever since the execution of the Trust Deed, Sept. 25, 1898, down to the time of the adoption of the resolution of dismissal, by common consent and acquiescence of all parties interested in the Trust Deed, the directors exercised a supervisory control over the business of the trust. They consistently and without interruption, and without objection on

the part of the trustees, before the present trustees came into office, elected editors, elected the publisher, during the period of time when the publisher had charge of the business affairs of the trust, and they elected the business manager when he succeeded to the functions of the publisher. They at all times had control and guidance of the editorial policy of the periodicals.

For a long period of time Mr. McLellan, who was the editor-in-chief of the periodicals, was also a director, and so a large measure of the control which the directors exercised over the periodicals was conveniently exercised through Mr. McLellan. For that reason there will be a period of time during which there is no record of communications being sent by the directors to the trustees relating to the editorial policy. During that time that power or that right was exercised directly through Mr. McLellan.

In all articles of a metaphysical nature which appeared in the periodicals the directors have during all this time exercised their right to control and guide, and, in general, they have had, and they have been acknowledged to have, supervisory and final control over the business done by the trustees under the Trust Deed and the Manual.

This course of conduct and acquiescence has never been questioned by any former Board of Trustees to the extent of definitely taking a stand refusing to be bound by the authority exercised by the Board of Directors. No former Board of Trustees has ever found itself unable to be guided by the by-laws in the Manual, as they are read into the Trust Deed; nor has any former Board of Trustees ever discovered any repugnancy between the terms of the Trust Deed and the terms of the By-Laws contained in the Manual.

So that the preliminary ad interim injunction issued in this case, issued upon the theory of preserving the status that was supposed to have existed at the time of the removal, was issued upon a false premise of fact and did not preserve a true status of things, but preserved a fictitious status, and every proceeding that has been had following the issuance of that ad interim injunction has been had upon this false premise of fact. The evidence of the directors in this case I think will conclusively show—and the most of it is in the form of record evidence—that our statements in this regard are well within the truth.

I want to say one word with reference to the parties to this bill. It was stated in the opening that this is a bill merely between two sets of trustees, one set holding under the Trust Deed of Jan. 25, 1898, and the other set holding under the Trust Deed of Sept. 1, 1892, which is Exhibit B in the Bill in Equity. The bill itself conclusively demonstrates the error of that position. The direc-

tors are indeed trustees under the deed of Sept. 1, 1892, but they are much more than that. They hold the property under the deed of Sept. 1, 1892, as trustees, and with respect to that property and the subject matter of that deed they are bound by its terms and provisions, but that Trust Deed is by no means the limitation of the measure of the authority and responsibility of the directors. The bill itself sets them out not only as trustees under this deed, but as the Christian Science Board of Directors, the directors of The Mother Church, the directors of The First Church of Christ, Scientist, in Boston, and as such they get their powers and their responsibilities from the By-Laws, the organic law of that Church. The director today, and at the time of the transactions in question, becomes a trustee under the deed of Sept. 1, 1892, by virtue of his being a director of The Mother Church, and he does not become a director by virtue of his being a trustee under this deed. Ample proof of that fact will develop.

The trustees under that deed are four in number. There were no provisions in it for an increase in their number. In 1908, or between 1903 and 1908, The Christian Science Board of Directors was increased to five members, as it was constituted on March 17, 1919, at the time of the transactions in question. So that it is by no means a controversy between two sets of trustees, the relative powers and responsibilities of which trustees are to be measured or limited by the provisions of the trust deed.

At this point I think it would be well to state very briefly something of the organization of the church, with particular reference to the governing body, the governing board of the church.

The present church began in the form of a reorganization of an older church, and that reorganization occurred on September 23, 1892, twenty-two days after the date of the trust deed, Exhibit B. That church had existed since 1879, in corporate form. On September 23, 1892, it was reorganized and the Board of Directors that had existed prior to the deed of September 1, 1892, were also reorganized on September 23, 1892, and continued in office as the Board of Directors of the reorganized church, which was not a corporation. It was a voluntary religious association.

That reorganization was accomplished by eleven persons, who met, and who were denominated "First Members," and that is the beginning of the body called First Members, who are mentioned in the Trust Deed, Exhibit A, in paragraph 10, relating to the right to declare vacancies. Those First Members met and organized themselves into this church, and subsequently they elected persons from time to time as First Members.

Now, from 1892 to 1901 the governing body of this church was the First

Members, the Christian Science Board of Directors, and Mrs. Eddy. Mrs. Eddy during her lifetime always retained a certain and important power of control over the organization of the church and of all the other activities connected with the movement. So that from 1892 to 1901, with the exception of those powers that were reserved by Mrs. Eddy, the church acted through its First Members and its Board of Directors.

In 1901 a by-law was adopted by which all of the business which had heretofore been transacted by the First Members was transferred to The Christian Science Board of Directors. So that from 1901 down to 1910, the date of the passing of Mrs. Eddy, the church acted through its Christian Science Board of Directors only, excepting the powers which Mrs. Eddy had reserved to herself. Since the passing of Mrs. Eddy in 1910 the sole administrative unit of the church organization has been its Christian Science Board of Directors.

In 1901, when the functions of the First Members were transferred to the Board of Directors, they were not dissolved, but they were continued on, but had no functions. As I recall it, it will appear that they met annually but that they exercised none of the business of the church, until 1908, when, by the adoption of a by-law, the body known as First Members whose name in the meantime had been changed to Executive Members, were abolished and disbanded. So that from 1908 down to the present time there has not been in existence a body known as First Members, but during that time The Christian Science Board of Directors has exercised all of the governing functions of The Mother Church, under the power given them by the Manual.

In the bill and the answer there are very few points of agreement, in the important allegations. Certain allegations of an historical nature are admitted, but the important issues which are raised by these pleadings divide themselves naturally into three. The first is:

What was the purpose, plan, and intention of Mrs. Eddy in the establishment of the trust of Jan. 25, 1898?

Second, on March 17, 1919, did The Christian Science Board of Directors have the power to declare a vacancy on the Board of Trustees under the trust instrument of Jan. 25, 1898?

Third, if they did have such power, did they exercise it, on March 17, 1919, in good faith?

The first issue is sharply defined by the bill and the answer. Paragraph 4 of the bill states the contention of the trustees, that:

"The conception and plan of Mrs. Eddy for the promotion and the extension of the religion of Christian Science, as taught by her, involved two general branches of activity. The first, the organization of churches for the study of the Bible and teaching the doctrinal truths of Christian

Science as contained in Mrs. Eddy's textbook of Christian Science, "Science and Health with Key to the Scriptures."

Then in the last sentence of that paragraph it is averred that this action on her part "was in pursuance of the distinct purpose on the part of Mrs. Eddy, the founder of The Mother Church and the Donor of both trusts, to keep the affairs of the Publishing Society under a separate control and management from that of her church."

On the other hand, the contention of the directors as to that point is contained in the fourth paragraph of the answer:

"That the intent and purpose of Mrs. Eddy in the execution of said trust instrument was to make and forever keep The Christian Science Publishing Society, as well as the various other branches of activity originated by her as herein stated, an integral part and activity of The Mother Church. . . . All of these various branches of activity she intended to have carried on under the general direction or supervision of The Mother Church, and to be devoted to one object, namely, the growth and development of the Christian Science religion throughout the world."

And the directors also aver in that connection that her purpose was to establish and maintain in The Mother Church a qualified form of control over all the agencies and departments engaged in the activities originated by her.

Now I direct Your Honor's attention for a moment, on this issue of the case, to the Trust Deed itself. It is our contention that the Trust Deed itself shows that it was Mrs. Eddy's intention and purpose, and a part of her plan, that the business done under this Trust Deed should be done under the supervisory and final control of The Mother Church. She provided in Section 10 of that instrument with respect to filling vacancies in the Board of Trustees, that

"The First Members together with the directors of said Church shall have power to declare vacancies in said trusteeship for such reasons as to them may seem expedient."

At that time the First Members and the directors were the instrumentalities through which The Mother Church acted. The Mother Church could not act except by its First Members and its directors. So she gave the power of removal of the trustees under this deed to The Mother Church. And we shall maintain that the power of removal, coupled, as it is, in paragraph 13, with the power to fix the salaries, with no minimum limit, is the power to control; that necessarily the power to remove an officer includes in it all lesser powers and includes all powers in supervision of the business which that officer has in charge.

We shall maintain, in the next place, that Mrs. Eddy's purpose, plan and intention to keep the control of the

publishing business in the Church is shown by the By-Laws, By-Laws which were promulgated by the Donor of this trust, and which come so near in point of time to the execution and delivery of this Trust Deed as to amount to a contemporaneous construction of the deed and its effect by the Donor herself.

The Master—What are the dates there?

Mr. Dane—The dates of the important By-Laws are Feb. 10, 1898. This Trust Deed was delivered Jan. 25, and on Feb. 10, 1898, at Mrs. Eddy's proposal, a by-law was adopted:

"That no vacancy shall be filled on the Board of Trustees of this deed except that the candidate be approved by the First Members";

that is, to be approved by the Church.

Mr. Streeter—Is that in the present—

Mr. Dane—That is not in the present by-law. That by-law will be followed and its development traced in evidence. But it is very important as showing Mrs. Eddy's own construction of the effect of the By-Laws with reference to the Trust Deed, almost contemporaneously with the execution of the deed itself, having in mind that at that time the First Members was one of the administrative units of The Mother Church and had such important functions, among others, as passing upon the admission of new members to the Church, and any matters relating to discipline of members and to the discipline of branch churches and societies.

Mr. Whipple—May I ask whether the directors were then in existence, Mr. Dane?

Mr. Dane—The directors were then in existence.

Mr. Whipple—That is, there was a Board of Directors?

Mr. Dane—There was a Board of Directors.

Another by-law which is very important upon this theory of the case was adopted on July 13, 1899. That by-law is set out in one paragraph of our answer, and it is to the effect that the Church shall see that the periodicals which are published by the trustees are ably edited. That by-law in its slightly altered form appears in the present Manual and was in force at the time of the removal of Mr. Rowlands. It now appears in the form that The Christian Science Board of Directors shall see that the periodicals are ably edited.

Mr. Streeter—What is the reference to the page, brother Dane, if you have got it handy?

Mr. Dane—That by-law in its present form is found in Article VIII, Section 14, of the present Manual:

"It shall be the privilege and duty of every member, who can afford it, to subscribe for the periodicals, which are the organs of this Church; and it shall be the duty of the Directors to see that these periodicals are ably edited and kept abreast of the times."

On July 13, 1899, Mrs. Eddy proposed, and it was adopted, that her Church should see that the periodicals which were published by these trustees were ably edited, clearly establishing, as we contend, her intention and her purpose to keep the control of the editorial policy of the organs of The Mother Church in the administrative body, administering the affairs of The Mother Church. At that time it was the First Members and the Board of Directors. Since 1901 it has been the Board of Directors.

Another by-law, almost contemporaneous with the execution of the Trust Deed, adopted some time in 1898, was to the effect that no person not accepted by Mrs. Eddy and the directors as suitable should be connected with the Publishing Society.

The Master—Some time in 1898?

Mr. Dane—In 1898.

The Master—Before or after—

Mr. Dane—After the execution of the Trust Deed.

The Master—You haven't the date exactly?

Mr. Dane—I haven't the exact date. It will appear in the evidence exactly.

Also the entire chapter which appear now in the present Manual as Article XXV, nine sections, mainly relating to the business of the Publishing Society, was adopted between the date of the Trust Deed, Jan. 25, 1898, and March 10, 1899.

The Master—That, again, was subsequent to the Trust Deed?

Mr. Dane—Subsequent to the Trust Deed. That article in the present Manual, and, so far as we are advised, always, has been The Christian Science Publishing Society, and was adopted, as I say, within a year and a few months, all of it, different sections at different times, of the execution of the Trust Deed. And it all appears in the tenth edition of the Manual, which was adopted on March 10, 1899. In that article appears the by-law under which, in connection with the provisions in the Trust Deed, the directors acted. Section 3:

"The Christian Science Board of Directors shall have the power to declare vacancies in the said trusteeship for such reasons as to the board may seem expedient."

That by-law is directly traceable back to Feb. 10, 1898, when it appeared on the proposal of Mrs. Eddy herself in the form in which I have already stated it, that no vacancy should be filled on the Board of Trustees except the candidate be approved by the First Members. And shortly after that the First Members, together with the directors, were given the power to declare a vacancy on that board, as we contend clearly indicating that Mrs. Eddy—

The Master—I don't quite follow that. Will you state that again? Shortly after what?

Mr. Dane—Shortly after the adoption of the by-law of Feb. 10, 1898, which was the by-law providing that no vacancy should be filled in the

trusteeship except the candidate be approved by the First Members, there was another by-law adopted which provided that the First Members, together with the Board of Directors, should have power to declare a vacancy in the Board of Trustees.

The Master—That is just what the Trust Deed had already said, was it not?

Mr. Dane—Yes. There are some of the By-Laws which were proposed and adopted which accord almost exactly with the provisions of the Trust Deed and were intended, we shall urge, to indicate clearly that the Founder of the trust and the Founder of the Church, the Leader in the Church, intended to have this Trust Deed executed in accordance both with the terms of that deed and such by-laws as manifestly related to the deed as might be adopted from time to time. I will discuss that a little more fully in another section a little later on.

Now, another thing which, we shall maintain, shows Mrs. Eddy's intention to keep the Publishing Society in the control of the Church, is her own expressions of her intention, which were made at the time the Trust Deed was executed, in connection with the drawing up and execution of the deed; and in her letters, which we shall show in evidence, written to the directors from time to time, which indicate clearly her idea and her intention that they should have the ultimate control of the periodicals, of the editorial policy, of the metaphysical matter which should go into them. Our evidence will go so far as to show that she herself expressed the intention and purpose, at the time of the execution of the Trust Deed, that she desired to have the fullest measure of control possible vested in the directors of the Church or in the Church itself, in order that there might be no danger of the literature being adulterated. And we shall also introduce evidence from which we will claim, and which will fairly indicate, that she understood that the adoption of the by-law, obviously relating to the duties of the trustees and to the execution of the trust, was a direction in the way of supervision of the business under the power which she herself had reserved by Sec. 3 of the Trust Deed, providing "that said trustees shall energetically and judiciously manage the business of the Publishing Society on a strictly Christian basis and upon their own responsibility and without consulting me about details, subject only to my supervision if I shall at any time elect to advise or direct them."

She understood, the first trustees under this deed understood, and so far as we can learn everybody in interest under this instrument has understood until this matter arose, that Mrs. Eddy's By-Laws, manifestly relating to the business of this deed, were her instructions, her directions, under the reserved clause in her Deed of Trust, and that also they were in

effect amendments under clause 8 of the deed which relates to the direction and supervision of the publications, wherein she reserves the right to make such changes as she may think important. That, Your Honor will recall, was interlined by the one who prepared the Trust Deed at Mrs. Eddy's direction, indicating its importance in Mrs. Eddy's mind, and in a clause which relates to the entire business done by the Publishing Society.

As a further proof of what Mrs. Eddy's plan, intention, was, it is important to direct Your Honor's attention to the events immediately preceding the execution of the Trust Deed, and I may state very briefly what is probably not disputed as a matter of history, that the business of the Publishing Society as a publishing society began with the foundation of The Christian Science Journal in 1883. It was published in the early days by a committee, and I think under the auspices of The National Christian Science Association. Only 10 years later, 1893, at the World's Fair, Mrs. Eddy requested that it be reconveyed to her, and it was reconveyed to her, and then she placed it in the hands of the Publication Committee, I think at first consisting of three members, to which there were later two members added. It was published by this Publication Committee until April 3, 1897. On April 3, 1897, a corporation was organized under the laws of Massachusetts, called The Christian Science Publishing Society. That corporation had as its assets the Journal and the other publications which at that time were in existence—I think it was only The Quarterly Bible Lessons and a piece of real estate located at 95 Falmouth Street, Boston. The corporation continued in existence until the execution of this Trust Deed. During the life of the corporation it became evident to Mrs. Eddy that with this business of publishing these periodicals carried on by a separate legal entity, such as the corporation was, a possible drifting away from The Mother Church and a separation from the control and authority of the constituted authorities of The Mother Church, would be possible. In other words, she saw in the business carried on in this corporate legal form the seeds of separation, of a drifting toward an independence, which logically carried out might result in the destruction of the unity of control which she had uppermost in her mind for all of the activities which she founded. With that danger, which is the very danger which we say is now confronting The Mother Church by the action of these trustees—with that danger in her mind, she requested this corporation to reconvey to her the personal property and the real estate, and the corporation did reconvey to her all of its assets, and deeded to her the piece of land on Falmouth Street where it was located. Then,

having in her possession the periodicals and the assets of this corporation and the real estate, she was confronted with a by-law which then existed, and which appears in the 1897 Manual, providing in substance that no trusteeship should ever be formed by or exist in The Mother Church.

With this property in her hands and facing that by-law, she instructed the directors of the Church to change that by-law so that she might make a gift to her church of the property which had been carried on under the auspices of the corporation, and acting under her instructions an amendment to that by-law was adopted, and the amendment appears in the following form:

"No board of trustees shall ever be formed by or between the members of this Church, or shall exist in The Mother Church, except the trusteeship be constituted by the Pastor Emeritus."

That amendment was adopted by the First Members of the Church on Jan. 18, 1898, seven days before the execution by her of the Trust Deed of Jan. 25, and three days after the date on which she made a gift to The Mother Church in her own handwriting, which has been brought heretofore in the plaintiffs' case.

Mr. Streeter—Won't you please read that again?

Mr. Dane—The amended by-law which she procured to be passed is that—

"No board of trustees shall ever be formed by or between the members of this Church, or shall exist in The Mother Church, except the trusteeship be constituted by the Pastor Emeritus."

In other words, having seen the dangers in the corporation's doing this business separate from the Church, she took the property from the corporation. Holding the property in her hands, she procured the amendment to the by-law which made it possible for her to give the property into the control of the Church; and then she deeded it to three trustees who were First Members of the Church; and she deeded the real estate direct to The First Church of Christ, Scientist, in Boston.

Now, she deeded the personal property, including these periodicals, to the trustees who were First Members, because she was advised at the time, and undoubtedly understood from her advice that she got, that under the laws of Massachusetts a religious organization could not carry on a business, certainly one that would produce an income of over \$2000 a year. Being face to face with that legal difficulty, and desiring to place the business under the control of the Church, she took such action as would most closely ally the business to The Mother Church, insuring the fullest measure of control possible, in view of the legal difficulties, to the directors of The Mother Church, and deeded the real estate direct to the Church, and, as I stated

before, in the deed she gave to the Church the power to remove, and provided in the By-Laws that the Church must approve one selected as a trustee, must fix the salary, and in general have final supervision through the paramount power of removal.

From that date to this, or, more accurately speaking, from that date until Sept. 11, 1918, every trustee, every Board of Trustees, everybody interested under this Trust Deed, has recognized Mrs. Eddy's intention to place the control of the business of the Publishing Society in the Church.

On Sept. 11, 1918 (which date is very important, and I will come to it a little later) this Board of Trustees, this present board, for the first time in the history of the movement took a definite stand in denying Mrs. Eddy's intention as shown by the deed, as indicated in the By-Laws, and as is apparent in the other respects of which I have spoken.

This brings me to the second issue, which is largely an issue of law, and that is, whether or not on March 17, 1919, The Christian Science Board of Directors had the power to declare a vacancy in the Board of Trustees. Of course we will not at this time argue the proposition of law, but I should take this opportunity to express the position which the directors take in respect to this subject, and to divide it into two sub-heads—

First, whether they had the power to declare a vacancy under the deed itself; and,

\*Second, whether they had power to declare a vacancy under the provision of the By-Laws which confers upon The Christian Science Board of Directors power to declare a vacancy in the Board of Trustees.

The Master—Your claim is that the power to declare vacancies resided in the whole board, or in a majority thereof?

Mr. Dane—Resided necessarily in the majority in the respect that the majority action of the board is the action of the board.

Section 10 of the Trust Deed confers upon the First Members, together with the directors of said Church, the power to declare vacancies in said trusteeship for such reasons as to them may seem expedient.

The Master—That means that they would all get together, and a majority could declare a vacancy?

Mr. Dane—Yes; that is our position, because, as a general proposition—

Mr. Whipple—A majority of each, or a majority of the assembly?

Mr. Dane—A majority of each, certainly.

The Master—A majority of the joint board or separate boards?

Mr. Dane—A majority of each board. As a general proposition, where nothing else appears, it is always the majority action of a board which is the action of the board, and there can be no question but what the power vested by this provision in the First Members and the directors was a power not vested in the individual

members of those two bodies, but was a power vested in those two offices. It was a power vested in the Church itself, because at that time the First Members as a body and the directors as a body existed side by side, and the Church could not act except through the instrumentality of those boards. Mrs. Eddy—

Mr. Whipple—Why did she not say "The Church," then?

Mr. Dane—If Your Honor please, I prefer not to be interrupted.

Mr. Whipple—Very well. I thought it might aid your explanations.

Mr. Dane—The First Members transferred to the Board of Directors in 1901 all the functions which they had. All the business which had been theretofore done by the First Members was in 1901 vested in the directors.

Now, that was not such a change as might appear from the statement of it. Having in mind that the provision of Section 10 essentially lodges the power to declare a vacancy in The Mother Church, acting through these two bodies, and having in mind that in 1901 the powers which those two bodies had theretofore exercised were merged in one of them, the power is still vested in The Mother Church, where it was originally vested by Section 10 of the Trust Deed, except that now The Mother Church acts through its one administrative unit instead of, as formerly, acting through these two bodies.

In 1908 the First Members as a body were disbanded. They had had no power since 1901, but in 1908 they were disbanded, had ceased to exist.

This power to declare a vacancy, having clearly been vested in these two bodies as official bodies rather than as individuals, and one of those bodies having gone out of existence, the right to exercise that power is clearly vested in and survives to the other body. The action taken by the directors on March 17, 1919, removing Mr. Rowlands, was taken under this provision of the Trust Deed, and also under the By-Laws of The Mother Church.

With respect to the action taken so far as it comes under the by-law of the Church which confers upon The Christian Science Board of Directors the power to declare a vacancy in the trusteeship for such reasons as to them seem expedient, we contend that was an exercise of a power given to them under a by-law which comes within Section 3 and Section 8, particularly within Section 8, of the Trust Deed. That is, the by-law is an exercise on the part of the Donor of the trust of a right which she reserved to herself by the terms of the trust to exercise. The trust is a trust of personal property, the reservation of the right in it is a general one, and there is no provision with respect to the specific manner in which that right is to be exercised; so that any act, any word, of Mrs. Eddy, which clearly appears to be an exercise of the right



reserved under such conditions will be held to be effectual as an amendment, or an enlargement, more properly speaking, of the powers contained in the Trust Deed.

At this point it might be well to state the defendants' theory as to the relation of the By-Laws contained in the Manual to the Deed of Trust. We have been somewhat at a loss to understand clearly what the trustees' position in this respect is. At one time it is stated that the Trust Deed is incorporated into the Manual by reference, so that the Trust Deed, they say, is a part of the Manual. Again, it is stated that the By-Laws contained in the Manual are accepted as the guide to the trustees in their spiritual affairs, differentiating them from their temporal duties. Again, it is stated that the trustees recognize the Manual, and adopt it; and, having done so, they proceed to interpret the terms of the By-Laws contained in it so as to rob them of any force or effect upon them as trustees or upon the Trust Deed. Again, it is stated—by Mr. Rowlands, I think—that the Manual and the Trust Deed are necessarily in conflict in some provisions, and where such conflict exists it is his duty as a trustee to obey the deed and to disregard the Manual. Again, counsel for the trustees characterizes the By-Laws as the ephemeral expressions of Mrs. Eddy, as perhaps inferior to the perpetual and irrevocable Trust Deed.

Now, the Manual of The Mother Church occupies an important and a unique position in the religion of Christian Science. It is not only accepted as a spiritual guide, as the inspired revelation of Mrs. Eddy, but it is the fundamental law of the movement, it is the organic law of the Church, it is the constitution of the Church. And right here I desire to point out what I believe to be the fallacy in the plaintiffs' case in contending that this Board of Directors, or insinuating that this Board of Directors, is acting as a religious oligarchy.

It is impossible for them to act as an oligarchy. This Manual is the source and the measure, the limitation, of the responsibilities and the powers of the Board of Directors, and they are governed and controlled by its provisions; and in that respect they are the administrative unit of a highly developed form of constitutional church government.

The position of the directors with respect to the relation which the By-Laws and the Manual have to the Trust Deed is simply this. The Trust Deed cannot be read without reading into it the provisions of the Manual, which have been made by Mrs. Eddy, an inseparable and interwoven part of it. There is absolutely no conflict between the provisions of the Trust Deed and the provisions of the Manual. The Donor of the deed is the author of the By-Laws, the one is the complement of the other; and the instructions contained in the Manual, where

they manifestly relate to the duties of the trustees, are the directions and instructions of Mrs. Eddy with respect to the execution of the Trust Deed, under the powers which she reserved to herself in the deed to so instruct and direct.

There is, Your Honor will see, in the defendants' claim or position, and there will be disclosed in the evidence introduced on behalf of the defendants, no claim whatever that this Manual must govern as against the provisions of the deed. There is no conflict whatever between the provisions of the deed and the Manual. The two must be read together, and the By-Laws must be read into the deed where they manifestly purport to control the trustees and to guide the execution of the trust powers.

This brings me to the third proposition. If the directors had power to declare this vacancy either under the provisions of the deed itself or under the provisions of the By-Laws, as related to the deed, then in exercising that power did they do so in good faith, with honest purpose and honest motives?

In approaching this question it is necessary to place ourselves in the position of the directors, and to see what the directors had in mind, what knowledge had come to them through their connection with the Christian Science movement, what facts they had which might have actuated them in taking this action. Without spending very much time upon it, they of course knew that from the very inception of the business under the Trust Deed everybody, trustees, directors, church members, everybody in interest, had acquiesced for 20 years in the course of conduct which they were only carrying out in discharge of a responsibility placed upon them both by the deed itself and by the By-Laws in connection with the deed. They had also in mind the fact that the periodicals, with the exception of the Journal and the Quarterly Bible Lessons, were not in existence at the time of the execution of the deed.

The Sentinel, which is the weekly paper, came into existence in September of 1898, and it came into existence in a very significant way, which I will take a moment to point out. On Aug. 22, 1898, Mrs. Eddy requested, through her secretary, Mr. Frye, that a weekly newspaper be started, having already provided for a by-law, which was adopted on Aug. 22, 1898, as follows:

"If a weekly newspaper shall at any time be published by The Christian Science Publishing Society, it shall be owned by The First Church of Christ, Scientist, in Boston."

She provided for the establishment of this newspaper which subsequently came to be called the Sentinel, by the instrumentality of a by-law specifically providing that it should be the property of The Mother Church.

The German periodical was estab-

lished in 1903. The Christian Science Monitor was established in 1908. Something has been put in evidence with respect to the beginning of The Monitor, some letter read as having been sent to the trustees in respect thereto. We expect to show in that connection that Mrs. Eddy in the first instance took up with The Christian Science Board of Directors the establishment of The Monitor, and that they referred the matter through Mrs. Eddy to the trustees. That is, when she came to the point of desiring to establish a daily newspaper, she took it up in the first instance with the Board of Directors of the Church, recognizing that they had ultimate charge and control over the periodicals.

The French Herald was the last in order of time to be established, and that was established in 1918.

Now, the directors, in taking the course which they did, had in mind also that the buildings were furnished by and belonged to The Mother Church; that all authority in respect to occupying the quarters occupied by the trustees must be derived from the Manual. For The Monitor, and also for other periodicals, they knew that large sums of money had been contributed by church members, at the request of The Mother Church, for the purpose of establishing these periodicals. Those contributions had been made by church members upon the assumption, which they had always had, and had a right to have, that those periodicals were governed by the Trust Deed and the By-Laws, and that the Board of Directors had the ultimate responsibility and control over them.

I have said that all the trustees prior to the beginning of the controversy had acted consistently, and without objection, as being guided and controlled by the deed and the Manual. That continued down to Sept. 11, 1918; and as indicating the exact period of time in which this transition took place, this reversal of policy and position on the part of the trustees, we shall show that in a letter written by the trustees on Feb. 15, 1916, sent to the Board of Directors—this letter has not yet been introduced in evidence—they took the position, in effect, that The Christian Science Board of Directors was the responsible authority in charge of the affairs of The Mother Church, and that the Publishing Society, being a gift to the Church, the Board of Trustees are working under the authority of the Church—precisely the position in that respect which the directors are now taking, and the exact reverse of the position which the trustees were taking on Sept. 11, 1918. So that between Feb. 15, 1916, and Sept. 11, 1918, these trustees reversed the position which they had always taken and which they had consistently followed since the execution of the Trust Deed.

The immediate occasion for the defi-

nite stand taken by the trustees on Sept. 11 was in connection with the pamphlet "Purification," and as that has all been gone over I will not take the time now to rehearse it. That was the occasion which brought to the surface in a definite form the refusal of the present Board of Trustees to be longer governed in any respect by the Board of Directors, and led step by step to the ultimate position which was taken on March 11, 1919, where they refused to sign the proposal of agreement between the two boards which provided, in substance, that The Christian Science Board of Directors was the responsible authority in charge of the affairs of The Mother Church, and the ultimate authority over the editorial policy of the periodicals which were the organs of The Mother Church.

Even as late as May 27, 1918, the trustees are on record as having conceded the directors' control in the respects which I have mentioned. That appears from a record of the trustees themselves, where they had before them a memorandum which had been prepared in 1916, the seven-point memorandum which has been referred to.

Mr. Thompson—Prepared by whom?

Mr. Dane—Prepared by the Board of Directors of the Church.

Mr. Thompson—By Mr. Dittmore, you mean.

Mr. Dane—That memorandum was before the Board of Trustees as late as May 27, 1918, and they are on record as saying that it contains nothing that is not already contained in the trust deed and in the By-Laws of The Mother Church.

On Sept. 11, however, and ever since that date, they have taken the reverse of that stand and have denied the control of the directors over them, or the control of the directors over the editorial policy of the organs of the Church.

On March 11, the trustees being openly opposed to the directors' position in this respect, the directors were face to face with an open refusal, an open defiance of their authority as the responsible governing board of the Church. The trustees denied the right to determine the suitability of persons who were to be connected with the Publishing Society. They denied the right of the Church to guide or control the editorial policy of its organs. They denied the right of the Church to elect editors and the business manager. They denied the right of the Church to declare vacancies in the Board of Trusteeship. They denied the right of the Church in general supervision of the larger affairs of the Publishing Society. The responsibility, then, in the face of this, was placed upon the directors by the organic law which governed the Church and by the Trust Deed itself, to exercise the power they had to preserve the unified control which Mrs. Eddy had provided and intended to be exercised in carry-

ing forward the great movement which she founded.

Now, this has been referred to as an academic proposition. It was an extremely vital proposition. They were face to face with an imperative necessity. The trustees of the society had denied the right of control of The Mother Church over them, and they were under the compulsion, both by virtue of the Trust Deed and the By-Laws, to take the action which they were obliged to take, in order to prevent the result which was threatened by the attitude and the position taken by the trustees from being actually accomplished.

Now at this time Mr. Rowlands had become active, aggressive, in advancing the position of the trustees in the joint meetings between the trustees and the directors. He was absent a large part of the time from Boston and could not give the attention to the Publishing Society business which the directors of the Church thought he ought to give. Having in mind the dangers in the logical and natural growth and development of the position which had been definitely taken by the trustees they adopted the resolution which appears in the answer in this suit and which can be summarized under three headings. They recited the denial on the part of Mr. Rowlands of the application of the By-Laws to the business of the Publishing Society. They recited the fact that he had at times adopted interpretations of the various By-Laws intended as exercising a supervision over the business of the trust in such a way as to rob them of any force. They recited his inattention to the business of the Publishing Society. And they voted, under the Trust Deed and the By-Laws, to declare the trusteeship held by him vacant, and sent him a copy of the resolution notifying him of that action.

Now these directors hoped by this action, which they were obliged to take in preserving the integrity and the unity of the Christian Science movement and all its activities, to obtain the result of a reversal of the policy and attitude on the part of the older trustees, that they would see the position in which they were placing the movement, in which they were placing the interests of the Publishing Society; and that they would acknowledge what had always been acknowledged in the past, the control, in the last analysis, of The Mother Church over the affairs of the Publishing Society, particularly in respect to its publications and its editorial policy. And those are the reasons which actuated them in adopting the resolution declaring the trusteeship held by Mr. Rowlands vacant. They did it not only in the exercise of the utmost good faith but they did it out of an imperative and vital necessity which they faced, to preserve the integrity of the movement, and to see to it that

every provision of the Trust Deed and every provision of the By-Laws should be observed and carried out in the way which Mrs. Eddy intended that they should be observed and carried out. And they knew that any Christian Scientist honestly endeavoring to give full effect and force to every provision in these two instruments could do so and in good conscience ought to do so.

[Mr. Charles E. Jarvis takes the witness stand.]

Mr. Streeter—If Your Honor please, before my friend starts with his examination I want to call your attention, and the attention of Governor Bates and his associates, to the request which we have made on the Board of Directors for information, facts, figures. One request was for information relative to payments from the War Relief Fund to the Comforts Forwarding Committee. Your Honor and my friends will remember that in the bill we made some very strong statements with reference to their handling of that money and the representations that they made to the contributors. The other was with reference to the funds of the Christian Science Benevolent Association, which is an organization carried on by the directors. The clerk of the Board of Directors is clerk of that. And the handling of those funds has not been good, and we have the right, we believe, to information from those books. In response to the request here are two letters under date of July 3, addressed to Mr. Dittmore:

"Dear Mr. Dittmore:

"The Christian Science Board of Directors instruct me to acknowledge receipt of your letter of July 1 asking for further information relative to payments from the War Relief Fund to the Comforts Forwarding Committee. Your request will receive the attention of the directors as soon as it can be reached in its order."

The reply to the other request, also under date of July 3, was as follows: "Dear Mr. Dittmore:

"The Board of Trustees of the Christian Science Benevolent Association instruct me to acknowledge receipt of your letter of July 1, requesting further information as to the accounts of the Benevolent Association for the six months' period just passed. This will necessitate engaging public accountants for an additional audit and the writer will be glad to take the matter up with the trustees at their next regular meeting."

That is the kind of a reply we are receiving from the official writer for the Board of Directors.

Now we would like to ask, in the presence of the Court, what the counsel are going to say about it. Are we going to have that information or not?

Mr. Bates—I have simply this to say, Your Honor: That if my brother conducts himself according to the usual rules of professional etiquette,

if he wishes any papers in the control of our clients that he is entitled to, he make his request through counsel, not direct upon the clients. It is the first we have heard of the requests.

Mr. Streeter—You will pardon me, brother Bates. I understand what those rules are. Of course, my client, Mr. Dittmore, did not; and in his behalf we very humbly apologize for not putting this through the proper channels. It has now come, and I now most courteously ask you—can we have that information and can we have it speedily?

Mr. Bates—I don't know what the information is that you have asked for. If you will make the request upon us we will probably be glad to furnish it to you if we have it.

Mr. Streeter—What we want is full information with reference to the financing of the War Relief Fund and also the Christian Science Benevolent Association. We have charged in our bill that there has been a gross misrepresentation to the contributors of one of those funds and it is the information about those two funds that we want. Now will you give it to us or not? Mr. Dittmore is president of the Christian Science Benevolent Association. Has he got to go to your office and get down on his knees and ask you, "Please, Mr. Counsel, won't you give me the information of this concern of which I am president?"

Mr. Bates—I should think it was his duty to furnish it if he is the president of it. He knows more about it than I do.

Mr. Streeter—But he has not got it. Your people have got it.

Mr. Bates—May it please Your Honor: This association is something entirely different. It is not the Board of Directors. It is a corporation distinct by itself, an association distinct by itself. If he wants any records or any information that they have that is material in this case it is his duty to summons the proper officers here.

The Master—I understand your position to be, Governor Bates, that this is the first you have heard of this request?

Mr. Bates—The very first I have heard of it.

The Master—Then it seems to me clear, General Streeter, that you cannot call upon Governor Bates for an immediate reply. Now I think you had better let this rest for the present.

Mr. Streeter—How long, Your Honor? We want this information.

The Master—At least until tomorrow morning.

Mr. Streeter—Then I give you preliminary notice now that I shall make, in the most courteous and professionally ethical way, a request upon you for this information. Pardon me, Your Honor.

The Master—It can hardly be part of the defendants' case which they are now about to put in. It can hardly constitute a part of the defendants'

case which Mr. Bates and Mr. Abbott are now about to begin putting in.

Mr. Streeter—No, but it is part of our case. Mr. Dittmore is nominally a defendant in this Eustace bill. He has got some very confident views about their good faith in dismissing him, and also confident views about their good faith in dismissing Rowlands, and I am perfectly free to say, Your Honor, that as far as the dismissal of Mr. Rowlands is concerned, we believe it was just as much in bad faith as the dismissal of Mr. Dittmore, because we confidently believe and have said that instead of dismissing Rowlands they ought to have dismissed all three. Now that is a part of this case.

The Master—I see no way in which I can deal with this matter at present, and I think you will have to let this subside, for the time being, at any rate.

Mr. Streeter—You mean until tomorrow morning?

The Master—I won't say that I shall be prepared to deal with it tomorrow morning. It will depend on how the facts appear at that time. You have made your call upon them and they now all have notice of it. Now we will see what comes up.

Mr. Streeter—Yes, I have an anecdote about waiting until morning.

The Master—Well, I think I wouldn't tell it now, General.

Mr. Streeter—No, I am not going to. But we would like to take these records over night, Brother Bates. Have you any objection—if we will be responsible for them?

Mr. Bates—There is, yes.

Mr. Streeter—What?

Mr. Bates—These records are important records. They have much in them that has nothing to do with this case. You have had every opportunity to examine them and you may still continue to do so, at our office, but I understand that the secretary of the board does not care to have them go out of his possession, and I don't think they ought to.

Mr. Streeter—Does Your Honor think that that is right?

The Master—I really do not see how I can order them out of the custody of the directors.

Mr. Streeter—I suppose you can't. If you want us to go to your office and have somebody—

Mr. Bates—We would like to have you come very much, General.

Mr. Streeter—Thank you very much, sir.

The Master—You are now about to begin the examination of the witness?

Mr. Dane—Yes, Your Honor. Have you been sworn, Mr. Jarvis?

Mr. Charles E. Jarvis—I think not, in this case.

Mr. Dane—The witness has not been sworn.

The Master—I think that the plaintiffs in the case began by swearing all their witnesses.

Mr. Dane—We were going to put in

a good deal of documentary evidence. However, there is no objection to the other witnesses being sworn at this time.

The Master—I have no choice. I merely call it to your attention.

Mr. Dane—Mr. Dickey, Mr. Rathvon, Mr. Merritt, and Mrs. Knott, will you please stand up.

[The four persons named, together with Mr. Jarvis, are sworn by the Master.]

Charles E. Jarvis Sworn

Q. (By Mr. Dane) Will you state your full name, please, Mr. Jarvis?  
A. Charles E. Jarvis.

Q. You are the corresponding secretary of The Christian Science Board of Directors? A. I am.

Q. How long have you held that office? A. Since June 1, 1916.

Q. Do you hold any other official position in connection with The First Church of Christ, Scientist, in Boston? A. Yes; I am clerk of The First Church of Christ, Scientist, in Boston.

Q. How long have you held that office? A. Since Nov. 1, 1917, I believe.

Q. I show you a book purporting to be the Church Manual of The First Church of Christ, Scientist, in Boston, Massachusetts, marked "Exhibit 57G for identification, R. H. J.," and I will ask you whether or not that is the Manual which was in force on March 17, 1919?

Mr. Whipple—We object, if Your Honor please. We think that so important a document as the Church By-Laws cannot be proved in that way. We think that it has to be shown by some proceeding which makes it a Church Manual, or makes the By-Laws effective, and you cannot merely call the clerk of the Church and show him a printed document and prove a Manual in that way. There must be some way in which by-laws are adopted. By-laws are adopted at different times.

The Master—Will you remind me, Mr. Whipple, how the evidence now stands about that book? It has been marked, I understand.

Mr. Whipple—Marked for identification merely.

The Master—Marked merely for identification?

Mr. Whipple—Yes.

The Master—Has there been any testimony regarding it so far?

Mr. Whipple—Within my memory, none with reference to the adoption of any particular by-law, or any number of by-laws—

The Master—I think that there must be some statement about it.

Mr. Whipple— —but we have had reference to different parts of it; different parts of it have been referred to; there have been references to it—you will remember that.

The Master—I think that it has been stated in a general way that that was the Manual of the Church in force.

Mr. Whipple—Yes.

The Master—Now, counsel desire to prove that it was in force on a certain date.

Mr. Whipple—Well, I understand that they have to prove, or desire to prove, that this document is the body of By-Laws of the Church as of a certain date. We objected to it, and the attempted proof was abandoned.

The Master—It was admitted subject to your objection; was it not?

Mr. Whipple—No, Your Honor. It was marked merely for identification. It was not admitted at all.

The Master—Very well.

Mr. Whipple—The matter of its admission was left in abeyance.

The Master—Won't you, then, Mr. Dane, have to begin by introducing the best evidence regarding the adoption of that Manual, and the date when it went into force?

Mr. Whipple—And may I suggest this merely as a suggestion? There are only a few provisions, or a few by-laws, that are in issue, or are of any consequence as bearing upon the issues in this case. Something has been said about when they were adopted, and the succession and development, etc. Those are general terms. If you have any proof in regard to them, we would like to have that proof. And this is not a technical objection, let me assure Your Honor.

The Master—No. I think that you had better prove the action by which and the date on which the successive By-Laws were adopted.

Mr. Whipple—Yes, Your Honor. That is what we ask to have done.

Mr. Dane—If Your Honor please, if I may say a word in respect to the offer of the Manual, which contains the By-Laws that were in existence on March 17, 1919, it has already appeared from the testimony of the trustees themselves that all of these By-Laws in the Manual are of Mrs. Eddy's authorship and that as to some of them, at least, they were governed in the administration of their trust by these By-Laws. Now, it seems to me that in that situation we are entitled to offer the By-Laws which the trustees themselves claimed to be administering their trust under, in the form in which they are now offered.

Mr. Whipple—If Your Honor please, there has been no such statement, and I remember nothing that will justify such a statement on the part of the trustees. They have said that they were administering their trust under the provisions of the Trust Deed, and that they saw nothing in the Manual inconsistent therewith. That is what they said.

Mr. Dane—No; I think that my recollection of the matter would be substantiated by the record.

Mr. Whipple—I think not.

Mr. Dane—I have carefully examined it for that purpose, and, besides, I suggest to Your Honor that this Manual is published by the trustees, the plaintiffs in this case. In several instances they have testified, not in

one alone, that they are administering this trust under this Manual in connection with the Trust Deed. Of course there are important provisions of the Manual in the form of By-Laws, some more important than others, that are raised by the issues in this case; and as to those, we have ample proof of their adoption and their development, and will show it.

The Master—What you want to ask him now, it seems to me, is, Is what I show you a copy of the official Manual of the Church?

Mr. Dane—Yes, as to which the trustees have testified.

The Master—That is the only addition to what has been heretofore testified to, that I see. Now, if you want to get that evidence, I think that you ought to refer to the official action which made that the Manual.

Mr. Thompson—Let me suggest, if Your Honor please, that the Public Statutes, Chapter 38, Section 5, use the word "by-law" and give it its sense in the Massachusetts law; and it is therefore of importance from Mr. Dittmore's standpoint that we may know whether these By-Laws are of the type recognized by the law of Massachusetts, and as such were adopted in the way that the laws of Massachusetts require that by-laws should be adopted, or whether they are called by-laws, but are, after all, of a different legal significance. Therefore I would like to ask about the dates, and in what manner they came into existence.

The Master—We shall have to have that, Mr. Dane.

Mr. Dane—There is no question but we shall have that proof with reference to the By-Laws which are particularly pertinent under the issues in this case. In view of the difference in recollection on the part of Mr. Whipple and myself as to the evidence of the trustees with reference to the Manual, I think that it will be best not to press the offer of the Manual at this time, so that we both can verify what the testimony has been with respect to it.

The Master—Well, why not proceed to get the evidence that I suggest with regard to it? That will cure all the difficulty.

Mr. Dane—That will cure it. I was attempting to gain time.

The Master—Put it right in.

Mr. Dane—I expected that there would be no objection whatever. I did not expect that the counsel for the trustees would question for a moment that these By-Laws in this book were the By-Laws that were in force on March 17, 1919.

Mr. Thompson—We would like that book in our case of Dittmore and Dickey. We would like to have it considered in as representing the By-Laws in force. But in the other case we think that further proof should be required, on the technical grounds that have been suggested; and I think that that is to your interest also.

The Master—I think that the short

way to save all dispute about it is to produce the evidence that I suggest.

Mr. Dane—I might say, if Your Honor please, that probably Your Honor has it already in mind, but these manuals are more in the nature of compilations—for instance, in this Manual the By-Laws (I think thirty-five or more) were adopted all at different times, and if strict technical proof of their adoption is going to be required, it will take a long time.

The Master—Perhaps it will not be necessary to show it as to all of them, but only as to those which are involved in this case.

Q. Mr. Jarvis, as clerk of the Church, do you have the possession and custody of the books of the Church? A. Yes, in my dual or joint capacity as clerk of The Mother Church and as corresponding secretary of the Board of Directors, I have such custody.

Q. And do you have custody of the record books of the Board of Directors? A. I do.

Q. And have you since you became clerk had the custody of the records of the First Members? A. I have.

Q. I show you a book with a filing on it, "Vol. I. Minutes of Meetings of First or Executive Members Board of Directors and Annual Church Meetings. Sept. 23, 1893, to Dec. 28, 1894," and ask you whether that is one of the record books which came into your possession, and which you have the custody of as clerk of the Church. A. It is.

Mr. Dane—I offer from this book that part of it which I now read into the record (proffering to Mr. Whipple the book described).

Mr. Whipple—If you will pardon me, that is not the way to prove anything. The book does not prove itself, and the fact that it came into this gentleman's hands does not prove it in the way that he has described.

Mr. Dane—It is apparent, if Your Honor please, that we have got to take one step at a time.

Mr. Whipple—Well, take the right one first.

Mr. Dane—And the Board of Directors succeeded to the powers and the duties of the First Members.

Mr. Whipple—Well, you assert that. That has been asserted a good many times.

Mr. Dane—We offer to prove it.

Mr. Whipple—But that is a pretty debonaire way to deal with legal propositions, where you are attempting thereby to effect a change in a solemn Trust Deed. I do not think that this book was identified in any way. When it is identified I shall want to look at it. It is identified merely as a book that this gentleman, who has been in office two or three years, has had handed to him at some time, he does not say by whom. You do not trace the official authority of it at all. You speak of it as being a record of the Board of Directors. Do you claim

that boards of directors make such by-laws?

Mr. Dane—Your Honor will have in mind that I cannot prove this all at once.

The Master—Oh, quite so. Now, what is the part in that book—what does it purport to be—the part of that book which you now offer?

Mr. Dane—It purports to be the first meeting of the First Members, on Sept. 23, 1892, at which time the present Church was organized. That is the starting point of the directors' case.

The Master—Hasn't the witness sufficiently identified that book as containing the record of the official doings of the First Members?

Mr. Whipple—I thought not, if Your Honor please. I thought that we should have to have some one who kept the record at that time, some explanation as to why that person is not here.

Mr. Dane—I submit that that is not required, if Your Honor please. Here is a book which comes into the custody of this officer of the Church, and comes from the archives of the Church—it comes into his custody in his capacity as clerk of the body which succeeded the body whose records are here recorded.

Mr. Whipple—What do you mean by "archives of the Church"? He has not said anything about any "archives," and I did not know that they had any archives.

The Master—By whom does the record now offered purport to be certified?

Mr. Dane—It purports to be signed by William B. Johnson, clerk.

Mr. Whipple—Well, isn't he living?

Mr. Dane—I think not.

Mr. Whipple—Do you know anything about it?

Mr. Dane—I think that he is not living.

Mr. Whipple—Well, then, have some evidence that he is not!

Mr. Dane—I do not think that that is required, if Your Honor please.

Mr. Whipple—All right. Then I will not try to help you. Just go ahead and prove it the best way you can.

Mr. Dane—William B. Johnson was, I am informed, the clerk of the Church, the same office that this witness now holds.

Mr. Whipple—How do you know that he was clerk of the Church?

Mr. Dane—Because it so states.

The Master—Well, we have no testimony to that effect yet, have we?

Mr. Whipple—The statute of the Commonwealth provides how a church may be organized, as I understand it, and how officers may be elected; but those things do not seem to disturb counsel at all. They think that if they get a book, that shows the whole thing. It may or may not.

Mr. Dane—Perhaps I can ask one or two questions of the witness.

Q. Mr. Jarvis, when did you become clerk of The Mother Church? A. I believe Nov. 1, 1917.

Q. And at that time this book came into your possession? A. Either at that time, or it was previous to that time, it was turned over to me as corresponding secretary for The Christian Science Board of Directors by the then clerk of The Mother Church.

Q. Do you know whether William B. Johnson is now living? A. I believe he has passed on, some years ago.

Q. And who was William B. Johnson? A. Formerly clerk of The Mother Church.

Mr. Whipple—Well, I do not suppose that that adds anything to the sum of our knowledge, unless this gentleman knew of him and knew of his performing those functions, and I do not understand that he says that he knew any such thing as that.

Mr. Dane—This record, if Your Honor please, purports to have been written and signed by William B. Johnson, the clerk. It is the record of the First Members—a record of a meeting of Sept. 23, 1892. I submit that the book has been sufficiently identified as the record book coming into the custody of this gentleman, the witness, the successor of the gentleman who kept these records, and that that is sufficient identification for its use in evidence.

Mr. Whipple—Will you point out where in the statutes of the Commonwealth there is any reference to First Members organizing a church?

Mr. Dane—I do not conceive that it is necessary to point it out.

Mr. Whipple—Well, aren't you trying to show the proper organization of this church under the laws of this Commonwealth, or what are you trying to do?

Mr. Dane—I am offering to show the record which appears on page 5 of this book, which comes from the custody of the clerk of the Church as successor to the man who kept this record.

The Master—You have told us in your opening, if I understood you correctly, that the Church was organized by 11 persons known as First Members.

Mr. Dane—Yes, Your Honor.

The Master—Now you want to show the record of their doings during that organization.

Mr. Dane—Yes.

The Master—You produce a book. All we know about the book is that the witness now says that it came into his custody in 1917 as clerk of the Church and as corresponding secretary of the Board of Directors. Is that enough to make the entry of what appears in the book evidence?

Mr. Dane—I think it is, Your Honor, especially when accompanied by the testimony that the gentleman who kept the record is dead and cannot be produced.

The Master—I have not heard any testimony to that effect.

Mr. Dane—He so testified.

The Master—I have heard a statement by counsel. I do not know

whether it is agreed to, or whether it is disputed.

Mr. Dane—The witness so testified. Mr. Whipple—Well, he has expressed a belief, but it does not appear that he ever knew the person at all.

The Master—I think that that is true, Mr. Dane, is it not?

Mr. Whipple—Or that he ever knew him when he was performing any functions purporting to be those of clerk of the Church.

The Master—Have you anybody who can testify about Mr. Johnson, what his official position was?

Mr. Dane—I expect that there are people who could testify about Mr. Johnson. This witness, as I understand, has testified that Mr. Johnson is not alive.

The Master—He said he believed he was not alive. That is hardly sufficient to prove that he is dead.

Mr. Dane—Well, if we are going to be held, Your Honor, to a strict degree of proof, we can probably meet it, and we shall endeavor to do it. It is now 4 o'clock, and I would suggest that we adjourn.

Mr. Whipple—I am glad to know that, because the important matters of these Church By-Laws I want you to understand that you will be held to prove by the strictest proof, the very strictest proof, especially in view of the disclosures which have been made here openly by a former director as to the manner in which your records have been kept and the alterations which have been made in them and the things that have been omitted. Now, let it be understood that I accept your statement that you can prove these things definitely, and do it!

Mr. Dane—I understand that you, as counsel for the trustees, are requiring from us the strictest kind of technical proof as to the fact that this Manual was the Manual in existence on March 17, 1919, and that this volume of the First Members which has been in the records of The First Church of Christ, Scientist, since 1892, is what it purports to be on its face; and we will endeavor to meet that degree of proof.

Mr. Whipple—You will please understand my statement, sir, as I have made it, and not as you have attempted to paraphrase it.

The Master—Well, I suppose that we had better stop here until tomorrow morning at 10 o'clock.

[Adjourned to 10 o'clock a. m., Tuesday, July 8, 1919.]

July 8, 1919

TENTH DAY

Supreme Judicial Court Room, Boston, Massachusetts, July 8, 1919

The Master—Are you all ready, gentlemen? You may continue, Mr. Dane. Oh, you haven't your witness here.

Mr. Dane—In view of the objections that were made yesterday to the records we have sent for Mr. William L.

Johnson, who was in New Hampshire, and he is here now. Mr. Johnson, if you will be sworn, please.

Mr. Whipple—Is this the gentleman who was reported yesterday as deceased?

Mr. Dane—This is the son of William B. Johnson.

Mr. Whipple—The son.

William L. Johnson, Sworn

Q. (By Mr. Dane.) Will you state your full name, please? A. William Lyman Johnson.

Q. And where do you reside? A. Dorchester.

Q. You are the son of William B. Johnson? A. I am.

Q. Is William B. Johnson now living? A. He is not.

Q. When did he pass away? A. In 1911.

Q. Was William B. Johnson at some time clerk of The First Church of Christ, Scientist, in Boston, Massachusetts? A. He was the first clerk of that church.

Q. And for how many years did he act as clerk for that church? A. Until 1909.

Q. Did you yourself have any connection with his office? A. I was his assistant from October, 1898, until June, 1909.

Q. I assume that you know and are familiar with the signature of your father, William B. Johnson? A. I am.

Q. I show you a book with the name William B. Johnson on page 9, and ask you whether or not that is your father's signature? A. That is his signature.

Q. Will you kindly examine this book and tell me whether or not you can identify it? A. Yes; I have seen it many times.

Q. What is it? A. This is a record book of the church, with the names of the church members.

Q. Is there in that book a record of the first meeting of the church members? A. Yes; on Sept. 23, 1892.

Q. What page of the book? A. Page 5.

Q. Was your father at that time clerk? A. That was a meeting at which he was the clerk, his name is signed here.

Mr. Dane—Now, I offer from this book, which the witness has identified and testified about, a record of the meeting of Sept. 23, 1892, beginning on page 5, and continuing on pages 6, 7, 8, and 9. Do you wish to see it, Mr. Whipple?

Mr. Whipple—Yes, thank you. (The book is examined by Mr. Whipple.) May I ask whether this record is offered by you to show the institution of the church, a body corporate, under the laws of the Commonwealth of Massachusetts?

Mr. Dane—No.

Mr. Whipple—Or whether you claim that it constituted any such organization?

Mr. Dane—No; I do not think it shows that, Mr. Whipple. I think it

shows the formation of a voluntary association of a religious nature, such as is alleged in your bill, in paragraph 3.

Mr. Whipple—That is, a religious society?

Mr. Dane—Yes; and it shows the organization that you allege in paragraph 3 of your bill as having occurred in September, 1892.

Mr. Whipple—Yes. That is, you do not claim that it became a body corporate?

Mr. Dane—Not by virtue of that record.

Mr. Whipple—Not by virtue of this record. Then you offer the record merely as showing what Mr. Johnson could testify to if here in person, because it bears his signature?

Mr. Dane—Yes.

Mr. Whipple—As a record of certain happenings on this day?

Mr. Dane—I beg pardon?

Mr. Whipple—Of certain happenings on this day; that is, agreements entered into by the respective parties?

Mr. Dane—Yes, for what the record shows. We offer it for any purpose for which it is material in the case.

Mr. Whipple—I wanted to see if you claimed it showed anything more than that. We have no objection to the record for that limited purpose.

Mr. Dane—I do not offer it for any limited purpose. I offer it for what it shows and for any materiality that it has in this case.

Mr. Whipple—If any.

Mr. Dane—Yes, if any.

Mr. Whipple—Yes, all right. I will agree with you as to that. I should think that might either be put into the record or read into the record.

Mr. Dane—I think it would be better to read it.

Mr. Whipple—I think it might be read, then it should be copied into the record, because we do not happen to have a copy of it.

The Master—I hear no objection. Proceed.

Mr. Dane—This is a record from Volume 1 of the records of the Members of The First Church of Christ, Scientist, in Boston, Massachusetts, dated Sept. 23, 1892.

The Master—It being the book produced by Mr. Jarvis yesterday.

Mr. Dane—Yes, Your Honor, being the book produced by Mr. Jarvis yesterday and identified by the witness who is on the stand.

The record of Sept. 23, 1892, from Volume 1 of Records of the Members of The First Church of Christ, Scientist, in Boston, Massachusetts, is Exhibit 107, and is read by Mr. Dane, as follows:

"Boston, Massachusetts, Sept. 23, 1892.

"Eleven persons, namely: Dr. Ebenezer J. Foster Eddy, Mr. Stephen A. Chase, Mr. Joseph S. Eastaman, Mr. William B. Johnson, Mr. Ira O. Knapp, Miss Julia S. Bartlett, Mrs. Mary W. Munroe, Mrs. Ellen L. Clarke, Mrs. Mary F. Eastaman, Mrs. Janet T. Colman, Mrs. Flavia S. Knapp, Mrs.

Eldora O. Gragg, met this day at No. 133 Dartmouth Street, Boston, Massachusetts, at 12 o'clock 'M. Dr. E. J. Foster Eddy was chosen chairman, and William B. Johnson, secretary.

"The meeting was opened with silent prayer, followed by the Lord's Prayer, repeated in unison; after which, the following business was transacted:

"The following motion was read by the chairman, seconded, and unanimously voted: That all who are present, and Mrs. Ellen L. Clarke, who is absent, are First Members of 'The First Church of Christ, Scientist,' in Boston, Massachusetts.

"Unanimously voted: That the secretary shall add Mrs. Ellen L. Clarke's name to the list of names of those present, which was done.

"On motion of Mrs. Janet T. Colman, seconded by Mrs. Eldora O. Gragg, Dr. Ebenezer J. Foster Eddy was elected president of 'The First Church of Christ, Scientist,' in Boston, Massachusetts.

"Mrs. Mary F. Eastaman moved, Stephen A. Chase seconded, and it was voted that William B. Johnson be the clerk of 'The First Church of Christ, Scientist,' in Boston, Massachusetts.

"Voted: on motion of Stephen A. Chase, seconded by Ira O. Knapp, that Mrs. Mary F. Eastaman be the treasurer of 'The First Church of Christ, Scientist,' in Boston, Massachusetts. The foregoing votes were unanimous.

"A list of names was read by the clerk of persons proposed for membership with this Church, as follows: Mr. Calvin A. Frye, Mr. Edward P. Bates, Mr. Eugene H. Greene, Mr. David Anthony, Mr. Hanover P. Smith, Mrs. Josephine Curtis Otterson, Mrs. Grace A. Greene, Mrs. Caroline S. Bates, Mrs. Emilie B. Hulin, Mrs. Caroline W. Frame, Mrs. Elizabeth P. Skinner, Mrs. Augusta E. Stetson, Mrs. Henrietta E. Chanfrau, Mrs. Emily M. Meader, Mrs. Berenice H. Goodall, Mrs. Annie V. C. Leavitt, Mrs. Laura E. Sargent, Mrs. Ann M. Otis, Mrs. Mary F. Berry, Miss Martha E. S. Morgan.

"Unanimously voted: That all those persons named in the list read by the clerk are elected First Members of 'The First Church of Christ, Scientist' in Boston, Massachusetts.

"Voted: That the clerk is requested to notify each of the members of their election as follows:

"You are hereby notified that you are elected one of the First Members of 'The First Church of Christ, Scientist,' in Boston, Massachusetts.

"Tenets to be subscribed to by those uniting with 'The First Church of Christ, Scientist' in Boston, were read by the president. The Tenets were adopted, and ordered to be written in the book containing the records of this Church.

"Tenets

"of

"The First Church of Christ, Scientist  
"by

"Rev. Mary Baker G. Eddy,

"To be signed by those uniting with 'The First Church of Christ, Scientist.'

"1. As adherents of Truth, we take the Scriptures for our guide to eternal Life.

"2. We acknowledge and adore one Supreme God.

"We acknowledge His Son, the Holy Ghost, and man in His image and likeness. We acknowledge God's forgiveness of sin, in the destruction of sin, and His present and future punishment of 'whatsoever worketh abomination or maketh a lie.' And the atonement of Christ, as the efficacy of Truth and Love. And the way of Salvation as demonstrated by Jesus casting out evils, healing the sick, and raising the dead—resurrecting a dead faith to seize the great possibilities and living energies of the Divine Life.

"3. We solemnly promise to strive, watch, and pray for that Mind to be in us which was also in Christ Jesus. To love the brethren, and, up to our highest capacity to be meek, merciful, and just, and live peaceably with all men.

"The following 'Rules' for the government of this Church were adopted.

"Rules

"1. The Annual Meeting of The First Church of Christ, Scientist, in Boston, shall be held on the first Tuesday evening in October in each year for the choice of officers for the ensuing year; listening to the reports of the treasurer, secretary, and committees, and for the transaction of any church business that may properly come before the meeting.

"2. Quarterly meetings of this church shall be held on the Saturday evening next preceding the Communion Sunday in each quarter, beginning with the Saturday next preceding the first Sunday in January, 1893.

"3. Applications for membership, coming from the students' students, must include the names and recommendations of their teachers. All applications for membership must be addressed to the pastor or the clerk of the Church. If to the pastor, he shall hand the letters to the clerk, who shall read them at the quarterly Church meeting, and the First Members shall vote on admitting these candidates. Candidates for membership with this Church shall be elected by a majority vote.

"4. The names of the members elected at a quarterly meeting of this Church shall on the following Sunday be read from the pulpit and the communion service be held.

"5. The communion shall be observed by this Church on the first Sunday in October, January, April, and July—by special exhortation, hymns, singing, and silent prayer.

"6. Members of this Church cannot be members of other churches except they are of the same denomination as this Church.

"The clerk was authorized to procure a suitable book in which to keep the records of this Church.

"The meeting then adjourned, subject to a call from the clerk of the Church, at 2:15 p. m.

"Respectfully submitted,

"WM. B. JOHNSON,  
"Clerk."

Q. I show you, Mr. Johnson, a record in this book, on page 11, under date of Oct. 5, 1892, and ask whether or not that is signed William B. Johnson? A. It is.

Mr. Dane—I desire to offer from the record of this meeting only that part relating to the approval of the minutes of the preceding meeting, which is one paragraph.

[The record is examined by Mr. Whipple.]

Mr. Whipple—If Your Honor please, it seems to us that the entire record may properly go in. It shows the form of the church government, the form of the agreement as it was amended. I do not think it is necessary to read all of the names, but it should appear in the record that they all purport to be signed as the original signatures of the adherents of the faith.

Mr. Dane—I have no objection.

Mr. Whipple—All right; we are agreed on that. Now, what will be the number of the exhibit that has already been read? I think that perhaps the records of these different meetings might be marked as exhibits. Does that meet with Your Honor's approval? Then we can distinguish them in our references to them by their numbers.

Mr. Dane—They will appear in full in the record.

Mr. Whipple—That is also true of a number of exhibits. What will be the number of this exhibit?

The Master—Is the entire volume now offered as an exhibit?

Mr. Whipple—I understand not. But I think that it will be convenient, and purely a matter of convenience, to refer to the different meetings by their different numbers. I think that we should find it so, because some of the meetings are inconsequential, while others are important.

The Master—Is that acceptable to the counsel generally?

Mr. Bates—I supposed that what were put in as exhibits were so identified by exhibit numbers, but this volume is not an exhibit, it is merely a part of the evidence. It is only a question whether it would not lead to confusion to mark these different meetings by exhibit numbers.

Mr. Whipple—I think that we should emancipate ourselves—

The Master—I suppose that there must be a good many more volumes?

Mr. Dane—There are two more at least, and there are more, of course, at a later period.

The Master—The course suggested by Mr. Whipple seems to me likely to

be a convenient one, and I see no objection to it at present.

Mr. Bates—If I understand his suggestion, it is that each separate record as it is read shall be marked as a separate exhibit.

Mr. Whipple—Yes, and that copies should be prepared.

Mr. Bates—Of course there have already been put in a number of records of meetings that have received no mark, and before our case is finished there will be a great many more of them. If it is understood that every time that a record is read into this record it is to be given the exhibit number, well and good, but that has not been done so far in the case. We ought to have some consistent policy in regard to it. That method has not been pursued so far in the case.

The Master—That is obvious, and your suggestion applies only to the records of this religious body which we are now hearing about.

Mr. Whipple—Yes, Your Honor.

Mr. Bates—We have no objection.

Mr. Whipple—The one that you read, of Sept. 23, 1892, will be Exhibit 107.

Mr. Bates—I assume, Your Honor, that that does not mean that that volume is to be left here. Of course it is a volume that should be taken back and kept with the records there.

Mr. Whipple—That is purely a matter of convenience to the stenographer.

The Master—I had rather supposed that if we are going to mark these records as exhibits, it would dispense with the necessity of keeping the books here.

Mr. Whipple—Yes, Your Honor.

Mr. Streeter—If Your Honor please, I thoroughly agree with Governor Bates that there ought to be some distinguishing mark, either as an exhibit or otherwise, so that an index can be made of all these excerpts from the records that go in, and I do not care how it is done, but I want to join with the master and the counsel in agreeing that they shall be marked in some way so that they can be indexed—I mean the excerpts from the records.

Mr. Whipple—Well, the one that has already been read will be marked Exhibit 107, and the next one will be marked 108, and such others as are put in will be marked with successive numbers.

Mr. Streeter—Well, but brother Whipple, haven't a good many excerpts been put in that do not bear any exhibit mark?

Mr. Whipple—I think that that may be so, but I think that they are inconsequential, most of them.

Mr. Streeter—Well, we entirely agree that it would be well to have these marked so that they may be indexed, and so that we can find them in the record.

Mr. Dane—Do you desire to have this entire record go in?

Mr. Whipple—Yes, omitting the names, but with the statement that

the names appear to be given in the original signatures.

[The record of the meeting of Sept. 23, 1892, which has been read, is marked Exhibit 107, R. H. J.]

Mr. Dane—This is the record of the meeting of Oct. 5, 1892, appearing upon page 11 of the Records of the First Members.

"The First Members of 'The First Church of Christ, Scientist,' in Boston, met this day at No. 133 Dartmouth Street, Boston, at 12 o'clock M.

"The president being absent, Ira O. Knapp was chosen chairman, and the meeting was opened with silent prayer and the Lord's Prayer. Twenty-seven members present.

"The records of the previous meeting were read and approved. The following proposition was adopted as Rule 7, of this Church.

"Rule 7. To become a member of The First Church of Christ, Scientist, the applicant must be a believer in the doctrines of Christian Science according to the platform and teaching contained in the book 'Science and Health,' by Rev. Mary Baker G. Eddy. The Bible, and 'Science and Health' with other works by the same author, must be his only text-books for self-instruction in Christian Science, and for teaching and practicing metaphysical healing.

"Voted, That Rule 7 shall be printed and a copy of it shall be sent to each applicant for membership with this Church, after which all present subscribed to the Church Tenets.

"The meeting adjourned at 1:15 p. m.

"Respectfully submitted,

"WM. B. JOHNSON, Clerk.

"After the meeting adjourned, the First Members present subscribed to the Tenets as on the following page."

Do you care, Mr. Whipple, to have those read?

Mr. Whipple—It is enough to say that written, or at least pasted, into the book, is a printed copy of the Tenets that had been adopted at a former meeting.

Mr. Dane—That is true.

Mr. Whipple—And then they are subscribed by the various members.

Mr. Dane—Following the Tenets appear the signatures of the various members whose names have already been read into the record.

Mr. Thompson—How many of them?

Mr. Whipple—It might properly appear, perhaps, if it is a fact, that Mrs. Eddy is not one of the subscribers. Is that correct?

Mr. Dane—There seem to be 35 signatures.

Mr. Whipple—Mrs. Eddy is not a subscriber?

Mr. Dane—I think that Mrs. Eddy's signature does not appear.

Mr. Whipple—And, so far as appears in both records, she was not present at either meeting?

Mr. Dane—The records speak for themselves.

Mr. Whipple—Well, I did not notice.

Mr. Dane—You did not notice it.

Mr. Whipple—I want to be sure. We are omitting a part of the record. I want to be sure that it appears that she was not present at either meeting.

Mr. Dane—"On the suggestion of Rev. Mary B. G. Eddy, the First Members invited those present in the association meeting Oct. 5, 1892, to unite with the Church, and 59 persons, whose names follow, subscribed to the Tenets."

The Master—This is under what date?

Mr. Dane—This is under the same date, Oct. 5, 1892. Then follow the signatures of the 59 persons.

Mr. Whipple—Are those in addition to the others, or do they comprehend the same names?

Mr. Dane—I had not compared them, Mr. Whipple.

Mr. Whipple—Do you see any that are in addition?

Mr. Dane—I think that they are in addition. In running them over hastily, I think that they are in addition to the other names.

Mr. Whipple—Yes.

The Master—First we have 35, and afterwards 59?

Mr. Dane—Yes, Your Honor.

Q. Now, Mr. Johnson, I show you three books with the filing respectively, Volume 1, Volume 2, and Volume 3, and ask you if you can identify each one of those books? A. Do you mean from the outside?

Q. No, by examining them.

The Master—Didn't I understand that you had already shown him Volume 1?

Mr. Dane—He had identified that book, and had identified the signature on two meetings in the book.

The Master—Yes.

Mr. Dane—I desire now to cover the entire volume.

A. Yes, I am very familiar with them.

Q. What are the books? A. The record books of the Church.

Q. Of The First Church of Christ, Scientist? A. Of The First Church of Christ, Scientist.

Mr. Whipple—I take it that what he means is that there is therein inscribed a record or history of what was done at certain meetings of the assembly.

The Witness—Yes, Mr. Whipple.

Mr. Whipple—Whether this had become a church or not, or just what it was, has not appeared yet.

Q. During the time covered—

The Master—And would it be convenient to have it appear there what is the date covered by the last book?

Q. Will you state, Mr. Johnson, what is the period of time covered by the three record books, from the earliest date to the last date? A. June 20, 1914, is the last date.

Q. And what is the first date?

Mr. Whipple—Take Volume 1 first, and strike that out about June 20. Volume 1 begins Sept. 23, 1892?

The Witness—Yes, that is the date.

Mr. Dane—The first date is Sept. 23, 1892, and the last date—

Mr. Whipple—What was the last date in Volume 1?

The Witness—Do you want the last date of the first volume, Mr. Whipple?

Mr. Whipple—Yes.

The Witness—That was the first date that I gave you, Sept. 23, 1892.

Mr. Whipple—Well, what is the last date, the date of the last meeting?

Mr. Thompson—Recorded in that Volume 1.

Mr. Whipple—Yes, that is it.

The Witness—There is a record here of Dec. 28, 1894.

Mr. Whipple—Is that of any church, or purporting to be?

The Witness—There seems to be a definite record of Nov. 5, 1894, and after that there is a remark here, marked Dec. 28, 1894—simply a remark that the last Friday evening meeting held at Wesleyan Hall was on that day. I don't know whether that is a part of the records or not.

Mr. Dane—The last record of a meeting in this book is Nov. 5, 1894, is it not?

Mr. Whipple—Yes, but it carries it to the date of Dec. 28, 1894. What we want to get now is a record of the dates merely, I take it.

Q. Now, will you state the date of the first meeting in Volume 2? A. Dec. 29, 1894.

Q. And the date of the last meeting in Volume 2? A. June 17, 1902.

Q. And will you state the date of the first meeting in Volume 3? A. May 15, 1902.

Q. And the date of the last meeting in Volume 3? A. June 3, 1912.

Mr. Thompson—There is a little overlap there, apparently. Volume 2 ended June 17, 1902, and Volume 3 began May 15, 1902.

The Witness—The first meeting is May 15, 1902. I think a correction should be made there, Your Honor. The last recorded meeting, in writing here, is Friday, May 28, 1909.

Q. In which book is that? A. That is in Volume 3.

Mr. Whipple—May what?

The Witness—May 28, 1909.

The Master—Do I understand that is the first or the last date?

The Witness—That was the last.

Mr. Whipple—There must be something in there that gave you the date of June 3, 1912.

The Witness—There is a clipping from the Sentinel, giving the account of the annual meeting of The Mother Church of June 8, 1914, published in the Sentinel of June 20, 1914.

Mr. Whipple—Well, where did you get your June 3, 1912?

The Witness—There is also an account of the annual meeting of The Mother Church of June 3, 1912, pasted in here.

Mr. Whipple—Well, then, you ought to have a later date than that in giving reference to the annual meeting and the account of it in the Sentinel, because that, you say, is in June, 1914.



The Witness—That is 1912 and 1914.

Mr. Whipple—Well, then, I should say the last date would be June, 1914.

The Witness—Well, now, of course the last record I have here in my father's handwriting is May 28, 1909.

Mr. Dane—The other records, if Your Honor please, are simply extracts taken from the periodicals, giving an account of the annual meetings of the Church, and those extracts are pasted into the book under date of June 3.

The Master—Without seeing them, it occurs to me that those things pasted in here cannot appear to constitute a part of the official records in the volume.

Mr. Dane—I think they do not. I claim nothing for them.

Mr. Whipple—I should say that was so. But what we were trying now to get was the periods of time when the books were in use, and therefore the dates referred to will give us that. And apparently this book was in use as late as 1914. Of course, if there is another record book which gives records of meetings of the members, that can be produced, but it is one of the important points, as we understand it, that after having started with the meetings of members and the control of the Church in the control of its membership, the meetings gradually dwindled away, so that the Church was no longer the governing body. And it is as bearing on that that we think these records may be important.

The Master—I suppose with this witness we are concerned only with records made by the elder Mr. Johnson.

Mr. Dane—Yes, Your Honor.

Q. Now, will you state, Mr. Johnson, in the third volume what is the date of the last meeting of the First Members, which is attested by William B. Johnson as clerk?

Mr. Whipple—He has stated it: May 28, 1909.

Q. Is that the fact, Mr. Johnson? A. That is the last record I have here as William B. Johnson, clerk of the Church, yes.

Q. Now, during the entire period of time covered by these three volumes was William B. Johnson the clerk? A. He was.

Q. And are you familiar enough with these three volumes to be able to testify as to whether or not Mr. Johnson signed as clerk the records of the meetings as recorded in these three volumes?

Mr. Whipple—Has he looked at them all?

Mr. Dane—He is very familiar with them.

Mr. Whipple—Well, has he looked to see whether his father purported to sign them or whether he as assistant clerk signed them?

The Witness—I signed none as assistant clerk.

Q. Your father signed all these meetings? A. Yes.

Mr. Whipple—I would like, if Your Honor please, to request that the books in some way be identified and that we have access to them for the examination of their contents. Do you have any objection to that, Mr. Dane?

Mr. Dane—I see no objection.

Mr. Whipple—Very well. How would you suggest having them identified?

Mr. Dane—They possibly could be marked for identification.

Mr. Whipple—That is agreeable.

Mr. Dane—But the books, as all other books of the Church, must be kept in the custody of the clerk, subject, of course, to your reasonable requirements in examining them.

Mr. Whipple—Well, I take it that they are actually within the control of the Court, but I should imagine that the Court would grant every measure for precaution and safety of the books.

The Master—Oh, yes.

Mr. Whipple—And we are agreed to that. But we would like to have them accessible to us as exhibits so that we may make examination at convenient times.

Mr. Thompson—And we join in that request, naturally.

Mr. Whipple—Yes. They ought to be equally accessible to all counsel at convenient times. They might be identified by the stenographer.

Mr. Dane—Possibly they could be marked for identification.

[Three volumes of Minutes of Meetings of First or Executive Members, Board of Directors, and Annual Church Meetings, signed by William B. Johnson, clerk, are marked for identification as follows: Vol. 1, 109; Vol. 2, 110; Vol. 3, 111.]

Mr. Dane—I offer now, from Volume 2, marked 110 for identification, that part of the record of a meeting of May 4, 1895, appearing upon pages 23 and 24, which I will read into the record.

Mr. Whipple—Pardon me a moment. [The record book is shown to Mr. Whipple.]

Mr. Whipple—May I ask, Mr. Dane, what you claim the organization was May 4, 1895? Was it a corporation organized under the laws of the Commonwealth, or was it simply a continuation of the voluntary organization which we have noted as having been organized in 1892?

Mr. Dane—I understand there was no change in the organization between those two dates.

Mr. Whipple—That is, it was still—and you offer this to show that the organization was still—merely a voluntary association of individuals who had laid down certain rules for the guidance of their own conduct.

Mr. Dane—No, I don't offer it at all for that purpose.

Mr. Whipple—I didn't say for that purpose, but that it was such an organization.

Mr. Dane—No, it is not offered for that purpose.

Mr. Whipple—Then I should want to know what the purpose is, and perhaps His Honor would, before I should

assent to the admission of this or any other record. In other words, what is it a record of, a corporation or what? Was it a church organization under the laws of this Commonwealth or what was it? I think, if Your Honor please, that I perhaps may properly address my inquiry in that way, to get some explanation of what it is that this is a record of.

Mr. Dane—I don't understand, if Your Honor please, that we are required at this time to argue our various legal contentions in this case. Of course, there has been no effort to prove that this Church was incorporated on Sept. 23, 1892, as a corporation.

Mr. Whipple—I don't ask you to argue your case, but I ask you to make intelligible to His Honor and to the rest of us what you are offering.

The Master—We have had what purports to be the records of an organization in September, 1892.

Mr. Whipple—Yes, Your Honor.

The Master—Of some kind. Mr. Dane now tells us that in offering a subsequent record purporting to be of the same organization, there has been no change since September, 1892.

Mr. Dane—No change in the character of the organization.

The Master—No change in the character of the organization.

Mr. Whipple—And no change in the rules which they adopted, by which they should be governed?

Mr. Dane—Why, they may have adopted many rules between those two dates.

The Master—I think we had better have the record, Mr. Whipple, and all the records it appears now are open to your inspection so that if there has been any change indicated which Mr. Dane does not specifically refer to or read, it will be open to you to do so.

Mr. Whipple—That is agreeable to us. This will be Exhibit 112?

Mr. Dane—Yes.

Mr. Whipple—And will you be good enough to read the entire record?

Mr. Dane—I will read at this time the part of the record which I have indicated to you, that I feel is important at this particular stage of the case. I have no objection to your putting in the rest of the record. It is a pretty long record and there are a good many things—

The Master—Well, now, read what you think is important and then we will see what else better be read.

[Record of meeting of May 4, 1895, beginning on page 21 of Volume of Minutes of Meetings of First or Executive Members, Board of Directors, and Annual Church Meetings numbered 2 and marked 110 for identification, is Exhibit 112.]

Mr. Dane—On page 23 of Vol. 2, from the record of a meeting of May 4, 1895:

"A special meeting of The First Members of The First Church of Christ, Scientist, in Boston, Massachusetts, was held this day in the ves-

try of the Church. The meeting was opened by reading selections from the Scriptures and from Science and Health, silent prayer, the Lord's prayer, and its spiritual interpretation at ten o'clock and six minutes a. m. The president and 23 members present.

"By a unanimous vote—the members rising—the following by-law was adopted:

**"By-Law**

"Voted unanimously—the members rising—that:

"The present Reader of the Scriptures, Judge S. J. Hanna, shall remain this Reader as long as he is acceptable and remains editor of The Christian Science Journal.

"Each president of this Church shall hold his or her office but one consecutive year, and once in three years.

"This Church shall have no leader but its pastor, the Bible, and Science and Health. One member of this Church shall not be guided by another.

"One good member is no more than another good member to this Church. Personal attachments or enmity shall not influence the action of the members of The Mother Church toward each other. God alone shall be their God.

"Voted: That in accordance with our Teacher's recommendation The Mother Church shall have a Church Manual.

"Voted: That this Church shall elect an executive committee whose special duty it shall be to see that the Rules and By-Laws of The First Church of Christ, Scientist, as contained in the Church Manual are carried out by each member that attends this Church, in their letter and spirit. And this committee which shall also prepare the Church Manual shall consist of those persons named by Mrs. Eddy.

"Mr. Edward P. Bates, Judge Septimus J. Hanna, Miss Julia S. Bartlett, William B. Johnson.

"The minutes of this meeting were read and approved. The meeting then adjourned at 10 o'clock and 30 minutes p. m.

"Respectfully submitted,  
"WILLIAM B. JOHNSON,  
"Clerk."

Mr. Whipple—We should like to have the whole of that record transcribed. Parts of it have been admitted. Is that agreeable?

Mr. Dane—I have no objection, Mr. Whipple, to your putting in any part of this record, but I do not want to read that whole record, because it seems to me there is much of it that is not pertinent.

Mr. Whipple—We think that other parts of it have quite as much pertinence as the parts you are putting in. We will therefore ask to have the whole of the record of that meeting transcribed in the record.

The Master—Do you want it read now?

Mr. Whipple—No, I do not care to interrupt to have it read at this time. (Addressing stenographers.) When you get the book to copy the records, will you please put in the entire record of that meeting?

[The complete record of meeting of May 4, 1895, as appears on pages 21-24 of Vol. 2, marked 110 for identification, reads as follows]:

"Boston, Massachusetts, May 4, 1895.

"A special meeting of The First Members of The First Church of Christ, Scientist, in Boston, Massachusetts, was held this day in the vestry of the Church. The meeting was opened by reading selections from the Scriptures and from Science and Health, silent prayer, the Lord's Prayer, and its spiritual interpretation at 10 o'clock and six minutes a. m. The president and twenty-three members present.

"The following letter and by-law were read:

"Pleasant View,

"Concord, New Hampshire,

"May 3, 1895.

"Beloved Brethren:

"I ask you to act on this By-Law for two reasons, viz., (1st) I cannot be your Leader unless I have the power to guide you when you need this guidance. (2d) Because I will pray earnestly and watch for God to guide me in knowing that I am right in my decision before entering a complaint against a member of this Church. And from long tests I know that He will show me the way that is just and then I will follow it.

"With love, your Mother in Israel,

"MARY BAKER EDDY.

"A. By-Law.

"A member of this Church who is a student of Rev. Mary Baker Eddy and refuses to leave a place in the field that she knows it is for his or her interest to leave and so advise him or her yet they do not comply with my request, this member shall be dropped from this Church membership and treated by this Church as a disloyal student.

"Also if a member of this Church is proven by me to be treating me mentally without my consent the name of this member shall be dropped from the roll of membership and he or she treated by this Church as a disloyal student.

"This by-law can only be amended or annulled by the unanimous vote of every member of this Church.

"The following letter from our Teacher—Rev. Mary Baker Eddy—was read.

"Beloved Students:

"When a student tells me that I am influenced in my conclusions or work in this field by anyone but God, or when he says I am mistaken in my knowledge of who is attacking me mentally and thus malpracticing—know then that this student is disloyal to the core and is not to be

trusted. This I have proven true 30 years.

"With love,

"Mother.

"Upon the recommendation of our Teacher it was voted that the service for the children shall be held once in four months on the second Sunday in the month.

"A letter from our teacher, the Rev. Mary Baker Eddy, addressed to Dr. E. J. Foster Eddy was read by the secretary. In said letter Mrs. Eddy demands Dr. E. J. Foster Eddy to comply with the demands of the publishing committee and owners of the Christian Science publishing building.

"At the close of the meeting the members, 21 in number, went directly to the Union Station and took the cars for Concord, New Hampshire, and upon reaching Concord immediately took carriages to go to Pleasant View, where we arrived at 3:30 p. m. We were gathered in the back parlor and upon our Teacher entering the room all arose to greet her.

"She then told us why she had called us to her: to inform us of the awful error that is working in our midst, and warn us of our danger. She spoke of those who are constantly working against the success of the cause, and instructed us how to meet scientifically the error of this hour. Her instructions were of incalculable value to us, and if duly heeded will save us from falling into the evil that is plotted against us.

"Mrs. Eddy presented a by-law and some other business to be acted upon by the Church.

"Upon our return to Boston, we went directly to the Church, reopened the meeting of this morning and transacted the following business:

"By a unanimous vote—the members rising—the following by-law was adopted:

**"BY-LAW**

"Voted unanimously—the members rising—that:

"The present Reader of the Scriptures, Judge S. J. Hanna, shall remain this Reader as long as he is acceptable and remains editor of The Christian Science Journal.

"Each president of this Church shall hold his or her office but one consecutive year, and once in three years.

"This Church shall have no leader but its Pastor, the Bible, and Science and Health. One member of this Church shall not be guided by another.

"One good member is no more than another good member to this Church. Personal attachments or enmity shall not influence the action of the members of The Mother Church toward each other. God alone shall be their God.

"Voted: That in accordance with our Teacher's recommendation The Mother Church shall have a Church Manual.

"Voted: That this Church shall elect an executive committee whose

special duty it shall be to see that the Rules and By-Laws of The First Church of Christ, Scientist, as contained in the Church Manual are carried out by each member that attends this Church, in their letter and spirit. And this committee, which shall also prepare the Church Manual, shall consist of those persons named by Mrs. Eddy:

"Mr. Edward P. Bates,  
"Miss Julia S. Bartlett,  
"Judge Septimus J. Hanna,  
"William B. Johnson.

"Voted: That in accordance with our Mother's wish this Church shall see that the Christian Science textbook, 'Science and Health with Key to the Scriptures' and other books by its author, shall be handled by no one that is not known to the author and selected by her.

"Voted: That Edward P. Bates be and is hereby elected President of the Church for one year beginning May 4, 1895.

"The clerk was instructed to notify Dr. Eddy that according to the foregoing by-law his term of office as president of this Church has expired, and that Mr. Bates is elected to that position.

"The minutes of this meeting were read and approved. The meeting then adjourned at 10 o'clock and 30 minutes p. m.

"Respectfully submitted,  
"WILLIAM B. JOHNSON, Clerk."

Mr. Dane—I now offer a certified copy of the Articles of Organization, and a certified copy of the certificate of The Christian Science Publishing Society, organized as a corporation under the laws of Massachusetts, April 2, 1897.

Mr. Whipple—The first, the Articles of Organization, will be Exhibit 113?

Mr. Dane—113, and the certificate No. 114.

The Master—I will ask you for that date in 1897.

Mr. Dane—The Articles of Incorporation are dated April 2, 1897; the certificate is issued April 3, 1897.

Mr. Whipple—Are the By-Laws given in it, or are you planning to put in a copy of the By-Laws?

Mr. Dane—I was not.

Mr. Strawn—Have you any certificate of the dissolution of that corporation?

Mr. Dane—I have not.

Mr. Whipple—We must get that—the certificate of dissolution.

Mr. Strawn—As a matter of fact, that corporation was dissolved on the 21st day of January, 1898, was it not?

Mr. Dane—I have no doubt, if you say so, Mr. Strawn, but I do not know.

Mr. Strawn—It was dissolved just after its assets were transferred to the trustees, as I understand it, or to Mrs. Eddy.

Mr. Dane—I presume so.

[Articles of Organization of Christian Science Publishing Society, dated

April 2, 1897, are marked Exhibit 113.] [Certificate of Secretary of the Commonwealth of Massachusetts, as to incorporation of Christian Science Publishing Society, dated April 3, 1897, is marked Exhibit 114.]

The Master—You do not read those? Mr. Dane—I do not care to unless you want them.

The Master—You might let me look at them.

Mr. Whipple—Mr. Dane, would you object to stating your view of the materiality of those papers?

Mr. Dane—Were you speaking to me, Mr. Whipple?

Mr. Whipple—Yes.

Mr. Dane—I beg your pardon?

Mr. Whipple—What is your view of the materiality of the papers you have just put in—the copy?

Mr. Dane—Why, I understand you have no objection to their going in.

Mr. Whipple—Why this furtiveness about it? Have you any object that is not disclosed in trying to put them in?

Mr. Dane—Not the slightest.

Mr. Whipple—We see no materiality whatever. What is your idea?

Mr. Dane—They are important steps in the development of this case, to show, as stated in the opening, that this society was a corporation immediately preceding the date of the Trust Deed, and that Mrs. Eddy received from this corporation all of the personal property and real estate held by it, and then turned it over to her Church by the Trust Deed of Jan. 25, 1898, and the deed of real estate to the Church. It bears upon her plan, purpose, and intention, which is made an issue by you in your bill.

I now offer a certified copy of a deed from The Christian Science Publishing Society to Mary Baker G. Eddy, dated Jan. 21, 1898, and ask Your Honor to note the date—Jan. 21, 1898.

Mr. Whipple—A deed of what?

Mr. Dane—A deed of the real estate, owned by The Christian Science Publishing Society. This was four days before the execution of the Trust Deed under which the plaintiffs claim.

Mr. Whipple—If Your Honor please, we object to the evidence of the conveyance for any such purpose as was outlined in the opening, but I take it that Your Honor will feel that the evidence should be taken subject to our objection and exception.

The Master—I think so. I do not think you will either of you be satisfied unless you have the whole history.

Mr. Whipple—Yes, Your Honor. With that understanding it may be marked.

Mr. Dane—Do you care to see it?

Mr. Whipple—Yes, I will glance at it. Is the amount of the Bates mortgage stated?

Mr. Dane—I think not.

[A certified copy of deed, Christian Science Publishing Society to Mary Baker G. Eddy, Jan. 21, 1898, is marked Exhibit 115.]

Mr. Dane—I desire to take the time

to read the deed, if Your Honor please.

The deed above referred to is read by Mr. Dane, as follows:

(Suffolk Registry of Deeds)

[Exhibit 115]

CHRISTIAN SCIENCE PUB.  
SOCIETY

To

EDDY

Book 2502, Page 301.

Know all men by these presents, That The Christian Science Publishing Society, a corporation duly established under the laws of the Commonwealth of Massachusetts, in consideration of one dollar and other valuable considerations to it paid by Mary Baker G. Eddy, widow, of Concord in the State of New Hampshire, the receipt whereof is hereby acknowledged, hereby remises, releases, and forever quitclaims unto the said Mary Baker G. Eddy, her heirs and assigns, a parcel of land, with the buildings thereon, situated in Boston, in the County of Suffolk and said Commonwealth, bounded and described as follows: Beginning at a point on the northerly side of Falmouth Street distant northeasterly three hundred seventy-four and 50-100 feet more or less from the easterly boundary line of West Chester Park (now Massachusetts Avenue): thence running northeasterly along said Falmouth Street twenty-three feet to Lot J, as shown on the plan made by William H. Whitney dated December 30th, 1886, recorded with Suffolk Deeds, Book 1756, page 17, thence northwesterly along said Lot J, eighty feet to Lot Z, as shown on said plan; thence southwesterly along said Lot Z, twenty-three feet to Lot H, as shown on said plan; thence southwesterly along said Lot H, eighty feet to the point of beginning. Containing 1840 square feet more or less and being Lot I on said plan. Together with and subject to the rights, easements, reservations, and restrictions set forth or referred to in the title deeds. Also a parcel of land, with the buildings thereon, situated in said Boston, being Lot H, on said plan bounded and described as follows: southeasterly on said Falmouth Street, twenty-three feet; northeasterly by said Lot I, by a line through the middle of the brick partition wall, eighty feet; northwesterly by said Lot Z twenty-three feet and southwesterly by Lot G, on said plan, by a line through the middle of the brick partition wall eighty feet. Containing 1840 square feet. Together with and subject to the rights, reservations, restrictions, and agreements set forth or referred to in the title deeds. Being the same premises conveyed to said corporation by deed of Augustus F. Arnold, dated April 6th, 1897, recorded with said Deeds, Book 2432, page 34. To have and to hold, the granted premises, with all the privileges and appurtenances thereto belonging to the said Mary Baker G.

Eddy and her heirs and assigns to their own use and behoof forever. And said corporation hereby covenants with the grantee and her heirs and assigns that the granted premises are free from all incumbrances made or suffered by it, except as aforesaid, and that it will warrant and defend the same to the grantee and her heirs and assigns forever against the lawful claims and demands of all persons, claiming by, through, or under it, except as aforesaid but against none other. In witness whereof The Christian Science Publishing Society has caused these presents to be signed and its common seal (having no corporate seal) to be hereto affixed by Edward P. Bates, its President, this twenty-first day of January A. D. 1898. Christian Science Publishing Society by Edward P. Bates President and a seal. Commonwealth of Massachusetts. Suffolk, ss. January 21st, 1898. Then personally appeared the above named Edward P. Bates and acknowledged the foregoing instrument to be the free act and deed of The Christian Science Publishing Society before me Malcolm McLoud, Justice of the Peace. . . . At a meeting of the Board of Directors of The Christian Science Publishing Society duly notified and held on the twenty-first day of January A. D. 1898, a quorum being present, it was voted that the said society sell its property to Mary Baker G. Eddy and the President Edward P. Bates is hereby authorized and empowered to execute and deliver in the name and behalf of this society a deed of the premises numbered 95 and 97 Falmouth Street in Boston, an assignment of the Bates mortgage recorded with Suffolk Deeds, Book 2399, page 379, and the note thereby secured and a bill of sale of all personal property belonging to the society, including The Christian Science Journal, so-called, The Christian Science Quarterly, so-called, all copyrights, all stationery, fixtures, stock on hand manufactured or unmanufactured, machinery, tools, mailing lists, book accounts, notes, drafts, checks, and bills whether in process of collection or not, five United States bonds of one thousand dollars each, all cash and bank accounts and all personal property belonging to this society whether enumerated or not. A true copy of the record. Attest James A. Neal Clerk. . . . At a meeting of the members and stockholders of The Christian Science Publishing Society duly notified and held on the twenty-first day of January A. D. 1898, all the members and stock being present and voting, it was voted that the said society sell its property to Mary Baker G. Eddy and the President Edward P. Bates is hereby authorized and empowered to execute and deliver in the name and behalf of this society a deed of the premises numbered 95 and 97 Falmouth Street in

Boston, an assignment of the Bates mortgage recorded with Suffolk Deeds, Book 2399, page 379, and the note thereby secured and a bill of sale of all personal property belonging to the society including The Christian Science Journal, so-called, The Christian Science Quarterly, so-called, all copyrights, all stationery, fixtures, stock on hand manufactured or unmanufactured, machinery, tools, mailing lists, book accounts, notes, drafts, checks and bills whether in process of collection or not, five United States bonds of one thousand dollars each, all cash and bank accounts, and all personal property belonging to this society whether enumerated or not. A true copy of the record. Attest James A. Neal Clerk. . . . January 26, 1898, at four o'clock and twenty-seven minutes p. m. Received, Entered and Examined. . . .

Attest THOS. F. TEMPLE, Reg.

A true copy from the records of Deeds for the County of Suffolk. Book 2502, page 301.

Attest WM. T. A. FITZGERALD, Register.

Mr. Dane—If Your Honor please, while Mr. Johnson is here—we had to get him here from his vacation that he was spending up in New Hampshire—while he is here I would like to have him identify Mrs. Eddy's signature to certain original letters that we propose to put in. Possibly if we take a recess now until 11:30, we can have these arranged so that we will gain time, if there is no objection.

The Master—I hear no objection. We will stop until 11:30.

[Short recess.]

The Master—You may go on, Mr. Dane, when you are ready.

Q. I show you, Mr. Johnson, a book purporting to be the records of the meetings of The Christian Science Board of Directors, and ask you if you can identify that book (passing a book to the witness)? A. I do.

Q. And what is the book? A. It is the record book kept by William B. Johnson.

Q. The records in this book were kept by your father, Mr. Johnson? A. Yes.

Mr. Thompson—Let us have the dates.

Q. What period of time is covered in the book which I now hand you? A. The first meeting recorded here is Sept. 3, 1892.

Q. What is the date of the last meeting? A. The last is June 16, 1902. Now, that record there is a record in the back of the book, but here is one—

Q. What is the date of the last meeting of the directors that is recorded in that book? A. Dec. 30, 1903.

Mr. Whipple—I thought you said that it ran to June 16, 1902.

The Witness—Well, there is a record here, Mr. Whipple, on the last page, of something on June 16, 1902.

Mr. Whipple—You spoke of a record of 1903.

The Witness—Yes, but that 1902 record might have been one that was omitted from its place in the regular records of 1902, and was put at the end.

Mr. Thompson—What is the last date of which it really does contain a record?

Mr. Dane—The last date on which a meeting was held, as recorded in that book, is June 16, 1902.

Mr. Whipple—No; he said 1903.

The Witness—The last one recorded here is Dec. 30, 1903.

Mr. Thompson—December?

The Witness—Dec. 30, 1903.

Mr. Thompson—Then do I understand that after the Dec. 30 meeting is recorded there is a meeting recorded on June 16, 1902?

The Witness—Yes. It may have been left out of the regular records.

Mr. Whipple—Am I correct that the date of the first meeting recorded is Sept. 3, 1892? Was that the statement?

Mr. Dane—That is so.

Mr. Whipple—Well, now, according to your records, the Church was not organized until Sept. 23, 1892.

Mr. Bates—I think the date is Sept. 30. I understood him to say so.

Mr. Whipple—I understood so.

Mr. Dane—Sept. 3 is the first record in this book—Sept. 3, 1892.

Mr. Whipple—Then that was before the Church was organized, according to that, and we do not appear to have any record of any by-laws creating directors, or anything of the sort, and we have the anomaly of the election of directors of a Church before the Church itself was organized. There must be some explanation of that, isn't there?

Mr. Dane—There must be.

Mr. Whipple—This would seem to be the cart before the horse, if the directors got before the Church. It is what they have been doing latterly, but we did not suppose that it began that way.

Mr. Dane—I am only seeking at this time, Your Honor, now that we have this witness here, to identify records and certain signatures. The full significance of these records will be made perfectly plain when they are offered in evidence, but I want to identify these records at this time by this witness.

Mr. Whipple—Well, our trouble was that we were getting a curious identification, that is all; but perhaps, as you say, this can all be worked out.

Mr. Dane—I don't think you need to worry.

Mr. Whipple—I am not worrying, but it seems like an anomaly when you get your directors first.

Q. I show you another book, Mr. Johnson, and ask you what that is, and what period of time it covers? A. This is entitled "Directors' Record Book," and the first meeting is Jan. 1, 1904. The last meeting is of Saturday, March 2, 1907.

Q. Does that book contain the rec-

ord of the meetings of The Christian Science Board of Directors?

Mr. Whipple—Are you presenting him another now?

Mr. Dane—No, the same book.

A. Yes, it does.

Q. Are those records signed by your father, William B. Johnson, secretary? A. They are.

Mr. Bates—What is the number of that for identification?

Mr. Dane—I have not marked any of them yet for identification.

Q. I show you another book, and ask you what that is? A. It is the directors' record book.

Q. And what period of time does that book cover? A. The first meeting is of March 4, 1907, and the last meeting May 28, 1909.

Q. And is that a book of records of the Christian Science Board of Directors? A. Yes.

Q. And are those records in that book signed by your father as secretary? A. They are.

Mr. Dane—Now I will ask to have marked for identification these three books. The one beginning Sept. 3, 1892, will be 116 for identification.

[The book described is marked Exhibit 116 for identification. R. H. J.]

And the one beginning Jan. 1, 1904, will be 117 for identification.

[The book described is marked Exhibit 117 for identification. R. H. J.]

And the one beginning March 4, 1907, will be 118 for identification.

[The book described is marked Exhibit 118 for identification. R. H. J.]

Q. I think I omitted to ask you, Mr. Johnson, with reference to the first book I showed you, "Exhibit 116, for identification. R. H. J.," whether or not that contained the records of The Christian Science Board of Directors as attested by your father, William B. Johnson, secretary? A. Yes, it does.

Q. Now I show you, Mr. Johnson, what purports to be an original letter under date of Oct. 12, 1903, mounted in silk, in a book entitled "Mary Baker Eddy. Letters and Miscellany. Vol. 4," on page 77, the letter itself being No. 361; and I ask you whether or not you can identify the signature on that letter? A. That is Mrs. Eddy's signature.

Q. You knew Mrs. Eddy in her lifetime, Mr. Johnson? A. I did.

Q. And you have seen many letters which she has written? A. Yes.

Q. Roughly how many? A. About 300.

Q. Have you received letters from her which she has written to you in her own handwriting? A. I have.

Q. And have you seen her write? A. I have.

Q. I show you a letter appearing on page 83 of the same book, the letter being dated Oct. 25, 1903, and the letter itself being numbered 364, and ask you whether or not that is Mrs. Eddy's signature to that letter? A. It is.

Mr. Thompson—What is the date of No. 361?

Mr. Dane—Oct. 12, 1903.

Q. I show you on page 213 of the same book a letter dated May 16, 1905, the letter being numbered 422, and ask you whether or not that is Mrs. Eddy's signature on that letter? A. It is.

Q. I show you a letter from Volume 3 of a book entitled "Mary Baker Eddy, Letters and Miscellany," on page 127, the letter being dated June 17, 1901, and the letter itself being numbered 279, and ask you whether or not Mrs. Eddy's signature is on that letter? A. Yes.

Q. From the same book, on page 193, I show you a letter dated June 20, 1902, numbered 310, and ask you if that is Mrs. Eddy's signature to that letter? A. It is.

Mr. Whipple—I take it we may have access to these volumes to look for other letters. Is that understood?

Mr. Dane—Yes, Mr. Whipple. You understand that the letters are mounted in the volumes in silk, and the directors do not want to let them go out of their possession, and they will not go out of their possession except as to your reasonable requirements for the purposes of testimony in the case.

Q. The records which I have shown you, Mr. Johnson—are they the records of The Mother Church, so-called?

Mr. Whipple—Which ones, may I ask?

Q. The records of the Board of Directors which I have just shown you—are they the records of the Board of Directors of The Mother Church? A. Yes.

Mr. Dane—I think that is all from Mr. Johnson. Do you care to cross-examine, Mr. Whipple?

Mr. Whipple—We do not care to cross-examine.

#### Cross-Examination

Q. (By Mr. Thompson.) Mr. Dittmore succeeded your father, didn't he, in 1909, as clerk? A. Yes.

Q. He was clerk, do you know how long? A. How long was my father clerk, did you say?

Q. No. Mr. Dittmore succeeded your father right after this last record of your father on May 28, 1909? A. Yes.

Q. As clerk, secretary and director? A. He did.

Q. Do you know how long Mr. Dittmore remained clerk? A. I do not.

Q. So that the records after that date would be kept by Mr. Dittmore? A. Entirely so.

Q. (By Mr. Whipple.) Mr. Johnson, do you know where in the records there is anything with regard to the creation of a Board of Directors or a similar office? A. I think at the first meeting of Sept. 23, 1892.

Q. You mean of the Church? A. Of the Church, yes.

Mr. Whipple—Well, we didn't find

anything of that sort. I don't remember it, at least.

The Witness—Why, I tell you: I think in the Trust Deed that Mrs. Eddy made, that is published in the Journal, she names certain members—Mr. Chase and others—as The Christian Science Board of Directors.

Mr. Whipple—I don't remember seeing anything in volume one.

The Witness—No, not in volume one. That was October, 1893, I am quite sure, in the Trust Deed of the land, given to the directors, who are to build the new building.

Q. Then you don't find anything in the records of the Church anywhere constituting a Board of Directors? A. I don't—

Q. I mean you can't turn and direct us to anything? A. I can't, no.

Mr. Whipple—Can you, Mr. Dane, point out anything in what have been called the Church Records, constituting a Board of Directors?

Mr. Dane—Are you asking me a question?

Mr. Whipple—Yes.

Mr. Dane—I am not testifying.

The Master—Well, as a matter of convenience—

Mr. Whipple—I supposed you would answer a civil question, as a gentleman.

The Master—As a matter of convenience couldn't it be pointed out at this stage, if there is anything of that kind?

Mr. Whipple—Or if you claim that there is anything in the meetings of the Church with regard to constituting a Board of Directors?

Mr. Dane—The Board of Directors, as I understand it—

The Master—No—only whether in the records which you have introduced there is anything showing a constitution of a Board of Directors by the Church?

Mr. Dane—I am not prepared at this moment, if Your Honor please, to state whether there is anything with reference to the constitution of the Board of Directors in the records that have been identified.

Mr. Whipple—We have been identifying some records of the Board of Directors, and I can't accept a statement that they were the Board of Directors of The Mother Church unless it appears that The Mother Church organization ever constituted them the Board of Directors.

The Master—I suppose we shall have to know at some stage just how and by whom the Board of Directors was constituted. Now the only inquiry at present is—Can you show us anything in the records bearing on that point as a matter of convenience at present? You are not bound to unless you want to.

Mr. Dane—I would gladly do so. I am not prepared at the present moment to point out in the records that have been identified anything bearing on that matter.

Mr. Whipple—If there is anything in the records which have not been

identified which bears on it I would like to see those.

Q. Mr. Johnson, can you help us on that? Do you know of any records whereby the Church constituted a Board of Directors as a part of its organization, and if so will you show it to us? A. I can't remember now, Mr. Whipple. The first time that I heard the name of the Board of Directors mentioned was in the Trust Deed of the land that Mrs. Eddy turned over to the Church, in which she constitutes a Board of Directors to be called The Christian Science Board of Directors.

Q. For the Church? A. For the Church, yes.

Mr. Whipple—That is right. We have seen that. And I think that deed has gone in evidence. Your Honor will remember that the church edifice was transferred to a body of trustees, nominated or denominated in that paper as Christian Science Board of Directors.

Q. That is the deed that is annexed to the pleadings, isn't it?

Mr. Whipple—Yes, Your Honor.

The Master—Exhibit 3: "Said grantees shall be known as The Christian Science Board of Directors and shall constitute a perpetual body or corporation," etc.

Mr. Whipple—Yes, Your Honor. And Your Honor may remember that we alleged in our bill that one trust was created by her conveyance in the Trust Deed to certain trustees of the Church property, and that another trust was created by a deed creating the trustees of the publication society. Now I wondered whether these defendant directors claim that they were constituted as directors of The Mother Church by any vote of the members of that Church. That is important to know, the sources of their alleged or claimed authority, whether they have anything beyond the Trust Deed.

The Master—Well, we have got now all that they are prepared to tell us at present.

Mr. Whipple—But not all that Mr. Johnson could tell us if he had those records accessible, because Mr. Johnson is probably more familiar with them than anyone else. But I am sorry to say that that first volume is in the hands of the stenographer, and I would therefore like to suspend further questions to Mr. Johnson on that until we get that record back, with Your Honor's permission.

Mr. Dane—Meantime I have one or two other records which can be identified.

#### Re-Direct Examination

Q. (By Mr. Dane.) I show you a book, Mr. Johnson, purporting to be Church By-Laws, Volume 1, and ask you if you can identify that and what it is.

Mr. Whipple—Well, I object to Mr. Johnson's being called upon to identify that as Church By-Laws, because you can't prove them in that way. He

can't tell what he knows about the volumes, the way he has others.

A. These are leaves or pages cut from the Manual of the By-Laws of The Mother Church.

Mr. Whipple—Well, I take it that that imports nothing as evidence with regard to any by-laws, and the point is not technical. So far as we can find out this Church has never had by-laws. If it is constituted under the laws of the Commonwealth it may have by-laws, but you have not stated yet whether you claim that it is so constituted, and if it is not constituted it may have rules of action, but it has no by-laws as such.

Mr. Dane—If you will wait a minute, Mr. Whipple.

The Master—I should like to inquire what this particular witness knows about these By-Laws. Does his father purport to have been connected with them in any way?

Mr. Dane—Yes, Your Honor. I was just getting to that point when Mr. Whipple rose.

Q. I call your attention, Mr. Johnson, now, to page 1 of this volume, "Church By-Laws, Volume 1," and ask you if your father's signature appears on that page as clerk of a meeting of the directors? A. It does.

Q. And what date was the meeting held, the record of which appears on page 1 of that book? A. Oct. 15, 1906.

Mr. Whipple—That accents the very point I was making, if Your Honor please. Directors cannot make by-laws. By-laws are made, as I understand it, by the principal for the guidance of the subordinates, by stockholders, or by members of a church, for the guidance of their directors, and you do not find real by-laws made by the directors for their own guidance, or their rule, or attempted rule, of somebody else. Apparently here it is a directors' record in which they are trying to constitute so-called by-laws, but of course they cannot be by-laws. They are not church by-laws in any sense known to the law.

The Master—So far I understand all we have got from this witness is that this is a book which is in some way under his father's signature.

Mr. Whipple—That is clear; I think that is the purport or the legal significance of the testimony.

The Master—I do not know exactly how, yet.

Mr. Dane—He has testified, if Your Honor please, that on page 1 there appears a record of a meeting of the directors signed by his father, William B. Johnson, as clerk, and that is all he has testified to.

Mr. Whipple—And the date is Oct. 15, 1906.

Mr. Dane—1906.

Q. Now, I show you, in the same book, Mr. Johnson, pages from 37 to 67, inclusive, covering a period of time from Oct. 19, 1906, to July 16, 1908, and ask you whether or not on those pages there are recorded meetings of the directors, which your

father signed as clerk? A. There are.

The Master—This seems to be, if I understand it rightly, a sort of a supplementary volume of the directors' records?

Mr. Dane—Exactly.

The Master—Kept by Mr. Johnson, the elder Mr. Johnson, as the directors' clerk?

Mr. Dane—Clerk, yes, sir. Now I desire to have this book about which the witness has just testified marked for identification.

[Church By-Laws, Volume 1, is marked for identification, Exhibit 119.]

Q. I show you now, Mr. Johnson, a book, Church By-Laws, Volume 2, and call your attention to the first page, to the page before the page numbered 1 in the book, and ask you if that is a record of a meeting of the Board of Directors of The First Church of Christ, Scientist, in Boston, under date of July 31, 1908, signed by your father, William B. Johnson, as clerk? A. It is.

Q. I call your attention in the same book to pages 37 to 47, both inclusive, and ask you whether or not those pages contain records of the meetings of the Board of Directors of The First Church of Christ, Scientist, in Boston, signed by your father as clerk? A. They do.

Mr. Dane—This book will be marked for identification, Exhibit 120.

Mr. Thompson—Do you want to give the dates of those last meetings?

Mr. Dane—The dates of what, Mr. Thompson?

Mr. Thompson—The dates of the directors' meetings on pages 37 to 47.

Mr. Dane—I will. The meetings recorded on pages 37 to 47 include the period of time from July 31, 1908, to May 22, 1909, both dates inclusive. This book is marked for identification, Exhibit 120.

[Church By-Laws, Volume 2, marked for identification, Exhibit 120.]

Mr. Dane—So far as we now know, that is all we want from Mr. Johnson in the way of identification of records. We have not had a chance to talk with Mr. Johnson. He may know something material to the case, and I would like to reserve the right to put him on later if I desire to do so.

The Master—Is there anything further from this witness at this stage?

Mr. Whipple—Nothing further so far as we are concerned, except to ask Mr. Johnson with regard to any record whereby the directors are constituted as such by the members of the Church, or any authority that they get by reason of any vote of The Mother Church, or any constitution of the Church as a religious body under the laws of the Commonwealth.

The Master—Anything further, Mr. Thompson, from this witness?

Mr. Thompson—Just a moment, if Your Honor please. (Consulting with Mr. Dittmore) I think there is nothing further, if Your Honor please, but

we also hope that he will be back here again in case we should need to examine him. It is too soon for us to make up our minds whether we have anything further to ask him.

Mr. Dane—That is all at the present, Mr. Johnson. I offer now, from the Church Manual of 1897, Article 5, Section 4, which I show to counsel.

Mr. Whipple—I do not think you need to show it to me until in some way you have shown any adoption of some by-law, or some authority in connection with what you offer to show. That is where we left off last night. You were going to prove the By-Laws of the Church. You opened very broadly about the By-Laws of the Church and the power it gave to the directors, and you were going to prove it. You cannot prove them by handing them to me.

Mr. Dane—Well, we will prove the By-Laws of the Church before we are through with the defense of this case, I think, to the satisfaction of the Court. This particular section of the by-law we do not rely upon in any way, but we simply desire to show that it appeared in a Church Manual in 1897, in the form in which it appeared, and that it was amended at the suggestion of Mrs. Eddy by adding to it a very important sentence. The by-law relates, as it appears in this Manual, to the existence of a Board of Trustees of The Mother Church, and provides that no Board of Trustees shall ever exist by or between the members of The Mother Church or in The Mother Church. The adoption of it is not a matter which we need to go into at this time, as we claim nothing under it; simply that it appears in this Church Manual in the form in which it there appears, and that the amendment of it was made, as we shall proceed to show, at Mrs. Eddy's request.

The Master—Must you not, if it is insisted upon, begin by showing the adoption? Without showing the adoption have you any foundation upon which to show the amendment?

Mr. Dane—I think so, if Your Honor please. We are not claiming anything under the amendment. It simply appears here in this book entitled "Church Manual," in the form that it there appears. Now, we claim nothing whatever under this particular by-law, but we must have this by-law as a foundation for what we are claiming under and what we propose to prove in the proper way.

The Master—Before you can call it a by-law must you not show its adoption?

Mr. Dane—Well, I will waive the denomination of it as a by-law and simply call it a section of Art. V appearing in a book entitled "Church Manual."

Mr. Whipple—That doesn't get you anywhere, calling it something else. According to your statement, it is entirely immaterial. You say you do not claim anything under it.

Mr. Dane—Well, I propose to make it material by following it up with proof of matter that is material.

Mr. Whipple—I do not understand you make things material by following them up. You have, when you offer them, to make it clear to the Court that they are admissible.

Mr. Dane—I will take my instructions and rulings from the Court.

Mr. Whipple—You are getting them.

Mr. Dane—If the Court thinks it is necessary.

The Master—It rather seems to me that you must prove the adoption, or at least something more about what you read from the Church Manual, than the mere fact that it appears in a book entitled "Church Manual."

Mr. Dane—I shall need to recall Mr. Johnson. Mr. Johnson, will you kindly take the stand again?

#### William L. Johnson, Recalled

Q. (by Mr. Dane) I show you, Mr. Johnson, page 85 of a book entitled "Mary Baker Eddy, Letters and Miscellany, Volume 7," and page 87 in the same book, and ask you whether or not the word "Mother" appearing on the paper numbered 710 is in the handwriting of Mrs. Eddy? A. It is.

Mr. Whipple—Do you care to give the date?

Mr. Dane—The date which appears on this is "Adopted, Feb. 3, 1898."

Q. Are you familiar, Mr. Johnson, with the records in this book numbered 708, 709, and 710? A. Yes.

Mr. Whipple—Those are the pages?

Mr. Dane—Those are the numbers of the writings appearing on pages 85 and 87.

Q. And whether or not those writings that I have called your attention to came from Mrs. Eddy?

Mr. Whipple—Well, what do you mean? You are asking whether they are in her handwriting?

Mr. Dane—No, they are not in her handwriting, except the word—

Mr. Whipple—Then how can Mr. Johnson say whom they came from?

Mr. Dane—Pardon me—except the word "Mother," which he has already testified to is in her handwriting.

Mr. Whipple—Isn't that the limit of what Mr. Johnson can testify to?

Q. Do you think so? A. Yes; they are.

Mr. Whipple—Well, then, the question and answer will have to be suspended, I take it, until Your Honor rules.

The Master—I do not quite grasp the situation, I am afraid.

Mr. Dane—The witness has testified that the writings appearing on pages 85 and 87 of this book, numbered 708, 709, and 710, came from Mrs. Eddy; that the writing on page 87, numbered 710—the word "Mother" appears in Mrs. Eddy's handwriting. And I offer—

Mr. Whipple—And I objected to the question as to whether they came from Mrs. Eddy, because it did not appear that Mr. Johnson knew about

that. They are not in her handwriting, and where they came from—

The Master—Should you not get the witness' knowledge, Mr. Dane, before you ask that question?

Mr. Whipple—May the answer which was made after my objection be stricken out for the moment?

The Master—Will that be necessary? If it appears that he has no personal knowledge we will strike that out.

Q. Have you any personal knowledge, Mr. Johnson, as to whether or not the writings appearing on pages 85 and 87 came from Mrs. Eddy? A. I have in the one that is signed. The first one—the typewriting—that, I should say and firmly believe, was done at Pleasant View by the machine that they had at that time.

Q. That is 708? A. 708.

Q. That was done on the same typewriter as 710? A. As 710, yes, sir.

Mr. Whipple—But it is not claimed that Mrs. Eddy used the typewriter?

The Witness—No, I do not claim that at all.

Q. And 710 bears the signature of "Mother" in Mrs. Eddy's handwriting? A. It does.

Mr. Dane—I offer 708 and 710. Do you care to see them, brother Whipple (passing to Mr. Whipple the volume containing the letters referred to)?

Mr. Whipple—You offer what—708? What do you offer?

Mr. Dane—I offer 708 and 710. 710 is offered for the purpose of comparison in connection with the witness' testimony and his testimony as to the signature of "Mother" upon it as being Mrs. Eddy's.

Mr. Whipple—Oh, well, I certainly shall have to object to that. I do not think there is any identification as showing that it was by Mrs. Eddy's authority, in the first place.

Mr. Dane—I will show it to the Court (passing to the Master the volume referred to).

Mr. Whipple—Now, then, there will arise another question after that. As I understand the testimony, they put in one typewritten piece which bears the penciled signature "Mother," in order to show that another one which bears no signature whatever came from the same typewriter, or Mr. Johnson judges that it did, to wit, a typewriter at Pleasant View. That does not go very far toward proof.

Mr. Dane—What you have suggested goes to the weight of it.

Mr. Whipple—It is not signed by Mrs. Eddy.

The Master—I did not get what the witness said in regard to his personal knowledge concerning the source of what you offer.

Mr. Dane—I will refer to that. I asked him whether or not he had personal knowledge as to whether those writings came from Mrs. Eddy, and he testified, I think, that he knew that 710 came from Mrs. Eddy, and 708, being written on the same type-

writer, the typewriter at Pleasant View, he would say that it came from Mrs. Eddy.

Mr. Whipple—He did not so state.

The Master—Is that all the personal knowledge that you have regarding the source of these papers?

The Witness—That is all, Your Honor.

The Master—It seems to me that that will be sufficient for 710: I do not think that it is as to the other.

Q. Do you know what the custom of Mrs. Eddy was as to signifying her approval of by-laws, acts of the directors? Whether or not she was accustomed to write her name "Mother" as signifying her approval?

Mr. Whipple—Well, if Your Honor please, Your Honor has ruled on that one.

The Master—I have admitted 710.

Mr. Whipple—That one is admitted. It is only the one as to which, apparently, there was no such custom followed—

Mr. Dane—I understand Your Honor excludes 708?

The Master—Well, for the present. I do not think that you have shown by this witness that that came from Mrs. Eddy. It may be very likely that you can do it by other testimony, but at present there is no evidence sufficient for that purpose.

Mr. Dane—I think that perhaps I can make that connection in a more satisfactory way, Your Honor.

Q. I show you, Mr. Johnson, a letter appearing on page 91 of a volume entitled "Mary Baker Eddy. Letters and Miscellany," a letter numbered 712, and ask you if you recognize the handwriting in the signature of that letter? A. I do.

Mr. Whipple—Which volume is that, page 91?

Mr. Dane—Page 91 of Vol. 7.

Mr. Whipple—And No. 712?

Mr. Dane—Yes.

Q. Who signed the letter, and who wrote the letter? A. Mr. Frye.

Q. C. A. Frye? A. Calvin A. Frye.

Q. And who was Mr. Calvin A. Frye? A. Mrs. Eddy's private secretary.

Q. And was he her private secretary while she resided at Pleasant View, Concord, New Hampshire? A. He was.

Mr. Dane—I offer the letter numbered 712, and the inclosure also numbered 712, appearing on page 91.

Mr. Whipple—Do you want me to look at it?

Mr. Dane—If you care to.

Mr. Whipple—Well, I don't care to.

Mr. Dane—You needn't.

Mr. Whipple—Then I will object to it without looking at it.

[Mr. Whipple takes the book and peruses the letter and inclosure referred to.]

We object to that, if Your Honor please. In the first place, it does not go to show the real adoption of the by-law at all in any legal sense, or in any real sense. At most, you might

ask to have attached to it the significance that every Christian Scientist attaches to the words of Mrs. Eddy herself over her own signature, but that sanctity does not extend to every one who purported to write something in her behalf, whether they be directors or private secretaries.

The Master—Not to every one, but might it not apply to every one who habitually wrote communications in her behalf?

Mr. Whipple—That has not appeared.

The Master—And is that not implied by the testimony that Mr. Frye was her private secretary?

Mr. Whipple—I thought not, if Your Honor please.

Mr. Dane—I can ask the question.

Q. Mr. Johnson, whether or not Mr. Frye habitually wrote letters on behalf of Mrs. Eddy? A. He did.

Q. During the time that she resided at Pleasant View, Concord, New Hampshire? A. He did.

Mr. Dane—Would Your Honor care to see that?

The Master—Signed by Mr. Frye, I think that I shall have to admit it.

Mr. Whipple—Will Your Honor note our objection to it as entirely immaterial?

The Master—Quite so. I do not pass on the materiality of it at all.

Mr. Whipple—Your Honor does not pass on its materiality?

The Master—Not at present. That will be open to argument hereafter.

Mr. Whipple—Then we will leave it open for the present, but we cannot see that it bears upon any issue in the case.

Mr. Dane—This is a letter on the letterhead—

The Master—Pardon me, Mr. Dane. I do not think that you have read yet 710, is it, or 708?

Mr. Dane—710 I do not wish to read into the record, because I offered it only for the purpose of comparison with 708, which was the important one.

The Master—In itself it has no particular materiality?

Mr. Dane—In itself, it has no particular materiality.

The Master—Very good. Now you may read 712, then.

Mr. Dane—

"Science and Health With Key to The Scriptures,

"(The Christian Science Textbook)

"And Other Works,

"By Mary Baker G. Eddy.

"Pleasant View, Concord, N. H.

"Feb 10 [1898].

"W. B. Johnson,

"Clerk of Mother Church,

"Mother requests that you have immediate action taken on inclosed by-law and have in [it] appear in this edition of Church Manual.

"Fraternally,

"C. A. FRYE.

"Church By-Law.

"The Christian Science Board of Directors of this Church shall not fill a vacancy occurring on that board except by a unanimous vote of all the

directors. The Board of Trustees of this Church shall not fill a vacancy occurring on their board except by a unanimous vote of all its members. The readers of this Church shall not be elected except by a unanimous vote of the Christian Science Board of Directors.

"This church by-law can neither be amended nor annulled except by the consent of Mrs. Eddy, the Pastor Emeritus of this Church, over her own handwriting."

[The letter of which the foregoing is a copy is Exhibit 121, R. H. J.]

Mr. Whipple—Now, we will submit, if Your Honor please, that that has no bearing upon any issue in this case.

Mr. Dane—I call Your Honor's attention to the date of this communication as February 10, 1898, shortly after the execution of the Trust Deed; and this communication of Mrs. Eddy falls directly within the reservation of power made by her in the Trust Deed as to the execution of the Trust Deed.

The Master—I am not prepared to exclude it as wholly immaterial on any issue. It may stand for the present. Will you now show, or will it be convenient for you to show now the action taken upon that request?

Mr. Dane—Yes, Your Honor. I am proceeding to do that.

The Master—This will be a convenient place to have it, I think, if there was any action.

Mr. Dane—I find that the volume in which that action is shown is now in the possession of the stenographer.

I will show Your Honor the adoption of the by-law which I have just read in evidence, as soon as the volume is brought back in which that action appears. In the meantime I will ask Mr. Johnson if that letter appearing on page 201 of a volume entitled "Mary Baker Eddy. Letters and Miscellany," Vol. 10, and numbered 1204, has the signature of C. A. Frye?

The Witness—It has.

The Master—What is the date?

Mr. Dane—Dated July 13, 1899.

And I offer that letter (passing the same to Mr. Whipple).

Mr. Whipple—We cannot see, if Your Honor please, that that is material in any way, but I think that it comes under the ruling that Your Honor has made, and I understand that Your Honor will not now rule upon the materiality of it, but will deal with that later.

Mr. Dane—This is a letter upon the letterhead:

"Works on Christian Science

"By

"Rev. Mary Baker G. Eddy

"Address all inquiries to Joseph Armstrong, C. S. D.,

"95 Falmouth Street, Boston, Mass.

"Pleasant View,

"Concord, N. H., July 13, 1899.

"William B. Johnson,

"Dear Brother:

"Mother requests that you change the last part of the by-law sent yesterday on qualifications of readers to



'read and spell well' instead of 'correctly.'

"She requests that Article I, Section 5, be amended by inserting after the word trustees, the words 'nor syndicates.' She says the students [students] had better mingle with other people than form syndicates, but better still would it be for them if they would keep apart from all worldly schemes and work with God.

"Mrs. Eddy also thinks it would be well for you to frame a by-law that all Christian Scientists who are able shall subscribe for the periodicals that our Church sustains and that these periodicals shall be ably edited and kept abreast with the times.

"All by-laws should be published in the Sentinel and Journal.

"Yours fraternally,

"C. A. FRYE."

[The letter of which the foregoing is a copy is Exhibit 122, R. H. J.]

The action of the First Members with respect to the subject matter of that letter also appears in Volume 2 of the First Members.

Q. I show you, Mr. Johnson, a paper on page 141 of Letters and Miscellany, Volume 7, numbered 738, and ask you if you know in whose handwriting that paper is, the handwriting that appears in black? A. No, I don't know that handwriting.

Mr. Dane—In connection with the letter from Mrs. Eddy with relation to the adoption of the By-Law as to the filling of vacancies, which has been put in, vacancies upon the Board of Directors and upon the Board of Trustees, I offer from Volume 2 of the Minutes of First Members of The Mother Church, the record appearing on page 183, which I will show to counsel. (Handing record book to Mr. Whipple.)

Mr. Whipple—With the reservation that has already been mentioned, as to the general application or materiality of these By-Laws, we have no objection to that being read.

[The record of a meeting of Feb. 10, 1898, appearing on page 183 of Volume 2, Minutes of Meetings of First or Executive Members, Board of Directors and Annual Church Meetings, is offered in evidence as Exhibit 123.]

Mr. Dane (reading)—

"Feb. 10, 1898.

"At a special meeting of the First Members of The Mother Church held in the vestry of the church and opened by the president in the usual form at 2:40 p. m., at which meeting 20 members were present, the following Church By-Law was adopted by a unanimous vote—all rising:

"The Christian Science Board of Directors of this Church shall not fill a vacancy occurring on that board except by a unanimous vote of all the First Members of this Church. The Board of Trustees of this Church shall not fill a vacancy occurring on their board except by a unanimous vote of all the First Members of this Church. The readers of this Church shall not

be elected except by a unanimous vote of all the First Members of this Church. And no person shall be a member of this Church or be eligible to the said offices who has made attempts to greatly injure Mrs. Eddy, and her testimony or the testimony of a member of the Christian Science Board of Directors shall be found sufficient evidence in the case.

"This Church By-Law can neither be amended nor annulled except by the consent of Mrs. Eddy, the Pastor Emeritus of this Church, over her own handwriting. Signed, Mary Baker Eddy. The minutes were approved. The meeting adjourned at 2:45 p. m.

"WILLIAM B. JOHNSON,

"Clerk."

Mr. Whipple—Don't you understand that to mean "over her own handwriting—Mary Baker Eddy," showing the signature which must be attached to consent to any change?

Mr. Dane—I don't understand that is her signature.

Mr. Whipple—No, but don't you understand that it prescribes a form in which her signature must appear in order to effect a change?

Mr. Dane—I understand that related to the entire by-law which was proposed by her for adoption at this time.

Mr. Whipple—Now what do you understand by the Board of Trustees of the Church as mentioned there?

Mr. Dane—I don't think, if Your Honor please, that we ought to argue the points of the case as we go along, unless the Court desires to hear from us.

Mr. Whipple—Very well. I thought perhaps you thought it meant Board of Trustees of the Publishing Society. If you don't care to state I won't press it.

Mr. Dane—Then I offer from page 200 of the same book the record of a meeting of Aug. 25, 1898, relating to an amendment in the by-law which has just been referred to (showing the volume to Mr. Whipple).

Mr. Whipple—Well, is that one of the things you have identified before?

Mr. Dane—Yes.

Mr. Whipple—Subject to our general objection as to its materiality we assent that it be taken provisionally.

[The record of a meeting of Aug. 25, 1898, appearing on page 200 of Volume 2 of Minutes of Meetings of First or Executive Members, Board of Directors and Annual Church Meetings, is offered in evidence as Exhibit 124.]

Mr. Dane (reading)—

"Aug. 25, 1898."

Mr. Whipple—Is this the meeting of First Members?

Mr. Dane—First Members—appearing on page 200 of Vol. 2.

"A special meeting of the First Members was held this day in the vestry. It was opened by the president without form at 9:15 o'clock, nine members present.

"Voted: That the second paragraph of Sect. 1 of Article XI, page 28 of the

Church Manual, Eighth Edition be amended by striking out the words following 'the remaining trustees shall fill the vacancy.' The words to be stricken out are: and the candidates proposed for this office shall be elected by a unanimous vote of all the First Members of said Church.

"Minutes approved, and the meeting adjourned at 10:50 a. m.

"WILLIAM B. JOHNSON, Clerk."

Mr. Dane—In connection with a letter from Mrs. Eddy, relating to the by-law as to the periodicals, which has been offered, I offer record of a meeting of the First Members, of July 17, 1899, that part which I will read into the record (showing volume to Mr. Whipple).

Mr. Whipple—The same reservation.

[The record of a meeting of July 17, 1899, appearing on page 258 of Vol. 2 of Minutes of Meetings of First or Executive Members, Board of Directors and Annual Church Meetings, is offered in evidence as Exhibit 125.]

Mr. Dane (reading)—

"July 17, 1899.

"A special meeting was held this day, the president present. The meeting was opened at 2 o'clock p. m. 48 members answered to the call of their names.

"On motion the following amendments and by-law were unanimously adopted by a rising vote.

"By-Law

"It shall be the privilege and duty of every member of this Church who can afford it to subscribe for the periodicals that are the organs of this Church; and it shall be the duty of this Church to see that these periodicals are ably edited and kept abreast of the times."

I offer from Vol. 3 of the directors' records the record of a meeting of July 30, 1903, appearing on page 122, and show it to counsel. (Showing Volume 3 to Mr. Whipple.)

Mr. Whipple—That I can't see how in any aspect can possibly be admissible. We are asked here to admit a vote of a Board of Directors adopting by-laws. What authority have the directors to adopt any by-laws for the government of the Church? Where is any such authority given to them by the First Members or by the members of the Church?

The Master—Heretofore we have had the records of the First Members. You now offer the records of the directors. Is that right?

Mr. Dane—Yes.

The Master—And I understand from Mr. Whipple that they purport to enact a by-law. Am I right?

Mr. Dane—Yes, Your Honor. They purport to adopt a Manual of by-laws. And I will say in that connection—

The Master—Must you not, then, show some authority in them to take such action?

Mr. Dane—Yes. In 1901 the functions of the First Members who had before that time acted upon the By-

Laws were transferred to the Board of Directors.

The Master—Have we had the evidence of that? I don't know but that we have. It has been stated several times. But has there been any evidence in regard to it?

Mr. Dane—I offer from Volume 2 of the Records of First Members, dated Jan. 10, 1901, page 313.

Mr. Whipple—I don't mind provisionally its being read, Your Honor, because we say that it does not sustain the claim that has been made and reiterated by counsel. It is no transfer of authority to make by-laws. It is an extraordinary situation for people—

The Master—Let us hear what it says and then I can understand better what you have to say about it.

Mr. Dane (reading)—

“Jan. 10, 1901.

“A special meeting of the First Members was held this day, 31 members present.

“On a motion which was seconded, and by a unanimous vote, the following By-Law was adopted:

“The business of The Mother Church hitherto transacted by the First Members shall be done by its Christian Science Board of Directors. The salary of each member of this board shall at present be raised to \$700 per annum.

“The First Members of this Church shall continue to convene annually at the Communion season, but they shall not be present at the business meetings. This By-Law can neither be amended nor annulled without the unanimous consent of the whole Church or the written consent of Mrs. Eddy, pastor emeritus.

“WILLIAM B. JOHNSON,  
“Clerk.”

The Master—And if I recollect right, you have not yet shown any action by the First Members constituting a Board of Directors?

Mr. Dane—I think not.

The Master—So that we are left in some doubt as to what that vote means when it refers to its Board of Directors.

Mr. Dane—That is, of course, involved in a recognition of the Manual.

The Master—Where does the Manual come in? I don't quite see that yet. By its Board of Directors—that is, the Church's Board of Directors?

Mr. Dane—Yes, Your Honor.

The Master—How did the church get a Board of Directors? We haven't yet any action of the First Members constituting one.

Mr. Dane—No. I think that may be correct. It will develop, however, and I would prefer to develop it gradually, rather than state my position at this time.

The Master—By no means do I intend to trouble you particularly regarding the order of proof, but would not the natural way be to show, in the first place, how the Church got its Board of Directors?

Mr. Dane—The deed of 1892, of Sept. 1.

The Master—Is that the only way?

Mr. Dane—Creating a Board of Directors which the Church accepted when it came into existence on Sept. 23, 1892, subsequent to the execution of the Trust Deed.

The Master—How is the acceptance of the Church shown?

Mr. Dane—It is shown by the conduct only, the continuation—

The Master—Not by a vote?

Mr. Dane—Not by a vote so far as I am aware at the present time.

The Master—And this deed of Sept. 1, 1892, goes no further than to authorize the directors to make regulations for the purpose of maintaining public worship.

Mr. Dane—Yes. Now, subsequent to that this voluntary association was organized and they simply accepted those persons as the Board of Directors and recognized them as such, and always have.

The Master—Without any formal action.

Mr. Whipple—Your Honor will notice that it does not transfer any authority to make by-laws or anything of that sort. There is a by-law whereby they transfer the business of The Mother Church, business administration, to these directors, assuming they were directors of The Mother Church. They were really trustees under another deed of trust with a definition contained in that trust of their duties, as we claim.

Mr. Dane—We do not concede—

The Master—We will let Mr. Dane put in all the facts and then we will see what follows from it. It seems all rather shadowy at present.

Mr. Dane—There are a great many records that will have to be put in to develop the situation, and necessarily it will perhaps go slowly at this time. I think it will be made perfectly clear, as the case goes in, exactly what the situation is.

Mr. Whipple—In the record which is now offered the directors purport to have gone forward to amend a so-called by-law on an alleged telephone request of Mrs. Eddy, although the existing by-law required her consent in writing to any change.

Mr. Dane—That has not been put in, has it?

Mr. Whipple—No. I am commenting on what you are trying to put in.

Mr. Dane—We haven't offered it. We will get to it in time.

Mr. Whipple—No, I am talking about what you are trying to do.

[The record of a meeting, dated Jan. 10, 1901, appearing on page 313 of Vol. 2 of Minutes of Meetings of First or Executive Members, Board of Directors and Annual Church Meetings, is offered in evidence as Exhibit 126.]

The Master—Shall we stop here?

[Recess until 2:05 o'clock p. m.]

## AFTERNOON SESSION

The Master—You may go on, Mr. Dane, when you are ready.

Mr. Dane—Have you Volume 3, Mr. Strawn? (Volume produced.) For the present I will withdraw the offer of the record of the meeting of July 30, 1903.

The Master—That record was what? Just remind me.

Mr. Dane—That was the record which I offered by which the directors adopted the twenty-ninth edition of the Church Manual. That has not gone in evidence and for the present I withdraw it. I had just before the adjournment put in the record of the transfer of the powers of the First Members to The Christian Science Board of Directors, in January, 1901. I desire now to go back to the record of Dec. 28, 1895, appearing on page 50 of Volume 2 of the First Members, and I offer the record of that meeting.

Mr. Whipple—This is a meeting of directors?

Mr. Dane—First Members.

Mr. Whipple—First Members.

Mr. Streeter—Let me ask, the Master and all the gentlemen concerned—are these records of specific By-Laws and specific abstracts being marked in the record so that they can be indexed, as we talked about this morning?

Mr. Dane—I understand these records which have been read into the record are being marked as exhibits in the record.

Mr. Whipple—Now may I ask what you offer?

Mr. Dane—I offer the record of the meeting of the First Members of Dec. 28, 1895.

Mr. Whipple—Do you understand that the following pages, page 51 and following, are a part of it?

Mr. Dane—Yes. I understand that is what was at that meeting adopted by the First Members.

Mr. Whipple—It says here, “Motion is hereby made by Ira O. Knapp that the foregoing rules and By-Laws read by the clerk to constitute a Church Manual be accepted.”

Mr. Dane—Yes, I know. That is quite obviously a typographical error. It refers to the “following,” because following that are the rules and regulations.

Mr. Whipple—In other words, it is just the opposite of what it says.

Mr. Dane—Yes, in intentment.

Mr. Whipple—How far do you understand the record goes of that meeting of Dec. 28, 1895?

Mr. Dane—To the bottom of page 80.

Mr. Whipple—Well, now, you see the Aug. 22 meeting refers to the “foregoing rules and By-Laws.”

Mr. Dane—Yes. I offer that also.

Mr. Whipple—While the one of Dec. 28 does not.

The Master—I thought that was September. December, is it?

Mr. Whipple—Dec. 28, 1895.

Mr. Dane—I offer the following meeting also, of Aug. 22, 1896.

Mr. Whipple—With the note of Mr. Johnson at the end, page 87? I fail to see, if Your Honor please, how any of the provisions of the By-Laws which appear to have been adopted on this date, in 1895, can have any bearing upon the Trust Deed or any of the issues that we have here.

The Master—It seems to me that we shall have to let Mr. Dane go on and develop his case, and bring out the facts. I hardly think it would be advisable to stop at every point to discuss their bearing or their admissibility. Why cannot we have it understood that it is all subject to objection? He has told us that he intends to show and to rely upon acquiescence in a course of conduct extending through a considerable period of time. Wouldn't it be the best way to hear what he has got to offer tending to show that, on the understanding that it is all open to objection—you do not admit its materiality or anything else?

Mr. Whipple—We should like very much to do that instead of making the objections, interspersing them with the different offers; and with that understanding we are content that this should be put in for what it is worth.

Mr. Dane—All right. The record of a meeting of First Members, dated Dec. 28, 1895, from Volume 2, page 50, of the First Members' records.

[The record from First Members' records above referred to, dated Dec. 28, 1895, is Exhibit 127.]

The record is read by Mr. Dane, as follows:

"A special meeting of the First Members was held this day in the church vestry. The president being absent, Ira O. Knapp was chosen chairman, after which the meeting was opened in the usual manner, at one o'clock and ten minutes. 21 members present."

Omitting two paragraphs, and proceeding:

"Motion is hereby made by Ira O. Knapp that the foregoing rules and By-Laws read by the clerk constitute a Church Manual be accepted and adopted, and that all Rules and By-Laws inconsistent with these Rules and By-Laws be repealed and that the clerk be authorized to expunge and obliterate such Rules and By-Laws from the books of the Church. The above By-Law was offered by Mr. Knapp—"

Obviously, that means "resolution."

"—in a previous meeting when he was not the chairman, but other Rules were adopted since that meeting, and as the records of that meeting had not been entered the above motion was adopted as above.

"These minutes were approved, and the meeting adjourned at 2:50 p. m.

"William B. Johnson,  
"Clerk."

Then follow pages 51 to 80, inclusive, and I desire only to read pages 51, 52 and 53.

The Master—Those are what are called in the minutes of the meeting "the foregoing"?

Mr. Dane—Those are what are called in the minutes of the meeting "the foregoing." Actually, they are following.

The Master—Apparently they were so called because they had been read to the meeting.

Mr. Dane—Undoubtedly that is the explanation.

The Master—Do you propose to put them all in?

Mr. Dane—Yes, sir. I want to put them all in; I don't want to read them all.

The Master—And to read only two pages?

Mr. Dane—Only a part of it. Page 51—

Mr. Dane—Page of—

Mr. Whipple—You do not care to have that all copied into the record?

Mr. Dane—Oh, no.

The Master—Let me ask this question at this point: Were they then printed, published and used just as they stand there?

Mr. Dane—Yes, I think they were, Your Honor.

The Master—Possibly it might be well to put in the printed edition.

Mr. Whipple—Yes.

Mr. Dane—I should be very glad to do so.

The Master—As it was then adopted and agreed upon.

Mr. Whipple—If that fact can be verified it would be better to use one of the printed forms.

The Master—Yes. Have it verified, and then we can all have it in the most convenient form to refer to. You can pick that out later, Mr. Dane. You had better read what you propose to read now. We do not want to lose any more time.

Mr. Dane—We will locate that printed volume of this Manual, but I will read now from page 51:

"Church Manual of The First Church of Christ, Scientist, in Boston, Massachusetts.

"Christian Science Publishing Society, 95 Falmouth Street, Boston.

"Copyrighted, by James A. Neal, Thomas W. Hatten.

"Contents: Church Officers, Formation of the Church, Church Tenets, Church Rules, By-Laws, Instructions to Teachers, Forms of Application for Membership, Deed of Trust, Preamble, List of Members, Explanatory Note."

The Master—Now, out of all that, are we concerned with anything else except the By-Laws included?

Mr. Dane—Possibly the Church Rules—the Church Rules and the By-Laws.

The Master—The Church Rules and the By-Laws.

Mr. Whipple—The list of officers, may I suggest, Your Honor?

Mr. Dane—The list of officers, and I was going to read the list of officers.

The Master—The vote does not refer to any list of officers, does it?

Mr. Dane—The vote adopts this Manual, which includes the list of officers, and in effect adopts that list of officers.

The Master—That is rather an unusual way of adopting a list of officers, is it not?

Mr. Dane—Yes, I think it is rather unusual.

The Master—I supposed that I had my attention fixed on the By-Laws and rules referred to in the vote. That was what we were after more immediately. However, you can go on.

Mr. Dane—At page 52:

"Church Officers

"Rev. Mary Baker Eddy, Pastor Emeritus.

"Ira O. Knapp, Joseph Armstrong, Stephen A. Chase, William B. Johnson, Christian Science Board of Directors.

"President, Edward P. Bates.

"First Reader, Septimus J. Hanna: reads from Scriptures and conducts services.

"Second Reader, Mrs. Eldora O. Gragg: reads from the Christian Science Textbook, 'Science and Health with Key to the Scriptures,' by Mary Baker G. Eddy.

"Clerk of Church, William B. Johnson.

"Treasurer, Mrs. Mary F. Eastaman."

The Master—Now, if I may ask a question there, had not some at least of those officers already been elected by the First Members to those positions?

Mr. Dane—I understand not.

The Master—Not any of them?

Mr. Dane—Not in the ordinary acceptance of the word "elected," in its legal acceptance.

The Master—Well, Mr. Johnson as clerk, how about him—hadn't he been elected?

Mr. Dane—I think, if Your Honor please, that the First Members simply adopted those men who were named in the Church, and the First Members elected Mr. Johnson as clerk of the Church.

The Master—They did that in September, 1892, did they not?

Mr. Dane—1892.

The Master—And he had served as clerk ever since, so that it did not take that vote to make him clerk.

Mr. Dane—No.

The Master—I am a little in doubt about the scope of that vote as to the officers named.

Mr. Dane—The vote reads that "the foregoing (meaning the following) rules and by-laws read by the clerk to constitute a Church Manual be accepted and adopted, and that all rules and by-laws inconsistent with these rules and by-laws be repealed."

The Master—That is all right so far as the rules and by-laws are concerned; but how about the officers?

Mr. Dane—Pursuant to that vote this Manual was prepared, and we shall show from time to time the adoption of other manuals by the Board of Directors after the powers of the

First Members were transferred and the—

The Master—What does it say in the vote about a Manual, or preparing and publishing a Manual?

Mr. Dane—It says:

“Motion is hereby made by Ira O. Knapp that the foregoing Rules and by-laws read by the clerk to constitute a Church Manual be accepted and adopted.”

The Master—That does not constitute the list of officers a part of the Church Manual.

Mr. Dane—They appear as The Christian Science Board of Directors in the Church Manual, which is authorized by that vote, and thereby—

The Master—That is just where I find my difficulty. The vote appears to authorize nothing more than Rules and By-Laws constituting the Church Manual.

Mr. Dane—In terms, yes, that is correct, but I think by necessary implication—

The Master—Now, they got up something, a list of officers, some of whom at least had already been elected officers by the First Members. Can it be that the adoption of the Rules and By-Laws by that vote amounts to anything as an election or appointment of the officers named?

Mr. Dane—I think that it bears upon the adoption and acceptance by implication, by necessary inference, by acquiescence of the First Members—

The Master—Very well.

Mr. Dane—of the directors named in the Manual, which they published under the authority of this by-law.

The Master—Very well. Now I think I understand it. You have stated your position.

Mr. Dane—It is at least a recognition of the existence of those gentlemen as directors.

Mr. Thompson—Now, will you read—

Mr. Whipple—Now, may I offer this suggestion, that long before these gentlemen had been appointed under that name as directors, although under the Deed of Trust they were thus constituted, and the recognition of them as trustees under that Deed of Trust does not make them Church officers. I am merely stating our contention.

The Master—Certainly, certainly.

Mr. Whipple—And Your Honor will observe that no evidence whatever is offered that the First Members or anybody else ever created an office in the Church of directors of The First Church of Christ, Scientist, or elected anybody to that office. These gentlemen were appointed under a Deed of Trust, and when we refer to The Christian Science Board of Directors we refer to those under the trust until there has been some other creation of those people.

The Master—All that is a difficulty which no doubt Mr. Dane will have to struggle with as best he can.

Mr. Dane—Now we offer from Volume 2—

Mr. Whipple—If you will pardon me, were you not going to read any more of your Manual of 1895?

Mr. Dane—I did not intend to at this time.

Mr. Whipple—Why, all you have read is a list of officers.

Mr. Dane—Yes.

Mr. Whipple—Or so-called officers.

Mr. Dane—Yes.

The Master—Then follow the Rules and Orders.

Mr. Dane—Then follow the By-Laws and Church Rules.

The Master—Are you not going to read any of them? Well, not unless you want to.

Mr. Dane—I was looking for the printed copy, and I thought that I could then read from that.

The Master—Yes; that would be more convenient, undoubtedly.

Mr. Dane—I will read from page 62 of the same record book, Volume 2 of the First Members:

“BY-LAWS.

“Article I.

“Church Officers.—”

The Master—Does this follow right after the list of officers?

Mr. Dane—It does not follow that.

The Master—Oh, yes. All right.

Mr. Dane—There are some pages intervening.

“Section 1. The officers of the Church shall be elected by the Board of Directors at their annual meeting.”

Now, Article III:

“Section 1. The Christian Science Board of Directors shall appoint a male and female reader, one to read the Bible, and one to read ‘Science and Health with Key to the Scriptures.’”

Mr. Whipple—Doesn't it state there what officers there shall be of the Church?

Mr. Dane—Yes; Section 2 of Article I relates to officers of the Church.

Mr. Whipple—That is right. Read that, won't you?

Mr. Dane—“Sect. 2. The Officers shall consist of a President, Clerk, Treasurer, and two Readers.”

Mr. Whipple—That is what I wanted to call attention to, that the officers of the Church are defined, and The Christian Science Board of Directors are not among them.

Mr. Dane—“Sect. 3. The President of this Church shall hold his office one year only, and is eligible to this office once in three years.

“Sect. 4. The President's, Clerk's, Treasurer's, Reader's terms of office expire on the first Tuesday of October.”

Page 63, from Article III:

“The directors shall select intelligible readers and exemplary Christians to read in Church.”

Mr. Thompson—What section is that?

Mr. Dane—That is Sect. 1 of Art. III.

“Sect. 2. This Board shall inform

the Pastor Emeritus of the names of their candidates for readers before they are elected, and if she objects to the election, said candidates shall not be chosen.”

Page 67, in Art. XI:

“Sect. 2. Applicants for membership who have not studied Christian Science with her, can unite with this Church, only by the invitation and recommendation of a Director, or a First Member of the Church, or her loyal students, unless it be an exception that the circumstances warrant.”

It should appear that on pages 73 to 77, inclusive, in this proposed Manual, appears the Deed of Trust of Sept. 1, 1892, which is Exhibit B in the Bill of Complaint.

Mr. Whipple—Well, how does that appear as a part of the Manual? Isn't it merely inserted in the midst of the Manual? It is not an article in the Manual, is it?

The Master—Does it purport to be made a part of the contents of the forthcoming Manual?

Mr. Dane—It does so purport, as I understand it. It is not given an article number or a section number.

Mr. Whipple—There is no correlation to the rest of what is written there at all, or reference thereto, is there?

Mr. Dane—It is the same as what appears in the present Manual.

Mr. Whipple—Of course it is. It might appear anywhere. But it is not related in any way to what goes before or what goes after.

Mr. Dane—That is a matter of argument.

Mr. Whipple—Will you show it to His Honor?

The Master—Well, all that we have at present is that, included within the pages that he specified, there is a copy of the Deed of Trust.

Mr. Whipple—Yes, Your Honor.

Mr. Dane—Do you care to see it, Your Honor?

The Master—No, I do not care to at present. What comes after that?

Mr. Dane—I call attention to page 78:

“By-Law

“It shall be the duty—”

The Master—Have you got another by-law on page 78?

Mr. Dane—On page 78, under the heading of “Committee on Finance.”

“It shall be the duty of the Christian Science Board of Directors to report annually the amount of Church Funds on hand, the amount of its indebtedness, and expenditures for the last year. Any gift made of the Church Funds shall require a majority vote of the Christian Science Board of Directors, and a majority vote of the First Members of this Church.

“The books of the Christian Science Board of Directors and of the Church Treasurer shall be audited annually at the written request of the Church, through a Committee on Finance.”

Mr. Thompson—While you are on

that, would you mind telling us whether under the provisions with respect to the committee on finance there occur any further provisions such as now occur in the present edition of the Manual?

Mr. Dane—Yes, there are several provisions under the heading "Committee on Finance" in this Manual.

Mr. Thompson—Are there any provisions such as there are in the present edition, making it a right and a duty to visit the Board of Directors and correct variations from duty, departures from duty?

Mr. Dane—Yes, in substance.

Mr. Thompson—Then I would be very glad, and it would save time, if you would put that in now.

The Master—I understood Mr. Dane to say that all this was printed at the time and distributed as the Church Manual, and that he is going at some time to give us a copy.

Mr. Thompson—We have not received a copy so far, and it would be a very great convenience if it could be put in now. It would save time.

Mr. Dane—I do not know that it has been verified. As soon as it has been verified I will be very glad to put in a printed copy of this Manual, which is authorized at this time.

The Master—Presumably it would be verified at the time, would it not, before it was published?

Mr. Dane—Presumably it would, but the difficulty that I find is that there is more than one edition in a given year.

The Master—Oh, yes. And you want the edition that was published in pursuance of this vote, of course.

Mr. Dane—Yes. That is what I want, and that is why I want to be careful.

Mr. Thompson—Would you have any objection to reading into the record at this time the provision about the Committee on Finance, saying that the Board of Directors shall fulfill its duties?

Mr. Dane—Oh, I do not care to put that in at this time, as a part of my case. I have given you the reference.

Mr. Thompson—If you had a witness on the stand, I was thinking that I could cross-examine him on it.

The Master—I understood that you have put the whole thing in as part of your case.

Mr. Dane—Yes, of course, and Mr. Thompson can call attention to any part of it.

Mr. Thompson—Then I would also like to make this suggestion, that you find and call attention to the vote where the number of the directors is raised from four to five.

Mr. Dane—Yes. I am coming to that, Mr. Thompson.

The Master—Later, I take it.

Mr. Streeter—Your Honor, may I make a suggestion with reference to this question that is now before you—and it will perhaps be of some service to the defendants, Mr. Dane's clients.

Mr. Whipple has required Mr. Dane to make proof that there are some directors of this Church. Will Your Honor be good enough to turn to the copy of the Bill and Answer and let me refer you to various places, various statements in that bill?

The Master—Your answer or the other answer?

Mr. Streeter—The Eustace bill,—the one that is being tried. If you will look at the first page, where the title is, the defendants are set up "as they are trustees under a Deed of Trust dated Sept. 1, 1892, wherein Mary Baker G. Eddy is donor, and a declaration of trust supplementary thereto and in amendment thereof, dated March 19, 1903, and as they are also Directors of The First Church of Christ, Scientist, in Boston, Massachusetts."

Then, if Your Honor will turn to page 9, the second paragraph, the beginning of the paragraph:

"Said defendants are, also, as the plaintiffs are informed and accordingly aver, for the time being directors of The First Church of Christ, Scientist, in Boston, Massachusetts, a religious organization founded by said Mary Baker G. Eddy."

Then will you turn to the plaintiffs' allegations on page 25, beginning at the bottom of page 24, the allegation that "never in their business association had any friction or disagreement paying over, semi-annually, substantial sums of money to the defendants, both in their capacity as directors for the support of The Mother Church and in their capacity as trustees . . . under the terms of . . . Mrs. Eddy's will."

Then on page 27, Brother Whipple's allegation:

"The 'Christian Science Board of Directors,' hereinafter referred to as the directors or directors of The Mother Church, are directors of only one of these Christian Science Churches; to wit, The Mother Church situated in Boston."

Then, if Your Honor please, will you turn to page 52, on which is the copy of the Deed of Trust, the last four lines of paragraph 4, with reference to turning over the net profits:

"Said treasurer shall hold the money so paid over to him subject to the order of 'The First Members' of said Church, who are authorized to order its disposition only in accordance with the rules and By-Laws contained in the Manual of said Church."

Then on the next page, in the Trust Deed of my friend Whipple's clients, paragraph 10, the last part:

"The First Members together with the directors of said Church shall have the power to declare vacancies in said trusteeship for such reasons as to them may seem expedient."

Now, I do not want unduly to interfere or butt into the time which Mr. Whipple is having here, but it seems as though it had gone far enough, and my friend Whipple is simply buried up with his own declarations in his own pleadings, which would relieve these

directors at least from proving that they are directors of this Church.

Mr. Dane—That, Your Honor, is precisely what we had in mind yesterday when we offered the Manual that was in existence on March 17, 1919, which they have admitted on page 27 of their bill, and under which they have testified in this case that they were acting, but it was excluded at that time.

Mr. Thompson—It is most unfortunate that you did not call attention to the pages in the bill where the whole thing was staring you right in the face so plainly that you could hardly miss it.

The Master—I think we shall have to know just how these people became directors and just what their powers are. I don't see how there is any—

Mr. Streeter—Even after it has been admitted over and over again in the pleadings?

The Master—I think so.

Mr. Whipple—If Your Honor please, I should like to correct a misconception of the learned counsel who has just addressed Your Honor and the assent that has been given to it by Mr. Dane. We have never said that these gentlemen were not directors of The Mother Church, being created so under the Deed of Trust. What we say is that all the powers they have or ever have had are under the Deed of Trust creating them; that they are not and never have been officials of the Church as such. They are directors of The Mother Church because The Mother Church was created by that deed, but they are not officers of the Church under the Manual, and they haven't any such powers under the Manual, and we have made no averment as to that at all. We specifically point out in our averment that they are trustees or directors created under this Deed of Trust. Your Honor has covered the whole situation by saying that the powers of the directors and their creation must be gone into, but there is nothing in the bill inconsistent with doing that.

Mr. Streeter—Well, may I ask my friend how he disposes of the last four lines of section 4 of his own Trust Deed which provides that they shall pay over the net profits to be used only in accordance with the rules and By-Laws contained in the Manual of said Church?

Mr. Whipple—We don't dispose of it at all, if Your Honor please. We are proposing—

The Master—Now we are trying to find out what those rules and by-laws were.

Mr. Whipple—That is, its reference to the Manual is to the Manual that was in existence at that time, and, as His Honor says, we are trying to find out what it was.

Mr. Streeter—Well, I don't know as I can help any of you, Mr. Whipple or Mr. Dane. I will withdraw. Now, go it!

Mr. Whipple—Well, General, nobody can say you haven't done your best.

The Master—I am afraid there is no escape from following this line that Mr. Dane is now following. I think he better proceed with it as rapidly as possible.

Mr. Dane—I now offer from Volume 2 of the records of the First Members the record of a meeting of March 10, 1899.

The Master—Pardon me, Mr. Dane. Haven't you yet been able to get us that printed copy?

Mr. Dane—This is the printed Manual of 1895, and subject to further verification, undoubtedly is the one adopted at that time.

The Master—Adopted in pursuance of the vote which you read?

Mr. Dane—Of the vote of the meeting which has been read.

The Master—Now let me ask you one more thing. You read the minutes of the First Members' meeting, Dec. 28, 1895. You followed that through. And you now produce this as the Manual issued in pursuance of the action of that meeting. Didn't you also in connection with that meeting refer to a subsequent meeting of Aug. 22, 1896?

Mr. Dane—Yes, I did.

The Master—Do you skip over that now or do you offer that now?

Mr. Dane—I will offer the record of that meeting at this time. It relates to additional by-laws which were put into a subsequent edition of the Manual.

Mr. Thompson—Is there any edition number of that, Your Honor?

The Master—The fourth edition, I find in pencil on the title page. The date is 1895, and the copyright mark 1895.

Mr. Thompson—It must have been printed pretty soon after the vote, and the vote was in December, wasn't it?

Mr. Whipple—Dec. 28.

Mr. Thompson—There weren't more than two days left in the year.

Mr. Whipple—It seems inconceivable that they could have printed it after that vote.

The Master—I ought to have shown this to counsel before I looked at it myself, perhaps.

Mr. Whipple—Haven't you another copy of that which you can furnish us?

Mr. Dane—That is the only copy we have.

[The printed copy is shown by the Master to Mr. Whipple and Mr. Thompson.]

Mr. Whipple—Well, now, if this was copyrighted, as it says here on the title page, in 1895, it can't be the copy of what you adopted Dec. 28, 1895, because it would be impossible, wouldn't it, to get it copyrighted as soon afterward as that?

The Master—It would require pretty quick work, but I don't know as it would be impossible.

Mr. Dane—I think the copyright law was different then than now.

Mr. Bates—Editions of the papers are copyrighted every day.

Mr. Dane—It would have to be copyrighted immediately.

Mr. Whipple—Perhaps they copyrighted it before they adopted it, in anticipation.

Mr. Dane—There is nothing in the meeting of Aug. 22, 1896, that I care to call to Your Honor's attention.

The Master—Then we may drop it.

Mr. Dane—We will pass it. I will offer next—

Mr. Whipple—Will you pardon me a moment. I think you said something there in one you had already read about the officers of the Church. I don't find any provision here about that.

Mr. Dane—Will you look on the fly-leaf?

Mr. Whipple—I am sorry. Under the By-Laws it does say:

"The officers of the Church shall be elected by the Board of Directors and they shall be the President, Clerk, Treasurer and two Readers."

May we have this marked, if Your Honor please, for identification? Do you see any objection to it?

Mr. Dane—I don't see any objection to that.

Mr. Bates—Mark it as an exhibit.

Mr. Whipple—It is not an exhibit yet, is it?

Mr. Dane—I offer it as an exhibit in connection with a record of a meeting which has been put into the record.

Mr. Whipple—If it be found to be what you say it is, I have no objection to its being admitted, but at present the remarkable celerity of the copyrighting, after being adopted on Dec. 28, 1895, leads us to suspect that it may not be just what you thought it was.

Mr. Dane—I have stated that a careful verification had not been made, and I offer it now as an exhibit subject to verification. If there is any discrepancy it will be called to the attention of the Court.

Mr. Whipple—I still think we better have it marked not as an exhibit but for identification.

The Master—Very well. Mark it for identification.

[Printed copy of Manual of 1895 is marked 128 for identification.]

Mr. Thompson—Before you go ahead I would like to examine it. It may have an important bearing on the other case.

Mr. Bates—Before it is identified even?

Mr. Thompson—No. It has now been identified.

Mr. Dane—It has not been accepted as an exhibit.

Mr. Thompson—I just want to see what it says about expelling directors. You are offering it, I suppose, in every case.

The Master—You do not desire to

have Mr. Dane suspend while you look at it?

Mr. Thompson—No, sir.

Mr. Dane—Then I offer from Volume 2 of the meetings of the First Members, page 223, the record of a meeting of March 10, 1899, which I will read into the record.

Mr. Whipple—May I look at it, please?

[The record book is shown to Mr. Whipple.]

Mr. Whipple—Well, let it be taken for what it is worth. It is not, I must say, very satisfactory.

[Record of special meeting of First Members, March 10, 1899, is Exhibit 129, and is read by Mr. Dane, as follows:]

"At a special meeting of the First Members held this day, which was opened by the president without form at 11 o'clock, 17 members present, the following business was transacted ...

"Voted: That the tenth edition of the Church Manual be accepted subject to future by-laws and amendments.

"Minutes approved, and the meeting adjourned at 12 o'clock.

"WILLIAM B. JOHNSON,  
"Clerk."

The Master—I suppose that there are similar votes respecting the intervening editions of the Manual between the fourth and the tenth?

Mr. Dane—There are none that I have found.

The Master—Not that you have found?

Mr. Dane—No. The editions of the Manual which were adopted by votes of this character were the first, the tenth, the twentieth, the twenty-ninth, thirtieth, thirty-third, fifty-seventh, and seventy-third. The seventy-third, with the amendments made to the seventy-third, constitute the eighty-ninth, which is the present Manual. I offer at this time the tenth edition of the Manual, referred to in the vote, and it may be marked for identification.

Mr. Whipple—Just a moment. How do you know that is the tenth edition?

Mr. Dane—That so states.

Mr. Whipple—Well, that is all right, but it doesn't prove itself in that way.

Mr. Dane—It purports to be the tenth edition and is published by the plaintiffs, The Christian Science Publishing Society, as the tenth edition.

Mr. Whipple—And do you think that we are bound by that admission of our predecessors in trust?

Mr. Dane—I think—

Mr. Thompson—I think it may be of some help if I should state, subject to correction, that I have carefully examined this fourth edition and there is nothing in it in regard to the expulsion either of a director or of a trustee.

The Master—May I see it again?

Mr. Thompson—Yes, sir.

The Master—You do not dispute that it is in accordance with the vote of Dec. 28?

Mr. Thompson—I have no knowledge on the subject, sir. This is of very little materiality to our case because all of the allegations in our bill in regard to the By-Laws are admitted.

The Master—Very well. As to the rest of it, we will consider later.

Mr. Whipple—I have no objection to this being marked for identification. This what purports to be the Church Manual of 1899, copyrighted by James A. Neal and Thomas W. Hatten. May I be permitted to call attention on the record to the fact that Article 1, section 1, provides: "The Church officers shall consist of a president, a clerk, a treasurer and two readers."

Mr. Dane—Now, Your Honor, I offer the Manual—

Mr. Whipple—Just a moment, let us have this marked.

Mr. Dane—which he has read from, as an exhibit.

The Master—We may assume until the contrary appears that that is the 10th edition referred to in the vote which Mr. Dane read last.

Mr. Whipple—We will receive it subject to correction.

[A copy of the Church Manual, tenth edition, is marked Exhibit 130, for identification.]

Mr. Dane—I offer, from Volume 3 of the directors' records, a record on page 22, under date of Feb. 20, 1901. I call Your Honor's attention to the fact that the date of this meeting was subsequent to the date of the resolution transferring the functions of the First Members to the Board of Directors.

Mr. Whipple—If you will pardon me, there are no such words used as "transferring the function." It says "the business of The Mother Church."

Mr. Dane—The date of this meeting is Feb. 20, 1901.

The Master—A meeting of the—

Mr. Dane—Of the directors.

The Master—The directors. Thank you.

Mr. Dane—And appears on page 22. I offer that part which I will read into the record, and which I show to counsel.

Mr. Whipple—We object to this, if Your Honor please. We cannot see any authority of the Board of Directors to alter the Church Manual or create By-Laws or make these amendments.

The Master—I think we shall have to take it subject to objection. Go on, Mr. Dane.

[A portion of directors' records, volume 3, page 22, under date of Feb. 20, 1901, is Exhibit 130-A, and is read by Mr. Dane, as follows:]

"A meeting of the full board was held this day at 3:30 p. m. . . .

"It was unanimously voted: That the By-Laws of The First Church of Christ, Scientist, contained in the twentieth edition of the Church Manual and also the amendments and changes marked therein, which were authorized

by Rev. Mary Baker Eddy, be and are hereby adopted."

Mr. Whipple—If Your Honor please, may we in that very connection call attention to the vote of Jan. 10, 1901, a special meeting of the First Members, at which 31 members were present? This appears on page 313, of Volume 2, of the records of the First Members. It has been read in part. This part has been read:

"The business of The Mother Church hitherto transacted by the First Members shall be done by its Christian Science Board of Directors. The salary of each member of this board shall at present be raised to \$700.00 per annum."

This part was not read:

"The First Members of this Church shall continue to convene annually at the communion season but they shall not be present at the business meetings."

Mr. Dane—Oh, I beg your pardon.

Mr. Whipple—Pardon me, that was read. I think this was not. Follow me and see if it was:

"This by-law can neither be amended nor annulled without the unanimous consent of the whole Church or the written consent of Mrs. Eddy, Pastor Emeritus."

Mr. Dane—I think that was read.

Mr. Whipple—Was that read?

Mr. Streeter—That was read.

The Master—I think so.

Mr. Whipple—Then I was mistaken about it, but I would like to call attention to it just the same.

Mr. Thompson—Mr. Dane, it would save a great deal of time if you would allow me to refer at this time, in lieu of cross-examination on this vote, to three places in the tenth edition, which you have put in. Is there any objection to that?

Mr. Bates—Why not put them in in connection with your case?

Mr. Thompson—Because I have a right to cross-examine, and it would save a great deal of time in going over it again.

Mr. Bates—We do not want to have it in as a part of our case.

Mr. Thompson—No part of the cross-examination is part of your case.

The Master—If Governor Bates objects, I think you better wait, Mr. Thompson.

Mr. Thompson—Very well, sir. It is only three passages that I wanted to call attention to, and it will be a great convenience to put it in now and save looking it up again.

Mr. Bates—We would like a little of our case as we put it, without interjection.

Mr. Dane—Then I offer, if Your Honor please, the twentieth edition of the Manual, referred to in the vote of the directors.

[Copy of the Church Manual, twentieth edition, is marked Exhibit 131, for identification.]

The Master—The fourth edition of the Manual is marked Exhibit 128 for

identification. The stenographers tell me that they do not quite clearly understand whether they are to mark in the same way the tenth and the twentieth editions. If there is no objection I will have them marked in the same way, for identification.

Mr. Dane—That is satisfactory. There was one, as I recall it, that was offered as an exhibit and accepted as an exhibit—the one that Mr. Whipple read from. I think it was the tenth edition.

The Master—Why should that stand on any different ground? Wouldn't it make confusion?

Mr. Dane—Then let them all be marked for the present, and we go along, for identification, and then if occasion arises for offering them as exhibits, as I expect there will, we will then offer them as exhibits and take Your Honor's ruling upon them.

The Master—Is that satisfactory?

Mr. Whipple—Yes, Your Honor. I hold a copy purporting to be the twentieth edition, which is the last one to be offered, in 1901. Your Honor will remember that that is the first one where the vote was by the Board of Directors.

The Master—That is clear, I think, on the record.

Mr. Whipple—And Art. XXX, Sec. 3, is the first appearance of a provision that The Christian Science Board of Directors shall have the power to declare vacancies in said trusteeship for such reasons as to them may seem expedient. I merely, in passing, wanted to call attention to the fact that that by-law was never passed upon by the First Members.

The Master—I rather think it would be better not to call attention to anything in these Manuals as we go along. I say that because Mr. Thompson endeavored to call attention to something and I declined to let him do so at this time, and I will have to treat everybody alike, I suppose, in that respect.

Mr. Whipple—I certainly do not want any better treatment than Brother Thompson, but it seems to me it would be a great advantage to the record if the appearance, the first appearance, of these provisions which we are discussing, might appear in the record when the editions go in; but in view of Your Honor's suggestion I will withdraw that statement and we will not comment on them until they are all offered.

The Master—I think there will be ample opportunity hereafter to point all that out, and also to point out anything that Mr. Thompson wants to point out.

Mr. Thompson—Undoubtedly there will be ample opportunity, but it might save two or three hours' cross-examination if I should call attention in this twentieth edition to two or three passages that are important. I entirely agree with Mr. Whipple that the first appearance of a provision

ought to be noted as the document goes into the record.

Mr. Dane—The record which I last read was a vote of Feb. 20, 1901, from the directors' records. It is an adoption of the twentieth edition of the Church Manual, and also of the amendment and changes marked therein, which were authorized by Rev. Mary Baker Eddy. Now I offer, in that connection, page 23 and page 24 and page 25, down as far as the words "February 27" which are the amendments referred to in the vote, but I will not take the time to read them at this time.

If Your Honor will pardon me one moment, I am trying to make out this handwriting.

I offer at this time a letter from Mrs. Eddy, in connection with the record just read, dated Concord, New Hampshire, Feb. 18, 1901, from the book entitled "Mary Baker Eddy. Letters and Miscellany. Vol. 3," page 113, which I show counsel (passing to Mr. Whipple the volume referred to).

Mr. Whipple—Do you think that it is her handwriting? I wish you would put that in, because it shows—

Mr. Dane—This is a letter on page 113 of the book that I have indicated, on letterhead with the monogram "M. B. E."

"Pleasant View,  
"Concord, New Hampshire,  
"Feb. 18, 1901.

"Beloved Student:

"Call immediately a meeting of the Church directors and adopt the amendments of By-Laws as arranged by me in our Manual. These amendments only qualify. They do not essentially change most of the wordings. They are, however, very important under existing circumstances.

"With love,  
"M. B. EDDY.

"N. B. Also at this meeting make the members whose names are inclosed First Members of this Church.

"M. B. E."

The inclosure is:

"For First Members  
"Mr. & Mrs. Landy  
"Miss Mary E. Eaton  
"Calvin C. Hill  
"Mr. & Mrs. H. H. Bangs."

[The letter from Mrs. Eddy, dated Feb. 18, 1901, with the inclosure, of which the foregoing are copies, is Exhibit 131. R. H. J.]

I now offer from Volume 3 of the directors' minutes a record of this meeting of the directors under date of July 30, 1903, appearing on page 122 (passing to Mr. Whipple the record referred to).

Mr. Whipple—This, we take it, goes in under the same arrangement—the materiality to be discussed later.

Mr. Dane—  
"July 30, 1903.

"A meeting of the directors was held this a. m. Messrs. Knapp, Johnson, and Armstrong present. In compliance with a request by Mrs. Eddy over the telephone to have all the By-Laws

that were to constitute the twenty-ninth edition of the Church Manual adopted, the directors present on separate motions and by unanimous votes adopted each and all the By-Laws for the twenty-ninth edition of the Church Manual.

"Minutes approved  
"WILLIAM B. JOHNSON, Clerk."

[The minutes of the meeting of July 30, 1903, of which the foregoing is a copy, are Exhibit 132. R. H. J.]

And I offer in connection with that record the twenty-ninth edition of the Manual.

Mr. Whipple—I take it that that may be marked for identification in the same way, and when you get to it you will tell us what part of it you want to offer in evidence.

[The twenty-ninth edition of the Church Manual of The First Church of Christ, Scientist, in Boston, Massachusetts, 1903, is marked Exhibit 133 for identification. R. H. J.]

Mr. Dane—I offer from the same book a record of the meeting of the directors under date of Sept. 21, 1903, at page 125:

"Monday, Sept. 21, 1903.

"A meeting of the directors was held this a. m., Messrs. Knapp, Johnson, Armstrong, and McLellan present. Minutes of the last meeting were read and approved.

"Each and all articles of the thirtieth edition of the Manual of The Mother Church, having been read in the presence of the above named directors, on motion it was unanimously voted: That the thirtieth edition of the Manual aforementioned be adopted in its entirety as the By-Laws of The Mother Church.

"William B. Johnson, Clerk."

[The minutes of the meeting of directors of Sept. 21, 1903, of which the foregoing is a copy, is Exhibit 134. R. H. J.]

And I offer the thirtieth edition of the Manual referred to in the vote.

The Master—What became of the twenty-ninth? Did you offer that?

Mr. Dane—Yes, sir.

Mr. Whipple—For identification.

[The thirtieth edition of the Church Manual is marked Exhibit 135 for identification. R. H. J.]

Mr. Strawn—Why do you skip from the twenty-first to the twenty-ninth?

Mr. Dane—You mean from the twentieth to the twenty-ninth? There were no manuals adopted as a whole between those dates.

Mr. Thompson—What is the significance of the numbering, then, twentieth and twenty-ninth? I have been trying to find that out myself. What happened in between twenty and twenty-nine—anything?

Mr. Whipple—Apparently several editions of the Manual were put out without any authority even of the directors.

Mr. Dane—Oh, I think not.

Mr. Thompson—It would be very convenient if we could know what the real answer to that is.

Mr. Dane—I offer from Volume 3 of the minutes of the directors' meetings, page 127—No; I withdraw that for the present.

Page 284 of Volume 3 of the directors' records, I offer part of the record of the meeting of September 5, 1906—

Mr. Thompson—If Your Honor please, I having examined for a moment this twenty-ninth edition that has been put in (Exhibit 133 for identification. R. H. J.), desire again to return to the question just started by both counsel here about intervening editions, and to call definitely for the production of the twenty-eighth edition. The reason for it is this, that in Section 5 of Article I, which for the first time contains a provision for the expulsion of a director, it says in the margin—this comes from Mr. Dane, so that it is apparently official, and prepared officially for the Church—it says in the margin, opposite this very provision, "Amendment adopted Mar. 12, 1903. Changes evidently made in proof."

And it says on the margin, opposite Section 4 of Article I, "Was Sects. 1 & 3, Art. III—28th."

Now, over on the other page, after Section 3, I find in typewriting this:

"Sect. 8. 'Duties of Church Officers.' Evidently new By-Law. No record of adoption. The last sentence of this By-Law appears in Sect. 1, Art. VI in 28th."

Now, the twenty-eighth edition is an edition which may be of extreme importance in assisting in the construction of Sect. 5, on which the action taken in the Dittemore case was placed. I do not know anything about the effect it may have in the other case, but, speaking for ourselves alone, we desire that the twenty-eighth edition of the Manual be now produced.

Mr. Dane—I see no objection to—  
Mr. Thompson—Or any other intervening edition.

Mr. Dane—To the twenty-eighth edition being produced, and I now hand it to you, Mr. Thompson.

Mr. Thompson—And I would like every other edition that has been left out.

[The twenty-eighth edition of the Manual is passed by Mr. Dane to Mr. Thompson.]

The Master—It is now produced.

Mr. Dane—And you may have access to every edition of the Manual that we have.

Mr. Thompson—It contains very important annotations made by somebody.

The Master—I understand from you, Mr. Dane, that the last edition is what number?

Mr. Dane—The last edition is No. 89.

The Master—Now, we hardly want 89 editions produced if we can help it. I think that counsel should select those that either of them consider important, and perhaps it will not be necessary to have the whole 89 brought in.



Mr. Dane—I am informed, if Your Honor please, that these editions of the Manual which are here in court are the only editions which the Church has, and there are original annotations and notes on them, so that they ought not to go out of the custody of the proper Church officers, but counsel will have every reasonable opportunity to examine them.

Mr. Dane—Now I offer from Volume 1 of the Church By-Laws a record of a meeting appearing on the first page.

“A meeting of the directors”—

Mr. Whipple—What is the date of it?

Mr. Dane—Oct. 15, 1906.

“Monday, Oct. 15, 1906.

“A meeting of the directors was held this p. m. Present: Messrs. Knapp, Armstrong, McLellan, and Johnson.

“On motion, it was unanimously voted: That all the by-laws contained in the fifty-seventh edition of the Manual be and are hereby adopted as the By-Laws of The First Church of Christ, Scientist, in Boston, Massachusetts.

“WILLIAM B. JOHNSON,  
“Clerk.”

[The record of the meeting of Oct. 15, 1906, of which the foregoing is a copy, is Exhibit 136. R. H. J.]

And in that connection I offer the fifty-seventh edition of the Manual, which will be marked for identification.

[The fifty-seventh edition of the Manual is marked Exhibit 137 for identification. R. H. J.]

Mr. Dane—I also offer from the book just referred to the records of the meetings appearing on page 37 to 67, both inclusive, relating to the adoption of amendments to the By-Laws contained in the edition just produced. I won't now take time to read it.

[Records of meetings appearing on pages 37 to 67 inclusive of the fifty-seventh edition of the Manual, previously marked for identification 137, are offered in evidence as Exhibit 138.]

Mr. Dane—And I offer from the Church By-Law book, Volume 2, the record of a meeting shown on page 1 under date of Friday, July 31, 1908:

“A meeting of the directors was held this a. m. Present: Messrs. Chase, Knapp, McLellan, Stewart and Johnson.

“The following resolution was introduced:

“Be it resolved by the Board of Directors of The Mother Church, The First Church of Christ, Scientist, in Boston, Mass., that each and all of the By-Laws contained in the seventy-third edition of the Manual of said church as printed and published by Allison V. Stewart be now adopted as the By-Laws of said Church. The adoption of this resolution being moved and seconded and the question of its adoption being duly put, it was

adopted by the unanimous vote of all the directors.

“WILLIAM B. JOHNSON, Clerk.”

[The record of a meeting of July 31, 1908, appearing on page 1 of Volume 2 of the Church By-Laws is offered in evidence as Exhibit 139.]

Mr. Dane—I offer in this connection the seventy-third edition of the Church Manual.

[A copy of the seventy-third edition of the Church Manual is marked 140 for identification.]

Mr. Dane—I also offer from Volume 2, Church By-Laws, the records of meetings appearing on pages 37 to 59, inclusive, being the records of meetings of the Board of Directors relating to the adoption of amendments to the By-Laws contained in the Manual which has been produced, the seventy-third edition.

[Records of meetings of the Board of Directors appearing on pages 37 to 59, inclusive, of Volume 2 of the Church By-Laws, are offered in evidence as Exhibit 141.]

Mr. Dane—I offer now, if Your Honor please, the eighty-ninth edition of the Manual, which is the seventy-third edition including the amendments made by the Board of Directors as shown in Volume 2 of the Church By-Law book.

The Master—Well, that speaks only of the seventy-third edition.

Mr. Dane—The seventy-third.

The Master—Is there any vote anywhere adopting the eighty-ninth?

Mr. Dane—I think not, Your Honor, but the eighty-ninth is the seventy-third, together with the amendments to the seventy-third adopted by the directors, as appears in Volume 2 of the Church By-Law books.

The Master—I understand that vote adopted the seventy-third plus amendments.

Mr. Dane—Yes.

The Master—The eighty-ninth contains the amendments then adopted?

Mr. Dane—It contains the seventy-third as changed or modified by the amendments then adopted.

Mr. Whipple—You nowhere offer the amendments that were adopted even by the directors.

Mr. Dane—Yes, the amendments that were adopted appear in Volume 2 of the Church By-Law books and the pages that I have already indicated on the record.

Mr. Strawn—Could you indicate the date of the adoption of the seventy-third edition and also the date of the adoption of the eighty-ninth edition?

Mr. Dane—The seventy-third edition, July 31, 1908, and the eighty-ninth edition is a compilation of the seventy-third edition as changed or modified by the By-Laws adopted by the directors as shown on pages 37 to 59 of the Church By-Law book, Volume 2.

Mr. Strawn—And when was that distributed, the eighty-ninth edition?

The Master—The eighty-ninth edition?

Mr. Dane—1910.

The Master—It is dated 1913.

Mr. Strawn—I have one that is dated 1917.

Mr. Dane—I am advised that it has been printed at intervals from 1910 to date but that no changes have been made in it since 1910. Changes of course appear in the list of officers, but none in the By-Laws, the Church rules.

Mr. Thompson—Can you produce at some convenient time, please, the vote under which—

Mr. Dane—Just a moment, Mr. Thompson. In this connection I desire to call Your Honor's attention to the fact that Mrs. Eddy passed away in 1910, so that there has been no by-law adopted, no change made, since her passing.

Mr. Thompson—As long as I have the book before me here, the twenty-eighth edition, I should like to put a call in at some time convenient to you to produce the vote of the directors or any other competent authority under which Article VI, Section 1, as it appeared in the twenty-eighth edition, reading: “A majority vote and the consent of Mrs. Eddy shall dismiss a member of this board,” was changed so as to read as it now appears—namely, “A majority vote or the request of Mrs. Eddy shall dismiss a member.” I haven't heard you refer to any vote in which that particular change was made.

Mr. Dane—I haven't the information right at hand.

Mr. Thompson—I dare say not.

Mr. Dane—But you will have access to the Manuals and the records.

Mr. Thompson—I don't care to look it up myself. I think I am justified in calling on you, if there is any such vote, to produce it.

Mr. Dane—Now I offer at this time, if the Court please, the eighty-ninth edition of the Manual, which was identified by Mr. Eustace in his cross-examination, and referred to by him as the Manual which was his guide and which was in existence at the time the resolution of dismissal was adopted. It is marked 57-G for identification. I offer it now as an exhibit.

Mr. Whipple—We still maintain our objection, if Your Honor please.

The Master—I don't think we need to change its status at present. What is the date of that?

Mr. Dane—That is the eighty-ninth edition.

The Master—I understand that, but the eighty-ninth edition apparently bears a good many different dates. What is the date of this one?

Mr. Dane—This is dated 1919—published by The Christian Science Publishing Society for the Trustees under the Will of Mary Baker Eddy, and is entitled, “Manual of The Mother Church, First Church of Christ, Scientist, in Boston, Massachusetts, by Mary Baker Eddy, Discoverer and Founder of Christian Science and Author of the Christian Science Text Book, ‘Sci-

ence and Health with Key to the Scriptures," Eighty-ninth Edition.

Mr. Strawn—Would you be kind enough to indicate the dates of the amendments which you referred to a moment ago and which you did not read?

Mr. Dane—The dates?

Mr. Strawn—Yes—some time between 1908 and 1910. The dates of the amendments to the By-Laws which took place after the printing of the seventy-third and before the eighty-ninth edition.

Mr. Dane—The amendments appearing in Volume 2 of the Church By-Law Book are July 31, 1908, August 28, 1908. I assume you don't care for the date of each one?

Mr. Strawn—They were all in 1908, were they?

Mr. Dane—1908, 1909 and 1910. August 29th, 1910, seems to be the date of the last.

In one of the records which I read from, on page 106 of Volume 2 of the First Members, setting out the By-Laws adopted in 1896, I desire to call attention to the following and to read it into the record:

"No Board of Trustees shall ever be formed by, or between the members of this Church, or shall exist in The Mother Church."

[A portion of the record appearing on page 106 of Volume 2 of the First Members, as read by Mr. Dane, is offered in evidence as Exhibit 142.]

Mr. Whipple—What was that—something that was adopted?

Mr. Dane—That was a by-law which appeared in the 1897 Manual, to which you made objection this morning.

Mr. Whipple—When was it adopted?

Mr. Dane—It appears as adopted by the First Members—adopted in a special meeting of the First Members held on March 16, 1896.

Mr. Whipple—It had not been adopted before that as an individual by-law, I take it?

Mr. Dane—Apparently not; I don't know as to that, however. I think that is the first mention of it in the records.

I call Your Honor's attention to an amendment to the by-law which has just been read, which was adopted in a meeting of Jan. 18, 1898, appearing on page 178 of Volume 2 of the records of the First Members. And I offer this, which I will read into the record:

"A special meeting of the First Members of The Mother Church was held this day in the Church vestry. The president being absent, Mr. Ira O. Knapp was chosen chairman and the meeting was opened without form at 11 o'clock a. m., eight members present.

"The following amendment to Article V, Section 4, of the Church By-Laws was read and by rising vote was unanimously adopted:

"No Board of Trustees shall ever be formed by, or between the members of this Church, or shall exist in The

Mother Church, except the trusteeship be constituted by the Pastor Emeritus.

"The above minutes were read and approved, and the meeting adjourned at 11 o'clock and 10 minutes.

"WILLIAM B. JOHNSON."

[Record of meeting dated Jan. 18, 1898, appearing on page 178 of Volume 2 of minutes of meetings of First or Executive Members, Board of Directors, and Annual Church Meetings, is offered in evidence as Exhibit 143.]

Mr. Dane—The amendment consists in the addition of the words "except the trusteeship be constituted by the Pastor Emeritus."

It is 4 o'clock and this is a convenient place to suspend.

[Adjourned to 10 a. m. Wednesday, July 9, 1919.]

July 9, 1919

#### ELEVENTH DAY

Supreme Judicial Court Room, Boston, Massachusetts, July 9, 1919.

The Master—Are you ready, Mr. Dane, or will you wait for Governor Bates?

Mr. Dane—No; I will proceed. I think that he will be here in a few moments.

The Master—Very well; you may proceed. Mr. Dane does not think that it is necessary to wait for Governor Bates. He will be here in a few minutes.

#### William L. Johnson, Resumed

Q. (By Mr. Dane.) I show you, Mr. Johnson, a letter appearing on page 91 of the volume entitled "Mary Baker Eddy. Letters and Miscellany. Vol. 7." The document number of the paper is 712. I ask you in whose handwriting the letter is, and who signed it? A. Mr. Frye.

Q. I show you also a document appearing on page 93 of the same book, bearing the document number 713, and ask you whose signature that is? A. Mrs. Eddy's.

Q. I call your attention to the reverse side of document 713, shown on page 94 of the same book, and ask you whose handwriting appears there, and whose signature appears there? A. Mrs. Eddy's.

Mr. Dane—I offer the documents 712 and 713, which I desire to read into the record, and which I now show the counsel (passing to Mr. Whipple the volume containing the letters described).

Mr. Whipple—Haven't these been offered before?

Mr. Dane—The one on page 91 has been offered. I will not read that. The one on page 93 has not.

Mr. Whipple—You say the one on page—

Mr. Dane—The one on page 91 has been offered.

Mr. Whipple—You say it has been?

Mr. Dane—It has been.

Mr. Whipple—And has been read?

Mr. Dane—I think it has.

Mr. Whipple—And now the only thing that you offer in addition is that on page 93?

Mr. Dane—Yes, for the present.

Mr. Whipple—And what appears on page 94?

Mr. Dane—Yes, the reverse side.

Mr. Whipple—I thought that that had been offered. Except for our general objection, we have no specific objection to this.

Mr. Dane—On page 93 of this volume:

#### "CHURCH BY-LAW.

"The Christian Science Board of Directors of this church shall not fill a vacancy occurring on that board except by a unanimous vote of all the First Members of this Church. The Board of Trustees of this Church shall not fill a vacancy occurring on their board except by unanimous vote of all the First Members of this Church. The Readers of this Church shall not be elected except by a unanimous vote of all the First Members of this Church. And no person shall be a member of this Church or be eligible to the said offices who has made attempts to *greatly injure Mrs. Eddy and hers or any member thereof and their testimony thereto* shall be received as sufficient evidence in the case. This Church Bylaw can neither be amended nor annulled except by the consent of Mrs. Eddy the Pastor Emeritus of this Church over her own handwriting.

#### "MARY BAKER EDDY."

(The words in italics are interlined.)

On the reverse side—

The Master—Is there any date for that?

Mr. Dane—There is no date on the document itself. There appears on it the notation, "See by-law adopted Feb. 10, 1898."

On the reverse side—

Mr. Whipple—But that is no part of the paper.

The Master—That is no part of the exhibit?

Mr. Dane—No part of the exhibit itself.

On the reverse side are the following words in pencil:

"Pass this by-law instead of the other one sent by this same mail—

"M B EDDY."

[The document of which the foregoing is a copy is Exhibit 144. R. H. J.]

Mr. Whipple—Will you be good enough to show it to His Honor so that the interlineation will appear?

Mr. Dane—Yes.

Mr. Whipple—And I should like, in having a copy made, to have an exact copy of the document, with its interlineations indicated.

Mr. Dane—Appearing on page 91 is a letter from Mr. Frye, with the inclosed church by-law on the same subject. The letter is dated Feb. 10, 1898. That was put in evidence yesterday.

Mr. Whipple—Mr. Dane, was that

the one that you just referred to that you passed?

Mr. Dane—That I have just read?

Mr. Whipple—The one that you have just referred to.

Mr. Dane—On page 91?

Mr. Whipple—Yes.

Mr. Dane—The one passed is as follows—

Mr. Whipple—Then there was not one passed at all?

Mr. Dane—I will show Your Honor the one that has just been read, on page 93.

In the same connection I offer on page 151 of Volume 10, Mary Baker Eddy, Letters and Miscellany, a telegram addressed to William B. Johnson, 95 Milk Street, Boston, dated Feb. 10:

“Correct by-law just sent to Read, and her testimony or the testimony of a member of the Christian Science board of directors shall be found sufficient evidence in the case.

“MARY BAKER EDDY.”

That is on page 151 of Volume 10, and is a correction of the interlineations—

The Master—Yes.

Mr. Dane—Which appear on document No. 713, on page 93 of Volume 7.

[Document No. 151, in Volume 10, Mary Baker Eddy, Letters and Miscellany, of which the foregoing is a copy, is Exhibit 145. R. H. J.]

I offer in the same connection, from Volume 2 of the records of First Members, page 183, that which I read into the record:

“Feb. 10, 1893.

“At a special meeting of the First Members of The Mother Church, held in the vestry of the church and opened by the President in the usual form at 2:40 p. m., at which meeting 20 members were present, the following church by-law was adopted by a unanimous vote—all rising.

“The Christian Science Board of Directors of this Church shall not fill a vacancy occurring on that board except by a unanimous vote of all the First Members of this Church. The Board of Trustees of this Church shall not fill a vacancy occurring on their board except by unanimous vote of all the First Members of this Church. The Readers of this Church shall not be elected except by a unanimous vote of all the First Members of this Church. And no person shall be a member of this Church or be eligible to the said offices who has made attempts to greatly injure Mrs. Eddy and her testimony, or the testimony of a member of the Christian Science Board of Directors shall be found sufficient evidence in the case.

“This church by-law can neither be amended nor annulled except by the consent of Mrs. Eddy, the Pastor-Emeritus of this Church, over her own handwriting. Signed Mary Baker Eddy. The minutes were approved. Meeting adjourned 2:45 p. m. William B. Johnson, Clerk.”

[The record of which the foregoing is a copy is Exhibit 146. R. H. J.]

From Volume 2 of the record of the First Members, page 258, I offer the following from the record of a meeting of July 17, 1899:

“A special meeting was held this day, the President present. The meeting was opened at 2 o'clock p. m.; 48 members answered to the call of their names.

“On motion, the following amendments and by-law were unanimously adopted by a rising vote. . . .

“By-Law

“It shall be the privilege and duty of every member of this Church who can afford it to subscribe for the periodicals that are the organs of this Church; and it shall be the duty of this Church to see that these periodicals are ably edited and kept abreast of the times.”

Mr. Whipple—Hasn't that already been offered?

Mr. Dane—Possibly it has.

The Master—I thought so.

Mr. Whipple—It sounds very familiar.

Mr. Dane—I desire only to call attention to it now in connection with what I offer from Volume 7 of Mary Baker Eddy, Letters and Miscellany, page 171.

Q. I will ask you, Mr. Johnson, if you can tell whose handwriting appears on the document on page 171 of this book, the document No. 751, the words “can afford it,” and the words “the organs of”? A. Mrs. Eddy's.

Mr. Dane—I offer that document No. 751:

“By-Law

“It shall be the privilege and duty of every member of this Church who [this is followed by a caret in ink, and interlined in ink are the words ‘can afford it,’] is able [an ink line is drawn through the words ‘is able’], to subscribe for the periodicals that are sustained [an ink line is drawn through the word ‘sustained,’ and written above it in ink are the words ‘the organs of’] by [an ink line is drawn through the word ‘by’] this Church; and it shall be the duty of this Church to see that these periodicals are ably edited and kept abreast of the times.”

I offer this document with the interlineations that are Mrs. Eddy's handwriting—document 751. The date appearing on this document, although not a part of it, is July 17, 1899. That is offered in connection with the adoption of the by-law which has just been read from Volume 2 of the record of the First Members.

Your Honor will note that the adoption of the by-law from Volume 2 of the First Members relating to this subject was before 1901, when the business of the First Members was transferred to the Board of Directors.

[The document No. 751, on page 171 of Volume 7 of “Mary Baker Eddy,

Letters and Miscellany” is Exhibit 147. R. H. J.]

I now offer from Volume 3 of the directors' minutes, page 122, the record of a meeting of July 30, 1903:

“A meeting of the directors was held this a. m., Messrs. Knapp, Johnson, and Armstrong present. In compliance with a request by Mrs. Eddy over the telephone to have all the by-laws that were to constitute the twenty-ninth edition of the Church Manual adopted, the directors present on separate motions and by unanimous votes adopted each and all the by-laws for the twenty-ninth edition of the Church Manual.”

The Master—Will you give me the date of that again?

Mr. Dane—July 30, 1903.

[The record of the meeting of which the foregoing is a copy is Exhibit 148. R. H. J.]

Mr. Whipple—Mr. Dane, these were all read yesterday. Why are we reviewing them?

The Master—You have read that once.

Mr. Dane—There may have been one or two read, but I do not intend to duplicate it.

Mr. Whipple—Practically everything that you have read this morning was read yesterday.

Mr. Dane—Oh, I think not.

Mr. Whipple—I did not say everything, but practically everything.

The Master—I have a minute of the one of July 30, 1903, relating to the twenty-ninth edition of the Manual.

Mr. Dane—It is quite possible that that was read. In connection with the letters of Mrs. Eddy I desired to call attention to it. I had an impression that it had not been read.

Mr. Dane—In the twenty-ninth Manual, which was marked for identification yesterday, there appears a by-law upon this subject which I call attention to.

Mr. Whipple—Which subject?

Mr. Dane—The subject of the letter of Mrs. Eddy and of the by-law adopted by the First Members, and of the by-law in the twenty-ninth edition of the Manual, adopted by the directors, relating to the Church seeing to it that the periodicals were ably edited and kept abreast of the times. And I desire only, in following this by-law down, to call attention to the fact that it appears in the twenty-ninth Manual in the same form in which it appears in the eighty-ninth Manual.

The Master—Under what number?

Mr. Dane—Article VIII, Section 14, in the eighty-ninth Manual.

The Master—No, the twenty-ninth.

Mr. Dane—The twenty-ninth Manual, I am very sorry to say, is not here. I have sent for it, and as soon as it is here I will call attention to the place where this by-law appears. And it appears in the same form in the eighty-ninth.

Mr. Whipple—Are you sure of that,

Mr. Dane? Aren't you wrong in that statement?

Mr. Dane—I think not. As soon as the Manual is returned here—

Mr. Whipple—Will you read the twenty-ninth if you have that here? We have the eighty-ninth.

Mr. Dane—I have the eighty-ninth. I have not the twenty-ninth for the moment.

The Master—It is in your possession, I think.

Mr. Dane—Mr. Thompson had it.

Mr. Thompson—Yes, and I handed it back to you last night. I expected there would be some suggestion of that kind. I handed it right back, put it on your desk there. And I also desire to call your attention to the fact that there were various official annotations on the margin indicating doubt as to the origin of some of the provisions, particularly the one altering Article I of Section 5. And I asked you to furnish me the authority of Mrs. Eddy for the change made in that article. You haven't done it.

Mr. Dane—I am informed that the stenographer had the manuals until about 6 o'clock last evening, and sent them to the church.

The Master—Can't we find out just where we are?

Mr. Whipple—If he would read again what was adopted at the meeting of July 17, 1899, which was the same, I think, as Mrs. Eddy wrote, and then compare it with the eighty-ninth, I think it will appear that instead of being the same they are different.

Mr. Bates—No. This is what was adopted July 30, 1903, not in 1899.

Mr. Whipple—That July 30, 1903, is the directors' vote.

Mr. Bates—Why not wait until the Manual comes and then we can compare it and see?

Mr. Whipple—Well, the trouble is, having gone all over this yesterday and put them out tentatively, we now find ourselves going over the same ground this morning, and when something else comes we will be going over the same thing again. It would help us if you can finish up at least one thing while you are at it.

Mr. Dane—If Your Honor will pardon me, the Manual is at the church, and we have sent for it, and as soon as it comes in I will call attention in the twenty-ninth Manual to the thing now under discussion in the precise form in which the by-law appears.

The Master—Is there only one copy of the twenty-ninth edition in existence?

Mr. Dane—I understand there is only one copy in the possession of the directors. These are their official records.

Mr. Whipple—Yes, but we would like to point out, then, that as appearing in the eighty-ninth the by-law is quite different from what Mrs. Eddy directed should be passed, and which was passed by the First Members on July 17, 1899.

Mr. Dane—I would like also to point out that the by-law which was originally suggested by Mrs. Eddy was amended and was adopted in its amended form by the directors at the request of Mrs. Eddy on July 30, 1903, and in that amended form it appears in the twenty-ninth Manual and also in the present one.

Mr. Whipple—But unfortunately the directors had no right under the law, or in any other way, to attempt an amendment.

Mr. Bates—Isn't that a matter for Your Honor?

Mr. Dane—That is a proposition of law.

Mr. Whipple—Which Mrs. Eddy had directed the First Members to do.

The Master—That is a matter about which, as we understood yesterday, there is a conflict, but we are now getting the history of what was done.

Mr. Dane—I offer now from Volume 3 of the Directors' Records, the record of a meeting held on July 15, 1903, appearing on page 120, as follows (reading):

"A meeting of the directors was held this day (Mr. Chase absent).

"By unanimous vote of all present the following by-law was adopted:

"Publishing Buildings, Sect. 6. It shall be the duty of the Christian Science Board of Directors to provide a suitable building for the publication of The Christian Science Journal, Christian Science Sentinel, Der Christian Science Herald, and all other Christian Science literature published by The Christian Science Publishing Society. It shall also be the duty of the Christian Science Board of Directors to provide suitable rooms conveniently and pleasantly located in the same building for the publication and sale of the books of which Mary Baker G. Eddy, is or may be the author, and other literature connected therewith.

"Minutes approved.

"WILLIAM B. JOHNSON,  
"Clerk."

[The records of a meeting of the directors, dated July 15, 1903, and appearing on page 120 of Volume 3 of Records of First or Executive Members, Board of Directors and Annual Meetings, is offered in evidence as Exhibit 149.]

Mr. Dane—I offer from the same volume, page 88, under date of March 17, 1903, the record of a meeting of the directors (reading):

"At a meeting of the full board held this p. m. On a motion and by a unanimous vote the following by-law was adopted.

"The members known as the First Members prior to March 17, 1903, from and after this date shall bear the title and be known as Executive Members of The First Church of Christ, Scientist, in Boston, Massachusetts.

"Minutes approved.

"WILLIAM B. JOHNSON, Clerk."

[The record of a meeting of the directors, dated March 17, 1903, appear-

ing on page 88 of Volume 3 of First or Executive Members, Board of Directors and annual meetings, is offered in evidence as Exhibit 150.]

Mr. Dane—I offer from Volume 3 of the records of the Board of Directors that part of a meeting held Wednesday, July 8, 1908, which I will read into the record—page 102.

The Master—Directors' records?

Mr. Dane—Directors' records (reading):

"Wednesday, July 8, 1908.

"A meeting of the directors was held this a. m.

"Present: Messrs. Knapp, McLellan, Stewart, and Johnson.

"On separate motions, and by unanimous votes, the following-named amendments were adopted."

I do not care to read the amendments.

"... All of the seventy-second edition of the Manual.

"Also it was voted to repeal the following sections: . . .

"Sections 1, 2, 3, 4 of Article V, page 33."

The minutes were signed, "William B. Johnson, Secretary."

[That portion of a record of a meeting of the Board of Directors held Wednesday, July 8, 1908, and appearing on page 102 of Volume 3 of the records of the Board of Directors, which was read by Mr. Dane, as above set forth, is offered in evidence as Exhibit 151.]

Mr. Dane—I call your attention to the fact that Sections 1, 2, 3, and 4 of Article V, seventy-second edition of the Manual, are sections relating to Executive Members.

Mr. Whipple—Well, now, if Your Honor please, some time ago Your Honor called upon counsel to show evidence that these directors were church officials. Here we find these directors assuming to legislate with regard to the membership of the Church, and so far not the slightest evidence has been produced that they were church officials. It has been shown in the various Manuals that they are not, that no such office existed as director of The Mother Church in the Manual or was referred to until a year or two ago, when these directors, apparently finding they were not church officials, bethought themselves of putting themselves in the Manual as such. Now, ought we not, before we take in this entire record, have some proof that has been promised us that the directors were church officials? They were named directors under the Deed of Trust, but what right have they as trustees under the Deed of Trust to be legislating, abolishing First Members, changing them to Executive Members, and then abolishing Executive Members, when they are not even church officials.

The Master—Is that anything more, Mr. Whipple, than another statement of the difficulty which was brought out yesterday? It is just the same thing, isn't it? We realized it yesterday. But

my view was that we better deal with it after we had got the whole history, all that was done. You don't admit that anything that was done by the directors under these circumstances was proper. All that will be open later. Is it worth while to renew the objection at every stage?

Mr. Whipple—I thought it was, for this reason: I understand Your Honor asked them to indicate some proof that the directors were church officials, and to direct their attention to that. And if they haven't any proof of that I thought Your Honor would perhaps feel that the Board of Directors, so-called, or these gentlemen who were acting as directors, had no authority whatever to interfere in these matters. But I am perfectly content, if Your Honor thinks we better take all these things which upon the record as it now stands are utterly futile. It is a mere matter of convenience—the easiest dispatch.

The Master—You will recollect that part of the answer made to my inquiry on that subject was that the directors intended to rely, at least in part, on a course of conduct and an acquiescence on the part of all the parties interested, and, to some extent, upon approval of Mrs. Eddy herself. Now, that is what I understand they are now in the process of doing.

Mr. Dane—And one more thing, if Your Honor please. We are not attempting, and we never have been attempting, to show that this Church is organized as a corporation. We are simply showing what the organization of this Church is. The directors were recognized and accepted by Mrs. Eddy, as the By-Laws were promulgated and proposed by her, and the Church members accepted that form of government and have continued to accept it.

Mr. Whipple—The difficulty is—

Mr. Dane—And are bound by it.

Mr. Whipple—The difficulty is with this idea of acquiescence, that they have now put in successive Manuals which do not even refer to directors as church officers, and it is difficult to see how acquiescence could make anybody officers, who ordinarily would depend upon the suffrage of the people, or the votes of the people, who would elect them officers, or at least would create the offices.

The Master—I quite appreciate all that.

Mr. Whipple—I am quite content if Your Honor thinks that is the best way to go on; and, as Your Honor says, let the gentlemen struggle with their difficulties.

Mr. Dane—There is only one statement, or misstatement, which I should care to correct, and that is that no Manual has ever referred to the Board of Directors as officers of the Church until the present Manual. That is not true. In 1895 they were referred to as officers of the Church.

Mr. Whipple—In the Manual itself? In 1895 you will find that where they

describe the officers of the Church, directors are not mentioned as officers. On the title page they are put in as directors.

Mr. Dane—Yes.

Mr. Whipple—Of course they were put in as that.

The Master—Have you the edition of 1895 right here?

Mr. Whipple—Yes. Take the one in 1895, and see if in describing or providing for the church officers—have you it—

Mr. Dane—I am not sure that the Manual of 1895 provides for the directors of church officers.

Mr. Whipple—Well, very well.

Mr. Dane—A vote of the First Members of Dec. 23 described the Board of Directors as officers of the Church, and in the Manual of 1895 they appear as church officers: Ira O. Knapp, Joseph Armstrong, Stephen A. Chase, Edward P. Bates, Christian Science Board of Directors.

Mr. Whipple—Well, that does not describe them as church officers; that describes them as they are in the deed. May I take this edition of 1895 a minute to call to your attention what they do provide? By-Laws, Article 1, Section 2: "The officers shall consist of a president, a clerk, and a treasurer." That is in 1895, and that is the description of what the officers of the Church are.

Mr. Dane—Now may I proceed?

The Master—I think when we have got the whole material before us we can take up these points to better advantage.

Mr. Whipple—And it was not until September, of 1908, that they were included, and then by the directors themselves, as officers.

The Master—The situation is undoubtedly in certain respects exceptional.

Mr. Dane—I now offer, from Volume 6 of Letters and Miscellany, page 123, a letter from Mrs. Eddy.

Q. I will show you, Mr. Johnson, this letter, and ask you whether that bears the signature of Mrs. Eddy? A. It does.

Q. And on the reverse side of the letter, appearing on page 124, is that Mrs. Eddy's handwriting and her signature? A. It is.

Mr. Whipple—What date, please?

Mr. Dane—July 1, 1908. This is page 123, document No. 592.

[A letter, Mrs. Eddy to Christian Science Board of Directors, July 1, 1908, is offered in evidence as Exhibit 152, and is read by Mr. Dane, as follows:]

"July 1, 1908.

"Christian Science Board of Directors, "Beloved: I have read your copy of the revised Manual and find it must be corrected throughout.

"My orders to Mr. Dickey were to go over the Manual and erase the name of Executive Members from the Manual. I told him this because said members no longer exist and the Manual should be corrected thus. I

cannot do all this work myself and I beg that you, The Christian Science Board, do it, and have it done correctly.

"Lovingly yours,  
"MARY B. G. EDDY."

The Master—The date of that was what?

Mr. Dane—July 1, 1908. On the reverse side of the letter—

The Master—That is, Executive Members are what is referred to there?

Mr. Dane—Executive Members. They are the members who were referred to in the article which was repealed by the action of the Board of Directors, which I have put in. On the reverse side of this letter, appearing on page 124, in Mrs. Eddy's handwriting, is the following:

"I have thought it best to have no executive members. Will you at once vote on this question, and have it valid and made known?"

"EDDY."

Mr. Dane—I offer now, from page 107 of Volume 9, of Letters and Miscellany, document No. 981. I will ask you, Mr. Johnson, if that is Mrs. Eddy's signature appearing on that document? A. It is.

[A letter, Mrs. Eddy to The Christian Science Board of Directors, July 1, 1908, is offered in evidence as Exhibit 153, and is read by Mr. Dane, as follows:]

"384 Beacon Street,  
"Chestnut Hill, Massachusetts,  
"July 1, 1908.

"Christian Science Board of Directors: "Beloved Brethren: Please vote to repeal the following paragraph of Article VI, Section 1, of the Church By-Laws.

"MARY BAKER G. EDDY.

"Article VI, Section 1, paragraph 2.

"The executive members of this Church shall continue to convene annually at the Communion Season, but they shall not be present at the business meetings of the Board of Directors."

Mr. Dane—I also offer, from the same volume, page 115, document No. 985.

Q. I ask you, Mr. Johnson, if Mrs. Eddy's signature appears on the letter, document 985? A. It does.

Mr. Whipple—Will you let me see that, please? (Examining letter.) All right.

Mr. Dane—This is on the letter head, "Rev. Mary Baker G. Eddy, Office of Secretary, 384 Beacon Street,"

[Letter, Mrs. Eddy to Christian Science Board of Directors, July 3, 1908, is offered in evidence as Exhibit 154, and is read by Mr. Dane, as follows:]

"Chestnut Hill, Mass.,  
"July 3, 1908.

"Christian Science Board of Directors, Boston, Mass.

"Beloved Brethren: Please vote on the adoption of the following church

By-law, and if adopted publish in our periodicals and the Church Manual.  
"MARY B. G. EDDY."

"Article

"No Executive Members. Sect. — Article V of the Church By-Laws creating executive members is hereby repealed. There being no further necessity for this organization, the Executive Members shall be and are hereby disbanded."

The Master—What did that leave them then—just plain members?

Mr. Dane—Yes; the office of executive members passed out of existence.

The Master—If you call it an office to be an executive member.

Mr. Dane—Yes, sir, as the First Members had been, because the Executive Members were the First Members. The name of First Members, Your Honor will remember, was changed to Executive Members.

The Master—I quite remember that, yes.

Mr. Dane—Yes, in 1903.

Mr. Whipple—We do not assent to the statement of counsel. We should suggest that the First Members were thereby revived, although it is not a matter, perhaps, of very much consequence. They were still probably members of the Church organization, and of course the vote was not by any church official. The injunction of Mrs. Eddy to make it valid was not carried out.

Mr. Dane—I offer now, from Volume 7 of Letters and Miscellany, page 257, the document appearing on page 257, No. 796.

Q. I ask you, Mr. Johnson, whose handwriting appears at the bottom of document 796—whose signature? A. Mrs. Eddy's.

Mr. Whipple—This is Volume 7, page 257?

Mr. Dane—Page 257, Volume 7. "Church by-law"—

Mr. Whipple—What is the date?

Mr. Dane—Oct. 4, 1901. It has the notation on it, "Adopted Oct. 4, 1901,"—not a part of the document.

[Document appearing on page 257, Volume 7, No. 796, a Church by-law with letter from Mrs. Eddy, Oct. 4, 1901, offered in evidence as Exhibit 155, and read by Mr. Dane, as follows:]

Church By-Law

From October, 1901, the term of office for the readers in The Mother Church, the editors and the publisher of The Christian Science Publishing Society, the clerk and the treasurer of this Church, and the manager of the general Publication Committees, in Boston, is three years each, dating from the time of election to the office. Incumbents who have served three years or more can be reelected, or new officers elected, at the annual meeting of this Church, by a unanimous vote of the Christian Science Board of Directors and the consent of the Pastor Emeritus given in her own handwriting.

Mr. Dane—There are interlineations

and words that were stricken out in the document, which can be copied into the record exactly as it appears on page 257. On the bottom of the document are the words:

"Beloved Clerk: Please call a meeting and vote on the above by-law. I think you will find this by-law very useful to our church.

"With love,

"M. B. Eddy."

Mr. Dane—I now offer, from Volume 3 of the minutes of the directors, on page 48, that part of the record of the meeting which I now read into the record.

Mr. Thompson—The date, please?

Mr. Dane—Nov. 14, 1901.

[Record, directors' minutes, page 48, Nov. 14, 1901, is offered in evidence as Exhibit 156, and is read by Mr. Dane, as follows:]

"A meeting of the directors was held this day and the following business was transacted. . . .

"Voted: That the following by-law which was adopted Oct. 4, 1901, shall be made Section 3 of Article 1.

"Officers and Term of Service.

"From October, 1901, the term of office for the readers in The Mother Church, the editors, and the publisher of The Christian Science Publishing Society, the clerk and the treasurer of this Church, and the manager of the general Publication Committees, in Boston, is three years each, dating from the time of election to office. Incumbents who have served three years or more can be reelected, or new officers elected at the annual meeting of this Church, by a unanimous vote of The Christian Science Board of Directors, and the consent of the Pastor Emeritus given in her own handwriting."

The Master—Have you in mind, Mr. Dane, what those terms had been before the adoption of those By-Laws?

Mr. Dane—Do you mean the length of them?

The Master—Yes. It is now made three years. What was it before? If you do not remember, never mind.

Mr. Dane—I do not remember that. They were subsequently changed to one year, by an amendment.

The record of Oct. 4, 1901, referred to in the vote which I have just read into the record, appears on page 45 of Volume 3 of the directors' records. Without reading the vote which is the same as the one which I have just read into the record, I will read the following from that meeting:

"Oct. 4, 1901.

"A meeting of the directors was held this day.

"On a motion and by a unanimous vote the following by-law was adopted."

Then follows the by-law which has already been read.

"Minutes approved.

"William B. Johnson, Clerk."

[The record of the meeting of Oct.

4, 1901, from which the foregoing extract is read, is Exhibit 156. R. H. J.]  
I offer from the records of the directors, Volume 3, page 57, that part of the record of a meeting of May 15, 1902, which I will read into the record:

"At a meeting of the Board of Directors held this day the following amendments were adopted by separate unanimous votes . . .

"Article I, Sec. 3. From October, 1901, the term of office for the editors and the publisher of The Christian Science Publishing Society, the clerk and the treasurer of this Church, and the manager of the general Publication Committees in Boston, is one year each dating from the time of election to office. Incumbents who have served one year or more can be reelected, or new officers elected, at the annual meeting held for this purpose, by a unanimous vote of the Christian Science Board of Directors and the consent of the Pastor Emeritus given in her own handwriting.

"Minutes approved.

"William B. Johnson, Clerk."

[The record of the meeting of the Board of Directors, from which the foregoing extract is read, is Exhibit 157. R. H. J.]

Mr. Thompson—Are you going to read the letter of Mrs. Eddy authorizing that amendment?

Mr. Dane—Authorizing it?

Mr. Thompson—Yes. You have read the change by the amendment. Now will you read the authority of Mrs. Eddy for making it?

Mr. Dane—Vol. 7 of Letters and Miscellany, page 111, document No. 725—

Mr. Whipple—The date.

Q. I show you, Mr. Johnson, a letter dated Aug. 22, 1898, appearing on page 111 of this book, and ask you in whose handwriting it is, and whose signature is on that. A. Mr. Frye's.

Mr. Whipple—May I ask Mr. Dane, or repeat Mr. Thompson's question, as to the authority of Mrs. Eddy for the change which appears in the directors' records, May 15, 1902, which was just read? Have you any?

Mr. Dane—I haven't it here, Mr. Whipple.

Mr. Whipple—Well, of course you have all Mrs. Eddy's letters here, haven't you?

Mr. Dane—Yes.

Mr. Whipple—You have Mrs. Eddy's letters here?

Mr. Dane—Yes, in these volumes. I was not intending to offer that in the order in which I intend to proceed.

Mr. Whipple—Well, are you intending to offer it at all?

Mr. Dane—I do not know that there is one and I do not know that there is not one, positively.

Mr. Whipple—That is a good frank statement.

Mr. Thompson—I think that it is only proper and legitimate at this stage to make this very brief statement, which will be only about three

lines long: We wish it distinctly understood that our client, Mr. Dittemore, stands today, as always in the past, unequivocally on the By-Laws of The Mother Church as the governing authority for both its members and officers. He also now, as in the past, demands that these By-Laws shall be adhered to both in their letter and in their spirit as the law of the entire Christian Science organization in all of its departments. But where a change appears to have been made, as in Article I, Section 5, and a marginal note, apparently of official origin, which shows doubt as to its origin, and as to any authority from Mrs. Eddy for making it, Mr. Dittemore demands proof that such change was made by any authority from Mrs. Eddy herself; and he feels that there are changes made here which have come to his knowledge during these hearings which have been made by unauthorized persons in these By-Laws; and this is an instance. You show no authority from Mrs. Eddy.

Mr. Whipple—That is, when you speak of unauthorized persons, you mean unauthorized by Mrs. Eddy?

Mr. Thompson—No; I mean persons acting without the authority of Mrs. Eddy. We understand that these By-Laws get their sanctity and authority because they come from Mrs. Eddy; and if anybody else, without her authority, undertakes to make alterations, changes in them, changing their sense, as apparently has been done here, we at least should like to know by what authority that person acted in making those changes, and how they did it.

Mr. Bates—Can't you wait until that develops?

The Master—You will have an opportunity to inquire about all that later.

Mr. Dane—There is no question but what Mrs. Eddy sanctioned and approved every one of them.

The Master—We ought not to take up time with statements about them. We are now in process of getting the evidence.

Mr. Dane—I offer from Vol. 7, on page 111, document No. 725—

Mr. Thompson—Of the Letters?

Mr. Dane—This is on the letterhead of

"Science and Health with Key to The Scriptures,"

"(The Christian Science Text-Book)

"and Other Works,

"By Mary Baker G. Eddy

"Pleasant View, Concord, N. H.

"Aug. 22 [1898].

"Dear Bro. Johnson

"Mother requests that you have this adopted immediately.

"Fraternally,

"C. A. FRYE.

"Church By-Law.

"If a weekly newspaper shall at any time be published by The Christian Science Publishing Society it shall be owned by The First Church of Christ,

Scientist, in Boston, and shall be copyrighted and conducted according to the by-law relating to The Christian Science Journal."

[The document of which the foregoing is a copy is Exhibit 158, R. H. J.]

I offer from Vol. 2 of First Members, page 199, the following, from the meeting of Aug. 22, 1898:

"A special meeting of the First Members was held this day in the vestry. The president being absent, Mr. Ira O. Knapp was called to the chair and the meeting was opened with the usual form at 5 o'clock p. m. 16 members present.

"The following By-Laws, and amendment were read and were adopted by unanimous votes.

"By-Laws.

"II. If a weekly newspaper shall at any time be published by The Christian Science Publishing Society it shall be owned by The First Church of Christ, Scientist, in Boston, and shall be copyrighted and conducted according to the by-law relating to The Christian Science Journal."

[The record from which the foregoing extracts are read is Exhibit 159, R. H. J.]

I offer now a letter from Mrs. Eddy to Mr. William P. McKenzie, dated Aug. 22, 1898. The letter is mounted in an unbound volume, but it is numbered document No. 4872.

The Master—Aug. 22, 1898, was the date of the last letter from Mrs. Eddy which you put in, was it not? Have you got another one of the same date?

Mr. Dane—Another of the same date.

The Master—All right.

Q. I show you a letter in this unbound volume, bearing the document No. 4872, and ask you in whose handwriting that is, and whose signature appears upon it? A. Mrs. Eddy's.

Mr. Dane—

"Pleasant View,

"Concord, N. H.

"Aug. 22, 1898

"My dear Student

"I hear you all were elated at the order, have a weekly newspaper. Now I trust you will not abate your joy by reading as follows The C. S. Messenger must be owned by The First Church of Christ Scientist and copyrighted in my name Call on the Treasurer of this Church for the funds to start with Let the editors of the C. S. Jour. be the editors of the C. S. Messenger and employ such help as is required

"With love mother

"M. B. Eddy."

[The document of which the foregoing is a copy is Exhibit 160. R. H. J.]

Mr. Dane—The Christian Science Messenger is the publication that subsequently became the Christian Science Sentinel. I think there is no dispute about that, is there, Mr. Whipple?

Mr. Whipple—No dispute about it? Well, I think that better be shown, as to when it was. Do you claim that

the Messenger as such was ever published?

Q. Mr. Johnson, do you know whether or not the Christian Science Messenger was ever published as a periodical? A. I don't remember of its being published under that name.

Mr. Whipple—Isn't there some correspondence showing how The Journal became the property of The Christian Science Publishing Society? If so, why not put it in?

Mr. Dane—I will inquire of the witness and see if we can find out.

Q. Was there a publication, Mr. Johnson, prior to the Christian Science Sentinel, that was published by The Christian Science Publishing Society?

Mr. Whipple—You mean weekly?

Mr. Dane—Weekly paper.

A. No.

Q. Was there a paper called the Christian Science Weekly? A. I never heard of it.

Mr. Dane—I thought possibly the witness might establish that fact. I think there is no question about it. We will show that later. Mr. McKenzie, to whom the letter was written, Your Honor will note was a trustee under the Trust Deed, one of the three original trustees. Mr. McKenzie we expect will be a witness, and the situation will be fully explained by him. Meantime I have here a publication of The Christian Science Publishing Society under date of Sept. 1, 1898, entitled the Christian Science Weekly.

Mr. Whipple—Wasn't it with reference to this that Mrs. Eddy, discovering that this came under the Trust Deed, wrote that letter in which she said, "Follow the trust"?

Mr. Dane—Not at all, Mr. Whipple.

Mr. Whipple—It would apply.

Mr. Dane—You are entirely in error about that. We shall establish that beyond any question.

Mr. Whipple—I should say it would apply, nevertheless.

Mr. Dane—I have also a publication of The Christian Science Publishing Society under date of Jan. 26, 1899, called the Christian Science Sentinel, and I offer—

Mr. Whipple—You don't claim that any of those were published or owned or copyrighted by the Church, do you?

Mr. Dane—Owned by the Church.

Mr. Whipple—Beg pardon.

Mr. Dane—We claim they were certainly owned by the Church.

Mr. Whipple—Really? We shall ask to have proof of that.

Mr. Dane—I offer now, from Volume 3 of Letters and Miscellany, page 193, a letter from Mrs. Eddy to the Christian Science Board under date of June 25, 1902.

[The volume is shown to the witness.]

Q. I ask you, Mr. Johnson, whether or not that is Mrs. Eddy's handwriting and whether that is her signature? A. It is.

The Witness—I would like to make an explanation about that weekly.

Mr. Dane—You may make the explanation if you care to.

The Witness—When you spoke about “weekly” I didn’t understand it as the title, but as a publication published weekly previous to the Sentinel.

Q. There was a publication published previous to the Sentinel? A. Called the Weekly.

Q. Called the Weekly. That publication that was published and called the Weekly—its name was changed subsequently and it was called the Sentinel. Is that correct? A. Yes.

Mr. Dane—Now, I offer from page 193 of this volume the following letter, under date of June 25, 1902, dated Pleasant View, Concord, New Hampshire:

“C. S. Board,  
“Beloved Students:

“In the absence of Mr. McLellan retain Willis and Miss Speakman at the head of our periodicals (p. 194). Unless Mr. McLellan has made some other arrangement, put Mr. Willis in the place of chief editor till Mr. McLellan returns. Do not allow another Sentinel to appear without an explanation as to the absence of the editor-in-chief. If McLellan is gone long have an editorial by Mr. Willis, and retain Mr. Willis on the editorial list. Dear Mr. and Mrs. Gross are ready to act as the chief editors-elect—but I charge you to have Willis somewhere, and I think (p. 193) he should be second editor. He is literary in style and learned.

“Now, do not neglect to have this attended to as I request. Get the Trustees to carry it out for you if need be.

“With love,  
“M. B. Eddy.”

[The letter read, being a letter from Mrs. Eddy, addressed “C. S. Board,” and dated June 25, 1902, is offered in evidence as Exhibit 161.]

Mr. Whipple—To whom is that addressed?

Mr. Dane—To the Board of Directors.

I now offer from Volume 5 of Letters and Miscellany, page 27, a letter from Mrs. Eddy to the Board of Directors, under date of June 27, 1905.

Q. I ask you if that is Mrs. Eddy’s letter and her signature? A. It is.

“Pleasant View,  
“Concord, N. H., June 27, 1905.  
“Board of Directors,

“Beloved: Be sure to have this article appear in a conspicuous place in this week’s Sentinel. I have special cause for this.

“Lovingly,  
“M. B. G. Eddy.”

[The letter read, being a letter from Mrs. Eddy to the Board of Directors, dated June 27, 1905, is offered in evidence as Exhibit 162.]

Mr. Dane—I offer, to be marked only for identification, the article bearing on the Christian Science Sentinel.

Mr. Streeter—What is the title of the article, Mr. Dane?

Mr. Dane—The title of that article is “Hear, O Israel: the Lord Our God is One Lord.” And this appears in Volume 7 of Christian Science Sentinel, page 708.

[Article entitled, “Hear, O Israel: the Lord Our God is One Lord,” appearing on page 708 of Volume 7 of Christian Science Sentinel, is marked 163 for identification.]

Mr. Dane—I now offer from Volume 6 of Letters and Miscellany, page 131, a letter, being document No. 596.

Q. I ask you, Mr. Johnson, whose handwriting that is? A. Mrs. Eddy’s.

Q. I call your attention to the reverse side and ask you in whose handwriting that is? A. Mrs. Eddy’s.

Mr. Whipple—What is the date, please?

Mr. Dane—This has an annotation that it was sent by messenger, received July 28, 1908, “William B. Johnson.”

“Beloved C. S. Board of Directors six pages of letters for our Sentinel are too many four pages are better than so many otherwise it makes the Sentinel as a news paper insipid.

“Lovingly Eddy  
“Notice So soon as the Pub. House debt is paid I request the C. S. Board Directors to start a daily newspaper called Christian Science Monitor. This must be done without fail

“M. B. G. Eddy”

[The letter read, being a letter from Mrs. Eddy to the Board of Directors, and bearing annotation indicating that it was received on July 28, 1908, is offered in evidence as Exhibit 164.]

Mr. Dane—Would it be convenient to take a recess at this time?

[Recess]

Mr. Whipple—Mr. Dane, may I ask whether you have any letter or copy of a letter sent by the Board of Directors in response to the last letter that was put in, that is, the letter of July 28?

Mr. Dane—The last letter was the one relating to The Christian Science Monitor.

Mr. Whipple—Yes.

Mr. Dane—That letter indicates on its face that it was sent by a messenger.

Mr. Whipple—I was asking about a copy of your reply.

Mr. Dane—I think that the reply was not made by letter. That entire incident will be explained later by a witness whom we intend to call, in connection with the letter that has been introduced on that subject.

Mr. Whipple—Because Your Honor will remember that the letter to the Christian Science Board of Trustees by Mrs. Eddy—

Mr. Dane—Yes; that was some time later.

Mr. Whipple—That was Aug. 8, 1908, which was only a few days later.

Mr. Dane—A few days later, yes. That whole incident will be explained.

Mr. Whipple—Well, you mean that you haven’t any copy of any reply or any letter that was sent to Mrs. Eddy in the meantime?

Mr. Dane—I think there is no letter.

Q. I call your attention, Mr. Johnson, to the last exhibit, which is on page 131, Volume 6, of Letters and Miscellany, and to the notation on the bottom of the document as it appears on page 132, the words, “Received by messenger, July 28, 1908. William B. Johnson,” and I ask in whose handwriting and whose signature that is? A. That is my father’s.

Q. He was clerk of the board at that time? A. Yes.

Q. I call your attention, Mr. Johnson, to the document No. 713, on page 93 of Volume 7 of Letters and Miscellany, which has already been introduced as an exhibit. I call particularly your attention to the words appearing on the top of the document, “Adopted, Feb. 10, 1898,” and ask you in whose handwriting that is? A. That is my father’s.

Q. And on page 171 of the same volume, I direct your attention to document No. 751, which has already been introduced, and call your attention to the words and figures on the top of that document: “Received, July 17, 1899; adopted, July 17, 1899,” indicated by ditto marks under “July 17” and “1899,” and ask you in whose handwriting that is? A. My father’s.

Q. I also call your attention to the document on page 257 of the same book, document No. 796, which has been introduced, and call your attention to the words and figures on that document, “Adopted, Oct. 4, 1901,” and ask you in whose handwriting that is? A. My father’s.

Mr. Dane—I now ask that it be noted on the record that the notations on these various documents which have been proved by the witness be regarded as a part of the exhibit. As we went along I was not sure in whose handwriting the notations were, and therefore that may not have been introduced as an exhibit at the time the document itself was introduced.

Mr. Whipple—I do not think they can be noted as a part of the exhibit because they are not, but they may be taken as a memorandum made by a man who is deceased, as to the truth of which Your Honor, I assume, must be convinced.

Mr. Dane—I now offer, from Volume 9, “Mary Baker Eddy, Letters and Miscellany,” a letter on page 139, document No. 995, a letter dated Aug. 15, 1908.

Q. I ask you whose signature appears on the letter? A. Mrs. Eddy’s.

Q. And whose signature appears to the by-law set forth on that document? A. Mrs. Eddy’s.

[A letter, Mrs. Eddy to Christian



Science Board of Directors, Aug. 15, 1908, is offered in evidence as Exhibit 165, and is read by Mr. Dane, as follows.]

"Chestnut Hill, Mass.,  
"Aug. 15, 1908.

"The Christian Science Board of Directors.

"Beloved Brethren: Please vote on the adoption of the following amendment to by-law, Article XXXVI, Section 2, of the Church Manual.

"M. B. G. EDDY.

"Seventy-Third Edition the Authority.

"Sec. 2. The Board of Directors, the Committee on Bible Lessons, and the Board of Trustees shall each keep a copy of the Seventy-Third Edition and of subsequent editions of the Church Manual; and if a discrepancy appears in any revised edition, these editions shall be cited as authority.

"MARY B. G. EDDY."

The Master—Will you give me the date of that again?

Mr. Dane—Aug. 15, 1908. In that same connection I offer from the directors' Church By-Law Book, Volume 2, the record of a meeting of Friday, Aug. 28, 1908.

Mr. Whipple—Will you give me that date again?

Mr. Dane—Aug. 28, 1908, appearing on page 37.

The Master—We had one entry from that book yesterday about the seventy-third edition.

Mr. Dane—This is the adoption of the by-law which Mrs. Eddy proposed in the letter that has just been introduced. I do not believe I have introduced this.

[Directors' records, Church By-Laws, Volume 2, Aug. 28, 1908, offered in evidence as Exhibit 165, and read by Mr. Dane, as follows:]

"At a meeting of the directors held this a. m. the following amendment to Church By-Law, Article XXXVI, Sect. 2, page 105 of the seventy-third edition of the Manual be adopted.

"Article XXXVI

"Seventy-third Edition the Authority.

"Sect. 2. The Board of Directors, the Committee on Bible Lessons, and the Board of Trustees shall each keep a copy of the seventy-third edition and of subsequent editions of the Church Manual; and if a discrepancy appears in any revised edition, these editions shall be cited as authority.

"William B. Johnson,  
"Clerk."

Mr. Dane—I direct the Court's attention to the fact that the seventy-third edition was the edition which, with its amendment, was introduced yesterday as adopted by the Board of Directors.

I offer from Vol. 3, Letters and Miscellany, page 127, June 17, 1901, addressed to The Christian Science Board of Directors.

Q. I ask you, Mr. Johnson, if that is Mrs. Eddy's handwriting, and if her signature is attached to that? A. It is.

Mr. Dane—

"Pleasant View,

"Concord, N. H., June 17, 1901.

"C. S. Board of Directors,  
"Beloved Students:

"Be sure this goes into this week's issue of the Sentinel, that circumstances have made it requisite to have our communion services held on the 23d of June, 1901. You will see this is carried out. I have written a notice of it and telephoned it to Judge Hanna to have it appear in this week's Sentinel.

"With love, Mother.  
"M. B. EDDY.

"N. B. Also adjourn the annual business meeting of our Church to the day following the date of the semi-annual meeting next October.

"Again, Mother."

[The document of which the foregoing is a copy is Exhibit 167, R. H. J.]

I offer from Vol. 4, Letters and Miscellany, page 77, a letter addressed to C. S. Board of Directors, under date of Oct. 12, 1903.

Q. I ask you whose handwriting that is, and who signed the letter? A. Mrs. Eddy.

Mr. Dane—

"Pleasant View,

"Concord, N. H. Oct. 12, 03.

"C. S. Bd. Directors

"Beloved Students:

"It is unnecessary to add another By-Law to our Manual merely to guide the Editors of our weekly and monthly Sen. and Jour. Hence I write the rule to be observed namely. When the Press breaks the observance of justice and courtesy and what it is supposed to be accountable for as honest pressmen see that you review it. Have our Editors repeat the facts and duly and wisely comment on such unjust proceedings. Of course they must avoid all that is *libellous* and be wise as serpents. Have the shameful transaction of the press"—

I will omit two words, with the consent of Brother Whipple, from this letter, involving certain newspapers. I do not think that it is necessary to put them into the case (showing to Mr. Whipple the portion referred to).

Mr. Whipple—Very well.

Mr. Dane—I will begin the sentence once more.

"Have the shameful transaction of the press . . . connected with Farrow's last attempt to contradict the falsehood that appeared in that paper as to himself—published in our next issue. Then our Exchanges can hear the truth of it. Leave the mention of my name out as much as possible. It is beneath us to continually contradict that stale falsehood. But when it is done let it be a quotation from C. S. History by Judge Hanna.

"Lovingly Yours,  
"M. B. EDDY."

[The document of which the foregoing is a copy is Exhibit 168, R. H. J.]

I offer now a letter on page 83 of Vol. 4 of Letters and Miscellany, ad-

ressed to The Christian Science Board of Directors, dated Oct. 25, 1903.

Q. I ask you, Mr. Johnson, whose handwriting appears at the end of the letter as shown on page 84, and whose signature is there attached? A. Mrs. Eddy's.

Mr. Dane— "Pleasant View,  
"Concord, N. H.  
"Oct. 25, 1903.

"Christian Science Board of Directors,  
"Beloved Students: To know one half of what your teacher and leader is meeting, would show you the cruelty of adding blows.

"Had my letter in the last Sentinel, had my name on its cover, it would have drawn much attention to it."

With your consent I will use a blank for the name of the individual appearing in here (showing to Mr. Thompson the portion referred to).

With the consent of counsel, in reading this letter, I will use blanks where the names appear, and I will begin the sentence:

"Had my letter in the last Sentinel, had my name on its cover, it would have drawn much attention to it. — attack upon me was never met, and even my letter in the Sentinel refuting one of his blasphemies was well-nigh hidden! In your next Sentinel republish my letter, and the letter from Elizabeth Earl Jones and the article copied from the Raleigh (N. C.) News and Observer.

"I write to you because our editor seems to be unmindful of such mistakes. . . . When reading the proof of my article I had no thought of such a thing as omitting my name in the 'Contents of This Number.' You must see that my requests in this letter are strictly obeyed in our next issue of the Sentinel and C. S. Journal.

"With love

"M. B. G. EDDY."

[The document of which the foregoing is a copy is Exhibit 170, R. H. J.]

I now offer from the same volume, page 213, a letter from Mrs. Eddy to the C. S. Board of Directors, May 16, 1905, document No. 422.

Q. I ask you, Mr. Johnson, whether or not that is in Mrs. Eddy's handwriting, and whether or not it bears her signature? A. It does.

Mr. Dane—

"Pleasant View,

"Concord, N. H., May 16, 1905.

"C. S. Board Directors.

"Beloved:

"See that a notice *proper* of the sudden departure from our sight of one of the noblest, most needed and *best* of mankind—dear Mr. Whitcomb. —Have it appear in our next Sentinel and Journal if it is too late for this week's issue of our weekly.

"Lovingly yours,  
"Mary Baker Eddy."

[The document of which the foregoing is a copy is Exhibit 171, R. H. J.]

Mr. Whipple—What was the name, please?

Mr. Dane—Whitcomb.

Mr. Whipple—Whitcomb. Thank you.

Q. I call your attention, Mr. Johnson, to a letter, on pages 19 and 20, Vol. 3 of Letters and Miscellany, and ask you whose is the signature on that letter of page 20? A. Mrs. Eddy's.

[The volume is shown to Mr. Streeter and Mr. Thompson.]

Mr. Dane—From the letter which the witness has just identified, appearing on page 19 of Volume 3 of Letters and Miscellany, with the consent of counsel I read but one paragraph. It is on the letterhead of "Works on Christian Science by Rev. Mary Baker G. Eddy—Address all inquiries to Joseph Armstrong, C. S. D., 95 Fal-mouth Street, Boston, Massachusetts" (reading):

"Pleasant View,  
Concord, New Hampshire,  
July 17, 1899.

"The First Church of Christ, Scientist,  
Boston.

"Beloved Brethren:

"... So long as the News-Letter keeps free from matter injurious to the Cause and stands as nobly out as it now does in defense of Truth, publish nothing in the Sentinel or Journal that shall stop the patronage of that paper. But if matter gets into it that is injurious to the Cause, then first rebuke the editor; tell him his fault and call his attention to this fact, and say if it is not discontinued you must publish your dissent to its patronage."

The letter is signed, "With love, Mother."

[That portion of a letter from Mrs. Eddy to The First Church of Christ, Scientist, Boston, dated July 17, 1899, and appearing on page 19 of Volume 3 of Letters and Miscellany, read by Mr. Dane as set forth above, is offered in evidence as Exhibit 172.]

Mr. Dane—I offer now from Volume 3 of the Directors' Records the minutes of the meeting of June 16, 1902 (reading):

"In compliance with the by-law adopted May 24, 1902, the directors elected the president and the first and second readers of this Church. The other officers of the Church and the Sunday School were also elected and also the boards and the committees.

"Officers

President, John R. Reeder.  
Clerk, William B. Johnson.  
Treasurer, Stephen A. Chase.  
First Reader, Prof. Hermann S. Hering.

Second Reader, Mrs. Ella E. Williams.

"In accordance with the by-law adopted Nov. 14, 1901, and amended May 15, 1902, the editors and the publisher of The Christian Science Journal and the Christian Science Sentinel were elected as follows:

Editor in chief, Archibald McLellan.  
Second Editor, John B. Willis.  
Assistant Editor, Miss Mary E. Speakman.  
Publisher, Joseph Armstrong.

Manager of the general publication committee, Alfred Farlow."

I will omit the election of the other officers.

"Minutes approved.

"WILLIAM B. JOHNSON,  
Clerk."

[Records of a meeting of the Board of Directors, dated June 16, 1902, appearing in Volume 3 of First of Executive Members, Board of Directors, and Annual Meetings, are offered in evidence as Exhibit 173.]

Mr. Dane—From the same book I offer the minutes of a meeting of June 29, 1903 (reading):

"A meeting of the Christian Science Board of Directors, which was the annual meeting for the election of officers, was held at the above named place at 10 o'clock a. m. (Stephen A. Chase was absent.)

"On separate motions and unanimous votes of all present, the following named persons were elected to the separate offices set against their names as follows:

"Board of Directors

"President, Archibald McLellan; secretary, William B. Johnson."

Omitting all but the election of the editors and manager of the Publishing Society, it follows:

"Editors

"Editor in Chief, Archibald McLellan; second editor, John B. Willis; assistant editor, Mrs. Annie M. Knott; assistant editor of Der Christian Science Herald, Miss Louise F. Kollmorgen.

"Manager

"Manager of The Christian Science Publishing Society, Joseph Armstrong.

"William B. Johnson, Clerk."

[Records of a meeting of the Board of Directors, dated June 29, 1903, appearing in Volume 3 of the Records of the First or Executive Members, Board of Directors and Annual Meetings, are offered in evidence as Exhibit 174.]

Mr. Whipple—Mr. Dane, do you think while you are reading these, it would be a good idea to put in the notices, if any, of any such action which was sent to the Board of Trustees?

Mr. Dane—It would not be convenient to do it as I read each meeting. I will put in what notices are of record as having been sent. For a good many years no notices were sent. Mr. McLellan was the editor in chief, and was also a member of the Board of Directors for a long time. So that there seemed to be no occasion while that situation prevailed of sending notices.

Mr. Whipple—There might be occasion to send word to the trustees.

Mr. Dane—Such notices as there are I will be glad to put in.

Mr. Whipple—Why not do it as we go along, otherwise you will have to

go all over this again, referring to something which has passed. We have a memorandum, and perhaps we can agree on it.

Mr. Dane—Well, let us see—

Mr. Whipple—You have put in 1902.

Mr. Dane—It will slow the procedure up very much.

Mr. Whipple—It can't slow it up beyond what it is. You will get it all in at once, and you won't have to go back over it again.

Mr. Dane—I desire with Your Honor's permission to proceed.

Mr. Whipple—I take Your Honor's direction, but if there is anything which can facilitate and speed up this it seems as though it ought to be adopted.

The Master—I should certainly favor anything which would tend to speed the proceedings up, but I am informed by Mr. Dane that he does not think the action suggested would accelerate matters.

Mr. Dane—I do not think it would, Your Honor.

Mr. Whipple—If Your Honor please, how can these things be of any consequence unless the trustees were notified of them and it was brought to their attention? We say it is not of any consequence anyway. But what does this futile action of so-called election amount to if nobody is notified of it? Therefore, I raise the point that unless it is called to the attention of the trustees it can't have any effect.

The Master—It is stated that for a number of years no notices were sent, there being a member common to both boards.

Mr. Dane—Yes.

Mr. Whipple—Oh, no, not that.

Mr. Dane—Not that. A member of the Board of Directors was also editor in chief of the periodicals.

The Master—Oh, yes, the editor being himself a director.

Mr. Dane—Himself a director.

The Master—I see.

Mr. Whipple—But no notice was given—

The Master—Now, if no notice was given during those years, that fact can be understood now, can't it, as undisputed?

Mr. Whipple—Yes. We can put in the years now.

Mr. Dane—I would prefer not, Your Honor.

Mr. Whipple—Very well.

Mr. Dane—I would prefer to proceed and show the fact that for this series of years the Board of Directors have elected the editors and the publisher and business manager of the Publishing Society.

Mr. Whipple—I think I will raise the question by objecting to it on the ground that it is of no consequence whatever unless the trustees were notified, and that the order of proof should be that the notice, if any, that was sent to the Board of Trustees should be put in. It is perfectly easy to do it.

The Master—It seems to me that if it is understood that for a number of years there was no notice other than that implied from the fact that the editor was himself a director, you might agree what those years were.

Mr. Whipple—We have it right here.

The Master—Why can't you agree right now?

Mr. Dane—We will put that all in, Your Honor.

The Master—Why not put it in now, if there is no dispute about it?

Mr. Dane—There may be a dispute about it.

The Master—I took your statement—I thought I did.

Mr. Dane—I did not mean to imply that there was no dispute about the number of notices that was sent, because I do not know what my Brother Whipple claims as to the number of notices that were actually sent. There may have been notifications by telephone or by other means than in writing.

Mr. Whipple—Let us deal with the letters now, anything in correspondence.

Mr. Dane—My objection was that to interrupt the course of proof now and to search out in our records the number of notices that were actually sent would involve a waste of time.

Mr. Whipple—Haven't you, in the preparation of your case, got those notices where you can lay your hands on them, with this corps of assistants that you have?

Mr. Dane—We have the notices, and we intend to put them in.

Mr. Whipple—Well, why not when you are putting in the elections, or so-called elections?

The Master—There does not appear to be sufficient agreement about the matter of notices to warrant the belief that we can materially shorten the proceedings by interrupting Mr. Dane, I think.

Mr. Whipple—Very well.

The Master—I thought from what he said that the contrary might be the case. Go on, Mr. Dane.

Mr. Dane—I offer from Volume 3 of the directors' records the record of a meeting of Monday, June 13, 1904 (reading):

"The annual meeting of the directors was held this day for the purpose of electing officers for the ensuing year. Present: Messrs. Chase, Knapp, Armstrong, and McLellan.

"On separate motions and by unanimous votes the following-named officers were elected to their respective offices:"

Omitting all but the election of editors and manager

"Editors

Editor in chief, Archibald McLellan.  
Second Editor, John B. Willis.  
Assistant Editor, Mrs. Annie M. Knott.  
Assistant Editor of Der Christian Science Herold, Miss Louise F. Kollmorgen.

"Manager

Manager of the Christian Science Publishing Society, Joseph Armstrong. . . .

(Signed) "STEPHEN A. CHASE,  
"Clerk pro tem."

[Records of a meeting of the Board of Directors, dated June 13, 1904, appearing in Volume 3 of records of First or Executive Members, Board of Directors, and annual meetings, are offered in evidence as Exhibit 175.]

Mr. Dane—From the same book, page 218, I offer that part of a record of the meeting of the directors, on Monday, June 12, 1905, which I now read into the record.

[Portion of directors' records, Volume 3, page 218, June 12, 1905, offered in evidence as Exhibit 176, and read by Mr. Dane, as follows:]

"Monday, June 12, 1905.

"The Annual Meeting of the Directors was held this A. M. for the purpose of electing the officers of the church for the ensuing year.

"The minutes of the meeting of June 8th were read and approved.

"By separate and unanimous vote the following named persons were elected to their respective offices:

"Editors

Editor in chief, Archibald McLellan.

Second editor, John B. Willis.  
Assistant editor, Mrs. Annie M. Knott.

Assistant editor of Der Christian Science Herold, Miss Louise F. Kollmorgen.

"Manager

Manager of the Christian Science Publishing Society, Joseph Armstrong.

(Signed) "WILLIAM B. JOHNSON,  
"Clerk."

Mr. Dane—From the same volume I offer that part of the record of a meeting of Monday, June 11, 1906, appearing on page 269, which I read into the record.

[Portion of directors' records, Volume 3, page 269, June 11, 1906, introduced in evidence as Exhibit 177, and read by Mr. Dane, as follows:]

"Monday, June 11, 1906.

"A meeting of the full board was held this a. m.

"On separate motions, and by unanimous votes the following named persons were elected to their respective offices:

"Editors.

Editor in Chief, Archibald McLellan.  
Second Editor, John B. Willis.  
Assistant Editor, Annie M. Knott.  
Assistant Editor of Der Christian Science Herold, Miss Louise F. Kollmorgen.

"Manager.

Manager of The Christian Science Publishing Society, Joseph Armstrong.

(Signed) "WILLIAM B. JOHNSON,  
"Clerk."

Mr. Dane—From the same volume on page 302, I offer that part of the record of a meeting of the directors held June 10, 1907, which I now read into the record.

[Record of directors' meetings, Volume 3, page 302, June 10, 1907, offered in evidence as Exhibit 178, and read by Mr. Dane, as follows:]

"Monday, June 10, 1907.

"The annual meeting for the purpose of electing the officers of the Church for the ensuing year was held this a. m.

"Present: Messrs. Knapp, Armstrong, Chase, and Johnson.

"In the absence of the chairman, Mr. McLellan, Mr. Joseph Armstrong was chosen temporary chairman. . . .

"On separate motions and by unanimous votes the following named persons were elected to their respective offices:

"Editors

Editor-in-chief, Archibald McLellan.  
Assistant Editor, John B. Willis.  
Assistant Editor, Mrs. Annie M. Knott.

Assistant Editor of Der Herold der Christian Science, Miss Louise F. Kollmorgen.

"Manager

Manager of The Christian Science Publishing Society, Joseph Armstrong.

"WILLIAM B. JOHNSON,  
"Clerk."

Mr. Dane—From the same volume I offer that part of the record of a directors' meeting which appears on page 324, held Monday, June 15, 1908, which I will read into the record.

[Portion of directors' records, Volume 3, page 324, June 15, 1908, is offered in evidence as Exhibit 179, and is read by Mr. Dane, as follows:]

"Monday, June 15, 1908.

"The annual meeting of the Christian Science Board of Directors for the purpose of electing the officers of the Church, and the transaction of any business that may properly come before the meeting, was held this a. m. All the members were present. . . .

"On separate motions, and by unanimous votes the following-named persons were elected to their respective offices for the terms specified herein:

"Editors—For one year.

"Editor-in-Chief, Archibald McLellan.

"Associate Editor, John B. Willis.  
"Associate Editor, Mrs. Annie M. Knott.

"Assistant Editor of Der Herold der Christian Science, Theodore Stanger.

"Manager.

"Manager of The Christian Science Publishing Society, David B. Ogden.

"WILLIAM B. JOHNSON,  
"Clerk."

Mr. Dane—Records of minutes of regular and special meetings of The Christian Science Board of Directors, May 31, 1909, appear to have been kept by or under the supervision of

Mr. Dittmore. Perhaps we can agree on that.

Mr. Thompson—What is the date you have got there?

Mr. Dane—May 31, 1909.

Mr. Thompson—Mr. Dittmore, it has already been shown, after Mr. Johnson ceased—

The Master—Mr. Dittmore succeeded him as clerk?

Mr. Thompson—He succeeded Mr. Johnson.

Mr. Dane—Do you make any question as to that, Mr. Whipple? Do you make any question, Mr. Thompson, requiring identification further than has already been made?

Mr. Thompson—Well, you better take it and look at it. Just a minute, Mr. Dane, we would like to have a little conference here.

[Conference between counsel.]

Mr. Dane—I understand it is conceded that the record of the meeting of May 31, 1909, appearing on page 1 of the book entitled, "Minutes of Regular and Special Meetings of The Christian Science Board of Directors," May 31, 1909, through Dec. 31, 1909, are the minutes of that meeting.

Mr. Streeter—Yes, Your Honor, but it must be understood that this concession or agreement only goes to the extent of the meeting agreed to.

Mr. Dane—Yes.

The Master—Only goes to the extent—I didn't quite get that.

Mr. Streeter—I mean exactly this. Mr. Dittmore agrees that that meeting is correctly recorded. There are a vast number of meetings where the records are not correctly recorded, where there have been changes in them, we think.

The Master—If I understand it right, Mr. Dittmore kept those records himself.

Mr. Streeter—Well, he kept the records of this meeting, yes.

The Master—That is what I referred to.

Mr. Streeter—Well, that is all.

The Master—The records you are now talking about.

Mr. Streeter—Yes, that is right.

The Master—I suppose, Mr. Dane, that so far your examination, what has gone in, has been a part of Mr. Johnson's testimony.

Mr. Dane—I suppose technically that is true.

The Master—You have now reached a point where you continue putting in the records but his testimony does not assist you.

Mr. Dane—So far as I know at the present time, I have finished with Mr. Johnson. It may be possible that we shall want him to identify some further records. At present I have none in mind, but I would not like to excuse him definitely.

The Master—No.

Mr. Dane—Simply with that reservation.

The Master—Now do you propose to keep on at this point with introducing records about which Mr. Johnson has no knowledge?

Mr. Dane—Yes. I propose to simply bring down to date the election of editors and of the business manager of the Publishing Society by The Christian Science Board of Directors.

The Master—And have those records identified by Mr. Dittmore, or whoever may have been the clerk at the time being?

Mr. Dane—Yes, sir. I have a list of references to the volume and page where these elections have occurred, but it is possible that the counsel could agree.

Mr. Whipple—I offered to some time ago, if we could also agree on what notices were sent to us, and I could have saved you a lot of trouble and you would me.

The Master—Have you got through with Mr. Johnson as a witness? Are you sure that you have got through with Mr. Johnson as a witness—I will put it that way? Won't you need him for the purpose of showing what you have told us you propose to show about the notice to the trustees of these successive elections down to 1909?

Mr. Dane—It may be that he has not yet identified those particular meetings, although I think that he has by a general identification of the meetings of the directors yesterday; but it is barely possible that there are meetings in that connection which I desire to have him identify, and that is why I would like to reserve the right to recall him.

The Master—Before you finish with him wouldn't it be better to get what he knows about the notice to the trustees as Mr. Whipple suggests?

Mr. Dane—I will take Your Honor's suggestion as to that.

The Master—Wouldn't it be easier to find, if you had it all under his testimony?

Mr. Whipple—I suggest, if Your Honor please, to facilitate matters, that the original of these notices would be naturally in the hands of the Board of Trustees, and we have such notices as were sent and upon request we will produce them, or copies, for the use of counsel, to save the waste of time that will otherwise be likely in looking through all their papers.

The Master—Why don't you put those in, Mr. Dane? That won't cut you off from putting in anything else, if you have got it. That certainly would tend to save time, it seems to me.

Mr. Dane—Mr. Whipple, have you a notice of June 21, 1902?

Mr. Whipple—Not the original, but I have a copy of it, which I understand is from your records.

Mr. Dane—I understood you to say that the trustees had these notices.

Mr. Whipple—I said either that or copies, and I have copies. I hand you a copy that I have for June 21, 1902.

Mr. Dane—Have you the original—you have not the original?

Mr. Whipple—Not the original at this moment, and I do not mean to

say that I actually have the original. I mean to say that I haven't it here. If you are not going to use my copy, let me have it.

Mr. Dane—Do I understand, Mr. Whipple, you will later produce the original?

Mr. Whipple—I cannot undertake to. You have a letter press copy, haven't you?

Mr. Dane—Yes, I have a letter press copy. I would like to have the original.

Mr. Whipple—Well, I am conceding a good deal when I tell you that I will let you put in your copy, because otherwise you would have to prove that it was delivered to the trustees, wouldn't you? I am waiving that, hoping that we will speed up things a little.

Q. Mr. Johnson, will you look at this—

Mr. Bates—If we get the notice we are sure it was delivered.

Mr. Whipple—You need not trouble to ask Mr. Johnson, unless you want to, about the signature to the letter press copy of June 21, 1902.

Mr. Streeter—Why don't we take the copies, and if they don't compare with your copies you can correct it? Wouldn't that save a lot of time?

Mr. Dane—If Your Honor please, ordinarily it would be perfectly satisfactory to put in the copy, all being agreed to that course, but I think it may be important to have the originals produced to show what disposition the originals of those letters indicated was made of them upon their receipt by the Board of Trustees. In other words, the receipt of that letter, with whatever notations may be on it, may be important on this issue. That of course would not appear from the typewritten copy, which is now produced by Mr. Whipple, and if it is possible to produce the originals I desire to have them produced or to have the failure to produce them some way accounted for.

Mr. Whipple—The failure to produce them would be accounted for by the fact that we did not have them.

Mr. Dane—Well, that is your statement about it.

Mr. Whipple—Well, I am not going to give you any other statement. You are asking me as counsel to produce them, and you must take my word in regard to it.

The Master—I understand, Mr. Whipple, you agree to produce them if you have got them.

Mr. Whipple—Yes, Your Honor; otherwise not.

Mr. Dane—I understand also he now says he has not got the originals; I want to be sure that the originals are not now in the possession of the trustees.

Mr. Whipple—That I cannot tell you about; I can only tell you that we do not find the originals here, of the June 21, 1902.

Mr. Dane—Then I think I will proceed with the witness.

Mr. Whipple—All right; go ahead.

Mr. Strawn—That will take longer. Anything that takes time, why do it.

The Master—It seems to be 1 o'clock.

Mr. Whipple—Can't we get this letter in first?

The Master—Certainly. I didn't know but if we stopped here we might contrive some way of shortening this before 2 o'clock.

Mr. Whipple—I beg of Your Honor, let us get one letter in.

The Master—Go on; put that one in.

Q. I call your attention, Mr. Johnson, to a letter appearing on page 294, in the volume of The Christian Science Board of Directors, a letter press copy book, and ask you whose signature appears on the letter dated June 21, 1902? A. William B. Johnson's.

Mr. Dane—I call Your Honor's attention to the fact that it was in 1902 that the by-law became effective giving The Christian Science Board of Directors the authority to elect editors.

The Master—Well, we have had the by-law to which you refer. Now, go on. Are you going to put in that letter? Suppose you read it and then we will stop.

Mr. Whipple—Page 294, it is.

Mr. Dane—Page 294, June 21, 1902.

[Letter, directors to trustees, June 21, 1902, from directors' letter press copy book, page 294, is offered in evidence as Exhibit 180, and is read by Mr. Dane, as follows:]

"To the Trustees of The Christian Science Publishing Society,  
"95 Falmouth Street, Boston, Mass.

"Brethren: You are hereby notified that: Mr. Archibald McLellan has been elected editor-in-chief of The Christian Science Journal and the Christian Science Sentinel. Mr. John B. Willis, second editor, and Miss Mary E. Speakman, assistant editor.

"Fraternally yours,

"Christian Science Board of Directors,  
"William B. Johnson, Secretary."

[Recess to 2:30 p. m.]

#### AFTERNOON SESSION

The Master—Shall we wait for Mr. Whipple?

Mr. Strawn—No; go right ahead.

The Master—Go on, Mr. Dane.

Q. Mr. Johnson, I show you a letter on page 147 of the letter-press copying book of the Board of Directors No. 10, and ask you if that bears the signature of your father, William B. Johnson? A. It does.

Q. I show you a letter-press copy of a letter dated Jan. 8, 1908, and ask you if that is William B. Johnson's signature? A. It is.

Mr. Thompson—What was the date of the first one?

Mr. Dane—The first one was dated July 5, 1903, and it is as follows:

"To the Board of Trustees of The Christian Science Publishing Society:—

"Mr. Thomas W. Hatten, secretary:  
"Dear Brethren,

"I beg to notify you that Mrs. Annie M. Knott, C. S. D., has been elected assistant editor of The Christian Science Journal, and Sentinel, by the approval of the Pastor Emeritus and the unanimous vote of the Christian Science Board of Directors.

"Yours in the bonds of Christ,  
"The Christian Science Board of Directors,

(Signed) "WILLIAM B. JOHNSON,  
"Secretary."

[The letter-press copy of which the foregoing is a copy is Exhibit 181. R. H. J.]

I offer the one dated Jan. 8, 1908:  
"The Christian Science Publishing Soc'y,  
"250 Huntington Avenue  
"Boston, Mass.

"Dear Brethren:

"I hereby inform you that upon the approval of your beloved Leader, the Rev. Mary Baker Eddy, and by the unanimous vote of the Christian Science Board of Directors, Mr. David B. Ogden, C. S. B. of Portland, Oregon, has been elected Manager of The Christian Science Publishing Society.

"Fraternally yours,  
(Signed) "WILLIAM B. JOHNSON,  
"Secretary."

[The copy of letter of which the foregoing is a copy is Exhibit 182. R. H. J.]

The Master—What year was that?

Mr. Dane—Jan. 8, 1908.

I offer in this connection a letter dated Dec. 29, 1907, addressed to The Christian Science Board of Directors, signed by the Board of Trustees of The Christian Science Publishing Society, per T. W. Hatten, Secy., which I show counsel (passing a paper to Mr. Strawn).

Mr. Strawn—That is all subject to our general objection as to its materiality.

Mr. Dane—

"Dec. 29th, 1907.

"To The Christian Science Board of Directors,

"Brethren,

"We find that on the first of January we shall be deprived of the active services of Mr. Stewart, who has been one of the two superintendents taking charge of the business of the publishing society. The former business manager was so preoccupied with other duties that this arrangement of appointing superintendents was made necessary. The situation therefore presented to the trustees, who are responsible for the conducting of the business, is one of immediate need, which under the By-Laws can only be supplied by the Board of Directors who elect the business manager. If there is any way in which the Board of Trustees may indicate to you the needs of the business, or confer with you as to supplying the need, the mem-

bers are ready to give any service desired.

"With fraternal regard,

"Yours respectfully,  
"The Board of Trustees of The Christian Science Publishing Society,  
"Per T. W. Hatten, Secy."

[The letter of which the foregoing is a copy is marked Exhibit 183. R. H. J.] I offer a letter dated June 8, 1914, the identification of which has been conceded by counsel.

Mr. Thompson—Well, the identification was by Mr. Dittmore.

Mr. Strawn—By Mr. Dittmore and acceded to by Mr. Whipple.

The Master—Isn't that going rather out of order? Were we not going to put these notices in so far as they related to the elections up to 1909?

Mr. Dane—I had originally planned to put in the elections from 1902 to 1913, but it is suggested that I—

The Master—True, but you need this witness only for those up to 1909.

Mr. Dane—That is all.

The Master—Now, my understanding was that you were going to prove what notice of those elections up to 1909 was given to the board.

Mr. Dane—That has been done.

The Master—You have got every one of them, have you, now?

Mr. Dane—Up to 1909.

Mr. Whipple—That is, in point of fact, there are only two of them?

Mr. Dane—Up to 1909, yes, two of these written communications.

The Master—I thought that you had put in one for 1902—

Mr. Dane—1903.

The Master—One for 1903, and one for 1907, and one for 1908?

Mr. Dane—That is correct.

Mr. Whipple—But 1903 was only the notice as to Mrs. Knott's election, not as to all the officers.

Mr. Dane—The notice for 1902 was as to the election of all of the editors.

Mr. Whipple—But not of any business manager.

Mr. Dane—No.

Mr. Whipple—Yes.

Mr. Dane—The notice for 1903 was a notification of the election of Mrs. Knott as an assistant editor.

Mr. Whipple—Yes, and not as to any other election, nor as to a business manager.

The Master—Not as to any other.

Mr. Dane—No. And a notice of 1908 was as to the election of a business manager.

Mr. Whipple—And not as to any editors?

Mr. Dane—Not as to any editors. Now, those notices occurred whenever there was any change in the personnel elected.

The Master—Now you have got one more, 1907?

Mr. Whipple—No; that is not a notice, if Your Honor please.

The Master—Not a notice?

Mr. Whipple—No.

The Master—Nor is there any notice for 1904, 1905, or 1906?

Mr. Dane—No written notification.

Mr. Whipple—Nor 1907.

Mr. Dane—Nor 1907. That is correct. The notices evidently were sent when there was a change made in the personnel.

The Master—I see.

Mr. Whipple—I do not think that we can agree to that. I think that there may be some other guide—

The Master—Very well. We will not understand that you do agree to it.

Mr. Whipple—I would like it understood that we entirely disagree with that.

The Master—Now, do I understand that the examination of this witness is complete so far as the papers that you wish to identify by him go?

Mr. Dane—I think it is, Your Honor, reserving the privilege, if I may, if I discover something, of putting him on subsequently.

The Master—Very well. Now, then, the next thing in the natural course of events would be for the other side to cross-examine him.

Mr. Dane—That is satisfactory, if they desire to do so.

The Master—I only suggest that if any other course is preferred, I am perfectly willing to adopt it.

Mr. Thompson—I want to ask him one or two questions.

#### Cross-Examination

Q. [By Mr. Thompson] You have mentioned the name of a Mr. Armstrong several times in your testimony. What is his full name? A. Joseph Armstrong.

Q. And he was connected with the Church in various capacities for a long time, was he not? A. Yes, he was.

Q. Is he living now? A. He is not.

Q. When did he pass on? A. In about 1907, I think.

Q. You were connected with the Church for how many years as assistant clerk, or in any other official capacity? A. Very nearly 11 years.

Q. During that time did you ever know of any vacancy having been declared in the Board of Trustees by the Board of Directors, or anybody else, or Mrs. Eddy, or the removal of a trustee by Mrs. Eddy, or by any other official body? I don't ask you the name. Simply Yes or No. Did you ever know of such a case? A. I don't recollect any, Mr. Thompson.

Q. Did you ever know during that period of the removal of a director by the board itself, or by Mrs. Eddy? A. I knew of a resignation asked by Mrs. Eddy.

Q. You knew of a resignation asked by Mrs. Eddy? A. Yes.

Q. How many such cases? A. Three.

Q. I asked you rather of a removal. Did you ever know of a vote removing a director? A. Removing a director? Q. Yes. A. No.

Q. And you never knew of anybody's being asked to resign from the Board of Trustees of the Publishing

Society? I wish you would think a minute. A. My memory doesn't serve me on that.

Q. I beg your pardon? A. My memory does not serve me on that.

Q. You have no recollection at all about it? A. I haven't any recollection at present.

Q. You speak as if you might have had one in the past. A. I might have. I would be glad to give it to you if I could.

Q. Can you recall that past recollection? A. Well, I could, perhaps, if I went over the names of the trustees.

Q. You think that there has been an occasion in the past of one of the trustees being asked to resign, or being removed? A. I think there has been, but I—

Q. Now your memory is improving as we go on, isn't it? A. I don't know.

Q. Won't you give it a little jog further, and see if it won't help you more? Can't you recall the name of somebody who was asked to resign from the Board of Trustees in the past? Remember that this is an occasion of some importance, and that you are under oath. A. I realize it fully.

Q. That you are under oath and that personal matters have no weight here. A. Not a particle.

Q. Now, I ask you, with that suggestion, if you will not try to refresh your memory by looking into it carefully and searching for the name of the person that probably will come to you now who was asked to resign from the Board of Trustees? A. I think Mr. Bates.

Q. Anybody else? Not the Governor? He has not been asked to resign yet. The Governor would like Mr. Bates' full name so as to disassociate him. A. Edward P. Bates is the name, I think.

Q. That is not the name that I had in mind. I will ask you to search your memory still further, and perhaps you might assist your memory by associating it with the name of Mr. Armstrong—not that he was asked to resign, but that his name might assist your mnemonic process.

Mr. Whipple—What process?

Mr. Streeter—Mnemonic.

Mr. Whipple—I don't know what that means!

A. I can't do it.

Q. You can't do it. I won't press you. A. I think that I could do it if I could remember all the names of the trustees during that period, but I don't remember the names of all of the trustees.

Mr. Thompson—I am urged not to press you further, and I won't.

The Master—Anything further in the way of cross-examination? That appears to be all, then.

Mr. Dane—Mr. Dittmore, having identified the letter of June 8, 1914, addressed by The Christian Science Board of Directors to the Board of Trustees, I will now offer and read it.

“June 8, 1914.

“Board of Trustees,

“The Christian Science Publishing Society,

“Boston, Massachusetts.

“Dear Friends:

“At the regular business meeting of the Christian Science Board of Directors held this morning, the following officers were elected: Manager of The Christian Science Publishing Society, David B. Ogden; Editor Christian Science Journal, Sentinel and Der Herold, Archibald McLellan; Associate Editor, Journal and Sentinel, John B. Willis; Associate Editor, Journal and Sentinel, Mrs. Annie M. Knott; Assistant Editor, Der Herold, Theodore Stanger; Editor, The Monitor, Frederick Dixon.

“Very sincerely,

“The Christian Science Board of Directors.

“By JOHN V. DITTEMORE,  
JVD-T “Secretary.”

Mr. Whipple—Mr. Dane, some of those at least had been serving before, hadn't they?

Mr. Dane—I expect so.

Mr. Whipple—But you said the rule was only to notify them of the election of some new person.

Mr. Dane—I think you will find there was a change in at least one of the officers. That was 1914.

Mr. Whipple—So there was a change of only one officer in one of the years before. And they notified them of only one officer—as you have said, but they didn't notify them where there hadn't been a change.

Mr. Dane—No, they didn't adopt any uniform rule.

Mr. Whipple—Well, I should judge not. That is what we claim, that they didn't.

[The letter dated June 8, 1914, from The Christian Science Board of Directors to the Board of Trustees, is offered in evidence as Exhibit 184.]

Mr. Dane—I now offer from minutes of the regular meetings of The Christian Science Board of Directors of 1910, in continuation of the evidence showing the election of editors and business manager by the Board of Directors—

Mr. Whipple—If you will pardon me: are there any more notices of elections?

Mr. Dane—None up to this period; none up to 1910. And I offer from the record of the meeting of May 30, 1910, that part which I read into the record, on page 38 of the directors' records:

“Regular annual meeting of the Board of Directors, eight a. m., May 30, 1910. All members present.

“The following officers having been approved by the Pastor Emeritus were unanimously elected for the ensuing year.

“Manager The Christian Science Publishing Society, David B. Ogden; editor-in-chief, Archibald McLellan; assistant editor, John B. Willis; as-

assistant editor, Mrs. Annie M. Knott; assistant editor 'Der Herold,' Theodore Stanger; managing editor The Monitor, Alexander Dodds."

Mr. Whipple—Isn't that a new one, Alexander Dodds?

Mr. Dane—I don't remember. I don't recall that name.

Mr. Whipple—I think you will find that it is a new one.

[That portion of the meeting of the Board of Directors, dated May 30, 1910, appearing on page 38 of the directors' records, which was read by Mr. Dane, is offered in evidence as Exhibit 185.]

Mr. Dane—I offer from the minutes of the directors for 1911, page 31, that part of the meeting which I read into the record (reading):

"May 29, 1911. Meeting of the Christian Science Board of Directors—all members present—being 'The Annual Meeting of the Christian Science Board of Directors, for electing officers and other business,' as provided for in Section 2, Article XIII of the By-Laws of The Mother Church.

"It was voted to proceed to the election of officers.

"The following officers were elected by individual vote to serve during the coming year, viz.: Manager of The Christian Science Publishing Society, David B. Ogden; editor-in-chief, Archibald McLellan; assistant editor, John B. Willis; assistant editor, Mrs. Annie M. Knott; assistant editor 'Der Herold,' Theodore Stanger; managing editor 'The Monitor,' Alexander Dodds."

[That portion of the records of the meeting of the Board of Directors, dated May 29, 1911, appearing on page 31 of the directors' records for 1911, which was read by Mr. Dane is offered in evidence as Exhibit 186.]

Mr. Dane—I offer from the records of the meetings of the Board of Directors for 1912, that part of the record of the meeting of June 3, 1912, appearing on page 26 which I read into the record.

"Meeting of the Christian Science Board of Directors—all members present—being 'The Annual Meeting of the Christian Science Board of Directors, for electing officers and other business,' as provided for in Section 2, Article XIII, of the By-Laws of The Mother Church.

"Voted to proceed with the election of officers.

"The following officers were elected by individual vote to serve during the coming year, viz.: Manager of The Christian Science Publishing Society, David B. Ogden; Editor-in-Chief, Archibald McLellan; Associate Editor, John B. Willis; Associate Editor, Mrs. Annie M. Knott; Associate Editor Der Herold, Theodore Stanger; Managing Editor The Monitor, Alexander Dodds."

[That portion of the records of the meeting of the Board of Directors dated June 3, 1912, appearing on page 26 of the directors' records for 1912,

which was read by Mr. Dane, is offered in evidence as Exhibit 187.]

Mr. Whipple—If you will pardon me—was there any election of the editor of The Monitor?

Mr. Streeter—Dodds is editor of The Monitor.

Mr. Whipple—No. He was managing editor.

Mr. Dane—The managing editor of The Monitor is Mr. Alexander Dodds.

Mr. Whipple—But Mr. Dixon is not mentioned that year or the year before.

Mr. Dane—No. Mr. McLellan is elected editor in chief of the periodicals.

Mr. Whipple—Well, that is of the periodicals, not The Monitor.

Mr. Dane—I am advised that Mr. Dixon was not here at that time.

From the minutes of the meetings of the Board of Directors of 1913, page 35, I offer that part of the record of the meeting of June 2, 1913, which I read:

"Meeting of the Christian Science Board of Directors, being 'The Annual Meeting of The Christian Science Board of Directors, for electing officers and other business,' as provided for in Section 2, Article XIII of the By-Laws of The Mother Church. All members present.

"Minutes of the regular meetings of May 28 and 30, and the special meeting of May 29, read and approved.

"The following officers were elected for the ensuing year:

Manager of The Christian Science Publishing Society, David B. Ogden.

Editor in chief, Archibald McLellan.

Associate editor, John B. Willis.

Associate editor, Mrs. Annie M. Knott.

Associate editor Der Herold, Theodore Stanger.

Managing editor of The Monitor, Alexander Dodds."

[That portion of the records of the meeting of Board of Directors dated June 2, 1913, appearing on page 35 of the directors' records for 1913, which was read by Mr. Dane, is offered in evidence as Exhibit 188.]

Mr. Dane—From the record of the directors for June 8, 1914, page 51, I offer that part of the minutes which I read.

The Master—Is this 1914?

Mr. Dane—Yes.

The Master—I thought you already had in one for 1914.

Mr. Dane—That was a letter of notification, I think, that I put in for that year. (Reading):

"The Annual Meeting of the Christian Science Board of Directors, for electing officers and other business, as provided for by Section 2 of Article XIII of the By-Laws of The Mother Church, at 9:30 a. m. All members present.

"Upon motion of Mr. Stewart, seconded by Mr. Dittmore, the following officers were unanimously elected for the ensuing year: . . . Manager of Christian Science Publishing Society, David B. Ogden; Editor, Journal, Sen-

tinel, Der Herold; Archibald McLellan; Associate Editor, Journal, Sentinel, and Der Herold, John B. Willis; Associate Editor, Journal, Sentinel, and Der Herold, Mrs. Annie M. Knott; Assistant Editor, Der Herold, Theodore Stanger; Editor, The Monitor, Frederick Dixon."

[That portion of the record of the meeting of directors dated June 8, 1914, appearing on page 51 of directors' records for 1914, which was read by Mr. Dane, is offered in evidence as Exhibit 189.]

Mr. Dane—That year, if Your Honor please, notice was sent, dated June 8, 1914, to the trustees, notifying them of the election of those officers, which has been—

The Master—Which you have read?

Mr. Dane—Yes—there being a change in the personnel of the editors.

Mr. Whipple—Then is it true that no notice had been sent since 1908?

Mr. Dane—Mr. Dittmore says, I understand, that notice was sent each year.

Mr. Thompson—Just a minute.

Mr. Dane—But so far as my minutes go—

The Master—You will have to leave that until he testifies, won't you?

Mr. Dane—So far as my minutes indicate there was no written notice sent to the trustees of the election of editors or business manager between 1908 and 1914.

Mr. Thompson—You are perfectly at liberty to put Mr. Dittmore on the stand, if you like.

Mr. Bates—We don't want him yet.

Mr. Thompson—No, I shouldn't think you would.

Mr. Dane—I offer from the minutes of the directors' records for 1915, page 42, that part of the record which I now read, June 7th, 1915. (Reading):

"The annual meeting of the Christian Science Board of Directors, for electing officers and other business as provided for by Section 2 of Article XIII of the By-Laws of The Mother Church, at 9:30 a. m. Present: Messrs. McLellan, Stewart, Dittmore, Dickey, and Neal.

"Upon motion of Mr. Neal, seconded by Mr. Stewart, the following officers were unanimously elected for the ensuing year: . . . Manager of The Christian Science Publishing Society, David B. Ogden; Editor, Journal, Sentinel, and Der Herold, Archibald McLellan; Associate Editor, Journal, Sentinel, and Der Herold, John B. Willis; Associate Editor, Journal, Sentinel, and Der Herold, Mrs. Annie M. Knott; Assistant Editor, Der Herold, Theodore Stanger; Editor, The Monitor, Frederick Dixon."

[That portion of the records of meeting of directors dated June 7, 1915, appearing on page 42 of directors' records for 1915, which was read by Mr. Dane is offered in evidence as Exhibit 190.]

Mr. Dane—And from the records of

the minutes of the directors for 1916, that part which is on page 79, which I now read:

"June 5, 1916.

"The annual meeting of the Christian Science Board of Directors, for electing officers and other business as provided for by Section 2 of Article XIII of the By-Laws of The Mother Church, at 9:30 a. m. Present: Messrs. McLellan, Stewart, Dittmore, Dickey, and Neal.

"Upon motion of Mr. Stewart, seconded by Mr. Dickey, the following officers were unanimously elected for the ensuing year:

"Manager of The Christian Science Publishing Society, David B. Ogden; editor, Journal, Sentinel, Der Herold, Archibald McLellan; associate editor, Journal, Sentinel, and Der Herold, Mrs. Annie M. Knott; associate editor, Journal, Sentinel, and Der Herold, William D. McCrackan; assistant editor, Der Herold, Theodore Stanger; editor, The Monitor, Frederick Dixon."

[That portion of the record of meeting of directors, dated June 5, 1916, appearing on page 79 of the directors' records for 1916, which was read by Mr. Dane is offered in evidence as Exhibit 191.]

Mr. Whipple—There appears to have been a change that year. Do you find any note of any notice being sent, in your minutes?

Mr. Dane—Not for 1916.

Mr. Whipple—Yes, but there was a change.

Mr. Dane—No written notice.

Mr. Whipple—They apparently didn't follow your rule that year.

Mr. Dane—From the records of the meeting of the Board of Directors for 1917, I offer that part which I read, of a meeting of Monday, June 4, 1917:

"At the annual meeting of the Christian Science Board of Directors for electing officers and other business, as provided for by Section 2 of Article XIII of the By-Laws of The Mother Church, held at 9:30 a. m. on above date in the directors' room of The Mother Church, there were present Messrs. McLellan, Stewart, Dittmore, Dickey and Neal.

"On motion of Mr. Neal, seconded by Mr. Stewart, the following officers were unanimously elected for the ensuing year:

"Manager of The Christian Science Publishing Society, David B. Ogden.

"Editor, Journal, Sentinel, Der Herold, Archibald McLellan.

"Associate Editor, Journal, Sentinel and Der Herold, Mrs. Annie M. Knott.

"Associate Editor, Journal, Sentinel and Der Herold, William D. McCrackan.

"Assistant Editor, Der Herold, Theodore Stanger.

"Editor, The Monitor, Frederick Dixon."

[That portion of the record of meeting of directors, dated June 4, 1917,

appearing on page 222 of directors' records, from June 7, 1916, through June 4, 1917, which was read by Mr. Dane, is offered in evidence as Exhibit 192.]

Mr. Whipple—Isn't it a fact that although there was no change that year a notice was sent?

Mr. Dane—Have you the notice?

Mr. Whipple—No; we have a copy of it from your books.

Mr. Dane—Notice was sent of the election of 1917.

Mr. Whipple—I beg your pardon.

Mr. Dane—A notice was sent to the trustees.

Mr. Whipple—Although there was no change in 1917?

Mr. Dane. In 1917.

Mr. Whipple—Then your rule doesn't apply.

Mr. Bates—We haven't said anything about a rule.

Mr. Whipple—Your suggestion as to what had been their habit.

Mr. Dane—I offer now from the minutes of the directors of 1918 that which I now read from the meeting of Monday, June 3, 1918.

[Portion of directors' records, June 3, 1918, is offered in evidence as Exhibit 193, and read by Mr. Dane, as follows]:

"Monday, June 3, 1918.

"At the Annual Meeting of the Christian Science Board of Directors for electing officers and other business, as provided for by Section 2 of Article XIII of the By-Laws of The Mother Church, held at 9:30 a. m. on above date in the directors' room at The Mother Church, there were present Messrs. Stewart, Dittmore, Dickey, Neal, and Merritt.

"On motion of Mr. Neal, seconded by Mr. Dickey, the following officers were unanimously elected for the ensuing year. . . .

"Manager, The Christian Science Publishing Society, John R. Watts.

"Editor, Journal, Sentinel, Der Herold, and Le Hérait, William P. McKenzie.

"Associate Editor, Journal, Sentinel, Der Herold, and Le Hérait, Mrs. Annie M. Knott.

"Associate Editor, Journal, Sentinel, Der Herold, and Le Hérait, William P. McCrackan.

"Editor, The Christian Science Monitor, Frederick Dixon."

Mr. Dane—Have you the notice, Mr. Whipple, of the election of those editors and manager for 1918?

Mr. Whipple—Not the original, or not any original, but I understand you have a copy of the duplicate original, am I right?

Mr. Dane—Mr. Watts was elected, newly elected, as business manager.

Mr. Whipple—Well, that may be, but in point of fact he had been working as business manager since the previous August, 1917, and was receiving his pay, and it was by virtue of selection by the trustees that he had been doing it. The same is true about the editor, Mr. McKenzie.

Mr. Dane—I offer now a letter from the volume, "Mary Baker Eddy, Letters and Miscellany," Volume 9, page 135, document No. 993.

[Letter, Mrs. Eddy to Board of Directors, Aug. 8, 1908, is offered in evidence as Exhibit 194, and is read by Mr. Dane, as follows]:

"384 Beacon Street,  
"Chestnut Hill, Mass.,  
"Aug. 8, 1908."

Mr. Whipple—Has this signature been identified?

Mr. Dane—No, it has not.

Mr. Whipple—Will you let us look at it over here, please? (Examining letter.) We have no objection, except the general one, to that.

"384 Beacon Street,  
"Chestnut Hill, Mass.,  
"Aug. 8, 1908.

"Board of Directors, of The Mother Church, Boston, Mass.

"Beloved Brethren:—Please vote on the following amendment to Article I, Section 1, of The Mother Church Manual.

"Article I.

"Names. Section 1. The church officers shall consist of a Pastor Emeritus, a Board of Directors, a president, a clerk, a treasurer and two readers.

"MARY B. G. EDDY."

Mr. Thompson—What is the date of that?

Mr. Dane—Aug. 8, 1908.

Mr. Whipple—Will you show that to His Honor?

Mr. Dane—I will show this to Your Honor. In that connection I offer from the Church By-Laws, Volume 2, page 38, a part of the records of a meeting of the directors, held on Sept. 4, 1908, which I read:

[Portion of directors' records, Church By-Laws, Volume 2, page 38, for Sept. 4, 1908, is offered in evidence as Exhibit 195, and read by Mr. Dane, as follows]:

"Friday, Sept. 4, 1908.

"A meeting of the directors held this a. m. the following Church By-law and amendment were adopted on separate motions and by unanimous vote. . . .

"Amendment to Article I, Section 1, page 25, of the seventy-third edition of the Manual.

"Names. Section 1. The Church officers shall consist of the Pastor Emeritus, a Board of Directors, a president, a clerk, a treasurer, and two readers.

"WILLIAM B. JOHNSON, Clerk."

The Master—How was it you didn't put that in before, Mr. Dane?

Mr. Dane—Why, I—

The Master—Overlooked it?

Mr. Dane—I overlooked it, yes, sir. I think it is very important, has an important bearing. I overlooked it.

The Master—It had a natural place in your series, didn't it?

Mr. Dane—It did.

The Master—Before the letter of Aug. 8, 1908?



Mr. Dane—Exactly; and it is an omission on my part.

Mr. Whipple—Is it true that after that directors were elected as officers of the Church each year?

Mr. Dane—I understand that the directors are not elected.

Mr. Whipple—As officers of the Church?

Mr. Dane—I understand they are not elected.

Mr. Whipple—Well, they are there made Church officers.

Mr. Bates—That does not necessitate an election.

Mr. Whipple—By a by-law which the directors themselves voted for, and never had been Church officers before.

Mr. Thompson—I would like to remind you to put in the by-law raising the number of directors from four to five, at your convenience. It is very important.

Mr. Dane—If Your Honor please, I also omitted to put in the record of a meeting of July 6, 1908, which properly came in connection with the letters with relation to disbanding the Executive Members. I now offer it from Church By-Laws, Volume 1, page 62.

Mr. Whipple—Haven't you put that in once?

Mr. Dane—I think not.

Mr. Whipple—I think you have. It may not be the same letter.

[Portion of directors' records, Church By-Laws, Volume 1, page 62, July 6, 1908, offered in evidence as Exhibit 196, and read by Mr. Dane, as follows:]

"Monday, July 6, 1908.

"At a meeting of the directors held this day, the following By-Laws were adopted on separate motions and by unanimous votes. . . .

"No Executive Members.

"Art. V of the Church By-Laws creating Executive Members is hereby repealed. There being no further necessity for their organization, the Executive Members shall be and are hereby disbanded."

Mr. Whipple—Are you sure that has not been put in?

Mr. Dane—I am sure it has not been put in as a resolution of the Board of Directors.

The Master—A letter from Mrs. Eddy was put in under date of July 1, 1908, which, as I understood it, directed that same repeal.

Mr. Bates—This is the response to it.

Mr. Dane—This is the action in response to the letter. I should have put it in in that connection. I should like to call attention at this time to the fact that this meeting of July 6, 1908, while it appears in the regular course in the book, is not signed by William B. Johnson. The designation "Clerk" appears, but evidently through oversight the meeting was not signed.

Mr. Whipple—Let us see that.

Mr. Dane—Yes, sir.

Mr. Whipple—That is interesting.

(Examining book.) That is a meeting of July 8?

Mr. Dane—July 6.

The Master—July 6, 1908.

Mr. Whipple—Can't you tell us or find out whose handwriting this is—whose handwriting the alleged record is made up?

Mr. Dane—I think we perhaps can do that.

Mr. Whipple—And if that person is not deceased perhaps we can get some light on it.

Lucia C. Warren, Sworn

Q. (By Mr. Dane.) Will you state your full name, please, Miss Warren?  
A. Lucia C. Warren.

Q. Are you officially connected with The First Church of Christ, Scientist, in Boston? A. I am.

Q. In what capacity? A. Assistant to the corresponding secretary of The Christian Science Board of Directors.

Mr. Thompson—Will you speak a little louder, please? It is very hard to hear.

Q. Will you speak a little louder?  
A. Assistant to the corresponding secretary of The Christian Science Board of Directors.

Q. How long have you been employed in the secretary's office of The Christian Science Board of Directors?  
A. In the corresponding secretary's office, since June, 1909. In the office of the secretary of the Board of Directors, since April 15, 1907.

Q. I show you a volume, Church By-Laws, Volume 1, and call your attention to the record of a meeting on page 62, under date of Monday, July 6, 1908, and ask you if you know the handwriting? A. I do.

Q. Who wrote it? A. Miss Sarah Rutter.

Q. And who was Miss Sarah Rutter? A. Miss Sarah Rutter was an assistant or stenographer in the clerk's office, and also in the office of the secretary of The Christian Science Board of Directors.

Q. Whether or not the minutes in this book, both preceding and following the record of July 6, 1908, are in her handwriting? A. They are.

Q. Do you know where Miss Rutter is now, Miss Warren? A. She resides at Dover, New Hampshire.

Mr. Dane—That is all; you may cross-examine.

Cross-Examination

Q. (By Mr. Whipple) Miss Warren, do you know how Miss Rutter got the information which she incorporated, or attempted to incorporate, into what is written in that book which has just been referred to? A. I do.

Q. How? A. She copied the records which were kept by William B. Johnson.

Q. Well, where are those records?  
A. Those records were not retained. After they were copied and verified in the book they were not kept for a period.

Q. That is, she was not at the meetings? A. She was not at the meetings.

Q. And some memoranda that Mr. Johnson had she copied, or did he tell her what to write? A. He, as a general rule, wrote it all out himself in final form and had it approved by the board; then she copied it into the record books, after it had been approved by the directors.

Q. Well, that seems extraordinary, that if he was going to write it out he wouldn't write it out in the book himself; but you say that what he did was to write out the whole record in his own handwriting? A. As a rule.

Q. And have it approved by the board? Is that it? A. I believe so.

Q. Then have her copy it into the books, and then destroy what he himself had written in his own handwriting? A. After a time.

Q. You hadn't told us "after a time." After how much time? A. I said "for a period."

Q. After how much time? A. Well, I couldn't say definitely.

Q. I beg pardon? A. I couldn't say definitely.

Q. Where did he keep those accounts which he wrote out completely in his own handwriting? A. He kept them in a manilla envelope in his safe.

Q. Where are those manilla envelopes in the safe? Let's get right down to this particular time, for instance. What were you at this date, in 1908? A. I was a stenographer in the clerk's office and in the office of the secretary of the Christian Science—

Q. Where were the meetings being held? A. In the directors' room in The Mother Church.

Q. Were you in there when they were being held? A. I was not.

Q. How far were they from your office? A. About the third room—second or third room.

Q. And Miss Rutter was not in there, either? A. She was not.

Q. Then take it, with reference, for instance, to this account of the meeting alleged to have been held on July 6, 1908—what was the first that you saw of that record? A. I have no definite memory of any certain record.

Q. Yes. Tell us what you saw with regard to any records, how soon you saw the completed draft? A. Well, the time might vary.

Q. Well, you have told us about a habit that this clerk had of writing out the entire account of the meeting, the entire record, in his own handwriting. Is that correct? A. Sometimes; as a general rule.

Q. As a general rule he did? A. He might not write out every word in full.

Q. Well, now, how do you know he did that? A. Well, he had a system of briefing words—

Q. Well, did you see him? A. I 'did.

Q. You saw him writing it out?

A. I don't say I saw him writing the original records, but I know—

Q. Well, now, tell us what you did see, then. A. You asked me if I had seen him writing these words in brief form, as I understand it?

Q. No. You have told us about a complete record which he gave to Miss Rutter to copy. Did you see him making those complete records? A. I may have. I don't say they were—

Q. Well, pardon me. You may have, and you may not have. Did you? A. I don't know that I could remember definitely having seen him write one complete record.

Q. Did you see him writing on a complete record? A. I don't know that I could say that; as I said before, he had a way of briefing the words.

Q. Pardon me. I am now just trying to get at what you saw him doing. When you saw him writing on these complete records where was he? A. Why, when he signed his books.

Q. Pardon me? A. When he signed his books.

Q. Well, now, I am not talking about the records in the book, which were not in his handwriting. I am talking about those which you say he put away in a manilla envelope. Where did you see him writing on those? A. In his office.

Q. Not in the directors' room? A. Not in the directors' room, no.

Q. Well, now, what was he writing that record from? A. From notes, or from memory, or from letters.

Q. Well, which was it? A. From all.

Q. Notes and memory, and what? A. Correspondence, or data, which may have been considered in the meeting.

Q. What do you mean by "data"? A. Memorandums.

Q. Whose memorandums? A. Anyone's who happened to have a subject to take up.

Q. In the meeting? A. Yes.

Q. Yes. And you saw him writing from his own notes, among other things? A. That would be his basis for writing them.

Q. Therefore in the ordinary course of making up his records he would have his notes which he made at the directors' meeting, wouldn't he? A. I should say so.

Q. And then a completed record of that meeting which he had himself written out from his notes and other data—is that right? A. That was his method of preparing them.

Q. And those were all destroyed? A. I think that they have all been destroyed unless—

Q. I beg pardon? A. I think possibly, unless a few which remained in the office when his term as clerk ended. It is possible that they are still in the—

Q. How often did this destruction take place? A. Why, right along. After the minutes were copied they were—

Q. But you have said that as the minutes were copied they were put into a manilla envelope and put into the safe? A. The first draft.

Q. Yes. Well, now, when were they taken out of the safe for destruction? A. After they were—perhaps he would keep them for a few weeks or perhaps for a few months—I couldn't say definitely about that.

Q. Well, how frequently did this destructive process of taking these notes out of the safe, where they had been put, I take it, for safe keeping and destroying them— A. They were put in the safe for the purpose of keeping them safe until they had been copied into the minute book and signed.

Q. Oh. Then how long was it before they were put into the minute book? A. The time varied.

Q. Months, would it be, before they were put in? A. No, not months. I should say perhaps weeks sometimes.

Q. I beg pardon? A. Perhaps weeks, sometimes.

Q. And then they were put into the safe for safekeeping until they should be copied into the minute book—is that it? A. Yes.

Q. Where were the notes put which he took himself? A. They were usually attached to this draft when it was written out.

Q. Yes. And destroyed when the draft was destroyed? A. Yes.

Q. How soon were the drafts destroyed after they were copied? A. They might have been destroyed right away. I don't know.

Q. They might have been, and they might not have been? A. They might not have been. As I say, there may be a very few memorandums of that kind still in the Church edifice.

Q. In the safe? A. Not in the safe.

Q. Where? A. In a vault.

Q. A vault? A. Yes.

Q. Who has access to the vault? A. The corresponding secretary.

Q. And have those been kept during all this time? A. They may have. I am not positive about that.

Q. Well, when did you last know of their having been kept in there? A. I saw them at one time when we were cleaning our vault, and destroyed—

Q. Do you know what mercy saved those from destruction? A. They may have been destroyed then.

Q. And of course they may not have been. A. They may not have been.

Q. How long since you have looked upon that scene so that you can tell us whether those have been saved from the burning or not? A. It must be two years, I think.

Q. Two years. Then the destruction must have been comparatively recent? A. If they are destroyed.

Q. Well, do you know why they were kept as long as that? A. Because—

Q. Let us see. Mr. Johnson was clerk for the last time in 1909? A. He was.

Q. And you have seen them within

two years. Those were kept a long time. A. When Mr. Dittmore was elected clerk there were still a few uncopied records, and those were the ones to which I referred.

Q. A few uncopied records? A. A few of these original drafts that were not copied into these minute books.

Q. When was that? A. When Mr. Dittmore was elected clerk in 1909.

Q. Did Mr. Dittmore keep them in the safe, or in the vault, up to two years ago? A. They never were destroyed after Mr. Dittmore came until, possibly, as I say, two years ago.

Q. That is, after Mr. Dittmore came, this practice of destroying the records in the clerk's handwriting was discontinued? A. This practice of destroying Mr. Johnson's notes was discontinued.

Q. Apparently not, because those were kept, Mr. Johnson's notes that had escaped destruction, until about two years ago. Did you see anyone destroy them then? A. Well, I destroyed some things myself. Whether those were among them or not I do not know.

Q. Do you know what things you destroyed? A. No. We destroyed—

Q. Well, how did Mr. Johnson destroy his notes—fire, water, or tearing them up? A. I think he tore them up.

Q. Tore them up? A. Possibly. Then they were burned.

Q. You think so. What makes you think so? A. Because he did often do that.

Q. He often did what—tore things up? A. Tore things up.

Q. Then you think that having a habit of tearing things up, he may have torn up his records? A. Not his records, no.

The Master—Drafts.

Q. Well, those that were in his own handwriting. A. Not his records.

Q. I mean records of the meetings which were in his own handwriting, and which were merely copied by a clerk into a book. A. Memorandums that were of no further use he destroyed.

Q. I thought you said he wrote out usually the complete account of the meeting, and that a clerk only copied it. A. With this exception, that he had a system, not of shorthand, but of briefing words by their consonants, and he did that right in the directors' meetings' oftentimes.

Q. Yes. Then I understand that he took those notes and came out into his own room and wrote out an account of the meeting? A. Not always.

Q. Well, I understood you to say that it was his habit. A. As a general rule. I didn't intend to say that he wrote them out completely, but practically.

Q. Practically completely? A. Yes, sir.

Q. Well, then, when the clerk took them to copy, did the clerk have Mr. Johnson's assistance in supplementing them? A. Yes.

Q. Though he had to sit by her

when she copied them? A. Not always. We learned many of these designations. Q. But these designations, I understood, were in his original notes which he took in the room? A. Sometimes, sometimes not.

Q. But when he sat in his own room and made up the record he didn't use those? A. He did, yes.

Q. Oh, he used that system also? A. Sometimes he used that, yes.

Mr. Whipple—If you have any of those notes preserved, I would like to ask counsel to produce them, the real records, the ones that Mr. Johnson made himself in his own handwriting. Have you any?

Mr. Dane—I do not know that there are any such records.

Mr. Whipple—Will you look for them?

Mr. Dane—I will have a search made for them.

Mr. Whipple—If you will have a search made for them we should like to get them. Perhaps Mr. Jarvis would know.

Cross-Examination, by Mr. Thompson

Q. (By Mr. Thompson) — Miss Warren, I want to ask you one or two questions about Mr. Dittimore's methods of keeping the records when he was clerk. You were his assistant, were you not? A. Well, for part of the time.

Q. For a good part of the time, weren't you? A. Since September, 1914, I was his assistant.

Q. And you knew his method of keeping the records, did you not? A. Yes.

Q. The directors' records? A. Yes.

Q. He came to you with notes in his own handwriting of what occurred, did he not, as one step? A. He had notes taken in the board meetings.

Q. If you don't understand the question, please tell me so, and I will repeat it; otherwise, if you will be good enough to answer the exact question put, I shall be obliged to you. He used to come to you with or show you pieces of paper with his own writing on them, didn't he? A. Occasionally.

Q. Yes. And he had written down notes of what he had observed in the meeting, had he not—what had taken place? A. Somewhat.

Q. Yes. And then you would take those notes and make up a report of that meeting, would you? A. No.

Q. What did you do? A. Mr. Dittimore dictated his—

Q. He dictated to you? A. Yes.

Q. And then you wrote it out on the typewriter, on the typewriting machine? A. Yes.

Q. And showed it to him? A. Yes.

Q. And if he found any errors in it he would ask you to correct them, would he? A. I imagine so. I don't recall.

Q. And then those reports thus written up from his notes and dictated

by him were taken into the next meeting of the board and approved by the board, were they not? A. Generally at the next meeting.

Q. Do you know of a single instance, madam, when any report of a meeting made by Mr. Dittimore was not subsequently approved by the Board of Directors in open meeting? If so, please let us have that meeting; if not, please say so. A. I don't know that I can answer that question.

Q. Is your hesitation due to the fact that you honestly believe that there was ever a single meeting taken by Mr. Dittimore as clerk which was not afterward submitted, the report of it, to the full board, for approval,—publicly submitted to the board? Yes or no. Yes or no, please. A. No. That is, my hesitation is not due to that.

Q. You know of no such case, do you, where he failed to submit his report to the full board for approval or disapproval? A. I know of one record. I know of indications of a meeting concerning which there is no record.

Q. Yes. One meeting there was no record of. Let us have the date of that meeting as near as you can place it. A. I can't place it now.

Q. Do you know whether Mr. Dittimore was present at that meeting? A. I don't know.

Q. You don't know. Then you don't mean to intimate by giving us that statement that Mr. Dittimore had attended in his capacity as clerk or secretary a meeting and had taken no notes of that meeting, did you? A. I didn't make any intimation.

Q. You didn't mean to intimate that. Aside from that, that seemed to be an exception, but now turns out not to be, it is a fact, isn't it, that you can't think of a single meeting, in all the time that you assisted Mr. Dittimore, when the notes, the report prepared by you and approved by him, was not taken in by him and submitted to the Board of Directors for their approval or disapproval? You can't think of one, can you? A. Not of one in connection with which I had anything to do.

Q. No. That is all I am asking you, madam. Do you know what the practice has been since Mr. Dittimore ceased to be secretary? Do you know? I don't ask what it is, but I ask you—do you know what the practice is? A. I do.

Q. You have had something to do with the making up of reports of meetings since that time, haven't you? A. I have.

Q. You have assisted Mr. Jarvis? A. I have.

Q. It is a fact, isn't it, that there have been reports of meetings that have not been taken in for approval for as much as six months after the meeting occurred? A. I don't think so.

Q. Are you willing to swear that that is not true? A. I don't think so.

I would want to look at the records first.

Q. If such a thing as that were true, do you think you would know it? A. I certainly do.

Q. It is a fact, isn't it, that there have been reports of meetings that have been altered repeatedly, notes of which have been altered repeatedly before they were approved by the directors? That is true, isn't it? A. Not altered repeatedly.

Q. Altered once or twice. That is true, isn't it, madam? Haven't you known of cases where reports of those meetings were altered after they had been entered? A. After they had been entered?

Q. Yes. A. We don't enter them in the book until after they are approved.

Q. Have they all been approved since Mr. Jarvis has been there? A. Certainly.

Q. Every one of them? A. Every one of them.

Q. How long a period has elapsed—what is the longest period you have known? A. The longest period I remember is about a month.

Q. About a month? What is approved—the rough draft or the actual record? A. The draft.

Q. Then the record itself—you don't know of a single instance where the record itself as finally written up has been approved by the board since Mr. Jarvis took hold, do you? A. The draft is approved.

Q. Only the draft is approved. And you don't know what changes have occurred between the draft and the record as finally written up on several occasions, do you? A. I do.

Q. There have been such cases, haven't there—yes or no? There have been, haven't there? A. Yes.

Mr. Whipple—After approval by the board?

Mr. Thompson—Yes.

Mr. Whipple—And before they are entered in the book?

Mr. Thompson—Yes.

Q. Do you know anything about the meetings in 1909—any meetings in 1909? Do you know about some records in 1915 relating to an increase by the directors in their own salaries? A. I do.

Q. And you know for a fact, don't you, madam, that a considerable part of the records of that meeting has never appeared on the books of the directors? That is true, isn't it? A. I don't.

Mr. Thompson—I would like to see those records of that meeting if you have got them with you—in 1915, where they voted on their own salaries. I would like to see those records of that meeting where they adopted the increase in their own salaries. I would like to see the records for July and August, 1915.

[Records are produced and handed to the witness.]

Q. Now will you turn, madam, in this book, to the records of the meetings in July and August, 1915, relating

to the increase in salaries by the directors, voting themselves an increase?

Mr. Whipple—Mr. Thompson, I think she may have found it.

Q. Have you found those two records? A. I don't think the directors increased their salary in 1915.

Q. On the subject of doing it—the discussion on that subject.

Mr. Dane—I pray Your Honor's judgment as to this line of inquiry—to any records relating to any change in salaries in 1915. I am not able to see any materiality that it has in the case.

Mr. Thompson—Don't you think it has some materiality on both these cases to show that systematically since Mr. Dittmore ceased to control these records, these records have been altered to suit the purposes of these, the majority of the directors? Don't you think that has any materiality at all? Don't you believe if Christian Scientists know that fact they might—

Mr. Dane—I deny that that is the fact.

Mr. Thompson—Then let me prove it, if you deny it.

Mr. Dane—Until it is shown that it is the fact, the records, in 1915, in relation to salaries of the Board of Directors, I submit, has no bearing on the issues in this case.

Mr. Thompson—Do you think the fact that you deny the truth of a statement I make justifies you in objecting to evidence from a sworn witness to prove the truth of what I am saying? It is a singular rule of testimony, one that I am not surprised that you invoke under these circumstances, but it is novel to me.

The Master—This is cross-examination, of course. Why is it not proper cross-examination?

Mr. Dane—I don't believe it is proper cross-examination because I don't believe it is material to any issue. I don't understand that my brother can go beyond anything that is material to the issues raised by his bill in cross-examination—and he is seeking now to develop certain records in 1915, long before the matter of which his client complains in his bill arose.

The Master—You have offered the present witness as a witness on the general method, to some extent, of keeping the records, haven't you?

Mr. Dane—We only offered the witness as to the record relating to the meeting of 1908, to identify the handwriting, because that meeting did not contain the signature of the clerk at that time—Mr. Johnson.

Mr. Thompson—I greatly regret to make any unnecessary disturbance or trouble in this case, but it is a general issue in both these cases, fairly defined by the pleadings and underlying them anyway, the good faith of these clients of yours. Now this bears directly on that topic, and, disagreeable as it may be, so far as I can bring it out the truth is coming out in this case.

Mr. Bates—It is not at all disagreeable.

Mr. Thompson—If it is not disagreeable, then don't object to it.

Mr. Dane—It is not a question of being disagreeable.

The Master—I should certainly not exclude it altogether from the case. My only doubt is whether this is the proper time to go into it. It interrupts the line of evidence that we have been following and brings us up against a controversy that has not been fairly raised yet.

Mr. Thompson—I won't go far, Your Honor. I simply want to identify at this time, when the witness is likely to give me her plain and straight recollection about it, I want to get—

The Master—You may have those records you mentioned identified if the witness can identify them.

Mr. Thompson—That is what I want now.

The Master—Now will you kindly see.

The Witness—You said July and August?

Q. July and August, 1915—any discussions on the topic of raising their salaries? A. I see none whatever.

Q. Or September, either. Now it ought not to take very long to find those records.

Mr. Bates—You have gone through two months now. Here is the third one.

Mr. Thompson—I don't think your witness, if left alone, will occupy much time in finding it. I don't think it will take very long to go through these records. It is a very important matter.

Mr. Bates—You ought to have some knowledge of it. Mr. Dittmore was clerk.

Mr. Thompson—I have some knowledge about it.

Mr. Bates—I mean some correct knowledge.

The Master—Mr. Thompson, I thought they had been submitted for your examination.

Mr. Thompson—No, sir; I haven't seen them.

Mr. Bates—You have had the opportunity to.

Mr. Thompson—I haven't seen them.

The Master—I thought they had been submitted to your examination.

Mr. Thompson—I haven't seen these records at all, sir.

The Master—I will ask the witness to run through July, August, and September and see whether she can identify any records relating to the matters referred to by Mr. Thompson.

Mr. Thompson—There can only be two or three meetings in all those months, I should suppose—three or four.

The Witness—I see none in September.

Q. Do you see any in July or August? A. No.

Q. None in any of those three months? A. No.

Q. Do you find in any of the meetings that you have looked over, in July, August, and September, a reference in the records, or a record of a letter or letters of protest by Mr. Dittmore—yes or no? A. None whatever.

Q. Do you find, in any of those records you have looked over, a reference to or a copy of a letter by General Street—yes or no? A. None whatever.

Mr. Thompson—That is all, madam.

Mr. Bates—You refer to the one you have been publishing in the New York Herald?

Mr. Thompson—No.

Mr. Whipple—Now, can't we have that book marked and identified?

Mr. Thompson—I would like to have that book marked, yes.

Mr. Whipple—Because if such things as are alleged ought to be there are not there we ought to have the book clearly identified in some way.

Mr. Thompson—Yes, I would like to have that book marked so that it can't be—so that we will know it when we see it again.

Mr. Whipple—May we have the date of the first meeting and the date of the last meeting. Just have the book marked itself, giving the dates of the first and last meetings and the number of pages in the book.

Mr. Dane—Perhaps I can read it into the record.

Mr. Whipple—Very good—if you will.

Mr. Dane—The book referred to by the witness is a book of minutes of regular and special meetings of The Christian Science Board of Directors for 1915, beginning with Jan. 6, 1915, and ending with Dec. 29, 1915, the records being kept by J. V. Dittmore.

Mr. Whipple—How many pages are there? Are the pages numbered consecutively?

Mr. Dane—The book contains 136 pages.

Mr. Whipple—I notice you speak of it as a book. It seems to be a collection of records simply bound together temporarily—loose-leaf records.

Mr. Dane—Yes.

Mr. Bates—No, they are not loose-leaf.

Mr. Whipple—Aren't they loose-leaf?

Mr. Bates—They don't seem to be. At any rate, the pages are numbered consecutively.

Mr. Whipple—I am not using the term "loose-leaf" in the sense of whether the cord that binds them together is drawn up tightly or not. It is merely whether by loosening the cord pages may be taken out.

Mr. Dane—The pages in the book are numbered consecutively from 1 to 136.

Mr. Whipple—But it is kept on the loose-leaf system, not bound together the way your other records have been.

Mr. Dane—I suppose you would call

it a loose-leaf system. It may be marked for identification. [The volume referred to, being a volume of minutes of regular and special meetings of The Christian Science Board of Directors for 1915, beginning with Jan. 6, 1915, and ending with Dec. 29, 1915, containing 136 pages, is marked 197 for identification.]

#### Re-Direct Examination

Q. (By Mr. Dane) Miss Warren, Mr. Thompson has asked you something with regard to changes that have been made in the drafts of meetings before they were entered as the final record, and you started to say something in explanation of that. What did you wish to say? What changes have you personal knowledge of? A. Simply minor changes, of a misspelled name, a typographical error or something of that nature.

Mr. Thompson—I ask that that answer be stricken out. It is not for her to say what are minor changes. We will find that out when we see Mr. Dittmore's original records corresponding to these dates, which he has fortunately kept.

Mr. Dane—I insist that the answer was responsive and not an expression of opinion.

Mr. Thompson—I ask that it be struck out.

The Master—I hardly think it is necessary to strike it out.

Q. Do you know, Miss Warren, what the practice was of having a draft approved by the board before it became the final record of the meeting? A. Since Mr. Jarvis has been there?

Q. Yes. A. Yes.

Q. What was the practice? A. It is dictated and taken in to the directors for approval. When it is approved it is stamped "Read," and with the stamp "C. S. Board of Directors." It is then copied into a minute book exactly as it is, except for some typographical errors such as I have mentioned, a misspelled name or something of that nature.

Q. And during the whole time Mr. Jarvis has been there—

Mr. Streeter—Pardon me. Will the stenographer read that answer?

[The answer is read by the stenographer.]

Q. Now, Miss Warren, during the whole time Mr. Jarvis has been clerk do you know of a single instance where a change has been made between the draft and the final record, except those of a nature which you have stated?

Mr. Thompson—Pardon me. Ask her if she knows first. It is obvious she was not attending the meetings. She is simply giving you what she believes rather than what she knows.

Mr. Dane—I asked if she knew of a single instance.

Q. Do you, Miss Warren? A. Perhaps I should enlarge a little on what I stated.

Mr. Thompson—I cannot hear.

The Witness—Perhaps I should en-

large a little upon the words "typographical error."

Q. I would be very glad to have you. A. Occasionally a record is slightly misstated.

Mr. Streeter—Slightly what? A. Slightly misstated in its original draft. The wording might be altered slightly, but not to alter the record. It is all in the nature of making it absolutely correct.

Mr. Thompson—I ask that that be stricken out. It is not testimony, it is not evidence.

Mr. Dane—It is an explanation of an answer which she thought did not fairly express her knowledge.

Mr. Thompson—It is an explanation from a witness who wants to help you if she honestly can, and who is giving you her opinion and not her knowledge. That is what the explanation is.

The Master—I think we will let it stand for the present, at any rate.

Mr. Dane—That is all.

The Master—Anything further?

The Witness—May I state a correction?

Q. Do you wish to make a correction? A. That during the month of September last year I was present in the board meetings and wrote their minutes.

Q. You wrote them yourself? A. I wrote them myself.

Q. That was during a time when Mr. Dittmore was absent? A. Mr. Jarvis was absent.

Q. Mr. Jarvis was absent, pardon me. A. And I was appointed corresponding secretary pro tem.

Q. And did you keep the minutes during that month in exactly the same way that Mr. Jarvis had? A. In exactly the same way.

Q. And you made a rough draft? A. Yes.

Q. That was submitted to the board for their approval? A. Yes.

Q. And then it became the final record in the book? A. Yes.

#### Re-Cross-Examination

Q. (By Mr. Thompson.) Did you ever, Madam, during that month of September, see a record, as entered in the book, read, and a vote passed on that record? Yes or No. A. I would have to look at them to see.

Q. Can't you recall that fact? A. I cannot.

Q. I am not talking about rough draft now. Can you, as you sit there, remember a single instance when you were present in that room and witnessed a vote passed approving such a record now in that book? Yes or No. A. I cannot say.

Q. You cannot say? A. No.

Q. Are you aware of the fact that Judge Smith's opinion has been asked—was asked by the board—as to the validity of their practice with reference to their records? A. I am.

Q. Are you aware of the fact that Judge Smith made an opinion protesting against their methods?

Mr. Dane—I pray Your Honor's judgment?

Mr. Thompson—You don't want her opinion now.

Mr. Dane—It is not the proper way to get the contents of an opinion.

Mr. Thompson—Oh, no; that is true.

Mr. Dane—Into the record.

Mr. Thompson—That is right.

Mr. Dane—You know how to prove it, if you can.

Mr. Thompson—I will call for that opinion of Judge Smith. You have got it. The opinion was given to your board.

Mr. Bates—You have no right to call for it.

Mr. Thompson—I want the opinion of Judge Smith now, given to your board. I call for it.

The Master—I do not see why we should put that in now.

Mr. Thompson—I have proved its existence, sir, by this witness.

The Master—Very true.

Mr. Thompson—They decline to produce it.

The Witness—I did not say a written opinion, sir.

Q. Did you ever know of any written opinion? A. No.

Q. Then there wasn't any occasion for Governor Bates' reluctance to produce it, was there?

Mr. Dane—There has been no reluctance to produce anything.

Mr. Thompson—I think we will drop the matter here. It is pretty evident we sha'n't get much further.

Mr. Dane—I want to ask you just one question, Miss Warren.

#### Redirect Examination

Q. (By Mr. Dane.) Miss Warren, during the time that you have been employed in the secretary's office, and within your own knowledge of the practice and method of keeping those records, has there been any change in the practice or method of keeping the records? A. The records are better kept than they have ever been before.

Mr. Thompson—I ask that that be struck out.

The Master—That I think you may strike out.

Mr. Dane—That may go out.

Q. Has there been any change made in the method or in the practice of keeping the records during the time that you have been there? A. I should say not, unless, as I have explained about Mr. Johnson's method and Mr. Dittmore's method.

Mr. Streeter—Explained about what?

The Witness—Mr. Johnson's method and Mr. Dittmore's method.

The Master—She has been all over that—the way he kept them and the way Mr. Dittmore kept them.

Mr. Dane—No further questions.

#### Re-Cross-Examination

Q. (By Mr. Thompson.) The only approval you ever saw was the ap-

approval of these rough notes, wasn't it? Yes or No.

The Master—What do you mean by "saw"?

Q. The only approval that you had personal knowledge of by the directors of records was the approval of rough notes which later on became records to be entered in the books?

Mr. Dane—There is no testimony there were rough notes to be later copied; the testimony is it was a draft.

Mr. Thompson—Will you let me put my question?

Q. That is the truth, isn't it? There were notes taken, those notes were approved, and when you speak of approval that is what you mean, isn't it? A. No, not notes.

Q. What do you mean? What was it that you saw approved? A. The first draft of records.

Mr. Thompson—The first draft of records; that is what I thought.

Mr. Dane—That is all.

#### Re-Cross-Examination

Q. (By Mr. Whipple.) Just a moment, Miss Warren, if you will indulge me just a moment. You have referred to being there present in the board room last September? A. Yes.

Q. Was it Sept. 11th? A. I think so.

Q. Now, will you let me take the record of Sept. 11th, because we can get some light on that subsequent opinion. How did you take the record of Sept. 11th—stenographically? A. I did take stenographic notes.

Q. You took stenographic notes? A. But fragmentary.

Q. Well, better fragments than anyone else took there, weren't they? A. I shouldn't say so. Mr. Jarvis—

Q. Who else took any fragmentary notes? A. You mean in that certain meeting?

Q. Yes, that particular meeting. A. Possibly Mr. Merritt, I don't know.

Q. Well, do you know that he did? Did you see him? A. I couldn't say about that certain meeting.

Q. You write shorthand? A. I do.

Q. Does Mr. Merritt? A. No, I think not, so far as I know.

Q. Now, then, you were present and took stenographically what was said at that September meeting, were you—the meeting of Sept. 11? A. I am not sure that I was present through the entire meeting. I was not present always.

Q. Now, how much were you present during the meeting? A. I was out and in, as I was called.

Q. I beg pardon? A. I was out and in as I was called.

Q. How much were you out and how much were you in? A. I can't remember.

Q. Well, did you take notes while you were in there? A. I did.

Q. What did you do while you were out? A. Waited to be called.

Q. Waited to be called again. You

didn't see anyone taking any notes, did you? A. I couldn't say.

Q. Except yourself, when you were in? A. I couldn't say that.

Q. Well, now, what did you do with the notes that you took when you were in? A. I used them as a basis for writing up the draft of minutes to be approved by the board the next day, or the next meeting.

Q. Used them as a basis. A. Yes.

Q. Didn't you transcribe your notes? A. My notes were fragmentary, as I said.

Q. Well, didn't you transcribe the fragments? A. They were embodied in the final draft.

Q. Where is your note book? A. I presume I have it still.

Q. Will you kindly produce it? A. Yes, sir, if I can.

Q. And will you produce what you transcribed out of the fragments? A. I will also say that in the board meeting—

Q. Well, pardon me. Will you do that? A. I beg pardon?

Q. Will you produce the fragments that you transcribed? A. I would like to correct a misapprehension, please.

Q. All right; if we misapprehend anything let us have it corrected. A. Yes; the notes which I took in the board meetings were on loose leaves, and were not kept.

Q. Oh, loose leaves? A. Loose leaf note books.

Q. And they have not been kept? A. I did not keep them.

Q. Have you got the fragments that you transcribed? A. No, I have not.

Q. What has become of those pages? A. I haven't them.

Q. What has become of them? A. You mean the draft?

Q. I mean whatever you put down on the typewriter from those. A. We have those.

Q. You have those? A. We have those.

Q. Where? A. In the church edifice.

Q. Now, will you bring them down from the church edifice to the court room? A. Yes.

Q. Can you? A. I can.

Q. Are they in your possession? A. In Mr. Jarvis' possession.

Q. In Mr. Jarvis' possession. If you will kindly bring them, because, you see, there seems to have been some doubt about what happened Sept. 11. Was that called to your attention? A. Sept. 11, yes.

Q. That some months later, I think in November, Judge Smith was called on to give an opinion as to what should go into the records? A. Yes.

Q. You know about that? A. I do.

Q. Had you then destroyed your loose leaf minutes? A. No.

Q. You destroyed them since then? A. Not the draft. We don't destroy the draft.

Q. No, I am talking about— A. The stenographic notes are—

Q.—the stenographic symbols that you took. A.—destroyed immediately after typewriting those.

Q. They had already been destroyed, but your transcription had not been destroyed, and has not now? A. No.

Q. Now, we have one or two different accounts of that, so perhaps if you will bring in and make your contribution of your fragments— A. I think we have it here now.

Q. I beg pardon? A. I think we have that certain meeting here now.

Q. I am not talking about a certain meeting; I am talking about your fragments. A. The meeting—during September—

Q. The Sept. 11 meeting; you know the one I mean, don't you? because there has been some— A. Well, I said my stenographic notes I did not keep.

Q. But you said you transcribed your notes? A. Yes.

Q. And that those things were generally kept? A. Yes.

Q. Where are they? A. That one of Sept. 11 is here in court.

Q. That is, the actual notes that you took; I mean the actual transcription of your notes? A. The transcription, yes.

Q. That is here in court? A. Yes.

Mr. Whipple—Is that the one that has been marked?

Mr. Bates—That is the one we showed you.

Mr. Whipple—That one has been delivered to us?

Mr. Bates—That is the one you have in your possession.

Q. Those are what you wrote out from the notes you took? A. Yes.

#### Re-Cross-Examination

Q. (By Mr. Thompson.) Now, let me put one more question to you. Were you present Sept. 12? A. I think so.

Q. Do you recollect that on Sept. 12, the next day, Mr. Dickey began to dictate the minutes of yesterday's meeting, the meeting of Sept. 11? A. I don't recollect.

Q. Are you willing to swear that didn't happen? A. No, I couldn't say.

Q. Do you recollect Mr. Dittmore said he wanted the records complete and protested? Yes or no. A. Yes.

Q. And do you recollect that the minutes were then laid over without approval? Yes or no. On your oath, that is true, isn't it? A. I would have to look at the record.

Q. Isn't that a fact, Madam, that there was a protest, and the records were made over without approval? Yes or no? A. The minutes of what date, please?

Q. On Sept. 12. A. I don't remember Sept. 12.

Q. Are you willing to say that did not happen? A. I can't answer that.

Q. Didn't you see Mr. Dickey tear up the minutes that he had on Sept. 12? A. I did not.

Q. Will you say he didn't do it? A. I say I did not see him do it.

Q. You wouldn't want to testify positively he didn't, would you? A. How could I?

Mr. Thompson—No, you couldn't.

Mr. Bates—Shall we adjourn?

The Master—Tomorrow morning at 10 o'clock.

Mr. Streeter—Before the court adjourns, I want to ask a question of my brothers for information.

The Master—I think we can excuse the witness for the present?

Mr. Streeter—I think it will help us out all around.

The Master—You want to do what?

Mr. Streeter—I want to ask here for a bit of information about this exhibit, Exhibit 119-L. That appears to be the Church By-Laws, Volume I. That is right, isn't it, Mr. Dane?

Mr. Dane—Yes.

Mr. Streeter—Now, there appears to be in this book an adoption in 1906, Oct. 15, 1906, of the fifty-seventh edition of the Manual, as here printed?

Mr. Dane—That is right.

Mr. Streeter—That is right, isn't it? Then later, the printed pages are inserted here?

Mr. Dane—Yes, that is correct.

Mr. Streeter—Then on page 37 begins a record of such By-Laws as were subsequently adopted by the Board of Directors, commencing Oct. 19; is that correct?

Mr. Dane—That is correct.

Mr. Streeter—Now that record proceeds to page 67, showing the adoption of the amendments to the fifty-seventh edition. Now, I want to ask you, as counsel, whether there were any amendments adopted by the directors subsequent to July 16, 1908, before Mrs. Eddy passed on, as far as you know?

Mr. Dane—You mean between July 16, 1908 and the date of her passing on?

Mr. Streeter—Yes.

Mr. Dane—I have no personal knowledge that any were adopted between those dates. I would not want to say there were not. I don't know.

Mr. Streeter—Can you ascertain and let the Court know?

Mr. Dane—I will.

Mr. Streeter—The reason for that is that this book appears to be an authoritative record of all the amendments that were made to the By-Laws, so that if Your Honor takes this book you will find here the printed pages of the fifty-seventh edition, and what appears to be all the subsequent amendments, and it is the first time that I have seen in the case anything which would enable us to be certain about the amendments to the By-Laws. Now, if I am wrong about that, Mr. Dane, you will tell me?

Mr. Dane—I will endeavor to get the information.

Mr. Streeter—Will you let us know in the morning?

Mr. Dane—I will.

Mr. Streeter—Thank you.

[Adjourned to 10 a. m., Thursday, July 10, 1919.]

July 10, 1919

TWELFTH DAY

Supreme Judicial Court Room, Boston, Massachusetts, July 10, 1919.

[After a conference at the bench it is agreed by the master, at the suggestion of Mr. Streeter, and with the consent of all other counsel, that when the hearing adjourns at 4 o'clock p. m. on Thursday, July 10, it will be resumed at 10 o'clock a. m., Monday, July 14, 1919.]

[Mr. Adam H. Dickey takes the witness stand.]

Mr. Streeter—If Your Honor please, I would like to cross-examine Mr. Jarvis now.

Mr. Bates—I don't think you have a right to now.

Mr. Streeter—Your Honor, Mr. Jarvis has gone on here and testified regarding the records, and we desire to cross-examine Mr. Jarvis upon the records, and I do not think you can change witnesses.

Mr. Bates—We expect, Your Honor, to put Mr. Jarvis on at the right time. You will have that opportunity.

Mr. Streeter—No, no.

Mr. Bates—Mr. Jarvis has merely gone on the stand to identify a record. The identification was not sufficient to satisfy Mr. Whipple, and we called Mr. Johnson to do it. Mr. Jarvis has not testified yet.

Mr. Streeter—Now, if Your Honor please, Mr. Jarvis went on and testified about those records, and of course we have the right to cross-examine him with reference to the records, and cross-examine him now before any other witness is put on.

The Master—I didn't understand that Mr. Jarvis' direct testimony was completed.

Mr. Bates—Well, I said we only suspended him.

Mr. Streeter—Well, I object to that. If you are through with Mr. Jarvis for the present I want to cross-examine him.

Mr. Bates—It has not even begun, you recall, General. We started to put in certain records. Mr. Whipple objected on the ground that Mr. Jarvis had not been the keeper of the records and could not identify the handwriting. We then called Mr. Johnson and suspended as to Mr. Jarvis. Mr. Jarvis therefore has not yet been on the stand in reality, or testified, but he will later.

Mr. Streeter—Now, if you please, I do not understand that is correct. I think I can find it here—I think so (referring to record). On Monday afternoon Mr. Jarvis was sworn and he began to testify, saying that he was the corresponding secretary, stating how long he had held the office, that he was clerk of the Chris-

tian Science Board, and then follows an examination with reference to the custody of the books of the Church and the record books of the Board of Directors, and the record books of the First Members, and so on.

The Master—What does it say when he gets through testifying, according to the record?

Mr. Streeter—I will tell you, Your Honor. The question is:

"And have you, since you became clerk, had the custody of the records of the First Members? A. I have." Then Mr. Dane showed him a book, and then there was objection by Mr. Whipple. And then after that trouble was conciliated, Mr. Dane says, "I can ask one or two questions of the witness." And then he proceeds to ask him when he became clerk, and whether Mr. Johnson was living, and so on. And he was on the stand when we adjourned Monday night. Then Tuesday morning Mr. Dane says: "In view of the objections that were made yesterday to the records, we have sent for William L. Johnson," and he was sworn and testified as to the records. In other words, he came in by agreement during Mr. Jarvis' examination.

The Master—Then you agree with me that Mr. Jarvis' examination was only suspended, not completed?

Mr. Streeter—Oh, yes.

The Master—If that is true, the time for cross-examining him has not come.

Mr. Streeter—Well, but, Your Honor, it was only suspended, as we understood, for the purpose of identifying and proving the handwriting in the books. It was not generally suspended. I did not agree that the examination of Mr. Jarvis might be suspended except for that purpose.

The Master—The purpose seemed to be pretty obvious. I heard no objection at the time.

Mr. Streeter—No, we did not make any objection, because we assumed that Mr. Jarvis, being on the stand, was suspended for the purpose of enabling the Governor, or Mr. Dane, to identify books and handwriting.

The Master—Well, then, there seems to be no dispute that Mr. Jarvis' direct examination is only suspended and not completed.

Mr. Streeter—I think that is right. But why should—

The Master—If it is not completed then am I not right in saying that the time for cross-examination has not come?

Mr. Streeter—Yes, Your Honor. But should not Mr. Jarvis' direct examination be continued, it being suspended only for a specific purpose? I will take Your Honor's judgment, of course.

The Master—That would seem to be quite regular if there is no objection on the part of Governor Bates.

Mr. Bates—We had not planned to put Mr. Jarvis on this morning, Your Honor. I will say that whenever the time comes that Mr. Streeter is put-

ting in his case, if he wants Mr. Jarvis he shall have him. We expect to examine him further, but it fits into the orderly presentation of our case at this time to put on another witness. If Mr. Jarvis had been able to identify the records satisfactorily to Mr. Whipple, we should have asked the Court to allow us to suspend with him at that time, because his direct testimony, except so far as the identification is concerned, is something that we do not care to put in until it comes along in its proper place. In view of the fact that we are trying to try two cases here together and that General Streeter has not as yet opened his case, I think we should have the right to put in those parts which we think apply particularly to the Eustace case and put it in in the order which seems to us will be the clearest and take the least time.

The Master—You had begun Mr. Jarvis' examination and gone some way with it and then suspended with him.

Mr. Bates—Pardon me, Your Honor. Just for identification of records—that was all.

The Master—Well, whatever the purpose was. Mr. Johnson's examination was then taken up and has now been completed—direct and cross-examinations both. Now, you propose to continue not with Mr. Jarvis but with another witness, and to that Mr. Dittemore's counsel object. How are you prejudiced, General Streeter?

Mr. Streeter—What?

The Master—How are you prejudiced if they do not now proceed to finish Mr. Jarvis' examination? What real difference does it make?

Mr. Streeter—To be entirely frank with the Court, in the Eustace case, the first case, Mr. Dittemore is a defendant, and he has made an answer in the case that is being tried, and he has answered with reference to all the allegations in the Eustace bill, and if he is a defendant in that bill, as he is upon the record, he has the right to cross-examine—

The Master—Nobody denies him that right; he is going to have that right and exercise it at some time. The only question is, when?

Mr. Streeter—Your Honor asked how we are prejudiced. We are prejudiced in this respect: We want to show in the cross-examination of Mr. Jarvis a large number of records—

The Master—How is it important what you want to show? You are going to have the right to cross-examine Mr. Jarvis.

Mr. Streeter—But Your Honor anticipated. We want to show that before Mr. Dickey testifies, for the purpose of enabling us to examine Mr. Dickey very much more satisfactorily. They started to put those records in.

The Master—Very well. Now, that being the reason given why Mr. Dittemore's counsel prefers to insist upon the strictly regular order, how are you prejudiced if you complete Mr. Jarvis' examination now?

Mr. Bates—I have the impression, Your Honor, that the testimony of the witness whom we have called will be very helpful to Your Honor when those records are read. But I recognize that it is a matter entirely within Your Honor's discretion. It is a case where we are putting in our case and trying to meet the combination of counsel, one of whom has refused to open his case, but who nevertheless wants to put in evidence and cross-examine our witnesses in regard to it. I think that we should be entitled to as much leeway as comes within the discretion of the Court in the matter of the presentation of testimony.

The Master—If it does not make a serious difference to you, would it not be better to go on with Mr. Jarvis now, and then we cut off one ground of objection.

Mr. Bates—We do not care to go on with Mr. Jarvis at present. If Your Honor thinks he should be open to cross-examination at this time, why, we will put him on the stand and Mr. Streeter can cross-examine him.

The Master—I do not think he should be open to cross-examination until his direct examination is completed. Why should it not now be completed?

Mr. Bates—Because we shall put in evidence in regard to certain matters by Mr. Dickey which we shall ask him about afterwards. We think it will make the matter clearer to Your Honor and save time and save explanations which Mr. Jarvis perhaps cannot give.

The Master—That would be an advantage to you, General Streeter, as well as to Governor Bates.

Mr. Streeter—Well, I recognize Your Honor's power to perceive better than I can, but as I view it I want to get out some of these records before Mr. Dickey testifies. There are a large number of records about which Mr. Dickey has got to testify. Mr. Jarvis was put on the stand with that book. Now, I want to get at that book before he testifies—to be entirely frank with you—so that I can examine Mr. Dickey in reference to those records. It looks to me as our right.

Mr. Bates—I submit that the records have been open to General Streeter and to Mr. Thompson. They have had every opportunity to examine them; they know all there is in them; their client was a member of the board when they were made, and made a large portion of them. It is not necessary, therefore, to put on Mr. Jarvis to get the information General Streeter speaks of. If he wants to examine Mr. Dickey in regard to any of those records the records are here, and he can examine Mr. Dickey as to them.

Mr. Streeter—I will take Your Honor's judgment.

Mr. Whipple—I have felt, if Your Honor please, that it would be a very distinct advantage to have the rec-

ords, so far as we want to use them, all before the Court and all in evidence before we cross-examine Mr. Dickey. That is also true with regard to another class of evidence which has been put in, and that is the letters from Mrs. Eddy. We have not had the volumes to examine those letters, and we had hoped to do that before it became necessary to cross-examine any other witness. I feel I ought to say this in behalf of our client, not because I think that our cross-examination of any of the parties is likely to be very extensive, because we have the feeling that our case has been proved by our own testimony, and we don't think we shall find it very necessary to elicit very much from the defendants' side by way of cross-examination or otherwise. But on the other hand, the letters of Mrs. Eddy are a distinct and important feature in the case, and the trustees desire to have the fullest opportunity to examine those volumes, and such cross-examination as we shall conduct will be largely affected by those letters, and to some degree by the other records, the directors' records and the by-law records, and the various records which have been referred to, but which have not been put in. It is the more orderly procedure not to have witnesses suspended and to have the examination hung up. We consented to the suspension of the examination of the secretary because apparently he did not meet the expectations of counsel who put him on with reference to the particular purposes which they wanted at the moment, but I see no good reason why we should not now finish up his testimony, and the plaintiff should enjoy the advantage which comes from that order of testimony which the defendants themselves had selected.

Mr. Streeter—I do not know that I can say anything more. Your Honor, except that it seems rather unnatural for a witness to be put on, with records, and produce and identify records, and then be suspended without giving the opposing parties the opportunity of examining him with reference to the records which he has been called upon to identify in court. I submit it to Your Honor's good judgment, as a matter of discretion.

The Master—It seems to me that the course you propose to adopt, namely, that of taking up now another witness in Mr. Jarvis' place, is so far irregular that I ought not to sanction it against the objection of everybody else—all other parties, I mean, in the case. I cannot imagine myself that it can make very much difference to either side. We do not intend by any order of procedure, I suppose, to prevent the reception of any evidence that either party has a right to offer at any time; but I think, in view of the objections raised, it will be better for us to follow the regular course, and finish with Mr. Jarvis so far as we can. That would be without prejudice



to your right to recall him hereafter if it should become necessary.

Mr. Bates—Very well. Mr. Dickey, won't you step down? Mr. Jarvis, will you take the stand?

Mr. Whipple—If Your Honor please, may I offer a suggestion with regard to the witness? We assented that the witnesses should occupy a position in the chair there merely for convenience in showing them particular signatures, but it seems to me that it would be more regular if the witness would sit in the witness' chair provided for the purpose, and if it is not convenient to have it here, in its usual place, it might be moved over there.

The Master—Can't we go on this morning and let him sit where he is, and then during the intermission we will have the witness' chair moved over?

Mr. Whipple—Well, perhaps. (To Mr. Bates.) Do you want the witness' stand moved over?

Mr. Bates—Yes; I think that that would be helpful to us. As you see, we have a great many documents and books here that we have to refer to.

Mr. Whipple—Very well.

Mr. Bates—But I think it would be well, as His Honor suggests, to have it done this noon or at the recess.

Mr. Whipple—Very well; only I think it is better that they should occupy the witness' box, generally speaking.

Charles E. Jarvis, Resumed

Q. (By Mr. Dane.) Mr. Jarvis, you have stated when you became corresponding secretary to The Christian Science Board of Directors. It was some time ago. Will you kindly tell us again? A. June 1, 1916.

Q. And when did you become clerk of the Church? A. Nov. 3, 1917. I stated the other day that it was Nov. 1, but I find upon reference to the records that it was Nov. 3 that I assumed those duties.

Q. Since those dates you have acted in those capacities until the present time, have you? A. Yes, sir.

Q. I show you a record book entitled "Minutes of the Regular and Special Meetings of The Christian Science Board of Directors," June 7, 1916, through June 4, 1917.

Mr. Streeter—I didn't get the first part of the question, Mr. Dane.

Mr. Dane—A description of the book.

Mr. Streeter—Oh, yes.

Mr. Thompson—June 7, 1916, to June 4, 1917.

Q. I ask you if you will identify that book. A. It is as stated on the cover, a record of the Minutes of the Regular and the Special Meetings of The Christian Science Board of Directors during the dates stated.

Q. And will you state, please, the date of the first meeting recorded in that book? A. June 7, 1916.

Q. And the date of the last meeting? A. Monday, June 4, 1917.

Mr. Dane—I ask to have this marked for identification.

[Record of Minutes of Regular and Special Meetings of The Christian Science Board of Directors from June 7, 1916, through June 4, 1917, is marked Exhibit 198, for identification.]

Q. I show you now a minute book entitled "Minutes of the Regular and Special Meetings of The Christian Science Board of Directors, June 6, 1917, through June 3, 1918," and ask you if you will identify this book? A. This is a similar record to the book previously offered and identified as Exhibit 198.

Q. It is a record of what, Mr. Jarvis? A. Record of the Regular and Special Meetings of The Christian Science Board of Directors from June 6, 1917, through June 3, 1918, both dates inclusive.

Q. And does the record show that the first meeting recorded there was June 6, 1917? A. It does.

Q. And what is the date of the last meeting recorded in the book? A. Monday, June 3, 1918.

Mr. Dane—Has this been marked for identification?

Mr. Bates—No, it has not been marked.

Mr. Dane—I will ask to have this book marked for identification.

[Record of the regular and special meetings of The Christian Science Board of Directors from June 6, 1917, through June 3, 1918, is marked Exhibit 199, for identification.]

Q. Now, I show you a volume entitled "Minutes of the Regular and Special Meetings of The Christian Science Board of Directors, June 4, 1918, through June 2, 1919," and ask if you can identify that volume? A. I can. This is a record of the regular and special meetings of The Christian Science Board of Directors, beginning with the meeting of Tuesday, June 4, 1918, and the last record in the book is that of the special meeting of The Christian Science Board of Directors, held on Friday, May 23, 1919. May I offer a word of explanation?

Q. Yes. A. The minutes of the meetings between the last entry in this book and that of June 2, 1919, have not yet been written up for permanent record, although they have been submitted to the directors and approved.

Mr. Streeter—Pardon me, Mr. Dane. You say they are approved? You have them here?

The Witness—I have not.

Mr. Streeter—Mr. Dane, will you have those produced right away, so that some inquiries can be made?

Mr. Dane—I will endeavor to do that.

Mr. Bates—Those are records since your suit?

Mr. Dane—They are since the date of the bill.

Q. Mr. Jarvis, are these books now in your custody, as an officer of the Church? A. They are.

Q. I wish you will state, Mr. Jarvis, what is the practice followed in

making the records that appear in these books? A. The minutes are written up from memoranda handed to me by the recording secretary of the Board of Directors, and from shorthand notes taken by myself, when I am present at the board meetings. They are dictated by me to a stenographer, and read at a subsequent meeting of the Board of Directors, and after the directors indicate such changes or corrections as are customary to be indicated in deliberative bodies, they are approved and written up permanently, and signed by the chairman and secretary of the board, and bound into these covers.

Q. Mr. Jarvis, you have spoken of receiving memoranda from the recording secretary, which is used, together with your own stenographic notes of proceedings, in making the records. I understand that you are not present at all these proceedings in the board room? A. I am not.

Q. And that is by virtue of some by-law or rule regulating this practice? A. As an employee of the Board of Directors, I am in the room in the capacity of a stenographer only; not as an officer of the board.

Q. When, Mr. Jarvis, are the minutes that are originally taken of the proceedings approved by the board? A. As a general rule, at the next succeeding meeting, but often the reading of the minutes are postponed on account of pressure of what seems to be more important business.

Q. Is the record made from the minutes which you receive from the recording secretary, and from your own stenographic report of proceedings made by you, or under your supervision? A. It is.

Q. And those are the minutes that appear in the volumes which you have identified? A. They are.

Q. Are there times in the board meetings when you are not personally present at the proceedings? A. There are, many such times.

Q. And on those occasions, the minutes are kept by the recording secretary of the board?

Mr. Whipple—Well, of course he is not there, and he could hardly testify about it.

Q. Do you receive from the recording secretary of the board minutes of the proceedings that have occurred while you have not been present? A. I do.

Q. The recording secretary is a member of the Board of Directors? A. He is.

Q. Is there any rule or practice, Mr. Jarvis, with relation to the character of proceedings at which you are not personally present in the board room? That is, what is the nature of the proceedings being carried forward by the board at which you would not be present?

Mr. Whipple—Well, if you will pardon me, if he is not there, how can he tell, except by hearsay?

Mr. Dane—If there is a rule or a

practice in that regard, that he knows of, I think he ought to be able to tell.

Mr. Whipple—He may state whether he is sent out or not, or what excuse is given when he is sent out.

Q. What is the practice in that regard, Mr. Jarvis? A. On occasions, I am asked to retire, and, assuming that the directors wish to consider some confidential matter, I immediately respond. On other occasions, there may be discussions ensuing which do not seem to indicate immediate action, and I leave the room of my own volition to attend to pressing duties in my private office, and return to the room on call, or when I have completed these duties, and if any action is taken during my absence a memorandum thereof is handed to me by the secretary.

Q. The recording secretary? A. Yes. I have used the term "recording secretary" more by way of explanation, but the Manual does not provide for an office known as a recording secretary, and the minutes are signed by the chairman and secretary of the board.

Mr. Dane—You may cross-examine—the last volume identified by the witness should be marked for identification.

[The volume which has previously been identified by the witness entitled, "Minutes of Regular and Special Meetings of The Christian Science Board of Directors," June 4, 1918, through June 2, 1919, is marked Exhibit 200 for identification.]

Mr. Whipple—Have you the volumes of the letters of Mrs. Eddy that were used yesterday, so they may be made accessible to us?

Mr. Bates—I beg pardon?

Mr. Whipple—Have you the volumes of Mrs. Eddy's letters that were used yesterday and examined, so that they may be made accessible to us?

Mr. Dane—The volumes are all here.

Mr. Bates—The volumes are all here. You understand those are regarded as of priceless value by The Christian Science Church, and therefore we do not wish them to go out of the custody of the Church. You shall have every opportunity to examine them.

Mr. Whipple—I do not think the trustees concede anything to the directors in their reverence for anything that comes from Mrs. Eddy. I merely desire to look them over for the purposes of cross-examination.

Mr. Bates—You mean now?

Mr. Whipple—Yes.

Mr. Bates—Oh, take them.

Mr. Whipple—Well, I would rather they would be handed to me, I am afraid I cannot select them.

[The volumes are produced and handed to counsel for the trustees.]

Mr. Krauthoff—Here is another unbound volume that has not yet been offered, I think (proffering a volume to Mr. Whipple).

Mr. Whipple—At present I would

like to keep out those from which you have offered nothing. I would like to see them later, perhaps.

Mr. Krauthoff—We want to make the disclosure.

Mr. Whipple—I thank you for your disclosure, and we will make use of them when we can; and I am glad to see that you are making full disclosure; it is one of the best symptoms that I have noticed.

The Master—Now, can we go on with the cross-examination of this witness, or not?

Mr. Whipple—We were just conferring. I shall be very glad if the counsel for Mr. Dittmore will go forward first in the examination, if that is entirely agreeable.

Mr. Thompson—We are perfectly agreeable to that.

Mr. Streeter—There are certain questions that I want to ask Mr. Jarvis.

The Master—I do not hear any objection.

#### Cross-Examination

Q. (By Mr. Streeter.) Mr. Jarvis, what are the duties of corresponding secretary? A. To dictate or write letters for and on behalf of the Board of Directors, and such other duties as the directors may to him from time to time indicate.

Q. Is there any general regulation of the board covering your duties as corresponding secretary? A. Nothing in the form of written rules that I know of.

Q. Anything in writing? A. Not that I recall.

Q. Under your organization there you have a chairman of the Board of Directors and a secretary, do you not? A. We do.

Q. And is that secretary called in common parlance the recording secretary? A. I believe he would be so called.

Q. So that the recording secretary under the general method would be responsible for the accuracy of the records, would he not? A. He would.

Q. But by the practice, you, as corresponding secretary, have kept these records in the way that you have told Judge Dodge? A. I have.

Q. And during the critical year from June, 1918, to June, 1919, was Mr. Merritt, a member of the board, the official secretary of the board? A. He was.

Q. You have described the way in which the records are made up and are put into the book and verified. Have you stated that fully? A. I believe so.

Q. You, as corresponding secretary charged by practice with the making up of the records, are in the room where the proceedings are carried on the greater part of the time, perhaps, or not the majority of the time? A. I should say possibly the greater part of the time. I should say it was more than half the time.

Q. And you are a shorthand writer? A. I am.

Q. And you take notes? A. Yes.

Q. Of what goes on? A. On occasion, but not of all of the conversation.

Q. Well, but you take notes of the subjects of conversation? A. Not always.

Q. Why not? I mean the subjects dealt with by the board. Why not? A. Because there does not seem to be an occasion for it.

Q. Mr. Secretary, if you are there to make the records of the proceedings of the board, why should you not record at least the subjects which are considered by the board, if you don't record the conversation? A. Because such a procedure has never been indicated to me.

Q. Well, then, these records, if you are correct in that statement, do not reflect accurately the proceedings of the board in those meetings? A. They record actions by the Board of Directors, but not all conversations relative thereto, or to other subjects.

Q. Do the records record all the action taken by the board? I ask you to reflect on that for a moment, and see that your answer is made upon reflection. A. By "action" I mean indicated disposition of a letter of inquiry, or a vote made, seconded and passed in the usual order.

Q. Do all the votes which have been passed by that board since you became secretary appear on the records that you have produced? A. I cannot answer.

Q. Why not? A. (After a pause.) I should say that they have been recorded.

Q. That does not answer the question. The question is whether all the votes which have been passed by that board, officially, since you became secretary now appear on the records? A. I should say yes, unless they were deleted by unanimous consent, which I understand to be a privilege of deliberative bodies.

Q. Your hearing is not impaired, is it? You have good hearing? A. I have.

Q. You didn't hear me ask you about your opinion regarding deliberative bodies, did you? A. No, sir.

Mr. Streeter—Well, then, please confine your answer to the question. Will the stenographer be good enough to read that answer?

[The answer is read as follows: "I should say Yes, unless they were deleted by unanimous consent, which I understand to be a privilege of deliberative bodies."]

Q. So that you now say the votes, the official votes, which have been passed by that board since you became secretary all appear on the records now, except such as have been deleted—is that correct? A. (After a pause.) I should say yes, if I may be permitted to offer a word of explanation.

Mr. Streeter—I would like to have you answer the question directly. The

stenographer will read it, and you please note it.

[The question is read as follows: "So that you now say that the votes, the official votes, which have been passed by that board since you became secretary all appear on the records now, except such as have been deleted—is that correct?"]

The Witness—It is.

Q. How frequently since June, 1916, when you became secretary, have official votes passed by the board been subsequently deleted from the records? A. I could not say, but it would be very rarely, if ever.

Q. Do you mean to intimate, Mr. Jarvis, that that never has been done? A. I am trying to tell you the whole truth, without reservation.

Q. Well, try again, and tell me the whole truth, without reservation, whether official votes passed by the board have never been deleted from the book, and whether all official votes are now on the book? A. I will say that all of the votes now appear on the book, to the best of my recollection.

Q. It is possible that we can refresh your recollection on that point. Do those records accurately and truthfully represent the actions and doings of The Christian Science Board of Directors? A. To the best of my knowledge and belief, yes.

Q. Will you turn to the last volume of records, under date of May 21 last, at page 381? A. (Producing the book.) Yes, sir.

Q. Read the record showing the official action of the board in revising—

Mr. Dane—Just a moment, please. Pardon me. If you are going to read the substance of the record which you are asking the witness for, I pray Your Honor's judgment as to the materiality of the question. The record called for is a record made of a proceeding subsequent to the filing of the bill of complaint, and can have no materiality and no bearing upon the matters set out in their bill of complaint.

Mr. Streeter—I am not ignorant of the fact that the record called for is subsequent to the bill of complaint, but the bill of complaint charges grossly bad faith and improper records. I am not aware of any principle which will prevent our showing the continuance of that bad faith, and the keeping of improper records, beyond the date when we actually filed our bill.

The Master—In order to show a continuance, such a continuance, you will have to show a beginning before the date of the filing of your bill.

Mr. Streeter—If Your Honor thinks that is the preferable way I will do that. And will you make a note of that, Mr. Thompson, and I will come back to that.

Q. Will you turn to your records of the meeting of Feb. 10, 1919?

[The records are produced.]

A. I have them.

Q. Read what you have there with reference to the meeting with the trustees on that date. A. (Reading):

"The directors had an interview with the three trustees of The Christian Science Publishing Society lasting two hours.

"At 2 p. m. the meeting adjourned."

Q. Now, turn to your records of Feb. 17, and see if you have entered there a protest by Mr. Dittmore against such a meager, casual record of an important meeting with the trustees.

Mr. Dane—Just a moment. I object to the characterization of the record by counsel.

Mr. Bates—We should characterize it as a perfectly proper record.

Mr. Dane—The record does not purport to be a stenographic report of everything that is said.

The Master—Why can't we omit that?

Mr. Streeter—Well, if they are fussy about it the stenographer may strike out those two words. I said "meager and casual," didn't I? I will strike it out. I want to be awfully nice to my friends over here and have almost everything their way.

The Witness—The only reference I find in the minutes of that day to Mr. Dittmore, aside from the record that he was present at the meeting, is this entry:

"A letter was read from Mr. J. V. Dittmore, dated Boston, Feb. 17, reiterating his position in the situation now existing between the directors and the trustees of the Publishing Society."

Q. Is that all? A. That is all.

Q. Now, you do not find there a record of a protest against the minutes of the meeting on Feb. 10, do you? A. I do not.

Q. Now, your memory is not impaired, is it? You have a good memory? A. I should say not. I have a good memory.

Q. Do you remember that when that record of Feb. 10 was read, Mr. Dittmore made a vigorous protest against one line of record covering a meeting of the trustees extending over two hours? A. Mr. Dittmore made vigorous protests on various occasions, but I—

Mr. Streeter—Pardon me.

The Witness— but I don't recall that particularly.

Mr. Streeter—Pardon me. I didn't ask you that question, and I fear that your hearing is impaired. I ask you about that day.

The Witness—I do not recall such a protest on that date.

Q. Do you remember on that day that after Mr. Dittmore made a protest the Chair, Mr. Dickey, agreed that the minutes of such meetings should be made fuller and more complete? A. I do not.

Q. Now, turn to your records of Oct. 7, 1918. A. I have them.

Q. Have you anything recorded with reference to Judge Clifford P. Smith's talk in the board with refer-

ence to the record, with reference to your method of keeping the record? A. On Oct. 7?

Q. Yes. A. I do not find recorded any reference to such a remark or advice.

Q. Let me see your record of Oct. 7. A. (The witness hands record book to Mr. Streeter.)

The Master—That is something we have not had read so far, I suppose.

Mr. Streeter—No. He says there isn't anything in here about it. (The record book is returned to the witness.)

Q. You don't find anything there about the advice and opinion of Judge Smith regarding the dangerous method of keeping your records? A. No, sir.

Q. Where are the original minutes from which that record of Oct. 7 was made up? A. I think they are at the office.

Q. Were those original minutes made by you or by—were they made by you? A. I believe they were.

Q. Could you get those minutes, original minutes, here, without much inconvenience, and soon? Could you send for them? A. Yes, gladly.

Mr. Streeter—Would you be good enough to do it?

Mr. Dane—We will endeavor to get them here.

Mr. Streeter—Now, will you at the same time bring the minutes of the records from May 23 down to date?

Mr. Dane—May 23 of what year?

Mr. Streeter—This year.

Mr. Dane—Those are all subsequent to the date of the bill.

Mr. Streeter—I understand that, but will you bring them and have them for the Court to pass upon whether we shall use them?

Mr. Dane—We will.

Mr. Streeter—Will you do it?

Mr. Dane—We will.

Q. Will you also, Mr. Jarvis, give directions that your messenger shall bring the original minutes which you made, or Merritt made for these other records, since June, 1918? A. Yes, I will.

Mr. Streeter—And will you give that direction now?

Mr. Bates—Well, I object.

Mr. Dane—It is understood. We have arranged to have those as soon as it is possible to do it.

Mr. Bates—I am afraid your hearing is bad, General.

Q. Where are the original minutes of these meetings preserved—in an envelope marked with the date of the meeting? A. No. I put them away in my desk until they accumulate to an extent where they are crowding, and then I remove them to the vault.

Q. Is the date marked on them?

A. This is a transcript of them, so that it does appear on each of them.

Q. Now, refreshing your memory, did Judge Smith on Oct. 7 last come before the board and with reference to your keeping the records say—

Mr. Dane—I pray Your Honor's judgment.

Q. (Con.)—Quote—

Mr. Dane—Just a moment.

Mr. Streeter—Well, I don't know what your metropolitan rule is down here, but where I have been practicing law—I beg Your Honor's pardon—Your Honor will rule on it—but I say where I have been practicing law we are allowed to ask questions and then they are ruled upon.

Mr. Dane—I rose to make an objection to the question General Streeter was putting. I thought he was proceeding to state what he understood to be some advice which Judge Smith gave to the board with reference to the records, and I raise the question that that is not material.

Mr. Streeter—Well, you got it exactly right. I am asking if he knows or remembers specific advice Judge Smith gave to the board, and if he doesn't remember it, I will prove it in another way, but I want to ask him that question.

Mr. Dane—And I object.

The Master—There is no objection now.

Mr. Dane—We object, Your Honor, now, yes. I can't see any materiality in the question.

The Master—This being cross-examination, the question is not precisely as to materiality. It is whether it is proper cross-examination. I suppose the question is asked to test the witness' recollection?

Mr. Dane—I don't understand that it is limited to that purpose, and then, if Your Honor please, there is another element here. I think it has appeared that in a great many matters Judge Smith was the counsel for the board. I don't think it is proper, even in cross-examination, to make an endeavor to elicit anything that Judge Smith might have said to the board in his capacity as counsel.

Mr. Streeter—It does not seem to me there is any occasion to reply to that, in the issues involved here. I think I understand that I have the right, on the question of good faith, to test the advice which every lawyer gave to them—the reasons on which they acted.

The Master—We have got no further, I think, in your question than the inquiry whether he recollected advice given.

Mr. Streeter—I was going to ask him, to test him—

The Master—Have you asked what the advice given was?

Mr. Streeter—No, he says he doesn't remember Judge Smith's being there. I believe that is right, isn't it?

The Witness—Your question, as I recall it, General Streeter, was, did I find any record in the minutes on that date of Judge Smith giving advice to the directors or commenting in any way upon their methods of keeping records.

Mr. Streeter—Yes.

The Master—Now, pause one moment. The question was asked and answered. The question now asked is,

independently of the record do you remember Judge Smith being there. Now, you may go on from there.

Mr. Dane—Will Your Honor note my exception?

The Master—I haven't admitted it yet. I want to hear what it is.

Q. Do you remember that in a conference of Judge Smith with the board on Oct. 7, he said in terms, "The way you now do, the board never reads its final records"?

The Master—Pause before you answer. Now, is that objected to?

Mr. Dane—I object to that.

The Master—You have nothing to add as to the grounds of your objection? I see no reason why I should exclude it. I think it may be put.

Mr. Dane—And Your Honor will save our exception?

The Master—Oh, so far as necessary an exception is always open.

A. I do not recall such advice from General Streeter.

Q. Do you remember that he then pointed out in express terms that you ought to change your plan of making these records? A. I do not. I do not believe I was present in the room when such advice was given, if it was given.

Q. Did you hear Judge Smith tell the board that their present method was "unsatisfactory" and "dangerous," using those two words? A. I do not recall it.

Q. Do you remember Mr. Dickey after this advice of Judge Smith's agreed to change the method, or that the method should be changed? A. I do not.

Q. Now, right in connection with this very thing, and for the purpose of refreshing your recollection, let me see your records of the next day, Oct. 8.

[The records are shown to Mr. Streeter, and are returned to the witness.]

Q. Do you find anything in that record with reference to Judge Smith's advice about changing the method of keeping the records?

The Master—What date was that?

Mr. Streeter—Oct. 8, the next day, the meeting of the next day. This is 1918, Judge, of course. A. No, I do not.

Q. Now, do you remember that the matter of keeping the records and the advice of Judge Smith that the present method was "unsatisfactory and dangerous" was brought up on Oct. 8, and the board decided not to change the method of keeping the records?

Mr. Dane—If Your Honor please, just a moment. I think the question assumes something that has not yet appeared in evidence—that that advice had been given.

The Master—Well, I think it does in form. Hadn't you better change it?

Mr. Streeter—Well, let's see. I want to do everything just as near right as possible. If you will read that question I will change it so that

brother Dane will be entirely satisfied, I think.

[The last question is read.]

Mr. Streeter—I will try to bow to your suggestion.

Q. Do you remember that at this meeting of Oct. 8 any advice of Judge Smith's that the present method, the then method, of keeping the records, was unsatisfactory and dangerous, was further considered by the board? A. I do not.

Q. Do you remember whether action was taken by the board that they would not change their method, notwithstanding any advice Judge Smith had given? A. I do not.

Q. Was there any discussion in the board at all at that time about the method of keeping the records? A. Not that I recall.

Q. Has there been any discussion at any time about the method of keeping the records and that it ought or ought not to be changed? A. I do not recall such a discussion.

Q. You do not remember that any question has ever been raised in the board, since you became secretary in 1916, about the method of keeping your records? Do you remember? A. No.

Q. If Judge Smith did state—a matter which you do not now remember—but under the present method the board never read the final records, was that true?

Mr. Dane—I object, if Your Honor please—a hypothetical question. The hypothesis has not been established.

Mr. Streeter—Of course, Your Honor will assume that I should not be asking these questions unless I expected to show that Judge Smith did give exactly the advice that I am quoting.

Mr. Dane—You haven't got very far yet with this witness toward showing it.

Mr. Streeter—Oh, I don't expect to get very far with this witness, my good friend.

The Master—I think you had better leave out any supposition as to what Judge Smith said, in view of the fact that the witness testified that he does not recall his saying anything.

Mr. Streeter—Yes.

Q. Now, on Oct. 7, at that time, were the final records as they were put into the book, after they were put into the book, ever approved by the board? A. No, not after they were put into the book.

Q. In other words, the approval of the records of this great organization was made only of the drafts of the records before somebody copied them in that book? Is that correct? A. That is true.

Q. Will you turn to your record of July 25, 1918? A. I have it.

Q. Let me see it. (Examining record.) Do you find in that record of July 25, 1918, any protest of Mr. Dittmore against holding the minutes, the board minutes, in the form of rough notes, for weeks and sometimes

for months, before they are written up in permanent form and put into the minute book?

The Master—What date have you there?

Mr. Streeter—July 25, Your Honor.

The Master—1918?

Mr. Streeter—1918.

A. I do not find such a protest recorded.

Q. Search your memory, and see if on or about that time you recollect that Mr. Dittmore made a vigorous protest against holding minutes of the board meetings in the form of rough notes for weeks and sometimes for months before they were written up in permanent form and put into the minute book? A. I do not recall such a protest.

Q. Do you recall any discussion on that or any suggestion on that point by Mr. Dittmore? A. No, I couldn't say that I do.

Q. Do you mean to say, Mr. Jarvis, that you have no recollection of ever hearing Mr. Dittmore protest against the method of keeping the records? Is that what you mean to say? A. I would have to have a distinct recollection of such an incident in order to so testify—

Q. No. A. And I do not recall specifically such a protest.

Q. No. A. Although I wouldn't want to say it had not been made.

Q. Well, now, you cannot recall specifically, but have you any mental impression of Mr. Dittmore making a vigorous protest such as I have suggested?

Mr. Dane—I pray Your Honor's judgment as to mental impressions. The witness is giving his best recollection.

The Master—Can the witness do more than to state according to his best recollection?

Mr. Streeter—Well, I don't know that he can, but from the way he put it I understood him to have in mind that there had been something of that sort said but he could not tell specifically what it was. Now I am asking generally, if he has any recollection or impression that Mr. Dittmore made protests against that method of keeping the records.

Mr. Dane—If Your Honor please, as I remember the witness' testimony, it was that he had no decided recollection as to that but wouldn't say that it had not been done. I think that is as far as he could go.

Mr. Streeter—I didn't get that.

Q. You say you wouldn't say that Mr. Dittmore had not done that? A. I did say so.

Q. Oh, well, I beg your pardon. I have some infirmity of hearing myself, that I am sorry for; I understand that I cannot help it. Let me see your records of July 7, 1918. A. There is no meeting on that day, General Streeter; that would be on Sunday.

Mr. Streeter—I will waive that question.

Mr. Thompson—July 8, it may have been.

Q. Turn, if you please, to your records of June 20, 1918. A. I have them.

Q. Let me see it, please. (Examining record.) Do you find anything in that record to the effect that Mr. Neal moved that the minutes of May 21 be deleted? A. I do not.

Q. Please turn to your records of May 21. A. That would be the preceding book. What is the date, please?

Q. May 21. A. All right. Do you wish to see them?

Q. Yes. (Examining record.) Do you find anything in the records of May 21 with reference to the appointment of Mr. Neal and Mr. Dickey as a committee to prepare a letter to be sent to Mrs. Longyear with reference to stopping the erection by her of a historical building in connection with Mrs. Eddy's life? A. I do not.

Q. Was that subject taken up, and were Mr. Neal and Mr. Dickey appointed a committee at that time with reference to Mrs. Longyear's proposed great contribution to a memorial to Mrs. Eddy? A. I couldn't say.

Q. Is your memory such that you can say they were not appointed a committee with reference to Mrs. Longyear's proposed benefaction? A. May I be pardoned, General, if I remind you that I am not present at all of the sessions, and therefore I cannot state what may have occurred in the board room while I was not there?

Q. Well, I didn't ask you to state what occurred when you were not there, I asked you if you remembered any discussion while you were there, on that point. A. No.

Q. Do you remember any discussion in the board at various meetings with reference to the proposed gift of Mrs. Longyear to the Church as a memorial to Mrs. Eddy? Was that subject ever discussed in the meetings of the board? A. In a general way, I do recall it having been discussed.

Q. Do you remember that letters were prepared to be sent to Mrs. Longyear, rejecting the proposed contribution? A. Yes.

Q. And do you remember that action was taken adopting the form of the letter to be sent?

Mr. Dane—Just a moment. I raise the question whether this is pertinent to the present case. It seems to me far afield of any issue that we are trying here, going into the matter of a proposed memorial.

The Master—In view of the witness' testimony, I cannot see that it is improper cross-examination.

Mr. Streeter—Will the stenographer read the question?

[The question is read by the stenographer.]

A. I do not recall such an action.

Q. Do you recall that after the letter was prepared Mr. Dittmore protested against sending such a letter

to Mrs. Longyear, and that it was not sent? You remember that? A. I do not.

Mr. Dane—Just a moment. I think the witness testified that he remembered no action with reference to the preparation of a letter.

The Master—He just answered this question; he does not remember.

Q. Do you remember that Mr. Neal, after it was decided not to send the letter, moved that the records about that should be deleted?

Mr. Dane—Just a moment.

Q. Do you remember such a thing as that?

Mr. Dane—I pray Your Honor's judgment as to whether that question does not carry an assumption of fact.

The Master—I think he is entitled to get to the bottom of the witness' recollection.

Mr. Streeter—You are trying to copy after brother Whipple over here. Why can't you sit still a minute?

A. I don't remember it.

Q. Have you a positive recollection that Mr. Neal did not move to delete the records with reference to a letter to Mrs. Longyear and that a vote was not taken on that? A. I don't remember.

Q. You don't remember either way, is that right? A. That is correct.

Q. You cannot say that he did or that he did not? Is that correct? A. No; I don't remember it one way or the other. I don't remember such an incident.

Q. I wish you would turn to your records of June 1. Have you got it? A. I have.

Q. Will you be good enough to let me look at that (examining record)? Were the annual reports of the clerk and treasurer of The Mother Church read to the board at that time? A. I couldn't say. There is no reference thereto in the minutes.

Q. Now, doesn't it appear in the records that the report of the clerk to The Mother Church was read? A. It does. I beg your pardon. The annual report of the clerk to The Mother Church was read and approved.

Q. Now, let me take that, please. (The book of records is passed by the witness to Mr. Streeter.) It does not say anything about the report of the treasurer here. A. It does not.

Q. When was the annual meeting of the Church that year? A. Monday, June 3, 1918.

Q. Was the report of the treasurer of The Mother Church read to the meeting, the annual meeting of the members? A. Yes.

Q. Was that report of the treasurer laid before the Board of Directors before it was read to the Church members at the annual meeting? A. I do not recall, but reference to the records at the office might disclose that fact.

Q. Let me see if I can refresh your recollection. Who was treasurer at

that time—Dickey or Ripley? Who was it? Or Knapp? A. I believe it was Mr. Knapp.

Q. Now, do you remember whether the report of the treasurer of The Mother Church as submitted to the board contained any information with reference to the finances of the Church, the income and expenditures, which would give the Church members any information with reference to the finances of their organization? A. I do not.

Q. Do you remember that Mr. Dittmore protested at the meeting of June 1 against a report of the treasurer which was going to be read to The Mother Church? A. I do not.

Q. Do you remember whether the board at that meeting cut out of the treasurer's report to the members of the Church all the pertinent figures that would enable them to understand anything about the finances. A. I do not.

Q. Do you remember that either one of the directors claimed they should be cut out because they did not want the Church members to know the magnitude of the finances of the organization? A. No.

Q. Did you ever hear anything of that sort? A. No.

Q. Who has the custody of the treasurer's reports that are read to the Church? A. The directors.

Mr. Streeter—Governor Bates, will you be good enough to furnish us the copies of the treasurer's reports to the members of The Mother Church at the annual meetings from 1911 to 1919?

Mr. Bates—Delighted, sir!

Mr. Streeter—Thank you. You see, brother Whipple, how nicely the Governor and I get along!

Q. Now, is it your recollection that the report, the treasurer's report to The Mother Church, gave the members of the Church the slightest information regarding the money which this Board of Directors was handling—receiving and paying out? A. I do not recall any of the details of the treasurer's report.

Q. Do you remember that it did give any information on that point? A. I do not.

Q. Do you remember any discussion whether the members of the Church should have the information or not? A. No, sir.

Mr. Streeter—Would it be convenient, Governor Bates—you were so awfully nice about it—would it be convenient for you to have those reports this afternoon?

Mr. Bates—I do not know, but we will try to have them for you this afternoon.

Mr. Streeter—It will probably be easy for you to do so. The treasurer's report would probably be in a paper, and if you can find it I would like it.

Mr. Bates—If we could send them a wireless we would, but your requests come about every three minutes, and we cannot keep messengers going all

the time. We will try to have them. If you will get your requests all together, and give us a list of what you want, then we will try to have them for you, and you will not have to wait at all.

Would this be a convenient time to take a recess, Your Honor?

Mr. Streeter—Any time will be convenient to me. I want to do just what Governor Bates wants me to do, because he is so nice to me.

The Master—Then we will suspend here for a few minutes.

[Recess of 10 minutes]

Q. Have you now your original notes? Have they come? A. For the entire period?

Q. Yes. A. I don't think they have.

Mr. Streeter—You can inquire.

The Witness—For what period, General Streeter?

Q. Have you your original notes, from which the records were prepared of the meetings of Oct. 7 and 8, 1918?

Mr. Dane—I understand that they have been asked for, but they have not yet come.

Mr. Streeter—I think they are here. You are better off than you thought.

[The records are produced.]

Q. Now, if you will turn to your original notes for Oct. 7, 1918? A. Yes, sir.

Q. Have you any reference in there to Judge Smith's advice, or being before the board at all? A. Yes.

Q. Will you let me see it? A. (handing the record book to Mr. Streeter) In the fourth paragraph. I haven't read it all through carefully.

Mr. Streeter—Oh, my dear man, I didn't ask for the notes that you revised and read to the board. I asked you for your original notes.

The Witness—Oh, I don't keep the memoranda and scraps of paper on which I note items in the room.

Q. You destroy those? A. Yes.

Q. Now, there isn't anything in here, so far as I can see, with reference to Judge Smith's advising about the method of keeping the books? A. No.

The Master—I understood he referred you to a certain paragraph in the paper he handed you.

Mr. Streeter—Yes, but if you look at the paragraph you will see that it is not what you thought it was.

The Witness—As I recall your question the latter part of it was—"Was there anything in the minutes to show that Judge Smith was present?" And that covers that question.

Mr. Streeter—I will put another question.

Q. Have you got anything in your minutes to show that Judge Smith was present and strongly advised a change of method of keeping your records? A. Not on that date.

Q. Have you memoranda that he did on any date? A. I couldn't say. I have no recollection.

Q. Judge Smith was present? A. It is so recorded.

Q. On Oct. 7? A. It is.

Q. And if he did make any suggestions about the unsatisfactory and dangerous method of keeping your records you have not recorded it? A. No.

Q. Now, is that memorandum an exact copy of what you put into your book? A. It is.

Q. Well, then, it is not the original minutes at all, is it? A. It is as I submitted them to the directors and they approved them.

Q. Mr. Jarvis, didn't you understand that what I was calling for was the original notes which you made in the board at the time the transactions were occurring? A. I did not.

Q. Turn, if you please, to the records of the meeting of Aug. 15, 1918. A. I have them.

Mr. Streeter—Will you let me see them?

[The records are shown to Mr. Streeter.]

Q. Were you present at that meeting? A. I could not say.

Q. Do you remember that when the minutes were read Mr. Dittmore inquired and protested against making no mention of Mr. Merritt's proposed letter to Mrs. Longyear, which was read to the board and filed with the secretary yesterday? Have you any recollection of that? A. I have no recollection of it, no, General Streeter.

Q. Do you remember being asked at that meeting to go and get the copy of the proposed letter to Mrs. Longyear? A. I do not.

Q. Do you remember going and getting it, the original? A. I do not.

Q. Do you remember handing it to Mr. Merritt, who put it in his pocket—this letter to Mrs. Longyear—proposed letter? A. I have a faint recollection of getting something for Mr. Merritt on some occasion. I couldn't positively identify it as the one to which you refer.

Q. Can't you brush up that memory of yours and see if you can't tell us more definitely about it? A. I am afraid I cannot, General Streeter.

Q. Let me refresh your recollection further. Do you remember that after you handed the letter, the original, to Mr. Merritt, who put it in his pocket, Mr. Dickey denied Mr. Dittmore's right to see the letter? A. I don't remember it now.

Q. Do you remember that Mr. Dickey as chairman ever denied Mr. Dittmore the right to see records of the board? A. No.

Q. So all these details are entirely gone out of your mind, if they ever happened—these details that I have read here? A. Yes.

Q. From the records of Aug. 13, 1918, I read into this record the following:

"The question of replying to Mrs. Mary Beecher Longyear's letter to the board dated July 20, 1918, concerning

the historical work she has been doing" was discussed. On motion of Mr. Neal, seconded by Mr. Merritt, it was voted to ask Judge Clifford P. Smith to prepare and submit a letter in reply to Mrs. Longyear's letter of above date, and that he be given all the information in the hands of the board on the subject before doing so.

"Mr. Merritt presented to the board and read a draft of a letter which he proposed for the board to send to Mrs. Mary Beecher Longyear in answer to her communication of July 20, 1918. This letter was handed to the secretary, who was later instructed to include it with other items to be sent to Judge Smith for his information in connection with Mrs. Longyear's relations to the historical work of The Mother Church."

This is from the records of Aug. 13, Mr. Jarvis. Have you any recollection of the things which that record refers to? A. I could not say that I have. I should say the record spoke for itself.

Q. You should say what? A. I should say the record spoke for itself.

Q. Well, everybody will agree on that. The question is whether this refreshes your recollection at all? A. No, I couldn't say that it does.

Mr. Streeter—Then from the records of the meeting of Aug. 15, 1918:

"The minutes of the regular meeting of Aug. 13 were read."

And I call Your Honor's attention to the fact that there is no record of any protest against that, against the records. Following:

"At the request of Mr. Merritt the corresponding secretary—"

Q. That was you? A. Yes, sir.

Mr. Streeter (continuing reading)—  
"—returned to him his proposed outline of a letter to Mrs. Longyear read by him to the board on Aug. 13, whereupon Mr. Dittmore protested, and on Aug. 19 presented his protest in writing as follows:

"I wish to file a protest against the unprecedented, irregular, and illegal action of the chairman of this board in permitting an important document, a draft of a letter presented and read to the board at its regular meeting of Aug. 13 by Mr. Merritt and filed with the secretary of the board, to be removed from the custody of the board without any copy of it being kept, thereby preventing a most important piece of evidence, on one of the most vital matters connected with the Cause of Christian Science and a matter which the board then had and now has under consideration, from being available in the consideration of the said matter.  
(Signed) "JOHN V. DITTEMORE.

"Boston, Aug. 14, 1918."

Q. Does that refresh your recollection in the slightest degree? A. It does.

Q. You now remember it? A. I remember the incident as described, yes.

Q. You do remember now that Mr.

Dittmore filed a very vigorous protest at that time, do you not? A. Yes. That's—

Q. Do you now remember that there was a great deal of controversy in the board with reference to a proposed contribution of a magnificent memorial to Mrs. Eddy by Mrs. Longyear? A. Yes.

Q. And that Mr. Dittmore took the view that the board, as the head of the Christian Science Church, should accept Mrs. Longyear's contribution of a memorial to Mrs. Eddy? Is that correct or not? A. Well—

Q. Answer the question directly, please. Is it or is it not correct that Dittmore took that view and urged it? A. Mr. Dittmore urged the acceptance of a gift by Mrs. Longyear of a historical building in the nature of a memorial, I believe.

Q. And was that opposed by Mr. Dickey and Mr. Neal and Mr. Merritt? A. It was.

Q. That answers the question. You remember now something of the circumstances, do you not? A. I do.

Q. Do you remember that Mr. Neal said that it was a memorial to the Longyear family to be heralded broadcast? A. I do not.

Q. Is your recollection such that you can say he did not make that statement? A. I do not recall having heard him make it.

Q. Are you so sure of your recollection that you can say Mr. Neal did not make that statement? A. I would not say that he did not make it.

Q. Will you turn to the records of April 24, 1918? A. I have them.

Q. And, keeping that place, turn to the records of April 18, 1918? A. I have them.

Q. Do you find anything in the records of April 18 with reference to the board approving a plan for changing the Boston Monitor delivery from the Publishing Society to the management of a Mr. Whitney? A. No, sir.

Q. Are you able to state that a vote to that effect was not passed, officially passed by the board, on April 18? A. I am not.

Q. Will you now turn to the record of April 24, 1918? Do you find it? A. I have them.

Q. Do you find any reference in that record to the vote of April 18, transferring The Monitor delivery in Boston to a Mr. Whitney? A. No, sir.

Q. Were you present at both of those meetings? A. I could not say.

Q. Have you any recollection of the subject matter of transferring The Monitor delivery to a Mr. Whitney? A. In Boston?

Q. Yes. A. I have no recollection of such a proposition.

Q. Not at all? A. This is the first time I have ever heard of it.

Q. Now, Squire Jarvis, do you recollect whether, on April 24, the board asked you personally to delete the records of April 18 on this subject—

the subject of Monitor delivery to a Mr. Whitney? A. No, sir.

Q. Do you say that the board, on April 24, did not ask you to delete and take out of the record of April 18— A. I couldn't say without referring to my records as presented to the board.

Q. Well, but your records as you presented them to the board—the only records that you have that you presented to the board—are exactly a copy of this book record, aren't they? A. Those copied in the book are the minutes as they were corrected by the directors after being prepared by me.

Q. Now, Mr. Jarvis, just brush up your memory just as much as you can. Do you say that the board did not tell you to take an official vote out of the record, and that you did it? A. On this date?

Q. On any date, if you please. A. I could not say.

Q. Sir? A. I could not say.

Q. You could not say. A. If the directors asked me to do it I would obey.

Q. If the directors asked you to delete an official vote you did it, did you? A. I did, if such a request was made.

Q. Do you deny that such requests were made and that you did delete official votes from that record? A. I have no recollection of a specific instance of that kind.

Q. And you do not recollect this instance? A. I do not.

Q. And you never heard of a transfer of The Monitor delivery to Mr. Whitney? A. I do not recall ever having heard it before, General Streeter.

Q. Are you sure— A. I am quite sure.

Q. No, you didn't get it. A. Pardon me.

Q. Are you sure that your memory isn't getting impaired? Are you sure about that?

Mr. Bates—Is this a memory test, Your Honor?

Mr. Streeter—Why, yes, certainly it is, on cross-examination.

Q. Are you really sure that your memory is not impaired? A. I do not wish to admit it.

Q. Well, I am hoping for your ultimate recovery. A. Thank you.

Q. Now turn to your record of July 8, 1918. A. I have it.

Q. Make it July 9, if you please. A. All right.

Q. Will you let me see the record? (Examining record.) In looking at this I find that on page 35 there are four of your records that are marked "Canceled." A. Yes.

Q. Do you find that so? A. Yes.

Q. And records on page 36 are marked "All canceled"? A. Yes.

Q. By whose authority did you cancel or delete the records on pages 35 and 36? A. Those are duplicate records, and they appear in their proper order in the book. This page was inadvertently picked up by the

stenographer and she started on the wrong page.

Q. Now, let me see the record of July 8. A. Yes, sir.

Q. Look at the record of July 8, and see if you find a resolution or motion by Mr. Neal to pay from the War Relief Fund \$27,000 for 10,000 khaki copies of "Science and Health" to give free to the soldiers? Do you find any such record as that? A. I do not.

Q. Are you able to state that Mr. Neal, on July 8, did not move, and that it was officially voted, to take \$27,000 from the War Relief Fund and dispose of it as I have indicated? A. I am not.

Q. Are you able to state that Mr. Dittemore did not file a very energetic protest against such action? A. No, sir.

Q. Are you able to state that after that action was taken, and before the next meeting, you were not instructed to delete that record, and not have it appear on the record? A. Not from my recollection; no, sir.

Q. I am reminded that the vote to which I am referring as having been passed was to take \$27,000 from the war relief fund to pay for 10,000 copies of Science and Health, in khaki binding. Does that refresh your recollection any? A. No, sir.

Q. And was that going to make an appropriation of \$2.70 for each one of the copies of Science and Health, if such a vote had been passed? A. Ten thousand times \$2.70 would be \$27,000.

Q. Now, search all the crannies of your recollection, and see if you do not remember that Dittemore protested against such a use of money? A. I do not recall any specific protest; Mr. Dittemore made many of them.

Q. Do you recall any general protests of Dittemore against such a use of \$27,000 of the war relief fund? A. General?

Q. General protest. A. Mr. Dittemore protested on many occasions.

The Master—Oh, well, stick to this one, please.

The Witness—Thank you; I beg your pardon. I do not.

Q. Can you remember whether this was one of the occasions when the directors told you to delete the records, the official records, and you did it? A. No, sir.

Q. You cannot say that this was one of them? A. I could not, no.

Mr. Bates—He has not said that there were any, General.

Mr. Streeter—Yes, he has.

Mr. Bates—I beg your pardon.

Mr. Streeter—I beg your pardon. You will have a chance to find that in the record.

The Master—We had better let the record speak for itself on that.

Mr. Streeter—Yes, the record will speak on that.

Q. I don't think I asked you with reference to the meeting of Aug. 15,

whether Dittemore wanted a copy of a letter to Mrs. Longyear and they refused it, Mr. Dickey told him he could not have it. I want to ask you about that. Do you remember that Mr. Dittemore, a member of that board, was refused a copy of one of the documents of the board? A. It seems to me that that was the case.

Q. What reason did the chairman of the board give for refusing to a member of the board a copy of one of the official documents of the board, if you remember? A. I don't remember any specific reason.

Q. Did he give any reason, or was it simply an arbitrary fiat, or an autocratic order, with reference to the records and documents of the board?

Mr. Dane—If Your Honor please, I object to the characterization by General Streeter of the letter which has been referred to as an official document. I think he should describe it as it is.

Mr. Streeter—Well, do you think that will do any particular harm? I want to be nice to you—but, really, Judge, I have a lot of trouble in keeping away from the rather fussy character—

The Master—Why not omit characterization so far as possible at the present stage? There will be an opportunity later.

Mr. Streeter—Do you want me, really, Mr. Dane, to put that question over, or will you let this one go if I will try to be good hereafter?

Mr. Dane—I want you to take the ruling of the Court. All I objected to was your characterizing a letter as an official document.

The Master—The only thing that I can see about it that is important is whether the witness remembers whether there was a refusal, with reason or without reason given.

Mr. Streeter—Yes.

Q. Well, what do you say? A. I have a faint recollection that a copy was refused but I don't recall the reasons therefor.

Q. Well, who refused it? Who refused to give a member of the board a copy of a letter, or records of the board? Who was chief of that job?

The Master—You asked him before, according to my recollection, if Mr. Dickey refused.

Mr. Streeter—Oh, he did say so; yes, he did.

The Master—He said he thought he remembered that Mr. Dickey did refuse.

Mr. Streeter—Yes; I remember that, that Dickey was the chap who did it.

Q. Now, search your recollection and see if you cannot remember some reason that my friend Dickey gave for refusing another member of the board a letter, which I will not describe as an official document, but a letter that belonged to the board.

The Master—I think he has stated that he could not remember whether Mr. Dickey's refusal was accompanied by a reason or not.

Mr. Streeter—I didn't know but what—you see, Judge, he brightens up sometimes—I didn't know but on reflection I might get something from him.

The Master—Have you anything to add, Mr. Jarvis?

The Witness—No, Your Honor.

Q. Is it true, Mr. Jarvis, that Dickey at other times refused Mr. Dittemore copies of the official records of the board? A. I do not recall.

Q. Well, why did you have to wait so long to conclude that you didn't recall? Can you give an answer? A. Because I wanted to give a truthful answer.

Q. Oh, yes, I sympathize with you. Are you quite sure that you have no recollection that at no time Mr. Dickey refused a co-member of the board, Mr. Dittemore, copies of the official records? A. I was—I do not recall Mr. Dickey having refused Mr. Dittemore copies of official records. I would like to add a word by way of explanation.

The Master—Go on.

The Witness—Mr. Dickey as chairman was only one member of the board. A request from a member of the board, if denied by the chairman, would be subject to an appeal. If the chair was sustained, the request was not granted.

Q. Well, now, Mr. Jarvis, I will put that in another way. Have you any recollection of other occasions when Mr. Dickey refused Mr. Dittemore copies of the official records of the board, and an appeal was taken, and Mr. Dickey was sustained in his refusal? A. There might have been one or two occasions—

Q. Were there? Not whether there might have been. Were there? A. I do not recall any specifically.

Mr. Streeter—How does the answer read?

[The answer is read as follows: "I do not recall any specifically."]

Q. Do you recall any generally? A. Repeat that question, please.

Mr. Streeter—Pardon me. Before you (the reporter) read it, I want to make a suggestion to the witness, that you (the witness) try to think what tracks you have got on your records here bearing on that question before you answer it. The witness wants the question read, and I think he ought to have it.

[The question is read as follows: "Do you recall any generally?"]

The Witness—It was the preceding question, the one upon which that was based, as to Mr. Dickey's action, that I wanted to hear read.

[The reporter reads as follows: "Well, now, Mr. Jarvis, I will put that in another way. Have you any recollection of other occasions when Mr. Dickey refused Mr. Dittemore copies of the official records of the board, and an appeal was taken, and Mr. Dickey was sustained in his refusal?"]

A. I don't recall any such specific



instances; but may I amplify my answer?

Mr. Streeter—I should like to have him answer it.

The Master—Go on. Finish your answer. Give the extent of your recollection.

The Witness—Mr. Dickey was opposed to giving out certain records of the directors, and so expressed himself on various occasions.

Q. You mean he was opposed to letting a member of the board have a copy of the official records of the board—is that what you mean? A. Yes.

Q. And, to make it more specific, Mr. Dickey was opposed to letting Mr. Dittmore, an equal member of the board, have extracts from the official records of the board—is that right? A. (After a pause) I could not say. I feel that Mr. Dickey's position had reference to all the members of the board.

Mr. Streeter—I pray Your Honor for an answer to that question, specifically—Mr. Dickey and Mr. Dittmore.

Mr. Dane—I object to the question. I do not suppose that the witness can answer what Mr. Dickey was opposed to, or what he was not opposed to, but only what he heard and observed.

Mr. Streeter—Well, it is suggested that my friend is trying to coach the witness, but I don't care. You may coach him if you want to.

Mr. Dane—He does not need any coaching from me. That has been apparent ever since he has been testifying.

Mr. Streeter—I pray Your Honor's judgment.

Mr. Bates—The coaching has been done by General Streeter, I think.

The Master—What is the pending question, exactly?

[The question is read as follows: "And, to make it more specific, Mr. Dickey was opposed to letting Mr. Dittmore, an equal member of the board, have extracts from the official records of the board—is that right?"] What do you say to that, Mr. Jarvis—is it right or not?

The Witness (After a pause)—I cannot answer.

Q. Why not? A. I do not know that Mr. Dickey would not have raised the same objection if another member of the board—

Mr. Streeter—That is not the question, Your Honor. It is a question whether he did object to Mr. Dittmore's having it. I pray an answer.

The Master—I think you should state whether, according to your recollection, there were such refusals or not.

The Witness—Yes, there were.

Q. How many? A. I could not say.

Q. What reason, if any, did you ever hear Dickey give for refusing another member of the board a copy of the official votes?—A. (After a pause.) I don't know that I could say.

Q. Why can't you say? A. I don't know as I recall.

Q. Do you remember that Mr. Dickey in his refusal to let Mr. Dittmore have a copy, or anything from the official records, gave any reason for such refusal? A. None other than that they were the private records of the Board of Directors and should be kept inviolate as the records of the board.

Q. Did he give that as a reason? A. I could not say definitely that he did.

Q. You said that he gave no other than that they were the private records of the board. Did he give that as a reason? A. It seemed to me that—

Q. I don't care what it seemed to you, with great respect—

The Master—As a matter of recollection, did he give that as a reason?

The Witness—I think he did; yes, Your Honor, he did.

Q. He did. Did he give any other reason for refusing a member of the board copies from the official records, so far as you recollect? A. No.

Q. Did at one time Mr. Dickey say that he had taken legal advice on that question? A. I do not recall Mr. Dickey's making such a statement.

Q. I wish you would turn to your records of Sept. 10. A. What year, please?

Q. The same year. A. 1918?

Q. Yes. A. (Turning to the records) Yes?

Q. Will you let me see it? A. Certainly (passing the volume to Mr. Streeter).

Q. In this connection, does it appear on that date that the directors asked the trustees for a conference on Sept. 11? A. Yes; there is a record of such an invitation.

Q. Now, is there any record of a discussion between Mr. Dickey and the other members of the board, a protest from Mr. Dittmore, and violent accusations by Dickey against Dittmore? Do you find anything of that sort in it? A. No, sir.

Q. Now, this was the day, Sept. 10, 1918, before the critical and vital day of Sept. 11, when the trustees and the directors had a pretty critical time, wasn't it—this was the day before? A. I so understand.

Q. Yes, Now, did Mr. Dickey at that meeting, and in anticipation of the meeting with the trustees take a conciliatory position with reference to making concessions to the trustees? A. I could not say, as I was not present.

Q. Oh, you weren't! Are you sure you were not? A. Yes.

Q. Oh, that is the time that Miss Warren was present? A. I was in California on that date.

Mr. Streeter—Well, then, I am not going to ask you whether you heard it or not.

The Master—Why don't you let all that about Sept. 10 go out of the record?

Q. You were not there Sept. 10? A. No, sir.

Mr. Streeter—It may go out of the record. It should, Your Honor.

The Master—It was all asked under a misapprehension, apparently.

Mr. Streeter—Do you want to adjourn now?

The Master—Any time that is desired.

Mr. Streeter—I am going to take up a new subject, and perhaps this would be a good time to stop.

The Master—We will stop until 2 o'clock.

[Recess until 2 o'clock p. m.]

#### AFTERNOON SESSION

Q. (By Mr. Streeter.) Departing just for a moment, I want to ask you if you are familiar with the signature of James A. Neal, a member of The Christian Science Board of Directors? A. I am.

Q. I have a paper on which is a signature purporting to be Mr. Neal's. Will you look at it and see whether it is his signature (showing paper to witness)? A. It is.

Mr. Streeter—I would like, if Your Honor please, to have the stenographer mark that paper right under Mr. Neal's signature, for identification—not to put in.

[Paper bearing signature purporting to be that of James A. Neal is marked 201 for identification.]

Q. Now, Mr. Jarvis, did it frequently happen, when you carried in your typewritten report to the directors of the minutes of the previous meeting, that they called for your short minutes that you took at the time of the meeting? A. No, sir. It very rarely happened.

Q. Did it ever? A. I can't say of any single instance where they asked me for memoranda. They may have done so.

Q. Well, haven't they done so within a year at least several times? A. Possibly.

Q. And on those occasions didn't you go out and get your original minutes and bring them in for comparison? A. If such a request was made I certainly responded.

Q. Now, when did you destroy those original minutes? A. As a general rule as soon as I had dictated the minutes of the meeting to which they referred.

Q. When did you destroy the last original minutes of those meetings? A. I do not recall.

Q. Well, was it so long ago you can't remember? A. No; but because they were just simply memoranda on scraps of paper that would have served their purpose as soon as I had dictated the minutes.

Mr. Streeter—Yes, I see. I want to make, if Your Honor please, a correction in reference to a question that I asked this morning, where I referred to a motion to appropriate \$27,000 of

War Relief Fund, to purchase 10,000 copies of Science and Health. Instead of being Science and Health it was 10,000 copies of the Bible, and I desire to make that correction.

Q. Do you desire to change your answer to the question, I having changed that from Science and Health to the Bible? A. I would have to refer to the records. I do not recall a vote of that kind for Bibles or Science and Health. I know that the question of purchasing 10,000 Bibles was up at some time.

Q. Is your memory also refreshed that it was proposed to appropriate \$27,000 for the purchase of 10,000 Bibles? A. I do not recall such a vote.

Q. Is your memory so clear that you will say that that vote was not passed? A. No.

Q. Is your memory also so clear that you would not say that at the next meeting of the board you were personally instructed to delete that record and did so? A. I have no recollection of such instructions.

Q. You say you were in California for a period in the latter part of 1918? A. Yes.

Q. Will you give me the dates so that I won't be troubling you about meetings when you were not there? Dates when you went away and when you returned? A. I think I left about the 6th of September and returned on or about the 6th of October.

Q. So that you were present on Oct. 7 when it appears by the records that Judge Smith was also present? A. I believe so. May I look at the record?

Q. If you please. A. (After referring to records.) Yes, I was present on Oct. 7.

Q. That was the date when I inquired of you whether Judge Smith did not advise that your present method of keeping the records was unsatisfactory and unsafe? A. I believe you did.

Q. Now, won't you turn to your record of Oct. 10? A. I have done so.

Q. Do you find any record there of Mr. Merritt's effort to create a mercantile corporation to be formed outside the Church and take advantage of the markets, or anything with reference to that—or Mr. Neal? Either by Mr. Merritt or Mr. Neal? A. No, sir.

Q. Have you any recollection of such a discussion? A. Yes.

Q. When was it? A. On Oct. 10.

Q. Call my attention to what in the records reminds you of that. Let me see it. A. The record entry, the third paragraph. (Handing volume to Mr. Streeter.)

Mr. Streeter—I read it. This is from the record of Oct. 10:

"A letter was read from Mr. William R. Rathvon, treasurer of The Mother Church, dated Sept. 25, expressing his views as to the incorporation of the Construction and Maintenance Department in order to facilitate the purchase of material for The Mother Church and its allied interests."

Q. What position did Mr. Dittmore take with reference to that matter, if you please? A. I haven't the faintest recollection.

Q. Your memory has not improved since the morning session, has it? A. I cannot say.

Q. Turn to your records of Nov. 5. A. Nov. 5?

Q. Yes. A. I have them.

Q. Let me see the records. A. (Handing volume to Mr. Streeter.)

Q. Did you report to that meeting of Nov. 5 that Mr. Dixon had declined the request of the board to come for a conference with Judge Smith, because he would not talk private matters before Judge Smith? A. I do not recall making any such report.

Q. Well, that was last November. Now, if you did report to that meeting that Dixon would not come to that meeting with Judge Smith, you possibly may have remembered it. Now, see if you do not remember making that report. A. No, I honestly can say that I do not recall making such a report.

Q. Did you make a report like that in substance? A. No, I do not recall it.

Q. Did you ever know from Dixon that he would not attend a meeting with Judge Smith present, at any time? A. I do not remember of any occasion when Mr. Dixon so expressed himself to me.

Q. Did Mr. Dixon come to the meeting of Nov. 5 after it was arranged that Judge Smith should not be present? A. The record shows that the directors had an interview with Editor Frederick Dixon of The Christian Science Monitor.

Q. Do you recollect whether Judge Smith was present? A. I do not.

Q. How far back can you— A. Well—

Q. Pardon me, Mr. Jarvis. A. I find from the record, if I may be pardoned, that the directors had an interview with Judge Smith on that date.

Q. But you do not find that they had an interview with Judge Smith concurrent with an interview with Dixon, do you? A. No, the record does not show that, and I do not recall it.

Q. Let me ask you about the condition of your memory. How far back can you remember anything clearly? A. General Streeter, that is a leading question.

Mr. Streeter—I know it.

Mr. Dane—Does Your Honor think that is helpful?

The Master—It does not strike me there is anything to be gained by that kind of a question.

Mr. Streeter—Your Honor is the judge.

Q. Now, on Nov. 6. Turn to that record. A. Nov. 6—I have the record before me.

Q. Was there any record entered up of the fact of Mr. Dittmore's motion that a different auditor from the

one employed by the Publishing Society be employed for the audit of the publishing house—trustees? A. On Nov. 6?

Q. Yes. A. No record appears.

Q. Have you any recollection whether Mr. Dittmore did try to move to have a separate auditor employed? A. For The Mother Church?

Q. A separate auditor employed for The Mother Church to examine the accounts of the Publishing Society trustees? Never heard of it? A. Yes.

Q. That Mr. Dittmore wanted that? A. Yes.

Q. Was it opposed? A. I do not recall whether it was opposed or not.

Q. Did his associates agree to it? A. I do not remember.

Q. Haven't you any impression whether Mr. Dittmore was asking for a separate, independent auditor of the trustees' accounts and the others opposed. Can't you remember about that? A. I remember the question coming up for discussion.

Q. And you remember Dittmore's position? A. I remember Mr. Dittmore proposed that a different firm of auditors be employed than the ones who had hitherto been engaged.

Q. Now, if you can find, between now and Monday—if we adjourn this afternoon—if you can find records that Mr. Dittmore's proposition to have a separate auditor was accepted by Dickey and his associates, will you please do so and report to us Monday morning? A. Gladly.

Q. You say that you know Dittmore wanted a separate auditor? A. Yes, sir.

Q. Your memory is all right on that question. Now, if you can find any reference in those records to any such motion I will ask you to do so and report to us. Will you do it? A. Gladly.

Q. Now, turn to your record of Nov. 13. A. I have it before me.

Q. Did you get down on that record anything with reference to a financial statement of the War Relief Fund in The Monitor of that date—of Nov. 13? A. No; there is no reference in the minutes of that date on the subject.

Q. Do you remember whether Mr. Dittmore protested to the board against the false information, or misinformation, that was given out to the Christian Science world with reference to the use of the War Relief Fund?

Mr. Dane—I pray Your Honor's judgment.

Q. Did you ever hear it?

Mr. Dane—I pray Your Honor's judgment as to the form of the question, assuming something that is not in evidence as to misinformation or false information.

Mr. Streeter—I will say alleged, I will put the word alleged before that, if it will help it.

The Master—I suppose all you want to do is to see what the witness re-

members about any such subject being brought up.

Mr. Streeter—Surely.

The Master—Now, what do you remember?

The Witness—It seems to me that I recall an objection on the part of Mr. Dittmore to a statement that appeared in The Monitor.

Q. What was his objection? A. In a general way, to the manner in which the figures were presented.

Q. Did he claim before the board that the figures were falsely presented, so as to give a false understanding to the contributors? Did he or not? A. I don't recall exactly that.

Q. Oh, well, now, are you sure you don't recall? A. I don't recall his exact words.

Q. What was he talking about the figures for? A. I stated, in my former answer, that my impression is that in a general way he objected to the manner in which the figures were presented in The Monitor article.

Q. Have you any recollection as to what objection he made? A. No.

Q. Let me see if I can refresh your recollection. Didn't The Monitor article state that there had been around \$1,300,000 collected from Christian Scientists, most of which had been spent in overseas work? Do you remember that statement? A. I believe so.

Q. Well, now, didn't Mr. Dittmore claim, before the board, that that was false, a false statement because only about 30 per cent of the whole amount had been spent in overseas work? A. I do not recall Mr. Dittmore making that specific objection.

Q. Well, if you have any memory on it at all, tell what it is. A. I have already stated it twice, that in a general way I recall his objection to the figures as presented in The Monitor article.

Q. Well, did he claim that the figures gave a false understanding to the Christian Science people who had contributed that million and three hundred thousand dollars? A. I do not remember exactly what he claimed on that date.

Q. Well, he was making a fuss about the statement in The Monitor? A. Yes.

Q. And you cannot remember whether he claimed that they were false or true? A. He objected to the figures, and he may have said that they were false. I do not recall that he did so.

Q. Let us see, what is your salary as corresponding secretary of the Board of Directors? A. \$5500 a year.

Q. And that salary depends entirely upon the good will of this Board of Directors, does it not? A. Possibly.

Q. Turn to Nov. 19. A. I have it before me.

Q. Have you got a record there of the trial of — of —? A. I have before me a record of an interview

with — of —, with regard to the complaints on file against him.

Q. Mr. Norwood is one of the counsel of The Christian Science Board of Directors, isn't he? A. He is.

Q. Did Mr. Norwood make a written report on that case to the board? A. I think he did.

Q. Where is that report? A. It will be in the files of the Board of Directors.

Q. Did Mr. Norwood report that the evidence did not show actual immorality on the part of —? A. The record does not show such a report—the record of Tuesday, Nov. 19.

Q. Do you remember that Mr. Norwood in his written report expressly stated that the evidence did not show actual immorality on the part of the accused?

Mr. Dane—I pray Your Honor's judgment as to whether this matter, one of discipline in the Church, should be gone into.

Mr. Streeter—Well, I don't care a hooter about the discipline, that is not what I am after, but if I could get an answer to this question, I next propose to ask him whether by order of the board that part of the report was deleted. If I have laid the foundation for it, with the permission of the Court, I will ask you that question.

The Master—I think I shall have to allow it to be answered.

A. This discipline case was only one of a great many; I do not recall Mr. Norwood's specific advice in this instance.

Q. After Mr. Norwood's report was read did the majority of the board vote to delete that part of the report, of Norwood's report, which recited that the evidence did not show actual immorality? A. Mr. Norwood's name is not mentioned in the minutes of Nov. 19.

Q. I did not ask you that question. You were present. I am asking you whether we have got down to a time when your memory runs back. Can you remember that? A. I do not know that I was present.

Q. Do you know that you were not? A. No.

Q. What is your judgment about it, whether you were or not? A. I believe that I was present during the interview with Mr. —.

Q. Let me remind you of something. You see, that was only a few months ago, Nov. 19th. There was a hearing, and Mr. — was brought in, wasn't he? A. Yes.

Q. Do you remember Dickey's telling you to put a high-backed chair between where — sat and your table, so that — could not see the notes that were being taken? Do you remember that? A. No.

Q. Not at all? A. No.

Q. I am awfully sorry. Do you remember whether Mr. Dittmore protested against such a proceeding? A. I do not.

Q. Do you remember whether Mr. Dittmore claimed that the decision in

the — case had been taken before — had a chance to be heard? A. Yes.

Q. Oh, you do remember that. Now, here is one thing, Nov. 19. You now remember that Dittmore protested against the — discipline case, claiming that the decision had been arrived at by the board before — was heard? A. I would not fix the date upon which Mr. Dittmore made that statement of Nov. 19, but I recall his making it.

Q. That is, Mr. Dittmore was standing before that board for the proposition that a man, an accused, should not be tried and found guilty until he had been heard? That was his position, was it? A. Yes.

Q. Did you as a man approve of that position?

Mr. Dane—I pray Your Honor's judgment.

The Master—What has his approval or disapproval to do with the matter?

Mr. Streeter—Well, I don't know as it has anything; I think Your Honor must be right.

Q. Now, turn to your record of Nov. 20. Will you let me see the record? A. Yes.

Mr. Bates—If Your Honor please, I assume my brother is going to leave this incident. I do not know who Mr. — is, nor anything about the matter, but I suggest that his name ought to be left out of the record.

Mr. Streeter—I don't care anything about the name, that isn't of the slightest consequence. That may be left out.

Mr. Bates—Then the reporters will be kind enough to leave that blank.

Mr. Streeter—Yes, I would be glad to have you.

The Master—By agreement, that name may be left blank.

Mr. Streeter—I was trying to show the way they did things down here, not who they did them to, in this case.

Mr. Bates—You are trying to show the way you said they did.

Mr. Streeter—It shows the way they did it—the same they did to Dittmore and to Rowlands both, later.

Q. Well, now I come to another subject. Will you look at Nov. 20. You were present, weren't you? A. I couldn't say.

Q. Well, you look at that and see if you don't remember that you were there? A. I was present part of the time, at least.

Q. Does the record show that Messrs. Dittmore, Neal, Merritt, and Rathvon were present at that meeting? A. Present, yes; Messrs. Dittmore, Neal, Merritt, and Rathvon.

Q. Did you ask the board whether you should take from the historical safe, delivered to you from Mr. Beauchamp's office, the old church records which belonged to The Mother Church? Did you ask the board that? A. I find a record here referring to

the subject. I do not recall whether I raised the question in the form of a request for permission to remove them, or whether I was authorized at the instance of some member of the board, and instructed by the board itself.

Q. Read your record on that. A. "The corresponding secretary was authorized to remove the old record books of The Mother Church, Massachusetts Metaphysical College, and Mother Church Sunday School, from the safe containing historical data assembled by Mr. Beauchamp, and place them in the directors' vault; and to consult the board regarding the manuscripts, original letters, etc., collected as a part of the historical data pertaining to our Leader and the Cause of Christian Science, before taking steps to have any of the papers mounted for permanent preservation."

Q. Is that all? A. That is all.

Mr. Whipple—May I suggest, with regard to the name of the gentleman or gentlemen whose name was deleted a few minutes ago, that I am informed that he would be identified if you leave in the residence.

Mr. Streeter—Well, I am perfectly willing to strike out the residence.

Mr. Whipple—The trustees join in the request that the name should be left out.

Mr. Streeter—Yes. I would like to strike out anything in that that would identify the man. He wasn't the gentleman I was looking after.

The Master—Make it clear to the stenographer; it seems to be agreed.

Mr. Whipple—Not only the name, but the residence and state.

The Master—The state.

Q. This record, made only last November, seems to remind you, to refresh your memory, doesn't it, Mr. Jarvis, about that transaction? A. The record speaks for itself.

Q. No; but have you any memory independent of the record? A. Yes; I—

Q. Now, do you remember raising the question whether all the letters, manuscripts and documents from Mrs. Eddy's home at Chestnut Hill should be sorted and mounted by Mr. Hoard? Do you remember raising that question? A. No, I do not.

Q. Let's see. Did you say you got \$5500 a year? Is that right? A. I did.

Q. Well, do you remember whether Mr. Dittmore pointed out to the board that the directors had no right to assume control over any of the manuscripts or documents which came from Chestnut Hill? Did he or not take that position? A. I believe he did.

Q. Did he take that position on the ground that the manuscripts did not belong to the directors, but belonged to the trustees under Mrs. Eddy's will—the New Hampshire trust? A. He took it temporarily.

Mr. Streeter—I didn't ask you that question. The stenographer will read it, please.

[The question is read by the stenographer.]

Q. Did he or didn't he? A. He did, because he had forgotten the bill of sale transferring them to the directors, apparently.

Mr. Streeter—Well, of course, Your Honor, before this tribunal I do not care whether that is struck out or is not. Of course, it is a mere volunteer statement, and it is not true.

The Master—You may have it struck out if you desire.

Mr. Streeter—Well, let it be struck out.

Q. Did he claim that no disposition of Mrs. Eddy's manuscripts or documents could be made except under the order of the trustees under Mrs. Eddy's will? A. I do not remember.

Q. Is your memory getting brushed up on that transaction some—a little? A. No, I remember very little about it.

Q. Very little, I see. See if you remember this: Did Mr. Neal ask if those manuscripts and letters and documents that Mrs. Eddy left at Chestnut Hill were not included in the bill of sale of the property at Chestnut Hill, to the directors? A. I don't remember such a question.

Q. Do you remember that Mr. Dittmore replied to Mr. Neal, or said at the time that they obviously were not included in the bill of sale, as the appraisal would show? A. I do not remember it.

Q. Did the board then agree that all of this property should remain in the safe under the custody of Mr. Jarvis, and that no other disposition should be made? A. That is my impression of the situation.

Q. At that time? A. Yes.

Q. It was left in your charge? A. Yes.

Q. With Dittmore's protest that those manuscripts and letters belonged to the New Hampshire Trust, and not to the Church—is that right? A. I don't recall Mr. Dittmore's protest in the board room.

Q. What? A. In the board room.

Q. You said a moment ago that Mr. Dittmore did claim that, that those articles, manuscripts and letters, did belong to the New Hampshire Trust? A. Yes.

Q. You remember that now? A. Yes.

Q. And they were left in your custody to hold, with the protest of Dittmore that they belonged to the New Hampshire Trust—that is right, isn't it? A. I don't recall his—

The Master—You mean left by vote of the directors?

Mr. Streeter—Yes.

The Witness—I should say, if I may, by the consent and approval of the directors, if I may distinguish between such consent and an actual vote.

Q. How long did they remain in the safe under that vote, these letters and manuscripts of Mrs. Eddy that Dittmore claimed belonged to the New Hampshire Trust? A. I do not know whether such a vote was passed.

Q. I didn't ask you that. How long did they remain in the safe after that day? A. They are still in the safe.

Q. What have you been doing to them since? A. They have been—some of them have been inspected.

Q. By whom? A. By Miss Warren in our office.

Q. By whom else? A. I could not say. Possibly one or more of our counsel; possibly one or more of the directors.

Q. What one or more of your counsel? A. I could not say.

Q. They were in your custody. Now, charged with their custody, do you mean to tell the Court that you can't remember who has been handling and dealing with those papers since? If you do, let us have it. A. I recall that Miss Warren and I have opened the safe on possibly one or two occasions, and examined or taken therefrom envelopes containing papers.

Q. By whose direction did you do that? A. I believe Miss Warren said to me that some one wanted to see certain of the papers.

Q. Who wanted to see them? A. I don't recall.

Q. Are you sure that you are telling that accurately? A. I believe I am.

Q. Has anybody connected with the management of the Church talked with you about those manuscripts and letters of Mrs. Eddy's that were put in the safe under your custody in November, 1918? A. I don't know that anyone besides Miss Warren has.

Q. Now, did Mr. Dittmore go to you on the 15th day of January last and talk with you about these papers, these important manuscripts and papers? A. One Wednesday evening meeting—one Wednesday evening, while I was in the office, Mr. Dittmore came down the hall and spoke—

Q. Why can't you say yes or no, without a lot of details? Did he talk with you or not? A. I don't know whether he talked with me on the 15th day of January or not.

Q. Well, did he talk to you at about that date? A. He made a remark to me one evening to take good care of the records, that he felt that they belonged to the Trustees under the Will, and that was prior to the incident to which you have referred in your recent questions.

Q. What did you say to him? What did you say to Dittmore? A. I don't know that I said anything.

Q. Well, did you assent to taking good care of those valuable manuscripts and letters of Mrs. Eddy, or didn't you? A. I don't remember that I made any reply. He didn't ask me any question.

Q. Well, have you since that time taken them out, or has anybody taken them out, and had them mounted, or any part of them? A. I don't know whether any part of them have been mounted or not. As I have stated, we have taken them out of the safe—

Q. Now, see here! Will you tell Judge Dodge all that you know about these manuscripts and letters claimed to belong to the New Hampshire Trust since they were put in your custody last November? Turn right round and tell the judge all about it. A. (Turning toward the master.) The question of ownership of the documents in the safe in question was raised, and I understood subsequently that the matter had been settled at the meetings of the Board of Directors and of the Trustees under the Will, who are the trustees under the New Hampshire Trust, to which General Streeter refers. I understood that the ownership had been decided to be in the Board of Directors under the bill of sale, with this exception, that manuscripts by Mary Baker Eddy were not to be disturbed or published or in any way disposed of without the authority of the Trustees under the Will of Mary Baker Eddy. The other papers I did not feel came under that ruling, and therefore, on my responsibility, I felt at liberty to extract from the safe such papers as might be needed for reference.

Q. Reference in what respect? A. In respect to the present litigation.

Q. So you took those papers which were claimed to be the property of the New Hampshire Trust, the manuscripts and letters and you have gone through them to find what you could that would help in this litigation, have you? A. I did not say so.

Mr. Dane—I pray Your Honor's judgment.

The Master—He says he did not say so.

Q. Well, I ask you if that is what you did. A. I did not.

Q. Who told you that the question had been settled that they did not belong to the New Hampshire Trust? A. I do not now recall.

Q. Well, is it so bad as that? Can't you remember? A. I am saying as a general impression that I gathered that the question had been settled as to ownership.

Q. Well, it was not Dittmore, was it? A. No, sir.

Q. Was it anybody in authority? A. My impression is that I gained the information from some one or more of the directors. How I gained it I cannot now state; I do not recall.

Q. Let us see. Before March 17, or since, did you gain that impression? A. I don't recall. I would say that it was before March 17.

Q. Well, it was not Dittmore, therefore it must have been either Dickey, Neal, or Merritt. A. Possibly it was one of those, or more of them; I don't remember.

Q. Well, don't you know? A. No, I don't.

Q. Was that in a meeting? A. I couldn't say. I don't remember how I got the impression.

Q. Did you ever examine the question yourself as to who owned those

letters and manuscripts? A. I examined the bill of sale, yes.

Q. Did you examine the appraisal in connection with it? A. I don't remember whether I did or not.

Q. Really, can't you remember? A. It seems to me that it is all incorporated in one. It seems to me that the appraisal and the bill of sale are in one document.

Q. The appraisal was of property at Chestnut Hill, amounting to \$21,000 plus, wasn't it? A. I believe so.

Q. And no manuscripts or letters were appraised in that \$21,000, were they? A. I don't remember as to the appraisal. It seems to me that the bill of sale included all documents, manuscripts and everything of whatsoever nature.

Q. Yes. But assume, Mr. Jarvis, that the appraisers appraised the property at Chestnut Hill, including furnishings and laces and carpets and other ordinary household furniture, at \$21,000, and didn't appraise the manuscripts and letters that were there, and then the Church directors voted to buy the property appraised for the amount of the appraisal, and the draftsman put into the bill of sale "also all letters, manuscripts," and so on, covering the property that you had got: would you then claim that those letters and manuscripts were transferred from the trustees, the New Hampshire trustees, to the Church?

Mr. Dane—I pray Your Honor's judgment on that question.

A. I would under the bill of sale. The Master—Don't you think that that is leading us rather far away from our present purposes?

Mr. Streeter—Yes, I do, Judge. As usual, you are right, I was somewhat tempted, Your Honor, because that matter will cut a very important figure. Perhaps I ought not to have gone into it so much now.

Q. Come to your records of Nov. 27. A. We do not seem to have had a meeting on that day, General Streeter. 1918?

Q. That was a Benevolent Association meeting. Did you have a meeting on Dec. 3?

The Master—A directors' meeting, I suppose you mean?

Mr. Streeter—A directors' meeting. A. Yes.

Q. Did Mr. Dickey state at that meeting that Mrs. Eddy's \$3,000,000 trust, or \$2,500,000 trust, in New Hampshire, had been kept there by deliberate falsification? I am asking you for your memory. I assume you wouldn't get it in your record. A. I don't recall his making such a statement.

Q. Do you find any vote there under Dec. 3—a motion by Mr. Dittmore that a full statement of the Benevolent Association be given to the field? A. No; no record of such motion.

Q. Very likely there is no record. Now I ask you if Mr. Dittmore didn't then move, at that meeting, that information regarding the Benevolent

Association be given to the field, which you didn't put into your record? A. No; I have no recollection of his making such a motion.

Q. You don't remember that? A. No.

Q. What is the Christian Science Benevolent Association? You are an officer of it, aren't you? A. I am.

Q. What is your position? A. Clerk.

Q. Who constitute the governing board of the association? A. A board of trustees, consisting of John V. Dittmore, Adam H. Dickey, Edward A. Merritt, William R. Rathvon, and James A. Neal.

Q. In other words, the directors of the Church are the board of trustees. Mr. Dittmore is chairman of that board, is he not? A. President of the association.

Q. And how long has he been president? A. Since the—about the beginning of this year, of this calendar year.

Q. It is a corporation, isn't it? A. A charitable corporation.

Q. What does it own? A. It owns approximately 21 acres of land on Lone Tree Hill, Brookline, with the buildings thereon.

Q. Did Mrs. Longyear contribute the land to this association? A. She did.

Q. Did she contribute \$90,000 in cash? A. She, I believe, contributed some money, a portion of which was subsequently withdrawn, or returned to her.

Q. Did she originally suggest \$150,000, and take back \$60,000, leaving her contribution to this \$90,000? A. I don't remember the exact figures, General Streeter. I remember she made a liberal cash donation upon certain conditions, and subsequently she saw fit to ask for the return, or at least a portion of it was returned to her, as it did not seem at the time wise to carry out part of the project.

Q. Was it stated to be because the board declined and refused to let her build a memorial to Mrs. Eddy at Pleasant View in Concord? A. I don't remember of her giving such a reason.

Q. How much was contributed to the assets of the Christian Science Benevolent Association, this charitable organization? A. I couldn't tell without the treasurer's books before me.

Q. Was it some five or six hundred thousand dollars? A. Yes, I should say so.

Q. That has been poured into that association. Mr. Dittmore here is president of the board? A. Yes.

Q. Has Mr. Dittmore, to your knowledge, been trying for the last three weeks to get information regarding the standing, the financial standing, of that association of which he is president? A. He has recently made requests of me for certain financial information.

Q. Have you furnished it? A. I

am in process of furnishing it. I am accumulating it.

Q. Have you furnished it? A. I have not.

Q. Why not? A. Because I haven't been able to get the figures.

The Master—I shall have to ask what we have to do with that at present. It is not only since this bill was filed but since we have begun these hearings.

Mr. Streeter—Your Honor, I am hoping to satisfy the Court that on the question of the directors' dealings with Mr. Dittmore the question of their good faith in expelling him or undertaking to expel him—I am hoping to satisfy your Honor that their acts since March 17 are just as vital as they were before.

The Master—Well, let us get those before first.

Mr. Streeter—I thought I had gotten quite a lot of them.

The Master—Have you got through?

Mr. Streeter—But I will follow Your Honor's suggestion.

The Master—I am not at present inclined to admit evidence regarding all that has passed since the filing of the bill between Mr. Dittmore and the directors.

Mr. Streeter—Does Your Honor's ruling go so far that you are not inclined to admit anything that has happened since the filing of the bill?

The Master—I don't think I need to go so far as that at present.

Mr. Streeter—I wish to ask with reference to the question that I started on about a deletion of the records in May. May I come to that, or shall I not?

Mr. Dane—It seems to me, Your Honor, that no foundation has been laid for that. We made the objection at the outset, and I renew it now, as to going into matters subsequent to the filing of the bill.

Mr. Streeter—I will take Your Honor's judgment.

The Master—So far as I now see, I shall exclude matters of that kind subsequent to the filing of the bill.

Mr. Streeter—That is, anything with reference to a continuation of the method of keeping the records. But I assume, Your Honor, it is without prejudice. Or does Your Honor make a final ruling that no evidence subsequent to the filing of the bill on the effect of what these gentlemen have done is admissible?

The Master (addressing Mr. Dane)—Anything further?

Mr. Dane—No, Your Honor; simply to say that I don't see how they could properly go into that because it bears only upon the question of good faith, and in order to do it they must have shown something occurring prior to the filing of the bill that would warrant their going into it on the theory of a continuation or lack of good faith, which has not yet been shown.

The Master—There has got to be shown, to be of any consequence in the case, a want of good faith prior to

the filing of the bill. I am unable to believe that for that purpose we ought to investigate all these matters which have come up since. I will rule, for the present at least, and until something further appears sufficient to require a change in the ruling, to exclude evidence of all these transactions subsequent to the filing of the bill.

Mr. Streeter—And does that cover evidence of all acts done and things said since the filing of the bill?

The Master—These matters that you have been going into this afternoon and today.

Mr. Streeter—You mean with reference to the record?

The Master—With reference to the record, yes, with reference to the benevolent society, and with reference to votes of the directors to delete, subsequent to March 25.

Mr. Streeter—Well, as a matter of form—and as a matter of substance, too—I would like to enter a general exception to that ruling, but with the confident belief that we shall be able to satisfy Your Honor's mind so that the ruling will be changed hereafter.

The Master—We have quite a task before us, haven't we, to get at all matters relevant to the case that happened before the filing of the bill?

Mr. Streeter—Yes, but our view, Your Honor, is that—

The Master—I think we had better get on with that.

Mr. Streeter—Our view is that their performances since the filing of the bill are quite as bad, with reference to the question, as they were before. But we will come to that later. I will take Your Honor's ruling.

Q. Do you have anything to do with the Board of Trustees under the Will of Mrs. Eddy? A. No, sir.

Q. Turn to your records of March 11. Had there been a meeting of the board with the trustees of the Publishing Society the day before? A. Yes.

Q. Was there any reference to it in the minutes of the board meeting of March 11? A. No, no reference to the meeting of the previous day with the trustees.

Q. Now, when you read the records did Mr. Dittmore protest against the board having an official meeting with the trustees and not making any record of what transpired? A. I don't recall that he made such a protest.

Q. Do you say that he did not? A. No, I wouldn't say that he did not.

Q. Did you record Mr. Dittmore's protest—any protest of Mr. Dittmore? A. As to the minutes with reference to the trustees?

Q. Yes. A. No, sir; I did not.

Q. Did Mr. Dickey give you direct instructions in the board meeting not to record or make any mention in the minutes of Mr. Dittmore's protests? A. I don't recall his so instructing me.

Q. You can't remember back to

March 11, three months ago, Dickey telling you that? A. If such a remark was made it was one of many. I don't recall of such instructions.

Q. One of many of the same kind? A. No, one of many on different subjects.

Q. And you can't remember? A. No.

Q. See if you can't remember this: After reading the minutes you said that you had presented to the directors yesterday, after Mr. Dittmore left, his request for copies of such part of the minutes as referred to the motions to prevent Dittmore from having copies of the minutes affecting him, and that the directors had said to bring it up this morning. Do you remember that? A. I probably did make such a report because of an entry I find in these minutes.

Q. What do you find? A. "The corresponding secretary reported a request from Mr. Dittmore for copies of those portions of the minutes of March 6 referring to him and of Mrs. Longyear's letter of Feb. 27. The chair declined to authorize the secretary to make copies of minutes in response to the request that they be given out, and a motion to appeal from the ruling of the chair made by Mr. Dittmore, seconded by Mr. Rathvon, was carried, whereupon the corresponding secretary prepared and gave Mr. Dittmore the copies as requested."

Q. That is, that was once when the other directors voted down Mr. Dickey's refusal to let Mr. Dittmore have copies. Is that correct? A. Yes; the record so recites.

Q. Do you remember any other instance when the majority of the board did not sustain Mr. Dickey in his refusal to let a fellow member have copies? A. I don't recall that a similar request was made on other occasions.

Q. Did Mr. Dickey say: "If Mr. Dittmore were acting in harmony with the rest of us we would not object to giving him copies of the minutes"? A. I don't recall his making such a remark.

Q. Did Mr. Dittmore remind the board of a letter written two or three years ago by a New Hampshire attorney warning them that they were bound to furnish every member of the board copies as he wanted? Do you remember that? A. It seems to me that Mr. Dittmore did make some such assertion—whether on that date or not, I don't recall.

Q. That referred to a time when Mr. McLellan wanted copies of the records of the board and they were refused him, did it not, as you understood it? A. I don't know what it referred to, General Streeter.

Q. Wasn't that stated? A. I do not recall.

Q. Did Mr. Dittmore ask for the letter of New Hampshire counsel advising and warning against withholding records from a member? A. I

don't recall his asking for such a letter.

Q. Did you send out and get it in the other room? A. I don't remember whether I did or not. I don't remember his request.

Q. Do you remember that word came back that the letter was not in the file of the directors? A. I do not.

Q. Where is the letter that was written to Mrs. Longyear, that Dittmore protested against? A. Since—I don't know. I don't know what letter you refer to, General Streeter.

Mr. Streeter—I refer to the one that we have been talking about here. Have you got it?

Mr. Bates—I don't know what one you refer to.

The Master—Is that the letter you referred to in your examination regarding the directors' meeting of Aug. 15, 1913?

Mr. Streeter—It is the one that Merritt took back, that Jarvis brought in.

Mr. Bates—It wasn't a letter to Mrs. Longyear, then. It was something Mr. Merritt suggested that never was used and never was sent, that you want.

Mr. Streeter—I suppose it was a draft of a letter.

Mr. Bates—Well, you didn't suppose the letter was ever sent?

Mr. Streeter—No, I suppose they backed out of it afterward and then moved to delete it from the records and got rid of it from the records.

The Master—Now I suggest that you identify the particular letter you want to find and then see whether the counsel for the directors will give it to you.

Mr. Streeter—The letter was one that was prepared and voted to be sent, that Mr. Dittmore protested against, that Mr. Jarvis went out and brought in and gave to Mr. Merritt, and that then Mr. Dickey and the rest of them refused to have Dittmore see a copy. It is the one that Mr. Dittmore wrote the letter about that has been put in here.

The Master—That will be a better way to make your request here, won't it, if Mr. Dittmore's letter is here?

Mr. Streeter—Let me see—May 21, 1918—wasn't it?

The Witness—Yes, I will find it.

Mr. Bates—I understand, Your Honor, that it was not a letter. They had a memorandum that had been drawn by Mr. Merritt, and it was given back to Mr. Merritt. Mr. Merritt says it is in his private office. If it is that memorandum you want we will endeavor to have it here for you Monday morning.

Mr. Streeter—We do want it.

The Master—Then you apparently have no dispute as to the particular document?

Mr. Bates—I think not, except that he has called it a letter, as if it was something that was sent. It was simply a suggestion or memorandum on Mr. Merritt's part.

The Master—And the document or memorandum or letter, whatever it

was, you undertake to have here at the next hearing.

Mr. Bates—Yes.

Mr. Streeter—Then that will be here Monday.

Mr. Bates—I expect so, yes, if we can find it, and I assume we can.

Q. Turn to your records of March 6, the meeting of March 6. A. Yes.

The Master—March 6, 1918 or 1919?

Mr. Streeter—1919. That is three months ago.

Q. Let me see them, please. A. Yes.

[Portion of directors' records, March 6, 1919, offered in evidence as Exhibit 202, and read by Mr. Streeter.]

"On motion of Mr. Merritt, seconded by Mr. Dickey, it is voted that any copies of resolutions or minutes of this board which are given to the members thereof be returned to the corresponding secretary to be destroyed by him within one month of the date they are given out without their having been copied.

"A roll call on the above motion resulted as follows:

"Mr. Dittmore ..... No.  
"Mr. Dickey ..... Aye.  
"Mr. Merritt ..... Aye.  
"Mr. Rathvon ..... Aye.

"Mr. Dittmore said he would file a letter reviewing the situation and explaining why he voted against this motion. Mr. Merritt declared that he offered the resolution in loyalty to the Board of Directors, that their proceedings should not go beyond the board."

Mr. Streeter—I also read the following from the record of the same meeting:

"Mr. Dittmore asked the corresponding secretary for copies of the informal notes made by Mr. Merritt and Mr. Rathvon of the two conferences between the directors and the trustees of the Publishing Society when he was not present.

"The chairman entered an objection to Mr. Dittmore's taking copies of any of the memoranda on file in our church with reference to the transactions of this board. Mr. Dittmore requested the board to be asked to sustain or not sustain the chair, and that a roll be called. Mr. Merritt left the room. The roll call resulted as follows:

"Mr. Dittmore ..... No.  
"Mr. Rathvon ..... No.  
"Mr. Dickey ..... Aye.

"Whereupon the corresponding secretary had copies made and given to Mr. Dittmore of the informal memoranda prepared and filed by Mr. Merritt and Mr. Rathvon of the meetings of Feb. 24 and March 3 with the trustees."

Mr. Streeter—Will you produce the letter filed by Mr. Dittmore, with reference to that transaction, Governor Bates?

Mr. Bates—If we have it. Oh, do you mean you want it now?

Mr. Streeter—Yes. It will be March 7, it will be the next day, March 7.

Mr. Bates—Is that what you wanted, General? (Handing letter to Mr. Streeter.)

Mr. Streeter—My friend Governor Bates has furnished the original letter, of March 13, 1919, from John V. Dittmore to The Christian Science Board of Directors. It is marked with a red stamp "indexed" and "Read March 13, 1919, C. S. Board of Directors." It reads as follows:

[Letter, John V. Dittmore, to directors, March 13, 1919, marked Exhibit 203.]

[Exhibit 203]

"March 13, 1919.

"The Christian Science Board of Directors,

"105 Falmouth Street,

"Boston, Massachusetts.

"Gentlemen:

"I voted against Mr. Rathvon's motion of March 11 for reasons which include the following:

"1. The action it contemplates is illegal and is so designated by an attorney's opinion which is, or should be in the files of this board.

"2. Just before this action was taken, Mr. Dickey, the chairman, said: 'If Mr. Dittmore were acting in harmony with the rest of us, we would not object to giving him copies of the minutes,' which simply means that because a member of this board disagrees with the majority, the majority thereupon retaliates by using its claimed power, either legally or illegally, to adopt rules to deprive such a dissenting member of his rights.

"3. This action is but another instance of the policy adopted by the majority of this board, to strangle the rights of a dissenting fellow member.

"Very sincerely,

(Signed) "J. V. DITTEMORE."

JVD—L

Mr. Streeter—In this connection—I am not quite through with him—but I would like to serve on my friend, or notify my friend, Governor Bates, of a list of letters and records in the files of the directors which we desire to use and desire to have you have them here on Monday, so that they can be accessible.

Mr. Bates—Have you a copy of that for us?

Mr. Streeter—Yes. I will read it right into the record.

Mr. Bates—Well, but we won't have the record; if you will let us have the copy now, we will know what you want.

Mr. Streeter—Well, I will, but I want it to appear in the record, too. I will give you a copy.

Mr. Bates—Well, I thought that was certainly encumbering the record; it is not evidence.

Mr. Streeter—No; but it is evidence of what we call for. I will do just as Your Honor thinks best about it. It is quite long.

The Master—It is quite long?

Mr. Streeter—Yes.

The Master—I suppose if we can get along without having it in the record we shall all be glad.

Mr. Streeter—Well, I simply desire to have this in the record. I want to do as near what the Judge thinks best as I can, but I would like to have this in the record.

The Master—My impression would be to leave it out of the record. That would be the best course.

Mr. Streeter—Well, I will follow it.

The Master—The only important thing would be to know in case of a given document whether you called for it or not.

Mr. Streeter—Yes.

The Master—You can easily show that by the copy that you preserve.

Mr. Streeter—This list, which I hand to Governor Bates, is headed "List of Letters and Records in Files of Directors Desired by Counsel for J. V. Dittmore," and begins, "Copies of letters to Eustace, Ogden and Watts, confirming Mr. Rowlands' dismissal, dated March 19," and follows with the items, covering nearly five pages. If we can have those, if you will have those accessible Monday, Governor, it will save time.

Q. Please turn to your record of Oct. 31. A. I have it before me.

Q. Do you find anything in that record with reference to the board's decision against Mr. Anderson's plan to put Mrs. Eddy's picture at the Benevolent Association entrance? A. I don't find any reference to the subject in the minutes of that date.

Q. Do you remember anything about it? A. Yes.

Q. Do you remember that the subject was discussed and that you were ordered not to make any mention of it in the minutes? A. I don't remember such a fact.

Q. Was the subject discussed? A. Yes.

Q. And it didn't get into the minutes? A. Well, not in these minutes, no.

Q. Well, those are the minutes of the board, aren't they? A. Well, the hanging of this picture refers to the Christian Science Benevolent Association.

Q. I understand that, but it was discussed and determined in The Christian Science Board of Directors, and your records do not mention it? Is that true? A. I couldn't say whether or not it is true, because I do not remember whether it was discussed at a meeting of the Board of Directors or of the trustees of the Benevolent Association.

The Master—Do you contend, General Streeter, that the omission of a discussion not resulting in action by the directors is a serious matter?

Mr. Streeter—No; I haven't made any such contention, and I have no purpose to make such a contention. What I am saying is that a large amount of action was taken officially, by official vote, which was subse-

quently deleted from the record, and goes not appear.

The Master—The question referred only to this last matter, as to which it appears only that there was or there may have been a discussion on the subject.

Mr. Streeter—I didn't mean to put it that way. I think there was action.

The Master—And the discussion was omitted.

Mr. Streeter—No.

The Master—That is as far as you got with it according to my recollection so far.

Mr. Streeter—Well, I meant action.

Q. Was any action taken by the board? A. I don't remember whether there was any action or not.

Q. Don't you remember whether there was or not? A. No.

Q. If action was taken, official action was taken, it didn't get into the records. Is that correct? A. I can't answer that question.

Q. Why, you can say whether it is in that record or not? A. It is not in that record.

Q. So that if official action was taken you did not record it?

Mr. Bates—You mean official action by the directors?

Mr. Streeter—Certainly, that is just what I mean.

Mr. Bates—He is talking about the trustees.

Mr. Dane—He is talking about the Benevolent Association.

The Master—No; the directors.

Mr. Streeter—Oh, no, I am talking about official action by the directors.

The Witness—No.

Q. And if official action was taken, then it is not recorded in the records? A. It is not, in the minutes of the directors.

Q. Turning to the record of the meeting of Dec. 22, Sunday morning, a special board meeting at 9:30, have you got it? A. Yes, I have.

Q. Will you let me see it? A. Yes.

Mr. Streeter—I read this into the record.

Mr. Dane—What date, General?

Mr. Streeter—Page 208, Sunday, Dec. 22, 1918.

[Portion of directors' records, Dec. 22, 1918, is offered in evidence as Exhibit 204 and read by Mr. Streeter as follows:]

"At a special meeting of The Christian Science Board of Directors held at 9:30 a. m. on the above date in the directors' room of The Mother Church, there were present Messrs. Dittmore, Dickey, Neal, Merritt, and Rathvon. The board met in executive session and listened to a report from Mr. Adam H. Dickey, who stated that he had individually and unofficially talked informally with Mr. Herbert W. Eustace with regard to the situation that has arisen between the trustees of the Publishing Society, and The Christian Science Board of Directors. After a brief discussion of the situation Judge Clifford P. Smith and At-

torney Edwin A. Krauthoff were called into the conference.

"It was decided to transmit to the trustees of The Christian Science Publishing Society the opinions obtained by the directors from Judge Clifford P. Smith, Mr. Edwin A. Krauthoff, and the joint opinions of John L. Bates and Leon M. Abbott, with the information that these opinions were obtained by the board from their desire to fulfill their duty to the fullest degree possible.

"It is also decided to call in for a friendly conference Editor William P. McKenzie and Business Manager John R. Watts, and at that time to hand each of them a letter to be prepared by Judge Clifford P. Smith, indicating the board's desire that any important or unusual action should be taken by either of them in the course of their official work only after they have made sure that it has this board's approval."

Mr. Streeter—The last paragraph is apparently immaterial. It is signed "Adam H. Dickey, Chairman," and approved by Edward A. Merritt.

Q. Were you present at that meeting? A. I was not.

Q. Were you present at a meeting on Dec. 24? A. I don't remember whether I was or not, General Streeter.

Q. Can't you tell by looking at it? A. No; the minutes do not record whether I was present or not. I was—

Q. Let me see the record of Dec. 30. A. Dec. 30 (passing to Mr. Streeter the volume of records, who, after examining it, returns it to the witness).

Q. Let me see the record of Dec. 2 (the record of the meeting of Dec. 2 is passed by the witness to Mr. Streeter, who, after examining it, returns it to the witness). Who were present at that meeting? A. Messrs. Dittmore, Dickey, Neal, Merritt and Rathvon.

Q. Do you find any reference to any action or statements made by Mr. Dickey with reference to the Manual of The Mother Church? See if you find that. A. I do not find any such record.

Q. Were you present at that meeting? A. I was present part of the time.

Q. Well, now, while you were there—and I ask you to note this particularly, and see if you recollect it, or the substance of it—did Mr. Dickey make the statement that "We made a vital mistake when we commenced to say 'Manual by Mary Baker Eddy': we will sometime want to make new by-laws, and we could do so; and the Manual was not really by Mrs. Eddy"? A. I do not recall hearing Mr. Dickey ever make such a statement.

Q. Will you state that at this meeting of Dec. 2, 1918, Mr. Dickey did not make that statement, in substance? A. I repeat that I do not recall hearing Mr. Dickey make such a statement at that meeting, or on any other occasion.

Q. Let me see the meeting of Dec. 30. (The record of the meeting of



ferred to is passed by the witness to Mr. Streeter, who, after examining it, returns it to the witness.) I will not take the time for both of us to look at it. I want you to see if you can find in the meeting of Dec. 30 any record of a report or statement by Mr. Edgett with reference to the clothing, etc., in the War Relief Fund. A. Will you please repeat the question?

Mr. Streeter—The stenographer will read it. (The question last put is read to the witness.)

The Witness—Yes.

Q. Read it. A. —

“Mr. Edgett’s letters to the board of Dec. 17, about giving away worn garments to local branch churches, and Dec. 23, asking that an audit be made of the Comforts Forwarding Committee; also a letter from Miss Lillian I. Slate . . . relative to her dismissal, were discussed and disposition indicated.”

Q. What disposition was indicated? A. I would have to refer to the letters, General Streeter.

Q. Did his report go into details? A. I couldn’t say what the contents of these letters were in detail without—

Q. Don’t you recall what his reports amounted to? A. No, sir.

Q. Who was Mr. Edgett? A. Mr. Edgett was for a time manager of the Comforts Forwarding Committee of Christian Scientists in Boston.

Q. Did he report that there were 375 cases of clothing on hand at the rooms, and that in November they had packed and sorted 200,000 articles, and that over 1,000,000 articles had been sent in, and not one had gone abroad? A. I believe he did so. Whether on this date or not I do not recall. The figures sound familiar to me.

Q. Was about \$1,300,000 contributed by Christian Scientists for war relief work? A. I believe approximately that sum.

Q. Who managed that money? A. The Board of Directors.

Q. Who actively acted for them, for the board? A. In dispensing the funds?

Q. Yes. A. Appropriations were made and—

Q. No, no, no; I didn’t ask you about that; but who was the active manager? A. Mr. George P. Dutton, of Springfield, was manager of the Comforts Forwarding Committee. He was succeeded by Mr. Edgett, and Mr. Edgett was succeeded by a committee of ladies of the Comforts Forwarding Committee. Mr. Harsch and Mr. Wallace—

Q. I understand that that is not the thing. That is another matter. Now, I want to ask you if it didn’t appear to the Board of Directors, if it was not shown to the Board of Directors, that in the management of that \$1,300,000 War Relief Fund there had been bought wool under the authority of the board on which an actual loss of

more than \$90,000 was sustained? A. As to the fact that the committee was authorized to purchase wool, I shall say Yes. As to the loss, I am not prepared to answer.

Q. Is it your impression that the loss as shown, reported and known to the board exceeded \$90,000? A. Possibly.

Q. Did not Mr. Dittmore protest to the Board of Directors against the turning over of such large sums of money contributed for war relief work to the Comforts Committee? A. I believe he did protest.

Q. And this business was carried on at a loss of a very large sum of money against his protest, was it not? A. The loss—

Q. Will you please answer that question? A. I can’t answer it.

Q. He protested? A. He did.

Q. And the money was lost—is that right? A. Eventually, yes.

Mr. Streeter—Yes, that is all I am asking you about.

Well, Your Honor, I may have a few questions more to put, but I hope not many; but if we are going to adjourn, we might retire to our—

Mr. Whipple—If you have only a few more questions, you can probably finish by 4 o’clock.

Mr. Streeter—Oh, no, it is practically 4 o’clock now. Just as Governor Bates does, I would have to ask questions up to 4 o’clock so as not to conclude my examination until I look it over! Oh, I will help you out by asking another question.

Q. Were you present in the board meeting on St. Patrick’s Day, March 17, 1919? A. A portion of the time, yes.

Q. What portion of the time were you there? A. At the beginning of the meeting.

Q. Well, was that when they took Rowlands and threw him out?

Mr. Dane—I pray Your Honor’s judgment.

Mr. Streeter—Oh, yes, yes; I beg your pardon!

Q. Was that when the board gently voted that Mr. Rowlands should be expelled?

Mr. Dane—I pray Your Honor’s judgment as to the form of these questions.

Mr. Streeter—Strike out “gently.” I do want, while I am round here, to satisfy my metropolitan brethren.

Q. Were you there when they expelled Mr. Rowlands?

Mr. Dane—I pray Your Honor’s judgment. I do not believe that this is a proper examination.

Mr. Whipple—Tried to.

Mr. Streeter—Tried to.

The Master—Passed the vote of expulsion—will that do?

Mr. Streeter—Mr. Dane may put that question to suit himself.

The Master—All that we want to get is the fact whether or not he was there at the time.

The Witness—Shall I answer it, Your Honor?

The Master—Yes; answer it.

A. I believe I was there.

Q. Were you there when they tried to expel Mr. Dittmore? A. I cannot say precisely.

Q. Well, now, look here, brother Jarvis, that was an important enough procedure so that it would seem as if you ought to remember it.

The Witness—May I relate the circumstances, Your Honor?

The Master—No, no. Were you there or not?

The Witness—I cannot say definitely whether I was there when the vote was passed dismissing Mr. Dittmore from the board.

Q. Well, were you there when his fellow directors pleaded with him to resign in order to escape the condemnation of expulsion? Did you hear that? A. I was present when the directors asked Mr. Dittmore if he would resign.

Mr. Streeter—It is now 4 o’clock, Your Honor.

Mr. Bates—You have been talking against time!

Mr. Streeter—I told you so. I will be frank with you.

The Master—That is all the examination, is it?

Mr. Streeter—For the present, until Monday.

The Master—It occurs to me to ask about those various editions of the Manual, a matter that we have not heard anything about, I think, yesterday or today. My idea was to wait until all the evidence was in regarding those various editions, and then see about marking them as exhibits. I believe they now stand marked only for identification. Has the time now come when they ought to be marked as exhibits, and have they all been picked out, and are they all here so that there can be no question about them?

Mr. Dane—They are here, Your Honor. There will probably be some other evidence bearing upon them, but they are all here, and they will be produced.

The Master—Then I will leave it for the present. I want to be sure that it is not forgotten.

Mr. Dane—It is not forgotten.

The Master—Is that all, then, for this afternoon? We will adjourn to Monday at 10 o’clock.

[Adjourned to 10 o’clock a. m., Monday, July 14, 1919.]

July 14, 1919

#### THIRTEENTH DAY

Supreme Judicial Court Room, Boston, Massachusetts, July 14, 1919.

Charles E. Jarvis, Cross-Examination, Resumed

[Counsel confer with the Master concerning the memorandum prepared by Mr. Dittmore in 1916, and appear-

ing in the answer of Mr. Dittmore in Eustace et al. v. Dickey et al., page 21.]

Q. (By Mr. Streeter.) Now, Mr. Jarvis, I want you to give me the records from January to March, 1918. Will you furnish them here? (A book is passed by the witness to Mr. Streeter.) Oh, I want 1919. I could not find anything that I wanted there. Give me 1919.

[Another book is passed by the witness to Mr. Streeter.]

Mr. Streeter—I read from the record of Monday, Feb. 3, 1919, a meeting held at 9:30 a. m. Present, Messrs. Dittmore, Dickey, Merritt, and Rathvon.

"Two letters were read from Mr. Dittmore, both dated Feb. 3, 1919, one with reference to the failure of Mr. Bicknell Young, First Reader of The Mother Church, to send the board a letter 'confirming his verbal assertions of loyalty to the church By-Laws and the constituted government of The Mother Church; also his failure to do his duty as First Reader of The Mother Church as demanded by Mr. Dittmore in his letter to the board of Jan. 27;' the other letter setting forth his reasons why he could not participate in the conference between the Board of Directors and the trustees of the Publishing Society, as arranged by counsel for the respective boards, to be held at 11 o'clock today.

"At 11 a. m. Mr. Dittmore left the meeting."

Mr. Bates—Will you give me the date of this meeting?

Mr. Streeter—Feb. 3, 1919.

"The directors had a conference with Messrs. Herbert W. Eustace, David B. Ogden, and Lamont Rowlands, the Board of Trustees of The Christian Science Publishing Society. Mr. Rathvon read a letter addressed jointly to the directors and to the trustees expressing his sentiments, and after touching briefly on some of the points involved in the recent situation, it was agreed that hereafter the trustees would meet with the directors weekly at 12 o'clock noon on Mondays, in the board room of The Mother Church.

"After the trustees had retired and at 12:30 p. m. Mr. Dittmore returned to the meeting.

"A letter was read from Col. F. A. Bangs of Chicago, dated Feb. 27, together with copy of a letter addressed by him to Herbert W. Eustace, Lamont Rowlands, and David B. Ogden, as trustees of The Christian Science Publishing Society."

[The record of the meeting of the Board of Directors of Feb. 3, 1919, from which the foregoing extracts are read, is Exhibit 205. R. H. J.]

Records of the meeting of Feb. 5, 1919:

"On motion of Mr. Merritt, seconded by Mr. Rathvon, it was Voted: That Edward L. Ripley, as treasurer of Mary Baker Eddy Memorial, be and hereby is authorized to indorse and transfer into coupon form \$8000 United

States Government registered 3½ per cent bonds, due 1947, now standing in the name of Mary Baker Eddy Memorial, and numbered as follows:"

At the same meeting a list of letters was read from the following, including:

"Judge Clifford P. Smith, dated Boston, Feb. 5, presenting certain facts disclosed by the letters from the trustees of The Christian Science Publishing Society and their legal counsel, regarding which the directors may wish the trustees to definitely declare themselves."

[The records of the meeting of the Board of Directors of Feb. 5, 1919, from which the foregoing extracts are read, is Exhibit 206. R. H. J.]

From the records of Thursday, Feb. 6:

"On motion of Mr. Rathvon, seconded by Mr. Dittmore, it was voted that we ask the opinion of counsel as to the legality of the trustees' paying attorneys' fees to counsel in the present situation from the funds they have in their hands.

"Letters were read from the directors to Mr. Frederick Dixon, formally tendering him the position of editor of The Christian Science Monitor, his reply thereto indicating the conditions under which he would accept, and the directors' response thereto, all three letters dated June 3, 1914."

The Master—June 3 of what year?

Mr. Streeter—June 3, 1914. Letters were brought up—

The Master—These records were made in February, 1919?

Mr. Streeter—Yes.

The Master—They went back to—

Mr. Streeter—It is simply recorded that they got out the letters of 1914 to read them.

[The records of Thursday, Feb. 6, 1919, of the Board of Directors, from which the foregoing extracts are read is Exhibit 206a. R. H. J.]

Record of Feb. 7, 1919:

"The directors had an interview at his request with Mr. Frank H. — of Chicago, at which he expressed his views relative to the situation between the directors and the trustees."

[The record of the meeting of the directors of Feb. 7, 1919, from which the foregoing extract is read, is Exhibit 207. R. H. J.]

From the records of Feb. 10, 1919:

"The directors had an interview with Judge Clifford P. Smith with reference to the letters written by him to certain Committees on Publication about the situation existing between the trustees and the directors."

Mr. Whipple—May I just look at the last that you read?

Mr. Streeter—Certainly.

[Mr. Whipple examines the record from which the foregoing extract is taken.]

"On motion of Mr. Rathvon, seconded by Mr. Merritt, it was voted that the memorandum of this day, containing two points prepared and recommended by our counsel, be signed by all of the

members of this board jointly with the trustees, as follows:

"Boston, Feb. 10, 1919.

"It is mutually understood by The Christian Science Board of Directors and the Board of Trustees of The Christian Science Publishing Society that the former board, as in relation to the latter board, has final authority in regard to the editorial policy of the official organs of The Mother Church, and final authority in regard to all matters affecting the policy of The Mother Church for the cause of Christian Science.

"In witness whereof this memorandum is signed by the respective members of said boards as follows:"

And then there are five blanks for The Christian Science Board of Directors, and three blanks for the Board of Trustees of The Christian Science Publishing Society.

"A roll call on the motion resulted in the following vote:

"Mr. Dittmore, not voting; Mr. Dickey, aye; Mr. Merritt, aye; Mr. Rathvon, aye.

"Mr. Dittmore explained that he had not voted for the motion 'because I decline to tie myself in advance on the matter, because I hope that "in that hour it shall be given me what I shall say."'

"Judge Smith stated: 'I wish to offer two items of advice, each with equal strength if possible. One is that you get the written acceptance of these two points. The other is that you make no additional agreement which would amount to a concession or compromise on this board's part.'

"Two letters were read from Mr. Dittmore, both dated Feb. 10, 1919; the first, filing in writing his views as to the proper course for the Board of Directors to pursue in notifying the trustees and business manager of the Publishing Society that the Board of Directors will hold them strictly accountable for any misuse of the trust funds in their possession; the second letter, expressing his views on the failure of any of the Christian Science periodicals to announce the completion of the pyramid memorial to Mary Baker Eddy erected by Mr. James F. Lord, on the Baker homestead, at Bow, New Hampshire.

"The directors had an interview with the three trustees of The Christian Science Publishing Society, lasting two hours."

Mr. Thompson—Was Mr. Dittmore present?

Mr. Streeter—Yes. That already appears.

[The record of the meeting of Feb. 10, 1910, of the meeting of the directors, from which the foregoing extracts are read is Exhibit 208. R. H. J.]

From the record of Monday, Feb. 17, 1919:

"Present, Messrs. Dittmore, Dickey, Merritt, Rathvon.

"A letter was read from Mr. J. V. Dittmore, dated Boston, Feb. 17, reiterating his position in the situation

now existing between the directors and the trustees of the Publishing Society."

[The record of the meeting of the directors of Feb. 17, 1919, from which the foregoing extract is read, is Exhibit 209. R. H. J.]

From the records of Feb. 18, 1919. Present, Messrs. Dittmore, Dickey, Merritt, and Rathvon.

"The minutes of the regular meeting of Feb. 17 were read and approved; the minutes of Feb. 10 were approved; and informal memoranda of details of the conference between the directors and trustees on Feb. 10, as prepared by Directors Merritt and Dittmore were read and ordered filed.

"Mr. Dickey reported to the board that he had had a very interesting conversation with Trustees Eustace and Ogden of the Publishing Society, regarding their attitude, and recommended to the other board members that they see said trustees and discuss with them the questions under consideration.

"A letter was read from Mr. William R. Rathvon, dated Boston, Feb. 18, relative to the situation existing between the directors and the trustees."

[The records of the meeting of the directors of Feb. 18, 1919, from which the foregoing extracts are read is Exhibit 210. R. H. J.]

Mr. Streeter—Will you produce that letter, Governor Bates? A letter from Mr. Rathvon to the board, dated Feb. 18?

Mr. Bates—Is that one of those you called for?

Mr. Streeter—I do not remember.

Mr. Thompson—We called for all letters written by Mr. Dittmore to the Board of Directors.

Mr. Bates—It is not Mr. Dittmore's letter.

Mr. Streeter—This is Mr. Rathvon's letter.

Mr. Thompson—Then you had another call which I think included that.

Mr. Bates—We will look it up. I do not think that is included in your call.

Mr. Streeter—Your Honor, may a memorandum be made by the stenographer right here that Mr. Rathvon's letter when it is found will be inserted at this place? Is that agreeable?

Mr. Bates—Not necessarily. Whether it should be inserted I suppose would depend on what it is when it is found—whether it is relevant and has any bearing on the issues here.

Mr. Streeter—Can't you find it? Don't you find it there, Mr. Dane?

Mr. Bates—I think we have a copy of it, General, if you will wait a minute.

Mr. Streeter—I would just as soon use a copy. I have not a copy. I will use your copy.

[Paper is handed to Mr. Streeter by Governor Bates.]

Mr. Streeter—The letter referred to in the record is as follows—

Mr. Whipple—May I ask, General Streeter, if that is offered in our case?

I mean, in the first case, the Eustace case?

Mr. Streeter—Well, it will be offered in both cases, I suppose.

Mr. Whipple—Then without stopping to read it in advance I would like to reserve the right to object after we hear it read, if we desire so to do.

Mr. Streeter—Yes, certainly. (Reading.)

[Copy of Exhibit 211]

"William R. Rathvon, C. S. B.

"236 Huntington Ave.

"Boston, U. S. A.

"February 18, 1919.

"The Christian Science Board of Directors,

"Boston, Massachusetts.

"Dear Friends: At our meeting yesterday such an amazing change of thought was expressed concerning the trustees' affair that I feel greatly disturbed over the outlook, and beg to here set forth briefly my position so that it may be clearly understood in whatever may follow.

"If a course of supine acquiescence with the trustees' present position of ignoring the Manual be followed by this board, I cannot be a party to it. I am not bloodthirsty nor have I yet reached the point where I hold it to be impossible to heal the situation without removing the offenders. I am free to say that no other course is apparent, yet I do not claim that no other course exists.

"I am endeavoring whole-heartedly to let Principle be my only guide in every step of this momentous hour, as, I believe, all of us are doing. The ultimate solution is, therefore, of less moment now than the immediate steps we have to take to reach it and the pitfalls we must avoid on the way. While we rely wholly upon that divine Love which our textbook tells us 'inspires, illumines, designates, and leads the way' (Science and Health, p. 454), we cannot be controlled by 'animosity nor mere personal attachment' (Manual); we cannot be diverted by fear of malpractice or be lulled to sleep by sympathetic mesmerism. We may desire greatly to save our erring brothers from the edge of the precipice upon which they are buoyantly dancing with closed eyes, but we must remember that the destiny of thousands of others rests upon our righteous action.

"We have placed upon us the protection of a divinely established organization, upon which hundreds of thousands of equally devout brethren are depending. We have never seen more than a comparatively few of them, yet their trust in our defense is unquestioned and unquestioning. Shall we be faithless to the many for the sake of the headstrong few?

"The trustees are on record as assuming the supposed moral obligation to ignore the Manual which their counsel has laid upon them, and which they have not yet formally denied or

disclaimed. At our last meeting they were given an opportunity to repudiate this position which must be abhorrent to every well-balanced Christian Scientist. They have refused to retract in writing their treasonable declaration which stands in the files of both boards.

"It was suggested yesterday that we refrain from further efforts to have the trustees sign the memorandum of understanding which they refused to sign and which was prepared by our legal advisers and that we adopt instead some different method. This, to me, seems equivalent to allowing the dirty pool to remain unpurged while we lovingly endeavor to show the transgressors the unwisdom of their defiance.

"I can conceive of no appeal we might make to them that has not already been poured into their ears time and again by those whose counsel they prize above ours. Yet, I will gladly assist in awakening them, but it must be after they have lowered the red flag.

"As I have repeatedly said before, I am unalterably opposed to any compromise with treason and cannot be a party to any course that provides for the continuation of present relationships so long as the trustees refuse to go on record as repudiating the most dangerous and treasonable declaration ever made by three Christian Scientists in positions of authority.

"The enemy would like nothing better than that we should become dulled and insensible to the enormity of the offense through our commendable desire to save the offenders. But we must not confuse the issue or allow error to lull us to sleep.

"This is not a Boston affair, it is not a mere tangle between the two boards. It is a subtle attempt of error to 'steal the livery of heaven to serve the devil in.' It is a determined effort to divide our Church from within as it has so often failed to do from without, and I must again decline to go further towards adjustment in any plan that will allow their present defiant attitude to remain unrepudiated by the trustees.

"Without consulting anyone I have written this hastily just before coming to this meeting, or I would say much more and say better what I have said, but every word is from my heart of hearts.

"Fraternally yours,

(Signed) "WM. R. RATHVON."  
WRR-F

[Letter, dated Feb. 18, 1919, from Mr. William R. Rathvon to the Board of Directors is marked Exhibit 211.]

Mr. Whipple—If Your Honor please, I think it is obvious that that intercommunication between the Board of Directors is not admissible in the Eustace case. We had no knowledge of any such letter.

The Master—Does anybody claim that it is admissible in the Eustace case?

Mr. Streeter—I do not make the claim.

Mr. Dane—We think, if Your Honor please, that it is admissible in the Eustace case.

Mr. Streeter—It is what?

Mr. Dane—It is admissible in the Eustace case, particularly as bearing upon the question of good faith of this director and of the other directors in the action which they took.

The Master—How are you going to prove good faith by their letters to each other?

Mr. Dane—It is a declaration of what actuated them, the motive by which they were moved in taking this action; and is, furthermore, a record of the directors of that date, made of record in their minutes book. It shows what was in the minds of the directors and I understand that the reasons that actuated them are admissible on the question of good faith.

Mr. Whipple—If we were to make any claim about it, if Your Honor please, we would say that it was rather an attempted justification of themselves for having violated an agreement which they had entered into within a week or two. And it showed their bad faith. But it does not need any such argument as that, I think. It was a matter which was not called to our attention in any way.

The Master—I do not at the present time see that it can be admissible in the controversy between the trustees and the directors. That may be the ruling for the present. We have got the letter in in the other case, and should there sufficient reason appear later the ruling may be corrected.

Mr. Dane—I will not take an exception at this time.

The Master—Well, you better reserve all your rights, I think, whatever they are.

Mr. Dane—I assumed it was admitted rather de bene or provisionally; for that reason I did not take an exception.

The Master—Well, it is excluded subject to your objection. You can do as you think best about it.

Mr. Dane—Then possibly, to save all rights, we will save an exception at this time.

Mr. Streeter—Well, not in the Dittmore case?

The Master—Oh, no, of course not. We are not talking about that.

Mr. Streeter—Shall I proceed?

The Master—Yes.

Mr. Streeter—Further quotation from the record of Feb. 18:

“Mr. Dickey offered a proposition that the board ask the trustees of the Publishing Society to put in writing, in a letter to the board, their understanding of the present situation. Copies of Mr. Dickey’s proposition were given to the board members present, and the subject laid over for consideration at the next meeting of the directors.”

[The above paragraph, as read by

Mr. Streeter, was offered in evidence as a part of Exhibit 210.]

Mr. Streeter—I read from the records of Feb. 20, 1919:

“The following resolution was introduced by Mr. Dickey, seconded by Mr. Rathvon, and adopted, Mr. Dittmore not voting, to wit:

“Resolved that hereafter no copies of letters, articles or documents of any nature, written, dictated or prepared by Mrs. Eddy, be made or given to any person without the majority vote of the full board. This action rescinds all former decisions of the board relating to this subject.”

[That portion of the record of the meeting of the Board of Directors, dated Feb. 20, 1919, as read by Mr. Streeter, is offered in evidence as Exhibit 212.]

Q. (By Mr. Streeter.) Mr. Jarvis, Mr. Dickey at this time was chairman of the board, was he not? A. He was.

Q. And as chairman he introduced this resolution, I infer from the record? A. So the record reads; yes, sir.

Mr. Streeter—From the records of Feb. 20:

“Editor Frederick Dixon of The Christian Science Monitor, dated Boston, Feb. 20, requested an interview with the board, which was granted, for 11 a. m., Friday, Feb. 21.”

[The portion of record of meeting of the Board of Directors of Feb. 20, 1919, as above, is offered in evidence as a part of Exhibit 212.]

Mr. Streeter—From the meeting of Feb. 21, 1919:

“Mr. Dittmore read extracts from ‘Trustees Hand Book’ by Loring, and from ‘Perry on the Law of Trusts and Trust Deeds’ bearing on the situation between the trustees of the publication society and the Board of Directors. The corresponding secretary was instructed to procure copies of the books for the use of the directors.”

From the same meeting:

“The directors had an interview with Editor Frederick Dixon of The Christian Science Monitor about the labor situation which he wishes to handle in The Monitor, about selecting a successor to Dr. Allen W. Heber Percy of the War Relief Committee for Great Britain and Ireland, and about his article in the Sentinel entitled ‘Mortal Mind and Human Mind.’”

[That portion of the record of the minutes of meeting of the Board of Directors dated Feb. 20, 1919, as read by Mr. Streeter, is offered in evidence as Exhibit 213.]

Mr. Streeter—From the records of Feb. 24:

“Present: Messrs. Dickey, Merritt, and Rathvon. The directors had an interview with Trustees Eustace, Ogden, and Rowlands of The Christian Science Publishing Society, in the course of which a letter from the directors to the trustees of even date was read and a copy thereof was later delivered to the trustees’ secretary.”

I think, Your Honor, that letter has already been put in.

[That portion of record of meeting of the Board of Directors dated Feb. 24, 1919, as read by Mr. Streeter, is offered in evidence as Exhibit 214.]

Mr. Krauthoff—Excuse me a moment, General; before the stenographers go I want to speak to Mr. Dane.

[Conference between counsel.]

Mr. Bates—I understand, Your Honor, that the name that was mentioned in the letter from England is the name of a party that it would be wise to eliminate, as it was a matter of discipline. I presume there will be no objection to eliminating the name, if the reporters will kindly do so.

Mr. Streeter—I do object. I read that record with an intelligent purpose.

Mr. Bates—Do you want the name left in?

Mr. Streeter—Yes; that is the successor of Dr. Allen W. Heber Percy of the War Relief.

Mr. Bates—You take the responsibility.

Mr. Streeter—I read from the records of Feb. 24, didn’t I, “The directors had an interview with the trustees”?

Mr. Thompson—Yes.

Mr. Streeter—I read from the record of Feb. 25, 1919.

[Directors’ records, Feb. 25, 1919, offered in evidence as Exhibit 215, and read by Mr. Streeter, as follows:]

“Letters were read from the following:

“Mr. Dittmore, dated Boston, Feb. 24, calling attention to his efforts to secure action in the situation between the directors and the trustees.

“Mr. Dittmore, dated Boston, Feb. 25, offering the following resolution:

“Whereas the By-Laws of The Mother Church [Article 25, Section 3] provide ‘The Christian Science Board of Directors shall have the power to declare vacancies in said trusteeship (of The Christian Science Publishing Society) for such reasons as to the board may seem expedient,’ and

“Whereas, the trustees of The Christian Science Publishing Society have for many months followed a course of action exceedingly detrimental to the cause of Christian Science,

“Now, therefore, be it resolved, that the directors shall and do hereby declare vacant the trusteeships held by Herbert W. Eustace, Lamont Rowlands and David B. Ogden, and that this course be followed by such legal steps as we are advised are necessary to confirm the proper appointment of those persons who are named as successors to these officers.

“Mr. Rathvon seconded Mr. Dittmore’s motion, and after discussing the question a roll call resulted in the following vote: Mr. Dittmore, aye; Mr. Merritt, no; Mr. Rathvon, no; Mr. Dickey, no.

“Mr. Rathvon stated that his purpose

in seconding the motion was to secure discussion. Mr. Dickey explained his negative vote by saying that if the action proposed in Mr. Dittmore's resolution were followed it would necessitate our making an appeal to the court to sustain our action and appoint new trustees, and that he felt it was not a wise thing to do at this time.

"The directors had an interview with Mr. Charles T. Root of New York City, as requested by the Board of Directors of Second Church of Christ, Scientist, New York. Mr. Root presented, on behalf of the Christian Science churches and societies of Greater New York, a plan for the appointment by The Christian Science Board of Directors of a Monitor representative for New York City, to stimulate the circulation of The Monitor, all expenses of the office to be borne by the New York churches and societies, and the control of which is to be in the hands of The Mother Church. Mr. Root discussed with the directors the question of the situation between the trustees and the directors, and agreed to place his views in writing. He also assured the directors of the fullest support from the New York field.

"The directors had an interview with Judge Clifford P. Smith with regard to the situation between the trustees and the Board of Directors, particularly with reference to the removal of one or all of the trustees."

Mr. Streeter—I read from the records of Feb. 26, 1919:

[Directors' records, Feb. 26, 1919, offered in evidence as Exhibit 216, and read by Mr. Streeter, as follows:]

"Present, Messrs. Dittmore, Dickey, Merritt and Rathvon.

"On motion of Mr. Rathvon, seconded by Mr. Merritt, it was voted that each member of the board, in compliance with the suggestion of our counsel, prepare reasons why one of the trustees should be removed, these reasons to be submitted to our counsel tomorrow that they may advise the board how to proceed legally to remove one of the trustees at once."

Mr. Streeter—Governor Bates, will you furnish the letter of counsel upon which this vote was based?

Mr. Bates—I don't know of any letter.

Mr. Streeter—Well, you wouldn't want to say that the records are not correct?

Mr. Bates—Does it refer to a letter?

Mr. Streeter—No, it says "suggestion." Have you such a letter?

Mr. Bates—No such letter, sir, so far as I know.

Mr. Streeter—This was oral advice?

Mr. Bates—Yes; and we will be very glad to tell you all of it if you would like.

Mr. Streeter—I should be glad to have you. I read from the records of Feb. 27, 1919.

[Directors' records, Feb. 27, 1919,

offered in evidence as Exhibit 217; and read by Mr. Streeter, as follows:]

"Proposed letter to the Board of Trustees of The Christian Science Publishing Society, requesting detailed itemized statements of monthly outlay and expenses, was approved. . . .

"The directors had a conference with Judge Clifford P. Smith, ex-Governor John L. Bates, and Mr. Leon M. Abbott, in connection with the next step to be taken by the directors toward the removal of one or of all the trustees of the Publishing Society. Governor Bates was of the opinion that the board ought not to do anything for the present in the way of dismissing the trustees, lest this action might throw the directors into court unprepared. He advised the board to prepare its case in such a way that if brought into court the board would be prepared to give its reasons for removing one or all of the trustees of the Publishing Society. Counsel encouraged the directors to continue to make requests of the trustees for the proper fulfillment of their duties."

Mr. Thompson—That has been read, General, once—isn't that in?

Mr. Streeter—Well, I cannot tell. Here is another one from the next meeting, March 3, and I don't know whether it is in or not.

Mr. Whipple—I think these recent excerpts that you have read, General, were all put in by us, but it doesn't do any harm to remind us of them.

Mr. Streeter—Mr. Thompson says this has not been put in. This is from the record of March 3.

[Directors' records, March 3, 1919, offered in evidence as Exhibit 218, and read by Mr. Streeter, as follows:]

"The directors had an interview with Judge Clifford P. Smith who read to the board two letters from himself to the board, both dated March 1, one recommending that the Board of Trustees of the Publishing Society be composed of three editors, and recommending that an early selection be made of a business manager for the Publishing Society; the other conveying an opinion expressed by ex-Governor Bates in a consultation with Judge Smith, that the board make frequent demands upon the trustees for information.

"Letters were read from the following:

"Mr. Frank H. Leonard, dated Chicago, Illinois, dated Feb. 27, together with a copy of his letter of that date to Trustee Herbert W. Eustace. . . .

"On motion of Mr. Dittmore, seconded by Mr. Merritt, it was voted to ask the trustees of the Publishing Society to let the board know the amounts that have been paid for attorneys' fees by the trustees of the Publishing Society during the past six months, including the names of such attorneys and the amounts paid to each. Also to advise the directors if any legal services have been rendered to the trustees during this period

which have not yet been paid for, and, if so, the amount of unpaid obligations.

"At 12 o'clock noon Mr. Dittmore left the meeting.

"The directors had an interview with the trustees of The Christian Science Publishing Society."

Mr. Streeter—I read from the records of March 5.

[Directors' records, March 5, 1919, introduced in evidence as Exhibit 219, and read by Mr. Streeter, as follows:]

"Present, Messrs. Dittmore, Dickey, Merritt, and Rathvon. The letter from Mr. Paul Harvey to Mr. John R. Watts, business manager of The Christian Science Publishing Society, dated Jan. 24, 1919, was again read to the board by Mr. Rathvon.

"Mr. Dittmore's letter to the board dated April 25, 1918, with reference to conditions facing the board and the Christian Science movement was read."

Mr. Streeter—Will you produce that letter, Governor Bates?

Mr. Bates—Mr. Dittmore's letter?

Mr. Streeter—Yes; Mr. Dittmore's letter dated April 24, 1918, which was reconsidered by the board on March 5, 1919.

Mr. Bates—Haven't you a copy?

Mr. Streeter—No, we haven't a copy of it. Haven't you got a copy in your hands, Mr. Krauthoff?

Mr. Krauthoff—The young lady is finding it.

Mr. Streeter—Mr. Krauthoff, haven't you got with you a copy of the minutes of February, 1916—the minutes of that meeting?

Mr. Krauthoff—We have a copy of a memorandum.

Mr. Streeter—Will you let us see that?

Mr. Krauthoff—Well, that isn't anything that belongs to you.

Mr. Streeter—Why not? If you have a copy of the original minutes, that we are hunting for—

Mr. Bates—We have not—the original records are here.

Mr. Streeter—No, no. We are now about these records of 1916. There isn't anything in the records of February, 1916, about this memorandum—in the original records.

The Master—Pardon me, do you mean 1916?

Mr. Streeter—Yes, 1916—this memorandum that we were speaking of in the first instance this morning.

Mr. Whipple—He has gone back to that part of the record which was stricken out.

Mr. Streeter—I call for the original minutes.

Mr. Bates—Well, you have called for two or three things at the same time.

Mr. Streeter—I am calling for the original minutes, which Mr. Krauthoff has got in his hands, and which you have advised him that we are not entitled to see.

Mr. Bates—You are entirely mistaken.

Mr. Streeter—As I understand it.

Now, will you produce them? Mr. Jarvis testified that he made copies of that and gave to the directors, and Mr. Krauthoff has got a copy, and I cannot see any reason why he should want to conceal it.

Mr. Bates—I will state, Your Honor, that General Streeter is mixing things a little bit. He called for something on March 5, 1919, and while we are trying to look for that he jumps back to 1916 and asks for the memorandum which Mr. Krauthoff has. This memorandum is something that we want to put in the case as badly as General Streeter does.

Mr. Streeter—Then what is the objection to it?

Mr. Bates—We have no objection to it, but I think you had better take things in their order. You called for another matter.

Mr. Streeter—I hunted for half an hour this morning to find that record, and I didn't find it.

The Master—I have not been quite able to follow your course for the last few minutes. I had my mind fixed upon a certain letter from Mr. Dittmore.

Mr. Streeter—Yes, sir.

The Master—Now, hadn't we better see about that first?

Mr. Streeter—Yes. Let us have that first. Will you let me see that letter from Mr. Dittmore, April 25—the letter of April 25, 1918, referred to in the foregoing record of March 5, 1919?

The Master—What are you going to do with that?

Mr. Streeter—I am going to put it in.

Mr. Whipple—If Your Honor please, that is a letter, again, that the trustees know nothing about. Whether or not it is admissible in the Dittmore case we do not venture to say, but we think it is clear that it is not admissible in the trustees' case.

Mr. Streeter—I have a copy of the letter. It is of the highest consequence in connection with this record, when they got out Mr. Dittmore's letter of April 25, 1918, with reference to conditions facing the board and the Christian Science movement—got it out and considered it.

The Master—The condition, in other words, facing the board in 1916?

Mr. Streeter—1918. this was.

The Master—No; but what you said seemed to me to indicate that it was a letter referred to in 1916.

Mr. Streeter—Yes. I have misled you by referring, pretty nearly at the same time, to two documents. One was a memorandum of 1916 prepared by Mr. Dittmore, which I tried to get this morning.

The Master—What is the date of this letter you are now offering?

Mr. Streeter—This is April 25, 1918.

The Master—All right. Now, the record says that that is material about the conditions existing in 1918.

Mr. Streeter—Yes. "Mr. Dittmore's letter to the board dated April 25, 1918, with reference to conditions facing the

board and the Christian Science movement is read." It was read March 5, 1919, this last March; they got it out and read it.

The Master—What do you understand that means—that the letter refers to the 1919 conditions?

Mr. Streeter—No; it refers to the—

The Master—Refers to the 1918 conditions?

Mr. Streeter—Refers to the 1918 conditions.

The Master—That is what I thought.

Mr. Krauthoff—Excuse me, General, didn't you ask for a letter of April 24? We gave you one of April 24; now you speak of one April 25.

Mr. Streeter—It was April 25—the one I called for in the record.

The Master—Is that the one you have got there?

Mr. Streeter—Yes. I have got a copy here, Mr. Krauthoff. If you have got the original I will take it or I will read from my copy and you can look at the original.

The Master—Now let us see where we are.

Mr. Streeter—April—

The Master—One moment.

Mr. Streeter—Let me see the original, please. (A letter is handed to Mr. Streeter.)

Mr. Bates—Will you give me back the one you didn't use?

Mr. Streeter—This is a letter from Mr. Dittmore to the—

The Master—The same letter, isn't it?

Mr. Streeter—Yes.

The Master—Very good. Now pause one moment. You offer that in the Dittmore case?

Mr. Streeter—Yes.

The Master—Mr. Whipple objects that it is immaterial as evidence in the other case.

Mr. Streeter—Yes.

The Master—Am I right? For the present the ruling made with regard to the letter last dealt with may stand. I understand this to be a letter from Mr. Dittmore to his co-directors—

Mr. Streeter—Yes.

The Master— —and nothing except that, so far, to connect it with the trustees.

Mr. Streeter—No.

The Master—Very good. The same ruling, then.

Mr. Streeter—The stenographer will note that this letter is marked with a red stamp "Indexed"; also marked with a red stamp, "Read Apr. 25, 1918. The C. S. Board of Directors"; also marked with a red stamp, "Read Mar. 5, 1919, The C. S. Board of Directors."

Now the letter:

"April 25, 1918.

"The Christian Science Board of Directors,

"105 Falmouth Street,

"Boston, Massachusetts.

"Dear Friends:

"After my remarks yesterday on the serious conditions which this board and the Christian Science movement

are facing, one of the members said he would be glad to know what I believed the remedy to be. I have decided to briefly and hastily outline some of the needs and reforms which are essential as a beginning.

"The first is an unselfish love for the cause of Christian Science expressed in a willingness to subordinate every personal pleasure to the vital duties of the movement which the members of this board have been chosen to direct. With such a foundation this body can begin to be 'lifted up' in thought above the sordid, selfish expressions of mortal mind's modes and methods, to take the first steps toward that unity of thought and action which will manifest itself in a united front to the enemy and to the Church membership, and which will draw those to Truth which are ready for its blessings.

"All is thought. Why should we expect that The Mother Church attendance for instance, should come out of its years of stagnation and increase unless we produce the occasion for it? Why should we expect the Real Estate Fund of The Mother Church to grow and meet our needs when there is the opposite of love, compassion, and unity expressed on this board? We have been agreeing with A. M. to move when it is willing. The various forms of the hidden hand of telepathy playing upon the weaknesses of those who are not seeing the foe in ambush necessarily hide also the hand of God which is always ready to save when consciousness is ready to accept the guidance of Principle.

"Now is the accepted time and now must Israel be delivered from its idols and go forward to the destiny for which God has called it.

"Among the departments of The Mother Church perhaps the most important activity is The Christian Science Publishing Society. This society was founded and has been maintained for the double purpose (which is really one) of providing authorized Christian Science literature and furnishing the principal source of income to The Mother Church. The custody and management of its property is intrusted to its trustees, but the general supervision of its policy is a responsibility of this board as directors of the Christian Science movement.

"Something was accomplished in the society last year, and in some respects progress is still being made and more efficient helpers speak well for the future. However, when this board gets ready to learn some of the things they ought to know, I am ready to see that those who can tell them are produced—not subordinate employees or former employees, but among the best and most faithful of our helpers.

"Lovingly, but firmly, this board must sooner or later eliminate the belief that the Publishing Society is a separate institution. This board must also be able to judge righteous and impartial judgment on matters pre-

sented to it, regardless of the relationship to us of those essential to our inquiry. Arrogance, autocracy, Pharisaism, unmercifulness, and incompetence which cannot be healed must be ruled out, or those expressing these qualities must go.

"The editorial management of The Monitor needs to be lovingly, but firmly, brought within the range of the general direction of the movement which is represented by this board. This is a kindness, not an act of hostility.

"This board must know the situation of the circulation of the publications and the finances of the Publishing Society at all times. A letter of Monitor circulation in Boston handed you herewith more than confirms my statements.

"Regular conferences are essential between this board and the trustees and editors and manager, and with such others as are necessary.

"It is this board which the By-Laws charge with the responsibility of keeping the periodicals abreast of the times. The Monitor alone has kept abreast of the times, but this board can take little credit for that fact. The Sentinel—perhaps the greatest asset this cause has—is being wasted and made of little use. A. M. has said for a long time that we cannot change the editorial situation of the Sentinel, and we accept its dictum. But God demands that this great potential force be brought to life now.

"When we allow thought to develop even slightly in regard to the Sentinel, the possibilities seem unlimited. An active editor with vision would confer with all writers of promise, develop their natural abilities along various lines according to their talents, find new contributors, rejuvenate the departments, and establish at least two new ones. There should be a column of 'Signs of the Times,' serving the double purpose of furnishing items significant to Christian Scientists as evidences of Truth's appearing and also serving as a link to connect and interest the outside world with Christian Science. Another column should serve a purpose which could be epitomized in Mrs. Eddy's sentence: 'Whatever inspires with wisdom, Truth, or Love—be it song, sermon, or Science—blesses the human family with crumbs of comfort from Christ's table, feeding the hungry and giving living waters to the thirsty.' (Science and Health, page 234.) It occurs to me that it might be called 'Crumbs of Comfort.' Into such a column would come brief paragraphs of various kinds, points on the Bible, the significance of important Scriptural unfolding. Every member of this board should furnish data of this kind, for if we are not inserting our 'Key' in the locks of the treasure-house of Truth and taking our gems of inestimable value, how can we expect the movement as a whole to go forward to

spiritual heights? I would be glad to add to my own work to the extent of undertaking to furnish such a column, for I know I could give a message to the field anonymously which would aid in some measure in bringing what Mrs. Eddy classified as the third degree of Christian Science, viz., 'a correct knowledge of the spiritual significance of the Scriptures.'

"It is through the Sentinel that the greatest work can be done. The arousing of Israel! The greatest work any man or woman can be connected with today. A labor which is worthy of 'absolute consecration of thought, energy, and desire.' (Science and Health, p. 3.) A work which must be done now. God calls upon this board now to make its demonstration of an ascension above the mists of petty selfishness and free from the image which Ezekiel says is always seen sitting at the inner gate by those gaining new visions of the Christ and of the New Jerusalem.

"And what about the budget? That which dissolves budgets scientifically has not been present on this board for a long time, and our gross neglect of communications from the field during the past year or more will never be met by mere personal presence in the board room even for long periods of time. It seems to me it is time to go back to the sane method of having the chairman and secretary, with the corresponding secretary, meet probably twice a week and sort over the correspondence and indicate the disposition of that which is unimportant or capable of being handled according to precedent.

"One of our members has said on several occasions that no deliberative body can be as efficient as it should be without utilizing committees to some extent. We are paying quite a penalty for our idiosyncrasy on this subject. When we get to working in Science we will not fear that a member who may be especially efficient in some particular line will abuse the confidence of the board or get some undue 'glory' because he is acting as a committee.

"There are many more things which can be done to accentuate the spiritual side and show the field that their directors have not lost the vision of their great Leader, but that the waters of mortal mind are dividing and that the people shall cross over into the promised land where the Ark of safety from the perils of these 'latter days' shall be proven to be their 'strong defence.'

"And now, as Mrs. Eddy puts it, 'What will you do about it?' 'Will you give yourself wholly and irrevocably to the great work of establishing the Truth, the gospel and the Science which are necessary to the salvation of the world from error, sin, disease, and death,' or will our classification be not above the 'intermediate worker' as he is described by Mrs. Eddy

in her 1900 Message to The Mother Church?

"I for one have no other interests requiring a moment of time other than this Cause. I am willing to devote all of every day, and the nights if necessary, to stemming the tide which is rapidly taking us beyond our depth.

"God demands a different standard and course of action from this Christian Science Board of Directors than heretofore, and I am convinced that the time is at hand when a great change must occur in the consciousness of this board.

"I plead guilty to every indictment that I have openly and secretly striven to extend the usefulness of Christian Science in connection with giving a more spiritual and progressive tone to our publications, and for ten years, to revealing the significant facts of our Leader's human experience which A. M. is so determined to suppress.

"I pray that the work of these last two days shall not be in vain.

"Very sincerely,

"J. V. DITTEMORE."

"JVD-L"

[The letter of which the foregoing is a copy is marked Exhibit 220. R. H. J.]

I read from the record of March 6—

The Master—You have now finished reading what you desire to read from the record of the meeting at which that letter was produced and considered, have you?

Mr. Streeter—Yes, the record of that meeting. That was the record of the meeting of March 5. Now I turn to the meeting of March 6.

Present, Messrs. Dittemore, Dickey, Merritt and Rathvon.

"On motion of Mr. Merritt, seconded by Mr. Dickey, it was voted that any copies of resolutions or minutes of this board which are given to the members thereof be returned to the corresponding secretary to be destroyed by him within one month of the date they were given out without their having been copied.

"A roll call on the above motion resulted as follows:

"Mr. Dittemore, No; Mr. Dickey, Aye; Mr. Merritt, Aye; Mr. Rathvon, Aye.

"Mr. Dittemore said he would file a letter reviewing the situation and explaining why he voted against this motion.

"Mr. Merritt declared that he offered the resolution in loyalty to the Board of Directors that their proceedings should not go beyond the board."

Another excerpt:

"Mr. Dittemore asked the corresponding secretary for copies of the informal notes made by Mr. Merritt and Mr. Rathvon of the two conferences between the directors and the trustees of the Publishing Society when he was not present. The chairman entered an objection to Mr. Dittemore's taking copies of any of the

memoranda on file in our Church with reference to the transactions of this board.

"Mr. Dittmore requested that the board be asked to sustain or not sustain the chair, and that a roll be called.

"Mr. Merritt left the room. The roll call resulted as follows:

"Mr. Dittmore, No; Mr. Rathvon, No; Mr. Dickey, Aye.

"Whereupon the corresponding secretary had copies made and given to Mr. Dittmore of the informal memoranda prepared and filed by Mr. Merritt and Mr. Rathvon of the meetings of Feb. 24 and March 3 with the trustees."

[The minutes of the meeting of the directors of March 6, 1919, from which the foregoing extracts are read, is Exhibit 221. R. H. J.]

Mr. Bates—That is another record that is already in.

Mr. Streeter—I think that that is in.

Mr. Bates—Among some of the other records which General Streeter put in this morning.

[Here followed a discussion concerning two letters dated March 13, 1919, from Mr. Dittmore to the board, which, by agreement of counsel and the approval of the Master, is omitted from the record, because Mr. Streeter suggests that he will offer the letters later, in connection with another matter.]

Mr. Streeter—A further excerpt from the records of March 6:

"Letters were read from the following: Mr. Edward L. Ripley, treasurer, dated Boston, Feb. 25, recommending that the Mary Baker Eddy memorial fund be merged with the general fund of The Mother Church, which was, upon motion of Mr. Merritt, seconded by Mr. Rathvon, approved."

[Excerpt from record of March 6 of meeting of the Board of Directors, as read by Mr. Streeter, is offered in evidence as Exhibit 222.]

Mr. Streeter—The following excerpt from the records of March 10, 1919:

"Harvey S. Chase & Company, Certified Public Accountants, dated Boston, Feb. 24, being a preliminary report upon their examination of the War Relief and Camp Welfare Fund, and the Comfort Forwarding Committee. Disposition indicated."

[That portion of the record of the meeting of the Board of Directors, dated March 10, 1919, as read by Mr. Streeter, is offered in evidence as Exhibit 223.]

Q. Do you know what that record means, Mr. Jarvis—"Disposition indicated"? A. It would be noted on the letter itself to which the record refers.

Mr. Streeter—Will you produce the letter, Mr. Krauthoff, or Governor? The letter from Harvey Chase, dated Feb. 24, inclosing a preliminary report with reference to the War Relief Fund.

Mr. Bates—We haven't it here, Your Honor.

Mr. Streeter—Well, will you get it?

Mr. Bates—Yes, certainly. But, as I have suggested before, I think you should put your request in the form of a letter so that we can know what you want, so that we won't keep running back and forth all the time.

Mr. Streeter—We will do the best we can, but you won't mind about this one, will you?

Mr. Bates—Oh, no; we will make a minute of it to help you out.

Mr. Streeter—Thank you. From the records of March 11, 1919, the following extract is quoted:

"The corresponding secretary reported a request from Mr. Dittmore for copies of those portions of the minutes of March 6 referring to him and of Mrs. Longyear's letter of Feb. 27. The chair declined to authorize the secretary to make copies of minutes in response to the request that they be given out, and a motion to appeal from the ruling of the chair, made by Mr. Dittmore, seconded by Mr. Rathvon, was carried, whereupon the corresponding secretary prepared and gave Mr. Dittmore the copies as requested."

From the same date:

"Letters were read from Judge Clifford P. Smith, manager of committees on publication, as follows:

"Dated March 11 advising that Attorney Samuel L. Powers had requested a conference between Judge Smith, the board and himself, and counsel for First Church of Christ, Scientist, Nashville, on Saturday, March 15; also requesting the engagement of Attorneys John L. Bates and Leon M. Abbott as counsel for The Mother Church. Disposition indicated."

Also the following excerpt:

"The following resolution was offered by Mr. Rathvon, its adoption seconded by Mr. Merritt, viz.:

"Resolved, that no copies of any portions of the minutes of the meetings of this board shall be made by or for any member except by unanimous vote of all members present.

"Roll call resulted in the following vote:

Mr. Dittmore .....	No.
Mr. Dickey .....	Aye.
Mr. Merritt .....	Aye.
Mr. Rathvon .....	Aye.

"The resolution was declared adopted. At 12 o'clock Mr. Dittmore left the meeting.

"The remaining directors had an interview with Trustees Eustace, Ogden and Rowlands of The Christian Science Publishing Society."

[The portions of the meeting of the directors dated March 11, 1919, as read by Mr. Streeter, are offered in evidence as Exhibit 224.]

Mr. Streeter—From the records of March 13, 1919:

"A letter was read by Mr. Dittmore, dated March 13, 1919, requesting copies of certain portions of the

minutes of March 11, and a letter written by Mrs. Eddy to the directors about the failure of the board to join other Boston churches in ringing the chimes on the occasion of the passing on of Pope Leo. The chair asked for a motion as to the disposition of Mr. Dittmore's request for a copy of certain of the minutes; the chair also asked Mr. Dittmore if he wished to make a motion; whereupon Mr. Dittmore offered a motion supporting his written request but as it did not receive a second, the matter was dropped. Mr. Dittmore asked for a copy of Mrs. Eddy's letter referred to in his letter of even date and the chair referred to a motion passed by the board prohibiting the giving out of such copies."

Q. Mr. Dickey was chairman at this time, was he not? A. He was.

Mr. Streeter—Another excerpt:

"A letter was read from Mr. Dittmore, dated March 13, giving his reasons for voting against Mr. Rathvon's motion of March 11."

[Those portions of the record of the meeting of the Board of Directors dated March 13, 1919, as read by Mr. Streeter, are offered in evidence as Exhibit 225.]

Mr. Streeter—Now, those two letters Mr. Thompson will read into the record.

Mr. Thompson—We have one, and they say they have not got the other one.

Mr. Streeter—Haven't you got copies?

Mr. Thompson—Yes; but I want the originals.

Mr. Whipple—I take it, if Your Honor please, those letters do not affect our case and come under the ruling Your Honor has already made.

The Master—I will rule as requested by Mr. Whipple as to that letter. Are you going to read it?

Mr. Thompson—Yes, sir. There are two letters of this date, both referred to in the records. The first one is as follows:

[Copy of Exhibit 226.]

"John V. Dittmore, C. S. B.

"236 Huntington Ave.

"Boston, U. S. A.

"March 13, 1919.

"The Christian Science Board of Directors,

"105 Falmouth Street,  
"Boston, Massachusetts.

"Gentlemen:—

"As a member of this board and as a co-trustee of the interests of the members of The Mother Church, the beneficiaries under this trust, I hereby respectfully request copies of the following:

"First—Copy of such parts of the minutes of this board of March 11 as refer to a motion by Mr. Rathvon adopted by the board, attempting to provide a means of preventing a minority of this board from securing copies of motions of record in the minutes of this board.



"Second—Copy of a letter written by Mrs. Eddy to the directors for their instruction and now in the files of the directors, giving advice in regard to the directors taking advantage of their opportunities and referring specifically to the failure of the board to join the other Boston churches in ringing the chimes on the occasion of the passing on of Pope Leo.

"Very sincerely,  
(Signed) "J. V. DITTEMORE."  
"JVD-L"

[Letter, dated March 13, 1919, Mr. Dittmore to Board of Directors, is marked Exhibit 226.]

Mr. Thompson—The second one is as follows—the same date, addressed to The Christian Science Board of Directors. That is the one I would like to see. Have you got it here?

Mr. Bates—No, we haven't found it.

Mr. Thompson—It may have some marginal comments on it. Many of these originals, as they come in here, have little pencil memorandums on them by somebody, and sometimes of significance. (Reading.)

"March 13, 1919.

"The Christian Science Board of Directors,  
"105 Falmouth Street,  
"Boston, Massachusetts.  
"Gentlemen:

"I voted against Mr. Rathvon's motion of March 11 for reasons which include the following:

"1. The action it contemplates is illegal and is so designated by an attorney's opinion which is, or should be in the files of this board.

"2. Just before this action was taken, Mr. Dickey, the chairman, said: 'If Mr. Dittmore were acting in harmony with the rest of us, we would not object to giving him copies of the minutes,' which simply means that because a member of this board disagrees with the majority the majority thereupon retaliates by using its claimed power, either legally or illegally, to adopt rules to deprive a dissenting member of his rights.

"3. This action is but another instance of the policy adopted by the majority of this board, to strangle the rights of a dissenting fellow member.

"Very sincerely,  
(Signed) "J. V. DITTEMORE."  
"JVD-L"

Now, that is the letter I would like to see the original of. You must have it there.

Mr. Dane—I think, Mr. Thompson, that letter was produced at the last hearing and was read into the record.

Mr. Thompson—Was it? Well, I did not see it. If it was it has got back into your possession, and I would like to see it again and see what is written on the margin.

Mr. Streeter—I also read from the records of March 13—

The Master—Pause one moment. Have you got through about this letter?

Mr. Thompson—I do not suppose any further request from us will produce anything more. Apparently counsel haven't it at hand in such a way that they can produce it at this time.

Mr. Dane—I have a recollection, Your Honor, that that letter was produced on last Thursday and was read into the record at that time, and it is not at the present time in our files of the Dittmore letters.

Mr. Thompson—Possibly, but it was not produced at our call, it was not handed to us. Now, it must have been returned to you by Mr. Whipple, unless he has it now, and I don't think he has.

Mr. Dane—It is marked Exhibit 203.

Mr. Whipple—My memory was that it was called for by General Streeter on Thursday. I do not remember that we had it, but I may be mistaken.

Mr. Dane—It was produced at the instance of General Streeter on Thursday and read into the record, and is marked Exhibit 203.

The Master—Now, does anybody want it in twice?

Mr. Thompson—No.

Mr. Streeter—No, Your Honor.

Mr. Bates—It has already been read.

Mr. Streeter—Only one more excerpt I want to read before recess. It is from the records of March 13:

"Christian Science War Relief Committee for Great Britain and Ireland (cable), dated London, March 11, submitting three nominations of the London churches for a successor to Mr. Allen W. Heber Percy on the committee. On motion of Mr. Rathvon, seconded by Mr. Merritt, it was voted to appoint Mr. Anthony Maxtone-Graham to fill the vacancy."

[That portion of the meeting of the directors, dated March 13, 1919, as read by Mr. Streeter, is offered in evidence as Exhibit 227.]

Mr. Streeter—Now, we come to the records of March 17, and those have got all to be read into this record. Shall we take a little recess before it is done?

The Master—We will take a recess if you desire.

[Recess.]

Mr. Thompson—These are the entries of the directors' records, Monday, March 17, 1919.

[Directors' records, March 17, 1919, introduced in evidence as Exhibit 228, and read by Mr. Thompson as follows:]

"At a regular meeting of The Christian Science Board of Directors, held at 9:30 a. m. on above date in the directors' room of The Mother Church, there were present Messrs. Dittmore, Dickey, Merritt and Rathvon. The minutes of the regular meeting of March 13 and of the special meeting of March 14 were read and approved.

"On motion of Mr. Merritt, seconded by Mr. Rathvon, the corresponding

secretary was instructed to arrange if possible for the installation of secondary clocks in the directors' room, in the hallway of the Readers' rooms, and in the Sunday School room of The Mother Church, to be connected with the master clock in The Christian Science Publishing House."

The Master—I take it, if you will allow me to interrupt a moment, that an entry like that throws no light on the case.

Mr. Thompson—Let it go out; it ought to go out, certainly. It is of no consequence.

"A letter was read from The Christian Science Publishing Society dated March 14, in acknowledgment of the board's letters of March 3 and 13, requesting certain information.

"The following preamble and resolution was offered by Mr. Rathvon, its adoption seconded by Mr. Merritt, viz.:

"The following resolution is offered for adoption by The Christian Science Board of Directors, the Board of Directors of The First Church of Christ, Scientist, in Boston, and the governing board of the Christian Science denomination. It is offered for adoption in the exercise of the rights and powers vested in this Church and in this board by the law of Massachusetts; by the Deed of Trust dated Jan. 25, 1898, through which Mary Baker Eddy, the Discoverer and Founder of Christian Science, and the Leader of the Christian Science movement, constituted the Board of Trustees of The Christian Science Publishing Society; by the By-Laws of this Church and by the usage of the Christian Science denomination.

"Whereas, Mr. Lamont Rowlands, who has been acting as a trustee of The Christian Science Publishing Society under said Deed of Trust and under Art. 25 of the By-Laws of this Church, was put into said position for the reason, among other reasons, that he was a member of this Church who had subscribed to its By-Laws and was regarded as obedient to its By-Laws and government; and

"Whereas, Mrs. Eddy has declared that "the present and future prosperity of the cause of Christian Science is largely due to the By-Laws and government of 'The First Church of Christ, Scientist,' in Boston" (Christian Science Sentinel, Vol. XVI, page 1010); and

"Whereas, Mrs. Eddy has declared that "Law constitutes government, and disobedience to the laws of The Mother Church must ultimate in annulling its Tenets and By-Laws. Without a proper system of government""—

The Master—Now, if you will let me interrupt there again, all this is printed in the pleadings, isn't it?

Mr. Thompson—I don't know whether this is or not.

Mr. Bates—Yes, sir.

The Master—I have it right before me.

Mr. Thompson—Very well; then that may not be read.

The Master—Do you want it all?

Mr. Whipple—I think it was read in the plaintiffs' case, was it not?

Mr. Thompson—My impression is that this resolution has been read at some time in the case.

Mr. Whipple—Yes; I think we read it.

The Master—It is in full, as I understand it, in the bill.

Mr. Streeter—What are you looking at?

The Master—If you read enough to identify it it seems to me that that is all you need.

Mr. Thompson—If Your Honor is sure that this is set out somewhere.

The Master—In the pamphlet containing the bill in equity and the answer of Dickey and others, I find it on page 57; in the pamphlet containing the bill in equity and the answer of Mr. Dittmore I find it on page 51, beginning at page 51.

Mr. Thompson—If it is not only in the pleadings but also admitted by the persons against whom it is pleaded there would be no occasion for reading it now.

The Master—As I understand the pleadings, it is admitted by both respondents. I don't know if I am right or not.

Mr. Bates—You represent one of them, Mr. Thompson.

Mr. Thompson—Well, we certainly admit that this resolution was passed as I have been reading it and as it has been set out in our pleadings.

Mr. Streeter—All we care, Your Honor, is that these two resolutions should be legitimately in the record of the case before you by proof. That is all we care for.

The Master—I supposed that must be all you cared for. Now that you have read enough to identify the document, isn't it enough after that to refer to the pleadings?

Mr. Thompson—If, with that reference, goes an admission on all hands that the pleadings correctly set out the contents of the records.

Mr. Streeter—They do set out—

The Master—I should suppose by this time counsel would know whether the pleadings correctly set forth the documents or not.

Mr. Bates—We admitted it in our pleadings.

Mr. Thompson—Very well; it apparently is admitted. Then I will read, without reading the rest of those preambles, the reasons that are alleged for Mr. Rowlands' dismissal—I will read the roll call on that motion:

"A roll call on the adoption of the resolution resulted as follows:

Mr. Dittmore .....Not voting  
Mr. Dickey .....Aye  
Mr. Merritt .....Aye  
Mr. Rathvon .....Aye

The resolution was declared adopted."

"The following resolution was read, viz.,

"Whereas Mr. John V. Dittmore, one of the members of this board, has frequently and continually failed and refused to accept and obey the by-law of this Church that "the business of The Mother Church""—

Mr. Streeter—Now isn't the rest of that all in?

Mr. Thompson—Yes; I am reading just enough to identify it.

"—'be transacted by its (C. S.) Board of Directors' (Manual, Article 1, Section 6)."

Then follow a large number of alleged reasons justifying the concluding sentence:

"Now therefore it is resolved by The Christian Science Board of Directors, the Board of Directors of The First Church of Christ, Scientist, in Boston, that Mr. John V. Dittmore be, and he is by the adoption of this resolution, removed and dismissed from this board.

"Resolved further that Mr. Dittmore be and hereby is requested to return to the clerk of The Mother Church and corresponding secretary of this board all letters, documents, papers, copies thereof, and other articles which he has taken or received as a member of this board or an officer of this Church, or which have been delivered to him by reason of his being a member of this board or an officer of this Church.

"And before the adoption of the foregoing resolution, the individual directors appealed to Mr. Dittmore that for his own sake he should tender his resignation as a member of the board. On his declining to do so, it was moved by Mr. Merritt, seconded by Mr. Rathvon, that the resolution be adopted. Carried.

"Shortly thereafter Mr. Dittmore left the board meeting.

"The directors had an interview with Trustees Eustace, Ogden, and Rowlands of The Christian Science Publishing Society, and the resolution adopted earlier in the meeting, declaring the trusteeship of Mr. Rowlands terminated and the position vacated, was read.

"After the trustees retired, it was moved by Mr. Rathvon, seconded by Mr. Merritt, and carried unanimously, Mr. Neal's vote being taken over the telephone, to elect Mrs. Annie M. Knott a member of The Christian Science Board of Directors to fill the vacancy caused by the retirement of Mr. Dittmore.

"At 1:35 p. m. the directors took a recess until 2:45 p. m.

"Letters were read from the following:

"Mr. Frank H. Leonard, dated Chicago, Illinois, March 15, and from Mrs. Eloise Hallenbeck, dated Port Chester, New York, March 15, both letters relating to the situation between the directors and the trustees.

"The directors had an interview with Editor Frederick Dixon of The Christian Science Monitor.

"The directors had an interview with the Finance Committee of The Mother

Church, namely, Messrs. Calvin C. Hill, Charles E. Lord and Fred M. Lamson.

"At 5:35 p. m. the meeting adjourned.

"ADAM H. DICKEY, Chairman.

"Approved, March 18, 1919,

"EDWARD A. MERRITT, Secretary."

Mr. Streeter—I will read the following extracts from the records of March 18, 1919.

[Directors' records, March 18, 1919, offered in evidence as Exhibit 229, and read by Mr. Streeter, as follows:]

"The directors had an interview with Editor Frederick Dixon of The Christian Science Monitor, in the course of which he expressed the hope that the differences between the directors and trustees might be adjusted amicably and he offered his services to that end. Upon his recommendation, the following tentative agreement was taken by Mr. Dixon in the hope of obtaining the signatures of the trustees of the Publishing Society thereto, viz.:

"Final authority in regard to editorial policy of the organs of The Mother Church and the general supervision of the affairs of The Christian Science Publishing Society as set forth in the Manual of The Mother Church."

Mr. Whipple—If you will pardon me, if Your Honor please, I take it that the account of this meeting and the efforts that were made as to compromise would not be material in the Eustace suit or the trustees' suit. I would like to raise the point.

Mr. Bates—I think I also, Your Honor, will raise the question as to whether any of these records after the date of the removal have any competency in the case, or are relevant.

Mr. Streeter—We filed our bill April 29, and we are proposing, with the approbation of Your Honor, to go over their records up to the time of the filing of the bill, and then the question whether later records will be offered we will discuss afterward.

Mr. Bates—This is an action to reinstate Mr. Dittmore.

Mr. Streeter—No, sir. I beg your pardon. This is an action—

The Master—I did not hear that.

Mr. Bates—This is a bill in equity to have Mr. Dittmore declared still a director in The Christian Science Church.

Mr. Streeter—Yes.

Mr. Bates—And I assume that these records as to what happened since, where he was not a party, and of meetings which he did not attempt to attend, have no bearing on the questions which are raised by our removal of him.

Mr. Streeter—May I be heard?

The Master—Of course.

Mr. Streeter—If Your Honor please, this is not a proceeding to reinstate John V. Dittmore as a member of The Christian Science Board of Directors. It is a proceeding to have declared null and void and unlawful an attempt made to remove him from that office to which he had been appointed by

the recommendation of Mrs. Eddy. Do not let us have any misunderstanding. We are not trying for reinstatement; we are challenging your power and authority and the lawful exercise of any power or authority that you had to dismiss Mr. Dittmore. Now, that—

The Master—Well, you want his attempted dismissal declared void?

Mr. Streeter—I do.

The Master—That is what it comes to.

Mr. Streeter—Unlawful.

The Master—Whether you call it a reinstatement, or call it by some other term, does not matter very much.

Mr. Streeter—Well, not so far as results are concerned, but so far as the general situation is concerned, I am stating it as I regard the situation to be.

The Master—I am not prepared to rule at present that everything done by the directors after March 17 is inadmissible as against Mr. Dittmore. I think I will take that subject to your objection, as I have several other pieces of evidence offered today. Some of these doings of the directors, although after March 17, appear to have a more or less direct relation to what was done on or before March 17.

Mr. Whipple—If Your Honor please, I interposed the first objection. Unless the directors' records contain admissions which the plaintiffs would desire to put in evidence, I do not see that they affect the trustees' case. I do not know that General Streeter is offering them in the trustees' case.

The Master—It may be all taken subject to your objection, and admitted over your objection, if necessary.

Mr. Streeter—From a meeting of March 19—oh, did I put in March 18? Yes, I did. Now, the next excerpt is from the meeting of March 19, 1919.

Present, Messrs. Dickey, Merritt, Rathvon and Mrs. Knott.

"The chair reported that yesterday afternoon Mr. Frederick Dixon came over to the directors' offices and interviewed Messrs. Rathvon, Merritt and Dickey. While he did not report a complete failure in his efforts to obtain the agreement of the trustees of the Publishing Society to the statement he received from the directors at their board meeting earlier in the day, he seemed to think that they were united in their opposition to the wishes of the Board of Directors as expressed in that paper. It seems that their intention as disclosed to him is that they shall take no action whatever regarding the dismissal of Mr. Rowlands and expect to continue their management of the Publishing Society, retaining him as co-trustee. At the request of the directors present, the corresponding secretary prepared two letters and sent them to Trustees Eustace and Ogden, and to Business Manager Watts, respectively, confirming the dismissal of Mr. Rowlands from trusteeship in the Publishing Society.

"Mr. Rathvon referred to certain steps which might be taken in connection with the situation, consideration of which was deferred until Monday, March 24."

"Another excerpt:

"An informal memorandum, prepared by Mr. Rathvon, of certain details of the conference between the trustees and directors on March 11 was read and placed on file."

Will you produce that, Mr. Jarvis? Do you remember what those "certain steps" were which Mr. Rathvon suggested?

The Witness—No, sir.

The Master—Pause a moment. You called for the memorandum, didn't you?

Mr. Streeter—Yes, I did.

The Master—Well, if that is here, I suppose it is the best evidence.

Mr. Streeter—Yes, Your Honor. You are quite right.

Mr. Bates—Here it is, General (passing a paper to Mr. Streeter).

Mr. Streeter—

"Memorandum of Notes

"by Wm. R. Rathvon

"taken at meeting

"between

"Trustees and Directors

"March 11, 1919."

And it is marked with a red stamp. "Read Mar. 19, 1919, the C. S. Board of Directors."

"Mr. Dickey—Then you concede that the directors have final authority in affairs of The Mother Church but not in the Publishing Society. Is that it?"

"Mr. Rowlands—We do not admit and never have admitted the final authority of the directors in affairs of the publishing house. That authority belongs to the trustees.

"Mr. Dickey—I have a letter here bearing Mr. Eustace's signature which admits it.

"Mr. Eustace—Now, Mr. Dickey, you know that was written at a time when we were trying to reach some working agreement. It does not bind my colleagues today as they were not trustees then. The two boards must act concurrently neither being superior to the other.

"Mr. Merritt—Suppose you were wanting to spend a sum of money for some purpose the directors did not approve and the two boards could not concur, would you go ahead and spend it?"

"Mr. Eustace—No, we would not.

"By W. R. R.—Suppose, on the other hand, you had adopted and were carrying out some policy or measure and the directors believed you should take another course, would you feel obligated to follow the course indicated by the directors?"

"Mr. Eustace—No, not unless the two boards concurred.

"Mr. Rathvon—Well, what could be done under such circumstances?"

"Mr. Eustace—We would all have to work it out by demonstration.

"Mr. Dickey—That is, you would have your own way about it."

[The memorandum of notes by William R. Rathvon, taken at meeting between trustees and directors March 11, 1919, of which the foregoing is a copy, is marked Exhibit 231. R. H. J.]

"Another excerpt from the meeting of March 19, 1919: "The directors had an interview with Judge Clifford P. Smith, who was requested to confer with Attorneys John L. Bates and Leon M. Abbott, with reference to the possible retirement of Mr. Dittmore as Trustee under the Will of Mary Baker Eddy." I will remind Your Honor—

Mr. Bates—That also has been read into the record.

Mr. Streeter—No; I don't remember it.

Mr. Thompson—Yes, it has been.

Mr. Bates—It has been. Mr. Thompson read it in.

The Master—It has a familiar sound.

Mr. Bates—I think that it should be struck out, Your Honor, for the sake of saving the space, if nothing else.

The Master—I beg your pardon, Governor Bates?

Mr. Bates—I say, I think that it should be struck out of the record for the sake of saving the space.

Mr. Streeter—I don't remember it, but, at any rate, we want it here.

The Master—Well, we do not want to get into the practice of putting anything twice into this record.

Mr. Streeter—No. Well, it might be struck out in the—well, I don't care if it is in: I simply want to be sure that it is in.

The Master—You are perfectly right, of course, in doing that. Can you not find out whether it has been put in already or not?

Mr. Bates—We can in a moment.

Mr. Streeter—Well, you may have it either way you wish. All that I want is to have it in once.

The Master—Well, then, if no one is prepared to show us now that it is in before, the stenographer had better take it, and it had better be stricken out should it appear later that it was put in before.

Mr. Streeter—I would remind Your Honor with reference to this vote that the Trustees under the Will of Mary Baker Eddy are not subject to removal by this Board of Directors or anybody else except the courts of New Hampshire.

Another excerpt:

"Mr. Rathvon read a letter to him from Mrs. Mary Beecher Longyear, dated Pasadena, March 12, with reference to the situation between the directors and trustees, and a copy thereof was placed on file."

Will you produce that letter?

Mr. Dane—What is the date?

Mr. Bates—Will you give us the date again?

Mr. Streeter—March 12.

Mr. Bates—From whom?

Mr. Streeter—From Mrs. Longyear, at Pasadena.

The Master—I suppose, in regard to that letter, that the only material point would be what action, if any, the directors took about it.

Mr. Streeter—Yes. Your Honor is quite right. The matter of Mrs. Longyear's benefactions to this board, and their treatment of her, against Mr. Dittmore's objection, is a matter of some consequence.

Mr. Bates—It is nothing that we object to, Your Honor, we do not consider the letter material.

The Master—I have already indicated that I do not see how the letter, in and of itself, can be material.

Mr. Streeter—Well, I supposed that it referred to the donations and benefactions. I find that it does not. It is purely a Christian Science letter. I will put it in or not, just as you want me to. I called for it and I will put it in if you say so.

Mr. Bates—We don't care what you do with it.

Mr. Streeter—All right. Then leave it out.

The Master—Leave it out.

Mr. Streeter—Another excerpt:

"A letter was read from Editor Frederick Dixon, dated Boston, March 19, advising the unchanged attitude of the trustees of the Publishing Society in spite of his efforts. Reply indicated."

[The record of the meeting of directors of March 19, 1919, from which the foregoing extracts are read, is Exhibit 232. R. H. J.]

From the records of March 20, 1919. Present, Messrs. Dickey, Merritt, Rathvon, and Mrs. Knott.

"The directors had an interview with Judge Clifford P. Smith who reported an interview with Attorneys Bates and Abbott, who saw no reason why a vacancy should not be declared in the directorate of the Benevolent Association in case Mr. Dittmore should refuse to resign, but they advised waiting a while before taking any action to effect a change in his trusteeship under the Will of Mary Baker Eddy, so as not to have too many contests on hand at the same time."

Mr. Bates—I submit, Your Honor, that this has all been read into the record once before by General Streeter's associate counsel. Nearly everything that he has read today has been read into the record before.

Mr. Streeter—Sir?

Mr. Bates—I say that nearly everything that you have read here today has been read before.

Mr. Thompson—Oh, no.

Mr. Streeter—You are absolutely wrong. Do you say that that was read in, Mr. Thompson?

Mr. Thompson—Yes, Mr. Whipple or I read it into the record; I am not sure which.

Mr. Streeter—If it has been read I withdraw it.

Mr. Bates—Well, then, let it go out.

The Master—Yes, let it go out. We do not, any of us, want the record to

be swelled by what does not belong there.

Mr. Streeter—Another excerpt:

"The directors approved the permanent mountings of letters from Mrs. Eddy's secretaries or assistants, also letters written by Mrs. Eddy in the files which came from Chestnut Hill; also any communications bearing notations of importance in Mrs. Eddy's handwriting."

Under date of Saturday, March 22, 1919.

Present, Messrs. Dickey, Merritt, Rathvon, and Mrs. Knott.

"The directors held a consultation with Judge Clifford P. Smith, and Attorneys Bates and Abbott, with reference to the resolutions adopted March 17, declaring vacant the directorship of John V. Dittmore and the trusteeship of Lamont Rowlands.

"During the conference letters were read from the trustees of The Christian Science Publishing Society, dated March 21, acknowledging receipt of the board's letter of March 18, advising them of the removal of Mr. Rowlands; also from the business manager of the Publishing Society, dated March 21, in reply to the directors' letters of Feb. 27 and March 13, advising the charges made by their attorneys.

"After the attorneys retired the directors had an interview with the business manager, John R. Watts, of the Publishing Society."

[The record of the meeting of the directors of March 22, 1919, from which the foregoing extract is read, is Exhibit 233. R. H. J.]

The meeting of March 24, 1919:

"Letters were read from the following: Mr. John V. Dittmore, dated Boston, March 12, to Mr. Albert F. Gilmore of New York City, about the situation between the directors and the trustees."

Will you produce that letter?

Mr. Bates—That was a letter from Mr. Dittmore?

Mr. Streeter—This is a copy of a letter from Mr. Dittmore to Albert F. Gilmore, dated Boston, Massachusetts, March 12, 1919, and considered by the board at their meeting of March 24.

Mr. Bates—We haven't the letter here. It is not one of those that you asked for. We haven't it.

Mr. Streeter—Well, we want it, Mr. Bates. Will you get it for us?

Mr. Bates—That is from Mr. Dittmore to Mr. Gilmore?

Mr. Streeter—From Mr. Dittmore to Mr. Gilmore.

Mr. Bates—Dated March 12?

Mr. Streeter—Dated March 12, about the situation between the directors and the trustees.

Mr. Bates—And read at the meeting of March—

Mr. Streeter—And read and considered by the directors at the meeting of March 24.

Mr. Bates—All right.

Mr. Streeter—Can you have it here this afternoon, Mr. Bates?

Mr. Bates—I presume so.

Mr. Streeter—Will you get it?

The Master—Are you going to rely on something that the directors did about that letter?

Mr. Streeter—Your Honor can see how—

The Master—If it simply stops there, that there was a letter from Mr. Dittmore to some outside party, that was read, and nothing done about it, I do not think that we want it.

Mr. Streeter—I read the following excerpt from the same record, the record of the same meeting:

"The directors requested Mr. Leonard to go to New York to consult Mr. Albert F. Gilmore and others regarding the local situation. The directors asked Col. Bangs to remain over until the following morning for further consultation."

This was obviously as a result of this letter.

The Master—Of what significance is it if they did send somebody over to consult with Mr. Gilmore?

Mr. Streeter—Well, it is preliminary.

The Master—Preliminary to what?

Mr. Streeter—Preliminary to what they did and what they said.

[The record of the meeting of the directors of March 24, 1919, from which the foregoing extract is read, is Exhibit 234. R. H. J.]

Well, I will proceed. I would like to have you get the letter.

Another excerpt:

"After considering various candidates for the position of associate editor to succeed Mrs. Annie M. Knott it was upon motion of Mr. Neal, seconded by Mr. Rathvon, and after consulting Editor William P. McKenzie, voted unanimously to elect Mrs. Ella W. Hoag as associate editor of the Christian Science periodicals."

[That portion of the record of meeting of the Board of Directors, dated March 24, as read by Mr. Streeter, is offered in evidence as a part of Exhibit 234.]

Mr. Streeter—From the records of March 25:

"A letter was read from the Board of Trustees of The Christian Science Publishing Society, dated Boston, March 25, advising the Board of Directors that the trustees had filed in the Supreme Judicial Court of Massachusetts a Bill in Equity to prevent the directors from the exercise of their authority, which the trustees allege will result in the destruction of a sacred trust created by our great Leader, defeat her purposes as therein declared, injure irrevocably the Christian Science movement and deprive The Mother Church and Mrs. Eddy's trustees of a great benevolence with which she has endowed the movement."

Another excerpt from the same meeting:

"The directors had an interview with Col. F. A. Bangs of Chicago respecting the differences between The Christian Science Board of Directors

and the trustees of The Christian Science Publishing Society."

Another excerpt:

"A tentative proposal to be submitted to the trustees of the Publishing Society, offering to arbitrate the alleged differences, was dictated, edited and laid over for further consideration."

[Those portions of the record of the meeting of Board of Directors, dated March 25, 1919, as read by Mr. Streeter, are offered in evidence as Exhibit 235.]

Mr. Streeter—From the records of Wednesday, March 26:

"The directors had an interview with Col. F. A. Bangs of Chicago in connection with the local situation."

Further excerpt:

"A conference was also held with Judge Clifford P. Smith, who was authorized to confer with his associates as to the wisdom of presenting a proposition to arbitrate the differences between the two boards."

Another excerpt:

"Judge Smith reported in person developments and conclusions reached by himself and Messrs. Bates and Abbott of counsel for the directors."

Another excerpt:

"Judge Smith submitted a proposed letter to be printed as a circular, which was, upon motion of Mr. Rathvon, seconded by Mr. Neal, approved and ordered printed in circular form to be mailed immediately to practitioners, readers and clerks of branch churches and societies, and to members of the Board of Lectureship."

[Those portions of the record of the meeting of the Board of Directors, dated March 26, 1919, are offered in evidence as Exhibit 236.]

Mr. Streeter—From the meeting of March 29:

"Judge Clifford P. Smith and Mr. Edwin A. Krauthoff of counsel were present, and the propriety of sending out a letter to the field asking Christian Scientists to defer judgment until our answer had been prepared and submitted to the courts was discussed, and a letter agreed upon and submitted by counsel was approved and ordered printed and mailed immediately."

[That portion of the record of the meeting of the Board of Directors, dated March 29, 1919, as read by Mr. Streeter, is offered in evidence as Exhibit 237.]

Mr. Thompson—There are one or two more here—we will try to get through quickly. Meeting of April 7:

"On motion of Mr. Merritt, seconded by Mr. Rathvon, it was voted to raze and destroy the boathouse and store the boat in the barn for the present."

[That portion of the record of the meeting of the Board of Directors, dated April 7, as read by Mr. Thompson, is offered in evidence as Exhibit 238.]

Mr. Thompson—That is Mrs. Eddy's boathouse at Pleasant View.

Mr. Bates—Now, I submit, Your Honor, that has no reference to this case whatever.

The Master—What do you want it for?

Mr. Thompson—I suppose what the General has in mind is this: Preceding the dismissal of Mr. Dittmore on March 17, there were differences of opinion between him and some of his fellow directors, especially Mr. Dickey, on a great variety of topics. He did not treat those as personal matters, merely as matters of sincere and honest differences of opinion. It appears that the only way to account for this extraordinary action of March 17, dismissing him, is merely because he preferred to discharge all the trustees at once rather than one at a time. The only explanation we can offer on that is, as bearing on the charge of bad faith, that it was an effort to get rid of him, not because of his difference of opinion with them on this theoretical topic, largely a matter of law, but by reason of the growing antagonism of a personal character between him, and especially Mr. Dickey, owing to a great variety of differences of opinion in the past. Now, this boathouse matter, I understand, is one of them. If it is, it is a trifling one, but that is the only pertinence of putting it in.

The Master—We haven't had anything about any difference of opinion regarding the boathouse?

Mr. Thompson—No, you have not. I suppose you will have to hear it for the first time sometime. You will hear a great deal about differences of opinion the moment Mr. Dittmore begins to testify. We are simply picking up from the records such corroboration as we can find—

The Master—I suppose if he says that he expects to make it material hereafter, I shall have to let it stand.

Mr. Thompson—If I do not make it material there is no reason why the reference to the boathouse should not go out.

The Master—Go on.

Mr. Thompson—I will add this: It might appear to the outsider, and it did to me when I first began to consider some of these matters, extremely remote, and difficult, to understand how men should get into a personal—how either one of two men should find ground for personal antagonism in some of these matters. But as I got into it more deeply and realized the significance to a Christian Scientist of some of these matters, it began to dawn on me why some of these things should lead to that very unchristian, and un-Christian Science-like state of mind which led finally to a discharge of Mr. Dittmore for merely obeying his own convictions.

Mr. Bates—I submit, Your Honor, that the counsel's statement is entirely out of place.

Mr. Thompson—I made it in response to a question of the Court's. It is entirely in place.

Mr. Bates—It is entirely out of place when you characterize the acts of the associates of Mr. Dittmore. You forget Mr. Dittmore is one and

that he was removed by all of the board. You have stated that the only reason was because of personal differences between him and Mr. Dickey. The evidence shows exactly the contrary. You have stated that you know of no reason except the differences on this trusteeship.

Mr. Thompson—I haven't said that.

Mr. Bates—The reasons are set forth in our answer in full.

Mr. Thompson—Now, you have made your speech. If I chose to characterize it as you have mine—

The Master—You began by making one, you know, Mr. Thompson.

Mr. Thompson—You asked me, and I made it in reply to your request.

The Master—I think you went a little further than was strictly necessary. But I think we will not follow it any further now.

Mr. Thompson—April 9 is the next one:

"Mr. Franklin Hess of Chicago, Illinois, dated April 7, acquainting the board with valuable information concerning Mr. Rowlands' business interests. Letter referred to counsel with request to obtain further information in the case."

[That portion of the meeting of the Board of Directors dated April 9, 1919, as read by Mr. Thompson, is marked Exhibit 239.]

Mr. Bates—Now, I submit, Your Honor, that that also has absolutely no reference to this case whatever.

Mr. Thompson—We will connect that.

Mr. Bates—So far as its being material.

Mr. Whipple—I would like to have it appear, if Your Honor please, because it has never yet appeared, as is the fact, that these complaints in regard to his business interests were ex post facto. They made them on the spur of the moment and then tried to get evidence to prove them afterward.

Mr. Bates—If Mr. Thompson is representing your clients I can see that it may be admissible, but as to questions between Mr. Dittmore and the directors it has no bearing whatsoever.

Mr. Thompson—It has a very marked bearing. I will make it material later.

The Master—On your undertaking to make that material I will let it stand.

Mr. Thompson—Yes, sir. And it will be made material in this way: that Mr. Dittmore objected to the dismissal of Mr. Rowlands and refused to participate in this unfounded charge of his lack of business ability and then have to search for evidence afterwards to get something against him.

April 14:

"The directors had an interview with counsel, viz.: ex-Gov. John L. Bates, Mr. Leon M. Abbott and Mr. Dane, of Bates, Nay, Abbott & Dane, Mr. Edwin A. Krauthoff and Judge Clifford P. Smith, and discussed

the probable line of testimony in connection with the hearing before the master on the suit in equity brought by the trustees against the directors."

[That portion of the record of the meeting of the Board of Directors dated April 14, 1919, as read by Mr. Thompson, is offered in evidence as Exhibit 240.]

Mr. Bates—And I submit, Your Honor, that that has no reason for being in the record, either.

The Master—I do not see any reason for it. We would assume that they would have such conferences.

Mr. Thompson—We will assume that they would have a conference as to the actual line of testimony, but not that they would have a conference as to the probable line of testimony.

Mr. Bates—That is because we could not fathom what you were going to do; and we have not been able to yet.

The Master—I am unable to see any materiality in that.

Mr. Thompson—I think we will connect it later, sir.

Meeting of April 22:

"Attorney Leon M. Abbott, of counsel, dated Boston, April 22, submitting a proposed letter to be used in answering inquiries as to the removal or dismissal of Mr. Dittmore from the Board of Directors."

[That portion of the record of the meeting of the Board of Directors, dated April 22, 1919, as read by Mr. Thompson, is offered in evidence as Exhibit 241.]

Mr. Thompson—I would like to see that letter if you have it handy.

Mr. Bates—I submit, Your Honor, that that letter is something we are perfectly willing that the world should have, but it has no bearing on this case. It is a question of advice of counsel, and my brother knows as well as anybody that it is not material or admissible.

Mr. Thompson—Well, I would like to know what reasons Mr. Abbott thought would be good reasons. They were not the reasons alleged. I would like to see that letter.

The Master—I should hesitate a good while before ruling that the directors' counsel were obliged to produce it.

Mr. Thompson—They have only to decline if they are unwilling to do so. Monday, May 5:

"The directors had an interview with Judge Smith to consider the point of informing members of the Board of Lectureship about Mr. Dittmore's attitude, etc."

[That portion of the record of the meeting of the Board of Directors, dated May 5, 1919, as read by Mr. Thompson is offered in evidence as Exhibit 242.]

The Master—Now, I think you have got to a date subsequent to the filing of the bill.

Mr. Thompson—Yes, subsequent to

the filing of the bill. Let me just see if there is anything more here.

Mr. Bates—Seeing you called for that, I will ask you to put it in (handing paper to Mr. Thompson).

Mr. Thompson—Well, I will be glad to get it. Yes, I would like to put this in. I will read it now.

The Master—Well, wait one moment. I understand at present that that was a letter prepared to be sent out. There is nothing at present to show that it ever was sent out?

Mr. Thompson—The Governor wants me to put it in, asked me to.

The Master—I want to see if I clearly understand the precise situation.

Mr. Bates—You are right, Your Honor. There is no evidence it ever was sent out, but my brother said he would like it.

The Master—Why should any of us want to have that in?

Mr. Thompson—Because it indicates the fluctuating attitude of these people in explaining what they have done. They did it first and then thought of the explanation afterwards, and their explanations do not always agree. I should like that letter to go in very much.

The Master—If it was never sent out I do not see what significance it can possibly have. Perhaps they thought better of it after they got it prepared.

Mr. Thompson—I do not think Your Honor quite sees what it is. It is a letter to the directors from Mr. Abbott. Here is a letter by Mr. Abbott to Judge Smith.

The Master—A mere suggested letter that it might be well to send out. There we stop.

Mr. Thompson—It is written by counsel for these directors after considering the facts, and when asked to prepare a statement of reasons for discharging Mr. Dittmore.

Mr. Bates—That was not the request at all.

Mr. Thompson—That was the request made.

Mr. Bates—No, it was not. It was your characterization.

Mr. Thompson—Does Your Honor rule it out? Counsel wants it in. If Your Honor rules it out that is the end of the matter.

The Master—If all the counsel want it in you may put it in.

Mr. Thompson—Very well. This is dated April 22, 1919, on the letterhead of Bates, Nay, Abbott & Dane, addressed to Judge Smith, signed by Mr. Abbott:

[Copy of Exhibit 243.]

"Bates, Nay, Abbott & Dane

"Counselors at Law

"933-939 Tremont Building

"73 Tremont Street

"Boston, Mass., April 22, 1919.

"Hon. Clifford P. Smith,

"236 Huntington Avenue,

"Boston, Massachusetts.

"My dear Judge:

"I have talked over with the Gov-

ernor, the proposed form of letter from the directors. Both Mr. Bates and myself still feel that it would be unwise to send out these or similar letters except to inquirers. To send them out generally, and not in response to a direct inquiry, looks as though the directors felt a little sensitive and that they must defend themselves. In our opinion, they ought to assume, as they have a right to do, that the field has confidence in them and believes in them. However, this is simply a matter of judgment and we should not feel to criticize if the board thought it best on the whole to send out such a letter generally.

"We have revised the form which you left with us just a little, and feel that it perhaps would better state the position of the board as we have redrafted it. However, we have no pride of opinion in the matter.

"I return the two drafts of letter which you left with me and also inclose a copy of the letter from Mr. Thompson to Mr. Bates.

"You will be glad to know that Judge Dodge has consented to act as master if he should be named by the court.

"Yours sincerely,

"A/L" (Signed) "LEON M. ABBOTT."  
"Encs."

[Letter, dated April 22, 1919, Leon M. Abbott to Hon. Clifford P. Smith, is marked Exhibit 243.]

Mr. Thompson—The letter referred to in next to the last paragraph as having been sent from Mr. Thompson to Mr. Bates is not here. If you have got it, we will put it in if you like. Here is the proposed letter (reading):

[Copy of Exhibit 243a]

"The First Church of Christ, Scientist, in Boston.

"Office of

"The Christian Science Board of Directors,

"Boston, Mass., April 21, 1919.

"The information in this letter is sent you by reason of inquiries which have been received, and by reason of mistaken reports which have gained currency.

"Mr. John V. Dittmore was dismissed from The Christian Science Board of Directors by the votes of three members of this board, with the concurrence and approval of the fourth member, who was consulted but was unable to be present. He was dismissed in full accordance with Article 1, Section 5, of our Church Manual.

"Mr. Dittmore was not willing to cooperate with the other members of the board, his views did not accord with theirs, and he often acted independently of the board and to the hindrance and embarrassment of its work. The other members of the board frequently expostulated with him, and in a Christian spirit tried to point out the necessity for unity of purpose and action. He persisted, however, in his opposition until the situation finally became such that it seemed necessary

that he be retired from membership on the board.

"The resolutions setting forth the reasons for his retirement were read to him and he was given an opportunity to resign. This he declined to do, and thereupon he was removed.

"Sincerely yours,"

[Proposed letter, dated April 21, 1919, headed "The First Church of Christ, Scientist, in Boston, Office of The Christian Science Board of Directors," is marked Exhibit 243a.]

The Master—Perhaps we better stop until 2 o'clock.

[Recess until 2 o'clock p. m.]

#### AFTERNOON SESSION

Q. (By Mr. Streeter.) I have only a few questions more, Mr. Jarvis. I hand you a letter, a copy of a letter, which I understand that you made, which was sent by the Board of Directors to Mrs. John M. Longyear, under date of Nov. 6, 1917. Did you make a copy of that letter (handing letter to witness)?

Mr. Streeter (To Mr. Bates)—Perhaps you have the original—no, you wouldn't have the original; you would have another copy. I was asking Governor Bates.

A. It has every evidence of being a copy of a letter prepared in our office.

Q. And the copy was made by you, wasn't it? A. Not by me personally; it was made by a stenographer.

Q. Under your direction? A. Yes.

Mr. Streeter—I offer this.

Mr. Bates—May I see it, please?

Mr. Streeter—Oh, certainly, Governor.

[Letter from the Board of Directors to Mrs. John M. Longyear, dated Nov. 6, 1917, is marked Exhibit 244, and is read by Mr. Streeter as follows:

[Exhibit 244.]

"Nov. 6, 1917.

"Mrs. John M. Longyear,  
"Leicester Street,  
"Brookline, Massachusetts.  
"Dear Mrs. Longyear:

"Your letter of Nov. 3, has been presented to us and we appreciate deeply your very generous offer to build and endow a 'historical building' to be dedicated to the history of Christian Science.

"We assume that this building will be devoted to housing and preserving permanently and securely records, documents, books, pictures, and other evidences of the fadeless human footsteps of the Discoverer and Founder of Christian Science and of those who assisted her in the fulfillment of her mission. It would seem proper, and we are sure it will coincide with your desire and expectation, that when this building is complete and ready for use, the land and building will be con-

veyed to The Mother Church without restrictions.

"Again thanking you, we remain,

"Very sincerely,

"THE CHRISTIAN SCIENCE BOARD  
"OF DIRECTORS.

"By (Signed) JAMES A. NEAL,  
"Secretary."

Mr. Streeter—That is all, Mr. Jarvis.

#### CROSS-EXAMINATION

Q. (By Mr. Whipple)—Mr. Jarvis, in your cross-examination you stated that the directors had, at a comparatively recent date, been going through letters and manuscripts of Mrs. Eddy, in order to find things that might bear upon or concern this litigation? A. Yes.

Q. You remember that, in substance? A. Yes.

Q. Who were the people who did it? A. I think Miss Warren, of the directors' office.

Q. Any one else? A. I don't know that any one else examined them.

Q. Did you assist? A. I opened the safe and made a memorandum of what was given to Miss Warren. We opened it jointly.

Q. Do you know, in a general way, about how many papers or manuscripts or letters were examined? A. No, I do not.

Q. Did you find any that you thought, or did she find any that she thought had a bearing upon this litigation? A. I think she did.

Q. What was done with them? A. I believe she referred them to counsel.

Q. Well, what do you mean by that? A. Submitted them.

Q. Did she write a letter to counsel? A. No, she probably exhibited them to counsel for perusal, and their judgment as to their value as evidence.

Q. Did you examine them yourself? A. I did not.

Q. Did she submit them to you? A. No—some of them she did, yes.

Q. Did you see them? A. I saw some of them, yes.

Q. How many of them? A. Oh, perhaps five or six.

Q. How did you happen to see those, as distinguished from the others? A. I saw certain Manuals with Mrs. Eddy's penned notations therein.

Q. Well, how did you happen to see some of them and not others? Did you request it? A. No, because I had a particular interest in keeping track of these Manuals, to see that they went back into the safe, because of the large number of various issues of the Manual in the directors' offices.

Q. Did you request it? A. I beg pardon?

Q. How did you happen to see certain ones and not others? Did you request it? A. Because I was present when they were examined.

Q. Now, to what extent were you present when the papers were being examined? A. I was not present when the papers were being examined, but

only when Manuals were being gone over; certain Manuals.

Q. Your specialty in that examination was Manuals? A. Yes.

Q. So to speak, and such Manuals as were discovered bearing any notation indicating that they had come under Mrs. Eddy's eye, you examined? A. I did.

Q. And put back in the safe? A. No.

Q. What did you do with them? A. They are in the hands of counsel.

Q. Did you put them there? A. I did.

Q. Do you know of any that they have not already put in evidence in their documentary proof? A. I do.

Q. How many Manuals, or copies of Manuals among those that you discovered have they thus far failed to put in evidence? A. Those to which I am referring at this moment are, I believe, four, possibly five Manuals.

Q. That is, that they have not put in evidence? A. Yes.

Q. You noticed that they had not offered some, or marked them for identification? A. I was about to explain.

Q. Pardon me. You noticed, did you not? I will defer your explanation; just get your question. You noticed that they had not introduced in evidence at least four or five of those that you discovered? A. These particular ones they have not offered in evidence.

Q. They have not offered them for identification? A. Not as yet.

Q. When did you discover them? A. On Saturday morning last.

Q. Well, then, when you testified to the examination I am asking about, you did not refer to an examination last Saturday, did you? A. Certainly not.

Q. Well, I am asking you about an examination you have already testified to. Had you any part in that? A. No, only to the extent of opening the safe and to extract—

Q. Did you in that examination or as a result of it find any papers or manuscripts or letters that had to do with this litigation? A. No.

Q. That is, in any examination that was made of the manuscripts of Mrs. Eddy up to last Saturday, you had discovered nothing that concerned the litigation? That is what you mean? A. I personally did not examine any manuscripts.

Q. Had any been submitted to you, or did you know of any? A. There was—

Q. As a result of this young lady's examination? A. None that she submitted to me personally, no, sir.

Q. Has she told you about any? A. As I recall, she told me that in one of the envelopes that she found nothing pertinent to the case, and the papers were replaced.

Q. Then, as of the date that you testified of the letters and manuscripts of Mrs. Eddy's having been examined to find whether anything was

there which bore upon or concerned the litigation, up to the time you so testified there hadn't been anything discovered, had there? A. Not to my personal knowledge.

Q. And not to your information, as far as concerns any information that you had either, was there? A. No.

Q. That is, an examination had been made of these manuscripts of Mrs. Eddy, to see what there was bearing on the litigation, and up to the time you testified nothing whatever, so far as you knew, had been discovered? A. No, nothing.

Q. But after you had testified, on last Saturday a further examination was made. By whom? A. By myself and Miss Warren, and certain of counsel.

Q. Which of counsel? A. Mr. Dane and Judge Smith.

Q. And then you found four or five papers or manuscripts or Manuals? A. Manuals.

Q. Which you kept out for submission to counsel? A. Yes.

Q. And those have not shown up yet? A. No.

Q. In the case. Then, to summarize your testimony, although you had discovered this great mass, or bulk of documents for evidence favorable to the directors, or evidence bearing on the issues of the case, you discovered nothing until last Saturday? A. I have not testified to going over a great mass of manuscripts, in testimony, only to a portion which was examined.

Q. This young lady went over all of it, didn't she? A. No, by no means.

Q. That is, she made a partial examination, then, of these manuscripts, for the purpose of discovering what bore upon this litigation? A. That would correctly characterize it.

Q. That was made after the date of this meeting, in which it is recorded that Governor Bates advised you not to go ahead on this case; he thought you were not prepared with your reasons? A. I could not testify as to the date.

Q. Can't you testify as to the relation between those two events; that is, calling in Governor Bates and his telling you how unprepared you were to go ahead with removal, and then the discovery among the effects, or the search among the effects of Mrs. Eddy to substantiate your position? A. No, I couldn't.

Q. Can't tell which it was? A. I can't connect the two at all. It might have occurred before or after that advice was given.

Q. In point of fact, there are in the possession or within the control of the directors something like 7000 of Mrs. Eddy's letters, are there not; letters either signed or authorized by her? A. I presume there are that many.

Q. Well, won't you look at your records, and find out? A. I don't—

Q. You have that book here. Give

us the highest number that you did have.

Mr. Whipple—Mr. Dane, will you be good enough to give us your highest number, so that this man may see it?

Mr. Bates—We are not testifying now. We can't give you the figure. We would be glad to do it if we could.

Mr. Whipple—I don't want you to, but we want to get your book which contains the highest number of these things; each is stamped with a number, apparently.

Mr. Bates—No, they are not all.

Mr. Whipple—Give us the highest number you have, then. We will make a computation of the rest from it.

Mr. Dane—I am informed that there are over 7000 in the mounted collection.

Mr. Whipple—Well, that accords with what we have said. There are over 7000 that are already numbered; is that correct?

Mr. Dane—That is my information.

Q. Have you others in your possession, or in the possession or within the control of the directors that have not been mounted? A. There may be a small number, yes.

Q. But not many? A. No, not a great many.

Mr. Whipple—Now, if Your Honor please, through this witness I should like to call to Your Honor's attention the record of Sept. 11, 1918, which has already been referred to, and referred to more than once, in our endeavor to find the real record of that meeting, which was a meeting at which the Board of Trustees were present. That is, we wanted to find, as Your Honor may remember, the explicit record of what happened between the trustees and the directors on that date. May I read all that appears, just to refresh Your Honor's recollection, with reference to that interview?

Mr. Bates—Pardon me, Mr. Whipple. Hasn't that all gone in?

Mr. Whipple—Between the trustees and the directors. It has, but I am referring to it to reestablish it in our minds, that is all.

[Mr. Whipple reads from the meeting of the directors, Sept. 11, 1918, as follows]:

"The trustees of The Christian Science Publishing Society met with The Christian Science Board of Directors for consideration of the pamphlet, 'Purification,' and stated their view—"

Mr. Bates—I pray Your Honor's judgment as to whether this ought to be read into the record again.

The Master—Perhaps it is hardly necessary to have it put down again in the record.

Mr. Whipple—I think it is. It is only a paragraph, if Your Honor please. It is preliminary to a question. (Reading):

"—and stated their view of the relations and respective responsibilities of these boards as the same are determined by the Church Manual and the Deed of Trust described in Art

XXV, Sec. 1, thereof. The directors were unable to agree to or even acquiesce in the views expressed by the trustees, but deferred making a definite statement of the directors' views until it could be carefully prepared."

Q. You remember that record, do you not? A. Yes.

Q. Now, you remember that I have asked, and asked this young lady when she testified, for the full record of that meeting? A. Yes.

Q. And that a paper was produced which she said, so far as she knew, was a record of the meeting in relation to which there was a comment on Oct. 1? You remember that, do you not? A. Yes.

Mr. Whipple—May I direct Your Honor's attention to what is said about that on Oct. 1, 1918. I read again from the record:

"The minutes of the directors' meeting of Sept. 11, relating to a conference with the trustees of The Christian Science Publishing Society on that date, were again taken up for consideration. To be referred to Judge Clifford P. Smith for an opinion as to what it will be best to include in the minutes." . . .

Q. Now, you remember at that point I asked for the data that was given to Judge Smith with reference to that meeting, and what should be included in the record? A. I do.

Mr. Whipple—Now, if Your Honor please, may I direct Your Honor's attention and that of counsel to one other paper with reference to that meeting, as bearing on the question of whether we have really got that record yet. I refer to Exhibit 4a in letter Sept. 30, 1918, from the trustees to the directors, which begins thus:

"Dear Friends:

"Referring to our meeting with you on Wednesday, Sept. 11, and your request later that the Board of Trustees listen to the reading of the minutes of the Board of Directors recording their interpretation of that meeting, after most careful and earnest consideration, the Board of Trustees has decided that this would not be a wise course of action for the trustees to take."

Q. You remember the directors receiving that communication, do you not? A. I cannot say positively, as I was away a portion of the time; specifically, on Sept. 11.

Q. Well, you were not on Sept. 30, were you? A. I was not present Sept. 30.

Q. Well, I will ask you whether you will testify from your knowledge of the circumstances that the directors invited the trustees over to hear read a record of that meeting as meager as I have read in these records of Sept. 11, which merely states that "the trustees met the directors for consideration" — and "stated their views of the relations and respective responsibilities of these boards, as the



same are determined by the Church Manual and the Deed of Trust"?

Mr. Dane—We object to the question.

Q. (Continued.) Was there not a fuller statement with regard to what was said as between the trustees and directors at that time than has yet been produced?

Mr. Dane—We object to the question, calling for the witness' knowledge. I understand that the witness was not at that time in Boston.

Mr. Whipple—Yes, but he is the corresponding secretary, and if he is away, he may have some knowledge of some more competent and probable statement in the original record as to what happened at that meeting.

The Master—I think the witness must answer so far as his knowledge goes.

Q. Did you understand the question, or would you like to have it read? A. I think I would.

Q. Very well; I would like to have it, and I would like to have you pay close attention to it, especially the latter part.

[Question read by the stenographer.]

A. Not to my knowledge. The only minutes with which I am familiar are those, and the ones from which those permanent minutes were copied, and which have been handed to you.

Q. Well, as you have known this controversy, can you state any reason why these directors would invite the trustees over "to listen to the minutes of the Board of Directors regarding their interpretation of that meeting," when there is in the record itself practically nothing but a statement that there was a meeting, and that a certain subject was referred to? [Handing record book to witness.] A. I am not familiar with any invitation the directors sent to the trustees.

Q. Look at it [handing paper to witness]. Look at it. I was just reading from it. Look at it in the first few lines of that letter of Sept. 30, which has been referred to several times. A. [Reading] "Referring to our meeting with you on Wednesday, Sept. 11, and your request later that the Board of Trustees listen to the reading of the minutes of the Board of Directors," etc.

Q. Yes. A. In the form of a letter under date of Sept. 30, I am not familiar with such an invitation, because I was not present, and had I been in Boston, I might not have been in the board room when such an invitation was sent, or it might have gone over the telephone from any of the directors to one of the trustees personally.

Q. I am not asking you to be familiar with any letter inviting them. I am asking you if with your knowledge of the circumstances you can state why in any form an invitation should be given by the directors to the trustees to come over and read the record of the Sept. 11 meeting as

meager as that which is contained in your record? A. I cannot state why.

Q. Who would know? A. Possibly one of the directors who was present when such an invitation was given.

Q. You think that that is a possibility, do you? A. Yes.

Q. Would this young lady, whose name I have forgotten, know about it? A. Miss Warren?

Q. Yes. Was she discharging your duties in your absence? A. She was.

Mr. Whipple—I shall wish to ask her some questions about it.

Mr. Bates—You already have.

Mr. Whipple—Yes, but not when I had as full information of the facts, which show that she must have been mistaken.

Mr. Bates—I beg your pardon. You had those papers at that time.

Mr. Whipple—Well, if I did, we did not appreciate the significance of them as fully as we do now, when we collate them; and probably you didn't, either, or she didn't.

Now, I have asked for, and I do not remember that we have had given to us, the data which were given to Judge Smith with reference to that meeting, in order that, on the basis of those data, he might inform the directors what they should include in their records.

Mr. Bates—Let me see those papers, will you, that you have?

Mr. Whipple—What papers?

Mr. Bates—The ones that you were just reading from.

Mr. Whipple—I hand you here the record—

Mr. Bates—No; the other papers which you have.

Mr. Whipple—What other papers?

Mr. Bates—Those.

Mr. Whipple—When? Why, this is one of the exhibits in the case, the letter of Sept. 30 (passing a document to Mr. Bates), and that is material only as showing the invitation that you sent to the Board of Trustees to come over there and listen to the reading of this sort of a record which you have finally included in your records, presumably by the direction of Judge Clifford P. Smith.

Q. Now, while counsel are looking at that, I will ask you whether this record of the Sept. 11 meeting was written up before or after you got back from California—written up and put into that book? A. After I returned from California.

Q. Well, then, you must know something about the original data there which were handed over to Judge Smith to form a basis for an opinion on his part as to what should be put into the records. A. Not necessarily.

Q. No, not necessarily, but didn't you? A. No.

Mr. Dane—Mr. Whipple, I have found—

Mr. Whipple—Pardon me a moment.

Q. What did you get to make that record up from after you got home from California? A. I had the original minutes of that day.

Q. Where are they? A. They are in the court room.

Q. Produce them, please.

Mr. Dane—I have here a paper dated Sept. 11, 1918, which has heretofore been produced at your request (passing a document to Mr. Whipple).

Mr. Whipple—Yes.

Mr. Dane—And also a paper dated Sept. 10, 1918, which I think also was produced at your request (passing another document to Mr. Whipple).

Mr. Whipple—You produced—and I will have this marked, not for the purpose of offering it, but for the purpose of identification—a paper or memorandum which purports to be dated Wednesday, Sept. 11, 1918, which has stamped on it "Copied and compared." Another stamp "Read Sept. 12, 1918, the C. S. Board of Directors." And then penciled afterward in someone's handwriting—whose, I don't know—"Approved Oct. 7." Perhaps you can tell me whose handwriting that is that I have just read (passing the document to the witness).

The Witness—I think it is Miss Warren's or Miss Lowe's.

Mr. Whipple—Let me take that, please.

The Witness—Yes (returning to Mr. Whipple the document referred to).

Mr. Whipple—Will you mark that, which consists of two and one-third typewritten sheets, and then a sheet with handwriting on it attached, and that is dated in somebody's handwriting "Wednesday, September 11, 1918." Someone has written in pencil "insert"; and it is stamped "Copied and compared"; and "Read Oct 7, 1918, the C. S. Board of Directors"; and then in pencil "& Approved." In whose handwriting is that fourth page, if you know?

The Witness—Judge Smith's.

Mr. Whipple—If Your Honor please, I will offer this as an exhibit, but I want to do it with the reservation that we do not accept it as the original minutes, but we accept it as a paper which is furnished to us, because, calling Your Honor's attention to what they had written there with regard to that, we submit to Your Honor an inference, or shall submit in due time an inference, as to whether the directors would have invited the trustees over to hear any such thing read as is here recorded. But we will have it marked as an exhibit.

Mr. Thompson—Here is another one that came over from Governor Bates (passing another document to Mr. Whipple).

Mr. Whipple—I will take this one first.

Mr. Thompson—That was drawn by Mr. Dittmore.

Mr. Whipple—Yes. I will lay that aside for a moment, because that did not refer to a meeting.

Mr. Bates—I understand that the date, the 10th, on there, is Mr. Dittmore's mistake; it should have been the 11th.

Mr. Thompson—It should have been the 11th.

Mr. Whipple—If Your Honor please, a large part of this paper which will be marked Exhibit 245 is a duplicate of the actual record of the meeting as it seems to have been finally settled upon. Have you that Sept. 11 record?

The Witness—Yes (passing the record book to Mr. Whipple).

Mr. Whipple—Therefore I am sure Your Honor would not wish me to read or to have printed in the record anything more than the paragraphs which I desire to compare; and, assuming that that has Your Honor's approval, I will call attention to the fact that the paragraph in the record which I read a moment ago, which is at the bottom of page 98 and the top of page 99, appeared in the following form, and it has been stricken out, and the revision of that paragraph appears on the pages that I have indicated. May I read what appears in the original minutes?

"The trustees of The Christian Science Publishing Society met with the board for consideration of the pamphlet 'Purification,' at which time the trustees presented their interpretation of the Deed of Trust under which they are operating the business of the Publishing Society, with the request for the entire cooperation of the directors of The Mother Church to the extent of consulting them on all important matters in regard to the publishing and issuing of Christian Science literature and any other affairs connected with the Publishing Society."

That was what was stricken out, and what I have read was substituted therefor.

Then the substitute is in Judge Smith's handwriting. It does not appear that Judge Smith was present at that meeting of Sept. 11, does it? Will you look and see if there is any evidence in that record of the meeting that Judge Smith was present, so that he knew what did happen?

The Witness (after examining the book of records)—No, apparently not.

Q. Apparently he was not there? A. No.

Q. Were the records of your meetings made up frequently by some person who was not there? A. No.

Q. It was not a usual occurrence that the records should be made up by some one who was not there? A. No.

Mr. Whipple—The insert in Judge Smith's handwriting is on the fourth page,

"Wednesday, Sept. 11, 1918"—

This is what appeared from the record, but the cabinet work, if I may call it that, in the way of insertions, etc., does not appear in the record.

"The trustees of The Christian Science Publishing Society met with The Christian Science Board of Directors"—

then here is an insert of the words "for consideration of the pamphlet 'Purification,'" and then it goes on,

"and stated their view of the relations and respective responsibilities of these boards, as the same are determined by the Church Manual and the Deed of Trust described in Article XXV, Section 1, thereof. The directors were unable to agree to or even acquiesce in the views expressed by the trustees, but deferred making a definite statement of the directors' views until it could be carefully prepared."

Mr. Bates—Will you pass that on to the Court, that memorandum, so that the Court may see it?

Mr. Whipple—That was my plan. May I ask Your Honor's special attention to that? The only thing that is changed that is of any importance is at the bottom of page 2, and if Your Honor compares it with the written memorandum which constitutes page 4, Your Honor will see that the record is changed from stating what the trustees proposed to an omission of that, and stating what the directors proposed.

Mr. Thompson—Mr. Whipple, here is a statement of what the trustees proposed (passing a document to Mr. Whipple).

[The paper produced by Mr. Dane, dated Sept. 11, 1918, in typewriting, attached to which is a paper in manuscript, dated Sept. 11, 1918, from which the foregoing excerpts are read, is marked Exhibit 245. R. H. J.]

Mr. Whipple—Will Your Honor be good enough to keep that (Exhibit 247. R. H. J.) while I read another paper for comparison? Your Honor may desire to look it over. With that memorandum (Exhibit 245. R. H. J.) came this one, handed to me by Governor Bates, which contains these legends at the top: In pencil, "Filed by Mr. Dittmore." Whose handwriting is that?

The Witness—Miss Warren's, I think.

Mr. Whipple—Then in red pencil, "File." Then stamped on it is this legend, "Copies sent to directors Sept. 16, 1918." Then the legend is stamped on it "Indexed." Then in pencil, "Copy sent to Mr. Dickey 4/2/19 L." Whose handwriting is that?

The Witness—Miss Lowe's.

Q. Who is she? A. A stenographer in the directors' office.

Mr. Whipple—Then in pencil, "Copy to Mr. Neal 4/26/19 L." Then the legend, which is stamped, "Read Sept. 16, 1918, the C. S. Board of Directors."

Now, if Your Honor please, the typewritten heading of what I am about to read is,

"Memorandum of additions to complete minutes of meeting of Sept. 10, 1918."

I am informed that all agree that that "10" is a typographical error for "11." Am I right?

The Witness—Yes.

Mr. Whipple—Now, I will read a paper which I shall offer, consisting

of two pages, one full written and the other about a third written.

[Copy of Exhibit 246.]

"Memorandum of additions to complete minutes of meeting of Sept. 10, 1918.

"The trustees protested against the recent order of the directors through the business manager of the Publishing Society to stop, pending a personal interview, the issuance of the pamphlet, 'Purification,' on the ground that 'the absolute management of the Publishing Society is vested in the trustees, and if the directors have anything to do with the publishing house it must be through the trustees.'

"The trustees also presented what they declared to be their further present unanimous concept of the relation of their Board of Trustees to The Mother Church and to its Board of Directors, which included the following points:

"(a) That the 'directors have no supervision of the trustees or right to declare vacancies on the Board of Trustees except only for dishonesty or immorality.'

"(b) That the trustees do not recognize that the directors have succeeded to any of the rights or responsibilities stated in The Mother Church By-Laws as formerly belonging to Mrs. Eddy in relation to the Publishing Society and its Board of Trustees.

"(c) That the final decision on what goes out as official Christian Science literature rests with the trustees.'

"(d) That 'the trustees need not employ the manager or editors whom the directors elect.'

"(e) That 'the trustees must hereafter be supreme in the publishing house.'

"(f) That 'the trustees are absolute in formulating rules for the recognition of practitioners' cards and church cards in The Christian Science Journal.'

"After a general discussion of the above-named matters and other questions related thereto covering a period of over three hours, the directors stated to the trustees that they would give further consideration to the whole subject and would advise the trustees of their conclusions."

[Document, two pages, headed "Memorandum of conditions to complete minutes of the meeting of Sept. 10, 1918," is marked Exhibit 246.]

Q. Now, when you got back that memorandum, which is marked Exhibit 246, was in your possession, was it not? A. Yes, sir.

Q. And it was in your possession as one of the original memoranda of what happened at that meeting, was it not? A. Yes.

Q. Who told you not to include it in the record? A. I do not recall that any instructions were given to me relative thereto.

Q. Did you upon your own respon-

sibility reject it from the record? A. No, sir.

Q. Well, then, who did? Whose responsibility was it, if you know?

Mr. Bates—Pardon me just a moment. I furnished that paper to you and therefore I have a right to state to His Honor what that paper is, inasmuch as you have not done so. That is a memorandum which was drawn up by Mr. Dittmore of what he thought it would be well to put in the record as the result of that conference. The board could not agree with him as to it, or as to what had taken place, and then it was that the question was submitted to Judge Smith to see what ought properly to go into the record in regard to that matter. It was the result of a dispute or a difference between Mr. Dittmore and the other directors. And this memorandum was drawn by Mr. Dittmore.

Mr. Thompson—I am advised, if Your Honor please, that all of that statement except that it was drawn by Mr. Dittmore is absolutely not the fact. I would like to have that go on record also. Mr. Dittmore informs me that everything you have said except the mere fact that that was written by him is without foundation in fact. That was an accurate statement of what took place and he urged it for that reason.

Mr. Bates—Do I understand you to deny that Mr. Dittmore and the other directors could not agree as to what ought to go into the record, and that was the reason it was drawn up?

Mr. Thompson—I think, to use your own expression, we will wait now until Mr. Dittmore gives a full and accurate account, as he expects to do, from diaries and notes of what really took place here at this and other meetings, where your records utterly fail to show the truth.

Mr. Bates—My explanation was intended merely to assist Your Honor. I think Your Honor understands the situation, notwithstanding Mr. Thompson undertook to befog it.

Mr. Whipple—Colloquy between counsel has perhaps explained by whose authority this paper, which purported to be a statement of what had happened, failed to go on record.

The Master—It leaves me in doubt on this point: That paper, which purported to be a statement of what happened—the one you last read, Exhibit 246—aren't we left in some doubt as to whether this was a part of the original memoranda of what happened at the meeting, kept by or under the authority of the recording officers? What is there to show that that was the case in regard to this paper?

Mr. Whipple—As I have relied entirely upon the colloquy which has taken place between counsel for the respective defendants, I am unable to answer, and I fear this witness may be unable to answer, except that I will now, in view of what Your Honor said, press the question—

The Master—It purports to be a memorandum of additions to complete minutes of meeting.

Mr. Whipple—Yes, may I suggest—

The Master—It appears also to have been read at the meeting of the Board of Directors.

Mr. Whipple—Yes, read twice.

The Master—Read at the Board of Directors' meeting a week later.

Mr. Whipple—Read twice, if Your Honor please.

The Master—Read twice?

Mr. Whipple—Yes, Your Honor.

The Master—We have not any clear testimony, have we, that it was a memorandum of what took place at the meeting, made at the time by anyone whose duty it was to keep memoranda of what took place at the meeting?

Mr. Whipple—Well, now, one difficulty lies in this, if Your Honor please—that so far as I have found out, I can't find whose duty it was to keep memoranda. Almost anybody who felt like it kept memoranda, and then when they started to make up the record this major seemed to control, the strongest one, the one having the largest number of votes, dictated what the record should be, and not always with fine regard to what had actually happened.

The Master—Very well. With regard to the first paper that you have presented here, Exhibit 245—I understand this witness says it was a part of the original memorandum made at the meeting?

Mr. Whipple—Yes, I understand him to say that it was.

The Master—I do not understand him to make any such statement regarding this Exhibit 246.

Mr. Whipple—I don't know that he has.

The Master—So that they stand on different grounds?

Mr. Whipple—Yes, Your Honor.

The Master—And on what grounds they do stand we are certainly left in very considerable doubt.

Mr. Whipple—I feel myself unable with the present witness to clear that up, unless some question occurs to Your Honor which I might put. Because you see I am depending largely upon colloquy of counsel. If it becomes very material we shall offer the trustees' version as to what happened, but at the present time we are dealing with a situation with regard to the directors' records that was a little startling to us in view of the desire of every one to have accuracy in those records.

Mr. Thompson—It might assist if I recall the fact that Miss Warren testified, when asked by me—I was referring to Mr. Dittmore absolutely—that Mr. Dickey did start to dictate the minutes of the meeting himself, she saw that. She went to that extent. When I asked her if he did not tear them up, she said she didn't know.

The Master—I don't think that helps us very much.

Mr. Thompson—It simply shows there was another set of memoranda started to be dictated by Mr. Dickey of what took place. These contemporaneous interests seem to differ very widely in their statements of fact.

The Master—We look first, do we not, to contemporaneous memoranda made under the authority of somebody whose duty it was to keep them?

Mr. Thompson—We would like to, but we can't find them sometimes.

The Master—Where are those? That is the first thing.

Mr. Whipple—If Your Honor please, the directors apparently have no sworn clerk. Sometimes the secretary makes them up, sometimes the stenographer is there and takes a part of it. I think the situation is subject to the comment I made some time ago that they are not an organized body, that their records are not such records as are contemplated in our statutes; that is, records which may be put in by reason of the fact they are the records of some one who by law ought to make a record. I offer that suggestion, if Your Honor please, although, it may be, and probably is a fact that The Christian Science Board of Directors, as Trustees under Mrs. Eddy's Deed of Trust for holding church property, are probably a corporation, whether they think they are or not, under our statutes.

The Master—To that extent it would seem as if they must be at least such a body as were required to keep records.

Mr. Whipple—But if they do not know it, and do not have any officer to keep them who is sworn to that duty, but simply go slipshod about it, anybody who happens to be there noting down whatever happens to interest him, then they lose that reality of record.

The Master—We must remember we have not as yet the testimony of any of them.

Mr. Bates—I submit, Your Honor, that notwithstanding all these comments that Mr. Whipple has made with regard to the records, which are so far apart from the evidence, that these records have been kept in a manner which is almost exemplary. You can hardly produce a corporation which has been formed by Mr. Whipple, or by any of his clients, that has records that have been kept so well as these records have been kept.

Mr. Whipple—I do not form corporations.

The Master—You mean, generally speaking.

Mr. Bates—Generally speaking. When he refers to the fact that these records are made up from memoranda, it is the almost universal custom at the present time. These records have been made up in the same way. When he says there is no secretary, he knows that every one of those records is

signed by the recording secretary and also signed by the chairman.

Mr. Whipple—Are either of them sworn as recording officers of a corporation, so far as you know?

Mr. Bates—You have not put in evidence that they are not, and I assume they are.

Mr. Whipple—That is what I was commenting on. I say that different people, naming themselves secretaries, do not make them so unless they are sworn under the statute.

Mr. Bates—Well, if you will turn back to the records, you will find, probably, that they were sworn.

Mr. Whipple—I am not going back hunting for what you think is probable. If you will point out anything, then we will have a certainty. However, I think perhaps we have commented fully as much as Your Honor would approve in regard to it. I do not think of any further questions that I can put with regard to a controversy which is entirely between the different members of the Board of Directors, and one regarding which we have no personal knowledge.

Mr. Bates—I will just add one thing more, Your Honor, and that is in regard to what is in these records and the implications in regard to these memoranda. The records, as Your Honor suggested the other day, are supposed to keep an actual statement of what is done, they are not supposed to keep discussions, and if a discussion of the trustees lasted three hours there is no reason why the discussion should be in there. If that is present, that is all the record is supposed to show. These records show that Judge Smith's suggestions in regard to it did not change the facts at all; it simply changed the question as to how much of a discussion should be put into the record.

Mr. Whipple—The only thing that changed was a fair record to one that was not fair to the trustees—that is all.

Mr. Bates—The record is absolutely fair in accordance with your own trustees' records.

Mr. Whipple—Pardon me. The original record of the Dittmore record shows what the trustees were there for and what they said. And under the advice of counsel that was entirely omitted for the purpose of putting in the position of the directors. Now, if you call that a fair record, why, you are welcome to thus name it. I was not characterizing the fact that they did not have a discussion put there; I was criticizing the fact that they made a partisan record against the trustees rather than a fair one.

Mr. Bates—I assert that you can't show it by the record or by any memoranda in connection with it.

Mr. Whipple—I assert that the record and the things shown in connection with it by the admissions of the counsel indicate it was not a fair record. Now, I will ask—

The Master—Well, we have now, haven't we, all the facts that we can get at the present time about that record?

Mr. Whipple—From this witness, yes, Your Honor.

The Master—Now, inasmuch as the directors are now supposed to be putting in their case, hadn't we better leave it there for the present?

Mr. Whipple—That is what I was about to do, having on my tongue's end to ask for another letter from Mr. Dickey when he was down south. It was Jan. 14. We called for a letter the other day which we read, and we find there was another one which was not produced and which we had not technically asked for, to be sure. That is of the present year, Miss Warren. I think it was called to your attention Friday.

Mr. Bates—My recollection is, Your Honor, that we handed Mr. Whipple two letters the other day and he returned one of them and said he didn't want it.

Mr. Whipple—There are three. You handed one which was camouflage, and I handed it back. But it was one that we did not want.

Mr. Bates—Now, I object. I ask my brother to explain what he means by saying one was camouflage?

Mr. Whipple—I mean, it was utterly immaterial, and when you handed me a letter that was utterly immaterial you did not hand me one that was very material. That is what I mean by "camouflage."

Mr. Bates—We handed you the one you asked for.

Mr. Whipple—I might have said that you were trying to draw a herring across the trail, but I didn't, I just called it camouflage, because that is politer. Now, let me have the real one.

Mr. Bates—I call Your Honor's attention to the fact that he read one of them and had it read into the record. If he did not regard it as material he certainly was taking up the time of the Court.

Mr. Whipple—I did. There were three letters instead of two. You haven't got it straightened out now, Governor Bates. You don't know what is being done under your pure personality. Hand it over.

Mr. Bates—Oh, it is very hard work to find out what is being done by you at times.

Mr. Whipple—That is all right, but you ought to keep up with the procession, and then you would know.

The Master—Have you now got the letter he is calling for?

Mr. Bates—I don't know, Your Honor, yet.

Mr. Streeter—Governor, I guess you had better let him have it.

Mr. Bates—There is something (handing paper to Mr. Whipple).

Mr. Whipple—This is a letter from Adam H. Dickey to The Christian Science Board of Directors, Boston, Massachusetts, and it is dated Jan. 14,

1919. It is on the letterhead of the Savannah River Lumber Co., manufacturers of long and short leaf yellow pine, cypress and hardwoods, Savannah, Georgia. It is stamped: "Read, Jan. 16, 1919. The C. S. Board of Directors." (Reading):

[Copy of Exhibit 247]

"Savannah, Georgia,  
"Jan. 14, 1919.

"Christian Science Board of Directors,  
"Boston, Massachusetts.

"Dear Brethren: Doubtless you have thought over many phases of the controversy now on between our board and the trustees of the Publishing Society, and you may have already considered the question of bringing charges against them individually for infraction of The Mother Church By-Laws. It seems to me there are a number of important By-Laws which cover their case, and if they continue their insane actions they could easily be disciplined.

"You may have thought this all out and concluded it would not be wise to pursue such a course at present, but the thought has come to me, and I decided it would do no harm to pass it along. Certainly, if ever anyone has worked against the Cause and against what Mrs. Eddy has considered best for the Cause, the present trustees are doing it to the fullest extent. Perhaps if the directors were to order one or more of their cards removed from the Journal they would refuse to consent and dispute the authority of the board—thereby furnishing additional cause for their removal. There seems to be no end to the complications which might ensue; therefore, I am leaving the question with you.

"Sincerely yours,  
(Signed) "ADAM H. DICKEY."

Q. Now, you know what church discipline means, don't you? A. Yes, sir.

Q. Unchurching? A. Yes.

Q. And you know or understand from this Trust Deed that if they could turn these trustees out of the Church on some excuse that they could no longer be trustees because they were not good Christian Scientists? You know that, don't you? A. I understand church discipline to mean just exactly what the term "discipline" means—not necessarily to dismiss a person from membership in the church, but to admonish them or to otherwise discipline them.

Q. Yes; but if they did not mind the admonishment, you understand what unchurching them is? A. The Manual provides the means for disciplining the members of The Mother Church.

Q. And, among other things, discipline means turning them out? A. That is one.

Q. You understand if they were turned out they could not be trustees of the Publishing Society? A. Not under the Manual.

Q. Well, not under the Trust Deed.  
A. Yes.

Mr. Whipple—I offer that as an exhibit, if Your Honor please—I don't know as its materiality is questioned—as showing the discussion of the things which we outlined in our bill against which we ask an injunction.

[Letter, Adam H. Dickey to directors, Jan. 14, 1919, is marked Exhibit 247.]

Mr. Whipple—That closes our examination.

The Master—Anything further from this witness?

Mr. Dane—Only one or two questions.

#### Re-Direct Examination

Q. (By Mr. Dane) You were asked, Mr. Jarvis, about the compensation that you received from The Mother Church and you stated, as I recall it, that it was \$5500 a year. A. That is correct.

Q. What positions do you hold for which you receive the compensation of \$5500? A. Clerk of The Mother Church and corresponding secretary for The Christian Science Board of Directors.

Q. In addition to those positions, have you other duties in connection with The Mother Church? A. I have.

Q. And what other duties or what other positions do you hold in connection with The Mother Church? A. Clerk of The Christian Science Benevolent Association and clerk of the trustees under clause 6 of the Will of Mary Baker Eddy.

Q. For those latter two positions you receive no compensation? A. No compensation at all.

Q. You were asked also, Mr. Jarvis, something with relation to the so-called loss of \$90,000 on a purchase of wool in connection with the war relief work. I wish you would explain what you know about what was termed a loss of that sum of money by the examiner. A. The Comforts Forwarding Committee in Boston and in other places was made possible—through an announcement from The Christian Science Board of Directors, appearing in, I think, the latter part of 1917. When the committee was organized in Boston, funds wherewith to carry on its activities were appropriated from the War Relief Fund, to which contributions were made by Christian Scientists from all over the world, for the purpose of extending war relief of various kinds to the people in the countries affected by the war. It was considered an opportunity to provide comforts for the armies and navies of the allied nations, and for refugees and others suffering in the countries affected by the war. These Comforts Forwarding Committees purchased yarn, knitted it into sweaters, helmets, socks and other garments, and this yarn was purchased at the time when the demand for that commodity was tremendous and the prices soaring constantly. The comfort of the people as a humanitarian measure was con-

sidered of prime importance rather than the money involved. When the armistice was signed, considerable wool was on hand and additional quantities contracted for. Naturally, with a prospect of an early peace, the price of wool in the open market depreciated, and I presume that is what is referred to as a loss. As a matter of fact, the Comforts Forwarding Committee was not in a commercial business but was conducting a humanitarian activity, and that wool was, all of it, either sold to those who knitted it into garments for those in need, or given away for such a purpose. So no actual loss, as I understand it—no actual monetary loss—accrued, aside from the expense of administration and cost of shipment, etc., which is a legitimate charge against a charity.

Mr. Streeter—Are you through?

Mr. Dane—No, not quite.

Q. I have in my hand, Mr. Jarvis, eight books of the minutes of regular and special meetings of The Christian Science Board of Directors, covering a period from 1909 to 1916. Perhaps you can identify those books without carefully examining them; I presume you have examined them many times. (Handing books to witness.) A. I can identify them as the minutes of the regular and special meetings of The Christian Science Board of Directors for a succession of years.

Q. And, for the purpose of the record, will you state the date of the earliest meeting recorded in those books and the date of the last meeting? A. The date of the earliest meeting is May 31, 1909.

Mr. Whipple—Why not have that with regard to each volume, for purposes of identification, the first meeting and the last?

Mr. Dane—I have no objection.

Mr. Whipple—You cannot have those all marked by one number.

Mr. Dane—No. I have no objection.

Q. If you will adopt Mr. Whipple's suggestion, and read beginning with the earliest record, the earliest date in it and the last date in it, and so on through the series.

The Master—Do I understand these are what have been referred to as original minutes?

Mr. Dane—These, I understand, are Mr. Dittmore's official records of the Board of Directors from 1909 to 1916.

Mr. Whipple—I understand they are only offered for identification.

Mr. Dane—Yes; while Mr. Dittmore was secretary.

The Master—These other books that we have been listening to are a different date.

Mr. Dane—From 1916 to date.

The Master—Oh, yes.

Mr. Dane—While Mr. Jarvis was secretary.

The Master—I see. Now we go back to 1909-16, during Mr. Dittmore's incumbency?

Mr. Dane—Yes.

The Master—Very good.

A. The first book contains the minutes beginning with May 31, 1909, to

and including those of Dec. 30, 1909. [Marked Exhibit 248 for identification.]

The second record book contains the minutes of meetings from Jan. 1, 1910, to Dec. 30, 1910, both dates inclusive.

[Marked Exhibit 249, for identification.]

The next book includes the records of meetings of the directors from Jan. 2, 1911, to Dec. 29, 1911, both dates inclusive.

[Marked Exhibit 250, for identification.]

The next book contains the minutes of the meetings of the directors, Jan. 4, 1912, to Dec. 26, 1912, both dates inclusive.

[Marked Exhibit 251, for identification.]

The next book contains the minutes of meetings from Jan. 1, 1913, to Dec. 31, 1913, both dates inclusive.

[Marked Exhibit 252, for identification.]

The next book commences with the minutes of Jan. 7, 1914, and concludes with the minutes of the meeting of Dec. 31, 1914.

[Marked Exhibit 253, for identification.]

The next book begins with the minutes of the meeting of Jan. 6, 1915, and concludes with the meeting of Dec. 29, 1915.

Q. Hasn't that already been marked for identification? A. Yes; Exhibit 197.

Mr. Thompson—There are seven books in all? A. (Continued) The next and last book begins with the minutes of the meeting of Jan. 3, 1916, and concludes with the minutes of June 5, 1916.

[Marked Exhibit 254, for identification.]

Q. I understand, Mr. Jarvis, you were not present at the directors' meeting on Sept. 11, 1918? A. That is correct.

Q. And you were not present on Oct. 1, 1918? A. I was not.

Q. You were away on your vacation? A. I was.

Mr. Dane—That is all now.

#### Re-Cross Examination

Q. (By Mr. Streeter) Mr. Jarvis, I called your attention last Thursday to a letter which the chairman of the Board of the Benevolent Association had written asking for information about the finances. A. Yes.

Q. Mr. Dittmore is chairman, is he not? A. He is chairman by reason of his former association with the Board of Directors.

Q. What do you mean by his former association? A. Well, as a former director of The Mother Church.

Q. Well, what do you mean by a former director? Are you passing on the question of whether he is now or was formerly a director? A. He became a director of the Benevolent Association because of being a director of The Mother Church.

Q. How long has he been trying to

get information from you about the finances of the Benevolent Association?

Mr. Bates—Hasn't that all been gone into, Your Honor?

Q. For the last two or three weeks? A. Yes.

Q. Has he got it? A. Not yet.

Q. Is he going to have it? A. He is.

Q. When? A. As soon as it can be handed to him.

Q. How long will that be?

The Master—Why should we spend time on this now, General Streeter? We went into it the other day, didn't we, to some extent?

Mr. Streeter—Yes, we did. We have been trying for two or three weeks to get some information and we haven't got it.

The Master—All subsequent to the date of the suit.

Mr. Streeter—Well, I know, but he is responsible; he is the responsible official.

The Master—Oh, I do not deny there may be a time and place at which you have a right to do it, but hardly now and here, is it?

Mr. Streeter—Well, I don't know. Your Honor knows better than I do.

Q. Have you called a meeting of the Association for tomorrow? A. I have.

Q. Have you got money enough to pay your bills?

Mr. Dane—I pray Your Honor's judgment on such a question as that.

The Master—I don't think we ought to go into that now.

Mr. Streeter—I withdraw it because Your Honor thinks I ought to.

The Master—Mr. Dane, what next?

Mr. Dane—I have some records from the books of the trustees that I would like to put in at this time.

The Master—Are you going to call a witness?

Mr. Dane—No witness. They are the trustees' records. I assume that we can read such extracts from them as seem to be material. Mr. Krauthoff can read the records.

The Master—You can read those most any time. Had you not better be getting through with your testimony?

Mr. Dane—Records in the trustees' books of course have to be offered sometime. It seemed to us that it would possibly make the testimony of the witnesses more intelligible if those records were read now.

The Master—Very well.

Mr. Krauthoff—Now, if Your Honor please, this is the first record book of the trustees, being the book which bears on its title page, page 1, these words:

"Minute Book for the Board of Trustees appointed by the Rev. Mary Baker G. Eddy for her Trust in behalf of The First Church of Christ, Scientist, in Boston, Massachusetts."

I do that by way of identifying the book. I suppose that it ought to be identified by the stenographer.

Mr. Whipple—I think not, if Your

Honor please. I think that the things that are read should be marked with exhibit numbers, the same course that was pursued with the directors' records; and I should like to see what you intend to read, if there is very much of it, and see whether we object to its materiality.

Mr. Krauthoff—There is considerable of it.

Mr. Whipple—Well, I think, if Your Honor please, that it would be much better for them to call attention to such things as they desire to offer, and then we can know whether we assent or object. Why not go ahead with oral evidence and get this thing into shape by agreement with counsel, not taking Your Honor's time, so that they can be read promptly and with dispatch, instead of taking so much time as we are taking by reading these dry details of records?

Mr. Krauthoff—If Your Honor please, these are all arranged. There are other documents that fit in, and I will always show Mr. Whipple what it is that I expect to offer.

Mr. Whipple—You can show it to Mr. Withington after hours and the question will be immediately settled whether there is any objection to its materiality, and there will not be these delays for discussion. I offer the suggestion merely to facilitate and expedite the procedure, if Your Honor please. However, if Your Honor does not approve of it, I will not press it.

The Master—I think if it could be done it would be a good thing to do it, but Mr. Dane's statement is that he puts these in now because he believes that they will assist and expedite the examination of witnesses whom he is going to call.

Mr. Krauthoff—I shall be very glad—

Mr. Whipple—If Your Honor please, it did not occur to him last week when he put Mr. Dickey on the stand: they were not going to have in any of these records: they were ready to go right ahead with him. So that they must have had enlightenment since that time.

Mr. Dane—No; we have not had any enlightenment, but we have had about a day of directors' records, and that being so, I think that we ought to have the correlative records of the trustees.

The Master—I think that we will go on, and follow the same course with regard to the trustees' records that was pursued with regard to the directors' records, as far as possible?

Mr. Krauthoff—On page 3 of the book, if Your Honor please, is a document headed,

"A Gift to The Mother Church, and A Grant of Trusteeship,"

which has heretofore been offered in evidence in the examination of Mr. Eustace; and we desire to begin on page 7.

Mr. Whipple—While you are speaking of that, I find, if Your Honor please, by comparing it with Mrs.

Eddy's original letter, that there are some errors or omissions in the copy which we have in our record book. The copy that was given to the trustees was not a correct copy. So sometime we want to put in the original, but we will not stop now.

Now, as to what you want to read, I am going, if Your Honor please, to suggest that it be read without my stopping to look it over to consider whether I will object to it, but it will be with the understanding that I may offer any suggestions about it after it is read. I think that that will save time.

Mr. Krauthoff—After the document of Jan. 15, 1898, to which Mr. Whipple has referred, as set out—and at the proper time we will produce the original of that document—the record continues—

The Master—Where is the original, while we are on that? I mean, which side has possession of it just now?

Mr. Krauthoff—We have it here.

The Master—All right. That answers my question. You have that in your books, your collection of Mrs. Eddy's writings?

Mr. Krauthoff—Yes; it is right here.

The Master—All right. Go right on. Do not stop for that now.

Mr. Krauthoff—Page 7:

"Whereas, on Jan. 15, 1898, the above letter was addressed by Mary Baker G. Eddy to The First Church of Christ, Scientist, in Boston, Massachusetts, accompanied by the above instrument in writing, and both documents were read in a meeting of the First Members of the said Church convened on that date; and,

"Whereas, this Gift and Grant was accepted by The First Church of Christ, Scientist, in Boston, Massachusetts, through its First Members at this meeting held on Jan. 15, 1898, and so recorded in the minutes of the said meeting by the Clerk of the Church; and,

"Whereas, for the purpose of carrying out the Trust above mentioned, Edward P. Bates, James A. Neal, and William P. McKenzie met at the publishing house of The Christian Science Publishing Society, at 95 Falmouth Street, in Boston, Massachusetts, at 9 o'clock in the morning of the 26th day of January, 1898; and,

"Whereas, Judge S. J. Hanna presented to the meeting a deed from Mary Baker G. Eddy to The First Church of Christ, Scientist, in Boston, Massachusetts, of the real estate of the above-mentioned Gift, which deed is as follows:—"

The deed is not here recorded.

"And whereas the said Judge S. J. Hanna presented also a bill of sale and Declaration of Trust from Mary Baker G. Eddy to Edward P. Bates, James A. Neal and William P. McKenzie, a copy of which is as follows."

Then here follows a document attached to the Bill in Equity herein as Exhibit A, which has been heretofore

offered in evidence. And then the record continues (page 19):

"Thereupon

"The said Edward P. Bates, James A. Neal and William P. McKenzie accepted all and singular the terms, conditions and specifications contained in the said Declaration of Trust and proceeded to enter upon their duties as such trustees by organizing, as follows: Chairman of the Board of Trustees, Edward P. Bates; treasurer, James A. Neal; secretary, William P. McKenzie."

Your Honor will recall that in the Deed of Trust the Hymnal was made a part of the Deed of Trust—the Church Hymnal in connection with that—

Mr. Whipple—You do not mean that the Church Hymnal was made a part of the Deed of Trust?

Mr. Krauthoff—It was conveyed in the Deed of Trust.

Mr. Whipple—Oh.

[The minutes from the Minute Book of the Board of Trustees of which the foregoing are extracts, are Exhibit 255. R. H. J.]

Mr. Krauthoff—On Feb. 4, 1898, an adjourned meeting of the Board of Trustees was convened at 9:20 a. m. Present Messrs. Bates, Neal and McKenzie.

"Voted, That the secretary write to Rev. Mary Baker G. Eddy in regard to the Church Hymnal included in her Deed of Trust but copyrighted by the Christian Science Board of Directors."

[The record of the meeting of the Board of Trustees, of Feb. 4, 1898, from which the foregoing extract is read, is Exhibit 256. R. H. J.]

On Feb. 11, 1898 (page 29):

"At 95 Falmouth Street the regular meeting of the Board of Trustees convened at 9:15 a. m. Present Messrs. Bates, Neal, and McKenzie. . . .

"At this meeting the following notice was approved for insertion in the March Journal:

"It is announced that The Christian Science Journal has become the official organ of The Mother Church, The First Church of Christ, Scientist, in Boston, Massachusetts, and that in the April number, 1898, the names of Christian Scientists therein given will be arranged in directory form; and as it is desirable to have all names of Christian Science practitioners properly accredited and advertised, blanks will be sent to all who request them that the information desired may be furnished. These blanks will hereafter be sent to new applicants; and present advertisers are requested to send for them and fill them out so that the record may be preserved on file. Since all mentioned in this directory will be known as Christian Science practitioners, and as this department of The Journal has become over-voluminous, it is desirable that the cards be condensed as much as possible."

Mr. Whipple—What is the date of that, Mr. Krauthoff?

Mr. Krauthoff—That is Feb. 11, 1898.

In connection with that, we desire to call attention to the fact that such notice appears in The Christian Science Journal for March, 1898, and that The Christian Science Journal for January, 1898, bears upon its cover the imprint,

"Official Organ of National Christian Scientist Association";

and the same imprint appears upon the February, 1898, Journal; and the same upon the March, 1898, Journal. In due course I will offer the April, 1898, Journal to show the change. On the same day, Feb. 11, 1898 (page 33):

"For insertion in the April Journal, to head the Directory, the following notice was framed:

"Those whose names are hereafter inserted in this Directory must be members of The Mother Church, and so amenable to its discipline, and have recommendation as Christian Science practitioners deemed satisfactory to The Christian Science Publishing Society. They must be Christian Scientists who use as their only textbooks the Bible and "Science and Health with Key to the Scriptures," and who use and distribute in Christian Science work only the works of Mary Baker G. Eddy and the publications of The Christian Science Publishing Society. If conclusive evidence be furnished that any person named here is not conformed in life and practice to the teaching of the above-named textbooks, such name will be removed, money due for unexpired term being refunded."

[The record of Board of Trustees of Feb. 11, 1898, from which the foregoing extracts are read, is Exhibit 257. R. H. J.]

Page 41: "April 15th, 1898. Regular meeting convened at 9 a. m. All members present. A reply to communication sent Feb. 4th to Mrs. Eddy was received from Mr. C. A. Frye, as follows: Stating that Mrs. Eddy 'desires the copyright of Hymnal to remain the property of the C. S. Board of Directors, and of course the revenue to go to them.' This letter was dated April 9th, 1898.

"Voted that the Business Manager be instructed to pay to the Christian Science Board of Directors the net receipts from sales of the Hymnal."

[The record of the meeting of the Board of Trustees of April 15, 1898, from which the foregoing extract is read, is Exhibit 258. R. H. J.]

Page 47: "May 20th, 1898. Regular meeting of the trustees convened at 9 a. m., present Messrs. Neal & McKenzie.

"A communication from Rev. Mary Baker Eddy was received directing that the forthcoming Quarterly be copyrighted in her name—which was so ordered."

[The record of the meeting of the Board of Trustees of May 20, 1898, from which the foregoing extract is read, is Exhibit 259. R. H. J.]

Page 49: "June 8, 1898. Special meeting in lieu of this week's regular meeting called at 5 p. m., present Messrs. Bates and McKenzie. Voted to withdraw name of (blank) from list of practitioners in Journal for reasons given in writing by Mrs. (blank)."

[The record of the meeting of the Board of Trustees of June 8, 1898, from which the foregoing extract is read, is Exhibit 260. R. H. J.]

We are offering that, if Your Honor please, for the purpose of showing that at that time the Publishing Society took names out of the list, in connection with further evidence as to a change in the Manual, and the practice thereafter. We omit the reading of the names, because, it being a matter of discipline, the name is not important.

Page 51: "July 8, 1898. Regular meeting of trustees convened at 9:10 a. m. Present Messrs. Bates and McKenzie, and later Mr. Neal.

"Applications for cards in August Journal were passed upon, and various communications received. A notice for the Journal was framed as follows: 'The attention of the branch churches of The Mother Church is called to the notices published in The Christian Science Journal for December, 1896, page 424, and for June, 1898, at the foot of page 167. And also to the general directions regarding church services in the Manual, in so far as they govern the members of The Mother Church. Branch churches which are not conformed to these directions cannot be advertised in the Journal.'"

[The record of the meeting of the Board of Trustees of July 8, 1898, from which the foregoing extract is read, is Exhibit 261. R. H. J.]

In connection with that notice, attention is called to The Christian Science Journal for December, 1896, at page 424, which contains this notice:

"The Bible Lessons as prepared by a committee appointed for that especial purpose, constitute the entire lesson-sermon, and no remarks whatever by the readers about the lesson or in explanation thereof are to be made at any time during the service."

Also, attention is called to the statement in the Journal for June, 1898, page 167:

"Notice

"All the churches of Christ, Scientist, are hereby notified to hold their weekly Friday evening testimonial meetings on Wednesday instead of Friday evening, commencing the second Wednesday in June, 1898.

"MARY BAKER EDDY.

"Pleasant View, Concord, New Hampshire, May 11, 1898."

[The notice appearing on page 424 of The Christian Science Journal for December, 1896, from which the foregoing notice is read, is Exhibit 262. R. H. J.]

The notice appearing on page 167

of The Christian Science Journal for June, 1898, of which the foregoing is a copy, is Exhibit 263. R. H. J.]

Page 63:

"Aug. 19, 1898. Regular meeting of the trustees convened at 9:55 a. m. Present Messrs. Neal and McKenzie. A communication from Mr. Frye was reported, saying that Mrs. Eddy declined to nominate a trustee to fill the vacancy on the board. It was voted that Septimus J. Hanna be, and is now nominated by the remaining trustees to fill the vacancy on the board—in accord with directions in the Church Manual, page 28 of eighth edition, and section 10 of the Deed of Trust—and that Mrs. Eddy be notified of this nomination."

[The record of the meeting of the Board of Trustees, of Aug. 19, 1898, from which the foregoing extract is read, is Exhibit 264. R. H. J.]

The correlative passage in the eighth Manual, referred to in these minutes, reads as follows:

"Whenever a vacancy shall occur in said trusteeship for any cause the Pastor Emeritus reserves the right to fill the same by appointment;"—

Mr. Whipple—May I ask what you are reading now? I thought that you were reading the records of meetings.

Mr. Krauthoff—I was reading from the eighth Manual that the record of the meeting referred to.

Mr. Whipple—That has not been admitted in evidence.

Mr. Dane—I think that that is in evidence.

Mr. Whipple—You have done so much of identifying, and so little of offering in evidence, that I must confess that I never know what is offered in evidence and what is merely identified. I would like to see the exhibit.

The Master—You say that that one has been admitted unconditionally, do you, without any qualification?

Mr. Dane—My recollection is that that is so. Perhaps I can find that.

Mr. Krauthoff—Independent of any question of that kind, here is a record of the trustees which refers to the Church Manual.

Mr. Whipple—What difference does that make? The trustees do not create the Church Manual.

Mr. Krauthoff—Wait a minute. This is the book to which they do refer.

The Master—How do we know?

Mr. Krauthoff—It is being offered as the book to which they refer. Its legal aspect is another question.

Mr. Whipple—I move that that be stricken out at present, this reading from the Manual.

The Master—I think that you had better leave it out for the present.

Mr. Whipple—I thought that counsel was safely fixed for the rest of the afternoon reading records, and I did not notice what he was doing. Give us notice when you leave the records again, Mr. Krauthoff.

Mr. Bates—He gave you notice, and you were not listening.

Mr. Whipple—It is so dull! How can we listen?

Mr. Bates—Then don't blame him.

Mr. Whipple—Sitting here and hearing these records read is very dull business.

Mr. Bates—They are your records. They ought not to be dull.

Mr. Whipple—They are not ours. The people are all dead who made these records. They are ancient history. You are not up to the times, Governor.

The Master—Are you going to read something from the minutes of every meeting for the last 20 years?

Mr. Krauthoff—No, Your Honor; I have no intention of doing that.

The Master—You are going back a long way.

Mr. Krauthoff—I have already traveled from Jan., 1898, to Nov. 21, 1899, Page 125:

"November 21, 1899.

"Regular meeting of the Board of Trustees convened at 9:30 a. m. All members present. . . .

"Voted, that C. S. Reading Rooms shall be advertised only when established under the auspices of a recognized Church of Christ, Scientist, or congregation holding regular Sunday services. No mention of reading rooms which are not established under this rule shall be made in personal cards or church notices."

[The record of the meeting of the Board of Trustees, Nov. 21, 1899, from which the foregoing extract is read, is Exhibit 265, R. H. J.]

Page 155:

"August 14, 1900.

. . . "In accord with the recent by-law the trustees made appointment for the Church Reading Room of Mrs. Laura Sargent, C. S. D., to have charge & Mrs. Nunn to be assistant, subject to Mrs. Eddy's approval."

[The record of the meeting of the Board of Trustees of Aug. 14, 1900, from which the foregoing extract is read, is Exhibit 266, R. H. J.]

Mr. Whipple—If Your Honor please, we object to that if an inference is to be drawn that there was any by-law. We do not object to the record in and of itself; but any inference that there was a by-law we should object to. It has not been shown yet that there was anybody capable of creating a by-law.

Mr. Krauthoff—Page 169, Nov. 22, 1900. "10:00 a. m. At an informal meeting with the directors the decision was agreed to that when complaints come in against practitioners whose cards are in the Journal, the trustees shall offer the accused the opportunity to present his defense, before presenting the papers to the committee appointed to administer discipline, viz., the Board of Directors and First Reader of The Mother Church."

[That portion of the record of the meeting of the Board of Directors, dated Nov. 22, 1900, as read by Mr.

Krauthoff, is offered in evidence as Exhibit 267.]

Mr. Krauthoff—Page 181, March 13, 1901: "Adjourned meeting convened at 11:30 a. m., all members present. . . . A message was received from Mr. Frye saying it was Mrs. Eddy's wish to have Mr. Willis, the new member of the Bible Lesson Committee, elected by the trustees, this being in accord with the Deed of Trust."

[That portion of record of meeting of the Board of Trustees, dated March 13, 1901, as read by Mr. Krauthoff, is marked Exhibit 268.]

Mr. Krauthoff—Page 183, April 8, 1901: "Special meeting with the directors convened at 12:30 p. m. and the following instructions were read from a letter signed by Mrs. Eddy, regarding Mr. Willis: 'You must put him in first editor now, not wait a day, so as to let him have the run of things. Have the trustees attend to this business at once.' In accordance with these directions, it was voted that Mr. John B. Willis be appointed first editor, and so notified, and that this action be reported to our Leader."

[That portion of the record of the meeting of the Board of Trustees, dated April 8, 1901, as read by Mr. Krauthoff, is offered in evidence as Exhibit 269.]

Mr. Krauthoff—Page 199, Sept. 9, 1901:

"Special meeting of Board of Trustees convened at 10 a. m., all members present. The business manager, Mr. J. Armstrong, was present and signified that as his time would be required more continuously with other work, he desired to be relieved of his duties as business manager. A letter was written Mrs. Eddy, informing her with regard to the situation, in accord with Manual, Art. XXX, Sec. 4."

[That portion of record of the meeting of the Board of Trustees, dated Sept. 9, 1901, as read by Mr. Krauthoff, is offered in evidence as Exhibit 270.]

Mr. Krauthoff—Sept. 17, 1901, page 201:

"Notice was received from the Board of Directors regarding suspension of (blank) card."

[That portion of record of meeting of the Board of Trustees, dated Sept. 17, 1901, as read by Mr. Krauthoff, is offered in evidence as Exhibit 271.]

Mr. Krauthoff—March 18, 1902:

"Regular meeting of the Board of Trustees convened at 10 a. m., all members present. . . . From 10 to 11:45 a conference was held with the Board of Directors and First Reader in regard to recognition of churches, and the agreement came to was that as the Manual permitted a loyal and exemplary member of The Mother Church to form a branch church, when complaints were made against those forming new churches, they should be in form as required by Manual and directed to the committee on complaints, and that recognition



of applicants for such branch church would be withheld so long as complaints were pending."

[That portion of record of meeting of the Board of Trustees dated March 18, 1902, as read by Mr. Krauthoff, is offered in evidence as Exhibit 272.]

Mr. Whipple—May I suggest, if Your Honor please, inasmuch as reference has been made to an agreement between the then trustees and the then directors, that it is our claim that the Deed of Trust cannot in any way be affected by any agreements of the incumbents at a particular time; that there is no estoppel; if they act either in a neglect of their duties or in ignorance of what their duties properly are, or in ignorance of the law, no estoppel is thereby created. I venture to speak of it at this time because it is likely to come up in a different form and more important relation later.

Mr. Krauthoff—At the proper time we shall present our views with respect to that phase of the case.

April 22, 1902:

"Regular meeting of the Board of Trustees convened at 10 a. m., all members present. . . . Conference with the directors in regard to (blank) church was had and a letter prepared in agreement."

[That portion of the record of the meeting of the Board of Trustees, dated April 22, 1902, as read by Mr. Krauthoff, is offered in evidence as Exhibit 273.]

Mr. Krauthoff—Page 225, June 17, 1902:

"Special meeting convened at 11:30 and the trustees met with Mr. Armstrong and Mr. Johnson of the Board of Directors, who made it known that Archibald McLellan of Chicago had been elected editor-in-chief of the Journal and Sentinel, and Miss Mary Speakman, assistant. Mr. McLellan was present and signified his acceptance of the office and indicated that a salary proportionate to his present income would be \$4500. Conference was had in regard to the work, and he announced his intention to return to Chicago and there terminate his business connections. These elections were accepted, but awaiting further instructions, no action was taken."

[That portion of the record of the meeting of the Board of Trustees, dated June 17, 1902, as read by Mr. Krauthoff, is offered in evidence as Exhibit 274.]

Mr. Krauthoff—June 21, 1902, page 227:

"A special meeting of the Board of Trustees convened to meet with the directors at 11:15 a. m., and the following instructions were communicated: that during Mr. McLellan's absence they should retain Mr. Willis and Miss Speakman in charge of the editorial department with Mr. Willis in the place of editor-in-chief—that there should be published in the next Sentinel an explanation of Mr. McLellan's absence—that an editorial by

Mr. Willis should appear in the next Sentinel, and that he be retained in editorial department as second editor after Mr. McLellan's return."

[That portion of record of meeting of the Board of Trustees, dated June 21, 1902, as read by Mr. Krauthoff, is offered in evidence as Exhibit 275.]

Mr. Krauthoff—Feb. 9, 1903: (1904?)

"Regular meeting of the Board of Trustees convened 10:15 a. m., all members present. . . . Mr. McKenzie reports that on his western trip he had a conference with Mrs. (blank) and also the Board of Directors of the (blank) Church of (blank) city, and says that difficulties have been removed so that no objection remains to the establishment of the (blank) Church in (blank) city."

[That portion of record of the meeting of Board of Trustees, dated Feb. 9, 1903, as read by Mr. Krauthoff, is offered in evidence as Exhibit 276.]

Mr. Krauthoff—March 15, 1904:

"Regular meeting of the Board of Trustees convened at 10:10 a. m., all members present. . . . The passing away of our beloved sister and faithful worker, Mrs. Mary W. Munroe, having created a vacancy on the Bible Lesson Committee, and as the 'Deed of Trust' indicates that it is the duty of the Board of Trustees to fill vacancies on said Bible Lesson Committee, the situation was discussed, and it was decided that a letter be sent our revered Leader and Teacher advising her of the vacancy and requesting her to nominate anyone whom she thinks best fitted to do this work. Said letter was written and mailed this date."

[That portion of record of meeting of the Board of Trustees, dated March 15, 1904, as read by Mr. Krauthoff, is offered in evidence as Exhibit 277.]

Mr. Krauthoff—April 11, 1904, page 282:

"Special meeting of the Board of Trustees convened at 10:45 a. m. . . . A letter from our beloved Leader, Rev. Mary Baker G. Eddy, requesting the appointment of Mrs. Annie M. Knott upon the Bible Lesson Committee, to fill the vacancy now existing there, was received through the Board of Directors, and in accordance with the same Mrs. Knott was notified of her appointment to take effect at once and accepted the appointment. A letter was sent our Leader notifying her of Mrs. Knott's appointment and acceptance. A similar letter was also sent the Board of Directors."

[That portion of record of meeting of the Board of Trustees, dated April 11, 1904, as read by Mr. Krauthoff, is offered in evidence as Exhibit 278.]

Mr. Krauthoff—Nov. 3, 1904, page 295:

"Regular meeting of the Board of Trustees convened at 3 p. m. Present, Messrs. Clark and McKenzie. . . . The issue of a circular to advertisers was considered and proofs examined and corrected."

[That portion of record of the meet-

ing of the Board of Trustees, dated Nov. 3, 1904, is offered in evidence as Exhibit 279.]

Mr. Krauthoff—Nov. 4, 1904:

"Meeting. . . . Time was given to a further discussion of the proposed circular and conference was had with Mr. Kimball in regard to its wording."

[That portion of record of meeting of Board of Trustees, dated Nov. 4, 1904, as read by Mr. Krauthoff, is offered in evidence as Exhibit 280.]

Mr. Krauthoff—Nov. 5, 1904:

"A special meeting was called because of a new by-law which required further revision of the circular, and in conference with the editor-in-chief and business manager, this was done between 11 a. m. and 1 p. m."

[That portion of record of meeting of Board of Trustees, dated Nov. 5, 1904, as read by Mr. Krauthoff, is offered in evidence as Exhibit 281.]

Mr. Krauthoff—Dec. 6, 1904, page 297:

"Regular meeting of the Board of Trustees convened at 10:20 a. m., all members present. . . . It was decided by the Board of Directors to remove without further advice the cards of all advertisers in The Journal who say on the form letter which was furnished the directors that they are engaged in other professions or pursue other vocations. A general letter was prepared to be sent to such advertisers, explaining that cards are dropped to conform to a recent by-law in regard to advertisers not being engaged in other vocations or professions."

[That portion of record of meeting of Board of Trustees, dated Dec. 6, 1904, as read by Mr. Krauthoff, is offered in evidence as Exhibit 282.]

Mr. Krauthoff—April 25, 1905, page 307:

"Regular meeting of the Board of Trustees convened at 9:30 a. m., all members present. . . . The following letter from our beloved Leader was received by Mr. McKenzie and placed before the trustees:

"Concord, N. H., April 22, 1905.

"Rev. McKenzie. Beloved Student. I think it just and a duty for the first provisions of the Deed of Trust to be carried out for the trustees. I am glad to know that the revenue to my Church is what it already is, and I well knew it would be thus when I gave my paper to the Church.

"With love,

"MARY BAKER EDDY."

"The receipt of this letter by the trustees was duly acknowledged by one sent to our Leader, thanking her for the loving thought and interest in our welfare. A letter was also prepared and sent to the Board of Directors, together with the letter received from our Leader, and asking that her recommendation be accepted and acted upon by the directors, and the letter returned to us at once."

[That portion of record of meeting of Board of Trustees, dated April 25, 1905, as read by Mr. Krauthoff, is offered in evidence as Exhibit 283.]

Mr. Krauthoff—I omitted one. March 5, 1902, page 215:

"Special meeting of the Board of Trustees convened at 9:45. Present, Messrs. Hatten and McKenzie. Directions from Mr. Frye for Mrs. Eddy were received stating that Mr. Tomlinson would retire from the Bible Lesson Committee, and nominating Rev. Charles D. Reynolds: accordingly Mr. Reynolds was appointed and letters sent to Mrs. Eddy announcing this action to Messrs. Tomlinson and Reynolds informing them of the change."

[That portion of record of meeting of Board of Trustees, dated March 5, 1902, as read by Mr. Krauthoff, is offered in evidence as Exhibit 284.]

Mr. Krauthoff—July 8, 1902, page 229:

" . . . Meeting . . . It was agreed to send out to all the churches and societies copies of the lectureship circular, and blanks for ordering literature for lectures."

[That portion of record of meeting of Board of Trustees, dated July 8, 1902, as read by Mr. Krauthoff, is offered in evidence as Exhibit 285.]

Mr. Krauthoff—July 23, 1902, page 231:

" . . . Meeting . . . It was voted in accord with a message from Mr. Frye, that Mr. Tomlinson be reinstated in his position on the Bible Lesson Committee, and that Mr. Reynolds, who has been his substitute, be relieved."

[That portion of record of the meeting of the Board of Trustees, dated July 23, 1902, is offered in evidence as Exhibit 286.]

Mr. Krauthoff—Nov. 12, 1902, page 241:

"Meeting convened at 10 a. m., all members present. It was voted to nominate Miss Emma H. McLauthlin, C.S.B., and John W. Reeder, C.S.B., as librarians for the Boston Reading Room, and a letter explaining the proposed change in hours, giving from 10 a. m. to 9 p. m. hospitality to the public, and presenting these nominations was written to Mrs. Eddy in accord with Art. XXXVIII, Sec. 2 of the Manual."

[That portion of record of meeting of the Board of Trustees, dated Nov. 12, 1902, as read by Mr. Krauthoff, is offered in evidence as Exhibit 287.]

Mr. Krauthoff—Nov. 10, 1903, page 271: "The trustees recommend that the editorial department add to the contents of Der Christian Science Herald the C. S. Quarterly Bible Lessons printed in German."

[That portion of record of meeting of the Board of Trustees, dated Nov. 10, 1903, as read by Mr. Krauthoff, is offered in evidence as Exhibit 288.]

Mr. Krauthoff—Jan. 26, 1904, page 276: Meeting of the Board of Trustees: "After a careful consideration of the subject it was decided to discontinue the publication of the (blank) pamphlet, and a notice to that effect will be published in the Sentinel. . .

In a conference with the Board of Directors they agreed with the trustees in discontinuing the publication of the (blank) pamphlet."

[That portion of record of the meeting of the Board of Directors dated Jan. 26, 1904, as read by Mr. Krauthoff, is offered in evidence as Exhibit 289.]

Mr. Krauthoff—Aug. 7, 1906, meeting of the Board of Trustees: "At the suggestion of our Leader made in a communication to Mr. McLellan, certain changes are to be made in the cover page of the Sentinel. An artist drawing has been prepared and this day sent to our Leader by special messenger for her consideration and approval and request to return same as soon as possible."

[That portion of record of meeting of the Board of Trustees, dated Aug. 7, 1906, as read by Mr. Krauthoff, is offered in evidence as Exhibit 290.]

Mr. Bates—May it please Your Honor, just a moment before adjournment. General Streeter has asked us to obtain for him certain information with regard to the Christian Science Benevolent Association. I did not understand, and do not understand, that we are under any obligation to do so, but we are pleased to furnish him the information as a matter of courtesy, and as he made the request in open court I hand it to him in open court.

Mr. Streeter—Governor Bates, you are a good man, and I appreciate your courtesy very much. I thank you.

The Master—Shall we stop until 10:00 o'clock tomorrow morning?

[Adjourned to 10:00 a. m., Tuesday, July 15, 1919.]

July 15, 1919

#### FOURTEENTH DAY

Supreme Judicial Court Room, Boston, Massachusetts, July 15, 1919.

The Master—Go on, Mr. Krauthoff. Mr. Krauthoff—We offer from the second record book kept by the Board of Trustees of The Christian Science Publishing Society the minutes of the meeting of Jan. 4, 1908, at page 1:

"Special meeting of the Board of Trustees convened at 11:45 a. m., all members present. Mr. Stewart announced that he had received appointment as director on condition of resigning from the Board of Trustees, and after discussion of the situation presented his resignation, which was accepted with regret for the loss of his brotherly fellowship in work, and with congratulations, because of the new opportunity for service. The remaining trustees conferred together and presented the case to the Leader according to the Manual, asking her if she wished to exercise her reserved right to fill the vacancy by appointment, indicating that if she did not exercise this right they would ask her

approval of their election of Mr. William D. McCrackan, at present First Reader of The Mother Church, but with only five months to serve, expecting from him good assistance in connection with the increasing scope of our periodicals and general literature, and especially in connection with German and foreign work."

[That portion of the record of the meeting of the Board of Trustees dated Jan. 4, 1908, as read by Mr. Krauthoff, is offered in evidence as Exhibit 291.]

Mr. Krauthoff—Meeting of Jan. 7, 1908, page 3:

"Meeting convened at 9:20 a. m., Messrs. McKenzie, Hatten, and McCrackan present.

"The trustees put on record their conference with the Board of Directors on Jan. 6, when by invitation they were allowed to present the needs of the business in connection with the appointment of a business manager. In compliance with the request of the directors a letter was addressed to the directors presenting these needs and setting forth the qualifications of David B. Ogden, C. S. B., of Portland, Oregon, to fill the vacancy, if elected."

[That portion of record of meeting of the Board of Trustees, dated Jan. 7, 1908, as read by Mr. Krauthoff, is offered in evidence as Exhibit 292.]

Mr. Whipple—May I ask if you read all the statement with regard to Mr. Ogden?

Mr. Krauthoff—Yes.

Mr. Whipple—If at any time you do not give the whole, if you omit any part of the record, will you please call attention to it?

Mr. Krauthoff—Yes, I will be very glad to.

Mr. Whipple—Thank you, if you will. Then I will assume that you read everything on a particular subject unless you state to the contrary.

Mr. Krauthoff—Yes.

Mr. Whipple—Everything in the record of a meeting on a particular subject unless you state to the contrary. I am asking this because I am not asking to see what you read in advance.

Mr. Krauthoff—All right. We will do that, Mr. Whipple.

Mr. Whipple—Thank you.

Mr. Krauthoff—Jan. 9, 1908:

"A letter was sent to Mr. David B. Ogden, C. S. B., of Portland, Oregon, defining in a general sense the duties of the office of business manager of The Christian Science Publishing Society. A telegram was also sent, informing him that the Board of Trustees had been notified of his election, asking him to come as soon as convenient, and offering to pay traveling or removal expenses."

[That portion of record of meeting of the Board of Trustees, dated Jan. 9, 1908, as read by Mr. Krauthoff, is offered in evidence as Exhibit 293.]

Mr. Krauthoff—Jan. 14, 1908, page 6: "It was unanimously voted by the Board of Trustees not to publish here-

after in the directory of the Journal any notices of churches or societies until the question of their recognition has been decided in each case by the Board of Directors."

[That portion of record of meeting of the Board of Trustees, dated Jan. 14, 1908, as read by Mr. Krauthoff, is offered in evidence as Exhibit 294.]

Mr. Krauthoff—Feb. 4, 1908, page 15:

"It was voted to prepare a complete list of all persons connected with editing or publishing the Christian Science periodicals, or with The Christian Science Publishing Society, in order to be ready to obey Art. XXIX, Sec. 5. In accordance with this vote, Mr. Hatten was instructed to find out the dates of admission to The Mother Church of all persons enumerated above."

[That portion of record of meeting of the Board of Trustees, dated Feb. 4, 1908, as read by Mr. Krauthoff, is offered in evidence as Exhibit 295.]

Mr. Krauthoff—Feb. 7, 1908, page 17:

"It was decided to send a letter to the directors asking for authorization to remove the cards of delinquent advertisers from the Journal."

[That portion of the record of meeting of the Board of Trustees, dated Feb. 7, 1908, as read by Mr. Krauthoff, is offered in evidence as Exhibit 296.]

Mr. Krauthoff—Feb. 13, 1908:

"Meeting convened at 10:25 a. m. in the usual way. The meeting reconvened at 3:45 p. m. to consider a new by-law, Art. XXVIII, Sec. 8, entitled 'Requirements for organizing branch churches.' Another application blank for church notices was then considered, to comply with this new by-law, also those portions in the publishing department which would be affected by the change."

[That portion of the record of meeting of the Board of Trustees, dated Feb. 13, 1908, as read by Mr. Krauthoff, is offered in evidence as Exhibit 297.]

Mr. Krauthoff—Feb. 14, 1908, page 20:

"The proof of a new application blank for church notices to comply with the new by-law was presented and approved."

[That portion of the record of meeting of the Board of Trustees, dated Feb. 14, 1908, as read by Mr. Krauthoff, is offered in evidence as Exhibit 298.]

Mr. Krauthoff—June 19, 1908, page 40:

"Theodore Stanger having been elected by the directors to be assistant editor of Der Herold, the trustees offered him, and he accepted a salary of \$200 per month, and he was thus employed. The trustees conferred with Mr. McLellan regarding the division of work between Mr. Stanger and Miss Kollmorgan and the direction of their work. It was agreed between Mr. McLellan and the trustees that he alone should direct the work of the assistant editor of Der Herold and his assistants. Mr. Stanger was present during this conference."

[That portion of record of meeting

of the Board of Trustees, dated June 19, 1908, as read by Mr. Krauthoff, is offered in evidence as Exhibit 299.]

Mr. Krauthoff—July 14, 1908, page 50:

"The practice of furnishing periodicals without charge to officers and employees of the Publishing Society for their personal use will be discontinued Aug. 1, 1908. The Church Manual (Seventy-Second Edition), Article X, Section 2."

[That portion of record of meeting of the Board of Trustees, dated July 14, 1908, as read by Mr. Krauthoff, is offered in evidence as Exhibit 300.]

Mr. Krauthoff—July 27, 1908, page 54:

"The trustees met the directors at their request to consider about the printing of a list of members of The Mother Church. The directors agreed with the trustees that the new by-law entitled 'Numbering the People,' forbids publishing said list. The directors requested the trustees to keep said list printed up to date by printing such copies thereof as may be needed by the clerk, treasurer, and directors of The Mother Church, and by the Publishing Society; and the trustees agreed to do this by printing such lists after each admission to membership in The Mother Church."

[That portion of the record of meeting of the Board of Trustees, dated July 27, 1908, as read by Mr. Krauthoff, is offered in evidence as Exhibit 301.]

Mr. Krauthoff—Aug. 10, 1908, page 57:

"This meeting was called at the instance of Mr. McLellan, and he appeared at the meeting and delivered to the trustees the following letter from our Leader:

'Box G, Brookline, Massachusetts,  
'Aug. 8, 1908.'

This letter, if Your Honor please, has been read in evidence. It is the letter referring to the starting of The Monitor. Shall I read it again?

The Master—Can you refer to it by the exhibit number?

Mr. Krauthoff—No, I do not know the exhibit number.

Mr. Whipple—Read it right in; it is short, isn't it?

Mr. Krauthoff—(Reading):

"Christian Science Board of Trustees,  
"Boston, Massachusetts.

"Beloved Students:

"It is my request that you start a daily newspaper at once and call it 'The Christian Science Monitor.' Let there be no delay. The Cause demands that it be issued now. You may consult with the Board of Directors. I have notified them of my intention.

"Lovingly yours,

"MARY B. G. EDDY."

Mr. Whipple—This is addressed to the trustees of the Publishing Society, is it not?

Mr. Krauthoff—Yes. Delivered to the Christian Science Board of Trustees by the hand of Mr. McLellan. (Reading):

"The Trustees immediately com-

menced making plans for the new daily, and arranged a consultation with the directors concerning it to tomorrow morning."

[That portion of record of meeting of the Board of Trustees, dated Aug. 10, 1908, as read by Mr. Krauthoff, is offered in evidence as Exhibit 302.]

Mr. Krauthoff—Aug. 11, 1908:

"A regular meeting of the trustees of The Christian Science Publishing Society convened at 9 o'clock a. m. in the directors' room at The Mother Church. Trustees all present. The trustees conferred with the directors in regard to The Christian Science Monitor. It was agreed between the two boards that the directors are charged with the duty of providing the building or place for the publication of the Monitor, and that the trustees are charged with the duty of organizing and starting the new paper, subject to such special authority in regard thereto as is vested in the directors by the Church By-Laws, or in Mr. McLellan by our Leader."

[That portion of record of meeting of the Board of Trustees, dated Aug. 11, 1908, as read by Mr. Krauthoff, is offered in evidence as Exhibit 303.]

Mr. Krauthoff—March 26, 1909, page 116:

"After carefully considering the subject, the trustees proposed to the directors a change in the basis for the accounting of the Publishing Society to The Mother Church. A letter was written to the directors in part as follows:—

Now, if Your Honor please, the details of the change are not important. This is being offered for the purpose of showing that it was submitted to the directors, and unless requested so to do I will not read the letter setting forth the details of the change.

Mr. Whipple—It does not seem to me it is important to any issue in this case that the trustees did submit questions to the directors and conferred with them and agreed with them upon certain matters of administration. It is a part of our claim that it was the duty of the trustees always to coordinate their activities with those of the directors; it was contemplated by Mrs. Eddy; and all this that is being read shows just exactly that course of procedure—a meeting together and an agreement with regard to matters having to do with the Publication Society. It has seemed that it was entirely immaterial to any controverted issue in the case. So far as it goes it is merely proving what we have had more plenary proof of in the case that has already been put in by the directors. But if any point is made of the trustees consulting the directors or writing letters to them, it is important what they wrote—quite as important as the fact that they wrote, because it shows, as we claim, that the administration has been that of the two boards trying to cooperate together to forward the great purpose as to which both of them were charged with duties—coordinating their work, agree-

ing together wherever they could. And this disturbance would not have arisen, as we claim, if the directors had continued to pursue that course. Mr. Krauthoff—Then I will not read that letter.

Mr. Whipple—I think you better. It is just as material as any part of what you are putting in.

Mr. Krauthoff (reading):

"We have concluded that it (the Deed of Trust) permits us to keep the amount of the assets received at the beginning of the trust besides enough assets to equal our necessary liabilities, it permits it to purchase such furniture, fixtures, and machinery as may be needed to conduct the business, paying for this as well as paying what is usually called the expense of a business, and it requires us to pay to the treasurer of The Mother Church the balance remaining in our hands after making these deductions at the end of each six months. Upon this basis we would strike a balance at the end of each six months by putting on one side of the balance sheet the amount of the original Trust Fund and the amounts which we owe to subscribers, advertisers, and others, first paying everything that should be paid in cash, and by putting on the other side the amount of cash on hand and the amounts of all other assets held by us as trustees, putting in the various items of property at their estimated cash value."

"This letter was taken to the directors' room by Judge Smith and submitted to them, and they expressed their approval of the proposed basis for accounting."

Judge Smith, at that time, if Your Honor please, was a member of the Board of Directors.

[That portion of the record of meeting of Board of Trustees, dated March 26, 1909, as read by Mr. Krauthoff, is offered in evidence as Exhibit 304.]

Mr. Whipple—If Your Honor please, if it would not be out of order, I would like to point out in regard to that letter that it was—

Mr. Bates—I object. Pardon me, Mr. Whipple. I object to your making any further statement. Mr. Whipple has already made the argument which had no place here. If he wished to have that letter read, all he had to do was to ask for it. If he wished to object, he could have objected; but to get up and make an argument without any request and without any objection is entirely irregular.

Mr. Whipple—I ask to have this letter and the entire record excluded, because it does not bear upon any issue; it shows merely that the trustees and beneficiaries were attempting to agree with regard to the administration of the trust, the trustees having the handling of the trust and the directors representing the beneficiaries. And this is an agreement of an accounting between them. It does not show any domination or authority on the part of the trustees at all; it is

merely a letter, usual and ordinary letter, passing between the trustees and the beneficiaries as to the administration of the trust.

The Master—Anything further?

Mr. Bates—I would simply like to state that Mr. Whipple's contention shifts somewhat. He contends that these were entirely separate and independent activities. This is introduced for the purpose of showing that there was supervision, and always had been, on the part of the directors. Certainly it is plainly competent on that issue.

Mr. Whipple—I want to just point out it does not show any such thing, that there was any supervision, any more than the report of a trustee to a beneficiary shows that the beneficiary supervised the administration of the trust. He does not do it at all; he simply receives the accounting of the trustee and the money that is to be paid over. And to attempt to say that that is a supervision of the trust is a stretch of the imagination that I did not think even the Governor would be capable of.

Mr. Bates—That is a matter for argument later.

Mr. Whipple—Well, you are arguing it now, and very effectively. I congratulate you.

Mr. Bates—Well, you ought to.

The Master—We are now investigating a course of conduct continued through a series of years, the effect of which on the issues in the case is in dispute. I think that we had better go on and get all there is about that, and reserve all argument about it until we have got it all.

Mr. Whipple—That is, Your Honor would prefer that we would not speak with regard to individual matters as they go on?

The Master—I think that that would be the best way.

Mr. Whipple—Very well, Your Honor; I will observe Your Honor's suggestion.

Mr. Krauthoff—Very well. Now we will resume the evidence. Page 135, July 6, 1909:

"With the approval of the directors, the trustees instructed the manager to purchase \$4000 of the preferred stock of the United Press Association from the president of this association at par."

[The record of the meeting of the trustees of July 6, 1909, from which the foregoing extract is read, is Exhibit 305. R. H. J.]

Page 175—This is the consolidated record, covering six meetings—Feb. 15, 18, 22, 25, and March 1 and 4, 1910—

The Master—1910?

Mr. Krauthoff—Yes.

The Master—Go on.

Mr. Krauthoff—

"Regular meetings of the trustees of the Publishing Society were held on all these days, at which all the trustees were present. . . . During this period the trustees were requested by the directors to undertake the work

of investigating complaints against advertisers in the Journal, and this work was commenced."

[The consolidated record of the meetings of the trustees on Feb. 15, 18, 22, 25, March 1 and 4, 1910, from which the foregoing extracts are read, is Exhibit 306. R. H. J.]

Mr. Whipple—If Your Honor please, I want to ask Mr. Krauthoff if it would be satisfactory to him, inasmuch as he has put in something from our records with regard to the Hymnal, to put in the letter which was written on July 13, 1909, to the trustees from the Board of Directors with regard to the Hymnal. We shall have to put it in later if you do not, Mr. Krauthoff, and it had better go in in its order. It clears up that Hymnal matter.

Mr. Krauthoff—We prefer to let that be introduced by Mr. Whipple as a part of his case.

Page 312, May 23, 1912.

"Regular meeting of the Board of Trustees convened at 2 p. m., all members present. . . . A letter was written and sent the Board of Directors, suggesting that in reappointing the managing editor in June he be relieved of the management of the advertising department."

[The record of the meeting of the trustees of May 23, 1912, from which the foregoing extract is read, is Exhibit 307. R. H. J.]

Page 267, Sept. 12, 1911—I have to go back of that for one date:

"Under the by-law directing that when a new trustee is required 'the remaining trustees shall fill the vacancy,' James A. Neal was elected to fill the vacancy caused by the resignation of Judge Clifford P. Smith."

[The record of the meeting of the trustees of Sept. 12, 1911, from which the foregoing extract is read, is Exhibit 308. R. H. J.]

Page 358, Jan. 8, 1913:

"Special meeting of the Board of Trustees convened all members present at 2 o'clock the trustees met with the Board of Directors in The Mother Church by invitation, and the matter of The Christian Science Publishing Society having an exhibit at the Panama Pacific International Exposition to be held in San Francisco, California, was thoroughly discussed and the business arrangements for carrying out the same was turned over to the trustees."

[The record of the meeting of the trustees of Jan. 8, 1913, from which the foregoing extract is read, is Exhibit 309. R. H. J.]

Page 373, March 13, 1913:

"A letter requesting a conference with the Board of Directors next Wednesday 19th, 2 p. m., to submit plans for distribution of literature was sent."

[The record of the meeting of the trustees of March 13, 1913, from which the foregoing extract is read, is Exhibit 310. R. H. J.]

That is on page 137, Mr. Whipple (passing to Mr. Whipple the volume of

trustees' records from which the foregoing extracts have been read).

Mr. Whipple—What is?

Mr. Krauthoff—The letter that you asked for.

Now, if Your Honor please, Jan. 1, 1914, page 32:

"Regular meeting of the Board of Trustees convened at 2 p. m. all members present the trustees in accordance with previous appointment met with the Board of Directors at 10 o'clock and was in conference until 1:30 p. m., the duties and position of the Board of Trustees as defined and provided for in the 'Deed of Trust' and the Manual and other matters of business were discussed."

[The record of the meeting of the trustees of Jan. 1, 1914, from which the foregoing extract is read, is Exhibit 311. R. H. J.]

At this point, if Your Honor please, I may take the liberty of saying that this is my first discovery in the records of these trustees, in 1914, 16 years after the trust started, of any difference of opinion being discussed, as a matter of record.

Mr. Whipple—It does not say that there was any difference of opinion there, either. They seemed to be cooperating very nicely.

Mr. Krauthoff—The first discussion of their respective duties that appears of record.

Page 34, Jan. 8, 1914:

"The trustees were in conference with the Board of Directors at The Mother Church from 1 to 2 p. m., and the matter of further improving The Monitor by employing the services of Mr. Tennant was discussed, the consensus of opinion was in favor of doing so."

[The record of the meeting of the trustees of Jan. 8, 1914, from which the foregoing extract is read, is Exhibit 312. R. H. J.]

Page 47, March 11, 1914:

"Regular meeting of the Board of Trustees convened at 2 p. m., all members present. On invitation the trustees met with the Board of Directors and were with them until 4:20 p. m. and a general discussion of business matters was held, the question of continuing publishing of a cheap edition of the book, 'Life of Mary Baker Eddy,' was considered, and it was thought best to do so. The trustees returned to their office and closed their meeting at 5 p. m."

[The record of the meeting of the trustees of March 11, 1914, of which the foregoing is a copy, is Exhibit 313. R. H. J.]

Page 114, Feb. 10, 1915:

"... A conference held with a committee of one of the Board of Directors (J. A. Neal) it was decided to omit sending out the letter of inquiry to applicants for cards in our periodicals regarding their application of Art. XXVII, Sec. 4 to their practice of former church affiliations, also not make a subscription to Der Herold a requirement."

[The record of the meeting of the

Board of Trustees of Feb. 10, 1915, from which the foregoing extract is read, is Exhibit 314. R. H. J.]

Page 178, Jan. 27, 1916:

"... The trustees were invited to meet with the Board of Directors and talk over matters of general interest, regarding the work and responsibility of the two boards.

"The trustees convened at 2 p. m. and the trustees returned to their office at 4:30 p. m."

[The record of the meeting of the Board of Trustees of Jan. 27, 1916, from which the foregoing extract is read is Exhibit 315. R. H. J.]

Page 180, Feb. 7, 1916:

"... A conference was held with the Board of Directors in The Mother Church from 1:30 to 3:25 p. m."

[The record of the meeting of the Board of Trustees of Feb. 7, 1916, from which the foregoing extract is read, is Exhibit 316. R. H. J.]

Page 181, Feb. 14, 1916:

"After meeting with the Board of Directors from 2 to 4:10 p. m. the Board of Trustees convened in their office to attend to the regular business conference."

[The record of the trustees of Feb. 14, 1916, from which the foregoing extract is read, is Exhibit 317. R. H. J.]

Page 182, Feb. 15, 1916—

Mr. Bates—Mr. Krauthoff, you have read all that is put into these records about the joint conferences?

Mr. Krauthoff—Yes; I have read the record exactly as it is written.

Mr. Bates—I am surprised that the trustees should have had so limited a record of two and three-hour conferences!

Mr. Whipple—And have you put in all the conferences that they had?

Mr. Krauthoff—I have put in all that I have found. Page 182, Feb. 15, 1916:

"Tuesday. Special meeting of the Board of Trustees convened at 2:45 p. m. All members present. After a conference with the Board of Directors at 2 p. m., a letter was prepared by the trustees setting forth their view of the duties, responsibilities, and work of the trustees, and delivered to the directors."

[The record of the meeting of the Board of Trustees of Feb. 15, 1916, from which the foregoing extract is read, is Exhibit 318. R. H. J.]

That letter, if Your Honor please, has not yet been offered in evidence, but I shall be glad to have Your Honor record that that letter is of some importance in the history of the case.

Mr. Streeter—Why don't you put it in? If it is of any consequence I would like to see it; if it is not, I do not care about it.

Mr. Bates—It will be put in later. The Master—Why isn't this the proper place for it?

Mr. Krauthoff—The letter can be proved only by extraneous evidence. If the trustees have it in their files,

and they will produce it, I shall be very glad to have it.

Mr. Streeter—Why don't you call for it, then?

Mr. Whipple—I understand that the original was directed to the directors?

Mr. Krauthoff—Yes.

Mr. Whipple—Haven't they it in their files?

Mr. Krauthoff—The history of that is this—

Mr. Bates—We have a copy of it.

Mr. Whipple—Pardon me. You haven't the original? Evidently you did not think very much of it if you did not keep it.

Mr. Krauthoff—We haven't the original.

Mr. Bates—No; it was returned to you.

Mr. Krauthoff—The history of that letter is that it was sent from the trustees to the directors, and returned by the directors to the trustees as not being sufficiently full, at least that was the reason that was stated that it was not sufficiently full.

Mr. Whipple—I take it that you will offer proof of that.

Mr. Krauthoff—That is the reason why I am explaining it. And the trustees then destroyed it. Later Mr. McKenzie, who wrote the letter—

The Master—If the letter is destroyed, I suppose we cannot get it in.

Mr. Krauthoff—We have copies of it that we will prove in due course. If the trustees at this time will produce the copy that Mr. McKenzie gave them of that letter in the fall of 1918, I shall be very glad to put it in now.

Mr. Thompson—You have a copy yourself, haven't you?

Mr. Krauthoff—We have a copy, and I shall be very glad to submit it.

Mr. Streeter—We have no objections.

Mr. Krauthoff—I will continue for a moment the reading, until I locate the letter.

This is page 184, Feb. 24, 1916:

"Regular meeting of the Board of Trustees convened at 2 p. m., all members present, minutes of previous meeting read and approved a conference was held with the Board of Directors in The Mother Church from 2:15 to 3:15 p. m., a good working basis was arrived at and agreed to by all, a meeting with the directors was arranged for at 2 p. m. Monday 28th."

[The record of the meeting of the trustees of Feb. 24, 1916, from which the foregoing extract is read, is Exhibit 319. R. H. J.]

Mr. Krauthoff—Mr. Whipple, here is our carbon of that letter of Feb. 15.

Mr. Whipple—May I ask where you got it? It cannot be a carbon of it, because you naturally would not have a carbon. You should have the original.

Mr. Krauthoff—Excuse me. I should say our copy of it.

Mr. Whipple—May I ask you where you got it?

Mr. Krauthoff—Yes. It was in the

files of one of the directors. When the letter was received copies were made of it, and a copy was given to each one of the directors, and this is the copy of one of the directors.

Mr. Whipple—That is, it is not a copy that you got from Mr. McKenzie?

Mr. Krauthoff—No.

Mr. Whipple—From which director did you get it?

Mr. Krauthoff—It was in the files of Mr. Neal. You have a copy of it that you got from Mr. McKenzie in the fall of 1918.

Mr. Whipple—I am glad to hear that.

Mr. Bates—Do you object to our reading this copy?

Mr. Whipple—Not until I see it.

Mr. Bates—You might pass it to him, then.

[A paper is passed by Mr. Krauthoff to Mr. Whipple.]

Mr. Krauthoff—Now, Your Honor, in passing, may I say of this date, Feb. 24, 1916, that that is the date on which, according to the directors' record, this so-called Dittmore memorandum was discussed?

Mr. Thompson—What do you mean by that, Mr. Krauthoff? Was the Dittmore memorandum discussed at this meeting?

Mr. Streeter—What is the date?

Mr. Krauthoff—Feb. 24, 1916.

Mr. Thompson—Wait just a minute. If you expect any statement of fact like that to be accepted, we shall have to look it up.

Mr. Krauthoff—I do not expect it to be accepted.

Mr. Thompson—Then you ought not to make it.

The Master—Your statement was that, according to the directors' records, a certain letter was discussed.

Mr. Krauthoff—That is, the situation is that Feb. 24, 1916, is the day on which this so-called Dittmore memorandum came out between the trustees and the directors.

The Master—No; you said something about "according to the directors' records."

Mr. Krauthoff—According to the directors' records, that is—

The Master—Has that record been put in?

Mr. Krauthoff—No, not yet.

Mr. Thompson—Well, then, why make any statement about it?

The Master—I do not see why you referred to it.

Mr. Krauthoff—I referred to it at this time, if Your Honor please, to register this date of Feb. 24, 1916, as shown by the directors' records.

Mr. Thompson—You characterize a written document as registering a date. I should like to see the trustees' records.

Mr. Bates—It is put in to fix the date.

Mr. Thompson—Then don't speak of it.

Mr. Krauthoff—I was not offering to prove the record, if Your Honor please. I was just trying to help—

The Master—Oh, I think that you

had better go on and finish up what you have to read from the trustees' records.

[An extract from the trustees' records, page 185, is introduced in evidence as Exhibit 320, and read by Mr. Krauthoff, as follows:]

"Feb. 28, 1916.

"The trustees met with the Board of Directors in The Mother Church at 2 p. m. and remained until 4 p. m. discussing matters of business, then returned to their office to take up routine business."

[Extract from the trustees' records, page 188, March 13, 1916, is offered in evidence as Exhibit 321, and read by Mr. Krauthoff, as follows:]

"March 13, 1916.

"The Board of Trustees met with the Board of Directors in The Mother Church at 2 p. m. and remained until 3:55 p. m., discussing matters of business, including the Bible Lesson Committee work and form letters to be sent to churches and societies applying for advertisements in the Journal, returning to their office at 4 p. m. to take up routine business."

[An extract from the trustees' records, page 189, March 20, 1916, is offered in evidence as Exhibit 322, and read by Mr. Krauthoff, as follows:]

"March 20, 1916.

"Regular meeting of the Board of Trustees convened at 4:05 p. m., all members present. A meeting was held with the Board of Directors in The Mother Church from 2 to 4 p. m. Matters of business discussed, including application blanks to be sent to applicants for cards and church notices to be published. The terms 'Christian Science' and 'Christian Scientists' to be retained."

[An extract from the trustees' records, page 191, March 27, 1916, introduced in evidence as Exhibit 323, and read by Mr. Krauthoff, as follows:]

"March 27, 1916.

"Regular meeting of the Board of Trustees convened at 4:30 p. m., all members present. A meeting was held with the Board of Directors in The Mother Church from 2 to 4:25 p. m., discussing matters of business."

Mr. Whipple—If Your Honor please, referring now to the letter, or copy of a letter, dated Feb. 15, 1916, addressed to The Christian Science Board of Directors and purporting to come from the trustees, I understand it is a fact that some such letter was prepared by Mr. McKenzie, then on the Board of Trustees, and sent to the Board of Directors, and that it was returned, as Mr. Krauthoff has stated, and the original was destroyed, the attempt to reconcile the views of the different parties having thus utterly failed. If it be understood that this paper was prepared by Mr. McKenzie, who is not a lawyer, and not after consultation with any attorney as to its legal effect, we have no objection to its going in upon the same terms that other matters have gone in,

merely as a thing which transpired, merely saying that counsel do not care to be concluded by any legal views that are expressed by Mr. McKenzie, if there are any in the letter. We have no objection to its being read now with that understanding.

Mr. Krauthoff—Well, Mr. Whipple, as I understand, that is the letter which, according to the minutes of the trustees of Feb. 15, 1916, was prepared by the trustees setting forth their view of the duties and responsibilities and work of the trustees, and delivered to the directors.

Mr. Whipple—I do not understand that it was expressive of their view. I understand it was to compromise a controversy which had arisen, and was not satisfactory to that purpose.

Mr. Krauthoff—In the circumstances, if Your Honor please, we will offer the letter in due course; we do not like to limit it.

Mr. Whipple—Let it be marked for identification.

Mr. Streeter—Why don't you read it into the record now so it will be printed?

Mr. Krauthoff—We do not want to limit it to Mr. Whipple's views.

Mr. Streeter—Well, you don't have to.

The Master—You have read a record—

Mr. Krauthoff—Yes.

The Master—The record refers to a letter in the terms that you have given us. Now you want to put in the letter?

Mr. Krauthoff—This is the letter.

Mr. Streeter—Nobody objects to it.

The Master—I think you better put in the letter now.

Mr. Krauthoff—Very well, but not under Mr. Whipple's limited—

The Master—I do not understand that either side is limited by what has passed. The letter comes in as part of the record of what was done at the time, does it not, and speaks for itself? We will see what conclusions are to be drawn from it later on.

[The letter above referred to, said to have been prepared by Mr. McKenzie, addressed to the Board of Directors, dated Feb. 15, 1916, is introduced in evidence as Exhibit 324, and read by Mr. Krauthoff, as follows:]

[Exhibit 324.]

"Feb. 15, 1916.

"The Christian Science Board of Directors,

"Boston, Massachusetts.

"Dear Brethren:

"We express our grateful appreciation of the three conferences we have lately had with your board, and desire very much that the opportunity for meeting together may be continued. We think there is good ground for this desire in view of our relationship to The Mother Church, since it is our duty to hold and manage the business which Mrs. Eddy made a gift to her Church, and The Christian Science

Board of Directors is the responsible authority of this Church.

"The business known as The Christian Science Publishing Society began with the publishing of The Christian Science Journal by Mrs. Eddy in April, 1883. Ten years later at the World's Fair, a meeting of the National Christian Scientist Association, by which the Journal had been for a time copyrighted, voted to give back the ownership to Mrs. Eddy, and she thereupon appointed a publishing committee to manage it for her. In 1897 she added two more members to the original three. The following year she made of the business 'A Gift to The Mother Church,' and this gift was accepted by the First Members for the Church, Jan. 15, 1898.

"Accompanying the gift, and making it available, there was 'A Grant of Trusteeship' whereby to fulfill her statement, 'the present Publishing Society can only act as my Trustees.' Three trustees were appointed to hold and manage said property and property rights exclusively for the purpose of carrying on the business, which has heretofore been conducted by the said Christian Science Publishing Society, in promoting the interests of Christian Science.' Complete rules for the guidance of this work were incorporated in the Deed of Trust, and in the Manual of The Mother Church.

"In defining the financial situation in regard to the Church edifice the Manual says: 'The Christian Science Board of Directors owns the Church edifices, with the land whereon they stand, legally, and the Church members own the aforesaid premises and buildings, beneficially.' We believe the situation to be similar in regard to the business, in that, according to the Deed of Trust, the Board of Trustees holds the property 'legally,' and The Mother Church owns the business 'beneficially.' It is provided that the net profits must be paid semi-annually to the treasurer. Originally the First Members had the authority, but at the present time the Board of Directors have the authority, of the disposing of this fund. The business then becomes a benefit to The Mother Church, this benefit increasing according to the success of the business.

"It was the First Members who accepted Mrs. Eddy's gift, and those who accepted the trusteeship were all three also First Members, and so had access to the councils of the Church. These members were later called Executive Members, and the acceptance of new members into The Mother Church, the dismissing of members, and the discipline of individuals or churches, was also in their care. They ceased from office with the appearing of the by-law, Art. I, Sec. 6: 'The business of The Mother Church shall be transacted by its Christian Science Board of Directors.' On one occasion when a vacancy was declared on the Board of Trustees, this was done by the First Members

in session, according to the provisions of the Deed of Trust. The Manual, Art. XXV, Sec. 3, specifically transfers this right to the Board of Directors.

"The directors have, by the rules now given in the Manual, taken the place of the First Members (or executive members) and exercise the rights which they formerly had. The Christian Science Board of Directors is therefore the responsible authority in direction of the affairs of The Mother Church, and the business of The Christian Science Publishing Society being a gift to the Church, the Board of Trustees in carrying out their well-defined duties according to the Deed of Trust and the Manual, are working under the authority of The Mother Church.

"At the initiation of the trusteeship the first three trustees were also First Members, and as has been mentioned, had access to the councils, and took part in the deliberations of the Church, and were thus apprised of its plans and polity. It would be an advantage now if the trustees could meet at a regular time with the directors, to consult with them in regard to questions involving action which may affect the field, and therefore should come under the authority of the Church.

"To show that this is desirable let us cite a few examples: (a) Remembering that the business is intended to affect The Mother Church, beneficially, when the expenditure of an unusual amount seems necessary, since this may affect the semi-annual payment for that period, it should be the privilege of the trustees to confer with the directors, and have their authorization for the expenditure before it is finally decided upon.

"(b) The Manual provides for the election by the directors of several officers who are employed by the trustees. It would work very much for harmony if the trustees could arrive at an agreement with the directors in regard to the salaries to be paid these officers at the time when they are elected, since there may be a difficulty in arranging this after the official has been notified of his appointment.

"(c) In connection with The Monitor, the managers of circulation and advertising departments are in constant communication with advertisers, distribution committees, subscribers, and every letter they write cannot be supervised but when the field is circularized by either of these departments if the trustees were meeting regularly with the directors, these form letters could be presented and discussed, and have the approval of the Church in so far as they affect the field, before they issue.

"(d) While the Deed of Trust makes specific provision for the issue of the Quarterly, and for the preparation of the Bible Lessons, it was the custom to report to Mrs. Eddy every nomination of a new member for the

Lesson Committee. We think it would be well for the trustees to consult with the Board of Directors in regard to the standing in the church of anyone they propose to appoint as a member of the Bible Lesson Committee, so as to be assured of their availability.

"(e) The business affords such varied services to the field that sometimes questions are raised involving the authority of the church as well as the sphere of the business, which questions could be discussed better in conference than by correspondence of a more formal nature. For example, we should appreciate the opportunity to determine in conference the rules according to which advertisements in the Journal and Herald should be accepted.

"(f) When we have had conferences in the past they have given results for which all may be grateful.

"We would, therefore, ask that a regular time be arranged when the directors may receive the trustees for a conference.

"Very sincerely yours,"

Mr. Krauthoff—Taking up the trustees' records again, April 3, 1916, page 193.

[An extract from the trustees' records, page 193, April 3, 1916, is offered in evidence as Exhibit 325, and read by Mr. Krauthoff, as follows:]

"April 3, 1916.

"A meeting was held with the Board of Directors from 2 to 3 p. m. Among other business matters discussed, was the plan of closing the publishing house at 4:30 p. m. No objection was offered. This change will be made without a vote of the employees."

[A conference between counsel.]

Mr. Streeter—If I may interrupt for a moment, Your Honor, with reference to the records of the Board of Directors from May 23, down to the present date.

The Master—May 23?

Mr. Streeter—May 23, down to the present date.

The Master—What year?

Mr. Streeter—This year. The matter was brought up, and Governor Bates permitted us to see those records.

Mr. Bates—We permitted you to see all the records.

Mr. Streeter—Yes; that is entirely correct. Then Your Honor ruled, but ruled without prejudice, that for the present we would not be permitted to introduce those records after May 23—I am stating that date rather than April 29, because we have them until April 29—until it was shown that a condition of things first existed which we claim continued after that day, and of course we assented to that, as we had to. Perhaps I ought not to say that. Your Honor made that ruling, or you said at a later date, after the case had gone on further, we could show the existence of a condition on which the record subsequent to this time would show a continuance. Now, we have seen those records, but we

have not taken any notes from them. I assumed that Governor Bates would let us take them to make notes, the question of the admissibility of anything on them to be later determined; but he sees fit now to decline. I think we are entitled to see all the records, whether they are admissible or not, and we would like an understanding that Governor Bates shall furnish us those records—

Mr. Thompson—In the court; we won't take them out of court.

Mr. Streeter—To examine here in court. The question whether anything thereon is admissible is to be determined by Your Honor later; but we ask that some understanding be reached, through the suggestion of the master, that we shall have a further opportunity to examine those records.

Mr. Bates—Your Honor's ruling was that you would not at the present time admit anything that had taken place since the filing of the bill of Mr. Dittmore, which is April 29. I understood that ruling to be made without prejudice in case they should lay a foundation for going into any of those matters. They have not laid any such foundation; they have not attempted to; and I have therefore told General Streeter I did not think he was entitled to again look at those recent records, all of which are records since this suit was brought. I do not know why he raises the question now. It certainly has no bearing on the present condition of the case, and I do not think he should raise the question again under Your Honor's ruling until he has laid a foundation that would show that they could possibly be material.

The Master—I understood that at an earlier period in the case you informed General Streeter and Mr. Whipple that all the directors' records were open to their inspection, and under, of course, proper restrictions—not letting them go out of the directors' custody. Do I understand that you withdraw some of that now?

Mr. Bates—They have been, Your Honor; they have had free access to them up to the time of Your Honor's ruling. Since that time I have assumed that they had no right to look at the records which have taken place since. I do not think that because I offered to let them see the records that we should keep them open for them, or keep them here for them to examine, or in my office for them to examine indefinitely. And in offering the records I had assumed that they would not expect to put in any records except those which were prior to the suit, and I had assumed they would not look at the others. As a matter of fact, they are in the same volume, therefore, when we allowed them to see the records which were pertinent and material, we had to let them see records which were not. But that is no reason why they should be shown some specific records—

The Master—It seems to me that you had better let them continue their examination. I can't tell, of course, what there might be in those records—whether there would be something in regard to which I should be obliged to change my ruling or not. But it seems to me that it would be much better to let the examination continue, under, of course, proper restrictions, the same as before.

Mr. Bates—If Your Honor thinks that they ought to see the records, or if that is Your Honor's preference, I am perfectly willing General Streeter should see them.

Mr. Streeter—Have you the records here?

Mr. Bates—No, we haven't them here. You can see them at our office.

Mr. Streeter—Now, wait a minute. Mr. Dittmore went to your office and was informed by a very nice and agreeable young lady, in a nice and agreeable way, that he could not see them.

Mr. Bates—I think she was perfectly right, after the opportunity you have had. Now, if His Honor thinks you ought to see them now, you shall see them.

Mr. Streeter—He does apparently think so. Can you send for them and have them brought up here?

Mr. Bates—You have omitted to state that you went at least two or three times when you were allowed to see them.

Mr. Streeter—I am informed otherwise.

The Master—As to their being brought here, or as to counsel going down there, that arrangement had better be made which will involve the least trouble and loss of time and friction.

Mr. Streeter—Yes. The governor and I do not quarrel. So far as the record is concerned, I am corrected; we have never seen those records, so I am told—but that is immaterial, so long as we are fixing things up.

Mr. Bates—The records are not in court; we will endeavor to let you see them tomorrow.

Mr. Streeter—Can't you get them this morning?

Mr. Bates—No, we can't.

Mr. Streeter—Can't you get them some time today?

Mr. Bates—No. I understand the recent records have not been written into the book yet. You may see them tomorrow.

Mr. Thompson—Therefore, they were not in the book that we were permitted to investigate.

Mr. Streeter—Well, aren't some of them written up since May 23?

Mr. Bates—I have given you what I understand to be the situation. You have asked for all the records since May 23. We are content that you should see them as soon as they are in the book.

Mr. Thompson—As soon as they appear in the book?

Mr. Streeter—May 23—and it is now

nearly two months. Do you mean to say, Governor, that the records of all the meetings since May 23 have not been written into the book and approved?

Mr. Bates—I am not prepared at the present time to give you information, because I am not informed.

The Master—I do not think you can call on him to answer that. You go ahead and complete your examination of what is shown you, and then we will see what the next step will be.

Mr. Streeter—Well, I understand that you will have them written up and have them here tomorrow morning?

Mr. Bates—We will endeavor to.

Mr. Streeter—I thank you, Governor.

The Master—This has given us a little break in the reading of records, but I can't quite see why it was necessary to bring it up at this particular time.

Mr. Bates—I cannot see any reason why it should be brought up at the present time.

Mr. Thompson—The reason was, if Your Honor please, Mr. Dittmore could now look at them if they were here. He would like to spend his time looking at those records—that is all.

Mr. Krauthoff—June 21, 1916, page 209: "Regular meeting of the Board of Trustees convened at 2:55 p. m., after a conference with the Board of Directors. All members present. 'Memorandum C' was discussed and some slight corrections made and released for publication."

[That portion of the record of meeting of Board of Trustees, dated June 21, 1916, as read by Mr. Krauthoff, is offered in evidence as Exhibit 326.]

Mr. Krauthoff—Your Honor will recall that Memorandum C is the document which Mr. Eustace identified. March 26, 1917, page 299: "The meeting of the Board of Trustees convened Monday, March 26, at 2 p. m., all members being present. . . .

"Mr. Dixon appeared at 3:05, and a discussion ensued regarding an increase in the price of The Monitor on account of the increase in the price of paper and other commodities attendant on increased cost of publishing. The question was fully considered, reaching the range of the Sentinel, Journal, Quarterly, and Herold, with the conclusion that whereas the increased price of all materials and other features entering into the publications of the Publishing Society should be considered at this time; therefore, be it Resolved that from and after July 1, 1917, the Board of Trustees propose to issue the publications of the society under the following rates":—Then appear the names of the periodicals and the new rates per annum and per copy.

"It is agreed that the question be placed before the Board of Directors



before issuing any information on this subject."

[Those portions of the record of meeting of the Board of Trustees, dated March 26, 1917, as read by Mr. Krauthoff, are offered in evidence as Exhibit 327.]

Mr. Krauthoff—Reading from the fourth book of minutes of the Board of Trustees, beginning April 18, 1917, page 11:

"Memorandum of joint conference of The Christian Science Board of Directors and the Board of Trustees, held at 12 o'clock, Wednesday, April 18:

"The main purpose of the conference was to discuss the proposed increase in rates for the periodicals. After a general discussion of the needs for the increase, on account of the present cost of paper and labor, and the probable increase in postage, and various other elements entering into an increased cost of the periodicals, the trustees proposed that the Journal be increased from \$2 to \$3 for annual subscription, the Sentinel from \$2 to \$3, the Herald from \$1 to \$1.50, the Quarterly from 50 cents to \$1, and the Monitor from \$5 to \$9, each for annual subscription.

"Mr. McLellan proposed that the Herald be increased to \$2, and after a general discussion of the wisdom of making this change, and so putting the Herald onto a paying basis, it was agreed that the prices recommended, including the increase to \$2 for the Herald, should go into operation, and that a notice to the field should be prepared and thoroughly discussed by both boards and then published in the periodicals. The proposed date of change in rates is July 1, 1917.

"The question was also discussed of the proposed new French Herald—that is, the present Herald translated into French, with the English equivalent on opposite pages. It was decided that this would be an excellent thing to get out to be ready for the close of the war."

[That portion of the record of meeting of the Board of Trustees, dated April 18, 1917, as read by Mr. Krauthoff, is offered in evidence as Exhibit 328.]

Mr. Krauthoff—May 4, 1917, page 23:  
"A special meeting of the Board of Trustees convened May 4, 1917, at 3 p. m., all members of the board being present.

"The meeting was called for the purpose of considering a bulletin presented by Mr. Ogden, who had been requested by Judge Smith to print the bulletin, which would give information to all congressmen regarding the affairs of the Publishing Society."

As a matter of explanation, if Your Honor please,—at that time there was a bill pending in Congress affecting postal rates of periodicals of the Publishing Society.

"Mr. Dixon came into the meeting. The question was fully discussed and the directors' committee was invited to come into the meeting. It was

found that Mr. Dittmore was out of town, but Mr. Neal appeared.

"After going over the important facts, the board requested Judge Smith to appear before the meeting, with the result that the bulletin was changed, and it was concluded to take the question before the Board of Directors at a meeting to be appointed later."

[That portion of the record of meeting of Board of Trustees, dated May 4, 1917, as read by Mr. Krauthoff, is offered in evidence as Exhibit 329.]

Mr. Whipple—If you will pardon me, Mr. Krauthoff. It has been called to my attention that you did not read all of that.

Mr. Krauthoff—Yes. I owe you an explanation about that, Mr. Whipple, which I was about to make.

Mr. Whipple—Never mind about the explanation; just read the rest of it, won't you, of the meeting of April 18.

Mr. Krauthoff—April 18?

Mr. Whipple—About the enlargement of the publishing house.

Mr. Krauthoff—Oh, I did not read that because I assumed that was not a matter of controversy, because however the case may be decided we were the owners of the publishing house. But I will be glad to read that.

Mr. Whipple—If you do not mind, please read it.

Mr. Krauthoff—It is on page 11 of this book. Mr. Whipple, I have not in my reading offered any evidences of the physical details of the publishing house. And I also want to make this explanation now, while I am speaking on the subject: all of the conferences of the trustees and the directors have not been offered in evidence because many of them simply record a conference without saying what was done, and some of them were upon others which, as we understand it, do not affect the controversy. I will finish the reading of the minutes of April 18, 1917, at the request of Mr. Whipple:

"The question was then discussed of the enlarging of the publishing house to secure more room. The trustees told the directors that they were having an engineer report on what sort of a building and what would be the best plan for an up-to-date manufacturing plant that would serve our purpose for several years to come, to be arranged in the most economical manner. In the discussion of the proposed new building the question arose relative to preparing for printing all our Leader's works, and the trustees were requested to have this taken into account in planning a new building."

[Excerpt from record of meeting of Board of Trustees, dated April 18, 1917, as read by Mr. Krauthoff, is offered in evidence as a part of Exhibit 328.]

Mr. Whipple—Now, if Your Honor please, to meet the suggestion which Mr. Krauthoff made a moment ago about the ownership by the directors of the publishing house, we want to register our protest against that, be-

cause that publishing house was paid for by subscriptions from the field; it was just as much a gift—it was for the purposes and uses of the publishing house.

Mr. Krauthoff—Well, the statement on that subject, if Your Honor please, is that the legal title to the ground on which the publishing house is erected is of record in The Christian Science Board of Directors. That is all I meant.

Mr. Whipple—I am informed to the contrary. However, we will go into that later.

Mr. Bates—And the subscriptions from the field were made to the Church, and went into the hands of the Church treasurer, and he was the one who paid them out at the direction of the Board of Directors for the building of the publishing house building.

Mr. Whipple—It may well have been that the directors laid hands on the fund, but there was no question as to why the field subscribed for the fund, and that was to provide a publishing house. I am merely meeting the assertion of Mr. Krauthoff.

Mr. Krauthoff—Now, if Your Honor please, regarding—

Mr. Whipple—Let me ask in that connection—isn't the title in your partner's name, Governor Bates—Mr. Abbott?

Mr. Bates—No, it is not.

Mr. Whipple—Well, wasn't it until recently?

Mr. Bates—Why, I cannot tell you.

The Master—I am afraid I do not follow that. I had understood that the title was in the directors:

Mr. Whipple—Well, that has been asserted a great many times, and it is possible that since these controversies arose Mr. Abbott has passed it along. But whatever may be the fact with regard to the legal title, the subscriptions were made by the field for the publishing house.

The Master—The legal title is all we have been talking about, isn't it?

Mr. Whipple—That was the subject of discussion a moment ago,—the legal title.

The Master—Well, perhaps you can clear up my mind about the legal title before saying anything about the beneficial ownership.

Mr. Whipple—Now then, if Your Honor please, I was informed after I sat down that there was doubt as to the question as to whether the legal title was in the directors. I know nothing about it myself, but the intimation was that the legal title had been taken in the name of Mr. Abbott,—Governor Bates' partner,—and my informant, the business manager, thought that it had not been transferred by him. But if it has, they have transferred a mere bare legal title.

Mr. Abbott—If Your Honor please, the title to the real estate on which the publishing house stands, did stand in my name for some years as trustee. It was conveyed by me to

the directors several years ago. I do not remember just how long ago.

The Master—As trustee?

Mr. Abbott—As trustee, to the directors of the Church.

Mr. Whipple—Now, I should like to know when that was, and by what authority it was conveyed?

Mr. Bates—It would be a simple matter for you to look up the records.

Mr. Abbott—It is a matter of record in the Registry of Deeds.

Mr. Whipple—Well, is the authority a matter of record? A contribution was made of thousands, and hundreds of thousands of dollars by the field in order to provide a publishing house; and the legal title to that land was put in your name, as I understand it. Now, the contributions being for a publishing house, the next question is, by what authority you ever transferred it to the Board of Directors or the Church? And we want to have proof and not this loose assumption in regard to it. But Your Honor sees what the situation is.

The Master—The first thing to do, I suppose, is to get the various conveyances and see what they say.

Mr. Whipple—Yes; and the authority for this conveyance.

The Master—Now we will have the letter.

Mr. Abbott—Now, I will say just one thing more: I did take title at the request of the Board of Directors. They were buying various pieces of property, and it was thought best not at first to take them in the name of the Board of Directors. Later, at my suggestion, followed by their adoption of my suggestion, the title was put into the Board of Directors, that all of the legal title might be vested in the board, where it properly belongs.

Mr. Whipple—Wasn't that since 1916?

Mr. Abbott—It certainly was not since 1916. If my memory serves me rightly, I think it was two or three years prior to that time.

Mr. Thompson—While you are about it, do you mind stating how long a time the deed remained with the directors unrecorded?

Mr. Abbott—I have no recollection as to that.

Mr. Thompson—I am advised it was finally recorded only a little while ago.

Mr. Bates—Why don't you ask your client? He was on the board.

Mr. Thompson—He is the man who just explained it to me.

The Master—When you get the conveyances, that will all appear.

Mr. Krauthoff—It might be stated in passing that none of the pleadings in this case refer to any controversy as to the ownership of that property.

The Master—Yes, I think that is undoubtedly so.

Mr. Whipple—Well, whatever there is of controversy as to the legal title, the fact that the funds were so contributed by the field, and were for

the purpose of constructing the publishing house, remains undisputed.

Mr. Krauthoff—Yes. The publishing house of The Mother Church.

Mr. Whipple—And if the directors got the title into their hands, we will find it out.

Mr. Bates—I would suggest that if my brother has any new issues to be raised, or any old ones to be changed, that he set them up in his pleadings by amendment.

Mr. Whipple—Governor, you seem to have come to life.

Mr. Bates—We are ready to meet any new issues if he raises them.

Mr. Whipple—The most you have got is issues, and nothing else. Very little of administration of Church affairs.

Mr. Bates—The quarrels are only with Mr. Whipple.

The Master—I think that we had better get on now with the records that Mr. Krauthoff was reading.

Mr. Krauthoff—I hope that this will not be charged up against my time, if Your Honor please.

Mr. Streeter—I did not suppose that there was any limit to your time!

Mr. Whipple—It is such a trifling part of the time that you have taken, that I do not think that anybody will notice it.

Mr. Krauthoff—Returning to the trial of the case, I read from the record of May 4, 1917 (page 23) about the discussion of this bulletin that was to be sent to congressmen with respect to increase in rates of postage.

Page 24, May 5, 1917:

"The joint meeting of the Board of Directors and the Board of Trustees convened Saturday, May 5, at 9 a. m. All members of both boards were present.

"The object of the meeting was to consider the question brought up at the meeting of the Board of Trustees on May 4 regarding the bulletin prepared by Judge Smith to be given out to congressmen if necessary. All members present agreed on the specific points and referred the question to be properly framed up by the Board of Trustees and the committee from the Board of Directors together with Judge Smith."

[The record of the joint meeting of the Board of Directors and the Board of Trustees of May 5, 1917, of which the foregoing is a copy, is Exhibit 330. R. H. J.]

On the same page, May 5, 1917, there is the record of another meeting of the board on the same day, a special meeting of the Board of Trustees:

"A special meeting of the Board of Trustees convened at 10:30 a. m., May 5, with the committee from the Board of Directors present.

"The object of the meeting was to further consider the bulletin as revamped by Judge Smith, with the hope of making certain changes which would be unanimously agreed to as being the best possible information to

go before the public, or specifically before the congressmen in Washington. Judge Smith was called into the meeting and the proper action was taken, resulting in the adoption of the following resolution:

"Whereas: The question of printing the bulletin as amended by Judge Smith on May 4, and as reconsidered and amended further on May 5 by Judge Smith, in conjunction with the committee from the Board of Directors and the Board of Trustees, has been fully considered; therefore, be it resolved: That the Board of Trustees consent herewith to the printing of the bulletin, a copy of which is made part of these minutes."

[The record of the special meeting of the Board of Trustees, May 5, 1917, of which the foregoing is a copy, is Exhibit 331. R. H. J.]

Now, if Your Honor please, that bulletin covers four pages of printing, and there is one paragraph, and one sentence in it, that I desire to read into the record. I will point out what it is, and then submit the bulletin to Mr. Whipple:

"United States of America.

"Sixty-Fifth Congress.

"First Session.

"Statement by The Christian Science Publishing Society concerning the proposed increase of second-class postage.

I.

"The Christian Science Publishing Society is a trusteeship or unincorporated association managed by a board of trustees, without stockholders or personal proprietorship. Except as reasonable wages and salaries are paid, the business of this society is conducted without pecuniary profit to any person. It is an auxiliary institution of the Christian Science Church, The First Church of Christ, Scientist, in Boston, Massachusetts."

And then in the course of the bulletin, on the second page, the following question is asked:

"Why, it may be asked, does the Christian Science Church issue a newspaper?"

Page 43, June 7, 1917:

"... The subject of the Bible Lesson Committee was discussed by the members of the board for some time, and at 3:40 Messrs. Dittmore and Neal, committee for the directors, entered the meeting, and a further discussion of the same subject ensued."

[The record of the meeting of the Board of Trustees of June 7, 1917, from which the foregoing extract is read, is Exhibit 332, R. H. J.]

Page 47, June 20, 1917:

"... The directors' committee, Messrs. Neal and Dittmore, met with the board until 3:10. The question of the pamphlet, 'What went ye out for to see?' containing the quotation from the Popular and Critical Encyclopedia, was considered, and it was deemed advisable to eliminate that feature

from the publication. Therefore the following resolution was unanimously adopted: Resolved, That the pamphlet containing the reference to the Popular and Critical Encyclopedia be and is hereby recalled, the sentences in question to be eliminated from all existing pamphlets, and a new publication to be issued without these sentences."

[The record of the meeting of the Board of Trustees of June 20, 1917, from which the foregoing extract is read, is Exhibit 333, R. H. J.]

Page 75, July 26, 1917:

"The meeting of the Board of Trustees convened at 1:45 p. m.; present Messrs. McKenzie, Eustace and Merritt. . . .

"At 2:05 p. m. Mr. Lamont Rowlands and the directors' committee, Messrs. Dittmore and Neal, came into the meeting, Mr. Rowlands having been called by telegram to consult with the trustees regarding the trusteeship of The Christian Science Publishing Society. Mr. Rowlands being the unanimous choice, the following resolution was unanimously adopted:

"Resolved, That Mr. Lamont Rowlands be and is hereby appointed a trustee of The Christian Science Publishing Society, to succeed Edward A. Merritt, to take effect as of Aug. 1, 1917."

"Mr. Rowlands expressed himself regarding the trusteeship, agreeing to the action of the Board of Trustees, and formally accepted the office."

[The record of the meeting of the Board of Trustees of July 26, 1917, from which the foregoing extract is read, is Exhibit 334, R. H. J.]

Page 79, Aug. 1, 1917:

"... A letter was read from The Christian Science Board of Directors, requesting that eight copies of proof sheets of all metaphysical articles intended for the Journal and Sentinel editorial pages, and for the Home Forum page of The Christian Science Monitor, be sent to the directors at least 48 hours before publication. The business manager was ordered to send such proof sheets to the directors in accordance with this request."

[The record of the meeting of the Board of Trustees of Aug. 1, 1917, from which the foregoing extract is read, is Exhibit 335, R. H. J.]

Page 87, Aug. 7, 1917:

"At 11 a. m., the Board of Trustees met with the Board of Directors to discuss the advisability of establishing a railroad and steamship ticket department."

Now, there are a lot of details that—

The Master—A railroad and what?

Mr. Krauthoff—A railroad and steamship ticket department. That was to sell railroad and steamship tickets. I do not care to read the details of that. I am just reading it for the purpose of showing the conference.

"... The question was then dis-

cussed with regard to the proposed changes in the Journal cover and in the editorial pages of the Journal, and also in the Sentinel editorial masthead. It was unanimously agreed that these changes were all in the line of progress, and further, that every one of the periodicals of the Christian Science movement should carry the statement that it was founded by Mary Baker Eddy."

[The record of the meeting of the Board of Trustees of Aug. 7, 1917, from which the foregoing extracts are read, is Exhibit 336, R. H. J.]

Mr. Whipple—What was the date of that?

Mr. Krauthoff—That was Aug. 7, 1917. Page 108, Aug. 21, 1917:

"At 10:30 the trustees met with the Board of Directors, together with Mr. Lesan and the editors, Mr. McKenzie and Mr. Dixon. . . . The subject of the meeting was the advertising of The Monitor in the Christian Science publications. After a thorough discussion of the question, the editors and Mr. Lesan withdrew.

"On further consideration of the subject by the trustees and directors, it was decided to appoint a committee of three—Mr. Lesan, Mr. Dixon, and Mr. McKenzie—to formulate advertising to be displayed in the Sentinel during the month of September, and to provide suitable advertising for the periodicals.

"It was approved that Mr. Lesan be retained as advertising counsel on a basis of \$500 a month, this money to be considered as a retainer, with the further understanding that in case money is expended in advertising by any of the activities of The Mother Church, the commissions on which will fully compensate Mr. Lesan for his work, this retainer is to be adjusted accordingly."

[The record of the meeting of the trustees with the Board of Directors on Aug. 21, 1917, from which the foregoing extracts are read, is Exhibit 337, R. H. J.]

The Master—That I think we have had before.

Mr. Krauthoff—No; I am quite sure we have not, Your Honor. We have mentioned Mr. Lesan's name, if Your Honor please, but I am quite sure that that was not proffered in evidence.

The Master—Well, all right.

Mr. Krauthoff—It is half-past 11. I have reached the point where I desire to confer. May we now suspend for a few moments?

The Master—We will stop for a few minutes.

[Short recess.]

[An extract from trustees' records, page 132, Sept. 11, 1917, is offered in evidence as Exhibit 338, and read by Mr. Krauthoff, as follows:]

"The regular meeting of the Board of Trustees convened Tuesday, Sept. 11, at 2 p. m.; present Messrs. Eustace

and Ogden. Mr. Rowlands still absent, now in Chicago.

Mr. Watts reported that the Board of Directors had requested a new editorial to take the place of that prepared by Mrs. Knott for the October Journal."

[An extract from the trustees' records, page 139, Sept. 19, 1917, is offered in evidence as Exhibit 339, and read by Mr. Krauthoff, as follows:]

"Mr. Watts came to the meeting at 2:15. The board approved the feature subject, 'Opportunity,' for Sentinel of Sept. 29.

"There was a general discussion as to how these features should be handled in connection with getting the approval of The Christian Science Board of Directors so as not to cause delay in connection with the printing of the publication."

Mr. Krauthoff—If Your Honor please, in connection with the word "feature" as used there, it is proper to say that the advertisements which I offer in evidence in bulk on the inside pages of the Christian Science periodicals are called, in advertising parlance, "features."

[An extract from trustees' records, page 170, Oct. 18, 1917, is offered in evidence as Exhibit 340, and read by Mr. Krauthoff, as follows:]

"Mr. Watts came to the meeting at 2:15, and the contract between the Trustees under the Will of Mary Baker Eddy and the trustees of the Publishing Society was considered very carefully, as rewritten by Mr. Norwood following amendments previously made. The trustees of the Publishing Society approved the contract as now submitted with a few minor changes. Mr. Watts was instructed to go thoroughly over the contract this afternoon, and to get in touch with Mr. Norwood and have the contract put in final form for signature tomorrow, Oct. 19.

"In connection with this contract, it was decided after due consideration to write to The Christian Science Board of Directors for written consent for the publishing by this society of Mrs. Eddy's writings. Consequently, the following letter was written by the Board of Trustees to the directors:

"The Christian Science Publishing Society is contemplating entering into a contract with the Trustees under the Will of Mary Baker Eddy to become the publishers of Mrs. Eddy's works: Article 25, Section 8, of The Mother Church Manual provides for "written consent" for the publishing or republishing of these works. We shall be glad if The Christian Science Board of Directors will give their "written consent" to our publishing these works."

[An extract from the trustees' records, page 188, Oct. 29, 1917, is offered in evidence as Exhibit 341, and read by Mr. Krauthoff, as follows:]

"The notice to appear in the Sentinel announcing the new periodical, Le

Hérait de Christian Science, was re-arranged pending its submission to The Christian Science Board of Directors.

"The trustees went across the street for conference with the Board of Directors at 2:30 and submitted the prepared announcement for the Sentinel and Journal regarding the Herold. This announcement, with a few amendments on the part of the directors, was approved.

"The trustees also informed the Board of Directors of the need for more room for the general printing department, and the directors informed the trustees that it was their intention to move the offices of the Trustees under the Will to the Massachusetts Trust Company building as soon as arrangements could be made for proper space."

[An extract from the trustees' records, page 216, Nov. 16, 1917, is offered in evidence as Exhibit 342 and read by Mr. Krauthoff, as follows:]

"The following letters were received from The Christian Science Board of Directors:

"1. In answer to our letter of inquiry regarding the removal of advertisements from the Journal when the practitioner enlists for military service, saying to remove, but to restore without formality on request after the war.

"The business manager reported that the Board of Directors had called his attention this morning to the omission of Mrs. Eddy's name from the Sentinel feature of the vest pocket edition of Science and Health; also that it was desirable in the advertisement of the French translation of Science and Health that the full title of the book be given, as well as Mrs. Eddy's name. The trustees ascertained that the name of our Leader did not appear, either, in the feature ad. of the vest pocket Science and Health for the December Journal, and in consequence ordered that the covers for this issue be rerun with a corrected advertisement."

[An extract from the Trustees' Records, page 267, Dec. 27, 1917, is offered in evidence as Exhibit 343, and read by Mr. Krauthoff, as follows:]

"At the request of the trustees, a meeting was had with The Christian Science Board of Directors in Mr. Stewart's office, and a letter from Judge Smith to the business manager relative to supplying Monitor subscriptions to members of Congress was considered. It was decided that it would be well for this work to be carried on, as in former years, by the Publishing Society's making written inquiry of each member of Congress before sending him The Monitor.

"The question of the pamphlet edition of the Hymnal for soldiers and sailors was considered with the directors, and it was reported that this was now satisfactorily under way, and that it was expected to be able to produce the Hymnal in pamphlet form, containing some 40 or 50 hymns as

set for male voices. The Christian Science Board of Directors approved the plan, and the trustees were authorized to get out the book.

"The subject of the directors' letter, relative to the translation of 'Answers to Questions Concerning Christian Science' into Japanese was discussed."

Mr. Krauthoff—Now, the fifth volume of the Board of Trustees' minutes, beginning with Jan. 2, 1918, page 281, Jan. 9, 1918.

[A portion of the trustees' records, page 281, Jan. 9, 1918, is offered in evidence as Exhibit 343, and read by Mr. Krauthoff, as follows:]

"The trustees met with The Christian Science Board of Directors at 10:30 to discuss the question of the advisability of preparing a vest pocket edition of the Quarterly containing the Bible references in full, as proposed in their letter of Jan. 3.

"After considerable discussion it was decided that it did not seem advisable to print the Quarterly in this manner, but that it would be well to reproduce the present Quarterly in vest pocket form, and also to secure a Bible similar in size to the vest pocket Science and Health for the use of the soldiers and sailors."

[An extract from the trustees' records, page 325, Feb. 15, 1918, is offered in evidence as Exhibit 344, and read by Mr. Krauthoff, as follows:]

"The Board of Trustees met with The Christian Science Board of Directors at 12:30 Friday, Feb. 15.

"The first subject considered was the cards in the Journal. The trustees presented to the Board of Directors their proposal to publish the practitioners' cards four times a year, once every three months, beginning with the April issue, the charge to be the same per line for the four insertions as had been made for 12 insertions in the past. The church and society advertisements were to continue to run monthly as in the past, but the charge was to be increased \$5 a line, making a total charge of \$10 per line. It was further recommended that a special letter be sent to all of the practitioners throughout the field and to all of the churches and societies, explaining the reason for this action. The letter will be submitted later."

[An extract from the trustees' records, page 339, Feb. 27, 1918, is offered in evidence as Exhibit 345, and read by Mr. Krauthoff, as follows:]

"Mr. Watts gave a report on the handling of the legal affairs for the Publishing Society and his experience with Mr. Norwood. Mr. Watts further stated that he felt that as business manager of the Publishing Society, and also having a thorough knowledge of law, he could better handle the Publishing Society's legal affairs individually, rather than by cooperating with Mr. Norwood's office. The trustees approved this recommendation and instructed Mr. Watts to

handle all of the Publishing Society's affairs hereafter."

[An extract from the trustees' records, page 343, March 4, 1918, is offered in evidence as Exhibit 346, and read by Mr. Krauthoff, as follows:]

"The regular meeting of the Board of Trustees convened Monday, March 4, 1918, at 12:30 p. m.; present, Messrs. Eustace, Ogden and Rowlands.

"At 1 o'clock the trustees met with The Christian Science Board of Directors. . . . The proposed letter to be sent to the field with regard to the arrangement"

Mr. Whipple—Just a moment. Are you proposing to omit with regard to the McLellan letters and the letters from Mrs. Eddy?

Mr. Krauthoff—I do not see that they have any bearing on this situation; I shall be very glad to read it.

Mr. Whipple—Well, I do not see that any of the things you are reading have any bearing on the situation.

Mr. Bates—Well, then, don't multiply it.

Mr. Whipple—But perhaps these do as much as any.

Mr. Krauthoff—Are you asking for the McLellan and the Eddy letters?

Mr. Whipple—Yes.

[Mr. Krauthoff continued reading, as follows:]

"At 1 o'clock the trustees met with The Christian Science Board of Directors to report that they had read carefully and classified all the letters from Mrs. Eddy to Mr. McLellan. The trustees expressed their appreciation for the privilege of reading these letters, and also stated that there were a great many which would serve as guides in connection with the work of the Publishing Society in the different departments. The Board of Directors were glad to have the trustees retain the copies they had presented.

"The trustees asked the Board of Directors if it would be in keeping with their ideas to let the trustees from time to time have the files of Mrs. Eddy's letters which they have collected, so that the trustees might read them and study them. The directors said they saw no reason why the trustees should not have these letters, but that they would report later on this subject.

"The proposed letter to be sent to the field with regard to the arrangement concerning practitioners' and nurses' cards and the raise in rate for churches' and societies' cards was read, and the substance of the letter was approved by the Board of Directors.

"Preliminary plans for the new publishing house were presented to the directors for their consideration, the trustees saying that these plans were at the time rather indefinite, but that they wished the directors to know that they were being forced to the point where it would be necessary to take some action in the very near future as the space in the publishing house was becoming very limited, and taking into

consideration the future growth of the movement and the increasing circulation of the periodicals, it would be necessary to take some definite action in the near future looking to making provision for growing needs."

Mr. Krauthoff—Now, May 27, 1918—

Mr. Whipple—You are not reading all the conferences or meetings that they had together.

Mr. Krauthoff—No; I said a moment ago I was not.

Mr. Whipple—I am sorry; I didn't hear you.

[An extract from trustees' records, page 444, May 27, 1918, is offered in evidence as Exhibit 347, and read by Mr. Krauthoff, as follows:]

"At 12 o'clock, on Monday, May 27, 1918, the Board of Trustees met with The Christian Science Board of Directors as arranged at the request of the trustees, to consider a letter from the directors dated May 21, 1918, referring to 'Section E of paragraph 7 of a memorandum considered jointly by the directors and trustees in February, 1916.' The trustees wished to talk this subject over with the Board of Directors rather than to reply by letter, as they felt there should be a thorough understanding between the two boards relative to their relation to the work of the Christian Science movement.

"The trustees stated that there had never been any records in the trustees' files in regard to the memorandum referred to, and that in considering this memorandum it was the unanimous conclusion that there was nothing in this unrecorded memorandum which was not already in the By-Laws of The Mother Church and in the Deed of Trust, and that it would not be right to attempt to supplement this by recorded interpretation; that the Manual was provided by Mrs. Eddy as being sufficient, and that the provisions contained therein would continue to unfold through further demonstration.

"The trustees assured the directors of their most hearty cooperation and support, and this was reciprocated on the part of the directors. It was finally decided that the memorandum should be destroyed."

[A portion of the trustees' records, page 448, May 29, 1918, is offered in evidence as Exhibit 348, and read by Mr. Krauthoff, as follows:]

"The report for the year of the activities of The Christian Science Publishing Society, to be sent to Mr. Jarvis to be embodied in his annual report, was read and approved and ordered sent to Mr. Jarvis."

[An extract from the trustees' records, page 453, June 3, 1918, is offered in evidence as Exhibit 349, and read by Mr. Krauthoff, as follows:]

"A letter was received from The Christian Science Board of Directors announcing the following appointments for the ensuing year."

Mr. Krauthoff—Then follow the names of Mr. McKenzie, Mr. Mc-

Crackan, Mr. Dixon and Mr. Watts, as editor, associate editors, and editor, and manager.

"It was moved and seconded that the secretary acknowledge the receipt of the letter and thank the board for its compliance with the request of the trustees to omit the appointment of the German translator, leaving the continuance of this appointment with the Board of Trustees.

"Mr. Watts came to the meeting and reported the receipt by him of a letter from the directors announcing his appointment for the forthcoming year."

Mr. Krauthoff—June 17, 1918, page 470:

"The business office was instructed to have the article by Mr. Dixon in Saturday's Monitor, 'Lusting Against Lust,' set up for use with other articles in a vest pocket pamphlet to be entitled 'Purification.'"

[That portion of the record of the meeting of Board of Trustees, dated June 17, 1918, as read by Mr. Krauthoff, is offered in evidence as Exhibit 350.]

Mr. Krauthoff—June 22, 1918, page 477:

"The appointment of some one to fill the vacancy made on the Bible Lesson Committee by Mr. Dutton's resignation was considered, and after going over the available workers, it was felt that Dr. Colby was well qualified for work on the Bible Lesson Committee. On motion duly seconded, therefore, Dr. Colby was elected and a letter was written to The Christian Science Board of Directors notifying them of the election and saying that the trustees would notify Dr. Colby providing the directors saw no objection to this appointment."

[That portion of record of meeting of Board of Trustees, dated June 29, 1918, as read by Mr. Krauthoff, is offered in evidence as Exhibit 351.]

Mr. Krauthoff—June 24, 1918, page 480:

"At 11:30 the trustees met with The Christian Science Board of Directors.

"The Christian Science Board of Directors also stated that they had received the trustees' letter notifying them of the election of Dr. Colby as a member of the Bible Lesson Committee. They said that this was being considered, and that the directors would reply formally to our letter in the near future."

[That portion of record of meeting of Board of Trustees, dated June 24, 1918, as read by Mr. Krauthoff, is offered in evidence as Exhibit 352.]

Mr. Krauthoff—July 5, 1918, page 492:

"A letter from Judge Smith, regarding The Christian Science Publishing Society, and the questions of using the words 'Sole Publishers of All Authorized Christian Science Literature,' was given consideration with the business manager, and the business manager said that he had made a careful

study of the situation and would submit a letter later for the trustees' consideration.

"It was felt by the trustees that this phrase did not conflict in any way with the work of the Committee on Publication, and was an additional protection to the Publication Society, besides being in accordance with the Manual of The Mother Church and the Deed of Trust."

[That portion of record of meeting of Board of Trustees, dated July 5, 1918, as read by Mr. Krauthoff, is offered in evidence as Exhibit 353.]

Mr. Krauthoff—July 8, 1918, page 494:

"At 12 o'clock the trustees met with The Christian Science Board of Directors.

"The question of storage space and additional space occupied by the Publishing Society outside of the publishing house being paid for by The Mother Church, was considered. It was felt by the trustees that this additional space should, according to the Manual, be paid for by the Mother Church, inasmuch as the Manual provides that 'It shall be the duty of The Christian Science Board of Directors to provide a suitable building for the publication of The Christian Science Journal, Christian Science Sentinel, Der Herold der Christian Science, and all other Christian Science literature published by The Christian Science Publishing Society' (Article 1, Section 7). This question was left open for further consideration.

"The new vest pocket Bible, and the possibility of its distribution through the Welfare Committee was considered. The directors felt that with the present cost of the Bible it would be impossible for the Welfare Committee to do much distribution. They therefore asked the trustees if it would not be possible to purchase the plates, or arrange for quantity distribution, so as to materially lower the present cost. The trustees assured the directors that they would be glad to make further investigation and report later.

"The indorsement of the appointment of Dr. Colby to fill the vacancy on the Bible Lesson Committee came up for consideration. The directors appreciated the fact that it was a courtesy to refer these appointments to them for their consideration before finally advising the appointees, and said that Dr. Colby was satisfactory to them in every way.

"The question of changing the date of issue of the Sentinel was presented for consideration, but because of lack of information the subject was deferred."

[Those portions on the record of meeting of the Board of Trustees, dated July 8, 1918, as read by Mr. Krauthoff, are offered in evidence as Exhibit 354.]

Mr. Krauthoff—July 30, 1918, page 517:

The Board of Trustees met with The Christian Science Board of Directors at 12:30 on Tuesday, July 30, the trustees having asked for this meeting in order to discuss the editorial department of the Journal, Sentinel, and Herald.

The situation was discussed at length, but the directors gave the trustees no definite information on the subject.

The question of the interpretation of the By-Law, Article XXV, Section 9, in The Mother Church Manual, was discussed, and left open for further consideration. The trustees of the Publishing Society agreed to submit further data.

The Manual By-Law Article XXVII, Section 4, was also discussed in connection with Mr. (blank), who has recently applied to have his name inserted as a practitioner in Le Héraut. The trustees assured the directors that they would give this subject careful consideration and advise them later.

[That portion of the record of meeting of Board of Trustees, dated July 30, 1918, as read by Mr. Krauthoff, is offered in evidence as Exhibit 355.]

Mr. Krauthoff—Aug. 8, 1918, page 528:

The Board of Trustees with the editor of The Christian Science Monitor and the business manager met with The Christian Science Board of Directors by appointment at 12 o'clock. The trustees asked for this meeting so as to present the recommendations and decision in regard to making The Christian Science Monitor in one edition, changing the issue of the paper from an afternoon to a morning newspaper. The chairman of the trustees and the business manager laid before the Board of Directors quite at length the recommendations and conclusions of the trustees. After thorough discussion and consideration of the subject, it was the unanimous conclusion of the meeting that the recommendations should be adopted and put into effect at once. It was the thought of the meeting that the change should be made before Aug. 12 if possible so as not to leave any chance of coming under the new ruling of the War Industries Board, which the business manager stated would become effective Aug. 12, 1918.

[That portion of record of the meeting of Board of Trustees, dated Aug. 8, 1918, as read by Mr. Krauthoff, is offered in evidence as Exhibit 256.]

Mr. Krauthoff—Aug. 15, 1918, page 539:

The Board of Trustees met with The Christian Science Board of Directors at 12 o'clock; present, Messrs. Adam H. Dickey, J. V. Dittmore, E. A. Merritt, James A. Neal, David B. Ogden, and Lamont Rowlands.

The directors desired to make inquiry of the trustees regarding the recent purchase of the Franklin automobile for the use of the Publishing

Society, and also to submit to the trustees a list of comparative inquiries regarding the progress and profits of the business. These questions were freely and frankly discussed by all present, and the trustees expressed surprise at the apparent lack of confidence expressed in the inquiry regarding the automobile, inasmuch as they felt that the conduct of the publishing house business and its efficient operation was, under the Deed of Trust, left to their own good judgment.

Regarding the long list of questions, which concerned principally the accounting department of the publishing house, the trustees assured the Board of Directors that they would be very glad to obtain this information and submit a report to them at the earliest possible moment.

The plans for rearranging the shipping rooms were submitted to the Board of Directors, and the directors asked that a written recommendation be presented to them, together with the plans. The trustees assured the directors that they would be given attention immediately.

[That portion of the record of meeting of Board of Trustees, dated Aug. 15, 1918, as read by Mr. Krauthoff, is offered in evidence as Exhibit 357.]

Mr. Krauthoff—In connection with that automobile, if Your Honor please—

The Master—What was the date of that last meeting?

Mr. Krauthoff—Aug. 15, 1918. In connection with the automobile, I omitted a meeting of the trustees on Aug. 10, 1918, page 533:

The trustees recommended that a motor car should be purchased at once to accommodate the demands of the trustees, business manager and editors, especially in connection with the work which will be occasioned by The Monitor being printed at night. The business manager asked that a Franklin be purchased, and this was approved.

[That portion of the record of meeting of Board of Trustees, dated Aug. 10, 1918, as read by Mr. Krauthoff, is offered in evidence as Exhibit 358.]

Mr. Krauthoff—Aug. 27, 1918, page 558:

Mr. Rowlands reported that he had had a telephone call from Mr. Dickey, chairman of The Christian Science Board of Directors, asking for information relative to the vest pocket pamphlet, 'Purification,' which was coming off the presses and which would soon be ready to send to the field. Mr. Dickey said that the Board of Directors at their meeting today had passed a resolution asking that the pamphlet be held up for the time being, as there were several points in connection with the pamphlet which should be discussed. The trustees were asked to meet with the directors next Tuesday, when there would be a full Board of Trustees.

After further consideration, the trustees felt it would be wise to defer

this meeting until Wednesday, inasmuch as the trustees would not be in session until Tuesday afternoon. Therefore, the following letter was sent to The Christian Science Board of Directors:

In compliance with your telephone request this morning, the pamphlet 'Purification,' which is now coming from the bindery, has been withheld from shipment until we have an opportunity to confer with your board.

In the meantime, we should appreciate it if you will write us regarding the points in the pamphlet which are under question, in order that we may give them consideration before the conference. We would like to have this information for our meeting tomorrow afternoon if convenient to you.

Inasmuch as Monday will be a holiday and our full board will not be available until an afternoon meeting on Tuesday, we should like to arrange the conference for Wednesday noon, rather than for Tuesday, as first planned.

[That portion of the record of meeting of Board of Trustees, dated Aug. 27, 1918, as read by Mr. Krauthoff, is offered in evidence as Exhibit 359.]

Mr. Krauthoff—Sept. 2, 1918, page 564:

The trustees' letter regarding the pamphlet 'Purification,' and the reply received last week from the directors, was again considered preparatory to a conference asked for by the directors and arranged for next Wednesday noon.

Then comes some other matter, not now important.

Later the trustees gave earnest and thorough consideration to their position and obligation under the Deed of Trust, and they were of one mind, that every part of this obligation should be faithfully lived up to.

[That portion of the record of meeting of Board of Trustees, dated Sept. 2, 1918, as read by Mr. Krauthoff, is offered in evidence as Exhibit 360.]

Mr. Krauthoff—Sept. 3, 1918, page 566; the meeting having been at 2 o'clock in the afternoon, and then it continues:

The meeting convened again at 3 p. m., with all members present.

This meeting was had to give further consideration to the Deed of Trust and its application to the work of the trustees and the Publishing Society.

After further consideration by the trustees of questions of import to the Publishing Society, the meeting adjourned with the reading of the Rule for Motives and Acts from the Manual.

[That portion of the record of meeting of Board of Trustees, dated Sept. 3, 1918, as read by Mr. Krauthoff, is offered in evidence as Exhibit 361.]

Mr. Krauthoff—Sept. 4, 1918, page 567:

The trustees went over for their

conference with the directors at 12:30, at which meeting all members of the Board of Directors were present except Mr. Stewart.

"An hour and a half was spent in a general discussion regarding the advisability of issuing the articles on 'generic man' in pamphlet form, under the title of 'Purification.' It was evident that the directors recognized that the issuing of this pamphlet was wholly a question which rested with the Board of Trustees, and that their question was not one of criticizing the metaphysics of the articles, but rather of the expediency of issuing it at this time.

"Three or four slight corrections were recommended in order to make some statement more definite, and the question of issuing the pamphlet without the name of the author of the articles was also considered. The trustees finally said they would be glad to give the recommendations consideration and would later notify the directors regarding their decision. The meeting was harmonious and beneficial to all concerned."

"Mr. Dixon came to the meeting and the question regarding the pamphlet 'Purification' was discussed with him. He readily consented to the few minor changes in the articles which have been discussed with the directors. It was finally decided that the issue of the pamphlet as now printed be sent out to the field, and that one or two minor changes be made in the next edition, but that the question of including the author's name be left open for further consideration. The secretary was instructed to prepare a letter notifying the directors of the decision of the board."

[That portion of the record of meeting of Board of Trustees, dated Sept. 4, 1918, as read by Mr. Krauthoff, is offered in evidence as Exhibit 362.]

Mr. Krauthoff—Sept. 5, 1918, page 570—

Mr. Whipple—If you will pardon me a moment. Is there any particular reason for omitting the rest of that record? You have omitted in connection with the discussion of the pamphlet "Purification" a statement was made by Mr. Dittmore, and so forth. Why not read it?

Mr. Thompson—If there is anything about him, put it in.

Mr. Krauthoff—I will read that as we go along.

Mr. Whipple—You have passed it, so that you will have to go back and pick it up.

Mr. Streeter—Let me ask if you are omitting from your reading anything that relates to Mr. Dittmore? Have you heretofore?

Mr. Krauthoff—I do not recall that I have, but I would prefer that you make your own examination of the records.

Mr. Streeter—Well, do you think it would be fair for you to read, when

you are reading a part of those records—to read the whole of them relating to both these matters?

Mr. Krauthoff—If Your Honor please, I have not assumed that a statement in these records of the trustees is evidence against Mr. Dittmore. There are a number of statements in here of conferences between the directors, and between these trustees and Mr. Dittmore alone, and Mr. Dittmore and Mr. Neal, in which the nature of the conference is not set out. I have not purposely omitted anything.

Mr. Thompson—Did it ever occur to you that there might be evidence in favor of Mr. Dittmore?

Mr. Krauthoff—Well, he has two very good lawyers.

Mr. Thompson—They are good enough to insist on your playing fair in this case. I want it read.

Mr. Krauthoff—I offered to read this and I—

The Master—It is on the question of reading the letter, is it?

Mr. Krauthoff—A statement of Mr. Dittmore. And in connection with that, if Your Honor please—

The Master—Well, if you undertook to read a letter it would seem that unless there is consent to the contrary you ought to read the whole letter.

Mr. Krauthoff—If Your Honor please, this is not a letter. Here is a record of the trustees as to what Mr. Dittmore said. Now, I had not, in the first instance, assumed that what the trustees wrote upon their records about what Mr. Dittmore said—

The Master—Did you read a part of that?

Mr. Krauthoff—I did not. I will read it now.

The Master—Do you desire to have it read?

Mr. Streeter—Yes, we want him to read what he has got in there about Mr. Dittmore. I supposed he was doing it.

Mr. Krauthoff—Now, if Your Honor please, may I make this suggestion: Some intimation has been made here about being unfair. Now, this morning I undertook to explain something as I went along and I precipitated upon myself an avalanche. Now, I am ready—

Mr. Streeter—Well, go ahead.

Mr. Thompson—Never mind about the avalanche.

The Master—It is agreed now that that is to be read. Go ahead and read it.

Mr. Krauthoff—Now, this is from the trustees' records on page 568, under date of Sept. 4, 1918:

"In connection with the discussion of the pamphlet 'Purification,' the statement was made by Mr. Dittmore that if attempted interpretations were made of Mrs. Eddy's writings, this would ultimate in disaster to the Christian Science movement. The chairman of the Board of Trustees,

Mr. Rowlands, took emphatic exception to this statement and rebuked it with the iteration that the permanency of the Christian Science movement rested on Mrs. Eddy's demonstration, and that no condition or power can ever overthrow it. This is sustained by what Mrs. Eddy has said, 'Truth is revealed. It needs only to be practised.' (Science and Health, p. 174), and 'No human pen nor tongue taught me the Science contained in this book, Science and Health; and neither tongue nor pen can overthrow it' (p. 110)."

[That portion of record of meeting of Board of Trustees, dated Sept. 4, 1918, as read by Mr. Krauthoff, is offered in evidence as a part of Exhibit 362.]

Mr. Bates—Do you feel better, General?

Mr. Streeter—Well, not much, because apparently he has gone on here for eight or ten years, and I supposed that he was reading it, and he has not read it, so that I don't feel much better.

Mr. Bates—We are glad to have your permission to do so, some of it was not read because we thought it was not admissible. Now it is.

Mr. Thompson—Is that the reason why you did not read it?

Mr. Bates—Mr. Thompson has asked me a question, and I will answer it. He has asked me if that is the reason why we did not read it. There are many paragraphs in there in regard to Mr. Dittmore that we did not read because we supposed that they were not admissible. But let me state also that we are under no obligation to read them, as the counsel on the other side very well know. We are putting in our part of the case. We are required to put in only those records which concern us. If either of the other counsel desires to put in any more of the records, he has a right to put them in; but counsel have no right to interrupt us and ask us to put them in for them.

The Master—I think that it would be better for you to put in what you desire to put in, and leave it for them to put in what they desire to put in.

Mr. Krauthoff—September 5, 1918—

The Master—One moment.

Mr. Streeter—You need not be at all sensitive about reading anything in that record regarding Mr. Dittmore. Mr. Dittmore wants the whole record, all there is on the trustees' records and the directors' records, spread out in the sunlight before the Master; and you need not hesitate to read them.

The Master—Mr. Dittmore may want that, but I do not think that any of the rest of us desire to have the trustees' and the directors' records put in here in extenso, the whole of them.

Mr. Streeter—It will simply compel us to put it in at a later time.

The Master—Mr. Krauthoff is now reading from the trustees' records certain things that he deems impor-

tant to his case. Now, if the privilege is reserved to you to read what you desire to read out of those records, making your own selection, what have you to complain of?

Mr. Streeter—I do not know that I have anything to complain of, except that he puts it in at a different time and place, and I supposed that he was reading—

The Master—We do not want all the records of the directors and the trustees just as they stand copied into this record.

Mr. Streeter—Oh, no; that is not it. It is only with reference to his remark—

The Master—Then let each side select what it wants.

Mr. Streeter—Well, if Your Honor thinks that that is the better way, we bow to your suggestion.

Mr. Whipple—But I understand, if Your Honor please, that where a record is put in purporting to cover a general subject, they ought to read it all, just as they would a letter, and not select sentences, and leave out other isolated sentences.

Mr. Thompson—That is the point, sir. And it seems to me that it is putting a great burden on us. Here is a part of a subject, this pamphlet "Purification," and Mr. Dittmore took a certain attitude on it, and Mr. Krauthoff read a certain portion of it. We are not asking for detached matters connected with Mr. Dittmore, but if he takes up a subject he ought not to eliminate what bears on it. It is not fair to Mr. Dittmore, and it is not a fair way to try a case.

The Master—If you put in a part of any statement of Mr. Dittmore, you ought to put in the whole of it.

Mr. Bates—We have; Your Honor.

Mr. Krauthoff—Now, then, if Your Honor please, since we have been authorized to offer evidence on the part of Mr. Dittmore, we will try to do it.

Mr. Streeter—What was that that you said?

The Master—I do not understand that there has been any express authorization.

Mr. Thompson—That is a silly comment on what we have said. We have only asked you to be fair. We have not asked you to put in evidence in behalf of Mr. Dittmore.

Mr. Krauthoff—Very well. Now I will read the record of the next meeting.

Sept. 5, 1918, page 570:

"... Mr. Parker came to the meeting inasmuch as Mr. Watts was in Washington, and reported that an inquiry had been made by the Board of Directors of the business office as to whether the pamphlet 'Purification' had been released. Mr. Parker had replied that no word had yet been received from the Board of Trustees for its release, and that 5000 were ready for issuance, while the balance of the edition was being held in process in the bindery. It was decided to hold the letter to the directors regarding the issuance of the pamphlet

'Purification' until Monday, but to authorize the finishing of the pamphlet in its present form, and its issuance to the field as soon as prepared."

[The record of the meeting of the Board of Trustees of Sept. 5, 1918, from which the foregoing extract is read, is Exhibit 363. R. H. J.]

Page 574, Sept. 9, 1918:

"... The secretary read the draft of a letter prepared by the editor of The Monitor to the directors on the subject of 'Purification,' which met with the hearty approval of the trustees. . . . A letter was received from The Christian Science Board of Directors, acknowledging our letter of Sept. 6, and asking that the sending out of the pamphlet 'Purification' be further deferred until another conference could be had between the two boards. The secretary was instructed to write the Board of Directors that the trustees would be glad to meet with them on Thursday at any time they might state, but that it seemed impossible to do so tomorrow or Wednesday. It was decided, however, that no change should be made in the release given the business manager regarding the sending out of the pamphlet.

"... Mr. Dixon said he had given further earnest consideration to his letter prepared to the Board of Directors, and had decided to send it to them this evening."

[The record of the meeting of the Board of Trustees of Sept. 9, 1918, from which the foregoing extracts are read is Exhibit 364. R. H. J.]

Page 577, Sept. 10, 1918:

"An inquiry was made by the Sentinel editorial department regarding the Christian Science Society at Kirksville, the card of which does not appear in the Journal. The inquiry was occasioned by a lecture announcement having come from that point. They were notified that the application for reinsertion of the advertisement of this organization was not yet completed, and that therefore the society would not be eligible under the by-law for a lecture. The business manager was instructed to notify Dr. Tutt, who was to deliver the lecture in question, of the status of the society's affairs.

"Mr. Rowlands reported that the secretary of the Board of Directors had telephoned him that the directors would like to arrange a meeting with the Board of Trustees for tomorrow noon, instead of Thursday, as planned in our letter. Although this made it necessary for Mr. Rowlands to rearrange his plans with some of his business associates, the trustees decided to arrange for this conference, and so telephoned Miss Warren, the acting secretary.

"Mr. Watts came to the meeting and reported that early this morning he had been called by Mr. Dickey and asked whether the pamphlet 'Purification' had been sent out from the publishing house. Mr. Dickey had

also requested the business manager to hold it from further shipment, saying that he would take this up with his board when it convened this morning.

"Mr. Watts then thought it advisable to see one of the trustees, and as no member was at hand, went over to see Mr. Eustace and notified him that he (the business manager) would undoubtedly be called to the meeting of the Board of Directors on this subject. Later he was called to the Board of Directors, and instructed to withhold the pamphlet from circulation until conference could be had by the two boards. The business manager asked that this request be given him in writing, which was done.

"After hearing this report from the business manager, the trustees told him that their instructions in the matter had been given several days ago by memorandum, and that he must look to Principle to decide what course he should now take. Mr. Watts spoke most earnestly of his desire to fulfill the requirements of business manager, and said that he felt the position of business manager should have the support of the Board of Trustees and the Board of Directors. He was assured that this was the desire of the trustees and that he must look to Principle for guidance."

[The record of the meeting of the Board of Trustees of September 10, 1918, from which the foregoing extracts are read, is Exhibit 365. R. H. J.]

Page 579, Sept. 11, 1918:

"The meeting of the Board of Trustees convened Wednesday, Sept. 11, 1918, at 11:35 a. m.; all members being present. . . .

"The business manager came to the meeting and reported that after very earnest consideration he had decided it was his highest understanding of Principle to follow the original order of the trustees relative to the shipping out of the pamphlet 'Purification,' notwithstanding the letter he had yesterday received from the Board of Directors requesting him not to ship out any of the pamphlets till authorized by the Board of Directors to do so, and that he had consequently notified the shipping room first thing this morning to send out the pamphlet. The trustees expressed their approval of his decision, feeling that he had made it wholly without influence from them, being guided solely by his own understanding of what Principle demanded of him to do.

"A general discussion was had of questions concerning the Deed of Trust.

"At 12:15 p. m. the trustees went over for a conference with the Board of Directors. The members of the Board of Directors present at the conference were Adam H. Dickey, James A. Neal, John V. Dittmore, and Edward A. Merritt."

"The chairman of the Board of Directors, Mr. Dickey, stated in detail how certain incidents and remarks in



connection with their inquiries and requests regarding the pamphlet 'Purification' had been used by animal magnetism to try to bring about a difference and misunderstanding between the two boards; that the arrangement in the letter of Sept. 6, sent by the trustees to them, stating that the trustees had decided to make the one or two slight changes which had been discussed by the two boards in the next edition of the pamphlet, was agreeable to them, but that they believed from what they knew of Mrs. Eddy's general expressed desire that the name of the author should appear on the pamphlet. Mr. Dickey further expressed the sense of the Board of Directors that the pamphlet could in no way do any harm.

"After some further general remarks, Mr. Rowlands, as chairman of the Board of Trustees, stated for the trustees that it was felt that there was a still larger question connected with these recent occurrences than that of the issuance of the pamphlet, namely, that of the responsibilities and obligations demanded of the trustees by the Deed of Trust, and that the trustees felt the action of the Board of Directors in giving the business manager of the publishing house written instructions regarding the pamphlet directly contrary to those given him by the trustees, or in fact, giving him any instructions whatever, was illustrative of the question to be considered.

"He stated that the trustees had every consideration, respect, and friendship for the directors, individually and as a board, and that the trustees are willing and desirous of cooperating with them in every right way, but that they insist, since they are the ones who have accepted the trust and its obligations, that they must be the interpreters of the provisions of the trust deed, for the trustees feel that the Deed of Trust is not only the highest moral trust ever recorded, but that it is equally a strictly legal trust, and that in consequence the importance of the trust from every standpoint is one that must, of necessity, receive the greatest honor, obedience, and protection from its signatories; therefore, the trustees, in the fulfillment of their trust, must be left free to manage the publishing house absolutely, and be treated by the Board of Directors as colleagues.

"Mr. Rowlands called attention to the fact that Mrs. Eddy had made the Deed of Trust of her own accord, without consulting the then Board of Directors, or First Members, and that she used terms in connection with the wording of the deed which were unmistakable in their intent, such as 'for the purpose of more effectually promoting and extending the religion of Christian Science . . . upon the following perpetual and irrevocable trust and confidence. . . . Said trustees shall energetically and judiciously manage the business of the Publishing Society on a strictly Chris-

tian basis, and upon their own responsibility . . . shall have direction and supervision . . . using their best judgment as to the means of preparing and issuing the same so as to promote the best interests of the Cause.'

"Mr. Eustace followed Mr. Rowlands in the statement of the attitude of the Board of Trustees in regard to the Deed of Trust and the relationship of the two boards, indorsing emphatically everything that had been said by Mr. Rowlands, and supporting the decision of the trustees to preserve and enforce their right to govern and direct the activities of The Christian Science Publishing Society unhampered. Mr. Rowlands stated that The Christian Science Board of Directors was the authority under Principle for the direction of the affairs of the Church, and in the same way the Board of Trustees was the authority under Principle for the direction of the affairs of the Publishing Society. Mr. Eustace emphasized this fact, indorsing it fully.

"The question of the provision of the Deed of Trust and The Mother Church Manual pertaining to the rights of the directors to 'declare vacancies in said trusteeships for such reasons as to them may seem expedient' was referred to by Mr. Dickey, and a discussion ensued regarding the meaning of the word 'expedient.' The trustees maintained that our Leader used this word advisedly as she always used words, and in its highest meaning of right, best, and advantageous, even as Jesus used it when he declared 'It is expedient for you that I go away.' Mr. Dickey read certain definitions of this word in its lower meaning from the dictionary, that the trustees refused to accept as our Leader's meaning of the word as used by her.

"The trustees admitted that the Deed of Trust and the Church Manual gave certain disciplinary power to The Christian Science Board of Directors as to the declaring of vacancies on the Board of Trustees, but that this could properly only be invoked for moral offenses such as dishonesty or immorality, and being untrue to the teachings of Science and Health as stated in the Deed of Trust, but for no other purpose. Certain members of the Board of Directors expressed a contrary opinion with this interpretation, at least for the time being, until they could give further study to the Deed of Trust and the Manual on the subject.

"The wording of the Deed of Trust in this connection was cited as a standard of what Mrs. Eddy required of the trustees, namely, that they should be 'loyal, faithful, and consistent believers and advocates of the principles of Christian Science.' The trustees maintained that so long as these requirements were fulfilled, no disciplinary action could be enforced.

"There was a general discussion of many points regarding the Deed of

Trust and the By-Laws of The Mother Church.

"On the question being put to Mr. Ogden, he affirmed his unqualified agreement with the entire statement presented by Mr. Rowlands and continued by Mr. Eustace, and insisted on the unity and determination of the trustees regarding their right and obligation to manage the Publishing House without interference. This attitude of the trustees was thoroughly understood by all present, and so stated.

"It should be recorded that during the conference reference was made to a semi-official communication designated as a memorandum that had once been under consideration by a former Board of Trustees two or more years ago, and which had been again under discussion at a meeting of the directors and trustees in June of this year, a copy of which memorandum in the hands of the trustees after the meeting was torn up as being utterly repudiated by them. The directors were told of this fact and were reminded further of the fact that that memorandum bore witness to the attempt of the Board of Directors to define the Deed of Trust for the trustees, and in so doing attempted to curtail their freedom of action in regard to not only appointments on the Bible Lesson Committee, but even in the purchasing of necessary machinery, etc., for the conduct of the business in direct opposition to the powers conferred on the trustees by the Deed of Trust, this curtailment extending to even necessary communications to the field about promoting the business of the Publishing Society. It was plainly pointed out that the trustees could not and would not tolerate any such actions, for to do so would virtually make void the Deed of Trust.

"Mr. Rowlands closed the conference for the trustees with the statement that the Deed of Trust and the Manual would be the guide of the Board of Trustees to the end, and that they could do no other than put their own metaphysical interpretation on the instrument of which they were trustees, lead wherever it might.

"The trustees returned to the publishing house at 3:15 and after consulting with the business manager regarding the possibilities of placing Mr. Dixon's name as author on the cover of the pamphlet 'Purification,' and finding that this was practicable, it was decided to have this done."

[The record of the meeting of the Board of Trustees of Sept. 11, 1918, from which the foregoing is read, is Exhibit 366. R. H. J.]

Page 532, Sept. 12, 1918:

". . . The business manager came to the meeting and reported that he had been phoned by Mr. Dickey, chairman of the Board of Directors, requesting the return of the letter of the Board of Directors referred to in preceding minutes, and stating that the board had decided to withdraw the

letter and release the pamphlets. The business manager answered that the pamphlets had already been released and later he handed the letter to the chairman."

[The record of the meeting of the Board of Trustees of Sept. 12, 1918, from which the foregoing is read, is Exhibit 367. R. H. J.]

Page 584, Sept. 13, 1918:

"... Mr. Eustace read a brief summary he had prepared for the trustees some four years ago on the Deed of Trust and the Manual and their particular application to the care of Journal cards. This statement was absolutely in accord with the views of the trustees today, as stated on Wednesday to The Christian Science Board of Directors."

[The record of the meeting of the Board of Trustees of Sept. 13, 1918, from which the foregoing is read, is Exhibit 368. R. H. J.]

Page 609, Sept. 30, 1918:

"... The trustees spent the morning session considering the draft of a letter to The Christian Science Board of Directors, reaffirming and amplifying the statements made to the directors relative to the Deed of Trust at the time of their conference Sept. 11.

"After drawing up the first copies of this letter, it was given to Mr. McKenzie, the editor of the Journal and Sentinel, who was one of our Leader's original appointees on the Board of Trustees and who served for 19 years on that board. A copy was also given to Mr. Dixon, editor of The Monitor, and to Mr. Watts, the business manager, so that each of these officers were fully conversant with the text of the letter. Each assented to and approved of the contents.

"Some additional slight changes were made by the trustees at the afternoon session and five copies were to be prepared for signature at the evening session."

[The record of the meeting of the Board of Trustees of Sept. 30, 1918, from which the foregoing is read, is Exhibit 369. R. H. J.]

Page 610, the record of the same meeting:

"Several documents connected with the consideration of the Deed of Trust in former years were given the trustees by Mr. McKenzie, and it was moved and seconded that these letters and papers, together with a copy of the brief prepared by the trustees several years ago, and referred to in the minutes of Sept. 13, 1918, and a copy of the memorandum prepared in February, 1916, by the Board of Directors, should be placed on file as a permanent record for this board, in a special folder entitled 'Deed of Trust,' together with a copy of the letter prepared today.

"The session then adjourned, to reconvene at 10 p. m.

"The meeting convened again at the appointed time, and the trustees again

carefully read and compared the letter prepared to the Board of Directors, and affixed their individual signatures thereto. . . . A copy of this letter, as signed by the three trustees, is attached as a part of these minutes."

That copy of letter, if Your Honor please, is a copy of a letter of Sept. 30, 1918, which was offered in evidence in connection with the testimony of Mr. Eustace.

Mr. Whipple—You haven't the number of the exhibit?

Mr. Krauthoff—No, I have not. There was no other letter on that date.

Page 611, Oct. 1, 1918:

"The meeting of the Board of Trustees convened Tuesday, Oct. 1, 1918,"

Mr. Whipple—If you will pardon the interruption, to fix that, it is Exhibit 4a.

Mr. Krauthoff—A letter of Sept. 30, 1918, found in the trustees' record as a part of the minutes of Sept. 30, 1918, is Exhibit 4a.

Mr. Whipple—That will serve to identify it.

[An extract from trustees' records, page 611, Oct. 1, 1918, offered in evidence as Exhibit 371, and read by Mr. Krauthoff, as follows:]

"The Board of Directors telephoned at 11 a. m., saying that in view of the letter received from the trustees, they would ask that the conference scheduled for this morning be deferred."

[An extract from the trustees' records, page 618, Oct. 3, 1918, offered in evidence as Exhibit 372, and read by Mr. Krauthoff, as follows:]

"Mr. Watts reported a meeting with the Board of Directors regarding a notice to be published in the Sentinel regarding Mr. Ripley's appointment as church treasurer. Mr. Seeley was asked to come to the meeting to discuss the placing of notices of this kind, and it was the unanimous decision that notices such as this should hereafter appear at the end of the editorial columns rather than at the head. This is to be talked over with the editor before being put into operation.

"A general discussion was had with Mr. Seeley as to the relation of the editorial department to the work of the Publishing Society and The Mother Church, and he was given a copy of the Deed of Trust to read."

[An extract from the trustees' records, page 643, Oct. 24, 1918, offered in evidence as Exhibit 373, and read by Mr. Krauthoff, as follows:]

"Mr. Watts came to the meeting and the trustees discussed with him a private letter written by Mr. Eustace to Mr. Rowlands regarding the Deed of Trust. Later Mr. Dixon came to the meeting and the letter was discussed with him. It was agreed by all that it covered the points well."

[An extract from trustees' records, page 669, Nov. 19, 1918, offered in evidence as Exhibit 374, and read by Mr. Krauthoff, as follows:]

"A letter was received from The Christian Science Board of Directors,

acknowledging our letter relative to the recent payment to the treasurer, and requesting a copy of the auditor's report for the period. The business manager was instructed to send the directors a copy of the semi-annual summary as soon as it is ready, and to state that the auditor's report is made only once a year, at the April accounting."

[An extract from the trustees' records, page 671, Nov. 21, 1918, is offered in evidence as Exhibit 375, and read by Mr. Krauthoff, as follows:]

"Mr. McKenzie came to the meeting, and later Mr. Watts. General consideration of the Deed of Trust and the Manual, and their application to the work of the publishing house, was had. At the editor's request, a copy of the references to the editorial department, in the trustees' letter of Sept. 30 to the directors, was to be made for his information."

[An extract from the trustees' records, page 707, Dec. 24, 1918, offered in evidence as Exhibit 376, and read by Mr. Krauthoff, as follows:]

"The last letters of Dec. 20, from the directors were again carefully considered by the trustees and the business manager, and it was decided to send the following acknowledgment and reply, signed by all of the trustees:

"After careful consideration of your two letters dated Dec. 20, this board can only reiterate and reaffirm its position as stated in previous letters to your board of Sept. 30 and subsequent dates.

"With our united kindest regards, and wishing you all the greetings of the season,

"Very sincerely yours,

"BOARD OF TRUSTEES."

"Mr. Rowlands asked to have recorded in the minutes that he had read the minutes of the actions taken by the trustees during his recent absence, particularly the letters to the Board of Directors, and these actions taken by the trustees were wholly in accord with the unanimous intention of the Board of Trustees, and had his full approval."

[An extract from the trustees' records, page 715, Jan. 2, 1919, offered in evidence as Exhibit 377, and read by Mr. Krauthoff, as follows:]

"Mr. Watts came to the meeting and reported that he had been asked by the Board of Directors to come over to their meeting this morning and that the directors had handed him a letter which they had prepared asking him to report to their board any special actions of importance in the Publishing Society before he put them into effect. This gave Mr. Watts an opportunity to declare himself on the Deed of Trust, and he talked at length with the directors on this subject, and gave them to understand that, in obedience to the Deed of Trust and The Mother Church Manual, he had reached the decision that his instructions should come to him through the Board of

Trustees. Mr. Watts will embody in a letter to the trustees a copy of the letter he received from the Board of Directors.

"The trustees gave further consideration to their reply to the recent letter from the Board of Directors, which they had prepared at their last meeting, Dec. 31, and it was decided that each member of the board should sign the letter, as in previous correspondence, and that it should be sent at once to the directors."

Mr. Krauthoff—That is a letter already introduced in evidence, referring to the Philadelphia lawyer.

Mr. Whipple—Don't you remember the number of that exhibit?

Mr. Krauthoff—No, I do not.

[An extract from the trustees' records, page 740, Jan. 22, 1919, offered in evidence as Exhibit 378, and read by Mr. Krauthoff, as follows]:

"Mr. Watts reported the conversation he had had this morning with Mr. Dickey, who had returned to Boston last night, in which Mr. Dickey emphasized his conviction of the wrongness of the position of the trustees, and indicated to Mr. Watts that such a course would result disastrously to the business manager as well as to the trustees, intimating that it might be necessary to have recourse to the Manual By-Laws for the dismissal of members. . . .

"After the meeting convened, Mr. McKenzie came down and indicated by his appearance and expressions that he was disturbed regarding the situation between the directors and trustees, and would not sustain his statement made at a recent meeting that he approved the course which had been taken by the trustees relative to the Deed of Trust. The trustees had a long conversation with him, and told him of the correspondence and of our attitude in being defenders of the Deed of Trust and not aggressors in a church dissension. They also told Mr. McKenzie that unquestionably the time would come very soon when it would be necessary for him to definitely take his stand on the question in connection with his office as editor, and that this could not be avoided.

"Two letters were received from the Board of Directors dated today, one directing that certain changes be made in the announcement in The Christian Science Journal regarding the 'teaching year' and applications for advertisements in the Journal, making these latter apply to the Board of Directors rather than to the Publishing Society. This letter also requested a meeting with the Board of Directors at 10 o'clock, Monday, the 27th, to consider the question of handling correspondence on the above subject. The second letter made a change in the wording of one of the paragraphs in their former letter of Dec. 20.

"After considering these letters the trustees felt that it would be well to have Mr. Rowlands present as soon as possible, to have a full consideration by the whole board, and a wire was sent to

him acquainting him with the receipt of the letters and asking him to come to Boston at once. The wire was sent to him both at Picayune and New Orleans.

"The trustees put in a long distance call for Mr. Rowlands at Picayune for 10 o'clock tonight, at the publishing house."

[An extract from the trustees' records, page 757, Feb. 1, 1919, offered in evidence as Exhibit 379, and read by Mr. Krauthoff, as follows]:

"The counsel for the trustees, Justice Hughes, Mr. Strawn, and Mr. Whipple, met with the counsel for the directors, Governor Bates, Mr. Abbott, Mr. Krauthoff, and Judge Smith, at 10 a. m. in Mr. Whipple's private office in the Tremont Building, and were in session three hours.

"At 2 p.m. the trustees and the business manager met with counsel at Mr. Whipple's office, and were told the result of the morning conference. The directors claimed final authority in the following matters:

"1. The recognition of new churches.

"2. As to the eligibility of practitioners and nurses, who are members of The Mother Church, to cards in the periodicals.

"3. As to the entire policy of all the publications."

Mr. Krauthoff—I think that should read "editorial policy."

"4. As to matters affecting the cause of Christian Science and of church policy.

"5. That the salaries of the editors and of the manager should be subject to the approval of the directors.

"6. That vacancies in the Committee on Bible Lessons should not be filled without the approval of the directors (Manual, Article XXV, Section 5).

"The first two of these points the counsel for the trustees acquiesced in, because they had already been agreed to in the letter from the counsel for the trustees to the counsel for the directors, but the last four, being in conflict with the requirements of the Deed of Trust, were positively denied.

"Each of our counsel advised the trustees to express a willingness to consult with the directors on the last four points, and try to make all questions those of agreement, without defining the matter of authority. The trustees acquiesced in this arrangement, and the counsel for both boards then went into conference again, and the trustees retired to a near-by office in the suite.

"Mr. Strawn brought the trustees a written outline relative to the Journal cards acceptable to the directors, which the trustees assented to, and which was afterwards initialed by Messrs. Bates, Smith, and Krauthoff. This is as follows:"

Mr. Krauthoff—Then follows the memorandum which was set out in the letter of Governor Bates to Mr. Whipple, in the early part of February, 1919, and which has been heretofore offered in evidence.

Mr. Streeter—Is it printed?

Mr. Krauthoff—In the record.

Mr. Whipple—What is the number of the exhibit?

Mr. Krauthoff—I do not know.

Mr. Streeter—Can't this be referred to now, so that we can find it?

Mr. Krauthoff—Well, I will undertake to get the exhibit number between now and 2 o'clock.

[Mr. Krauthoff continued reading, as follows]:

"Judge Smith came from the directors and reported that they were in accord with the proposal of counsel that the Board of Trustees turn over to the Board of Directors the question of the acceptance of applications from churches, societies, practitioners, and nurses covered in points 1 and 2, and as to matters under discussion not covered by these two points, neither side waived its contentions, but it was understood that the two boards would resume their meeting with the hope that agreement regarding all points of difference might then become possible. This arrangement was also acceptable to the Board of Trustees, and it was finally arranged that the trustees should meet the directors in conference in the board room of The Mother Church at 10 o'clock Monday morning."

Mr. Krauthoff—I have reached the point, if Your Honor please, where I desire to confer with my associates. It is now practically 1 o'clock.

The Master—Very good. I suppose you can hardly rely on these records, made after the controversy had developed itself, as showing any course of conduct or acquiescence material to the purposes of the case.

Mr. Krauthoff—We do not offer it for the purpose of showing the conduct; they are offered for the purpose of showing a change in the conduct.

The Master—They certainly seem to be material, if at all, for a different purpose than that for which the earlier part of the records is offered.

Mr. Krauthoff—They are offered for the purpose of telling a continuous story, showing how it was done in the days of peace and what is being done in days of disagreement.

The Master—What is done in days of disagreement we have had a good deal of evidence about already.

Mr. Krauthoff—I was preferring to tell the story consecutively and continuously; I am almost through.

Mr. Bates—These last records, if Your Honor please, also bear on the question which has been raised as to whether or not the directors did anything except what was expected of them in their endeavor to settle these other problems; in other words, this alleged agreement between counsel which was arrived at was left open, as this record shows, for the very purpose of seeing whether or not the parties could not get together on these other matters; and yet because they did attempt to get together they have been accused of violating the agreement.

Mr. Whipple—No; we say they didn't attempt to get together, but they reopened the discussion within two days.

Mr. Bates—Well, of course the record is offered for the purpose of bearing on that.

The Master—Of course you are entitled to bring out just what happened.

Mr. Streeter—Before we adjourn let me remind Your Honor and Governor Bates that he made a very nice promise to me that he would produce a letter this morning from Mr. Dittemore to Mr. Gilmore of New York, which ought to have gone in yesterday, but you did not have it here and said you would have it this morning. I would like to put it in now or have it so that I can put it in at an early date.

Mr. Bates—We have the letter here, I think.

Mr. Streeter—I could do it in two minutes.

Mr. Bates—That is the letter, if I remember right, that Your Honor suggested you could not see what bearing it had on the case. Therefore I assume when the General offers it Your Honor will want to pass on that question.

The Master—Nevertheless, General Streeter wants it, and you have agreed, I understand, to give it to him.

Mr. Bates—I have agreed to have it here, and it is here.

The Master—It is here.

Mr. Bates—I haven't read the letter myself.

Mr. Streeter—I can see that Governor Bates and Mr. Krauthoff want to go to lunch; it is now 1 o'clock.

The Master—Perhaps before we do we can settle about this letter.

Mr. Streeter—I would like to look at it.

The Master—It is here.

Mr. Bates—Do you refer to Mr. Dittemore's letter to Mr. Gilmore?

Mr. Streeter—Yes. Let me see it, will you, please?

Mr. Bates—We have no objection to it. (Handing letter to Mr. Streeter.)

Mr. Streeter—Well, I will look at it and see this afternoon.

Mr. Bates—The General is now undecided as to whether he wants to put it in; there is just time enough to read it.

Mr. Streeter—Oh, there will be time enough after lunch. You are willing I should take it, Governor?

Mr. Bates—Certainly.

The Master—If you have no objection to his keeping it; we will stop until 2 o'clock.

[Recess till 2 p. m.]

#### AFTERNOON SESSION

Mr. Streeter—If Your Honor please, by agreement I put in this letter that was called for yesterday. Governor Bates has been good enough to furnish it. This letter is on the letter-

head of John V. Dittemore, Boston, Massachusetts, and is dated March 12, 1919, and is marked in large letters at the top—capital letters, "Confidential," and addressed to Mr. Albert F. Gilmore, 52 Vanderbilt Avenue, New York City.

"Dear Mr. Gilmore:

"I am glad to have the information contained in your letter of March 11.

"The memorandum which reached you through Mr. Root was never signed, ostensibly because of a technical objection by Mr. Eustace that the Deed of Trust should be the only signed document relating to the Publishing Society business. It was definitely agreed, however, as the minutes of that meeting show, that the provisions of the memorandum were accepted by both the directors and the trustees."

This, if I may interject, refers to the memorandum of February, 1916.

"It was learned only a few weeks ago, however, that immediately following the conference at which this agreement was made, the trustees returned to their office in the publishing house whereupon Mr. Eustace tore his copy into bits. I do not believe that it would be wise for you to use the document itself, but the story of our efforts to remove the abuses at that time and the tearing up of the document are matters of quite general knowledge.

"Upon my return home I discovered an exceedingly interesting and instructive situation. Nothing appears to have been left undone that gives promise of securing some semblance of concessions from the trustees which will justify their continuance in office. There seems to be the greatest fear of publicity, litigation, or investigation when the policy being pursued is the surest guarantee that these will all come. I should not be surprised to see a recombination and realignment of most any kind to prevent the common danger.

"In the meantime, telegrams and letters continue to come in from the most responsible sources in the movement, all pledging their loyalty to the board, but predicating it upon the sustaining of Mrs. Eddy's By-Laws in the spirit and the letter and keeping pure the channels she has provided. I am convinced that we are rapidly approaching, not only the most interesting, but perhaps the most vital moment in the history of the organization. There is cause for the greatest rejoicing. 'This sickness is not unto death, but for the glory of God, that the Son of God might be glorified thereby' (John 11:4). Principle is going to win as great a victory for the 'children of Israel' of today who are faithful as it ever did in the centuries gone by. Truth is an 'automatic rejecter,' and those who bend the knee to a modern Baal in any form of unfaithfulness to the idea and ideal which Mrs. Eddy has founded, will ex-

perience whatever reward their motives and actions demand.

"Joshua 7:13.

"Very sincerely,

(Signed) "JOHN V. DITTEMORE."

[Letter of March 12, 1919, John V. Dittemore to Albert F. Gilmore, is marked Exhibit 380.]

Mr. Streeter—As a part of this exhibit I read the reference—Joshua 7:13, as follows:

"Up, sanctify the people, and say, Sanctify yourselves against tomorrow: for thus saith the Lord God of Israel, There is an accursed thing in the midst of thee, O Israel: thou canst not stand before thine enemies, until ye take away the accursed thing from among you."

Mr. Whipple—If Your Honor please, I take it that that letter is not accepted as evidence in any way in the trustees' case?

The Master—I suppose it stands just where the similar letters produced by General Streeter in Mr. Dittemore's case stood?

Mr. Whipple—Yes, Your Honor.

The Master—I see no ground for any distinction.

Mr. Whipple—Yes, Your Honor.

Mr. Krauthoff—Trustees' record of Feb. 17, 1919, page 775:

"Mr. Dickey came to the meeting informally, on his own behalf, and discussed with the trustees for an hour or more what he believed to be a disturbed situation in the field at large, and expressed his hope that the trustees would signify in some way in writing what had been stated repeatedly by them—that they were in full accord with the requirements of The Mother Church Manual and were willing to abide by them in connection with their work. The trustees reiterated to Mr. Dickey that they meant exactly what they all had said at the meeting with the directors on Feb. 3, that to them there was no inconsistency between the Deed of Trust and The Mother Church Manual, and that it was their purpose to work all questions out regarding the true demonstration with the Board of Directors, and that with this assurance they could see no good reason for making any written statement. Mr. Dickey explained to the trustees that he had come to them on his own responsibility, as an individual Christian Scientist and because he wanted to help in the solution of the problem."

[That portion of record of meeting of the Board of Trustees, dated Feb. 17, 1919, as read by Mr. Krauthoff, is offered in evidence as Exhibit 381.]

Mr. Streeter—Mr. Krauthoff, will you be good enough to give the date of that?

Mr. Krauthoff—Feb. 17, 1919.

Now, Feb. 18, 1919, page 777:

"Mr. Merritt came to the meeting informally and spent a half an hour with the trustees discussing the general situation in the most kindly manner. His whole attitude was simply

to recommend what he felt would make for greater unity of action between the two boards.

"The trustees sent a night letter to Mr. Rowlands telling him that all was going well, and reporting the visits of the two friends from across the street."

[That portion of the record of meeting of Board of Trustees, dated Feb. 18, 1919, as read by Mr. Krauthoff, is offered in evidence as Exhibit 382.]

Mr. Krauthoff—March 6, 1919:

"Mr. Dickey came to the meeting at 3:40 to further discuss the question of the relationship of the two boards, and some plan for working out unity of action.

"After more or less discussion, Mr. Dickey read section by section the draft of the directors' memorandum which has been under consideration a number of times during recent years, and asked the trustees to express such modifications as they felt would be acceptable to them,"—

I think this has been offered in evidence by somebody, where they referred to the four copies—no, no, it has not been.

"After more or less discussion, Mr. Dickey read section by section the draft of the directors' memorandum which has been under consideration a number of times during recent years, and asked the trustees to express such modifications as they felt would be acceptable to them, in order that he might present these to his colleagues. The question was tentatively discussed and a number of changes made, and it was agreed that the publishing house should make copies of the corrected memorandum and send four of these to Mr. Dickey and keep copies for themselves, in order that it might be given earnest and thoughtful consideration before making any decision. Miss Farr was asked to make these copies, and later in the evening, Mr. Rowlands and Mr. Ogden compared them with the original and sent the four copies to Mr. Dickey's residence.

"Later on in the evening Mr. Eustace also came to the publishing house, and the trustees for a few moments discussed the memorandum, but left the whole question open until further consideration tomorrow."

[That portion of the record of meeting of Board of Trustees, dated March 6, 1919, as read by Mr. Krauthoff, is offered in evidence as Exhibit 383.]

Mr. Streeter—Mr. Krauthoff, isn't it a fact, or don't you understand that the memorandum there referred to was that original memorandum of February, 1916?

Mr. Krauthoff—Yes, it is the memorandum of Feb. 24, 1916.

Mr. Streeter—The one drawn by Mr. Dittemore?

Mr. Whipple—We do not so understand it.

Mr. Krauthoff—I do not know if it was drawn by Mr. Dittemore.

Mr. Thompson—It has all gone in

by Mr. Rowlands—this same passage, and Mr. Rowlands has testified.

Mr. Krauthoff—It is the memorandum of Feb. 24, 1916. I have no knowledge of who wrote it. It is the memorandum which I understand you have attached to your answer.

Mr. Streeter—Yes.

Mr. Krauthoff—March 7, 1919: "The trustees gave careful consideration to their amended draft of the agreement discussed with Mr. Dickey yesterday, the changes being those which had occurred to them individually and collectively. No further word was had from Mr. Dickey consequently action regarding the agreement was deferred awaiting some word from him."

[That portion of the record of meeting of Board of Trustees, dated March 7, 1919, as read by Mr. Krauthoff, is offered in evidence as Exhibit 384.]

Mr. Krauthoff—March 10, 1919:

"At 12 o'clock they met by appointment with the Board of Directors. Mr. Dickey, in company with Judge Smith, had prepared a new and shorter memorandum which the directors wished to discuss with the trustees, and this was read paragraph by paragraph twice, and given some brief discussion. The trustees, however, asked to take the memorandum for their own consideration and return it with their comments tomorrow. This was satisfactory to the directors, and the conference adjourned at 1:15."

[That portion of the record of meeting of Board of Trustees, dated March 10, 1919, as read by Mr. Krauthoff, is offered in evidence as Exhibit 385.]

Mr. Krauthoff—March 11, 1919:

"The trustees met at 11:30 a. m. on Tuesday, March 11, with all members present, and opened the meeting with the usual prayer.

"A few additional changes were considered in the memorandum which was to be discussed today with the Board of Directors.

"The trustees met in conference with the directors at 12 o'clock.

"Mr. Rowlands, as chairman, read the memorandum, paragraph by paragraph, on which there was more or less discussion. The directors did not concur in all the provisions of the memo., because it did not contain a provision stating that the Board of Directors had final supervision over the work of the publishing house. The memo. did, however, contain a paragraph which agreed that no important action affecting the Christian Science movement or the 'net profits' should be taken without the concurrence of the two boards. The trustees unanimously and steadfastly maintained that they could not concede that the final authority for The Christian Science Publishing Society under the Manual and the Deed of Trust could rest other than with the trustees, and they positively denied that the directors had final authority. The trustees left with the directors the memorandum for their further consideration."

[That portion of the record of meeting of Board of Trustees, dated March 11, 1919, as read by Mr. Krauthoff, is offered in evidence as Exhibit 386.]

Mr. Krauthoff—Then the next record is March 17, 1919, at which the trustees were at the directors' office with respect to the vote of dismissal.

Mr. Streeter—Let me see that, please.

[Volume handed to Mr. Streeter by Mr. Krauthoff.]

Mr. Krauthoff—That is all the records which we are offering at this time, if Your Honor please—of the trustees' records.

Mr. Whipple—If Your Honor please, I would like to have go into the record the letter that I referred to at the time it was reached in chronological order. Page 137, July 13, 1909. The original records are not here; they are in use by the stenographer. The record reads as follows:

"The following letter was delivered to the trustees by Mr. Dittemore:

"Boston, Mass., June 26, 1909.

"The Trustees of the Christian Science Publishing Society, Judge Clifford P. Smith, Secretary, Falmouth and St. Paul Sts., Boston, Mass.

"Dear Friends:

"At a time when the members of The Christian Science Board of Directors received no compensation for their work, the profits of the Christian Science Hymnal were voted to them pursuant to the desire of the Pastor Emeritus that "the Copyright of the hymnal of the Christian Science Board of Directors and of course the revenue to go to them," and these profits have been paid to the individual members of the board since that time. The salary since paid to the members of this board has been fixed with these profits in contemplation, and it now appearing to the present members of the board that the enlargement of the Hymnal which is in process of preparation for publication will greatly increase the sale of the book and thereby increase the profits to a degree not contemplated in the original transaction, they now desire to relinquish their right to the profits, and for this purpose of carrying this desire into effect, they hereby direct you to pay over to the Church Treasurer the profits derived from this publication, as you pay over the profits of other publications under Mrs. Eddy's trust conveyance of Jan. 25, 1898, and under the Church Manual and By-Laws.

"You will, of course, pay out of the Hymnal account all sums due on that account and all sums due or to become due on account of the preparation of the new Hymnal.

"IRA O. KNAPP,

"STEPHEN A. CHASE,

"ARCHIBALD McLELLAN,

"ALLISON V. STEWART,

"JOHN V. DITTEMORE."

"After receiving this letter the trustees directed the manager to con-

tinue to keep a separate account for the Hymnal and to pay the net profits of the Hymnal to the Church Treasurer."

[That portion of the record of meeting of Board of Trustees, dated July 13, 1909, as read by Mr. Whipple, is offered in evidence as Exhibit 387.]

Mr. Thompson—What is the date of that?

Mr. Whipple—The letter from Mr. Dittmore is dated June 26, 1909. The meeting at which the letter was made a part of the records was July 13, 1909.

Mr. Streeter—I ask Mr. Krauthoff if he knows if the last paragraph of the trustees' records of the meeting of March 17, 1919, has been put in?

Mr. Krauthoff—I did not offer it.

Mr. Streeter—If not, it should go in now.

Mr. Bates—If Your Honor will pardon me, I do not think either General Streeter or Mr. Whipple is following the suggestion which Your Honor made this morning. They will have their time for putting in such portion of the records as they desire; I do not see why they should interrupt our case at this time.

Mr. Whipple—I thought this was our time, and I was doing it.

Mr. Bates—I did not so understand it.

Mr. Whipple—Well, why not; you put in all the directors' records you wanted to; now I am putting in ours.

Mr. Bates—I am ready to take Your Honor's ruling whether it is a proper time for Mr. Whipple to be putting in these records.

Mr. Whipple—Now, if Your Honor please, if the regular proceeding had been followed some one would have been put on the stand as a witness through whom these records would go in and be read. We waived the formality of a witness being put on the stand; but the position remains just the same. They having put in through this hypothetical witness the records that they want, it becomes our turn to put in what we desire to put in by way of cross-examination, or quasi cross-examination. They cannot escape our right to put in the records we desire simply by not calling a witness but by taking our record books and reading them themselves. Now, the next record that I desire to read—

Mr. Bates—Aren't you going to wait for the Court to rule?

Mr. Whipple—I thought you had subsided.

Mr. Bates—It is a question for the Court to decide; not Mr. Whipple.

Mr. Whipple—I thought it was so clear that you had subsided and did not want a ruling.

The Master—Let us find out all there is to find out about it. What have you to say, Governor Bates?

Mr. Bates—I assume, Your Honor, that these gentlemen will have a chance to put in their evidence in re-

buttal at the proper time. Mr. Whipple has already put in what he wanted to put in from the records. Now we are putting in our case. I submit that he should wait to put this in until the time comes for the reply by rebuttal by the evidence, and not to interrupt our case to put in his records at this time.

Mr. Whipple—I suppose learned counsel would call cross-examination an interruption of his case, but the principle is somewhat elementary that you have a right to cross-examine and to interrupt distinguished gentlemen like this.

Mr. Bates—I do not assume because I state a thing it is always so. I haven't that degree of assumption that some gentlemen have.

Mr. Whipple—Yours is presumption instead of assumption.

The Master—We must try to treat everybody as nearly alike as we can here. Now, in putting in your case, your first witness, the first one you spent any time about, was Mr. Johnson, wasn't it? You called him because he was the clerk, having charge of the records.

Mr. Streeter—It was Mr. Jarvis.

The Master—Then you offered a lot of directors' records. He was cross-examined about them, was he? And if we go back farther to the trustees' case, they called the person who kept their records, I think. And they introduced such of the trustees' records as they wanted to put in, referring to him as the person who kept them. Am I right?

Mr. Bates—Yes, Your Honor; they have already put in the records presumably what they wanted to. And we have the right to put in the records we wish.

The Master—Then you cross-examined, didn't you, and called for further records?

Mr. Whipple—And put them in, if Your Honor please, on cross-examination.

The Master—And put them in. Is that not so?

Mr. Bates—I assume we did, Your Honor, as a part of the cross-examination, but not in our case.

The Master—As a part of your cross-examination. I am a little uncertain in what light I ought to consider the reading of the records this morning. I was a little doubtful about it when you began to read them. You did not call any witness; you did not put any person on the stand as the person having the custody or control of the records, or as having had anything to do with keeping them: you simply read them.

Mr. Bates—Simply because the records had already been introduced by the plaintiffs.

The Master—How can that alter the case? I do not quite see?

Mr. Bates—Why, Your Honor, these record books had been produced with the understanding that we should have a chance to read from them any-

thing that was material, that the Court considered important, and that is a procedure which I do not think is unusual.

Mr. Whipple—Where is that understanding expressed or stated?

Mr. Bates—What is that? That understanding has been all the way through the trial. You have done the same thing.

Mr. Whipple—I did it with a witness on the stand.

The Master—That is just the point, now, that I am trying to find out. Have they done anything like that? Have they done the same thing, namely, putting into evidence records simply by taking them up and reading them, not in connection with anybody's testimony?

Mr. Thompson—No.

Mr. Bates—Yes. If I understand it aright, Your Honor, these records have been produced as the trustees' records, and it was understood that either one should have a right to put in whatever he thought was competent from those records. We have been doing that. We might have gone through the formality of calling Mr. Eustace or Mr. Ogden back to the stand, but it would have been simply a waste of time.

The Master—Who kept the trustees' records?

Mr. Bates—Mr. Ogden, I think, kept the trustee's records.

The Master—Who was the man who was examined with regard to them?

Mr. Whipple—They were kept by different members of the board at different times.

The Master—Oh, yes.

Mr. Whipple—Sometimes Mr. Ogden was secretary, sometimes Mr. Rowlands, sometimes Mr. Eustace.

Mr. Bates—It is simply a question of the orderly procedure which I raise, and, as I stated, if Your Honor thought that you could get that matter better by having Mr. Whipple put it in at this time, I have no objection, but I had assumed that he would wait until he was putting his case in in rebuttal before he attempted to reply to these matters.

The Master—Is it understood that the trustees or Mr. Dittmore now have a right to pick up any volume of the directors' records and read it into the case?

Mr. Bates—They have been doing so.

The Master—Without calling any witness at all in connection with it?

Mr. Bates—I assume so. The records have been identified. The only question now is whether or not the record which they wish to read is one which Your Honor thinks is competent.

The Master—Oh, subject, of course, to materiality and competency.

Mr. Bates—Certainly.

The Master—But I do not understand that that has been done thus far up to this point.

Mr. Thompson—No.

The Master—It may be a good thing to do, but we have not so far done it.

Mr. Bates—It was done this morning, surely, with the consent of all parties.

Mr. Whipple—Simply because we waived your calling a witness, assuming that the—

The Master—The difficulty there is to know precisely what was assented to. They raised no objection to your reading these records. To my mind, it is only a question of what will be the most expeditious way, and save the most time. May it not be a good idea, now that we have all got our minds on these records, and have heard them consecutively, if the other parties have anything to suggest as to anything that ought to be read in that connection as showing something further, to have it read now?

Mr. Bates—Well, I certainly do not object to it, if Your Honor please.

The Master—It does not seem to me a very vital matter either way, but I would like to get some course that all parties will agree to. What do you say, General Streeter? Is there any objection to that?

Mr. Streeter—It is all right, only there are quite a number of entries in those records, I infer, that we are not prepared to put in now, simply because we have not scrutinized them closely enough.

The Master—Well, you had a good deal—They are not your records, that is true—

Mr. Streeter—What, Your Honor?

The Master—I will withdraw what I was about to say. Can you show me, Governor Bates, any prejudice that you will be likely to sustain?

Mr. Bates—Oh, no, Your Honor; I do not think that it will prejudice our case a particle, and if Your Honor thinks that that is a better way—

The Master—I want to do what is best for all parties, and preserve the rights of all parties.

Mr. Bates—We have no objection at all, if Your Honor thinks that it is admissible.

The Master—Now, we will understand that if in connection with what Mr. Krauthoff has read there is anything further which the other parties think ought to be read to make what he has read perfectly intelligible—

Mr. Streeter—If Your Honor please, so far as we are concerned, we think that it will be more expeditious if before we try to put in scattered bits of this record some of us take and go over the entire record and see what has not been put in, and make up a list so that we can read it chronologically, and without any delay. If we undertake to pick out all that we want now it will make a good deal of work, and we have not had time—

The Master—You have not yet had the opportunity, I understand, to go over the trustees' records in full?

Mr. Streeter—No. Neither have we carefully scrutinized the directors' records, except for a certain period.

We will put all these in in a bunch later.

The Master—In that case, Mr. Whipple, if the counsel for Mr. Dittmore are not prepared now to put in what else they think should go in from the trustees' records, would it not be better to wait until that can be done all at once by you and Mr. Dittmore's counsel?

Mr. Streeter—So far as we are concerned, Your Honor, we have no objection to any course that the other counsel may desire to pursue, but we are suggesting that course for ourselves.

Mr. Whipple—Ours is so short and direct that we would rather put it in now, if Your Honor please, so that it will be associated in the record with what has already gone in.

The Master—I think that there is an advantage there, so that you can find it all together in one place as nearly as possible. Very well; you may continue.

Mr. Whipple—As bearing upon the kind of things that were the subjects of conference between the trustees and the directors, things that were concededly within the scope of the authority of the trustees, we offer a record of March 13, 1916, from the trustees' records. It reads as follows:

"The Board of Trustees met with the Board of Directors in The Mother Church at 2 p. m., and remained until 3:55 p. m., discussing matters of business, including the Bible Lesson Committee work."

[The record of the meeting of the Board of Trustees of March 13, 1916, from which the foregoing extract is read, is Exhibit 388. R. H. J.]

The Master—I find that Mr. Krauthoff read a record of March 13, 1916.

Mr. Whipple—He did not read that, if Your Honor please.

The Master—Now, this is part of the record of that date, which he did not read, I understand?

Mr. Whipple—Well, I take it so, yes, Your Honor. This was not read.

Mr. Krauthoff—My recollection is that I read it.

Mr. Bates—That is my recollection. The Master—Read what he just read now?

Mr. Krauthoff—Yes, sir.

Mr. Whipple—We followed it very closely, and we think he did not.

Mr. Krauthoff—Nor do we concede that that is a subject upon which the trustees have sole jurisdiction.

Mr. Whipple—Perhaps you do not, but Mrs. Eddy's sacred deed provides for it, and you are finding yourself contradicted right along.

The Master—I think that we will not talk about Mrs. Eddy's deed every time—

Mr. Whipple—The trouble is that I was replying to this gentleman who was interrupting me.

The Master—Now, go on and read what you want from that record of March 13, 1916.

Mr. Whipple—I have read it, that is, all we want.

The Master—I have an impression that we have had it once.

Mr. Whipple—We were following it, or trying to follow it, as counsel read it.

The Master—Very well.

Mr. Whipple—That is all that we care to offer of the records, is that.

Mr. Thompson—Without waiving the right that General Streeter asked for, of a general inspection of these records, and putting in anything all together which we may find, in connection with what Mr. Krauthoff has read, I should like to put this in, unless it has already gone in—

The Master—Do I understand that Mr. Whipple is all through?

Mr. Thompson—Yes; he says that he is all through.

Mr. Whipple—So far as the records are concerned, I desire to call for a letter also bearing upon this record—a letter of Mrs. Eddy, in volume 3.

Mr. Withington—283 in the book.

Mr. Whipple—Page 283. Is that the page number, or the number of the letter?

Mr. Withington—It is the page number, I think.

The Master—You call for that in connection with what you have just read?

Mr. Whipple—Yes, Your Honor, and especially in connection with the statement of counsel that they do not concede that the Bible Lesson Committee work was within the scope of the trustees' activities.

[A book is passed by Mr. Dane to Mr. Whipple.]

The letter is No. 283 of the collection, on page 137 of volume 3 of Mrs. Eddy's letters. It has the scroll "M. B. E."

"Pleasant View,  
"Concord, New Hampshire, Aug. 23,  
1901.

"Dear Student:

"The Bible Lesson Com. (for 'committee') is not included in the last by-law. This Com. belongs to the Publishing Society.

"With love,  
"M. B. EDDY."

[The letter of which the foregoing is a copy is Exhibit 389, R. H. J.]

That letter is all of it in the original handwriting of Mrs. Eddy herself.

The Master—Now, Mr. Thompson.

Mr. Thompson—Now, in the meeting of March 17, 1919, speaking of their calling upon the directors, and of their being notified of the resolution attempting to remove Mr. Rowlands, it goes on to say:

"The directors intimated that another action had been taken by them which would be made known later on in the day, and which later developed to be the retirement of Mr. Dittmore from the board, and the appointment of Mrs. Knott in his place. . . .

"Mr. Dixon came to the meeting about 4:30, and reported that he had been two hours with the directors discuss-

ing the action of this morning, and that they had requested him to confer with the trustees with a view to ascertaining if some agreement could not be reached regarding the situation between the boards. They stated to him that they were willing to agree to the memorandum last submitted by them. The trustees explained to Mr. Dixon, paragraph by paragraph, why they felt it was necessary to make changes in the directors' memorandum as submitted by the trustees to the directors at their meeting last week. Mr. Dixon took both copies for consideration, with a view to discussing the question fully with the directors tomorrow."

[The foregoing extracts from the record of the meeting of the Board of Trustees of March 17, 1919, are Exhibit 390, R. H. J.]

That is all we desire to put in at this time, but we reserve the right mentioned by General Streever to make a systematic inquiry into the various volumes of these records and see whether there is anything more that ought to go in, in behalf of Mr. Dittmore.

Mr. Krauthoff—Now, if Your Honor please, supplementing these trustees' records, there was a reference to them with respect to the proposed increases of prices of the periodicals, and I would desire at this time to offer a letter from the directors to the trustees of April 30, 1917. I suppose you have the original?

Mr. Whipple—Perhaps so. I will look and see. Under the same restrictions and limitations that affect the other evidence, we are content that that shall be read. In other words, we claim that it does not show any estoppel by conduct, but, if it did, it would not be admissible.

Mr. Krauthoff—

"April 30, 1917.

"Board of Trustees,  
"The Christian Science Publishing Society,

"Boston, Massachusetts.

"Dear Friends:

"I am instructed by The Christian Science Board of Directors to say that after further consideration of the question of increase in the prices of the periodicals, it has seemed to the Board, as they indicated to you on the day of the recent conference, that the way in which the announcement of this change is presented to the field is of paramount importance. Inasmuch as the field holds the directors responsible in all matters affecting the field, they are anxious, as they have no doubt your board is, to have this important statement go out in the most effective way. They believe that what is said should be in no way apologetic, and that it should definitely cover three points. These points are: First, an explanation of the reason for a change of price; second, a statement of just what the change will be; and third, a call to the field to realize more clearly the responsibility which is

theirs for giving all of our publications a wider circulation. Inclosed herewith is a statement which the directors believe will accomplish the desired result.

"The directors are heartily in accord with your action and on April 18th it was unanimously voted that the board approve the proposal of the Trustees of The Christian Science Publishing Society to increase the price of the periodicals published by them.

"Very sincerely,

"CHAS. E. JARVIS.

"Corresponding Secretary for The Christian Science Board of Directors."

Mr. Whipple—We have the original, if you desire it, and a copy of the answer.

Mr. Krauthoff—I have the answer, thank you.

Mr. Whipple—Yes. Will you read that?

[The original letter from Charles E. Jarvis to the Board of Trustees of The Christian Science Publishing Society, dated April 30, 1917, of which the foregoing is a copy, is marked Exhibit 391. R. H. J.]

Mr. Krauthoff—This is the answer:

"April 30, 1917."

This is on the letterhead of The Christian Science Publishing Society.

"The Christian Science Board of Directors,

"Falmouth and St. Paul Streets,  
"Boston, Massachusetts.

"Dear Friends:

"Thank you for your letter dated today relative to the proposed increased prices for our periodicals, and for the text of the announcement of this change of prices which accompanied your letter. The announcement is adequate and satisfying in every respect, and the only change which it seems to us necessary to make is to add the single copy rate to the table of prices, and in the paragraph which follows to call attention to subdivided subscriptions and to the fact that the new schedule gives one subscription price to Christian Scientists throughout the world.

"It is planned to print the announcement in the Sentinel of June 2, in order that it may be known before the time of the annual meeting, and also in the July issue of the Journal. It is further planned to send advance galley slips of the announcement to the reading-rooms in countries other than the United States and Canada, in order that the announcement may be made practically at the same time to all Christian Scientists throughout the world.

"A copy of the announcement as amended, and the original draft, are inclosed.

"With best wishes,

"Yours sincerely

"Board of Trustees.

"HERBERT W. EUSTACE,

"Secretary."

[The copy of letter of which the

foregoing is a copy is marked Exhibit 392. R. H. J.]

Mr. Krauthoff—In that connection I desire to offer this announcement as it appeared in the Christian Science Sentinel of June 2, 1917, over the signature of The Christian Science Publishing Society. "New Prices for Our Periodicals." It covers over a column, and I will read the part which is vital. It begins with the statement of the increase in price, and continues:

[This article, entitled "New Prices for Our Periodicals," Sentinel, June 2, 1917, is offered in evidence as Exhibit 393, and is read by Mr. Krauthoff, as follows:]

"As Christian Scientists catch a glimpse of Mrs. Eddy's vision of the Church of Christ, Scientist, they commence to understand more clearly the means which her demonstration has provided for the extension and broader usefulness of the present Church activities. They then see what lay behind her earnest hope that Christian Scientists would support our literature. The effectiveness of a subscription to the Journal, Sentinel, Herald, Quarterly, or Monitor increases in direct proportion to the understanding of the subscriber as to what is his privilege and therefore his responsibility to the Christian Science literature. The financial returns from the Christian Science publications constitute not only an expression of value received for the contents of the publications, but they also furnish a substantial part of the financial means for supporting and extending all the activities of The Mother Church, the effects of which reach to every part of the earth.

"The Christian Scientist whose 'eye is single' to the limitless opportunity which today awaits his awakened and selfless activity, will extend an even more hearty and effectual support to our periodicals than heretofore. In this vital hour of the world's history will he especially give his earnest help to enable The Christian Science Monitor, the great 'apostle of the Gentiles' in this age, more efficaciously to fulfill its mission as the world's medium of circulation and exchange for truer ideas and ideals of human experience approaching the true substance and vitality of the universe."

Mr. Krauthoff—The same notice appeared in the July, 1917, Journal. That is all, if His Honor please; I will yield to Mr. Dane.

The Master—What will you do next, Mr. Dane?

Mr. Dane—We desire to call Miss Warren. I desire to take up now the matter of the Manuals, that was interrupted by the cross-examination of Mr. Johnson and Mr. Jarvis.

Lucia C. Warren, Recalled

The Master—Miss Warren, I think you will have to make a little effort now to speak as loud as you can and



as distinctly, so that those gentlemen farthest from you can hear.

Q. (By Mr. Dane) Miss Warren, you have been employed in the office of the secretary of the Board of Directors for how long a period? A. Over 12 years.

Q. Were you employed there before Mrs. Eddy passed on? A. I was.

Q. And while you were there did your office receive communications from her? A. It did.

Q. In her handwriting? A. Yes.

Q. Have you been engaged in making a collection of Mrs. Eddy's original letters and papers? A. I have.

Q. For how long a period had you been thus engaged? A. I should say five or six years.

Q. And during that period of time substantially how many of Mrs. Eddy's original writings had come under your eye? A. Over seven thousand.

Q. Are you familiar with her handwriting and her signature? A. I am.

Q. I show you this book—

Mr. Whipple—If you will pardon me, did she ever see Mrs. Eddy write?

Q. Miss Warren, Mr. Whipple wants to know if you ever saw Mrs. Eddy write? A. I never did.

Mr. Whipple—I think that is an essential of a handwriting expert. She can only know by comparison of these other signatures, said to be those of Mrs. Eddy, and if you think you have qualified her as an expert on Mrs. Eddy's handwriting, I submit, if Your Honor please, counsel has not done so. I think by submitting them to General Streeter, who does know her handwriting and has seen her write many times, possibly we can make an agreement.

Mr. Dane—I have concluded the preliminary examination of Miss Warren, and I have nothing further to ask her on the question of whether she is qualified or not to identify Mrs. Eddy's writing and her signature.

Mr. Thompson—I think she is not.

Mr. Whipple—Well, I don't care to ask any further questions, because it is so perfectly clear that she never saw her write. You never saw Mrs. Eddy, did you?

The Witness—I never did.

Mr. Whipple—Well, it is a curious handwriting expert when they never saw the person, even, whose handwriting she is asked to judge about.

Mr. Dane—I understand, if Your Honor please, that it is the common, ordinary way of proving qualifications to prove that the witness has seen the person write, but I do not understand that that is the exclusive method of qualifying a witness on handwriting. Here is a witness who has seen over 7000 pieces of Mrs. Eddy's handwriting, seen letters come to her in her official capacity as a clerk of the Church.

The Master—Isn't the objection there, then, how did she know that these were Mrs. Eddy's handwriting? How can she know?

Mr. Dane—Well, I don't want to

waste much time about it; I will take Your Honor's ruling. If Your Honor thinks the witness is not qualified of course I can prove it by other witnesses.

The Master—If there is any prospect of any dispute about it, if the genuineness of any signature of Mrs. Eddy is to come up as a question in this case, then I think you have not qualified this witness as an expert to prove the genuineness of her writing.

Mr. Dane—You may step down, Miss Warren.

Mr. Whipple—I do not wish to make any technical objection with regard to Mrs. Eddy's signatures or writing. If it can be shown to General Streeter, who does know about it, or some person who ever saw Mrs. Eddy write, we can very likely make an agreement; but the idea of putting on as an expert in the handwriting of a person who has passed on a person who never even saw her, founding the whole testimony upon hearsay, is a novel proposition.

The Master—Well, let us see if we cannot get some agreement about it. It does not seem to me quite possible that there can be a serious dispute.

Mr. Whipple—What do you want? Have you anything in particular that you want to offer?

Mr. Dane—You have been talking so long I don't know just where I am at.

Mr. Whipple—Well, then, I will sit down till you find out where you are at; I have noticed for some time that you didn't know where you were at.

Mr. Dane—I appreciate that attitude very much.

Mr. Whipple—We will pause now to let you find out where you are at.

Mr. Dane—Are you all through?

Mr. Whipple—We are waiting for you to find out where you are at.

Mr. Dane—I understand General Streeter has no hesitation in saying that that signature is Mrs. Eddy's that I proposed to prove by Miss Warren. I understand that that is satisfactory to Brother Whipple.

Mr. Whipple—Now, let me see it, please.

Mr. Dane—I will show it to you.

Mr. Whipple—Thank you. (Examining volume.)

Mr. Streeter—I haven't any doubt that she wrote that.

The Master—Do I understand that there is an agreement about that signature?

Mr. Dane—I understand that General Streeter has identified the signature on the title page of the book which I have as Mrs. Eddy's signature. I understand that that is satisfactory to Brother Whipple.

The Master—Nobody desires to cross-examine General Streeter as a witness on that?

Mr. Whipple—I have done so, if Your Honor please, privately. I am satisfied.

The Master—Very good. That may go down, then, on the record.

Q. Miss Warren, I show you a book entitled, "Church Manual of The First Church of Christ, Scientist, in Boston, Mass., 1895," and ask you when you first saw that book? A. The inside of it, last Saturday.

Q. When did you first see the book in its entirety, or about when? A. About October, last year.

Q. Where did you see it? A. In the vault of The Mother Church.

Q. Was that one of the books which came to The Mother Church from Mrs. Eddy's residence at Chestnut Hill? A. It was.

Q. And did it come to The Mother Church from her residence at Chestnut Hill after her passing on? A. It did.

The Master—Is that a book you have already marked for identification?

Mr. Dane—It has not been marked, and I want now to explain about this book.

The Master—What is the earliest book you did mark for identification?

Mr. Dane—The earliest book that I did mark for identification was 1895, the same date as this book. There appear to have been several editions issued in that year. If Your Honor will recall, at the time that the Manual of 1895, which I think was the fourth edition, was marked last week, I said that I was not sure that it was the exact edition that was adopted by the First Members, and written out in their records. Upon comparison with the By-Laws as adopted by the First Members, which are in evidence, with the book which was marked as an exhibit for identification, it was found not to be the set of by-laws that was there adopted but by comparison with the book which the witness has been testifying about, it is found that this book which I now hold, and which I now offer as an exhibit, does compare with the By-Laws that were adopted by the First Members, which have already been offered as an exhibit.

Q. I now ask you, Miss Warren, whether or not you have made a comparison of the By-Laws and Church rules and tenets as they appear in Volume 2 of the First Members' minutes, under date of Nov. 20, 1895, commencing on page 47— A. I have.

Q. —with the book which I have shown you, and about which you have testified? A. I have.

Q. And whether or not the Church By-Laws and rules as contained in the First Members' volume are the same as those appearing in this book? A. They are substantially the same.

Mr. Whipple—Well, substantially!

The Master—Can you tell us, Mr. Dane, how it happened that in 1895 there were editions of the Manual showing different by-laws?

Mr. Dane—I expect, Your Honor, although I have no definite knowledge, that there were some slight amendments that were made between the

editions of the Manual in the same year.

The Master—What edition is that?

Mr. Dane—This is apparently the earliest one—this is the third edition.

The Master—What edition was it that you offered?

Mr. Dane—It was the fourth that I offered last week, and I was under the impression then that it was the same that appeared in the book.

The Master—This, then, may be taken to be an earlier volume than any which you have so far produced?

Mr. Dane—It is, Your Honor. It is suggested that General Streeter only identified the signature appearing on the title page. I call his attention to the word "by," and ask him if there is any question but what that is also Mrs. Eddy's handwriting?

Mr. Streeter—I will answer that I think so, but I should not be so confident about it as I am about the signature itself. It is my impression that it is.

Mr. Dane—I will show this to Your Honor.

Mr. Whipple—If Your Honor please, if there is a difference between the By-Laws in the Manual of the same edition wouldn't it be proper that counsel should undertake to show any change by the First Members? If not, when and where changes were made by the First Members, some authority from Mrs. Eddy about it?

Mr. Dane—Well, it is not the same edition.

Mr. Whipple—Is it possible that we are going to attempt to receive these different editions without any authority from Mrs. Eddy for these changes?

Mr. Dane—It is not the same edition; there are no changes in the same edition.

Mr. Whipple—I thought you said there were in the 1895 edition.

Mr. Dane—You didn't quite understand me, Mr. Whipple. There are various editions apparently that were issued in the same year, but there is no difference in the same edition.

Mr. Whipple—Well, your vote that you are comparing it with, the vote of the First Members, was in November.

Mr. Dane—Yes.

Mr. Whipple—There must have been a good deal of hustling if there were a lot of editions after that. Your fourth edition is dated in 1895, I notice, and you say now your third edition is also.

The Master—I notice that in the book that I have before me, although as printed it read "Third Edition," the word "Third" is crossed out in pencil.

Mr. Dane—I noticed that.

Mr. Thompson—Before you offer that will you show it to me?

Mr. Dane—Yes.

Mr. Thompson—I would like to have a chance to look at it sometime.

Mr. Whipple—I am told it was Dec. 28 that they identified as the fourth edition; that is, the meeting, the By-Laws adopted on Dec. 28, was the one

they attempted to identify as the fourth edition. But now when was this third edition? If you say it corresponds with the vote of Dec. 28, 1895, when do you think that was gotten out, if you offer it as corresponding with that vote?

Mr. Dane—Well, I do not think it is profitable for anybody to speculate about such matters as that, Mr. Whipple.

Mr. Whipple—That is just why I was objecting to speculation and asking you to produce evidence.

Mr. Dane—I produced an edition of the Manual of 1895, coming from Mrs. Eddy's possession, which bears on its title-page the words, "By Mary Baker G. Eddy," in her own handwriting, and that compares with the Manual as adopted by the First Members in 1895.

Mr. Whipple—Dec. 28?

Mr. Dane—Yes. The record of the adoption has already been received in evidence. I now offer the Manual which I have produced as an exhibit.

Mr. Whipple—I object to it on this state of the evidence, if Your Honor please. In looking through it there are a lot of pencilings in it.

The Master—As to those pencilings to which you refer—General Streeter's statement related, as I understood the matter only to the words, "Mary Baker G. Eddy" on the title-page. It has nothing to do with the pencilings inside the book?

Mr. Whipple—None whatever.

The Master—Isn't it obvious that we have got to have these Manuals in? I think I shall admit it subject to objection.

Mr. Whipple—I understand Your Honor saves our rights.

The Master—But I am still very much in doubt as to what edition you can call that one which I have admitted.

Mr. Whipple—If Your Honor will pardon me, you will remember that this is three years before the Trust Deed. What its pertinency is, as affecting the Trust Deed, has never been explained by counsel. They may have remotely or otherwise in their minds some effect that they think this action three years before has on the Trust Deed, but that is largely the basis of our objection.

The Master—My view is that the Manual appears to have been developed in the successive editions, and that you had better begin as far back as you can.

Mr. Whipple—Yes.

The Master—Perhaps in that way we shall be enabled to find out exactly what the Manual was at a given date. It may be necessary to know.

Mr. Whipple—But what we want—the trustees desire—is a most careful scrutiny as to the extent to which Mrs. Eddy gave authority to any of these By-Laws. That is the thing which concerns them most. And this general putting them in without the authority and stamp of Mrs. Eddy is a

thing that we want to prevent as far as it is possible.

The Master—That is entirely within your rights, undoubtedly.

Mr. Dane—It is pretty well established that this particular Manual that has gone in is Mrs. Eddy's Manual.

Mr. Whipple—It is established merely that she wrote her name on the title-page. That is all that is established about it.

Mr. Dane—It says, "By Mary Baker G. Eddy."

The Master—Then we have the record which somewhat assists on that point.

Mr. Dane—Yes, Your Honor.

The Master—What will you next put in?

Mr. Dane—Then we have also—

Mr. Thompson—Is this supposed to be in, Your Honor?

The Master—Yes, I have admitted it subject to objection.

Mr. Thompson—Then have it marked.

Mr. Streeter—I haven't any idea what is supposed to be rubbed out.

Mr. Thompson—There are two passages rubbed out; also handwriting in it that is said not to be hers.

Mr. Whipple—Is it her handwriting that some one has attempted to erase?

Mr. Thompson—Yes.

Mr. Whipple—I think that ought to appear.

Mr. Dane—Let us have it marked.

The Master—I want to hear all of his objections before I finally act; I want to know just what we are doing.

Mr. Whipple—On what was originally page 73, at the bottom, there is an attempted, and somewhat successful attempt to erase several lines of the handwriting which General Streeter recognizes as that of Mrs. Eddy.

Mr. Thompson—Another place in front.

Mr. Whipple—I would like to have Your Honor look at that, and then we would like to call your attention to another place in it (handing Manual to the Master).

The Master—You have seen that, undoubtedly, Mr. Dane?

Mr. Dane—Yes, Your Honor. It is so perfectly obvious that there were attempts to erase something which has been written there—undoubtedly Mrs. Eddy's own work.

Mr. Whipple—Yes, but erasing Mrs. Eddy's handwriting is something different.

Mr. Bates—She had a perfect right to erase it herself, I suppose.

The Master—Let me understand exactly what is offered. Is it only the printed matter, or is it the printed matter plus the penciling?

Mr. Dane—Only the printed matter, and the notation on the title-page.

Mr. Whipple—In reply to Governor Bates' suggestion we quite recognize the right of Mrs. Eddy to erase her own handwriting, but not your right to testify that she did.

Mr. Bates—I have not so testified.

Mr. Whipple—Well, you have implied that.

Mr. Bates—I object.

Mr. Whipple—You have put in no evidence—

Mr. Bates—You have not given us any chance. If you just sit down and wait your time—

Mr. Whipple—Well, if you will put in your evidence before you get your papers marked, you will do better. On page 9 there are several erasures.

The Master—Now, let me suggest this to you, Mr. Whipple: Is that material, in view of their statement—the statement of directors' counsel—to me just now, that they offer only the printed matter?

Mr. Whipple—Now, if Your Honor please, we think it is, because the only way in which they get it in is to have the handwriting of Mary Baker G. Eddy to identify it on the title-page, and she does not identify it as the third edition, because "the third" is stricken out. That is just it. They fail utterly when they begin to ask to have the "Mary Baker G. Eddy" an identification of the printed matter here. It is perfectly evident that it is an identification or the start on identifying another and a new edition—not the third edition at all.

Mr. Dane—If Your Honor please, we have failed in absolutely nothing we desired to show in this connection, and that simply is that the printed matter corresponds with the record which is already in evidence, and that the title-page bear the words "By Mary Baker G. Eddy."

Mr. Whipple—It does not—not as the third edition.

The Master—That is not necessary. He does not insist on calling it the third edition. As a Manual of 1895 which corresponds with the First Members' record adopting the Manual.

Mr. Dane—That is precisely so.

Mr. Whipple—Now, it will be enough if I state this, if Your Honor please: It is perfectly obvious that so far as Mrs. Eddy had anything to do with it, it was merely as a framework for another edition. And it is not in any way an approval of this edition. It is perfectly evident that it was not and cannot be used as an approval of that edition. And with that statement we are content—calling attention to the various changes—

Mr. Bates—I thought you were content.

Mr. Whipple— —and interlineations of other people's handwriting in the book.

Mr. Dane—Now are you content?

Mr. Whipple—I beg your pardon?

Mr. Dane—Now are you content?

Mr. Whipple—Not with your manners.

The Master—Just a moment. Mr. Thompson wants to be heard now.

Mr. Thompson—I am extremely anxious to see the book printed which Mrs. Eddy was preparing here. I have looked through here—and I find Mr.

Dittemore has verified the handwriting—on page 26, Article IX is stricken out by Mrs. Eddy under the heading "Seating of Strangers," and on the margin "Rule for page 18, Art. 10, Sec. 6," and then, "Rule for page 18, Art. 11, Sec. 7," and then "Applicants." Repeatedly through here Mrs. Eddy has eliminated printed provisions and indicated what was to be done with them. It is merely nothing more nor less than a correction of proof. I should be extremely glad to see the document showing her O.K. on the edition which she evidently was so very laboriously preparing.

The Master—For anything we can now tell we may be going to see it. I admit that book in view of the testimony which has been offered in regard to it and in view of the record of the First Members that the printed matter in the book is said to correspond with the record of the First Members.

Mr. Thompson—Then I would like to ask this lady one question.

Q. (By Mr. Thompson.) You said you had compared the printed matter here with the document called the First Members' By-Laws. Didn't you?  
A. Yes.

Q. Did you find that the matter which Mrs. Eddy had eliminated here, the printed matter which she had struck out—did you find that corresponded with what was in the book?  
A. Not at all. The printed page corresponds with the record book.

Q. You mean to say, what corresponds with the record book is this print if you subtract from this print what Mrs. Eddy has put her pencil through. Is that it?  
A. Yes.

Mr. Thompson—Yes, that is what I thought.

Mr. Bates—No, she didn't say anything of the kind.

The Witness—The book—the Manual—as originally printed, is exactly like the record in the book—the First Members.

Mr. Thompson—I do not get that.

The Witness—The Manual as originally printed is exactly like the record in the book, the First Members.

Q. Take, for instance—you have said that you are familiar with the Article IX. "Article IX" is struck out, "Article X" is struck out, and then there are various memoranda in the margin, and a line is drawn all around the text of Article IX, Section 1, and Article X, Section 1. In the book do you find Article IX, Section 1, just as it is printed?  
A. Just as it is printed.

Q. Not struck out. So that in the By-Law book what we have is a set of By-Laws which have not been subjected to the criticism of Mrs. Eddy, as indicated here on the margin. That is a fact, isn't it?  
A. Not submitted to her alterations.

Q. Well, call it "alterations." That is, what is in that book is not the By-Laws as altered by Mrs. Eddy in

her own handwriting in this book, is it?  
A. No.

Mr. Dane—It is not supposed to be and it is not offered as such. Of course she made corrections on this Manual, probably was preparing for another edition, a subsequent edition.

The Master—Now, without going into the realm of conjecture at present, what do you offer next?

Mr. Dane—This ought to be marked as an exhibit.

The Master—You are going to leave the one you marked for identification just where it is?

Mr. Dane—I will withdraw that. I will take Your Honor's direction as to that; it has no pertinency now.

The Master—Put this in in place of it?

Mr. Dane—Yes.

Mr. Whipple—I should like to have the other marked for identification. It will never go any further unless they offer it.

Mr. Dane—I have no objection.

[Church Manual of The First Church of Christ, Scientist, in Boston, Massachusetts, 1895, with "By Mary Baker G. Eddy" on the title page, in her own handwriting, is marked Exhibit 394.]

Mr. Dane—I now offer as an exhibit the book marked "Exhibit 130 for identification," which is the tenth Manual.

The Master—What do you mean—the tenth edition of the Manual?

Mr. Dane—The tenth edition of the Manual. There has already been put in evidence the vote of the First Members adopting the tenth edition of the Manual. This is offered as an exhibit; it is already marked "Exhibit 130 for identification."

Mr. Whipple—This illustrates one of the difficulties, if Your Honor please, of putting in for identification one week and then offering your book the next week, after every one has forgotten what went in in connection with the identification. I can only say in regard to this that here there seems to be a number of changes, and there is nothing which connects with Mrs. Eddy in any way whatever as far as I can see. There is nothing in her own handwriting, and nothing that is authentic. It appears to have been published by The Christian Science Publishing Society in 1899, but I do not remember any vote in connection with it. What vote do you claim there was?

Mr. Dane—The vote of the First Members adopting the tenth edition of the Manual.

Mr. Whipple—Who testifies that this corresponds to the one that was in the vote?

Mr. Dane—No one.

The Master—Perhaps you can refer us to the place in the record.

Mr. Dane—I can, Your Honor.

Mr. Whipple—Your Honor will notice that this is a vote after the date of the Trust Deed.

Mr. Streeter—This is 1899.

Mr. Dane—Yes.

Mr. Strawn—On page 246, Mr. Dane.

Mr. Dane—Of the stenographer's record?

Mr. Strawn—No.

Mr. Dane—Of the large record?

Mr. Strawn—Of the large record.

Mr. Dane—Thank you. The record of the First Members adopting the tenth edition of the Manual is Exhibit 129. A meeting held on March 10, 1899, and the vote is that the "tenth edition of the Church Manual be accepted subject to future by-laws and amendments. Minutes approved and meeting adjourned." And this is offered as the tenth edition of the Manual.

The Master—You offer that as a copy of the edition of the Manual referred to in that vote?

Mr. Dane—In that vote, yes, sir.

The Master—It purports to be, does it, on its face?

Mr. Dane—On its face it does.

The Master—Tenth edition. That is all you know about it?

Mr. Dane—Tenth edition, published by the Publishing Society.

Mr. Whipple—Now, no evidence whatever is offered that this is the edition which was referred to there at all. No one attempted to identify it as being the one which was before the First Members; there is not the slightest evidence connecting it. So far as I remember, nothing is pointed out. Of course, our memory as to what happened last week may be infirm. There is nothing that connects it with Mrs. Eddy or her authority. I hand it back (handing Manual to Mr. Dane).

Mr. Dane—There is nothing except what is shown upon the face of the book.

Mr. Whipple—There is nothing in her handwriting, and no evidence there.

The Master—Isn't that rather unsatisfactory? How can we be sure that that book is the one that was referred to in the vote that you just read?

Mr. Dane—Why, I take it that the evidence of that is that what it purports to be is a book published by the plaintiffs, The Christian Science Publishing Society, in 1899, as the tenth edition of the Manual of The Mother Church. The vote of the First Members accepted and adopted the tenth edition of the Church Manual.

The Master—Isn't it a little surprising that no particular copy of the tenth edition was then marked and identified by the directors themselves?

Mr. Dane—It would have been much better if it had been done, but in this particular instance the entire Manual is not set out in extenso in the record of the adoption. Undoubtedly they had it before them in book form, or in printed form, and there adopted it.

Mr. Whipple—Why would it be printed before they adopted it?

Mr. Dane—That might well be.

Mr. Whipple—Then your adoption—

The Master—I think that we shall

have to have it in, Mr. Whipple, subject to your objection. We have to get to the bottom of this matter of the Manual somehow.

Mr. Whipple—It is somewhat tenuous.

The Master—It is very unsatisfactory, it seems to me.

Mr. Bates—It is all there is, Your Honor.

Mr. Whipple—I suppose that they are doing the best they can.

The Master—Is it not surprising that a book of the importance of the Manual should be left without any more authentication than here appears?

Mr. Dane—It would have been better for the purposes of proof if it had been set out in extenso in the record, but it was not, and, so far as I know, there is no record, no documentary identification, that could be produced.

The Master—Well!

Mr. Whipple—If it had been really inspired by Mrs. Eddy, I think that there would have been more care taken with it than appears to have been. I think we have got some of your handiwork now.

Mr. Dane—Oh, well, we shall come to that in a few moments.

Mr. Whipple—Well, but you are right at it now. You have come to it.

Mr. Thompson—If Your Honor please, we were relying on the directors to establish these By-Laws. The only importance of it from our standpoint, in this whole controversy, is a very significant note occurring on the official edition of the twenty-eighth edition, which was introduced by Mr. Dane as an exhibit, or for identification.

Mr. Dane—Oh, no. I introduced the twenty-ninth.

Mr. Thompson—Your Honor has made a suggestion—

The Master—Why could you not wait until he gets to the twenty-eighth edition, and then put it in at that point?

Mr. Thompson—Your Honor has made a suggestion, wanting to know why this is not any more definite. I call Your Honor's attention to this memorandum on that book, opposite Section 5 of Article I, which is the provision authorizing the expulsion of directors, and opposite the words "with the consent of Mrs. Eddy," or "the request of Mrs. Eddy," which we have always supposed was perfectly valid, occur these words in ink, "Amendment adopted Mar. 12, 1903. Changes evidently made in proof." Now, who "evidently" made those changes in proof? That is what we would like to know.

The Master—Perhaps we can understand that better after we have taken them in order. What is the next one, Mr. Dane?

Mr. Dane—The twenty-ninth edition of the Manual.

The Master—What was the one that you just had?

Mr. Thompson—The twenty-eighth edition.

The Master—Now you are skipping over the twenty-eighth?

Mr. Dane—The twenty-eighth was not marked.

Mr. Thompson—Why not?

Mr. Dane—It was not called for, brother Thompson.

Mr. Thompson—Excuse me.

Mr. Dane—It was not introduced by us.

Mr. Thompson—I have a note here that you produced it.

Mr. Dane—After they requested it we produced it.

Mr. Thompson—No, I am sorry that I haven't the reference to those remarks here.

Mr. Dane—I have them.

Mr. Thompson—They appear on pages 247 and 248 of that copy of the printed record that I was using. If I could borrow that for a minute—

Mr. Whipple—Is this the one (passing a document to Mr. Thompson)?

Mr. Thompson—Yes; that is the one. It is on page 249. Now, in the twenty-eighth edition—I copied it off when I saw it—

"A majority vote and the consent of Mrs. Eddy shall dismiss a member of this board"—

that got changed somehow to the words,

"A majority vote or the request of Mrs. Eddy," and apparently it was made in proof; and all that we would like to know is that Mrs. Eddy wanted that change made. We do not feel bound by by-laws altered by unauthorized persons, that is all.

Mr. Dane—Mrs. Eddy approved of that change.

Mr. Thompson—I am glad to hear you say so.

Mr. Dane—And it is in evidence already.

Mr. Thompson—But I have not heard any proof of it yet.

The Master—Go on. You were going to refer us to the proof. Let us hear it.

Mr. Dane—The proof is this, that the change was made between the twenty-eighth edition, which Brother Thompson asked for, and the twenty-ninth edition, which was offered as an exhibit for identification. The twenty-ninth edition was authorized by the directors, in compliance with a request of Mrs. Eddy over the telephone to have all By-Laws that were to constitute the twenty-ninth edition of the Church Manual adopted.

Mr. Whipple—Who says over the telephone?

Mr. Dane—The record says so.

Mr. Whipple—Pardon me.

Mr. Dane—And the change occurs between the twenty-eighth and twenty-ninth editions; and there is the approval of Mrs. Eddy as to the change which Brother Thompson has spoken of. It is on page 248 of the large records which you have.

The Master—There again we are in a rather serious difficulty, are we not,

because we do not know exactly what the by-laws were which she referred to in that telephone message?

Mr. Dane—Well, the twenty-ninth edition.

The Master—Afterward the twenty-ninth edition came out.

Mr. Dane—Yes.

The Master—But that had not then been published.

Mr. Thompson—That note is on the twenty-ninth edition, Mr. Dane.

Mr. Dane—Yes. She approves the By-Laws in the twenty-ninth edition.

Mr. Thompson—Is it conceivable that you will stand up here and maintain that when some one in your office has written opposite these words which now turn out to be very important, but which never before were thought to be of any importance—these two or three words have become very important—every one has been living on the supposition that they had been authorized by Mrs. Eddy as they now appear—and you say to me that because Mrs. Eddy said over the telephone that she wanted the changes made and put into it and adopted, she is responsible for the changes, when on the margin somebody in your office has written, "Changes evidently made in proof"—do you mean that Mrs. Eddy made that change in proof? All that I want to get at is the truth about it.

Mr. Whipple—He says that Mrs. Eddy telephoned, and the record says "telephone message"; it does not say from her, or from Mr. Frye, or from anybody else.

Mr. Dane—The proof about it will develop, and the proofs about it start with this record relating to the twenty-ninth edition, which was adopted at Mrs. Eddy's request over the telephone. Now, that by-law which Mr. Thompson speaks of continues during the various subsequent editions, the fifty-seventh and the seventy-third; and Mrs. Eddy approved specifically the seventy-third edition, and established it as the authority, and approved specifically every amendment which was adopted to the seventy-third edition. So that she has specifically approved not only beginning with this record, but down through and including the seventy-third edition, a change which Brother Thompson speaks of, which occurs in all subsequent editions.

Mr. Thompson—Of course, Mr. Dane, any statement of fact made by you as of your own knowledge imports absolute verity; but I do not know that you are making statements of fact on your own knowledge. It is very easy to brace up suddenly discovered weak spots in a case by asserting that they are not weak; but all that I would like is the proof of those things in this case.

Mr. Dane—I am giving it to you.

Mr. Streeter—May I make a suggestion to you, Mr. Dane? I am informed that every change that was made in the by-laws was indorsed by Mrs. Eddy in her own handwriting on

the back of them, and that those documents are on file. Now, if that is so, why not produce them? We do not want to contend against by-laws, but we do want to know—in fact, we want to support the by-laws—but we do want to know that Section 5 was changed, as Mr. Thompson suggests, by Mrs. Eddy's authority. I never dreamed that there was any dispute about it.

Mr. Dane—There is not a doubt about it.

Mr. Streeter—What?

Mr. Dane—There is not a doubt about her ultimate approval of every by-law that is in this Manual.

Mr. Streeter—Well, show it.

Mr. Dane—I am showing it as fast as I can.

Mr. Bates—Give us a chance.

Mr. Streeter—All right. We will withdraw all suggestion, with the understanding that you are to show that Mrs. Eddy approved of that change; and if you do we will very gladly accept it.

Mr. Dane—If Mrs. Eddy approved the changes that were made on the proof sheets, I expect that those proof sheets are now in the possession of the Publishing Society, and we gave notice this morning, and I would like to repeat it now, Brother Whipple, that I would like to have you produce all proof sheets relating to all editions of the Manual that are in the possession of the Publishing Society at the present time.

Mr. Whipple—Mr. Dane, can you tell us the significance of that indorsement "must have been made on the proof"? Who put it on there? Some one was looking it up and found that it could not be accounted for in any other way except that it was made on the proof. Who was it? Do you mind telling us?

Mr. Bates—Produce the proof.

Mr. Dane—The proof would be the best evidence of it. We have not seen it. We have not had access to it.

Mr. Whipple—Do you really decline to say who made that memorandum on there?

Mr. Dane—I don't know, Mr. Whipple. I would like to see the original proof which you have in your possession.

Mr. Thompson—Let us have the book a minute.

Mr. Streeter—Mr. Dane, I am informed that the trustees have not got that proof, but that the directors have, that those slips with her indorsement on the back of each by-law were in the hands of Mr. Stewart, her publisher, and that long before his death those papers and documents were turned over to the directors. If that will help you any I shall be glad of it.

Mr. Dane—Our information is that those proofs are still in the hands of the Publishing Society.

Mr. Streeter—Well, Mr. Dittmore says otherwise.

Mr. Dane—That does not make it so.

Mr. Bates—Probably he thinks so, but that does not make it so.

Mr. Whipple—May I make the statement that about four months ago the directors wrote to the trustees of the Publishing Society and asked to have all these things—correct me in this, Mr. Watts, if I do not state it accurately—asked to have all the manuscripts, proofs and everything else in their possession that related to any one of these Manuals sent to them, and it was done, and you have it all. Now, we will bring your directors' letter tomorrow morning, and show it to you, so that you cannot call on us for anything further in that connection.

Now will you let us take your alleged twenty-eighth edition of the Manual a moment?

Mr. Thompson—The twenty-ninth.

Mr. Whipple—Or the twenty-ninth.

Mr. Dane—The twenty-ninth is the one that is marked for identification.

Mr. Whipple—Now, let us see it, and let us see if you can't tell us whose writing it is that expresses a doubt about that by-law. Do you mind letting us take it?

Mr. Dane—No.

Mr. Whipple—Let us take it a moment.

[A book is passed by Mr. Dane to Mr. Whipple.]

The Master—I understand Mr. Thompson to say that it was in the twenty-eighth edition.

Mr. Thompson—It is in either the twenty-eighth or the twenty-ninth. We will find out in a moment.

Mr. Whipple—Now, if Your Honor please, let us follow this right down, if we may. Here is Sect. 5 of Article I; and right opposite the printing are these words written in pen, "Amendment adopted March 12, 1903. Changes evidently made in proof."

[The twenty-ninth edition of the Manual is passed by Mr. Whipple to the Master.]

Now, I have asked for the identification of that handwriting, if counsel can state it.

The Master—This is the twenty-ninth which you offer, is it?

Mr. Dane—Yes, Your Honor.

The Master—That is the copy which you put in?

Mr. Dane—Yes; that is the copy.

Mr. Whipple—It was offered for identification. Now, don't you know whose handwriting it is?

Mr. Dane—I will examine it as soon as His Honor gets through with it.

Mr. Whipple—You must know where you got the book.

Mr. Dane—Oh, yes; I know that.

Mr. Whipple—Perhaps your witness would know whose handwriting it is.

The Master—The question now is about having that made an exhibit, it heretofore having been marked for identification only.

Mr. Dane—Yes, Your Honor.

The Master—And—

Mr. Whipple—Now, can you tell us whose that is (passing to Mr. Dane the twenty-ninth edition of the Manual)?

The Master—And there again you offer only the printed matter, I take it?

Mr. Dane—Only the printed matter, Your Honor.

Mr. Whipple—That being so, if Your Honor please, we desire to call attention to the fact that here we begin to deal with by-laws which it is alleged the directors passed. We have pointed out that at this time the directors were not church officers at all.

Mr. Dane—Pardon me for interrupting, but haven't we had this argument over and over again?

Mr. Whipple—We therefore object on that ground, that the directors had no authority, not being officers, or officers of the Church at all, to pass anything which could be called a by-law or accept a Manual. I am not speaking about anything that Mrs. Eddy may have authorized. I am talking about the absolute want of authority of these men who were not even officers of the Church; and on that additional ground we desire to object to this book.

The Master—I understand, Mr. Dane, that that is all the evidence that you are going to offer about the twenty-ninth edition of the Manual, is it?

Mr. Dane—On the twenty-ninth, at this time. I think there is a letter—

The Master—You offer only the printed contents of this copy of the twenty-ninth?

Mr. Dane—Exactly.

The Master—Now, it seems to me that that is evidence tending to show what the Manual was, at any rate. It is part of the history of the Manual. I think it is proper to admit it as an exhibit for that purpose. What conclusions we can draw from it will be entirely another matter.

Q. Now, Miss Warren, I call your attention to a book marked—

Mr. Bates—Has this been marked, Mr. Dane?

Mr. Dane—No.

Mr. Bates—Shall we take the identification number?

Mr. Dane—Yes.

[The twenty-ninth edition of the Church Manual is now admitted as Exhibit 133, the words "for identification" being crossed out.]

Q. Miss Warren, I call your attention to the fifty-seventh edition of the Manual, marked "Exhibit 137 for identification," and I also call your attention to the record contained in the Church By-Law book, Volume 1, beginning on page 1, and extending to and including page 33, and ask you whether or not you have made a comparison of the provisions of the printed matter in the book, "Exhibit 137 for identification," with the printed matter contained on the pages to which I have called your attention?

A. I have.

Q. And whether or not the printed matter in the Manual is the same as the printed matter in the volume of

Church By-Laws, Volume 1? A. It is identical.

Mr. Dane—Then, Your Honor, I offer as an exhibit the book "Exhibit 137 for identification," the fifty-seventh edition of the Manual.

Mr. Whipple—I assume that Your Honor will accept it under the same limitation.

The Master—The same ruling may apply to that.

Mr. Bates—That will be Exhibit 137. [The fifty-seventh edition of the Church Manual is admitted in evidence as Exhibit 137, the words "for identification" being stricken out.]

Q. Now I show you, Miss Warren, the seventy-third edition of the Manual, marked "Exhibit 140, for identification," and I show you the Church By-Law book, Volume II, and call your attention to pages 1 to and including page 33, and ask you whether or not you have made a comparison of the printed matter contained in the printed Manual with the printed matter contained on the pages in the Church By-Law book? A. I have.

Q. Whether or not it is the same? A. It is exactly the same.

Mr. Dane—I offer "Exhibit 140, for identification," being the seventy-third edition of the Manual, as an exhibit.

The Master—The same ruling.

[The seventy-third edition of the Church Manual is admitted in evidence as Exhibit 140, the words "for identification" being stricken out.]

Mr. Dane—I show you, Mr. Whipple, a document appearing on page 133 of Volume 9, Letters and Miscellany, and ask if you make any question that that is Mrs. Eddy's signature. (Handing volume to Mr. Whipple.)

Mr. Whipple—You mean 992?

Mr. Dane—Yes.

Mr. Whipple—I understand there is no doubt about that signature.

Mr. Dane—I offer from Volume 9 of Letters and Miscellany, Document No. 992, appearing on page 133.

[This document is offered as Exhibit 395, and is read by Mr. Dane, as follows:]

"Chestnut Hill, Mass.,

"July 30, 1908.

"The Christian Science Board of Directors,

"Beloved Brethren:

"Please vote on the adoption of the following amendment to Church By-Laws, Article XXVII, Section 1, of the seventy-second edition of the Church Manual; and, if adopted, publish in our periodicals and in the Church Manual.

"MARY B. G. EDDY.

"Article XXVII.

"Soloist and organist. Sect. 1. The music in The Mother Church shall not be operatic, but of an appropriate religious character and of a recognized standard of musical excellence; it shall be played in a dignified and suitable manner. Music from the organ alone should continue about eight or nine minutes for the voluntary and

six or seven minutes for the postlude, the offertory conforming to the time required to take the collection. The solo singer shall not neglect to sing any special hymn selected by the Board of Directors."

Mr. Dane—I call Your Honor's attention to the fact that on page 37 of the Church By-Law book, Volume 2, under date of Friday, July 31, 1908, appears a record of a meeting of the directors adopting the article which I have just read. It has been introduced in evidence.

The Master—I guess we had that the other day.

Mr. Dane—I read from the same volume, page 139, Letters and Miscellany, Document No. 995, appearing on page 139, the following:

[This document is offered as Exhibit 396, and is read by Mr. Dane, as follows:]

"Chestnut Hill, Mass.,

"August 15, 1908.

"The Christian Science Board of Directors,

"Beloved Brethren:

"Please vote on the adoption of the following amendment to By-Law Article XXXVI, Section 2 of the Church Manual:

"M. B. G. EDDY.

"Seventy-Third Edition the Authority. Sect. 2. The Board of Directors, the Committee on Bible Lessons, and the Board of Trustees shall each keep a copy of the Seventy-Third Edition and of subsequent Editions of the Church Manual; and if a discrepancy appears in any revised edition, these editions shall be cited as authority.

"MARY B. G. EDDY."

The Master—Haven't you put that in once?

Mr. Whipple—I am sure that was read—I feel very sure.

Mr. Dane—I think that I put in the adoption of it, as adopted in the By-Laws. I do not believe I have read that. On page 37 of the second volume of the Church By-Law book appears a meeting of the directors adopting that by-law which I have just read. I offer from the same volume, Letters and Miscellany, page 137, Document No. 994.

[This document is offered in evidence as Exhibit 397, and is read by Mr. Dane, as follows:]

"384 Beacon Street,

"Chestnut Hill, Mass.,

"August 8, 1908.

"The Christian Science Board of Directors, Boston, Mass.

"Beloved Brethren:

"Please vote on the adoption of the following By-Law, Article XVII, Sect. 4, of The Mother Church Manual.

"Article XVII.

"Overflow meetings. Sect. 4. A Church of Christ, Scientist, shall not hold two or more Sunday services at the same hour.

"MARY B. G. EDDY."

Mr. Dane—I call Your Honor's attention, that on page 38 of the Church

By-Law book, under date of Sept. 4, 1908, is the record of the meeting of directors adopting the by-law which I have just read. From the same volume of Letters and Miscellany, page 135, I offer Document No. 993, which reads as follows:

[This document is offered in evidence as Exhibit 398, and is read by Mr. Dane, as follows:]

"384 Beacon Street,  
Chestnut Hill, Massachusetts,  
Aug. 8, 1908.

"Board of Directors, of The Mother Church, Boston, Massachusetts.

"Beloved Brethren:

"Please vote on the following amendment to Article I, Section 1, of The Mother Church Manual.

"Article I.

"Names. Section 1. The Church officers shall consist of the Pastor Emeritus, a Board of Directors, a President, a Clerk, a Treasurer, and two Readers.

(Signed) "MARY B. G. EDDY."

Mr. Whipple—I am sure that was read the other day.

Mr. Dane—I am not sure but what it was read the other day.

Mr. Whipple—I don't think we ought to repeat the record.

Mr. Dane—I do not intend to, but Your Honor will see the purpose of this is to show that every amendment to the Manual, the seventy-third, has been adopted by the directors at the request of Mrs. Eddy.

Mr. Whipple—Well, you see, the trouble is you have not shown it; you are doing it latterly, but earlier you do not.

The Master—Either the adoption or the request for that by-law I am quite sure you have put in already.

Mr. Bates—It was the record of the adoption.

Mr. Dane—I think it was the record of the adoption, and Governor Bates so remembers it.

The Master—Maybe you have put in both, I don't know.

Mr. Thompson—Now if you will come to Article I, Section 5.

Mr. Dane—I simply call attention to the fact that the adoption of that by-law appears on page 38 of the Church By-Law book, Volume 2. From the same volume of Letters and Miscellany I offer, from page 141, Document No. 996, reading as follows:

[The above document is offered as Exhibit 399, and is read by Mr. Dane, as follows:]

"Chestnut Hill, Mass.,  
August 22, 1908.

"The Christian Science Board of Directors, Boston, Mass.

"Beloved Students:

"Please vote on the adoption of the following amendment to By-law Article VIII, Sect. 28, of the 73d edition of the Manual.

"As ever, MARY B. G. EDDY.

"Article VIII.

"Numbering The People. Sect. 28. Christian Scientists shall not report for publication the number of the

members of The Mother Church, nor that of the branch Churches. According to the Scripture they shall turn away from personality and numbering the people."

Mr. Dane—That was adopted at a meeting of directors, Sept. 4, 1908, appearing on page 38 of Volume 2 of the Church By-Law book. I offer from the same volume of Letters and Miscellany, page 145, Document No. 998, as follows:

[This document is offered in evidence as Exhibit 400, and is read by Mr. Dane, as follows:]

"Chestnut Hill,  
September 10, 1908.

"Christian Science Board of Directors,  
Beloved Brethren:—

"Please vote on the adoption of the following Church By-law and publish in our Church Manual, if you decide to adopt it.

"MARY B. G. EDDY.

"Article XXIV.

"Committee on Business. Sect. 9. The Christian Science Board of Directors shall elect annually a committee on business, which shall consist of not less than three loyal members of The Mother Church, who shall transact promptly and efficiently such business as Mrs. Eddy, the directors, or the Committee on Publication shall commit to it. While the members of this committee are engaged in the transaction of the business assigned to them they shall be paid from the Church funds. Before being eligible for office the names of the persons nominated for said office shall be presented to Mrs. Eddy for her written approval."

Mr. Dane—The adoption of that by-law by the directors appears upon the bottom of page 38 and the top of page 39 of the Church By-Law book, Volume 2. I offer from the same volume of Letters and Miscellany, page 149, Document No. 1000.

[This document is offered in evidence as Exhibit 401, and is read by Mr. Dane, as follows:]

"September 22, 1908.

"C. S. Board of Directors,  
The First Church of Christ, Scientist,  
Beloved Brethren:—

"Please vote on the adoption of the following Church By-law, and if adopted publish in the Church Manual.

"Circuit Lecturer.

"Article XXXI, Sec. 5. Upon the written request of Mrs. Eddy, The Mother Church shall appoint a circuit lecturer. His term of office if approved, shall not be less than three years. He shall lecture in the United States, in Canada, in Great Britain and Ireland.

"A member shall neither resign nor transfer this sacred office.

"Lovingly yours,

"MARY B. G. EDDY."

Mr. Dane—This by-law was adopted by the directors under date of Oct. 5, 1908, as appears upon page 39 of the Church By-Law book, Volume 2. I

offer from the same volume of Letters and Miscellany, page 151, Document No. 1001, as follows, upon the letter-head "Rev. Mary Baker G. Eddy, Office of Secretary, 384 Beacon Street."

[This document is offered in evidence as Exhibit 402, and is read by Mr. Dane, as follows:]

"Chestnut Hill, Mass.,  
November 14, 1908.

"Board of Directors,

"The First Church of Christ, Scientist,  
Beloved Brethren:—

"Please vote on the adoption of the following By-law, and if adopted publish in our Periodicals:

"The room in The Mother Church formerly known as 'Mother's Room' shall hereafter be closed to visitors.

"Also vote on the repeal of sections 14, 15, Article XXII of the Church By-laws.

"Lovingly yours,

"M. B. G. EDDY."

Mr. Dane—The adoption of the proposed by-law appears on page 39 of Volume 2 of the Church By-Law book, at a meeting of the directors under date of Nov. 14, 1908. From the same volume of Letters and Miscellany, page 153, I offer Document No. 1002, which reads as follows:

[This document is offered in evidence as Exhibit 403, and is read by Mr. Dane, as follows:]

"Chestnut Hill, Mass.,  
November 16, 1908.

"Board of Directors,

"The First Church of Christ, Scientist,  
Beloved Brethren:

"Please vote on the adoption of the following Church By-law, and if adopted, publish in our periodicals and in the Church Manual.

"Article VIII.

"Christian Science Nurse. Sect. 31. A member of The Mother Church who represents himself or herself as a Christian Science nurse shall be one who has a demonstrable knowledge of Christian Science practice, who thoroughly understands the practical wisdom necessary in a sick room, and who can take proper care of the sick.

"The cards of such persons may be inserted in The Christian Science Journal under rules established by the publishers.

"MARY B. G. EDDY."

Mr. Dane—The adoption of that By-Law appears under date of Nov. 16, 1908, on page 40 of the Church By-Law book, volume 2. From the same volume of Letters and Miscellany, page 157, I offer Document No. 1004.

[This document is offered in evidence as Exhibit 404, and is read by Mr. Dane, as follows:]

"Chestnut Hill,  
Dec. 14, 1908.

"Christian Science Board of Directors,  
Beloved Brethren:—

"Please vote on the adoption of the following Church By-Law, and if

adopted publish in our periodicals and in the Church Manual.

"MARY B. G. EDDY.

"Article XXII

"Location. Sect. 12. Rev. Mary Baker G. Eddy calls to her home or allows to visit or to locate therein only those individuals whom she engages through The Christian Science Board of Directors of The Mother Church. This By-Law takes effect on Dec. 15, 1908.

"Please enter this By-Law in the Manual as Art. 22, Sect. 12, and carry the remaining sections of that article along one number each."

Mr. Dane—The adoption of the proposed By-Law appears at the bottom of page 40 and the top of page 41, in volume 2 of the Church By-Law book. It is four o'clock, if Your Honor please; if this is a convenient place I will suspend.

[Adjourned to 10 a. m., Wednesday, July 16, 1919.]

July 16, 1919

FIFTEENTH DAY

Supreme Judicial Court Room,  
Boston, Massachusetts, July 16, 1919.

The Master—Go on when you are ready, Mr. Dane.

Mr. Whipple — If Your Honor please—

The Master—One moment, Mr. Whipple.

Mr. Whipple— I would like to respond to an inquiry which was put to us yesterday in regard to certain documents said to be in the hands of the trustees. On July 15 we received a notice from counsel for the defendant directors asking us to produce at this trial all original proofs of By-Laws for any of the Church Manuals of The Mother Church, and the memorandum of February, 1916, referred to in the trustees' records of Sept. 30. Now, I stated yesterday in regard to the Church Manuals that there had been correspondence between the parties on the subject, and that they had been delivered.

May I offer, first, a letter of Aug. 8, 1918, Mr. Jarvis to the Board of Directors, as follows:

"The Christian Science Board of Directors,

"Boston, Massachusetts,

"Aug. 8, 1918.

"Board of Trustees,

"The Christian Science Publishing Society,

"107 Falmouth Street,

"Boston, Massachusetts.

"Dear Friends:

"I am instructed by the Christian Science Board of Directors to say the board understands that The Christian Science Publishing Society is in possession of letters from Mary Baker Eddy to her publisher, regarding changes in the Manual of The Mother Church.

"The directors would be glad to

have you send these letters over for permanent preservation as a part of the records of The Mother Church. If you wish to retain copies of these letters, the directors will be glad to have you do so.

"Sincerely yours,

(Signed) "CHAS. E. JARVIS,

"Corresponding Secretary for The Christian Science Board of Directors."

"CEJ-L"

[Letter, Aug. 8, 1918, Charles E. Jarvis, corresponding secretary for The Christian Science Board of Directors, to the Board of Trustees, is marked Exhibit 405.]

Mr. Whipple—The business manager was requested to report, and on Oct. 22 of last year the business manager wrote to the Christian Science Board of Directors as follows:

"Oct. 22, 1918.

"The Christian Science Board of Directors,

"Falmouth and St. Paul Streets,

"Boston, Massachusetts.

"Dear Friends:

"The Board of Trustees asks us to transmit to you the accompanying correspondence between our Leader and her publisher relating to changes in the Manual of The Mother Church. This is the correspondence requested in your letter of Aug. 8.

"With best wishes,

"Yours sincerely,

"The Christian Science Publishing Society,

"by

"incl. Business Manager."

[Copy of letter, dated Oct. 22, 1918, from business manager of Publishing Society to Board of Directors, is marked Exhibit 406.]

Mr. Whipple—On Oct. 22 Mr. Jarvis, as corresponding secretary, replied as follows:

"The Christian Science Board of Directors,

"Boston, Massachusetts.

"Oct. 22, 1918.

"Trustees of The Christian Science Publishing Society,

"Falmouth and St. Paul Streets,

"Boston, Massachusetts.

"Dear Friends:

"I am instructed by The Christian Science Board of Directors to thank you for transmitting to The Mother Church, through the business manager, the correspondence passing between Mrs. Eddy and her publisher which related to changes in the Manual of The Mother Church. The directors will be glad to include these communications in the files of Mrs. Eddy's letters which are now being permanently preserved.

"With all good wishes,

"Sincerely yours,

(Signed) "CHAS. E. JARVIS.

"Corresponding Secretary for The Christian Science Board of Directors."

"CEJ

"W-C"

[Letter of Oct. 22, 1918, Charles E. Jarvis, corresponding secretary for the Christian Science Board of Directors, to the Board of Trustees, is marked Exhibit 407.]

Mr. Whipple—I stated yesterday that we had delivered all this original correspondence in our hands, and this correspondence is offered for the purpose of showing that we have done so. Now, as we did not keep a list of the letters which were so sent, we should be glad at the appropriate time to have those letters all presented so that a list may be taken of them. But at all events, we have long ago complied with your recent request.

The Master—If you did not keep a list you are unable to identify what was delivered in pursuance of that request.

Mr. Whipple—Except by possible memory of Mr. Watts, the business manager. You will observe—

The Master—Are the directors able to identify what they received?

Mr. Bates—Yes, Your Honor, we can identify what we received. I want to direct Your Honor's attention to the fact that that correspondence does not mention the proof sheets. We had supposed from what Mr. Whipple said yesterday that he understood that the proof sheets had been returned to us. We find upon examination that they were not, with the exception of two or three by-laws, which were not the long proof sheets that had been sent or that we understood they had in their possession. We think those still must be in the possession of the Publishing Society, and I think possibly a diligent search may produce them. At any rate we would like very much to have them. The correspondence which was sent to us in connection with that was very meager, and we can put a witness on to show just what it was. We will be glad to do so.

The Master—Do you claim that in response to that request any proof sheets were delivered them?

Mr. Whipple—I do not. I do not know about it, therefore I make no claim. What do you say as to that?

Mr. Watts—We have got quite a number of proofs or references to articles in the Manual that were published in the Sentinel and Journal. We have them.

Mr. Whipple—Have you any with any indorsement of Mrs. Eddy thereon?

Mr. Watts—Yes, quite a number. But they are all relative to the Sentinel and Journal.

Mr. Bates—Well, they are relative to the By-Laws.

Mr. Whipple—I am talking about the Manual.

Mr. Watts—None of these as to the Manual.

Mr. Bates—They are relative to the By-Laws, and we would like to have them produced so that we can see them.

Mr. Whipple—I understand—and



you will correct me, Mr. Watts, if it is not correct—that we have nothing in the way of proofs in respect of the Manual or any of the provisions.

Mr. Watts—Only these relate, Mr. Whipple, to the By-Laws, notices of which were published in the Sentinel and Journal—

The Master—We had better not get that in at present. Were there any proof sheets of the Manual? That is what you are inquiring about, Mr. Bates?

Mr. Bates—Proofs sheets of the Manual, or proof sheets of any of the By-Laws, we are asking for. Now, the By-Laws were under Mrs. Eddy's instructions published in the Sentinel.

Mr. Whipple—Let us get one at a time. Are there any proof sheets of the Manual?

Mr. Watts—None that I know of at this moment.

Mr. Whipple—Now, I understand that there is a voluntary statement that with reference to some of the By-Laws which were published in the Sentinel and Journal, and possibly were later incorporated in the Manual, there are proofs.

Mr. Bates—That is what we want.

Mr. Whipple—Well, that is not what you asked for. That is not what you asked for.

Mr. Bates—We asked for all proof sheets relating to the Manual, and a proof sheet of a by-law is a part of the Manual.

Mr. Whipple—I will read your letter, sir, and see:

"All original proofs of By-Laws for any and all of the Church Manuals of The Mother Church."

Mr. Bates—That is exactly it. Now, you have proof sheets of some of those By-Laws, and we want them.

The Master—It does not seem to me that proof sheets of something else, something other than the Manual, come within your call.

Mr. Bates—Your Honor will recall that the By-Laws—whenever Mrs. Eddy requested the directors to adopt a by-law she would say, "Have this published in the Sentinel." Now, those proof sheets of the By-Laws were sent to her to see that they were correct before they were published. They became a part of the Manual. The fact that they were published in the Sentinel did not prevent their being a part of the Manual. They became a part of it by virtue of being by-laws.

The Master—We are only concerned, then, with the directors' action in adopting these By-Laws.

Mr. Bates—Well, if Your Honor will recall, Mr. Thompson, or General Streeter, requested information with regard to a certain by-law. Now, we think that that information might be disclosed by the production of these proof sheets. You will recall the memorandum which Mr. Thompson read from the page of the by-law indicating that the change had been made in proof.

The Master—It hardly seems possi-

ble that the proof of something published in the Sentinel or Journal can assist in proving the authentication of a given by-law.

Mr. Bates—Not if it was in Mrs. Eddy's handwriting as a by-law of the Church?

The Master—We want the production by the directors of the written instruction by Mrs. Eddy, I take it, do we not, for any given by-law?

Mr. Bates—I think it would tend, if Your Honor please, to give us all the information there is, at any rate, in regard to the By-Laws, if we had everything that is in her handwriting in regard to them. And it seems to me, therefore, that our request for proofs in regard to by-laws which have become and are a part of the Manual ought to be complied with.

The Master—Perhaps it ought, but I think hardly under the call which has been read.

Mr. Bates—Then I will ask for them now, that they be produced.

Mr. Whipple—Now, if you will name what you ask for, so that we may have recorded what we give to you.

Mr. Bates—I ask for the proofs of any by-laws that have any writings upon them by Mrs. Eddy.

Mr. Whipple—That is, any of her handwriting?

Mr. Bates—Yes.

Mr. Whipple—You mean, published in the Sentinel—

Mr. Bates—Whether published in the Sentinel or not.

Mr. Whipple—All right. (Conferring with associates.) I hand you a proof sheet of an article, "No Executive Members, Section (blank), Article V; no monopoly, Section (blank)." On the front—

The Master—Have you a list of those?

Mr. Whipple—No, Your Honor.

The Master—Wouldn't it be better to make a list before you offer them, to save time in going over them here?

Mr. Whipple—Well, we should want to have the list put into the record, because we do not wish to hand these over without some record of what we hand over.

The Master—If you had a list prepared perhaps it would save time in getting it into the record.

Mr. Whipple—I think not; there is very little of it, if Your Honor please. Let us try it this way, if Your Honor does not mind, and see if we can't expedite it.

On the back, in what purports to be Mrs. Eddy's handwriting, is written, "Do not publish it as a by-law, but a notice. Eddy." That is a provision as to the executive members. (Handing paper to Mr. Bates.)

The next paper is "Amendments to By-Laws, Article XXVI, Private Communications; Article XXVII, Music in the Church." On the back side is written, in pencil, in what purports to be the handwriting of Mrs. Eddy, the word "Eddy." (Handing the paper to Mr. Bates.)

Then, headed "An Amended By-Law, Article XXXVII, in Branch Churches, Section 3"; in handwriting apparently that of Mrs. Eddy is the word "Over." On the back side, "Our Manual specifies jurisdiction over the U. S. and Canada only. M. B. E." (Handing paper to Mr. Bates.)

The Master—No dates to any of these?

Mr. Whipple—None whatever.

The next is headed "A new By-law, Article XXVIII." As originally printed, "No more communion," which is changed in what may be Mrs. Eddy's handwriting into the words "communion service, section 16; The Mother Church of Christ, Scientist, shall observe no more communion seasons." On it is marked in another handwriting, "Sentinel, Journal and Der Herold." On the back is written, in what purports to be Mrs. Eddy's handwriting, the word "Eddy." (Handing paper to Mr. Bates.)

The next is headed, "A new By-law, Article XXVIII." Originally written, "No Census Taking, Section 8"; and then that is erased and "Numbering the People" is written in what purports to be Mrs. Eddy's handwriting. "Sentinel, Journal, Der Herold" on the face in another handwriting; and on the back side is indorsed "Eddy" in pencil. (Handing paper to Mr. Bates.)

Then, "An Amended By-law, Article XXVIII; The Mother Church and branch churches local self-government, Section 1." And on the back is written, in the same handwriting, in pencil, "Eddy." (Handing paper to Mr. Bates.)

The next, "An Amended By-law, Article XIX, Teaching in Sunday School, Section 5." Indorsed in the same handwriting in pencil, "Eddy." (Handing paper to Mr. Bates.)

I have a few more here. I will take Your Honor's direction. I think it will save time if I go right through them, but I am not sure.

The Master—You may as well continue as you have begun, I think.

Mr. Whipple—Yes. The next is an amended by-law, Article XXXVII, "In Branch Churches," Section 3. There is a caret in the sentence, "Each County of Great Britain through its three largest branch churches," and the insertion is of the two words "and Ireland," apparently in Mrs. Eddy's handwriting—is that, General?

Mr. Streeter—Yes.

Mr. Whipple—Lower on the page, an amended by-law, Article XXXVII. This is also as to branch churches; it is another proof of the same by-law, and in the handwriting of Mr. McLellan are these words:

"Beloved Leader: Please see Mr. Johnson's letter regarding this. There are over 50 counties in Great Britain; the name Great Britain does not include Ireland.

"Lovingly yours,

"ARCHIBALD McLELLAN."

It is indorsed "Eddy."

Next, "Amendment to By-Law, Article XXVIII. Church Membership. Section 14." That is indorsed on the back side "Eddy." This refers to the teaching of Roman Catholics. I would like to call attention to that a little later.

The next is headed "Amended By-Laws, Article XVII. Debt and Duty. Section 7. The Mother Church shall not be made legally responsible for the debts of individuals," etc.

"Committee on Business. Section 8. The Christian Science Board of Directors shall elect a committee on business."

At the bottom, in what purports to be the handwriting of Mr. McLellan: "Beloved Leader: Are both sections to be published in all three of the periodicals?"

"Lovingly,  
"ARCHIBALD McLELLAN."

Here we have a date because there is a letter from Mrs. Eddy, in her own handwriting, dated Dec. 23, 1906, from Pleasant View, Concord, New Hampshire:

"My Beloved Student: By-law 'Debt and Duty' should be published in the Sentinel. 'Committee on Business' is to be published only in our Church Manual.

"Lovingly yours,  
"MARY BAKER EDDY."

Next, a Church By-Law:

"Article XX. Testimonials. Section 12. Glorify God in your body and in your spirit, which are God's. (St. Paul.)"

It is indorsed, "September Journal, September 1 Sentinel, October Herald," with an interrogation mark after it; and, following that interrogation, in the handwriting of Mrs. Eddy, is this legend, "Yes, Eddy," apparently in reply to the interrogation as to whether it should go into the Herald. That is indorsed in Mrs. Eddy's handwriting, "Eddy."

The next, "Amendment to Church By-Law, Article XVIII. Local self-government. Section 1." In the handwriting apparently of Mr. McLellan, "Sentinel, January 27, 1906; February Journal." Indorsed on its face in Mrs. Eddy's handwriting, "Eddy."

The next, "Amendment to By-law, Article XX."

"The promotion of peace. Section 14. It shall be the duty of the members of The Mother Church," etc.

That is indorsed in Mrs. Eddy's handwriting, "Eddy," and in some other handwriting, "Sentinel."

Next, "An Amended By-law, Article XVII. Committee on Business. Section 8." Indorsed on the back, "Eddy."

The next, "A New By-law, Article XX."

"Sudden decease. Section 8. If a member of The Mother Church shall decease suddenly."

"Sentinel, Journal, Der Herald," indorsed in what appears to be Mr. McLellan's handwriting. "Eddy" indorsed on the back.

The next proof is "Church Manual, Article XX. Sudden decease. Section 8."

And on the back, indorsed in Mrs. Eddy's handwriting is this legend: "Publish these articles together. Eddy."

The next, "Church By-law, Article XXII."

"Publications unjust. Section 11. Should a member of The Mother Church publish, or cause to be published, an article that is false, or unjust," etc.

In the last line the word "Church" is stricken out, and the word "its" substituted therefor in what is apparently Mrs. Eddy's handwriting, so that it will read, "in this Church and from its membership." It is indorsed in lead pencil. "Punctuation O. K. M. B. G. E. Sec."

The next is "Amendments to By-laws. Article XXVIII. Local Self-government. Section 1." From that the word "Annual" is stricken, and "triennial" inserted, in Mrs. Eddy's handwriting, so that it reads, in part:

"No conference of churches shall be held, except the triennial conference at The Mother Church, unless," etc.

"Article XXVIII. Communion of branch churches. Section 8."

On the back is indorsed, "Eddy," in the same handwriting. Attached is a letter dated July 12, 1906:

"Dear Mr. McLellan:—

"I inclose corrected proof with Mrs. Eddy's indorsement. Will you please see that Mr. Johnson has this proof so that proper correction can be made in the copy for the Church Manual?"

"Sincerely,  
"LEWIS C. STRANG."

Indorsed on it are the words:

"Mr. Johnson, please note and return. A. McL."

The next, "Amendments to By-laws, Article XII."

"Regular and special meetings. Annual meetings. Section 1."

The next, "Meetings of Board of Directors. Section 2."

The next, "Article XX."

"No malpractice. Section 8. (Paragraph 2.)

"A member of The Mother Church who mentally malpractices or treats our Leader or her staff without her or their consent," etc.

The word "or" is stricken out and the word "and" inserted in what apparently is Mrs. Eddy's handwriting. That is indorsed, "Sentinel, Journal, Der Herald"; and indorsed on the back, "Eddy."

The next, "An amended By-Law. Article VI."

"Executive Members' Meetings. Section 2. There shall be no annual meetings of the executive members," etc.

On the back in the handwriting of Mrs. Eddy is this legend: "I see no fault; do you see any?"

Mr. Thompson—Mr. Whipple, would you mind my calling attention to this

Amendment to Article XX, to the fact that under the title "No Malpractice, Section 8 (paragraph 2)," it read originally, in print, "A member of The Mother Church who mentally malpractices or treats our Leader," and the word "or" is struck out, and in Mrs. Eddy's handwriting is written the word "and."

Mr. Whipple—I think I referred to that.

Mr. Thompson—Perhaps you referred to that.

Mr. Whipple—Yes, I did.

Mr. Thompson—Showing the great care that she had of those matters.

Mr. Whipple—Next, "Amended By-Law, Article XX."

"Joining Another Society. Sect. 14. It shall be the duty of members of The Mother Church and of its branches to promote peace on earth and good will toward men; but members of The Mother Church shall not hereafter become members of other societies except those specified in the Church Manual."

Just before the words "Church Manual" is inserted, or an indication that there is to be inserted, the word "Mother," and the word is written in Mrs. Eddy's handwriting. It is indorsed "Eddy" on the back.

The next paper is in part a by-law and in part not, but the indorsements, in the part that is not a by-law, are in Mrs. Eddy's handwriting, so that I will call attention to them. "A Question. Mary Baker Eddy." That is in print. Then there is the insertion of a "G," so it will read, "Mary Baker G. Eddy," and that is in Mrs. Eddy's handwriting. There is a sentence, "Thinking of person implies less thinking of Principle." The word "less" is stricken out, and the words "that one is not" are inserted, so that it would read, "Thinking of person implies that one is not thinking of Principle." Then there is the insertion of a "they" later, also in Mrs. Eddy's handwriting, and the striking out of the word "will."

Also, "Church By-law, Article XI. Duty to God. Section 4."

The paper is indorsed on the back with the legend "Eddy."

The next, "A New By-law. Article XXVIII."

"Requirements for Organizing Branch Churches. Section 8. A branch church of The First Church of Christ, Scientist, Boston, Mass., shall not be organized with less than sixteen loyal Christian Scientists, four of whom are members of The Mother Church. This membership shall include at least one active practitioner whose card is published in the list of practitioners in The Christian Science Journal."

That is indorsed with the word "Sentinel," and that is indorsed on the back, in ink, "Eddy."

Those are all the proofs which relate to by-laws which have any indorsement or stamp giving or indicating Mrs. Eddy's authority.

The Master—How shall we avoid confusion hereafter about what you have now produced? Will those documents be kept together?

Mr. Whipple—I wish they might be, and kept very carefully. If they are offered in evidence I should like to have them made separate exhibits and returned to us, as we produced them.

Mr. Bates—No objection to that.

Mr. Whipple—Or, if you do not care to use them as exhibits, I would like to have them handed back.

Mr. Bates—We certainly shall do so.

The Master—Can't you put them all into one envelope or in some way separate them from the other papers?

Mr. Bates—We haven't any envelope here big enough for them, but we will keep them together and see that they are returned to Mr. Whipple.

The Master—Now, may it be assumed, in regard to each document, where Mr. Whipple has told us that Mrs. Eddy's signature or handwriting appears that it is Mrs. Eddy's signature or handwriting, until somebody undertakes to deny it?

Mr. Bates—That is satisfactory.

Mr. Whipple—We have an envelope which we would like to have them put in.

The Master—In regard to several of the documents the statement was that Mr. McLellan's handwriting appeared on it or in connection with it. May it also be assumed that that is in fact his handwriting?

Mr. Bates—Unless evidence is offered to the contrary.

The Master—Anything further at present, Mr. Whipple?

Mr. Whipple—If Your Honor will indulge me just a moment, I think there may be. If Your Honor please, I ascertained what I did not know when I was on my feet before, that Mr. Ogden, in searching among some papers of a former publisher, discovered last night still other proofs which bear the indorsement of Mrs. Eddy. I will therefore continue, with Your Honor's permission, identifying a few more. The first reads as follows:

"Church Manual, p. 69. Due notice required. Sect. 12. To leave Mrs. Eddy's home either without her consent or without giving at least three weeks' notice to her, in advance thereof, shall cause the removal of this offending member from membership with The Mother Church of Christ, Scientist."

Then the word "either," in a pencil memorandum, is indicated to be stricken out. Then at the bottom are written the words "Erased by Eddy" apparently indicating this "either." That is in Mrs. Eddy's handwriting. Then a pencil cross is drawn through or over the whole by-law. Then there is attached to it something purporting to be Article XXII, page 68, headed, "Opportunity for Serving the Leader, Sect. 11."

"At the written request of the Pastor Emeritus, Mrs. Eddy, the Board of Directors shall immediately notify a member of this Church to go in 10

days to her, and it shall be the duty of the member thus notified to remain with Mrs. Eddy 12 months consecutively, or three years consecutively, if Mrs. Eddy requires or requests it. Any member who leaves Mrs. Eddy's home in less time than she requires or requests, or without her consent, after having given at least three weeks' notice to her, in advance thereof, or who declines to obey this call to duty without the Church's consent, shall be excommunicated from the Church.

"Members thus serving the Leader shall be paid semi-annually at the rate of \$1000 yearly in addition to rent and board. Those members to whom she teaches the course in Divinity, and those who remain with her three consecutive years, receive the degree of the Massachusetts Metaphysical College, if they are considered by Mrs. Eddy prepared to receive it."

That bears no indorsement in Mrs. Eddy's handwriting and has a pencil cross over its face. These are both attached to a letter of Allison V. Stewart, publisher, on a heading of that description, dated Boston, Nov. 4, 1908:

"Rev. Mary Baker G. Eddy,  
"Chestnut Hill, Massachusetts,  
"Beloved Leader:

"I inclose herewith proof of the new by-law entitled, 'Due notice required.' I have located this by-law on page 68 following the by-law, 'Opportunity for Serving the Leader,' as it seems to me this is the proper place for it.

"Unless you would like to have this by-law appear in a section by itself, it might be embodied in Section 11 of Article XXII, on page 68 of the Manual.

"I have written out the section including that part of this new section not already in Section 11, and submit it for your consideration.

"Lovingly yours,  
"ALLISON V. STEWART,  
"Publisher."

Indorsed on the back side of the letter in Mrs. Eddy's handwriting is the legend, "Thank you, Eddy."

The Master—Is that regarded by anyone as material for any purpose in the case?

Mr. Whipple—I am sure I do not know. I am simply identifying these as I hand them over.

Mr. Bates—No, Your Honor.

Mr. Whipple—But it bears the indorsement of Mrs. Eddy, and it may be material, if it be a fact, that neither of these by-laws that were indorsed by her ever got into the Manual. I mean that we are now dealing perhaps with the question as to the manner in which the Manual was constructed and what parts of it bear the inspiration of Mrs. Eddy.

The Master—Very well. My remark is caused by the fact that the whole thing seems to have resulted in nothing.

Mr. Whipple—I am not sure whether that is in one of the Man-

uals or not. It apparently had Mrs. Eddy's indorsement.

The Master—But I understood you that the proposed addition to the Manual was crossed out.

Mr. Whipple—Well, I do not know whether that cross means stricken out or whether it is an indication that it has been examined.

The Master—Very well.

Mr. Whipple—But I thought it proper to state that the cross was there.

The Master—Perhaps we will hear more about it.

Mr. Whipple—There are here four papers pinned together, and the stamp on the first one is "May 18 1908 O K with punctuation Ans 5-19-08.

"page 69

"Special Offense. Sect. 3. If a member of this Church, either by word or work, represents falsely to or of the Leader and Pastor Emeritus, said member shall immediately be disciplined, and a second similar offense shall remove his or her name from membership in The Mother Church."

There are changes in punctuation indicated on the proof. It is indorsed with the legend "Eddy."

The second sheet is another copy of the same by-law, also indorsed "Eddy." The third sheet is another copy of the same by-law, all three sheets being stamped with the date "May 18, 1908," and this third sheet does not bear any indorsement.

The fourth sheet is printed on different paper, but is headed "A New By-Law. Special Offense," and that bears the indorsement on the back, in Mrs. Eddy's handwriting, of this legend: "Church Manual Eddy."

The next paper bears the stamped indorsement "Jun 25 1908," and then in pencil, "Page 61 new," with an interrogation mark in pencil.

"mother church p. 81

"No More Communion. Sect. 17. The Mother Church of Christ Scientist shall observe no more Communion Seasons.

"Approved, Eddy."

The last two words are in Mrs. Eddy's handwriting, and on the back is the legend, "Eddy."

The next is indorsed "Jun 5—1908." "church manual, p. 61

"Joining Another Society. Sect. 14. It shall be the duty of the members of The Mother Church and of its branches to promote peace on earth and good will toward men;"—

That is the same as we have had, and it bears the indorsement on the back "Eddy."

Here is what purports to be a page about the size of the Manual, stamped "Feb. 9—1909." It is headed "Teaching Christian Science 85." The headings of the paragraphs on the page are: "Change of Location. Sect. 8. Caring for Pupils of Strayed Members. Sect. 9. Teachers must have Certificates. Sect. 10." In handwriting, in ink, on the back, is the legend, "Eddy."

The next one is stamped "Feb. 17, 1908."

"Church Manual, Article XXVIII, Section 7.

"Organizing Churches. Sect. 7. A member of this Church, who obeys its by-laws and is a loyal exemplary Christian Scientist working in the Field, is eligible to form a church in conformity with Article XXVIII, Sect. 8, and to have Church services conducted by reading the Scriptures and the Christian Science textbook. This Church shall be acknowledged publicly as a Church of Christ, Scientist. Upon proper application, made in accordance with the rules of The Christian Science Publishing Society, the services of such a church may be advertised in The Christian Science Journal. The branch churches shall be individual, and not more than two small churches shall consolidate under one church government. If the Pastor Emeritus, Mrs. Eddy, should relinquish her place as the head or Leader of The Mother Church of Christ, Scientist, each branch church shall continue its present form of government in consonance with The Mother Church Manual."

That is indorsed on the back, "Eddy."

Here is a letter from Mr. Dickey:

"Rev. Mary Baker G. Eddy,  
Office of Secretary.

"Brookline, Mass.,  
Feb. 17, 1908.

"Mr. A. V. Stewart,  
Boston, Massachusetts.  
Dear Mr. Stewart:—

"I return herewith proofs of Article XXVIII, Section 7, with our Leader's indorsement.

"Will you kindly hand one of these to Mr. Johnson.

"Sincerely,  
ADAM H. DICKEY."

Also attached to the letter is another copy of the same proof, bearing the stamp "Feb. 17, 1908. Organizing Churches. Sect. 7." There are some directions about changes, which are not in Mrs. Eddy's handwriting. There are two other copies of this proof attached, neither of which have any legend connected with Mrs. Eddy.

I hand them all over to counsel because we have not cared to remove the pins or other clasps that attach them.

Here, pinned together, are two proofs, apparently of page 86, headed "Church By-Laws."

The Master—Is there any reference to any edition?

Mr. Whipple—The second one, on the back, has Mrs. Eddy's indorsement—the word, "Eddy" put on it. They are as follows: "Article XXVII. Pupils." The headings of the paragraphs on the page are: "Authorized to Teach. Section 1. Without Teachers. Sect. 2. Basis for Teaching. Sect. 3."

Mr. Streeter—Will you pardon me a minute, Brother Whipple?

Mr. Whipple—Certainly. (After a pause.) Shall I proceed?

The Master—Shall Mr. Whipple continue, General Streeter?

Mr. Streeter—Oh, yes, I beg your pardon. I have found out what I wanted.

Mr. Whipple—Clasped together are three pages purporting to be pages 99, 100, and 101. The heading on the first is, "Committee on Publication"; on the second, "Church By-Laws"; and on the third, "Committee on Publication." On the first page there seems to be a by-law continued from another page. Then comes the paragraph headed, "Appointment. Sect. 4. Removal from Office. Sect. 5. Case of Necessity. Sect. 6." On the back of the third page, in Mrs. Eddy's handwriting, appear the words, "Mary Baker Eddy." Will you hand that to His Honor (passing papers to Mr. Thompson)? They bear the indorsement, "March 22, 1910."

Mr. Thompson—I will look at them first.

Mr. Whipple—Yes, if you will, and then hand them to His Honor.

The next purports to be page 83, headed "Teaching Christian Science. Article XXVI. Teachers. Motive in Teaching. Section 1. Care of Pupils. Sect. 2."

Mr. Thompson—Your Honor, he has asked me to hand them to you (handing papers to the master).

Mr. Whipple—I thought Your Honor might desire to see the signature.

The Master—What is it I am desired to look at here?

Mr. Whipple—The signature on the back.

This is indorsed with the legend, on the back, "Eddy." It is stamped "Oct. 14, 1909."

The Master—Why is it desirable for me to look at that any more than any of the other signatures?

Mr. Thompson—I do not know, sir.

Mr. Whipple—The next purports to be page 85, headed "Teaching Christian Science," and is stamped "Oct. 22, 1909." The paragraphs are headed: "Caring for Pupils of Strayed Members. Sect. 8. Teachers Must Have Certificates. Sect. 9." It is indorsed on the back, in pencil, "Mary Baker Eddy."

The next purports to be page 84, and has the stamp "Oct. 19, 1909." The paragraphs are headed: "Defense against Malpractice. Sect. 3. Number of Pupils. Sect. 4. Pupil's Tuition. Sect. 5. Associations. Sect. 6. A Single Field of Labor. Sect. 7." It bears the indorsement on the back, in pencil, "Eddy."

The next are three pages, which are identical in their print, the first being page 71 and headed, "Discipline," and bearing the stamp "Jan. 1—1908." It is headed "Article XXVI. Members." The paragraphs are headed: "Departure from Tenets. Section 1. Violation of By-Laws. Sect. 2. Illegal Adoption. Sect. 3." The first copy bears the indorsement, on the back, in pencil, "Eddy."

Here is another sheet, stamped

"Mar. 14, 1910," which is an exact duplicate of one already put in. It is page 84, headed "Church By-Laws," and the paragraphs are headed, "Defense against Malpractice," and otherwise just as I stated. It bears on the back, in pencil, the indorsement, "Eddy."

The next is page 91, stamped "March 14, 1910," and headed, "Board of Education." Under this heading the paragraphs are entitled: "Signatures. Sect. 3. Remuneration and Free Scholarship. Sect. 4. Surplus Funds. Sect. 5. Primary Students Sect. 6." It is indorsed on the back, in pencil, "Eddy."

The next is page 92, bearing the stamp, "Jan. 25, 1910," and the paragraphs are headed, "Healing Better Than Teaching. Sect. 7. Not Members of The Mother Church. Sect. 8." It is indorsed on the back, in pencil, "Eddy."

The next is page 87, stamped "June 26, 1909," and the paragraphs are headed: "Church Membership. Sect. 4. Class Teaching. Sect. 5." On the back, written in ink, are the words, "Mary Baker Eddy."

The next is page 103, stamped "March 23, 1909," with the heading, "Church-Building. Article XXXV." The paragraphs are headed: "Building Committee. Section 1. Designation of Deeds. Sect. 2." It bears the indorsement on the back, in pencil, "Eddy."

The next is page 69, bearing the stamp "Nov. 16, 1908," and the paragraphs are headed: "Help. Sect. 12. Students with Mrs. Eddy. Sect. 13. Mrs. Eddy's Room. Sect. 14." On the back is the stamp, "Dec. 1, 1908" and under it, in pencil, the indorsement, "Eddy."

The next is stamped, "Mar. 4—1919," and reads as follows:

"church manual p. 69

"No Interference. Sect. 18. There shall be no interference by students with the rules governing Mrs. Eddy's home, nor by any individuals whom she has not called upon for counsel."

Indorsed in some one's handwriting, in blue pencil, are the words, "Canceled when final proof was sent." There is attached another copy of the by-law, which has been amended in pencil, and is indorsed on the back, in ink, "Eddy."

The next are pages 68 and 69, pinned together. The paragraphs are headed: "First Opportunity for Serving Leader. Sect. 11. Location. Sect. 12. Help. Sect. 13. Students with Mrs. Eddy. Sect. 14. Mrs. Eddy's Room. Sect. 15." It is indorsed on the back, "Eddy." This is in part a duplicate of the last.

The next is stamped, "Feb. 9—1909," page 63, and the first paragraph is headed, "Subject for Lessons. Sect. 3." Then comes the main heading, "Reading Rooms. Article XXI. Establishment. Section 1. Librarian. Sect. 2." Then, on page 64, is the main heading, "Relation and Duties of Members to Pastor Emeritus. Article XXII. The Title of Mother Changed.

Section 1." Each sheet is indorsed on the back, in ink, "Eddy."

The next is page 69 and reads as follows:

"Agreement Required. Sect. 13. When The Christian Science Board of Directors call a student in accordance with Article XXII, Sect. 11 of our Church Manual, to the home of their Leader, Mrs. Eddy, said student shall come under a signed agreement to remain with Mrs. Eddy during the time specified in the Church Manual. "Incomplete term of service. Sect. 14."

It is indorsed, on the back, "Eddy."

March 26, 1909, "Literature in Reading Rooms, Sect. 3." Indorsed "Eddy."

Two pages together, "Privilege of Members, Sect. 8"; "No close communion, Sect. 9"; "No interference, Sect. 10." "Guardianship of Church Funds: Church edifice a testimonial, Sect. 1"; "Financial situation, Sect. 2." This is stamped "May 19, 1909," and indorsed "Eddy."

Aug. 4, 1909, "Pastor Emeritus to be consulted, Sect. 18"; "Teachers' and practitioners' offices, Sect. 11," indorsed "Eddy."

Page 56, "The Sunday School, Sect. 4." "Eddy."

Page 74, "Teachers' and practitioners' offices, Sect. 11," "Recognition, Sect. 12," indorsed "Eddy."

Page 48, "The Golden Rule, Sect. 27," "Numbering the people, Sect. 28," "Our Church edifices, Sect. 29," "No monopoly, Sect. 31," "Christian Science nurse, Sect. 31," "A legal ceremony, Sect. 1," "Sudden decease, Sect. 2," "Debating in public, Sect. 1." Both of them are indorsed "Eddy," and are stamped "December 1, 1908."

May 26, 1909. "Article IX. Marriage and decease. Sects. 1 and 2." "Debating in public." It is a duplicate of the one I just read, and the first page is indorsed "Eddy."

The next one is stamped March 16, 1910, purporting to be pages 44 and 45, beginning, "Obnoxious books, Sect. 12." There are other headings which I have not read.

Forty-two and 43, beginning Sect. 5, "Prayer in church." May 24, 1910, indorsed "Eddy."

What purports to be page 29, "Church officers and Readers of The Mother Church," July 13, 1909, indorsed "Eddy."

Page 46, stamped, "August 31, 1909." The first is "Illegal adoption, Sect. 20," "Practitioners' patients," indorsed, "Eddy."

Page 32, "Church By-Laws." "Naming book and author, Sect. 5," "Readers in branch churches, Sect. 6," "Enforcement of By-Laws, Sect. 7." "A table of contents." There are four copies of that, and then some printed matters under Sect. 4, giving the duties of readers. The last is indorsed "Eddy."

These are all attached to a letter from Mr. Johnson, dated Jan. 14, 1907, addressed to Mrs. Eddy at Pleasant View, Concord, New Hampshire:

"Beloved Leader and Teacher:

"I have received the following question:

"Is it a violation of Article XXVIII, Sect. 6, to insert in the By-Laws of a branch church any part of the By-Laws of The Mother Church; for instance Article IV? If so, could the By-Laws contain the following clause: "The readers of this Church must act in accordance with Article IV of the Manual of The Mother Church"?"

"If it were permissible to grant the request yet, it appears to me that it would be better to govern the readers in all Christian Science churches directly from the Manual of The Mother Church, rather than give permission to branch churches to embody in their respective by-laws portions of the By-Laws of The Mother Church other than what is now indicated in Article XXVIII, Sect. 3, page 78, last sentence.

"In looking over Article IV I find, with a few changes, which I have made in the inclosed proof pages, it will be applicable to the readers in all Christian Science churches that it will command uniformity in the duties of the readers throughout the entire field.

"Will you kindly let me know if these changes have your approval and if you desire them to be made in our Church Manual?"

"Lovingly your student, (Signed) "WILLIAM B. JOHNSON." "I do approve of said changes. M B G Eddy." And it is indorsed "Eddy" on the back.

The next two pages, July 1, 1909, purporting to be pages 120 and 121, giving the appendix, indorsed "Eddy."

Two pages, 120 and 121, in different form but in substance the same, giving the order of services in The Mother Church and branch churches, and the order of exercises for the Sunday School; indorsed "Eddy."

A collection of two pages, 125 and 126 of the Appendix, "Eddy."

120 and 121 of the Appendix, giving the order of services in The Mother Church. That is also indorsed "Eddy."

122, "Wednesday meetings," Appendix; indorsed "Eddy."

123 and 124, headed "Order of services," also indorsed "Eddy"—two pages.

Those are all the proofs that we have bearing Mrs. Eddy's indorsement.

The Master—The stenographer asks me whether all those are to be marked as exhibits, and it seems to me at present we stand with regard to them in this way: Mr. Whipple has offered them and submitted them to counsel for the directors in pursuance of a call from them. I take it that the directors will now want to look over them and see which of them they will want to put in evidence. Is that right?

Mr. Bates—That is right.

The Master—Is that understood, Mr. Whipple?

Mr. Whipple—It is entirely agreeable.

The Master—And until they or some of them are offered by counsel for the directors, or perhaps by counsel for Mr. Dittmore, none of them are to be marked as exhibits.

Mr. Whipple—That is correct.

The Master—One further point: Do they need to be marked for identification?

Mr. Whipple—I tried to identify them as I handed them over.

The Master—You think they are sufficiently identified?

Mr. Whipple—I think so.

The Master—For the present?

Mr. Whipple—I think so.

The Master—Very good, then.

Mr. Whipple—I would like to have this last collection of them put back or kept in the original file in which we found them last night.

Mr. Bates—Kept separate from the others?

Mr. Whipple—Yes. This is indorsed, "Manual page proof," O. K.'d on back by Mrs. Eddy. And I think I may have said it—if I have not I want to state—that these are from Mr. Stewart's files that had not been looked at by us before last night.

Mr. Bates—Mr. Stewart, Your Honor will remember, was formerly the publisher. He is now dead. He was formerly Mrs. Eddy's publisher of her own works.

The Master—Yes.

Mr. Bates—Also one of the directors for a time. I understand, then, Mr. Whipple, that you have produced—

Mr. Whipple—Was Mr. Stewart one of the trustees at one time?

Mr. Bates—No, I think he never was a trustee; he was a director.

Mr. Whipple—He was a trustee, if Your Honor please, I am informed.

Mr. Bates—Oh, very well. I understand you have introduced all of the proofs you have relating to the Manual or the By-Laws.

Mr. Whipple—Quite right. All that are indorsed by Mrs. Eddy.

Mr. Bates—Yes, or all that came from her home, with the indorsement of herself or of her secretaries for her.

Mr. Whipple—Yes.

Mr. Bates—Will you also be kind enough to let us see, either before the next session or to produce in court, all letters which you have from Mrs. Eddy relating to the Publishing Society or its business?

Mr. Whipple—Of course we have put in some of them. We have put some of them in evidence, if Your Honor please—those that seem to be material.

Mr. Bates—We only want those that you have not put in, of course.

Mr. Whipple—Very well. We will collect them and let you have them or examine them. I am informed that you have copies of all that are in our possession, but if you want to inspect the originals you will be privileged to do so.

Mr. Dane—At the time of the adjournment yesterday I was offering in

evidence the written request of Mrs. Eddy for the adoption of amendments to the seventy-third edition of the Manual, and had reached the date Dec. 14, 1908.

I now offer from Volume 9 of Letters and Miscellany, page 155, document No. 1003, reading as follows:

"Chestnut Hill,  
"December 14, 1908.

"Christian Science Board of Directors,  
"Beloved Brethren:

"Please vote on the adoption of the following amended Church by-law and if adopted publish in our periodicals and in the Church Manual.

"MARY B. G. EDDY."

[Letter of Mrs. Eddy to Board of Directors, December 14, 1908, being Document No. 1003, as read by Mr. Dane, is offered in evidence as Exhibit 408.]

"Article XXII.

"Opportunity for Serving the Leader. Sect. 11. At the written request of the Pastor Emeritus, Mrs. Eddy, the Board of Directors shall immediately notify a person who has been a member of this Church at least three years to go and tend her, and it shall be the duty of the member thus notified to remain with Mrs. Eddy three years consecutively. A member who leaves her in less time without the directors' consent or who declines to obey this call to duty, upon Mrs. Eddy's complaint thereof, shall be excommunicated from The Mother Church. Members thus serving the Leader shall be paid semi-annually at the rate of \$1000 yearly in addition to rent and board. Those members whom she teaches the course in Divinity, and who remain with her three consecutive years, receive the degree of the Massachusetts Metaphysical College."

[Proposed Article XXII, Section 11, "Opportunity for Serving the Leader," as read by Mr. Dane, is offered in evidence as Exhibit 409.]

Mr. Dane—That amendment was adopted by the directors, as appears in the Church By-Law book, Volume 2, on page 41, and has heretofore been put in evidence.

The Master—It is another amendment to the seventy-third edition, is it?

Mr. Dane—Yes, Your Honor.

Mr. Whipple—What edition? I did not catch that.

Mr. Dane—Of the seventy-third edition, as adopted by the directors in the Church By-Law book, Volume 2, page 41, and the following pages.

Mr. Whipple—Was this by-law adopted?

Mr. Dane—That was adopted.

The Master—Under what date?

Mr. Dane—Under date of Dec. 15, 1908.

Mr. Whipple—Was it ever printed in the book, Mr. Dane?

Mr. Dane—I beg your pardon, Mr. Whipple?

Mr. Whipple—Was it ever printed in one of the printed Manuals?

Mr. Dane—I think the subject appears in the present, the eighty-ninth Manual.

Mr. Whipple—Not in this form, however?

Mr. Dane—I think substantially in this form. I will come to that. In any event, I am coming to that later, because I am going to trace it to the present Manual.

I now offer from Volume 9 of Letters and Miscellany, page 161, Document No. 1006, a letter under date of Dec. 28, 1908:

"Chestnut Hill  
"Dec. 28, 1908.

"Christian Science Board of Directors,  
"Beloved Brethren:—

"Please vote on the adoption of the following Church By-law and if adopted have it published in our Church Manual.

"As ever, Sincerely,  
"MARY BAKER EDDY."

[Letter Mrs. Eddy to Board of Directors, Dec. 28, 1908, as read by Mr. Dane, is offered in evidence as Exhibit 410.]

Mr. Dane—The words "As ever, Sincerely" are in Mrs. Eddy's handwriting, and the signature, "Mary Baker Eddy."

"Article XXII

"Incomplete Term of Service. Sect. 14. If a student who has been called to serve our Leader in accordance with Article XXII, Sect. 11, of the Church Manual leaves her before the expiration of the time therein mentioned such student shall pay to Mrs. Eddy whatsoever she may charge for what she has taught him or her during the time of such service."

[Proposed Article XXII, Section 14, to Church By-Laws, as read by Mr. Dane, is offered in evidence as Exhibit 411.]

Mr. Dane—The adoption of that by-law appears upon page 42, under date of Dec. 31, 1908, of the Church By-Laws book, Volume 2.

I offer from the same volume of Letters and Miscellany a letter on page 163, Document No. 1007, on the letterhead, "Rev. Mary Baker G. Eddy, Office of Secretary, 384 Beacon Street":

"Chestnut Hill, Mass.,  
"January 15, 1908."

The Master—You go back now from December?

Mr. Dane—Yes. This says "1908" in typewriting, and underneath in pen is "1909." Evidently it was a typographical error of the date.

Mr. Whipple—What was the date?

Mr. Dane—In typewriting is "January 15, 1908," and in pen underneath "1908" appears the figures "1909."

"Chestnut Hill, Mass.,  
"January 15, 1908.

"Board of Directors  
"The First Church of Christ, Scientist,  
"Boston, Mass.

"Beloved Brethren:  
"Please vote on the adoption of the

following amendment to Article XXII, Sect. 13 of The Mother Church By-laws, and if adopted publish in the Church Manual and in our periodicals.

"MARY BAKER EDDY."

[Letter, Mrs. Eddy to Board of Directors, Jan. 15, 1908/1909, as read by Mr. Dane, is offered in evidence as Exhibit 412.]

"Article XXII

"Agreement Required — Sect. 13. When The Christian Science Board of Directors calls a student in accordance with Article XXII, Sect. 11, of our Church Manual to the home of their Leader Mrs. Eddy, said student shall come under a signed agreement to remain with Mrs. Eddy if she so desires, during the time specified in the Church Manual."

[Proposed Article XXII, Sect. 13, to Church By-Laws, as read by Mr. Dane, is offered in evidence as Exhibit 413.]

Mr. Dane—On the bottom of the document appear the words and figures, "Allison V. Stewart, 1/5/09," as fixing the date.

The By-Law just read was adopted, as appears in Church By-Laws book, Vol. 2, under date of Jan. 15, 1909, page 44.

I offer from the same volume of Letters, page 165, Document No. 1008, reading as follows:

"Chestnut Hill, Mass.,  
"Feb. 4, 1909.

"Christian Science Board of Directors,  
"Beloved Brethren:

"Please vote on the adoption of the following amendment to By-Law, Article XXI, Sec. 2 of the Church Manual:

"Article XXI

"Librarian. Sec. 2. The individuals who take charge of the Reading Room of The Mother Church shall be elected by The Christian Science Board of Directors, subject to the approval of Mary Baker Eddy. He or she shall have no bad habits, shall have had experience in the Field, shall be well educated, and a devout Christian Scientist.

"MARY BAKER EDDY."

[Letter, Mrs. Eddy to Board of Directors, dated Feb. 4, 1909, with accompanying By-Law, Article XXI, Sec. 2, as read by Mr. Dane, is offered in evidence as Exhibit 415.]

Mr. Dane—That was adopted by the directors, as appears in the Church By-Law book, under date of Feb. 8, 1909, page 44.

I offer from the same volume of letters, page 167, the document No. 1009, as follows:

"384 Beacon Street,  
"Chestnut Hill, Mass.,  
"Feb. 6, 1909.

"The Christian Science Board of Directors,  
"Beloved Brethren:

"Please vote on the adoption of the following amendment to By-Law, Article XXVI, Sec. 10:

**"Article XXVI.**

"Teachers Must Have Certificates. Section 10. A member of this Church shall not teach pupils Christian Science unless he has a certificate to show that he has been taught by Mrs. Eddy or has taken a normal course at the Massachusetts Metaphysical College or in the Board of Education. Such members who have not been continuously active and loyal Christian Scientists since receiving instruction as above shall not teach Christian Science without the approval of the Christian Science Board of Directors.

**"MARY BAKER EDDY."**

[Letter, Mrs. Eddy to Board of Directors, Feb. 6, 1909, with accompanying proposed by-law, as read by Mr. Dane, is offered in evidence as Exhibit 416.]

Mr. Dane—That was adopted by vote of the directors under date of Feb. 8, 1909, as appears on page 44 and 45 of Volume 2 of the Church By-Law book.

From the same volume of Letters and Miscellany, page 173, I offer document No. 1012.

[This document is offered in evidence as Exhibit 417, and is read by Mr. Dane, as follows:]

"Chestnut Hill, Mass.,  
"March 19, 1909.

"Christian Science Board of Directors,  
"Beloved Brethren:

"Please vote on the adoption of the following amendment to Church by-law, Article XXXV of the Church Manual.

**"Article XXXV.**

"Designation of Deeds, Section 2. All deeds of further purchase of land for The First Church of Christ, Scientist, in Boston, Mass., shall have named in them all the trusts mentioned in the deed given by Albert Metcalf and E. Noyes Whitcomb in March, 1903; but this rule shall not apply to land purchased for any purpose other than the erection of a Church edifice. Also there shall be incorporated in all such deeds the phrase, 'Mary Baker Eddy's Church, The Mother Church or The First Church of Christ, Scientist, in Boston, Mass.'

**"MARY BAKER EDDY."**

Mr. Dane—This amendment was adopted by the directors as appears on page 45 of the Church By-Law book, Volume 2, under date of March 20, 1909. From the same volume of Letters and Miscellany, page 175, I offer Document No. 1013.

[This document is offered in evidence as Exhibit 418, and is read by Mr. Dane, as follows:]

"384 Beacon Street,  
"Chestnut Hill, Mass.,  
"March 23, 1909.

"Christian Science Board of Directors,  
"Beloved Brethren:

"Please vote on the adoption of the following Church by-law, Article

XXI, Section 3, and if adopted publish in the Church Manual.

**"MARY BAKER EDDY.**

**"Article XXI.**

"Literature in Reading Rooms. Sect. 3. The literature sold or exhibited in the reading rooms of Christian Science churches shall consist only of Science and Health with Key to the Scriptures, by Mary Baker G. Eddy, and other writings by this author; also the literature published or sold by The Christian Science Publishing Society."

Mr. Dane—That was adopted by the directors, as appears in Volume 2, Church By-Law book, page 46, under date of March 25, 1909. From the same volume, page 179, I offer Document No. 1015.

[This document is offered in evidence as Exhibit 419, and is read by Mr. Dane, as follows:]

"Chestnut Hill, Mass.,  
"May 14, 1909.

"Christian Science Board of Directors,  
Boston, Mass.,  
"Beloved Brethren:

"Please vote on the repeal of Article XXIII, Section 10, of The Mother Church By-laws and on the adoption of the following Amendment:

**"Article XXIII.**

"No interference. Section 10. A member of The Mother Church may be a member of one branch Church of Christ, Scientist, or of one Christian Science Society holding public services, but he shall not be a member of both a branch church and a society; neither shall he exercise supervision nor control over any other Church. In Christian Science each branch church shall be distinctly democratic in its government, and no individual, and no other church shall interfere with its affairs.

"If the By-law above is adopted please publish it in the Church Manual, and in the Christian Science periodicals.

**"MARY BAKER EDDY."**

Mr. Dane—The adoption of the By-law appears on page 46, under date of May 14, 1909, in the church by-law book, Volume 2.

The Master—What appears in the by-law book—anything beyond the by-law, or a record of its adoption?

Mr. Dane—A record of its adoption at a meeting of the directors.

The Master—That is true in every case, is it?

Mr. Dane—In every case as far as I have read at present; and in every case the documents appearing in Volume 9 have a notation on the foot of them "Adopted," and the date of their adoption. From the same volume of Letters and Miscellany, page 181, I offer Document No. 1016, on the letter head "Rev. Mary Baker G. Eddy, Office of Secretary, 384 Beacon Street."

[This document is offered in evidence as Exhibit 420, and is read by Mr. Dane as follows:]

"Chestnut Hill, Mass.,  
"May 22, 1909.

"Christian Science Board of Directors,  
Boston, Mass.  
"Beloved Brethren:

"Please vote on the repeal of Section 2, Article IX, of The Mother Church By-laws, and on the adoption of the following Amendment:

**"Article IX.**

"Sudden Decease. Section 2. If a member of The Mother Church shall decease suddenly, without previous injury or illness, and the cause thereof be unknown, an autopsy shall be made by qualified experts. When it is possible the body of a female shall be prepared for burial by one of her sex.

"In case the above Amendment is adopted, please publish it in The Mother Church Manual.

"Lovingly yours,

**"MARY BAKER EDDY."**

Mr. Dane—The adoption of that amendment appears upon page 47 of the church by-law book, under date of May 22, 1909. I offer now, from Volume 6 of Letters and Miscellany, page 163, Document No. 606, a letter to Mrs. Eddy from The Christian Science Board of Directors, by J. V. Dittmore, Secretary. I think there is no question about Mr. Dittmore's signature?

Mr. Thompson—You might just let us look at it.

Mr. Dane—Do you make any question about that?

Mr. Thompson—(Examining signature) Yes; that is all right.

[This Document, No. 606, Letters and Miscellany, page 163, May 31, 1909, is offered in evidence as Exhibit 421, and is read by Mr. Dane, as follows:]

"Boston, Mass.

"May 31, 1909.

"Rev. Mary Baker Eddy,  
"Brookline, Mass.  
"Beloved Leader:

"This board respectfully represents to you that there seems to be no need for the missionaries provided for in Article XXXIII of the By-Laws of The Mother Church and they ask your consent to the repeal of said article of the By-Laws.

"Lovingly yours,

**"CHRISTIAN SCIENCE BOARD OF DIRECTORS,**  
"By J. V. Dittmore, Secretary."

Mr. Dane—Indorsed upon the bottom of the letter are the words: "You have my hearty consent, Mary Baker Eddy." Do you make any question about that handwriting?

Mr. Whipple—No.

Mr. Dane—It is understood that the words "You have my hearty consent, Mary Baker Eddy," are in Mrs. Eddy's handwriting. From the minutes of regular and special meetings of the directors, under date of June 1, 1909, I offer the part which I read into the record.

[An extract from directors' records, June 1, 1909, is offered in evidence as

Exhibit 422, and is read by Mr. Dane, as follows:]

"Upon motion of Mr. Stewart, seconded by Mr. Chase, it was unanimously voted that Articles XXXIV, XXXV, and XXXVI in the eightieth edition of the Manual shall be numbered Articles XXXIII, XXXIV, and XXXV, respectively, in the eighty-first edition, this action being necessary because of the repeal of Article XXXIII."

The Master—Is there no vote repealing that Article XXXIII?

Mr. Dane—I omitted that. It should have been read before the one I just read, but it is as follows:

"Upon motion of Mr. Stewart, seconded by Mr. Chase, it was unanimously voted that Article XXXIII of the By-Laws be repealed, such action having been authorized by the Pastor Emeritus."

Mr. Dane—I offer, from Volume 9 of Letters and Miscellany, page 183, Document No. 1017.

[This document is offered in evidence as Exhibit 423, and is read by Mr. Dane, as follows:]

"Chestnut, Hill, Mass.,  
"June 23, 1909.

"Christian Science Board of Directors,  
"Beloved Students:

"Please vote on the adoption of the following Church By-Law, Article XXVII, Section 5, and, if adopted, publish in the Church Manual and in our periodicals.

"Article XXVII.

"Class Teaching. Section 5. Members of The Mother Church who are authorized by its by-laws to teach Christian Science, shall not solicit, or cause or permit others to solicit pupils for their classes. No member of this Church shall advise against class instruction.

"Teachers of Christian Science must have the necessary moral and spiritual qualifications to elucidate the Principle and rule of Christian Science, through the higher meaning of the Scriptures.

"The less the teacher personally controls other minds and the more he trusts them to the Divine Truth and Love, the better it will be for both teacher and student." (Retrospection and Introspection, page 84.)  
"MARY BAKER EDDY."

Mr. Dane—I offer, from the records of the directors, under date of June 25, 1909, the following vote.

[An extract from the directors' records, June 25, 1909, is offered in evidence as Exhibit 424, and is read by Mr. Dane, as follows:]

"Having received the written approval of the Pastor Emeritus, it was unanimously voted to adopt the By-law, Article XXVII, Section 5, 'Class Teaching.'"

The Master—The by-law itself is not quoted?

Mr. Dane—It is not quoted in the vote adopting it. It is referred to by title; it is on the same date.

The Master—Two days later, I think.

Mr. Dane—Is it two days later? That is right. The vote is June 25, and the letter June 23. I offer now from Volume 9 of Letters and Miscellany, page 185, Document No. 1018, what appears to be a proof sheet of the Manual, page 29, with the indorsement on the reverse side, "Eddy."

[This document is introduced in evidence as Exhibit 425.]

The Master—Any date?

Mr. Dane—There is stamped upon the document "July 13, 1909," and there is on the margin of the document, in handwriting, "Amendment adopted July 12, 1909."

Mr. Whipple—In whose handwriting?

Mr. Dane—I do not know, Mr. Whipple.

Mr. Thompson—Let me see that, please.

The Master—Is there any record of the adoption?

Mr. Dane—Yes, Your Honor, I was coming to that. Mr. Thompson asked to see the document.

Mr. Thompson—Will you just specify what that refers to, please—the article in the by-laws?

Mr. Dane—The article in the by-laws just referred to refers to this subject, and I will read the last paragraph, the paragraph in which the amendment occurs:

"If the Christian Science Board of Directors fails to fulfill the requirements of this by-law and a member of this Church, or the Pastor Emeritus, shall complain thereof to the clerk and the complaint be found valid, the directors shall resign their office or perform their functions faithfully. Failing to do this, the Pastor Emeritus shall appoint five suitable members of this Church to fill the vacancy. The salary of the members of the Board of Directors shall be at present two thousand five hundred dollars each annually."

On page 11 of the directors' minutes, under date of June 12, 1909, I offer the following vote:—

The Master—Don't you mean July 12?

Mr. Dane—July 12; I beg pardon; 1909:

"Having been approved by the Pastor Emeritus, it was voted that the last sentence in Section 9 of Article I of the By-Laws of The Mother Church be amended by substituting the following:

"The salary of the members of the Board of Directors shall be at present two thousand five hundred dollars each annually."

[The record of the meeting of the Board of Directors of July 12, 1909, from which the foregoing extract is read, is Exhibit 426. R. J. M.]

From Volume 9 of Letters and Miscellany, page 187, I offer Document No. 1019, reading as follows:

"Chestnut Hill, Mass.,  
"July 23, 1909.

"Board of Directors,  
"The First Church of Christ, Scientist,  
"Boston, Mass.

"Beloved Brethren:

"Please vote on the adoption of the following Church By-law, article 23, section 11, and, if adopted, publish in the Church Manual and in our periodicals.

"Article XXIII.

"Sect. 11. Teachers and practitioners of Christian Science shall not have their offices or rooms in the branch Churches, in the reading rooms, nor in rooms connected therewith.

(Signed) "MARY BAKER EDDY."

[The document No. 1019, Vol. 9 of Letters and Miscellany, page 187, is Exhibit 427. R. J. M.]

From the minutes of the regular and special meetings of the Board of Directors I offer, from page 14, the following vote, under date of July 23, 1909:

"At the request of the Pastor Emeritus over her own signature, the following by-law was unanimously adopted:

"Article XXIII.

"Teachers' and Practitioners' Offices. Sect. 11."

And then is set forth the by-law in the same words which I have already read.

[The foregoing extract from minutes of the Board of Directors, page 14, dated July 23, 1909, is Exhibit 428. R. J. M.]

From Vol. 9 of Letters and Miscellany, page 189, I offer document No. 1021, as follows:

"July 28th, 1909.

"Christian Science Board of Directors,  
"Beloved Brethren:

"I request you to vote at once upon the adoption of the following Church By-law and send your decision to me by Mr. McLellan.

(Signed) "MARY BAKER EDDY."

"The Mother Church shall not make a Church By-law nor enter into a business transaction with a Christian Scientist whom I am employing without first consulting Mary Baker Eddy on said subject and adhering strictly to her advice thereon."

[The document No. 1021, of Vol. 9 of Letters and Miscellany, page 189, is Exhibit 429. R. J. M.]

And from page 15 of the directors' minutes of regular and special meetings, under date of July 23, 1909, I offer the following vote:

"Voted to adopt the following by-law:

"Article XXII

"Pastor Emeritus to be Consulted. Sect. 18. The Mother Church shall not make a Church By-law nor enter into a business transaction with a Christian Scientist in the employ of Rev. Mary Baker Eddy without first consulting her on said subject and adhering strictly to her advice thereon."



[The foregoing extract from directors' minutes of July 28, 1909, page 15, is Exhibit 430. R. J. M.]

It is to be noted that there are slight changes in the order of the words between the by-law as set out in the letter of July 28, 1909, and the by-law as adopted, and I will point them out. In the letter it reads: "nor enter into a business transaction with a Christian Scientist whom I am employing;" in the by-law as adopted, it reads: "nor enter into a business transaction with a Christian Scientist in the employ of Rev. Mary Baker Eddy." In the by-law as set out in the letter it reads: "without first consulting Mary Baker Eddy on said subject," and in the by-law as adopted it reads "without first consulting her on said subject."

The Master—Is there anything about that in the Church by-law book?

Mr. Dane—In the Church by-law book there is a record, under date of July 28, 1909, which apparently is supplementary to the record as made on page 15 of the minutes of regular and special meetings. In the Church by-law book, on page 50, the vote is set forth and is set forth in the phraseology used in the by-law as adopted by the directors on page 15 of the directors' book. In that connection—

Mr. Whipple—There is something omitted.

[Short conference between Mr. Dane and Mr. Whipple.]

Mr. Whipple—Your Honor has observed the relation of the two books. There is no certification of what you call the by-law?

Mr. Dane—No; to the prior ones, yes. I am going to explain that as soon as I have completed what I was doing.

Mr. Whipple—Was this ever incorporated in any edition of the Manual?

Mr. Dane—I understand so.

The Master—I understood, at the start, that all this related to amendments to the seventy-second edition. Is that right?

Mr. Dane—It is correct. It relates to amendments to the seventy-second edition. Some of these were put into editions which were issued between the date of the issue of the original seventy-third, so that some of them as they appear in the record of the Church by-law book appear to be amendments to editions which were issued subsequent to the seventy-third but which contained the same by-laws as the seventy-third. The matter of issuing editions we expect to show in evidence by another witness a little later. It will clear up all the confusion on that, if there is any now.

The Master—And the dates of the different issues?

Mr. Dane—The different issues, yes. It seems that there was a practice of printing 1000 copies of each edition and as soon as the thousand copies were exhausted then another edition was printed and issued, and a subse-

quent number was given the edition. Sometimes the following edition contained the same by-laws as were in the preceding edition. If in the meantime any amendments had been adopted, they were incorporated into the subsequent editions.

Mr. Streeter—Let me ask you, Mr. Dane, if it was not the practice to issue a new edition upon the coming into office of a new official?

Mr. Dane—I had never heard of that.

The Master—Mr. Dane says that he is going to introduce evidence to explain it all later.

Mr. Streeter—Yes; that is all right.

The Master—The seventy-third edition appears to be a sort of starting point, or standard, according to the Manual?

Mr. Dane—That is it exactly.

The Master—So that no doubt, when you come to it, you will tell us all about the issue of that seventy-third edition. And perhaps there is somewhere an authenticated copy of the seventy-third edition. When you simply produce a book and say, "This is the seventy-third edition, because it says so on the title page," it does not seem very satisfactory, does it?

Mr. Dane—The evidence relating to the seventy-third edition, as I recall it now, is that the directors voted to adopt the seventy-third edition, and in the record of their adoption it purports to have been done at the request or upon the approval of Mrs. Eddy. That is a part of the record of the adoption, and then following that—

The Master—Have we—Go on; I did not mean to interrupt you.

Mr. Dane—Following that we have the by-law which was proposed by Mrs. Eddy for adoption, which made that edition of the Manual the authority, and provided that if there were any discrepancies between that edition and the others, that that edition should govern. Then—

The Master—Well, now, ought we not to have some—

Mr. Dane—I beg your pardon.

The Master—No; you have not got through; go on.

Mr. Dane—It is suggested to me that the seventy-third edition is copied in full into the Church by-law book, Volume 2, following the vote of the directors under date of July 31, 1908.

The Master—Oh, yes.

Mr. Dane—And it has already been testified that, upon a comparison, the printed pages as they appear in the Church by-law book are the same as they appear in the Manual which was issued—the seventy-third edition.

The Master—That is, you put in here a given copy of the Manual?

Mr. Dane—Yes.

The Master—The seventy-third edition?

Mr. Dane—Yes.

The Master—And the evidence is that that is just the same as what was written out in the Church by-law book?

Mr. Dane—Exactly.

Mr. Bates—That authenticates that issue.

Mr. Dane—That is the starting point as we maintain, of an authenticated edition in its entirety. Now, these amendments which I am putting in now, which were made at the request of Mrs. Eddy, become, together with the seventy-third edition, the eighty-ninth edition, which is now—

The Master—They first become a number of other editions?

Mr. Dane—Yes; they are issued in a number of other editions.

The Master—And then they wind up with the eighty-ninth edition?

Mr. Dane—Eighty-ninth.

The Master—Is that right?

Mr. Dane—That is right; which is the last edition and was the edition which was in force on March 17, 1909, which has already been marked for identification.

Mr. Whipple—Will you let me see where you say the seventy-third edition is in your By-Law book?

The Master—That is already in evidence, you say, Mr. Dane?

Mr. Dane—It is in evidence, as I recall it.

The Master—I do not want to make you go over again anything that is in evidence.

Mr. Whipple—If Your Honor please, I thought not, because here there is nothing except the same thing that they offered in another way—taken to pieces and pasted into this book. Where is the authentication?

Mr. Dane—Right here on page 1 (indicating in book).

Mr. Whipple—Now, that says: "The following resolution was introduced. Be it resolved by the Board of Directors of The Mother Church, The First Church of Christ, Scientist, in Boston, Massachusetts, that each and all of the By-Laws contained in the seventy-third edition of the Manual of said Church, as printed and published by Allison V. Stewart, be now adopted as the By-Laws of said Church. The adoption of this resolution being moved and seconded, the question of its adoption being duly put, it was adopted by the unanimous vote of all the directors. William B. Johnson, Clerk."

It does not refer to anything that follows.

Mr. Dane—Oh, yes. I would like to show it to Your Honor. It seems to me it is a sufficient identification. Your Honor will notice that it is the one published by Allison V. Stewart, and is the seventy-third edition.

Mr. Whipple—That does not prove itself. It is only printed; there is no signature of Mr. Stewart.

Mr. Bates—That is a matter of argument, Mr. Whipple.

Mr. Whipple—It is a matter of proof.

Mr. Bates—It has been put into evidence already.

The Master—It would have made it a little clearer, certainly, if the resolution had added, "and as set forth in the

following pages"; but it does not say so.

Mr. Whipple—Nor does it appear who pasted it in.

The Master—Nor does it appear by whom these were pasted in. And when you get to the end, is there any certification? I do not find any.

Mr. Dane—I think not. I think there is no certification.

Mr. Whipple—All you have, as I said a moment ago, is a printed copy torn to pieces and pasted in there, instead of being in a bound volume; and all that Your Honor has said with regard to the bound volume not proving itself would appear to apply to the fragments or parts that are there pasted in.

The Master—Well, perhaps it is not too much of an inference that they meant to say, "as set forth in the following pages."

Mr. Whipple—The courts have power to supply an interpretation, but—

Mr. Bates—There is no logical interpretation otherwise.

The Master—We will consider that later. We have now got the facts.

Mr. Dane—It seems to me to be simply a question of identification. If the Court is satisfied that what the directors then adopted was the Manual as set forth on the following pages, I think that is sufficient.

Mr. Whipple—The Court would have to be satisfied that they knew it to be there.

[Short recess.]

The Master—How would it do, Mr. Dane, to correct that now?

Mr. Dane—My attention has been called to the fact that several times this morning I referred to the seventy-second edition of the Manual, I should have said the seventy-third edition of the Manual, as the seventy-third is the one of which there is the record of the adoption in the Church By-Law book.

Mr. Thompson—When you said that those amendments were amendments of the seventy-second, you meant that, did you?

Mr. Dane—Seventy-third.

Mr. Thompson—You meant that all those various amendments were amendments of the seventy-third?

Mr. Dane—Yes.

The Master—They appear, I think, by their dates—the seventy-third edition, according to the record, having been adopted July 31, 1908. What he has put in this morning, if I understand it right, are letters by Mrs. Eddy or actions by the directors on dates subsequent to July 31, 1908.

Mr. Thompson—I thought some of those yesterday were on dates previous to that.

The Master—Yes, so they were. But this morning when Mr. Dane told us he was now going to put in letters referring to the amendments relating to the seventy-second edition, he meant amendments to the seventy-third edition.

The stenographers had better correct that wherever it is necessary.

Mr. Dane—Before leaving the subject which was last under discussion at the time of the recess, I merely desire to point out that in the Church By-Law book, Vol. 2, the record of the adoption of the seventy-third edition appears under date of July 31, 1908, and the printed pages of the seventy-third edition appear on pages 1 to 33, inclusive; and then upon page 37 there appears a record of the directors under date of July 31, 1908—the same date as is the meeting adopting the seventy-third on the first page. Showing that—

The Master—Is there anything in the action following the pages you have referred to that is material?

Mr. Dane—There is nothing. It simply proceeds to adopt By-Laws to the seventy-third.

The Master—If you had followed the practice that is followed by the Secretary of the Commonwealth in the successive editions of the Acts and Resolves of the Legislature, you would have had your secretary certify that everything contained in this volume is a true copy of the original, referring to where it is in the record.

Mr. Dane—That is correct. But that was not done.

Mr. Whipple—Perhaps it might be well to call attention to the testimony that these records frequently were not made up until some weeks or months after the meetings were held.

Mr. Bates—There is no such testimony.

Mr. Whipple—Well, you do a lot of disputing, but you do very little looking up in order to verify your ideas. If you would look up the evidence maybe you would realize what it is.

The Master—I think we have had some testimony, haven't we, to the effect that the book which you have put in as the seventy-third edition has been compared and is a true copy?

Mr. Dane—Yes, we have, Your Honor.

The Master—The particular book which you put in. That only goes no further than to show that that particular book is a true copy.

Mr. Dane—Yes. It was done yesterday afternoon.

The Master—Yes, you are right.

Mr. Dane—This was the question: "I show you, Miss Warren, the seventy-third edition of the Manual, marked 'Exhibit 140 for identification,' and I show you the Church By-Law book, Volume 2, and call your attention to pages 1 to and including page 33, and ask you whether or not you have made a comparison of the printed matter contained in the printed Manual with the printed matter contained on the pages in the Church By-Law book? A. I have.

"Q. Whether or not it is the same? A. It is exactly the same."

Mr. Whipple—Both of them are printed, and all that means is that one of them is torn to pieces and

pasted in the book, and the other one is not.

Mr. Bates—Why are you so disturbed, Mr. Whipple?

Mr. Whipple—I am not disturbed. There is not the slightest disturbance.

Mr. Bates—Your actions seem to belie your words.

Mr. Whipple—You seem to prove something; you can't tell, you are not a good judge of human nature, Governor; you don't know what is going on by any observations that you make.

The Master—Is there anything further, Mr. Dane?

Mr. Dane—Yes, Your Honor.

I offer now from Volume 9 of Letters and Miscellany, page 201, Document No. 1027, as follows:

"Chestnut Hill, Mass.,

"October 9, 1909.

"Christian Science Board of Directors, "Beloved Brethren:

"Please vote on the adoption of the following amendment to By-law Article XXVI, Sect. 2, to be published in our periodicals and in The Mother Church Manual:

"Article XXVI.

"Care of Pupils. Section 2. Christian Scientists who are teachers shall carefully select for pupils such only as have good past records and promising proclivities toward Christian Science. A teacher shall not attempt personal control of or attempt to dictate to his pupils, but he shall hold himself morally obligated to promote their progress in the understanding of divine Principle, not only during the class term but after it, and to watch well that they prove sound in sentiment and practical in Christian Science. He shall persistently and patiently counsel his pupils in conformity with the unerring wisdom and law of God, and shall enjoin them habitually to study the Scriptures and Science and Health with Key to the Scriptures.

"MARY BAKER EDDY."

[Letter, Mrs. Eddy to Board of Directors, Oct. 9, 1909, with accompanying proposed by-law, as read by Mr. Dane, is offered in evidence as Exhibit 431.]

Mr. Dane—I offer from the records of the directors' minutes, the minutes of the regular and special meetings of the Board of Directors, page 31, a vote under date of Oct. 13, 1909.

[An extract from directors' records, Oct. 13, 1909, introduced in evidence as Exhibit 432, and read by Mr. Dane, as follows:]

"Having been approved by the Pastor Emeritus, the following amended By-Laws were adopted by the unanimous vote of the directors present."

Mr. Dane—Then follows the Article XXVI as set out in the letter of Oct. 9, 1909. On page 203 of Volume 9 of Letters and Miscellany, I offer also Document No. 1028, with the indorsement on the reverse side, in Mrs. Eddy's hand, "Eddy," in which is set

out under the caption, "Care of pupils, Sect. 2," the by-law as it appears to have been adopted on page 31, under date of Oct. 13, 1909, in the directors' minute book.

[This document is offered in evidence as Exhibit 433.]

Mr. Dane—I offer, from Volume 9 of Letters and Miscellany, page 197, Document No. 1025.

[This document is offered in evidence as Exhibit 434, and is read by Mr. Dane, as follows:]

"Chestnut Hill, Mass.,  
"Oct. 9, 1909.

"Christian Science Board of Directors,  
"Beloved Brethren:

"Please vote on the adoption of the following Amendment to By-law, Article XXVI, Section 7, to be published in our periodicals and in The Mother Church Manual:

"Article XXVI.

"A Single Field of Labor. Section 7. A loyal teacher of Christian Science shall not teach a loyal teacher's pupil except it be in the Board of Education. Outside of this board each student occupies his own field of labor. Pupils may visit each other's churches and by invitation attend each other's associations.

"MARY BAKER EDDY."

Mr. Dane—I offer from the meeting of the directors, from the minutes of regular and special meetings of The Christian Science Board of Directors, under date of Oct. 13, 1909, on page 31, the following.

[Extract from directors' records, Oct. 13, 1909, is offered in evidence as Exhibit 435, and read by Mr. Dane, as follows:]

"Having been approved by the Pastor Emeritus, the following amended By-Laws were adopted by the unanimous vote of the directors present:

"Article XXVI.

"A Single Field of Labor. Section 7. A loyal teacher of Christian Science shall not teach another loyal teacher's pupil except it be in the Board of Education. Outside of this board each student occupies only his own field of labor. Pupils may visit each other's churches and by invitation attend each other's associations."

Mr. Dane—From the same volume of Letters and Miscellany, Volume 9, page 205, I offer Document No. 1029.

[This document is offered in evidence as Exhibit 436, and is read by Mr. Dane, as follows:]

"Chestnut Hill, Mass.,  
"October 15, 1909.

"Christian Science Board of Directors,  
"Beloved Brethren:

"Please vote on the adoption of the following Amendment to Article XXVI, Section 6, to be published in our periodicals and in the Manual of The Mother Church.

"Article XXVI.

"Associations. Section 6. The Associations of the pupils of loyal

teachers shall convene annually. The pupils shall be guided by the Bible and Science and Health, not by their teacher's personal views. Teachers shall not call their pupils together, or assemble a selected number of them, for more frequent meetings.

"MARY BAKER EDDY."

Mr. Dane—From the minutes of the regular and special meetings of the Board of Directors, page 33, under date of Oct. 18, 1909, I offer the following.

[Extract from the directors' records, Oct. 18, 1909, is offered in evidence as Exhibit 437, and is read by Mr. Dane, as follows:]

"Having been approved by the Pastor Emeritus, the following amended by-law was unanimously adopted."

Mr. Dane—Then follows the by-law as set forth in the letter that has been read. From Volume 9, Letters and Miscellany, page 209, I offer Document No. 1031.

[This document is introduced in evidence as Exhibit 438, and is read by Mr. Dane, as follows:]

"Chestnut Hill, Mass.,

"October 18, 1909.

"The Christian Science Board of Directors,

"Beloved Brethren:

"Please vote on the repeal of the following By-law.

"Article XXVI.

"Change of Location. Section 8. Faithfully to fulfill the solemn responsibilities of a teacher of Christian Science or of a Reader, a teacher or Reader should remain with his own pupils, Association and Church. But if, for sufficient cause or to supply a need of the Pastor Emeritus, a teacher permanently changes his location, he may select a member of his church to guide his pupils.

"MARY BAKER EDDY."

Mr. Dane—From the records of the minutes of the regular and special meetings of the Board of Directors, held on Oct. 21, 1909, page 33, I offer the following record:

[An extract from directors' records, Oct. 21, 1909, is offered in evidence as Exhibit 439, and read by Mr. Dane, as follows:]

"Pursuant to the request of the Pastor Emeritus, under date of Oct. 18, Art. XXVI, Section 8, of the church By-Laws was repealed."

Mr. Dane—From Volume 9 of Letters and Miscellany, page 213, I offer Document No. 1033.

[This document is introduced in evidence as Exhibit 440, and is read by Mr. Dane, as follows:]

"Chestnut Hill, Mass.,

"January 24, 1910.

"Christian Science Board of Directors,  
"Beloved Brethren:

"Please vote on the adoption of the following amended By-law, Article XXX, Section 8, to be published in The Mother Church Manual.

"Article XXX.

"Not members of The Mother Church. Section 8. No person shall receive instructions in Christian Science in any class in the Massachusetts Metaphysical College nor receive the degree of C.S.B. or C.S.D., who is not a member of The First Church of Christ, Scientist, in Boston, Mass.

"Only those persons who are members of this Church and possessed of the qualifications named in Section 9, Article XXVI, of these By-laws, shall be deemed loyal teachers of Christian Science.

"MARY BAKER EDDY."

Mr. Dane—From the minutes of regular and special meetings of The Christian Science Board of Directors, on page 6, under date of Jan. 27, 1910, the following record, or part of record, of a meeting.

[An extract from the directors' records, Jan. 27, 1910, is introduced in evidence as Exhibit 441, and read by Mr. Dane, as follows:]

"Having been approved by the Pastor Emeritus, the following amended by-law was unanimously adopted by the Board of Directors. Article XXX."

Mr. Dane—Then follows the by-law as set out in the letter of Jan. 24, 1910. From Volume 9 of Letters and Miscellany, page 217, I offer Document No. 1035, on the letter head "Rev. Mary Baker Eddy, Office of Secretary, 384 Beacon Street."

[This document is offered in evidence as Exhibit 442, and is read by Mr. Dane, as follows:]

"Chestnut Hill, Mass.,

"March 10, 1910.

"Christian Science Board of Directors,  
"Boston, Mass.

"Beloved Brethren:

"Please vote on the adoption of the following amendment of The Mother Church By-laws.

"Article XXX.

"Remuneration and Free Scholarship. Section 4. Tuition and class instruction in the Board of Education shall be \$100. The bearer of a card of free scholarship from the President, Rev. Mary Baker Eddy, shall be entitled to a free course in this department on presentation of the card to the teacher. Only the President gives free admission to classes.

"If adopted, please publish in the Church Manual.

"Lovingly yours,

"MARY BAKER EDDY."

Mr. Dane—From the record of regular and special meetings of the Board of Directors, on page 16, under date of March 11, 1910, I offer the following part of the record.

[An extract from the Board of Directors, March 11, 1910, is offered in evidence as Exhibit 443, and is read by Mr. Dane, as follows:]

"Voted, unanimously, to adopt the following By-law. Article XXX."

Mr. Dane—Then follows the By-Law as set out in the letter of March 10.

Mr. Thompson—Aren't section numbers given when they are adopted?

Mr. Dane—Yes. Article XXX—and they are the same as I have read in reading the letter unless I call attention to it.

Mr. Thompson—Yes; but you only say in each case "Article XXX." Don't the directors say "Article XXX, Section 4"?

Mr. Dane. They do, yes. From Volume 9 of Letters and Miscellany, page 219, I offer Document No. 1036, on the letterhead "Rev. Mary Baker Eddy, Office of Secretary, 384 Beacon Street."

[This document is offered in evidence as Exhibit 444, and is read by Mr. Dane, as follows:]

"Chestnut Hill, Mass.,  
"March 10, 1910.

"Christian Science Board of Directors,  
Boston, Mass.

"Beloved Brethren:

"Please vote on the adoption of the following amendment to The Mother Church By-Laws.

"Article XXVI.

"Pupils' Tuition. A student's price for teaching Christian Science shall not exceed \$100 per pupil.

"If adopted, please publish in the Church Manual.

"Lovingly yours,

"MARY BAKER EDDY."

Mr. Dane—From the minutes of regular and special meetings of The Christian Science Board of Directors, under date of March 11, 1910, page 16, I offer the following part of the record.

[An extract from the directors' records, March 11, 1910, is offered in evidence as Exhibit 445, and is read by Mr. Dane, as follows:]

"Voted, unanimously, to adopt the following By-Law. Article XXVI. Pupils' Tuition. Section 5."

Mr. Dane—Then follows the By-Law as set out in the letter of March 10.

From Volume 9 of Letters and Miscellany, page 225, I offer document No. 1040:

"Rev. Mary Baker G. Eddy,

"Office of Secretary,

"384 Beacon Street,

"Chestnut Hill, Mass.,

"March 15, 1910.

"Christian Science Board of Directors,  
Boston, Mass.

"Beloved Brethren:

"Please vote on the amendment of Article 8, Sect. 15 of the Mother Church By-laws to read as follows:

"Article VIII.

"Church Organizations Ample. Sect. 15. Members of this church shall not unite with organizations which impede their progress in Christian Science. God requires our whole heart, and He supplies within the wide channels of The Mother Church dutiful and sufficient occupation for all its members.

"If adopted please publish in our periodicals and in the Church Manual.

"Lovingly yours,

(Signed) "MARY BAKER EDDY."

[The document No. 1040, Letters and Miscellany, page 225, is Exhibit 446. R. J. M.]

From the minutes of regular and special meetings of The Christian Science Board of Directors I offer, from page 18, the following part of a meeting under date of March 14, 1910:

"Voted unanimously to adopt the following amended by-law:

"Article VIII.

"Church Organizations Ample. Section 15."

Then follows the By-Law as set out in the letter of March 15, 1910.

[The foregoing extract from the directors' minutes, page 18, dated March 14, 1910, is Exhibit 447. R. J. M.]

Mr. Thompson—That is, the meeting was on the 14th?

Mr. Dane—I notice that there is an apparent discrepancy. Either the meeting or the letter is wrongly dated, because the letter is dated March 15 and the meeting is dated March 14, and one or the other is a typographical error. My attention is called to the fact that at the bottom of the document there are the words and figures: "Adopted March 14, 1910," and the "14" is underscored.

From Volume 9 of Letters and Miscellany, page 229, I offer Document No. 1042, as follows:

"Chestnut Hill, Mass.,

"March 21, 1910.

"The Christian Science Board of Directors.

"Beloved Brethren:

"Please vote on the adoption of the following amendment to by-law, Article 33, Section 3, to be published in The Mother Church Manual.

"Article XXXIII.

"In branch churches. Sect. 3. The readers of the three largest branch churches in each state of the United States and in Canada shall annually and alternately appoint a committee on publication to serve in their localities. For the purposes of this by-law, the State of California shall be considered as though it were two states, the dividing line being the thirty-sixth parallel of latitude. Each county of Great Britain and Ireland, except as hereinafter specified, through the readers of its three largest branch churches, shall annually and alternately appoint a committee on publication to serve in its locality. Each church is not necessarily confined to its own members in selecting its committee, but if preferred can appoint a committee on publication who is in good fellowship with another Church of Christ, Scientist.

"This by-law applies to all states except Massachusetts, in which the committee on publication is elected only by The Christian Science Board of Directors. The committee for the counties in which London, England,

is situated shall be appointed by The Christian Science Board of Directors, and he shall, in addition to his other duties, act as district manager of the committees on publication for Great Britain and Ireland.

"Lovingly yours,

(Signed) "MARY BAKER EDDY."

The words "Lovingly yours" appear in Mrs. Eddy's handwriting, as well as the signature.

[The document No. 1042, Vol. 9 of Letters and Miscellany, page 229, is Exhibit 448. R. J. M.]

From the minutes of regular and special meetings of The Christian Science Board of Directors, under date of March 22, 1910, I offer from page 20 the following:

"Voted unanimously to adopt the following amended By-Law:

"Article XXXIII.

"In Branch Churches. Sect. 3." and then follows the By-Law as set out in the letter of March 21.

[The extract from the directors' minutes, dated March 22, 1910, page 20, is Exhibit 449. R. J. M.]

From Vol. 9 of Letters and Miscellany, page 243, I offer Document No. 1046:

"Chestnut Hill, Mass.,

"May 18, 1910.

"The Christian Science Board of Directors,

"Beloved Brethren:

"Please vote on the adoption of the following amended By-Law, Article VIII, Section 8, to be published in The Mother Church Manual:

"Article VIII.

"No Malpractice. Sect. 8. Members will not intentionally or knowingly mentally malpractice, inasmuch as Christian Science can only be practiced according to the Golden Rule: 'All things whatsoever ye would that men should do to you, do ye even so to them.'

"A member of The Mother Church who mentally malpractices upon or treats our Leader or her staff without her or their consent shall be disciplined, and a second offense as aforesaid shall cause the name of said member to be dropped forever from The Mother Church.

(Signed) "M. B. EDDY."

[The Document No. 1046, Vol. 9 of Letters and Miscellany, page 243, is Exhibit 450. R. J. M.]

And from the record of minutes of regular and special meetings of The Christian Science Board of Directors, under date of May 20, 1910, at page 35, I offer the following:

"The following amended by-law having been approved by the Pastor Emeritus, was unanimously adopted:

"Article VIII.

"No Malpractice. Sect. 8."

Then follows the by-law as set forth in the letter of May 18, 1910.

[The extract from the minutes of directors, dated May 20, 1910, at page 35, is Exhibit 451. R. J. M.]

From Vol. 9 of Letters and Miscellany, page 247. I offer Document No. 1048:

"Chestnut Hill, Massachusetts.

"Aug. 27, 1910.

"The Christian Science Board of Directors,

"Beloved Brethren:

"Please vote on the adoption of the following amendment to by-law Article VIII, Section 22, to be published in our periodicals and in The Mother Church Manual:

"Article VIII.

"Practitioners and Patients. Sect. 22. Members of this Church shall hold in sacred confidence all private communications"—

then the three words, "as may be," are stricken out, and then follow the words:

"made to them by their patients. Also such information as may come to them by reason of their relation of practitioner"—

the word "and" is stricken out and the word "to" is inserted—

"to patient. A failure to do this will subject the offender to Church discipline.

"A member of The Mother Church shall not, under pardonable circumstances, sue his patient for recovery of payment of said member's practice, on penalty of discipline and liability to have his name removed from membership. Also he shall reasonably reduce his price in chronic cases of recovery, and in cases where he has not effected a cure. A Christian Scientist is a humanitarian; he is benevolent, forgiving, long-suffering, and seeks to overcome evil with good.

(Signed) "MARY BAKER EDDY."

[The Document No. 1048, Volume 9 of Letters and Miscellany, page 247, is Exhibit 452. R. J. M.]

And from the minutes of regular and special meetings of The Christian Science Board of Directors, under date of Aug. 29, 1910, page 67, I offer the following:

"Having received the written approval of the Pastor Emeritus, the following amended by-law was unanimously adopted:

"Article VIII.

"Practitioners and Patients. Sect. 22."

Then is set forth the by-law as it appears in the letter of Aug. 27, 1910, excepting that in the sixth line as the by-law appears in the record book the word "shall" is used and in the corresponding line in the letter the word is "will"; and excepting that in the tenth line, as the by-law appears in the record book, the word "for" is used before the word "said," and in the corresponding line in the by-law as set out in the letter the word "of" is used.

[The foregoing extract from the minutes of the directors, dated Aug. 29, 1910, page 67, is Exhibit 453. R. J. M.]

In that connection I offer from Volume 50 of Letters and Miscellany the Document No. 7025, which is the proof of an amended by-law, Article VIII—this by-law, on the back of which is the signature "Eddy" in Mrs. Eddy's handwriting.

[The Document No. 7025, Volume 50 of Letters and Miscellany, is Exhibit 454. R. J. M.]

The Master—Is there any date?

Mr. Dane—There is indorsed upon the proof these words: "From McLellan's Collection, Adopted Aug. 29, 1910." And I call the court's attention to the fact that in this printed proof the change which was made in the record of the vote adopting the by-law is made in the proof, with Mrs. Eddy's indorsement on the back; that is, the proof has the changes "shall" instead of "will," and "of" instead of "for."

Now, Miss Warren, will you take the stand again?

Lucia C. Warren, Recalled.

Q. (By Mr. Dane.) Miss Warren, have you made a comparison of the seventy-third edition of the Manual together with the amendments to that edition of the Manual as they appear in the Church By-Law book, Volume 2, and the Minutes of the Regular and Special Meetings of The Christian Science Board of Directors, with the eighty-ninth edition of the Manual? A. I have.

Q. And is the printed matter in this eighty-ninth edition of the Manual the same as is contained in the seventy-third edition, with its amendments, as they appear in the Church By-Law book, Volume 2, and the Minutes of the Regular and Special Meetings of the Board of Directors? A. They are exactly the same.

Q. Miss Warren, from your examination of the records of the Board of Directors, can you tell us the date of the adoption of the last by-law or amendment? A. I think it is Aug. 27, 1910.

Q. I show you this record book and I ask you if that refreshes your recollection as to the date of the adoption of the last by-law or amendment? A. Yes; Aug. 29, 1910.

Mr. Whipple—Don't you take the official record rather than the witness's memory as establishing it?

Mr. Dane—I thought that would be a convenient way of showing it on the record.

Mr. Whipple—Well, heretofore you have been reading from the record itself, without objection. I should think that the record would be the thing that would prove it and not the testimony of the witness.

The Master—What does the witness's testimony add?

Mr. Dane—It adds nothing except to fix the fact, as shown by that record, that Aug. 29 was the date of the last adoption by the board of an amendment or by-law.

Mr. Whipple—Isn't that one that you put in?

Mr. Dane—Yes.

Mr. Whipple—The last one that you put in?

Mr. Dane—Yes.

Mr. Whipple—Then what you want to ask her is, I suppose, whether she finds in any of the records since then the adoption of any By-law, and she says no.

Mr. Dane—Precisely.

Q. Miss Warren, have you here the eighty-ninth edition of the Manual that you compared? A. I have. It has my name in the front cover.

Q. Is this the edition of the eighty-ninth that you compared? A. That is.

Mr. Dane—Would you mark this for identification (handing book to reporter)?

Mr. Whipple—Haven't you had one marked for identification?

Mr. Dane—Yes.

Mr. Whipple—Now this is another one?

Mr. Dane—Yes.

Mr. Whipple—Of the alleged eighty-ninth edition?

Mr. Dane—Yes.

[The above referred to copy of the eighty-ninth edition of the Manual is marked Exhibit 455 for identification. R. J. M.]

Q. Now, Miss Warren, I show you this Manual marked Exhibit 455 for identification, and I show you the Manual marked Exhibit 57G for identification, and ask you whether or not the printed matter in those two is the same? A. The printed By-Laws in those two are the same.

The Master—The By-Laws are the same, but I infer that there are differences outside the By-Laws?

Mr. Dane—The lists of officers undoubtedly are changed.

Q. Is that what you refer to, Miss Warren? A. That is what I refer to.

Q. Is the printed matter the same, with the exception of the lists of officers? A. Yes, it is.

Mr. Dane—Then I offer now as an exhibit the Manual which has already been marked Exhibit 57G for identification, which was identified by Mr. Eustace in his cross-examination.

Mr. Whipple—I take it that that will be received subject to the same objection and limitation as before?

The Master—Yes, I admit it subject to the same objection.

[The above referred to copy of the Manual marked Exhibit 57G for identification, is marked Exhibit 57G.]

[Recess until 2 p. m.]

AFTERNOON SESSION.

The Master—Are you ready, Mr. Dane?

Mr. Dane—The witness has not shown up.

The Master—All right. Go on when you are ready.

Mr. Dane—I can proceed and read the record without the witness actually being on the stand, if it is agreeable. The witness is not here, but

I can proceed with the records if you consent.

The Master—You can read the records and you can ask her if you need to, afterwards, about them.

Mr. Dane—Yes. I call Your Honor's attention to the first sentence of Section 5 of Article I of the Eighty-Ninth Manual:

"The Christian Science Board of Directors shall consist of five members."

And in that connection I offer an original letter of Mrs. Eddy from Volume III of Letters and Miscellany, page 221, Document No. 323.

(Scroll) "M B E

"Pleasant View,  
"Concord, N. H.  
"Feb. 5, 1903.

"Board of Directors.

"Beloved Students:

"I send the enclosed By-laws. Please convene immediately and vote on them. They are of great importance to our cause. After adopting the By-law on the number of C. S. directors, then consider and act on my candidate for director, Mr. Archibald McLellan, our Editor in Chief. I have watched him and so far he has been right on all important subjects. You will have three in unity. That leaves a majority when they are right. Also you can now remove a member of your board. 'Mother' lives and learns by the things she suffers.

"With love, your teacher,  
"M. B. EDDY."

The letter is all in Mrs. Eddy's handwriting.

[Letter, Mrs. Eddy to Board of Directors, dated Feb. 5, 1903, as read by Mr. Dane, is offered in evidence as Exhibit 456.]

Mr. Whipple—If you will pardon me a moment. In connection with that letter, or perhaps with the vote, I want again, if I may, to direct your attention to the fact that the Church Manual did not then provide for directors of the Church. The question which arises as to the status of Mr. McLellan or his successors under the Trust Deed may have important consequences in the case. I want to just note those suggestions to be taken up later.

Mr. Streeter—Let me ask you, Mr. Dane: Accompanying this letter, was there any form of by-law?

Mr. Dane—I am about to put that in, General Streeter.

Mr. Thompson—That is the form in which it was voted. Does anything go with the letter which you have just read?

Mr. Dane—I will read the vote, and then I think it will probably be necessary to show the connection later. Perhaps it will be done by some one.

I offer from Volume 3 of the records of the directors, page 82 that part of the record of a meeting held on Feb. 7, 1903, which I now quote:

"Feb. 7, 1903. A meeting of the full board was held this day at 1 o'clock p. m. On motion the following by-law was adopted by a unanimous vote:

"By-Law.

"The Christian Science Board of Directors shall consist of five members."

Mr. Streeter—Is that all?

Mr. Dane—That is all.

[That portion of record of meeting of the Board of Directors, dated Feb. 7, 1903, as read by Mr. Dane, is offered in evidence as Exhibit 457.]

Mr. Thompson—Now, in the letter it spoke about something else—"you can now remove a member of your Board."

Mr. Dane—Yes.

Mr. Thompson—Is there any by-law going with that letter?

Mr. Dane—That meant by a majority, I expect.

Mr. Thompson—How do you know that, Mr. Dane?

Mr. Dane—I don't, Mr. Thompson, except from inference.

Mr. Thompson—I do not draw any inference that you can now remove a member of the board unless you produce what must undoubtedly have been there—the particular paper that she inclosed or the suggestion that she made.

Mr. Dane—I expect that will appear later. There is no witness here at the present time that can make that explanation satisfactorily.

Mr. Thompson—How did the by-law read after the adoption of this?

Mr. Streeter—I have got it here.

Mr. Dane—There is only the one section which I have read that I care to offer at this time—that the Board of Directors shall consist of five members.

Mr. Thompson—At that time was there anything else in Sect. 5?

Mr. Whipple—Let me ask if there were other by-laws adopted on that date?

Mr. Dane—Yes, there are other by-laws adopted as of that date. In looking them over I found nothing which appears in that particular section of the eighty-ninth Manual.

Mr. Streeter—Will you pardon me for one more question? Do you understand by what you are reading that Article 1, Section 5, on Feb. 7, 1903, read as follows: "The Christian Science Board of Directors shall consist of five members," and that there was nothing further in that by-law but that? Is that your understanding?

Mr. Thompson—Mr. Dane apparently does not care to answer that very proper question.

The Master—Well, he is looking.

Mr. Dane—I am not refusing to answer any question.

The Master—I think he was looking to see what answer he should make.

Mr. Dane—I was looking. Apparently in the Manual in force at that time, Section 5—(Manual examined by Mr. Streeter and Mr. Thompson.)

Mr. Whipple—Now, if Your Honor please, by reference to this alleged by-law Your Honor will observe that

it is not enacted by the First Members at all, it is by the body, The Christian Science Board of Directors, which had not at that time become church officers at all.

Mr. Bates—Well, that is your contention, but we do not admit it.

The Master—Let us get the facts, and then we will see.

Mr. Whipple—I am only commenting on what the By-Laws show.

Mr. Dane—Apparently before the adoption of the by-law which has been introduced, there was no provision in the Manual as to the number.

The Master—Was there a Section 5?

Mr. Dane—There was a Section 5, but it was not on this subject. The letter and the vote is offered at this time, and we expect later—because it has a particular bearing on the Dittemore case—to go into it more in detail, when we have the proper witnesses here to do it.

Mr. Streeter—Mr. Dane, we will not bother you any further. We will expect that you will fill up that gap.

Mr. Dane—We certainly will.

Mr. Streeter—We assume that you can, and expect that you will, and we will wait until you do that before doing anything further about it.

Mr. Dane—Thank you.

Mr. Thompson—In the meantime, will you give us what this was called? What was it called—the passage about the Christian Science directors shall consist of five members. What is it called? Article I, Section 5, as adopted?

Mr. Dane—The record does not state.

Mr. Thompson—It does not state?

Mr. Dane—No. Now, I offer from Volume 4 of Letters and Miscellany, page 47, Document No. 348, a letter in Mrs. Eddy's handwriting, signed by her.

(Scroll) "M B E

"Pleasant View,  
"Concord, N. H.

"C. S. Board Directors,

"Beloved Students:

"I give you direct orders to bring out our Manual and not to delay one other day. I know the Manual is right. God tells me to have it published as it is. You have adopted the By-Laws; now delay no longer to put it in book form."

The Master—Is there any date?

Mr. Dane—Yes.

"Nothing whatever but malicious mortal mind is now causing delay.

"With love,

"M. B. G. EDDY.

"Aug. 17, 1903.

"What and who caused this last delay?"

[Letter, Mrs. Eddy to Board of Directors, Aug. 17, 1903, as read by Mr. Dane, is offered in evidence as Exhibit 458.]

Mr. Dane—Now, in that connection I call Your Honor's attention to Exhibit 131, from which it appears that it was on July 30, 1903, that the Board of Directors adopted the twenty-ninth

edition of the Church Manual. Now, I offer from Volume 3, of Letters and Miscellany, a letter signed by Mrs. Eddy, page 225, Document No. 325, on the letterhead of "Works on Christian Science by Rev. Mary Baker G. Eddy; address all inquiries to Joseph Armstrong, C. S. D., 95 Falmouth Street, Boston, Mass."

"Pleasant View,  
"Concord, N. H.,  
Feb. 27, 1903.

"Dictated.

"Christian Science Board of Directors,  
"Beloved Students:

"I am not a lawyer and do not sufficiently comprehend the legal trend of the copy you inclosed to me to suggest any changes therein. Upon one point, however, I feel competent to advise, namely: Never abandon the By-laws nor the denominational government of The Mother Church. If I am not personally with you the Word of God and my instructions in the By-laws have led you hitherto and will remain to guide you safely on, and the teachings of St. Paul are as useful today as when they were first written. The present and future prosperity of the cause of Christian Science is largely due to the By-laws and the government of the First Church of Christ, Scientist, in Boston. None but myself can know, as I know, the importance of the combined sentiment of this church remaining steadfast in supporting its present By-laws. Each of these many By-laws has met and mastered or forestalled some contingency, some imminent peril, and will continue to do so. Its By-laws have preserved the sweet unity of this large church, that has perhaps the most members and combined influence of any other church in our country. Many times a single by-law has cost me long nights of prayer and struggle, but it has won the victory over some sin and saved the walls of Zion from being torn down by disloyal students. We have proven that 'in unity there is strength.'"

And in Mrs. Eddy's handwriting:

"With love as ever,  
"MARY BAKER G. EDDY."

And further in Mrs. Eddy's handwriting:

"N. B. I request that you put this letter upon our church records.

"M. B. E."

The Master—To what particular by-law has that reference?

Mr. Dane—To all of them, if Your Honor please. It speaks of all the By-Laws of The Mother Church.

[Letter, Mrs. Eddy to Board of Directors, dated Feb. 27, 1903, as read by Mr. Dane, is offered in evidence as Exhibit 459.]

The Master—I suppose you mean all of them up to the date of the letter.

Mr. Dane—Exactly.

[Miss Warren resumes the witness stand.]

Mr. Whipple—Mr. Dane, was that in reply to some letter?

Mr. Dane—It speaks of copy that was inclosed to her.

Mr. Whipple—Now, couldn't you assist by showing what that copy was?

Mr. Dane—I haven't it at hand, but I will endeavor to locate it, and if I can find it I will see that you have it, Mr. Whipple.

Mr. Whipple—It would seem that that was in reply to a letter that we ought to have, then we would know what the letter referred to, in accordance with His Honor's suggestion.

Mr. Dane—That is all with this witness.

The Master—Now you have Miss Warren.

Mr. Dane—Miss Warren is on the stand.

Mr. Whipple—If you will pardon me a moment. That letter was written before the by-laws to which you have just referred, or which you put in—before this one with regard to the Board of Directors consisting of five members, was it not?

Mr. Dane—I will look it up and let you know. No, it was written afterward.

Mr. Whipple—What are the respective dates of the ones—

Mr. Dane—The by-law was adopted Feb. 7, 1903, and the letter is dated Feb. 27, 1903.

Mr. Whipple—Well, then, the letter was written after the by-law was adopted?

Mr. Dane—Yes. That is what I said.

Mr. Whipple—Will you let me take that Manual that has the handwriting on the margin?

Mr. Dane—You mean Mrs. Eddy's first edition?

Mr. Whipple—No.

The Master—The twenty-eighth edition, I think it is.

Mr. Whipple—I want to have that one with the writing on the margin, expressing a doubt. (Book produced.)

#### Cross-Examination

Q. (By Mr. Whipple) Let me ask you to look at this document—Exhibit 133, is it? A. Yes.

Q. On page 36, opposite section 5, will you read the legend there in some one's handwriting? A. "Amendment adopted, Mar. 12, 1903. Changes evidently made in proof."

Q. In whose handwriting is that, do you know? A. I think that is in the handwriting of Miss Firth, one of the young ladies in our office.

Q. Is she still there? A. She is. It was made under my direction.

Q. And do you remember it being made? A. Yes.

Q. When was it made? A. About four or five months ago, I think.

Mr. Thompson—I can't quite hear over here.

Mr. Whipple—Four or five months ago, she said.

Q. Was it made as a result of some studies that you had given to the subject? A. It was made to complete our set of Manuals, which in later editions had been marked in this way,

but the earlier editions had not, and we started and worked backward and marked them.

Q. Well, was it in completing some system that you had? A. Yes.

Q. And an investigation to find where changes were authorized, was it not? A. Yes.

Q. And you couldn't find any authority for this change, could you? A. No definite form signed.

Q. Or authority? And therefore you wrote "Changes evidently made in proof"? A. Yes.

Q. But you didn't find the proof? A. No.

Q. And in the proofs that are produced here today you have not found any that referred to that? A. I have not looked them over.

Q. Well, were you here when they were read this morning? A. I was.

Q. You didn't hear any that applied? A. I heard some of them, but not all.

Q. You didn't hear any that applied to it? A. No, none that applied to it.

Mr. Dane—You didn't read them all, did you, Mr. Whipple?

Mr. Whipple—I sufficiently identified them so as to indicate if they applied to this section.

Mr. Dane—You didn't read their contents.

Mr. Whipple—I beg pardon?

Mr. Dane—You didn't read the contents of them all.

Mr. Whipple—No; but I identified them as amendments, or new By-Laws; and no amendment, as I remember it, referring to this, appeared.

Q. Now on this same page there is in some handwriting, penciled, this: "Was Section 143, Article 111-28th." In whose handwriting is that? A. The same person's.

Q. You say she is still with you? A. Yes.

Q. Now, on page 27, here is a typewritten rider under Section 28, "Duties of Church Officers." The rider is as follows:

"Section 8. Duties of Church Officers. Evidently new by-law. No record of adoption. The last sentence of this by-law appears in Section 1, Article 6, in the 28th."

Who put that in? A. The same young lady.

Q. By your direction? A. Yes.

Q. Was that the result of your investigation? A. Yes. There is no record of adoption, refers to a specific adoption of one by-law.

Q. I so understand. A. Yes.

Q. That is, this by-law, appearing on page 27 of Exhibit 133, reads as follows:

"Duties of Church Officers. Section 8. Law constitutes government, and disobedience to the laws of The Mother Church must ultimate in annulling its tenets and By-Laws. Without a proper system of government and form of action, nations, individuals, and religion are un-

protected; hence the necessity of this by-law and the warning of Holy Writ:

"That servant, which knew his lord's will, and prepared not himself, neither did according to his will, shall be beaten with many stripes."

"It is the duty of the Christian Science Board of Directors to watch and make sure that the officers of this church perform the functions of their several offices promptly and well. If an officer fails to fulfill all the obligations of his office, the Board of Directors shall immediately call a meeting and notify this officer either to resign his place or to perform his office faithfully; then failing to do either, said officer shall be dismissed from this church, and his dismissal shall be written on the church records.

"It is the duty of any member of this church, and especially of one who has been or who is the First Reader of a church, to inform the Board of Directors of the failure of the Committee on Publication or of any other officer in this church to perform his official duties. A director shall not make known the name of the complainant.

"If the Christian Science Board of Directors fail to fulfill the requirements of this by-law, and a member of this church or the Pastor Emeritus shall complain thereof to the clerk and the complaint be found valid, the directors shall resign their office or perform their functions faithfully. Failing to do that, the clerk of this church shall call a meeting of the executive members, and their two thirds vote, with the consent of the Pastor Emeritus, shall elect five suitable members of this church to fill the vacancy. The salary of the directors shall be at present \$1000 each annually."

Mr. Dane—What section is that, Mr. Whipple?

Mr. Whipple—That is Section 8 of Article I, page 127.

Q. Now, with regard to that entire section the comment is made by your authority, after having looked it up: "Evidently a new by-law. No record of adoption. The last sentence of this by-law appears in Section 1, Article VI, in the twenty-eighth edition?" A. Yes.

Q. Now this is the twenty-ninth edition, or claimed to be the twenty-ninth? A. Yes.

Q. And that had not appeared in the twenty-eighth at all and there was no record of its adoption in the interim? A. Except Mrs. Eddy's authority to adopt the full twenty-ninth edition.

Q. Yes; but there was nothing in the meantime? A. No.

Q. But you say the last sentence, "The salary of the Board of Directors shall be at present \$1000 each annually"—that sentence appeared in the twenty-eighth, Section 1, Article VI, did it? A. Yes.

Q. On pages 30 and 31 a penciled mark is drawn opposite Section 2, and

a part of Article III, and a part of Article IV, Section 1. Do you know the significance of that? A. I do not.

Q. And you don't know what similar marks indicate on the succeeding page? A. No.

Q. Was an attempt made to trace all the articles appearing in this exhibit to some previous authority? A. Yes, and to show the changes from the last previous edition and also the changes in the next following edition.

Q. When there is no memorandum opposite any of the provisions what does that signify? A. That it was the same in the previous edition and the same in the following edition.

Q. It would not be the same number? A. Not necessarily, but the statement is exactly the same.

Q. And where there are memoranda it is intended to indicate where it has appeared before? A. Yes.

Q. Now, on page 75, Sections 11, 12, and 13, are on the following subject: "No Impromptu Meetings. Sect. 11." "Laying of Corner Stones. Sect. 12." "Our Church Edifices. Sect. 13." As against each of those is written a legend: "New, not in the twenty-eighth?" A. Yes.

Q. Did you find any authority for any of those—I mean authority from Mrs. Eddy, in the interim? A. I would have to look that up.

Q. This would indicate that there was no such authority found, would it not? A. It would.

Q. According to the system which you adopted? A. It would, yes. I might say that our work is not completed on this.

Q. On page 80, Article 31, headed "Normal Teachers, Sect. 1,"—opposite that is the legend: "Amendment evidently covered by meeting March 12, 1903, re By-Laws?"

Mr. Whipple—Will you let me take the minutes of the meeting of 1903, March 12?

The Witness—First Members' meeting. (Book produced.)

Q. Would you be good enough to point out what there is in that record which is the basis of this marginal legend: "Applicants and graduates"? That is the heading. Sub-heading: "Normal Teachers. Sect. 1." A. I see no reference to that matter.

Q. That is, you find nothing whatever which would justify this marginal note: "Amendment evidently covered by meeting March 12, 1903, re By-Laws"? A. I cannot.

Mr. Thompson—We cannot hear anything from the witness.

Mr. Whipple—She says she does not.

Q. Now, while we have the record of that meeting, let me revert to Article I, Section 5, and its marginal legend to which I have already referred, page 26, as follows: "Amendment adopted Mar. 12, 1903. Changes evidently made in proof." Now, won't you read what was adopted on March 12, 1903,—in respect of Article I, Section 5? A. "Article I p. 23 twen-

ty-eighth edition By-Law Section 1. The Christian Science Board of Directors shall consist of five members. They shall fill a vacancy occurring on that board after the candidate is approved by the Pastor Emeritus. They shall neither"—there is evidently a word left out—"the discussions of this board, nor those with Mrs. Eddy.

"This By-Law cannot neither be amended nor annulled except by the written consent of Mrs. Eddy, the Pastor Emeritus."

Mr. Whipple—Now may I read, unless Your Honor has it before you, the By-Law as it appears in this exhibit?

The Master—That is the twenty-ninth edition?

Mr. Whipple—Yes, Your Honor.

The Master—Yes.

Mr. Whipple—

"Directors. Section 5. The Christian Science Board of Directors shall consist of five members. They shall fill a vacancy occurring on that board after the candidate is approved by the Pastor Emeritus."

Q. Now that is just exactly like what you have there, isn't it, in your adoption? A. Yes.

Mr. Whipple—Then follows this:

"A majority vote or the request of Mrs. Eddy shall dismiss a member."

Q. That is not in the vote of March 12 at all, is it? A. No, but it is taken from Article VI. Section 1 of the twenty-eighth edition.

Q. But it is not in the March 12 record? A. No.

Mr. Whipple—Then it goes on:

"Members shall neither report the discussions of this board, nor those with Mrs. Eddy."

The Witness— "the Pastor Emeritus."

Q. Is that the same? A. Except for "the Pastor Emeritus."

Mr. Whipple—Now, going back to page 81, opposite Article XXXII, Sect. 2, on the subject of "Special Instruction," is this legend:

"Amendment adopted Feb. 24, 1903. Changes evidently made in proof."

Q. Reverting to the meeting of Feb. 24, 1903, will you point out what changes there are, or at least in what respects the section has been changed? A. "Amend Article XXXIII, Section 3, page 73 of the twenty-eighth edition of the Manual to read as follows:

"Not less than three thorough lessons, by a well qualified teacher, shall be given to each primary and normal class on the subject of mental practice and malpractice. Each student in the class shall prepare a paper on said subject that shall be read to the class, thoroughly discussed, and understood.

"After their teacher has carefully examined these papers and pronounced them to be sufficient and accurate, the authors may retain their copies. These papers shall be required of each normal class student before he shall receive the certificate of degree. None but the teacher



and members of the college shall be present at any of its Sessions."

Mr. Whipple—Now, in comparison, may I read what appears in the twenty-ninth edition:

"Special Instruction. Sect. 2. Not less than three thorough lessons, by a well qualified teacher shall be given to each primary and normal class on the subject of mental practice and malpractice. One student in the class shall prepare a paper on said subject that shall be read to the class, thoroughly discussed and understood;"—

Q. So far it is practically the same? A. Except for one word.

Q. And that is— A. "One" instead of "Each" before "student."

Q. Yes. It is changed from "Each student in the class shall prepare a paper" to "One student," is it? A. Yes.

Mr. Whipple—And the rest otherwise is the same. Then this follows: "then this paper shall be given to the teacher and he shall not allow it or a copy of it to remain, but shall destroy this paper."

Q. Nothing like that in the amendment that was adopted, is there? A. No.

Q. But quite a different thing, as you read it? A. Quite different.

Q. And that was the basis of your assistant's legend here: "Changes evidently made in proof"? A. Yes.

Q. But so far as you heard the proofs read or referred to this morning, did you notice anything as to that? A. Not in those I heard this morning.

Q. But you did not hear them all? A. I did not.

Q. So that it is possible there may be something. Now, reverting for a moment to this Article I, Section 5, again, you said that the words, "A majority vote or the request of Mrs. Eddy shall dismiss a member," appeared in Article VI, Section 1, in the twenty-eighth edition? A. Yes; but not identical. That is a reference to refer one to some passage in the previous—

Q. Well, now, if it is not identical let us have it accurate. We have what purports to be the twenty-eighth edition, and now won't you find it anywhere in what purports to be the twenty-eighth edition? Article VI, Section 1—see if it is there. A. "A majority vote and the consent of Mrs. Eddy shall dismiss a member of this board."

Q. That is referring to the Board of Directors, is it? A. Yes.

Q. Now, let us read those together for comparison. In the twenty-eighth edition it is, "A majority vote and the consent of Mrs. Eddy shall dismiss a member of this board"? A. Yes.

Q. In the twenty-ninth edition it reads, "A majority vote or the request of Mrs. Eddy shall dismiss a member"? A. Yes.

Q. Did you think those were practically the same? A. I did not mean

to say that they were practically the same.

Q. Or substantially the same? A. No. This is a reference to show the similar by-law.

Q. But you realize that one of them, the first one, made it impossible for the directors to take any action without Mrs. Eddy's consent?

Mr. Dane—I pray Your Honor's judgment. It is a question of law, I think, that has got to be determined by somebody other than by the witness.

Mr. Whipple—I will waive it; I will waive the question because I think you did not intend to state quite as broadly as you did the identity—

The Witness—I did not intend to state the identity at all. That is a marginal reference to allow one to refer to some by-law in the previous edition.

Q. I quite realize that, but what you first said was, when I read this section, "A majority vote or the request of Mrs. Eddy shall dismiss a member"—you said that appeared in the twenty-eighth edition. A. Yes.

Q. And of course you did not mean that? A. I did not mean it.

Q. You did not mean it as broadly as that. I think it was purely an inadvertence, and perhaps the vast difference between what is here and in the other did not occur to you. Now, on page 82, Section 7 of Article XXXII, there is the notation, "New. Not in 28th." That indicates that there was no authority found from Mrs. Eddy for that section under the heading, "Healing Better than Teaching," except so far as she approved, if she did approve, the collection in the twenty-ninth edition? A. Yes, it may so indicate, although I would want to look up the records before I so stated.

Q. But, according to the system under which these notations were made, that is what it would indicate? A. As I say, our record is not complete; it was stopped right at this point.

Q. As far as it goes, that was what it was intended to indicate? A. Yes.

Mr. Whipple—Now, on page 85, under the general heading, "General Association of Teachers . . . Uniformity in Teaching and Practice Required. Sect. 4," there is the notation: "By-law adopted June 7, 1903. Minor changes evidently made in proof."

Q. Will you be good enough to refer to the adoption of that by-law, or to the record, at least, of June 7, 1903? A. "The following by-law was adopted by a unanimous vote of those present. It is to be placed as section 4, Article XXXIV"—and then in pencil—"XXXIII" with a question mark.

"Uniformity in teaching and practice required. If one or more of the pupils of either a Normal class teacher or of a Primary class teacher shall practice differently from the others, and so depart from the theory and

practice which they have been taught, this departure shall be noted and discussed Christianly at the annual meeting, and then acted upon by the Board of Teachers."

Mr. Whipple—The sentence here is, "by this body of teachers." A. (Continued): "the rule of uniformity in the teaching and practice of Christian Science shall be strictly adhered to by both teacher and pupil. If a pupil persists in disobeying this rule his name shall be dropped from the membership of the Teachers Association."

Mr. Whipple—It says here, "the Association of Teachers." A. (Continued):

"And if a teacher after being admonished, continues to disobey said rule, he shall be dismissed from this board."

Mr. Whipple—"Association" is the word here and not "board." A. (Continued):

"A two-thirds vote shall admit a member or dismiss one, from the Board of Teachers"—

Mr. Whipple—"Association of Teachers" here. A. (Continued):

"And when dismissed he shall no longer be regarded as a teacher of Christian Science."

Mr. Whipple—There is the addition, if Your Honor please, in Exhibit 133, of this sentence, besides the minor differences which I have noted as the section was being read:

"He can be reinstated by the Board of Education after he is willing to comply with the rules of the Association of Teachers."

Q. There is nothing in the record, so far as you know, giving specific authority of Mrs. Eddy for the addition of that sentence? A. No, not up to this point.

Q. So far as you discover. Now on page 97, under the heading "Church Building. Article XLI. . . The Mother Church Building. Section 3," there is this legend:

"By-Law adopted May 2, 1903. Changes evidently made in proof."

Will you give us the actual by-law as adopted, the terms of the by-law they have adopted?

A. "On motion and by unanimous vote of those present the following by-law was adopted:

"By-Law. The edifice erected in 1894 for The First Church of Christ, Scientist, in Boston, Massachusetts, shall not be demolished, joined to another building, nor be removed from the spot where it was built."

Mr. Whipple—The addition is, if Your Honor please, in the following words: "without the written consent of Mrs. Mary Baker G. Eddy."

Q. I take it that you have found no specific authority from Mrs. Eddy for the addition of that provision? A. Not so far as I know.

Mr. Whipple—On the following page, 98, under the heading "Church Manual" and the sub-heading "Amendment of By-Laws, Sect. 3," there is this legend:

"By-Law. (?) Adopted Mar. 25, 1903. Minor changes evidently made in proof."

Q. Will you be good enough to turn to the record of the meeting of March 25 and state what vote appears to be recorded in respect to the amendment to By-Laws? A. "On a motion and by a unanimous vote of all present the two following by-laws were adopted.

"All deeds of further purchase of land for The First Church of Christ, Scientist, of Boston, Mass., shall have named in them, all the trusts mentioned in the deeds given by Mr. Albert Metcalf and E. Noyes Whitcomb, March, 1903. Also there shall be incorporated in all future deeds for land for said Church the phrase 'Mary Baker G. Eddy's church,' The First Church of Christ, Scientist, Boston, Mass."

Q. What does it say about amendments of By-Laws? A. "The Manual of The Mother Church shall not be revised nor a by-law amended or annulled without the written consent of Mary Baker Eddy."

Mr. Whipple—Now, if Your Honor please, what appears in this exhibit is as follows:

"Amendment of By-Laws. Sect. 3. No new Tenet or By-law shall be adopted, nor any Tenet or by-law amended or annulled, without the written consent of Mary Baker G. Eddy, the author of our textbook, Science and Health."

Q. You do not find anywhere up to the present stage of your search any specific authority from Mrs. Eddy to change this Section 3 in the manner in which we find it changed from that which the directors adopted? A. No.

Q. And you have looked for it, I take it? A. Somewhat.

Q. Evidently this legend here indicates that it has been given consideration and search has been made? A. Yes.

Mr. Whipple—At the other side of this Section 3 there is another notation: "See Art. XXIX, Sect. 1 twenty-eighth edition." Have you the twenty-eighth edition, Mr. Withington?

[Mr. Withington passes a book to Mr. Whipple.]

That, if Your Honor please, on page 65, under the heading, "The Mother Church and Branch Churches," reads as follows:

"Tenets and Governments. Section 1. The tenets and the government of The Mother Church in Boston, shall neither be amended nor annulled without the consent, over her own signature, of the Founder of Christian Science."

There are, therefore, those three provisions differing in phraseology, the one in the twenty-eighth edition, Article XXIX, Section 1, under the heading "Tenets and Government," and the vote—

Q. Well, that does not say that that is to be incorporated in the by-law, does it, among the By-Laws

there is nothing indicated? A. "The two following by-laws were adopted." This is one and this is the second.

Q. Yes, you are quite right; but it is not under any heading? A. No heading.

Mr. Whipple—And then this article, amendment to the by-law, Section 3, Article XLII, under the heading, "Church Manual," differs from both of them.

Q. Now, you said something about deeds in there—the adoption of a by-law in relation to deeds. A. Yes.

Q. Have you found where that was included in the so-called twenty-ninth edition? A. Article XLI, Section 2.

Q. Under "Church Building"? A. Yes.

Q. Is it identical in language? A. Apparently.

Q. This index of amendments of the twenty-ninth edition, and amendments in the earlier part, in the front pages, the inserted pages of this exhibit, are the handiwork of your assistant? A. Yes.

Q. And are recent and not a part of the paper? A. Are recent, yes.

The Master—Is there anything further from Miss Warren?

Mr. Thompson—Just a moment, Your Honor.

Mr. Whipple—Perhaps while the conference is going on I may be permitted to put this general question which involves the result of Miss Warren's very painstaking, and I have no doubt careful, research—although perhaps it has sufficiently appeared.

Q. (By Mr. Whipple) It is a fact, is it not, Miss Warren, that you have found no document, or paper, or Manual or by-law constituting The Christian Science Board of Directors officers of the Mother Church—that is, putting them in, creating those offices—in any of the books or papers prior to 1903?

Mr. Dane—Wait a moment.

A. No, that is not a fact.

Mr. Dane—Wait a moment.

Q. Now, I will ask you to point out in any paper you have discovered any statement of a church officer known as a director, or church officers known as directors, in any Manual or other paper prior to 1903. You are familiar, are you not, with the section which creates and names the church officers? A. I am.

Q. Now, I want to have you produce any paper in which, among the Church officers as named in the By-Laws relating to them, any such officer or officers are created or named. A. You refer—

Mr. Dane—One moment,—just a moment.

Q. Can you do it?

Mr. Dane—I object, if Your Honor please, to the witness being asked as to what creates and what does not create the Board of Directors of this Church.

The Master—Oh, I do not think she is asked that. It must be purporting to create.

Mr. Dane—That would be a different question.

The Master—We could hardly understand it, could we, in any other way?

Mr. Dane—I should not think so; but the question was so framed that it might be later argued if it had been admitted.

The Master—Well, Miss Warren evidently has something in mind on that point. I think we had better let her speak.

Mr. Whipple—I would like the book produced, because in every one of the books that I have seen there is a statement in the By-Laws of the Church officers under that name, and I want to see if the witness knows of a provision in the By-Laws creating Church officers under that name prior to 1903.

The Witness—When I answered, I had in mind the one that was offered in evidence this morning, also the title page to the Manual, or the list of officers in the Manual which gives the Board of Directors as officers of the Church.

Q. I am referring to By-Laws. Do you know of any By-Law prior to 1903— A. No.

Q. —in which any such officers are listed? A. No.

Q. As officers of the Church? A. No, not listed as officers of the Church.

Q. Do you know that under the Deed of Trust which creates The Christian Science Board of Directors they are given that name?

Mr. Dane—Just a minute. Does Your Honor think that is proper cross-examination?

The Master—Well, what would follow if she did know that?

Mr. Whipple—Merely a preliminary question, because she is evidently the person who has searched and the person upon whose knowledge of the facts counsel very much rely.

The Master—Well, you say that is preliminary to something else?

Mr. Whipple—Yes.

The Master—Let us see what the real inquiry is.

Mr. Whipple—Well, the real inquiry is as to whether in all the research she has made The Christian Science Board of Directors are not mentioned and referred to in exactly the terms in which they are described in that Deed; desiring thereby to show that when they are referred to either in the Manual or any other paper before they were created officers of the Church, they were referred to under the name by which they are described in the document which created them.

The Master—Well, if she knows of anything, I think it is proper enough for her to state it.

Mr. Whipple—That is what I inquired.

The Witness—Well, I think there is a letter from Mrs. Eddy in which she addressed them as The Christian

Science Board of Directors of the First Church of Christ, Scientist.

Q. That is, she addressed them differently from what they are described in the deed? A. I should not say so.

Q. Well, she addresses them exactly as they are described in the deed, or practically so? A. Practically so.

Q. Sometimes simply addresses them "Board of Directors"? A. Sometimes "Dear Students."

Q. Or "Beloved Students"? A. Yes.

Q. In other words, her addresses to them, substantially, as far as you have observed them, are under the name in which they are described in the Trust Deed? A. Yes.

Mr. Whipple—That is all I want to ask.

The Master—Is there anything further?

#### Re-Direct Examination

(By Mr. Dane.) Miss Warren, you referred to a letter—

The Master—One moment. I do not know but Mr. Thompson has something, or General Streeter.

Mr. Thompson—We think at the present time that if we are to have the liberty of recalling her later we do not desire to ask her anything now.

Q. Miss Warren, you referred to the letter which Mrs. Eddy addressed The Christian Science Board of Directors as The Christian Science Board of Directors of the Church? A. Yes.

Q. Can you produce that letter? A. I cannot locate it just now.

Q. Well, is it here in court? A. Yes, it is.

Q. Will you produce it later, when you have an opportunity? A. Yes, I will.

The Master—Apparently we are through with Miss Warren for the present.

Mr. Dane—I think we are for the present.

Mr. Krauthoff—Will you take the stand, Mr. Dickey? I believe, Your Honor, Mr. Dickey has been sworn as a witness.

The Master—I think so, and you began to examine him, did you not?

Mr. Krauthoff—No, I do not think we asked him a question.

#### Adam H. Dickey—Sworn

Q. (By Mr. Krauthoff.) Your name is Adam H. Dickey? A. Yes, sir.

Q. And you are one of the defendants in this case? A. Yes.

Q. And a member of The Christian Science Board of Directors? A. Yes, sir.

Q. And have been since what time? A. Since November, 1910.

Q. Prior to your becoming a director of The Mother Church had you served Mrs. Eddy in a personal capacity? A. Yes, sir; I was her secretary.

Q. For what period of time? A. 1908, 1909, and 1910.

Q. And, of course, as such you saw her personally? A. Yes, sir; constantly.

Q. And you saw her write and are familiar with her handwriting? A. Yes.

Mr. Streeter—Now, Mr. Krauthoff, I thought I should not be able to hear Mr. Dickey. I can hear him so far, but I can't hear you. Suppose you speak up, please.

Mr. Krauthoff—I shall elevate my voice.

Q. Is this document in the handwriting of Mrs. Eddy (showing document to witness)? A. It is.

Mr. Krauthoff—I offer from Volume 6 of Letters and Miscellany, by Mary Baker Eddy, from the office of the clerk of The Mother Church, the following document:

Mr. Whipple—What is the number of it?

Mr. Krauthoff—635.

Mr. Whipple—If you will kindly give us the volume, the number, and the date, then we could identify them and look them up.

Mr. Krauthoff—All right. It is Volume 6, page 225, document 635. It has no date except the date on which it is stamped received by the clerk, Nov. 21, 1910.

Mr. Thompson—Hadn't we better look at it before you put it in?

[Mr. Krauthoff hands volume to Mr. Thompson.]

Mr. Krauthoff—Does Mr. Whipple wish to see it?

Mr. Whipple—I will look at this, but generally speaking I am content after they are identified as Mrs. Eddy's letters, or her handwriting, to have them read, and then offer objection later if there is any objection, or comment upon them—which will save time. Or else I will look over your shoulder, as I did.

Mr. Streeter—I will say, if the Master please, that we have no expectation of offering any objection to any document or letters either dictated by or signed by Mrs. Eddy, of whatever character it may be.

The Master—Then you had better read it, Mr. Krauthoff, if there is no objection.

Mr. Krauthoff—I was asked to show it to Mr. Thompson after the statement was made that it was Mrs. Eddy's handwriting. Now if the gentlemen who have no objection to it will be good enough to give it back to me I will proceed.

Mr. Streeter—Don't be sarcastic; he is doing the best he can. He doesn't know any better.

Mr. Whipple—Mr. Krauthoff is not sarcastic; he is as genial and friendly an individual as you can find.

Mr. Krauthoff—(Reading:)

"The Board of Directors

"Beloved Students:

"Please appoint Mr. Adam H. Dickey member of the Board of Directors.

"Lovingly yours,

"MARY B. EDDY."

"Clerk's Office, received Nov. 21, 1910."

[Letter, Mrs. Eddy to Board of

Directors, without date, stamped as received Nov. 21, 1910, as read by Mr. Krauthoff, is offered in evidence as Exhibit 460.]

Q. And upon that request being made you were made a member of the Board of Directors? A. Yes, sir.

Q. And as a matter of historical incident, was that the last communication from Mrs. Eddy to the board, so far as you know? A. It was.

Mr. Whipple—Have you the date of the election by the board, stating whom he succeeded, and the formal proof in regard to that? If so, wouldn't it be in order now?

Q. Do you have a personal recollection of the person whom you succeeded on that board? A. Yes.

Q. Who was that? A. Mr. Ira O. Knapp.

Q. He had passed away? A. He had.

Q. He had been a director from 1892, I believe? A. I don't know about the time, but he was a director.

Mr. Krauthoff—I offer the record of The Christian Science Board of Directors of Nov. 21, 1910:

"A special meeting of The Christian Science Board of Directors, duly called by the clerk at 11:00 a. m. Messrs. Chase, McLellan, Stewart and Dittmore present.

"Having received written nomination from the Pastor Emeritus, Rev. Mary Baker Eddy, Mr. Adam H. Dickey was unanimously elected a member of The Christian Science Board of Directors to succeed Mr. Ira O. Knapp.

"Meeting adjourned. App. Nov. 25-10. J. V. D."

[That portion of record of meeting of Board of Directors dated Nov. 21, 1910, as read by Mr. Krauthoff, is offered in evidence as Exhibit 461.]

Mr. Krauthoff—On Nov. 18, 1910, the record recites:

"Regular meet of The Christian Science Board of Directors at 9:30 a. m. Messrs. Chase, McLellan, Stewart and Dittmore present.

"It was unanimously voted that at this, our first regular meeting since the passing on of our beloved associate, Mr. Ira O. Knapp, the secretary be instructed to express to Mr. Knapp's family our appreciation of his services on this board during the many years past."

[That portion of record of meeting of the Board of Directors, dated Nov. 18, 1910, as read by Mr. Krauthoff, is offered in evidence as Exhibit 462.]

Q. When did you first become interested in Christian Science? A. In 1893.

Q. Where did you live at that time? A. Kansas City, Missouri.

Q. Were you then engaged in—

Mr. Streeter—What was the other question? What is your question—the next to the last one?

Mr. Krauthoff—When did he first become interested in Christian Science.

Mr. Streeter—Oh, yes.

Mr. Krauthoff—And the answer was 1893.

Mr. Streeter—Yes.

Q. Did you then live at Kansas City, Missouri? A. Yes, sir.

Q. In what business were you engaged? A. Manufacturing of clay products.

Q. In connection with your brother, I believe? A. Yes, sir.

Q. Was that an extensive business establishment? A. It was.

Q. And what interested you in Christian Science? A. The healing of one of the members of my family.

Q. What steps did you take after you became interested in Christian Science? A. I continued the study of Christian Science for six years.

Q. Did you become a practitioner of Christian Science? A. I did; I began to practice it at once.

Q. I mean by practitioner, in the sense of having your card in the Journal? A. After six years I gave up my business and went into the practice of Christian Science exclusively.

Q. And took out your card in the Journal? A. Soon thereafter, yes.

Q. What offices did you hold in the activities of the local church in Kansas City, Missouri? A. Why, I began at once to serve in the church in various capacities, as usher, Sunday School teacher, Sunday School superintendent. I was treasurer of the church, one of its Board of Directors, also the presiding officer of the church. Of course, these all came in turn, you understand.

Q. You mean presiding officer of the church or presiding officer of the Board of Directors of the church? A. Of the church at its business meetings.

Q. Yes. A. I was also First Reader of the church up until the time I left to come to Boston.

Q. Did you take what is commonly known as class instruction in the primary class? A. Yes, sir.

Q. Then afterward were you taught further? A. Yes. I was called to the Metaphysical College in Boston in the years 1900 and 1901.

Q. And who was your teacher in the Metaphysical College? A. Edward A. Kimball.

Q. Were you thereafter taught by Mrs. Eddy while in her household? A. I was. I was taught in the Normal Class by Mrs. Eddy and given a certificate from her to that effect.

Q. Now, Mr. Dickey, taking up your work in the local church, I desire to first call your attention to the work that you did in the Sunday School, and I will ask you to state, from the work that you did as a Sunday School teacher in Kansas City and your subsequent experience in Christian Science, of what importance to the movement is the Sunday School work? A. It is considered of the greatest importance.

Q. And the holding of Sunday Schools is provided for in the Church Manual? A. Yes, sir.

Mr. Whipple—If Your Honor please, a pleasant and friendly introduction of Mr. Dickey and a recounting of his

activities is unobjectionable, but what is the importance of the Sunday School to any issue in this case? Why not pass on to those things that are really in issue?

Mr. Krauthoff—I will approach it in a moment and demonstrate its importance.

The Master—And may we not assume, without more, that all the Christian Scientists regard it as important?

Mr. Krauthoff—The work of the Sunday school?

The Master—Yes.

Mr. Krauthoff—And that it is provided for in the Church Manual?

The Master—That speaks for itself, I suppose.

Mr. Krauthoff—Yes.

Q. Are you familiar with the literature of the Christian Science movement as it appears from time to time in the publications of The Christian Science Publishing Society? A. Yes, sir.

Q. And do you recall that from time to time articles appear in these periodicals bearing upon the teaching in the Sunday schools? A. Yes.

Q. Do you regard it expedient to have as a trustee of The Christian Science Publishing Society, in charge of its periodicals, a trustee publishing articles on a Sunday school provided for by the Church Manual, who is not in every way loyal to the Church Manual?

Mr. Whipple—That I object to.

The Master—I think we shall have to leave that out.

Mr. Krauthoff—If Your Honor please, may I be heard for a moment on that? Mr. Dickey is charged at the bar of this Court with having acted arbitrarily and capriciously and not in good faith in the removal of Mr. Rowlands. He has a right to show his own state of mind and the reasons which actuated him in reaching the conclusion that he did.

The Master—Anything further?

Mr. Whipple—The only thing we have charged in the matter of bad faith is as stated in our bill, and this does not meet any charge of that sort or description.

Mr. Krauthoff—Oh, yes.

Mr. Whipple—All we say is with regard to their removal that they have put up frivolous and baseless charges against Mr. Rowlands—utterly baseless; that the real reason they attempt to oust him is because he will not submit his trust, which came from Mrs. Eddy, to the dictation of these directors. That is all. That is what they are really trying to do, and that they are getting up charges which they really do not believe in and for which there is no foundation, as an ostensible excuse.

The Master—I do not recall anything in the pleadings that raises a question about the Sunday schools or the literature of the church regarding Sunday schools.

Mr. Krauthoff—If Your Honor

please, the case involves the literature of the Church in its entirety, the claim of the plaintiffs being that they have the right to publish the literature of the Church in its entirety, without any control on the part of The Mother Church of its own literature. We are offering to prove that an essential part of this literature is articles written on Sunday schools, which in and of themselves are created and provided for by the Church Manual, which, in the very nature of things, cannot be accurately treated from the standpoint of Christian Science without adhering to the Manual; and that this man, this defendant, does not regard it as expedient to keep in office as a trustee to publish literature on the subject of Sunday schools, a man who is not loyal to this Manual. Now, that is the whole case so far as the plaintiffs are concerned. He claims the right to write articles on our Sunday schools, and sell them in our churches without our having anything to say about it.

The Master—I think we must begin by confining ourselves to those specifications of want of good faith which are brought up by the pleadings. I shall exclude this at present.

Mr. Krauthoff—And we shall note our exception.

Q. In the work that you did in the local church, Mr. Dickey, did you come in contact with the work of the Board of Lectureship of The Mother Church? A. Yes, sir.

Q. And in what manner are lectures given by the Board of Lectureship of The Mother Church? A. The Manual provides that each branch church shall—

Mr. Whipple—If you will pardon me. If Your Honor please, he is not asked what the Manual provides. He is asked a plain, simple question.

The Witness—I am going to answer it.

Mr. Whipple—Well, I wish you would; all of us wish you would, instead of telling us what we already know.

The Witness—I will be very glad to if you will give me an opportunity.

Mr. Whipple—Very well, go ahead, without telling us what is in the Manual, because that we know.

A. The Manual provides that each branch church shall have a lecture each year, and in compliance therewith the churches employ the lecturers, who are appointed by The Christian Science Board of Directors or The Mother Church, in Boston.

Q. That is, who are members of the Board of Lectureship of The Mother Church? A. Yes.

Q. And are any lectures given in Christian Science churches other than those given by members of the Board of Lectureship of The Mother Church? A. None.

Q. Do Christian Scientists, so far as you know, attend any lectures on Christian Science given at other places

than given in churches of the Christian Science denomination by members of the Board of Lectureship of The Mother Church? A. They do not attend lectures on Christian Science by any others than those who are members of the Board of Lectureship of The Mother Church, in Boston.

Q. Are these lectures published from time to time, or at least some of them? A. They are.

Q. By The Christian Science Publishing Society? A. Yes.

Q. And when these lectures are so published are they sold by The Christian Science Publishing Society? A. They are.

Q. To whom? A. To the Christian Scientists and members of The Mother Church at large.

Q. And to branch churches? A. And to the reading rooms of branch churches, yes, sir.

Q. Do you regard it as expedient to have in charge of the publication of lectures delivered by members of The Mother Church a person who is not obedient to the Church Manual?

Mr. Whipple—That I object to, if Your Honor please.

A. No.

Mr. Whipple—Mr. Dickey, I will suggest that when I make an objection you refrain from answering until it is passed on by the Court.

Mr. Krauthoff—The answer may be stricken from the record.

The Witness—I certainly will do so, Mr. Whipple; I was not aware that you were going to object to that.

Mr. Whipple—If you will observe, I was already objecting before you answered.

The Witness—You didn't speak until I answered.

Mr. Whipple—On the other hand, I did; I was objecting before you spoke.

The Master—Well, let us settle this with as little friction as we can. Go on. It is objected to. I will hear what you want to say about the objection.

Mr. Krauthoff—The point we make about that, if Your Honor please, is this. The Christian Science Publishing Society claims the right to publish lectures on Christian Science and to sell them to branch churches of The Mother Church, without The Mother Church having anything to say about what shall be contained in those lectures. Mr. Rowlands has been removed from office by a vote of Mr. Dickey, and Mr. Dickey is charged with bad faith in the casting of that vote. We now offer to prove by Mr. Dickey, as one of the elements of his good faith, that he regards it as an expedient reason within the meaning of the Deed of Trust to remove from office any trustee of The Christian Science Publishing Society who claims the right which I have described.

The Master—Mr. Dickey, as I understand the matter, voted for Mr. Rowlands' removal on certain specified grounds.

Mr. Krauthoff—Yes.

The Master—Is this one of the certain specified grounds?

Mr. Krauthoff—The question of the right of the Board of Directors to give directions to the trustees of The Christian Science Publishing Society is one of the certain specified grounds. The claim in the bill is that we asked them, that is, the directors asked the trustees, to sign a memorandum giving the directors full control of the periodicals.

The Master—I do not find it among the specified grounds; perhaps you can point it out.

Mr. Krauthoff—The lectures, of course, were not mentioned in terms, but the specified grounds are very comprehensive. May I have the bill just a minute?

The Master—I think you had better come at once to the proof of good faith in regard to the specified grounds. I am very anxious to avoid going into any field that will take us beyond the issues in the case.

Mr. Krauthoff—As I understand it, if Your Honor please, that is one of the controversies in this case, whether the Publishing Society can publish lectures and sell them to the Christian Science churches, and in the reading rooms of the Christian Science churches, without those churches having anything to do with the publication of them. In addition to that, if Your Honor please, there is another issue tendered by this bill, and that is that The Mother Church be enjoined from establishing any publishing house of its own and publishing any literature of any kind. That is one of the prayers of the bill; and we have upon that the right to show the importance, not only of the literature as to lectures, but the literature as to everything. It goes to the very heart and the kernel of the controversy—the right of The Mother Church to control its literature, consisting, among other things, of published lectures.

The Master—I think I shall have to exclude it on the same ground that I excluded the other.

Mr. Krauthoff—We note an exception to that.

The Master—Certainly.

Q. Now, Mr. Dickey, in the work that you did at Kansas City, Mo., did you become acquainted with the nature of the reading rooms conducted by branch churches? A. Yes, I did.

Q. And have you since become more familiar with the work of the reading rooms done generally? A. I have.

Q. What literature is sold in these reading rooms? A. All the literature that is published by The Christian Science Publishing Society, and Bibles in addition to that.

Q. And that of course includes the works of Mary Baker Eddy? A. Yes.

Q. At one time they were not published by The Christian Science Publishing Society? A. That is true.

Q. Who conducts these reading rooms? A. They are conducted by the branch churches, by a librarian appointed or elected by the church.

Q. And does The Mother Church conduct several of its own? A. It does.

Q. Is any other literature sold in these reading rooms, so far as you know, except the literature that you have described? A. Nothing more.

The Master—Isn't that all regulated by the By-Laws which we have been over?

Mr. Krauthoff—I believe it has been provided in a by-law. I thought it would be helpful to have Mr. Dickey state the form and structure of this situation.

Q. And does this literature include the periodicals published by The Christian Science Publishing Society? A. Yes.

Q. Including the daily newspaper, The Monitor? A. Yes.

Q. Is this literature sold also in the Church buildings at times? A. On some occasions, Wednesdays, I believe.

Q. Wednesdays, following the testimony meeting? A. Yes.

Q. Who purchases this literature from the Publishing Society for these reading rooms? A. Purchased almost entirely by Christian Scientists.

Q. I know; but who purchases it from the Publishing Society in the first place? A. The branch churches, through their reading rooms.

Q. Do you know in the conduct of the business of the Publishing Society, of the Publishing Society giving away any literature? A. No, they do not.

Q. Or distributing any literature other than as they sell it? A. No.

Q. Now, these reading rooms—are they conducted as activities of the branch churches and of The Mother Church? A. They are.

Q. Do you regard it as expedient to have a trustee of The Christian Science Publishing Society, a trustee selling literature to the reading rooms of your churches, and claiming the sole right to do it, who is not in every particular loyal to the Church Manual of The Mother Church?

Mr. Whipple—That, if Your Honor please, is evidently objectionable on the same ground.

The Master—I will make the same ruling on that.

Mr. Krauthoff—And we will take the same exception.

Q. In your work in the branch church at Kansas City you served as Reader, I believe you said? A. Yes, sir.

Q. Will you briefly describe the manner in which the services in a Christian Science Church are conducted? A. They are conducted by—

The Master—Is that strictly necessary for the purposes of the case?

Mr. Krauthoff—If Your Honor please, I feel that it is or I would not have asked it.

The Master—It will take a long time and I cannot see that it comes near enough to anything we have got to decide to make it material.

Mr. Krauthoff—I will explain the materiality of it. The plaintiffs in the case at bar claim the sole right to prepare the sermons to be read in the Christian Science churches of the world, without the Christian Science churches of the world having anything to say about the preparation of those sermons. In order to understand the precise importance of that controversy it becomes necessary for the Court to be advised as to just what these sermons are and how they are prepared.

The Master—I do not think that is necessary any further than that they are used in the services of the Church.

Mr. Krauthoff—Well, if I have progressed that far in Your Honor's consciousness I am grateful to know it.

Q. What sermons are read in these branch churches, Mr. Dickey? A. The sermons prepared by The Christian Science Publishing Society through its Bible Lesson Committee.

Q. Consisting of what? A. Consisting of reading alternately from the Bible and the Christian Science textbook, written by Mrs. Eddy.

Q. The Christian Science textbook, "Science and Health with Key to the Scriptures"? A. Yes, sir.

Q. And those sermons are called Bible Lessons, I believe, at some times, and at some times are called Lesson Sermons? A. Yes.

Q. And they are arranged as shown in The Christian Science Quarterly which has been introduced in evidence? A. Yes.

Q. What is the importance of the manner of the arrangement of these sermons, Mr. Dickey?

Mr. Whipple—That I object to, if Your Honor please.

Mr. Krauthoff—It seems to me, if Your Honor please, that we do have the right to show, as against people who are claiming the right to prepare our sermons for us, that the manner and the arrangement of these sermons is of such importance that we have some rights in the premises with respect to them.

Mr. Whipple—If Your Honor please, I think that counsel do not understand quite what they are doing or he is doing. It is quite possible that this Board of Directors, with the assistance of counsel, could construct a better project, a better method of spreading the gospel of Christian Science than Mrs. Eddy did; quite possibly they may; but we are dealing with the method that she created, and she provided as to how these lessons should be prepared,—the Bible Lessons,—how they should be read, who should be appointed to do it; and your suggestion is that you desire to substitute the opinion and judgment as to how that should be done of this gentleman and yourself rather than that of Mrs. Eddy.

Mr. Krauthoff—Now, if Your Honor please, we had not thought at this stage of the case that we would be called upon to argue it, but in order that Mr. Whipple may know just exactly the falsity of his accusation with respect to us, our position is this: We take the inspired word of Mary Baker Eddy as a complete whole, which means all that she did; and all that she did was to provide that this Publishing Society should be subject to the control of The Mother Church.

The Master—That will be argued later.

Mr. Krauthoff—Very well

The Master—Now, I want to give you, of course, opportunity to reply to anything that Mr. Whipple states, if you will come directly to it. Is there anything further that you desire to say?

Mr. Krauthoff—Not in view of Your Honor's intimation that the argument is not proper at this time.

The Master—That the sermons—that is the matter you are on now, I think.

Mr. Krauthoff—Yes.

The Master—Or the preparation of the sermons is important for the purposes of the church, I do not imagine anyone will think of disputing.

Mr. Whipple—It is a matter of supreme importance, we think, and the trustees have so regarded it, as one of the most important commissions that Mrs. Eddy gave to them in the trust deed.

The Master—Now my objection is that I do not think we add anything to the material evidence by finding out from this witness how and to what extent he thinks it is important.

Mr. Krauthoff—Well, the reason that I asked this witness what he thought about it, if Your Honor please, was this: The Board of Directors asked the Board of Trustees of the Publishing Society not to name anybody on this Bible Lessons Committee unless he was approved of by The Christian Science Board of Directors. The Christian Science Board of Directors predicates its right to make such a request on the fact that the Manual says that no person not accepted as suitable by The Christian Science Board of Directors and the Pastor Emeritus shall in any way be connected with The Christian Science Publishing Society. The trustees wrote us and said that that was a subject with which we had nothing to do.

The Master—Pardon me? Why need we go over that now? I am now considering only this: How can the degree of importance or the manner in which the sermons become of importance in the opinion of this witness be material evidence?

Mr. Krauthoff—I will answer that in this way: After the—

The Master—It being admitted on all hands that the sermons and their preparation are of importance, of great importance to the purposes of

the Church? Now you do not add anything by asking him that question and getting an answer to it.

Mr. Krauthoff—This is not an ordinary witness on that question, if I may be pardoned for a moment. After the trustees of The Christian Science Publishing Society had taken that position, subsequently one of them was removed from office—Mr. Rowlands. He brings a suit and says that his removal from office was in bad faith and was arbitrary and capricious, and for a great many other reasons set out in the bill. We are now proving by Mr. Dickey, whose good faith Your Honor is sitting in judgment upon, what induced him to take the step which Your Honor is called upon to say was done in bad faith.

The Master—I do not see how you can make anything more appear on the question of his good faith by asking him to what extent and in what manner the preparation of the sermons is important—it being admitted, as I say, on all hands that they are of great importance.

Mr. Krauthoff—If Your Honor please, having reached that point, why, we will move on.

Q. Do you know of anything, Mr. Dickey, that makes the Bible, together with "Science and Health with Key to the Scriptures," the only preachers in all these Christian Science churches throughout the world, outside of the order of Mrs. Eddy in that respect which was adopted and became a part of the Church Manual?

Mr. Whipple—I pray Your Honor's judgment. I think that I should have to object to that on the ground that I do not understand it. There may be other objections after you have elucidated what it means.

Mr. Krauthoff—We may concede that Mr. Whipple does not understand it, but here is what we are trying to point out, if Your Honor please—

The Master—No; put the question again. Rather than tell what you are trying to do, let us have the exact question.

Mr. Krauthoff—Very well. Will the stenographer read it?

[The question is read as follows: "Do you know of anything, Mr. Dickey, that makes the Bible, together with 'Science and Health with Key to the Scriptures,' the only preachers in all these Christian Science churches throughout the world, outside of the order of Mrs. Eddy in that respect which was adopted and became a part of the Church Manual?"]

The Witness—No.

Mr. Whipple—I think I will have to object to that.

The Master—Do you know anything outside of Mrs. Eddy which makes so-and-so and so-and-so the only preachers—is that it?

Mr. Krauthoff—Yes.

The Master—I cannot see how we gain anything, but you may get an answer to that question if he can

answer it. A. I know of nothing outside of the Christian Science Manual that does that.

Mr. Whipple—That I object to, if Your Honor please, because that was not the question. Do you know anything outside of Mrs. Eddy's orders with regard to it?

Mr. Krauthoff—Mrs. Eddy's orders, which became a part of the Church Manual.

Mr. Whipple—Well, that involves a great many questions.

The Master—I think we had better let the answer stand as it is.

Mr. Whipple—Very well.

The Master—It cannot make very much difference.

Q. In your work at Kansas City in these various capacities in the branch church and in your work as a member of the Board of Directors, have you had occasion to study the relation of The Mother Church to its branches throughout the world? A. Yes, sir.

Q. In the bill filed by the plaintiffs in this case it is alleged that you are the director of only one of 1800 churches. Will you please state the relation of The Mother Church to the branch churches as it is worked out in practice from day to day and in the work that you are doing as a director?

Mr. Whipple—I pray Your Honor's judgment. That all appears in the Manual.

Mr. Bates—I am glad you have found that there is a Manual!

[Loud applause]

Mr. Whipple—There never has been a body of men more consistent supporters of the Manual than these trustees.

Mr. Bates—Whom are you addressing?

Mr. Whipple—I am addressing these people who are impertinent enough to clap their hands in a court of justice.

Mr. Bates—They are wise enough to recognize the inconsistency of your position.

Mr. Whipple—We do not want to recognize that sort of thing in a court of justice! We have the judicial determination here and we ought not have this sort of display.

Mr. Bates—You are fighting the whole Church.

Mr. Whipple—We are not fighting the Church.

The Master—I think I should have—

Mr. Whipple—We are fighting the benighted ignorance of men drunk with power!

[Hisses. The master raps for order.]

The Master—I shall have to request the people in the audience to abstain from making any demonstration either of approval or disapproval of anything that may be said during the progress of the hearing.

Mr. Krauthoff—Now, if Your Honor please, the statement with which Mr. Whipple concluded his remarks shows the importance of this court having

some comprehension, from the statement of the people who are engaged in the administration of affairs with respect to which their good faith is attacked, as to the practical relationship of The Mother Church to its branches. We had this Manual introduced in evidence. There is the Manual to be construed. But if Your Honor will remember for a moment, you are dealing with a question of church law which has to be proved before you as a fact, the same as if it were the law of England, or the law of any jurisdiction with which the court, as such, is not presumed to be familiar and of which it does not take judicial notice. If a lawyer from America was called as a witness in a foreign country to testify what the Constitution of the United States meant when it said that the Congress of the United States shall have the power to regulate commerce among several states and with the Indian tribes and foreign nations, he would be denying the judge all the light he had if he refused to say what John Marshall had said about it, or if he refused to say what the Supreme Court of the United States had said since John Marshall's day, or what was done in daily practice in the Congress of the United States in the way of enacting laws regulating interstate commerce.

Now this man is the director of a Church which we claim extends in its activities around the world, a Church which is, in its true sense, a "Mother" Church to the 1800 branches over which it must of necessity extend the care that a mother does over her children as it continues from time to time. In the exercise of that, he discharged his duty and removed Mr. Rowlands. Mr. Rowlands has summoned him to the bar of this court; has filed here a bill in equity and has sent 140,000 copies to the branch churches, in which the issue is made that The Mother Church has nothing to do with the branch churches, and Mr. Eustace has so testified upon the stand. Now we submit that we have the right, on behalf of these directors, to explain what their concept of the relation of The Mother Church to the branches is, that in order through their explanation Your Honor may understand what it was that moved them to the action that they did take.

The Master—I do not think that the witness should take up the time by recounting, going over again what the Manual provides for. We can assume from his position, from what he says, that he recognizes all that. Now, further than that, you desire to ask him to give his opinion as to what follows from the provisions of the Manual, do you?

Mr. Krauthoff—I do not ask for his mere opinion. He is a member of the board, and has been since 1910, which is charged with the duty of enforcing this Manual. It is an ecclesiastical tribunal, in effect, and his views, and his judgment and his

statements, about what this Manual means in its application to The Mother Church and the branch churches, are as applicable and admissible in this case as would be the testimony of a lawyer from England as to what the British Constitution is and how it is administered and applied in courts of justice in England.

The Master—You are examining him, then, as an expert on the Manual, are you?

Mr. Krauthoff—Not only as an expert of the Manual but also testifying to his own good faith; and I want to say to Your Honor—

The Master—You do not quite make it clear to me whether you are examining him as an expert on the Manual or on the ordinary practice under the Manual, or on his state of mind bearing on his good faith.

Mr. Krauthoff—I am taking all three of those in order. I am offering him as an expert on the Manual, and his expert judgment, of course, comes from the application that has been made of the Manual in the work that he has done as a director and in the Christian Science movement preceding his becoming a director, and in what he learned from Mrs. Eddy and from his study of her works; and then I will follow that by asking him, as bearing upon his good faith, whether he did all that in the performance of the acts with respect to which it is charged that he acted in bad faith.

Now, if I may be pardoned for just a moment, if Your Honor please, I appreciate at the outset that it may seem that I am entering upon an inquiry which is very comprehensive; but it has been my privilege to take these footsteps, it has been my privilege for six months to study these things, and it is because I have done it that I can present to you something that will help you, and it is because the lawyers on the other side have not done it that they have brought a lawsuit which has no basis.

The Master—Perhaps before tomorrow you can find and refer me to the testimony of Mr. Eustace to which you have just now had reference. I would like to look at that again.

Mr. Krauthoff—I shall be very glad to do it.

The Master—I suppose if it be true—it is so many days ago that I do not recall the precise form in which Mr. Eustace's testimony came out—if he has been allowed to give his interpretation of the Manual, I suppose we must allow Mr. Krauthoff time to do the same thing.

Mr. Whipple—Not if he was asked in cross-examination.

The Master—That is why I requested that counsel refer me to the place in order that I could see the connection in which it came up.

Mr. Whipple—It is perfectly clear, if we had asked him his interpretation with regard to a particular part of the Manual, that it would be unfair to exclude the other side from asking expert questions; but it is only a be-

lated thought on the part of counsel that he was examining Mr. Dickey as an expert. His first statement was that he was trying to show his good faith.

Mr. Krauthoff—One of the things to which I desire to call Your Honor's attention in that respect is the sixth paragraph of the bill in equity.

The Master—I have it before me, I believe. What have you to say about it?

Mr. Krauthoff—In that, if Your Honor please, the issue is distinctly stated that the defendant directors are the directors of only one of these Christian Science churches, "to wit, The Mother Church, situated in Boston," and then an interpretation of the Manual is pleaded: "The Church By-Laws created by Mrs. Eddy provide for local self-government of churches," and a part of the Manual is quoted.

Mr. Whipple—Now, if you can quote any part of the Manual contrary to that, I think you would be entitled to call His Honor's attention to it.

Mr. Krauthoff—We are now endeavoring to show, if Your Honor please, by taking the Manual as a whole, by taking the structure of the Christian Science movement as a whole, that that statement there is not accurate.

Mr. Whipple—That is, that Mrs. Eddy did not mean what she said here—

Mr. Krauthoff—No.

Mr. Whipple—because you can find somewhere else something that you think is opposite to it?

Mr. Krauthoff—No, I beg your pardon.

The Master—The question raised by the sixth article of the bill and by your answer to it seems to be this: The plaintiffs' allegations are that the Board of Directors are directors of only one of the Christian Science churches. You, on the contrary, allege that The Mother Church is the central organization of which all other Christian Science churches are branches?

Mr. Krauthoff—Yes; and we also allege that The Christian Science Board of Directors is the governing body of The Mother Church and of its branches with respect—

The Master—Well, that is not necessary, if you establish that The Mother Church is the central organization of which the other Christian Science churches and societies are branches, in your sense of the word.

Mr. Krauthoff—Yes. Now, we offer to prove that by the manner in which the business of The Mother Church and other branches has been conducted ever since 1892—we offer to prove that by the form and structure of the movement, which of necessity makes that true, and we offer to prove it by the tenets and principles of Christian Science. Now, we cannot do that in a minute and it cannot be taken for granted.

The Master—I think that I shall have to permit an inquiry into the manner in which the business has been done since 1892. I will hear counsel if they desire to object to my permitting that inquiry.

Mr. Whipple—If it has been done contrary to the terms of the Manual, it could have no effect; if it has been done under the terms of the Manual, the Manual ought to be the controlling feature.

The Master—There we should only get into a dispute as to whether it was under or contrary to the terms of the Manual. I think that we had better have the evidence as to what the practice has been.

Mr. Whipple—Very well, Your Honor.

Mr. Krauthoff—It is now 4 o'clock. The Master—So far I will rule, and you may proceed on that line tomorrow morning.

Mr. Krauthoff—Thank you.

The Master—But that is not to be understood as opening your inquiry at present to the extent which you have claimed.

[Adjourned to 10 a. m., Thursday, July 17, 1919.]

July 17, 1919

#### SIXTEENTH DAY

Supreme Judicial Court Room,  
Boston, Massachusetts, July 17, 1919.

Adam H. Dickey, Resumed

Mr. Krauthoff—At the adjournment on yesterday, if Your Honor please, a question was pending as to which some objection was made, and the master made a general ruling on the subject of the course of testimony that might be pursued. In view of that ruling the question is for the present withdrawn—the question of the relationship of The Mother Church to its branches—and I will proceed along the line of showing the fact.

The Master—Let me see the particular question that you are talking about, which you now say is withdrawn.

Mr. Krauthoff—The particular question was the witness' statement as to the relationship of The Mother Church to its branches.

The Master—Will you let me hear the question just as it was put? Have you got it there?

Mr. Krauthoff—The question was: "Will you please state the relation of The Mother Church to the branch churches as it is worked out in practice from day to day and in the work that you are doing as a director?" And on that—

The Master—One moment. I do not think I excluded that, did I?

Mr. Bates—No, Your Honor did not. The Master—"As it is worked out in practice."

Mr. Krauthoff—Yes. Now, what I was going to do, if Your Honor please,

was to withdraw that question for the present and take up a line of inquiry preceding Mr. Dickey's advent on the Board of Directors, and then, having reached his position as a member of the Board of Directors, I will again return to this subject. I feel that that is a more orderly presentation of what I am about to prove by Mr. Dickey.

The Master—Very well.

Q. Mr. Dickey, how long—

The Master—It is understood, however, that that particular question I did not exclude.

Mr. Krauthoff—I appreciate that, if Your Honor please, and I appreciate the courtesy that was shown us on yesterday in permitting us to express our views at the length that we did.

The Master—Why, that is what we are here for.

Mr. Krauthoff—Thank you.

The Master—I don't see any particular courtesy about it.

Q. Mr. Dickey, in your work in the service of Mrs. Eddy individually, please state to what extent you became acquainted with her? A. After coming to her home she asked me if I would be willing to come there and live in her house, and I expressed my willingness.

The Master—Is that necessary? You asked him to state the extent to which he became acquainted with her.

Mr. Krauthoff—Yes.

Q. Just state generally, Mr. Dickey. Did you live in the household? A. I did.

Q. And was your work of such a nature that you saw her both day and night? A. It was.

Q. I mean both in the day and the evening? A. Yes.

Q. What was your work? A. She asked me if I would accept the place of secretary. I did so, and then she told me what my duties would be.

The Master—I think, Mr. Dickey, if you could answer the question directly without quoting Mrs. Eddy it would be better. Put the question again, and let the witness notice what is asked.

Q. What was your work?

The Master—What was your work?

A. That of secretary to Mrs. Eddy.

Q. In your work as secretary did you handle the incoming mail? A. Yes, sir.

Q. Did you reply to some of the letters? A. Many of them.

Q. And others were referred to her for reply? A. Yes.

Q. Did you have charge of the household in any way? A. Yes.

Q. The details of the household? A. Many of them.

Q. Now, this was in Chestnut Hill, in Boston? A. In Newton.

Q. In Newton? A. Yes, sir.

Q. At that time Mrs. Eddy had moved from Pleasant View, at Concord, New Hampshire, to Chestnut Hill? A. Yes, to Chestnut Hill.

Q. What was the habit of Mrs. Eddy with respect to the use of the Church Manual? A. Well, Mrs.—



Mr. Whipple—Just a moment. I cannot see how that is material, if Your Honor please. It must be assumed that she knew of the Church Manual, and wrote about it, but no particular point such as is indicated by the question is of importance.

Mr. Krauthoff—I understand, if Your Honor please, from Mr. Whipple's line of objections during the last two days that there was some doubt in his mind whether all of this Manual was approved by Mrs. Eddy; and I want now to prove by this witness the extent to which she used this Manual from day to day, and what she said about it and what she did about it.

Mr. Whipple—I do not believe that evidence can be offered of that description. The inquiry which we desired to have made was the extent to which Mrs. Eddy, who, apparently with the most meticulous care attached her name to anything that she approved, actually did approve in writing different provisions of the Manual. We have seen the very great care with which every scrap of paper that came down bore her signature on the back; sometimes the same by-law, three or four copies of it, bore her signature. We were interested to find the authority, approval, of Mrs. Eddy, in writing, of different parts of the Manual; and that is probably what caused the somewhat mistaken view you have expressed this morning as to the purpose of the objections that have been made.

The Master—The purposes?

Mr. Whipple—Of objections which we had made. What I have in mind is only an inference, so far as expressed—only an inference of Mr. Krauthoff.

Mr. Krauthoff—What we are trying to prove, if Your Honor please, is that continually during the time Mr. Dickey was in Mrs. Eddy's household this Manual, which bore upon its face "By Mary Baker Eddy" was cited and used by Mrs. Eddy—

The Master—Pause a moment, Mr. Krauthoff. I am inclined to think I shall have to admit the question. You may proceed.

A. Mrs. Eddy regarded the Manual as a very—

The Master—No, no; not how she regarded it, but what she stated and what she did.

A. Why, she was very careful about all of the By-Laws, to see that they were properly presented to the directors, examined the proof carefully when it returned and put her signature on the back, which was her custom of approval of anything to be printed in the periodicals.

Q. In her daily work did she have the Manual on her desk? A. She did.

Q. Did she cite it in her correspondence, or refer to it? A. Many times.

Q. Did she call the attention of the Board of Directors to any omission to follow the Manual? A. Whenever such occurred.

Q. What did she enjoin upon the members of her household with respect to the Manual? A. That they should

strictly obey the By-Laws in the Manual.

Q. What, if anything, did she say as to the relation of the Manual to The Mother Church—I mean to the Christian Science movement?

Mr. Whipple—I pray Your Honor's judgment as to that.

The Master—I hardly see the necessity for that in view of what the Manual itself says in her name. It is merely superfluous, isn't it?

Q. What were the habits of Mrs. Eddy with respect to accuracy of language? A. She was the most accurate person I ever saw or came in contact with.

Q. What attention did she give to the question of punctuation? A. Very strict attention.

Mr. Krauthoff—If Your Honor please, we offer the original of the document of Jan. 15, 1898, being on page 167, Document 179, of Volume 2 of Letters and Miscellany.

The Master—Hasn't that been in already?

Mr. Krauthoff—Not the original.

The Master—We have it in in some form?

Mr. Krauthoff—It was in the form in which it was written in the books of the trustees, but that is not the precise order of arrangement that it is in the original, and we desire now to offer the original document. It was offered in the books of the trustees for the purpose of showing that it was written upon their books. We now offer it in its original form, and, preliminary to its offer, I will ask you, Mr. Dickey, if that is the signature of Mary Baker Eddy to the document which I have shown you.

The Witness—It is.

Mr. Streeter—May I ask you, Mr. Krauthoff, if there are any differences between the original and the one copied in the book?

Mr. Krauthoff—My understanding is that the language is not exactly the same, and then the order of arrangement is not exactly the same. May I show Your Honor a photograph of the original?

[Mr. Krauthoff passes two photographic reproductions to the Master.]

Mr. Whipple—Ought not this go first?

Mr. Krauthoff—I shall be very glad to offer that in connection with it. That is the one in which the most striking difference appears.

I call your attention to this other document, No. 178, on page 165 of volume 2 of Letters and Miscellany—

The Master—Just a moment, Mr. Krauthoff. Have you got through with this?

Mr. Krauthoff—No; Mr. Whipple has thought that the other should be offered first.

The Master—Oh, very well. I did not hear that. Go on.

Mr. Whipple—Is there a photograph of this?

Mr. Watts—No. We should like to have one.

Mr. Streeter—May I have one?

Mr. Whipple—Here is a photograph of the paper which Mr. Krauthoff is about to read (passing photographic reproduction to the Master). I think it would be fortunate if you could give the number, the serial number, the exhibit number, of the paper that is already in which corresponds. Do you happen to remember it?

Mr. Krauthoff—No, I do not.

Mr. Whipple—Can you tell, Mr. Withington, what the number is of this letter of Mrs. Eddy's of Jan. 15? Your Honor will notice that these are both in advance of the trust deed.

The Master—I noted that.

Mr. Withington—I do not think that it has been given a number. Mr. Krauthoff read it out of the trustees' book.

Mr. Krauthoff—May I have the first volume of the trustees' book, please?

[Mr. Withington passes a book to Mr. Krauthoff.]

Mr. Krauthoff—Now, if Your Honor please, document No. 178, on page 165, in its original form reads as follows:

"To The First Church of Christ, Scientist, Boston, Mass.

"Jan. 15, 1898.

"My beloved Students:—

"I appreciate your uniform loyalty and courtesy to mother who desires to know no partiality for one or another of her children but to earnestly consider the welfare of all. I have asked for a small Board of Trustees (to keep peace in the family) and as I believe a strong board; one is a business man [man], another a doctor, and still another a scholar.

"I now recommend that these trustees continue at present Mr. Joseph Armstrong as the business manager of the Publishing House for the benefit of the Mother Church in Boston, Mass.

"Please to hand an attested copy of this letter and documents to the editors of The Christian Science Journal for publication in the March number of The Christian Science Journal.

"With love mother

[Signed] "MARY BAKER EDDY."

Now, shall I at this time point out wherein this differs from the record in the book?

The Master—I think it would be as good a time as any.

Mr. Krauthoff—The distinction is this, if Your Honor please. In recording that letter in the book the words, "A Gift to The Mother Church and a Grant of Trusteeship," were placed in advance of this letter. As will be presently pointed out, those words are on the part of the caption to the second document which I will presently read. The address, "To The First Church of Christ, Scientist, Boston, Mass.," and the date, "Jan. 15, 1898," at the top of the document, are not recorded in the book. Then the words, "My beloved Students"—with those the recording begins. The parenthetical clause, "(to keep peace in the family)" is omitted in the record, and the word "mother" is omitted. It

reads, "With love Mary Baker G. Eddy." The true signature is, "With love mother Mary Baker Eddy." The recorded document says, "the February number of The Christian Science Journal," and the original document says, "the March number of The Christian Science Journal."

[The document No. 178, Volume 2 of Letters and Miscellany, page 165, is Exhibit 463. R. J. M.]

Now, if Your Honor please, the document—

Mr. Strawn—As a matter of fact, Mr. Krauthoff, that document never was published.

Mr. Krauthoff—I am not now able to state in what form it finally appeared.

Mr. Strawn—I understand that was supplemented—I mean the one of Jan. 25 was substituted for that, and therefore that was never published.

Mr. Krauthoff—I do not agree to the word "substituted." I am not sure as to what was published in the Journal. I will get that. (To Miss Warren) Will you please get me the Journal for February, 1898?

Mr. Whipple—Or March.

Mr. Krauthoff—Now, in Volume 2 of Letters and Miscellany is the document to which I will call Your Honor's attention—document No. 179: "A Gift to The Mother Church."

And Your Honor will note, in that connection, that the period is after the word "Church."

"A Gift to The Mother Church, and a Grant of Trusteeship.

"I hereby constitute a Board of Trustees namely, Edward P. Bates, James A. Neal, and William P. McKenzie, all of them being residents of Boston, Massachusetts. And I hereby entrust to the aforesaid persons The Christian Science Journal, and all moneys, subscription lists, real estate, or whatever other property is connected therewith at this date. This property is only to be held in trust by the above named persons for the purpose of carrying on the business which has been conducted by the Christian Science Publishing Society at Boston, Massachusetts. The net proceeds accruing from sales of The Christian Science Journals and the literature connected therewith, after deducting therefrom semi-annually the salary for each of these trustees—shall, by the treasurer of the trustees for the publishing house of the Mother Church, be immediately handed over to the treasurer of the Mother Church, The First Church of Christ, Scientist, in Boston, Massachusetts, to be applied to the use and for the benefit of this Church. I retain my ownership of the Christian Science Journal; and it shall be copyrighted in my name during my so-called natural life, in which I give the above named church the benefits derived therefrom; but thereafter the copyright and the aforesaid Journal shall become the property of this Church.

"No member of this Board of Trustees shall be empowered to conduct

the business as pertains to the board without the knowledge and consent of the majority of its members.

"For the faithful performance of this trust each of the above named trustees or their successors shall, from the above date, receive a salary of one thousand dollars, payable semi-annually, beginning at the date of this trusteeship. The Christian Science Journal shall not descend to my heirs or assigns; but it shall continue a perpetual benefit for the Mother Church—unless that for some reason I shall over my own signature and handwriting withdraw it.

"If for any reason a member of this board becomes incapacitated to transact the duties of his office, his place shall, by a majority vote of the board subject to my approval (or by myself if I see fit so to decide) be declared vacant, and the remaining members shall at once proceed to elect a new member to fill the vacancy. No candidate shall be eligible to this position unless it can be shown that he or she is at the time of election a true and loyal Christian Scientist.

"In witness whereof I have hereunto set my hand and seal this 15th day of January in the year of our Lord 1898.

"(Signed) MARY BAKER EDDY.  
"Witness (Seal)

"(Signed) FRED N. LADD,  
"HENRY STEVENS."

[The document No. 179, Vol. 2 of Letters and Miscellany, is Exhibit 464. R. J. M.]

Now, as recorded, the document says: "I hereby create a Board of Trustees, namely Edward P. Bates, James A. Neal, and William P. McKenzie, all of them being residents of Boston, Massachusetts, for the purpose of entrusting to the aforesaid persons The Christian Science Journal," and from that point on the recorded instrument appears to be the same as the original document.

Mr. Whipple—Just what do you mean by "recorded"?

Mr. Krauthoff—I mean recorded in the book of the trustees.

Mr. Whipple—That is, it is one thing that is set forth at the beginning of their records?

Mr. Krauthoff—Yes; the instrument is there recorded.

Now, with respect to the publication of that document, if Your Honor please, Mr. Strawn asked a question in regard thereto. The circumstances of the execution of that document and the publication, or rather the manner in which the whole transaction was published, will be explained by the deposition of Judge Hanna. At this time I call attention to the article in the February, 1898, number of The Christian Science Journal, which has the headnote, "A Gift to The Mother Church, and a Grant of Trusteeship." We offer the article in its entirety, and we read from it at this time the following statements—

Mr. Whipple—Well, ought it not all to be read? Is it very long?

Mr. Krauthoff—No. I will read it all.

Mr. Whipple—If it is very long, if you will let us take it and look it over, perhaps you need not read it.

Mr. Krauthoff—No, I will read it.

"A Gift to The Mother Church, and a Grant of Trusteeship.

"My kingdom is not of this world," said the gentle Nazarene. And when the temptations of evil spread out before him in visions, 'all the kingdoms of the world, and the glory of them,' his sharp rebuke to the temptation was, 'Get thee hence, Satan: for it is written, Thou shalt worship the Lord thy God, and him only shalt thou serve.'

"So unlike his generation was he that his motives were misunderstood, and he was stoned and crucified because of them.

"In a large sense all who have sincerely followed in his footsteps have met a similar fate.

"The Reverend Mary Baker Eddy has been said, by those who cannot comprehend the elevated and broadly humanitarian character of her life and work, to be sordid and mercenary. Her charges for her work have been said to be exorbitant, and many a stone has been thrown at her on this ground; but by those only who know nothing whatever of her work or its value. The thousands who are familiar therewith, because they have been the joyous beneficiaries thereof, have been able themselves to prove the truth of her teachings in the most indubitable ways, and are, therefore, competent to judge of her work (and the only ones who are). Let their testimony be received by the charitable and unbiased everywhere. And what is their testimony? There is not a sincere student of Mrs. Eddy in the world who will not declare, out from the depths of an honest heart, that all they ever paid her was not a drop in the ocean as compared with all they have received in return.

"And suppose, as the result of her long years of toil, Mrs. Eddy did accumulate somewhat of this world's wealth. Has that wealth become her kingdom? Has she yielded to it, or, like her great Exemplar, has she said, 'Get thee hence, Satan: for it is written, Thou shalt worship the Lord thy God, and him only shalt thou serve'?

"Let a few indisputable facts, selected out of thousands, answer our question.

"Besides an almost countless number of private charities extending over a long time, she has contributed large sums for the benefit of the Cause which she established. Years ago she donated a lot of ground in Boston on which to erect The Mother Church, then valued at \$20,000, and now estimated to be worth more than double that sum. Recently she gave to the church at London, England, \$1000. Also purchased a lot in Concord and

refitted a building on it for church purposes, at a cost to her of about \$20,000.

"We cannot now recall all the contributions of like kind she has made even within two years. We have heard of a number, and many, doubtless, we have not heard of and never shall hear of. We can mention, however, by her permission, her latest magnificent donation. It is none other than this:

"1. A conveyance in perpetuity to The First Church of Christ, Scientist, in Boston, Massachusetts, of the real estate of The Christian Science Publishing Society, with the buildings, now used by the society, and located at 95 and 97 Falmouth Street, in Boston. Its value is not less than \$22,000, and it is situated in a vicinity where the increase in value is considerable.

"The following reservation is made by Mrs. Eddy in this conveyance:

"Reserving, however, the right to have and occupy so much room conveniently and pleasantly located in the Publishing House as may be necessary to carry on the publication and sale of the books of which I am or may be the author, and other literature connected therewith."

"2. A transfer to said Church in perpetuity of The Christian Science Journal, Quarterly, and all the literary publications of the society, and every right and privilege whatever connected therewith, saving only the right to copyright the Journal in her own name, and all the moneys and assets thereof; these to be held in trust by three trustees, namely, Edward P. Bates, James A. Neal, and William P. McKenzie. These trustees are to have charge of the business affairs of the society, and the business is to be continued in the name of The Christian Science Publishing Society. The moneys and assets of the society now on hand go into the hands of the treasurer of The Mother Church, and all accruing profits over and above the actual running expenses of the business are to be turned over semi-annually to said treasurer, meantime to be kept by the trustees in a safe bank or trust company.

"These funds are to be held by the treasurer for the benefit of The Mother Church, as now organized, and disbursed under careful safeguards in such manner as will best promote the interests of the cause. The total present value of the entire property thus conveyed and transferred is fairly estimated at \$50,000. We may add that about a year since Mrs. Eddy safely assigned her copyrights of all her books and writings.

"It is needless to comment on the importance of this movement or its mighty augury for the future. We cannot now comprehend, much less estimate, its significance.

"Let us endeavor, nevertheless, to lift up our hearts in thankfulness to God for His goodness to us and our cause, and to his servant, our Mother

in Israel, for these evidences of a generosity and self-sacrifice that appeal to our deepest sense of gratitude, even while surpassing our comprehension.

"God grant that this great trust may be carried out in the same Christ-like spirit in which it is conferred.

"The present publisher and editors remain as formerly."

"We are requested by Mrs. Eddy to return, through the columns of the Journal, her sincerest thanks and gratitude for the numerous beautiful and valuable Christmas remembrances received from many of her students, and to say that she has been prevented by the stress, even for her, of unusual work for the Cause, from making personal acknowledgment of these tokens of love.

"Will the dear donors please accept this public acknowledgment in lieu of private ones?"

[The article in the February, 1898, number of The Christian Science Journal, of which the foregoing is a copy, is Exhibit 465. R. J. M.]

The Master—Is that the publication to which the letter of January 15 refers?

Mr. Krauthoff — If Your Honor please, as I stated a moment ago, the circumstances of that will all be disclosed in the testimony of Septimus J. Hanna, who at that time was the editor of The Christian Science Journal.

The Master—I gathered from what you said that you were going to read the publication which was made in the March number of The Christian Science Journal—

Mr. Krauthoff—I am reading the publication—

The Master— —in pursuance of the last paragraph of Mrs. Eddy's letter of Jan. 15, 1898?

Mr. Krauthoff—Yes. I have read the publication—

The Master—They did not publish—I have not seen in what you have read any publication of the letter and document.

Mr. Krauthoff—No; I was about to say, if Your Honor please—

The Master—Why do we need all that article?

Mr. Krauthoff—Mr. Strawn asked me what was published, and I read it.

Mr. Strawn—I asked you if that article was published. I beg your pardon. I did not ask what was published.

Mr. Krauthoff—Oh, I beg your pardon. Very well. I offer that for the purpose of showing what was published in the February, 1898, number of the Journal, with particular reference to the statement that Mrs. Eddy transferred to the Church—

The Master—You have not got yet any publication of the attested letter and document?

Mr. Krauthoff—No; and, as to that, the document and letter were not published in the Journal.

The Master—That request was not complied with?

Mr. Krauthoff—That request was not complied with for reasons—

The Master—Never mind the reasons. It was not as a matter of fact.

Mr. Krauthoff—I did not undertake to state them—for reasons which are stated in Judge Hanna's deposition. I will register that now so that you can associate it when you come to work it out.

Mr. Whipple—I understand that it is clear that this request, "Please to hand an attested copy of this letter and document to the editors of The Christian Science Journal for publication in the March number of The Christian Science Journal," was never complied with?

Mr. Krauthoff—That request was not complied with, and the reasons are explained by Judge Hanna.

Mr. Whipple—Well, then, I had supposed that you were going to read from The Christian Science Journal something which you claimed was a compliance with this, and therefore I asked you to do it. It appeared that it is no such thing, and I will ask whether that should not be withdrawn from the record? I cannot see anything in it that is material, nor can I see anything that is authorized by Mrs. Eddy. If it were, it would be on a different basis. So far all we have is that the people to whom this letter was directed did not comply with it. The fact that they did something else is of no importance, and I should say that that ought not to be printed.

The Master—I am unable to see why that should not go into the record in full.

Mr. Krauthoff—The reason I read it in full, if Your Honor please, was that Mr. Whipple raised a question as to whether it was going to be read in full or not. All of it does not strictly belong in the record. And so far as the document itself is concerned, it will become important, and the circumstances connected with this article will be shown by Judge Hanna's deposition. I merely read it at this time by reason of the fact that some inquiry arose as to what was published.

The Master—On your statement that evidence to be introduced in the future will make it admissible, it may stand for the present.

Mr. Krauthoff—Without prejudice to renew the objection, I suppose?

The Master—Certainly not.

Q. Mr. Dickey, I call your attention to Document 5208 on an unnumbered page of Vol. 39 of Letters and Miscellany, and I will ask you to state whether the handwriting in there, exclusive of the words in the rubber stamp on the upper left-hand corner, is that of Mary Baker Eddy? A. The signature and the superscription, and some of the alterations in the typewritten letter, are in the handwriting of Mrs. Eddy.

Q. All that portion thereof which is not in typewriting? A. Yes.

Q. 5207, in the same book. Is the part, other than within the rubber

stamp in the handwriting of Mary Baker Eddy? A. Yes, sir.

Mr. Krauthoff—May I have those two photographs a moment? (Documents are handed to Mr. Krauthoff.)

Q. Referring to the document that was offered as No. 178. Did you state that the signature was that of Mary Baker Eddy—the words, “With love, Mother”? A. That is her signature.

Q. And the word “this,” and the words “and document,” interlined therein? A. That is her handwriting; yes, sir.

Q. And did you state that this was her signature to the document marked 179? A. It is.

The Master—I understood you to make some statement regarding the order of those two documents.

Mr. Krauthoff—The two photographs?

The Master—The two documents photographed. Did you say something about there being a dispute as to the order in which they came?

Mr. Krauthoff—I understand they came together. This is what happened, if Your Honor please: I first referred to the instrument which was the document of gift, and that was No. 179, and Mr. Whipple asked me if it was not better to read 178 first, and I acceded to that suggestion. They are in the book in the order that I have stated—178 and 179. As a matter of history, they both came—

The Master—And they are in the same order in the trustees' records?

Mr. Krauthoff—They are in the same order in the trustees' record, with this distinction: the words “A gift to The Mother Church” are preceding the letter in the trustees' record.

The Master—Then they are in a different order?

Mr. Krauthoff—May I give you the book itself, and you can see it.

The Master—Oh, I see, the heading.

Mr. Krauthoff—If Your Honor will take the book (handing volume to Master, who examines it).

The Master—Yes. I see what you mean.

Mr. Krauthoff—Now, this is the next document. Your Honor, Document 5208 in Volume 39, unbound, of Letters and Miscellany:

“My Beloved Students:

“I have conveyed The Christian Science Journal etc. to The First Church of Christ, Scientist, in Boston, Massachusetts—holding its services at this date in The Mother Church—and that shall continue to hold its meetings at this First Church edifice, erected by the Christian Scientists in Boston, Massachusetts.

“The real estate that is Quit Claimed to me by The Christian Science Publishing Society I deed to The Mother Church, The First Church of Christ, Scientist, in Boston, Mass. and not to the Board of Trustees who are to conduct the publishing business. I reserve however so much room, well located, in these buildings, as may

be necessary to carry on the publishing and sales of the works of which I am author.

“With love,

“MARY BAKER EDDY.

“Pleasant View

“Jan. 22, 1898.

“Please publish this letter in Feb. Journal. M. B. E.”

[Letters and Miscellany, Document 5208, is offered in evidence as Exhibit 466, as read by Mr. Krauthoff.]

Mr. Krauthoff—That letter was not published in the February Journal, and the circumstances of its non-publication will be explained in the deposition of Judge Hanna.

The Master—The document which you read begins, “My Beloved Student”?

Mr. Krauthoff—Yes. Students.

The Master—Students—is that right?

Mr. Krauthoff—Yes. And the deposition of Judge Hanna will show that that was received by Judge Hanna, who, together with Mrs. Hanna, was a student of Mrs. Eddy, and at that time they were editors of The Christian Science Journal.

The Master—The stamp in the corner here is, “Written to Judge and Mrs. Hanna.”

Mr. Krauthoff—That is a mark that the clerk of the Church put on the document when these documents were donated to the Church, and were identified so as to show their donor.

The Master—You do not dispute the statement?

Mr. Krauthoff—Pardon me?

The Master—You do not dispute the statement?

Mr. Krauthoff—No, I do not dispute it.

The Master—Then by “My Beloved Students” is there meant Judge and Mrs. Hanna?

Mr. Krauthoff—Yes. Now, here is a photograph of the other document that Mr. Dickey identified (handing document to Master).

Document 5207 in Volume 39 of Letters and Miscellany:

“Pleasant View,

“Concord, N. H. Jan. 18, '98.

“Beloved Student

“For special reasons and to prevent unhappy results this transaction had to be rattled off that night in time for the meeting as called. I employed a lawyer called smart. His father was our Senator at Congress. I had scribbled it for a schedule but there was not time for the Lawyer to read and rewrite it and mail it in time, so I read it to him and he said it was ‘right’ and I signed and Mr. Ladd my 2nd cousin, treasurer of The Loan and Trust Savings Bank, Concord, put down his signature. The lawyer is of the firm of Stevens & Leach, city. Names, Fred N. Ladd, Henry W. Stevens. Do as you think best about adding the signatures.

“With love, M. B. EDDY.”

[Letters and Miscellany, Document

5207, as read by Mr. Krauthoff, is offered in evidence as Exhibit 467.]

Q. Now, Mr. Dickey, calling your attention to Document 5206 in Volume 39, of Letters and Miscellany, is that in the handwriting of Mrs. Eddy? A. Yes.

Q. Including the reverse of it? A. Yes.

Q. Both sides? A. That is her writing; yes, sir.

The Master—This letter of Jan. 18. It is not entirely clear to what transaction it refers. But you expect to show that by other evidence?

Mr. Krauthoff—Yes. It refers to the instrument of Jan. 15, 1898, and that will be shown by the deposition of Judge Hanna.

Mr. Whipple—Unfortunately, these are going in in the reverse chronological order, and that makes it a little more difficult to understand them. The next one is the 17th.

Mr. Krauthoff—I was going to ask, if Your Honor please, and Mr. Whipple has called my attention to the inverse chronological order—I have offered three documents, one of Jan. 22, 1898; one of Jan. 18, and one of Jan. 17, and with the consent of Mr. Whipple and the order of the Court I would like to have the stenographers rearrange the order so that they will appear in chronological order.

The Master—I certainly have no objection if that can be done without confusion.

Mr. Whipple—Can that be done easily? You see, it involves a redraft.

Mr. Krauthoff—Well, then, we will try to avoid that in future.

Document 5206, in Volume 39, of Letters and Miscellany:

“Pleasant View,

“Concord, N. H., Jan. 17.

“Beloved Student,

“I will attend to that business. Have had so much on hand could not before. Confidential.

“With love Mother

“M. B. Eddy

please find the amendment to by-law for next edition of Manual. I read and showed my woman document to Lawyer of Concord who is considered smart. And he said ‘there is nothing incorrect in it.’

“Well had I been its author I scarcely could have believed it. But I was not more the author of that than of S & H as I regard it.

“Again M B E”

[Letters and Miscellany, Document 5206, as read by Mr. Krauthoff, is offered in evidence as Exhibit 468.]

The Master—Both these letters appear to have been written to Judge Hanna?

Mr. Krauthoff—Yes, Your Honor, that is right.

Q. Now, with respect to the statement of Mrs. Eddy, Mr. Dickey:

“Well had I been its author I scarcely could have believed it. But I was not more the author of that than of S & H as I regard it.”

What did Mrs. Eddy teach with regard to the authorship of Science and

Health? A. She taught that she was divinely guided in the authorship of that book.

Q. And that the authorship was of God? A. It was.

Q. You became a director in the fall of 1910? A. Yes, sir.

Q. And shortly thereafter Mrs. Eddy passed on? A. She did.

Q. With the passing on of Mrs. Eddy the board at that time—the Board of Directors—consisted of Mr. McLellan, Mr. Stewart, Mr. Chase, Mr. Dittmore, and yourself? A. That is right.

Q. Mr. Chase had been a director since the inception of the Church?

A. I don't know as to that. He had been a director for many years.

A. Mr. McLellan had served for a considerable period of time?

A. Yes.

Q. And also Mr. Stewart? A. Yes.

Q. The relationship between the various members of the directors and Mrs. Eddy up to that time—were they of a close and intimate nature? A. Very close.

Q. Did you then make a statement as a Board of Directors of your relation to the Christian Science movement? A. Yes, sir.

Q. I call your attention to the records of the Board of Directors of Dec. 7, 1910, and ask you if that is the statement that the board then wrote upon its records? A. Yes.

Mr. Krauthoff—We offer that, if Your Honor please, for the purpose of showing the situation as the board understood it on Dec. 7, 1910, it being claimed in the bill in this case that the authority which the Board of Directors is now seeking to exercise is of recent origin. We offer this for the purpose of showing that immediately upon the passing of Mrs. Eddy the board in its official capacity made this statement and published it.

Mr. Whipple—One moment. I object to that. I cannot see how that has any probative value of any sort whatever on any issue in this case.

Mr. Krauthoff—May I show the copy of it to the master?

Mr. Whipple—Yes; just show that. [The document is handed to the Master.]

Mr. Krauthoff—I wanted to add, if Your Honor please, that that is offered as the statement of an ecclesiastical tribunal, and stands as the established law of the Christian Science Church.

Mr. Whipple—What authority is there for the statement that an ecclesiastical tribunal can make a law for the Church, assuming that this is the statement of an ecclesiastical tribunal?

The Master—It is the first we have heard about ecclesiastical tribunals. The directors at that date had powers which were then, whatever they may have been, settled and fixed. They could not be altered or changed by anything the directors could put on their records. I suppose you will agree with me there?

Mr. Krauthoff—Yes, Your Honor.

The Master—We have got to decide what they were.

Mr. Krauthoff—Certainly. You asked me one question. I wanted to state my answer to it more accurately. I said a moment ago, if Your Honor please, that this stands as the declaration of an ecclesiastical tribunal and as such becomes the law of the Church. My attention has been called to the fact that the Manual is the law of the Church, and in my expression, "the law of the Church," I meant the law as it is commonly known in courts of justice, that is, the law as the Court interprets and administers it. The Manual, of course, is the law. The Bill in Equity in this case tenders the issue that these directors, the defendants in this case, have sought to exercise powers and jurisdiction which they never theretofore exercised prior to this controversy; that they were reaching out for power; as the expression was used yesterday, they have become drunk with power; that they were trying to do things from which they were excluded by the practice and the Manual of The Mother Church. Now, the Board of Directors is the tribunal of The Mother Church charged with administering and enforcing, and, so far as it becomes necessary to administer and enforce it, to interpret the Manual of The Mother Church, in the light of their understanding.

The Master—Their interpretation of the Manual could have no weight whatever unless the Court agreed to their interpretation of the Manual.

Mr. Krauthoff—It is evidence, however, if Your Honor please. It is evidence of those who were charged with the duty of enforcing it. It is the evidence of those who were familiar with Mrs. Eddy in her lifetime, and some of those who gave to Christian Science the thought and study of a lifetime. It is exactly the same as the conduct of parties in an executive department under the law, which the Court always accepts as an understanding of what the law means—in reaching an understanding of what the law means. Now, the argument made in this case is that The Christian Science Board of Directors have no charge of certain affairs of The Mother Church and of its branches, and we offer this as showing the statement that was publicly made on Dec. 9, 1910, more than eight years ago, and which has been accepted and acted upon by everybody since, as the evidence of the form and structure of the Christian Science Church.

Mr. Whipple—I did not understand that the Christian Science Church had been governed ever since by a declaration of the directors made at the decease of Mrs. Eddy. I had always supposed that it had been governed by the Manual, and not by their declaration—

Mr. Krauthoff—It has been governed by the Manual.

Mr. Whipple—always—absolutely always—

Mr. Krauthoff—Exactly.

Mr. Whipple—until your directors began to encroach upon an authority that is not in the Manual.

Mr. Krauthoff—They have always been governed by the Manual; but what that Manual means, and how it has been administered, and in practice how it has been applied, is the question that this Court is called upon to determine officially and judicially, and we offer this as evidence of what the directors have done under it.

Mr. Whipple—That does not affect the Deed of Trust, which was Mrs. Eddy's Deed of Trust—you keep forgetting—an inspired Deed of Trust, made intentionally an irrevocable Deed of Trust.

The Master—Well, that leads us, I think, a little too far into the argument of the whole case. The question now is whether this is admissible for any purpose. I am at present entirely unable to see how what power the directors had would settle the interpretation of the Manual.

Mr. Krauthoff—Well, if Your Honor please, in the course of the case it will develop that in the administration of the affairs of The Mother Church questions arise under the Manual precisely as in a court of justice questions arise under the Constitution of the United States, and some authority must decide those questions in so far as they affect the administration of the affairs of The Mother Church and of its branches.

The Master—The decision, however, could be of no final and binding effect in court.

Mr. Krauthoff—Certainly not; because the Court would have to reach its own conclusion. But it is, if Your Honor please, important as bearing on the practice which has been had and what the directors have done; and then, if Your Honor please, if it becomes vital as to any specific issue, there are many authorities which hold that on a question of church government the decision of the tribunal charged with the enforcing of that law is final in a court of justice, if done in good faith.

Mr. Whipple—May I suggest, if Your Honor please, that this does not come within the description of the learned counsel as to what they have done. At most all this is what they said. If you want to offer any acts, why, we will get onto a different ground.

Mr. Krauthoff—I am going to offer this as preliminary to the question whether he has conducted himself as a director in accordance with this statement.

The Master—Having undertaken to let Mr. Krauthoff show the practice followed by the directors in the government of the Church, and in view of his statement that he proposes to begin with this and go on to show certain action by the Church in gen-

eral upon it, I am going to let him put the letter in subject to your objection. I have already stated the view which I entertain regarding it at present.

[An extract from the directors' records of Dec. 7, 1910, is introduced in evidence as Exhibit 469, and is read by Mr. Krauthoff, as follows:]

"Special meeting of The Christian Science Board of Directors at 1 p. m. Present, Messrs. Chase, McLellan, Stewart, Dittmore and Dickey.

"Upon motion duly made and seconded, it was unanimously voted that at this first formal meeting of The Christian Science Board of Directors since Mrs. Eddy passed from our sight, the following statement be authorized by this board and given to the press through the channels of the Committee on Publication.

"The authority given to the Board of Directors by the Church Manual remains intact, and is fully adequate for the government of the organization in all its affairs. The policy of this board will be the same as when under Mrs. Eddy's active direction.

"The board is in complete harmony and hundreds of telegrams and letters received from branch churches and societies throughout the world show that it has the unswerving loyalty and support of the entire denomination.

"The adequate written instructions and directions of Mrs. Eddy, under which the Christian Science movement has grown and prospered, including the By-Laws which place the direction of the spiritual and business affairs of the Church entirely in the hands of The Christian Science Board of Directors, will continue to guide their actions."

"Meeting adjourned.

"Approved, December 16, 1910.

"J. V. D."

Q. You have been a director, as you have stated, since that date to this? A. Yes.

Q. And in the conduct of your office as director, have you accepted that statement as your guide?

Mr. Whipple—That I object to, if Your Honor please; that is not keeping the word that Mr. Krauthoff stated—

The Master—What has he done?

Mr. Whipple—It is simply getting in as a generalization—

Mr. Krauthoff—Well, then I will prove it in detail; excuse me.

Mr. Whipple—State what he did in detail and see whether it conforms; and, if so, in what respects.

Mr. Krauthoff—Very well.

Q. That statement was published in the press of the country at the time, Mr. Dickey? A. Yes, it was.

Q. Mr. Eustace, as I understand, became a trustee of The Christian Science Publishing Society in the fall of 1913?

The Master—I did not get his testimony as to the publication of that vote.

Mr. Krauthoff—He said it was.

The Master—Published where and when and how?

Mr. Krauthoff—It was published in the press of the country.

The Master—What do you mean by the press of the country?

Mr. Krauthoff—I mean by several newspapers; excuse me.

Q. In what newspapers was it published, if you recall, Mr. Dickey? A. In the Boston newspapers and in other papers throughout the country, the United States.

Q. It was given to your Committee on Publication, Mr. Alfred Farlow? A. Yes.

The Master—By the press of the country, then, he means by certain newspapers in Boston and elsewhere?

Mr. Krauthoff—Yes.

The Witness—Yes.

Mr. Whipple—If it is of any importance the newspapers should be produced, we think, if Your Honor please.

The Master—That is hardly publishing it in the press of the country.

Mr. Krauthoff—Well, being in Boston, if Your Honor please, I thought that—

The Master—Well, the actual fact is it was published in several Boston newspapers and in several newspapers outside of Boston?

Mr. Krauthoff—Yes.

The Master—That is where we stop at present.

Mr. Krauthoff—Yes; and whether that is the press of the country of course is an inference.

Q. Was that published in any of the periodicals of the Christian Science denomination? A. I do not recall now that it was.

Q. Did you regard it as necessary to publish it in the periodicals?

Mr. Whipple—That I object to.

The Master—I shall have to exclude that.

Mr. Krauthoff—Very well.

Q. Mr. Eustace, I believe, became a trustee of The Christian Science Publishing Society in the fall of 1912? A. I think so.

Mr. Krauthoff—I offer at this time, if Your Honor please, from the records of the Board of Directors, Feb. 5, 1913, the following:

[An extract from the directors' records, Feb. 5, 1913, is offered in evidence as Exhibit 470, and is read by Mr. Krauthoff, as follows:]

"Regular meeting The Christian Science Board of Directors at 1 p. m. All members present."

Mr. Whipple (after examining record)—Very well.

The Master—What is this, the directors or the trustees?

Mr. Krauthoff—This is the directors' records of Feb. 5, 1913.

"Voted, unanimously, that the board concurs in the opinion of the trustees of The Christian Science Publishing Society that the letters 'C. S.' can properly be used in the C. S. Journal only following the name of a person who has received class instruction

from an authorized teacher of Christian Science."

Q. I will ask you if at that time Mr. Eustace submitted any views to the directors on that question? A. He did.

Q. Is that the document containing his views at that time? (Handing paper to witness.) A. It is.

Mr. Krauthoff—Mr. Whipple asks "whose views." They purport to be the views of Mr. Eustace.

The Master—For what purpose are they offered?

Mr. Krauthoff—For the purpose of showing that at that time the Publishing Society, The Christian Science Publishing Society, submitted to the Board of Directors of The Mother Church the question of whether certain initials should be used in publishing cards in the Journal, and in submitting their views they treated it from the standpoint of the Church Manual governing the situation.

The Master—Is it offered in contradiction of anything testified to by Mr. Eustace?

Mr. Krauthoff—Yes, it is. It is offered in contradiction of his testimony that The Christian Science Publishing Society had the absolute power to publish the list in the Journal.

The Master—Oh, no. I mean any specific statement by him that that would tend to contradict.

Mr. Krauthoff—Oh, he wasn't asked as to this particular document, no. He is a party to the case, and he did state that The Christian Science Publishing Society had the power to publish—

The Master—Well, that is only his opinion.

Mr. Krauthoff—I am only trying to show that that was not what was done.

Mr. Whipple—It was merely in cross-examination. You asked him his opinion and you must abide by it.

Mr. Krauthoff—We ask that the document be identified as an exhibit. I do not ask to read it into the record in full.

Mr. Whipple—Well, I am willing it should be identified, and probably it should, because you have referred to it, and we always ought to have a record of any paper that you have shown to the witness; but I do not think that it should go in as an exhibit because I do not think that it in any way sustains the claim made about it. It ought to be understood, once for all, that the trustees have always followed a course of the most friendly cooperation and consultation and conference with the directors of the Church with reference to anything that affected this great movement. But that is no concession of authority. The mere fact that they consult with them and get their opinion and judgment—that is what every trustee is bound to do with reference to his beneficiary.

Mr. Krauthoff—May I have it identified?

The Master—It may be marked for identification. I do not admit it at present as evidence in the case.

[The document above referred to, headed "Regarding C. S.," and beginning, "The matter first to be considered is what do the initials 'C. S.' mean," is marked Exhibit 471, for identification.]

Q. Is that the signature of Mr. Eustace to the document in your hand, Mr. Dickey? (Handing paper to witness.) A. Yes.

Mr. Whipple—We have no objection to that letter.

Mr. Krauthoff—We offer this letter as evidence:

"The Christian Science Publishing Society,  
"Falmouth and St. Paul Streets,  
"Boston, Massachusetts  
"Manager's Office January 29, 1913.  
"The Christian Science Board of Directors,  
"The First Church of Christ, Scientist,  
Boston, Mass.

"Dear Friends:

"The question of the use of the letters C. S. has come before the Board of Trustees and the board feels that it is really a matter that The Christian Science Board of Directors should decide.

"I have prepared a short brief that I think will facilitate your consideration of the question which I should like to present to you if you can spare ten minutes this afternoon or any afternoon. I will be in the trustees' room all this afternoon and I can go right over at a moment's notice if you telephone. If not today any day will suit me or if you prefer I will send the brief over to you.

"Very sincerely yours,

(Signed) "HERBERT W. EUSTACE."

[The letter from Herbert W. Eustace to The Christian Science Board of Directors, dated Jan. 29, 1913, is marked Exhibit 472. R. J. M.]

The reply to that letter is as follows:

"February 7, 1913.

"Mr. Herbert W. Eustace, Secretary,  
"The Christian Science Publishing Society,

"Boston, Massachusetts.

"Dear Mr. Eustace:

"On Wednesday, following your personal presentation of the question regarding the use of the letters 'C. S.' in connection with the cards of practitioners, the subject was carefully considered by our board.

"I wish to advise you that we voted unanimously that the evidence submitted by you clearly confirms the fact that the letters 'C. S.' should be used in the Journal only after the names of those persons who have received class instruction from an authorized teacher of Christian Science.

"Very sincerely,

(Signed) "JOHN V. DITTEMORE,

"Secretary."

[The copy of the letter from John V. Dittmore to Herbert W. Eustace.

dated Feb. 7, 1913, is marked Exhibit 473. R. J. M.]

The Master—Those two letters, I understand, go in as exhibits?

Mr. Whipple—We do not make any objection to them.

The Master—They are not objected to.

Mr. Whipple—We do not admit their materiality, but it seems better to take them as showing the course of conduct.

Mr. Krauthoff—In this connection I wanted to introduce two Christian Science Journals which show that in accordance with that recommendation—

The Master—Well, why not introduce them?

Mr. Krauthoff—I am getting them, if Your Honor please. I will get them during the intermission and supply them then, if Your Honor please. They do not seem to be immediately at hand.

I offer from the records of The Christian Science Board of Directors, May 28, 1913, the following:

"Regular meeting of The Christian Science Board of Directors, at 12 m. All members present. . . . Voted to recommend to The Christian Science Publishing Society that its employees be hereafter granted a vacation of two weeks per year instead of one week."

[The record of the meeting of The Christian Science Board of Directors of May 28, 1913, from which the foregoing extract is read, is Exhibit 474. R. J. M.]

Q. Do you recall that incident, Mr. Dickey? A. Yes.

Q. Was that taken up in conference with the trustees?

A. It was.

Q. And upon that recommendation of the directors did the trustees thereafter give two weeks' vacation to the employees? A. Yes, sir.

Q. That is, the bulletin shows they do it to all who have been there more than one year? A. Yes.

Mr. Whipple—That is, they do not do it to all of them, but they do it to all of them who have been there more than a year?

Mr. Krauthoff—That is their present practice.

Mr. Whipple—In other words, the recommendation was followed in part. Is that your thought?

Mr. Krauthoff—The recommendation is that the employees "be hereafter granted a vacation of two weeks per year instead of one week."

Q. And the Publishing Society does do that to all employees who have been there more than one year? A. That is right.

Q. Mr. Dickey, referring to the annual election of editors and manager of The Christian Science Publishing Society, as shown by the records, which Mr. Dane has offered in evidence, from June, 1911, until June, 1918, you participated in these annual elections as shown by the record? A. Yes, sir.

Q. Prior to the incident with regard to Mrs. Hoag succeeding Mrs. Knott as editor of the publications, was there any question raised by anybody in any form as to the power of the Board of Directors to elect those editors and business manager? A. Not—

Mr. Whipple—That I object to, if Your Honor please.

The Master—If the question had ever come up, what was done might be important.

Mr. Krauthoff—We are proving that it never did come up.

The Master—I think I shall admit it as showing that nothing of the kind was ever discussed, or no question ever brought up.

Q. Did the editors and the manager that you elected serve as such? A. Do you want me to answer that question? I did not answer it.

Q. Oh— A. None whatever.

Q. Did the editors and the manager whom you did elect serve as such, to your knowledge? A. Always.

Q. Do you recall, Mr. Dickey, that in the year 1913-1914 there were some improvements in the publishing house, or did you erect a new building at that time? A. Yes, there was a large addition built at that time.

Q. In whose hands were the details with respect to the erection of that building? A. In the hands of the Church, through its Board of Directors.

Q. The records show numerous instances of action by the Board of Directors upon that subject? A. Yes, sir.

Mr. Krauthoff—I do not offer these in evidence, if Your Honor please, because of their large number, but for Mr. Whipple's convenience, I will be glad to give him the dates on which the Board of Directors of The Mother Church did act on the publishing house building, so that he may cross-examine on those dates if he wishes to (passing a paper to Mr. Whipple).

Mr. Whipple—Those do not interest me at all. I do not see what it has to do with any issue here. The publishing house was given by Mrs. Eddy in trust to the Church with the reservation that the Publishing Society should have quarters in it, and should have fitting quarters. Later, as I understand, the field were called upon to contribute large sums of money—I am right in that, am I not?—and the money was paid in by the field for the purpose of having the publishing house constructed. For many, many years Mr. Abbott, as it appeared the other day, held as trustee the title to the land upon which it was being constructed, not, as I understand, on any written trust. It appeared and we had knowledge for the first time the other day, that he had transferred that property to the Board of Directors, but the record of the deed was not made until after these proceedings were instituted, as we are informed as to the fact. Now, we cannot see

possibly what bearing it has upon any issue here.

Mr. Krauthoff—We understood, if Your Honor please, the statement of Mr. Whipple that the Publishing Society were the real owners of the ground and the building in which they did business.

Mr. Whipple—Why don't you get the deeds and show that?

Mr. Krauthoff—As bearing upon that, in the course of our conduct, we show that the details of the erection of the building were entirely in the hands of The Christian Science Board of Directors. Now, as to the other statement that Mr. Whipple has made, the facts with respect to that will all be shown in the course of the case and in due course.

The Master—I understand that Mr. Whipple does not dispute that the additions to the building as they were made from time to time were managed by the directors?

Mr. Whipple—In consultation with the Board of Trustees, as you would naturally expect, who had greater knowledge as to the needs of the Publishing Society, and whose wishes or suggestions as to their convenience, as we understand, were always observed.

The Master—Nor do I understand Mr. Whipple to dispute that the directors were the proper persons to direct and manage those additions?

Mr. Whipple—I think that is probably so, in view of the fact that they undertook to go to the field to get the money.

The Master—There hardly seems to be any question there.

Mr. Krauthoff—Well, if Your Honor please, I at this time was simply proving the fact that The Christian Science Board of Directors did, in 1913 and 1914, have charge of the details of the improvements in this publishing house. Now, as to all the other things to which Mr. Whipple has referred—

The Master—We will consider that—

Mr. Krauthoff—We will consider them when they arise by due and proper evidence.

It is now half-past eleven. Shall we suspend?

The Master—If you desire. We will stop for a few minutes.

[Short recess.]

Mr. Krauthoff—If Your Honor please, in connection with the testimony offered a few moments ago with respect to the letters "C. S.," I call your attention to The Christian Science Journal for September, 1913, and to the heading at the list of practitioners as it appears in this volume in the number of The Christian Science Journal, which reads as follows: "Christian Science Practitioners."

"The Practitioners whose cards appear in these columns are members of The Mother Church, The First Church of Christ, Scientist, in Boston, U. S. A., and are amenable to its discipline."

[Reading matter under heading "Christian Science Practitioners," ap-

pearing in The Christian Science Journal, September, 1913, as read by Mr. Krauthoff, is offered in evidence as Exhibit 475.]

Mr. Krauthoff—And as showing the change that was made, I call your attention to the wording in The Christian Science Journal for October, 1913, which reads as follows:

"Christian Science Practitioners. "The Practitioners whose cards appear in these columns are members of The Mother Church, The First Church of Christ, Scientist, in Boston, U. S. A., and are amenable to its discipline. They have presented testimony to The Christian Science Publishing Society showing that they are qualified to have their cards advertised in the Journal as practitioners of Christian Science.

"The degree C. S. D. is the Massachusetts Metaphysical College degree of Doctor of Christian Science.

"The degree C. S. B. is the Massachusetts Metaphysical College degree of Bachelor of Christian Science. This degree followed by (teacher) means one who has had normal course instruction, and has received a certificate.

"The letters C. S. after a practitioner's name designates one who has had class instruction. Those without such instruction have no designation.

"Note—Not all who have the degree of C. S. B. or C. S. D. are authorized teachers. See Article XXVI, Section 9, Church Manual. Authorized teachers hold but one class not exceeding 30 pupils each year. The teaching year begins Aug. 1."

[Reading matter under heading "Christian Science Practitioners," as appearing in The Christian Science Journal for October, 1913, as read by Mr. Krauthoff, is offered in evidence as Exhibit 476.]

Mr. Krauthoff—Those are offered for the purpose of showing that the recommendation or direction of the board in the premises was followed by The Christian Science Publishing Society.

Mr. Whipple—Why did you use the word "direction"? It seems to have been a recommendation—at the request of the trustees.

Mr. Krauthoff—Then we will say the "decision." Mr. Eustace said it was a question to be decided by the Board of Directors. So that it was the decision of the board that was followed by the Publishing Society.

The Master—Haven't we had that before?

Mr. Krauthoff—I beg your pardon? The Master—Haven't we had all that before?

Mr. Krauthoff—Not that instance. You mean—

The Master—You want to prove the date of it, perhaps. I thought that had been gone over at some earlier stage in the case.

Mr. Krauthoff—I spoke to Mr. Eustace about it on cross-examination, and I am now offering the document

in the case, and the Journal which shows the change that was made after the board wrote the letter to the trustees.

The Master—It does not show anything different from what Mr. Eustace testified to about it, does it?

Mr. Krauthoff—It was offered in order that the record of it might be shown and thus presented in its more accurate form. I do not know that there is any difference on that score between the testimony of Mr. Eustace and this. I shall be careful not to go over any subject on which we are in accord.

Q. Is this the signature of Herbert W. Eustace to the letter of Oct. 22, 1913? (Showing letter to witness.)

A. It is.

The Master—Why can't you assume that if a letter purports to be signed by Mr. Eustace it is his letter until some dispute is made.

Mr. Krauthoff—I shall be very glad to do that, if Your Honor please.

The Master—Is there any objection to that?

Mr. Whipple—Not the slightest. I hope some such method will be adopted.

Mr. Krauthoff—While Mr. Whipple is examining that document I will offer from the record of the directors the meeting of Feb. 18, 1914:

"Regular meeting of The Christian Science Board of Directors. Present, Messrs. McLellan, Dittmore, Dickey and Neal.

"Upon motion of Mr. Dittmore, seconded by Mr. Dickey, it was unanimously voted that steps be taken immediately to have the Christian Science seal protected by registration or such other means as are available in the United States and all foreign countries, and with the cooperation of The Christian Science Publishing Society take steps toward having as soon as possible all authorized Christian Science literature bear upon its face this official seal."

[That portion of the record of meeting of Board of Directors, dated Feb. 18, 1914, as read by Mr. Krauthoff, is offered in evidence as Exhibit 477.]

Q. That seal, Mr. Dickey, refers to the cross within the crown, and the circle, that appears on the books that have been offered in evidence? A. And the legend printed in the circle, yes, sir.

Q. And this action was taken as set out in this record of Feb. 18, 1914? A. Yes, sir.

Mr. Whipple—If Your Honor please, how can that possibly be material on any question of exercising control? It states that it was an action taken in cooperation with the trustees, and from the very beginning they had been cooperating. Now, this letter that is handed to me—is that in contradiction of anything Mr. Eustace has said?

Mr. Krauthoff—That letter is offered for the purpose of showing the recognition by the Publishing Society of



the operative force and effect of the Manual.

Mr. Whipple—They have repeatedly said that they recognized the operative force and effect of the Manual. There is not the slightest question about it. Their complaint is that these directors are infringing upon the Manual as recognized in this trust. That is their complaint. I cannot see anything in that letter that would warrant taking steps—

The Master—It does not seem to me that it adds anything to what is undisputed in the case.

Mr. Whipple—Not at all.

The Master—But still, if Mr. Krauthoff thinks it does, I suppose I shall have to let him, under my undertaking to let him show the doings of the directors, the course of business, the acquiescence of the church members therein—I shall have to let him put it in.

Mr. Whipple—I was speaking of it merely in the interests of economy of space.

The Master—Quite so.

Mr. Whipple—If he wants it in, let it be in, except we have to pay for the printing.

Mr. Dane—There are only two sections, two paragraphs.

Mr. Whipple—Well, I don't want a paragraph left out of a letter without an explanation.

Mr. Krauthoff—I will read the whole letter, omitting the name of the gentleman to which it refers, because it is a question of discipline.

Mr. Whipple—Just wait a minute. Of course the trustees do not attempt any church discipline.

Mr. Krauthoff—The letter will speak for itself.

Mr. Streeter—I guess you better show it to us, if you are going to leave anything out of the letter, Mr. Krauthoff.

The Master—It seems like a pretty long letter.

Mr. Whipple—Well, I am willing that just that shall be read that Mr. Dane has wisely pointed out—those two last sentences. You will not object to those, General Streeter. Just read those.

Mr. Streeter—Let me see it first. (Looking at letter.)

Mr. Whipple—The two last paragraphs, the suggestion is, that he read.

Mr. Streeter—Well, I don't see what it comes to, but I do not object.

Mr. Whipple—Just identify the letter. Give the date of it anyway; from whom to whom, and read the last two paragraphs.

Mr. Krauthoff—The statement that we desire to quote from this letter reads as follows—

Mr. Thompson—What is the date of it, please?

Mr. Krauthoff—The letter is from The Christian Science Publishing Society, under date of Oct. 22, 1913, addressed to The Christian Science Board of Directors, Mr. John V. Ditte-

more, Secretary, Boston, Massachusetts. It is from The Christian Science Publishing Society, the signature being "Board of Trustees, by Herbert W. Eustace, Secretary." The statement that I desire to read is as follows:

"This statement, we feel, sets forth exactly the attitude of the trustees, and if after receiving it, your board, who in the final analysis has, according to the Manual, Article VIII, Section 14, the overseeing 'that these periodicals are ably edited and kept abreast of the times,' considers that when the trustees have admitted an advertisement of either a church or a practitioner, their responsibilities cease and they need take no further cognizance of the card, the Board of Trustees is unanimous in its willingness and gladness to do this, and turn over to the Board of Directors any and all complaints that may arise about any card.

"Our desire is in no way to interfere with what is not our business, as we only desire to be helpful and not neglect anything which we should be doing, or to add to the work of your board."

Mr. Whipple—Read the last sentence, too.

Mr. Krauthoff (reading)—

"We shall appreciate your candid opinion on this matter and we wish to assure you in advance of our hearty cooperation."

[That portion of letter of Oct. 22, 1913, from Board of Trustees to Board of Directors, as read by Mr. Krauthoff, is offered in evidence as Exhibit 478.]

Mr. Krauthoff—I offer from the Board of Directors of June 18, 1914:

"Special meeting of The Christian Science Board of Directors, duly called by the clerk at 10 a. m. All members present.

"Upon motion of Mr. Dittemore, seconded by Mr. Neal, it was voted that hereafter all alterations in the publishing house building be charged to maintenance and paid by the Publishing Society."

[That portion of record of meeting of Board of Directors, dated June 18, 1914, as read by Mr. Krauthoff, is offered in evidence as Exhibit 479.]

Q. Do you recall that action, Mr. Dickey? A. Yes. That was after the completion of the building and some few minor changes were being made from time to time; and to save the time of the board we asked the Publishing Society to do that themselves and pay for it.

Q. So far as you know, that was done without any question? A. It was.

Mr. Krauthoff—July 29, 1914, meeting of The Christian Science Board of Directors:

"Upon motion of Mr. Dittemore, seconded by Mr. Dickey, it was voted to recommend The Christian Science Publishing Society to translate a Christian Science lecture or other

suitable fundamental statement of Christian Science into the Italian language."

[That portion of record of meeting of Board of Directors, dated July 29, 1914, as read by Mr. Krauthoff, is offered in evidence as Exhibit 480.]

Q. Were steps taken to do that, Mr. Dickey? A. Yes, they were.

Q. It has not been accomplished? A. I am not aware that it has. I believe there has been an Italian pamphlet issued, Mr. Krauthoff.

Q. I notice in some of these resolutions that I have read you use the word "recommend" as applied to The Christian Science Publishing Society? A. Yes, sir.

Q. What was your habit in dealing with them?

Mr. Whipple—Just a moment. I pray Your Honor's judgment. The habit appears from the record, and we all of us are able to interpret the English language.

Q. Why did you use the word "recommend"?

Mr. Whipple—I pray Your Honor's judgment.

The Master—I think the word will have to speak for itself, Mr. Krauthoff.

Mr. Krauthoff—The point we make in that direction, if Your Honor please, is that it is claimed because we used the word "recommend" we thereby in some manner lost some of our own authority. And the explanation we desire to make is as to why the word "recommend" was used.

Mr. Whipple—That does not seem much of a point. That shows why you did not do something, instead of why you did.

The Master—I think you better go on and show what you did.

Mr. Krauthoff—Very well, if Your Honor please. Aug. 12, 1914:

"Upon motion of Mr. Dittemore seconded by Mr. Dickey, it was voted to copy the following letter written by our beloved Leader under date of Feb. 27, 1903, into the minutes of this board, and also to publish it in full in an early issue of the Christian Science Sentinel."

[That portion of record of minutes of Board of Directors, dated Aug. 12, 1914, as read by Mr. Krauthoff, is offered in evidence as Exhibit 481.]

Mr. Krauthoff—Now, if Your Honor please, that is the letter which Mr. Dane read in evidence under date of Pleasant View, Concord, New Hampshire, Feb. 27, 1903, and it is the letter that was published in the Christian Science Sentinel under date of Aug. 22, 1914, under the heading, "Words of Counsel," and to which the attention of Mr. Eustace was called in his cross-examination.

Dec. 3, 1914:

"Present, Messrs. McLellan, Stewart, Dittemore, Dickey, and Neal.

"The board had an interview with Mr. Frederick Dixon in regard to the policy of The Christian Science Moni-

tor in the publication of news from the countries now at war."

[That portion of record of meeting of the Board of Directors, dated Dec. 3, 1914, as read by Mr. Krauthoff, is offered in evidence as Exhibit 482.]

Q. In connection with that interview, Mr. Dickey, you recall Mr. Dixon was elected editor of *The Monitor* in the summer of 1914? A. Yes, sir.

Q. Did you have frequent interviews with Mr. Dixon? That is, I mean the board? A. Yes, we did.

Q. From that time until when? A. Until comparatively recently.

Q. The interviews are not now taking place? A. Not as regularly as they did a few months ago.

Q. Now, the policy of *The Christian Science Monitor* in the "Publication of news from the countries now at war"—does that affect the cause of Christian Science as a whole? A. That policy would have some effect upon the cause as a whole; yes, sir.

Q. And you took up other matters with Mr. Dixon from time to time of the same general nature? A. Yes.

Q. Such as the Y. M. C. A., the Red Cross— A. Yes.

Q. —the government ownership of railroads— A. Yes.

Q. —and other matters? A. Other matters of public interest; yes, sir.

Q. On which you felt that the Christian Science Church should speak as a united body? A. Yes, sir.

Mr. Krauthoff—March 31, 1915:

"Regular meeting of The Christian Science Board of Directors. All present. Upon motion of Mr. Dittmore, seconded by Mr. Stewart, it was voted to arrange for a Monitor meeting in The Mother Church to be addressed by Mr. Frederick Dixon on Thursday evening, April 29."

[That portion of record of meeting of the Board of Directors, dated March 31, 1915, as read by Mr. Krauthoff, is offered in evidence as Exhibit 483.]

Q. That meeting was held? A. Yes, sir.

Q. And was the communication from the board to Mr. Dixon direct about that? A. Yes.

Q. And why did you hold The Monitor meeting in The Mother Church?

Mr. Whipple—I object, if Your Honor please.

Mr. Krauthoff—As showing the essential unity of the two so-called separate institutions, if Your Honor please.

Mr. Whipple—We have never said that we were not striving for unity. We have said repeatedly that we had striven from the outset for unity. It is only because we could not bring it about and because these gentlemen insisted upon going outside of the scope of their activities that we have—

The Master—The tendency of that action to show anything important in the case is not obvious to me. You can put it in.

A. We felt that since that newspaper belonged to the Church—

Mr. Whipple—Pardon me. I do not understand that his talk about reasons for the meeting are important.

The Master—No.

Mr. Whipple—That is what I was objecting to. His statement of his reasons for that meeting. That is excluded, I take it?

The Witness—Am I to answer?

Mr. Krauthoff—No, not for the present. May I say, if Your Honor please, in response to Your Honor's ruling, the bill tenders the issue that the Publishing Society—

The Master—We know now, I think, Mr. Krauthoff, what issues are tendered by the bill. I would not keep reciting them over and over.

Mr. Krauthoff—Very well, if Your Honor please.

The Master—Just come more directly to the point you wish to call attention to, if you please.

Mr. Krauthoff—I was just about to do that when Your Honor stopped me. July 22, 1915:

"Special meeting of The Christian Science Board of Directors. Present, Messrs. McLellan, Dittmore, Dickey and Neal.

"After due consideration and upon motion of Mr. Neal, seconded by Mr. Dittmore, it was voted to remove the cards of the following named persons from the list of practitioners published in the columns of *The Christian Science Journal*."

I will omit the names.

[That portion of record of meeting of Board of Directors, dated July 22, 1915, as read by Mr. Krauthoff, is offered in evidence as Exhibit 484.]

Q. Action of that kind had been taken frequently by The Christian Science Board of Directors? A. As often as the necessity demanded; yes, sir.

Q. And in taking that action, Mr. Dickey, have you had occasion to consider the importance to the individual of having his card in *The Christian Science Journal*? A. We have.

Q. And some of these hearings have been somewhat complicated and extended? A. That is true.

Q. How is the privilege of having a card in *The Christian Science Journal* regarded by members of The Mother Church? A. Well, it is regarded as being a very desirable thing for a practitioner engaged in healing the sick to have his card appear in *The Christian Science Journal*.

Q. As a matter of fact, you have two lawsuits now on hand where persons whose cards have been removed are seeking to have them returned to the Journal? A. There is some litigation in progress, I believe.

Q. This list of practitioners that appears in *The Christian Science Journal*—is that on file in the reading rooms of the branch churches and societies and of The Mother Church? A. It is; it is published in the Journal.

Q. To what extent do these reading

rooms, so far as you know, refer inquiries for practitioners to this list in the Journal? A. It is their custom to refer inquirers to this list of practitioners.

Q. You have had a card in for many years? A. Yes.

Q. And in being asked for the names of practitioners in other cities than the one in which you were engaged, or when you were not able to serve, what did you do in the way of selecting other practitioners or recommending other practitioners? A. I used the columns of the Journal.

Q. Does any authenticity or integrity attach to the persons whose name is in the Journal as a practitioner? A. There is.

Q. On Oct. 15, 1915, your record recites as follows: "The secretary was instructed to inquire of The Christian Science Publishing Society their reasons for questioning the maintenance of two Reading Rooms by the Brunswick, Maine, society." Do you recall that incident? A. I do.

Q. And how did it arise, Mr. Dickey? A. It came up on our board because we felt that that was a matter the Publishing Society should not interest themselves in, the question of what a church—

Mr. Whipple—That I ask to have stricken out.

The Master—Do you want that, Mr. Krauthoff?

Mr. Krauthoff. (To the witness)—It is not a question of what you felt. Maybe we can get at it this way. I think that may be stricken out.

The Master—Strike it out.

Mr. Whipple—The circumstances under which it arose I have no objection to the witness' stating.

Q. As I understand it, this society installed two reading rooms? A. That is so.

Q. And the Publishing Society took it up with the society? A. It did, directly.

Q. And then the matter came up before your board? A. Yes.

Q. And then you did take it up with the Publishing Society? A. Yes.

Q. There is a provision of the Manual about Reading Rooms, I believe? A. There is.

Q. By branch churches? A. There is.

Q. And the same subject seems to have come again before your board on Nov. 26, 1915.

"Oct. 20, 1915.

"The following communication was presented to the board:

"Frederick Dixon, Oct. 19, with proposed reply to Pamela Clough on the Montessori system."

The Montessori system is a system of the education of children, I believe? A. It is purported to be.

Q. And some question arose about some article in *The Monitor* on that system? A. Yes, sir.

Q. And Mr. Dixon took up with

the board his proposed reply? A. He did.

Q. Was that taken up definitely with the Board of Directors? A. With Mr. Dixon, yes, sir.

Q. Did the trustees have anything to do with it at all? A. They said nothing to us that I recall at that time.

Q. In any of your conferences with the editors and the business manager prior to this controversy did you in any way bring the trustees into the conference, or deal with them in any way, or did you deal directly with the editors and the business manager? A. We dealt directly with the editors and business manager.

Q. Was any question raised on the part of anybody as to your right or power or authority to do that? A. None whatever.

Q. Now, Mr. Dickey, coming down to January, 1916, you will recall that in Mr. Eustace's direct examination he identified a document that he had written in November, 1915?

Mr. Whipple—Cross-examination, was it not?

The Witness—Yes.

Mr. Krauthoff—Cross-examination, to be more accurate.

Q. Which he referred to as a brief upon the question of who controlled the cards in The Christian Science Journal? A. Yes.

Q. Do you recall that incident arising in the fall of 1915? A. I do.

Q. Then Jan. 11, 1916, your record recites: "The Board had an informal conference with the trustees of The Christian Science Publishing Society"—

The Master—You mean 1916?

Mr. Krauthoff—1916, we are on now.

The Master—I thought you had begun with the fall of 1916?

Mr. Krauthoff—No.

The Master—It occurred to me when you spoke of January it must be January, 1917.

Mr. Krauthoff—No. If I said the fall of 1916 I made a mistake; it was the fall of 1915.

The Master—Oh, yes; thank you.

Q. On Jan. 12, 1916, the board had a conference with Mr. Frederick Dixon, editor of The Christian Science Monitor. Feb. 14, 1916, the board had a conference with the trustees of The Christian Science Publishing Society. Do you remember the document that has been offered in evidence as having been written on Feb. 14, 1916, by the trustees, and which Mr. McKenzie— A. I do.

Q. —is said to have prepared? A. Yes.

Q. That document was presented to the Board of Directors by the three trustees? A. It was.

Q. And the original, as you recall it, bore their signatures? A. Yes.

Q. And later was returned to them? A. It was later returned.

Q. "February 15, 1916. The board had a conference with the three trustees of The Christian Science

Publishing Society. The trustees left with the board a letter addressed to the directors under date of Feb. 14." That letter appears to have been dated Feb. 15, but that is the letter, is it not? A. It is.

Q. "February 24, 1916. The board had a conference with the trustees of The Christian Science Publishing Society on subjects of general interest connected with their work. Present, Messrs. Dittmore, Dickey and Neal."

Mr. Streeter—Pardon me, Mr. Krauthoff, will you read right there all that is said in the record of 24—the directors' records of Feb. 24—relating to this matter?

Mr. Krauthoff—I have.

Mr. Streeter—Well, if you have that is all I ask.

Q. Now, that is the meeting, Mr. Dickey, at which the memorandum that has been referred to in evidence here as the Dittmore memorandum was taken up with the trustees? A. That is the meeting.

Q. Now, this memorandum of Feb. 24, 1916, has been referred to as the Dittmore memorandum; it is attached to Mr. Dittmore's answer in the trustees' case. That memorandum was worked out how, Mr. Dickey? A. That was—

Mr. Whipple—Well, I pray Your Honor's judgment.

Mr. Krauthoff—I have not offered it yet.

Mr. Whipple—That is just the trouble. You have not offered it and it isn't of any consequence how it was worked out.

The Master—Let me see if I quite grasp the question presented.

The Witness—That was prepared—

The Master—One moment.

Mr. Krauthoff—One moment.

The Witness—Pardon me.

The Master—You say that is in Mr. Dittmore's answer?

Mr. Krauthoff—I am not sure.

Mr. Streeter—It is on page 80, Judge, of the Dittmore answer.

Mr. Whipple—No; this is a different thing that they have handed me.

Mr. Streeter—Well, let us see what you have got there.

Mr. Whipple—Well, it is not a thing that seems to have any author or anything else. It is a memorandum in typewriting, with nothing except that somebody penciled at the end of it "Trustees." I do not know who it is said got it up, or when it was gotten up, or anything about it.

Mr. Streeter—Mr. Krauthoff, is that what you showed me the other day?

Mr. Krauthoff—Yes.

Mr. Streeter—The suggested record of a meeting?

Mr. Krauthoff—Yes.

Mr. Streeter—We have no objection to it as far as we are concerned.

The Master—Will you read me again what the record of the meeting said about it? Not the whole record, but just what it said about the particular document.

Mr. Krauthoff—"The board had a conference with the trustees of The Christian Science Publishing Society on subjects of general interest connected with their work."

The Master—Oh, I don't want that.

Mr. Whipple—That is all there is.

The Master—What is there about that?

Mr. Whipple—It said nothing about it.

Mr. Krauthoff—That is all that the official record shows.

The Master—Oh, yes. Then the witness states that at that meeting something happened about this memorandum.

Q. Now, Mr. Dickey, in this conference with the trustees—

The Master—Well, what has he said? I am asking.

Mr. Whipple—He hasn't said.

Mr. Krauthoff—I am asking the question now. He hasn't said, if Your Honor please.

The Master—He hasn't said; all right.

The Witness—I would like to hear the question.

Q. In this conference with the trustees of The Christian Science Publishing Society on subjects of general interest connected with their work, held by the Board of Directors with the trustees on Feb. 24, 1916, did the things set forth in this memorandum occur? A. That memorandum was presented to the trustees and discussed by the directors with the trustees.

Q. You mean from No. 1 on?

Mr. Whipple—Well—

Q. The question I am asking you, Mr. Dickey, is this whole document a correct statement of what happened at that conference? (Handing document to witness.) A. This is a memorandum of what transpired at that meeting.

Mr. Whipple—It doesn't show by whom it was made or its origin or anything else.

The Master—Perhaps Mr. Krauthoff was going on; let us see.

Q. Did you assist in the preparation of that document that you now hold in your hand? A. Yes. It was prepared by the secretary of the board and discussed and approved by the board.

Q. Mr. Dittmore was secretary of the board? A. He was.

The Master—I understand at the meeting of Feb. 24. Am I right?

Mr. Krauthoff—That is a record of what happened at the meeting of Feb. 24, 1916.

Mr. Whipple—Oh, no; he hasn't said that.

The Master—That is what I asked. The witness said it was prepared and discussed. I then inquired, was that at the meeting of Feb. 24?

The Witness—This was prepared, Your Honor, by the secretary, and brought into that meeting and discussed then by the directors before the trustees were present.

The Master—That answers my question. Go on, Mr. Krauthoff.

Mr. Whipple—Then, if Your Honor please, it is not an account of what happened at the conference, of course, because it was prepared and discussed by the directors before they had a conference.

Q. Mr. Dickey, may I call your attention to the document consisting of several things? That is, it consists of a letter to the trustees, a proposed letter to the trustees, then relates some conversation, and then it begins with a memorandum in seven paragraphs? A. Yes.

Q. Now, what was it that was prepared before the trustees came over? A. The memorandum of seven paragraphs.

Q. Beginning with the figure 1? A. Beginning with paragraph 1.

Q. Now, the rest of that document, preceding paragraph 1, what is that? A. That is an account of what transpired at this interview between the directors and the trustees.

Q. And when was that prepared? A. After the meeting.

Q. And is that a correct statement of what happened at the meeting? A. It is.

Q. Did you assist in the preparation of it? A. To a limited extent.

Q. It was principally prepared by Mr. Dittmore? A. Yes.

Q. He was then the secretary of the board? A. He was.

Q. And you participated, of course, in the meeting? A. Yes.

Mr. Krauthoff—We offer that memorandum.

Mr. Whipple—Why, I don't think that makes that memorandum of any value as a memorandum. If a man is sure of its accuracy he may take the responsibility of using it to refresh his recollection, but it is not a record in any sense. It is a mere paper that some parties get together after a conference and get up themselves. It is not certified by any secretary or anything else.

The Witness—May I say a word?

The Master—Why, isn't that true, Mr. Krauthoff? Can you treat that as a record of what took place? If it had been a record you would have put it in your record books, wouldn't you?

Mr. Krauthoff—As I understand, if Your Honor please, a record of the board proves itself; but as to a conference with these trustees as to what was said and done, the fact that the words or the documents are not spread on the record in the directors' book does not change the fact that things were said and done. The fact that it was not in the record book may have some bearing upon whether it was actually said or done, but not conclusive.

The Master—I think, then, that if this is a true statement of what took place in regard to the memorandum, that was prepared after the meeting, and that the witness took part in its preparation only to a limited extent,

you will have to get his testimony as to what took place, permitting him perhaps to use the memorandum to assist his recollection, but that you have not yet made the memorandum evidence.

Q. Now, Mr. Dickey, at this meeting of Feb. 24, 1916, there were present Mr. Neal and Mr. Dittmore and yourself? A. Yes.

Q. Of the Board of Directors? A. Yes.

Q. And the three trustees? A. Yes.

Q. Who at that time were Messrs. McKenzie, Hatten, and Eustace? A. Yes.

Q. And who was the chairman of the meeting in the Board of Directors on that occasion? Who presided at the meeting? A. I may have done so, I have forgotten.

Q. What did you do with respect to presenting to the trustees the draft of a letter that had been proposed to be sent to them? A. We presented to them a draft of a letter.

Q. Which you had not sent? A. Which we had not sent.

Mr. Whipple—And never was sent. The Witness—Delivered to them.

Mr. Krauthoff—Not delivered, as I understand.

Mr. Whipple—Not given to them.

Mr. Bates—It was read to them.

Q. Didn't you read that letter to them at the meeting? A. Of Feb. 24.

Q. Now beginning with the words, "Your letter of Feb. 23d has been received," and going down to the tenth line on the second page, ending with the words, "is present," state whether or not that is the copy of the letter which you presented at that time?

Mr. Whipple—Just a moment. Where is the so-called letter? Why do you use a copy? Why don't you use the paper that you claim was read, if one really was read?

Mr. Krauthoff—Our present information is that the original of that letter is not at hand.

The Witness—The original of that letter was given to the trustees on that occasion. They took it away with them.

Mr. Whipple—We have no such letter, and we deny that it was ever given to them.

The Witness—That is the one that was testified as being torn up after they got back to their meeting.

Mr. Whipple—I do not think so. I think you are mistaken in your testimony.

Mr. Krauthoff—Well, the testimony is that it was delivered to the trustees, and we have asked them to produce it—

Mr. Whipple—We say that it was not.

Mr. Krauthoff—So I offer the document in its present condition.

Mr. Whipple—Well, that isn't any document. That is an alleged record that was gotten up subsequently or which you apparently thought that you might some time want to put in

your records, but it was not an actual record and so you never put it in.

Mr. Krauthoff—We are not offering the whole record, if Your Honor please. We are offering that copy of the letter that was given to the trustees on that date.

Mr. Whipple—There is no verification; he cannot verify whether it was a copy or not.

Mr. Krauthoff—He states that it is.

Mr. Whipple—He states a lot of things that are impossible for any man to state or know.

The Master—The evidence being that a certain letter was delivered to the trustees on that date, the trustees' counsel stating that they now have no such letter and cannot produce it, doesn't that open the way for proof of the contents of the letter said to have been delivered by a copy? The witness testifies that this is a copy. It may or may not be—that is his testimony.

Mr. Whipple—I think the testimony of Mr. Eustace was to this effect, that something having been presented or read, there was a conference at which Mr. McKenzie was present, and this was said, "Come, now, let us tear up these papers and go along together as Christian Scientists," and it was immediately torn up right there. Am I not right? In substance, that was Mr. Eustace's testimony, that it was torn up; that this letter which they had gotten ready tentatively to present was torn up right there, and then they said, "We will go along as Christian Scientists."

The Witness—This was a letter—

Mr. Krauthoff—One moment.

The Master—Let us assume that it is torn up.

Mr. Whipple—Yes.

The Master—Isn't it now open to prove it, if material, by a copy?

Mr. Whipple—I suppose that is so, Your Honor.

Q. Did any tearing up of letters occur on February 24, 1916, at that conference? A. Not at that meeting, no.

Mr. Whipple—Do you want to ask him at what meeting it was torn up?

Q. Was it torn up at any other subsequent date, so far as you know? A. I heard it was.

Q. I mean in your presence? A. Not in my presence. I would like to make an explanation, Your Honor.

The Master—I think you had better wait, Mr. Dickey, until some question is asked of you. If your counsel desires to have you make an explanation of anything, we will see.

Mr. Thompson—Let us see that document before you put it in. Let us see what you are showing to Mr. Whipple.

Mr. Whipple—May I show that to Mr. Eustace?

[Mr. Whipple passes the document to Mr. Eustace, and then to Mr. Thompson.]

The Master—While they are looking at that, Mr. Krauthoff, I call your at-

tention to the fact that the witness has said something about making an explanation. Is there anything you desire to have him explain?

Mr. Krauthoff—Yes, thank you.

Q. Was there some explanation that you desired to make in connection with what you have just said, Mr. Dickey? A. That letter that was given to the trustees was accompanied by the memorandum which follows there, beginning with Number 1 down to Number 7. That memorandum was read and discussed at that meeting.

Mr. Krauthoff—We will get to that presently, Mr. Dickey.

Mr. Thompson—We make no objection, but we do not feel called on to make any statement in regard to it, although we are fully advised as to what actually took place.

Mr. Krauthoff—Now, this is the letter which Mr. Dickey testifies was given to the trustees at this meeting on Feb. 24, 1916:

"Your letter of February 23d has been received.

"To fulfill certain conditions simply in order to maintain a semblance of harmony would be to cry 'Peace, peace, when there is no peace.'

"We have made a very earnest effort to establish a basis for cooperation to the end that increased efficiency might result in the work of The Christian Science Publishing Society. When we undertook this duty we were unaware that a new concept of your trusteeship had been evolved and adopted by you. We, like most other Christian Scientists, had supposed that your trusteeship was a subordinate body which held and managed certain valuable property subject to the general direction and supervision of The Christian Science Board of Directors.

"We are not without previous experience in noting the tendency of departments of the work of The Mother Church to assume an independence of policy and action, which, carried to its ultimate conclusion, would destroy the unity of our Leader's demonstration for the government of The Mother Church.

"This church is one institution, and this board is charged with the inescapable responsibility of demonstrating the direction of its affairs. Mrs. Eddy says:

"I deprecate personal animosities and quarrels. But if one is intrusted with the rules of church government, to fulfill that trust those rules must be carried out' (Miscellaneous Writings 284:29).

"It is not our intention to in any way shirk our duties as we understand them. Under the circumstances which have developed, we do not feel called upon to take any further responsibility in this matter until our full board is present."

Mr. Streeter—By whom is that signed?

Q. By whom was that signed? A.

The Christian Science Board of Directors.

Q. Through Mr. Dittmore, its secretary? A. Through its secretary.

Q. And by whom was the letter prepared? A. It was prepared by the secretary and brought into the meeting and approved by the board.

Q. In that letter you refer to the letter of the trustees of Feb. 23, 1916? A. Yes.

Q. Do you know what has become of the original of the letter of the trustees of Feb. 23, 1916? A. I believe it was returned—No, I do not think that that was the date. I do not know about that letter of Feb. 23, unless I could see it.

Mr. Krauthoff—Will you see if there is any copy of that in your files, Mr. Whipple? We have not the original for some reason.

The Witness—I do not recall it now.

Q. Now at this meeting, after reading this letter to the trustees, what then took place? A. We read the memorandum attached thereto, paragraph by paragraph, and discussed each paragraph as we read it.

Q. Now, is the memorandum that you discussed at that meeting set out in that document? A. It is.

Q. Beginning where? A. Beginning about the middle of the second page with paragraph numbered 1.

Q. And going how far? A. And going four pages, to the end of paragraph 7, which is subdivided into sections lettered from A to H.

Q. Now, this memorandum that you have identified, being paragraphs numbered from 1 to 7, both inclusive, including the subdivisions lettered from A to H, what did the trustees at that meeting do orally with respect to that memorandum?

Mr. Whipple—Well, I suppose that means what did they say, if anything, and who said it.

Mr. Krauthoff—Yes, what did they say and who said it.

Q. The question is, what did they say, Mr. Dickey, and who said it? A. They said that they—

Mr. Whipple—Well, I do not know what "doing orally" is.

The Witness—They said that represented—

Q. I mean they—each one of them. A. The trustees—Mr. Eustace was the spokesman and said that was a satisfactory agreement to them, they accepted it as defining the relations between the directors and the trustees, they were perfectly agreeable to everything contained in those paragraphs as read.

Q. Now the statement—

Mr. Streeter—Mr. Krauthoff, to be certain, may I ask if the memorandum that Mr. Dickey is testifying about is the one that we have called the Dittmore memorandum that is in the end of Dittmore's answer on page 80?

Mr. Krauthoff—It is.

Mr. Streeter—That is the same one?

The Witness—That is the one, yes. We asked them at that time if the—

Q. Wait a moment, Mr. Dickey. You have stated what Mr. Eustace said. Did he state that in the presence of Mr. McKenzie and Mr. Hatten, the other two trustees? A. He did.

Q. What, if anything, did they say? A. They all agreed to that.

Q. What did one—it is not what they agreed. What did Mr. McKenzie say? A. Mr. McKenzie accepted it as being a satisfactory statement.

Q. What did he say? A. He said, "This is all right, it suits me."

Q. And Mr. Hatten? A. Mr. Hatten said, "That is quite satisfactory to me."

Q. Now, what, if anything, did any of the directors say—not what "we said"—what did you say, or Mr. Dittmore say, or Mr. Neal say? A. I asked them if they would attach their signatures to that document—

Q. Who answered it? A. —so as to go on record permanently and have their attitude fairly defined in writing.

Q. And who answered for the trustees? A. Mr. Eustace replied that they hadn't the slightest objection to anything in the paragraphs, but he thought they had better not sign it, for the reason that it might be considered equivalent to making a new by-law and the trustees would not like to be placed in the light of creating by-laws; therefore, they asked us if we would not be satisfied with their acceptance of it and that it would be kept as a gentleman's agreement without any writing connected with it.

Q. What, if any, answer did any of the directors make to that statement, and who made the statement? A. I assented to that, a little reluctantly, however. Mr. Dittmore and Mr. Neal also assented to that.

Mr. Krauthoff—We offer, if Your Honor please, the paragraphs numbered from 1 to 7, both inclusive, including the subdivisions lettered A to H.

Mr. Whipple—Now, if Your Honor please, we make the same objection that we have made to some other papers. If it is offered merely to show a course of conduct and an attempt to compromise, I do not know that it is of very much consequence one way or the other. If it is offered in any way to affect the Trust Deed or to change its import, or as an estoppel by conduct, then we think it is entirely inadmissible, because the Trust Deed cannot be affected in its terms by the agreement of any trustee for the time being; his opinion or his conduct cannot affect the obligations of that Trust Deed in respect of his duties or responsibilities.

Mr. Krauthoff—It is offered, if Your Honor please, for what it is, and I assume that the Court will determine its force and effect.

The Master—I think you may put it in.

The Witness—May I say something in addition?

Q. Did you answer fully, or did you want to say something further?

A. No. I would like to add something to that answer. In our discussions of this we took the language of the Trust Deed and the language of the Manual, and we agreed that there could be no conflict between the Trust Deed and the Manual.

Q. You say, "we agreed," Mr. Dickey. You will have to state who said it and what he said. A. Well, I think we all participated in that conversation. It was taken at some length, and we discussed the Trust Deed and the Manual together in that connection.

Mr. Krauthoff—Now we offer—

Mr. Whipple—If Your Honor please, I take it that "we agreed" will be stricken out because—

The Master—You do not want that, do you?

Mr. Whipple—That is an inference.

Q. What did they say, Mr. Dickey? A. Mr. Eustace said that was a satisfactory interpretation of the relations of the two boards, and I agreed to that, and I believe Mr. Dittmore and Mr. Neal—I know they also agreed to that.

Q. You say, "they agreed"; what did they say, Mr. Dickey? A. They said—

Q. In substance? A. In substance—

Mr. Whipple—Well, of course they did not talk in concert. Just tell us.

Q. I mean what did they say in substance?

The Master—He has given that, hasn't he? No, he has given what Mr. Eustace said in substance. Now what did you say?

Q. What did you say?

A. I stated that this memorandum stated my concept of the adjustment that we had arrived at between the trust deed and the Manual, and that it was quite satisfactory to me if they would sign it. I also agreed afterward that Mr. Eustace would keep his gentleman's agreement—

Q. You said, you mean? A. I said that that would be satisfactory. The other directors concurred in that.

Q. Leave out the word "agreed," Mr. Dickey, and tell who said it and what they said. Now, what did Mr. Dittmore say? A. Mr. Dittmore said that nothing short of what was contained in those memoranda would be satisfactory to him, but that if they would keep to this that would settle the whole dispute between the directors and the trustees.

Q. And what did Mr. Neal say? A. Mr. Neal said substantially the same thing.

Q. Now, in the course of this conference did you have a copy of the Deed of Trust before you? A. We did.

Q. And the Manual, of course? A. And the Manual.

Q. And you took up, as you said a moment ago, the provisions of the Deed of Trust and the Manual? A. We did.

Mr. Krauthoff—We offer this document, paragraph 1—

The Master—Now, let me ask, Mr. Krauthoff. We have this in the pleadings, in print in full, haven't we?

Mr. Krauthoff—I have never compared it. I have understood it was there.

The Master—Oh, you are not prepared to say that we have got it exactly as it reads there in print in the pleadings? If that be the case I suppose you will have to go ahead and read it.

Mr. Whipple—Couldn't it be compared privately, if Your Honor please, without taking up the time while we are all waiting?

The Master—My suggestion is made for this reason only—that it seems hardly worth while taking up our time to read word for word what we have in print before us, if it be true that we have just the same thing in print before us.

Mr. Krauthoff—I will undertake to do that at noon, if Your Honor please. And then at 2 o'clock I will state whether or not it is correctly set out in the pleadings.

The Master—Yes.

Mr. Krauthoff—That is Mr. Dittmore's answer to the trustees' case.

Mr. Whipple—Yes.

Mr. Thompson—Haven't you admitted that it is in your answer to Mr. Dittmore?

Mr. Krauthoff—I do not recall.

Mr. Bates—We have not had any occasion to admit what is in your answer, Mr. Thompson.

Mr. Krauthoff—Now, Feb. 28, 1916:

"On the request of the trustees of The Christian Science Publishing Society, they met with the directors.

"The trustees presented for the consideration and approval of the directors a revised form of announcement to be placed at the head of the church and practitioner department of the Journal, and form letters to be sent to persons requesting recognition for churches and societies.

"The trustees read to the directors a list of those employees who are paid annual salaries of \$3000 or more."

[That portion of record of meeting of Board of Directors, dated Feb. 28, 1916, as read by Mr. Krauthoff, is offered in evidence as Exhibit 485.]

Q. Did those incidents occur on Feb. 28, 1916? A. They did.

Q. And what was the state of the relations between the trustees and the directors of Feb. 28, 1916?

Mr. Whipple—That I object to, if Your Honor please.

The Master—I did not get the question.

Mr. Krauthoff—I am offering to prove how they got along with each other on the 28th of February—

Mr. Whipple—He asked, what was the state of the relations, and if that does not call for an opinion I do not know what does.

The Master—Why not ask what was said?

Q. I mean, was everything entirely

harmonious on the 28th of February? A. It was, and we—

Mr. Whipple—That I object to, if Your Honor please.

The Master—Isn't that going a little too far, Mr. Krauthoff?

Q. Did any controversy of any kind arise on the 28th of February?

Mr. Whipple—Well, if Your Honor please, it does not appear they were meeting together then.

Mr. Krauthoff—Yes, it does. It says that "On the request of the trustees of The Christian Science Publishing Society they met the directors."

Mr. Whipple—Yes; you are right about that.

Mr. Krauthoff—And we are offering generally that everything was serene and harmonious on that occasion.

The Master—Does the record say anything more?

Mr. Krauthoff—No. The record just simply says they met and took up certain things.

The Master—I think you may ask if any controversy arose at that meeting.

Q. Did any controversy arise at that meeting? A. No, none. We agreed—or, rather, they presented this recommendation to us and we accepted it.

Mr. Whipple—What recommendation? Let me see the recommendation. (Referring to records.) It does not appear that there is any recommendation mentioned there. The habit of construing these things to be something they are not seems to be prevalent.

Mr. Bates—We have noticed that.

Mr. Whipple—Well, you want to reform it, then, because your side has been the guilty party.

Mr. Bates—We have tried to reform you but we can't.

Mr. Krauthoff—March 6, 1916:

"Present, Messrs. Dittmore, Dickey and Neal.

"The Trustees of The Christian Science Publishing Society met with the Directors and discussed with them the subject-matter of the letters sent to churches and societies desiring recognition by cards in the Christian Science Journal."

[That portion of the record of meeting of Board of Directors, dated March 6, 1916, as read by Mr. Krauthoff, is offered in evidence as Exhibit 486.]

Q. Did that conference occur, Mr. Dickey? A. It did.

Mr. Whipple—Why should those questions be put? We read the record—

The Master—Having read the record. I think we might assume—

Mr. Whipple—He is asking this gentleman to verify the record when it is verified by the signatures.

Mr. Krauthoff—I shall not verify in duplicate. March 13, 1916:

"The trustees of The Christian Science Publishing Society met with the directors and discussed further the subject-matter of the letters sent to churches and societies desiring recognition by cards in The Christian Science Journal.

"There was also a discussion of the proposed appointments to the Bible Lesson Committee, and the trustees presented to the directors a statement showing the growth and circulation of The Christian Science Monitor."

[That portion of record of meeting of the Board of Directors, dated March 13, 1916, as read by Mr. Krauthoff, is offered in evidence as Exhibit 487.]

Q. Now, this Bible Lesson Committee to which reference is here made. Is that the committee appointed by the Publishing Society for preparing the Bible Lessons, or the Lesson Sermons read in Christian Science churches? A. Yes; under the Trust Deed.

Q. And what had been the practice with respect to the trustees and the directors conferring as to the personnel of the Bible Lesson Committee?

Mr. Whipple—Just a moment. Do you want to amend or add to the records you have put in on the subject? If every conference appears to be recorded, why don't you rely on the record?

Mr. Krauthoff—Well, I do not expect to read every one of them. I can do that if you prefer.

Mr. Whipple—Unfortunately, you have. I have not seen that you have omitted any conference.

Mr. Krauthoff—I asked the general question what the practice had been in respect to conferring about it?

Mr. Whipple—That I object to, Your Honor.

The Witness—The Deed of Trust—The Master—One moment. What the practice had been?

Mr. Krauthoff—What the practice has been prior to this last controversy, in the fall of 1918, with respect to the trustees conferring with the directors?

The Master—I think he can answer that. I can't see any harm in it.

A. The trustees have always conferred with the directors in regard to their appointments on the Bible Lesson Committee.

Mr. Krauthoff—March 20, 1916:

"The trustees of The Christian Science Publishing Society met with the directors and discussed various revisions of the application blanks and circular letters sent to churches, societies, practitioners and nurses desiring recognition by cards in The Christian Science Journal.

"There was also a discussion of the question of keeping the term Christian Science in the English language in foreign translations of Christian Science literature. No decision was reached."

[That portion of record of meeting of the Board of Directors, dated March 20, 1916, as read by Mr. Krauthoff, is offered in evidence as Exhibit 488.]

Mr. Krauthoff—March 27, 1916:

"The trustees of The Christian Science Publishing Society met with the directors and discussed the revised list of questions to be asked persons

requesting practitioners' cards in The Christian Science Journal."

[That portion of record of meeting of the Board of Directors, dated March 27, 1916, as read by Mr. Krauthoff, is offered in evidence as Exhibit 489.]

Mr. Krauthoff—On April 3, 1916:

"The trustees of The Christian Science Publishing Society met with the directors and discussed several questions of interest to The Mother Church, including a plan for the Publishing Society to extend credits to Christian Science reading rooms and the question of revising the hours for employees in the Publishing Society."

[That portion of record of meeting of the Board of Directors, dated April 3, 1916, as read by Mr. Krauthoff, is offered in evidence as Exhibit 490.]

Mr. Krauthoff—June 12, 1916:

"At this point the trustees of The Christian Science Publishing Society requested and were granted a conference with the directors with regard to the publication of their new pamphlet, 'Memorandum C.'"

[That portion of record of meeting of the Board of Directors, dated June 12, 1916, as read by Mr. Krauthoff, is offered in evidence as Exhibit 491.]

The Master—I think you put in the trustees' record about that.

Mr. Krauthoff—Yes, if Your Honor please.

Q. Now, Mr. Dickey, with respect to this Memorandum C. That is the document Mr. Eustace identified, being the document sent to the churches for literature distribution purposes? A. Yes.

Q. And that document was taken up with the directors and the trustees together? A. It was.

Q. Did the trustees take up Memorandum D with you? A. They did not. They took up C at our request.

Q. Do you recall the fact that in the year 1916 Mr. Willis was elected an editor? A. I didn't know he was elected in 1916.

Q. Oh, Mr. McCrackan. Excuse me. A. Mr. McCrackan, yes.

Q. Was elected in 1916? A. Yes.

Mr. Krauthoff—We offer a letter from The Christian Science Publishing Society, under date of June 9, 1916. (Handing paper to counsel.) While counsel are examining that, if Your Honor please, may I ask, for the information of all of us—are we to have a session tomorrow?

The Master—What is the desire of counsel about that? I shall follow whatever that is.

Mr. Whipple—We all desire to go ahead.

Mr. Krauthoff—May we speak about it at 2 o'clock?

Mr. Whipple—We desire to make speed as fast as we can.

Mr. Streeter—While we do not want to go on tomorrow, we feel we ought to go on tomorrow and see if we can't get to an end of this case sometime.

Mr. Whipple—We are all willing to make sacrifices, and I assume we will go on tomorrow.

Mr. Krauthoff—I was not speaking for anyone but myself, and if we have anything further to say we will say it at 2 o'clock.

This is a letter to The Christian Science Board of Directors from The Christian Science Publishing Society, dated June 9, 1916:

"The Christian Science Publishing Society,

"Falmouth and St. Paul Streets,  
"Boston, Massachusetts,

"Manager's Office, June 9, 1916.

"The Christian Science Board of Directors,

"Falmouth Street,  
"Boston, Massachusetts.

"Dear Friends:

"As a change will have to be made in the plate from which the Journal cover is printed, the Board of Trustees would like to know if in the place of Mr. Willis the name of Mr. McCrackan is to appear as one of the Associate Editors.

"We should like to know this at once, as the Sentinel for June 17 will go to press on the 10th in usual course, and a change must be made there too.

"Very sincerely yours,  
"Board of Trustees,

"HERBERT W. EUSTACE,  
"Secretary."

[Letter, Board of Trustees to Board of Directors, June 9, 1916, is marked Exhibit 492.]

Mr. Krauthoff—The answer to that is dated June 9, 1916:

[Copy of Exhibit 493.]

"June 9, 1916

"The Christian Science Publishing Society

"Falmouth and St. Paul Streets  
"Boston, Massachusetts.

"Dear Friends:

"In reply to your inquiry concerning the changing of the name of Mr. John B. Willis on the outside cover of The Christian Science Journal and Christian Science Sentinel, and substituting the name of Mr. William D. McCrackan as Associate Editor, we would say that this matter was brought up at a Board meeting today and Mr. McLellan explained to the Board that he had already provided for the change mentioned.

"Very sincerely yours,  
"THE CHRISTIAN SCIENCE  
"BOARD OF DIRECTORS."

"AHD/CEJ"

[Copy of letter from Board of Directors to The Christian Science Publishing Society, dated June 9, 1916, is marked Exhibit 493.]

Mr. Krauthoff—At this point we will suspend until 2 o'clock.

The Master—Suspend until 2 o'clock,

[Recess until 2 p. m.]

## AFTERNOON SESSION

Mr. Krauthoff—If Your Honor please, at the time of adjournment the question was asked with respect to a session on tomorrow, Friday, and we stated that if we had anything to offer with respect to that we would do so at this time. It is agreeable to us to proceed on tomorrow if such is the desire of the Master and of other counsel.

The Master—I am entirely ready to proceed tomorrow if counsel are. What about Saturday?

Mr. Streeter—Isn't that a terrible suggestion on the part of the Court? Of course, if the Court says so, we will come.

Mr. Krauthoff—I think there is a general understanding that we do not meet on Saturday. We would prefer not to meet on Saturday, I take the liberty of saying.

The Master—If that is the understanding among counsel, it is agreeable to the Master. We ought, of course, to use all the time we can.

Mr. Krauthoff—Thank you. With respect to the memorandum that Mr. Dickey identified as the memorandum discussed at the meeting of Feb. 24, 1916, we have compared the paper which Mr. Dickey identified with the memorandum appearing at the end of paragraph 20 of the answer of Mr. Dittemore in the Eustace case, and that memorandum is there correctly set forth, beginning with the figure 1. The title in the answer is not a part of the document as identified by Mr. Dickey.

Q. A meeting of The Christian Science Board of Directors on Aug. 8, 1916:

"Letters were read from the following:

"Charles W. J. Tennant, dated London, July 27, relative to the outcome of the suit against Mrs. Annie C. Bill. Corresponding secretary instructed to transmit copies of above letter to trustees of The Christian Science Publishing Society and to the manager of the Committees on Publication."

Q. Mr. Dickey, what was the Annie C. Bill litigation? A. It was a suit brought against Mrs. Annie C. Bill to prevent her from publishing an infringement on The Christian Science Journal and Sentinel.

Q. A suit brought by The Christian Science Publishing Society? A. Yes.

The Master—I suppose he means infringement of copyright, doesn't he?

Mr. Krauthoff—Yes.

Q. You mean an infringement of copyright? A. Yes.

Q. And did the trustees of The Christian Science Publishing Society take up the incidents of that suit with the Board of Directors? A. We talked them over together, yes.

Q. And who conducted the correspondence with London? A. It was done by The Mother Church.

Mr. Whipple—Well, does it appear any more than that some one from London wrote to The Mother Church about it? You have not shown any letters that they sent about it.

Mr. Krauthoff—Mr. Dickey has stated, generally, that The Mother Church conducted the correspondence.

Mr. Whipple—Yes. I notice you like those general statements, but why don't you come down to the specific point and show us any letters, and then we can see what they are and how they happened to be written?

Mr. Krauthoff—We will produce at the next hearing a complete file with respect to the Annie C. Bill suit, together with a copy of the suit itself.

Mr. Whipple—Well, in the meantime the testimony, I take it, may be stricken out, about conducting the correspondence.

Mr. Bates—Oh, no.

Mr. Krauthoff—He has stated that they conducted the correspondence. That is the fact.

Mr. Whipple—It may have been only one letter and a reply.

[The last question and answer are read by the stenographer.]

The Master—That is not responsive. He was asked who, what persons, conducted the correspondence. He did not tell us.

Q. By The Mother Church what do you mean? A. By its Board of Directors.

Mr. Whipple—Well, the Board of Directors didn't write the letter.

The Master—No, that is not an answer. Who conducted the correspondence? That means what persons.

Q. Was that correspondence conducted by Mr. Jarvis? A. By the secretary of the Board of Directors.

Mr. Whipple—Now, if Your Honor please, we would like the letters.

Mr. Krauthoff—Well, they will be here in the morning.

Mr. Whipple—Very well.

Mr. Krauthoff—The Aug. 8, 1916, meeting further shows the following:

"Detailed report of The Christian Science Publishing Society showing Monitor income and outgo for six months ending June 30, 1916, was read, and upon motion of Mr. Dittemore, seconded by Mr. Dickey, it was voted that a committee be appointed from the Board of Directors to confer with the trustees of The Christian Science Publishing Society for consideration of the entire question of the deficit now shown by The Monitor department, and to report its findings back to the board. The chair appointed Mr. Dittemore and Mr. Neal to serve as such committee."

Mr. Thompson—Who was acting as chairman at that time?

Mr. Krauthoff—Mr. Stewart.

Mr. Thompson—Does the record show that?

Mr. Krauthoff—He signed it as chairman. We will verify that. The

minutes are signed "Allison V. Stewart, Chairman."

Q. (Reading:) "Monday, Sept. 11, 1916.

"At a special meeting of The Christian Science Board of Directors held at 2 o'clock p. m. on above date in the directors' room of The Mother Church, there were present Messrs. McLellan, Stewart, Dickey and Neal; also the trustees of The Christian Science Publishing Society, Messrs. Thomas W. Hatten, William P. McKenzie and Herbert W. Eustace.

"A letter was read from Mr. McLellan to the Board of Trustees of the Publishing Society dated July 21, 1916, asking that Mrs. Myra B. Lord be made Editorial Manager of the Christian Science periodicals and her salary made commensurate with the work performed by her.

"After some discussion of the question, it was referred back to the trustees of the Publishing Society with the understanding that since Mrs. Lord's position would not be an editorial one, the question of salary should be settled by them."

Mr. Dickey, Mr. McLellan was a member of the Board of Directors during the time that you were there, up to July, 1917? A. He was.

Q. And at the time that he was a member of the Board of Directors what was the practice and habit of the board with respect to communicating with the editorial department of the Christian Science periodicals? A. Mr. McLellan was the editor-in-chief of the periodicals, and also sat on the board as a member, and our communications with regard to publications in the church periodicals were made through Mr. McLellan.

Mr. Krauthoff—We offer at this time a letter from the Board of Trustees to the Board of Directors with respect to the establishment of a library for The Monitor.

[This letter is shown to counsel.]

[An extract from the directors' records, from the meeting of Jan. 17, 1917, is read by Mr. Krauthoff, as follows:]

"Jan. 17, 1917.

"At the request of the directors, Mr. Frederick Dixon, editor of The Christian Science Monitor, appeared before the board for a conference with regard to certain phases of the problem of the foreign languages versus the English language. Mr. Dixon asked the cooperation of The Christian Science Church and of The Christian Science Publishing Society in a righteous endeavor to prevent encroachments on the English language through foreign channels. The question of printing the English version on the opposite pages of all translations into foreign languages was discussed. Mr. Dittemore asked permission to read to Mr. Dixon his letter to The Christian Science Board of Directors, dated Jan. 8, 1917, which was granted, and the letter read.

"After Mr. Dixon left the meeting, the following motion was made by



Mr. Dittmore and seconded by Mr. Dickey, viz.:

"That the editor of The Christian Science Monitor be authorized to editorially and through the news columns of The Monitor indorse and support an alliance of the English-speaking peoples, and that the Christian Science Sentinel be asked to support this policy of The Monitor through the wise, metaphysical interpretation of this and other subjects of broad international significance as they are referred to in The Monitor.

"After some discussion of the question, it was laid on the table, to be taken up at the next meeting of the board."

Mr. Krauthoff—"Thursday, Jan. 18, 1917—"

Mr. Thompson—Just a moment. Before you pass on to that we think that letter of Mr. Dittmore's of Jan. 8, being part of the proceedings, if you are going to read them, ought to go in.

Mr. Krauthoff—Have you the letter?

Mr. Thompson—Of course not; it is in your possession.

Mr. Krauthoff—I mean, have you your copy?

Mr. Thompson—I dare say, but haven't you got it? We called upon you to have them ready. You certainly would not put in the proceedings of the meeting and leave out a letter like that, would you?

Mr. Krauthoff—I am just now putting in evidence on the trustees' case. I am quite willing to put in the letter.

Mr. Thompson—True enough; but that doesn't entitle you to mangle the proceedings.

Mr. Krauthoff—"Thursday, Jan. 18, 1917—"

Mr. Thompson—Just a moment. If you are now proceeding—

Mr. Krauthoff—I am on the same subject. When I find the letter I will read it. It was written by Mr. Dittmore, on Jan. 8, 1917. "Thursday, Jan. 18, 1917"—

Mr. Thompson—Just a moment. What are you reading now—some directors' record?

Mr. Krauthoff—Directors' record.

Mr. Thompson—Why don't you put in that letter?

Mr. Krauthoff—Well, I will as soon as it is handed to me.

Mr. Thompson—I have got a copy of it here.

Mr. Whipple—I am talking about the letter which you asked me to look at.

Mr. Krauthoff—Oh, I wanted to finish this about the English language while I was in the midst of it.

Mr. Whipple—All right. We are getting into chronological order now.

Mr. Krauthoff—Thank you.

[An extract from the directors' records, of Thursday, Jan. 18, 1917, is read by Mr. Krauthoff, as follows:]

"The motion introduced by Mr. Dittmore at the meeting of the directors on Jan. 17 was taken from the table and the discussion thereof resumed.

Mr. Dixon was sent for, and, after conferring further with him, and he had left the board room, the motion was amended and passed unanimously as follows:

"Voted, That the editor of The Christian Science Monitor be authorized to, editorially through the columns of The Monitor, indorse a policy of cooperation among all English-speaking peoples for the peace and religious freedom of the world, and that the Christian Science Sentinel be asked to support this policy of The Monitor through a wise, metaphysical interpretation of this and other subjects of broad international significance, and that a copy of this motion be sent to the editors of the Sentinel and of The Monitor."

Mr. Thompson—Now, I have a copy of that letter. If you haven't the original I will read in the copy.

Mr. Krauthoff—I have the original.

Mr. Thompson—Let me look at it, will you?

[This letter is handed to counsel.]

Q. Mr. Dickey, with respect to the use of the English language, state whether or not the Board of Directors regards that as one of the questions which affect the cause of Christian Science as a whole? A. They do.

Mr. Whipple—How is that material? What if they did?

Mr. Krauthoff—Why, if Your Honor please, the statement of the directors to the trustees at the time of the controversy was that the Board of Directors should have the final authority with everything respecting the cause of Christian Science as a whole. I am asking him if this is one of the things that he regarded as affecting the cause of Christian Science as a whole, within the meaning of that requirement?

The Master—I think I shall let him answer.

A. They did.

Mr. Thompson—Now will you read that letter?

Mr. Krauthoff—Certainly. Now I will read the letter of Mr. Dittmore, under date of Jan. 8, 1917, written on that subject referred to in the record. [A letter from John V. Dittmore to the Board of Directors, Jan. 8, 1917, is marked Exhibit 494, and is read by Mr. Krauthoff, as follows:]

[Exhibit 494.]

"January 8, 1917.

"The Christian Science Board of Directors,

"The First Church of Christ, Scientist, "Boston, Massachusetts.

"Dear Friends:

"On December 28th the editor of The Christian Science Monitor came before this Board and in a more detailed and comprehensive way than at any previous conference he analyzed the international political situation and discussed the trend of human events. At this conference the editor of The Monitor recommended that the Christian Science Church through its peri-

odicals should initiate and support a movement looking toward an alliance of the English-speaking peoples as a step toward the solution of the problem of attaining and maintaining world peace, and gave the reasons for his recommendations. The metaphysical analysis of the 'nations' drama' was considered in detail. The historical lineage of Christian Science and its direct bearing on the present demands upon our literature was also clearly set forth. Since the close of this interview, no discussion or consideration has been given to the subject by this Board, notwithstanding the fact that no more vital question confronts the human race at the present time.

"It is my purpose by this letter to recall to our thought that our Leader through her By-Laws has charged this board with the inescapable responsibility of keeping our publications 'abreast of the times.' In order to fulfill this duty God demands in this eventful hour that we shall 'discern the signs of the times' as interpreted by Christian Science through history, prophecy and revelation, and that the Christian Science movement shall point the way not only for those 'of our own fold,' but for all those who are ready to 'hear His voice.' In the words of our Leader, 'We are in the midst of a revolution; physics are yielding slowly to metaphysics; mortal mind rebels at its own boundaries; weary of matter, it would catch the meaning of Spirit.' (Christian Healing, p. 11, 11. 6-9.)

"To enable mortal mind to 'catch the meaning of Spirit' by 'spreading undivided' the record and scientific interpretation of current history and to 'hold guard' over the messages of Truth are the vital duties of The Monitor and the Sentinel. In order, therefore, for these publications to perform the functions for which their founder provided them, three things are absolutely essential.

"1st—A definite editorial and news policy for The Monitor based not upon the physical testimony of the kaleidoscope of mortal mind, but upon the metaphysical evidence which comes through inspiration and demonstration. It is such a policy wisely directed and uninfluenced by any sense of expediency which the editor of The Monitor is evidently striving to attain.

"2d. The adoption of a policy for the Sentinel which will afford proof that it is 'abreast of the times,' interpreting for the great body of Christian Scientists the 'signs mental,' as well as the current effects of Truth's activity. It is the duty of the Sentinel to point the way to the universal responsibilities of Christian Scientists for the protection and deliverance of the whole world.

"3d. A constant and hearty cooperation between the editorial management of The Monitor and of the Sentinel to the end that they may supplement each other and thereby gain for

The Monitor especially the sustaining and directing force of the awakened mental activity of all Christian Scientists.

"As a preliminary step, and in order to initiate an orderly plan of working toward the ultimate goal, I would propose that the leading Monitor editorials each Saturday be made to cover some broad phase of human history or international affairs as they already frequently do. I would also propose that in the issue of the Sentinel of the same Saturday one of our editors be instructed to cover the same questions from a strictly metaphysical standpoint for the benefit of students of Christian Science. In a way this has already been done to a certain extent by some of the Sentinel editorials, although not yet as a definite policy.

"With the earnest hope that these vital matters may be fully considered and acted upon and the present situation improved in the immediate future, I am

"Very sincerely,  
"JOHN V. DITTEMORE."

"J. V. D.—L."

I offer also this letter from The Christian Science Publishing Society, under date of Nov. 22, 1916:

"The Christian Science Publishing Society,

"Falmouth and St. Paul Streets,  
"Boston, Massachusetts,  
"Manager's Office.

"November 22, 1916.

"The Christian Science Board of Directors,

"Falmouth and St. Paul Streets,  
"Boston, Massachusetts.

"Dear Friends:

"In a conference with the directors six months ago, the need of provision for a library for the use of The Monitor was presented. The need for such a library is still apparent, as shown by the two letters inclosed, indicating the way in which the question presents itself to the Editor and his assistants.

"The expansion of the stencils department would at the present time require for convenient service the room now used as the index room.

"The Editor's proposal to ask for two rooms will, under the circumstances, require considerable readjustment. When the rooms occupied by the Committee on Publication can be made available for the uses of the business, two of these rooms would exactly meet the need for a Monitor library.

"Yours respectfully,

"BOARD OF TRUSTEES,  
"By Wm. P. McKenzie."

[The letter from William P. McKenzie to The Christian Science Board of Directors, dated Nov. 22, 1916, of which the foregoing is a copy, is marked Exhibit 495. R. J. M.]

Now, we are not offering the two editor's letters attached because we do not think they are important in

this particular; and, upon reading that letter, if Your Honor please, I am constrained to believe that I offered it in error. It seems to relate to rooms occupied by the Committee on Publication, which was a Church activity, and of course it would be proper to ask the Board of Directors to move the Committee on Publication. I should be very glad to withdraw the letter.

The Master—Is there any objection?

Mr. Whipple—I think it had better stand. I think it showed the relations between the parties.

Mr. Krauthoff—Well, let it stand with the explanation that I have made.

Mr. Whipple—It is quite as important as the other letters that have been put in showing their relations.

Mr. Krauthoff—From the record of the meeting of The Christian Science Board of Directors held on Feb. 9, 1917, I will offer the following:

"On motion of Mr. Dickey, seconded by Mr. Neal, the board voted that the editorial department of The Christian Science Publishing Society be requested to send to the corresponding secretary of The Christian Science Board of Directors a list of all contributors of articles to The Christian Science Journal and Christian Science Sentinel that are received from time to time, the notice to be given immediately upon receipt of the articles and to include therein the name of the contributor and the subject written upon.

"The editorial policy of the Sentinel and Journal was discussed and the members expressed themselves freely in regard thereto."

[The record of the meeting of the Board of Directors, dated Feb. 9, 1917, from which the foregoing extract is read, is Exhibit 496. R. J. M.]

Q. Now, Mr. Dickey, with respect to asking for these names of the contributors to the Christian Science periodicals, what is the point in that?

Mr. Whipple—I object to that, if Your Honor please.

The Master—I think you will have to ask him a definite question.

Q. What was the reason you asked for that? Why did you ask for it?

Mr. Whipple—That I object to, if Your Honor please. The undisclosed reasons of the directors in making the request cannot be of material importance.

Mr. Krauthoff—Well, they can, if Your Honor please, as showing the importance of it and the necessity for it and what induced them to do it. One of the allegations in the bill is that we asked for things capriciously, upon one excuse and another we did this or that or something else, and we offer to show—

The Master—I do not think you can go into his undisclosed reasons.

Mr. Krauthoff—You mean the Board of Directors must disclose their reasons to the trustees in each case?

Mr. Whipple—They need not disclose them, except if they want to put them in evidence they must disclose

them. You are asking him to disclose them now.

Mr. Krauthoff—Well, we offer to prove, if Your Honor please, that the Board of Directors asked for this in order to prevent the possibility of articles appearing in the periodicals which were contributed to the periodicals by persons who had been disciplined in The Mother Church, or who at the time were under charges affecting discipline, and that the editorial department complied with their request.

The Master—I have not made any ruling against showing what the editorial department did with regard to any request.

Mr. Krauthoff—Then I will reserve the proof until I reach that, if Your Honor please.

I will offer the following records from the meeting of the Board of Directors of Feb. 10, 1917:

"It was moved by Mr. Dickey, seconded by Mr. Neal and voted to publish in the Sentinel in parallel columns the poem 'Greeting from England' as originally published in the London Chronicle in 1898, together with the poem in reply by Mrs. Eddy, entitled, 'The United States to Great Britain' from the Boston Herald of May 15, 1898, and appearing on page 337 of Miscellany, together with an appropriate note of explanation over the signature of The Christian Science Board of Directors."

[The record of the meeting of the Board of Directors of Feb. 10, 1917, from which the foregoing extract is read, is Exhibit 497. R. J. M.]

Q. Was that done, Mr. Dickey? A. It was.

Q. It appeared in the Sentinel? Yes.

Mr. Krauthoff—I offer the following from the record of the meeting of Feb. 15, 1917:

"The question of fire protection for the rear of the Publishing House was brought up and the Corresponding Secretary was instructed to have the Purchasing Department of The Christian Science Publishing Society investigate and report to the board the cost of installing collapsible shutters on all windows in the Publishing House opposite buildings which are separated therefrom by the width of the alley only. The Corresponding Secretary was also instructed to ascertain to what extent the installation of such devices would reduce the insurance rate."

[The record of the meeting of the Board of Directors of Feb. 15, 1917, from which the foregoing extract is read, is Exhibit 498, R. J. M.]

Q. Were those shutters installed? A. We recommended them.

Q. You do not know whether they were? A. I believe they were, yes.

Mr. Krauthoff—I offer the following from the record of the meeting of the Board of Directors of Feb. 21, 1917:

"Letters were read from the following:

Countess Elsie H. de Festetics of New York City, dated Feb. 19th (referred to the board by the Publishing Society) asking if her title might appear in her card in the Journal. The board could see no objection to granting the request and the Corresponding Secretary was instructed to advise the Publishing Society accordingly."

[The record of the meeting of the Board of Directors of Feb. 21, 1917, from which the foregoing extract is read, is Exhibit 499. R. J. M.]

Also the following from the record of the meeting of Feb. 28, 1917:

"Letters were read from the following:

"Mr. John S. Braithwaite, dated Dover, February 27th (cablegram), announcing that he had telegraphed instructions to cancel his lecture dates in America and Mr. McLellan was requested to make announcement in the Sentinel accordingly."

[The record of the meeting of the Board of Directors of Feb. 28, 1917, from which the foregoing extract is read, is Exhibit 500. R. J. M.]

Q. Mr. McLellan is the gentleman of whom you have just spoken as a member of the Board of Directors and also editor of the Sentinel? A. Yes, sir.

Mr. Krauthoff—I offer the following from the record of the Board of Directors of March 8, 1917:

"Letters were read from the following:

"Literature distribution executive committee dated Boston, March 5th, requesting permission to call a meeting of the practitioners in Boston for the purpose of securing the names of receptive persons for a mailing list, and to have such a meeting addressed by Mr. Frederick Dixon, editor of The Christian Science Monitor, and Judge Clifford P. Smith, manager of committees on publication. Upon the above recommendation, and on motion of Mr. Neal, seconded by Mr. Dickey, the board voted to grant the request."

[The record of the meeting of the Board of Directors of March 8, 1917, from which the foregoing extract is read, is Exhibit 501. R. J. M.]

Also the following from the record of the meeting of Friday, March 16, 1917:

"The corresponding secretary submitted a report on the names of contributors of articles to the Sentinel and Journal as submitted by the editorial department, and was instructed to send a copy of any complaints against such members of The Mother Church to the editorial department."

[The record of the meeting of the Board of Directors of March 16, 1917, from which the foregoing extract is read, is Exhibit 502. R. J. M.]

I offer the following from the record of the meeting of the Board of Directors of Friday, April 6, 1917:

"Upon motion of Mr. Dittmore, seconded by Mr. Dickey, the board voted to request the editorial department to publish the last paragraph of the lead-

ing editorial in The Christian Science Monitor of April 4, 1917, entitled 'The Crucible,' in a box at the head of the editorial column in the Christian Science Sentinel of April 14, 1917."

[The record of the meeting of the Board of Directors of April 6, 1917, from which the foregoing extract is read, is Exhibit 503. R. J. M.]

Q. That was done, Mr. Dickey? A. It was.

Mr. Krauthoff—I offer the following from the record of the meeting of the Board of Directors of April 13, 1917:

"Letters were read from the following: . . . Mr. Archibald McLellan, editor, The Christian Science Journal, Christian Science Sentinel, and Der Herold der Christian Science, referring names of persons who have submitted articles for publication in the periodicals against whom charges or complaints have been made to the directors. The list was read and the approval or disapproval of the board indicated thereon for the information of the editorial department."

[The record of the meeting of the Board of Directors of April 13, 1917, from which the foregoing extract is read, is Exhibit 504. R. J. M.]

Also the following from the record of the Board of Directors of May 1, 1917: "Letters were read from the following: . . . "Trustees of The Christian Science Publishing Society, dated April 30, with reference to the proposed increase in prices of the periodicals."

[The record of the meeting of the Board of Directors of May 1, 1917, from which the foregoing extract is read, is Exhibit 505. R. J. M.]

Also the following from the meeting of May 5, 1917:

"At a special meeting of The Christian Science Board of Directors at which were present the trustees of The Christian Science Publishing Society—"

If Your Honor please, this is a correlative record to that of the trustees on the same subject, and there is no conflict between the two. It refers to postal rates on second class postage. So I will not read the record, unless it is requested, and I will ask Mr. Dickey some questions.

Q. With respect to the legislation that was pending in Congress in May of 1917 affecting the rate of postage on second class mail matter, that is, the periodicals of The Christian Science Publishing Society, including The Monitor, did the directors and the trustees take that up together? A. They did.

Q. And what did the directors do with respect to the situation?

Mr. Whipple—Just a moment. Do you claim that anything was done different from what is recorded in your book, and if not, why isn't that the best evidence?

Mr. Krauthoff—It was done in addition to what was recorded in the book. I will first read what was in the book to avoid any question.

The Master—Let us see if we cannot get along without that.

Mr. Krauthoff—In that—

The Master—One minute, Mr. Krauthoff. You refer to what you already have put in from the trustees' records about that?

Mr. Krauthoff—Yes.

The Master—Do I understand that you desire to prove something which is not brought out either by the trustees' records, or by these?

Mr. Krauthoff—Yes. I am now desiring to prove that The Mother Church retained counsel to appear before Congress and act with respect to this matter.

The Master—By "The Mother Church" I suppose you mean the Board of Directors?

Mr. Krauthoff—Acting through its Board of Directors.

The Master—Now, is there any controversy that that is the fact?

Mr. Whipple—What counsel?

Mr. Krauthoff—Why, they retained Mr. Edwin A. Krauthoff, of Washington, District of Columbia, and Judge Clifford P. Smith also went to Washington in that capacity.

The Master—Why can't we agree that that is so?

Mr. Whipple—If Mr. Krauthoff says it is so, I have no doubt of it. It was a very wise thing to do.

Mr. Krauthoff—Well, I am acquainted with Mr. Edwin A. Krauthoff, who was retained!

Mr. Whipple—Are you acquainted with Judge Smith?

Mr. Krauthoff—Yes, very well.

Mr. Whipple—We have not heard anything from him for quite a while.

The Master—Let us assume that to be the fact; no one doubts it.

Mr. Thompson—You say that there is no record of this retaining of counsel?

The Master—It has already appeared, I think, that no record of that fact appears, either in the trustees' records or in the directors' records. Am I right, Mr. Krauthoff?

Mr. Krauthoff—I have no information at present which shows that there is a record retaining Mr. Krauthoff. I would not state that affirmatively. I was not looking for that. The statement I made was that the record of the directors' meeting of May 5, 1917, does not show that counsel were retained.

Mr. Thompson—Were any counsel retained to advise whether or not to put that in the record?

Mr. Krauthoff—I beg your pardon?

Mr. Thompson—Is there any record about retaining counsel to advise about entering it in the record?

Mr. Whipple—No answer!

Mr. Thompson—I think you will find a letter from Mr. Dittmore of protest.

Mr. Krauthoff—Thursday, June 14, 1917:

"The request of Mr. Bicknell Young, First Reader of The Mother Church, that his local address 'for mail only,

385 Commonwealth Avenue,' be added to his card in The Christian Science Journal, was granted, and the Corresponding Secretary was instructed to notify The Christian Science Publishing Society accordingly."

[That portion of record of meeting of the directors, June 14, 1917, as read by Mr. Krauthoff, is offered in evidence as Exhibit 506.]

Mr. Krauthoff—Monday, June 25, 1917:

"Letters were read from the following: The Trustees of the Christian Science Publishing Society, dated June 14, 1917, informing the Board of the proposed reconstruction of the Bible Lesson Committee. Reply indicated."

[That portion of record of meeting of Board of Directors, dated June 25, 1917, as read by Mr. Krauthoff, is offered in evidence as Exhibit 507.]

Mr. Krauthoff—Have you your carbon of that letter here?

Mr. Whipple—What date?

Mr. Krauthoff—June 14, 1917.

July 6, 1917:

"Letters were read from the following: The Christian Science Publishing Society, dated June 28, proposing to dispense with the key-words to Science and Health now appearing in the Lessons and Sermons as published in the Quarterly. Action approved."

[That portion of record of meeting of the Board of Directors, dated July 6, 1917, as read by Mr. Krauthoff, is offered in evidence as Exhibit 508.]

Mr. Krauthoff—We would like to have your carbon of that letter (handing paper to Mr. Whipple).

Mr. Whipple—Is this another one?

Mr. Krauthoff—Yes.

Mr. Whipple—Subject to correction if you should find the original was not sent.

Mr. Krauthoff (reading):

[Copy of Exhibit 509.]

"The Christian Science Publishing Society

"Falmouth and St. Paul Streets

"Boston, Massachusetts

"June 28, 1917.

"The Christian Science Board of Directors,

"Falmouth and St. Paul Streets,

"Boston, Massachusetts.

"Dear Friends:

"The question has again arisen about continuing to give in the Quarterly the key-word of the 33-line edition of Science and Health. In trying to find copies to supply the six members of the Bible Lesson Committee at various times, it has proved almost impossible to get copies of this 33-line edition. This would indicate that these copies are pretty scarce.

"It is now proposed to dispense with the key-word of the 33-line edition, and in order to avoid any sense of hardship on anyone, the Publishing Society stands ready to supply any complainant there may be with a new Science and Health.

"This question was discussed with

your board before, and at that time it seemed advisable to wait a while, but in view of the new committee's beginning its work for the year commencing July 1, 1917, we are again presenting the question. The trustees feel that it is now an opportune time to stop using the 33-line edition, and by giving a new Science and Health to anyone who complains, the possibility of working a hardship on anyone would be eliminated.

"An early reply, giving your views on this subject, will be appreciated.

"Very sincerely yours.

"Board of Trustees,

(Signed)

"HERBERT W. EUSTACE.

"Secretary."

[Letter, Board of Trustees to Board of Directors, June 28, 1917, is marked Exhibit 509.]

Mr. Whipple—That is the proposal and letter referred to in the record which you have just read?

Mr. Krauthoff—In the record, yes. And you have one that we are asking for about the reconstruction of the Bible Lesson Committee.

Mr. Whipple—Haven't you a copy of it?

Mr. Krauthoff—We do not locate the original; we were asking for your carbon.

Mr. Whipple—Well, haven't you a copy of it? I mean, one that you feel is reliable?

Mr. Krauthoff—We will look further for that.

Q. With respect to this correspondence referring to the 33-line edition of Science and Health, at one time there was an edition of Science and Health printed 33 lines on a page? A. Yes.

Q. And it now has 32? A. They all have 32, and the directors decided to authorize that change to be made.

Mr. Whipple—I move that be stricken out, if Your Honor please, as neither responsive nor proper. The record shows—

The Master—Strike it out if it is objected to.

Q. The 33-line Science and Health could only be used by having a key-word to relate the Quarterly to the 33-line edition? A. That was it, yes.

Mr. Krauthoff—We haven't any copy of that letter, Mr. Whipple, about the reconstruction of the Bible Lesson Committee. If you can give us your carbon we will appreciate it very much.

Mr. Whipple—We will continue to search.

Mr. Krauthoff—Thank you. July 10, 1917:

"The corresponding secretary was instructed to advise Mr. Frederick Dixon, editor of The Christian Science Monitor, to continue for the present his policy of handling items regarding the Red Cross Society according to their news value."

[That portion of record of meeting of Board of Directors, July 10, 1917,

as read by Mr. Krauthoff, is offered in evidence as Exhibit 510.]

Q. Is the matter of the relation of The Mother Church to the Red Cross Society one of the considerations which affect the cause of Christian Science as a whole, Mr. Dickey? A. It is.

Mr. Krauthoff—The record of the directors, July 18, 1917, showed the passing of Mr. McLellan on the morning of that day, and also the following:

"The board held an informal conference with Messrs. Herbert W. Eustace and Edward A. Merritt of the Board of Trustees of The Christian Science Publishing Society."

[That portion of record of meeting of the Board of Directors, July 18, 1917, as read by Mr. Krauthoff, is offered in evidence as Exhibit 511.]

Q. At that time, Mr. Dickey, Mr. McKenzie and Mr. Eustace and Mr. Merritt were the trustees of The Christian Science Publishing Society? A. They were.

Q. And as a result of action taken at that time, Mr. Merritt became a member of the Board of Directors? A. He did.

Q. And Mr. McKenzie an editor of the Christian Science periodicals? A. The editor.

Q. The editor, exclusive of the Monitor? A. Yes.

Q. And Mr. McKenzie resigned as a trustee? A. He did.

Q. And Mr. Merritt resigned as a trustee? A. He did.

Q. And then Mr. Ogden, who had been the business manager, became a trustee? A. Yes.

Q. And Mr. Rowlands became a trustee? A. That is right.

Q. How were these changes worked out as between the directors and the trustees?

Mr. Whipple—Just a moment. We have the records and we have had them repeatedly in regard to that.

Mr. Krauthoff—The records show conferences, if Your Honor please, but they do not show what happened at the conferences.

The Master—Then ask him what happened at the conferences.

Q. What happened at the conferences between the directors and the trustees as respecting these changes which I have indicated?

Mr. Whipple—Pause a moment. Which conferences? If we are to meet any testimony in regard to that we want to know what conference you refer to.

Mr. Krauthoff—Well, I will read them off. I first refer to conference of Wednesday, July 18, 1917:

"The board held an informal conference with Messrs. Herbert W. Eustace and Edward A. Merritt of the Board of Trustees of The Christian Science Publishing Society."

[That portion of record of a meeting of Board of Directors, July 18, 1917, as read by Mr. Krauthoff, is offered in evidence as Exhibit 512.]

Mr. Krauthoff—Then on Thursday, July 19, 1917:

"The Board held a brief conference with Mr. Herbert W. Eustace of the Board of Trustees of The Christian Science Publishing Society."

[That portion of the record of meeting of the Board of Directors, July 19, 1917, as read by Mr. Krauthoff, is offered in evidence as Exhibit 513.]

Mr. Whipple—Now, why don't you ask him what happened at either one or both of those conferences?

Mr. Krauthoff—You wanted to know these conferences, and I am now telling you. On July 23, 1917—

Mr. Whipple—Pause a moment.

The Master—I think you will have to take them one by one if that is insisted on.

Mr. Whipple—How can we contradict them or meet them?

Q. Now, in respect to these conferences to which your attention has been called, are you able now to state just what happened at any particular one of them, Mr. Dickey? A. Yes.

Q. And what happened at the first conference that you had with Mr. Eustace and Mr. Merritt on July 18, 1917—the date of Mr. McLellan's passing? A. We explained to them—

Q. Not "we explained to them," but tell us what was said.

Mr. Whipple—What date is this?

Mr. Krauthoff—July 18, 1917, the date of Mr. McLellan's passing.

Q. You may continue, Mr. Dickey. A. I am just trying to recall who was the chairman of the board at that time.

Q. The records show that Mr. Dittmore was presiding. A. Yes.

Q. He was the chairman in the year 1917? A. Yes. The chairman explained to Mr. Eustace and Mr. Merritt that it would be necessary to elect a new editor, and he talked of the consideration of the board—or, he talked of the point the board had under consideration of making Mr. McKenzie the editor of the Christian Science periodicals.

Q. Now, was any other subject mentioned at that conference? A. There was.

Q. What further was said? A. It was originally talked of to make Mr. Ogden one of the trustees instead of the position of business manager, which he was occupying.

Q. Who first mentioned that in that conference? A. I do not recall. I think it was the chairman, however.

Q. Was it a member of the Board of Directors or Mr. Eustace? A. A member of the Board of Directors.

Q. And what did Mr. Eustace say to the proposition that Mr. Ogden should become a trustee? A. Well, substantially he said that that would be agreeable to him.

Q. Was anything said at that meeting about making Mr. Merritt a director? A. I think not at that meeting.

Q. Not at that meeting? A. No.

Q. Was anything else said at that meeting of which you know—I mean,

of which you can now speak? A. I do not recall anything further.

Mr. Krauthoff—The record next shows on Thursday, July 19, 1917:

"The board held a brief conference with Mr. Herbert W. Eustace of the Board of Trustees of The Christian Science Publishing Society."

[That portion of record of meeting of the Board of Directors, July 19, 1917, as read by Mr. Krauthoff, is offered in evidence as Exhibit 514.]

Q. When did Mr. Rowlands come to Boston, if you know? A. The date is recorded, I believe, but I just can't remember it now.

Q. But referring to this conference of the next day, Thursday, July 19, 1917—what further details were taken up at that time with Mr. Eustace, and how, and in what manner? A. The chairman talked to him at that time of making Mr. Merritt one of the Board of Directors, which would necessitate the appointment of a new trustee.

Mr. Whipple—That is, talked with Mr. Eustace about it?

The Witness—Yes.

Q. And what did Mr. Eustace say about that? A. Mr. Eustace expressed his willingness to let the board make those recommendations, and he agreed to accept them.

Mr. Whipple—That is, that Mr. Merritt should become one of the directors? He approved of that?

The Witness—Yes.

Q. What did Mr. Eustace say about Mr. Merritt retiring from the Board of Trustees? In other words, did you ask Mr. Eustace' consent to elect Mr. Merritt a director—

Mr. Whipple—I pray Your Honor's judgment. He has said—

The Master—Well, Mr. Krauthoff, let us get what was said first, before you refresh his recollection.

Mr. Whipple—He has already said they were put up to Mr. Eustace and Mr. Eustace approved it.

Mr. Krauthoff—Of course, if Your Honor please, that is really—

Mr. Whipple—I am not claiming it was an interference with the Board of Directors.

Mr. Krauthoff—I have listened to a great many things Mr. Whipple has said in this case, but when he begins to say that this Board of Directors asked Mr. Eustace whether Mr. Merritt should become a director—

Mr. Whipple—I did not say it; your witness said it. Now you are trying to extricate him.

The Witness—What I meant to convey was that he would be willing to part with Mr. Merritt in his department in order that he might serve on the Board of Directors.

Mr. Krauthoff—I will call your attention to the complete record on that subject.

"Thursday, July 19, 1917. At a special meeting of The Christian Science Board of Directors held at 10 a. m., on above date, in the directors' room of The Mother Church, there were

present Messrs. Stewart, Dittmore, Dickey, and Neal.

"Because of the importance of pending matters requiring the attention of a full board, it was upon motion of Mr. Stewart, seconded by Mr. Dickey, voted that Mr. Edward A. Merritt of Brookline, Massachusetts, be elected a director of The Mother Church to fill the vacancy on this board caused by the passing away of Mr. McLellan. Carried unanimously.

"Mr. Merritt thereupon entered the meeting and took his seat as a director.

"Mr. William D. McCrackan met with the board at the latter's request for a conference relative to the editorial work.

"At 1:50 p. m. a recess was taken until 2:15 p. m.

"The board held a brief conference with Mr. Herbert W. Eustace of the Board of Trustees of The Christian Science Publishing Society, and at 4:05 p. m.—The meeting adjourned."

[That portion of record of meeting of the Board of Directors, July 19, 1917, as read by Mr. Krauthoff, is offered in evidence as Exhibit 515.]

Q. Now, what happened after this conference you had with Mr. Eustace in the afternoon of the day on which Mr. Merritt had been elected a member of the Board of Directors? A. The chairman told him what the board had done and spoke to him with regard to a successor to Mr. Merritt.

Q. As what? A. As trustee.

Q. Were any names discussed at that conference to succeed Mr. Merritt? A. Mr. Rowlands' name, I believe, was.

Q. Who first mentioned the name of Mr. Rowlands? A. The chairman, I think.

Q. The chairman? A. The chairman of the Board of Directors.

Q. And what did Mr. Eustace say with respect to that? A. He expressed his approval of the appointment.

Mr. Whipple—Of the appointment?

The Master—That is what I understood the witness to say. Q. What did he say?

Mr. Whipple—I do not see how it could be an appointment.

The Witness—Perhaps I had better withdraw the word "appointment." We made no appointment; but of the change—the proposed change.

Mr. Krauthoff—Monday, July 23, 1917:

"The Board had a brief conference with Mr. Frederick Dixon, editor of The Christian Science Monitor.

"Upon motion of Mr. Merritt, seconded by Mr. Dickey, it was voted to appoint William P. McKenzie editor of The Christian Science Journal, Christian Science Sentinel and Der Herold Der Christian Science. Mr. Stewart's vote being taken by telephone, the vote was unanimous.

"The board took a recess of 25 minutes, after which a conference was held with the trustees of The Christian

Science Publishing Society and the business manager.

"At 4 p. m. the meeting adjourned."

[That portion of record of meeting of Board of Directors, July 23, 1917, as read by Mr. Krauthoff, is offered in evidence as Exhibit 516.]

Q. What was discussed at that conference, Mr. Dickey? Did the question arise as to who was to be the new business manager? A. We talked of that before we invited the trustees over.

Mr. Krauthoff—Then the next record is Tuesday, July 24, 1917:

"The board held conferences with Mr. David B. Ogden, and Mr. John R. Watts, of The Christian Science Publishing Society.

"A letter from Mr. David B. Ogden, dated July 24, 1917, tendering his resignation as Business Manager of The Christian Science Publishing Society, effective Aug. 1, 1917, because of his election to the Board of Trustees of The Christian Science Publishing Society, was read, and upon motion of Mr. Dickey, seconded by Mr. Merritt, the resignation was accepted.

"Upon motion of Mr. Merritt, seconded by Mr. Neal, it was voted to appoint Mr. John R. Watts, Business Manager of The Christian Science Publishing Society, effective August 1, 1917. The vote of Mr. Stewart was taken by telephone and the motion was carried unanimously."

[That portion of record of meeting of Board of Directors, dated July 24, 1917, as read by Mr. Krauthoff, is offered in evidence as Exhibit 517.]

Mr. Krauthoff—Wednesday, July 25, 1917: "On motion of Mr. Merritt, seconded by Mr. Dickey, it was voted to request The Christian Science Publishing Society to submit eight copies each of all metaphysical editorials intended for The Journal and Sentinel and of the metaphysical articles for the Home Forum page of The Monitor, to the corresponding secretary at least 48 hours before going to press.

"At 1:10 p. m. a recess was taken until 2 p. m.

"The board held a conference with Messrs. Herbert W. Eustace, Frederick Dixon, David B. Ogden and John R. Watts of The Christian Science Publishing Society.

"At 2:45 p. m. the meeting adjourned."

[That portion of record of meeting of Board of Directors, July 25, 1917, as read by Mr. Krauthoff, is offered in evidence as Exhibit 518.]

Q. With respect to this request to submit eight copies each of all metaphysical editorials, please state the reason for making that?

Mr. Whipple—That I object to, if Your Honor please. Any undisclosed reasons they may have are not material as affecting the issue.

Mr. Krauthoff—If Your Honor please, the Board of Directors did not have to disclose its reasons to the Trustees of the Publishing Society, but the claim is made that these di-

rectors have been seeking to aggrandize their authority, and to extend into fields which theretofore they had not explored. Now, this is a new request made by them, and they have the right as relieving themselves against any charge of that kind, to show why they made this request.

Mr. Whipple—What we referred to in the bill, if Your Honor please, as making a lot of demands, and so forth, refers more particularly to those things that were done in pursuance of the advice of Governor Bates and Judge Smith, recorded in their minutes, in which they intimated they might lay some foundation for a case against the trustees by asking them a lot of things and urging them to do a lot of things. We suspected then that they were made merely as the foundation of some case they wanted to get up, and not bona fide demands for any real information. And therefore the bill alleged that they had been making a lot of inquiries of that sort, and we questioned whether they were done for any useful or proper purpose. What you say is that the directors were not bound to disclose their reasons for making the demands. If they did not want to do it then they need not do it now. If they wanted to make their demands and the reasons for them known, so that they would be evidence, they should have made them known. And their undisclosed reasons, since they desired to conceal them at that time, are of no importance in the case, I submit, if Your Honor please.

Mr. Krauthoff—Well, Mr. Whipple having stated that this was not one of the things of which they complained, I shall not ask any more questions about it.

Q. Were those articles furnished from time to time? A. They were.

Q. And are they now being furnished? A. They are not, since this suit has been filed.

Q. Have you withdrawn that request in any way? A. No.

Q. Have you been advised of any reason for the discontinuance of these articles? A. No.

Q. These articles reached you 48 hours before the periodicals went to press? A. Yes.

Q. And unless you made some comment with respect to them they were automatically released, as that term is known in the publishing world? A. Yes.

Q. One other question. These articles coming to you in advance, did that give you an opportunity to call attention to anything that was wrong in them before it appeared in the literature of the movement? A. It did.

Q. In the periodicals of the Church? A. Yes.

Q. (Reading:)

"Friday, July 27, 1917.

"On motion of Mr. Merritt, seconded by Mr. Neal, it was unanimously voted to authorize an increase in the salaries of the trustees of The Christian

Science Publishing Society to \$6000 per annum each, beginning August 1, 1917."

At that time did any question arise as to who were the directors of The Mother Church? A. No.

Q. Or whether you were officers of The Mother Church? A. Not at all.

Q. Or whether you were acting under the Manual or the Deed of Trust? A. No question of that kind arose.

Q. Or any question of your irreconcilable positions? A. No, that was not brought up at that time.

Q. The salaries have continued at that rate up until this date? A. Yes; that is the present salary.

Q. (Reading:)

"Tuesday, July 31, 1917.

"The Corresponding Secretary was instructed to arrange for The Christian Science Publishing Society for delivery to the Board offices as soon as printed five advance copies each of the Sentinel and Journal, and one copy of the International edition of the Monitor, also five copies of the International edition of the Monitor to the respective offices of the directors."

How far ahead of the date of publication, as appears on the periodical itself, does the Sentinel appear? A. From eight to twelve days, I should say.

Q. And the Journal? A. The Journal about the same; perhaps a little longer time on the Journal.

Q. And under this resolution you were delivered these as soon as they were printed? A. Yes, sir.

Q. Ahead of the publication date? A. Yes.

Q. Are these periodicals now reaching you? A. They are not.

Q. When did they cease reaching you? A. Some time after the filing of this suit.

Q. Any explanation as to the cessation of that service? A. No explanation.

Q. Was that service of value to you in the work you were doing? A. We thought it was.

[An extract from the directors' records, Aug. 7, 1917, is read by Mr. Krauthoff, as follows:]

"Tuesday, Aug. 7, 1917.

"The board had an interview with Messrs. Eustace and Ogden, of the Board of Trustees of The Christian Science Publishing Society, regarding proposed changes and improvements in some of the Christian Science periodicals.

"Wednesday, Aug. 15, 1917.

"The board had an interview with Messrs. Eustace and Ogden, trustees of The Christian Science Publishing Society, about advertising the Monitor in the Christian Science Sentinel, Christian Science Journal and other publications."

Q. Up to that time, Mr. Dickey, had there been any advertisements of The Monitor in these other periodicals? I

mean any general advertisement of it?  
A. There had not.

Q. (Reading:)

"Thursday, Aug. 16, 1917.

"On motion of Mr. Merritt, seconded by Mr. Dickey, it was voted to request the editor of the Christian Science Sentinel to publish frequently in the columns captioned 'Selected Articles,' metaphysical articles from the Home Forum page of The Christian Science Monitor without the name of the author, said selections to be submitted to The Christian Science Board of Directors in like manner as metaphysical editorials for the Journal, Sentinel and Monitor are now being submitted."

Were those articles published from time to time as here requested? A. They were.

Q. And at one time were they submitted to the directors? A. They were.

Q. Are they now being submitted to the directors? A. They are not.

Q. Any explanation for the cessation of the service, that you know of? A. No; no explanation.

Q. On the same date:

"The board approved an editorial by Mr. William D. McCrackan, entitled 'Work and Pray' for the Christian Science Sentinel of Aug. 25."

"Aug. 20, 1917.

"On motion of Mr. Merritt, seconded by Mr. Neal, it was voted to publish an article entitled 'Principle and Practice,' by Mrs. Eddy, with a brief foreword on the editorial page of the Christian Science Sentinel of Sept. 1, 1917."

That appeared, did it, Mr. Dickey? A. It did.

Q. (Reading:)

"Aug. 21, 1917.

"The board held a conference with the trustees of The Christian Science Publishing Society and Mr. Harry E. Lesan of New York City in regard to presenting the facts connected with The Christian Science Monitor to other publications."

Up to that time had The Christian Science Monitor been advertised in other publications? A. It had not.

Q. And this related to advertising The Monitor in publications other than those of the Christian Science Church? A. Yes.

Q. Periodicals of general circulation? A. Yes.

Q. Was such a campaign of advertising worked out? A. It was.

Q. And was it done in conference between the directors and the trustees? A. Yes.

Q. Did the Trustees under the Will of Mary Baker Eddy pay for part of that expense? A. They did.

Q. And the five then directors were five of those trustees? A. They were; but that was considered separately by the Trustees under the Will.

[Extracts from the directors' records of Aug. 27 and Aug. 29, 1917, are read by Mr. Krauthoff, as follows:]

"Interviews were held with:

"Mr. Frederick Dixon, editor of The Christian Science Monitor.

"Trustee David B. Ogden of The Christian Science Publishing Society, after which the board released the Christian Science Sentinel for Sept. 1, 1917.

"Associate Editor William B. McCrackan who was granted leave of absence until Oct. 1, his only responsibility in the meantime being his weekly and monthly editorials for the Sentinel and Journal respectively."

"Aug. 29, 1917.

"The board had an interview with the trustees of The Christian Science Publishing Society with reference to cards in The Christian Science Journal from practitioners and branch churches and societies."

Q. Did you ever have any conferences as here related with the trustees on that subject? A. Yes, we did.

Q. And did you take up at those conferences the nature of the questions that they were asking applicants for cards as practitioners? A. We did.

Q. Did you make any objections to the questions? A. Yes; we at various times made objections, and corrections were made on our recommendation.

Q. The same record shows:

"On motion of Mr. Merritt, seconded by Mr. Dickey, it was voted to tell the trustees of the Publishing Society that the board thinks it would be a good thing to put the Postmaster General's notice about mailing magazines to the front, on the front page of all the Sentinels and Journals."

Did that relate to the privilege that the Post Office Department extended of putting a 1-cent stamp on periodicals and putting them in the mails, and thus sending them to soldiers? A. It did.

Q. And was that notice thereafter put— A. Yes.

Q. —on the Christian Science periodicals? A. It was.

[Extracts from the directors' records of Aug. 31, and Sept. 4, 1917, are read by Mr. Krauthoff, as follows:]

"Aug. 31, 1917.

"After thirty minutes spent in considering editorials for the Sentinel of Sept. 8, a conference was held with Editor William P. McKenzie and the meeting adjourned."

"Sept. 4, 1917.

"On motion of Mr. Merritt, seconded by Mr. Dickey, it was voted to publish in the Sentinel for Sept. 15 over the signature of The Christian Science Board of Directors the article entitled 'The Near Future.'"

Q. Was that article published in the Sentinel, Mr. Dickey? A. It was.

Q. Any question arise about the publication of it? A. None whatever.

[An extract from the directors' records of Sept. 10, 1917, is read by Mr. Krauthoff, as follows:]

"Sept. 10, 1917.

"A letter was dictated to Associate Editor, Mrs. Annie M. Knott, requesting her to substitute another editorial for the one entitled 'Names and Their Significance,' prepared by her for the October Journal.

"The board had an interview with the business manager, John R. Watts, of The Christian Science Publishing Society regarding the proposed advertisements of The Christian Science Monitor on the cover pages of the Journal."

Q. Is Mr. Watts conferring with the board now about advertisements? A. Not now.

Q. With respect to this letter to Mrs. Knott, she did prepare the other editorial? A. Yes; Mrs. Knott prepared another editorial.

Q. And was very gracious about it, I believe? A. She was.

[Extracts from the directors' records of Sept. 11 and Sept. 14, 1917, are read by Mr. Krauthoff, as follows:]

"Sept. 11, 1917.

"Editorials for the October, 1917, Journal were considered and approved."

"Friday, Sept. 14, 1917.

"Letters were read from the following:

"Trustees of The Christian Science Publishing Society, dated Sept. 6, advising that after interviews with Mr. A. B. Ritchie of Kansas City and Mr. H. E. Lesan of New York City, it was decided that the time was not opportune for the establishment of a department of the Publishing Society to sell railroad and steamship tickets."

Q. How did that question arise, Mr. Dickey, and what was it? A. At one time The Monitor had a very successful advertising department known as the Hotel and Travel Department, and in connection therewith the Publishing Society undertook to direct people in their lines of travel, in selecting routes and selecting hotels, and in that way quite a large advertising business came to the newspaper. After their abandonment of that the advertising shrank considerably, and we suggested the advisability of reestablishing that department.

Q. And the matter was taken up between the directors and the trustees? A. It was.

Q. And it did not result in any definite action? A. No definite action.

[Extracts from the directors' records of Sept. 18 and Sept. 26, 1917, are read by Mr. Krauthoff, as follows:]

"Sept. 18, 1917.

"The board had an interview with Business Manager John R. Watts of The Christian Science Publishing Society, about advertising The Christian Science Monitor in the Journal and Sentinel."

"Sept. 26, 1917.

"The board had an interview with trustees Eustace and Rowlands of The

Christian Science Publishing Society, regarding the magazine in the French language which they are to publish, beginning Jan. 1, 1918."

Q. The French Herald, Le Héraut de Christian Science, appeared in January, 1918? A. I believe it did.

Q. And the details of the appearance of that magazine, in advance thereof, were taken up between the directors and the trustees? A. Yes, sir.

Mr. Thompson—Have you any entry under Sept. 24?

Mr. Krauthoff—Of what nature?

Mr. Thompson—A meeting of the Board of Directors.

Mr. Krauthoff—Yes. September 24?

Mr. Thompson—Yes.

Mr. Krauthoff—No; they met on September 1 and September 25, but not on September 24.

Mr. Thompson—Well, that was the day they went to Washington, wasn't it?

Mr. Krauthoff—I see no record of any trip to Washington or any reference to it.

Q. (Reading):

"October 2, 1917.

"The editorial department was requested to publish the notice 'Distribution of Literature in The Christian Science Journal for November, 1917.'"

That notice appeared, Mr. Dickey? A. Yes.

Q. (Reading):

"October 15, 1917.

"The Board had an interview with Mr. H. E. Lesan, of New York City, about advertising, and the Board sanctioned Mr. Lesan's proposal to advertise The Christian Science Monitor in the leading magazines for a period of six months when he is authorized to do so by The Christian Science Publishing Society."

Q. Now, that was a problem of advertising The Monitor in the periodicals generally, just as you have mentioned a moment ago? A. Yes.

Q. And the Publishing Society took that up with the directors? A. They did.

Q. And the directors acted upon it in the way I have read? A. Yes; they recommended it.

Mr. Krauthoff—Here, and at other parts of the record. On the same date, Oct. 15, 1917:

"An interview was held with Trustees Ogden and Rowlands of The Christian Science Publishing Society, who reported progress with the new French magazine."

October 19, 1917:

"Periodical advertisement, 'Can Truth Grow Old,' for the Sentinel for Oct. 27, and statement from the Board of Directors, captioned 'Footsteps of Progress' for the editorial page of the Sentinel for Oct. 27, were read, edited and approved."

Q. That was done? Those were published, Mr. Dickey? A. They were.

Q. In the periodicals? A. That is right.

Mr. Krauthoff—Oct. 29, 1917:

"On motion of Mr. Merritt, seconded by Mr. Stewart, it was voted to instruct the editorial department of The Christian Science Publishing Society to accept articles for publication in the periodicals, excepting The Monitor, from members of The Mother Church only."

In connection with that record of the directors I read from the April, 1919, number of The Christian Science Journal:

"Available articles from members of The Mother Church and good testimonies from those healed by Christian Science are always welcome for consideration by the editors."

November 2, 1917:

"Notice captioned 'Comforts for Army and Navy' for the editorial column of the Christian Science Sentinel of Nov. 10, was approved."

Q. That notice was printed as approved? A. Yes.

Q. (Reading):

"Nov. 5, 1917.

"On motion of Mr. Neal, seconded by Mr. Stewart, it was voted to publish in the Sentinel of Nov. 24, the poem entitled 'Our National Thanksgiving Hymn,' by Mary Baker Eddy."

And that appeared, did it, Mr. Dickey? A. That appeared.

[Extracts from directors' records of Nov. 7 and Nov. 16, 1917, are read by Mr. Krauthoff, as follows:]

"Nov. 7, 1917.

"The Sentinel cover advertisement, 'What is Profit Sharing' was approved and released."

"Friday, Nov. 16, 1917.

"Mr. Frederick Dixon, editor of The Christian Science Monitor, was called in for a conference with a view to giving publicity to the Y. M. C. A. campaign to raise funds for War Camp Activities. While Mr. Dixon was present, Mr. Fred M. Lamson, and a delegation representing the Y. M. C. A., consisting of Mr. F. W. Stearns, Mr. Albert H. Curtis, and Mr. George W. Mehaffey, called on the board and a general discussion ensued, involving the attitude of the Y. M. C. A. toward the Christian Science movement. After the gentlemen retired from the meeting, it was voted to ask Mr. Dixon to go to New York for an interview with Mr. John R. Mott, general secretary of the War Work Council of the Y. M. C. A."

Q. In asking Mr. Dixon to go to New York, as you then did, did you in any way consult the trustees, or did the question in any way arise? A. We did consult them.

Mr. Whipple—I object to that. It does not seem to me it is of any consequence whether he did or not.

Mr. Krauthoff—If Your Honor please, Mr. Whipple claims that Mr. Dixon was in their employ, and subject only to their order at that date.

Mr. Whipple—I think that the chief editor of a great newspaper has the right, a recognized right, to use his time judiciously as he sees fit in great public undertakings. He was subject to no such restriction as that, that he could not go out of town without asking permission.

The Master—I think I shall let the question be answered for what it is worth.

Mr. Krauthoff—Monday—

The Witness—What is the question, please?

Q. Did you consult with the trustees about Mr. Dixon's going to New York? A. No, we did not.

Mr. Krauthoff (reading)

"Monday, Nov. 19, 1917.

"The board had an interview with Editor Frederick Dixon of The Christian Science Monitor, about his interview in New York City with John R. Mott, general secretary of the Y. M. C. A. War Work Council."

[The record of the meeting of the directors of Nov. 19, 1917, from which the foregoing extract is read, is Exhibit 519. R. J. M.]

Mr. Krauthoff (reading)—

"December 7, 1917.

"... Trustees Eustace, Ogden, and Rowlands, of The Christian Science Publishing Society, called for a conference with regard to advertising."

[The record of the meeting of the Board of Directors of Dec. 7, 1917, from which the foregoing extract is read, is Exhibit 520. R. J. M.]

"Wednesday, Dec. 19, 1917.

"... The board had interviews with the following:

"Trustees of The Christian Science Publishing Society about advertisements in The Christian Science Journal; about the proposed pamphlet concerning The Monitor; and the communication from the Christian Science organizations in Germany, about changing the title of Der Herold, of church, and the German equivalent of 'Christian Science.'"

[The record of the meeting of the Board of Directors of Dec. 19, 1917, from which the foregoing extract is read, is Exhibit 521. R. J. M.]

Mr. Thompson—Is that all you have on Dec. 19 about that discussion of the German Christian Science publication?

Mr. Krauthoff—Yes; over the signature of John V. Dittmore, chairman. That is all I found.

Mr. Thompson—Who was the secretary?

Mr. Krauthoff—James A. Neal.

Mr. Thompson—Yes.

Mr. Krauthoff—It seems to have been approved on Dec. 21, 1917, at a meeting at which Mr. Dittmore was present.

Mr. Thompson—Does it appear when those minutes were approved?

Mr. Krauthoff—Dec. 21, 1917. (Reading:)



"Friday, December 28, 1917.

"Proposed article for the Sentinel on joint distribution of literature was read, edited, and ordered set in type."

[The record of the meeting of the Board of Directors of Dec. 28, 1917, from which the foregoing extract is read, is Exhibit 521 A. R. J. M.]

Q. Mr. Dickey, this "joint distribution of literature" referred to the joint action of branch churches in the same community with respect to literature? A. I believe so, although I do not just recall the circumstances in connection with that.

Q. And the distribution of literature purchased from the Publishing Society is a church activity and in the hands of the churches? A. Yes, sir.

Q. That notice appeared? A. In all periodicals; I believe it did.

Mr. Krauthoff (reading)—

"Wednesday, January 2, 1918.

"Letters were read from the following:

"The Christian Science Publishing Society, dated December 24th, inclosing a letter indicating that magazines mailed without address under the Postmaster General's permit were not being properly distributed. To be referred to Camp Welfare Committee."

[The record of the meeting of the Board of Directors of Jan. 2, 1918, from which the foregoing extract is read, is Exhibit 522, R. J. M.]

Q. That was the privilege that the government gave of putting a one-cent stamp on the periodicals? A. Yes.

Q. And these periodicals were gathering in the mail and not being distributed? A. That was the report to us and we investigated.

Q. And that question was referred to you by the Publishing Society? A. It was.

Mr. Krauthoff (reading)—

"Wednesday, January 9, 1918.

"The Board had an interview with Trustees Eustace, Ogden and Rowlands of The Christian Science Publishing Society, who felt that it would not be best to publish a miniature Quarterly for the soldiers, to fit the vest pocket edition of Science and Health, and to contain the Bible references in full, together with the citations from Science and Health."

[The record of the meeting of the Board of Directors of January 9, 1918, from which the foregoing extract is read, is Exhibit 523, R. J. M.]

Q. That question of the Quarterly came up later, did it not? A. Yes. We recommended that the Quarterly be published at that time, at that first interview, and it was not done, and it came up again and was finally published.

Q. It was finally published? A. Yes.

Mr. Krauthoff (reading)—

"Friday, January 11, 1918.

"A list of hymns from the Christian Science Hymnal, was submitted by The Christian Science Publishing Society for publication in a small Hymnal for soldiers' use. The list was approved with recommendation of slight changes."

[The record of the meeting of the Board of Directors of Jan. 11, 1918, from which the foregoing extract is read, is Exhibit 524, R. J. M.]

The Witness—That is correct.

Q. That Hymnal came out? A. Yes.

Mr. Krauthoff (reading)—

"Wednesday, January 16, 1918.

"The Board had an interview with Editor Frederick Dixon of The Christian Science Monitor regarding the position to be taken by the Monitor relative to Government ownership of railroads."

[The record of the meeting of the Board of Directors of January 16, 1918, from which the foregoing extract is read, is Exhibit 525, R. J. M.]

"Friday, Jan. 18, 1918.

"On motion of Mr. Dickey, seconded by Mr. Neal, it was voted unanimously to publish the sermon on 'Life' by Mary Baker Eddy in the Christian Science Sentinel for Feb. 2, 1918, with the revised foreword to be signed by the editor."

[The record of the meeting of the Board of Directors of Jan. 18, 1918, from which the foregoing extract is read, is Exhibit 526, R. J. M.]

Q. That sermon appeared as here voted? A. Yes, it did.

Mr. Krauthoff (reading)—

"Thursday, Jan. 24, 1918.

"The board had an interview with Editor Frederick Dixon of The Christian Science Monitor, about Y. M. C. A. work in Boston. The board requested him to encourage the drive now being made for \$100,000.00."

[The record of the meeting of the Board of Directors of Jan. 24, 1918, from which the foregoing extract is read, is Exhibit 527, R. J. M.]

Mr. Thompson—Do you find anything else in those records about the trustees, Jan. 24, 1918, and about an objection to having struck out of the minutes of the meeting of Jan. 21 certain matter relating to the trustees?

Mr. Krauthoff—I find nothing in the meeting of Jan. 24, 1918, of the character indicated, and the minutes are approved by J. V. Dittmore, chairman, and James A. Neal, secretary.

Mr. Thompson—I guess not; I guess you will have to withdraw that statement later.

Mr. Krauthoff—I beg pardon?

Mr. Thompson—I think perhaps you had better not be too sure that the minutes were approved by J. V. Dittmore.

Mr. Krauthoff—I say that they are signed by J. V. Dittmore as chairman.

Mr. Thompson—A piece of paper signed by him.

Mr. Krauthoff—All I know is that it is in a book entitled "Minutes of The Christian Science Board of Directors," bearing the name, "J. V. Dittmore, Chairman."

Mr. Bates—If your client certifies to it, that is all there is to it.

Mr. Thompson—His signature is no doubt there.

Mr. Bates—Perhaps all your client's records are only scraps of paper.

Mr. Thompson—I do not believe you had better say too much about my client's records or your clients' records.

Mr. Bates—Don't go back on your client's records.

Mr. Thompson—I am not going back on them. I am going to make you show what the true records of your doings are later.

Mr. Bates—I think Your Honor has already stated that it was the privilege of Mr. Thompson to put in additional records when his time came, and that he should not interfere with our case by attempting to put them in now.

Mr. Thompson—When you undertake to make capital out of the signature of my client, on a piece of paper that you call a record, I think it is time for me to say something.

The Master—These conversations between counsel I hardly think can be considered a part of the proceedings, can they? They began in a tone of voice that was hardly audible to me and I supposed that it was a mere aside and that the stenographers would not take it down.

Mr. Thompson—I simply started by asking the gentleman whether he had read all of a certain record or whether he had on his records that he was then reading something relating to the trustees, which I supposed was what he was doing—

The Master—You got his answer.

Mr. Thompson—And he said he did not find it, and then the Governor talks about my client's having signed that record and tries to make some little capital about that fact.

The Master—Do you want all that on the record?

Mr. Bates—It is entirely immaterial to me, Your Honor. Mr. Thompson had stated to me that the record signed by his client was not a record, that it was only a piece of paper. I think that we have the right to call the Court's attention to that fact, because he has got that in the record.

Mr. Thompson—You are very sensitive about it. I have not made any statement. I said you have got my client's name on a piece of paper. You may draw what interpretation you

please from it. Later the truth will come out. I would like my question to Mr. Krauthoff and his answer stay on the record, and the rest may be stricken out.

The Master — That unquestionably can stay on the record.

Mr. Streeter—Governor and Mr. Thompson, I am sorry I went out. You made it very pleasant!

The Master—I think you had better go on, Mr. Krauthoff. Our time is drawing to a close.

Mr. Krauthoff—Thank you.

“January 26, 1918.

“The board had an interview with Editor Frederick Dixon of The Christian Science Monitor, who announced his intention of visiting Ottawa at once for a conference with and at the invitation of certain official representatives of the British Government.”

[The record of the meeting of the Board of Directors of Jan. 26, 1918, from which the foregoing extract is read, is Exhibit 528. R. J. M.]

“February 4, 1918.

“The board had an interview with Editor Frederick Dixon of The Christian Science Monitor, who reported the results of his trip to Canada.”

[The record of the meeting of the Board of Directors of Feb. 4, 1918, from which the foregoing extract is read, is Exhibit 529. R. J. M.]

Q. Are you advised generally of a trip that Mr. Dixon made to England lately? A. Yes.

Q. Did he visit the board before he went to England?

Mr. Whipple—Just a moment, if Your Honor please. I have not objected to this series of questions, as to whether there has been an alteration in the relation of these parties since the suit was brought. They are plainly not admissible, because things that have happened since the suit was brought, in their changed relations, are of no consequence whatever. They have been excluded repeatedly, and you would hardly expect, after what these directors have done or attempted to do, that the relations would remain the same as they were before.

Q. Did Mr. Dixon leave Boston before March 17, 1919, so far as you are advised? A. He did.

Q. And did he return before that time? A. He did.

Q. Was there any call made on the board before he went, or any report to the board after he came back? A. Nothing of an official nature.

Mr. Whipple—I do not want it to be implied that he had ever called upon them officially as representing the trustees. There is nothing in the record to show it.

Mr. Krauthoff—

“February 15, 1918.

“The board met the trustees of The

Christian Science Publishing Society at the latter's request for a conference, and it was agreed with the trustees to omit all practitioners' cards listed in the Journal except for the months of April, July, October, and January, commencing with May, 1918, and to charge \$5 per line per annum for such announcements; also to continue church and society notices monthly and to charge \$10 per line per annum therefor. These changes are necessary because of the increase in the circulation and the cost of production, which at present is causing a loss instead of a profit from the publication of practitioners' cards in the Journal.”

[The record of the meeting of the Board of Directors of Feb. 15, 1918, from which the foregoing extract is read, is Exhibit 530. R. J. M.]

Q. Prior to that meeting, Mr. Dickey, the practitioners' names had been appearing monthly in each issue of the Journal? A. Yes.

Q. And after that they appeared every three months? A. The trustees made a recommendation to drop the practitioners' cards out of the Journal entirely, and to print them in another form. The directors, however, made the suggestion that they appear every three months in the Journal itself, and be bound up with the Journal, which they thought was a good suggestion, and that was finally adopted.

Q. In that connection, did the question also arise that if the cards were not in the Journal as part of it, the mailing of them through the mails could not be done at the second-class rate of postage? A. I did not quite catch your question, Mr. Krauthoff.

Mr. Krauthoff (to the reporter)—Will you read it, please?

[The last question is read.]

A. Why, the cards became so numerous that we understood from the trustees—I understood there was a prohibitory rule of the United States Postal Department against the Journal going through the mail as second-class matter. In order to obviate that some change had to be made.

Mr. Krauthoff—

“Feb. 26, 1918.

“... The board considered the editorials prepared for the Sentinel by Editor William P. McKenzie and Associate Editor William D. McCrackan.”

[The record of the meeting of the Board of Directors of Feb. 26, 1918, from which the foregoing extract is read, is Exhibit 531. R. J. M.]

“March 4, 1918.

“... A telegram was read from the Camp Welfare Committee of New York, dated March 2, and a letter from Mr. C. C. Wolcott, the Camp Welfare worker at Camp Upton, Long Island, inclosing a letter from the division surgeon's office at Camp Upton, dated Feb. 27, regarding the exclusion of The Christian Science Monitor from Camp Upton because of its articles against vaccination and serum therapy.

“The board had an interview with Editor Frederick Dixon of The Christian Science Monitor, regarding the attitude toward and the course to be pursued by The Monitor with regard to vaccination and serum therapy in the army and navy.”

[Record of the meeting of the Board of Directors of March 4, 1918, from which the foregoing extract is read, is Exhibit 532. R. J. M.]

Q. Is that one of the things to which you refer as a matter affecting the cause of Christian Science as a whole? A. It is.

Q. That is the attitude of the Christian Science Church and of its periodicals toward the established law of the land as evidenced in its health laws and regulations? A. It is.

Mr. Krauthoff—March 25, 1918:

“Mr. Dittmore submitted a proposed notice to be published in the Christian Science Sentinel over the signature of The Christian Science Board of Directors, calling attention to the established rule governing the editorial and news columns of The Christian Science Monitor on the question of religion and politics. Laid over for further consideration on Tuesday.”

[That portion of record of meeting of the Board of Directors, March 25, 1918, as read by Mr. Krauthoff, is offered in evidence as Exhibit 533.]

Mr. Krauthoff—Tuesday, March 26:

“After further consideration the board approved for publication in the Sentinel for April 6, the statement captioned ‘Religion and Politics.’”

[That portion of record of meeting of Board of Directors, March 26, 1918, as read by Mr. Krauthoff, is offered in evidence as Exhibit 534.]

Mr. Thompson—May I ask whether you find anything under date of March 27 about the Publishing Society?

Mr. Krauthoff—We will come to that in just a moment.

In this connection, if Your Honor please, I offer in evidence this article, “Religion and Politics,” from the Christian Science Sentinel on April 6, 1918:

“In The Christian Science Monitor of March 23 there appeared a leading editorial with the above title, which was of much more than passing interest.

“Its value is not alone in the incident which called it forth, but also in its declaration of the established rule which governs the editorial and news columns of The Christian Science Monitor on the question of ‘religion and politics’—a question which is daily attracting the attention of increasing numbers of thoughtful men and women.

“This editorial, which we commend to the attention of every Christian Scientist, points out clearly that the religious teachings of a church are primarily the concern of that church alone, whereas the political dealings of a church are, in the very nature of things, common property. It also

points out that The Christian Science Monitor demands for, and extends to, every religion the toleration it claims for itself and has no conflict with any form of religious teaching. It does, however, maintain its right to record and analyze the signs of these times as they appear upon the political horizon, irrespective of whether these signs reveal the attempted manipulation of men and nations in the name of political parties, religious bodies, or individuals. To do less than this would be for The Monitor to fail to fulfill its responsibility to its Founder and to the world.

"In this period of universal conflict Christian Scientists need to understand clearly the issues upon which the world is being divided. They also need to stand fearlessly and understandingly on that side where only can be demonstrated 'Science and peace' (Science and Health, p. 96).  
"THE CHRISTIAN SCIENCE BOARD OF DIRECTORS."

[Article appearing on page 630 of Christian Science Sentinel for April 6, 1918, entitled "Religion and Politics," as read by Mr. Krauthoff, is offered in evidence as Exhibit 535.]

Q. Is the attitude of the Christian Science periodicals upon the subject mentioned—religion and politics—one of the things to which you referred when you spoke of everything affecting the cause of Christian Science as a whole? A. It most assuredly is.

Mr. Krauthoff—April 8, 1918:

"The directors had an interview with Trustees Eustace and Ogden, of The Christian Science Publishing Society, with regard to the practice of closing the Sentinel forms two weeks before the date of publication; with reference to arrangements with Mr. John B. Willis, formerly associate editor; and the space to be occupied by the Publishing Society of the building at 59-61 Norway Street."

[That portion of record of meeting of Board of Directors, April 8, 1918, as read by Mr. Krauthoff, is offered in evidence as Exhibit 536.]

Mr. Krauthoff—April 18, 1918:

"The directors had an interview with Mr. John R. Watts, business manager of The Christian Science Publishing Society, in connection with release dates for the Christian Science Sentinel and other features of the work of The Christian Science Publishing Society."

[That portion of record of meeting of Board of Directors, April 18, 1918, as read by Mr. Krauthoff, is offered in evidence as Exhibit 537.]

Mr. Krauthoff—May 13, 1918:

"The directors had an interview with the trustees of The Christian Science Publishing Society at their request."

[That portion of record of meeting of Board of Directors, May 13, 1918, as read by Mr. Krauthoff, is offered in evidence as Exhibit 538.]

Mr. Krauthoff—May 15, 1918:

"The directors had a conference

lasting two hours with the trustees of The Christian Science Publishing Society at their request, to consider the work of the Publishing Society."

[That portion of record of meeting of the Board of Directors, May 15, 1918, as read by Mr. Krauthoff, is offered in evidence as Exhibit 539.]

Mr. Krauthoff—May 16, 1918:

"On motion of Mr. Merritt, seconded by Mr. Neal, it was voted to instruct the corresponding secretary to write to the trustees of The Christian Science Publishing Society, calling their attention to paragraph E of Section 7 of a memorandum between the Board of Trustees of The Christian Science Publishing Society and the Christian Science Board of Directors, adopted as the result of conferences held during February, 1916."

[That portion of record of meeting of Board of Directors, May 16, 1918, as read by Mr. Krauthoff, is offered in evidence as Exhibit 540.]

Mr. Whipple—I take it that that recital, if Your Honor please, except so far as it was called to the attention of the trustees, cannot be accepted as any evidence of what is recited. It is a record of what was done by the directors. Where is the reply to this?

Mr. Krauthoff—We have no record of any reply to it. Paragraph E of Section 7 of that memorandum, if Your Honor please, reads as follows: "The salaries of all persons who are elected by the directors and employed by the trustees shall be fixed by mutual agreement."

[Paragraph E of Section 7 of memorandum of February, 1916, as read by Mr. Krauthoff, is offered in evidence as Exhibit 541.]

Mr. Krauthoff—May 21, 1918: "The corresponding secretary submitted and the board approved proposed letter to the Board of Trustees of The Christian Science Publishing Society relative to salaries."

[That portion of record of meeting of Board of Directors, May 21, 1918, as read by Mr. Krauthoff, is offered in evidence as Exhibit 542.]

Mr. Krauthoff—Mr. Whipple has that letter.

Mr. Whipple—We have the original of that letter with a memorandum on it (handing paper to Mr. Krauthoff).

Mr. Krauthoff—The letter of May 21, 1918, reads as follows:

"The Christian Science Board of Directors,

"Boston, Massachusetts,

"May 21, 1918.

"Board of Trustees,

"The Christian Science Publishing Society,

"Falmouth and St. Paul Streets,

"Boston, Massachusetts.

"Dear Friends:

"I am instructed by The Christian Science Board of Directors to express their appreciation of the satisfactory meeting they had with you last Monday, and which they feel has been mutually helpful in many ways.

"In connection with the various subjects discussed, there is one point which the directors would like to have you consider, and that is the matter of salaries of those who are appointed by the Board of Directors, but who render service to and are paid by The Christian Science Publishing Society. Section E of Paragraph 7 of a memorandum considered jointly by the directors and trustees in February, 1916, reads, 'The salaries of all persons who are elected by the directors and employed by the trustees shall be fixed by mutual agreement.' In view of this the directors would appreciate the courtesy of your consulting with them before making any changes in salaries in excess of \$5000 per annum.

"Will you kindly let the directors hear from you and oblige,

"Sincerely yours,

(Signed) "CHAS. E. JARVIS.

"Corresponding Secretary for The Christian Science Board of Directors." On that letter is the pencil indorsement:

"Meeting arranged with Secty for May 27, noon. See minutes May 27, 1918."

[Letter, Board of Directors to Board of Trustees, May 21, 1918, is marked Exhibit 543.]

Mr. Whipple—Now, if Your Honor please, may I call attention to what I said a moment ago with regard to this record, and what I desire to have excluded, because it was never brought to the attention of the trustees.

Mr. Krauthoff—Why, I am content to let that incident rest on the letter.

Mr. Whipple—Well, wait a minute. I am not—

Mr. Krauthoff—All right.

Mr. Whipple—Where is the record you read?

Mr. Krauthoff—I thought you wanted the record excluded.

Mr. Whipple—Well, I guess in that connection we had better show how you keep your records as compared with the letters that you write.

Mr. Krauthoff—Then we are content to leave the record in.

Mr. Whipple—I am perfectly willing the record should be in, but I want a ruling that it is not evidence of what it states. Where is it?

Mr. Krauthoff—Feb. 16, 1918.

Mr. Whipple—Here is the vote.

Mr. Krauthoff—Now, if Your Honor please, Mr. Whipple is asking that the record stay in, and it is in. He is now desirous of preventing my introduction of evidence by arguing that the record of the letter discloses that the record is inaccurate.

Mr. Whipple—I do not want to argue anything; I want to show you up a bit on your record.

The Master—Let Mr. Whipple state his point.

Mr. Krauthoff—Well, he has not objected to the exclusion of any evidence, and until there is objection made I am willing to let it go. He

says now he wants to keep it in, and he wants to keep it in for the purpose of arguing to Your Honor that our record is incorrect. This is not the time or the place to do that, and I respectfully object to his doing it.

Mr. Whipple—All I want to do is to have a ruling.

The Master—You ask me to rule something. I don't know what it is.

Mr. Krauthoff—He wants you to find at this time in the trial of the case that the record is not accurate.

The Master—Couldn't you let him state it?

Mr. Whipple—That is what I mean by saying that I want to show you up a bit. The part of the record of May 16 that was offered in evidence, and to which I made objection that it was not proof of what was stated therein is a fact unless it was made known to us, is as follows:

"On motion of Mr. Merritt, seconded by Mr. Neal, it was voted to instruct the corresponding secretary to write to the trustees of The Christian Science Publishing Society, calling their attention to paragraph E of Section 7 of a memorandum between the Board of Trustees of The Christian Science Publishing Society and The Christian Science Board of Directors, adopted as a result of conferences held during February, 1916."

Now, what we did not want to have accepted as showing was that part of it that it was adopted, unless they communicated to us that they regarded it as adopted. Now, in the letter which they sent on May 21, which they have offered as the letter sent in pursuance of that vote, they say this:

"Paragraph E of Section 7 of a Memorandum considered jointly by the directors and trustees in February, 1916," not stating or claiming that there was any adoption of the agreement, or any agreement entered into as the basis of it. They put in their records, which are not called to our attention, a suggestion that there was an agreement; in the letter they write to us they refer to it as a memorandum which was "considered jointly."

Mr. Krauthoff—Now, I respectfully submit, if Your Honor please, that Mr. Whipple has interrupted my introduction of evidence to argue the facts of this case, and I ask that that be stricken from the record.

The Master—No, I do not quite think that. The record is evidence of what took place at the meeting, it is evidence that the directors adopted the vote which you have read. It is no evidence to show that the letter to which they referred was adopted; that must be shown by other evidence, if at all. Must not that be so?

Mr. Krauthoff—If Your Honor please, I read from the record of May 21, 1918, the following:

"The corresponding secretary submitted and the board approved a proposed letter to the Trustees of The Christian Science Publishing Society relative to salaries."

And then I read the letter. Then Mr. Whipple made the point that the letter did not correspond with the entry of May 16, 1918. I then offered to take that out of the record. He then said he wanted to keep it in the record and suspended the trial of the case at a time when I was introducing evidence in order to argue the facts of it.

The Master—Oh, no. Only to call attention to the probative force of what you read. How far it was competent, and how far it was not competent to prove—

Mr. Krauthoff—If Your Honor please, I offered to wholly withdraw it. The Master—to prove a certain thing.

Mr. Krauthoff—I offered to wholly withdraw—

The Master—I cannot see why that is not proper. Why not?

Mr. Krauthoff—I offered to wholly withdraw it, and I do it now.

Mr. Whipple—No doubt of it. Of course you would like to withdraw it after what has appeared. But I cannot consent to that.

Mr. Krauthoff—But I do not think, if Your Honor please, that it is fair and proper in the trial of the case to take evidence which is in, to which no objection is made, and which counsel asks to be kept in the case, and interrupt my introduction of evidence in the middle of the trial of the case to make an argument.

The Master—It very often happens that a piece of evidence is competent for some purposes and not for others, and a part of it is incompetent for a given purpose. Why not earmark that as you go along?

Mr. Krauthoff—I am not talking about the competency of the evidence; I am talking about the courtesy of taking up the time of counsel who is introducing evidence in order to interject an argument on the facts.

[Adjourned to 10 a. m., Friday, July 18, 1919.]

July 18, 1919

Seventeenth Day

Supreme Judicial Court Room,  
Boston, Mass., July 18, 1919, 10 a. m.

Adam H. Dickey, Resumed

The Master—Are you all ready, Mr. Krauthoff? If everybody is ready we will go on.

Mr. Krauthoff—If Your Honor please, yesterday some evidence was offered from the record of the Board of Directors with respect to what is known as the Bill suit in England, and I have now the correspondence on that subject, and also a transcript of the suit itself. In form it is a suit by The Christian Science Publishing Society of Boston, Massachusetts, against Mrs. Bill, an institution in England calling itself The Christian Science Publishing Society, and that—

The Master—It is a suit, as I understand it, brought in the English courts?

Mr. Krauthoff—Yes; in the nature of a suit to restrain unfair competition. We spoke of it yesterday as a suit for the infringement of a copyright.

The Master—Now, how much of the record of that case are we obliged to have in the record here?

Mr. Krauthoff—My present information, if Your Honor please, is that, so far as we are concerned, we shall be obliged to have none of it. At first impression I thought that it was significant that the trustees of the Publishing Society were taking up with the Board of Directors the matter of bringing a suit in England in the name of the trustees. On further investigation I find that the situation in England not only involved the question of Mrs. Bill's conducting a publishing society under the name of The Christian Science Publishing Society, but she was also conducting a church under the name of The First Church of Christ, Scientist, of London, England, and calling it The Mother Church of London, England; so that it was a suit which affected both the Church and the Publishing Society, and no inference with respect to any issue in this case is to be drawn with respect to the case in England, so far as we are advised. In pursuance of my promise, I deliver all the documents to Mr. Whipple, for such use as he may see fit to make of them (passing documents to Mr. Whipple).

Mr. Whipple—Accepting that statement that the attempted proof in connection with it that the directors were discharging something that came within our claim of the duty of the trustees has failed, I do not know that these papers are particularly material, but we will look them over, and if there is anything that needs to be brought to the attention of the Court we will do so.

The Master—Do you want to arrange anything now about going on this afternoon or not?

Mr. Krauthoff—May I have the trustees' record of June 8, 1914, a moment, please?

[A record book is passed by Mr. Whipple to Mr. Krauthoff.]

Q. (By Mr. Krauthoff.) Mr. Dickey, you are familiar with the handwriting of Mr. Frederick Dixon—

Mr. Thompson—Just a moment, Mr. Krauthoff. The question has been raised by Governor Bates about adjourning, and I think that we ought to settle that first.

Mr. Krauthoff—I beg your pardon.

[Counsel confer.]

Mr. Whipple—So far as counsel for the trustees are concerned, we should hold ourselves in readiness to keep the usual hours. It is already obvious that we must all of us undergo some sacrifice to get the case dispatched as

promptly as possible. It is of the greatest importance to those who are interested in the issues in this case, not merely the parties, but a great many people who are interested in the proceedings, that we should have no delay merely for personal convenience for vacations or things of that sort; and we are all agreed for the trustees that we will be very glad to keep the regular hours; and I understand that although it is a very distinct sacrifice to both General Streeter and Mr. Thompson with respect to their week-end engagements, or their desire to be with their families, they are willing to make the same sacrifice.

Mr. Streeter—You mean this week?

Mr. Whipple—Yes. We will deal with each week as the particular circumstances of the respective parties indicate with reference to the particular emergency; but this week we are ready to go ahead.

Mr. Bates—That is entirely agreeable to the counsel for the directors, Your Honor.

Mr. Krauthoff — If Your Honor please, one of the record books of the directors is not with us this morning, but I am sending for it, and so I may have to recur to some incidents between May 23 and May 31. June 24, 1918—

Mr. Whipple—What records are you referring to now?

Mr. Krauthoff—Why, from May 23 on, from the book that ends June 4, 1918.

"Letters were read from the following . . . Trustees of The Christian Science Publishing Society, dated Boston, June 22, concerning appointment to the Bible Lesson Committee"—

Mr. Thompson—What year, Mr. Krauthoff?

Mr. Krauthoff—June 24, 1918.

Mr. Thompson—Is that a meeting of the directors?

Mr. Krauthoff—A meeting of the directors.

"Edward Smith, of the Boston Newspaper Web Pressmen's Union No. 3, dated June 21, relative to wage questions at the Publishing Society.

"The directors had an interview with Trustees Ogden and Rowlands of The Christian Science Publishing Society relative to the questions contained in the two foregoing communications."

[The record of the meeting of the directors of June 24, 1918, from which the foregoing extracts are read, is Exhibit 544. R. H. J.]

July 8, 1918:

"The directors had an interview with Trustees Rowlands and Ogden of The Christian Science Publishing Society, about—

"(a) Setting the release date of the Sentinel forward one week.

"(b) Claims made by [blank] that the trustees refused to see the latter.

"(c) With reference to the announcement that the Publishing Society are 'Sole Publishers of All Authorized Christian Science Literature.'

"(d) The selection of a successor

to Mr. [blank] on the Bible Lesson Committee.

"(e) Question of The Mother Church paying rental of quarters on Norway Street occupied by the Lunch Room, Local Delivery of The Monitor, Purchasing and Employment departments, and Department of Construction and Maintenance.

"(f) Prohibitive price of the new khaki-bound Bible for soldiers."

[The record of the meeting of the directors of July 8, 1918, from which the foregoing extracts are read, is Exhibit 544a. R. H. J.]

We offer in this connection a letter to The Christian Science Board of Directors from The Christian Science Publishing Society, under date of July 12, 1918:

"The Christian Science Board of Directors,

"Falmouth and St. Paul Streets,

"Boston, Massachusetts.

"Dear Friends:

"The following letter dated July 8, addressed to the business manager, has been received from the Third Assistant Postmaster-General at Washington, District of Columbia, exempting the Christian Science periodicals from the zone postage rates:

"In further reference to your call on the 29th ultimo, I have to say that your postmaster has been authorized to accept the publications mentioned in your letter of the same date for mailing at the special rate of postage prescribed by the provisions of the Act of Oct. 3, 1917, embodied in paragraph 4, amended section 429, Postal Laws and Regulations."

"Yours sincerely,

"THE CHRISTIAN SCIENCE PUBLISHING SOCIETY,

"By Ralph E. Parker,

"Assistant to Business Manager.

"Mgr-F7"

[The letter of which the foregoing is a copy is marked Exhibit 545. R. H. J.]

July 11, 1918:

"Letters were read from the following: . . .

"Editor William P. McKenzie, dated Boston, July 10, concerning certain problems in connection with his work."

[The record of the meeting of the Board of Directors of July 11, 1918, from which the foregoing extract is read, is Exhibit 546, R. H. J.]

July 15, 1918—well, that refers to the letter that I have just read in evidence, so that I do not care to read the record.

July 22, 1918:

"Letters were read from the following:

"Trustees of The Christian Science Publishing Society, dated Boston, July 19, 1918, inclosing checks aggregating \$48,869.73 completing balance due The Mother Church for the fifteen months ending March 30, 1918."

[The record of the meeting of the Board of Directors of July 22, 1918,

from which the foregoing extract is read, is Exhibit 547. R. H. J.]

July 30, 1918:

"The Directors had an interview with the Trustees Ogden and Rowlands of The Christian Science Publishing Society at the trustees' request."

[The record of the meeting of the Board of Directors of July 30, 1918, from which the foregoing extract is read is Exhibit 548. R. H. J.]

Mr. Krauthoff—"Aug. 8, 1918—"

Mr. Thompson—Isn't there a motion there of great importance, on July 30, concerning matters of discipline, that has a bearing on this, that you have omitted? I don't want to interrupt the putting in of the evidence.

Mr. Krauthoff—I didn't notice it, if you will call my attention to it.

Mr. Streeter—Well, very likely it isn't in the record.

Mr. Thompson—There is a resolution offered there. It seems to me of some consequence if it is there, if it is in the record, to put it in.

Mr. Krauthoff—You mean July 30, 1918?

Mr. Thompson—Yes.

Mr. Krauthoff—What is the incident, I do not find it.

Mr. Thompson—Well, the resolution, offered by Mr. Dittemore, is:

"That hereafter no discipline of any kind, either the removal of cards from the Journal, removal from Sunday school of teachers or officers, or any form of discipline, shall be taken without first giving the accused an adequate opportunity to be heard in their own behalf."

It seems to me that it might be of some consequence if it occurred.

Mr. Krauthoff—You mean that happened July 30, 1918?

Mr. Thompson—Yes; that was a resolution offered at that meeting.

Mr. Whipple—May I ask whether it was rejected? Does the record show it?

Mr. Thompson—Yes; it was not passed, it was rejected.

Mr. Krauthoff—I have no record on July 30, 1918, of that incident.

Mr. Thompson—Very well. I do not want to interfere with your putting in of the testimony.

[An extract from the directors' records, Aug. 8, 1918, is offered in evidence as Exhibit 549, and is read by Mr. Krauthoff, as follows:]

"The directors had a conference with Trustees Ogden and Rowlands, Business Manager John R. Watts, and Editor Frederick Dixon, of The Christian Science Publishing Society, who recommended that as soon as the change can be effected, that The Monitor print one morning edition, thereby changing the paper from an evening to a morning edition. The recommendation was approved unanimously by the board, and the trustees were authorized to proceed with their plans."

[An extract from the directors' records, Aug. 15, 1918, is offered in evi-

dence as Exhibit 550, and is read by Mr. Krauthoff, as follows:]

"The directors had an interview with Trustees Ogden and Rowlands of The Christian Science Publishing Society. The board discussed with the trustees the recent purchase of a sedan automobile for the Publishing Society for its use, and asked the trustees if they thought that the circumstances warranted the outlay. The board also presented a number of questions, prepared by Mr. Dittemore, as follows:

"What was the gross income, net income and profit from subscriptions and sales of each of the Christian Science publications for the year immediately preceding the increase of price which went into effect on July 1, 1917?

"What was the total operating expense for the same period?

"What was the total pay roll for the same period?

"What was the average paid circulation of each publication for the same period?

"What has been the gross income and net income from subscriptions and sales of each of the publications for the year immediately following the increase of price?

"What has been the total pay roll for the same period?

"What has been the operating expense for the same period?

"What has been the paid circulation of each publication for the same period?

"What has been the income from subscriptions and other sales of each of the publications for each year during the last five years?

"What is the present paid circulation of each of the publications on bona fide subscriptions?

"What is the present paid circulation of each of the publications on subscriptions to Christian Science organizations, committees, camps, etc.?"

"What is the present paid circulation of The Monitor in Boston proper, Greater Boston, and the principal cities of the world, and total present paid circulation?"

"The trustees took the questions and said they would furnish replies as soon as the information could be collected.

"After a general discussion of the relationship of The Christian Science Publishing Society to The Mother Church, the trustees retired."

Q. In this meeting of Aug. 15, 1913, Mr. Dickey, in which reference was made to the purchase of this automobile, at that time did any difference of opinion arise as to the relation of the directors to the trustees? A. Yes, there was quite a controversy at that time.

Q. Was that the first time that any controversy arose after February, 1916? A. Yes.

Q. You remember you testified that on Feb. 24, 1916, the so-called Ditte-

more memorandum was discussed? A. That was the first real outbreak.

Q. In August, 1918? A. Yes.

Q. And how did the outbreak occur, as you call it? A. Well, Mr. Dittemore brought the information to the board that—

Q. That is not proper to state. What did you say to the trustees? A. The board put the question up to the trustees.

Q. I beg pardon. What individual put it up to the trustees? A. I did, the chairman.

Q. You were chairman at the time? A. I was the spokesman for the board.

Q. Yes. And now what did you say and to whom did you say it? A. I addressed the trustees, all of them.

Q. At that time Mr. Eustace, Mr. Ogden, and Mr. Rowlands— A. Were present.

Q. And those were the three trustees at that time? A. Yes, sir.

Q. Now what did you say to the three trustees? A. I told them that it had been brought to the attention of the board that the trustees had purchased for themselves a limousine.

Q. Was the cost of it mentioned? A. No. I think nothing was said about the cost of it, but we thought it was rather an expensive luxury for the trustees to maintain.

Q. Did you so state to the trustees? A. We stated so to the trustees, and Mr. Rowlands replied resenting the imputation that the trustees did not have a right to buy an automobile for their use if they thought fit to do so.

Q. What else, if anything, was said in that interview? It speaks here "after a general discussion of the relationship," between the two.

Mr. Whipple—Has he finished all the colloquy or dialogue about it?

A. There was a great deal said in connection with the purchase of the automobile. The trustees—

Q. State as fully as you now recollect, Mr. Dickey, the subject of that conversation. A. Mr. Rowlands stated that he thought they had a perfect right to buy this automobile; that they felt they had use for it in taking some of their members to and from the trains, and meeting people who were coming to the city to see them at the train, and in using it for their night editorial service. He stated that if the directors objected to that outlay that he would be willing to purchase the automobile himself. I think that is all I can recall just at the present moment, of the conversation.

Mr. Streeter—Mr. Krauthoff, I heard you ask a question whether this was the first time since Feb. 24, 1918.

Mr. Krauthoff—1916.

Mr. Streeter—1916. I didn't hear the answer. Did he answer it?

The Witness—I answered that, yes. I said this was the first real outbreak.

Q. Have you anything more to say about what was said on Aug. 15, 1918? A. Yes. We went on and discussed

further the relationship of the trustees to the Board of Directors. The trustees raised the question of their rights under the Deed of Trust, and we raised the question of their obligation under the Church Manual.

Q. Was that the first time that the Deed of Trust had been mentioned after Feb. 24, 1916, so far as you know? A. In the way of discussion, I believe it was.

Q. Was there anything else that you wish to add to your testimony now on that subject, Mr. Dickey? A. There was quite a lengthy discussion.

Q. What if any statement was made at that time by the trustees about the rights they claimed under the Deed of Trust as distinguished from the Church Manual, if any? A. I don't recall specifically anything further, but, in general and in substance, there was quite a difference of opinion expressed as to whether the Trust Deed could be observed in conformity with the Manual. I maintained that it could.

Q. You mean you so stated? A. I did.

Q. And what did the trustees say on that subject? A. They apparently agreed with that statement.

Mr. Whipple—If you will pardon me, I think you better put this language into the mouth of some one.

Q. What did any one of the trustees say on that subject—what did he say?

Mr. Whipple—And who was it?

A. They all participated in the conversation, and the substance, as nearly—

Q. Mr. Dickey, the intimation is that it is desired that you name the particular one of the trustees who spoke. A. Mr. Rowlands did the most of the talking, but I cannot recall his exact words, Mr. Krauthoff.

Q. What was the substance of what Mr. Rowlands said on that occasion, as to whether the Manual and the Deed of Trust would work together or were irreconcilable? A. He said that there was nothing that would conflict in the Deed of Trust and the Manual. He stated further that he thought we were not treating the trustees as colleagues, that we were treating them as office boys, and expecting them to jump every time we pushed the button. We replied that that was not the situation at all, that we were trying in every way to cooperate with them, and merely expressed the wish that they would comply with the requirements of the Manual of The Mother Church in connection with their duties as trustees.

Q. And that, among other things, enjoins prudence and economy, I believe? A. I quoted that by-law which says that wisdom and economy shall govern the acts of the members of The Mother Church.

Q. Was there anything else at that time, Mr. Dickey? A. I think we must have talked for an hour or two.

Mr. Krauthoff—The other book, it

Your Honor please, has returned, and I will fill the gap that I left a moment ago.

[An extract from the directors' records, May 23, 1918, is offered in evidence as Exhibit 551, and is read by Mr. Krauthoff, as follows:]

"The corresponding secretary was instructed to request from the trustees of The Christian Science Publishing Society a copy of their letter to the Board of Directors dated Feb. 23, 1916, for the directors' files."

Mr. Krauthoff—I offer in connection with that the letter to the Board of Trustees.

[Letter, directors to trustees, May 23, 1918, is offered in evidence as Exhibit 552, and is read by Mr. Krauthoff, as follows:]

[Exhibit 552.]

"May 23, 1918.

"Board of Trustees,  
"The Christian Science Publishing Society.

"Falmouth and St. Paul Streets,

"Boston, Mass.

"Dear Friends:

"I am instructed by The Christian Science Board of Directors to ask you to kindly furnish them with a copy of your letter to the board, dated Feb. 23, 1916, the original of which we are unable to locate in the files of The Mother Church.

"Thanking you in anticipation of your courtesy,

"Sincerely yours,

(Signed) "CHAS. E. JARVIS

"Corresponding secretary for The Christian Science Board of Directors."  
"CEJ-L"

Mr. Thompson—Didn't Mr. Dittemore present a report on periodicals at that meeting?

Mr. Krauthoff—On May 23, 1918?

Mr. Thompson—Yes.

Mr. Krauthoff—Yes. I was going to suggest, if Your Honor please, that in the introduction of the testimony I am now directing myself to the trustees' case, and, with all deference to Mr. Thompson, when he asks me about incidents connected with Mr. Dittemore it diverts the course of the testimony, and I shall appreciate it if Mr. Thompson will take those up when I come to the Dittemore case.

Mr. Thompson—Let me just say, in reply to that, that I have carefully abstained from calling attention to any of the numerous things that have a bearing solely on Mr. Dittemore's case. I have tried to confine my suggestions, and they are merely suggestions, to matters bearing directly upon the present case. Mr. Dittemore played a very prominent part in asserting what he thought to be the rights of the directors here in these various conferences, and was trusted to prepare papers, and so on, by his fellow directors; and it occurred to me that in that very case, if he had presented a report on periodicals as part of this general discussion that was going on, it would be very appropriate in the Eustace

and Dickey case to refer to it and put it in. What is really happening, and has been happening for a good while, is that the directors have now adopted Mr. Dittemore's position, and are putting in, in a way that perhaps his counsel would not choose if they had the guidance of the case—the case really prepared by Mr. Dittemore; and it is rather a painful process for us to sit here and hear our case put in by other people. Therefore I am once in a while venturing, when you seem to me to be leaving out something that Mr. Dittemore would naturally put in, just to call it to your attention; but if you do not desire me to do it I will remain silent.

Mr. Krauthoff—Now, the intimation being that that letter bears on the Eustace case, I am quite willing to offer it.

[Mr. Krauthoff reads further from the directors' records of May 23, 1918, as follows:]

"A letter was read from Mr. Dittemore, dated Boston, May 23, being a report on ways and means for improving the Christian Science periodicals in accordance with a vote of the directors on April 25."

Mr. Krauthoff—Do you wish at this time, to have that letter read, Mr. Thompson?

Mr. Reuter—I wish you would, if you please.

Mr. Whipple—If Your Honor please, if it be read I must ask that it be not regarded as evidence in the Eustace case, unless it shall appear it was called to the attention of the trustees; because, of course, evidence affecting the trustees cannot come from the intercommunication of the directors as between themselves, not called to our attention. The letter may be admissible for some purpose, but not for proving anything with regard to the trustees. Whether it is admissible for some purpose I do not venture to say, but I see no purpose for which it is admissible in the trustees' case.

Mr. Krauthoff—The point made by Mr. Whipple, if Your Honor please, is the exact reason why I have not been doing that of which Mr. Thompson complains of the omission of it. The letter from Mr. Dittemore to the board, not communicated to the trustees, is not evidence against the trustees.

Mr. Thompson—I thought you suggested another reason a minute ago.

Mr. Krauthoff—Well, that is the reason that I have not been reading these records.

The Witness—May I explain something about Mr. Dittemore's letter?

Mr. Thompson—I don't think we care for it at present.

The Master—Not just now.

Mr. Krauthoff—Perhaps not unless Mr. Dickey, it is to the effect that it was called to the attention of the trustees.

Q. Was it called to the attention of the trustees? A. Not at that time.

Q. At any time? A. I think not.

Q. That is all that is proper for you to state now; later we will come to that. A. Yes.

Mr. Krauthoff—In view of Mr. Whipple's objection—

The Master—One moment, Mr. Krauthoff. You are taking, necessarily, a good deal of time in going through all these records, covering a long period. You have taken them in chronological order for a number of years. If there is any way in which we can arrange to have everything that is material in the case, in either case, go in during that process, wouldn't it be in the interest of all parties to have them so go in, rather than have Mr. Dittemore's counsel go all over them again?

Mr. Krauthoff—I shall follow Your Honor's direction.

The Master—Well, I do not direct; I simply suggest at the present stage.

Mr. Whipple—Now in that connection, if Your Honor please, it would serve a useful purpose if at the same time that the version of different conferences is given in the directors' records we could have the corresponding statement with regard to them in the records of the trustees. Perhaps that would be too burdensome, but we would be glad to have that done, because then we have collated and aggregated the entire picture with regard to the particular meeting.

The Master—We have already had the trustees' records to a considerable extent put in.

Mr. Whipple—But not with regard to the same conferences.

The Master—Very likely.

Mr. Whipple—I have followed it very carefully, and comparatively few of them correspond; and there are trustees' records that will have to go in finally if these records are considered of very vital importance. I merely offer the suggestion; I do not press it.

The Master—Now, we have got as far as we have, I do not quite see how we can make a material change in the method of doing things without introducing confusion. And it is quite likely that the suggestion that I made will be open to some objection.

Mr. Whipple—Well, I do not care to press it.

Mr. Krauthoff—I think not, if Your Honor please, and in explanation of what Mr. Whipple has mentioned I endeavored to match the records of the trustees and the records of the directors, so that the correlative records of the same date could be introduced side by side, but I found they did not match. They did not always reflect each other's records.

Mr. Whipple—You mean, they were contradictory?

Mr. Krauthoff—No; I mean that there is not always a record in the trustees' records of a conference that the directors have recorded, and there is not always a record in the directors' records of a conference the trustees have recorded.

Now, I did read from the trustees' record every conference with the directors. I would be very glad from now on, if Mr. Whipple will take his trustees' record and see if there is anything on that date that bears on this, if it has not been introduced in evidence I will be very glad to do it. By taking the record of last Tuesday morning it can be found what I have omitted. I tried to read it all.

The Master—Well then, there is all of yesterday's work, and perhaps more, which has not been subjected to that process.

Mr. Whipple—I think, if Your Honor please, that we are getting to the more important meetings, so that we shall save a little time if this suggestion is adopted.

The Master—Very well. Unless counsel can agree upon some method of abbreviating it, we better go ahead as we have begun. My suggestion was made in the hope that possibly counsel would be able to devise a way—which I know they would be all very glad to do—to abbreviate the process of getting in these records with perfect justice to all parties concerned. Now, you may go on about the Dittmore letter.

Mr. Krauthoff—Now, may it please Your Honor, this is the letter of Mr. Dittmore of May 23, 1918, to which Mr. Thompson has referred, which is being offered in evidence in the Dittmore case.

Mr. Whipple—Do I understand that Your Honor thought that letter might be put in in the Dittmore case?

The Master—Subject to your objection that it is not evidence in the Eustace case.

[Copy of Exhibit 553.]

"John V. Dittmore, C. S. B., 236 Huntington Ave., Boston, U. S. A.

"Member of The Christian Science Board of Directors.

"May 23, 1918.

"Report on Ways and Means for Improving the Christian Science Periodicals.

"The Christian Science Board of Directors,

"105 Falmouth Street,  
"Boston, Massachusetts.

"Dear Friends:

"In accordance with the vote of the directors on April 25, I submit herewith my report on ways and means for improving the Christian Science periodicals—especially the Sentinel.

"Although this report is quite lengthy, I have reduced it about one-fourth of what it would have been had I inserted all of the notes and data which I have made during the past four weeks, during which time I have never so clearly seen the unlimited possibilities for progress which lie latent in our Sentinel.

"In order to adequately consider the needs of the Christian Science publications, it is necessary first that a clear comprehension be attained of Mrs. Eddy's purpose in establishing

them. Each one of these periodicals represents a demonstration by Mrs. Eddy, and their continued growth and usefulness likewise require a demonstration by those who are responsible for their editing and publication and for keeping them 'abreast of the times.'

"Inasmuch, therefore, as demonstration is simply bringing within the range of the physical senses that which is supersensibly true, the demonstration of this Board of Directors in connection with their responsibility for the Christian Science periodicals can be assisted by seeing clearly what is the supersensible or spiritual fact in regard to each of them. To this end may we not

"1st. Analyze the significance of the name of each publication.

"2d. Consider Mrs. Eddy's statements in regard to the mission and purpose of each of them; and

"3d. Make sure that they are kept 'abreast of the times' by seeing to it that those responsible for their editing and publication are growing in their vision and demonstrated ability for the work they are responsible for, and that they are gaining an increasingly clear perception of the signs in the mental heavens of this period which reveals the significance of the life and work of our great Leader and their relation to both history and prophecy.

"The first—The Christian Science Journal—was established 'to put on record the divine Science of Truth' ('The First Church of Christ, Scientist, and Miscellany,' p. 353), and it has been said that:

"The Journal occupies, and shall ever occupy, a necessary and distinctive place in the history and literature of Christian Science. It can never, by the logic of events, sink lower in the scale of its mission and existence, but by the necessity of growth and progress, must continue in an ascending scale to perform the important function which gave it birth. Its establishment was fraught with far too much of sacrifice, struggle, and hardship,—its place in the rise and progress of the cause has been, is, and shall continue to be, much too important, to admit of its losing one jot or tittle of its proverbial value.—The Christian Science Weekly (Sentinel) Vol. 1, No. 1, p. 1.

"Der Herold der Christian Science and its more recent companion—Le Héraut de Christian Science—'proclaim the universal activity and availability of Truth' (The First Church of Christ, Scientist, and Miscellany, page 353), and are undoubtedly intended to be the great missionaries to those of other folds than of 'Anglo-Israel.'

"The temperament, education (both secular and religious), and historical development of both the German and French peoples should be made the basis for selecting and producing the contents of these two publications. Simply translating and republishing

articles from the Journal and Sentinel is entirely inadequate. Much material is available in current French literature to show the trend of the times in France and the signs which point to their national religious awakening.

"Because the English language is the language of prophecy and revelation, the human medium of expression by which divine Science—the 'Comforter'—has been reduced to human apprehension, this great fact should not be overlooked in these two publications especially, but rather should the thought of the ultimate universality of the English language be gently, but constantly kept in view. Neither should there be any fear in proceeding from this premise to point out that those whose broadening and progressing thought has led them to a domicile in English-speaking nations should fuse their consciousness with their adopted brothers in the sense of upholding their ideals, these ideals being the highest human concepts of liberty, even the solid foundation upon which the structure of revealed Truth has grown through the stages of stern Protestantism and the gradual emergence from the bondage of matter up to the revelation of divine Science. It is more than a mere matter of historical interest that our Leader's original plan for the Massachusetts Metaphysical College included instruction in the English language.

"The Christian Science Sentinel was established, not as a weekly edition of the Journal, but as Mrs. Eddy has explained, 'to hold guard over Truth, Life, and Love' (The First Church of Christ, Scientist, and Miscellany, p. 353), in fact, to perform the duties and responsibilities of a sentinel, which are to watch, to guard from surprise, to observe, and to give notice of danger. One of the reasons for its establishment is stated as follows in its initial number:

"The growing necessities of the situation seem to demand, at times, a speedier means of communication with the field than our monthly Journal affords.'

"As one of its duties the Sentinel should operate as a connecting link between the 'millions of unprejudiced minds' which The Monitor is reaching, and the coming of such to the serious study of Science and Health. This should not be done by having the Sentinel less spiritual, but more broadly spiritual and more universal in its appeal and with a keener insight into the spiritual meaning of world affairs.

"Men and women in every walk of human life need to have given to them a hint of the spiritual side of their daily responsibilities.

"I will now simply add some detached memoranda which, although disconnected, will tend to hint some of the latent possibilities of the Sentinel:

"The Sentinel should guard from



the dangers that threaten the movement, and guide with true metaphysics into reducing error's claims to nothing.'

"The directors and editors should be in such close touch with the movement and with world affairs that the first symptoms of any evil which could become far-reaching in its undesirable or dangerous results would be checked and nullified by quick work through the Sentinel.'

"The editors should have a definite plan in the arrangement of their material.'

"The testimonials are the personal experiences; the articles should not be.'

"The periodicals should show the world that Mrs. Eddy's revelation must grow and expand in human consciousness until it fills the whole earth.'

"Christian Scientists need to know what Christian Science really is—its lineage and destiny—and the individual Scientist's responsibility.'

"The responsible heads of our periodicals should confer with, and develop the natural abilities of all writers of promise.'

"New contributors should be found, especially among progressive students who are active and successful practitioners and teachers.'

"The exchanges in the Sentinel are not always honest inasmuch as the article as a whole, if published, would usually contradict the sentiment of the detached sentence or paragraph quoted.'

"There should be less cant and stereotyped formality in regard to Mrs. Eddy, and a deeper, wiser estimate of her life and work.'

"The policy in former years has been largely one of glittering generalities and nothing that would offend anyone, instead of direct, clear, helpful admonitions. This policy has perhaps been responsible for the deep sleep of so many—more than any other one thing.'

"Introductions to lectures when given by Christian Scientists are not usually important.'

"Occasionally expressions of gratitude to Mrs. Eddy's loyal students and those who have borne the heat of the day would be welcome and appropriate.'

"Less conventionality and ironclad rules, and more elasticity and spontaneity.'

"Editing should not include re-casting articles into the mold of the editor's thought.'

"Leading articles and editorials should be timely and up to date. Those responsible for the Sentinel should be so alert to the "signs of the times" that they could call for and receive for publication from the writer best fitted to handle any particular subject, an article or editorial, in a few hours if need be, which would meet any emergency or forestall any effort of evil operating through suggestion.'

"There should be no effort to appear neutral on any vital question. Neutrality is impossible in Christian Science.'

"An understanding of God as Principle must also include an understanding of God as Love. Therefore, those who are taking their first footsteps should not be frightened, and human affection should not be criticized or chilled by intellectualism.'

"As a safeguard, all articles submitted for publication should be read and their availability considered by more than one person.'

"The Monitor's work—brilliant as it is—must be supplemented by the right activity of the Sentinel.'

"Lecture news that is news can be readily secured. The present department is entirely inadequate.'

"A column of "Current Items of Interest" should be started. For instance, within the past few days I recall seeing three items which could properly be reviewed in the Sentinel: an account of the discovery of a new papyrus, confirming the Scriptures; remarkable growth of the American Bible Society; new evidence that St. Paul visited Britain. The field should also be given brief sketches of the vital work of those men and women whom Mrs. Eddy has given undying recognition by mentioning them in her writings. For instance, such persons as Agassiz, Dr. Beaumont, Savonarola, Admiral Coligny, Charles Sumner, etc., etc. This would add a new interest to the study of our Leader's writings.'

"A column entitled "Signs of the Times." The Sentinel not only through its editorial, but especially by means of a well-balanced department, should review and interpret current events in the light of Christian Science. The Monitor does this editorially in the way in which a newspaper can do it, but the Sentinel should go more deeply into the significance of such events and thus supplement The Monitor's efforts with special consideration for the needs of Christian Scientists.'

"Articles which might be called "definitional" are dangerous because they usually attempt to re-state or re-interpret Mrs. Eddy's teachings and therefore to re-teach the field. This is one of error's ways of leading thought away from Mrs. Eddy's writings, instead of toward them.'

"The Sentinel should contain each week some new word from Mrs. Eddy, perhaps only a sentence, or a paragraph from a letter. The great storehouse of material which we have, not only from the letters that have been turned in to The Mother Church, but from the mass of material which Mrs. Eddy carefully preserved and which is in the hands of this board, really belongs to the world and must be given to the world. Such items, selected with care and wisdom, would stimulate the field at this time as nothing else would.'

"In journalism, the enemy of sus-

tained activity and vitality is monotony—a claim that must be constantly handled.'

"The three following comments by Mrs. Eddy to her editors are deeply significant:

"To be wise and gentle and strong and fearless is the province of an editor.'

"There must be better literature and more interesting or it will not stand the test of what I require and the public needs—Two articles were shockingly wanting in quality.'

"Editorials explaining Scriptures is what I like. Watch signs of the times.'

"Most Christian Scientists add a dream about Christian Science to their dream of life in matter, just as they formerly dreamed of medicine or orthodoxy. Christian Science cannot be tacked on to anything else, but must be used to reform and transform out from matter and its dreams. To accomplish this end the Sentinel has been provided.

"Christian Scientists must see that a clear comprehension of Mrs. Eddy's place in history and prophecy is as essential to understanding her life-work as is an understanding of the significance of Jesus' human experience and accomplishments. In other words, the Israel of today needs to know the truth about itself and then as its belief fades into understanding and a broader vision ensues, Christian Scientists will have little time for personal opinions and the differences which grow out of fear and envyings. In a letter I received a few days ago was this statement: 'I have felt for some time that the Scientists generally should learn the truth about the Nation in whose consciousness the Messiah and the Comforter first appeared. It is amazing when you consider the part which Christian Science has to play in the events of these "latter days," that the Scientists generally are so indifferent or actually ignorant about these things.'

"In order to initiate and accomplish the changes and reforms in the periodicals so urgently needed, I stand ready to devote all of my time not required for board work, and to render this service anonymously or in any way that the board may desire. I have thought of the appointment of an 'editorial board' to serve perhaps only through one year of the Sentinel or until the rejuvenation is accomplished. The results of such a plan would, of course, depend upon the thought of those constituting the board.

"The possibility has been mentioned on this board of Mr. McKenzie taking the 'sabbatical year' to which his long and faithful service to the Church entitles him. I also believe that Mr. McCrackan and Mrs. Knott might be glad to have their service more in the capacity of contributing editors than in just the way they are now employed. I am strongly of the opin-

ion that two fresh, active assistant editors should be appointed.

"Of one thing I am sure, and that is that God demands that our periodicals, and especially our Sentinel, should be brought to life, and that it be done now.

"Very sincerely,

(Signed) "JOHN V. DITTEMORE."

[Letter, Mr. Dittemore to Board of Directors, May 23, 1918, is marked Exhibit 553.]

Now, this letter has on it the following marks—

The Master—I understand that it is the desire of General Streeter and Mr. Thompson that that whole letter, word for word, should go into the record.

Mr. Thompson—I think so, yes, sir.

Mr. Krauthoff—This letter was received by The Christian Science Board of Directors on May 23, 1918. It was read on May 23, 1918, to The Christian Science Board of Directors; and read again on June 20, 1918, the marginal notation being that it was read before the full board on that date. There are also pencil marks which indicate that copies of the letter went to each of the other directors, including a copy to Mr. McKenzie on July 2, 1918. In the body of the letter, the first two of the last three paragraphs have the word "out" in pencil on either side.

Mr. Thompson—In the handwriting of Mr. Jarvis.

Mr. Krauthoff—Which Mr. Dittemore states is in the handwriting of Mr. Jarvis, and not in his handwriting.

I wish to make an explanation, if Your Honor please.

[At this point a colloquy is had which, at the suggestion of the Master, and with the acquiescence of counsel, is omitted from the record.]

I want to make a correction in the statement that I made a moment ago with respect to Mr. Whipple. I stated generally that I had put in all the records of the trustees that mentioned conferences with the directors. I am reminded that that statement is too broad. What I did was to put in evidence all records of the trustees showing conferences with the directors in which the nature of the conference or the business transacted was set forth.

Mr. Whipple—Mr. Krauthoff, may I return to you the papers with regard to the London suit? We see nothing in them that makes it desirable to put them in evidence (passing documents to Mr. Krauthoff).

Mr. Krauthoff—May 27, 1918:

"At 12 o'clock noon the board had a meeting with the trustees of The Christian Science Publishing Society at their own request, to discuss the affairs of the Publishing Society and the relations between the Board of Directors and the trustees."

[The record of the meeting of the Board of Directors of May 27, 1918, from which the foregoing extract is read, is Exhibit 554. R. H. J.]

Mr. Thompson—What date is that, Mr. Krauthoff?

Mr. Krauthoff—May 27.

Q. Now, Mr. Dickey, with respect to the meeting of the Board of Directors of May 27, 1918, to which your attention has just been called, you are familiar with the trustees' record of May 27, 1918? A. I heard it read here in court.

Q. Which we offered in evidence as Exhibit 347. And is the trustees' record a correct statement of what happened at the directors' meeting, or were there other incidents? A. Could I hear that record again. I don't recall just what was said at the—

Mr. Krauthoff—I do not want to read it into the record again, because it has already been read into the record once. I will show it to you.

Mr. Whipple—I shall be very glad if you will read it in connection with the record that you have just put in.

Mr. Krauthoff—It has already been offered in evidence as Exhibit 347, and has been read.

Mr. Whipple—Perhaps it would refresh His Honor's mind if it were either read or laid before him at this time.

Mr. Krauthoff—May I read it, if Your Honor please, for the information of the master and the witness, with the understanding that the stenographer will not set it out again in the record? Let the record merely show that it is read at this time.

Mr. Whipple—Well, if it does not make any difference, why not let it go into the record. It does no harm; but I will take Your Honor's direction.

The Master—We want to do all we can to keep down the bulk of the record.

Mr. Whipple—Yes, if Your Honor please, but this is a very important meeting, or may be so considered, and I think that a great many things could be left out of the record to greater advantage.

The Master—It is now once in the record.

Mr. Whipple—Very well, Your Honor.

The Master—Why not have the memorandum here, Exhibit 347, noted in the record as read to the witness.

Mr. Whipple—Very well, Your Honor.

The Master—Let that take the place of putting the contents into the record again.

[At this point Exhibit 347 is read by Mr. Krauthoff.]

Q. Mr. Dickey, you will recall that at adjournment yesterday the letter from the directors of May 21, 1918, was read, referring to this Section E of Paragraph 7, which related to the salaries of those elected by the board? A. Yes, sir.

Q. And employed by the trustees. Now, at this meeting of May 27, 1918, did any question arise as to the power

of the directors to elect the editors and the general manager?

Mr. Whipple—Well, if Your Honor please, I think that, in putting in the direct examination, it is very much better to ask the witness what was said, instead of putting leading questions: This is not directed to contradicting anything which is in the trustees' records; it is directing his attention in a way that is leading to a particular answer.

The Master—Try to get at it in that way, if you can, Mr. Krauthoff; it will shorten matters.

Mr. Krauthoff—I thought that I was shortening it by asking what was said on that subject. The conference was quite lengthy.

Q. Was anything said at that meeting about destroying this memorandum? A. Nothing.

Q. Was anything said at that meeting about that memorandum not being operative or in force or having been agreed to, as you said yesterday, as a gentleman's agreement? A. Nothing about its not being agreed to, but something was said about its having been agreed to.

Q. What was said about that, and by whom? A. I stated that this paragraph that I cited to them was an extract from the memorandum of Feb. 24, 1916, to which we had all agreed, and also stated this, that it seemed only natural and right that the editors and the business manager who were elected by the Board of Directors should receive a salary that was arrived at by the trustees after a consultation with the directors.

Q. What statement, if any, was made by any of the trustees, and by which trustee, in response to that? A. Mr. Eustace said that that was a proper and a fair arrangement. I replied that it had not always been carried out, and that we had in times past called their attention to this same neglect on their part, namely, that they had gone ahead and raised the salaries of our appointees without consulting us. Mr. Dittemore also joined in the conversation and stated that this had been done before, after it had been arranged between us, but that it should not be done without consulting with the directors.

Q. You speak of "this" having been done before— A. The raising of the salaries of our appointees.

The Master—Give me the date of that trustees' record.

Mr. Krauthoff—May 27, 1918, Exhibit 347.

The Master—All right.

Q. In that connection, Mr. Dickey, were you, as a board or otherwise, advised of the action of the trustees in October, 1918, raising the salary of Mr. Watts to \$10,000 per year? A. I do not remember that we were apprised at that time that Mr. Watts' salary had been raised.

Q. Any request made of the board for its approval, or conference? A.

Nothing. We did not know that Mr. Watts was drawing a salary of \$10,000.

Q. The last salary raise that Mr. Dixon received, was that with the knowledge and approval of the Board of Directors? A. It was not.

Q. Are you advised of any raise that was made in the salary of Mr. McKenzie? A. We heard indirectly that they had done so, but they did not advise us officially of their action.

Q. Or take it up with you in any way? A. No.

Mr. Whipple—Isn't it true that at least some of these increases of salary happened after May?

Mr. Krauthoff—After May, 1918?

Mr. Whipple—Yes.

Mr. Krauthoff—Well, Mr. Watts' did. I haven't the date of Mr. Dixon's increase.

Mr. Whipple—Well, then, you would seem to be defeating your own purpose by saying that an agreement had been reached, because it shows that the parties did not so understand it even afterward. However, that, I suppose, will be a part of your argument.

Mr. Streeter—You mean yours.

Mr. Bates—You remember that these salaries were raised on Sept. 30, the date that your records show that they agreed to this statement which the trustees had drawn up of their position.

Mr. Whipple—If you stated the contrary of what you did state you would be entirely correct, Governor.

Mr. Bates—Well, I will leave that to the record.

Q. Then was any statement made on May 27, 1918, as to what the trustees would do about these salaries of your appointees? A. They said it was perfectly right that we should be consulted, and that they would do so.

Mr. Whipple—You say "they." I think that we had better have the names.

The Witness—Mr. Eustace, and concurred in by the other two members of the board.

Q. That is, Mr. Eustace made the statement? A. Yes.

Q. Did the other two members, Mr. Ogden and Mr. Rowlands, say anything, or remain silent? A. They gave their assent to Mr. Eustace's statement.

Mr. Whipple—Well—

Q. What did they say? What did Mr. Ogden say? A. I don't recall the words he said—

Q. The substance. A. —but I know that it was—

Q. What was the substance of what Mr. Ogden said? A. The substance of what Mr. Ogden said was that that was quite a proper request for the directors to make, and that he would agree to that; and Mr. Rowlands also made the same statement.

Mr. Krauthoff—May 31, 1918.

"The directors had an interview with the trustees of The Christian Science Publishing Society"—  
Now, I haven't the trustees' record on that.

Q. Do you recall any subject that came up at that time, Mr. Dickey? A. I don't now, Mr. Krauthoff.

Mr. Whipple—Do you want it?

Mr. Krauthoff—I shall be glad to see what your record shows on May 31.

Mr. Whipple—Shall I read it?

Mr. Krauthoff—Yes, if you please.

Mr. Whipple—May 31, 1918. This is under the heading, "Conferences with directors from trustees' minutes."

The Master—This is exhibit what?

Mr. Whipple—It is not any exhibit.

The Master—It has not been put in. All right.

Mr. Whipple—"At the request of The Christian Science Board of Directors, the trustees met with them at 12 o'clock on Friday, May 31, 1918, and the directors said that the Assistant Secretary of War for France, His Excellency Justin Godart, would be in Boston tomorrow and would be at the publishing house about 10:10 a. m. with Monsieur J. C. Joseph Flamand, the French Consul. The directors asked the trustees to be on hand at the publishing house to show the gentlemen over the building. They also desired that Mr. Godart and Mr. Flamand be provided with copies of the French-English Science and Health and with copies of our other literature in French.

"The directors also considered with the trustees the question of the appointment of the translator for the German department, about which the trustees recently wrote the directors. In this connection the appointments of the French translators were also discussed."

[The record of the meeting of the Board of Trustees on May 31, 1918, from which the foregoing extracts are read, is Exhibit 555. R. H. J.]

Mr. Krauthoff—Now, if Your Honor please, having filled the gap, I will take up the record at the place where I stopped, after Aug. 15—

The Master—Is the record read by Mr. Whipple just now to be marked as an exhibit?

Mr. Krauthoff—Yes, if Your Honor please.

The Master—You ask this witness no further questions about it.

Q. Now that you have heard the trustees' record, Mr. Dickey, was there anything that occurred at that meeting which you now recall? A. Yes, I remember that we received in the directors' room the French gentleman referred to there.

Mr. Whipple—Well, not on that day, he was not present.

The Master—That is another matter.

The Witness—I am referring to the record that was read about the visit of the Frenchman to the church.

Q. Was the question of the translation taken up as stated in the trustees' record? A. I don't remember that, Mr. Krauthoff. I do remember that there was a discussion at some time about the appointment of Mr. Stanger about the—

The Master—Do we need that now? Mr. Krauthoff—That, I believe, has already been shown in evidence.

The Witness—I don't recall the circumstances.

Q. You recall the letter from the trustees about Mr. Stanger having been changed from the position of assistant editor to that of a translator? A. I do.

Q. And that was submitted by the trustees to the directors at about this time? A. Yes. If I had the name of this person suggested, perhaps I could recall.

Mr. Whipple—Just a moment. If you want it, we have a line record of a meeting the next day, June 1, 1918, at 10:10 a. m.

Mr. Krauthoff—That refers to the same subject, doesn't it, Mr. Whipple, about the gentleman from France?

Mr. Whipple—It merely says:

"The Board of Directors brought His Excellency Justin Godart to the meeting, with the French Consul, Mr. Flamand, and the two aides, Major Rist and Major Locard."

[The record of the meeting of the Board of Trustees of June 1, 1918, from which the foregoing is read, is Exhibit 556. R. H. J.]

And then it says that they walked round the publishing house, but it does not say that the directors went with them.

The Master—So far as I gather, if that is all about the meeting of the trustees with the directors on May 31—

Mr. Krauthoff—That is all.

The Master—There is no controversy about that.

Mr. Krauthoff—No; it is a mere passing incident.

The Master—What do you want it in the record for?

Mr. Krauthoff—I did not recall, if Your Honor please, when Mr. Whipple asked about reading it in the record, that that was the incident to which it referred. I did not select it as one that I offered, because I did not regard it as of any importance. I shall be very glad if the meeting of May 31, 1918, may be regarded as out of the record.

Mr. Whipple—If Your Honor please, I think that it is quite as important as almost anything that has been offered from any of the meetings—

The Master—Mr. Whipple does not agree that that shall not stay in the record.

Mr. Whipple—That shows the kind of things that they were conferring about, and the attitude and relations of the parties at the time.

Mr. Krauthoff—Aug. 19, 1918:

"Letters were read from the following:—

The Master—You now continue from August, 1918?

Mr. Krauthoff—Yes.

The Master—Having filled, as you tell us, the gap which, if you had had the book here, you would have filled before, relating to May, 1918?

Mr. Krauthoff—Yes, Your Honor. We have now arrived at Aug. 19, 1918—

Mr. Whipple—Mr. Krauthoff, before taking that up, do you want our corresponding record of Aug. 15? You have just finished with that when you started in to fill the gap.

Mr. Krauthoff—My recollection is that that has been read in evidence.

Mr. Whipple—Has it been about this Franklin car?

Mr. Krauthoff—Your meeting of Aug. 15, 1918, has been offered in evidence as Exhibit 357.

Mr. Whipple—All right.

Mr. Krauthoff—Aug. 19, 1918.

"Letters were read from the following: Board of Trustees of The Christian Science Publishing Society, dated Boston, Aug. 16, recommending certain changes in the first floor offices and basement to provide better facilities for the shipping and storage departments," with the word "Approved."

[The record of the meeting of the Board of Directors of Aug. 19, 1918, from which the foregoing extract is read is Exhibit 557. R. H. J.]

Mr. Thompson—Is that all that you are going to read of Aug. 19?

Mr. Krauthoff—That is all I have in mind on that.

Mr. Thompson—If I may make the suggestion, isn't there something in that meeting about the minutes of that or a preceding meeting not being approved?

Mr. Krauthoff—I don't think that has any bearing on the Eustace case. I don't think I shall read it.

Mr. Streeter—Well, Mr. Thompson, what we shall have to do—this gentleman is reading such parts of these records as it seems to him that he wants, and he is omitting the other parts, and it will compel us to go through them and put in what he has omitted. Of course he doesn't want to read about not approving the minutes.

Mr. Krauthoff—If Your Honor please, on Aug. 19, 1918, this book recites:

"The minutes of the regular meeting of Aug. 15 were read and at the request of the Chair and approval of the same was deferred until the next meeting."

Mr. Thompson—Who was the Chair?

Mr. Krauthoff—Mr. Dickey was the chairman. Now, in presenting the record in the Eustace case I have not looked over these things.

Mr. Streeter—Don't spend too much time on it, we will take care of ourselves. Go ahead.

Mr. Thompson—One moment. You did use it in the Eustace case because you read the records of Aug. 15. Now, if they were not approved—very well.

The Master—Approval was deferred, so far as we have got, I believe.

[An extract from directors' records, Aug. 21, 1918, is offered in evidence as

Exhibit 559, and read by Mr. Krauthoff, as follows:]

"At a regular meeting of The Christian Science Board of Directors held at 10:30 a. m., on the above date in the directors' room of The Mother Church, there were present Messrs. Dittmore, Dickey, Neal, and Merritt. The records of the regular meetings of Aug. 13, 15, 19, and 20, were read and approved."

[An extract from the directors' records, Sept. 4, 1918, was offered in evidence as Exhibit 560, and read by Mr. Krauthoff, as follows:]

"The directors had an interview with the trustees of The Christian Science Publishing Society, and discussed the wisdom of publishing the proposed pamphlet entitled 'Purification.' At the request of the trustees further consideration of the question was deferred until a later meeting."

Mr. Krauthoff—Now, with respect to this pamphlet entitled "Purification," I desire to have it identified as an exhibit, but I shall not read it—the pamphlet itself, as published by The Christian Science Publishing Society.

[A copy of the pamphlet entitled "Purification" is marked as Exhibit 561, for identification.]

Mr. Whipple—Would you like to have our record on that meeting?

Mr. Krauthoff—I have already offered it in evidence. Sept. 4, 1918, was offered in evidence as Exhibit 362.

Q. Mr. Dickey, you recall the incident of the pamphlet entitled "Purification"? A. I do.

Q. That pamphlet had its inception in some articles written for The Monitor and published therein by Mr. Dixon? A. Yes.

Q. Did the Board of Directors request the writing of those articles? A. They did not.

Q. Or did you know of the articles prior to their appearing in the advance sheets that were sent to the directors? A. We did not.

Q. At the time that these advance sheets were sent to the directors did you give to that pamphlet the care and thought which you afterward did? A. No.

Q. These sheets came to you 48 hours in advance of their publication in The Monitor? A. They did.

Q. And unless you made objection to them they were automatically released and published in The Monitor? A. That is correct.

Mr. Whipple—Well, if Your Honor please, we do not assent either to the fact or to your automatic recital. That is not the testimony of the witness. We do not assent at all that they were automatically released if they said nothing, nor do we assent that if they objected to them still they would not be published, if the trustees felt upon their own responsibility they should be. You have recited that once before. Your witness does not testify to it, but it is an assumption you have got into your mind of which you find it difficult to rid yourself.

Mr. Krauthoff—I did not know that that was a controversy in May of 1918. I will state it in another form.

Q. What was the practice—

The Master—Hadn't you better let the witness state? "What was the practice"—that is proper, go on.

Q. What was the practice at this time, in September, 1918, with respect to these metaphysical articles in The Monitor being sent by the trustees to the Board of Directors?

Mr. Whipple—As to that there is no dispute.

Mr. Krauthoff—That is what I thought.

Q. Go ahead, Mr. Dickey. A. The trustees were in the habit of sending over to the offices of the directors an advance proof or advance copy of the article that appeared each day in the Home Forum page of The Monitor, 48 hours before the article appeared. It was the habit of the directors to read these articles over, and if they felt it was necessary to make any change in the article these articles were marked and the question taken up with the editor.

Mr. Whipple—Now, if Your Honor please, what we would like to know is whether this was ever done, whether they made any objection or criticisms or suggestions, and, if so, what and when, and what was done; because otherwise he is stating a theory of what might be done.

The Master—Well, you are going to have an opportunity, of course, to ask all those questions later if Mr. Krauthoff does not ask them now.

Q. Well, that was the general practice? A. That was.

Q. You are now stating as to the general practice? A. Yes.

Q. If the article met with your approval, or if you did not have an opportunity to go over it, what, if anything, was done? A. It was printed then by assuming that the directors had given their consent.

Q. That is, you did not formally express your approval of an article of which you did approve? A. No.

Q. Now, these articles that are in the pamphlet "Purification" were articles that did appear in The Monitor? A. They were.

Q. And they were articles to which, as they came to you, you expressed no disapproval at that time? A. That is right.

Q. When did you first hear about their being gathered and put into a pamphlet? A. Mr. Jarvis informed us one day that he had received a proof of a pamphlet being printed by the Publishing Society, containing a number of articles that had appeared in The Monitor, and that the title of the pamphlet was "Purification." I asked him if he could get the proofs. He said "Yes," and did so, and gave one to each of the directors.

Q. Is this the proof of the pamphlet which came to you? (Showing paper to witness.) A. Yes, it is.

Q. In whose handwriting is the

lead pencil interlineation? A. That is my handwriting.

The Master—When you passed this up to me did you offer it as an exhibit? (Referring to a copy of the pamphlet entitled "Purification.")

Mr. Krauthoff—If Your Honor please, may I show it to Mr. Whipple? He wants me to. I want to offer it as an exhibit but I want to first show it to Mr. Whipple.

The Master—I thought you gave it to me for my instruction.

Mr. Krauthoff—For your information.

Mr. Whipple—This appears to have been marked as an exhibit. When was that done?

The Master—Well, we will have that canceled, if necessary.

Mr. Whipple—No. I thought it had been put in before.

Mr. Krauthoff—It being a pamphlet issued by The Christian Science Publishing Society, I am ready to show it to Mr. Whipple.

Mr. Whipple—May I ask what the object is in putting it in in full?

Mr. Krauthoff—The object of putting it in in full is to compare it with the one that Mr. Dickey has just identified, for the purpose of showing how many of the changes which the board pointed out were put into the pamphlet as issued.

Mr. Whipple—What do you claim—that all the changes they suggested were adopted?

Mr. Krauthoff—That they were not.

Mr. Whipple—That they were not adopted?

Mr. Krauthoff—That they were not. Mr. Whipple—All right; we will agree to that. We will agree that some of the changes that were suggested by the directors were adopted and others we declined to adopt. Now, what more do you want than that?

Mr. Krauthoff—I think, if Your Honor please, it will aid Your Honor. I do not ask that this be copied into the record, I do not ask to read it, but that it be identified as an exhibit as other pamphlets are, in order that the court may have it before it.

Mr. Whipple—If you want to put it in for identification I have no objection, or if you want to point out the things or let your witness point out the things that he suggested, which were adopted, and those that he suggested which were not adopted, I am willing that should be done.

The Master—If that is done, and if the making or not making of the changes is important in the case, I suppose the pamphlet had better be an exhibit.

Mr. Krauthoff—We offer it as an exhibit, if Your Honor please.

Mr. Whipple—I am perfectly satisfied provided we do not have to print it again.

The Master—That has already been understood.

Mr. Whipple—That settles it.

Mr. Krauthoff—Not to be printed in

this form or to be transcribed by the stenographer, but merely offered as an exhibit—If Your Honor please, it is 11:35—if we may suspend for a few moments.

The Master—We will stop for a few moments.

[Short recess.]

Mr. Krauthoff — If Your Honor please, I desire to make a statement especially for the information of Mr. Whipple. Several times the question has been asked how many of these trustees' records are introduced in evidence, and there seems to be some question about whether I introduced all that bear on the case or not. I would prefer now to be released from all statements that I have made about how many trustees' records I have introduced and allow Mr. Whipple to take the record of the case and his trustees' records, and determine for himself, so that there may be no question of whether he is correctly advised.

At this time, in connection with this pamphlet "Purification," I have a letter from The Christian Science Publishing Society Board of Trustees, David B. Ogden, secretary, under date of Aug. 27, 1918. That letter was authorized by the trustees of The Christian Science Publishing Society on Aug. 27, 1918, and is set out in full in the records of the meeting on that date, which have heretofore been offered in evidence as Exhibit 359.

I offer the reply to that letter from the records of the Board of Directors, under date of Aug. 28, 1918:

"August 28, 1918.

"Board of Trustees,  
"The Christian Science Publishing Society,

"Falmouth and St. Paul Streets,  
"Boston, Massachusetts.

"Dear Friends:

"I am instructed by The Christian Science Board of Directors to say in reply to your kind favor of Aug. 27 requesting the board to write you regarding the points in the pamphlet 'Purification' which are under question, that all that the board has asked so far is that you will kindly withhold the pamphlet from circulation until they have an opportunity to discuss it with you in person. After that, if they have any well-defined objections they will be made to you in writing as requested.

"With reference to your request to defer the conference until Wednesday noon, Sept. 4, it will be quite agreeable to the directors to see you at that time.

"Sincerely yours,

(Signed) "CHAS. E. JARVIS,

"Corresponding Secretary for The Christian Science Board of Directors."

"CEJ-C"

[Letter from Board of Directors to Board of Trustees, Aug. 28, 1918, is marked Exhibit 562.]

Q. In connection with the document I have just read in evidence, Mr. Dickey, there is a rubber stamp on

the upper right-hand corner, "Read, Sept. 9, 1918, the C. S. Board of Directors." That means that you read the letter again in your own— A. It means that it was brought out and re-read for our own information.

Mr. Krauthoff—Monday, Sept. 9, 1918:

"A letter dated Sept. 6 from the Board of Trustees of The Christian Science Publishing Society regarding the pamphlet 'Purification' was read, also a letter dated Sept. 9, from Business Manager John R. Watts, on the same subject."

[That portion of record of meeting of the Board of Directors, Sept. 9, 1918, as read by Mr. Krauthoff, is offered in evidence as Exhibit 563.]

Mr. Krauthoff (reading)—

"The Christian Science Publishing Society, Boston, U. S. A.,

"Cable Address, 'Monitor, Boston,'

"Sept. 6, 1918.

"The Christian Science Board of Directors,

"Falmouth and St. Paul Streets,

"Boston, Massachusetts.

"Dear Friends:

"Since our conference with you last Wednesday we have had a talk with Mr. Dixon regarding the pamphlet 'Purification,' and we have decided to send out the pamphlets we now have printed, and in future editions to make the one or two changes spoken of in our meeting with you, in order to clarify any possible misunderstanding.

"The point on page 20 was a typographical error, and there should have been simply a comma after 'universe' instead of a period.

"Very sincerely yours,

"Board of Trustees,

(Signed) "HERBERT W. EUSTACE,

"Secretary."

[Letter, Board of Trustees to Board of Directors, Sept. 6, 1918, is marked Exhibit 564.]

Mr. Krauthoff—I don't know whether I read this before adjournment or not—the minutes of the meeting of Sept. 4, 1918:

"Sept. 4, 1918. The directors had an interview with the trustees of The Christian Science Publishing Society and discussed the wisdom of publishing the proposed pamphlet entitled 'Purification.' At request of the trustees further consideration of the question was deferred until a later meeting."

[That portion of record of meeting of Board of Directors, Sept. 4, 1918, as read by Mr. Krauthoff, is offered in evidence as Exhibit 565.]

Q. Now, this letter from the trustees to you of Sept. 6, 1918, referred to "last Wednesday," which would, of course, be Wednesday, Sept. 4, 1918.

Now, at this conference on Sept. 4, 1918, did you take up the dummy pamphlet that you had with the lead pencil interlineations in? A. Yes. I held that in my hand while talking to the trustees. That was not submitted to them in its present shape with the

request that they make the corrections made in that proof

Q. It was not? A. No. If you would like me to tell the whole story, I will do it.

Q. I want you to tell it, and tell it very fully, Mr. Dickey. A. When I first discovered what seemed to be some inaccuracies in this pamphlet—

Mr. Whipple—Just a moment. If Your Honor please—

Q. You mean by that—

Mr. Whipple—I think the story had better be confined to the conversation.

Mr. Krauthoff—Yes.

Q. I mean, of course, the conversation between you and the trustees, being careful always to say which trustee spoke and what he said. A. Yes. We at first discussed this in the board before the trustees were present. The board sent me over to Mr. Watts with the request that that pamphlet be not printed. I called on Mr. Watts, who was our appointee—

Mr. Whipple—Now, if Your Honor please, I will ask to have this all stricken out as unresponsive.

The Master—I think it will have to be.

Q. Will you please begin, Mr. Dickey, with the person to whom you spoke—that is, the trustee or Mr. Watts—and what you said to Mr. Watts or any one of the trustees, and what any one of them or Mr. Watts said to you, omitting such words as "we agreed," or "it was understood." Make it as individual as possible.

Mr. Whipple—How do you claim that the conversation with Mr. Watts is admissible?

Mr. Krauthoff—Because it is a subject upon which Mr. Watts has testified, and the trustees have written upon their records what occurred with Mr. Watts, and we have also the right to show, if Your Honor please, the directions we gave to our appointee, Mr. Watts, and what happened to those directions.

Mr. Whipple—Well, I challenge that right.

Mr. Krauthoff—Of course I—

Mr. Whipple—Mr. Watts is an employee of the board, of the trustees. He is paid by them and engaged by them, and I do not think it is material in this case what directions these directors undertook to give Mr. Watts.

Mr. Krauthoff—If he be treated as an employee of the board, of the trustees, and is therefore an agent of the Board of Trustees, why, certainly, any conversation with the agent of the plaintiffs is admissible against them.

Mr. Whipple—I had never known such a rule of law unless—

The Master—Now, has Mr. Watts testified about any conversation between himself and the witness?

Mr. Krauthoff—As to the pamphlet "Purification"?

The Master—Yes.

Mr. Krauthoff—According to the records of the trustees, Mr. Watts on one occasion said—

The Master—No; but has Mr. Watts testified about it?

Mr. Krauthoff—I am not able now to state about that, nor would I say definitely that Mr. Watts even testified on the subject of the pamphlet. I did not cross-examine him, and I did not charge my mind about that. But this pamphlet is mentioned in the trustees' records, and Mr. Watts' doings with respect to it are related in the trustees' records. Now, Mr. Watts, so far as this case is concerned, is either one of two things: He is either the employee of the plaintiffs and their agent in the conduct of the business which they claim to carry on, and as such, conversations with him are admissible; or he is the employee, the appointee, of the board, and subject to the board's direction, and the board has the right to show what directions it gave to its own appointee and what happened to those directions.

Mr. Whipple—We do not think that Mr. Watts was in a position to bind the trustees or receive communications for the trustees from the Board of Directors. He does not claim any such function, and he never did any such thing. He was not cross-examined on the matter, and therefore it cannot be for the purpose of contradicting him. It is purely a matter inter alios, and does not affect the Board of Trustees and is not admissible therefore, we claim.

Mr. Krauthoff—If Your Honor please, according to the contention of the plaintiff, Mr. Watts is their business manager for the transaction of their business with all the world, including The Christian Science Board of Directors, and any conversation that anybody has ever had with Mr. Watts about the affairs of The Christian Science Publishing Society is admissible against the plaintiffs as a conversation with their agent, on their own theory. I am not admitting that their theory is correct, but I say that on either one of the two aspects of the case we have a right to tell what we said to Mr. Watts.

The Master—What is the conversation with Mr. Watts? I mean on what date?

Q. What date did you speak to Mr. Watts first about the pamphlet "Purification," Mr. Dickey? A. About Sept. 4, I should say, as near as I can recall.

Q. That is the Wednesday on which the conference occurred? A. No; it was before that conference.

Q. The conference occurred on Wednesday, Sept. 4, 1918? A. Yes. This was prior to the conference.

Q. How long before the conference? A. A day or two; possibly two days.

Q. What did you then say to Mr. Watts—

The Master—Now, pause. You want to inquire into the conversation with Mr. Watts?

Mr. Krauthoff—Yes.

The Master—On Sept. 4, or a day or

two prior to that date, and Mr. Whipple objects.

Mr. Krauthoff—Yes. And we offer that in the aspect either as a direction to our own agent or an inquiry to our own agent with a view of following it up to show what happened to it; or, if the other theory which Mr. Whipple contends for be correct, our conversation with an agent of the plaintiffs.

The Master—I think I shall have to let you ask him, subject to Mr. Whipple's objection. A. I told Mr. Watts that the pamphlet "Purification" was not acceptable to the directors and asked him what shape it was in—if it had been printed. He said, "Wait a moment and I will inquire." He asked for Mr. Rhodes on the telephone, and a conversation ensued, a part of which I heard—namely, what Mr. Watts said. Then he said, "It has not been—"

The Master—You will have to leave that out, won't you?

Mr. Krauthoff—I am not asking for that.

Q. What did Mr. Watts say to you after the conversation? A. He said, "Mr. Rhodes informs me that that has not been printed." "Well," I said, "that is good; will you kindly hold it up and not print it until you hear from us further?" He said, "I will." And with that understanding I left.

Mr. Streeter—Mr. Krauthoff, what is the date of this conversation?

Mr. Krauthoff—Mr. Dickey said a day or two before Sept. 4, 1918.

Q. Now, in connection with the letter of Sept. 6—

The Master—Now, have you got all through with the talk with Mr. Watts?

Q. That is all that occurred on that occasion, Mr. Dickey? A. That is all with Mr. Watts.

Q. Now then, coming to the conference on Wednesday, Sept. 4, 1918. Who was present at that conference, of the trustees? A. All three trustees were present, as I recall it.

Q. And what was said by any of the directors to the trustees at that conference about that pamphlet, and what was said by any of the trustees to the directors at that conference, stating in substance what each individual said, and naming the individual. A. I addressed the board and stated that this pamphlet—

Q. One moment. Did you address the Board of Directors or the Board of Trustees? A. The Board of Trustees. I said that this pamphlet was not exactly satisfactory to the Board of Directors to be issued as a pamphlet. Mr. Eustace said, "Why, all of those articles have been published in The Monitor." I said, "That is true; but now you are going to republish them and circulate them in large quantities to Christian Scientists all over the world, and we think—I think it is a subject that had better be left as it is and not sent out in quantities into the field." Mr. Eustace asked me why. "Well," I said, "it treats to a

great extent on the subject of generic man."

Mr. Streeter—What?

The Witness—The subject of generic man—g-e-n-e-r-i-c man.

Mr. Streeter—Oh, I can spell it after I hear it. Thank you.

The Witness—I said that I thought that Mr. Dixon said more in his pamphlet on that subject than Mrs. Eddy had said in all her books, and that I did not think it wise to send that out into the field. Mr. Dittmore remarked that the term "generic man" had been used as a fetish in the Publishing Society, that whenever anything went wrong over there the trustees said, "Now, that is because you do not understand generic man, and if you will study up on the subject of generic man your troubles will disappear." Mr. Dittmore also stated that he thought this was a subject that had better be left untouched. I stated that in addition to this there were certain inaccuracies in the pamphlet that ought to be corrected before it was sent out. I pointed out several myself by word, not by pencil indications. The pamphlet was in Mr. Eustace's hand, and he followed the statements I made. I told him why I thought these corrections should be made. I pointed out the place that their letter refers to as a mistake in punctuation, and told them that it did not make good sense. And I said that it was the wish of the directors that that pamphlet not be sent out until it had been corrected. I said, "Another thing, it does not bear the name of the author, and it was always Mrs. Eddy's custom and her desire that when articles on Christian Science went out into the field from the Publishing Society that they ought to bear the name of the author," that that custom had been carried out for years in the Journal and Sentinel and in all the pamphlets and lectures that had been issued. They said that—

Q. Not "they." Which one? A. Yes. Mr. Eustace said he couldn't see why that was necessary, but he finally agreed—

Q. What did he say? A. He finally said he would take that up with Mr. Dixon, and he saw no objection to putting Mr. Dixon's name on the pamphlet. I said, "Well, you understand—" I said, "You will now understand that this pamphlet is not to be sent out until we have an opportunity to confer with you again and suggest these corrections to you." He said, "We will hold it up." That is substantially all I can recall of that conversation.

Q. On Sept. 4, 1916? A. Yes, sir.

The Master—No; 1918, isn't it?

Mr. Krauthoff—1918, yes.

Then the subject came up on Monday, Sept. 9, 1918, according to the record.

Monday, Sept. 9, 1918:

"A letter dated Sept. 6, from the Board of Trustees of The Christian Science Publishing Society, regarding the pamphlet 'Purification' was read;

also a letter dated Sept. 9, from Business Manager John R. Watts on the same subject."

I have read in evidence the letter of Sept. 6, 1918; I stated a moment ago that it had been offered in evidence. We now offer the letter of Mr. Watts of Sept. 9, 1918:

"Mr. Charles E. Jarvis, Clerk,  
"The First Church of Christ, Scientist,  
"Boston, Massachusetts.

"Dear Mr. Jarvis:

"In response to a memorandum from Miss Warren, our records show that the pamphlet 'Purification' went to the printing department on July 17, and that 200,000 copies were ordered on July 24. In August, after 5000 copies had been bound, and the remainder of the order had been printed, all work on the pamphlet and announcements relative to it was ordered stopped by the business manager. The pamphlet was ordered released by the Board of Trustees directly to the printing department on Sept. 6. We have standing orders for about 50,000 in advance now in the shipping room.

"Sincerely yours,

(Signed) "JOHN R. WATTS.  
"Business Manager."

[The letter from John R. Watts, business manager, to Charles E. Jarvis, clerk, dated Sept. 9, 1918, of which the foregoing is a copy, is marked Exhibit 566. R. H. J.]

To which the Board of Directors wrote on Sept. 9, 1918, as follows:

"Board of Trustees,  
"The Christian Science Publishing Society,

"Boston, Mass.

"Dear Friends:

"Your kind letter of Sept. 6 has been received, and I am instructed by The Christian Science Board of Directors to say that they regret to learn that you have decided to send out the pamphlet 'Purification' prior to the carrying out of the understanding the directors had with you at their interview on Sept. 5, which was to the effect that the matter would be held in abeyance until after another interview should take place, the purpose being from the directors' point of view that a satisfactory understanding might be reached that would be for the very best interest of every one concerned. In order to have such a working out of this problem and to preserve the proper relations between this board and your board, the directors instruct me to say that they wish you would now withdraw the pamphlet in its present form until a further conference can be had and an agreement reached upon the subject.

"Trusting that it will be agreeable to you to comply,

"Sincerely yours,

"L. C. WARREN,

"Corresponding Secretary pro tem. for  
The Christian Science Board of  
Directors."

[The copy of letter from L. C. Warren to the Board of Trustees, dated

Sept. 9, 1918, of which the foregoing is a copy, is marked Exhibit 567. R. H. J.]

Now, the meeting continues, the meeting of Sept. 9, 1918, after reading the letters that I have referred to:

"Mr. Watts was invited into the meeting for a conference relative to this pamphlet. After he retired, on motion of Mr. Merritt, seconded by Mr. Neal, the following vote was carried:

"Whereas the Trustees of The Christian Science Publishing Society—

Mr. Whipple—Just a moment. This vote, unless it was called to the attention of the trustees, I take it, is not in evidence in our suit.

Mr. Krauthoff—It was called to their attention, if Your Honor please. This is the meeting of Sept. 9, and following this meeting this letter was written.

Mr. Whipple—Which letter?

Mr. Krauthoff—That I have just read in evidence.

Mr. Whipple—Well, does it recite the vote? If so, why didn't you put in your vote first, and then your letter. It would have been clearer if you had put them in chronologically, in order, instead of putting in the last first.

Mr. Krauthoff—May I have the letter from the stenographer, please, the letter of Sept. 9? (Exhibit 567 is passed to Mr. Krauthoff.)

The record recites that:

"Mr. Watts was invited into the meeting for a conference relative to this pamphlet. After he retired, on motion of Mr. Merritt, seconded by Mr. Neal, the following vote was carried:

"Whereas the trustees of The Christian Science—

Mr. Whipple—Just a moment. I object.

Mr. Krauthoff—I will have the record recite, if Your Honor please, that I withdraw for the present Exhibit No. 567, in order to show first the vote which authorized the sending of the letter.

Mr. Whipple—Well, if it is understood that its recitals are not evidence of the fact, I am content—the recitals of your vote.

Mr. Krauthoff—The recitals of the vote of the Board of Directors are evidence of what the directors did.

Mr. Whipple—It is not any evidence of the fact. It is evidence of their statement.

Mr. Krauthoff—I will prove the fact, then, affirmatively. "Mr. Watts was invited into the meeting for a conference relative to this pamphlet. After he retired, on motion of Mr. Merritt, seconded by Mr. Neal, the following vote was carried:

"Whereas, The trustees of The Christian Science Publishing Society agreed on Sept. 5 to interview this board again before taking any action on the pamphlet 'Purification,' and

"Whereas, A letter dated Sept. 6 has been received from the trustees of The Christian Science Publishing Society to the effect that they have ordered

said pamphlet issued without consulting this board,

"Now, therefore, be it Resolved, That the trustees of The Christian Science Publishing Society be and hereby are requested to withhold the issuance of the pamphlet 'Purification' in its present form until another conference be obtained and an agreement reached, also that a letter be written to the trustees of The Christian Science Publishing Society to this effect."

[The record of the meeting of the Board of Directors of Sept. 9, 1918, from which the foregoing extracts are read, is Exhibit 568. R. H. J.]

Now, then, having read the vote of Sept. 9, 1918, I offer again Exhibit 567, which I read a few moments ago.

Q. Now, Mr. Dickey, in this letter from the directors to the trustees of Sept. 9, 1918, and in the minutes of the meeting of Sept. 9, 1918, reference is made to Sept. 5. That is evidently an error: the conference took place on Wednesday, Sept. 4. A. The 4th—that is correct.

Mr. Krauthoff—1918.

Now, this resolution recites about what the trustees agreed on Sept. 4—that is, the resolution says Sept. 5—it means Sept. 4—"to interview the board again before taking any action on the pamphlet 'Purification.'" Was that statement by the trustees on Sept. 4, 1918—

Mr. Whipple—Just a moment. Ask him what statement was made on the subject.

Q. What statement was made by the trustees on Sept. 4, 1918, and by which one, in respect to interviewing the directors again before taking any action on the pamphlet "Purification"? A. Mr. Eustace stated that they would interview the board again before anything was done about issuing the pamphlet.

Q. The resolution further refers to a letter dated Sept. 6, 1918. That is the letter which has been read in evidence? A. Yes, sir.

Q. A letter from the— A. Pardon me. Isn't there an interview with Mr. Watts there?

Q. I beg your pardon. What happened at the conference with Mr. Watts on Sept. 9, 1918? What was said to Mr. Watts and by whom? A. I asked him if he didn't remember my calling on him and requesting that the pamphlet be withheld, and I recalled the conversation to the effect that he had stated that the pamphlet had not been printed. Mr. Watts said, yes, he recalled that, but he found out since that Mr. Rhodes had misunderstood his question, that he thought he was referring to another pamphlet; therefore the information was given to me that this pamphlet "Purification" had not then been printed, when, as a matter of fact, it had been printed.

Q. What was said, if anything, about having released the pamphlet for distribution and sale? A. We asked Mr. Watts if he didn't consider that he was under obligations to re-

spect the requests of the Board of Directors, and he said he—

Mr. Whipple—Just a moment. Does Your Honor admit that conversation on the ground that what Mr. Watts said upon that subject is binding upon the trustees?

The Master—I think that we had better have the conversation, subject to your objection.

Mr. Whipple—Very well.

Mr. Streeter—I would like to know, Mr. Krauthoff, who said it? As it was given, it was "he said" and "we said."

Mr. Krauthoff—Mr. Dickey, always give the name of the person saying it.

The Witness—Yes. I beg your pardon. I made that statement.

Q. To Mr. Watts? A. To Mr. Watts.

Q. Did you complete the statement of it? A. Yes. Mr. Watts said that he recognized that he was under the authority of the directors.

Q. Did anything else happen at that conference? A. Nothing that I recall further.

Mr. Krauthoff—A letter from The Christian Science Publishing Society, Sept. 9, 1918:

"The Christian Science Board of Directors,

"Falmouth and St. Paul Streets,

"Boston, Massachusetts.

"Dear Friends:

"Your letter of Sept. 9 is received.

"We shall be very glad to meet with you any time on Thursday that will suit you. Tomorrow and Wednesday it seems impossible for us to arrange to do this, but if you will set any time on Thursday we shall be glad to meet with you.

"Very sincerely yours.

"BOARD OF TRUSTEES.

(Signed) "Herbert W. Eustace,  
"Secretary."

[The letter from Herbert W. Eustace, secretary, to The Christian Science Board of Directors, dated Sept. 9, 1918, of which the foregoing is a copy, is marked Exhibit 569. R. H. J.]

Now there is a pencil notation on this letter by Miss Warren, which, if agreeable to Mr. Whipple, I will read, in order to keep the record straight as we go along (passing to Mr. Whipple Exhibit 569, who, after examining it, returns it to Mr. Krauthoff).

The pencil notation is as follows:

"Sept. 10, 'phoned Mr. Rowlands asking if the trustees could confer with the directors at 12 m. Wed.—He said he would present the request and report—L. C. W."

[A letter from The Christian Science Board of Directors to Mr. Watts, dated Sept. 10, 1918.]

"Mr. John R. Watts, Business Manager of The Christian Science Publishing Society, Boston, Massachusetts.

"Dear Mr. Watts:

"The Christian Science Board of Directors instructs me to confirm Mr. Dickey's instruction to you this morning by saying that the board would

like to have you defer sending out any further copies of the pamphlet 'Purification' until further advice from the board.

"Sincerely yours,

"L. C. WARREN,

"Corresponding Secretary, pro tem.  
"For The Christian Science Board of Directors."

[The copy of letter of which the foregoing is a copy is marked Exhibit 570. R. H. J.]

The Witness—That request I 'phoned to Mr. Watts, and the board confirmed it by letter.

Mr. Krauthoff—Tuesday, Sept. 10, 1918:

"A letter was read from the trustees of The Christian Science Publishing Society, Sept. 9, in reply to the board's letter of the same date to them, requesting that the pamphlet 'Purification' be withheld until a conference be had and an agreement reached. A letter was also read from Editor Frederick Dixon, dated Sept. 8, relative to this pamphlet. Business Manager John R. Watts of The Christian Science Publishing Society was invited into the meeting, and after discussion of the pamphlet a letter was dictated to be sent to Mr. Watts, confirming the chairman's verbal instructions of this morning to him to discontinue sending out this pamphlet, at least until receiving further advice from the board. It was agreed to ask the trustees of The Christian Science Publishing Society to confer with the board at 12 o'clock noon, Wednesday, Sept. 11, if possible."

[The record of the meeting of the Board of Directors of Sept. 10, 1918, from which the foregoing extract is read, is Exhibit 571. R. H. J.]

Q. Now, the letter I read just before I read this record is the letter to Mr. Watts that was sent in response to this direction? A. Yes, sir.

Mr. Krauthoff—Sept. 11, 1918—

Mr. Whipple—If you will pardon me, weren't you going to read the letter from Mr. Dixon, and the trustees' reply, unless you have read the trustees' reply?

Mr. Krauthoff—I read the letter from the trustees, dated Sept. 9, didn't I?

Mr. Whipple—How about the Dixon letter?

Mr. Krauthoff—The stenographer has the letter from the trustees of Sept. 9.

Now, Mr. Whipple has asked about that letter from Mr. Dixon. That is a very lengthy letter, and goes into a very elaborate argument as to the correctness of the pamphlet itself. I will not offer that at this time, if Your Honor please, but will defer until 2 o'clock the question of whether that letter shall be presented.

Mr. Whipple—Well, if it goes in at all, it ought to go in in connection with this controversy.

Mr. Krauthoff—I beg pardon?

Mr. Whipple—And it does seem as though the letter or statement of Mr.



Dixon, who was the author of this "Purification," in meeting the suggestions or criticisms of the trustees, might be quite important.

Mr. Krauthoff—The point—

Mr. Whipple—If you make any point out of the fact that the split came over the publication of this pamphlet, what could be more important than what Mr. Dixon himself said on that subject?

Mr. Krauthoff—If Your Honor please, that letter, as I said a moment ago, is a very lengthy document. We do not present this pamphlet "Purification" for the determination of whether the trustees were right in claiming that it was a proper pamphlet, or whether Mr. Dixon is right in arguing that his metaphysics were correct. We present the incident of the pamphlet "Purification" as an exercise of the authority of the directors with respect to the literature of the Christian Science movement which the trustees disregarded, and which, from our point of view, is a violation of their duty as such, without regard to the question whether the pamphlet as published by them is correct or not.

Mr. Whipple—That is, what you are insisting upon is trying to show that they had a right to exercise an arbitrary authority, whether it was wisely exercised or not, and that even if they made a blunder in regard to it, and were entirely unjustified from the standards of common sense in what they requested, yet that it was a violation of duty by the trustees, because they did not accept their want of judgment and ignorance in the matter. Is that your position, or do you want to justify the action of your clients on the basis of common sense and ordinary judgment?

Mr. Krauthoff—The position we take, if Your Honor please, is this—

The Master—I do not understand at present exactly what letter you are referring to.

Mr. Krauthoff—Why, it is a letter from Mr. Dixon dated Sept. 8, 1918, to the Board of Directors.

The Master—Has it been referred to in what you have read?

Mr. Krauthoff—Yes; it says that a letter was also read from Editor Frederick Dixon, dated Sept. 8, relative to this pamphlet. It is referred to in the minutes.

The Master—I suggest that you produce the letter and offer it for identification, and perhaps we can postpone until later the question whether it shall be admitted in evidence.

Mr. Krauthoff—Your Honor has in mind that Mr. Dixon was the author of the articles.

The Master—I have that in my mind.

Mr. Krauthoff—In this pamphlet, and that this is a letter which Mr. Dixon submitted to the trustees for their approval and cooperation before he sent it to the Board of Directors.

The Master—Have you got the letter here?

[The letter is produced.]

The Master—Is there any objection to marking it now for identification?

Mr. Bates—No objection to its being identified.

The Master—Do you object to its being identified?

Mr. Whipple—Oh, no, Your Honor. We not only would like to have it identified, but mark it as an exhibit.

The Master—Mark it now for identification.

Mr. Bates—A letter of seven pages.

The Master—It is seven pages long. If it in any way can be—

Mr. Bates—From Mr. Dixon to Mr. Dickey, dated Sept. 8, 1918.

The Master—If any course can be taken which will result in omitting that letter from the record, without doing injustice to the rights of any of the parties in the case, I think we all want to omit it.

Mr. Whipple—It may be that some parts of it can be omitted, after it has been considered, but my present impression is that the importance of the letter deserves that, although it is a long one, it should be printed in the record, but I understand that, for the present, it is marked for identification.

The Master—Only for the present. Your right is reserved to insist later, if you wish, to insist upon its going into the record, and we will see about it then.

[Letter from Mr. Dixon to Mr. Dickey, dated Sept. 8, 1918, is marked Exhibit 572, for identification.]

The Master—What is next, Mr. Krauthoff?

Mr. Krauthoff—"Wednesday, September 11, 1918." I will read first the record as written. You will remember, Your Honor, this is the date of the meeting that has heretofore given rise to considerable discussion, about the state of the minutes, so I first read what the record recites. I will read all the minutes on that date; it will present the subject fully.

[The directors' records, Sept. 11, 1918, are offered in evidence as Exhibit 573, and are read by Mr. Krauthoff, as follows:]

"Wednesday, Sept. 11, 1918.

"Present, Messrs. Dickey, Dittmore, Neal, and Merritt." Now, the record as written recites as follows:

"The trustees of The Christian Science Publishing Society met with The Christian Science Board of Directors for consideration of the pamphlet 'Purification,' and stated their view of the relations and the respective responsibilities of these boards, as the same are determined by the Church Manual and the Deed of Trust, described in Article 25, Section 1, thereof. The directors were unable to agree to or even acquiesce in the views expressed by the trustees, but deferred making a definite statement of the directors' views until it could be carefully prepared."

Mr. Krauthoff—"Thursday, Sept. 12, 1918"—

Mr. Whipple—Just a moment. Now, would you like the record of the meeting of Sept. 11?

Mr. Krauthoff—That has been offered in evidence as an exhibit.

Mr. Whipple—You are quite sure of that?

The Master—I don't hear what you are now inquiring for, Mr. Whipple.

Mr. Whipple—The trustees' minutes of the same meeting—but Mr. Krauthoff informs me that they have already been put in.

Mr. Streeter—It is printed, Brother Whipple; it is already printed. I don't remember the number of the exhibit.

Mr. Krauthoff—Exhibit 366 is the trustees' record of that meeting.

Mr. Streeter—Mr. Krauthoff, have you read from the directors' record of Sept. 11 all that was there recorded with reference to this conference?

Mr. Krauthoff—Yes. I have read what is written in the record.

"Thursday, Sept. 12, 1918"—

Mr. Thompson—Is that all you have got on Sept. 11?

Mr. Krauthoff—That is all that is written in the record, I said, Mr. Thompson.

Mr. Thompson—Well, I know—I assume that is what you mean.

Mr. Krauthoff—I am not through with Sept. 11; I am just beginning.

Mr. Whipple—You do not claim that that is any sort of an adequate record? Your Honor will remember this is the meeting regarding which Judge Smith's opinion—

Mr. Krauthoff—If Your Honor please, if these gentlemen will permit me to introduce some evidence in the case, I think we shall move along faster. I have started to tell the whole story of the minutes of Sept. 11, 1918, which I shall proceed to do rapidly if I am not interrupted.

Mr. Thompson—We don't want you to tell it.

Mr. Krauthoff—I am telling it from the documents.

Mr. Thompson—What documents?

The Master—I think you will have to let Mr. Krauthoff take his own course here to a certain extent.

[An extract from the directors' records, Sept. 12, 1918, is offered in evidence as Exhibit 574, and is read by Mr. Krauthoff, as follows:]

"Thursday, Sept. 12, 1918.

"Present, Messrs. Dittmore, Dickey, Neal, and Merritt.

"The minutes of the regular meeting of Sept. 11 were read and approval of the same deferred until a later date."

Q. Now, Mr. Dickey, referring to the minutes of the meeting of Sept. 11, 1918, that were presented to you on the morning of Sept. 12, 1918, I will ask you if this is the form in which the minutes came to the board on that morning? (Handing paper to witness.) I call your attention to the rubber stamp at the top, which you probably

noticed. A. Yes; those are the minutes, yes.

Mr. Streeter—Just state what that is again that Mr. Dickey identified.

Mr. Krauthoff—Why, this is the form in which the proposed minutes for the meeting of Sept. 11, 1918, were read to the Board of Directors on the morning of Sept. 12, 1918.

Mr. Streeter—Read by whom?

Q. Who reads the minutes, Mr. Dickey, when the board meets in the morning? A. The secretary.

Q. Miss Warren—I mean the corresponding secretary? A. The corresponding secretary.

Q. So these minutes were read to you on the morning of Sept. 12, 1918, by Miss Warren? A. They were.

Mr. Krauthoff—And they have been heretofore identified, I think, as Exhibit 245.

Mr. Streeter—Now, will you read those right into the record?

Mr. Thompson—Well, let's see. Let me look at them.

Mr. Streeter—I want to have them in.

Mr. Thompson—Let's see what is in them.

Mr. Streeter—I don't care what is in them. It is what Miss Warren presented to the board on the morning of Sept. 12.

Mr. Krauthoff—Just one minute.

Q. Mr. Dickey, attached to Exhibit 245 in the form in which it is identified is a sheet of paper in the handwriting of Judge Clifford P. Smith. Now, that did not come to you on the morning of Sept. 12, 1918?

Mr. Thompson—Just a minute. This affects us.

A. I think not, Mr. Krauthoff.

Mr. Thompson—Just a minute. That is a leading question. I ask to have it struck out, and the answer also.

Mr. Krauthoff—Very well.

Mr. Thompson—When did it come to you?

Q. When did it come, Mr. Dickey? A. Some time after the meeting on Sept. 12.

Mr. Thompson—Why is it attached to that record?

Mr. Krauthoff—I suppose that is a question that will be answered.

Mr. Thompson—Before you tear it off, we want to know.

The Master—Suppose we proceed in this way—

Mr. Krauthoff—I wasn't going to tear it off.

The Master—It appears that when he told you, as I understood him to tell you, that the document was the minutes of the meeting of Sept. 11, read and presented on the morning of Sept. 12, he did not mean that statement to apply to the whole of the document.

Mr. Krauthoff—No.

The Master—Now, find out how much he did mean this to apply to.

Mr. Krauthoff—It is with the proposed minutes of the meeting of Sept. 11.

The Master—You want now what

was presented on the morning of Sept. 12.

Q. How much of this document, No. 245, was presented upon the morning of Sept. 12, 1918? A. All but the attached sheet, dated Sept. 11, in the handwriting of Judge Clifford P. Smith, and stamped, "Read, October 7, 1918, C. S. Board of Directors." Stamped, "Copied and compared."

Q. When the first three pages of Exhibit 245 were read to the board on the morning of Sept. 12, 1918, did any difference of opinion arise as to any part of the proposed minutes, and if so, which part?

Mr. Thompson—Pardon me; I object to the question on behalf of Mr. Dittimore.

Mr. Krauthoff—I beg pardon?

Mr. Whipple—I take it what you mean, Mr. Krauthoff, is, Was there any conversation about it, and if so, what?

Mr. Krauthoff—Certainly.

Mr. Whipple—Now, wouldn't it be simpler to put it that way?

Mr. Krauthoff—I assume the witness would know that a difference of opinion could arise only in conversation.

Q. Did anybody say anything on the morning of Sept. 12, 1918, about the proposed minutes as set out in the first three pages of this exhibit, and who was it that said it, and what did they say?

Mr. Whipple—That is all right.

A. When the minutes were read for the approval of the board, Mr. Dittimore objected.

Q. What did he say, Mr. Dickey? A. He said that the minutes did not record the full proceedings of the meeting of the day before, and he objected to the minutes in the form in which they were presented.

Q. Did he present at that time any document that was from his point of view to be made a part of the minutes? A. I don't recall that he did.

Q. Now, then, the document which you have identified, the first three pages of Exhibit 245, is originally in typewriting. There seems to be a lead pencil deletion at the bottom of page 2 and the top of page 3. Do you know how that came to be put there? Was it done by some member of the Board of Directors or by someone else? A. No; that would not be done by any of the members of the board; that would be done by the secretary.

Q. What else did Mr. Dittimore say on the morning of Sept. 12, 1918, about these minutes and about what they should include from his point of view? A. He said he objected to the practice of the Board of Directors in not stating in full in the minutes the conversation had at an interview of that character.

Q. What, if anything, did any member of the board say in reply, and who said it? A. I said that I thought the minutes as recorded by the secretary were adequate; that it was not the custom of this board to record conver-

sations or make extended items in their minutes where no action had been taken by the board. I objected to the minutes of The Mother Church recording anything in the nature of a dispute or a quarrel between the directors and the trustees unless some vote had been taken and some action done.

Mr. Krauthoff—Now, this document, Exhibit 245, has not been read in evidence in full, I believe. It has been marked for identification, and at this time I will read the part of the minutes.

Mr. Whipple—You say it has not been read, it has not been put in evidence?

Mr. Krauthoff—It has been marked, as I understand it, as an exhibit, but it has never been read.

Mr. Whipple—Well, I think that has been read. It is not as an exhibit, not as an identification mark at all, and I feel confident I read it all; at any rate, it is an exhibit in the case.

Mr. Krauthoff—May I inquire whether this part that is deleted in lead pencil has been read into the record?

Mr. Whipple—If I could read it, I am sure I did, but if it was so obliterated that it could not be read, then I did not.

Mr. Krauthoff—May I see the record on exhibit 245? I will verify it.

Mr. Whipple—Of course, I cannot state with certainty as to what I read. It is my belief that I read the part that you have spoken of as deleted, and emphasized particularly that it has been stricken out,—

Mr. Krauthoff—May I have the document?

Mr. Whipple—At the bottom of page 2 and top of page 3. That would be my memory.

Mr. Krauthoff—I believe it would aid the Court if I may at this time read into the record the deleted part, which is only about eight or ten lines of typewriting.

Mr. Whipple—I have no objection to it.

Mr. Krauthoff—Your Honor will recall now that this is the form in which the proposed minutes were presented on the morning of Sept. 12, 1918:

"The trustees of The Christian Science Publishing Society met with the board for consideration of the pamphlet, 'Purification,' at which time the trustees presented their interpretation of the Deed of Trust under which they are operating the business of the Publishing Society, with the request for the entire cooperation of the directors of The Mother Church to the extent of consulting them on all important matters in regard to the publishing and issuing of Christian Science literature and any other affairs connected with the Publishing Society."

Q. Now, that is the form in which Miss Warren wrote the minutes which were presented on the morning of Sept. 12, 1918? A. It is.

Q. And the board did not, on Sept.

12, 1918, approve these minutes? A. They did not; they tried to.

Q. Was there any other objection made to these minutes on Sept. 12, 1918, than those of Mr. Dittimore? A. None but the ones made by Mr. Dittimore.

Q. Now, then, this subject came up frequently in September—these minutes? A. Yes, they came up with great regularity.

Mr. Whipple—If you will pardon me, Mr. Krauthoff, I do not understand that Mr. Dittimore objected to anything that was in or objected to this particular paragraph; but objected because there was not more. Wasn't that the testimony?

Q. Have you stated all of the conversation with Mr. Dittimore? A. All that I recall.

Mr. Whipple—It does not appear that anybody objected to this paragraph which you have read, which was deleted.

The Witness—Mr. Dittimore objected to voting for the adoption of the minutes in the form in which they were read.

Mr. Whipple—We have not yet found who asked to have these deleted and Judge Smith's changes incorporated.

The Witness—Am I being cross-examined by Mr. Whipple or by you?

The Master—Perhaps we had better leave that, Mr. Whipple, for the present. Let his statement speak for itself as it stands at present.

Mr. Whipple—Very well.

Q. Mr. Dickey, Mr. Dittimore did object to the minutes in the form in which they were presented on the morning of Sept. 12, 1918? A. He did.

Q. And he did say that the minutes should contain more than they did? A. Pardon me?

Q. Did he say that the minutes should contain more, or that what was in was wrong? A. He said that they were not adequate.

Q. And on the morning of Sept. 12, 1918, according to the record of the board, you deferred their approval? A. Yes.

Q. You are not able to state who it was that struck out the language in lead pencil that I read in the record? A. I don't know whose marks those are, no.

Q. I call your attention to this document and ask you when you first saw that. (Handing paper to witness.) Do you notice the rubber stamps on it. Mr. Dickey? A. Yes. This was presented by Mr. Dittimore at the meeting of Sept. 16, as his version—

Q. Sept. 16, 1918? A. 1918. —as his version of what should appear in the minutes of the meeting of Sept. 11. This date is Sept. 10 on the top of it, but I think it should be the 11th; shouldn't it?

Q. You said this was Mr. Dittimore's statement of his version. You meant by that, that was Mr. Dittimore's statement of what the minutes

should be? A. Of what he thought should be contained in the minutes of that meeting.

Mr. Krauthoff—Now, this is exhibit 246.

The Master—He said he first saw that on Sept. 16?

Mr. Krauthoff—Yes.

The Master—You left off with Sept. 12.

Mr. Krauthoff—Yes.

The Master—Is there anything that comes between?

Q. Do you know of anything that comes between Sept. 12 and Sept. 16 on this subject?

The Master—Do you have any records there between? A. Not in writing.

Mr. Krauthoff—There was no meeting between Sept. 12 and Sept. 16.

The Master—Very well.

Mr. Thompson—If you are going to put anything in, you might let us see it.

Mr. Krauthoff—I think we have already put it in evidence. (Handing paper to Mr. Thompson.)

Mr. Thompson—I don't know whether you have or not. Let us look at it and see.

The Master—Has that been put in?

Mr. Thompson—It seems a familiar document.

Mr. Krauthoff—It has been identified as an exhibit; I am not sure whether it has been read in evidence or not. I was just trying to verify the record to see whether it was read in evidence.

Mr. Whipple—I remember it, yes; I put it in.

Mr. Streeter—You did not read it.

Mr. Whipple—I read it fully and read all the notations on the top of it. But I do not remember that I knew at the time that it was what they call Mr. Dittimore's version.

The Master—If the fact be as stated, that that has already been read by Mr. Whipple—

Mr. Krauthoff—I am not going to read it.

The Master— —and it is marked as an exhibit, do you need to go any further than you have now, than to have the document referred to marked as such and such an exhibit?

Mr. Krauthoff—I was going to ask one question:

Q. With respect to this Exhibit 246 which is headed "Memorandum of Additions to Complete Minutes of Meeting of Sept. 10, 1918," the date "Sept. 10" is a typographical error, is it not, Mr. Dickey? A. I thought it was, yes.

The Master—What is the number?

Mr. Krauthoff—Exhibit 246.

Q. It was referring to the minutes of the meeting of Sept. 11? A. Yes, sir.

Q. And that was read to the Board of Directors on Sept. 16, 1918, and it seems to have been read again on Sept. 23, 1918. A. That is correct.

Q. In the course of the discussions that came up about these additions to

complete the minutes of meeting of Sept. 10, 1918, was anything said by Mr. Dittimore as to the duty of the Board of Directors under the law to conduct its record? What was their legal duty? A. Mr. Dittimore characterized the action of the board as illegal.

Q. What did he say? A. He said it was illegal to withhold a proper account in our minutes of what had transpired.

Q. Now, do you have any recollection of anything happening between Sept. 16, 1918, and Sept. 23, 1918, about these minutes? A. We had a great many disputes over that question of admitting Mr. Dittimore's addition.

The Master—Yes; but do you remember anything that happened between Sept. 16 and Sept. 23? I think that is now the question put to you.

Q. Did anything happen? A. I do not remember anything definitely as to what happened between those dates. Q. Your attention has been called to a record of the board of Oct. 1, 1918:

"The minutes of the directors' meeting of Sept. 11 relating to a conference with the trustees of The Christian Science Publishing Society of that date were again taken up for consideration, to be referred to Judge Clifford P. Smith as to what it would be best to include in the minutes, and an opinion upon the position of the trustees of The Christian Science Publishing Society as outlined in their letter of Sept. 30, Judge Smith to be furnished all information on the subject which will be helpful to him."

Now, the records show that on Sept. 30, 1918, the trustees of the Publishing Society sent you a letter which has already been introduced in evidence? A. Yes, sir.

Q. And at this meeting on Oct. 1, 1918, the full board was present—Messrs. Dittimore, Dickey, Neal, Merritt, and Rathvon, according to the record? A. They were.

Q. And the minutes of Oct. 1, 1918, as I have read, were approved on Oct. 2, 1918, at a meeting where Messrs. Dittimore, Dickey, and Merritt were present? A. Yes.

Q. Now, why did you refer these minutes to Judge Smith? A. Well, the dispute had been drawn out so lengthy it was impossible for us to conduct our business without settling that in some way, because it was raised at every meeting by Mr. Dittimore, who protested that he wanted his statement put into the minutes of that day. So thinking to settle the matter by calling in somebody from the outside. I suggested that we refer this matter to Judge Smith as to the legality of the action of the board in leaving out Mr. Dittimore's statement.

Q. Was that satisfactory to Mr. Dittimore—

Mr. Thompson—One moment. Pardon me a minute. That is going beyond the line. I pray Your Honor's

judgment. I move to have that question excluded.

Mr. Krauthoff—I am glad to be corrected.

Q. What did Mr. Dittmore say to that? A. He said that would be satisfactory to him, or something to that effect. I do not remember the exact words.

Q. Did he vote for the resolution sending it to Judge Smith?

Mr. Thompson—One moment. The record shows that.

Mr. Krauthoff—The record does not show any aye or no vote on it.

Mr. Thompson—Then ask him first if he remembers and is prepared to swear whether he did or not.

The Witness—If Mr. Dittmore did not vote his vote would be recorded, there.

Mr. Thompson—If he did not vote his vote would be recorded, would it?

Q. You mean, if he did not vote, it won't be recorded. A. The action of his not voting would be recorded.

Q. And where the minutes are silent as to not voting, or he voted affirmatively or negatively, then what was the practice?

Mr. Thompson—One moment. I pray Your Honor's judgment.

Q. What is the practice of the board with respect to recording the unanimous action of the board in its minutes?

Mr. Thompson—Pause a moment. I pray Your Honor's judgment both as to form and substance. It is incompetent from beginning to end.

Mr. Krauthoff—If Your Honor please, this record is silent as to how the board voted on that order or resolution with respect to referring the subject to Judge Smith.

Mr. Thompson—May I look at your record there that you are talking about so much?

Mr. Krauthoff—I am now offering to prove by this witness what the practice of the board is with respect to recording the vote of the board where the action of the board is unanimous.

Mr. Thompson—Let me just see what you have got here. (Referring to record.)

Q. Have you any personal recollection of how Mr. Dittmore voted on that motion to refer this to Judge Smith?

The Master—I think Mr. Thompson asked you to pause until he looked at the record.

Mr. Krauthoff—Yes.

Mr. Thompson—Why, there isn't even a record of a vote here, if Your Honor please, or even a resolution. I marvel that Mr. Krauthoff should proceed here, leading on his witness and telling him what is in this written document, on such a slender basis as he has. Find me the record of a vote or resolution, or anything even approximating it, before you ask whether it was unanimous or not.

The Master—Just what, Mr. Krauthoff, is the vote you have in mind now?

Mr. Krauthoff—It is the vote with respect to this action: that the minutes of the directors' meeting of Sept. 11 were to be referred to Judge Clifford P. Smith.

Mr. Thompson—There is no vote at all there recorded.

Mr. Krauthoff—Now, if Your Honor please, this Board of Directors—

The Master—Pause a moment. Mr. Thompson claims that there is no such vote recorded.

Mr. Thompson—Will Your Honor look at that thing he is talking about as a vote or resolution? It really seems strange; there is nothing there of either kind.

Mr. Krauthoff—It does not formally state that on motion of Mr. Jones, seconded by Mr. Smith, the following resolution was moved and seconded three times and then passed by a vote as follows. It is not kept with the precision of the records of a legislative assembly.

Mr. Thompson—Apparently not.

The Master—Couldn't that be taken as an elliptical form of stating that it was voted that it be referred?

Mr. Thompson—I dare say that what really happened, as far as I can make out, was that there was a general discussion, no vote taken at all, and the secretary, whoever it was there, some one, took notes, and suggested afterward that it be written up in that way, because there was no vote that it be put in that formal shape—without any vote or resolution at all.

Q. Mr. Dickey, what is the practice of the board with respect— A. You asked me a question before, what my personal recollection was.

Q. Very well. I was trying to accommodate myself to Mr. Thompson's objection. Never mind as to your personal recollection; I will withdraw that for the present. I will ask you this question: What is the practice of the board with respect to formal motions being offered in every case?

Mr. Thompson—I pray Your Honor's judgment.

Q. That a formal motion is offered and seconded and a formal vote taken?

Mr. Thompson—I ask Your Honor to exclude that.

The Master—Pause a moment; do not answer until I give Mr. Thompson's objection due consideration. Have you anything more to say?

Mr. Krauthoff—No, not until I find out what was done. Mr. Dickey was there and Mr. Thompson was not.

The Master—If there was a practice of the board in that matter, I think he may show it. Mr. Thompson's objection, of course, being reserved.

Mr. Krauthoff—Now, will you read the last question that was asked?

[The question is read by stenographer as follows: I will ask you this question: What is the practice of the board with respect to formal motions being offered in every case?]

Q. I will ask what was the prac-

tice in September, 1918, as to this subject. A. The practice was that if a formal—

Mr. Thompson—Is that question admitted?

The Master—Yes; I shall admit it subject to your objection. Go on. A. (Continued) If a motion was made and seconded and put before the board and voted upon, it was recorded in exactly that fashion. If there was any dissenting vote it was customary to record that fact; if any member wished to file his explanation of his vote, that privilege was accorded him. If just an agreement was arrived at—if the chairman should say, "Shall we do thus and so?" and they all agreed, it was frequently entered upon the minutes that the board decided to do thus and so. In the present case I asked Mr. Dittmore if it would be agreeable to him to refer this question to Judge Smith for settlement, and he said it would. The other members of the board assented and that was done.

Mr. Krauthoff—Now, in connection with the minutes of Oct. 1, 1918, which I have read, I call attention to the minutes of Oct. 2, 1918, in which there was present at the directors' meeting, Messrs. Dittmore, Dickey, and Merritt.

"The minutes of the regular meeting of Oct. 1 were read and approved." Now, it is 1 o'clock, if Your Honor please.

[Recess until 2 p. m.]

#### AFTERNOON SESSION

Mr. Krauthoff—If Your Honor please—

Mr. Whipple—I understood that we were to call up at 2 o'clock the matter of this letter of Mr. Dixon to Mr. Dickey, of The Christian Science Board of Directors. We have examined it, and while it is a somewhat long production, we think it one which is very helpful as throwing light upon this whole situation, the situation just at this time. There are a great many things which could not be made to appear in any other way. We therefore would like at the proper time, and under Your Honor's direction, to have it admitted as an exhibit, it already having been referred to in the record, and to read it, and have it become a part of the record. It would seem as if the most convenient time to do it would be now, while we are in relation to the records of Sept. 11.

The Master—Is there not any way in which the significant parts can be read?

Mr. Whipple—It is so connected that it seems difficult to do it, and it is right on the point of this particular controversy on which a good deal of stress is laid by the defendant directors. It would not take a very great amount of time to read it, and, if it is agreeable, and if it is to be read, I should like to read it now.

Mr. Krauthoff—We object to the

reading of the letter in evidence, for the reason that it has no relevancy to the controversy. The controversy is not as to whether it was proper or improper to send out this pamphlet from the standpoint of its own merit or its own correct statement of metaphysics. The question arises as to the power of the board to ask the trustees to hold it up, and that does not depend on whether the pamphlet is right or wrong; and this letter has no bearing on the extent of the authority and power of the board: it is an argument to the effect that the pamphlet is correct, and that is not the question before the Court, as we see it.

Mr. Whipple—That was not the controversy at the time at all. The directors were not as benighted, apparently, as their counsel is. They were not claiming then that whatever they said must arbitrarily be taken, whether right or wrong: they were claiming then that they were right in regard to this proposition, and that therefore what they wished should be complied with—they were at least pretending, or stating, and apparently in good faith, that they wanted their wishes observed because their wishes were right. Now their counsel says that the position that he wants to maintain is that, right or wrong, they were the absolute body who could cram wrong down the throats of this great denomination; that they had the power, quite irrespective of whether they were right, to enforce their wishes. It is in line with something which was developing the other day, developing fast, mentioned the other day, about this ecclesiastical tribunal. There is only one religious body, or was before we heard of this one, that was infallible, or religious person absolutely infallible. Apparently now the Pope has a rival, according to the contention that you are making. The question is not involved whether they were right. The question is whether, right or wrong, they could put something through.

The Master—If it is claimed that the letter has any bearing on the question which Mr. Whipple indicates, namely, whether it was at the time the directors' attitude that they must govern, right or wrong, I suppose that the letter will have to be read.

Mr. Krauthoff—Well, if Your Honor please, as to the directors' attitude at the time, Mr. Whipple has not said that at the time the directors claimed that, whether right or wrong, the pamphlet should not go out. Mr. Whipple has said that at the time the directors said if they were right the pamphlet should not go out. Now, for the sake of this record, this letter tends to show, from the standpoint of the writer, that this pamphlet is a correct statement of Christian Science doctrine, and should have been issued.

The Master—Nobody is going to expect me to decide, or the Court to de-

cide, whether that is true or not, of course.

Mr. Krauthoff—That is just the reason why the letter should not be read in evidence.

The Master—But it being claimed that the letter has a relevancy beyond any such question, I think that, if it is insisted on, you will have to read it.

Mr. Krauthoff—I did not understand that it was claimed that the letter had any relevancy as to the attitude of the directors at all.

Mr. Whipple—Why, I tried to make that position clear.

The Master—So I understood, Mr. Whipple.

Mr. Whipple—We understood that that was the persuading influence which made the directors recede from the position that they had taken.

Mr. Krauthoff—As to receding, we will offer our own evidence.

Mr. Whipple—That is right, and I want this put in before you put in the evidence of your receding, so that its weight in accomplishing that result may be considered, with Your Honor's permission—

Mr. Krauthoff—As to the receding, if Your Honor please, we desire now to state that we do not admit that we have receded, and as to the claim of receding we will offer our own evidence.

Mr. Whipple—All right.

The Master—I think that undoubtedly you have that right.

Mr. Whipple—This is on the letter-head of—

"An International Daily Newspaper

"The Christian Science Monitor

"Published by The Christian Science Publishing Society

"Falmouth and St. Paul Streets

"Office of the Editor

"Boston, Massachusetts,

"Sept. 8, 1918."

It bears the legend stamped on it: "Read Sept. 10, 1918, The Christian Science Board of Directors," and another statement: "Copies sent to directors Sept. 10, 1918."

It is addressed to:

"An International Daily Newspaper

"THE CHRISTIAN SCIENCE  
MONITOR

"Published by The Christian Science Publishing Society

"Falmouth and St. Paul Streets

"Boston, Massachusetts

"Office of the Editor

"Mr. Adam H. Dickey,

"The Christian Science Board of Directors,

"Boston, Massachusetts.

"Dear Mr. Dickey:

"I am writing to you, as chairman of the board, over the question of the pamphlet, 'Purification,' because I cannot any longer disguise from myself the fact that the matter needs to be cleared up. I will endeavor to

make this letter as short as possible, but I am afraid I shall have to go into the whole matter."

"May I begin, therefore, by explaining the genesis of the pamphlet? Some time ago the trustees asked me if I would write this pamphlet. They gave me the names of the various subjects they wished dealt with. These sub-heads and the name of the pamphlet are theirs: the whole of the rest is entirely my own."

The Master—I suggest, Mr. Whipple, that if you find anything as you go along that is clearly only a discussion of doctrine, you omit it.

Mr. Whipple—I will.

Mr. Bates—I think, Your Honor, that it is all on doctrine, and that it ought to be handed to Your Honor to glance over, and then if Your Honor thinks that it is something that ought to be read into the record, we have no objection. It is merely because it has no bearing on any issue in this case that we have objected to it; but if it were handed to Your Honor, and Your Honor thought that it was a proper document to be put into this case, we should have no objection at all to its being read into the record.

The Master—Now that we have got started, I think that we will go through, and then we will all hear it at once. And let me add there, we will also reserve to you the right to move to strike it out later on.

Mr. Whipple (resuming the reading of the letter)—

"When they asked me to write it I had no hesitation in agreeing to do it, the trustees, as I understand it, being responsible for all literature issued from the publishing house. If, however, I had ever had any hesitation it would have been removed by the fact that the directors receive advanced copies of all Monitor articles, in order that they may satisfy themselves of any of these articles before they are published. As no objection was made to any of these articles before they were printed, and as no objection was made on their publication, I was a little surprised to get a letter from Mr. Jarvis, asking me if I would explain to the directors exactly what my thought was on a particular passage in one of these articles. It so happened that within a few minutes of getting that letter the directors asked me to come over and see them about an entirely different matter. When we had done discussing the subject they had asked me to come and see them about, I myself raised the question of these articles, and I explained exactly what I meant by the passage in question, and asked how the question came to be raised. The directors assured me, without any dissentient, that they did not in the least mean to question the metaphysics of any statement in them, but that they were a little doubtful about the wisdom of giving such advanced metaphysics to the field, especially as Mrs. Eddy herself had gone somewhat carefully over

this ground. That I could not personally agree to, but it was a perfectly legitimate standpoint for anybody to take, and I, therefore, myself volunteered the information to the board that the articles had been written at the request of the trustees, and that the trustees intended to issue them in pamphlet form. I had a specific reason for stating this. It is, as I explained to the directors, that if anybody thought it wiser not to issue the pamphlet, on the grounds they had stated, action should be taken at once, as in a few days it would be too late to do anything without occasioning a great deal of trouble. I left the matter there, and said nothing to the trustees on the subject. This because it is my invariable habit to regard my interviews with the directors as entirely confidential, and never to repeat a single word, at any of them, to any person, unless that person is involved and is to be communicated with.

"After telling the directors that the articles were to be issued in a pamphlet, after telling them that personally I had no feeling in the matter, and did not mind one atom whether it was ever issued or not, provided that action was taken before any trouble could ensue, I never gave the matter any further thought, and I was therefore tremendously surprised when I received an intimation, from the trustees, long afterward, that the question had been raised again, and this after the pamphlets had been printed, and the fact was known to numbers of people, and after a considerable number of advanced copies had been sent away, so that there was no question that the matter had become public property."

I want especially, if I may interrupt myself, to call attention to that statement, as to the length of time that the directors had known about it and raised the question.

"It so happened that the next morning I saw two of the directors in Beacon Street, Mr. Neal and Mr. Merritt, and I spoke to them about it, and explained that though I said, and entirely meant that I did not mind if the pamphlet was held up before it was public property, I did feel that any attempt to hold it up after it had become public property, would make the situation quite impossible for me. Mr. Merritt and Mr. Neal assured me, as I understood, that the question involved was a question of the pamphlet being published without my name, and I then told them that the pamphlet had been shown to me with my name on it, but that I had struck it out because I had always maintained that all literature was best issued anonymously and on its own merits. Mr. Merritt, I think, explained that Mr. McLellan had said that Mrs. Eddy wanted the names of the writers of articles published, and that therefore it was felt that my name should appear on this pamphlet. I replied that as far as I was concerned personally I did not care, and

that I was merely contending for the anonymity of publications in general. At the same time I pointed out that you could not use Mr. McLellan both ways. That his declaration that Mrs. Eddy had said other things had been questioned, and put right aside, on the ground that there was nothing to show that she had said it, and that you could not now use him as an authority on one point, when he had been rejected as an authority on another point. Besides I pointed out to them that if we were to accept statements of what Mrs. Eddy said through other parties, who might or might not have sufficient understanding or demonstration to report them accurately, or to give her reasons for them, we should very soon have a mass of authorization which would obliterate Mrs. Eddy's teaching. As a matter of fact, Mrs. Eddy had provided for this by insisting that no communication of hers should be even read, which was not read absolutely in full, and that acting on what she was supposed to have said to somebody was offending against the spirit of this by-law to the very limit.

"With the assurance that it was simply a question of name, I again thought no more about it until one afternoon the trustees asked me to come down to their room, and told me that at the directors' request they had discussed the pamphlet with them, and that exceptions had been taken to certain statements, which I will deal with separately. At the moment, however, what I want to draw attention to is the fact that in spite of everything I had said, to safeguard such an eventuality, the question of the publication of the pamphlet was again raised, and raised after a growing number of people had heard all about it. This, I think, would have been unfair enough to me, but since then the trustees have told me that the chairman of the board rang up Parker, and asked him if the pamphlet had been issued yet, and that at his request Parker had been up to the printers, had found out the exact status of the case, and had reported to him. Now this means that an ever-increasing number of people are having their attention drawn to the pamphlet, and are having doubts raised in their minds. You will remember that some time ago an article, upon which one of the directors had made some alterations, for his own satisfaction, and not because there was anything wrong in the pamphlet, was sent over to the manager's office, and openly passed forward and up to the composing room, with the necessary implication that the directors had to get the articles correct themselves. These combinations of circumstances make the work of an editor extremely trying, and are really not the support that any editor has a right to expect from the board, inasmuch as the mere printers and people are informed over his head of circum-

stances he knows nothing of, and the impression given that mistakes had occurred where there is no implication even of a mistake.

"Now may I come to the pamphlet itself? The pamphlet was written, and before it was even printed the proofs were shown to the trustees simultaneously with the directors. The trustees read these most carefully and assented to every statement in them. Subsequently they read the proofs of the pamphlet, which I was too busy to, and again individually assented to every statement in them. Now the trustees in talking to me on the subject told me that they had agreed with the board to see me, and to speak to me about certain matters in the pamphlet. They told me that the board had admitted that there was absolutely no metaphysical mistake in the pamphlet, but that they thought for certain reasons it was unwise to publish it. I am going to take these reasons seriatim, because the question is an intensely serious one. And in order that I may not misrepresent the trustees, in any way, I have shown them this letter so as to be perfectly positive that there shall be no misrepresentation of their statements. Now the points at issue, as I understand from the trustees, are these.

"1. That the pamphlet unveils a phase of Christian Science that Mrs. Eddy has carefully veiled.

"2. That it uses expressions which she has only used sparingly, sometimes only once.

"3. That its use of the word (a) 'reflection,' and (b) of the word 'subdivisions' is puzzling.

"4. That it interprets or restates Mrs. Eddy's teaching.

"I do not know if these are individual or general objections, and it is just as well that I do not, but I will deal with them in turn.

"1. The statement that Mrs. Eddy has veiled some of her teachings seems to me to be very much more serious than anything objected to in the pamphlet. It implies that Mrs. Eddy deliberately darkened certain phases of her teaching, and it does this on the authority of an individual or individuals, who, in doing so, certainly do interpret or restate Mrs. Eddy's teaching. Personally it never occurred to me for a second that I was unveiling anything. I was writing of a phase of Christian Science which was to me just as clear as the unreality of matter or the infinity of good. It is a subject I have talked over with numbers of Christian Scientists, and I never heard any single one of them imply that Mrs. Eddy had ever said anything which she did not think it wise that the world should know. To me personally there is nothing whatever veiled or hidden in her teaching of generic man. It is a plain, straightforward, metaphysical argument, which is nothing like as difficult or as

involved as the unreality of matter. I therefore must take exception to the charge that I have unvelled anything of Mrs. Eddy's and I know that I am utterly incapable of unvelving anything that she has said, for she has taken the veil off for every human being to read.

"2. The criticism that I have used expressions which she used sparingly or only once, is, in my opinion, not exact and is, also, like the first objection, in itself an interpretation or restatement of Christian Science. I am told that it was said that the word 'generic' only occurs four times in Science and Health. If it had occurred only once, it would be absolutely sufficient authority for a Christian Scientist to use it, but as a matter of fact it really occurs from the beginning to the end of Science and Health. Mrs. Eddy used generic man to define generic man on a few occasions, but she could not be expected to drag in the word 'generic' every time she spoke of generic man any more than she could be expected to introduce the term supposititious every time she spoke of evil. She made it perfectly clear that evil was unreal, and then left it for the rest of the book to the reader, or else the writing of the book would have become impossible. It is like a man who wrote a life of the Duke of Wellington being expected to introduce the Duke of Wellington's full name whenever he mentioned him in the biography. It would be frankly impossible. In my opinion exactly the same statement is true of generic man, and nobody could possibly teach Christian Science scientifically for five minutes who did not teach what generic man is even if he never mentioned the fact of generic man. But to contend that because Mrs. Eddy only uses the word 'generic' four times in Science and Health, Christian Scientists must not use it, seems to me a contention weighted with tremendous danger to the movement. Something of this nature was said to me when I was talking to the directors myself, it being to the effect that Mrs. Eddy only once uses the term, 'man including the universe.' That once is warrant for any Christian Scientist using it, and as a matter of fact it conveys entirely the same intention as generic man. But the matter goes much further than this. If the Board of Directors were really to maintain this ground, they would be starting an index-expurgatorius of Mrs. Eddy's writings, a thing which Christian Scientists were requested to hold off from. Such a condition would split the movement from top to bottom, if it were possible to split it, which we all know is quite impossible.

"3. (a) I have used the word 'reflect' or 'reflection' in exact accordance with its use in all great English literature, and, what is far more im-

portant, in Science and Health. Objection has been taken to the statement on page 1 of the pamphlet, 'Generic man, in Christian Science, is the full image and likeness of God, divine Mind, and is reflected in an infinity of greater and lesser ideas and their identities.' Now if anyone will refer to page 305, line 13, of Science and Health, he will find this statement: 'The verity that God's image is not a creator, though he reflects the creation of Mind, God, constitutes the underlying reality of reflection.' And on page 507, line 15, Mrs. Eddy writes: 'The universe of Spirit reflects the creative power of the divine Principle, or Life, which reproduces the multitudinous forms of Mind and governs the multiplication of the compound idea man.' On page 281, line 14, 'The one Ego, the one Mind or Spirit called God, is infinite individuality, which supplies all form and comeliness and which reflects reality and divinity in individual spiritual man and things.' On page 266, line 27, 'Man is the idea of Spirit; he reflects the beatific presence, illumining the universe with light.' All those statements are on all fours with the statement in the pamphlet. The fact, as I understand it, is that in reading any statement about reflection, you have to remember that the word reflect has a multitude of implications, and to be quite sure that you are not narrowing the word down to some specific implication in your own mind.

"3. (b) 'Subdivisions' On page 20 of the pamphlet there appears the statement, 'The reality not merely of those greater ideas, the sons and daughters of God, but of those lesser ideas or subdivisions of greater ideas and their identities, such as money, mountains, or mammals.' Now on page 511, line 2, of Science and Health, the word 'subdivides' is used exactly in this sense. 'This Mind forms ideas, its own images, subdivides and radiates their borrowed light, intelligence, and so explains the Scripture phrase, "whose seed is in itself."'

"Now the danger of words is simply this. That Mrs. Eddy herself, in literally a thousand passages, uses words in seemingly contradictory senses, but these, when examined, are found not to be contradictory. It is almost impossible to use human language which is material in illustration of spiritual things, and not be guilty of apparent discrepancies. As far as I know there is probably not a single pamphlet which has been published which could not be criticized from this point of view, if it were subjected to a minute criticism, such as has been devoted to 'Purification.'

"4. I am not quite sure what is meant by the word restatement or interpretation. So much depends upon the definition of the words that it is a little difficult to meet the objection. As I understand the matter, however, every lecturer who gives a lecture, interprets Science and Health, every person

who writes an article, interprets Science and Health. In the sense that the lecturers interpret Science and Health and in the sense that writers interpret Science and Health, and in the sense that teachers interpret Science and Health the pamphlet 'Purification' does, but in no other sense that I can imagine. It is dealing with Mrs. Eddy's statements and is carefully, most carefully, using them for both premises and conclusions.

"The same difficulty faces anybody over the word restatement. Every person who obeys Mrs. Eddy's instructions not to quote her, but to write their own articles in their own way restates Science and Health, and if this is restatement, it is a restatement under her own instructions. If by the word restatement it is intended to imply that the pamphlet introduces one single iota of teaching which is not contained through and through Science and Health, or if the word interpretation is intended to imply this, then I am bound utterly to repudiate them. Indeed I would go far further than this. I would request the Board if it really thinks this, to give me chapter and verse, in the pamphlet, for the statement, because I am perfectly certain it is impossible to do so. In the old days people used to try to write articles crammed with quotations from Science and Health. These became parrot-like, and Mrs. Eddy, for reasons best known to herself, intervened, and gave an order that it was not to be done. After the order had been in existence for some time Farlow wrote to me stating that he thought I sometimes was too generous in my quotations. But, he wound up, Mrs. Eddy is content to give you a special dispensation, because it is never abused, and therefore, of course, I have nothing whatever to say. The fact is that every Christian Scientist is sensitive on the subject of adding to or taking from the teachings of Christian Science, and if criticisms of such a nature are made, they should be made, especially on the Board, with chapter and verse.

"The Board will understand that this is not a criticism in any way, but a reply to criticism, and a defense of the position which has been criticized. I think they will understand that a person so busy as I am does not break right into his day's work, to write a letter as long as this, unless the terrific seriousness of the situation is apparent to him. The devil is active to try to break up the Christian Science movement by setting individual against individual. Personally I know the Board recognizes that I have done every single thing in my power not to make trouble for it. It had the articles in question before they were printed, after they were printed, and finally, it was in possession of the fact that the articles were to be issued in a pamphlet, and yet it never spoke.

It waited until it was almost impossible to do anything without causing trouble to the individuals concerned, not intentionally, I know, but still in effect, and then it made certain criticisms to the Board of Trustees, to pass on to the editor of The Monitor, which it is quite impossible for him to pass over without replying to.

"Yours ever sincerely,  
(Signed) "FREDERICK DIXON."

Mr. Whipple—That would be Exhibit 572; strike off "for identification."

[The letter from Mr. Dixon to Mr. Dickey, dated Sept. 8, 1918, previously marked Exhibit 572 for identification, is now marked Exhibit 572.]

Mr. Krauthoff—Now, if Your Honor please, the letter having been read in evidence, we move to strike it out for the reason that it consists of three varieties of statements. The first, the opinion of Mr. Dixon as to who is the authority for sending out the literature of the Publishing House, that being a question to be decided by this Court and not upon the opinion of Mr. Dixon. Second, because it is a statement of facts said to be true, which can only be proved by the testimony of witnesses orally in court. Third, because the rest of the letter is an argument to prove that the pamphlet as written by Mr. Dixon correctly states Christian Science. That is not an issue in this case, and the letter has no bearing upon that issue. We ask that the letter be stricken out and that it be not printed in the record.

The Master—It seems to me on hearing the letter that there may be some things in it significant for the purposes of the case in connection with the evidence which you have been putting in. I am not prepared at present, of course, to separate those or identify them. Need this be printed in the record?

Mr. Whipple—We should like it. We see no reason to discriminate against it, and I am frank to say that many, many Christian Scientists throughout this country and throughout the world are watching the reports, reading the report with meticulous care, of what is said and done at this hearing; and no reason has occurred to us why they should be deprived of this statement of what we may say perhaps is one of the most eminent Christian Scientists in the world.

The Master—The trouble is that a good deal of what he says does not seem to me to be important for any purpose in the case, and I am admitting the letter only because of the possibility that there may be some things in it which you will have a right to use in the case.

Mr. Whipple—If this controversy with regard to "Purification" is important at all—a controversy which is introduced entirely by these defendants, and to which we did not re-

fer in any way—why, it is important that the letter which was written by Mr. Dixon to the board, after their frequent interviews with him with regard to it, should go in—just as important as those interviews are. I understand the defendant made some reply to it, or attempted some reply. Those may be put in. I further understand, although it has been criticized, that the directors themselves were convinced that they were wrong in their position and receded from it; but you say you are going to offer evidence on that. We will await the evidence.

The Master—It appears that the letter was presented at the meeting—

Mr. Krauthoff—Of The Christian Science Board of Directors.

The Master—And action taken in regard to it?

Mr. Krauthoff—The letter was read.  
The Master—The letter was read.  
Mr. Whipple—Didn't you answer it?

Mr. Krauthoff—I am not now advised as to that.

Mr. Whipple—I understood that Governor Bates took copies of the answers off before he handed the original to us.

Mr. Bates—You didn't understand anything of the kind.

Mr. Whipple—Didn't I?

Mr. Bates—No, sir.

Mr. Whipple—Perhaps you are a mind reader.

The Master—We have not yet completed all the evidence which you intend to put in about the incident in which this pamphlet is concerned, have we?

Mr. Krauthoff—No, we have not.

The Master—I think I will at least wait until we get all that in before I rule on your motion.

Mr. Bates—Your Honor will save us an exception if that is going in at present.

The Master—Oh, yes; yes, indeed—an exception on anything on which I rule against you I hope will certainly be saved. It won't be lost by any consent of mine.

Mr. Whipple—Now, if Your Honor please, in connection with the meeting of Sept. 11, about which there has been so much controversy, I understand and am informed that there is a quasi-record—perhaps a record—that Mr. Dittmore kept with regard to this meeting, stating somewhat more fully what happened. I infer that from what has been said and what has been written, and I judge it from the replies to questions which I have put to counsel. I should like to call for the production of that record. That would be material, I take it, at all events, in the controversy between the trustees and Mr. Dittmore. Mr. Dittmore has made a separate answer. It may contain matters that are material, if they should be verified by testimony. That would be very material in the other suit.

The Master—I do not think at present I shall insist on Mr. Krauthoff putting in anything he does not offer with regard to the records of that meeting. I want him to complete first, at any rate, everything he wants to put in.

Mr. Whipple—I was not asking for the production of it from Mr. Krauthoff; I was asking for its production by counsel for Mr. Dittmore. I think probably Your Honor may be right, that I ought not to interrupt Mr. Krauthoff's examination at this moment, unless Your Honor thinks that all the versions of this meeting of Sept. 11 ought to go in together as nearly as possible. It is only a matter of expediency and procedure, which I think rests entirely in Your Honor's discretion, and if you think that the call would be an unfair interruption of Mr. Krauthoff I shall not press it.

Mr. Krauthoff—If Your Honor please—

The Master—I think that you should proceed, Mr. Krauthoff, to put in what you wish to offer, and you understand that the other side has called for a certain document purporting to be a record. If you do not put that in, we will see what follows then.

Mr. Krauthoff—If Your Honor please, in that connection I wanted to remind Mr. Whipple that the document to which he refers has already been put in evidence as Exhibit 246, and that before the noon adjournment I was identifying it by Mr. Dickey and explaining a typographical error at the top of it.

Mr. Whipple—If you will pardon me, Mr. Krauthoff, you are mistaken in that. That is not what I was calling for. I was calling for what I have been hinting at as a private diary or stenographic report, or something of that sort, that Mr. Dittmore kept of the meeting itself.

Mr. Krauthoff—I have no control over Mr. Dittmore's diary.

Mr. Whipple—Yes. I said I was not asking it from you, I was demanding it from counsel for the other defendant. Perhaps you will join with me in asking for it.

Mr. Krauthoff—Now, if Your Honor please, Exhibit 245 is the minutes of Sept. 11, 1918, in the form in which they were proposed on the morning of Sept. 12, 1918.

Exhibit 246 is the memorandum of additions to complete minutes of the meeting of Sept. 11, 1918, as proposed by Mr. Dittmore on Sept. 16, 1918.

Before we proceed further, if Your Honor please, I was asked at the noon recess by some one present to ask if we were to be in session tomorrow, and I told him that it was definitely agreed that we would not be.

Mr. Bates—That was the understanding that was arrived at.

Mr. Whipple—I so understood.

Mr. Streeter—We so understood.

Mr. Krauthoff—I was just now stating it publicly so that those who asked me about it might know.

Q. Now, Mr. Dickey, referring to



Exhibit 245, I will call your attention to the last sheet of paper attached thereto, written in pen and ink with lead pencil interlineations. Is that the form in which Judge Smith made a report to the board in connection with the resolution of Oct. 1, 1918? A. It is.

Mr. Krauthoff—I will read from the record of The Christian Science Board of Directors:

"Monday, Oct. 7, 1918. At a regular meeting of The Christian Science Board of Directors held at 10 a. m. on the above date in the Directors' Room of The Mother Church, there were present Messrs. Dittmore, Dickey, Neal, Merritt, and Rathvon.

"The minutes of the regular meetings of Sept. 11 and Oct. 3 were read and approved."

[That portion of record of meeting of the Board of Directors, Oct. 7, 1918, as read by Mr. Krauthoff, is offered in evidence as Exhibit 575.]

Mr. Streeter—Mr. Krauthoff, there are quite a number of entries along there that bear upon the developments of this case. As you are putting in the records for this period, do you see any objection to reading in one bunch such references from those records as are applicable to this case between the first day of October and the first day of January—those three months?

Mr. Krauthoff—If Your Honor please, in response to the request of General Streeter, I desire, first, to answer that request; and, second, to pray Your Honor's direction. I have so far in the evidence that I have introduced proceeded upon the theory that I would present consecutively and chronologically everything that pertained to the controversy between the trustees and the directors with respect to the acts of the trustees and the directors. Now, intermingled with those transactions are incidents arising between Mr. Dittmore upon the one hand and the four other directors upon the other hand, and which incidents resulted, as the four directors claim, in Mr. Dittmore's removal from the board. I would very much prefer, with Your Honor's consent, to continue that line of proof, and prove the case as between the trustees and the directors—

Mr. Streeter—Pardon me, Your Honor. Please do not take another second of time, Mr. Krauthoff. I withdraw my request. Go ahead and put in what you want yourself; we will take care of ourselves.

Mr. Krauthoff—Is that agreeable to Your Honor?

Mr. Streeter—I withdraw it. There is nothing for you to do but go ahead.

Mr. Krauthoff—Now, if Your Honor please, I will recur to the minutes of Sept. 11, 1918.

The Master—You have put in the record of a meeting at which they were finally approved, haven't you?

Mr. Krauthoff—I have put in the

meeting at which they were finally approved.

The Master—Oct. 7, wasn't it?

Mr. Krauthoff—On Oct. 7. And they were approved in the form in which I first read them.

Q. Now, Mr. Dickey, referring back to this meeting of Sept. 11, 1918, and the memorandum of additions to the complete minutes of that meeting, as proposed by Mr. Dittmore on Sept. 11, 1918, I call your attention to the statements of Mr. Dittmore in this memorandum as a basis for what did happen between the trustees and the directors at that meeting. What did any of the trustees at the meeting of Sept. 11, 1918, say, and which trustee said it, with respect to the supervision, if any, by the directors over the trustees, or the right, if any, on the part of the Board of Directors to declare vacancies in the trusteeship, and the reasons that might be assigned for the declaration of such vacancies? A. Your first question was with regard to the supervision of the literature?

Q. The supervision of the trustees, is the language of the memorandum. A. Why we explained to the trustees—

Q. Pardon me, Mr. Dickey. Will you please state who spoke and what he said? Not "We explained" at all. A. Well, I, having been the chairman, was expected to be the spokesman for the board, and did nearly all the talking—most of it.

Q. Certainly. Now, what did you say and to whom did you say it? A. I said there could be no question as to what Mrs. Eddy's intention was regarding the literature of the Christian Science Church, that she had definitely, positively placed that regulation in the hands of her Board of Directors, and that through their supervision of the trustees in various ways it was to be expected that they would pass upon the literature that was published.

Q. Who passed upon it? A. The directors. I mentioned that the mere fact that she had placed the election of the editors in the hands of the directors was evidence that she expected the directors to regulate what the editors wrote. I also cited the fact that the building belonged to The Mother Church, that the—

Q. You mean, the publishing house building? A. The publishing house building—that the directors were required to elect the business manager of the Publishing Society; that the directors were given power to dismiss a trustee for any reason that to them might seem expedient was another evidence; that the directors had power to request the dismissal of any person employed by the Publishing Society who was not suitable to the directors was another evidence of that fact. The question of this pamphlet was discussed and I made the statement that we did have the right to question the pam-

phlet itself and to ask them not to publish it. That was not denied by any of the trustees at that meeting. They did, however—

Q. Excuse me. You said that was not denied. Do you mean any of the statements which you recited, or which one of the statements was not denied? A. The statement that we had control of the literature.

Mr. Streeter—Mr. Dickey is talking about Sept. 11, isn't he?

Mr. Krauthoff—Yes.

Q. You are talking about the meeting of Sept. 11? A. Sept. 11. Mr. Eustace replied to the statement made with regard to the pamphlet "Purification," that it had been a long time since this pamphlet was printed and set up, and that a number of the employees had found out that there was some reason why the directors had requested it to be held up and that was being talked and noised about amongst the employees of the publishing house, and he hoped that we would allow the pamphlet to go out so as not to create any criticism of Mr. Dixon's work amongst the employees.

Q. What, if anything, was said by any of the trustees or by any of the directors on that occasion in the presence of the trustees, stating who said it, as to the right, if any, of the directors to declare vacancies in the trusteeship only upon the grounds of dishonesty or immorality? A. Mr. Dittmore brought that point up and discussed it quite freely.

Q. What did Mr. Dittmore say about that in the presence of the trustees? A. Mr. Dittmore said that there could be no question in regard to Mrs. Eddy's intention when she made a by-law authorizing the directors to dismiss a trustee whenever it might seem to them expedient. Mr. Eustace replied that there might be a difference of opinion in regard to the meaning of the word "expedient."

Q. Did he read anything from the Bible on that occasion? A. I do not recall that he did.

Q. Did you have a dictionary— A. I left the table and consulted a dictionary at the side of the room, looked up the meaning of the word "expedient," and read the definition as given therein, and I said, "There can't be any possible room for a misapplication of that definition." Mr. Eustace said that that was not his interpretation of it.

Mr. Streeter—Won't you repeat that? I didn't get that last—what Mr. Eustace said.

The Witness—That was not his interpretation of the meaning of the word "expedient." And I said, "Well, Mr. Eustace, of course if you are allowed to interpret the Manual and also allowed to interpret the dictionary, you can make it mean anything you please." Mr. Dittmore maintained that there could be no question about the meaning of Mrs. Eddy's expression in the Manual, and also maintained

that the Deed of Trust itself gave that right to the directors, because the First Members were no longer in existence, and naturally that right fell to the succeeding body, which was the directors; and also he referred to the Manual stating that the business of The Mother Church should be conducted by its Board of Directors.

Q. Have you stated all that was said on that occasion upon the question of the removal being limited to dishonesty or immorality? A. I have not. It would be impossible for me to state it all. There was a great deal of conversation on the subject.

Q. Was there any claim made by any of the trustees on that occasion that in no event did the Board of Directors have any power at all to declare a vacancy in the trusteeship? A. No, they did not claim that. Mr. Eustace made the claim that the word "expedient" there could only be properly interpreted, and legally interpreted, as meaning for insanity or dishonesty or immorality.

Q. Were any statements made at that meeting by any of the trustees, or any of the directors in the trustees' presence, with respect to the question whether the directors of The Mother Church had succeeded to any of the rights or responsibilities stated in The Mother Church By-Laws as formerly belonging to Mrs. Eddy in relation to the Publishing Society and the Board of Trustees? A. That subject was introduced by Mr. Dittmore.

Q. And what was said by anyone, stating the name of the person who stated it? A. Well, Mr. Dittmore did not claim that the directors succeeded to the rights of Mrs. Eddy, yet he said that our legal advice had been, after Mrs. Eddy's passing on, that the directors could not be expected nor required to perform impossibilities, and since it was now impossible to obtain Mrs. Eddy's consent to such of their actions as the Manual requires that they would not be expected to obtain such consent and could act legally without that consent.

Q. On that occasion was there any mention made of the several things in the Manual, which, according to the language in the Manual, was to be done subject to Mrs. Eddy's approval or with her consent expressed in writing? A. I mentioned some of them myself. One I remember: I said that we could not elect a reader to The Mother Church if we were not allowed to act without Mrs. Eddy's consent. I also stated that there were numerous requirements of the Board of Directors that they could not fulfill unless they should act without Mrs. Eddy's consent.

Q. Was anything said as to what the effect of such a contention would be upon the life of The Mother Church if upheld? A. Yes. I made the statement—I believe Mr. Dittmore also made the statement—that it would have the effect of annihilating the organization and destroying The

Mother Church as a whole if we were prohibited from carrying out the requirements of the By-Laws without obtaining Mrs. Eddy's consent.

Q. What, if any, answer was made by the trustees in response to any of those statements that you have just related? A. That I am not clear on, Mr. Krauthoff.

Q. Was anything said at that conference by any of the trustees or any of the directors in the presence of the trustees, and if so by whom, as to the trustees being required to employ the people whom the directors elected as editors and business manager? A. I am not certain that anything was said at that meeting, but on former occasions—

Q. Was anything said on a former occasion? A. Yes. I know that on one former occasion Mr. Eustace made the remark, "Well, even if you did elect them we would not have to employ them"; and when we brought the question up of dismissing one of the trustees, he said, "Well, suppose you did dismiss one of the trustees; we could reappoint him to that position."

Q. Was anything said on Sept. 11, 1918, by any of the trustees, or any of the directors in the presence of the trustees, and if so state who said it, with respect to the question who must thereafter be supreme in the publishing house? A. I do not recall that at that time that question was specifically brought out, or that any definite action was taken by any of the trustees. Their general attitude was such—

The Master—He is getting away from the question, I think.

The Witness—I beg your pardon.

Q. Was anything said at that meeting by the trustees, or any of the directors in the presence of any of the trustees, and if so, by whom, giving the name, as to whether or not the trustees were absolute in formulating rules for the recognition of practitioners' cards and church cards in The Christian Science Journal? A. That question did come up, and I made this statement: That I thought the reference made in the Deed of Trust—or, in the Manual, rather, not the Deed of Trust—in the Manual, that cards of practitioners and churches may be advertised in the Journal upon compliance with the rules made by the Publishing Society. I stated that my thought on that was that the Publishing Society had the right to make certain rules with regard to the price paid for the advertisement, to the size of the advertisement, the number of lines, the number of words in a line, and the location and arrangement of the advertising; but that it had no right to determine when a person was qualified to practice Christian Science and either keep his card out or admit it on those grounds.

Q. What was said as to the recognition of a branch church or society? A. Well, it was always understood between us—

The Master—One moment.

The Witness—Nothing definitely that I can recall at that meeting. That was a thing we all knew.

Q. This morning I handed you this dummy proof of "Purification," which you stated was interlined in your handwriting in pencil? A. Yes.

Mr. Krauthoff—I will now ask that that be identified as an exhibit.

Mr. Whipple—What is that?

Mr. Krauthoff—These are his interlineations.

Mr. Whipple—I do not think his interlineations make it admissible. He said that he held it in his hand, but that he did not show it to anybody.

Mr. Krauthoff—I am now asking him to identify it, if Your Honor please and I am showing it—

Mr. Whipple—if you want to have the passage marked for identification I have no objection.

[The passage in the book referred to is marked Exhibit 576 for identification, R. H. J.]

Q. Referring to Exhibit 576 for identification, R. H. J., did you have that with you at this interview about the pamphlet "Purification"? A. Yes.

Q. On Sept. 4, 1918? A. Yes.

Q. Were all of the interlineations in at that time, or did you have— A. They were; they were all there.

Q. Did you point out all of them to the trustees on that occasion? A. I did not. I read from this pamphlet and explained several of the corrections I had made.

Q. You didn't explain all of them? A. I did not. I explained more to Mr. Dixon, perhaps, than to the trustees.

Q. The pamphlet being released before you had the final interview, you did not read all of them? A. I didn't go through them all because they said they would defer it—

Mr. Whipple—I pray Your Honor's judgment.

The Master—On what?

Mr. Whipple—I think that the witness was stating what is not admissible in evidence. He is giving his reasons for something.

The Master—Confine yourself to the question as nearly as you can, Mr. Dickey.

The Witness—I did not read all of the corrections, because the trustees said that they would consider it again, and give us an opportunity to talk the matter over with them again before they took any final action.

Mr. Whipple—I move that that part of the answer which Your Honor directed should not be given, but which was nevertheless given, be stricken out.

The Master—The answer to the question is "I did not," I think. You do not want any of the rest of it?

Mr. Krauthoff—Beginning with the word "because," it may be stricken out.

Q. Did you have an interview with Mr. Dixon at or about that time with respect to this letter that was read in

evidence, written by him on Sept. 9, 1918? A. Yes, sir.

Q. And was that in the board meeting, or was that a personal interview? A. That was in a board meeting.

Q. And at that time were there any of the trustees present? A. None.

Q. Were the details of this pamphlet discussed with Mr. Dixon? A. I can tell you just what was discussed if I may have the pamphlet.

The Master—Now, give him the pamphlet.

[The pamphlet, which has been marked Exhibit 567, for identification, R. H. J., is passed to the witness.]

Do you really want to go into just what was discussed at length?

Mr. Krauthoff—I am not going to ask about that, if Your Honor please.

The Master—While he is looking at it, the stenographer asks my instructions as to whether Exhibit 572 is now to be printed in the record. That is the Dixon letter.

Mr. Krauthoff—Yes, and I am not asking that.

The Master—The stenographer writes me a memorandum that he does not quite understand how that letter is left, so far as the record is concerned. Can we postpone the printing until we have got through with all this evidence about the pamphlet, according to my suggestion? Does it make any difference to you whether it is printed now or a little later, if it is printed at all?

Mr. Whipple—We should prefer that it should go in this afternoon.

Mr. Krauthoff—Our motion to strike out being pending, it would seem not proper to print it until that motion is determined.

The Master—In that case, I think that it will have to stand for the present omitted from the printing.

Mr. Whipple—That is, Your Honor does not desire to hear the argument now? Oh, you want to hear more evidence about it?

The Master—I thought that I would wait until I got all the evidence about this "Purification" controversy.

Mr. Whipple—Very well.

Q. Be careful for the present, Mr. Dickey, not to say anything about the conversation with Mr. Dixon, because the court has not yet determined whether the letter is in evidence. But you did have a conference with Mr. Dixon? Yes or No. A. Yes.

Q. Did you have a conference with Mr. Eustace, as distinguished from the other trustees? A. No. On that date I held the pamphlet in my hand and talked to all the trustees.

Q. Have you any recollection of any conversation with Mr. Watts, stating that you had concluded to release this pamphlet? A. I don't remember it.

Q. Did you have the further conferences that were mentioned as about to take place on the pamphlet? A. I recall that after talking this over

with the other members of the board we all reached a conclusion—is it right to say that?

Q. You have a right to say what you said.

Mr. Whipple—Said to whom?

The Witness—To each other.

Mr. Krauthoff—You haven't a right to say that if Mr. Whipple objects.

Mr. Whipple—Said to whom?

Mr. Thompson—Said to each other.

Mr. Krauthoff—The witness stated that they said it to each other.

Q. Have you related all of the incidents of the pamphlet "Purification," in so far as they relate to any questions which arose at that time between the trustees and the directors as to the publication of the pamphlet? A. As nearly as I can recall.

Q. I don't mean as to the correctness of what was in the pamphlet. A. No. Except this, that all our talks were based on the supposition that none of these pamphlets had been printed.

Q. Well, what was said by anybody in the conferences as to whether or not they had been printed? A. Nothing was said by them. Mr. Watts told me that they had not been printed.

Q. You did get some letters stating that they had some printed? A. Nothing was said by them. Mr. Watts told me that they had not been printed.

Q. You did get some letters stating that they had some printed? A. Yes, sir.

Q. But I mean prior to the letters you had no statement— A. No.

Mr. Krauthoff—This incident of Sept. 11, 1918, was followed—we read from the record—by the meeting of Sept. 18, 1918:

"The board had an interview with Trustees David B. Ogden and Herbert W. Eustace of The Christian Science Publishing Society. They requested that the conference be postponed until the return of Trustee Rowlands, who is now absent from Boston."

[The record of the meeting of the Board of Directors of Sept. 18, 1918, from which the foregoing extract is read, is Exhibit 577, R. H. J.]

Oct. 1, 1918, the full board present:

"A letter was read from the trustees of The Christian Science Publishing Society, dated Oct. 1, and inclosed letter dated Sept. 30, expressing the trustees' present concept of the relationship between The Christian Science Board of Directors and the Board of Trustees of The Christian Science Publishing Society."

[The record of the meeting of the board of directors of Oct. 1, 1918, from which the foregoing extract is read, is Exhibit 578. R. H. J.]

That is the document that has been offered in evidence as Exhibit 4 and Exhibit 4a. I understand that as I read from these records of the directors the stenographer marks them as exhibits.

Mr. Whipple—Mr. Krauthoff, have you now finished all the evidence you

intend to offer with regard to this pamphlet "Purification"?

Mr. Krauthoff—All of which I am at present advised.

Mr. Whipple—Now, if Your Honor please, it appears that this pamphlet was read to the trustees and approved by them and then sent to the Board of Directors and received by them, read, copies of it distributed, and discussed by them with Mr. Dixon at a board meeting later. It has not appeared whether they replied to it. It takes on the nature of, and is in effect, a communication from the trustees to the Board of Directors on this very subject, and it is, as we think, one of the most important communications made to the directors on the subject. Mr. Dixon wrote it because of his participation in the matter, as indicated in the letter itself, but it went forward with the approval of the Board of Trustees as their own approved expression in a communication to the directors. It so states in the letter. It is so stated in the record of the Board of Trustees which has already been put in evidence. It was asserted a few minutes ago by Mr. Krauthoff as one of the objections to its admission that it had been read and approved by the Board of Trustees. We put its admission very largely on that ground, that it came in as a part of the correspondence and a part of the interview between the Board of Trustees and the Board of Directors. It was adopted by the Board of Trustees as a communication, their communication, a communication of Mr. Dixon stating the facts going before them for their approval.

Mr. Krauthoff—And we say that that does not make it evidence in their favor.

The Master—It is evidence, is it not, of a feature essential to the understanding of what was done at these meetings?

Mr. Krauthoff—We had not so regarded it.

The Master—Is there anything further on that subject?

Mr. Krauthoff—Nothing further.

The Master—I think that I shall have to adhere to my admission of the document, and in that case it may, I suppose, be printed, if you cannot agree to omit any of it.

Mr. Krauthoff—Now, of course, we take an exception to its admission in evidence, and it will be agreeable to us to have no part of it printed.

Mr. Whipple—You say it is agreeable to you?

Mr. Krauthoff—Yes, to have no part of it printed.

Mr. Whipple—And I suppose that, conversely, it is very disagreeable to you to have any of it printed?

The Master—I think that so far we have omitted to print an exhibit that had been admitted in the case only when it was so agreed by all the counsel.

Mr. Krauthoff—I was speaking only for myself, if Your Honor please.

The Master—We will follow that course. It may be printed.

Mr. Krauthoff—Now, if Your Honor please, the letter having been admitted in evidence, it is not here at present, I believe?—

The Master—I do not know whether it is or not. Oh, yes; here it is (passing to Mr. Krauthoff Exhibit 572).

Mr. Krauthoff—The subject treated by this letter, if Your Honor please, is so comprehensive, and of so technical a nature, that I would not undertake at this moment to examine Mr. Dickey in respect to the contents of it, and I will ask the courtesy of the court to do that Monday morning, subject, of course, to any objection that may be made.

The Master—There is a good part of the contents of it that I do not think you will need to examine him about at all.

Mr. Krauthoff—Well, I want to examine it more closely.

Mr. Bates—I understand that Your Honor has admitted it all?

The Master—I have done the best I could to keep it out, I think counsel will agree.

Mr. Bates—Your Honor has now admitted it all, I understand?

The Master—I have admitted it, but I have also stated that a very large part of it does not seem to me to be of any significance at all for the purposes of this case.

[The letter, Exhibit 572, being now admitted in evidence, it is printed at the point where it was first read by Mr. Whipple.]

Mr. Krauthoff—Monday, Oct. 7, 1918: "The Directors had an interview with Judge Clifford P. Smith, who submitted a proposed letter from the directors to the trustees of The Christian Science Publishing Society, relative to the functions and relationship of the two boards. To be laid over for further consideration."

[The record of the meeting of the board of directors of Oct. 7, 1918, from which the foregoing extract is read, is Exhibit 579. R. H. J.]

Q. As I understand it, Mr. Dickey, you received this letter of Sept. 30, 1918, which has been introduced in evidence as Exhibit 4 and Exhibit 4a—  
A. Yes, sir.

Q. —on Oct. 1, 1918? A. That is right.

Q. Did the Board of Directors then consider the question of taking counsel with respect to the relationship of the two boards? A. We did.

Q. Up to that time had there been any thought of taking counsel or advice?

Mr. Whipple—I pray Your Honor's judgment on that question.

Mr. Krauthoff—Mr. Whipple has proved as to—

Mr. Whipple—Well, but he cannot what the thoughts were. The question is not a good one, on the face of it.

Mr. Krauthoff—Oh, the objection is to the word "thought"?

Q. Had any steps been taken up to that time in relation to it? A. No steps until that time.

Mr. Krauthoff—Oct. 8, 1918: "The proposed letter prepared by Judge Clifford P. Smith from The Christian Science Board of Directors to the Board of Trustees of The Christian Science Publishing Society, relative to the functions of the respective boards was read, edited, and upon motion of Mr. Rathvon, seconded by Mr. Dittmore, it was voted to send the letter as amended."

[The record of the meeting of the Board of Directors of Oct. 8, 1918, from which the foregoing extract is read, is Exhibit 580. R. H. J.]

On that day the full board was present, and that is the letter which has been introduced in evidence and marked Exhibit 5.

Mr. Whipple—What is the date of it? Mr. Krauthoff—The date of it is Oct. 8, 1918.

Mr. Whipple—Thank you.

Mr. Krauthoff—Oct. 10, 1918:

"Letters were read from the following: . . .

"Editor William P. McKenzie, dated Sept. 17, proposing to change the heading 'From the Press' to another heading, 'Signs of the Times.' To be laid over until the board hears further from the trustees of the Publishing Society."

[The record of the meeting of the Board of Directors of Oct. 10, 1918, from which the foregoing extract is read, is Exhibit 581. R. H. J.]

Q. Mr. Dickey, this title "From the Press," is that the title of a column in the Sentinel? A. It is.

[An extract from the directors' records, Oct. 14, 1918, is offered in evidence as Exhibit 582, and is read by Mr. Krauthoff, as follows:]

"Oct. 14, 1918.

"The corresponding secretary was instructed to ask The Christian Science Publishing Society for a financial statement for the six months ending Sept. 30, 1918."

[An extract from the directors' records, Oct. 15, 1918, is offered in evidence as Exhibit 583, and is read by Mr. Krauthoff, as follows:]

"The board spent some time in considering the names of members of The Mother Church heretofore disapproved as contributors to the Christian Science periodicals."

Mr. Thompson—I observe that Mr. Krauthoff frequently reads a number of entries on different dates without asking any questions about them at all. I have abstained from interrupting because I understood as long as he was examining the witness he was not to be interfered with; but such marked omissions from the transactions of the board, having a bearing on Eustace v. Dickey, appear to occur from the notes that I have here that I really think that if he in-

tends merely to read without examining the witness at all I have the right to suggest to Your Honor that he ought to read the whole record. In many instances—I can point out three or four instances—for instance, the Sept. 11 entry. I take occasion now to say that if Mr. Whipple or anybody else wants to see the notes taken at the time by Mr. Dittmore of the statements of the trustees, taken down verbatim, I shall not hesitate to produce them. On many of these other meetings here, for instance, Judge Smith, on Oct. 7, that one he just read, made another report on the method of keeping the records; he made another one, and they overruled him on Oct. 8. I do not object as long as he is inquiring of the witness, but if he is simply reading the records in without any purpose except to get them on our record, I would like to have it done more completely.

Mr. Krauthoff—If Your Honor please, the plan I am pursuing is this. I am reading the records which I wish to offer in evidence, chronologically, and examining the witness as I come to the things about which I desire to ask him.

The Master—Well, is it not the fact, as Mr. Thompson claims, that you have read a good many records there without asking the witness anything at all?

Mr. Krauthoff—That is true, because the question was raised, when I was asking the witness about them, that unless there was some special testimony about it the reading of the record was sufficient. I have thought it would aid the Court to have these records offered chronologically rather than at one time read those of which I inquired and then at some other time read those of which I did not inquire.

The Master—Have you not offered a good many of them chronologically when you had the secretary on the stand?

Mr. Krauthoff—Not bearing on this controversy.

Mr. Thompson—On what controversy did they bear, then, I should like to know?

Mr. Krauthoff—My recollection is that the evidence of the secretary—I mean the controversy, I mean the difference of opinion between the trustees and the directors—the evidence of the secretary, as I understood it, was on the adoption of the Manuals and changes in By-Laws and election of officers, and not the things to which I am now referring.

Mr. Thompson—Very well. Then if your purpose is merely to inform the Court, not through the mouth of Mr. Dickey but through your own mouth, reading these records of certain facts, why don't you, if you read the record of any particular day, read all the evidence on that day on the same subject, or on any subject relevant to the issues in Eustace v. Dickey? For instance, on Oct. 7 is there not an entry

to this effect: That Judge Smith reported the way you do now the board never reads its final record, and he pointed out that you should change the plan as at present it was unsatisfactory and dangerous, and Mr. Dickey agreed to it? Then on Oct. 8 the board voted to overrule Mr. Smith's recommendation.

Mr. Bates—May I submit, Your Honor, that Your Honor has already passed on this matter several times? Your Honor has requested counsel not to make these interruptions. Mr. Thompson has seen fit to read in things from Mr. Dittmore's private memoranda, things which he thinks are in the record, but Your Honor has stated to him several times that he will have the opportunity to put in what he wishes to put in when his chance comes. He was offered the right to go ahead and put in his defense first if he wished to.

Mr. Thompson—Oh, this has got nothing to do with it.

Mr. Bates—He absolutely declined to do so, and I submit he ought not to keep interrupting Mr. Krauthoff, and Mr. Krauthoff ought to be allowed to go ahead and put in those things which he deems material. It may well be that he and Mr. Thompson would differ as to what is material, but Mr. Thompson is to have his opportunity. It is simply wasting time for him to keep making these interruptions.

Mr. Thompson—It is a singular thing that Governor Bates should talk about wasting time. I really think that any candid observer here would say that perhaps Mr. Krauthoff came as near to wasting time as anybody—perhaps more so than some would. All I am saying is that if you are going to put in the records relating to the issues in Eustace v. Dickey, without asking the witness any questions about it, you ought to put in all of them on those subjects, that is all; and that does not call for any such speech as has just been made by Governor Bates, either.

The Master—I cannot help thinking that that would be the best way. If you simply read, without asking Mr. Dickey anything about it, something from your record of a given date relating to a given subject, as material in Eustace v. Dickey, is it the best way to read only a part of it?

Mr. Krauthoff—If Your Honor please, that question does not arise, because what Mr. Thompson read a moment ago does not appear on the face of the record from which I am reading.

The Master—If it does not appear there I do not see how you can be expected to read it.

Mr. Krauthoff—And, in addition to that, it does not relate to the controversy between Eustace and Dickey at all, but it is a controversy by Mr. Dittmore as to whether the board kept its records in proper form.

Mr. Thompson—Do you think that has no bearing on the case of Eustace v. Dickey?

Mr. Krauthoff—Well, not on everything. Mr. Dickey has asked that Mr. Dittmore be removed.

The Master—I understand now, at any rate, from you, that when you read an entry about a given subject you read all that there is in the record before you on that subject. Am I right?

Mr. Krauthoff—I am so endeavoring, if Your Honor please, but I do not wish to make that as a definite statement, because in the mass of it I may have omitted something.

The Master—Generally speaking.

Mr. Krauthoff—Yes, generally speaking.

The Master—Now, you may go on without taking any more time about it.

Mr. Krauthoff—If Mr. Thompson will follow his copy of the record as written by him, and call my attention to anything more—

Mr. Thompson—I have no copy of the record as written by me; I have a copy of notes taken carefully at the time of what actually occurred.

The Master—But those I think you cannot expect Mr. Krauthoff to do anything more about than he is now doing.

Mr. Thompson—I am not asking him to, except as they remind me to speak to him, to see how much of these facts get into the record.

[An extract from the directors' records, Oct. 17, 1918, is offered in evidence as Exhibit 584, and read by Mr. Krauthoff, as follows:]

"The directors had an interview with Editor William P. McKenzie of the Christian Science periodicals."

[An extract from the directors' records, Oct. 22, 1918, is offered in evidence as Exhibit 585, and is read by Mr. Krauthoff, as follows:]

"On motion of Mr. Merritt, seconded by Mr. Rathvon, it was voted to request the editor of the Christian Science periodicals to submit the names of contributors selected for each issue as soon as the articles for that issue are decided upon."

[An extract from the directors' records, Oct. 29, 1918, is offered in evidence as Exhibit 586, and is read by Mr. Krauthoff, as follows:]

"The corresponding secretary was instructed to ask the trustees of The Christian Science Publishing Society for a payment on account of the earnings for the past six months, due Oct. 1."

Mr. Thompson—Would it be convenient if I should ask you if your record does not show that Mr. Dixon came in that day and talked with the board?

Mr. Krauthoff—Yes; you are right about that.

[Mr. Krauthoff reads a further extract from the records of Oct. 29, 1918.]

"The directors had an interview

with Editor Frederick Dixon of The Christian Science Monitor."

The Master—Showing he came, but not showing what he talked about?

Mr. Thompson—Doesn't it show what he talked about?

Mr. Krauthoff—I have read the record as it is written and subsequently approved by a vote of the board.

[An extract from the directors' records, Oct. 31, 1918, is offered in evidence as Exhibit 587, and is read by Mr. Krauthoff, as follows:]

"Letters were read from the following:

"The Christian Science Publishing Society, dated Boston, Oct. 31, advising the remittance to the treasurer of The Mother Church of a check for \$100,000 on account of net profits of the business of the Publishing Society for the six months previous to Oct. 1, 1918."

Mr. Krauthoff—I am passing the record of Nov. 5, 1918, in which there was an interview with Mr. Dixon, because it does not state the circumstances of the subject discussed.

Mr. Thompson—Would you be willing to turn to the record of Nov. 4 and take the report on the number of Monitors that are being given away to soldiers in England, France, and Canada, and the cost per day of such distribution?

Mr. Krauthoff—I do not think, if Your Honor please, that that has any bearing on Eustace v. Dickey.

Mr. Thompson—Doesn't it seem to you to have a bearing whether or not gross extravagance was being practiced in giving \$450,000 a year or \$1500 a day of these things away?

The Master—Mr. Thompson, I shall have to ask you to keep that for the present. I will give you an opportunity.

Mr. Thompson—I thought Your Honor agreed I might suggest to him when he passed over a record.

The Master—Well, he has said he didn't care to read it. You called his attention to it, but he declines to read it.

Mr. Krauthoff—If Your Honor please, I have no objection to reading it. I much prefer to read it than have any difference of opinion arise. The record is as follows:

[An extract from the directors' records, Nov. 4, 1918, is offered in evidence as Exhibit 588, and is read by Mr. Krauthoff as follows:]

"A letter was read from the Christian Science War Relief and Camp Welfare Committee, dated Boston, Nov. 4, reporting on the number of Christian Science Monitors being distributed through the agency of the above committee. The corresponding secretary was instructed to get the figures on the distribution of Monitors in England, now being taken over by the War Relief and Camp Welfare Committee for Great Britain and Ireland."

Mr. Krauthoff—Now, as at present advised, I do not know of anything in that which bears on the question

of the trustees of The Christian Science Publishing Society.

Mr. Thompson—You don't care to give the figures?

Mr. Krauthoff—I will endeavor to locate the letter, and then offer the letter.

[An extract from the directors' records, Nov. 13, 1918, is offered in evidence as Exhibit 589, and read by Mr. Krauthoff, as follows:]

"A letter from the Board of Trustees of The Christian Science Publishing Society, dated Nov. 11, was read, in which they adhere to their concept of the relationship between the two boards as set forth in their letter of Sept. 30, 1918."

Mr. Krauthoff—That letter, if Your Honor please, has been introduced as Exhibit 7.

[Mr. Krauthoff continued reading from the records of Nov. 13, 1918.]

"After considering further the letter from the Board of Trustees of The Christian Science Publishing Society above referred to, it was upon motion of Mr. Rathvon, seconded by Mr. Merritt, voted that the board engage the services of ex-Governor John L. Bates, collaborating with Mr. Leon M. Abbott, of the law firm of Bates, Nay, Abbott & Dane, of Boston, Mr. Edwin A. Krauthoff of Washington, D. C., and Judge Clifford P. Smith of Boston, to give each a separate opinion on the Deed of Trust and Manual evidence in the relation between this board and the trustees of The Christian Science Publishing Society, and the rights of this board to exercise authority under Article XXV, Section 3, of the By-Laws of The Mother Church.

"The editors had an interview with Judge Clifford P. Smith in connection with the above contemplated action."

Q. Now, prior to Nov. 13, 1918, except as the board may have conferred with Judge Clifford P. Smith, had the board taken any steps to employ counsel with respect to the issue tendered by the letter of Sept. 30? A. It had not.

Mr. Whipple—Just a moment. How is that material? Has the board anything to apologize for in what it did before that, on the ground that it did not have counsel? What difference does it make whether they had counsel or not?

The Master—It seems to me that the date of the first step taken toward the engagement of counsel may have some possible significance.

Mr. Whipple—Well, they had already engaged counsel before this; these were the additional ones.

The Master—Go on, Mr. Krauthoff. [An extract from the directors' records, Nov. 14, 1918, is offered in evidence as Exhibit 590, and read by Mr. Krauthoff, as follows:]

"The corresponding secretary was instructed to ask the Publishing Society for a copy of the auditor's report on their business as of Sept. 30, 1918."

[An extract from the directors' records, Nov. 18, 1918, is offered in evidence as Exhibit 591, and read by Mr. Krauthoff, as follows:]

"The directors had an interview with Attorneys John L. Bates and Leon M. Abbott, who were requested to prepare and submit a joint opinion as to the relationship between the Board of Trustees of The Christian Science Publishing Society and The Christian Science Board of Directors.

"The directors had an interview with Attorney Edwin A. Krauthoff of Washington, D. C., for the same purpose."

Q. With respect to these two interviews had on that date, one with Governor Bates and Mr. Abbott, and one with Mr. Krauthoff, were they held separately? A. They were.

Q. And what instructions were given to these counsel, I mean to Governor Bates and Mr. Abbott at one interview, and Mr. Krauthoff at the other?

Mr. Whipple—Just a moment. I must object to that, I think.

The Master—Do you expect to bring out something different from what appears by the record?

Mr. Krauthoff—No. The record shows them consecutively and I want to show that they were separate.

A. Shall I answer?

Q. I beg pardon? A. Shall I answer?

Mr. Krauthoff—Well, if objection is made by Mr. Whipple, not for the present.

[An extract from the directors' records, Nov. 19, 1918, is offered in evidence as Exhibit 591, and read by Mr. Krauthoff, as follows:]

"Nov. 19, 1918.

"The directors had an interview with Editor Frederick Dixon of The Christian Science Monitor."

Mr. Krauthoff—Nov. 21—that relates to the opinion of counsel, which is passed for the present.

The Witness—I would like to state something in that connection.

Mr. Krauthoff—That is not now open, Mr. Dickey, for the present.

[An extract from the directors' records, Nov. 26, 1918, is offered in evidence as Exhibit 592, and read by Mr. Krauthoff, as follows:]

"Nov. 26, 1918.

"On motion of Mr. Merritt, seconded by Mr. Rathvon, it was voted to change the teaching year so that commencing Jan. 1, 1919, and thereafter, it will conform to the calendar year, instead of beginning Aug. 1, as heretofore. The corresponding secretary was instructed to prepare and submit the proposed announcement of the change to be sent at once to all authorized teachers of Christian Science, and to notify the Publishing Society to change the notice in the Journal accordingly."

Q. What is meant by the term "teaching year," Mr. Dickey? A. Each teacher is allowed to teach one class

annually, and the teaching year has reference to the date from which the year begins.

Q. You say they are allowed to teach one class annually. That is under a provision of the Church Manual? A. The Church Manual, yes.

The Master—Is there any controversy about all that?

The Witness—Yes, there is.

Mr. Krauthoff—Why, if Your Honor please, as I understand the situation, we requested the trustees to put that notice in the Journal.

The Master—You have got that in.

Mr. Krauthoff—Yes; and the trustees declined to do it, and we are now proving—

The Master—I mean about what it related to in the beginning of the year, and all that. You have had it all before and I do not understand it is disputed.

Mr. Krauthoff—I didn't remember that I had asked Mr. Eustace about that.

The Master—And, in any case, there is the Manual that you have put in.

Mr. Whipple—There is no dispute about it.

Mr. Krauthoff—I beg pardon. The Manual, if Your Honor please, provides that each teacher shall teach one class annually; the Manual does not say when the teaching year shall begin.

The Master—I think we have had it already.

Mr. Krauthoff—Very well, if Your Honor please; if it has been proved I have no desire to spend time doing it over again.

Mr. Whipple—May I suggest that it is not quite true that the trustees declined to do it. They wrote a letter asking the reason for it and pointing out that Mrs. Eddy had established it.

The Master—You will; no doubt, get the true history as you go on.

Mr. Krauthoff—Now, in accordance with the vote I have just read, if Your Honor please, a letter was sent from the directors to the trustees, which has been offered in evidence as Exhibit 8, and there was an answer from the trustees to the directors read in evidence as Exhibit 9.

December 2:

"The corresponding secretary was instructed to draft and submit to the board a proposed cablegram to Editor Frederick Dixon of The Christian Science Monitor, now in London, England, requesting him to use his efforts to have enacted at the forthcoming Peace Conference a measure providing for the religious freedom of all nations."

[That portion of record of meeting of Board of Directors, Dec. 2, 1918, as read by Mr. Krauthoff, is offered in evidence as Exhibit 593.]

Mr. Krauthoff—Dec. 3, 1918:

"The corresponding secretary submitted and the board approved a proposed cablegram to Editor Frederick Dixon, as authorized by the directors on Dec. 2."

[That portion of record of meeting of Board of Directors, Dec. 3, 1918, as read by Mr. Krauthoff, is offered in evidence as Exhibit 594.]

Q. Referring to that subject, Mr. Dickey, "a measure providing for the religious freedom of all nations," is that one of the subjects which you classified as affecting the cause of Christian Science as a whole? A. It is.

Mr. Krauthoff—Dec. 5, 1918:

"The corresponding secretary was instructed to request of the trustees of The Christian Science Publishing Society details of the item sub-headed 'Charges,' totaling \$48,032.19, under Schedule 4 of the report of Harvey S. Chase & Co., upon a balance sheet audit of the Publishing Society for the year ended March 31, 1918; also details of the item sub-headed 'Charges,' totaling \$17,959.73, under Schedule 3 of said report; also to request the trustees to furnish the directors with a detailed analytical comparative statement of their business for five years preceding March 31, 1918."

[That portion of record of meeting of Board of Directors, Dec. 5, 1918, as read by Mr. Krauthoff, is offered in evidence as Exhibit 595.]

Mr. Krauthoff—I will check that up, if Your Honor please, and on Monday show where that letter was sent and what answer was made to it.

Dec. 11, 1918:

"The directors had an interview with assistant to the editor, Oscar L. Stevens, of The Christian Science Monitor."

[That portion of record of meeting of Board of Directors, Dec. 11, 1918, as read by Mr. Krauthoff, is offered in evidence as Exhibit 596.]

Q. During the absence of Mr. Dixon in England, did Mr. Stevens act in Boston as the editor of The Monitor? A. He did.

Q. And the board had interviews with Mr. Stevens as to the editorial work? A. Yes, sir.

Q. In December, 1918? A. Yes.

Mr. Thompson—Do I understand, Your Honor, that what he reads becomes a part of the exhibits in the case, when he reads a passage?

Mr. Krauthoff—That was our understanding.

Mr. Thompson—Then a lot of things are going in without our having a chance to look them over and see if there is any objection to them. We don't know whether they are all read or not. I don't want to be captious about it, but it does seem a little unfair that the records should go in without our seeing them at all or seeing the context.

The Master—Unless you show them to Mr. Thompson you will have to give him a chance to look them over later.

Mr. Whipple—I think, Your Honor, that these were supposed to affect the trustees, and I suggested to Mr. Krauthoff that they might go in subject to correction, so perhaps that is the reason why he is putting them in. If we

should discover that they were inaccurate later we will correct them, but it seemed not worth while to read them here first.

Mr. Thompson—Then may we understand that none of them are to be offered in evidence in Mr. Dittimore's case so far?

Mr. Bates—Certainly not.

Mr. Thompson—Then I move to strike them out. I don't know whether he has read all the context or what Your Honor would say was a fair representation. This is not an examination of the witness, apparently; it is mixed in.

The Master—You are going to be allowed an opportunity to look them over, and they are all going to be subject to your objection if you find anything in them incorrect.

Mr. Thompson—That is true, except it is a good deal of a job to go over and read these all at some future time. I could do it a good deal better if he would follow the usual rule and let me see them as he puts them in.

The Master—I think we will have to allow him to go on at least through today as he has begun, and then perhaps if a different method needs to be adopted we can adopt it.

Mr. Krauthoff—I may state in that connection, if Your Honor please, that it is my habit to give the book to the stenographers, so that the stenographers may copy exactly from the record that which I read, and that upon any subject—

The Master—I am not sure that that quite satisfies Mr. Thompson.

Mr. Krauthoff—I am very glad to show it to him each time (showing book to Mr. Thompson).

Mr. Thompson (after examining record)—Now, here is a meeting, if Your Honor please, where there are half a dozen different things in it that he doesn't intend to read—two of them referring to Mr. Dittimore by name, and I think they connect with the issues in Eustace v. Dickey. And here is something referring to Mr. Krauthoff that seems to be material, and he does not intend to read it. I think he better read that whole record in. I will submit it to Mr. Whipple.

The Master—Mr. Whipple is satisfied with the protection afforded by an opportunity to look them over hereafter.

Mr. Whipple—I do not care to stop and look at them now.

Mr. Thompson—I would suggest to Mr. Krauthoff that he read every entry there relating to Mr. Dittimore and the one relating to himself. If he does not want to, perhaps we can put it in later.

Mr. Bates—I submit, Your Honor, it ought to be left to our discretion to put in what we think is material. We cannot tell what is running in Mr. Thompson's mind; certainly we cannot be supposed to put in records which we do not deem material simply because he suggests them.

The Master—I think we will have to follow that course for the present, anyway. Go on, Mr. Krauthoff. Go on.

Mr. Krauthoff—What is the direction of the Court?

The Master—Proceed as you have been proceeding. I understand that you propose to afford Mr. Thompson and Mr. Whipple an opportunity to look over all those afterwards if they want to.

Mr. Krauthoff—Why, certainly, if Your Honor please.

The Master—Very good. Now, on that understanding, proceed and read what you select. If they have the opportunity I refer to, then they will hereafter have an opportunity to put in what they think ought to go in.

Mr. Thompson—I think the books ought to be left where we can readily get at them; we should not be obliged to go to defendant's office. They should not be left at counsel's office; they should be left in court.

Mr. Krauthoff—Dec. 17, 1918:

"In response to verbal inquiry from Assistant to the Editor Stevens of The Christian Science Monitor and the attitude to be taken by The Monitor toward the present Red Cross drive the board instructed the corresponding secretary to say to Mr. Stevens that the board felt it would be best not to take any definite position one way or the other; to keep out any reference therefrom from the editorial columns, and to treat the subject purely as news."

[That portion of record of meeting of Board of Directors, Dec. 17, 1918, as read by Mr. Krauthoff, is offered in evidence as Exhibit 596.]

Mr. Krauthoff—Dec. 18, 1918:

"A letter was dictated to the trustees of The Christian Science Publishing Society inviting them to meet with the board, Thursday morning, Dec. 19, at 10:00 a. m."

[That portion of record of meeting of Board of Directors, Dec. 18, 1918, as read by Mr. Krauthoff, is offered in evidence as Exhibit 597.]

Mr. Krauthoff—That letter was offered in evidence as Exhibit 10, and the answer to it is marked Exhibit 11.

Q. With respect to that answer, Mr. Dickey—

The Master—Meaning Exhibit 11?

Mr. Krauthoff—Exhibit 11.

Q. In that reference is made to this fact:

"If the directors desire to ask the trustees concerning the Publishing Society, the trustees will be very glad to set a time for the conference in board room of the trustees, and that if on the other hand the trustees desire to ask the directors some question, they would ask for an appointment to meet with the directors in their board room."

Up to that time, in your experience as a member of the Board of Directors, had there been any refusal on the part of the trustees to meet the Board of Directors in the room of the Board of Directors at any time that the Board

of Directors requested? A. No; that was the first time they had ever refused.

Mr. Krauthoff—Dec. 19, 1918:

"Letters were read from the following:

"Board of Trustees of The Christian Science Publishing Society, dated Boston, Dec. 18, requesting in writing further data and information in connection with the board's instruction to the Publishing Society dated Dec. 13, to change the date of the beginning of the teaching year from Aug. 1 to Jan. 1, in the notice in The Christian Science Journal."

[That portion of record of meeting of Board of Directors, Dec. 19, 1918, as read by Mr. Krauthoff, is offered in evidence as Exhibit 598.]

Q. You received a letter from the trustees under date of Dec. 18, 1918, which has been offered in evidence as Exhibit 9, in which the trustees asked the board for the data and your reasons for making this recommendation. Prior to December, 1918, in your experience as a member of the Board of Directors, had any of the trustees of the Publishing Society at any time asked for any reason or for any data with respect to any announcement that the directors had asked to appear in the official periodicals of the Christian Science movement, or any change in any official announcement that related to the affairs of the Church itself? A. Such a thing was unheard of until that time.

Mr. Whipple—Just a moment. It does not appear that the question had ever arisen. Why don't you ask him that? That is the real significance,—whether they had asked any changes in any dates which had been fixed by Mrs. Eddy.

The Master—Unless something to the contrary appears I should suppose the question had never arisen.

Mr. Whipple—With that assumption we are satisfied, but I thought it my duty to call attention to the futility of such a question.

Mr. Krauthoff—Dec. 19, 1918:

"Proposed letters prepared jointly by Judge Clifford P. Smith and Attorney Edwin A. Krauthoff, addressed to the Board of Trustees of The Christian Science Publishing Society,—the first in reply to the trustees' letter of Dec. 18, and the second embodying seven points for the consideration of the trustees, were read, edited and final approval reserved until Dec. 20."

[That portion of record of meeting of Board of Directors, Dec. 19, 1918, as read by Mr. Krauthoff, is offered in evidence as Exhibit 599.]

Mr. Krauthoff—Friday, Dec. 20, 1918:

"At a special meeting of The Christian Science Board of Directors, held at 9 o'clock a. m. on above date in the directors' room of The Mother Church, there were present Messrs. Dittemore, Dickey, Neal, Merritt and Rathvon.

"Judge Clifford P. Smith, and Attorney Edwin A. Krauthoff of Washington, D. C., were present.

"After carefully considering, editing and finally approving the letters prepared by Judge Smith and Mr. Krauthoff, (1st) in reply to a letter from the Board of Trustees of The Christian Science Publishing Society, dated Dec. 18, declining to meet with the directors; (2d) setting forth the board's position on seven definite points—it was on motion of Mr. Dittemore, seconded by Mr. Merritt, unanimously voted that the board maintain its rights in the premises, and to that end that the letters numbers 1 and 2, prepared by our attorneys, be sent to the Board of Trustees of The Christian Science Publishing Society as quickly as possible.

"Upon the recommendation of Mr. Krauthoff, and after further considering the proposed letter number 3, in reply to the letter from the Board of Trustees, dated Dec. 18, 1918, wherein they virtually decline to change the notice in The Christian Science Journal relative to changing the date of the beginning of the teaching year, without further information and data from the directors, it was decided to postpone disposition of this question until a later date."

[That portion of meeting of Board of Directors, Dec. 20, 1918, as read by Mr. Krauthoff, is offered in evidence as Exhibit 600.]

Mr. Krauthoff—Those letters have been introduced in evidence as Exhibit No. 12 and Exhibit No. 13.

[Adjourned to 10 a. m., Monday, July 21, 1919.]

July 21, 1919

#### EIGHTEENTH DAY

Supreme Judicial Court Room,  
Boston, Massachusetts, July 21, 1919.

Adam H. Dickey, Resumed

Mr. Krauthoff—If Your Honor please, at the time that Mr. Whipple referred to Exhibit 572, being the letter from Mr. Dixon to Mr. Dickey with respect to the pamphlet "Purification," read in evidence on last Friday, reference was made to the answer of the Board of Directors to that letter, and I will offer the answer in evidence in order that the record in that respect may be complete. This is the answer, if Your Honor please, that was attached to the original, and which we removed at the time that we gave the original to Mr. Whipple, and is the document that Mr. Whipple referred to as having been removed therefrom.

Mr. Whipple—Isn't that the one with reference to which counsel said that it was no such thing, that I didn't know that it had been removed?

Mr. Krauthoff—I don't remember what counsel then said; I am now stating what is the fact.

Mr. Thompson—Yes; that is what he said.

[Letter, Board of Directors to Mr. Dixon, Sept. 17, 1918, is offered in evi-

dence and marked Exhibit 601, and is read by Mr. Krauthoff, as follows:]

[Exhibit 601]

"Sept. 17, 1918.

"Mr. Frederick Dixon,

"The Christian Science Monitor,

"Falmouth and St. Paul Streets,

"Boston, Massachusetts.

"Dear Mr. Dixon:

"I am instructed by The Christian Science Board of Directors to thank you for your letter of Sept. 8 relative to the pamphlet 'Purification,' which letter has received the consideration of the board.

"With kindest regards,

"Sincerely yours,

"L. C. WARREN,

"Corresponding Secretary pro tem for  
The Christian Science Board of  
Directors."

"LCW

"L-F"

Mr. Whipple—Will you remind me of the date of it?

Mr. Krauthoff—Sept. 17, 1918. In connection with the letter from Mr. Dixon which Mr. Whipple has introduced in evidence, I offer the following letters which were exchanged between The Christian Science Board of Directors and Mr. Dixon in June, 1914.

Mr. Whipple—I pray Your Honor's judgment. It seems to me a far cry from—

The Master—You now jump back to 1914. Why should we do that?

[Mr. Krauthoff offers the correspondence to Mr. Whipple.]

Mr. Whipple—I do not care to see them.

Mr. Krauthoff—If Your Honor please, on Friday Mr. Whipple introduced in evidence a letter from Mr. Dixon in which certain statements were made with respect to the powers of the trustees with the respect to the issuance of literature.

The Master—What date is that?

Mr. Krauthoff—1918.

The Master—Yes.

Mr. Krauthoff—I am now offering the letters which passed at the time that Mr. Dixon was appointed the editor of The Christian Science Monitor and his recording of the situation at the time he was so appointed.

Mr. Whipple—If Your Honor please, I did not offer the letter of September, 1918, strictly speaking. It was a letter which was made admissible by the proceedings which were being conducted by Mr. Krauthoff in direct examination. He had made it admissible as a part of the correspondence at this particular time. But, even if it were, that does not make letters four years before of any consequence or admissible in the case.

Mr. Krauthoff—The letter is also admissible for another reason, if Your Honor please. It is the correspondence between the Board of Directors and Mr. Dixon, who was named as editor by the Board of Directors. It evidences the understanding under which



Mr. Dixon took the position which he is now filling.

The Master—Can that be important in this case? I do not see the purpose for which it can be important.

Mr. Krauthoff—It shows the practice and the understanding of the parties, if Your Honor please, and I understood that that was what we were now proving—the course of conduct under which this business was established and operated.

The Master—It seems to me I shall have to exclude that. We have got to draw the line somewhere upon this correspondence. It does not seem to me sufficiently relevant.

Mr. Krauthoff—May I have it marked for identification and note our exception?

The Master—Yes.

[Correspondence exchanged between The Christian Science Board of Directors and Mr. Dixon, in June, 1914, marked Exhibit 602, for identification.]

Mr. Krauthoff—In connection with that correspondence I desire to remind the Court that the record of the Board of Directors shows the appointment of Mr. Dixon, or the election of Mr. Dixon, as editor of The Christian Science Monitor, on June 8, 1914; and, in connection with that date, I desire to offer the record of the Board of Trustees bearing upon the election of Mr. Dixon as editor.

Mr. Whipple—You have the original records?

Mr. Krauthoff—I have the original records.

Mr. Whipple—Of the trustees?

Mr. Krauthoff—Of the trustees.

Mr. Whipple—Are you sure you have not put them in?

The Master—You ought to have put them in a good while ago if you were going to put them in.

Mr. Krauthoff—I have not put this item in, because at that time the importance of it was not recognized as it is now.

Mr. Whipple—Is it with regard to Mr. Dixon's so-called election?

Mr. Krauthoff—It refers to the election of Mr. Dixon as editor.

Mr. Whipple—Well, it refers to it?

Mr. Krauthoff—I mean, it bears on that; it does not mention him as being elected.

Mr. Whipple—Then I think I will object to it. You have already put in the fact and the record of his election, and what more is of consequence?

Mr. Krauthoff—We now offer the action of the trustees with respect to the action of the directors in electing Mr. Dixon.

Mr. Whipple—Well, you have put in their action—that they employed him.

Mr. Krauthoff—I beg pardon; we have not put in the record of the trustees with respect to Mr. Dixon, and we have not put in that they employed him.

The Master—The directors' record having gone in on that subject, I do

not see my way to exclude the trustees' record.

Mr. Whipple—If that is what the record really is I have no objection to it; I thought it had been put in. (Examining record.) All right. That is not any action on the part of the Board of Trustees with regard to his employment.

The Master—If it relates to his employment, go ahead and read it, Mr. Krauthoff.

[An extract from the trustees' records, June 8, 1914, is offered in evidence as Exhibit 603, and read by Mr. Krauthoff, as follows:]

"Regular meeting of the trustees convened at 4:20 p. m., after attending the annual meeting in The Mother Church.

"Conference held with Mr. Dixon. A meeting of the editorial staff and the heads of departments of The Monitor was called and met at 8 p. m. in the publishing house, and Mr. Dixon, the new editor, was formally introduced. Interesting talks were made regarding the work of The Monitor. Meeting closed at 9:15 p. m."

Q. Mr. Dickey, heretofore you have been asked about a conference with the trustees on Sept. 11, 1918. In your previous testimony no question was asked of you about any statement that you made to Mr. Ogden. Did you, on Sept. 11, 1918, make a statement to Mr. Ogden in the presence of Mr. Rowlands and Mr. Eustace with respect to the relation of the trustees to the directors, and, if so, please state what you said to Mr. Ogden and what he said to you? A. I did say something to Mr. Ogden. I said, "Mr. Ogden, you have been here a good many years in the capacity of manager, and you know what the rule and the custom has been with regard to the editorial policy; and now things have taken an entirely different turn and you know better than to make the claims you are making now." Mr. Ogden said, "No, I do not." That was all he replied.

Q. In the record read in evidence on Friday, of the directors, of Dec. 20, 1918, it appears that on that date you postponed the disposition of the question of the teaching year until a later date. A. That is correct.

Q. That was done for the purpose of assuring yourselves that your position was quite correct? A. It was.

Q. And then at a later date it was disposed of by another order, that has been read in evidence, and the trustees thereafter complied with that in the announcement in the Journal? A. That is correct.

Q. Coming back to the two letters that were authorized by the Board of Directors, on Dec. 20, 1918, the first letter appears in evidence as Exhibit No. 12. Your attention has been called since last Friday to that letter, as being a general statement of the relations of the directors and the trustees as you understood it at that time? A. Yes, sir.

Q. Then the other letter of Dec. 20,

1918, covers seven points. I will call your attention to the first one, which has to deal with the responsibility for the final decisions in regard to recognizing new branches of The Mother Church and societies. You have examined again the Church Manual to see to what extent branch churches are provided for in the Church Manual. A. I have.

Q. Referring to this list of churches and societies which appears monthly in The Christian Science Journal, to what extent is that list accepted as the official list of Christian Science churches and societies, that is, authorized churches and societies of The Mother Church? A. That is the authorized list, and it is accepted everywhere by Christian Scientists as such.

Q. It is so accepted by the board in the transaction of its business? A. It is.

Q. Do you recognize as authentic any church or society whose card is not in here, or who has not an application pending for a card?

Mr. Whipple—Just a moment.

The Master—I think you have gone as far as you can go on that line.

Q. The question of a church or society having its card in this Journal—did that come before the board at any time on questions—I mean, did it prior to Feb. 1, 1919—did that question ever arise as to the rights of churches and societies to have their cards in this list? A. Well, at one time the Board of Directors had entire charge of that.

Mr. Whipple—That I would like to have stricken out, if Your Honor please, as not responsive.

The Master—It is not responsive.

Mr. Whipple—And if there are any actions of the board upon that question, the proper way to produce them would be to show the records.

The Master—You can make much better progress if the witness will answer the question and stop.

The Witness—Perhaps I did not understand the question, Your Honor.

Q. In individual instances as distinguished from the general practice has the board been called upon to determine the rights of churches and societies to have a card put in the Journal? A. We had not.

Q. That has been done by the trustees? A. Done by the trustees.

Q. Prior to the 1st of February, 1919? A. Yes, sir.

Q. And since that time? A. Since that time it has been done by the directors.

Q. Prior to the 1st of February, 1919, had any question arisen—I mean, with the present trustees and the board, about this question of churches and societies having their cards in the Journal? A. That question had been up for discussion many times.

Q. And the trustees were making some claims with respect to their rights as to that? A. They were.

Q. You are familiar, of course,

with the provision in the Manual that every church—

The Master—Well, we have got the Manual in, haven't we?

Mr. Krauthoff—Yes, Your Honor.

The Master—Can't we assume that he is familiar with it?

Mr. Krauthoff—I was going to ask him that as a basis for a question, but I shall not press it further.

Q. The second point in this letter relates to the eligibility of persons who might apply for recognition as practitioners or nurses. Did the board have before it at that time instances of people who were claiming the right to have a card in the Journal and were claiming that the trustees had not given them the right they claimed? A. The board were—

Mr. Whipple—Just a moment. We have gone all into this, if Your Honor please, we have had the fullest statement of the record to it, and the procedure.

The Master—And everything that happened, haven't we, and all the communications?

Mr. Krauthoff—Why, if Your Honor please, as I understood the theory of the Bill in Equity in this case, it was that this Board of Directors had been arbitrary and capricious in making these requests and these directions. I have no desire to overload the case, and I was simply pointing out the situation as it was on Dec. 20, 1918, as bearing upon the reasonableness and propriety of this request.

The Master—Anything they did or did not do you may show.

Mr. Thompson—What is the date of that letter?

Q. The question I was asking was, whether prior to Dec. 20, 1918, the Board of Directors did not have instances of where people claiming the right to have their card in the Journal as a practitioner, were claiming that the trustees had excluded them from the Journal, and whether that had not been the subject of these conferences prior to that time? A. We did have—

The Master—Pause a moment. If there are conferences on that subject I suppose they are in evidence now, aren't they? You have gone over this chronologically.

Mr. Krauthoff—Well, if Your Honor please, I shall not press that further.

Q. The next question related to the general welfare of the Christian Science movement as a whole, which was later remodeled, I believe—the fourth point in the letter. A. It was.

Mr. Thompson—This letter of Dec. 20, you are talking about?

Mr. Krauthoff—Dec. 20, 1918.

Q. The fifth point referred to the editorial policy of the Christian Science publications? A. Yes.

Q. And you have stated the importance of that, and on what you base your right to that? A. Yes, sir.

Q. Or your duty? A. Yes, sir.

Mr. Krauthoff—Then came the question of salaries of the editors and the business manager elected by the di-

rectors, and the question of the Manual and the nature of the work done by the Committee on Bible Lessons.

The record recites, Mr. Dickey, that on Sunday, Dec. 22, 1918:—

"The board met in executive session and listened to a report from Mr. Adam H. Dickey, who stated that he had individually and unofficially talked informally with Mr. Herbert W. Eustace with regard to the situation that has arisen between the trustees of the Publishing Society and The Christian Science Board of Directors. After brief discussion of the situation Judge Clifford P. Smith and Attorney Edwin A. Krauthoff were called into conference. It was decided to transmit to the trustees of The Christian Science Publishing Society the opinions obtained by the directors from Judge Clifford P. Smith, Mr. Edwin A. Krauthoff, and the joint opinion of John L. Bates and Leon M. Abbott, with the information that these opinions were obtained by the board in their desire to fulfill their duties to the fullest degree possible."

[That portion of record of meeting of Board of Directors, Dec. 22, 1918, as read by Mr. Krauthoff, is offered in evidence as Exhibit 604.]

The Master—One moment. Has that been gone into before?

Mr. Krauthoff—It has not, as I recall.

Mr. Whipple—Well, counsel has put a question, and we haven't the slightest idea what he has read from. I supposed he was reading from the record of the case. He began by saying something about the record.

Mr. Krauthoff—The record of The Christian Science Board of Directors. I am sorry, Mr. Whipple.

Mr. Whipple—Is it something new you wanted to put in?

Mr. Krauthoff—Something I had not heretofore read. There it is (showing volume to Mr. Whipple).

Mr. Whipple—Well, you have read it now.

Mr. Krauthoff—I have read it through.

Mr. Whipple—And you want to base a question on it?

Mr. Krauthoff—I want to base a question on it.

Mr. Whipple—Perhaps I will listen to the question. I didn't know what you were reading from.

Mr. Krauthoff—I am sorry. Do you want to see it, Mr. Thompson?

Mr. Thompson—I don't like this habit, if Your Honor please, of his reading a part or the whole, generally a part, of the record, and then sometimes basing a question on it and sometimes not. It seems to me the proper way would be to let the witness look it over and refresh his mind if he needs to, and then put the question.

The Master—Haven't we already discussed that point considerably?

Mr. Thompson—I think we have, sir.

The Master—Shall we save time by

reading it again and talking about it some more now?

Mr. Thompson—It seems to me I should like to object to the question just to raise the point whether there is any propriety in a man standing there and reading a record to a witness. I do not understand it.

Q. Mr. Dickey, did you have a conference with Mr. Eustace prior to Dec. 22, 1918—immediately prior to it? A. I did.

Q. Where? A. At his apartment in the Braemore Hotel.

Q. When did that conference take place? A. Friday morning preceding the 22d.

Q. Friday morning, Dec. 20, 1918? A. The 20th, yes.

Q. What did you say to Mr. Eustace and what did he say to you in that conference, stating it fully, in substance, and being careful to always state what he said and what you said. A. I said, "Mr. Eustace, I have come to see you because I think more of the Christian Science movement than I do of anything else in the world, and my high regard for you as a man is such that I cannot let this whole affair run along without coming and talking this question over with you personally. You and I have had certain advantages in instruction in Christian Science, and I am sure that we cannot take a different—cannot take different views on this question that is up now between the directors and trustees." I said, "It looks to me as though there was difficulty ahead, and the Christian Science movement was threatened with a split, and it ought not to be; I have heard some talk about the possibility of a lawsuit being entered into, and that is one of the things I want to talk with you about." He said, "Why, Mr. Dickey, I can assure you that there will be no lawsuit; do not let that disturb your harmony for a minute; we are all Christian Scientists and there never will be a lawsuit in this movement if I can prevent it." "Well," I said, "why then can you not adjust your actions with the requirements of the Church Manual and the Deed of Trust you are acting under?" I said, "There never has been any difficulty in former years with men who occupied your position, they have always worked in perfect harmony with the directors, everybody understood what the conditions were." Just prior to that, what brought that forth from me, was a statement by Mr. Eustace that he felt he was obligated to obey the law of the land. Then I made the remark to him about what his predecessors had done. I said, "They did not break the law of the land, they did not disobey any rule of the Manual; the whole question was adjusted amicably between the trustees and directors, and we have always had perfect harmony." He said, "We can have now; there is no reason why we should not have; there is no discrepancy between the Church Manual and the trustees."

"Then," I said, "why can't we get together and act on that, and why can't you live up to your obligation under the Deed of Trust and to your obligation as a Christian Scientist under the Manual just as well as the men did who filled this office before you?" He said, "We can, and we certainly shall." He said, "I am very glad you came, because it gives me an opportunity to tell you just where I stand, and I stand on the Church Manual absolutely and on the Deed of Trust, and there is not any reason why they both can't be carried out." "Well," I said, "it must be done that way; there can be no other solution of it." He said, "You are quite right." "Now," I said, "I was contemplating going away for the Christmas vacation, and I did not want to leave town without coming to you and talking this over." And he said, "I am very glad you came, and you may go away with perfect assurance that there will be no trouble and no lawsuit." On the following Sunday I reported at this meeting that was held by the directors, Dec. 22, that I had had this conversation with Mr. Eustace.

Mr. Krauthoff—Is that objected to, Mr. Whipple?

Mr. Whipple—I beg your pardon.

Q. Go ahead, Mr. Dickey, and tell what you said on Sunday to your fellow directors. A. I told my fellow directors—

Mr. Whipple—Just a moment.

The Master—Something which is not in the record?

Mr. Krauthoff—It is an oral conversation between Mr. Dickey and his associate directors on Sunday, which I suppose is not competent if objected to.

Q. Did you report on Sunday the fact that you had seen Mr. Eustace? A. I did. Shall I tell you—

Q. You told them you had seen him? A. Yes.

Q. Mr. Dickey, it is desired to get all the conversation on a particular day in the record at one time if possible. Have you stated fully all that happened at this interview with Mr. Eustace on Friday, Dec. 20, 1918, or is there something more you wish to add? A. There was a great deal more, Mr. Krauthoff, because I think we must have talked for a half or three-quarters of an hour—all of the latter, I should think—and we talked generally on Christian Science and what was required of us and our obligations to the movement under the Manual, the expectations of Mrs. Eddy that her wishes would be carried out in the conduct of this movement, and her care in putting men only in office whom she could trust absolutely to carry out the requirements as she was led to put them in the Church Manual. I told him—I said, "You know that she depended entirely upon this Manual being carried out for the safety of the Christian Science movement." He said, "Yes, I know that;

we agree perfectly, Mr. Dickey; there is no difference between us." He said, "You are quite right in your statements, and I know that you understand me." I said, "Well, I believe I do, but I have had apprehension and fear to a great extent that you were undertaking to do something that would, in effect, separate the Christian Science movement—or attempt to separate it into two divisions." He said, "No, I know that the Christian Science movement is one and the unity of it must be maintained, so you can rest perfectly assured that there will be nothing of the kind done on the part of the trustees." The meeting was a very friendly one and I left him in that condition of mind.

Q. You left him with this statement on his part? A. Yes.

Q. You then went to Savannah, Georgia, and other places? A. I left Boston for a vacation, which I had not had for a long time.

Mr. Streeter—Is that Dec. 20?

Mr. Krauthoff—Sunday.

The Witness—I left the 22d.

Mr. Krauthoff—Mr. Dickey left on Dec. 22, but the interview of which he speaks was on Friday, Dec. 20.

Q. The date on which you returned to Boston was what, Mr. Dickey? A. Jan. 21.

The Master—1919?

Mr. Krauthoff—1919. There has been introduced in evidence a letter from the Christian Science Board of Directors to the trustees under date of Jan. 22, 1919, offered in evidence as Exhibit No. 20, and another letter of Jan. 22, 1919, as Exhibit No. 21; and those letters, if Your Honor please, were authorized by The Christian Science Board of Directors at their meeting on Jan. 22, 1919. I desire to offer in evidence the record showing the authorization but not again repeating the document, because it is already in evidence.

Mr. Whipple—We admit they were authorized, if Your Honor please, and put them in on that assumption. They could not have gone in unless it had been assumed they were. Why do we need anything more?

Mr. Krauthoff—That being admitted, that becomes immaterial.

Q. Recurring for a moment to your visit to the south. Mr. Dickey, there has been offered in evidence Exhibit No. 106, a letter from Mr. Adam H. Dickey to the Board of Directors in Boston, in which you speak of not asking for the resignation of all three of the trustees. At that time had that subject been discussed between you and your fellow members? A. I had received—

Mr. Whipple—Just a moment—when? Since the very friendly interview of Dec. 22, with the memory of which he went away to the south—do you mean since that time?

The Master—What was the date of the exhibit to which you referred?

Mr. Krauthoff—The letter was written on the 11th of January.

Mr. Whipple—Now you have asked something about whether this had been the subject matter of an interview. You have just introduced evidence that the last time he was in Boston he had a very friendly interview and a full understanding with Mr. Eustace.

Mr. Krauthoff—I am asking him as to the facts of the case, Mr. Whipple.

The Master—The question comes to this, doesn't it: Had there been any discussion about the subject referred to with your fellow directors prior to Jan. 11, 1919?

Mr. Whipple—At any time.

The Master—That is what it amounts to, isn't it?

Mr. Krauthoff—At any time, certainly.

The Witness—I was informed by letter—

Mr. Whipple—No, pardon me a moment. The question is whether there had been any discussion with you?

The Master—Get the discussion first if there was any.

The Witness—No verbal discussion with me.

Q. Then this letter of Jan. 11, 1919, was based on a letter which you received? A. It was.

Q. After you left Boston? A. Yes.

Q. On Dec. 23? A. I left on Dec. 22.

Q. You left on Sunday, Dec. 22, 1918? A. Yes, sir.

Q. Another letter was written from Savannah, Georgia, on Jan. 14, 1919, which has been introduced in evidence as Exhibit No. 247, and I call your attention to this sentence in that letter:

"Perhaps if the directors were to order one or more of their cards removed from the Journal they would refuse to consent and dispute the authority of the board, thereby furnishing an additional cause for their removal."

As bearing on that, Mr. Rowlands and Mr. Eustace and Mr. Ogden all have cards in the Journal as Christian Science practitioners? A. They do.

Q. And under the Church Manual the board has the right to order the cards removed for cause? A. That is a duty imposed on the board.

Q. What did you mean by that statement, Mr. Dickey, or what explanation have you to make in respect to—

Mr. Whipple—I pray Your Honor's judgment. Isn't that as plain and explicit as human language can make it? How can an explanation add to it or detract from it?

Mr. Krauthoff—The difference, if Your Honor please, between Mr. Whipple and myself in that respect is this: Mr. Whipple claims that no cause existed for the removal of the cards of his clients from the Journal, and that the defendants were using this as a threat and a menace to the plaintiffs. I desire to show by this witness what he intended by that and on what that statement was based.

Mr. Whipple—If you will pardon

me, we have not claimed at all that this was a threat or a menace, because it was not called to our attention until it was put in evidence here.

The Master—How could it be if they didn't know about it?

Mr. Whipple—We brought it out first showing the machinations that were going on of which we had no knowledge—justifying certain statements in our bill in equity.

Mr. Krauthoff—Yes, and we offer to show that this was not a machination.

Mr. Whipple—It was not a machination?

Mr. Krauthoff—Yes.

The Master—I find it very difficult to see how what is said there can need explanation. The meaning seems to be entirely clear and plain.

Mr. Krauthoff—Well, the question that I desire to put to Mr. Dickey is this: was that statement based upon the belief of Mr. Dickey that grounds existed, independent of any question arising under the Deed of Trust—that grounds existed for the removal of the cards of these plaintiffs from the Journal. Whether he was doing that in the discharge of his duty as a director, in good faith, because their cards should have been removed, or whether he was doing it as a threat and a menace or machination, as Mr. Whipple calls it. As I understand it, if Your Honor please—

The Master—I do not quite understand how you can put in Mr. Dickey's evidence to his own belief.

Mr. Krauthoff—Why, as I understand, where a man's good faith is attacked he has the right to show what he said and what he thought, and why he did a certain thing. Not as being conclusive upon the subject, but as being illuminating on the subject. And where a man makes a statement that is capable of two constructions, one reflecting upon his good faith and one not reflecting upon his good faith, he has the right to show that he did make it in good faith and the purpose for which he did make it.

The Master—I do not see where the two constructions are possible in regard to that thing. It is too plain to admit of more than one construction, is it not?

Mr. Krauthoff—Well, I don't think so, if Your Honor please. Mr. Whipple claims that it is open to the construction that Mr. Dickey was saying to the plaintiff in this case, "If you fail to do what we demand of you, whether we demand it rightly or wrongly, we will take your cards and take them out of the Journal." And the explanation—

The Master—Nothing of that kind has yet appeared. This is a mere communication, as I understand it, from Mr. Dickey to his fellow directors.

Mr. Krauthoff—Yes.

The Master—Not communicated at the time to the trustees.

Mr. Krauthoff—But I understand the claim of Mr. Whipple, running all

through his bill, is that, notwithstanding that these plaintiffs had taken legal advice as to their duties as trustees, notwithstanding that they were seeking to discharge their duties under the laws of the Commonwealth of Massachusetts, the defendants, by virtue of their great authority and power as the directors, in withholding licenses and making appointments, to use the language of the bill, were in some way trying to terrorize the plaintiffs into submission to the will of the directors and—

The Master—I think that we will wait until we get some reason to believe that that was communicated to the trustees.

Mr. Krauthoff—Thank you.

The Master—In some form or shape.

Mr. Krauthoff—We offer in evidence the record of the directors of Thursday, Jan. 23, 1919.

Mr. Whipple—Mr. Krauthoff, you mentioned a moment ago a letter from the directors to Mr. Dickey, on which he bases the change of attitude displayed in these two letters as compared with the love feast which he said had taken place just before his departure. Was it your plan to produce that letter?

Mr. Krauthoff—I shall locate it and—

Mr. Whipple—I did not know but you had examined the files and found out what did justify that change.

Mr. Krauthoff—I have not seen that letter, Mr. Whipple.

Mr. Whipple—You have not seen it?

Mr. Krauthoff—No.

Mr. Whipple—I did not know but you had overlooked it, and if you had overlooked it I wanted it to go in now.

The Master—Would it not be better to go on?

Mr. Whipple—Yes, Your Honor. I did not know but what he had it now.

The Master—Mr. Krauthoff says that he has not got it now.

Mr. Krauthoff—I will not at this time, if Your Honor please, read the intervening record of the directors in Mr. Dickey's absence from the city, reserving that for a later date, unless the master believes that chronologically I should now read it, in which case I should be very glad to read it now, and present it chronologically.

The Master—What are we now on? Are we still on the practice, the course of conduct, and acquiescence?

Mr. Krauthoff—Yes, the course of conduct and the engendering of the controversy.

The Master—I think that we can hardly consider the transactions after the controversy had become acute as showing a course of conduct or acquiescence.

Mr. Krauthoff—No.

The Master—The records of those transactions are important, if at all, as showing what the history of the controversy was.

Mr. Krauthoff—Yes. We have now

come to the point where we are not so—

The Master—What is the preference of counsel about having those records go in now, or letting Mr. Krauthoff reserve them for the present?

Mr. Streeter—I have, Your Honor, a very clear idea on that point. I may be wrong. We are putting in records that we think bear on the case, and there will be hundreds of pages of testimony, and if Mr. Krauthoff does not put in all the records of the directors from Jan. 1 to March 17, when this gentleman and his associates relieved Mr. Dittmore and expelled him—if Mr. Krauthoff does not read them now, they will have to be read again; if he reads part of them now, then we shall have to pick out the part that he has not read; and it will be better for Your Honor, I think, and better for everybody, if Mr. Krauthoff will begin Jan. 1, and read into this record all the records of the directors that bear upon this controversy.

Mr. Krauthoff—I shall be very glad to do that.

Mr. Streeter—That is the way it seems to me. I do not know how—

Mr. Whipple—So far as I am concerned, if Your Honor please, if we can have the parts of the record which Mr. Krauthoff wants to put in put in now, and not have them all repeated again when he gets another witness on the stand—

Mr. Streeter—That is right.

Mr. Whipple—I quite agree that it would be better to have them go in now. But if it merely means that when he gets another witness on the stand he is going to ask him the same questions and review those meetings again, it will be better to wait until that director comes. What do you say, Mr. Krauthoff—do you want—

Mr. Bates—I submit, Your Honor, that inasmuch as this is our first witness, the remarks of Mr. Whipple are entirely out of place.

The Master—It will be necessary, will it not, for us to look ahead a little and see if we cannot reduce this record to the smallest compass?

Mr. Bates—I do not object to that, Your Honor, but the intimation or insinuation that Mr. Krauthoff is going over this several times with different directors, when this is the first director that we have put in the stand—

Mr. Whipple—This is your first director that you have had on the stand, but you have had the secretary and assistant secretary, and you put in quite a mass of records through them.

The Master—My suggestion would be that counsel should go over the records and see if there is not a part of them at least which all would agree to omit, and that then everything should be read, beginning with Jan. 1, if that is the date which either counsel desires.

Mr. Whipple—I am perfectly willing that Mr. Krauthoff should read, if we thus got the records in from Jan. 1,

all that he thinks are material to the controversy; and that is what General Streeter suggested; but any records that relate to outside matters—

Mr. Streeter—All that anybody thinks is material is what I suggested.

Mr. Whipple—I know; but Mr. Krauthoff is no mind reader, and he does not know what others think is material; so let him read first what he thinks is material, and then if there is something more that others think is material, let us have that read.

The Master—Read all that Mr. Whipple or General Streeter or Mr. Thompson desires.

Mr. Streeter—We have such notes that we can tell when he reads whether he is reading all that we think is material.

The Master—Will there be any objection, then, to this course, that Mr. Krauthoff may proceed and read the records during that period, with the understanding that he is reading them all, and then if counsel can agree to omit any of them, have them then omitted? Will that do?

Mr. Bates—Does Your Honor mean to read the entire records, or only such portions of them as are material and have any bearing on the case? I think, according to my recollection, that there is a world of entries there that have nothing whatever to do with the case in any way.

Mr. Streeter—We do not want those read. All that we want read are those which bear upon some branch of the case.

Mr. Krauthoff—I think that I can do that, if Your Honor please.

The Master—Now, that comes down pretty nearly to my suggestion, at least as I intended it, that counsel should go over the records and agree what parts are not material, and the rest should be read.

Mr. Krauthoff—I think that I can pick them out, if Your Honor please, without any trouble. I will begin with Dec. 26, 1918—

The Master—Pause a moment. Let us clearly understand that we are adopting that course with the consent of everybody. Is that satisfactory?

Mr. Whipple—Perfectly satisfactory to us.

Mr. Thompson—Does Your Honor mean that we should outside of these hearings go over these records and pick out the ones that we think are material, or that we should do it now during the progress of the hearing?

The Master—My suggestion was that you should do it outside; but Mr. Krauthoff thinks that he can do it now.

Mr. Thompson—I thought that Your Honor meant to do it outside.

Mr. Krauthoff—I think that I can pick them out now.

Mr. Thompson—What is it that you are going to do now?

Mr. Krauthoff—Read what happened between Dec. 26 and Jan. 21.

The Master—I thought that your

first suggestion was to begin reading the record of Jan. 1.

Mr. Krauthoff—The reason I said Dec. 26 was that I had stopped with Mr. Dickey on Dec. 23, and here is an incident on Dec. 26. I think I can do it very quickly if I may just go ahead.

The Master—In order to be sure that we shall not get into further confusion about this matter, I want a distinct understanding now what it is that you are going to do, and that it is with the consent of counsel.

Mr. Krauthoff—I propose, if Your Honor please, with the consent of counsel, and subject to Your Honor's direction, to read the records of the directors from Dec. 23, 1918, to Jan. 21, 1919, being the period of Mr. Dickey's absence from Boston, on the incidents that bear on the controversy between the trustees and the directors.

The Master—Now, if you do that, you will not read the whole record just as it stands: you will read certain parts of it, exercising your judgment.

Mr. Krauthoff—If on any day I omit anything that—

The Master—Pause one moment, Mr. Krauthoff.

Mr. Krauthoff—I beg Your Honor's pardon.

The Master—Now, it is suggested by General Streeter and Mr. Thompson that you may omit something that they will want.

Mr. Streeter—May what?

The Master—That he will omit something which you will want read.

Mr. Streeter—We will call his attention to it right at the moment.

The Master—Very good. Now, it is understood that if that should prove to be the case, General Streeter, and Mr. Thompson will call your attention to it at the moment—is that right, Mr. Krauthoff?

Mr. Krauthoff—Yes.

The Master—And that you will then read what they want, if you have omitted it—is that right?

Mr. Krauthoff—Yes.

The Master—And Mr. Whipple has no objection to that course?

Mr. Whipple—No, sir.

The Master—Now, perhaps we have got a working agreement under which we can get these records in with the least possible loss of time. Let us try.

Mr. Krauthoff—Thank you.

Mr. Bates—Let me make this one suggestion, so as to make sure that the agreement is complete. I think that General Streeter and Mr. Thompson wish those parts of the record read which pertain also to the Dittemore case.

Mr. Streeter—Surely.

The Master—Oh, yes.

Mr. Bates—Well, I think that Mr. Krauthoff did not understand it that way. I want him to read those also.

Mr. Krauthoff—Do you mean at this time?

Mr. Bates—Yes, at this time.

The Master—What more do you want?

Mr. Bates—Mr. Krauthoff made a remark that led me to think that he did not understand it that way.

The Master—Oh, of course that is desirable. It is difficult to get an understanding of this kind complete. Is your understanding now clear, Mr. Krauthoff?

Mr. Krauthoff—Yes, I understand it. I am reminded that on Dec. 22, 1918, I omitted one paragraph.

The Master—Do not get back too far.

Mr. Krauthoff—It was also decided to call in for a friendly conference, Editor William P. McKenzie and Business Manager John R. Watts, and at that time to hand each of them a letter to be prepared by Judge Clifford P. Smith, indicating the board's desire that any important or unusual action should be taken by either of them in the course of their official work, only after they have made sure that it has this board's approval.

[The record of the meeting of the Board of Directors of Dec. 22, 1918, from which the foregoing extract is read is Exhibit 605. R. H. J.]

Mr. Streeter—Now, Mr. Krauthoff, in the record of that same meeting there was a vote with reference to sending to the trustees the legal opinions.

Mr. Krauthoff—I read that.

Mr. Streeter—Then you do not need to read it again.

Mr. Krauthoff—Monday, Dec. 23, 1918.

"Judge Smith submitted and the board edited and approved a proposed letter to Editor William P. McKenzie of The Christian Science Publishing Society, with respect to any unusual or important actions in the course of his work as editor. . . .

"The directors had an interview with Editor William P. McKenzie, editor of The Christian Science Publishing Society, and handed him the letter referred to above."

[The record of the meeting of the Board of Directors of Dec. 23, 1918, from which the foregoing extract is read, is Exhibit 606. R. H. J.]

Tuesday, Dec. 24, 1918:

"The corresponding secretary was instructed to refer to Editor William P. McKenzie for editing and publishing in the Christian Science Sentinel, the letter from — regarding the work of —, a Christian Science chaplain in the American Army. . . .

"Mr. Rathvon was requested to prepare and submit, for publication in the Sentinel, a notice from the directors regarding the various funds of The Mother Church. . . .

"Letters were read from the following: . . .

"The Christian Science Publishing Society, dated Boston, Dec. 17, requesting the correspondence in the — case before replying to his inquiry regarding the reinsertion of his card as practitioner and teacher in The Christian Science Journal. Reply indicated. . . .

"The Christian Science Publishing

Society, dated Boston, Dec. 17, requesting correspondence between — in connection with her request for the reinsertion of her card in the Journal. . . .

"The directors had an interview with Attorney Edwin A. Krauthoff, with further reference to the relationship between The Mother Church and the Publishing Society."

[The record of the meeting of the Board of Directors, dated Dec. 24, 1918, from which the foregoing is read, is Exhibit 607. R. H. J.]

Dec. 26, 1918:

"A letter was read from the trustees of The Christian Science Publishing Society, dated Dec. 24, in reply to the directors' two letters of Dec. 20, and reiterating and reaffirming their position as stated in the trustees' letter to the board of Sept. 30 and subsequent letters."

[The record of the meeting of the Board of Directors of Dec. 26, 1918, from which the foregoing extract is read, is Exhibit 608. R. H. J.]

That letter has heretofore been read in evidence.

The Master—What exhibit?

Mr. Krauthoff—I do not know.

Mr. Streeter—Why don't you go right along with your records, Mr. Krauthoff?

Mr. Whipple—The Judge asked a question.

Mr. Streeter—I beg Your Honor's pardon.

Mr. Krauthoff—On the same date (Dec. 26, 1918):

"The directors had an interview with Judge Clifford P. Smith, in connection with the situation between the directors and the trustees. Judge Smith was requested to prepare and submit proposed letter to the trustees, offering to exchange or to submit opinions of counsel."

Dec. 30, 1918:

"Judge Clifford P. Smith, manager of committees on publication, dated Boston, Dec. 23, submitted proposed letters to all teachers of Christian Science and to The Christian Science Publishing Society, about the change in date of beginning the teaching year."

[The record of the meeting of the Board of Directors of Dec. 30, 1918, from which the foregoing extract is read, is Exhibit 609. R. H. J.]

Mr. Krauthoff—"Jan. 2"—

Mr. Streeter—Wait a moment. There is another record there with reference to the letter from Hon. Mrs. Frances Porter.

[Mr. Krauthoff reads from the directors' records, Dec. 30, 1918, an extract which is offered in evidence as Exhibit 610.]

"Letters were read from the following:

"Hon. Mrs. Frances Porter, dated Dublin, Ireland, Dec. 7, informing the board that she is about to teach her class and proposes to bring out her views on the subject of the one Mind, which are at variance with her under-

standing of the subject as presented by Judge Smith to the college class. Letter to be referred to Judge Smith for reply."

[An extract from the directors' records, Jan. 2, 1919, is offered in evidence as Exhibit 611, and is read by Mr. Krauthoff, as follows:]

"The directors had an interview with Business Manager John R. Watts of The Christian Science Publishing Society."

Mr. Streeter—No, no; you must have a record there about a motion of Mr. Dittmore.

Mr. Krauthoff—Oh, the Comforts Forwarding Committee?

Mr. Streeter—Yes, sir.

Mr. Krauthoff—All right.

[Mr. Krauthoff reads an extract from the directors' records, Jan. 2, 1919, which is offered in evidence as Exhibit 612.]

"On motion of Mr. Dittmore, seconded by Mr. Merritt, it was voted that the Comforts Forwarding Committee at once have the clothing contributed for refugee relief abroad all turned over to such of the established relief organizations as are prepared to give it prompt transportation and distribution to those in need."

[An extract from directors' records, Jan. 3, 1919, is offered in evidence as Exhibit 613, and is read by Mr. Krauthoff, as follows:]

"The chairman announced that the meeting was called to consider the proposed letter prepared by Judge Clifford P. Smith in reply to a communication from a Board of Trustees of The Christian Science Publishing Society, dated Dec. 31.

"After a brief discussion Judge Smith was called in for consultation and after he retired from the meeting, and after further careful consideration of the situation, the corresponding secretary was instructed to send the letter as drafted with changes indicated."

Mr. Krauthoff—That letter has been introduced in evidence as Exhibit 18. I have also located the letter of the trustees of Dec. 31, 1918, and that has been introduced in evidence as Exhibit 17.

[An extract from the directors' records, Jan. 7, 1918, is introduced in evidence as Exhibit 614, and is read by Mr. Krauthoff, as follows:]

"The directors had an interview with Judge Clifford P. Smith with reference to the situation existing between the Board of Trustees of The Christian Science Publishing Society and The Christian Science Board of Directors."

Mr. Streeter—Is that all?

Mr. Krauthoff—No; there is a reference in the record to an attorney who is not now in the case.

Mr. Streeter—Mr. Krauthoff, I want you to read the record without making any discussion about it, please.

Mr. Thompson—We don't want comments on it; go ahead and read it.

Mr. Krauthoff—Is that the one you

want, General? (Showing records to Mr. Streeter.)

Mr. Streeter—Yes, "Mr. Neal reported," etc.

[Mr. Krauthoff also reads the following extract from the record of Jan. 7, 1919, Exhibit 614.]

"Mr. Neal reported that he had received a telephone inquiry from Attorney Charles F. Choate, Jr., saying that the trustees of The Christian Science Publishing Society had asked him for an opinion on their Trust Deed, and after consulting with Messrs. Dittmore, Merritt, and Rathvon, who were all agreeable to the proposition, Mr. Neal, in the presence of the other directors told Mr. Choate over the telephone to go ahead. Mr. Neal reported also a second telephone communication from Mr. Choate, advising that the trustees had asked him if he would be in a position to act as their attorney in court in the event of the case going to trial. Under the circumstances the directors deemed it advisable not to release Mr. Choate's services and Judge Clifford P. Smith was authorized to prepare a letter to Mr. Choate which would serve as a retainer, requesting him to act as counsel together with Attorneys John L. Bates and Leon M. Abbott.

"Judge Smith was requested to confer with Attorneys Choate, Bates, and Abbott, and to arrange for an interview with the directors on Wednesday, Jan. 8."

[An extract from the directors' records, Jan. 8, 1919, is offered in evidence as Exhibit 614-A, and is read by Mr. Krauthoff, as follows:]

"The corresponding secretary submitted and the board approved proposed letters as follows:

"To Mr. Herbert W. Eustace, in reply to his letter taking exception to the action of the directors in changing the date of beginning the teaching year."

Mr. Krauthoff—"January 9—"

Mr. Streeter—Isn't there another record there, of an interview with Messrs. Smith, Choate and Bates?

[Mr. Krauthoff reads the following additional extract from the record of Jan. 8, 1919, Exhibit 614-A:]

"The directors had an interview with Judge Clifford P. Smith, and later Attorneys Charles F. Choate, Jr., John L. Bates and Leon M. Abbott entered the conference and full discussion ensued regarding the situation now existing between The Christian Science Board of Directors and the Board of Trustees of The Christian Science Publishing Society."

[An extract from the directors' records, Jan. 9, 1919, is offered in evidence as Exhibit 615, and is read by Mr. Krauthoff, as follows:]

"Mr. Dittmore filed in writing his views relative to the proposed conference by Attorneys Charles F. Choate, Jr., with the trustees of The Christian Science Publishing Society."

Mr. Krauthoff—Do you desire at this

time to put those views in as a part of the record?

Mr. Streeter—No. It seems to me, if Your Honor please, that it would be better to go right on through, keep these records together, and then go back and put in what he desires to refer to. I don't care, but it looks as though it would be better to put those in in a block, but if it is desired to break in by putting in the references to letters referred to, I don't care.

Mr. Krauthoff—I prefer to put them in at one time; I was merely asking your preference.

Mr. Streeter—Well, what does Your Honor think about it?

The Master—What course have we followed so far in regard to that?

Mr. Krauthoff—We have not followed any definite course; we have introduced the letters as we came to them sometimes, and sometimes when—

The Master—And sometimes not?

Mr. Krauthoff—Sometimes not.

Mr. Streeter—Well, it is suggested that if those letters were put in that are referred to in the January 9th record, it would take the whole story together—keep the story together—and on reflection and suggestion I do not object to those letters being put in now, Mr. Krauthoff.

Mr. Krauthoff—All right.

Mr. Streeter—Right in connection with this record.

Mr. Krauthoff—This is the memorandum of Mr. Dittmore of Jan. 9, 1919.

[A memorandum prepared by Mr. Dittmore, dated Boston, Massachusetts, Jan. 9, 1919, is offered in evidence as Exhibit 616, and is read by Mr. Krauthoff, as follows:]

"Boston, Massachusetts,  
January 9, 1919.

"It is to be assumed that Mr. Choate, under his present employment, will confer with the trustees of The Christian Science Publishing Society as the representative of the directors, and that his effort will be to negotiate a compromise as the method of preventing mortal mind's threat of 'a big lawsuit,' unless Principle appears to come under the rod wielded by arrogance and worldly policy. The accomplishment of such an end would in no way be a solution of the problem. To patch up, smooth over, and make things look all right on the top, is not Principle. The most distinguished lawyer on earth has no power undervived from Principle. Nothing is 'big' but God.

"J. V. DITTMORE."

Q. In connection, Mr. Dickey, with this memorandum of Mr. Dittmore, just read in evidence, did you give any instructions of any kind to Mr. Choate with respect to a compromise of the relations between the trustees and the directors? A. None whatever.

Mr. Streeter—Aren't you going to read in the other one?

Mr. Krauthoff—They were duplicates of each other, weren't they?

Mr. Bates—Yes.

Mr. Krauthoff—They were duplicates.

Mr. Bates—It sounds good, but I don't think we ought to hear it twice.

Mr. Krauthoff—Jan. 11, 1919—

Mr. Streeter—Jan. 10.

Mr. Krauthoff—Oh, yes, Jan. 10, 1919.

[An extract from the directors' records, Jan. 10, 1919, is offered in evidence as Exhibit 617, and is read by Mr. Krauthoff, as follows:]

"Upon the recommendation of Mr. Harsch, and on motion of Mr. Dittmore, seconded by Mr. Rathvon, it was voted to send Assistant Manager Wallace to France as quickly as he can obtain transportation with instructions to define to Mr. Norledge and others, the board's position relative to the war relief work, to send home such of the workers who want to return to America, and to do whatever else is necessary to be done after consultation by cable with this board."

[An extract from the directors' records, Jan. 11, 1919, is offered in evidence as Exhibit 618, and is read by Mr. Krauthoff, as follows:]

"Judge Clifford P. Smith, at whose instance the meeting was called, was present and communicated to the board certain information which had just reached him relative to the situation between the trustees of the Publishing Society and the Board of Directors.

"A letter was read from Attorney Leon M. Abbott, dated Boston, Jan. 10."

[An extract from the directors' records, Jan. 13, 1919, is offered in evidence as Exhibit 619, and is read by Mr. Krauthoff, as follows:]

"A letter was read from Director Adam H. Dickey, dated Savannah, Georgia, Jan. 11, recommending that we proceed slowly in the situation now existing between the directors and trustees of The Christian Science Publishing Society and recommending that one trustee be dismissed rather than ask for the resignation of all of the trustees."

Mr. Streeter—Anything more?

[Mr. Krauthoff also reads the following extract from the records of Jan. 13, 1919, Exhibit 619:]

"The directors had an interview with Judge Clifford P. Smith, who reported an extended interview with Attorneys Bates and Abbott, relative to the situation existing between the Board of Trustees of The Christian Science Publishing Society and The Christian Science Board of Directors."

Mr. Krauthoff—That is all I know of, General.

Mr. Streeter—It is what you omitted.

Mr. Krauthoff—I beg pardon. That

is the second instance in the record that I haven't got to it.

[An extract from the directors' records, Jan. 14, 1919, is offered in evidence as Exhibit 620, and is read by Mr. Krauthoff, as follows:]

"Letters were read from the following:

"Director Adam H. Dickey, dated Savannah, Georgia, Jan. 10, recommending that the new clothing collected by the Comforts Forwarding Committee be sent to France as originally planned."

Mr. Krauthoff—Is there anything about the clubhouse in Pasadena, California, that is important?

Mr. Streeter—No.

[Mr. Krauthoff continues reading from the records of Jan. 14, 1919:]

"Letters were read from the following:

"Judge Clifford P. Smith, manager of Committee on Publication, dated Boston, Dec. 21, in further reference to the recent custom of publishing Monitor editorials as paid advertisements in circular newspapers.

"The directors had an interview with Judge Clifford P. Smith and Attorney Edwin A. Krauthoff of Washington, District of Columbia, with reference to developments in the situation between the directors and the Board of Trustees."

[An extract from the directors' records, Jan. 16, 1919, is offered in evidence as Exhibit 622, and is read by Mr. Krauthoff, as follows:]

"Letters were read from the following:

"Director Adam H. Dickey, two letters dated Savannah, Georgia, Jan. 14, with reference to the situation between the trustees of the Publishing Society and the Board of Directors.

"The corresponding secretary submitted the names of contributors to the Christian Science periodicals heretofore disapproved and was instructed to ask the editorial department, that upon receipt of an acceptable article from any person whose name has heretofore been disapproved, to resubmit the name of the contributor to the directors."

Mr. Streeter—Are you going to put in those letters of Dickey's?

Mr. Krauthoff—Well, I will as soon as I locate them; I haven't them in my hands at present.

Mr. Thompson—It would be a good thing to put them in, as you call it, chronologically.

Mr. Krauthoff—Yes, it would if I had them. I will when I have them at hand. I am now being called upon to read records that I have not checked up, if Your Honor please, for I haven't everything immediately at hand.

[An extract from the directors' records, Jan. 17, 1919, is offered in evidence as Exhibit 623, and is read by Mr. Krauthoff as follows:]

"The Chair announced the purpose of the meeting to be for receiving and considering recommendations from

counsel in connection with the situation now existing between the Board of Trustees of The Christian Science Publishing Society and The Christian Science Board of Directors.

"Attorneys Clifford P. Smith and Edwin A. Krauthoff appeared before the board and, after discussing the situation, on motion of Mr. Dittmore, seconded by Mr. Rathvon, and by unanimous vote of the members present, The Christian Science Board of Directors instructed the corresponding secretary for this board to request the Board of Trustees of The Christian Science Publishing Society to collect and furnish to this Board of Directors as soon as possible the papers and information described as follows:

"1. Copies of all blanks and forms used by The Christian Science Publishing Society at any time since the 1st of January, 1918, in its correspondence with persons or organizations applying, or signifying an intention or desire to apply, for cards or advertisements in The Christian Science Journal, the official organ of The First Church of Christ, Scientist, in Boston, Massachusetts. This request covers blanks and forms, including forms used for composing letters, pertaining to correspondence with persons or organizations applying, or signifying an intention or desire to apply, for any kind of a card or advertisement in said periodical.

"2. A complete list of the persons who applied in the year 1918 to The Christian Science Publishing Society for practitioners' cards in The Christian Science Journal, or signified in said year their intention or desire to make such an application, and whose applications The Christian Science Publishing Society did not accept, together with the reasons in each instance for not accepting the same.

"3. A complete list of the organizations or groups of Christian Scientists which applied to The Christian Science Publishing Society in the year 1918 for advertisements in The Christian Science Journal as branch churches or societies, or signified in that year their intention or desire to make such an application, and whose applications The Christian Science Publishing Society did not accept, together with the reasons in each instance for not accepting the same."

"Letters were read from the trustees of The Christian Science Publishing Society, dated Jan. 14, 1908, and in reply to the directors' letter of Jan. 18, 1908, also dated April 25, 1905, and letters from the directors to the trustees dated Jan. 18, Jan. 19 and Jan. 25, 1908."

Mr. Krauthoff—I will look those letters up at the intermission, if Your Honor please.

[An extract from the directors' records, Jan. 20, 1919, is offered in evidence as Exhibit 624, and is read by Mr. Krauthoff, as follows:]

"Letters were read from the following:

"Mr. William P. McKenzie, editor, dated Boston, Jan. 20, relative to his editorial, 'Things Not Expedient,' in the Sentinel for Jan. 25, and its application to the situation now existing between the trustees of The Christian Science Publishing Society and the directors of The Mother Church.

"Miss Etta V. Friend, dated New York City, Jan. 2, and Myron Fabricant, dated New York City, Jan. 3, inquiring as to which periodicals are the organs of The Mother Church. Queries and proposed reply to be submitted to Judge Smith."

[An extract from the directors' records, Jan. 21, 1919, is offered in evidence as Exhibit 625, and is read by Mr. Krauthoff, as follows:]

"Letters were read from the following:

"Mr. William P. McKenzie, editor, The Christian Science Publishing Society, dated Jan. 20, with reference to his editorial, 'Things Not Expedient,' in the Christian Science Sentinel for Jan. 25."

Mr. Whipple—May I suggest that you do not put that in twice? That was read, and then Mr. Krauthoff went back and reread it.

Mr. Krauthoff—Oh, I beg your pardon; it was read on two different dates.

Mr. Whipple—No; Jan. 21; and then you went back and read something about Jan. 20.

Mr. Krauthoff—I beg pardon. The record shows that it was read on Jan. 20 and read also on Jan. 21. I am quite willing that one of the meetings shall be omitted. I was trying to keep my promise, that was all. Now I have got up to Jan. 22, 1919.

Mr. Streeter—Not quite.

Mr. Krauthoff—I beg your pardon.

Mr. Streeter—You have a record under date of Jan. 21 of a letter from Mr. Norwood, haven't you?

Mr. Krauthoff—Of the Finance Committee?

Mr. Streeter—Yes, sir.

Mr. Krauthoff—Jan. 21, 1919:

"Letters were read from the following:

"Attorney C. Augustus Norwood, dated Boston, Jan. 20, advising that a member of the Committee on Finance had raised the question of the advisability of having that committee approve contracts. Reply indicated."

[That portion of record of meeting of Board of Directors, Jan. 21, 1919, as read by Mr. Krauthoff, is offered in evidence as Exhibit 626.]

Mr. Krauthoff—Jan. 23, 1919—

Mr. Streeter—Anything about the twenty-second?

Mr. Krauthoff—Well, I had read that, I thought.

Mr. Streeter—I don't know of anything that you read on Jan. 22.

Mr. Krauthoff—Oh, I beg your pardon, General, I called attention to the fact that on Jan. 22, 1919, there was adopted by the board the motions

which have heretofore been introduced in evidence by Mr. Whipple.

Mr. Streeter—Suppose you find something else in the record which you think bears on this.

The Master—Can you identify that now by the exhibit number? It might be convenient.

Mr. Krauthoff—I did at the time.

The Master—You did at the time? Very good.

Mr. Thompson—It is a very small part of it. Why not start in and read Jan. 22 about Mr. Strickler and Mr. Young?

Mr. Krauthoff—Wednesday, Jan. 22, 1919:

"Three of the members of the board reported conversations with Mr. Virgil O. Strickler in which he stated that he had a long interview with Mr. Bicknell Young in the course of which Mr. Strickler alleged that Mr. Young made some unusual statements criticizing the government of The Mother Church, and it was decided to have an interview with Mr. Young immediately. A letter was read from Mr. Bicknell Young, First Reader of The Mother Church, dated Boston, Jan. 21, 1919, offering his services in arranging a meeting between the Board of Trustees of The Christian Science Publishing Society and The Christian Science Board of Directors.

"The directors had an interview with Mr. Bicknell Young, First Reader of The Mother Church.

"The directors had an interview with attorneys, Clifford P. Smith, Edwin A. Krauthoff, ex-Governor John L. Bates and Mr. Leon M. Abbott, with respect to the situation existing between the Board of Trustees of The Christian Science Publishing Society and The Christian Science Board of Directors."

[That portion of record of meeting of Board of Directors, Jan. 22, 1919, as read by Mr. Krauthoff, is offered in evidence as Exhibit 627.]

Mr. Krauthoff—And then follow resolutions which have heretofore been offered in evidence.

Mr. Thompson—Both Mr. Neal's and Mr. Dittmore's? Both of them?

Mr. Krauthoff—Yes, they were offered in evidence by the plaintiffs.

"The directors had an interview with Manager Paul A. Harsch, Assistant Manager Arthur J. Wallace of the Christian Science War Relief Committee, and Judge Clifford P. Smith, with regard to the Camp Welfare Work being done by our workers in France.

"The proposed letter to the Board of Trustees of the Seventh Church of Christ, Scientist, of New York City, with respect to a circular published by them, entitled 'The Church By-Laws,' read, edited and approved.

"A letter was read from Mr. Josiah E. Fernald, dated Concord, New Hampshire, Jan. 16, with reference to the sale of Pleasant View. Reply indicated."

[That portion of record of meeting of Board of Directors, dated Jan. 22,



1919, as just read by Mr. Krauthoff, is offered in evidence as a part of Exhibit 627.]

Mr. Krauthoff—If Your Honor please, in justice to Mr. Bicknell Young, at this time we want the record to show that at the proper time Mr. Young will be offered as a witness.

Mr. Streeter—Oh, well, don't try to argue it now; go ahead and put in the records.

Mr. Krauthoff—I am not making any argument, if Your Honor please; I am making a statement, which, when completed, General Streeter can move to strike out if he wants to. And that is that at the proper time Mr. Bicknell Young will be offered as a witness to state his version of what occurred with respect to these matters of which Mr. Strickler spoke.

Mr. Thompson—That ought to be struck out, and any similar comments, which break up the continuity of the record.

Mr. Krauthoff—I make that statement, if Your Honor please, because this testimony is read daily by hundreds of thousands of people who accept everything as fully proved by a statement read from the Board of Directors' records.

Mr. Streeter — Well, that may not always be so, Mr. Krauthoff.

Mr. Krauthoff—Jan. 23, 1919:

"A reply was indicated to Mr. Bicknell Young's letter of Jan. 21, offering to arrange a meeting between the directors and the trustees of the Publishing Society.

"The directors had an interview with Judge Clifford P. Smith, who submitted for consideration and adoption a resolution with respect to certain bequests to be made of the trustees of the Publishing Society for information regarding applications of certain individuals for practitioners' cards in the Journal, Der Herold, and Le Hérait.

"On motion of Mr. Dittmore, seconded by Mr. Merritt, The Christian Science Board of Directors by unanimous vote adopted the following resolution:

"Resolved, That the Board of Trustees of The Christian Science Publishing Society be and hereby is requested to send a copy of the correspondence between The Christian Science Publishing Society and Mrs. Louise M. Norledge of Paris, France, and William H. Norledge of Paris, France, concerning their applications for cards as Christian Science practitioners in Le Hérait de Christian Science, and a copy of correspondence between The Christian Science Publishing Society and Albert F. Gilmore and Robert S. Ross of New York City, and Mrs. Emily Householder of Kansas City or Boston, concerning their applications for cards as Christian Science practitioners in The Christian Science Journal, with a statement of the reasons in each case why these persons have not been allowed to have such advertisements in said periodical.

"Resolved further That the Board of Trustees of The Christian Science Publishing Society be and hereby is requested to send to The Christian Science Board of Directors a list of the names and addresses of persons who applied during 1918 for cards as Christian Science practitioners in Der Herold der Christian Science, or signified to The Christian Science Publishing Society during 1918 a desire or intention to make such applications, whose applications for such advertisement have not been accepted, with a statement of the reasons in each case why said persons have not been allowed such advertisement in said periodical.

"Resolved further That the Board of Trustees of The Christian Science Publishing Society be and hereby is requested to send to The Christian Science Board of Directors a list of the names and addresses of persons who applied at any time before the first of January, 1919, for cards as Christian Science practitioners in Le Hérait de Christian Science or signified to The Christian Science Publishing Society at any time before the first of January, 1919, a desire or intention to make such applications, whose applications for such advertisement have not been accepted."

[That portion of record of meeting of Board of Directors, Jan. 23, 1919, as read by Mr. Krauthoff, is offered in evidence as Exhibit 628.]

Q. Now, Mr. Dickey, with respect to this resolution referring to the case of Mr. and Mrs. Norledge of Paris, France, what was the situation at that time?

The Master—You may wait one minute, Mr. Dickey. I understand now you have covered the ground up to Jan. 21, 1919, being the time during which Mr. Dickey was absent.

Mr. Krauthoff—Yes, if Your Honor please.

The Master—Now, are we to assume that he was present at the meeting of Jan. 22? I do not think you read anything to show that he was.

Mr. Streeter—Let me ask, if it would not be—I beg your pardon.

The Master—One moment.

Mr. Krauthoff—The record recites the presence of Mr. Dickey on Jan. 22, 1919.

The Master—I suppose it would be better to have it in the record, wouldn't it, that he was present, inasmuch as we have been dealing for a little time with a period when he was absent?

Mr. Krauthoff—Yes, that is right, if Your Honor please. Mr. Dickey attended the meeting of the Board of Directors on Dec. 22, 1918, and was continuously absent, including Jan. 21, 1919, and present on Jan. 22, 1919.

The Master—Thank you; that answers my question. Now we will see what General Streeter has to say.

Mr. Streeter—I was going to suggest that it would be much more convenient for everybody reading this

record—for the counsel, it seems to me, and for everybody else—if Mr. Krauthoff would now continue to put in these records en bloc up to March 17, so far as they relate to these matters, and if he does not put them in, we shall have to put them in later. Isn't that agreeable, Mr. Krauthoff?

Mr. Krauthoff—It is now half-past eleven, if Your Honor please.

The Master—I see that, but before we take the recess let us see what is to be said on General Streeter's proposition.

Mr. Krauthoff—I would like to take the advice of counsel on that.

Mr. Streeter—Well, it does not really matter, except for convenience. If you do not put in those records from Jan. 21 to March 17, we shall have to, and they will be in in another place. It is only a question of the place in the record.

The Master—After Mr. Krauthoff has had his conference perhaps they will agree with you.

Mr. Streeter—I think they will. If you talk with Governor Bates—he is a very agreeable gentleman, and he will do things about right.

The Master—Let me now say that as we are now covering a period during which the records disclose rather the history of the present controversy when it became acute than show any course of conduct or acquiescence, such as I thought they might be capable of showing prior to that time, it seems to me that it would be convenient to follow the course suggested by General Streeter. Whether it would be desirable to follow it against anybody's objection would be another question, of course. We will wait until Mr. Krauthoff has had the opportunity for his conference and will stop a few minutes for that purpose.

[Recess.]

Mr. Krauthoff—Now, if Your Honor please, with respect to the request of General Streeter, or rather the suggestion of General Streeter, that from this time on I read both that which occurred with respect to the controversy between the trustees and the directors and the controversy that was then pending between Mr. Dittmore and the directors, I find myself in this situation: In preparing my material, I prepared it in logical order with respect to the incidents between the trustees and the directors. To read this record without at the same time examining Mr. Dickey with respect to it would mean that I would have to go back to it and recall the record to him. To read it and attempt to examine him at this time would ever and anon take us on an excursion of such length that I fear that before we returned to the port of our departure we would have forgotten where it was that we started from. And so I would prefer to continue now to examine Mr. Dickey with respect to what happened between the trustees and the directors up to and including March 17, 1919,

and then we will take up the Dittmore incidents in the order.

Mr. Streeter—Now, if Your Honor please, there is not anything in this record with reference to Dittmore incidents that is not related to the trustees' incidents. Here is a record from Jan. 21 to March 17, a little less than two months, and these directors have put upon their records a story about what they were doing. Some of them—most of them—relate to the whole controversy between the trustees and the directors and Dittmore's attitude. Now, those records have got to be read—I say that they have got to be read—they have got to be read by somebody; we cannot compel Mr. Krauthoff to read them. But if he reads a portion of those records in this place, then we have got at a later time and in another place to read the balance of them. If he would go right through them without stopping to talk and explain about them, and get them into the record in a block, I am sure that it will save a lot of time and be mighty convenient to everybody, and I will help him in this respect:— You go on and read the records that you have got your mind on, Mr. Krauthoff, and if you omit anything I will call your attention to it so that you can read anything else right in.

Mr. Krauthoff—Well, thank you, General, for the intimation that I am expected to read only that which bears on the controversy between the directors and the trustees. I now come to a record about a sale of some yarn, which I understand does not relate to the trustees and the directors.

Mr. Streeter—What is the date of that?

Mr. Krauthoff—Jan. 23, 1919. And I will—

Mr. Streeter—I have not asked you to say anything about that.

Mr. Krauthoff—Well, I gathered from your request the other day—

Mr. Streeter—If you will read from your record of Jan. 23 what you want, I will call attention in a word to anything else that I want.

Mr. Krauthoff—I have read the resolution of the directors with respect to certain information requested by the directors of the trustees.

Mr. Streeter—I know it. Have you read all from the record of the meeting of Jan. 23 that you want?

Mr. Krauthoff—And upon that I desire to examine Mr. Dickey, and then I will state whether there is anything more there that I—

Mr. Streeter—To that I object.

Mr. Krauthoff—I beg pardon?

Mr. Streeter—I object to your reading a piece of that record and then stopping to make an examination. I suggest that this record here be put in in a block, and then you can go back and ask Mr. Dickey anything that you want to.

Mr. Krauthoff—All right. We will try to work it out that way.

Now, on Jan. 23, 1919, General, is there anything?

Mr. Streeter—Yes, there is a record there about Judge Smith presenting letters from Mr. Bicknell Young.

Mr. Krauthoff—Judge Smith presented the following letters which were read to the board:

"From Mr. Bicknell Young to Mr. Virgil O. Strickler, dated Boston, Jan. 18.

"From Mr. Virgil O. Strickler to Mr. Bicknell Young, dated New York City, Jan. 22.

"From Mr. Virgil O. Strickler to Judge Clifford P. Smith, dated New York City, Jan. 22."

Mr. Streeter—That is all we want. Mr. Krauthoff—

"The corresponding secretary was instructed to have copies made of the three above-described letters.

"At this point Mr. Dittmore left the meeting."

[The foregoing extracts from the record of the meeting of the Board of Directors of Jan. 23, 1919, are Exhibit 629. R. H. J.]

Jan. 24, 1919:

"The directors had an interview with Judge Clifford P. Smith, who stated that Attorney Sherman L. Whipple, as one of counsel for the trustees of The Christian Science Publishing Society had called on Mr. John L. Bates yesterday afternoon to propose a conference between counsel for the two boards this afternoon.

"On motion of Mr. Neal, seconded by Mr. Merritt—"

I understand, if Your Honor please, that I may recur to these records in the examination of the witness.

Mr. Streeter—I assumed that. I assumed that everybody, Your Honor, would refer to these records. The purpose of this is to get them in here in a block, where we can all refer to them.

The Master—Very well.

[The record of the meeting of the Board of Directors of Jan. 24, 1919, from which the foregoing extracts are read, is Exhibit 630. R. H. J.]

Mr. Krauthoff—This is from the meeting of Jan. 24, 1919:

"On motion of Mr. Neal, seconded by Mr. Merritt, it was voted that the board call for interviews, either singly or in groups, Messrs. John R. Watts, William P. McKenzie, W. D. McCrackan, and Oscar L. Stevens, and that they shall be interviewed this noon, or as soon as possible thereafter."

Mr. Streeter—Mr. McKenzie requested the release of the article.

Mr. Krauthoff—Do you wish that read at this time?

Mr. Streeter—Yes.

Mr. Krauthoff—

"Mr. McKenzie requested release of the article from The Independent Statesman of Dec. 26, 1918, describing the Pyramid memorial erected by Mr. James F. Lord, marking the alleged birthplace of Mary Baker Eddy on the Mark Baker homestead, said article

having been set up for republication in the Sentinel for Feb. 8, and proofs sent to the directors on Jan. 27. Mr. Merritt moved and Mr. Dickey seconded the motion that the article be not run. A roll call resulted in the following vote:

Mr. Dittmore, No  
Mr. Dickey, Aye  
Mr. Merritt, Aye  
Mr. Neal, Not voting  
Mr. Rathvon, Not voting

Mr. Rathvon gave as his reason for not voting that this is a matter which antedated his admission to the board and about which he did not feel well enough posted to vote intelligently. Mr. Merritt then moved and Mr. Dickey seconded a motion to lay the question on the table for some future reference. A roll call resulted in the following vote:

Mr. Dittmore, No  
Mr. Merritt, Yes  
Mr. Neal, Not voting  
Mr. Rathvon, Not voting  
Mr. Dickey, Yes

The chair announced that the motion was carried and instructed the corresponding secretary to notify Mr. McKenzie that consideration of publication of the article had been postponed."

Mr. Streeter—Now there is a record about a letter of Mr. Dittmore of Jan. 24, re method of discipline.

Mr. Krauthoff—

"A letter was read from Mr. Dittmore, dated Jan. 24, 1919, expressing his views with regard to the charges against —, to be considered at this time."

Mr. Streeter—Now, have you that letter?

Mr. Krauthoff—I will undertake to have it here at 1 o'clock.

Mr. Streeter—Haven't you got it right there, so that you can put it in in connection with this record?

Mr. Krauthoff—Why, if Your Honor please, I do not think that it is quite fair to me to ask me to produce a letter and read it in evidence that I have never had an opportunity up to this time of reading myself.

The Master—I think that you are entitled to a reasonable time to get the letter.

Mr. Krauthoff—

"The directors had an interview with Judge Clifford P. Smith regarding a conference in session today between himself and Attorneys Krauthoff, Bates, and Abbott, with reference to the pending conference between counsel for both boards tomorrow.

"While Judge Smith was with the directors, Mr. John R. Watts, business manager of The Christian Science Publishing Society, also came before the board, and a general discussion ensued.

"Mr. Watts read a letter from the New York representative of The Christian Science Monitor, dated Jan. 24, 1919, to Mr. Watts about certain statements alleged to have been made

by one of the directors in New York City about the circulation and management of The Monitor. Copies to be made for the directors. . . .

"A letter was read from Editor William P. McKenzie, dated Boston, Jan. 23, in formal acknowledgment of the board's letter to him of Dec. 23, 1918, which had previously been acknowledged verbally.

"The directors had an interview with Editor William P. McKenzie with regard to his work and also respecting the situation now existing between the trustees and the directors."

Mr. Streeter—Anything about the directors' considering Judge Smith's letter?

Mr. Krauthoff—

"A letter was read from Judge Clifford P. Smith, dated Boston, Jan. 24, proposing two substitutions to his proposed letter to the Hon. Mrs. Porter of Dublin, Ireland, of Jan. 6, in reply to her letter to him of Dec. 6, 1918. Judge Smith's letter was approved and the corresponding secretary was instructed to acknowledge receipt of Mrs. Porter's letter to the board of Dec. 7 and advise her that Judge Smith's reply had the sanction and approval of the board."

Jan. 25, 1919. I assume that this, having been called up once, has become important. Jan. 25, 1919:

"The directors held a joint conference with the following named gentlemen who arrived a few moments apart and in the following order—Mr. Virgil O. Strickler of the Board of Lectureship, Mr. William P. McKenzie, editor of the Christian Science periodicals, and Mr. Bicknell Young, First Reader of The Mother Church."

Mr. Streeter—That is all that we call for. You may put in anything that you want to.

Mr. Krauthoff—

"The corresponding secretary was instructed to ask the editor of The Christian Science Monitor to give some publicity to the forthcoming Boston Y. M. C. A. drive for funds."

[The record of the meeting of the Board of Directors of Jan. 25, 1919, from which the foregoing extracts are read, is Exhibit 631. R. H. J.]

Monday, Jan. 27, 1919:

"The directors had an interview with Attorneys Clifford P. Smith and Edwin A. Krauthoff, who reported on the conference held Saturday, Jan. 25, between Attorneys John L. Bates, Leon M. Abbott, Clifford P. Smith and Edwin A. Krauthoff representing The Christian Science Board of Directors, and Sherman L. Whipple, Esq., representing the Board of Trustees of The Christian Science Publishing Society. While Judge Smith and Mr. Krauthoff were present, the following letters were read to the board and counsel—From Editor William P. McKenzie to Mr. Herbert W. Eustace, dated Jan. 23, 1919, and Mr. Eustace's reply to Mr. McKenzie, dated Jan. 24, 1919. Also a letter from Mr. William P. McKenzie to The Christian Science

Board of Directors, dated Boston, Jan. 27, stating his position with regard to the situation now existing between this board and the trustees of The Christian Science Publishing Society.

"After counsel retired Mr. Dittmore presented the following letters, which were read to the board.

"Dated Boston, Jan. 27, to Mr. Paul Harvey, in reply to his letter to Mr. Watts, which was read to the directors on Jan. 24.

"Dated Boston, Jan. 24, to The Christian Science Board of Directors about the pro-English attitude of The Christian Science Monitor and the need for a conference with the acting editor and his assistants to inaugurate a change of policy.

"Dated Boston, Jan. 27, with regard to the attitude of Mr. Bicknell Young, First Reader of The Mother Church in the present situation confronting the directors."

Now, this is the discipline case that Mr. Dittmore filed his views about a few minutes ago:

"On motion of Mr. Dittmore, seconded by Mr. Rathvon, it was voted to dispose of the charges against \_\_\_\_\_ as follows: that no formal discipline shall ensue but that Mr. \_\_\_\_\_ have his case reviewed and that he be told in a letter that his course of action during the next year will determine whether or not the case will be reopened. . . .

"The corresponding secretary was instructed to write a letter to The Christian Science Publishing Society asking what is the present day circulation of each of the Christian Science publications and in the case of The Christian Science Monitor, please divide the figures, so that individual paid subscriptions and free distribution copies and any other special classes be separate.

"Letters were read from Mr. William P. McKenzie dated Boston, Jan. 27, indicating a slight change in his earlier letter of even date, also a copy of his letter of today to the trustees of The Christian Science Publishing Society transmitting to them a copy of his letter to the directors referred to above."

Mr. Streeter—Have you a record of interviews there?

Mr. Krauthoff—The record of Jan. 27, 1919, continues:

"The directors had an interview with Mr. Bicknell Young, First Reader of The Mother Church.

"The directors had an interview with Mr. John R. Watts, business manager of The Christian Science Publishing Society."

[The record of the meeting of the Board of Directors of Jan. 27, 1919, from which the foregoing extracts are read, is Exhibit 632. R. H. J.]

Jan. 28, 1919:

"The directors had an interview with Editor William P. McKenzie. . . .

"The directors had an interview with Associate Editor William D. McCrackan. . . .

"The directors had an interview with Mr. Oscar L. Stevens, assistant to the editor of The Christian Science Monitor."

[The record of the meeting of the Board of Directors of Jan. 28, 1919, from which the foregoing extracts are read, is Exhibit 633. R. H. J.]

These interviews were all with the directors.

Mr. Streeter—Anything about a letter from Mr. Watts?

Mr. Krauthoff—I thought I had read that.

Mr. Streeter—No.

Mr. Strawn—Isn't there a memorandum in that dated Jan. 26 indicating the receipt of a letter from Mr. Watts stating his position in the premises?

Mr. Streeter—That is the 28th.

Mr. Krauthoff—I haven't come to Jan. 28.

Mr. Streeter—I meant the 27th. No—you are reading Jan. 28.

Mr. Krauthoff—I had not begun Jan. 28; I have been asked a lot of questions.

Mr. Streeter—What you have read about the interviews with various people was on the 28th.

Mr. Krauthoff—Excuse me; but three different people were asking me questions at the same time. On Jan. 28, 1919, I have read three interviews by the directors, with Editor William P. McKenzie, Editor William D. McCrackan, and Oscar L. Stevens, editor of The Christian Science Monitor.

[Mr. Krauthoff continues reading from the records of Jan. 28, 1919:]

"A letter was read from Mr. John R. Watts, business manager of The Christian Science Publishing Society, dated Boston, Jan. 28, stating his position in the present situation between the directors and the trustees.

"The directors had an interview with Mr. John J. Flynn, assistant to the editor of The Christian Science Monitor.

"The corresponding secretary was instructed to address a personal letter to Mr. Charles D. Warner, of Washington, D. C., and say that the directors would like to see him in Boston for a little conference."

Mr. Krauthoff—Jan. 29, 1919. Here is a record I want to submit to Mr. Whipple before I read it—the third paragraph of that. (Handing record to counsel.)

Mr. Streeter—Of course you will read it.

Mr. Whipple—It seems to be perfectly perfunctory. What is the idea?

Mr. Streeter—Well, of course you read it.

Mr. Krauthoff—Well, it has been asked for by General Streeter and so I will offer it.

[An extract from directors' records, Jan. 29, 1919, is offered in evidence as Exhibit 634, and is read by Mr. Krauthoff, as follows:]

"The corresponding secretary reported word from Mr. Elisha B. Seeley, assistant to the editor of The Christian Science Publishing Society, that the forms for the March, 1919, Jour-

nal had been released this morning without the changes requested by the directors.

"Proposed letters were submitted to and approved by the directors as follows:

"To Myron Fabricant and Mrs. Etta V. Friend of New York City respectively in reply to their inquiries as to which periodicals are the organs of our movement.

"The directors had interviews in the following order with Forrest Price, assistant to the editor of The Christian Science Monitor, and Mr. Paul S. Deland, city editor of The Christian Science Monitor."

[An extract from the directors' records, Jan. 30, 1919, is offered in evidence as Exhibit 635, and is read by Mr. Krauthoff, as follows:]

"A letter was read from Mr. W. D. McCrackan, dated Jan. 30, acknowledging The Christian Science Board of Directors as the directing power of the Christian Science organization. After reading a letter dated Jan. 27, 1919, from Attorneys Charles E. Hughes, Silas H. Strawn and Sherman L. Whipple, counsel for the trustees of The Christian Science Publishing Society, addressed to John L. Bates, et al., counsel for the Board of Directors, copies of which had been furnished to the respective directors a conference was held with Attorneys Clifford P. Smith and Edwin A. Krauthoff in connection with the immediate establishment of a department of The Mother Church to care for the detail of applications for Journal cards of branch organizations, practitioners and nurses, which heretofore have been accepted or rejected by the trustees of The Christian Science Publishing Society."

Mr. Krauthoff—What is the next one of that date that you want?

Mr. Streeter—A letter from Mr. McCrackan.

[Mr. Krauthoff continues reading from the records of Jan. 30, 1919, as follows:]

"Mr. W. D. McCrackan, dated Dec. 28, about writing a history of Mary Baker Eddy and from Mr. Adam H. Dickey, dated Savannah, Georgia, Jan. 8, about Mr. McCrackan's request. Reply to Mr. McCrackan's letter was indicated—that the directors after due consideration had taken the position that they cannot consistently authorize nor prohibit the writing of the history

Mr. Streeter—The letter from Mrs. Longyear.

[Mr. Krauthoff continues reading from the records of Jan. 30, 1919, as follows:]

"Mrs. Mary Beecher Longyear, dated Pasadena, California, Jan. 8, offering to present to The Mother Church two lots near The Mother Church under certain restrictions. Reply indicated."

Mr. Krauthoff—Is there anything else on that date?

Mr. Streeter—No, sir.

[An extract from the directors' records, Jan. 31, 1919, is offered in evidence as Exhibit 636, and is read by Mr. Krauthoff, as follows:]

"The directors had a conference with Mr. Charles D. Warner of Washington, District of Columbia, who came to Boston at the directors' request.

"The directors had an interview with Mr. Elisha B. Seeley, assistant to the editor of The Christian Science Publishing Society."

[An extract from the directors' records, Feb. 1, 1919, is offered in evidence as Exhibit 637, and is read by Mr. Krauthoff, as follows:]

"The corresponding secretary submitted and the board approved proposed letters as follows:

"To Mrs. Mary Beecher Longyear in reply to her tender of a gift of two lots near The Mother Church.

"To Mr. William D. McCrackan in reply to his inquiry about writing a history of Mrs. Eddy."

"To Attorney C. Augustus Norwood about advising the Publishing Society concerning members of The Mother Church against whom charges have been made.

"The corresponding secretary read a memorandum concerning the need of procuring from the Publishing Society the dates of the various editions of the Manual.

"Letters were read from the following:

"Attorney C. Augustus Norwood, dated Boston, Jan. 15, about the personal property of The Christian Science Publishing Society being exempt from taxation.

"Judge Clifford P. Smith, dated Boston, Jan. 21, inclosing copies of correspondence between him and former publisher of Mrs. Eddy's works, Allison V. Stewart, concerning a supplementary deed of trust to the trustees of the Publishing Society.

"Judge Smith met with the directors to report the progress of a joint conference between counsel representing The Christian Science Board of Directors and the Board of Trustees of The Christian Science Publishing Society. After a thorough discussion of the situation, Mr. Dittmore prepared a written statement expressing his views, which was read to the board. The following motion was offered by Mr. Dickey, seconded by Mr. Neal, and carried, viz.: In ratification of the agreement proposed by counsel, I move that we accept the concession made by the trustees and that we await further developments. Mr. Dittmore did not vote, stating that his reasons for not doing so were set forth in the above-mentioned communication."

Mr. Streeter—Have you got the communication right there? It ought to go in right here, at this point.

Mr. Krauthoff—Yes.

[Memorandum prepared by Mr. Dittmore, Feb. 1, 1919, "The Only Position," is offered in evidence as Exhibit

638, and is read by Mr. Krauthoff, as follows:]

[Exhibit 638].

"The Only Position

"Feb. 1, 1919,  
"3 p. m.

"A complete and unequivocal recognition of the unity of The Church of Christ, Scientist, and its government by The Mother Church By-Laws as established by Mrs. Eddy, interpreted according to their letter and spirit.

"A complete abandonment by the trustees of their contentions in regard to the Publishing Society being independent in any way of the general direction of the established Christian Science Church government as set forth in the correspondence of the trustees and the statement of their counsel.

"J. V. DITTEMORE."

Mr. Krauthoff—Now, that statement, if Your Honor please, that I have referred to in this record, is the agreement that the board ratified on this date, Feb. 1, 1919; it is the one that is set out in the letter of John L. Bates and others to Mr. Strawn, which has been marked Exhibit 23, being the result of the conference of counsel on Feb. 1, 1919.

[An extract from the directors' records, Feb. 3, 1919, is offered in evidence as Exhibit 639, and is read by Mr. Krauthoff, as follows:]

"At a regular meeting of The Christian Science Board of Directors, held at 9:30 a. m. on above date, in the directors' room of The Mother Church, there were present Messrs. Dittmore, Dickey, Merritt, and Rathvon.

"The minutes of the regular meetings of Jan. 28 and 30 and of the special meetings of Jan. 29 and Feb. 1, were read and approved, with changes indicated.

"Two letters were read from Mr. Dittmore, both dated Feb. 3, 1919, one with reference to the failure of Mr. Bicknell Young, First Reader of The Mother Church, to send the board a letter 'confirming his verbal assertions of loyalty to the Church By-Laws and the constituted government of The Mother Church,' also his failure to do his duty as First Reader of The Mother Church as demanded by Mr. Dittmore in his letter to the board of Jan. 27, the other letter setting forth his reasons why he could not participate in the conference between the Board of Directors and the trustees of the Publishing Society, as arranged by counsel for the respective boards, to be held at 11 o'clock today."

Mr. Streeter—Now will you put that letter in? That letter should come right there.

Mr. Krauthoff—I think these are the ones. (Showing letters to counsel.) The first letter is the letter of Mr. Dittmore of Jan. 27, 1919.

The Master—Do I understand, General Streeter, that you want them all?

Mr. Streeter—What?

The Master—Do I understand that you want all these letters? Can't we get along with less than all of them?

Mr. Thompson—There are only two, Your Honor.

Mr. Streeter—There are only two of them. What I particularly called for was in connection with this record, that Mr. Dittmore gave his reasons why he could not participate at a joint meeting at 11 o'clock that day, and, those reasons being referred to right in this place, they properly come here.

The Master—That would seem to call for only one of the letters.

Mr. Streeter—Then the other was regarding the failure of Bicknell Young, which is a part of the record, Your Honor.

The Master—Do you want that, too?

Mr. Streeter—Yes—those two.

The Master—You have got to have that in full also?

Mr. Streeter—Yes.

[A letter from Mr. Dittmore to the Board of Directors, Feb. 3, 1919, is offered in evidence as Exhibit 640, and is read by Mr. Krauthoff, as follows:]

[Exhibit 640]

“February 3, 1919.

“The Christian Science Board of Directors,

“105 Falmouth Street,

“Boston, Massachusetts.

“Dear Friends:

“On Jan. 9, Mr. Jarvis read to the board a memorandum filed by me on the subject of attempting to negotiate a compromise through lawyers, with the present efforts of disloyalty and disruption in connection with The Christian Science Publishing Society.

“What has now occurred is what seemed then in prospect, judging from the course which was decided upon and which has been pursued. Nothing has ever happened in the history of the cause of Christian Science which to my thought is farther removed from the demand of Principle and the spirit of our Church By-Laws, especially Article I, Section 9, which I now again call to the attention of the board, than the result and recommendation of the conference of the lawyers representing the trustees and the directors, for a compromise and for the directors to proceed even for a moment on the present intolerable basis. The course in prospect will in no way whatever solve the problem.

“Mrs. Eddy's words on page 41 of ‘The First Church of Christ, Scientist, and Miscellany,’ seem to have been written for this occasion:

“‘Christian Science makes no compromise with evil, sin, wrong, or imperfection, but maintains the perfect standard of truth and righteousness and joy.’

“After the most earnest and prayerful thought, I have reached the conviction that I dare not and will not enter into personal negotiations with

the Trustees of The Christian Science Publishing Society on the present existing basis. I shall therefore ask the other three directors to excuse me from their conference with the trustees which the lawyers have arranged for 11 o'clock today.

“Very sincerely,

“JOHN V. DITTEMORE.”

Mr. Streeter—Now, Your Honor, with reference to the other letter, about Bicknell Young, we do not care whether it is in or not; it may be read or it may not be read.

Mr. Krauthoff—At this time, then, we shall not read it, until the incidents in that respect are brought together.

Mr. Whipple—May we take it?

Mr. Krauthoff—Why, Mr. Whipple is asking for it; it is not a letter that refers to the trustees at all.

The Master—I didn't hear Mr. Whipple's request, it was not made directly to me.

Mr. Krauthoff—I said, Mr. Whipple said, may he take it. We are not offering it.

Mr. Streeter—In view of the fact, Mr. Krauthoff, that it is a part of the record here, I will withdraw my statement and ask you to read it in connection with this.

The Master—Might it not be that if you let him see it we could contrive some way of omitting it?

Mr. Krauthoff—I will be very glad to submit it to Mr. Whipple if it is proper to do so. I had not felt, on the spur of the moment, that all of our correspondence was open to everybody.

Mr. Streeter—Well, this is a sunlight investigation, and there isn't anything that I know of in connection with this matter that is not open.

The Master—I am not at the present moment quite able to see why we should have all the evidence relating to the incident.

Mr. Whipple—By the way, as you have a moment, have you found those letters that Mr. Dickey said were sent to him which produced that apparent change of attitude? I merely don't want to overlook them. I am afraid you may if I do not remind you.

Mr. Krauthoff—I am not at present advised of those letters, Mr. Whipple. I shall have to ask Mr. Dickey to which letters he referred, and I will have them here at 2 o'clock.

Mr. Whipple—You mean you are not advised that there are any?

Mr. Krauthoff—I did not say that. I said I am not advised as to the particular letters to which Mr. Dickey referred and I will have them at 2 o'clock.

Mr. Bates—This is a letter of Mr. Dittmore's. I don't see any reason why it should not go in if General Streeter wants it.

The Master—Unless counsel can get together some way in which that may be admitted, I suppose it will have to be read.

Mr. Streeter—As a matter of fact, I do not care whether it goes in or not, but if anybody wants to put it in we are perfectly willing.

Mr. Krauthoff—I have no desire to read it at this time, and the only hesitancy I had in showing it to Mr. Whipple is that it is a letter from Mr. Dittmore to the board, and General Streeter can show it to Mr. Whipple if he wishes to.

Mr. Streeter—I have no particular desire to show it to Mr. Whipple.

Mr. Krauthoff—Well, Mr. Dittmore may hand it over.

Mr. Streeter—Or he either.

Mr. Krauthoff—Well, he certainly wouldn't do it without their consent, if Your Honor please.

Mr. Streeter—Well, if you want to see it, Mr. Whipple, you can have it.

Mr. Whipple—Thank you.

Mr. Streeter—And anybody else can see it.

Mr. Krauthoff—Monday, Feb. 3, 1919. Taking up the record where it read. At 11 a. m. Mr. Dittmore left the meeting.

“The directors had a conference with Messrs. Herbert W. Eustace, David B. Ogden, and Lamont Rowlands, the Board of Trustees of The Christian Science Publishing Society. Mr. Rathvon read a letter addressed jointly to the directors and to the trustees, expressing his sentiments, and after touching briefly on some of the points involved in the recent situation, it was agreed that hereafter the trustees would meet with the directors weekly at 12 o'clock, noon, on Mondays in the board room of The Mother Church.

“After the trustees had retired, and at 12:30 p. m., Mr. Dittmore returned to the meeting.

“A letter was read from Col. F. A. Bangs of Chicago, dated Jan. 27, together with copy of a letter addressed by him to Herbert W. Eustace, Lamont Rowlands, and David B. Ogden as trustees of The Christian Science Publishing Society.”

[That portion of record of meeting of Board of Directors, Feb. 3, 1919, as read by Mr. Krauthoff, is offered in evidence as Exhibit 641.]

Mr. Whipple—If Your Honor please, I think I would like to have this letter of Feb. 3, from Mr. Dittmore to the Board of Directors read as an exhibit in the case, because we think that it sustains our position that if anyone sympathized at all with the Board of Trustees they were subjected to or threatened with a discipline which made it impossible, as a practical matter, for anyone to stand by the trustees, even if they sympathized with their position. What will be the number of that exhibit?

Mr. Krauthoff—Just one moment.

Mr. Whipple—We would like it in the trustees' case.

Mr. Krauthoff—This letter of Mr. Rathvon, if Your Honor please, of Feb. 3, 1919, referred to in the minutes of Feb. 3, 1919, has heretofore

been offered in evidence as Exhibit No. 24.

This letter of Feb. 3, 1919, that I am now coming to about Mr. Bicknell Young—

The Master—It is the other of Mr. Dittmore's letters? You offered two. Mr. Krauthoff—Yes, the other. Mr. Whipple has stated the reasons why he wants it read in evidence. It was sufficient to state he wanted it. The letter, Your Honor will remember, is a letter from Mr. Dittmore complaining to the board that they were not doing certain things.

Mr. Streeter—Why not read the letter and let that state what it is instead of trying to tell yourself?

The Master—Well, how can I forbid Mr. Krauthoff making a brief statement about that letter, I having listened to Mr. Whipple's statement about it?

Mr. Streeter—Oh, he ought to have a chance to reply to Mr. Whipple, of course. I beg Your Honor's pardon. I do not want to interfere with their quarrels.

Mr. Krauthoff—I was only going to say that at this time it is not entirely clear whether Mr. Whipple complains that we did not discipline Mr. Bicknell Young or whether he complains that we did discipline him.

Mr. Whipple—Do you want me to make that clear?

The Master—Isn't that enough about that; can't we read the letter?

Mr. Krauthoff—I think so.

[Copy of Exhibit 642.]

"John V. Dittmore, C. S. B., 236 Huntington Avenue, Boston, U. S. A.

"Feb. 3, 1919.

"The Christian Science Board of Directors, 105 Falmouth Street, Boston, Massachusetts.

"Dear Friends:

"A full week has passed since our last interview with Mr. Bicknell Young. The letter which he was to write this board at once confirming his verbal assertions of loyalty to the Church By-Laws and the constituted government of The Mother Church, has not been received. Neither has there been any evidence of his having fulfilled his duty as First Reader as that duty was set forth in my letter to the board of Jan. 27, and as presented to Mr. Young in person by the chairman of the board.

"This board cannot permit this instance of flagrant disloyalty to go unheeded. The By-Laws of the Mother Church will not permit it, to say nothing of doing justice to Mr. Strickler and others for their loyal stand for The Mother Church, and for what this board should exemplify in connection with the matter.

"There were enough facts admitted by Mr. Young to require further action to be taken, entirely aside from the points in dispute or the demeanor of Mr. Young in connection with the whole matter. Among these facts are the following:

"1. That the First Reader of The Mother Church invited a lecturer to his home after a lecture in The Mother Church—the home which Mrs. Eddy's loving generosity had provided—and that in a bedroom apart from the household and guests, for an hour and a half, he unfolded to this lecturer the position of the trustees of The Christian Science Publishing Society in their rebellion against Mrs. Eddy's church government, predicated on the statement that 'This is a time when we are getting a new and different view of things.' It was definitely stated by both men that Mr. Young presented the trustees' claims and that no other subject was discussed.

"2. That Mr. Strickler branded the trustees' attack as a repetition of the New York case of 10 years ago, only in a somewhat different and more dangerous form, and that he combated Mr. Young's statements point by point up to the time when the conversation became so loud and heated that Mrs. Strickler came and called her husband to go home. That to the end Mr. Young defended the trustees in the face of Mr. Strickler's declaration that the whole effort was not only the betrayal of a sacred trust, but was moral idiocy.

"3. That every member of this board has expressed the conviction that Mr. Young has been guilty of gross disloyalty and has been an active agent of this propaganda to destroy Mrs. Eddy's government of The Mother Church.

"It is long past time for Mr. Young to be required to give unquestionable evidence of his alleged change of heart and for him to do his duty as First Reader of The Mother Church under the Manual he is charged with enforcing. I hereby call to the attention of the board, Mrs. Eddy's requirement in our church By-Laws covering a case of this kind.

"Very sincerely,

(Signed) "JOHN V. DITTEMORE."

[Letter, Mr. Dittmore to Board of Directors, Feb. 3, 1919, is marked Exhibit 642.]

Mr. Krauthoff—Feb. 4, 1919:

"A letter was read from the Comforts Forwarding Committee, dated Boston, Feb. 3, asking three questions of minor importance, to which replies were indicated.

"Proposed reply to Col. F. A. Bangs' letter to the directors of Jan. 27, was read, edited, and approved."

[That portion of record of meeting of Board of Directors, Feb. 4, 1919, as read by Mr. Krauthoff, is offered in evidence as Exhibit 642.]

Mr. Krauthoff—Feb. 5, 1919: In connection with this record of Feb. 5, 1919, the record shows that Messrs. Dittmore, Dickey, Merritt, and Rathvon were present.

"On motion of Mr. Merritt, seconded by Mr. Rathvon, it was voted to designate the new department to be established by The Mother Church for

consideration of applications for recognition as branch churches or societies, practitioners and nurses, who desire to have cards published in The Christian Science Journal, as The First Church of Christ, Scientist, Department of Branches and Practitioners, and the corresponding secretary was instructed to order appropriate stationery accordingly."

Mr. Streeter—Is there anything on page 264 about a letter from Judge Clifford P. Smith?

Mr. Krauthoff (continuing reading)—

"Letters were read from the following: Judge Clifford P. Smith, dated Boston, Feb. 5, presenting certain facts disclosed by the letters from the trustees of The Christian Science Publishing Society and their legal counsel, regarding which the directors may wish the trustees to definitely declare themselves."

That is the letter which has been offered in evidence by the plaintiffs as Exhibit 25.

[That portion of record of meeting of Board of Directors, dated Feb. 5, 1919, as read by Mr. Krauthoff, is offered in evidence as Exhibit 644.]

Mr. Krauthoff—Was there anything else on that date, General?

Mr. Streeter—No.

Mr. Krauthoff—Feb. 6, 1919:

"On motion of Mr. Rathvon, seconded by Mr. Dittmore, it was voted that we ask the opinion of counsel as to the legality of the trustees paying attorneys' fees to counsel in the present situation from the funds they have in their hands.

"Letters were read from the following: Mr. John J. Flynn, an editorial writer of the staff of The Christian Science Monitor, dated Boston, Feb. 5, giving his reasons for declining to write editorial notes reflecting upon newspapers which publish items from The Christian Science Monitor without properly accrediting them.

"Mr. Charles D. Warner, in charge of the Washington, D. C., news bureau of The Christian Science Monitor, relating to his work. Disposition indicated."

[That portion of record of meeting of Board of Directors, Feb. 6, 1919, as read by Mr. Krauthoff, is offered in evidence as Exhibit 645.]

Mr. Whipple—If Your Honor please. Mr. Krauthoff omitted in the record of Feb. 5 a reference to himself, which we regard as significant only as indicating that the directors at that time had themselves supposed that a settlement had been reached that did not require the services longer of litigating counsel.

Mr. Krauthoff—I shall be very glad to read that, if Your Honor please, with the understanding that I may ask one question with it. This is Feb. 5, 1919:

"The directors had an interview with Attorney Edwin A. Krauthoff, which resulted in the termination of his services as associate counsel for

the directors in the situation between the directors and the trustees of the Publishing Society."

[That portion of record of meeting of Board of Directors, Feb. 5, 1919, as read by Mr. Krauthoff, is offered in evidence as a part of Exhibit 644.]

Q. Now, Mr. Dickey, as written, that record carries the idea that something happened in that interview which resulted in Mr. Krauthoff's services being terminated. What is the exact fact with respect to that? A. There was nothing in the interview which led to a termination of Mr. Krauthoff's services, but we had—shall I say it?

Q. Yes. A. We had supposed that our difficulties were in a fair way of solution, or had been entirely solved, on the promise of the trustees that they would go ahead and absolutely obey the Christian Science Manual in connection with the Deed of Trust, and that they would uphold and support and sustain Mrs. Eddy's form of church government as set forth in the Manual.

Mr. Whipple—Now, if Your Honor please, I desire that part of the answer which is a speech, which the witness takes occasion to attach to a response to a question, be stricken out.

Mr. Krauthoff—Well, if Mr. Whipple will indicate when the speech began, so that—

Mr. Whipple—Well, it is a little difficult. It is an ingenious attachment of a speech to the field in answer to a question, and it is not always easy to know just where it begins, but you always know when it is there.

The Master—Well, can it amount to anything more than this, that they supposed they had got to a compromise? Isn't that the whole thing? What else can there be in it?

Mr. Whipple—That I understood to be a reply, and the witness might well have stopped the answer there. That is what I understood as I rose to my feet. I stated that we asked to have it put in merely because we believed it indicated that the directors themselves supposed that the matters had been adjusted.

Mr. Krauthoff—And that may be accepted as true.

Mr. Whipple—Well, then, may the answer be stricken from the record?

Mr. Krauthoff—No.

Mr. Bates—No, no.

Mr. Whipple—I desire to have it.

Mr. Krauthoff—There is a part of the answer in which I have a personal interest, if Your Honor please.

Mr. Whipple—That part of it which says that the termination of the services of Mr. Krauthoff as litigating counsel was not on account of anything said in the interview should properly stand, in justice to Mr. Krauthoff. Apparently the counsel who had been secured as litigating counsel, for litigating purposes, was not longer thought necessary.

The Master—I think that, strictly

speaking, a part of the answer may be regarded as improper. But is it worth while to stop to distinguish in a case like that, where it is not an unnatural statement for the witness to make under the circumstances?

Mr. Whipple—In view of Your Honor's intimation as to the character of the answer, I am willing that nothing more should be done about it. Except that I notice that there is sort of a tendency to do it, and I think if the answer were stricken out that we would prevent the tendency, and therefore prevent the achievement, and therefore we should have less of it and less reason for interruption.

Mr. Krauthoff—With respect to that, if Your Honor please—

The Master—Can't we let the matter stand now where it is?

Mr. Krauthoff—Very well.

Mr. Streeter—I want to make a suggestion. Mr. Krauthoff, representing as he says, the Board of Directors, admits and says that they understood on Feb. 3 that there had been a compromise.

Mr. Krauthoff—I didn't say that.

Mr. Streeter—Well, that is the substance of your admission.

Mr. Krauthoff—No, I didn't say that.

Mr. Streeter—And I want to say for Mr. Dittmore that he did not understand that there had been any compromise, or could be any compromise.

The Master—Does it seem to you possible that anybody could suppose anything different from that with regard to Mr. Dittmore?

Mr. Streeter—Well, I hope not. I am trying to have that appear very plainly.

Mr. Krauthoff—We believe in justice, not compromise.

Mr. Whipple—May I suggest further, in regard to that answer, because it troubles my associate—it is a complete contradiction of what the papers established was the fact—namely, that neither side yielded their claims in any way, but attempted to get along on a Christian Science basis. The documents show that, but still this witness, without anybody asking him, attempts to import the suggestion that the trustees had in some way yielded their views. With that statement on the record I am willing anything you want should stand.

The Master—Well, let it stand subject to your objection, and I hope that not only this witness but the other witnesses will do the best they can to answer the questions and then stop.

Mr. Streeter—Well, will Your Honor indulge me a single further suggestion? It may be that I made my statement in a way that would be misunderstood. Mr. Dittmore supposed from what they said, and from their sending out to the field, that they had made a compromise, and that is what he was most vigorously opposed to.

Mr. Krauthoff—In order that the record may be kept straight as we go

along, if Your Honor please, Mr. Dittmore was not present at the conference of the directors and the trustees on Feb. 3, 1919.

The Master—I so understood it.

Mr. Thompson—It is all the more reason why there should be a record of what he thought about it.

Mr. Streeter—But, Your Honor, they dictated a letter to Bangs in which they stated that everything had been fixed up and that it was all sweet and serene and nice as could be.

The Master—We all understand, do we not, that that was a majority action?

Mr. Streeter—Well, I understand it.

Mr. Krauthoff—That is our understanding of it.

Feb. 7, 1919:

"The directors had an interview at his request with Mr. Frank H. Leonard of Chicago, at which he expressed his views, relative to the situation between the directors and the trustees."

[That portion of record of meeting of Board of Directors, Feb. 7, 1919, as read by Mr. Krauthoff, is offered in evidence as Exhibit 646.]

Mr. Krauthoff—Monday, Feb. 10, 1919:

"The directors had an interview with Judge Clifford P. Smith, with reference to the letters written by him to certain committees on publication about the situation existing between the trustees and the directors.

"On motion of Mr. Rathvon, seconded by Mr. Merritt, it was voted that the memorandum of this day containing two points prepared and recommended by our counsel, be signed by all of the members of the board jointly with the trustees, as follows:"

Now, that memorandum has been offered in evidence as Exhibit 26a.

"A roll call on the motion resulting in the following vote:

Mr. Dittmore, not voting.

Mr. Dickey, Aye.

Mr. Merritt, Aye.

Mr. Rathvon, Aye.

"Mr. Dittmore explained that he had not voted for the motion 'because I decline to tie myself in advance on the matter because I hope that "In that hour it shall be given me what I shall say."'

"Judge Smith stated, 'I wish to offer two items of advice, each with equal strength if possible. One is that you get the written acceptance of these two points. The other is that you make no additional agreement which amount to a concession or compromise on this board's part.'

"Two letters were read from Mr. Dittmore, both dated Feb. 10, 1919—the first filing in writing his views as to the proper course for the Board of Directors to pursue in notifying the trustees and business manager of the Publishing Society that the Board of Directors will hold them strictly accountable for any misuse of the trust funds in their possession; the second

letter expressing his views on the failure of any of the Christian Science periodicals to announce the completion of the pyramid memorial to Mary Baker Eddy, selected by Mr. James F. Lord at Bow, N. H.

"The directors had an interview with the three trustees of The Christian Science Publishing Society lasting two hours."

[Those portions of meeting of Board of Directors, Feb. 10, 1919, as read by Mr. Krauthoff, are offered in evidence as Exhibit 647.]

Mr. Streeter—Now, right in that connection, those two letters of Mr. Dittimore's should go in.

Mr. Krauthoff—Both of these are very elaborate communications.

Mr. Streeter—Well, it was a very elaborate situation.

Mr. Krauthoff—

"Feb. 10, 1919.

"The Christian Science Board of Directors,

"105 Falmouth Street,  
"Boston, Massachusetts.

"Dear Friends:

"In accordance with my stated intention, I hereby file in writing the substance of the important question of a duty of the directors which I presented at the last board meeting.

"A responsible and able attorney who is a member of The Mother Church, Col. Frederick A. Bangs of Chicago, has rendered an opinion that payment by the trustees of The Christian Science Publishing Society of fees from the trust funds in their possession to three of the most eminent and expensive attorneys for services to assist these trustees in their efforts to circumvent the provisions of Mrs. Eddy's Deed of Trust and the Church By-Laws, constitutes a misappropriation of funds. This opinion is also strongly held by others.

"In view of the facts and in accordance with the requirements of the Church By-Laws, it would seem clearly to be the duty of The Christian Science Board of Directors to at once notify the three men who hold the offices of trustees of the Publishing Society, and also the business manager of the Publishing Society who disburses its funds, that this board will hold them strictly accountable for any misuse of the trust funds in their possession.

"Very sincerely,

"J. V. DITTEMORE."

[The letter of which the foregoing is a copy is marked Exhibit 648. R. H. J.]

The second is in respect to the pyramid.

The Master—With respect to what?

Mr. Krauthoff—The pyramid that was built in New Hampshire.

"Feb. 10, 1919—"

The Master—Do counsel see any possibility of avoiding the putting in of a letter about that pyramid in extenso?

Mr. Krauthoff—I shall be very glad to omit it. General Streeter asked for it.

Mr. Streeter—It was with reference to a memorial to Mrs. Eddy up in the home place where she was born, in Bow, near Concord. We do not care whether it is read or not. We shall be glad to have it read, because this was one of the differences of opinion between—pardon me, Your Honor—

The Master—Oh, certainly.

Mr. Streeter——between Mr. Dickey and Mr. Dittimore and others—that a memorial should be placed there. Now, this is one of those—

The Master—We know that there were a number of differences of opinion.

Mr. Streeter—Yes, Your Honor, yes.

The Master—When we know that fact, do we not have all that is necessary for the purposes of the case?

Mr. Streeter—Well, hardly. Perhaps that goes too far. When we get round to March 17, and Your Honor begins to inquire judicially, to put your judicial mind into operation as to whether Mr. Dittimore's opinions furnished a sufficient warrant in law for expelling him from the household, and, I may say, then appropriating his clothes, the question of these differences of opinion, and whether they are sound or not, will be a thing to be really considered by you. But, so far as this is concerned, we are not insistent upon it.

Mr. Bates—I think that Your Honor will get a better view of the situation if the letter goes in.

Mr. Krauthoff—We feel that it should be read in evidence.

Mr. Streeter—Well, then, go ahead.

Mr. Krauthoff—It was an unfolding to us—

The Master—As long as there is room for a fair difference of opinion, I do not see how the Court can be called on for any purpose in this case to say which had the best of it.

Mr. Streeter—I understand that to be so, Your Honor; but the question for Your Honor to determine, I suppose, when you get round to March 17, is whether this man could have an honest difference of opinion with my distinguished friend in the witness box without being subjected to being kicked out of the tabernacle.

Mr. Krauthoff—If Your Honor please—

The Master—Now, that must depend entirely, must it not, upon the powers of his fellow directors with regard to dismissal?

Mr. Streeter—Partly. Pardon me.

The Master—Perhaps they had an absolute power, outright, of dismissal, without being obliged to give any reasons at all. That is a possibility.

Mr. Streeter—If Your Honor please, that is precisely what they claim.

The Master—So I understand.

Mr. Streeter—That they had that power. We claim—

The Master—Now, the only question for us—

Mr. Streeter—We claim that, while they had the power, it was a power which could not be exercised capriciously, arbitrarily, or without sound reason and a sufficient reason in law. That is a statement in a general way of our contention.

The Master—I so understood it, and so supposed. I still do not see how the Court is going to be required to determine which had the best of the dispute.

Mr. Streeter—No; but Your Honor would determine whether the reasons given, after a scrutiny of the whole situation, were sufficient in law to warrant the dismissal.

The Master—If there was a serious difference of opinion, it may be that the power of Mr. Dittimore's co-directors was such that they had a right to act on that and nothing more, may it not?

Mr. Streeter—Well, that is the question. That is a question of law. As Judge Holmes says, it is a judicial question, not a question to be determined on the co-directors' temper or state of mind, but it is a judicial question, as stated by Judge Holmes. And as Mr. Thompson suggests, our claim is that an honest difference of opinion upon a debatable ground can never be a sufficient warrant for kicking a man off the board. But Your Honor does not want us to argue it now, I suppose.

The Master—I am glad to have that indication of the position you take in the matter, and I can be considering it. You may go on.

Mr. Krauthoff—

"Feb. 10, 1919.

"The Christian Science Board of Directors,

"105 Falmouth Street,  
"Boston, Massachusetts.

"Dear Friends:—

"On Jan. 24, 1919, Mr. McKenzie requested release of the article from 'The Independent Statesman' of Dec. 26, 1918, describing the memorial erected by Mr. James F. Lord marking the childhood home at Bow, New Hampshire, of Mrs. Eddy, this article having been set up for re-publication in the Sentinel for Feb. 8th and proofs sent to the directors on Jan. 23d. Mr. Merritt moved and Mr. Dickey seconded the motion, that the article be not run. A roll call resulted in the following vote:

"Mr. Dittimore, no.

"Mr. Dickey, aye.

"Mr. Merritt, aye.

"Mr. Neal, not voting.

"Mr. Rathvon, not voting.

Mr. Rathvon gave as his reason for not voting that this is a matter which antedated his admission to the board and about which he did not feel well enough posted to vote intelligently. Mr. Merritt then moved and Mr. Dickey seconded a motion to lay the question on the table for some future



reference. A roll call resulted in the following vote:

- "Mr. Dittmore, no.
- "Mr. Merritt, yes.
- "Mr. Neal, not voting.
- "Mr. Rathvon, not voting.
- "Mr. Dickey, yes.

The Chair announced that the motion had carried and instructed the Corresponding Secretary to notify Mr. McKenzie that consideration of publication of the article had been postponed.

"This action was simply the plan adopted by Mr. Dickey and Mr. Merritt to prevent any account of this memorial from being published in the Christian Science periodicals and thereby given to the Christian Science field. I am firmly convinced that it has been under the constraint of divine Principle that within the last forty-eight hours the great avenues for news dissemination have been opened and have carried a complete story of the memorial at Bow throughout this country and probably to foreign lands, in spite of the fact that the Christian Science publications have ignored it.

"In order to gain a more comprehensive knowledge of the situation, it is necessary to refer back to a certain resolution prepared and presented by Mr. Dickey and seconded by Mr. Merritt, which was adopted by the board on Aug. 1, 1918 (I alone voting against it). This resolution was as follows:

"Whereas, this board has learned that Mr. James F. Lord has purchased the farm at Bow, New Hampshire, on which it is alleged Mrs. Eddy was born, and that he is planning to erect a monument on said farm to mark it as her childhood home;

"And whereas, the propriety of such an undertaking should be determined in accordance with what our Leader desired for herself and understood to be advantageous for the Cause of Christian Science;

"And whereas, this board has reason to believe and does believe that Mrs. Eddy would be opposed to the monument in question, and this board regards it as of no value to the Cause of Christian Science, but detrimental thereto;

"Therefore be it resolved, That this board's view of the proposed monument at Bow, as the same is stated in this resolution, be made known to Mr. Lord, and that he be requested to refrain from doing more than Mrs. Eddy has done to draw attention to the particular spot on the earth where she was humanly born."

"I filed with the board the following explanation of my vote against this resolution:

"In explanation of my vote against the adoption by this board of Mr. Dickey's motion in opposition to Mr. James F. Lord's plan to place a monument on the farm at Bow, New Hampshire, where Mrs. Eddy was born and where she spent her childhood, which farm is now owned by Mr. Lord, I

wish to place the following statement on record:

"I voted against this resolution for reasons which include the following:

"1. I am convinced that Mr. Lord's plan is not detrimental to the cause of Christian Science, but of value to it.

"2. I have heard no reason which has seemed valid to me in confirming the contentions that Mrs. Eddy would be opposed to such a monument, but I am convinced that there is an abundance of evidence to indicate that she would not be opposed to it.

"3. I am unequivocally opposed to all efforts to control the actions of this board on any questions through personal opinions enforced by the claim that such opinions represent the views that Mrs. Eddy would take on such questions if she were personally with us—instead of ourselves going to Principle for our answers and our guidance, as her teachings in Science demand. A continuation of this constantly growing tendency will result in the government of the movement by tradition and dogmatic opinion instead of by demonstration, and it will ultimate in unadulterated ecclesiasticism.

"4. The action of the board constitutes a violation of the personal rights of an individual member of The Mother Church.

"5. Mrs. Eddy herself expected that the human affection of hundreds of thousands of her followers in future years would cause them to seek a knowledge of the place and conditions under which their wayshower spent her childhood as well as the remainder of her human life—an expectation which I am convinced she did not disapprove.

"6. There are certain other reasons more essential to the well-being of the cause of Christian Science than those above stated and which I shall present to the board in detail at a later date, as supplementary hereto, if circumstances make it appear necessary to do so."

"I also read to the directors at this time several statements by Mrs. Eddy, including her written approval of the sale of a picture of this place of her birth and her childhood home, and her prophecy that the time would come when hundreds of thousands would be interested in seeing it.

"This effort to prevent or discredit the erection of a memorial at Bow is in my opinion a part of the same claim which has manifested itself in so many ways during the past year and a half, including Mr. Merritt's resolution of June 26, 1918, adopted by the directors (I only voting against it), which undertook among other things to prevent the further collection of the rapidly disappearing personal testimony regarding the 'fadeless human footsteps' of the Discoverer and Founder of Christian Science. This resolution also stated that it withdrew the privilege from Mrs. Mary Beecher Longyear of gathering historical data re-

garding Mrs. Eddy 'in the name of Christian Science,' which it must be admitted constituted in the Christian Science Church quite an unprecedented assumption of ecclesiastical authority over individual freedom of action. Especially unfortunate does this seem when Mrs. Longyear has proven herself one of the most valuable of our members and one who has been the channel more than once for making possible important projects of The Mother Church. In The Christian Science Journal, Vol. XXIV, page 312, Mrs. Eddy's views of Mrs. Longyear's benefactions and usefulness are more clearly set forth than I could express them.

"In fact, the results of the adoption of this resolution constituted even a more far-reaching attempt than in trying to block Mr. Lord's expression of loving gratitude to the 'human herald' of this age by a worthy and appropriate memorial or in preventing Mrs. Longyear from erecting and presenting to The Mother Church a building to cost over half a million dollars for historical and other appropriate purposes.

"These things and many others, such as stopping Mr. Beauchamp's work of gathering historical data regarding Christian Science and personal reminiscences of Mrs. Eddy, the tendency to prevent the giving to the field of the great quantity of wonderful unpublished writings by Mrs. Eddy, etc., are all part of the same argument of mortal mind, the 'god of this world.' This argument in its many ramifications, has for its purpose the creation of a condition between humanity and its wayshower in this age which will be a repetition of the history of nineteen hundred years ago. Only as the world today can understand the human footsteps of Mrs. Eddy the woman, and comprehend her 'daily walk and conversation among the people' will it be possible to prevent a 'great gulf' from being formed as the years pass by, between the wayshower and the sick and suffering world which only the understanding and demonstration of her discovery will redeem. Unless this is accomplished, the world will witness darker ages than ever before, and 'churchianity' with personal deification of Mrs. Eddy and professional 'mediators' as of old will be the penalty for the blindness of today. Already the signs give warning to those who are willing to see and hear.

"These latter paragraphs may seem to be somewhat detached from the subject of the Bow Memorial, but they are intimately related to it, for it is all a part of the one paramount effort of evil, consciously or unconsciously, to fulfill the law that history must and shall repeat itself in this age in the Church of Christ, Scientist, as it did eighteen hundred years ago.

"It was not my intention to write this letter, but after two or three re-

mindings by the chairman, for some reason which I do not quite understand, I am glad to reduce to writing for the directors this brief presentation of an almost inexhaustible subject.

"In view of the strenuous experience on the board during the past few days, it may not be amiss for me to add some reflections which I have had since our last meeting. Perhaps I have fallen into a too strenuous advocacy of the positions I have taken in regard to the vital matters which are now confronting this board, The Mother Church, and therefore the world. My zeal to prevent what I believe to be almost fatal decisions as to procedure has sometimes caused me to see too dimly that 'the battle is the Lord's' and that without human striving He will Himself 'overturn, overturn . . . until he come whose right it is' to reign. The best Christian Scientists on earth today can truly claim to have but a few qualities of thought, perhaps only one, which Principle can use in spite of their undesirable personal qualities. Mortal mind cannot be painted any blacker than it is. I see more clearly that I have no other responsibility than to stand fast in the abiding consciousness of that Truth which brings all things into the orbit of right action in Principle, and that I be always ready to go through any door which Mind opens toward the ultimate solution. I also see more clearly that I must be willing to 'let' the irresistible force of Principle annihilate all that would impose its will to obstruct or retard the bringing into view of the infinite, divine purpose which Mrs. Eddy discovered in Principle and sought to bring to earth under the type and symbol of the complete Church of Christ, Scientist.

"Very sincerely,

"JOHN V. DITTEMORE."

[The letter of which the foregoing is a copy is marked Exhibit 649. R. H. J.]

May we take a recess at this time?  
The Master—Until 2 o'clock.

[Recess until 2 o'clock p. m.]

#### AFTERNOON SESSION

Mr. Krauthoff—Before proceeding with the records, if Your Honor please, I have made a statement to Mr. Whipple about producing at this time the letter that Mr. Dickey received in Savannah, Georgia, in the early part of January, 1919, before he wrote the letters in which he referred to the resignation of the trustees.

Q. Mr. Dickey, did you get any letter in Savannah, Georgia, or on your southern trip, prior to Jan. 10, 1919, advising you of the action of the Board of Directors on Jan. 3, 1919—  
A. I did.

Mr. Streeter—One moment. What was the question?

Mr. Krauthoff—I did not quite get through. I will re-state it.

Q. Did you get any letter while on

your trip in the south, in the early part of January, 1919, and prior to Jan. 10, referring to the action of the Board of Directors in asking the resignation of the trustees on Jan. 3, 1919?  
A. I did.

Mr. Whipple—Just a moment; if you are putting in what is in the letter why not produce it?

Mr. Krauthoff—I am going to explain that in just a moment.

Q. Just answer that yes or no.  
A. Yes.

Q. Have you that letter, Mr. Dickey? A. No.

Q. Have you looked for it? A. Yes.

Q. And have not been able to find it? A. No.

Mr. Streeter—Haven't you your copy, Mr. Krauthoff, from your files?

Q. What kind of a letter was it, Mr. Dickey? A. I now believe it must have been a personal letter from some of the directors or from Mr. Jarvis, but I am not able to find it.

Mr. Krauthoff—We cannot find any copy of it in our file.

Mr. Whipple—Well, I should think you might hunt around among the directors, and Mr. Jarvis, and see if they remember of sending one; perhaps they have got a copy of it.

Mr. Krauthoff—I am only telling you what Mr. Dickey knows.

Mr. Whipple—I see; you haven't got as far as that in your investigation yet about finding that letter.

The Master—The letter is not here and the witness cannot find it.

Mr. Whipple—I was indicating the possibility of further search, if Your Honor please, if the letter was important.

Mr. Krauthoff—I am obliged for Mr. Whipple's suggestion and I will follow the line of direction.

Mr. Whipple—That is right—always cordially given.

Mr. Krauthoff—"Monday, Feb. 17"—

Mr. Streeter—By the way, Mr. Krauthoff, under the record of Jan. 24, the record referred to a letter from Mr. Dittmore re method of discipline, and you were to have that here this afternoon and to put it in—to read it. I think you must have overlooked that.

Mr. Krauthoff—I will look and see if we have it.

Mr. Streeter—Here is a carbon copy of it you can use. I do not ask you to read the name of the party, of course.

Mr. Krauthoff—The letter of Mr. Dittmore to which Mr. Streeter has called my attention is as follows:

[Letter, Mr. Dittmore to the Board of Directors, Jan. 24, 1919, is offered in evidence as Exhibit 650, and is read by Mr. Krauthoff as follows:]

[Copy of Exhibit 650.]

"Jan. 24, 1919.

"The Christian Science Board of Directors,

"105 Falmouth Street,

"Boston, Massachusetts.

"Dear Friends:

"Re discipline of (Blank) of (Blank).

"Mr. (Blank) appears to have been tried by this board on March 5, 1917, on nineteen different charges, including immorality, dishonesty, and various lesser offenses. It further appears that at the end of the hearing, the case was disposed of by the board taking Mr. (Blank's) card out of the Journal, telling him to 'go and sin no more,' and to reestablish himself in the confidence of the Christian Scientists of his community. We are now in the midst of considering Mr. (Blank's) case on evidence principally furnished by Mr. (Blank) of (Blank).

"My position is that no one under such circumstances should be tried a second time on the same or practically the same charges as those upon which he had once been tried and the case adjudicated, unless the alleged offenses were committed subsequent to the date of the first trial. In the present case I feel that the board should conduct the hearing on the evidence of misconduct presented in the usual form for such cases and shown to have been committed subsequent to the former trial on March 5, 1917.

"I stated the above view repeatedly to the board yesterday, and finally after over one hour of confused discussion and what appeared to be a determination to confuse the issue, I described the course of the chair in what seemed to me the most accurate and appropriate term, viz.: 'cuttle-fishing the issue.'

"I was not present at Mr. Blank's trial on March 5, 1917, and I have never met him. He may be shown to be deserving now of very strict and serious discipline, and if so, I am entirely in favor of rendering a decision in favor of such a disposition of the case. I am not in favor, however, of being swayed from a course of strict order and justice in this case because of impressions or because of the lengthy interview with the principal complaining witness before the person complained of has been seen by the board.

"I feel that my experience of yesterday requires me, as a matter of protection, to file this statement of what is and has been my position in regard to the just and proper method of handling this case and also to meet Mr. Dickey's expressed desire that there be a record made of my remark to him in regard to his method of handling the matter.

"Very sincerely,

(Signed) "J. V. DITTEMORE."

Mr. Krauthoff—In connection with that letter the record further recites:

[Exhibit 651.]

"At the request of Mr. Dickey, Mr. Neal took the chair and Mr. (the respondent) came before the board and was questioned at length as to certain of the charges recently presented through or by Mr. (the complaining witness). Mr. (the respondent) retired from the room and Mr. (the complaining witness) came before the

directors to answer further questions as the result of the conference with Mr. (the respondent). Mr. (the respondent) was then called in and Mr. (the complaining witness) repeated some of the allegations made to the board against Mr. (the respondent's) character. Mr. (the respondent) answered these and after further questioning of them by the board members, both gentlemen left the room and were told they might return to (their homes). Further consideration of the case was then postponed."

Mr. Krauthoff—Can you tell, General, the date on which that case was disposed of?

Mr. Streeter—No, I cannot give it.

Mr. Thompson—What is the date of that letter, Mr. Krauthoff?

Mr. Krauthoff—Jan. 24. I am not advised at present, if Your Honor please.

Mr. Streeter—There is a record on Jan. 27 about it. You read that, on Jan. 27: "Upon motion of Mr. Dittmore, seconded by Mr. Rathvon, voted, to dispose of the charges," etc.

Mr. Krauthoff—All right. Just so it is understood that that record of Jan. 27, 1919, referring to Mr. Blank is the same Mr. Blank in this other record.

Mr. Streeter—Well, it was.

[An extract from the directors' record, Feb. 17, 1919, is offered in evidence as Exhibit 651-A, and is read by Mr. Krauthoff as follows:]

"A letter was read from Mr. J. V. Dittmore, dated Boston, Feb. 17, reiterating his position in the situation now existing between the directors and the trustees of the Publishing Society."

Mr. Streeter—Shouldn't that go in here?

Mr. Krauthoff—Yes, if we may see the letter.

The Master—If it is only reiteration, why do you want it in?

Mr. Streeter—I don't know—I don't know what it is.

Mr. Thompson—It is said not to be reiteration.

Mr. Streeter—No, it is not reiteration, I am very certain. I am told that it is not.

Mr. Thompson—That is a very important letter.

Mr. Krauthoff—We are desirous of reading it, if Your Honor please.

Mr. Whipple—I take it, if Your Honor please, that this intercommunication between the directors in no way affects the plaintiffs in the Eustace case, and of course if that be so, I can neither object nor withdraw anything.

Mr. Krauthoff—Now, if Your Honor please, you will recall that counsel had had a conference on the first of February, and the trustees and the directors met on the 3d of February and the 10th of February. For some reason they did not meet on the 17th of February.

[Mr. Krauthoff proceeds to read the

letter of Feb. 17, 1919, from Mr. Dittmore to the Board of Directors.]

The Master—Your remark was that they did not meet on the 17th?

Mr. Krauthoff—They did not meet for some reason on the 17th of February. They again met after that.

The Master—I thought you were just reading the record of the 17th.

Mr. Krauthoff—I did, but it does not recite any meeting between the directors and the trustees.

Mr. Thompson—The directors had a meeting on the 17th.

Mr. Krauthoff—The directors met on the 17th.

The Master—Oh, you mean no conference?

Mr. Krauthoff—No conference between the directors and trustees on that Monday.

[A letter from Mr. Dittmore to the Board of Directors, dated Feb. 17, 1919, is offered in evidence as Exhibit 652, and is read by Mr. Krauthoff, as follows:]

[Copy of Exhibit 652]

"Feb. 17, 1919.

"The Christian Science Board of Directors,

"105 Falmouth Street,  
"Boston, Massachusetts.

"Dear Friends:

"Since it is still the purpose of the majority of the directors to pursue the course declared to the three trustees of the Publishing Society after their last outrageous exhibition of disloyalty to the Cause one week ago today, viz.: that 'we will work together and have our meetings and we won't be separated,' as Mr. Dickey stated it, or as the same sentiment was expressed by Mr. Rathvon when he said: 'We are going to have our weekly meetings, if I have anything to do with it, whether we are flying at each others' throats or not'—I must again protest against this calamitous course of action with all the earnestness of which I am capable.

"Although we bear the title which Mrs. Eddy gave to the offices we hold—The Christian Science Board of Directors—we are nevertheless in the eyes of the law and according to both the spirit and the letter of the Church By-Laws, trustees. We are not only trustees of very large property interests, but of far more importance is our trusteeship in the direction of a great 'public and religious charitable trust,' the Christian Science movement through the world.

"It was over five months ago, on Sept. 11, 1918, that the trustees of the Publishing Society, in conference with the directors, arrogantly declared the most outrageous doctrine of disloyalty and rebellion against the constituted authority of The Mother Church as established by Mrs. Eddy that has probably ever been declared in its history.

"In spite of the specific provisions of our Church Manual relating to the

duties of the directors (especially Article I, Section 9); in spite of the continuous propaganda of the trustees meaning disintegration to the Christian Science movement; in spite of the deplorable conditions in the publishing house due to mismanagement; in spite of the lamentable conditions connected with The Monitor; in spite of the urgency of securing the immediate cancellation of the contract giving the control of the publication of Mrs. Eddy's works to these trustees for 27 years; in spite of the most earnest warnings from well-known and trustworthy members of The Mother Church as to what the weak and procrastinating course of the directors will result in—nevertheless we are still found, after all these months, temporizing and condoning this most flagrant attack of lawlessness and disruption.

"Ultimately the Christian Science field will force this board to do its duty and fulfill the requirements of the By-Laws. Even now among many who know something of the conditions, the confidence of the field in the directors has been shaken by their failure after many months to fulfill the obligations of their offices. With each passing day the poisonous propaganda is being injected more and more into the thought of those not mentally alert to its purpose and the sedition is hourly intrenching itself more firmly.

"I feel that the situation has now reached a place where I can no longer assume even an outward semblance of acquiescence in the course which the majority of the directors has adopted, and I therefore feel duty bound to so declare myself.

"Very sincerely,

(Signed) "J. V. DITTEMORE."

Mr. Krauthoff—Is there anything else on that day, General, Feb. 17?

Mr. Streeter—Is there something about Dickey's modification of Judge Smith's letter?

Mr. Krauthoff—Oh, yes.

[Mr. Krauthoff continues reading from the record of Feb. 17, 1919, Exhibit 651-A, as follows:]

"Mr. Dickey's modification of Judge Smith's proposed letter to the trustees of Feb. 13, 1919, was read.

"After discussing the situation existing between the Board of Directors and the trustees of the Publishing Society,

"4:15 p. m. the meeting adjourned."

Mr. Streeter—That is all.

[An extract from the directors' records, Feb. 18, 1919, is offered in evidence as Exhibit 653, and is read by Mr. Krauthoff, as follows:]

"Mr. Dickey reported to the board that he had had a very interesting conversation—"

Mr. Streeter—Hadn't you better read the names of those present or whether they were all present or not?

"Tuesday, Feb. 18, 1919.

"At the regular meeting of The Christian Science Board of Directors

held at 9:30 a. m. on above date in the directors' room of The Mother Church, there were present Messrs. Dittmore, Dickey, Merritt and Rathvon.

"The minutes of the regular meeting of Feb. 17 were read and approved; the minutes of Feb. 10 were approved; and the informal memorandum of details of the conference between the directors and trustees on Feb. 10 as prepared by Directors Merritt and Dittmore were read and ordered filed.

"Mr. Dickey reported to the board that he had had a very interesting conversation with Trustees Eustace and Ogden of the Publishing Society regarding their attitude, and recommended to the other board members that they see said trustees and discuss with them the questions under consideration.

"A letter was read from Mr. William R. Rathvon, dated Boston, Feb. 18, relative to the situation existing between the directors and the trustees."

Mr. Streeter—The letter of Rathvon is already in.

Mr. Krauthoff—I will take up all those when I get through with the record.

Mr. Streeter—All right.

"On motion of Mr. Dickey, seconded by Mr. Merritt, it was voted to telegraph Mr. Strickler, cautioning him against promiscuous discussion in the field of the situation between the directors and the trustees.

"Roll-call on the vote resulted as follows:

Mr. Dickey ..... Aye.  
Mr. Merritt ..... Aye.  
Mr. Rathvon ..... Aye.

Mr. Dittmore not voting, and stating he would explain his reasons in a letter at the next meeting.

"Mr. Dickey offered the proposition that the board ask the trustees of the Publishing Society to put in writing in a letter to the board, their understanding of the present situation. Copies of Mr. Dickey's proposition were given to the board members present, and the subject laid over for consideration at the next meeting of the directors."

Mr. Streeter—The Rathvon letter is in, I know, I can't give you the number of the exhibit.

Mr. Krauthoff—Feb. 20, 1919:

"Present, Messrs. Dittmore, Dickey, Merritt and Rathvon. Two letters were read from Mr. Dittmore, one dated Feb. 20, setting forth his views in connection with the refusal of the majority of the directors to permit the use of The Mother Church for the address of Woodrow Wilson to be delivered in Boston on his return from the Peace Conference; the second letter, dated Feb. 19, giving his reasons for voting against sending a telegram to Mr. Virgil O. Strickler as authorized by the board on Feb. 18."

Mr. Streeter—Shouldn't that be put in now?

Mr. Krauthoff—Yes. While those two letters are being located:

"The following resolution was introduced by Mr. Dickey, seconded by Mr. Rathvon, and adopted, Mr. Dittmore not voting, to wit:

"Resolved, That hereafter no copies of letters, articles or documents of any nature, written, dictated or prepared by Mrs. Eddy, be made, or given to any person without the majority vote of the full board. This action rescinds all former decisions of the board relating to this subject.

"The corresponding secretary was instructed to prepare and submit to the board a letter to Mr. Strickler cautioning him about repeating certain statements which he is alleged to have made in lectures on Christian Science.

"The chairman and corresponding secretary were authorized to proceed to put the department of branches and practitioners into immediate operation."

The record continues:

"Letters were read from the following:

"Editor Frederick Dixon of The Christian Science Monitor, dated Boston, Feb. 20, requesting an interview with the board, which was granted for 11 a. m., Friday, Feb. 21."

[Those portions of record of meeting of Board of Directors, Feb. 20, 1919, as read by Mr. Krauthoff, are offered in evidence as Exhibit 654.]

Mr. Krauthoff—Now, those two letters, if Your Honor please, of Feb. 20, from Mr. Dittmore—that is, they were read on Feb. 20, 1919:

[Copy of Exhibit 655.]

"John V. Dittmore, C.S.B.

"236 Huntington Ave.,

"Boston, U.S.A.

"Feb. 20, 1919.

"The Christian Science Board of Directors,

105 Falmouth Street  
Boston, Massachusetts

"Dear Friends:

"Since the majority of the directors made their decision yesterday against allowing The Mother Church to be used by President Wilson to make his first American address upon his return from the Peace Conference, I have been unable to get the subject out of my thought. There are none of the points raised against it which are insurmountable or which would not justify the action by precedents already established.

"When Mrs. Eddy so strongly rebuked the directors for their failure to join the other Boston churches in ringing the chimes out of respect for the memory of Pope Leo, she also said:

"These lost opportunities never return with their full power to do good; and m. a. m. always induces a stupor as to this fact. . . . Please remember this as my answer on all such occasions."

"I feel that we have cast aside an

opportunity which God has given us and one which we will never cease to regret. It is not that it is Woodrow Wilson, not a matter of political partisanship. It is the President of the United States returning home first to the New England out of which was given to the world the discovery of Christian Science. It is the return of the incumbent of the greatest office of human authority in the world, after accomplishing the mighty task of insuring to the peoples of the whole world that freedom and high idealism for which the United States stands.

"I can think of nothing more appropriate or far-reaching for good than to have had the President deliver from the platform of The Mother Church his first message to the American people on the modern, universal Magna Charta which he has evolved guaranteeing the freedom of the nations and practically the abolition of war—all in fulfillment of the prophecies of Mary Baker Eddy.

"Very sincerely,

(Signed) "JOHN V. DITTMORE."  
"JVD-L"

[Letter, Mr. Dittmore to Board of Directors, Feb. 20, 1919, is marked Exhibit 655.]

Mr. Krauthoff—(reading)—

[Copy of Exhibit 656]

"John V. Dittmore, C. S. B.,  
"236 Huntington Ave.,  
"Boston, U. S. A.

"Feb. 19, 1919.

"The Christian Science Board of Directors,

"105 Falmouth Street,  
"Boston, Massachusetts.

"Dear Friends:

"I did not vote in favor of sending the telegram to Mr. Virgil O. Strickler yesterday for reasons which include the following:

"1. After dictating the telegram, the chairman said, 'What we really want to do is to stop him (Mr. Strickler) from giving his views to the field.' It is such loyal and courageous views as this board knows Mr. Strickler will express, if he expresses any, which will save us from the disloyal 'views' being so industriously circulated.

"2. Because this telegram would tend to confirm what I feel has been a lack of appreciation, at least so far as any evidence has been given, of the very conspicuous service rendered the Cause by Mr. Strickler in having the moral courage to uncover and condemn flagrant disloyalty in 'high places' in The Mother Church.

"3. For the principal reason that in my opinion this board should not undertake to curb the free speech of Christian Scientists under any circumstances, and the telegram in question was in effect an effort to prevent a church member from talking about a subject which is nearest to the heart of every loyal Christian Scientist.

"Make no mistake in regard to the propaganda of disruption sent out by

the Publishing Society and gaining ground each day, while we week after week repeat the history of Nero and 'fiddle' while the 'hidden hand' uses its channel to prepare for the threatened conflagration.

"Very sincerely,

(Signed) "J. V. DITTEMORE."

"JVD-L."

[Letter, Mr. Dittmore to Board of Directors, Feb. 19, 1919, is marked Exhibit 656.]

Mr. Krauthoff—Friday, Feb. 21, 1919:

"Present, Messrs. Dittmore, Dickey, Merritt and Rathvon.

"Mr. Dittmore read extracts from Trustees'—"

I think this has been offered in evidence, hasn't it?

"Mr. Dittmore read extracts from 'Trustees' Handbook' by Loring, and from Perry on 'The Law of Trusts and Trustees,' bearing on the situation between the trustees of the Publishing Society and the Board of Directors."

Mr. Streeter—"Bearing on the present situation," isn't it?

Mr. Krauthoff—No; "bearing on the situation."

"The corresponding secretary was instructed to procure copies of the books for use of the directors."

What is the next in that meeting that is called for?

Mr. Streeter—The last of it. In reference to the cable from Margaret Whyte.

Mr. Krauthoff—I think you have read that in evidence:

"A cablegram was read from Margaret Whyte, secretary of the War Relief Committee for Great Britain and Ireland, advising resignation of Dr. Allen W. Heber Percy from that committee."

As I understand, General, heretofore when that issue was raised you desired that the name of the gentleman be read into the record.

Mr. Streeter—Yes. Well, go ahead and read the rest of it.

Mr. Krauthoff—I have read all there is of it.

Mr. Thompson—Oh, no, no.

Mr. Krauthoff (continuing reading)—

"The directors had an interview with Editor Frederick Dixon of The Christian Science Monitor about the Labor situation, which he wishes to handle in The Monitor."

Mr. Streeter—Haven't you got in there something about an interview with Mr. Dixon about selecting a successor?

Mr. Krauthoff—Yes.

"About selecting the successor to Dr. Allen W. Heber Percy on the War Relief Committee for Great Britain and Ireland, and about his article in the Sentinel entitled 'Mortal Mind and Human Mind.'"

"Proposed resolution prepared by Judge Clifford P. Smith with regard to compositions published on the back covers of our weekly and monthly periodicals was read and copies sent to the respective directors for further consideration.

"Proposed letter to Mr. Virgil O. Strickler about statements made by him in recent lectures, was read, edited and referred back to the Corresponding Secretary for further revision.

"At 1 P. M. the meeting adjourned."

[Those portions of record of minutes of meeting of Board of Directors, Feb. 21, 1919, as read by Mr. Krauthoff, are offered in evidence as Exhibit 657.]

Mr. Krauthoff—Monday, Feb. 24, 1919:

"Present, Messrs. Dickey, Merritt, and Rathvon. Letters were read from the following:

"Mr. Virgil O. Strickler, dated Globe, Arizona, Feb. 18, about the knowledge in the field concerning the situation between the directors and the trustees.

"The directors had an interview with the trustees, Eustace, Ogden, and Rowlands of The Christian Science Publishing Society, in the course of which a letter from the directors to the trustees of even date was read and a copy thereof was later delivered to the trustees' secretary."

[That portion of record of meeting of Board of Directors, Feb. 24, 1919, as read by Mr. Krauthoff, is offered in evidence as Exhibit 658.]

Mr. Krauthoff—That letter has been offered in evidence under Exhibit No. 26.

Mr. Streeter—I think it is in.

Mr. Krauthoff—Feb. 25, 1919:

"Present, Messrs. Dittmore, Dickey, Merritt, and Rathvon.

"The minutes of the regular meeting of February 24 were read and approved. Informal memoranda of details of the conference between the directors and trustees on Monday, Feb. 24, as noted by Directors Merritt and Rathvon, were read and ordered filed.

"Letters were read from the following:

"From Editor William P. McKenzie, dated Boston, Feb. 21, about Mr. McCrackan's proposed editorial 'Miracles' for the Sentinel for March 8, which contains a reference to the pyramid memorial recently erected at Bow, New Hampshire, to mark Mrs. Eddy's birthplace. Reply indicated.

"Mr. Dittmore, dated Boston, Feb. 24, calling attention to his efforts to secure action in the situation between the directors and the trustees.

"Mr. Dittmore, dated Boston, Feb. 25, offering the following resolution:

"Whereas, The By-Laws of The Mother Church (Article XXV, Section 3) provide that "The Christian Science Board of Directors shall have the power to declare vacancies in said trusteeship (of The Christian Science Publishing Society), for such reasons as to the board may seem expedient," and

"Whereas, The trustees of The Christian Science Publishing Society have for many months followed a course of action exceedingly detrimental to the cause of Christian Science;

"Now therefore be it Resolved: That

the directors shall and do hereby declare vacant the trusteeships held by Herbert W. Eustace, Lamont Rowlands, and David B. Ogden, and that this course be followed by such legal steps as we are advised are necessary to confirm the proper appointment of those persons who are named as successors to these offices.'

"Mr. Rathvon seconded Mr. Dittmore's motion and after discussion a roll-call resulted in the following vote:

"Mr. Dittmore, aye; Mr. Merritt, no; Mr. Rathvon, no; Mr. Dickey, no.

"Mr. Rathvon stated that his purpose in seconding the motion was to secure discussion. Mr. Dickey explained his negative vote by saying that if the action proposed in Mr. Dittmore's resolution was followed, it would necessitate our making an appeal to the courts to sustain our action and appoint new trustees, and that he felt this was not a wise thing to do at this time.

"The directors had an interview with Mr. Charles C. Root of New York City—"

Is that desired?

Mr. Streeter—We don't care anything about it.

Mr. Krauthoff—All right:

"The directors had an interview with Judge Clifford P. Smith with regard to the situation between the trustees and the Board of Directors, particularly with reference to the removal of one or all of the trustees.

"A letter was read from Judge Clifford P. Smith, dated Boston, Feb. 21, submitting, at request of the directors, the following resolution, which was upon motion of Mr. Rathvon, seconded by Mr. Merritt, unanimously adopted, to wit:

"Whereas, The compositions which in recent months have been published on the inside of the back covers of our weekly and monthly periodicals have become more than ordinary advertisements; they have become unsigned editorials or unsigned pronouncements upon Christian Science and related subjects; and

"Whereas, The same reasons why other articles and editorials in said periodicals should be written or edited by editors elected under the provisions of our Church Manual apply fully to the compositions in question; and

"Whereas, It is necessary to scrupulously observe the several provisions of our Church Manual which provide safeguards for the contents of the periodicals which are the organs of this Church; it is therefore

"Resolved, by The Christian Science Board of Directors, That all compositions intended for the inside of the back covers of our weekly and monthly periodicals shall be examined before publication by the editors thereof, and that nothing in the nature of an article, editorial, or pronouncement on Christian Science, its practice or teaching, shall be published in

the weekly or monthly periodicals which are the organs of this Church, after the issues thereof which are now ready to be issued, until the same has been examined and approved either by the editors of said periodicals or by this board.

"Resolved, further, That the substance of this resolution shall be communicated to the Board of Trustees of The Christian Science Publishing Society and to the editors of said periodicals for their direction, and that the corresponding secretary be instructed to prepare and submit to the board a courteous letter to the trustees of the Publishing Society, also to the editors of the Christian Science periodicals, embodying the substance of the above resolution."

[Those portions of record of meeting of Board of Directors, Feb. 25, 1919, as read by Mr. Krauthoff, are offered in evidence as Exhibit 659.]

Mr. Streeter—Do you find your letter of Feb. 24?

Mr. Thompson—We have a copy of it here.

Mr. Krauthoff—Mr. Dittmore's letter of Feb. 24, 1919:

"The Christian Science Board of Directors,

"105 Falmouth Street,  
"Boston, Massachusetts.

"Dear Friends:

"The purpose of this letter is to reply specifically to the statements made by Mr. Dickey and Mr. Rathvon in what must have been an unguarded moment, in the board meeting of Feb. 20, in connection with their defense of the policy of the directors in the Publishing Society error, to the effect that my course of action in that matter has not been constructive and that I have presented no definite plan for a solution of the problem. If the course of the board during the past five months in the handling of this problem had left in me any capacity for surprise, I am sure I should have again experienced that sensation at hearing such a statement from these two gentlemen.

"Since the trustees' intentions were fully uncovered on the eleventh day of last September, I have continually urged prompt action for their removal under the specific provisions of Mrs. Eddy's By-Laws, and a complete cleansing of the rank conditions in the publishing house. In fact, a reference to the files of the board will show that on Sept. 10, 1918 (the day before the complete uncovering), I presented in writing a review of the situation and its enormous dangers, called attention to the by-laws governing the directors, and urged that our duty be recognized and fulfilled. On Dec. 18 I offered a resolution for action under the by-law providing for declaring vacancies in the trusteeship, but no director seconded it. Again, on Jan. 3, I offered a similar motion, but the chairman would not even ask for a second, and the motion failed. There has never been a

meeting when this matter was under discussion since Sept. 11 that I have not urged obedience to our Leader's By-Laws, which, of course, include following the course of action which she has set forth for the protection of the cause.

"I have also repeatedly urged the board to consider the evidence showing that Mr. Watts is totally unfitted for the position of manager of the Publishing Society and that his methods and practices have done almost irreparable damage to that institution.

"For over five months this board has drifted about in their attempted handling of this matter like a ship without compass or rudder. Almost every expedient that gave promise of success in human law or policy has been considered or tried. The directors of The Mother Church have one final responsibility—to sustain in its complete integrity the law and government of The Mother Church as Mrs. Eddy established them and recorded them in plain terms in the Manual of The Mother Church. I have always stood on the ground that every definite by-law or rule of procedure provided by Mrs. Eddy in the Manual is possible of demonstration, otherwise she would not have left them for our guidance. I have never had but one course of action in thought, and that has been the course which the Manual provides. If the steps had been taken promptly and with that faith and assurance which the protection of God's cause demands, the 'sea' would have long since parted and every effort of disloyalty and treachery would have been taken care of as it had been reached and as Mrs. Eddy never failed to prove for this Church, that 'No weapon formed against' it could 'prosper.'

"Probably the most aggressive 'mental offensive' ever launched has involved this board in the mazes of legal lore, doubt, and fear. The hope to save 'persons' from the effects of their evil course, until the desired conclusion that 'nothing can be done' or needs to be done, has produced almost complete paralysis. In the meantime deceit and trickery strive to allay the awakening thought of the field by sending out the suggestion that 'everything is settled' and that the two boards have never been on such a good basis. At home the treachery aims to gain its ends by letting it be seen that all is well because directors and trustees fraternize together and are once more in 'loving cooperation.'

"Of one thing I am sure, and that is that The Mother Church cannot go on to the fulfillment of its destiny under the policy of direction which has prevailed for the past 18 months.

"Very sincerely,  
JVD-L "JOHN V. DITTEMORE."

[The letter of which the foregoing is a copy is marked Exhibit 660. R. H. J.]

In connection with the resolution of Feb. 25, 1919, regarding the advertisements on the inside covers of the periodicals, we offer the letter from the directors to the trustees of Feb. 26, 1919:

"Board of Trustees,  
"The Christian Science Publishing Society,

"Falmouth and St. Paul Streets,

"Boston, Massachusetts.

"Dear Friends:

"I am instructed by The Christian Science Board of Directors to write you with reference to the advertisements published on the inside of the back covers of our weekly and monthly periodicals. In recent months these announcements have become more than ordinary advertisements; they have really become unsigned editorials or unsigned pronouncements on Christian Science and subjects related thereto. The directors feel that the same reasons why other articles and editorials in our periodicals should be written or edited by editors elected under the provisions of our Church Manual, should also apply fully to the compositions in question.

"Inasmuch as it is necessary for the directors to scrupulously observe the several provisions of our Church Manual, which provide safeguards for the contents of the periodicals, which are the organs of this Church, I am instructed by the board to ask that hereafter all compositions intended for the inside back covers of our weekly and monthly periodicals be examined before publication by the editors thereof and that nothing in the nature of an article, editorial or pronouncement on Christian Science, its practice, or teaching, shall be published in the weekly or monthly periodicals, which are the organs of this Church, after the issues thereof which are now ready to be issued, until the same has been examined and approved either by the editors or by this board, after copies have been sent to the respective directors as is the present custom with other editorials.

"Thanking you in anticipation of your compliance with the foregoing and awaiting your acknowledgment of this letter,

"Sincerely yours,

"CHARLES E. JARVIS,

"Corresponding Secretary for The Christian Science Board of Directors."

"CEJ-L"

[The copy of letter of which the foregoing is a copy is marked Exhibit 661. R. H. J.]

The answer to that letter, if Your Honor please, is found in a letter of March 6, 1919. There are two paragraphs, of which the second reads as follows. The first is not—

Mr. Whipple—Why not read it all?

Mr. Krauthoff—Very well.

"The Christian Science Board of Directors,

"Falmouth and St. Paul Streets,  
"Boston, Massachusetts.

"Dear Friends:

"Thank you for your letter of March 5 calling our attention to the mistake of using the word 'borrowed' as applicable to all of the reading rooms of Christian Science churches. We feel that to omit this word and let the notice read 'may be read or purchased' will correct this.

"Referring to your letter of Feb. 26 in reference to the feature advertisements that we have been running in the Sentinel and in our monthly periodicals, for some time past we have been considering the question whether it would not be better to discontinue this form of advertisement entirely. It has not been discontinued, and for the present letters of appreciation of The Monitor will take its place. With you we consider it the duty of the editorial department to pass on these features before they are published.

"With best wishes,

"Yours sincerely,

"BOARD OF TRUSTEES,

"Herbert W. Eustace,

"Secretary."

[The letter of which the foregoing is a copy is marked Exhibit 662. R. H. J.]

Records of the meeting of the Board of Directors of Feb. 26, 1919. Present, Messrs. Dittmore, Dickey, Merritt, and Rathvon:

"On motion of Mr. Rathvon, seconded by Mr. Merritt, it was voted that each member of the board, in compliance with the suggestion of our counsel, prepare reasons why one of the trustees should be removed. These reasons to be submitted to our counsel tomorrow that they may advise the board how to proceed legally to remove one of the trustees at once."

[The record of the meeting of the Board of Directors of which the foregoing is an extract is Exhibit 663. R. H. J.]

Mr. Whipple—Mr. Krauthoff, inquiry, I think, was made, when that was read before, about submission of reasons by the different members of the board. Have you found them?

Mr. Krauthoff—That is a detail which has not yet had attention. We shall give it attention later.

Mr. Whipple—Do you call that a detail, a formal statement by each one of the Board of Directors as to the grounds on which they thought they could put the removal of a trustee?

Mr. Krauthoff—Well, I call it a detail in the sense that I would call—

Mr. Whipple—I was wondering what you thought was a really important thing.

The Master—Now supposing we let Mr. Krauthoff say what he proposes to do about that.

Mr. Whipple—Did I interrupt him in that? I asked him so long ago I

was afraid he did not propose to do anything about it.

Mr. Krauthoff—Mr. Whipple asked me if I considered this a detail. I spoke of it as a detail as I should speak of myself or Mr. Whipple as a detail in the case. As to whether we shall be able to get it, I will say that I may be able to get it here tomorrow morning.

Mr. Whipple—Do you think, after having two or three weeks, that you will be able to get it here by tomorrow morning?

Mr. Krauthoff—I hope to, Mr. Whipple, if they are in existence in writing.

Mr. Whipple—Well, if you call them details, just as you call yourself a detail, you are more in evidence than those papers, because I asked for them long ago and they do not come, but you are in evidence all the time.

Mr. Bates—Not all the time. Except when you are!

[Laughter.]

Mr. Streeter—Oh, oh, Governor, don't do it. They are getting on fine!

Mr. Whipple—The Governor is re-galvanized!

Mr. Krauthoff—You understand, of course, Your Honor, that I am not advised as to whether this was put in writing or not. I will find out and let you know tomorrow morning.

The Master—You will find out and let us know tomorrow.

Mr. Whipple—I want Mr. Krauthoff to find out, if he can, which one of them produced the grounds on which they finally thought they would proceed.

Mr. Bates—There are lots of things you want.

Mr. Thompson—Page 233, letters of Strickler.

Mr. Krauthoff—

"Letters were read from the following:

"Mr. Virgil O. Strickler, dated Los Angeles, California, Feb. 20, requesting the return to him of all copies of his confidential letter to the President of the United States."

Mr. Streeter—We have nothing more.

Mr. Krauthoff—Feb. 27, 1919:

"Proposed letter to the Board of Trustees of The Christian Science Publishing Society requesting detailed itemized statements of monthly outlay and expenses was approved."

Mr. Thompson—Who were present?

Mr. Krauthoff—Messrs. Dittmore, Dickey, Merritt and Rathvon.

[The record of the meeting of the Board of Directors of Feb. 27, 1919, from which the foregoing extract is read, is Exhibit 664. R. H. J.]

Then follows the reference to the conference, and the minutes of that have already been read in evidence.

Monday, March 3, 1919—

Mr. Streeter—Let us see a minute. Where is that reference to the conference with the directors and Judge Smith and Mr. Bates?

Mr. Krauthoff—That has been read in evidence.

Mr. Streeter—On page 237. Is that in?

Mr. Thompson—I think only in part.

Mr. Streeter—Has it been read in full or in part?

Mr. Thompson—I can't remember all of its being read.

Mr. Streeter—Well, at any rate, it is brief, only three or four lines. I suggest that you read it in this connection.

Mr. Krauthoff—Why, if Your Honor please, it is about 15 or 16 lines of typewriting, which have already been read in evidence.

Mr. Streeter—I do not think so.

Mr. Krauthoff—I am sure that it has.

Mr. Thompson—I do not feel sure that it has all been read in evidence. I think it would be very good to get it in chronologically, as you say.

Mr. Krauthoff—I see no occasion for repeating matters that are already in evidence, if Your Honor please.

The Master—I see none.

Mr. Whipple—I am not sure that you have got that in evidence.

Mr. Thompson—I do not think so. It was paraphrased when it went in.

Mr. Krauthoff—Mr. Whipple read it in evidence, and I am quite sure that he does not paraphrase anything.

Mr. Thompson—He probably did not paraphrase the material part, but there might be some material that he did not speak of.

Mr. Krauthoff—This is the letter from the Board of Directors to the Board of Trustees of The Christian Science Publishing Society, under date of Feb. 27, 1919:

"February 27, 1919.

"Board of Trustees,

"The Christian Science Publishing Society,

"Falmouth and St. Paul Streets,

"Boston, Massachusetts.

"Dear Friends:

"I am instructed by The Christian Science Board of Directors to say that it is the desire of this board, as the governing board of The Mother Church, which is a beneficiary of the trust established by Mrs. Eddy, and of which you are in charge, to familiarize themselves with the outlay and expenses of The Christian Science Publishing Society. In order that the board may be able to do this, will you be kind enough to send to them the itemized, detailed statements of your monthly outlay and expenses of each month from the close of the six months period ending September 30, 1918, up to and including January 31, 1919, and hereafter as soon as possible after the close of each month's business.

"The directors would also thank you to include with the above reports detailed statements of your daily expenses for cabled news from England for the months of December, 1918, and January and February, 1919.

"Kindly advise on receipt of this

letter when the directors may expect these reports.

"Sincerely yours,  
"CHARLES E. JARVIS,

"Corresponding Secretary for The  
Christian Science Board of Directors."

"CEJ-L"

[The copy of the letter of which the foregoing is a copy is marked Exhibit 665. R. H. J.]

March 3, 1919—

Mr. Whipple—Aren't you going to read that record of the conference?

Mr. Krauthoff—I beg your pardon. It has been put in evidence, Mr. Whipple.

Mr. Thompson—It would not have taken half so long to put it in as to discuss whether it is in whole or in part.

Mr. Streeter—If you say it has been put in, what is the number of the exhibit?

Mr. Krauthoff—I will find it for you tomorrow morning.

Mr. Streeter—Well, not much!

Mr. Thompson—We want it now.

Mr. Streeter—If it has been put in, it is an exhibit, and we would like to know its number. It is only brief, and I suggest that you either show us the exhibit or read it.

Mr. Krauthoff—If Your Honor please, I do not think that I should now stop this reading in order to find whether it is an exhibit in a case that has been on trial as long as this case has been.

Mr. Thompson—Why don't you find out whether it is in or not in order to prevent discussion. You say it is in, and we say it is not.

Mr. Krauthoff—If Your Honor please, I would like to proceed with the trial of this case.

Mr. Whipple—You might omit something of a good deal of value. Your hesitancy makes me think that it is of value.

The Master—If counsel cannot prove by reference to the records whether a thing has been read before or whether it has not, I suppose the only thing to do is to read it.

Mr. Thompson—It has been referred to several times before. I have a doubt whether it has actually been read in verbatim.

Mr. Streeter—It is only a few lines. Why not read it?

Mr. Krauthoff—I will try to find it, and I think I can find it in a few minutes.

Mr. Thompson—Apparently there is some reason why it is not read.

Mr. Streeter—Why spend so much time about it? Even if it has been read, it has never been appreciated, as one of my associates suggests.

Mr. Bates—May it please the Court, there is every reason why it should not be read merely because these gentlemen want it read again. If they find that it has not been read, then it can be read. Your Honor intimated that we should go ahead, and I object

to these interruptions in this way as entirely improper and out of order.

Mr. Streeter—Now, Governor—

Mr. Bates—Oh, I raise objection to your interruptions in this matter.

Mr. Streeter—Oh, don't. Now, Governor—

The Master—I think that we will go on for the present. If it appears that the extract referred to has not been read, we can easily put it in later.

Mr. Streeter—Yes, Your Honor.

Mr. Krauthoff—March 3, 1919:

"Present Messrs. Dittimore, Dickey, Merritt and Rathvon. . . .

"The directors had an interview with Judge Clifford P. Smith, who read to the board two letters from himself to the board, both dated March 1, one recommending that the Board of Trustees of the Publishing Society be composed of three editors."

[The record of the meeting of the Board of Directors of March 3, 1919, from which the foregoing extract is read, is Exhibit 666, R. H. J.]

This has also been read in evidence. I will continue it.

Mr. Thompson—I am not sure that it has.

Mr. Whipple—Everything of real importance has been read?

Mr. Krauthoff—I think so.

Mr. Whipple—If you want to omit things that have been read you might as well omit the rest.

Mr. Krauthoff—From Mr. Whipple's point of view his statement is correct.

[An extract from the directors' records, March 4, 1919, is offered in evidence as Exhibit 667, and is read by Mr. Krauthoff, as follows:]

"Tuesday, March 4, 1919.

"Present, Messrs. Dittimore, Merritt, and Rathvon.

"The minutes of the regular meetings of March 3 were read and approved, and an informal detailed memorandum of the conference between the directors and the trustees of the Publishing Society on March 3, prepared by Mr. Merritt, was read and ordered filed.

"The attention of the directors was called to an announcement published in the Sentinel to the effect that the Bible, Mrs. Eddy's writings, and all other authorized Christian Science literature may be borrowed at all Christian Science reading rooms, and the corresponding secretary was instructed to request the trustees to change the notice and submit the change to the board."

Mr. Krauthoff—You said there was a motion by Mr. Dittimore?

Mr. Streeter—No; I do not care about it.

Mr. Krauthoff—All right.

[An extract from the directors' records, March 5, 1919, is offered in evidence as Exhibit 668, and is read by Mr. Krauthoff, as follows:]

"The minutes of the regular meeting of March 4th were read and approved, and Mr. Rathvon read an informal memorandum prepared by him

of the conference with the trustees on March 3, 1918.

"The letter from Mr. Paul Harvey to Mr. John R. Watts, business manager of The Christian Science Publishing Society, dated Jan. 24, 1919, was again read to the board by Mr. Rathvon. Mr. Dittimore's letter to the board, dated April 25, 1918, with reference to conditions facing the board and the Christian Science movement, was read."

Mr. Streeter—Were read, or again read?

Mr. Krauthoff—Were read.

Mr. Streeter—If Your Honor please, that is printed as Exhibit 220, on pages 294 and 295 of the printed record.

Mr. Krauthoff—If Your Honor please, you will recall a moment ago a discussion about a part of the record of Feb. 27, 1919. I am advised that that was read in evidence as Exhibit No. 217. It is on the same page of the record that Mr. Streeter has just referred to. This letter that I was referring to just now, Wednesday, March 5, 1919—the record recites that the letter was read on March 5, 1919. Self-evidently, that is not the first time it was read; at least, we assume it was not, and I find that that entry had been introduced in evidence as Exhibit 219.

The Master—It would be convenient, would it not, to have the stenographer put those exhibit numbers in?

Mr. Krauthoff—Yes; certainly.

The Master—At the proper place.

Mr. Krauthoff—That is the reason I am giving them to the stenographer now. The second entry of March 3, 1919, which I did not read a moment ago, is in evidence as Exhibit 218. In justice to General Streeter, I want to say that both of those were read by General Streeter. I said that Mr. Whipple had offered one or two of them. I find that I gave the credit to the wrong gentleman, or, rather, I gave the credit wrongly—not to the wrong gentleman.

Mr. Thompson—You have compared them to see that they were read correctly, have you?

Mr. Krauthoff—I have assumed that you read them correctly. In connection with the letter of the directors to the trustees of Feb. 27, 1919, I read the further letter of March 13, 1919.

[A letter from the directors to the trustees, March 13, 1919, is offered in evidence as Exhibit 669, and is read by Mr. Krauthoff, as follows:]

[Copy of Exhibit 669]

"March 13, 1919.

"Board of Trustees,  
"The Christian Science Publishing Society,  
"Falmouth and St. Paul Streets,  
"Boston, Massachusetts.  
"Dear Friends:

"I am instructed by The Christian Science Board of Directors to say that they have had no reply to their requests contained in their letter of Feb.



27, for the monthly outlay and expenses of each month from Sept. 30, 1918 to Jan. 31, 1919, both inclusive, etc., and in their letter of March 3, for information as to attorneys' fees, both important matters connected with the Publishing Society.

"The directors' letter of Feb. 27 requested acknowledgment which has not yet come to hand. If the information requested has not been furnished the board because of the time necessary to complete it, the directors would like to have you send them at once such information as you already have compiled.

"Acknowledgment of this letter will be very much appreciated.

"Sincerely yours,

"CHARLES E. JARVIS,

"Corresponding Secretary for The Christian Science Board of Directors."

Mr. Krauthoff—To which the following answer was made on March 14, 1919.

[A letter from John R. Watts, business manager of The Christian Science Publishing Society, to the Board of Directors, dated March 14, 1919, is offered in evidence as Exhibit 670, and is read by Mr. Krauthoff, as follows:]

[Copy of Exhibit 670]

"March 14, 1919.

"The Christian Science Board of Directors,

"Falmouth and St. Paul Streets,  
"Boston, Massachusetts.

"Dear Friends:

"In response to your letter of March 3 to the Board of Trustees, and to your further request of yesterday, the trustees have asked us to tell you that they will bring with them to the next meeting with your board, which we understand will be next Monday, March 17, the information and figures about which you are inquiring.

"With best wishes,

"Yours sincerely,

"THE CHRISTIAN SCIENCE PUBLISHING SOCIETY,

"by (Signed) John R. Watts,

"Business Manager."

Mr. Krauthoff—March 6, 1919, there were present Messrs. Dittmore, Dickey, Merritt, and Rathvon. That has already been read in evidence.

The Master—Have you got the exhibit number? Put it in if you can.

Mr. Krauthoff—The first entry from the minutes of March 6, 1919, has been read in evidence as Exhibit 221. The letter of Mr. Dittmore of April 25, 1918, which was referred to a moment ago, has been read in evidence as Exhibit 220.

Mr. Streeter—What do you say this March 6 first paragraph is—Exhibit 221?

Mr. Krauthoff—That is Exhibit 221. That includes two entries from the record of March 6, 1919—the one about giving out copies of resolutions or minutes, the other about copies of the informal notes by Mr. Merritt and Mr. Rathvon.

Mr. Streeter—Now, the next one, a letter from Mrs. Longyear.

[Mr. Krauthoff reads the further paragraph from the records of March 6, 1919, Exhibit 221:]

"Letters were read from the following:

"Mrs. Mary Beecher Longyear, dated Pasadena, California, Feb. 7, with further reference to her proffered gift of two lots in the vicinity of The Mother Church whereon she wishes an historical building to be erected. Reply indicated."

Mr. Streeter—Now, have you a copy of the reply? Won't it go right here? I believe Mrs. Longyear's letter has been put in, hasn't it?

Mr. Krauthoff—It has been furnished, but I don't understand you have read it in evidence. It has not been read in evidence that I remember.

Mr. Streeter—Then shouldn't both of those letters be read in this connection?

Mr. Krauthoff—I will be very glad to. Have you them at hand?

Mr. Streeter—I haven't them, no.

Mr. Krauthoff—I will get them as soon as I can. Is there anything else on March 6, General?

Mr. Streeter—No; just that correspondence with Mrs. Longyear.

Mr. Krauthoff—Well, we are locating it.

Mr. Streeter—I think the young lady has it now, hasn't she?

Mr. Krauthoff—We will take up those Longyear letters in a few moments, if Your Honor please, when we have gone over them and gotten them in order.

[Mr. Krauthoff reads a further extract from the records of March 6, 1919, Exhibit 221:]

"After Mr. Harsch left the meeting the corresponding secretary submitted and the board approved a proposed reply to Mrs. Mary Beecher Longyear's letter of Feb. 7 above referred to."

Mr. Krauthoff—March 7, 1919—

Mr. Streeter—Why can't we have those now in this connection?

Mr. Thompson—No reason why we shouldn't have them; you have got them right there.

Mr. Whipple—I think both of them have been put in.

Mr. Streeter—Oh, one of them has; I think the other one has not.

Mr. Krauthoff—If Your Honor please, I can only say what I said a few moments ago. It is scarcely to be expected that on the spur of the moment I will pick up a bunch of correspondence and just read it in without knowing what relation it has to the case or what relevancy it may have.

Mr. Thompson—You are asked to pick up one letter. What are you referring to a bunch of correspondence for?

Mr. Krauthoff—It was in a bunch of correspondence that was handed me.

The Master—I think Mr. Krauthoff

should have a fair opportunity to get the letters together.

Mr. Krauthoff—Mr. Thompson is very kind in his advice and directions but I am not at present in his employ. Friday, March 7, 1919. I find nothing in that that I wish to read unless the General will point out something.

Mr. Streeter—No.

[An extract from the directors' records, March 10, 1919, is offered in evidence as Exhibit 671, and is read by Mr. Krauthoff, as follows:]

"Present, Messrs. Dickey, Merritt, Rathvon and Mr. Dittmore from 11:10 a. m. till 12 o'clock noon. At 12 o'clock Mr. Dittmore left the meeting.

"The directors had an interview with Trustees Eustace, Ogden and Rowlands of The Christian Science Publishing Society.

"At 1:10 p. m. the meeting adjourned."

Mr. Streeter—Do you claim that the other two entries in that record with reference to Dittmore's demand for copies and their refusal have already been put in?

Mr. Krauthoff—No; they were not in the meeting of March 10.

Mr. Streeter—I mean March 11.

Mr. Krauthoff—I am not at present advised about that.

(Examining record.) General Streeter read from March 11, 1919, under Exhibit 224.

[An extract from the directors' records, March 11, 1919, is offered in evidence as Exhibit 672, and is read by Mr. Krauthoff, as follows:]

"At a regular meeting of The Christian Science Board of Directors held at 9:30 a. m. at above date in the directors' room in The Mother Church, there were present Messrs. Dittmore, Dickey, Merritt and Rathvon.

"At 12 o'clock Mr. Dittmore left the meeting.

"The remaining directors had an interview with Trustees Eustace, Ogden and Rowlands of The Christian Science Publishing Society.

"At 1:15 p. m. the meeting adjourned."

[An extract from the directors' records of March 13, 1919, already offered in evidence as Exhibit 225, is read by Mr. Krauthoff. Mr. Krauthoff also reads the following extract from the records of March 13, 1919:]

"Letters were read from the following:

"Board of Trustees of The Christian Science Publishing Society, dated Boston, March 12, in answer to the board's letter of March 10, recommending the publication of some vest pocket pamphlets in German."

Mr. Krauthoff—Is there anything else in that meeting?

Mr. Streeter—I think, Mr. Krauthoff, that from here on to March 17 I read everything into the record—from there I read everything.

[A letter from the Board of Directors to the Board of Trustees, dated

March 10, 1919, is offered in evidence as Exhibit 673. The reply, Board of Trustees to Board of Directors, March 12, 1919, is offered in evidence as Exhibit 674. These letters are read by Mr. Krauthoff, as follows:]

[Copy of Exhibit 673]

"March 10, 1919.

"Board of Trustees,  
"The Christian Science Publishing Society,  
"Falmouth & St. Paul Streets,  
"Boston, Massachusetts.

"Dear Friends:

"I am instructed by The Christian Science Board of Directors to say with reference to the letter from Miss Anna Six of Berlin, Germany, a copy of which was sent to this board by Mr. Theodore Stanger, that at a meeting of the board held this day it was voted that the board request the Publishing Society to issue some German literature for immediate shipment to Berlin, preferably a number of the vest-pocket pamphlets.

"Commending the above to your favorable consideration and with kind regards,

"Sincerely yours,

"CHARLES E. JARVIS,

"Corresponding Secretary for The Christian Science Board of Directors."

[Copy of Exhibit 674]

"March 12, 1919.

"The Christian Science Board of Directors,

"Falmouth and St. Paul Streets,  
"Boston, Massachusetts.

"Dear Friends:

"Thank you for your letter of March 10.

"Mr. Stanger had sent the trustees the letter from Miss Six of Berlin, Germany, and the question of translating some of the vest-pocket pamphlets into German is already under way.

"Thanking you,

"Very sincerely yours,

"BOARD OF TRUSTEES,

"HERBERT W. EUSTACE,

"Secretary."

Mr. Krauthoff—I think that is all I have to read at present from the records. A letter from Mrs. Longyear is called for and we will be able to comply with that request presently.

What was the date of that letter from Mrs. Longyear you called for? There are several.

Mr. Streeter—Feb. 7—I think that one has been put in. I am not sure, but it was the one of March 6, on which date you sent a reply. That is the one I want to secure.

Mr. Krauthoff—According to the record it was dated Feb. 7.

Mr. Streeter—Well, that is Mrs. Longyear's letter.

Mr. Krauthoff—Yes.

Mr. Streeter—I want the copy which you sent in reply. You say, "under date of March 6 the board sent a letter

to Mrs. Longyear in reply to hers of Feb. 7."

Mr. Krauthoff (reading)—

"March 6, 1919.

"Mrs. Mary Beecher Longyear

"12 Maryland Apartments

"Pasadena, California

"Dear Mrs. Longyear:

"I am instructed by The Christian Science Board of Directors to say in further reply to your favor of Feb. 7, 1919, that your proffered gift of land to The Mother Church for the purpose of erecting an historical building thereon was given further consideration by the directors at their meeting today.

"It would not appear at present that there are enough members of the board favorable to accepting your gift for the specific purpose of an historical building, therefore the board believes it would be better for them to wait until Mr. Neal's return to Boston, so that whatever action is then taken may be an expression of the entire Board of Directors.

"The board again assures you of its deep appreciation of your generosity in this matter and hopes within the next 30 days to make a definite reply to your proposal.

"With renewed assurances of the directors' high esteem, and with kindest regards to you and to Mr. Longyear,

"Sincerely yours,

"CHARLES E. JARVIS,

"Corresponding Secretary for The Christian Science Board of Directors."

[Letter from Board of Directors to Mrs. Mary Beecher Longyear, March 6, 1919, is marked Exhibit 675.]

Mr. Streeter—Now, Mr. Krauthoff, you stopped reading the records just before you got finished, I think. See if under date of March 18 you have not an entry, "Board read Dittmore's letter against Rowlands' dismissal."

Mr. Krauthoff—"March 18, 1919:

"A letter was read from Mr. John V. Dittmore, dated Boston, March 18, giving his reasons for not voting on the motion offered March 17, declaring vacant the office of trustee of The Christian Science Publishing Society held by Mr. Lamont Rowlands."

[That portion of record of meeting of Board of Directors, March 18, 1919, as read by Mr. Krauthoff, is offered in evidence as Exhibit 676.]

Mr. Streeter—Now, in connection with that letter you should read the letter of Mr. Dittmore.

Mr. Krauthoff—I am not clear about that. This is a letter which Mr. Dittmore wrote the day after he was removed. I cannot—

Mr. Streeter—It does not matter. I submit that, Your Honor, in the Dittmore case, on that question. Mr. Dittmore voted against the dismissal of Mr. Rowlands, and he told them at the time that he would state his reasons in writing. They did not wait for that, but in about five minutes thereafter undertook to expel

him from the board. He filed that letter, and we think it bears on the issues of the case.

Mr. Bates—You did not mean to say that Mr. Dittmore voted, did you?

Mr. Streeter—No; he did not vote.

Mr. Bates—You stated that he did vote.

Mr. Streeter—I beg your pardon. I want to be accurate. Why not read the letter?

The Master—I think if it is insisted upon you will have to read it, Mr. Krauthoff.

Mr. Krauthoff (reading)—

"March 18, 1919.

"The Christian Science Board of Directors,

"105 Falmouth Street,

"Boston, Massachusetts.

"Gentlemen:

"I did not vote on the motion yesterday declaring vacant the office of trustee of The Christian Science Publishing Society held by Mr. Lamont Rowlands because such discipline of Mr. Rowlands in no way touches the root of the present deplorable situation and because such action operates to again prevent a real cleansing of the condition and the elimination of the qualities of thought which are slowly, but surely crushing out the vitality of the Christian Science movement.

"Very truly yours,

(Signed) "J. V. DITTMORE."

[Letter, Mr. Dittmore to Board of Directors, March 18, 1919, is marked Exhibit 677.]

Q. Mr. Dickey, may I inquire of you—because you have kept track of it and I have not—just how far we had progressed in point of time when I began to read these records? What was the last question I asked you about it? A. I think I had returned to Boston on Jan. 21.

Q. You had returned to Boston on Jan. 21 and participated in the meeting of the board of Jan. 22? A. Yes.

Q. Mr. Dickey, I called your attention before I began reading the records a moment ago, to the resolution of the Board of Directors of Jan. 23, 1919, with respect to the cards of Mr. and Mrs. Norledge of Paris, France, in The Christian Science Journal and in the French periodical Le Héraut de Christian Science. A. Yes.

Q. What was the situation in respect to their cards at the time that resolution was adopted?

Mr. Whipple—I pray Your Honor's judgment. How is that important?

Mr. Krauthoff—Well, it is only important, if Your Honor please, as bearing upon the question of our good faith. The bill charges that upon one excuse or another we made requests and that we did various things arbitrarily and capriciously. We are now taking the steps that we did and endeavoring by our testimony to show their good faith, and that they were entered into with at least a reasonable ground for doing so. If that is held

by the Court to be immaterial at this time I shall not complain.

The Master—Is there any dispute between the boards on this subject which he now proposes to investigate?

Mr. Whipple—My impression is not, if Your Honor please.

Mr. Krauthoff—Well, I shall not press the matter further at this time unless it becomes an issue.

Q. Did you have an interview with Mr. Watts on the evening of Thursday, January 23, 1919, with respect to the situation as then in issue? A. Yes, sir.

Q. Where? A. At my home.

Q. Did he come there at your request? A. He did.

Q. I believe you stated previously that you are an accredited teacher of Christian Science? A. Yes, sir.

Q. And is Mr. Watts a student of yours, as that term is used in Christian Science? A. Yes, he is my student.

Q. Explain briefly the relation of a teacher in Christian Science to his student.

Mr. Whipple—That I object to, if Your Honor please. I am going to try to prevent these things being gone over repeatedly and the hopeless confusion of the record which must ensue.

Mr. Krauthoff—I have no thought of going over anything. I am now trying to explain the circumstances of this interview.

Mr. Whipple—Well, of what consequence are the circumstances?

Mr. Krauthoff—Well, very well. Go ahead and say what was told at that interview, Mr. Dickey.

Mr. Whipple—Now, that I object to on the ground that it is not material.

Mr. Krauthoff—We have heretofore considered that question, if Your Honor please, as to what was said to Mr. Watts and what was said by Mr. Watts, and I have pointed out that Mr. Watts is either our appointee, subject to our direction, and we have the right to state in evidence what we told him and what happened to what we told him; or if he is to be treated as the employee of the plaintiffs, we have the right to state what we told the plaintiffs' employee, charged with the management of their business.

The Master—You are now going into a private interview, not an official interview, between this witness and Mr. Watts?

Mr. Krauthoff—I do not regard it as a private interview, if Your Honor please. It happened to be at Mr. Dickey's house, but that made it none the less a part of it, and as I recall it the trustees' record undertakes to recite that interview, and Mr. Watts testified to it.

The Master—Do you expect to contradict Mr. Watts in regard to it?

Mr. Krauthoff—We expect to, yes.

Mr. Whipple—Now, if Your Honor please, we never asked Mr. Watts a question about it, and if they have inquired of Mr. Watts about an immaterial matter they cannot contradict

it. Furthermore, if Your Honor please, this comes within the rule Your Honor indicated this morning, and that is that this course of conduct and acquiescence no longer applies after the controversy had become acute. I am really going to make an earnest endeavor to prevent this issue being befogged and this record being made any more complex by this going through part way and then going back a bit, and then starting in again and taking the record in different aspects and from different angles.

The Master—I do not think I can generally forbid Mr. Krauthoff to examine the witness on the stand in regard to any matter occurring within the period covered by the records which he has consecutively read. There may be material matters with regard to which he has the right to examine the witness, occurring during that period. I think we can guard against undue confusion while he does that, but of course the matters about which he examines the witness must be material.

Mr. Whipple—If Your Honor please, the records are now already in. He is asking about something which is not a matter of record at all; it is a private interview.

The Master—There is something in the records, I think, about this interview with Mr. Watts.

Mr. Whipple—I think not.

The Master—And I was trying to recall to my mind what it was. Am I right?

Mr. Krauthoff—The trustees' records disclosed—

The Master—Oh, the trustees' records, not in the records which you have read?

Mr. Krauthoff—No, not in the records that I have read.

Mr. Whipple—But the trustees' records were not put in by us.

The Master—True.

Mr. Whipple—This is a process that counsel has adopted of putting in everything they can, material and immaterial, and then going over it again for the purpose of contradicting what they themselves put in.

Mr. Krauthoff—If Your Honor please, there is one other phase of this situation which should be called to Your Honor's attention. The plaintiffs in this case—

The Master—Suppose before we go into a phase of the situation that we go into the materiality of this particular matter.

Mr. Krauthoff—Yes, if Your Honor please; and what I was about to say bears upon that. And that is this: that the plaintiffs in this case have charged the defendants with acting arbitrarily, capriciously, without reason, arrogantly, to establish an oligarchy and a few other adjectives which the dictionary supplies, and we have the right to show the efforts we made and the statements that we made to them and to their agent, as they claim he is, or to our agent as we

claim him to be, in an effort to prevent what has happened, from the position that we took and the position they took, all as bearing upon the allegation that we acted in bad faith in removing Mr. Rowlands in office.

Mr. Whipple—As Your Honor has repeatedly pointed out, we have indicated the respects in which they acted capriciously, and so far as we have made allegations of bad faith, those are in the bill. They may have had the best of good faith in other respects—that is entirely immaterial. The trouble is that they utterly fail to meet the bill and its allegations. They say, "We have been good in all other respects," but they shun that issue. They do not come down to grips on the issue that is tendered.

Mr. Krauthoff—It is rather interesting, if Your Honor please, to be told by counsel that is objecting to evidence that I am trying to introduce, that I am trying to shun an issue.

Mr. Whipple—That is it—you are trying to put in a lot of befogging evidence, that is why you shun the issue.

The Master—Have I now heard all that counsel desires to say on this point? If so, I am not satisfied that this interview between Mr. Watts and Mr. Dickey is a matter which you are entitled to go into at present, and I will exclude it.

Q. Mr. Dickey, referring to Friday, Jan. 24, 1919, do you recall the incident of Mr. Watts appearing before the Board of Directors and reading the letter written by Mr. Paul Harvey of New York City? A. Yes, sir.

Q. Will you please state the circumstances as they then occurred in respect to that letter, showing what you said or what any other director said to Mr. Watts, being careful always to indicate who said it?

Mr. Whipple—Now, if Your Honor please, that Harvey letter, if I remember correctly, was gone into by General Streeter, and does not affect our case. I can't see that it has any materiality. The circumstances under which it was read are of no consequence. The letter speaks for itself and we have all the correspondence.

Mr. Krauthoff—If Mr. Whipple states that the incident of the Harvey letter has nothing to do with the trustees' case I shall defer this question for the present. I understood that was one of the complaints that the trustees made against the directors, and that was that some member of the Board of Directors had made certain statements in New York City of which the trustees had a right to complain. But inasmuch as Mr. Whipple absolves us from any complaint with respect to that, I will not press it further at this time.

Mr. Whipple—You will have to take what I said as the indication of what our utterance is, and not your improvisation of it.

Mr. Krauthoff—If there is any misunderstanding about that, it either has something to do with the case or it

has not. Now, I offer it to show what occurred on that occasion with respect to the Harvey letter in the presence of Mr. Watts, who brought it over to the directors.

The Master—And of the Board of Directors?

Mr. Krauthoff—I beg your pardon?

The Master—In the presence of Mr. Watts and the Board of Directors?

Mr. Krauthoff—Yes. At a meeting of the board.

Mr. Whipple—At which the trustees were not present.

The Master—At which, of course, the trustees do not appear to have been present. It was not a conference.

Mr. Krauthoff—They were not present in their physical person.

The Master—Don't your records show what took place?

Mr. Krauthoff—The record recites that Mr. Watts read the letter, but the record is not written with the precision and fullness of a Congressional Record, and does not record all the conversation.

The Master—That would mean, then, an interview between the full Board of Directors and Mr. Watts?

Mr. Krauthoff—Yes, who brought the letter over, the letter that had been written to the Board of Trustees, containing the statement of fact of which the trustees then complained to the board, through Mr. Watts, and of which we were advised—we were advised until a few moments ago by Mr. Whipple that they still complain—

The Master—I think that I shall allow you to state what was said. I do not understand what you intend to bring out by your question about the circumstances quite.

Mr. Krauthoff—Well, I meant by that what was said, if Your Honor please; but I will adopt Your Honor's suggestion.

Q. State what was said on that occasion when Mr. Watts brought this letter over. A. Mr. Watts called me by telephone and asked if he might see the board—

The Master—Oh, no; you are beginning too far back. Come to the meeting.

Q. Take the meeting and tell us what happened there. A. He read the letter at the meeting, and then said, "Now, we would like to know what the directors intend to do about this." "Well," I said, "Mr. Watts, that is not a letter from the directors to anybody; it is a private communication and not addressed to the directors; really it hasn't anything to do with the meeting of this board."

Q. What, if anything, did Mr. Dittmore say in Mr. Watts' presence? A. Mr. Dittmore said, "Well, it just may be that that letter refers to me, because I think I was in New York about that time, but, if it were not for that fact, I don't think I should recognize the letter as applying to me; but I was there, and I did have luncheon with some gentlemen there."

Q. Did you go to New York and make any statements of any kind such as are described in that letter, to anybody? A. No, nothing of the kind.

Q. At any time? A. At any time.

Q. Was anything else said at that meeting of Jan. 24, 1919, between Mr. Watts on the one hand and the several directors on the other, with respect to the affairs of the Publishing Society? I mean the relation of the Publishing Society to the Church? A. I believe there was quite a good deal said on that occasion, and if that is the day on which Mr. Watts read from the Bible, there was quite a good deal; but I am not clear that that was the day.

Q. You don't think that that is the day? A. And I don't recall any of the rest of the conversation that took place at that time.

Q. On Saturday, Jan. 25, 1919, you were advised of the conference between your counsel on the one hand and Mr. Whipple on the other? A. Yes, sir.

Q. On that occasion, according to the letter of Judge Hughes that has been read in evidence, Judge Smith spoke of four different subjects. Were those the only things that were at that time open between the trustees and the directors, or were they typical or representative?

Mr. Whipple—That I object to.

The Master—I am trying to recollect what you refer to by the letters of Judge Hughes.

Mr. Krauthoff—The letter of Judge Hughes, if Your Honor please, is the opinion of the counsel, a portion of which is printed in evidence in this case—I mean a portion of which is printed in the bill in this case.

The Master—Of Jan. 27, 1919?

Mr. Krauthoff—Yes, and all of which—

The Master—Then should you not say Judge Hughes and two others—Mr. Strawn and Mr. Whipple?

Mr. Krauthoff—Yes, I should.

Q. You are—

The Master—What do you wish to ask him about that?

Q. You are familiar with the letter of Jan. 27, 1919, written by Messrs. Charles E. Hughes, Silas H. Strawn, and Sherman L. Whipple to the Board of Directors? A. Yes, sir.

Q. That has been heretofore introduced in evidence as Exhibit 22. And you remember that in that letter, Mr. Dickey, reference is made to four questions that Judge Smith took up with Mr. Whipple at the conference of Jan. 25, 1919? A. I believe so.

Q. That is, the four questions were, first, that the directors claimed the sole right to determine the acceptance of branch churches, and that the trustees should not assume the responsibility; second, with respect to the questionnaire sent out by the trustees to practitioners as a step precedent to the insertion of cards in the Journal; third, the so-called anti-Roman Catho-

lic editorial policy of The Monitor; and, fourth, the editorial entitled "A Mad World." Were those the only questions that were open at that time between the trustees and the directors? A. No, sir.

Mr. Whipple—That I object to, if Your Honor please. In order to tell what was open, and what controversies had been or were then existing, we have got to have some other statement than that. We have to introduce evidence as to what had been said, and I do really think that we have got about all the writings and about all the interviews that there were between the parties so as to state pretty well what the controversy was, what the issues were. We want the issues stated as they then were, not as the witness now thinks they were.

Mr. Krauthoff—Now, if Your Honor please, this letter shows that on Jan. 25, 1919, there was a conference between counsel, at which Judge Smith spoke of four matters. We are now proving generally by this witness that those were not the only four matters that were open at that time. Now, as to what other matters were open at that time, the Court, of course, will determine that upon the whole evidence in the case. We are merely asking now, as preliminary to a further question, whether those were the only things that were open. Now, as to whether—

The Master—Why can't the Court equally well determine that question upon the record in the case?

Mr. Krauthoff—I assume that it can, if Your Honor please. I was about to ask the witness about the details of these four questions, but I am constrained now to leave that until some further contention is made with regard to it. I will not take up the time of the Court now in particular unless the—

The Master—I think that that might be just as well, Mr. Krauthoff.

Q. Now, with respect to this letter of counsel for the trustees of Jan. 27, 1919, offered in evidence as Exhibit 22, copies of that reached the directors? A. Yes, sir.

Q. And you studied them? A. Yes, sir.

Q. And considered them?

The Master—I suppose that you mean that a copy reached each director—is that it?

The Witness—Yes, sir.

The Master—If a letter was read at the directors' meeting, that shows that the letter reached the directors, does it not?

Q. Each of the directors received a copy of it? A. They did.

Q. That is, the clerk of the Church made copies and gave one to each of the directors? A. Yes, sir.

Q. Then, as you were advised, a further conference was held on Saturday, Feb. 1, 1919, at which Messrs. Hughes and Strawn and Whipple were present for the trustees, and Messrs.

Bates and Abbott and Smith and Krauthoff for the directors? A. Yes.

Q. And you were advised on Saturday afternoon, Feb. 1, 1919, by letter, of the result of that conference? A. We were.

Q. On Feb. 3, 1919, did you meet with the trustees? A. We did.

Q. At what time, and where? A. We met in the board room of The Mother Church, I believe, at noon.

Q. I asked you, Mr. Dickey, if you had been advised of that conference by a letter. I am reminded that you were first advised orally of it? A. Yes.

Q. That is, your counsel came to the church? A. Counsel came to our meeting there, and told us what had transpired at the meeting of counsel.

Q. And, whatever letter you received, you received afterward? A. Subsequently to that interview.

Q. On Feb. 3, 1919, did the trustees meet with some members of the Board of Directors? A. They did.

Q. Who were present at that meeting? A. Messrs. Merritt, Rathvon, and Dickey.

Q. Where was Mr. Neal at that time? A. Mr. Neal was in Florida.

Q. Do you know how long he was in Florida in the early part of 1919? A. Perhaps over a month.

Q. And did Mr. Dittmore remain for the meeting between the— A. He did not.

Q. Now, state what was said on Feb. 3, 1919, by any of the directors to any of the trustees at that meeting, in the presence of all the directors and the trustees then present—all of the three trustees and the three directors—being careful to say what individual said it, and restricting yourself to what was said by anybody. A. Of course, I cannot repeat the conversation verbally, but, in substance, after the usual greetings, the secretary of the trustees produced certain correspondence that they had been having with practitioners and churches in the field relative to the printing of their cards in the Journal, and they said that it was understood that they were to turn this business now over to the directors, and we accepted that as a part of the compliance with the agreement that counsel had had on the Saturday previous.

Q. What else was said and done at that meeting? A. Then a general conversation ensued. After we had disposed of the question of cards, Mr. Rowlands, I believe, said, "Well, what reason is there now why we can't adjust all our differences and go right along and conduct the business in perfect harmony, as it has always been done before this difficulty arose?" I said, "I hope that we can do that. That is the object of our visit," or "of your visit," rather, "to us." And one of the trustees said, "Well, as far as we are concerned, we will be very glad to call everything off and end our disagreements right here."

The Master—Would it be better if he tried to state who said it?

Mr. Krauthoff—Quite right.

Q. Will you state who said it? A. I believe it was Mr. Rowlands, because he was acting as spokesman at the time, but the others concurred in whatever he said.

Q. I beg your pardon. What did they say, Mr. Dickey? It is not proper to state generally that they concurred. You must state what they said, if anything. If they remained silent— A. Well, they said that they hoped that that arrangement could be made; that that was perfectly satisfactory to them.

Q. Did each of them say so? A. Well, they each said it in those words, or something akin to it. They all gave their approval.

Q. What was said, if anything, about the Church Manual on that occasion? A. Well, we went on to talk about the whole situation, and how we could work this question out; and I said, "Of course, gentlemen, it is understood that anything that we agree to here is based upon the compliance of the trustees with all the requirements of the Manual, as well as the trust deed under which they hold office." Mr. Rowlands said, "Why, certainly. We couldn't think of attempting to do anything without obeying the Manual." Mr. Eustace and Mr. Ogden also agreed to that. Then I said, "We must also understand that whatever we do from this time henceforth must be done with the understanding that Mrs. Eddy's demonstration of Church government is to be upheld, that is to say, that the form of Church government which she has established, and for which the Christian—the Church Manual has been written must be upheld by the trustees." They were quite agreeable to that, and it was agreed then by all of them, and by all of us, that whatever should be done hereafter, it should be done under exact obedience to the Manual of The Mother Church as well as the Deed of Trust.

Q. You say—

Mr. Whipple—Now, if Your Honor please, that statement of the agreement I will ask to have stricken out.

Q. Will you please state what—

Mr. Whipple—Just one moment. Let us have that passed upon. The witness undertook to state an agreement. I am not objecting to the conversation; but of course we get in a statement of that sort nothing reflected except the idea of the man himself, and it is not a statement of testimony.

Q. Will you please—

Mr. Whipple—Just a moment.

Mr. Krauthoff—That motion may be sustained, if Your Honor please.

Mr. Whipple—All right, if that is stricken out.

Q. Now, will you please state what was said, Mr. Dickey, by any one of the trustees or by any one of the directors in their presence, on that subject? A. Mr. Ogden said, "Well, now, we have had some letters of in-

quiry from the field regarding the situation between the two boards. What shall we say in reply to them?" I said, "Why, you can tell them just what has happened here—that the two boards have met, and their differences have been adjusted on the basis of compliance with the Church Manual, and whatever a Christian Scientist understands to be the right thing to do under such circumstances."

Q. Mr. Dickey, I want to remind you that a moment ago you stated what you all agreed to, and, on the motion of Mr. Whipple, that was stricken out, on the ground that it was not proper for you to state what people agreed to do— A. Yes, sir.

Q. Going back to that statement, what did anybody say on that subject of what the relation of the trustees and the directors to the Church Manual and the Deed of Trust should be on and after Feb. 3, 1919? A. Mr. Eustace spoke at length on that subject, and said that they had never intended to violate the Church Manual, and that they never would do so; that, as Christian Scientists, they felt that that could be worked out in conjunction with the Deed of Trust without a single discord.

Q. Did you state fully the substance of all that Mr. Eustace said? A. I think that that is the substance. And also to comply and conform to the form of Church government established by Mrs. Eddy. Those two points were made very specific.

Q. Now, how is the form of Church—

Mr. Whipple—That, if Your Honor please, I would like to have stricken out. That is not part of the conversation.

The Master—I took it to mean that they were made specific, by Mr. Eustace in what he said. If that is wrong, I suppose that it should be stricken out.

Q. What did any of the trustees say about the form of Church government as established by Mrs. Eddy? A. Mr. Ogden agreed—

Q. Don't say he "agreed." A. I beg your pardon, sir. Mr. Ogden stated that that was his understanding of our arrangement, and that he would be glad to comply with that. Mr. Rowlands also made the same statement.

Q. What I am trying to get at is this, Mr. Dickey: Did anybody on that occasion and in that conversation use the phrase "the plan of Church government as established by Mrs. Eddy"? A. Why, yes, that phrase, and they said that they accepted it.

Q. Wait a minute. What did you say to that, that is, the plan of Church government as established by Mrs. Eddy? Please state what you said, Mr. Dickey? A. I said that it must be understood that the trustees not only agreed to carry out the specific terms of the Church Manual, but that they also shall uphold and sustain Mrs.

Eddy's form of Church government as set forth in the Manual.

Q. Now, in response to that, what did any trustee say? Please state in substance what was said. A. Mr. Rowlands stated that they never intended to do anything short of that, that that would be agreeable to him. Mr. Eustace said that that would be satisfactory to him, and that he would comply with it. Mr. Ogden also made the same statement.

Q. Now, was anything else said on that occasion which you desire to add to your testimony? A. Well, we talked—yes, Mr. —

Mr. Krauthoff—Excuse me, if Your Honor please, but—

The Master—I had hoped that we might be able to complete the account of this conversation before the adjournment.

Mr. Krauthoff—All right. Go ahead, Mr. Dickey.

The Witness—Mr. Rowlands said, "Now, that everything is adjusted, why can't you gentlemen come over and take luncheon with us?"—No; I beg your pardon; that was at the end, after we had gone away. I think that I have told all that occurred, in substance. Of course the conversation lasted perhaps for an hour—

The Master—Then I think you may leave out the invitation to luncheon, that, it is said, did not take place at the conference.

Mr. Krauthoff—If Your Honor please, I would not feel that it would be just to Mr. Rowlands in view of what he did on that occasion if I acceded to the suggestion. I would like to have that statement stand.

The Master—It might be proper to let it stand, except that the witness now recalls his statement, and says that that was something that followed the conversation that he testified to.

Mr. Krauthoff—Yes, that followed. That is all on that, then.

The Master—Shall we stop here until tomorrow morning at 10 o'clock?

Mr. Krauthoff—That will be agreeable to us.

[Adjourned to 10 o'clock a. m., Tuesday, July 22, 1919.]

July 22, 1919

## NINETEENTH DAY

Supreme Judicial Court Room  
Boston, Massachusetts, July 22, 1919.

Mr. Withington—Mr. Whipple is delayed in the single justice session, but he asked that we not wait for him.

The Master—Mr. Krauthoff, Mr. Whipple says not to wait for him. He is in a session of the Supreme Court here. You may proceed. He requests us not to wait for him.

Adam H. Dickey, Resumed

Q. (By Mr. Krauthoff.) Mr. Dickey, your attention has been called to the

testimony of Mr. Watts with respect to his visit on Jan. 27, 1919, to the Board of Directors at which Mr. Watts read from the Bible, and in which the expression was used with respect to the publishing house becoming "an empty shell." A. Yes, sir.

Q. Have you anything to add to the testimony of Mr. Watts on that subject, or anything in conflict with it?

The Master—You do not quite mean that, do you—"add to Mr. Watts' testimony"? How could he do that?

Q. I mean, what was the conversation on that occasion, Mr. Dickey, between Mr. Watts and the trustees? A. When Mr. Watts came at our request to that meeting one of the members said to him, "Now, Mr. Watts, we would like to know from you as our appointee just what your position is in regard to this controversy between the trustees and the directors." And as nearly as I can recall, Mr. Watts said, "Why, I can't take any sides on that question; my purpose and object is to be the manager of The Christian Science Publishing Society, and as such I feel that I must be governed by my sense of Principle and right." One of the directors said, "Well, Mr. Watts, what would you do in case the board should dismiss a trustee?"

Mr. Streeter—Which director was that, please, Mr. Krauthoff?

The Witness—That might have been Mr. Merritt.

Q. Not what it might have been, but what is your best recollection of who it was? A. I can't definitely say. I know that the statement was made to Mr. Watts. I don't remember exactly who made the statement. But it was made by one of the directors.

Q. May I remind you that the full board was present on that occasion? A. Yes, sir.

Q. And are you able with that information to state which one it was? A. I cannot, Mr. Krauthoff.

Q. Go ahead.

The Master—Now, has he finished what he has to say about that conversation?

Mr. Krauthoff—No, he has not. Mr. Streeter—

The Master—Let him complete it.

Mr. Krauthoff—General Streeter asked a question.

Q. Will you go ahead, Mr. Dickey? A. Mr. Watts was asked what he would do, what action he would take if one of the trustees were dismissed, and he said, "Well, I just cannot tell; I would have to know what the conditions were and for what reason he would be dismissed." And I think—yes, it was Mr. Dittmore that said to him, "Mr. Watts, do you mean to say you would not uphold the action of this board in carrying out a requirement of the Church Manual?" And Mr. Watts said, "I could only reiterate that I would have to be governed by Principle." He asked him what right he would have as an appointee of the board to do anything else than

accept the view of the board as given in the Church Manual and in the Deed of Trust. Mr. Watts replied that as a thinking man he would have to take that under consideration for himself. Mr. Dittmore then proceeded to talk to Mr. Watts along this line—

The Master—No, no; what he said.

The Witness—He said, "Mr. Watts, I suppose you know what would happen if the trustees should make any definite attempt to separate themselves from the Church; do you suppose for one moment that the field in Christian Science would tolerate anything of that kind from the trustees?" And Mr. Watts said, "I do not think they would." Mr. Dittmore said, "Can't you see the inevitable consequences of such an action; if this Church is to publish the literature of this movement and the Publishing Society undertakes to take away and usurp the right of the directors to publish the literature of the Church, that the business would fall off and that the field would cease to support literature that did not emanate from The Mother Church; can't you see that the inevitable result of that would be that the publishing house would be left an empty shell?"

Q. Is that all, Mr. Dickey? A. There was more said, of course, Mr. Krauthoff, but I just can't recall everything that was said.

Q. Was Mr. Watts asked on that occasion— A. I asked Mr. Watts—I said, "Mr. Watts, are you representing the Publishing Society in a legal way?" He said, "No, sir, I am not." I said, "I have heard that you were so doing." He said, "I am not representing them in a legal way at all."

Q. And then Mr. Watts read from the Bible, as he testified? A. Yes, he did.

Q. Was any question then asked with respect to the Bible reading? A. Mr. Rathvon asked him something about what he had read, but I don't recall just what his question was.

Q. Then the next incident was the afternoon of Feb. 1, 1919, at which the board was advised orally of the conference between counsel? A. Yes, sir.

[At this point Mr. Whipple arrived.]

Mr. Krauthoff—If Your Honor please, now that Mr. Whipple has arrived, on yesterday some request was made for some reasons which the directors are thought to have put in writing with respect to the dismissal of these trustees. My research of that is not entirely complete and I will be able to report further at 2 o'clock this afternoon.

Mr. Whipple—You remember, also, Mr. Krauthoff, that I asked for the production of certain letters, or a letter which was testified to by the witness as having been sent to him in Savannah, which it alleged to have been the cause of a very marked change of attitude between the time when he left, according to his testimony, and his suggestions that the

trustees be dismissed one by one, or subjected to Church discipline as soon as he got down there.

Mr. Krauthoff—Yes, sir.

Mr. Whipple—May I ask if you have found any of those letters?

Q. What was your statement, Mr. Dickey, about the letter which you received in the south advising you that the board had asked for the resignation of the trustees? A. I looked through my files, and I also asked Mr. Jarvis to look through his. I found nothing, and I understood that he had found nothing. So I stated yesterday that I thought it must have been a personal letter to me from one of the trustees which I have not retained.

Q. One of the trustees? A. I beg your pardon; one of the directors.

Mr. Whipple—Yes, I remember he made that statement, but I suggested then, and you thanked me for the suggestion as a helpful one, that he make inquiry among his fellow directors and see if he could not find, perchance, that some of them remembered about it and had a copy of it. Apparently that suggestion has been neglected.

Mr. Krauthoff—We have not interviewed the other directors, because we have been pretty busy interviewing ourselves.

Mr. Whipple—They seem to be pretty near to you, and perhaps since they are within the sound of our voices they may have looked it up to see whether they did find any such letter, or a copy of a letter, or remember about it. Perhaps they have been too busy to look it up.

Mr. Krauthoff—I will look into that, too, Mr. Whipple. Thank you.

Mr. Whipple—And perhaps without further prompting from you they will do it.

Mr. Krauthoff—May I inquire of Mr. Whipple as to which of the counsel for the plaintiffs added the pencil memoranda on the documents that I now show him (handing papers to Mr. Whipple).

Mr. Whipple—The instrument which you have handed me consists of two sheets. The words on each sheet, or the letters, O. K., C. E. H., S. L. W., S. H. S., on both sheets, the initials were written by Judge Hughes, by Mr. Strawn, and by myself. The legend "O. K.," I think, is in my own handwriting. At the bottom of each page is a penciling in the handwriting of Mr. Strawn.

On the first page of the memorandum there is an insertion after the words "By the Trustees" and before the words "as conclusive" of these words, "for the purpose of publication." Those penciled words are in the handwriting of Mr. Strawn.

At the bottom of the first page are these words, in parentheses: "(This work has heretofore been done by the trustees at the request of the Board of Directors and by their authority, and not by the trustees under the Deed of Trust)."

On the second page there are the

words inserted between the words "nurses" and "to be recognized," as follows: "who are members of The Mother Church." Those are inserted in Mr. Strawn's handwriting. And then at the bottom of this page is written in parentheses, "(This work has heretofore been done by the trustees at the request of the Board of Directors and by their authority, and not by the trustees under the Deed of Trust)."

With your permission, I will hand that to His Honor so that he can see what has been done.

Mr. Krauthoff—For the information of the Court I may state that these two sheets of paper are the memoranda of the conference held between the counsel on Feb. 1, 1919, at which Messrs. Hughes, Whipple, and Strawn represented the trustees, and Messrs. Bates, Abbott, Smith, and Krauthoff represented the directors. The memoranda is set out in full in Exhibit No. 23, being the letter from John L. Bates and others to the counsel for the trustees, under date of Feb. 6, 1919.

We desire at this time to have the documents marked for identification.

Mr. Whipple—These are not memoranda of the conference; they are memoranda which were drawn up as the result of the conference.

Mr. Krauthoff—Yes, memoranda as the result of the conference.

The Master—Whose memoranda? Who made them?

Mr. Krauthoff—Why, the counsel. They are made by the counsel.

The Master—Counsel for which side?

Mr. Krauthoff—Both sides.

The Master—Oh, they are agreed memoranda by counsel?

Mr. Krauthoff—Yes. The way it was done was that we, the counsel for the directors, initialed one set and gave them to the counsel for the trustees, and the counsel for the trustees initialed the other set and gave them to us. These are the set which the counsel for the trustees initialed and gave to the counsel for the directors.

The Master—Thank you.

Mr. Whipple—I think possibly it would be a little clearer reply to Your Honor's question to say that after having oral discussion in which certain points of agreement were reached, counsel for the directors retired and attempted to draft, and the typewritten part of these two sheets is the work which was brought back to counsel for the trustees as the handiwork of counsel for the directors. The amendments were written in by Mr. Strawn after the rough sheets were brought back, and the papers were then O. K.'d by the initials of the respective counsel, after having been read.

Mr. Streeter—Now, Mr. Krauthoff, you say this memorandum has been printed. What exhibit is it?

Mr. Krauthoff—It is set out in full in Exhibit 24 on page 30. They have

not been printed as separate and distinct memoranda. They are set out in full in the letter of John L. Bates and others of Feb. 6, 1919.

Mr. Streeter—If Your Honor please, these memoranda are important, and they stand by themselves, and I would prefer to have them printed in connection with this Feb. 3 record.

Mr. Krauthoff—That is agreeable to us. We now offer both of them in evidence.

The Master—What is the object of printing them over again if they have been printed once?

Mr. Streeter—Well, simply for convenience of reference.

Mr. Krauthoff—It is thought, if Your Honor please, that, in view of the statement by Mr. Whipple as to what part of it has been placed therein in lead pencil, and by whom, it would be more convenient if the statement of Mr. Whipple and the document be placed in juxtaposition rather than requiring us to go back to an earlier stage in the record for comparison.

The Master—If that is the desire of all counsel, I have no objection, but I do not see the necessity myself.

Mr. Krauthoff—They are not very long.

The Master—You are going to have them marked, at any rate, for identification.

Mr. Krauthoff—I offer them in evidence, if Your Honor please, as exhibits.

The Master—Can you print them with all these lead pencil memoranda? The typewritten contents, you have had printed once already.

Mr. Krauthoff—Yes.

The Master—The important thing added by the testimony this morning is the memoranda in pencil upon them and the source of those memoranda.

Mr. Krauthoff—Yes.

The Master—Are you going to reproduce those in print?

Mr. Bates—Your Honor, the additions in pencil there are also a part of what is in print already; in other words, it is in print exactly as it is there, with the exception of the minutes which indicate the O. K.'ing by counsel through their initials. The reason it is offered now is to call Your Honor's attention to the fact that those additions were made by counsel, those additions in regard to this work having been done previously at the request of counsel.

The Master—It seems to me that what you want to do, whether you print it or do not print it, is to have them identified.

Mr. Krauthoff—As an exhibit, both of them.

The Master—They are really one document.

Mr. Krauthoff—Mr. Whipple spoke of the first paper and the second paper.

Mr. Whipple—The first sheet and the second sheet, I think I said.

Mr. Krauthoff—Oh, all right. They can be made one document, then; and

I was going to suggest with regard to the printing, if it is agreeable to all concerned, that the lead pencil interlineations be printed entirely in capital letters, and that will show what is interlined in pencil.

Mr. Whipple—I see no reason for that.

Mr. Bates—There is no reason for that. Mr. Whipple's statement explains what the interlineations are.

The Master—You had better attach them in some way and mark the two together as exhibits, for identification.

[The first page of the memoranda referred to is marked Exhibit 678. R. H. J.]

On the top of the page, written in ink, is, "(ORIGINAL)."

Stamped at the top of the page, near the middle, in red ink, are the words, "COPIES SENT TO DIRECTORS FEB. 3, 1919," followed by the words written in ink, "& to Judge Smith and Atty. Krauthoff," and then the stamped word and figures "FEB. 4, 1919."

In the upper right-hand corner is a stamp in red ink "THE CHRISTIAN SCIENCE BOARD OF DIRECTORS, FEB. 3, 1919," with a hand on a dial apparently pointing to 6:45.

On the upper left-hand corner, written in pencil, is the following: "O. K. C. E. H. S. L. W. S. H. S."

The typewritten portion of the paper is as follows:

"It is understood by The Christian Science Board of Directors of The First Church of Christ, Scientist, in Boston, Massachusetts, and the Board of Trustees of The Christian Science Publishing Society as follows:

"(1) The responsibility for all decisions in regard to recognizing branches and societies of The Mother Church rests with The Christian Science Board of Directors. To this end, all preliminary correspondence on the subject named shall be conducted by the directors and not by the trustees. When a branch church or society of The Mother Church has been recognized as such by the directors, upon proper application made in accordance with the rules of The Christian Science Publishing Society, the services of such a church or society may be advertised in The Christian Science Journal. The recognition by the directors of the church or society as a branch of The Mother Church shall be accepted by the trustees" (this is followed by a caret in pencil, and written above it in pencil are the words "for the purposes of publication") "as conclusive evidence of the fact that such branch church or society has been properly organized as a branch church or society. The card of a church or society not so recognized by the directors shall not be inserted in the Journal. As a condition precedent to recognition or its continuance, churches or societies shall be required to insert and have continued a card in the Journal."

The following is written in pencil at the foot of the page:

"(This work has heretofore been done by the trustees at the request of the Board of Directors and by their authority and not by the trustees under the Deed of Trust)."

The second page is stamped in the upper righthand corner, "The Christian Science Board of Directors, Feb. 3, 1919," with a hand on a dial apparently pointing to 6:24.

On the upper lefthand corner, written in pencil, is the following: "O. K. C. E. H. S. L. W. S. H. S."

The typewritten portion of the paper is as follows:

"(2) The responsibility for the determination of the eligibility of practitioners and nurses" (this is followed by a caret in pencil, and written above it in pencil are the words, "who are members of The Mother Church") "to be recognized as such rests with The Christian Science Board of Directors. To this end, all preliminary correspondence on the subject named shall be conducted by the directors and not by the trustees. When the directors have determined that a practitioner or nurse be recognized as such, upon proper application made in accordance with the rules of The Christian Science Publishing Society, such a practitioner or nurse may have a card inserted in the Journal. The determination by the directors of such recognition shall be accepted by the trustees as conclusive evidence of the eligibility of such practitioner or nurse to be advertised as such. The card of a practitioner or nurse not so recognized by the directors shall not be inserted in the Journal."

The following is written in pencil at the foot of the page:

"(This work has heretofore been done by the trustees at the request of the Board of Directors and by their authority and not by the trustees under the Deed of Trust)."

Q. Coming down to Feb. 5, 1919, two days after this first conference with the trustees, do you recall the circumstance of the letter of Judge Smith of Feb. 5, 1919, which has been read in evidence as Exhibit No. 25? A. I do.

Q. Being read to the Board of Directors? A. Yes, sir.

Mr. Whipple—What page is that?

Mr. Krauthoff—It is on printed page 34 of the record, page 34 of the printed record.

Mr. Whipple—Thank you.

Q. Did you see Mr. Eustace after you received that letter? A. Yes, sir. I asked Mr. Eustace to come to my house about two or three days after that meeting with the directors where that letter of Judge Smith was read and copies given to the directors.

Q. Mr. Dickey, let me call your attention to this: The trustees' record shows that Mr. Eustace reported on the 7th of February, two days after the 5th. Are you able to fix the day any more closely than that? A. I

think perhaps the 6th would be the right date.

Q. Did Mr. Eustace come to your house? A. He did.

Q. About what time of day? A. About 5 o'clock in the evening.

Q. At that time you were living in Brookline? A. At 1101 Beacon Street.

Q. Now, just state what the conversation was on that occasion between you and Mr. Eustace.

Mr. Whipple—Just a moment. That I object to. I see no ground on which it is admissible. It is quite true that heretofore I have not pressed the objection with reference to these private conversations. They are not official in any way, not official communications. Here is an attempt to put in evidence with regard to a private conversation between two individuals. If it is for the purpose of contradicting Mr. Eustace in any way, it might be admissible, provided the contradiction was of a material point. But I understand that it apparently is offered for another purpose, and we object to it.

Mr. Krauthoff — If Your Honor please, this is a conversation to which Mr. Eustace has testified, and is the basis of the claim which Mr. Whipple has made on several occasions, that within 48 hours after the adjustment of Feb. 3, 1919, the directors broke it, and Mr. Eustace characterized the incident of this letter being handed him as the most dishonorable thing that has ever happened in the history of the world; and we offer to prove the circumstances under which Mr. Dickey handed this letter, which the plaintiffs have introduced in evidence, to Mr. Eustace.

The Master — Mr. Krauthoff says that this conversation has been testified to by Mr. Eustace.

Mr. Whipple—That is, it is in contradiction of that testimony, is that why you offer it?

Mr. Krauthoff—We are going to contradict Mr. Eustace's statement, and we offer the circumstances in connection with it.

Mr. Whipple—Is this evidence offered for the purpose of contradiction?

Mr. Krauthoff—Yes.

Mr. Whipple—That is, to contradict Mr. Eustace in regard to this?

Mr. Krauthoff—Yes.

Mr. Whipple—Very well.

Q. State what happened on the occasion that you gave Mr. Eustace that letter, and how you happened to give it to him? A. I said to Mr. Eustace. "We are"—"we" meaning the Board of Directors—"are receiving a great many letters from Christian Scientists in the field who are making demands on us to know why we have not carried out the terms of the Manual and dismissed the trustees of the Publishing Society." I said, "This seems to be something that we have no control over, and inasmuch as we can only report to them that we have had a verbal agreement with you, and



that we are proceeding along the lines of your agreement to carry out the terms of the Deed of Trust and the Manual of The Mother Church in perfect harmony, it seems necessary that we should have something definite that we can show or refer to as a signed agreement. Now," I said, "we had a talk with our counsel, Judge Smith, the other day, and he submitted to us a letter which I would like to read to you." And Mr. Eustace said, "Now, Mr. Dickey, there is one thing I want to say about your counsel. If you would drop Judge Smith and just keep him out of this question altogether, we would get along a whole lot better." "Well," I said, "we can't very well do that. Judge Smith has been very valuable to us on a great many occasions, and we consider his advice in regard to Church matters as particularly valuable to us. But I would like to read this letter to you," which I did. Then he asked me if he might take it. I said, "Yes, I would be glad to let you have it." So I gave it to him. That was the letter that Mr. Eustace referred to in his testimony as wondering if it were confidential; and there was nothing in my thought about its being confidential.

Q. That is, the giving of it to Mr. Eustace was not regarded as confidential? A. Yes. I asked Mr. Eustace—I said, "Now, won't you men take this under consideration and do something to settle this question and get it in a more definite shape?" "Well," he said, "we will think about it."

Q. Was there anything said on that occasion by Mr. Eustace with respect to its being a dishonorable act on your part in giving this letter to him, or having this letter? A. Nothing whatever; nothing at all.

Q. Was there any incident of an unpleasant nature in that conference at all? A. No unpleasantness of any kind at all.

Q. Was that letter given with any statement on your part, or any intention on your part, of breaking any arrangement or any agreement that had theretofore been made with the trustees? A. No, sir.

Mr. Whipple—Just a moment. If it were a breach of the agreement the intention is of no consequence, and it is perfectly plain on the record whether it was a breach of agreement or not.

The Master—Shall we not have to judge of that from the conversation as testified to?

Mr. Krauthoff—I guess that that is right, if Your Honor please, except that I understood generally that whenever anybody was charged with having done a particular thing, he had a right to give his own intention, and then the Court would determine what it was; but he has a right to state whether he intended to break any agreement, whether he did it for that purpose, or whether he did it merely

to evidence an agreement already made.

Mr. Whipple — The memorandum that you put in this morning shows conclusively what the agreement was, and as to the matter agreed in there, so that we have their contention, and it so states.

Mr. Krauthoff—But the incident of Feb. 1, 1919, to which Mr. Whipple has just referred, was followed by the conference of the parties themselves on Feb. 3, 1919, at which, as we understand it, they came to a complete understanding, and there was nothing left open.

Mr. Whipple—You have a very strange understanding.

Mr. Krauthoff—And now we are charged, after having come to a complete understanding on Feb. 3, 1919, with having done a dishonorable thing in giving Mr. Eustace this letter of Feb. 6, 1919, and we are desirous of proving the intention of Mr. Dickey in doing so, whether he had any thought of breaking any agreement or doing anything dishonorable. Of course, it not being conclusive, the Court has to determine it ultimately, but where a person's actions are colored by adjectives, he has a right to show the nature and intention of his act, submitting, of course, to the judgment of the Court whether his statement is true or not.

The Master—Is your objection insisted upon?

Mr. Whipple—Yes, Your Honor.

The Master—I think I shall let you ask him, subject to objection. On the whole, that will be the better course, rather than to exclude it peremptorily.

Q. Was there any intention on your part, in submitting this letter to Mr. Eustace of date Feb. 5, 1919, of breaking any agreement that you had theretofore made as directors with the trustees, or doing anything that you regarded as dishonorable? A. None whatever.

Q. And what was the purpose of showing the letter to Mr. Eustace?

The Master—That is going—

A. My purpose was to induce him—

Mr. Whipple—I pray Your Honor's judgment.

The Witness—I beg your pardon.

The Master—I think that that is going a little further, is it not?

The Witness—I would like to add this, that occurred in the conversation. I said, "Well, Mr. Eustace, I have known you a long time, and I can't believe that it is your intention or your purpose, to do anything that would affect our Church." And he said, "Why, Mr. Dickey, I wouldn't do a thing in the world to affect our Church, and you may rest assured of this, that there will be no separation between the Publishing Society and the Church, and nothing done on our part that would tend to such a consummation." "Well," I said, "thank God for that; I am glad to know it."

Q. The next incident to which I

desire to call your attention, Mr. Dickey, is the conference of Feb. 10, 1919, at which, according to the records of the board, Messrs. Dittmore, Dickey, Merritt, and Rathvon met with the trustees, and at which was presented this short memorandum which is set out in the record of the board, of Feb. 10, 1919, and which has heretofore been read in evidence. Now, I haven't yesterday's record before me. It is in the record of Feb. 10. Do you recall that meeting, Mr. Dickey? A. Yes, I do. That was a meeting at which Mr. Dittmore was present.

Q. Was that memorandum presented to the trustees for their signature on that occasion? A. It was.

Q. And with what result? A. They declined to—

Q. I beg your pardon. What did they say? It is my fault. A. Mr. Rowlands said, "We will not sign anything. If we can't agree to go along and work this thing out through demonstration on the lines already declared, we will sign nothing."

Q. Do you recall on that occasion Mr. Rathvon reading the letter that has been introduced in evidence? A. I do.

Mr. Krauthoff—May I inquire at this time whether Mr. Rathvon's memorandum of Feb. 10, 1919, was introduced in evidence? (Consulting with Mr. Bates.) That has been referred to, but not yet introduced.

Q. What else occurred on that occasion in that conversation? A. Well, the interview lasted, perhaps, for an hour and a number of questions were put to the trustees and they made a number of replies. I cannot at this time state specifically just what occurred, but if I may be allowed to state the substance of the whole interview—

Q. Go ahead, Mr. Dickey, and state it. A. I would like to. It was to the effect—

Q. No, you will have to state the substance of what anybody said, not the substance of the interview. A. Well, I don't recall just what each individual stated, Mr. Krauthoff.

Q. Was anything said on that occasion with respect to there being one head to the Christian Science Church? A. Yes. I made the statement that "You surely would not accuse Mrs. Eddy of starting a movement with two heads," and Mr. Eustace said, "No, nothing of the kind, but she did start a movement with two bodies of trustees, one of which she intended to balance the other."

Q. What did you then say with respect to that? A. Why, I said that such a thing would be an impossibility, as to have a church with two organizations with equal power; and Mr. Eustace's contention was that the trustees were endowed with equal power to the directors.

Mr. Whipple—That I move be stricken out, if Your Honor please—

treated as a contention by the witness.

Q. What did Mr. Eustace say, in words? A. His statement was what I have said.

Q. What, if anything, did Mr. Eustace say as to the head of the Church being Mrs. Eddy's writings? A. Mr. Eustace said that he would have to put his interpretation on the Manual for himself; that he could not allow the directors to interpret it. "But," I said, "Mr. Eustace, any document must have some person or somebody to interpret or enforce it." I said, "The Trust Deed that you are operating under cannot operate as a written instrument of itself without somebody to act as trustees and enforce the agreement or the articles contained therein." And I said, "In the same way there has to be a responsible head to the Christian Science Church, and Mrs. Eddy has made that responsible head the Board of Directors. Now," I said, "we don't like to claim power and we are not seeking power, but it just so happens that that is her form of church government, and our sole duty is to accept that responsibility and carry it out as long as we are directors."

Q. Did you on that occasion refer to any conversation that you had with Mrs. Eddy personally on that subject? A. Well, I don't know whether it was on that occasion, but I did, in talks I had with the trustees, tell them that Mrs. Eddy had stated to me that—

Mr. Whipple—I pray Your Honor's judgment.

Mr. Krauthoff—I cannot see the point of the objection to what Mrs. Eddy has said to Mr. Dickey and which he repeated to the trustees.

Mr. Whipple—I understood him to say that he could not say certainly that he did repeat it to the trustees.

The Witness—I did repeat it, but I wasn't sure it was at that meeting, Mr. Whipple. We had a number of meetings following each other very closely, and I had several interviews, three of them myself, with the trustees in their own office, and at all of these times I was trying to show them what the—

Q. One minute. A. Beg pardon.

Q. Not what you were trying to show them. A. All right.

Q. What you said will have to speak for itself. A. Well, I told them that Mrs. Eddy had told me that every organization of any kind, a government or an army or a commercial enterprise or a church, must have one responsible head; and she said that in the case of her Church she had put and was continually putting the responsibility of church government on the directors. I told them that that was her custom; that when anything came up for her decision from the field or in connection with her Church, she would usually refer it to the directors to see how they would handle it.

Q. And these statements of Mrs. Eddy that you have testified you

made to the trustees—were they made to you by Mrs. Eddy?

A. They were.

Mr. Whipple—Just a moment. That I object to.

Mr. Krauthoff—If Your Honor please—

The Master. You would not claim, would you, that statements made by Mrs. Eddy to this witness alone, not going any further, could be material in this case?

Mr. Krauthoff—Well, we think so. They were made to him at a time when he was her secretary, with respect to the discharge of his duties as such, with respect to the administration of the Church of which she was the Leader, of the religion of which she was the Discoverer and the Founder, and they stand as evidences of what Mrs. Eddy thought was for the good of the promotion and extension of the religion of Christian Science.

Mr. Whipple—If Your Honor please, there are perhaps two aspects of the question: the legal aspect, and under that it seems to me there can be no question that this is entirely hearsay and cannot be reproduced. In the second place, looking at it from the Church's point of view, as I understand what is proposed, it is a flagrant violation of what Mrs. Eddy herself has said with regard to quoting her; because she provided in the Manual, in Section 8 of Article XXII, "A strictly private communication from the Pastor Emeritus to a member of her Church shall not be made public without her written consent." And throughout, in order that just this thing should not be done, she insisted that she should not be quoted except in things that she put out over her own signature. That is beside the mark as far as this case is concerned, perhaps, but I would like to call it to the attention of some of these gentlemen who are speaking so zealously in behalf of abiding by Mrs. Eddy's words and directions.

Mr. Krauthoff—Now, with respect to that, if Your Honor please, here is not a private communication as that word is used in the Manual. In addition, the bill tenders the issue that these directors relied upon certain alleged expressions of Mrs. Eddy in their conversation with the trustees, and we have the right—

Mr. Whipple—Written, sir.

Mr. Krauthoff—Oh, I beg pardon.

Mr. Whipple—Written.

Mr. Krauthoff—The bill does not say written expressions; it says certain alleged expressions by Mrs. Eddy, and we have a right to show that we did make these statements to these trustees, and that Mrs. Eddy did make them to Mr. Dickey. They also, if Your Honor please, plead her general intent to create a movement which would be divided in two parts, and which would have a Publishing Society separate and distinct from The Mother Church. And over and above all that, if Your Honor please,

is the still greater question that we are dealing with a great historical religious character, Mary Baker Eddy, who founded this trust for the promotion and extension of the religion of Christian Science, not for the purpose of running a printing shop. And every loyal follower of Mary Baker Eddy, every one who is obedient to her teachings, takes her statements with respect to the conduct of that Publishing Society as being a statement of what she conceived to be for the promotion and extension of the religion of Christian Science, which is the dominant purpose of this trust. For people who come into court saying that they are loyal to everything that Mrs. Eddy said and did, and then object to Mr. Dickey, her secretary, testifying to her statements to him upon an official matter, at a time when he was in her service and acting as her secretary, is not to my mind a very high evidence of loyalty.

The Master—I am unable to see my way to admit as evidence in the case statements made in private by Mrs. Eddy to her secretary, and never officially communicated to anyone else.

Mr. Krauthoff—Well, we offer them as evidence of her intention and her concept of the plan for the promotion and extension of Christian Science, as evidence of what is for the good of the promotion and extension of the religion of Christian Science. We offer them not as private conversations; we offer them as statements—

Mr. Whipple—If you will pardon me, Mr. Krauthoff, it is not the habit in our courts, without permission of the Court, after an opinion has been given or decision rendered to argue the case—to argue the point.

The Master—Well, I am very desirous not to cut Mr. Krauthoff off from an opportunity to say all he wants to say. I thought I had heard all he had to say but I may have been in error.

Mr. Krauthoff—I am sorry, if Your Honor please, that I may be trespassing upon Mr. Whipple's thought of propriety, but this to me is of such vital import that I will ask the privilege of the Court to read a statement from the bill, the eighth paragraph:

"During the month of October last past, the defendants, Dickey, Neal, Merritt, Rathvon, and Dittmore made formal demand upon the trustees that thereafter the trustees should in general no longer conduct the business of The Christian Science Publishing Society as they had theretofore conducted said business and performed their duties as declared and defined by the provisions of the trust instrument; but that they, the trustees, thereafter should act in all matters concerning the administration of the trust in conformity with the directions of said Board of Directors in accordance with the interpretation by said Board of Directors of certain alleged wishes of Mrs. Eddy, the Donor, alleged by said directors to have been expressed both in the Manual of The

Mother Church and otherwise, on occasions long after the date of the Deed of Trust, although these alleged expressions and statements are admittedly inconsistent with the terms of the Deed of Trust and in derogation of the powers and duties of the trustees as therein declared and defined."

It also pleads, in other parts of the bill, that after Mrs. Eddy's death, these directors took up certain things and did certain things which they never did in her lifetime, all in pursuance of a conspiracy on their part to extend their power into the jurisdiction from which Mrs. Eddy had excluded them. And in contradiction of that allegation of the bill we offer to prove by this witness that he never made any statements to these trustees about any wish of Mrs. Eddy that was not communicated by Mrs. Eddy in her lifetime, or which is not found in her printed works.

The Master—Having heard Mr. Krauthoff, after my ruling, I ought to give you (addressing Mr. Whipple) an opportunity to reply to him, I suppose, if you desire.

Mr. Whipple—It does not seem to me that Mr. Krauthoff has called to Your Honor's attention anything that is new. What he has read refers to what the witness has just been testifying about; that he set himself up, with his associates, as an ecclesiastical tribunal, whose interpretation of the Manual shall be final, and that no one hereafter is to be permitted to interpret the Manual; and he has asserted that this morning, and that his interpretation of the Manual shall override the provisions of the Trust Deed.

The Master—I am afraid I shall have to adhere to my ruling.

Mr. Krauthoff—And to which we reserve an exception.

Q. Was any question asked of Mr. Eustace on that occasion as to any conflict that might arise between the Manual and the Deed of Trust, and what Mr. Eustace would do in the event that such a conflict arose that you now remember? A. I pressed that question with Mr. Eustace, and asked him what he would do in the event that such a thing should arise as a conflict between the Manual and the Deed of Trust; and he said such a thing as a conflict between the Manual and the Deed of Trust could not occur, but "We would have to reserve the right to interpret the Manual according to our own conception of the Manual." "Well," I said, "there is only one way to interpret the Manual. It is written in very plain English, and Mrs. Eddy's words are not obscure at all. It is an easy thing for anybody to interpret the Manual according to the way in which it is written." Mr. Eustace said that he considered it his right to put his own interpretation, which was a metaphysical one, on the Church Manual.

Q. Was anything said on that occasion about the Deed of Trust hav-

ing been published? A. Yes, there was. What meeting is this, again—what date?

Q. This is the 10th of February, the meeting at which Mr. Dittmore was present. A. No, I think it was a later meeting, when I asked Mr. Eustace some questions about publishing the Deed of Trust.

Q. Was anything said about your disappointment?

Mr. Whipple—About what? I am sorry I cannot—

A. I do not recall anything at this time. I remember at a subsequent meeting I expressed my disappointment, in reply to a question from the trustees.

Q. Now, during the week of Feb. 10, 1919, was your attention called to a letter that Judge Smith prepared, about the 13th of February, that was to go over to the trustees, and which was thereafter revised and sent over? A. Yes.

Q. On Feb. 17, 1919, that being the next Monday, there does not seem to have been a conference between the directors and the trustees. I am not asking you now as to what prevented it, but, as we are passing, that was not the fault of the trustees, I believe? A. No, it was not. Their understanding was that they were to have a conference with us every Monday.

Mr. Krauthoff—We have a letter of Mr. Ogden of Feb. 15, 1919, which we desire to introduce at this time on account of the chronology of the case. I do not care to read the whole letter, most of it is personal.

Mr. Whipple—How is it material?

Mr. Krauthoff—But I will hand Mr. Whipple the letter with an indication of how much of it I desire to offer.

Mr. Whipple—How is it material?

Mr. Krauthoff—If you will read it—

Mr. Whipple—The course of conduct, is it?

Mr. Krauthoff—No. If you will read it you will see the materiality of it. (Handing letter to Mr. Whipple.) It is a statement by one of the plaintiffs on February 15, 1919, as to the then existing state of things.

The Master—Mr. Ogden, I understand?

Mr. Krauthoff—Mr. Ogden, one of the plaintiffs.

Mr. Whipple—I cannot see that it is material, even after having had your direction to a particular point.

Mr. Thompson—We have not any view one way or the other on that.

Mr. Krauthoff—We offer the extract from the letter of Mr. Ogden of date February— I beg your pardon; does Your Honor wish to see it?

The Master—It is objected to, I understand.

Mr. Whipple—It does not seem to me it is admissible at all.

The Master—If my recollection is correct, Mr. Whipple when closing his case said that he did not propose to call the other trustees whom he did not then call as a witness, Mr. Ogden

being the person to whom he then referred, but that the counsel for the directors were at liberty to cross-examine Mr. Ogden, who was then present, if they desired.

Mr. Krauthoff—Yes.

The Master—Now, if you wanted to put in anything from Mr. Ogden then would have been the strictly proper place, wouldn't it?

Mr. Krauthoff—I understood a statement of a party to a case was admissible in evidence without asking the party whether he made it.

The Master—I do not know but that may be true.

Mr. Whipple—It does not seem that the thing is material at all. It is Mr. Ogden's statement to an outsider as to how they were getting along in this acute crisis. I must confess that it does not amount to much one way or the other. And if you will submit it to His Honor and he thinks it should go into the record, I shall make no objection about it. (Paper handed to master.)

The Master—The paragraph you have marked in red pencil?

Mr. Krauthoff—Red ink, I think it is.

The Master—I think I shall admit it subject to objection.

Mr. Whipple—I shall take no exception. I waive the objection.

Mr. Krauthoff—This is on the letter-head of David B. Ogden, C. S. B., under date of Feb. 15, 1919, to Capt. William K. Riddle of the United States Navy:

"You will be glad to know that, so far as any situation is concerned which affects The Mother Church and the publishing house, all is working together harmoniously for the good of our well loved Christian Science movement. A question of viewpoint has been under consideration by the Board of Directors and Board of Trustees for some little time past, and while these views have been quite decided, there is, as I have said, now a harmonious working out of all questions, and I know you will be glad to have this information."

[That portion of letter from David B. Ogden to Capt. William K. Riddle, Feb. 15, 1919, as read by Mr. Krauthoff, is marked Exhibit 679.]

Q. Referring to Monday, Feb. 17, 1919, at which as you have stated the trustees, through no fault of theirs, were not present—did you visit the trustees that afternoon? A. I did.

Q. Which one of them did you see, Mr. Dickey—

The Master—We are now on February—

Mr. Krauthoff—17, 1919.

A. (Continued.) I found Mr. Eustace and Mr. Ogden there. Mr. Rowlands was not in the city.

Q. Now, state what you said to Mr. Eustace and Mr. Ogden on that occasion. This was in the publishing house.

Mr. Whipple—Does Your Honor think this is admissible?

A. This was in their office—in the

trustees' office in the publishing house.

Mr. Whipple—I am trying purely for the sake of abbreviating this record, if possible, to refrain from going into all these conversations, because it has seemed to me that the issues were sufficiently defined. It may involve a good deal of examination on the other side, and all for no good purpose. And therefore I object to it. It was not an official communication at all; it is talk between these parties about this subject matter, but not in contradiction of anything that has been said by either Mr. Eustace or Mr. Ogden, as I understand it.

The Master—Without knowing what statements were made in the conversation I do not see how I can rule that none of them would by any chance be material. Mr. Eustace has been a witness. It is possible that statements made by Mr. Eustace might have some bearing.

Mr. Whipple—Well, as I have said, I make the objection purely in the interest of saving time and publishing space.

The Master—You may go on.

Q. Go ahead, Mr. Dickey, and state what you said and what was said by Mr. Ogden or Mr. Eustace, always saying who said it. A. Well, I said, "I am here again to see if I can't prevail upon you men to do something to end this controversy; we are getting continual reports about things that it is alleged the trustees are saying in the way of trying to establish the fact that Mrs. Eddy had created two boards, one of which should balance the other." And Mr. Eustace said, "That is exactly what she did." "Well," I said, "I was not aware that you had ever made that claim, but I cannot see how you can reconcile that with everything in her writings about the Christian Science Church being one organization and the Church Manual being a sacred document for the observance of every Christian Scientist." "Well," he said, "it is quite plain to see why she did it; she never intended the Board of Directors to set up a religious hierarchy, and for that reason she created the Board of Trustees and gave them power to prevent the directors from assuming a superiority in control of this movement, and she also gave the directors power to prevent the trustees of the Publishing Society from disobeying her requests with regard to their duties."

Q. Was the phrase "double check" or "balance" used? A. Yes.

Q. In what connection? A. I said, "This sounds like something I have heard about checks and balances with regard to the United States Government." And Mr. Ogden said, "Well, she did make one board a check on the other." I do not think, though, that he used the word "balance," but he did use the word "check." "Well," I said, "I do not think anybody could accuse Mrs. Eddy of creating a double-headed

movement." And Mr. Eustace made the remark that she did not create a double-headed movement, there was just one movement but two separate boards each having equal power.

The Master—Was that all?

Q. Was that all, Mr. Dickey? A. Well, I am not telling all that transpired, but that is all I can recall at this moment.

The Master—There is nothing further you desire to ask him about that?

Mr. Krauthoff—No.

The Master—Now, I will ask you, Mr. Krauthoff, if you think that anything has been really added by those statements? Were not the respective claims of the two parties already fully brought out?

Mr. Krauthoff—In one aspect of the case, yes. But we are charged here, if Your Honor please, by the plaintiffs with a lack of good faith. We are charged with demanding things that we had no right to demand. We are now endeavoring to prove everything we said to them on every occasion, with a view of showing exactly what it was we did and what it was we claimed of them, and what it was they said and did, all as leading up to their removal.

The Master—Unless something different from what has already appeared was said, to go over it again would be merely cumulative. It seems to me.

Mr. Krauthoff—And I do not recall in any previous testimony of Mr. Dickey's that this question of the double-headed movement was as fully and accurately spoken of as it was at this conference on Feb. 17, 1919. I am simply trying, if Your Honor please—

The Master—Is it anything more than the same thing in different words?

Mr. Krauthoff—Perhaps so. Being on trial as we are with respect to our good faith and our official conduct, we are endeavoring, if Your Honor please, to tell everything we said and did to these people, and having done that, of course, we have discharged our duty. If the Court feels that we are covering too much ground in that particular, of course—

The Master—Well, I submit it to you whether we have not got the respective claims of the two parties already fully stated?

Mr. Krauthoff—In the work I have done on it it simply unfolds itself from day to day, and the only way I have been able to work it out was by taking up the statements as they were made from day to day, and letting them speak for themselves.

The Master—Now, I suppose the same statements, in substance, were made over again on the next day, and on the next, and on the next. Do you add anything by having it all recited and repeated again and again?

Mr. Krauthoff—I think not, Your Honor, and I shall content myself hereafter by asking the general question if there was anything said on that occasion which had not been mentioned before.

The Master—I do not mean to direct you with any strictness about it; I only submit it to you whether anything is really added.

Mr. Krauthoff—Your Honor has been very desirous of getting out all the facts.

Q. Then, Mr. Dickey, after the meeting of Feb. 17, 1919, of which you have just spoken, did you tell the other directors of the visit? A. Yes, I did. The following day at a directors' meeting, I told them I had—

Mr. Krauthoff—I suppose what he told his directors is objected to, Mr. Whipple? I will be very glad—

Mr. Whipple—Well, it would be another repetition if he told it just as he has already told it, wouldn't it?

Mr. Krauthoff—That is not the way he told it.

Mr. Whipple—I beg your pardon?

Mr. Krauthoff—That is not the way he told it.

The Master—Well, you know what it is going to be, Mr. Krauthoff, and if you really think it adds anything, put it in.

Q. What did you tell your fellow directors as the result—not the details of your conference.

Mr. Whipple—That I object to—as to the result.

Mr. Krauthoff—I did not mean to say—

The Master—I do not think Mr. Krauthoff quite meant that. It is the substance of what passed, isn't it?

Q. What did you say to your fellow directors on the 18th of February as to the nature of your conference and as to the propriety of their going over to see the trustees? A. Well, I said—

Mr. Whipple—Just a moment. I can't quite see. If he told truthfully what had been said, we already have it in the record; if he did not tell it accurately at all, why do we need that? You do not want to stultify him.

Q. Did you relate everything that was said, or did you simply tell the general— A. I did not relate what was said, but I told them I had a very interesting interview with Mr. Ogden and Mr. Eustace, and I would advise the other members of the board to go and see the trustees personally as well as to see them in our conferences. I said, "I do not believe that you men are doing everything you can do unless you go and present the case to them personally."

Q. And you are advised Mr. Merritt went over? A. I so understand.

Q. We have now come to Feb. 24, 1919, at which Messrs. Dickey, Merritt and Rathvon, on behalf of the Board of Directors, met with Messrs. Eustace, Ogden and Rowlands. Your attention, Mr. Dickey, has been called to the letter of the directors to the trustees of date Feb. 24, 1919, which has been offered in evidence and is Exhibit No. 26, and is found on pages 35 and 36 of the printed record. That is the letter which Judge Smith had been working on before that time and with respect to which you had made

some revision, as shown by the record? A. Yes, sir, that is the one.

Q. Was that letter read to the trustees on that occasion? A. It was.

Q. With the memoranda attached which have been introduced in evidence as Exhibit 26a, on page 37—the memoranda in one paragraph? A. Yes, sir, it was attached.

Q. What, if anything, did the trustees say on that occasion about signing that? A. They all declined to sign it and put themselves on record in any such way.

Q. On that occasion did you have before you the opinion of counsel for the trustees? A. I had some extracts from it. There were four of the points contained in the letter from counsel of trustees to counsel for directors which I read at the meeting, and asked them what their intention was with respect to those four points.

Mr. Krauthoff—Now, that is the letter of Messrs. Hughes, Strawn and Whipple to the counsel for the directors, which has been heretofore offered in evidence as Exhibit No. 22, and is found on pages 26 and following of the printed record.

Q. I call your attention, Mr. Dickey, to that letter, and the fact that in it there are five paragraphs or statements of legal doctrine. A. Yes, sir.

Q. I will call your attention to the first statement, "First, the deed created a valid, express trust." Was there any difference of opinion between the directors and the trustees on this conference of Feb. 24, 1919, with respect to that?

Mr. Whipple—I pray Your Honor's judgment. This was a matter which the counsel started in upon yesterday, and it was, as we thought, very properly excluded. This meticulous scrutiny of every point in every letter, and whether there was a contention about it or not, is filling up a record, all to no good purpose.

Mr. Krauthoff — If Your Honor please, the bill charges the directors with having requested the trustees to repudiate the opinion of their counsel.

Mr. Whipple—That is in writing, and no examination of your witness or any other can blot it out.

Mr. Krauthoff—And we are now stating what orally occurred at the meeting in which the trustees and the directors discussed the opinion of counsel.

The Master—I do not exactly remember what happened about it yesterday.

Mr. Whipple—Well, he brought up these four points yesterday—

Mr. Krauthoff—Oh, I beg your pardon.

Mr. Whipple—Didn't you? It certainly was not the "14 points."

The Master—It is all out of my recollection if there was anything about it yesterday.

Mr. Whipple—My learned brother starts in in so many different places, and he approaches them from so many different angles, that you can't

always tell just which way he is progressing, or on what points; but as I remember it, Your Honor said in that connection that after the controversy had been well developed that the addition of these statements with regard to it would serve no useful purpose.

The Master—I still do not remember exactly in what connection the points came up yesterday.

Mr. Krauthoff—If Your Honor please, I think I can clear that up if I am permitted.

The Master—But I am naturally anxious to be as consistent as possible in my rulings.

Mr. Krauthoff—If I may be permitted I think I can clear that situation. In the opinion of Messrs. Hughes, Strawn, and Whipple, to which I referred, Exhibit No. 22, at the opening part of the opinion there are five paragraphs numbered in Arabic numerals, which state five legal propositions. In the remaining portion of the letter there is this statement:

"At the interview on the 25th, Judge Smith stated the criticism by the directors of the trustees in four particulars."

Now, on yesterday we approached those four particulars, and in doing so I said in passing, without going into them at all, either meticulously or in any other way, that we would assume that those four criticisms were made in good faith until the contrary was shown. The subjects to which I am now addressing myself are not the four particulars which I passed sub silentio on yesterday, but the five legal points which the counsel for the plaintiffs said in their letter of Jan. 27, 1919, and with respect to which the plaintiffs in their bill claim that we called upon them to repudiate these five points of legal opinion, thereby committing a very serious offense. And that being true, we are to now show just what we did with respect to those five points.

Mr. Streeter—Mr. Krauthoff, what is the number of the exhibit to which you are referring, and on which page of the printed record is it?

Mr. Krauthoff—It is on page 26 of the printed record, Exhibit 22. It is the document which, according to Mr. Whipple, becomes the law and the gospel of the case, and in respect to which we are being charged of a great offense—of having asked the plaintiffs not to adhere to it.

Mr. Whipple—Mr. Krauthoff, your sarcasm is not as becoming as your good nature.

Mr. Krauthoff—Why, I regret exceedingly if anything that I said could be thus interpreted. If what I said can be properly characterized as sarcasm, I ask leave to withdraw the remark from the record. I had no thought of such a thing.

The Master—Do you now propose to have the witness tell everything that was said at the meeting of Feb.

24, when they had, as he tells us, extracts from the trustees' counsel's opinion—about those extracts?

Mr. Krauthoff—Yes, if Your Honor please, about those five legal points as to what the directors stated about them and what the trustees stated about them.

The Master—I suppose that we have already had the evidence from the trustees of what took place at that meeting.

Mr. Krauthoff — Very generally. They said that the directors asked them to repudiate the opinion of their counsel.

The Master—Under those circumstances, I think that you may show what took place at the meeting about that opinion, or those extracts from it.

Mr. Krauthoff—Your Honor did not pass on my request to withdraw certain remarks from the record.

The Master—No; I regarded that as entirely within your power. If you desire to withdraw anything that you said, I think that you have the right to withdraw it, unless it is objected to, at any rate.

Q. Now, Mr. Dickey, with respect to the first paragraph, "The deed created a valid, express trust." No difference of opinion, I understand, arose with respect to that? A. None at all.

Q. So that when you speak about four points at that meeting, you mean the other four? A. The remaining four, yes, sir.

Q. The second point begins, "The Deed of Trust is complete in itself and irrevocable." Now, what was said by any of the directors to any of the trustees, or by any of the trustees to any of the directors, about that? A. Well, I preceded the reading of this by saying that I had gone over their lawyers' advice to them quite carefully, and there were some points as to which the directors were anxious to know just how the trustees looked upon them. I said, "With your permission, I will read the ones I refer to." And then I read that first one.

Q. And what did you say to Mr. Eustace with respect to this first point? A. I asked him what his thought was concerning that.

The Master—I thought that you had got so far as to have it appear that there was no dispute as to that first point.

Q. By the first one you mean the second one? A. Yes, I mean the second one in their letter, but the first one that I read.

The Master—Then why not correct your question, and ask what was said about the second point?

Q. What was said about the second point, that "The Deed of Trust is complete in itself and irrevocable"? Now, answer as to that. A. My recollection is that Mr. Eustace said that that was right, that that was a legal document, and was irrevocable, and that they stood on that.

Q. What was said, if anything,

about its being "complete in itself"?  
A. Well, I made some reference to the Church Manual, and also to a clause in the deed, where Mrs. Eddy says, referring to the trustees, that they shall conduct the business on their own responsibility, except as she may elect to advise them; and I raised the point, or made the statement, that her Church Manual, which included a paragraph, or a chapter, rather, on the Publishing Society, was her advice and direction to the trustees, and to every member of The Mother Church subsequent to the Deed of Trust. Mr. Eustace said, "Well, that all depends on how you interpret it." He would say nothing further on that point.

Q. Was anything said on that occasion with respect to this second paragraph? A. I read the second paragraph then.

Q. I mean, was the word "repudiate" used? A. Yes; I asked them if they intended to repudiate their counsel's advice; and he said, "What do you mean by that?" "Well," I said, "we would like to know what you are going to do about it. We want to know if you are going to use your counsel's advice as a license to break the Church Manual."

Q. And what did Mr. Eustace say to that? A. Mr. Eustace said that he reserved the right to interpret the Church Manual to himself.

Mr. Streeter—Pardon me, Mr. Krauthoff: am I right in thinking that this was in the conference in the afternoon of Feb. 17?

Mr. Krauthoff—No, no; this was the board meeting on Feb. 24, 1919.

Mr. Streeter—Oh, Feb. 24.

Q. With respect to the third paragraph in the opinion, "The power under the Deed of Trust to declare vacancies having been vested jointly in the Board of Directors and the First Members, the Board of Directors alone cannot exercise the power," being the second paragraph that you discussed, what was said about that? A. I asked Mr. Eustace what he had to say about that; and the trustees all laughed quite audibly; and I said, "I don't see any occasion for merriment in connection with that; it is a pretty serious thing; and we would like to know how you look upon it." Mr. Eustace said that the trustees would interpret the Church Manual and the Deed of Trust up to their highest responsibility, and follow the leadings of Principle; and they objected to being questioned as to what their intentions were, or what they would do under certain circumstances.

Q. Then the fourth point in the letter, "The source of the powers and duties of the trustees is the Deed of Trust," being your third point: was that discussed? A. Yes, it was.

Q. Was any reference made on that occasion to the letter of Sept. 30, 1918? A. Yes; Mr. Eustace said that they stood on that letter of Sept. 30. That

was their answer to all of these questions.

Q. The fifth paragraph, "If there be any conflict between the terms of the deed and the language of the Church Manual," and so on, being the fourth point that you discussed: was that mentioned? A. It was.

Q. Was anything said in that connection about the laws of the land? A. I asked Mr. Eustace what they intended to do about that last clause. "Well," he said, "you can't expect us to disobey the laws of the land, can you?" "Why," I said, "no; but the Deed of Trust as written is not the law of the land; it is supported and upheld by the law of the land; but that is a part of one harmonious whole, and it is just as adaptable to the Deed of Trust as two different statements of the same Principle would be." He said, "You remember that Mrs. Eddy was solicitous about all Christian Scientists obeying the law of the land." I said, "Yes, she was; but I don't understand that that meant that you had to obey a deed of trust, and at the same time use that as an excuse for disobeying the Manual."

Q. You spoke about the Deed of Trust being adaptable. What did you mean to say about the Manual in that connection? A. Why, I meant that they were both a part of one harmonious whole, and should be and could be considered together perfectly; and that there was no conflict between the two instruments. Mr. Eustace admitted that there was no conflict between the two instruments.

Q. Was any statement made on your part that, as you understood it, it could be done under the law of the land? A. Yes, I did say so. I—I am thinking of another conversation now. I withdraw that.

Q. Was anything said on that occasion—well, I have asked you about the one responsible head. It is now, if Your Honor please, 11:30, and I shall not be able to finish this immediately.

The Master—We will suspend, then, for a few minutes.

[Recess of ten minutes]

Q. At this interview of Feb. 24, 1919, to which you have been testifying—or, rather, this conference—was anything said by any of the directors or any of the trustees with respect to the necessity of the trustees being members of The Mother Church? A. There was. We had quite a lengthy conversation, in the course of which I said to Mr. Ogden, "Mr. Ogden, I understand that you have made the statement to one of our western practitioners that it was not necessary for a trustee of the Publishing Society to be a member of The Mother Church." I said, "Is that correct?" And he said, "Why, I did say something of that kind." "Well," I said, "do you think that is acting in conformity with Mrs. Eddy's wishes?" Well, he said that in time of course

the whole world would become Christian Scientists and it would be quite possible for a member of the Board of Trustees not to belong to The Mother Church in Boston.

Q. Was anything said about what would happen to The Mother Church in the course of time? A. I did say to him that if all Christian Scientists felt like that we would soon have no Mother Church, and with no Mother Church we would have no organization.

Q. What did Mr. Ogden say to that? A. I don't think Mr. Ogden made any reply to that.

Q. What, if anything, was said at that time as to the trustees believing all that their lawyers had said to them? A. Well, that was about the close of the meeting. I made this statement. I said, "Well, it looks like this to me: That in spite of the protestations that have been made by you gentlemen, I think you do accept and you do believe and you are relying on the advice of your lawyers, which furnishes you an excuse to break the By-Laws of The Mother Church."

Q. Was any answer made to that? A. I don't recall that there was.

Q. Was anything said on that occasion about the three trustees retiring and three other persons being installed in their places? A. Mr. Rathvon, I believe, asked them something about resigning in case they could find three other men, or in case we could find three other men, that would fill their places and keep the By-Laws of The Mother Church, as well as fulfill their obligations under the Trust Deed. They said they would not resign.

Q. Then the next incident to which I desire to call your attention is the conference of March 3, 1919, at which the records show that Messrs. Dickey, Merritt, and Rathvon had an interview with Messrs. Eustace, Rowlands, and Ogden. With respect to these interviews, when did Mr. Neal leave Boston—did you ascertain this morning? A. In the early part of February, I believe he left.

Q. He was not present at these conferences in February and March? A. No, not subsequent to Feb. 3, he was not.

Q. On the morning of March 3, 1919, was anything said about letters having been received from the field? A. Yes, there was, Mr. Krauthoff, but I do not recall the details of that just now.

Q. Was the question of the word suitable in the By-Laws discussed? A. Yes, it was. I referred the trustees to that by-law where Mrs. Eddy says that no one who is not suitable to the directors shall be employed in the Publishing Society or in connection with the publishing of her works. Mr. Whipple—Suitable to the directors?

Q. You mean accepted as suitable by the directors? A. Accepted as suitable.

Q. By the directors and the Pastor Emeritus, I believe is the language.

A. I read from the by-law, which is my custom when I am quoting by-laws. I don't like to quote them from memory.

Mr. Whipple—It would be more accurate.

Q. We are enjoined to read from the Manual itself? A. Yes, sir.

Q. Can you identify it from the section, Mr. Dickey, without reading it in there?

The Master—I think I have it before me, Section 5 of Article XXV.

Q. What, if anything, was said about that by-law on that occasion?

A. I haven't found the by-law. "Why," Mr. Eustace said, "that all depends on what you mean by suitable."

Q. Was anything else said? A. Yes. That didn't end the conversation but I don't remember just what followed that, but I do remember that he made that expression.

Q. Mr. Dickey, that by-law is on page 81 of the Church Manual, and you spoke of it as not suitable to the Board of Directors. The exact language is: "A person who is not accepted by the Pastor Emeritus and The Christian Science Board of Directors as suitable." A. Yes, sir.

Q. Since the passing of Mrs. Eddy the Board of Directors has been acting on all the matters in the Manual which in her lifetime could only have been done with her consent? A. They have.

Mr. Whipple—Just a moment. I pray Your Honor's judgment.

Mr. Krauthoff—I am not offering this as proof of any legal fact; I am only using it in proof of how he came to use the expression "the directors."

Mr. Whipple—The difficulty is that what he says is not so. They may have tried to do it but in this very instance they did not do it.

Mr. Krauthoff—I was only offering it as an explanation of how he came to use the words "suitable to the directors."

Mr. Whipple—Well, let the answer be stricken out, then.

The Master—I think we will strike that out. That is rather too important, if it is important at all, to be put in by way of a leading question, isn't it?

Mr. Krauthoff—It will come up in another connection so it may be stricken out.

The Master—We have got to have the exact facts if that is of any consequence.

Mr. Krauthoff—Yes, I appreciate that.

Q. Did Mr. Eustace on that occasion read from Miscellany on the question of obedience, referring to the things that are Cæsar's? A. I don't recall that, Mr. Krauthoff.

Q. Was anything said on that occasion about propaganda on either side? A. Not that I can repeat.

Q. Now, referring to this confer-

ence of the trustees on March 3, 1919, did you then go and see the trustees with respect to the thought of Love and demonstration as applied to this situation? A. Well, that was—

Mr. Whipple—Just a moment. May I have that read?

The Master—I didn't get that.

[The question is read by the stenographer.]

Mr. Krauthoff—I am merely doing that to identify the conference.

Mr. Whipple—Well, you have identified the conference as March 3, haven't you? Are you referring to another one now?

Mr. Krauthoff—We are now referring to a visit that Mr. Dickey made, after March 3, 1919.

Mr. Whipple—Oh, you mean after this conference at some time?

Mr. Krauthoff—Yes.

The Master—Well, wouldn't it be better to reframe that question?

Q. Did you call on the trustees after this conference of March 3, 1919? A. I did.

Q. Whom did you see? A. I saw Mr. Eustace and Mr. Ogden and Mr. Rowlands, in their office in the publishing house. I had quite a lengthy conversation with them on that occasion, looking towards an adjustment—

Mr. Whipple—Just a moment.

Mr. Krauthoff—Excuse me.

The Witness—All right.

Mr. Whipple—When?

Q. What was said?

Mr. Whipple—When is this?

A. That was on the afternoon of March 5, I believe, about 3 o'clock. I made an engagement to go over and see them at that time. Do you want me to continue?

Q. Yes, if you will continue, please. A. I said, "Well now, gentlemen, the whole trouble seems to me that you have not got the right point of view with respect to the directors." Mr. Eustace said, "Well, we think we have, and the fact is that you men are acting in a shameful and disgraceful manner toward this Board of Trustees; you are simply acting as a religious hierarchy and issuing orders to us and expecting us to obey them implicitly. Now, we have certain rights in this connection and we do not think you ought to come at us in that fashion." "Well," I said, "Mr. Eustace, I must admit that perhaps there have been times when we have not always written courteous letters to you, that is, not as courteous as they might be; perhaps sometimes they have been a little brusque; but you must remember that we have a lot of work on our hands and we are not always able to stop and frame our letters in the very nicest way, although our thought is that we want to cooperate with and show all the love and respect and consideration to you gentlemen that we possibly can. But," I said, "the fact is quite apparent to me that you have not the right thought yourselves toward the directors." I said, "Indeed, you are

expressing thoughts of hate and resentment toward them. Now, if we are ever going to work this problem out and make it a demonstration, as you want to do, the basis for a demonstration is not hatred, and you have got to get to the point where you are going to love these men, every one of them, before you can do anything." Mr. Eustace said, "Why don't you clean out your own board? Look at what you have got there. All our trouble, nearly all our troubles and difficulties, have arisen from that hidden hand that you have over there." And I said, "Well, now, Mr. Eustace, if you are talking about some member of our board, just forget it, because that does not interest you, and it cannot. God does not hold you responsible for what some member of our board does, but He does hold you responsible for what you do. Now, if you want to be a Christian Scientist you know that you have got to entertain love in your heart, not only for all mankind but for the men on the Board of Directors; and I am not speaking selfishly, because if I were not there you would have to do this just the same." And I said, "If by handing my resignation today in to this Church I could help this situation one bit, I would be very glad to do it. Now," I said, "Love does not operate from without, it operates from within; and if you do not get the right concept of Love you cannot make a demonstration." I said, "You know how our Leader has toiled for years to bring this movement up to the point where it is now."

Q. Did you on that occasion read anything to the trustees from any of the— A. I did.

Q. Have you now the references which you then read? A. I think they are in this satchel. Here it is. I have got it in my hand. I turned to page 229 in Miscellany, and I read this:

"Will those beloved students, whose growth is taking in the Ten Commandments and scaling the steep ascent of Christ's Sermon on the Mount, accept profound thanks for their swift messages of rejoicing over the twentieth century Church Manual? Heaps upon heaps of praise confront me, and for what? That which I said in my heart would never be needed,—namely, laws of limitation for a Christian Scientist."

And then I turned over to the other page and finished:

"Notwithstanding the sacrilegious moth of time, eternity awaits our Church Manual, which will maintain its rank as in the past, amid ministries aggressive and active, and will stand when those have passed to rest."

I also read from page 251 of the same book:

"Adhere to the teachings of the Bible, Science and Health, and our Manual, and you will obey the law and gospel."

I read that in reply to a statement from Mr. Eustace referring to the law of the land. I talked there for over two hours, and when I left they expressed a great deal of gratification at what had been said, and I think at that time they entertained a different point of view than they had had before—

Mr. Whipple—Just one moment.

A. —with regard to the directors.

Mr. Whipple—I ask to have that stricken out.

The Master—You don't wish that, I take it, Mr. Krauthoff?

Mr. Whipple—His thoughts with regard to other people's thoughts are not material.

Mr. Krauthoff—Mr. Whipple asks that that be stricken out. It may be stricken out, beginning with the words "I think."

Q. Have you stated now fully, in substance, the general nature of that conversation? A. Yes; I have stated now all I can recall.

Q. Now, after that conversation did you come back the next day? A. I did.

Q. And did you bring with you the document that we have identified as the Dittmore memorandum? A. I called by an appointment I made with them the next day, and I spoke at length along the same line that I talked the day previously.

Mr. Thompson—He hasn't answered your question. Did he have the Dittmore memorandum with him?

The Witness—I then said—oh, pardon me. After I had talked for perhaps an hour and listened to them talk I got up and said, "Well, I am sorry that my efforts have accomplished nothing; it looks as though you were of the same opinion as you have been all along, and now I guess I will go." They all said, "Don't hurry, there is lots of time; we would like to talk with you some more." And Mr. Ogden said, "Now, we have heard your side of this proposition, won't you listen to ours?" I said, "I will listen to anything that has for its object an adjustment of this difficulty." So we talked again for a few moments and then I said, "Won't you let me read you something?" And they said, "Why, certainly." And I drew from my pocket an agreement—

Q. I beg pardon for interrupting you. You drew from your pocket a paper? A. A paper that—

Q. Go ahead, Mr. Dickey. A. —that had been presented in 1916 to the Board of Directors, that has been referred to here as the Dittmore memorandum.

Q. Have you that paper with you? A. I have. That is it. (Handing paper to Mr. Krauthoff.)

Q. This was cut, Mr. Dickey, as I understand it, from the memorandum of the meeting of Feb. 24, 1916, which has already been introduced in evidence? A. Yes, sir.

Q. So that the last words, the last 10 lines, which is stricken out in lead

pencil, "The understanding between the directors and the trustees," etc., is not important? A. It was not considered at that meeting.

The Master—What is the exhibit number?

Mr. Krauthoff—This is a new document, if Your Honor please.

The Master—Oh, a new document? Very good.

Mr. Streeter—What is the document, Mr. Krauthoff? Let me see it.

[Document handed to Mr. Streeter; conference of counsel.]

Mr. Thompson—That is all right (returning document to Mr. Krauthoff).

Mr. Streeter—Mr. Krauthoff, the document which you hold in your hand,—may I ask you what it is that you are inquiring about of the witness?

Q. Will you please answer the question of General Streeter, Mr. Dickey? A. That is what has been introduced in evidence as the Dittmore memorandum which was presented to the Board of Trustees for their signature in 1916.

Mr. Streeter—Well, I was not conscious of that. That appears to be a garbled rewrite of the Dittmore memorandum of Feb. 24, 1916, the original memorandum being in print on page 80 of Dittmore's answer, and this appears to be a garbled version of that original Dittmore document.

The Witness—Would you like me to explain to you—

Mr. Streeter—If you are using it as the original Dittmore memorandum, I would like to have it appear to the Court that it is not the original but apparently a rewrite of it.

Mr. Bates—If you will just wait a minute, General, you will get the whole explanation.

Q. Mr. Dickey, will you please state with respect to the document I have exhibited to you what the typewritten part of it is, without regard to any pencil interlineations and deletions? A. It is, as I have stated, a copy of the memorandum which the directors asked the trustees to sign in 1916.

The Master—Will you remind me whether we have had the original?

Mr. Thompson—Yes, sir. There was a good deal of talk about it; finally it was agreed that the original was the one printed on page 80 of the answer of Mr. Dittmore, the one General Streeter has just referred to. That has been agreed to as being authentic.

The Master—Now, what, according to the evidence, became of the original document itself?

Mr. Thompson—I do not know what has become of the original document. I do not remember ever seeing the original paper here. I do not know what has become of it.

Mr. Streeter—Let me ask further, for my own information on that, and that of the Court, what this is now? You say the typewritten part of it is

a copy of the original Dittmore memorandum which was printed on page 80 of Dittmore's answer. But what is this document?

Mr. Krauthoff—Now, if you will permit the witness to go ahead, General, he will tell you all about it.

Mr. Streeter—I will be very glad to be informed.

Mr. Whipple—Just a moment. Your Honor asked what had become of the original? The evidence is that it was torn up.

The Master—Oh, yes.

Mr. Whipple—Some of the evidence is that it was torn up in token of the abandonment of the enterprise that was then on foot.

The Master—I remember.

Mr. Thompson—I suppose there might be other copies of it in existence as of that date, but there have not any of them been introduced except this one.

The Witness—Shall I proceed?

Mr. Krauthoff—Yes.

The Witness—I asked them if they would allow me to read something to them, and they said, yes.

Mr. Whipple—Just a moment. I think the question was to identify this memorandum. I would like to present this for consideration, if Your Honor please: Here was an effort on the part of these gentlemen to compromise such of their difficulties as were capable of—

The Master—Before I hear you on that, Mr. Whipple, I think I would like to have Mr. Krauthoff complete the explanation referred to by Governor Bates as to what that particular paper was.

Mr. Whipple—I will be very glad if that can be done.

The Master—I do not think we got through on that. I think it would be better to have it all together.

Mr. Krauthoff—Just a minute.

The Master—The witness, I think, is taking not quite that course, but Mr. Krauthoff will perhaps recall him to what he wants him to do.

Mr. Krauthoff—It seems to me, if Your Honor please, that on Feb. 24, 1916, there was a conference between the trustees and the directors.

The Master—Well, I have got as far as this: He says that the typewritten part there is a copy of something presented in 1916?

Mr. Krauthoff—Yes.

The Court—Then you were going to ask something about the penciling, and he did not get as far as that because he went on to something else. Isn't that true?

Mr. Krauthoff—Yes.

Q. Now, Mr. Dickey, will you please state what the pencil interlineations and deletions are, and how you arrived at them? State fully now all the circumstances. A. Well, to tell all the conversation I will have to go through just what I did.

The Master—Oh, no; we do not want the conversation. Just what that



paper is. Not at present, but there will be a later opportunity on that.

Mr. Krauthoff—At this conference on March 6, 1919, Mr. Dickey took over the paper in the typewritten form.

The Master—Yes.

Mr. Krauthoff—Then at this conference he made certain interlineations and deletions in pencil.

The Master—They were made on March 6th?

Mr. Krauthoff—1919, in the presence of the plaintiffs.

The Master—All right. Now I get an idea of it.

Mr. Streeter—Now, if Your Honor please—

The Master—Does that answer your inquiry?

Mr. Streeter—Mr. Krauthoff answered it. But I would like to have the witness answer it, and see whether that is actually correct, whether he took over the original Dittmore document and then these pencil interlineations and deletions were made by him or by somebody else at that conference of March 6. He can tell better than my friend Krauthoff.

Mr. Krauthoff—I was answering it briefly because the Court was asking about it.

Mr. Streeter—Why can't you let the witness tell us about it?

Mr. Krauthoff—I will.

The Master—The witness seems to want to tell all the conversation before he answers the question. I was hoping you would induce him to say what the paper consists of before you went into that part of the examination.

The Witness—The paper consists of a copy of the original memorandum which was presented by the directors to the trustees in 1916. At that time, in addition to the original document, each director was handed a copy. I took this copy and put it in my files, and it remained there until I took it out about a week prior to the time I carried it to the Board of Trustees.

Q. That is, the typewritten part?

A. The typewritten part. Now, the pencil interlineations and additions and deletions are those which we agreed to—that is, the three trustees and myself. On this particular day as I read these paragraphs over they assented to certain—

Mr. Krauthoff—One moment, Mr. Dickey. It is not proper to say they agreed or assented.

The Master—Pause there just a moment. Does that answer your question?

Mr. Streeter—I think so. He has not got done yet, but I think so.

The Master—Very well. Now, Mr. Krauthoff, you may go on. Oh, one moment; I forgot. I interrupted Mr. Whipple, and I suppose I ought first to hear what he has to say.

Mr. Whipple—I wish to offer the suggestion that this was an effort on the part of these gentlemen to recon-

cile their personal differences, to bring about a compromise indicating a way in which they could get along together. Such things are not admissible in evidence, generally speaking—attempts to compromise their differences. But beyond that, of course, anything that they said or could say could not in the slightest degree derogate from the powers or the duties of the trustees under their trust deed. They could not agree that the trust deed should be different from what it was, or should impose different duties or different responsibilities or give different rights. They were for the time being trustees merely, and nothing that they could say or could do could be construed as an estoppel affecting the trust itself. Therefore, it seemed that we ought to interpose the objection that this interview should not be gone into.

The Master—The difficulty with that is, I think, there has been some testimony about it already.

Mr. Whipple—I had thought not. They have put in the evidence of the directors' meetings, but I think there has been no evidence with regard to this interview. I think not with regard to the interview with the trustees, Your Honor. I am reminded that there was probably some cross-examination with regard to it, but of course we could not prevent cross-examination on it. But we put in nothing with regard to it at all and made no inquiries in any way in respect to it.

Mr. Krauthoff—As to the state of the evidence, if Your Honor please, this is the occasion that Mr. Dittmore's counsel has referred to as the time when four copies were made and sent to Mr. Dickey's house. That has been introduced in evidence by Mr. Dittmore's counsel. As to the document itself, we think it is admissible in evidence against the plaintiffs as a statement of the claim that they were then making as to what they were claiming as trustees in opposition to the Church Manual, and as some of the steps in the line of incidents which led up to their removal.

Mr. Whipple—That illustrates just exactly the basis on which we ask for its exclusion. It was not an interview in which claims were stated, and it was not for that purpose. Their claims had been stated and repeated. It was an attempt at compromise, and it is perfectly evident that if the evidence is admitted and—

The Master—Pardon me. Do you think that I can say at this stage that what took place at that interview was only an attempt at compromise?

Mr. Whipple—Well, I thought so, Your Honor—

The Master—I do not know yet what it was.

Mr. Whipple—Upon the evidence. It is possible that you will have to take the evidence and then rule upon it. I think that it is quite likely that there will be some difficulty in ruling

upon the statements of counsel merely, but I had rather supposed that Mr. Krauthoff would agree with me, and that Your Honor would infer from what the witness has already stated that that was the object of it, that they took this paper, or they had it there, and they went over the various items to see what by way of compromise they could fix upon as a *modus vivendi*. Of course it will be said that they had done it repeatedly, and evidence as to that has gone in, but if it had not gone in I think we should have saved a great many days of what I think will turn out to be a rather futile inquiry.

Mr. Krauthoff—We do not, if Your Honor please—

The Master—As the matter stands at present, I am afraid that there is no way but to go on and take the evidence subject to objection. I am afraid that if I exclude it there will be somebody who will think that he has not had his rights fully preserved in regard to the evidence here.

Mr. Streeter—Yes, Your Honor, but this, from our point of view, is an important document.

The Master—Well, now, let us get it in, and then we will see about its importance.

Mr. Streeter—Well, can't we have it marked for identification?

The Master—Oh, I dare say you can, when the time comes, but has that time quite come?

Mr. Streeter—Well, if Your Honor has that in mind, all I want to be sure is that that document—

The Master—Does not get away?

Mr. Streeter—Yes, with its interlineations—that it does not get away.

The Master—Have you any objection to marking it for identification?

Mr. Krauthoff—Why, no, if Your Honor please.

The Master—Let it be marked, then.

[The document referred to is marked Exhibit 680 for identification. R. H. J.]

Now, possibly, Mr. Krauthoff, there will be some brief way of getting out what happened about it.

Mr. Krauthoff—I hope to be able to do that, if Your Honor please (passing to the witness the document referred to).

Q. Now, Mr. Dickey, state what was said at that conference by you to any of the trustees, or by any of the trustees to you, about that document, being careful to state who said it, and what they said. A. Yes, sir. I read the first paragraph as follows: "The relations, duties"—

The Master—Now—

Mr. Krauthoff—It is not necessary to read that paragraph.

The Witness—I can't tell the conversation, Mr. Krauthoff, unless I do, because it was interrupted at different places, and interlineations made, and discussions had all through as the pamphlet was read—as the article was read, and it is so interwoven

with the conversation that I couldn't detach the two.

Q. Very well. Go ahead.

The Master—Let me see about that. We have all got the memorandum, or at least the substance of it, barring these changes and interlineations, right before us in print. Now, can it be possible that we have got to have that all gone over again in the record? Isn't there any way of avoiding that?

Mr. Krauthoff—I very much fear, if Your Honor please, with all due respect to our desire to shorten the record, that the proper thing to do now is to put this document into the record in this original and in its altered form, in order that, having them side by side in the record, they may be compared.

Mr. Thompson—We shall have to do it in the Dittemore case, anyway, sir. It is a direct substantive issue in the Dittemore case, as to what took place at this interview. It was introduced by me on cross-examination for that purpose but it has never been introduced in the Eustace case at all. It was limited strictly to the Dittemore and Dickey case. Mr. Whipple was quite right in suggesting that he never put it in. It was understood, we put it in, that it bore on the Dittemore case alone.

The Master—Can't you assist us in some way to keep the record within reasonable bounds?

Mr. Thompson—It is very important that we should know everything that was said about this document.

Mr. Krauthoff—May the witness proceed?

The Master—I suppose he will have to.

Mr. Krauthoff—Go ahead, Mr. Dickey, in the way you started.

The Witness—The first paragraph is:

"1. The relations, duties, and responsibilities of The Christian Science Board of Directors and of the Board of Trustees of The Christian Science Publishing Society must necessarily be based not upon single detached sections or sentences of our Church By-Laws or of the Deed of Trust constituting the trusteeship, but upon the intent and purpose of all of the Church By-Laws relating to these boards and of the entire text of the Deed of Trust."

The Master—So far it seems to correspond exactly.

The Witness—I said, "Now, is there anything wrong with that paragraph? Is there anything there that you gentlemen cannot subscribe to?" And Mr. Eustace addressed Mr. Rowlands and said, "I don't see anything wrong about that." And Mr. Rowlands said, "I don't." Mr. Ogden said, "It looks all right to me." "Well," I said, "very well. We have gone so far. Now I will put a bracket around that, and mark 'Yes' opposite indicating that

we are agreed on that paragraph." They said, "That's all right. Go ahead."

Q. Did you do that at the time? A. I did that at the time, yes, sir, and in their presence.

Paragraph 2:

"The government of The Mother Church is set forth in the 35 articles of our Church By-Laws as contained in the Church Manual. One of these articles (Article XXV) records the situation under which The Christian Science Publishing Society exists and fulfills its proper functions. The Manual reveals clearly that this society is not a separate organization independent of The Mother Church, but is an interdependent department"—

Mr. Eustace interrupted me at that point, and said, "Now, wait just a minute. The Publishing Society is not a department of The Mother Church." "Well," I said, "what is it?" "Well," he said, "it is not a department." "Well," I said, "could you call it anything else?" He said, "Yes, we might call it something else." I said, "How about using the word 'function'?" He said, "That's all right." And the others agreed to use the word "function," and I deleted the word "department" and wrote the word "function" in lead pencil in the margin; and I then proceeded, "an interdependent function—and a very important one—in the denomination activity of the Christian Science movement."

And then I called attention to the fact that that word "denomination" should be "denominational," and they agreed to that; and then I wrote the word "Yes" opposite it in lead pencil.

"3. Mrs. Eddy has provided that 'The business of The Mother Church shall be transacted by its Christian Science Board of Directors.' The By-Laws as a whole clearly indicate that to this Board of Directors is intrusted, as its name indicates, the general direction and supervision of the Christian Science movement in all of its departments."

I said, "Is there anything wrong with that paragraph?" There was a pause for a while, and a little consultation, and finally the trustees all said, "That paragraph is all right; we will all agree to that." I said, "Very well; I will mark that 'Yes,'" which I did.

"4. 'The Church By-Laws and the Trust Deed gives evidence that this trusteeship was created and exists for two general purposes—First, "For the promotion of the interests of Christian Science" through the publication of the current literature of Christian Science; and second, for financial benefit to The Mother Church for the general use of all departments of The Mother Church for which funds can be expended according to the provisions of the By-Laws. Our Church By-Laws dealing with this question confirm the fact that The Christian Science Publishing Society is under the general

direction of The Christian Science Board of Directors.'"

Mr. Eustace said, "Now, hold on a minute. That is not right." I said, "What is not right?" He said, "That last sentence you have read." "Why," I said, "what is the trouble about that?" "Well," he said, "we don't agree that The Christian Science Publishing Society is under the general direction of The Christian Science Board of Directors." "Well," I said, "we will not stop to argue that point. If I delete that, will that be satisfactory?" And he said, "Yes"; and the others gave their assent, and I deleted that sentence down as far as "The Christian Science Board of Directors."

Mr. Streeter—Where did you begin to delete?

The Witness—I deleted "Our Church By-Laws dealing with this question" down to "The Christian Science Board of Directors," five lines. I then went on and read:

"This Board of Trustees necessarily differs organically from other departments of our Church."

I was interrupted there by Mr. Eustace, who said, "That won't do. This is not a department of The Mother Church." "Well," I said, "all right. To get somewhere, I will just scratch that word, 'departments,' out; and what shall I put in?" We discussed that for a moment, and finally I suggested the words "departmental activities." That was agreeable to Mr. Eustace. So then I read this:

"This Board of Trustees necessarily differs organically from other departmental activities of our Church in that its responsibilities in the holding and management of valuable property require that it be constituted and perpetuated in accordance with the established legal usage necessary to safeguard and properly manage public trusts. We are agreed that Mrs. Eddy's use of words is wonderfully exact. Webster defines 'Trustees' as 'Persons to whom property is legally committed in trust.' Trusteeships always have to do with the holding and management of property."

There was an objection made to that paragraph, or to that statement, "Trusteeships always have to do with the holding and management of property," and I deleted it, but these words follow in lead pencil the "management of property," "the conducting of business and the promotion of the object of the trust." We talked over that, and Mr. Eustace finally said, "I don't like that last statement"; and I said, "Very well; I will erase it all." So I deleted everything from "Trusteeships always have to do" down to "the object of the trust." Then I marked "Yes" in the margin, and said, "Now, are we agreed to that? Is that satisfactory?" They all said, "Yes."

"5. 'The Christian Science Board of Directors control the disposition of all funds accruing from the profits of

the publications managed by the Board of Trustees."

And there was something said then about putting in "according to the terms of the trust." I said, "Very well; I will put that in." So I added that phrase, "according to the terms of the trust," after the words "Board of Trustees."

"They elect to office the business manager of the Publishing Society and the editors of all the periodicals. They own and furnish the building in which the Publishing Society conducts its business. They are required to determine the salaries of the trustees and have had placed upon them the additional responsibility named in Article XXV, Section 3, of the Mother Church By-Laws."

That paragraph was agreed to as amended and I marked "Yes" in the column, and asked them if that was all satisfactory, and they all said "Yes."

"6. 'It is not our purpose either to magnify the responsibilities of The Christian Science Board of Directors or to minimize the duties and responsibilities of the Board of Trustees. This trusteeship is the most important and far-reaching trust in the world, and its financial resources are destined to become practically unlimited and to require in its management the highest degree of ability and intelligence that can be demonstrated.'"

That last sentence was objected to, and after some discussion we agreed—I proposed to strike out the sentence which I shall read, following this statement, and the trustees, each of them, agreed to it, and therefore, in compliance with that, I erased everything from "This trusteeship is the most important" down to the words "that can be demonstrated." Then I finished the reading of the paragraph as follows:

"It is our purpose, however, to define what we consider to be the correct and only consistent relationship of the trustees of The Christian Science Publishing Society to The Mother Church and The Christian Science Board of Directors to the end that all concerned may accept in theory such correct interpretation and demonstrate in practice, through a right sense of cooperation, the degree of efficiency in every detail connected with the publishing work which the Christian Science movement demands."

That was satisfactory to Mr. Eustace, according to his statement. Mr. Ogden and Mr. Rowlands both expressed agreement with it; and I said, "Very well; I will mark that 'Yes,'" which I did.

"7. 'In order that the directors of The Mother Church shall not be made responsible for policies and rules adopted and for actions taken by the trustees of The Christian Science Publishing Society without the approval of The Christian Science Board of Directors, it shall be agreed as follows.'"

Mr. Eustace then objected to the

word "shall." He said "I don't like it; it is too mandatory." I said, "Very well; I will scratch it out"; which I did.

"A. 'The trustees of The Christian Science Publishing Society shall order no special or unusual action to be taken affecting the field without the written approval of the directors.'"

The trustees all spoke up and said, "Hold on; that will not do; that is asking too much, to have us give our written approval before—" —I will take that back—"to receive the written approval of the directors before we take any special action."

Mr. Krauthoff—Excuse me, Mr. Dickey. Which one of the trustees said that?

The Witness—Mr. Eustace and Mr. Ogden and Mr. Rowlands. They all said that. So I said, "Well, what would you like to have me put in there instead of 'the written approval'?" Mr. Eustace suggested the word "concurrence," making it read, "without the concurrence of the directors." I said, "Very well; that suits me all right; I will go on."

"B. 'The responsibility for the editorial and news policies of the Christian Science publications shall rest with The Christian Science Board of Directors according to the provisions of Article VIII, Section 14, of the Church By-Laws.'"

Mr. Eustace objected to that, and said, "We don't agree that the responsibility for the editorial policies rests entirely with the Board of Directors. We believe that that belongs also in part to the trustees." Then I said, "What would you have me say there to make it satisfactory to you?" "If you added after 'Board of Directors' and the trustees of The Publishing Society acting concurrently," it would be satisfactory to me." I said, "Well, I will put that in." The others then gave their consent. Then I suggested—

Mr. Streeter—Just a minute. What was it that you inserted there?

The Witness—I added after—

Mr. Streeter—After the word "Directors?"

The Witness—After the words "policies of the Christian Science publications shall rest with The Christian Science Board of Directors," I added "and the trustees of the Publishing Society acting concurrently." You understand this is not my agreement; it is theirs.

Mr. Whipple—I move that that be stricken out.

Mr. Thompson—I move that that be stricken out, too, if Your Honor please.

The Master—I think that you will have to confine yourself to stating what was said and done.

The Witness—I beg Your Honor's pardon. I was just answering Mr. Streeter. After the words "Section 14," I placed a caret and wrote in pencil the words "and Article XXV,

Section 8," to which Mr. Eustace agreed, as did the other trustees.

Then I went to the next one:

"C. 'All rules governing the acceptance or rejection of applications for cards in The Christian Science Journal shall be subject to the written approval of the directors.'"

Mr. Eustace agreed to that, also Mr. Ogden and Mr. Rowlands agreed.

Then I went on:

"D.—"

Mr. Streeter—Did you mark that "Yes"?

The Witness—These are all in one paragraph, subdivisions of No. 7. When I got through I marked the whole paragraph "Yes."

"D. 'All circular or form letters in regard to circulation or advertising shall be approved in writing by the directors before being sent.'"

Mr. Eustace said, "Well, now, I do object to that." "Well," I said, "I will scratch that out," and so I did.

Then I read:

"E. 'The salaries of all persons who are elected by the directors and employed by the trustees shall be fixed by mutual agreement.'"

Mr. Eustace said, "That's all right." Mr. Ogden and Mr. Rowlands both assented, and I went on:

"F. Any unusual expenditures by the trustees which affect the income of The Mother Church shall be subject to the written approval of the directors."

Mr. Eustace objected to that, and said, "I don't like the words 'written approval.'" Then I said, "What would you like in there?" He said, "You might put the word 'concurrent' there." I said, "All right." So I deleted "written approval," and put the word "concurrent" in the place of it.

I also wrote the words "will seemingly" in pencil after "which," making it read, "Any unusual expenditures by the trustees which will seemingly affect," etc. Afterward we all assented to delete the words "will seemingly," and the paragraph was finished without that in it.

"G. We believe that appointments to the Bible Lesson Committee should be made by the trustees after consultation with the Board of Directors."

Mr. Eustace objected to that, and after some conversation we deleted the words "We believe that," being the first three words in that paragraph. Mr. Eustace then said that paragraph was satisfactory to him, Mr. Ogden and Mr. Rowlands also concurred, and I marked it "Yes." I marked then the whole paragraph "Yes."

"H. The duties and responsibilities of the trustees as set forth in the Manual of The Mother Church and the Deed of Trust creating the trusteeship are the holding and management of the property of the trust and the conduct of the business of The Christian Science Publishing Society subject to the general supervision of the directors."

Mr. Eustace objected to that and had me read it again, which I did. Then he said, "Now, right here, 'creating the trusteeship are holding and management of the property of the trust,' I would like you to insert the words 'according to the terms of the trust.'" I said, "Very well." So I did so.

Mr. Streeter—Where did you insert that?

The Witness—Afterward that was deleted, so that it appears here to have been written in once and then erased. At the close of the paragraph reading, "the general supervision of the directors," Mr. Eustace asked to have the words "according to the terms of the Deed of Trust" added thereto, and I suggested that we also add to that, "and the provisions of The Mother Church Manual." Mr. Eustace agreed to that. So did Mr. Ogden, so did Mr. Rowlands. I don't know why I did not mark that "Yes," but my recollection of it is that I was so near the end of the paragraph, and the hour was so late, that I went right on without putting the word "Yes." The next paragraph, or the next sentence of paragraph 3, reads:

"It shall be accepted in theory and demonstrated in practice that The Mother Church is one institution, and that the responsible authority for its direction in all of its departments is not divided, but has been definitely established in The Christian Science Board of Directors."

That closed the reading of the paragraph. Mr. Eustace agreed to that, Mr. Ogden and Mr. Rowlands also agreed, and I said, "Well, that finishes this agreement. Now," I said—

Mr. Streeter—There was no change in that last paragraph, as I understand you?

The Witness—"It shall be accepted"—from that on—

Mr. Streeter—No; I don't ask you to read it, I ask if there was any change.

The Witness—In the second sentence of the last paragraph there is no change; the only change in that paragraph is in the first sentence. I said, "Well, now I will take this over to my office in the morning and have some copies made, and I will send you some;" and Mr. Rowlands said, "Why, Mr. Dickey, we can copy that right here, let us have that and we will make some copies right away." I said, "Why, you can't, it is nearly six o'clock." And he said, "Oh, yes, we can, Miss Farr is right here." And somebody touched the button and Miss Farr appeared, and I handed the document to Mr. Rowlands, and he passed it over to Miss Farr, and said, "Miss Farr, can you make copies of this tonight?" She said, "Yes." Mr. Rowlands said, "Now, Mr. Dickey, we will make these tonight and send them to your house, if you would like." I said, "Very well, that will suit me." He said, "How many copies do you want?"

I said, "I want one for each of the directors; four copies, if you please." So he said, "All right." And he sent four copies out to my house that night about nine o'clock by messenger.

Previous to that, previous to nine o'clock, while I was absent from home, a telephone call came from a gentleman who said he was very anxious to see me but did not leave his number. Mr. Rowlands told me subsequently that it was he who had called up. The reason he called was that in going over the agreement or the memorandum after I left there they found something else that they objected to, and before changing it he wanted to ask my permission. Not being there, he said they went ahead and changed it, so that the memorandum as finally sent to me did not embody the exact language in which I had left it with them. That ends that day, Mr. Krauthoff.

Mr. Whipple—Now, if Your Honor please, Your Honor having heard the evidence, and it plainly being with regard to a compromise, I move that so far as the record is concerned in the Eustace case it be stricken out.

The Witness—I would like to add something else, if I may.

Mr. Krauthoff—The witness is not entirely through, if Your Honor please.

The Witness—No.

Mr. Krauthoff—I would like to ask this question—

The Master—Let the witness finish first.

The Witness—I got up then to leave the room, and Mr. Rowlands said, "Mr. Dickey, our limousine is at the door; wouldn't you like me to send you home in it?" And we all laughed at the proposition. I said, "No, thank you, I will take a street car." So as I left the room he followed me out into the hall, and, putting his hand on my shoulder, he said, "Well, now, don't you think we have accomplished something?" I said, "Well, Mr. Rowlands, I hope so, but it all depends on how my fellow board members look at this agreement when they see it. I cannot make any promise as to just what may be done."

Q. Before you took up this document of which you have spoken, what did you say to the trustees with respect to what you would do with the document after they had worked out the terms of it? A. I said I would submit it to the directors for their consideration.

Q. Did you undertake on that occasion to agree to any of them on behalf of the directors? A. No, I did not.

Mr. Whipple—Just a moment; I object to that.

The Witness—I told Mr. Rowlands, as I was leaving, that I didn't know what the result would be, that I couldn't agree to anything until it had been presented to the directors.

Q. Now, is there anything more that you wanted to state about the document itself? A. The next day I presented—

Q. No, no. I mean now upon that occasion. A. I think that is all.

Mr. Krauthoff—Mr. Whipple had a motion, I believe.

The Master—Yes; Mr. Whipple asked that this may be stricken out as immaterial in Eustace v. Dickey, and I take it that General Streeter and Mr. Thompson desire it to stay in in the other case.

Mr. Streeter—We certainly do.

Mr. Whipple—But not in the Eustace and Dickey case.

Mr. Streeter—No; we do not care about that; we want it in the Dittmore case.

Mr. Krauthoff—We think it is competent in the Eustace case as a statement of the claim that the plaintiffs were then making as to their rights and privileges under the Church Manual and the Deed of Trust, taken separately or together, as to the concurrent control by the trustees and the directors of certain activities which we claim are activities of The Mother Church.

Mr. Whipple—It is perfectly plain, on the contrary, if Your Honor please, that it was not such a thing. It represented, taking the statement at par, the full limit of the concessions which, for the sake of compromise, the trustees were willing to make provided the directors were willing to make certain concessions from their position. In that connection you will remember quite a significant entry in the directors' records, which has not been commented upon, in which one of the directors, Mr. Rathvon, stated, with regard to what we had supposed was an agreement which would be binding upon gentlemen when it was presented—he stated, "Accept their concessions, and then see what we will do." Here is another instance where they were trying to get from the trustees certain concessions with regard to their position, which they would then deal with as they saw fit, without making any concessions themselves. It is a futile attempt to compromise, and we think it has no place in the Eustace and Dickey case. The fact that for the sake of peace and compromise the trustees were willing to go to these limits, although our memory does not accord with just what the testimony is, the fact that they were willing to go so far as they will testify they were willing to go is creditable to themselves, but you see it is asked for on the basis of being a statement of their position. That is what Mr. Krauthoff keeps repeating, and it was not. He wants to get it into the case for an improper purpose—not as a compromise, but as a statement, an authoritative statement, by the trustees of their position, when the case bristles with evidence that it was not any such thing. It was an attempt to make extreme concessions in order to prevent the catastrophe and calamity that came.

Mr. Krauthoff—Now, if Your Honor please—

The Master—I am not clear that the document and the testimony regarding it just given by the witness cannot be material for any purpose in Eustace and Dickey, therefore I think I shall have to decline to strike it out, and it stands subject to the objections just stated by Mr. Whipple.

Q. It has been stated, Mr. Dickey, that you were given four copies of this memorandum by the trustees after it was transcribed? A. Yes, sir.

Q. Where was Mr. Neal at that time? A. Mr. Neal was away in the south.

Mr. Thompson—One moment, Mr. Krauthoff. I take this occasion to call Your Honor's attention to the fact that the only purpose of this question can be to introduce evidence in contradiction of Mr. Dittmore's case. I do not say that this is not the proper time, I do not say that it is not proper to anticipate a case not in at all and deny it before it is proved. But, if it is done I merely want to be at liberty to raise the point later, after Mr. Dittmore has testified, that it won't then be possible to put on witnesses to contradict him over again. If they are going to contradict him now on any part of his case, let them do so; but if they propose to try the case as is common, that is, to wait until Mr. Dittmore has put in his case before meeting it, then they ought to be confined to that, but not do both. This can only be material as contradicting a good deal of the testimony under the agreement on the part of Mr. Dittmore.

The Master—I think that having begun with this we will get the whole history of it, and I cannot rule now in advance as to what we will do hereafter. We will have to see about that when it comes up.

Mr. Thompson—Well, I am sorry, but we shall have to preserve whatever rights, if any, we may have, on that ruling, because I think it is an important question of practice.

Q. Where was Mr. Neal at that time? A. Mr. Neal was absent from Boston on a vacation.

Q. I call your attention to a special—

The Master—Now, let us see. What has he said—that the four copies were all sent out to his house?

Mr. Krauthoff—And that Mr. Neal at that time was absent.

The Master—Mr. Neal was absent on a vacation.

Mr. Krauthoff—Leaving four copies, one copy for each of the directors who were then in the city.

The Master—In his house?

Mr. Krauthoff—Yes.

The Witness—No, not in my house.

Q. Where? A. They were not in my house—the directors.

Q. No, I mean the copies. A. They brought the copies to me that night at my house, and I handed them to the directors at the meeting next day.

Mr. Thompson—You mean you handed one to Mr. Dittmore?

The Witness—I handed one to every director present.

Mr. Thompson—Mr. Dittmore included?

The Witness—Mr. Dittmore was not at the meeting and I couldn't give him a copy.

Q. You mean you didn't give him a copy? A. I did not.

The Master—I merely suggested that, as far as the evidence has gone, the four copies were left at the witness' house.

Mr. Krauthoff—That is correct.

The Master—Now, you add to that, or he has added to that since, that he brought them all to the meeting next day.

Mr. Krauthoff—That was too extensive on his part, and that statement for the present may be—

The Master—He gave one of them to each director then present, Mr. Dittmore not being one because he was not there.

Mr. Krauthoff—He was not there.

The Master—Am I right?

Mr. Krauthoff—That is right.

The Master—Go on.

Q. Now, Mr. Dickey, at the meeting then—

Mr. Streeter—Mr. Krauthoff, and Your Honor, have you any objection to turning to the records and seeing what the records say about Mr. Dittmore being present at the next meeting?

The Master—Well, that can be done, I think, during the intermission. We are nearing 1 o'clock now. Have you any questions with which you can use up the two or three remaining minutes?

Mr. Streeter—It is a very simple thing; he has the records right in his hand.

Mr. Krauthoff—I will do it, if Your Honor please.

Q. May I ask one question, Mr. Dickey? In returning these four copies to your house, did the original also come back with it? A. Yes, sir.

Q. Is that the one you have in your hand? A. That is the one I have in my hand now.

Q. May I have that document a moment, please? A. Yes. (Handing document to counsel.)

Mr. Streeter—Let me see your record, please, Mr. Krauthoff.

Q. Now, the document from which you have read your testimony just preceding this question is the one that has been marked Exhibit 680, for identification? A. Yes, sir.

Mr. Krauthoff—If Your Honor please, with respect to this document we make the suggestion that it be photographed and copies of the photograph given to counsel for their use and to the Court, because I think in that form it is more intelligible than in any other form, and that it not now be offered in evidence as an exhibit.

Mr. Streeter—We assent to that, but we want it in evidence.

Mr. Krauthoff—Oh, certainly.

Mr. Streeter—We assent to the photograph.

Mr. Thompson—We want it put in now.

Mr. Krauthoff—It is offered in evidence, but I do not think it necessary to again transcribe it, either in its original or in its altered form.

The Master—No. I suppose you all agree to that, don't you?

Mr. Streeter—What?

The Master—You do not want it transcribed all over again now?

Mr. Streeter—Oh, no, but we want photographic copies of it.

Mr. Thompson—Has it got an exhibit mark on it?

Mr. Krauthoff—Yes, 680.

The Master—Very well, the document is in. Now, you do not require any order from me about photographing it?

Mr. Krauthoff—No; I was just saying that by way of explanation. It is in, and is not to be further transcribed.

The Master—Yes, all right—either in its original or its altered form.

Mr. Thompson—But it is to be available for the inspection of all counsel at any time.

The Master—Of course, like any other exhibit.

Mr. Krauthoff—I beg pardon, I didn't catch what Your Honor just said.

The Master—Mr. Thompson suggested that it should be open to inspection by all counsel at any time, and I said, "Yes, just like any other exhibit."

Mr. Krauthoff—Thank you.

[The memorandum previously marked Exhibit 680, for identification, is now marked in evidence as Exhibit 680.]

Q. Now, when the meeting was had next day, on March 7, 1919, at which Mr. Rathvon and Mr. Merritt and you were present, did your associates agree to this memorandum as it was worked out? Just say yes or no. A. No.

Q. And so nothing further came of that? Did you tell the trustees afterward? A. Yes.

Q. When? A. At their next meeting with us.

Q. On the following Monday? A. Yes.

Q. General Streeter wishes to know which of the three agreed to it, if any—either Mr. Rathvon, Mr. Merritt or yourself? A. None of us agreed to it.

Mr. Streeter—What is the answer?

The Witness—None of us agreed to it.

Mr. Krauthoff—It is now 1 o'clock, if Your Honor please.

The Master—We will stop here until 2 o'clock.

[Recess to 2 p. m.]

#### AFTERNOON SESSION

Q. (Mr. Krauthoff.) Mr. Dickey, with respect to this interview with the

trustees on March 6, 1919, where the Dittmore memorandum was gone over in detail and the four copies and the original sent out to your house, you spoke of a telephone conversation which Mr. Rowlands thereafter stated came from him. Did that refer to a change in that memorandum? A. It did.

Q. What change did that telephone conversation refer to, if you know?

Mr. Whipple—If Your Honor please—

The Witness—I did not get the conversation, so that I do not know.

Mr. Whipple—Just a moment. If there was any conversation on the subject it should be given.

The Master—Now, just state what the conversation was over the telephone about that.

Q. You were not at home when the telephone came? A. I was not. I did not get the conversation relating to the change so that I could not repeat it.

Q. Do you know what change was made in the document after you left the trustees and before it came to you? A. There was one very decided change made, which I took note of.

Q. Where is the document now? Have you it, Mr. Dickey? A. No, I have not.

Mr. Streeter—Hasn't he one of the four copies which was sent over? He can point out from that the change which was made after he left.

The Master—All that about the telephone conversation might as well disappear from the record, so far as I can see.

Mr. Krauthoff—Certainly, Your Honor, that is right.

The Master—It has no bearing.

Mr. Krauthoff—My recollection is that it was given to the stenographers.

The Master—The last I saw of it it was in the hands of the stenographers.

Q. Have you the copy which came to you—one of the four copies? A. I have.

Q. Are you able from that to state what the change was? A. I could not give it exactly, but there was a change in the last paragraph.

Mr. Krauthoff—We will wait until the document comes in and then I will recur to that.

Q. It was not entirely clear to me, Mr. Dickey. Did you on this occasion, March 6, 1919, in this interview with these trustees, agree to these modifications of this Dittmore agreement? You used the phrase that you agreed to this and that you agreed to that.

Mr. Whipple—Just a moment. I pray Your Honor's judgment. If there was any conversation on the subject—I understand there was—it may be given, so far as it has not been given, but there is no use repeating it.

Mr. Krauthoff—Certainly.

The Witness—I agreed that—

Mr. Krauthoff—One moment; don't say what you agreed.

Q. What did you say? A. I said I would present these to my fellow

directors and put the question up to them of the acceptance of the terms of the memorandum.

Q. Did you say that they were acceptable to you?

Mr. Thompson—Pardon me, just a moment.

A. Not I—

Mr. Whipple—Just a moment. I pray Your Honor's judgment. Why not ask him what he said on the subject?

The Master—This, I take it, is the conversation of March 6.

Mr. Krauthoff—With the trustees.

Q. What did you say?

The Master—Just a moment.

Mr. Krauthoff—I beg your pardon.

The Master—To bring in something additional which you think he has not brought out yet?

Mr. Krauthoff—Yes, if Your Honor please.

The Master—All right. Of course if there is anything he omitted, you can bring it out now.

Mr. Krauthoff—Just one question, if Your Honor please.

The Witness—I—

Mr. Krauthoff—One moment.

Q. What, if anything, did you say as to whether or not you agreed to these—

Mr. Thompson—Just a moment. Can I be heard a moment on that? This gentleman has repeatedly testified that he went through line by line, changes were suggested, conclusions reached, he was asked if it was satisfactory to him, and he said it was; the other three said it was to them, and he marked it, "Yes." Now, can there be any legitimate reason for changing or altering that testimony? That answers the present question.

The Master—Unless something else was said at the conversation, in which case I think they have the right to say what else was said.

The Witness—I did not say that I would agree to any of those paragraphs in the memorandum; I said it would be acceptable to me to present to the directors for their consideration. I made no agreements of any kind.

Mr. Thompson—Now, I ask that that last be stricken out, if Your Honor please.

Mr. Krauthoff—The statement, "I made no agreements of any kind" should be stricken out.

Mr. Streeter—It is agreed that that should go out, Mr. Krauthoff?

The Witness—I did not commit myself in any way.

Mr. Thompson—One moment. I ask that be struck out.

The Master—One moment. You will get along better if you will testify only in answer to the questions.

Mr. Thompson—That may all go out, I understand, may it?

The Master—I understood Mr. Krauthoff to say that might go out.

Mr. Krauthoff—I submit to Your Honor's judgment on that. It is a negative statement as to what he did not say.

The Master—I so interpreted it.

Mr. Bates—I think it ought to stay in, Your Honor.

The Master—I take it as a denial by him that he ever said he agreed.

The Witness—Exactly.

The Master—For any other purpose I should not receive it.

Mr. Krauthoff—May I proceed?

The Master—Yes.

Q. What was the particular difficulty that the directors had on March 7, 1919, when you conferred with them in respect to this document?

Mr. Whipple—That I object to.

The Master—There, again, Mr. Krauthoff—this is ground where they evidently want you to follow strictly the regular course.

Mr. Krauthoff—Very well. Thank you. If that is objected to of course it is not admissible against the trustees.

Q. The next incident, Mr. Dickey, is the meeting of the Board of Directors on the next Monday, March 10, 1919, at which, according to the record, Messrs. Dickey, Merritt and Rathvon were present all during the meeting, and Mr. Dittmore from 11:10 to 12 o'clock noon—the record further recites that Mr. Dittmore left the meeting at 12 o'clock noon. At that meeting did you present a memorandum to the trustees prepared by Judge Smith? A. I did.

Q. Have you that document here? A. I have.

Mr. Krauthoff—May I see it, please? [Paper handed to Mr. Krauthoff, who hands it to counsel.]

Mr. Whipple—I understand that this paper which you have handed me is something that had been prepared by Judge Smith as another attempt similar to the last. Am I right?

Mr. Krauthoff—It was another attempt on March 10, 1919, of the parties to come to an understanding as to their mutual relations, and is offered for the same purpose as the last document—that is, as showing the position that was taken by the trustees and the position that was taken by the directors, and the points of difference.

Mr. Whipple—That is, having apparently in good faith had an interview with these trustees, asking them to make certain concessions, to which very clearly by implication he agreed, and undertaking to present it to the trustees, apparently still acting in good faith, with a view to a settlement of this controversy—now, without the slightest evidence that this man ever voted for it among the directors, or even submitted it to them with any recommendation, you now offer another attempt by drawing up some other paper to lead the trustees further on. Isn't that practically what you are doing?

Mr. Krauthoff—If Your Honor please—

Mr. Whipple—Now, pardon me—unless you want to answer my question.

Mr. Krauthoff—If I was asked a

question I thought it was proper to direct my answer to the Court.

Mr. Whipple—Certainly.

The Master—It does not strike me that this discussion could be particularly useful at this time.

Mr. Whipple—Well, does Your Honor think that this further memorandum, after what you have observed with regard to the last one, would be helpful? If so, I will submit it without any argument.

The Master—I can't tell whether it is or not until I hear what the evidence about it is going to be.

Mr. Whipple—Very well. Let us take the evidence.

Mr. Krauthoff—If Your Honor please, in passing—

The Master—Now, Mr. Krauthoff, wouldn't it be better to go on with the examination about this?

Mr. Streeter—We have no objection to it.

The Master—I am sorry to restrict these little arguments by the way, but it is obviously of great importance to make as great progress as possible.

Mr. Krauthoff—We are very glad to be restricted when the necessity is not apparent.

Q. Mr. Dickey, at this meeting on March 10, 1919, did you say anything to the trustees about this memorandum that you had taken up with them the previous week, on March 6, 1919? A. Yes.

Q. What did you say to the trustees? A. I told them that it had not been received by the board and the board would not accept it.

Q. Did you state to them the reasons why the board would not accept it? A. I did. I told them that the change in the memorandum which they had made after they consulted with me, and those which I put in with their consent—or, rather, which they put in with my consent, namely, the word "concurrently," that that was not acceptable either to our counsel or to the directors.

Q. When you used the phrase a moment ago, or the word, "received," you actually delivered the paper to the directors? A. Which paper are you referring to, Mr. Krauthoff?

Q. The revised Dittmore memorandum in the form in which you and the trustees had worked it out. A. They kept their own copies.

Q. I understand. But you said it had not been received by the board. A. I meant, they did not accept the terms of it. I did not mean, receive the paper; they did receive the paper.

Mr. Krauthoff—Now, this document—

Mr. Streeter—I beg pardon, Your Honor, and yours, Mr. Krauthoff. But what I am interested to know, is, what change came from the trustees in that memorandum?

The Master—We are going to get that, I understand, as soon as we get the paper back. Am I right?

Mr. Krauthoff—Yes; that is my understanding of the situation.

Mr. Streeter—Oh, I beg your pardon.

Mr. Krauthoff—Now, this document, if Your Honor please, known as the Judge Smith memorandum, was presented on March 10, 1919. We desire to have it marked as an exhibit for identification at this time.

The Master—Identify it now and then go on with the evidence about it, please.

[Document known as "The Judge Smith Memorandum," is marked 681 for identification.]

Q. In the form in which that was presented to the trustees by the directors on March 10, 1919, was it in typewriting? A. Yes.

Q. Now, will you point out the changes that were made in pencil—it will not be necessary to read it in full—and at whose instance those changes were made?

Mr. Streeter—Well, if Your Honor will pardon me, it will be necessary to read that in full, or it will be necessary to have it printed in full and the changes pointed out in such a way that they can be identified by the master as well as by counsel.

Mr. Krauthoff—At the proper time, if Your Honor please, we shall ask that that be offered in evidence as an exhibit and be transcribed twice, once in its original typewritten form and once in the form of the lead pencil additions, or by some suitable means—I suppose it can be done by under-scoring.

Q. Will you please explain the lead pencil additions, Mr. Dickey? A. In paragraph 2, in the last line, four words are deleted, as follows, "that Mrs. Eddy did"; and the addition was made to read as follows, "of Mrs. Eddy's published writings and her avowed acts as Discoverer"—those were added to the paragraph in pencil.

Q. Who asked that that— A. Pardon me just a moment. After that, a part of these lead pencil words were deleted, as follows, "and her avowed acts as"—those were deleted.

Q. At whose instance were those changes made? A. Mr. Eustace, the other members of the board concurring.

Q. What did they say? A. Well, they said—

Q. Who said it? A. Mr. Eustace said this paragraph 2 was not satisfactory in the condition in which we presented it to them; he would not consent—

Q. What did he say? Is that what he said? A. He said he would not sign it in its present shape.

Q. And who wrote in the pencil words? A. I did, at his dictation.

Q. And then after that some of them were taken out? A. Yes.

Q. What was the next pencil change there? A. In paragraph 3, in the last line, the word "in" is deleted where it occurs in this sentence, "In perfect accord with the By-Laws in the eighty-ninth edition of our Church Manual." The word "in" was changed to read "of."

Q. And the next lead pencil change?

A. In paragraph 4, the last line, the words occur as follows, "is to be sought and found in a simple and reasonable manner." "Simple and" was deleted. And at the last of the sentence was added, "and in accordance with the law of the land." That was done at Mr. Eustace's request, and I agreed to that and wrote it in, making that paragraph read that, "Mrs. Eddy used words both carefully and exactly, hence her intention as expressed in our Church By-Laws and in the Deed of Trust dated Jan. 25, 1898, is to be sought and found in a simple and reasonable manner." "Simple and" was deleted, and it was made to read, "sought and found in a reasonable manner in accordance with the law of the land."

In paragraph 5, the last two lines are deleted, which read as follows, "Among other powers this board now has those which formerly were conferred on the First Members of The Mother Church."

In the fourth paragraph, the change was made at Mr. Eustace's request. He stated that he would not agree to it in its present form.

In paragraph 5, the words, "Among other powers this Board now has those which formerly were conferred on the First Members of The Mother Church" were deleted at Mr. Eustace's request.

Paragraph 6, the last two lines were deleted at Mr. Eustace's request, "and they are subject to the general supervision of the Board of Directors in accordance with the provisions of the By-Laws and Trust Deed."

In Paragraph 7, one word was changed in the last line, which reads, "shall be subject to the approval of the Board of Directors." The word "approval" was changed to "concurrence," making it read, "shall be subject to the concurrence of the Board of Directors."

Those changes were all made in my handwriting and agreed to by Mr. Eustace, but not by the directors.

Mr. Thompson—I pray Your Honor's judgment.

Mr. Whipple—If Your Honor please, this witness has said more than once as he went through, "Mr. Eustace suggested it and I agreed to it." Now, does he reverse himself on that?

Q. Mr. Dickey, in using the words "agreed"— A. I meant, I agreed to write it in this instrument as it appears.

Mr. Whipple—Oh, I see. You just agreed to write it in?

The Witness—That is all, Mr. Whipple.

Mr. Whipple—I had supposed you did write it in and did not agree to it. The Witness—We did.

Mr. Whipple—You actually wrote it?

Mr. Thompson—I think we would like that out. I do not follow this at all, sir. I think the witness should be required to be very explicit here. He and his associates are apparently

striving to reach some sort of agreement with the trustees which involves the surrender by them of what has theretofore been insisted on. Now, either he was acting in good faith and leading them to believe that if they would agree he would, or else he was not. Now, I don't think he ought to be allowed to characterize his conduct after he has participated in this conference, and say, "I agreed to nothing except to write in these changes."

The Master—That is his testimony as he means to give it.

Q. Mr. Dickey, will you please state that over again and leave out the word "agreed," what you agreed or what they agreed, or what somebody suggested, and just state what was said and what was done.

Mr. Whipple—You mean reviewing this whole paper again?

The Master—I hardly think we can do that, Mr. Krauthoff.

Mr. Krauthoff—Very well. I was trying to accede to the criticisms of counsel.

Mr. Thompson—The easiest way would be to strike out the word "agreed."

Mr. Krauthoff—Then his testimony would be meaningless.

Mr. Thompson—I don't think so.

Q. Mr. Dickey, this paper was taken up, and the trustees suggested certain words, as I understand it. The lead pencil delineations were suggested by the trustees? A. They were.

Q. And were written in by you? A. Yes.

Mr. Streeter—Pardon me, Mr. Krauthoff. Probably it is because I did not hear, but I want to know whether this was taken up at a joint meeting of the boards or by him alone with the trustees?

Mr. Krauthoff—It was taken up at a joint meeting of the two boards on March 10, 1919.

Mr. Streeter—That is what I supposed.

Q. And you wrote it in? A. I did.

Q. Then I notice, Mr. Dickey, on the second page, there is one clause with a parenthesis all around it, and the letter "d" on either side. A. Well, that "d" is a delete mark, which means that that phrase is to be deleted. That is not a letter "d."

Q. Now, who asked that that be put in parenthesis, with the delete mark on it? A. Well, it was in there in full as I wrote it at the request of Mr. Eustace. Afterwards he requested that part of it deleted, and I drew a circle around it and put the delete mark in the margin.

Q. After that what was done with this paper, Exhibit 681? Did the trustees take it away with them? A. I think not. I think that they had their own, and made their own marks on their own paper.

Q. Oh, it was written in duplicate before you took it up? A. Yes.

Q. On that occasion neither the di-

rectors nor the trustees came to an agreement with respect to it?

Mr. Thompson—I pray Your Honor's judgment. I do not think that that is proper, considering the issues in this case.

Q. You have stated what happened about this paper, then, have you, Mr. Dickey? A. Yes.

Q. Have you stated all the conversation that took place about the paper? A. No; there was quite a little conversation that I do not recall sufficiently well to repeat.

Q. What did the trustees say when they took the paper away with them, and which trustee said it? A. Mr. Eustace said that he—that they would take it away and give it their consideration.

Mr. Streeter—Mr. Krauthoff, ask him what the directors said about it.

Q. And what did you or any of the directors say to the trustees about this paper? A. Nothing. We had nothing to say with regard to their taking away that paper and returning another one.

Q. I mean with regard to these lead pencil interlineations, what did any of the directors say? A. I don't recall that anything was said in particular—

Mr. Thompson—That has already been gone over once.

The Witness—Beyond the fact that they were inserted there.

Mr. Krauthoff—I am sorry, Mr. Thompson, but General Streeter asked me to ask—

Mr. Streeter—Yes, I did.

Mr. Thompson—No; you asked him to ask when they took it away.

Mr. Krauthoff—Now, we offer this Exhibit 681 for identification in evidence as an exhibit, and I presume, if Your Honor please, that it will be proper to have it transcribed once as it is in the original typewriting, and again as it is with the deletions and interlineations. Will that be agreeable to Your Honor?

The Master—If there is no way of escaping it.

[The document previously marked "681 for identification. R. M. K.," is now admitted in evidence as "Exhibit 681. R. M. K.," and it is as follows:

Written at the top of the first page, in lead pencil, are the words "Read and discussed at meeting with trustees March 10, 1919, furnished by counsel." Underneath the words "discussed at meeting with trustees March" is a pencil line. Then, in typewriting, is the following:

"It is mutually understood and agreed by and between the Board of Directors of The First Church of Christ, Scientist, in Boston, Massachusetts, and the Board of Trustees of The Christian Science Publishing Society, as follows:

"1. That The Christian Science Publishing Society is not separate from or independent of The Mother Church. The Deed of Trust dated Jan. 25, 1898, was and is accurately

described by our Leader's words, 'A Gift to The Mother Church and A Grant of Trusteeship.'

"2. That the relations of the above named boards and their respective duties and responsibilities are shown by our Church By-Laws and the above mentioned Deed of Trust. These By-Laws and this trust deed must be, respectively, considered as a whole; each must be construed in connection with the other; and both must be construed in the light of all that Mrs. Eddy did (pencil lines are drawn through the words, 'that Mrs. Eddy did,' and written above in lead pencil are the words, 'of Mrs. Eddy's published writings') as the (followed by a caret in pencil, and the words in pencil, written underneath, 'discoverer &,' and written above the caret in pencil the words, 'and her avowed acts as,' which last words are inclosed with a pencil line and carried by a line to the right-hand margin, after which is the printer's symbol for delete) Founder of Christian Science.

"3. That the trusteeship created by the Deed of Trust dated Jan. 25, 1898, was and is a legal trust. It is also a trust that can be and is to be executed in perfect accord with the By-Laws in (the word 'in' is incircled by a pencil line, and from this pencil line is drawn a line to the right-hand margin, after which is the word 'of') the 89th edition of our Church Manual.

"4. That Mrs. Eddy used words both carefully and exactly; hence her intention, as expressed in our Church By-Laws and in the Deed of Trust dated Jan. 25, 1898, is to be sought and found in a simple and (a pencil line is drawn around the words 'simple and') reasonable (a pencil line is drawn under the letters 'ason' in the word 'reasonable,' and in the right-hand margin, in pencil, is an interrogation mark) manner. (At this point, written in pencil, are the words '& in accordance with the law of the land.')

"5. That the Board of Directors of The First Church of Christ, Scientist, in Boston, Massachusetts, which our Leader designated as the 'Christian Science Board of Directors,' is intrusted with the general direction and supervision of the Christian Science movement in all of its departments. Among other powers, this board now has those which formerly were conferred on the First Members of The Mother Church. (The words beginning with 'Among other powers' and ending with 'First Members of The Mother Church' are inclosed by pencil lines, and opposite them, in the right-hand margin, is the printer's symbol for delete.)

"6. That the duties and responsibilities of the Board of Trustees of The Christian Science Publishing Society are not those of mere clerks, nor are they merely formal or unimportant. On the contrary, the duties and responsibilities of this board are



exceedingly important. Nevertheless they consist only of what is expressly conferred on this board by our Church By-Laws and the Deed of Trust dated Jan. 25, 1898; and they are subject to the general supervision of the Board of Directors in accordance with the provisions of the By-Laws and Trust Decd. (The words beginning 'and they are subject' and ending with the words 'provisions of the By-Laws and Trust Deed' are inclosed with a pencil line; a pencil line is drawn down the right-hand margin of the paper beginning on the second line of '6' and ending with the words 'provisions of the By-Laws and Trust Deed,' and on the right-hand margin, opposite the words 'expressly conferred on this Board by our' is, in pencil, the printer's symbol for delete, and also on the left-hand side between the last and the next to the last lines.)

"7. That all new or unusual acts contemplated by the Board of Trustees, which would or might, to an important extent, affect the interests of Christian Science or the income of The Mother Church, shall be subject to the approval of the Board of Directors. (Under the word 'approval' is a pencil line, and written in the right-hand margin, opposite, in pencil, is the word 'concurrence.')

"Signed March , 1919

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"For The Christian Science Board of Directors.

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"For the Board of Trustees of The Christian Science Publishing Society."

Q. Did the trustees come back on March 11, 1919? A. They did.

Q. And did they bring with them a document? A. They did.

Q. Have you that document? A. I have.

Q. Was Mr. Dittmore present at the time that the document that you have just referred to was considered by the board? A. He was not.

The Master—Meaning exhibit what?

Mr. Krauthoff—Exhibit 682.

The Master—You do not refer to the Judge Smith—

Mr. Krauthoff—No; I am now referring to the one that the trustees—

The Master—I was not quite clear about that, whether you were going back a little, or whether you referred to the document that you just handed counsel.

Mr. Krauthoff—I am referring to the document which I just handed counsel, which has not been introduced in evidence, being the document that the trustees prepared and brought back with them.

The Master—Very good.

Mr. Streeter—Mr. Krauthoff, so far

as Mr. Dittmore is concerned, we do not object, and, not only that, but we approve.

Mr. Krauthoff—May I have this marked? We offer it in evidence as an exhibit.

Mr. Streeter—Does it appear from the record that this document was brought back on March 11, 1919, as a proposal of the trustees?

Mr. Krauthoff—The record of the directors shows that at 12 o'clock Mr. Dittmore left the meeting, and the remaining directors had an interview with Trustees Eustace, Ogden and Rowlands, of The Christian Science Publishing Society. At 1.15 p. m. the meeting adjourned.

Mr. Streeter—That does not show it. You offer a document here, and I understand you to say that this was a paper which the trustees brought back at that meeting as their proposal of an adjustment.

Mr. Krauthoff—Yes, that is it.

Mr. Streeter—Is that correct?

Mr. Krauthoff—That is correct.

Mr. Whipple—We have no other objection to it, if Your Honor please, than that which we have already recited.

The Master—The same objection on Mr. Whipple's part, and the same ruling.

[The typewritten document last described is marked Exhibit 682. R. H. J.]

Q. This is Exhibit 682, Mr. Dickey, which you handed me a moment ago. Did the trustees bring that with them to the meeting of March 11, 1919? A. They did.

Q. And what did the trustees say, any of them, with respect to this 682?

A. I can't tell whether it was Mr. Eustace or Mr. Rowlands that handed in that document and said that that represented their ideas of what this agreement should contain, it was a modification of the one that they carried away the day before.

Q. Did he say it was a modification? A. No. He said they had made some changes in it, but this contained their present ideas.

Mr. Krauthoff—That document is offered in evidence as Exhibit 682, and it is as follows:

"It is mutually understood and agreed by and between the Board of Directors of The First Church of Christ, Scientist, in Boston, Massachusetts, and the Board of Trustees of The Christian Science Publishing Society, as follows:

"1. That The Christian Science Publishing Society is not separate from or independent of The Mother Church, but is an interdependent activity of the Christian Science movement, and that the gift of the 'net profits' from the conduct of the business of The Christian Science Publishing Society under the Deed of Trust dated Jan. 25, 1898, was and is accurately described by our Leader's words, 'A Gift to The Mother Church, and a Grant of Trusteeship.'

"2. That the relations of the above named boards and their respective duties and responsibilities are shown by our Church By-Laws and the above mentioned Deed of Trust. These By-Laws and this Trust Deed must be respectively considered as a whole. Each must be construed in connection with the other, and both must be construed in the light of all of Mrs. Eddy's published writings as the Discoverer and Founder of Christian Science.

"3. That the trusteeship created by the Deed of Trust dated Jan. 25, 1898, was and is a legal trust. It is also a trust that can be and is to be executed in perfect accord with the By-Laws of the eighty-ninth edition of the Church Manual and in accordance with the law of the land.

"4. That Mrs. Eddy used words both carefully and exactly. Hence her intention as expressed in our Church By-Laws and in the Deed of Trust dated Jan. 25, 1898, is to be sought and found in a reasonable manner and in accordance with the law of the land.

"5. That the Board of Directors of The First Church of Christ, Scientist, in Boston, Massachusetts, which our Leader designated as the 'Christian Science Board of Directors,' is intrusted with the general direction and supervision of the Christian Science movement in all its departments; but it is understood that The Christian Science Publishing Society is not such a department, being a function of the Christian Science movement. Therefore the Board of Trustees necessarily differs organically from departmental activities of The Mother Church, in that its responsibilities in the holding and management of valuable property require that it be constituted and perpetuated in accordance with the established legal usage necessary to safeguard and properly manage the trust and confidence given by Mrs. Eddy in the Deed of Trust.

"6. That the duties and responsibilities of the Board of Trustees of The Christian Science Publishing Society are not merely formal or unimportant, but are clearly and definitely defined under the Church Manual and the Deed of Trust.

"7. That all unusual acts contemplated by the Board of Trustees which would or might to an important extent affect the interests of the Christian Science movement or the income of The Mother Church shall be taken with the concurrence of both boards.

"8. Both boards recognize that under Section 3 of Article XXXV no new tenet or by-law can be adopted, nor any tenet or by-law amended or annulled, and both boards fully recognize the duty of each to the other in complying with the laws of the land, but because of the rapidly increasing business and the ever increasing influence of Christian Science throughout the world, it has now become necessary for both boards

to unite upon some working agreement to be in accord with the Manual of The Mother Church and the Deed of Trust constituting The Christian Science Publishing Society, which it is agreed shall not be construed as a new by-law or as an amendment to the By-Laws of the Church Manual, and which shall not be construed as affecting in any wise the rights, duties, or responsibilities of either board under the Manual of The Mother Church and the Deed of Trust.

"Signed March , 1919.

"For The Christian Science Board of Directors.

"For the Board of Trustees of The Christian Science Publishing Society."

Q. On March 11, 1919, when this Exhibit 682 was presented by the trustees, was anything said by any of the trustees or any of the directors with respect to that agreement? A. Yes, there was; but before I state that I would like to make a possible correction in my testimony. I stated that I made these alterations in lead pencil on March 10, and I am not now certain that I did that on the 10th, nor am I real certain that I did it on the 11th, but I am inclined to believe that it was on the 11th, the day that the agreement was brought in from them, that I made these interlineations on the paper that I had before me. Now, that will change my testimony to a considerable extent.

Q. You are not able now to state when you— A. I am not able. I have been trying to think the matter over, and I am more inclined to believe that I did it on the 11th than that I did it on the 10th.

Q. Let me see. On the 11th the trustees brought the document that they had prepared? A. Yes.

Q. Now, did you then, Mr. Dickey, on March 11, before taking up their document, go back to your own document and try to work that out? A. No. If it was done on the 11th, I did it as they read their document, and I made the corrections on the paper that I had before me; but I am not able to state; and if it is not desired to leave the matter that way, I would rather that the whole question would be stricken out than to claim what perhaps I cannot substantiate.

Q. I will ask you later to compare the two documents and state whether they were both presented on the same day or not? A. I don't know that I could state that. I would not know that.

Mr. Thompson — Before we reach that, the two papers you speak of are

Judge Smith's memorandum and the paper brought by the trustees on March 11. Is that right?

Mr. Krauthoff—They are Exhibits 681 and 682.

Mr. Thompson—He cannot tell whether he made the pencil marks on Judge Smith's memorandum on March 10 or 11?

The Witness—That is right.

Mr. Krauthoff—So he now states.

The Witness—Quite right. You asked me if there was any discussion.

Mr. Whipple—I understand, if Your Honor please, that as a result of the witness' correction, while it is not very clear, as to all this circumstantial narrative of his with regard to going through Judge Smith's memorandum paragraph by paragraph and deleting or adding thereto in accordance with the suggestion of Mr. Eustace, he now thinks that it did not happen at all.

The Witness—No, sir, that is not what I said.

Mr. Whipple—That is what you did testify to.

The Witness—I mean it happened on the 10th or on the 11th.

Mr. Whipple—Well—

Mr. Krauthoff—If Your Honor please, I am quite sure that when the witness thinks of it further he will get straight on that. He has just for the moment—

Mr. Whipple—He must know more about it than you do. Where is he going to get it? Are you going to straighten him out on it? Where is he going to get his inspiration?

Mr. Krauthoff—If Your Honor please, the circumstances clearly indicate that it was done on the 10th, because the two documents are not so similar that you can make the one fit the other by interlineation.

The Master—Can it be a matter of very great importance whether it was done on the 10th or on the 11th?

Mr. Whipple—Well, we regard it as of importance, of course, as affecting the memory of the witness. He gives us a circumstantial narrative with photographic accuracy as to what happened with regard to a paper, and then he finds there isn't a bit of basis for it—I mean as to the accuracy of the witness' memory—

Mr. Bates—He has said it took place either on the 10th or the 11th.

Mr. Thompson—Well, pardon me, excuse me.

Mr. Whipple—It couldn't have been on the 11th.

Mr. Bates—That is his statement.

Mr. Whipple—What he said is that if it happened on the 11th he did it by comparing the two papers and not reading to Mr. Eustace all the things he wanted inserted, because Mr. Eustace has prepared an entire paper, and it was not an amending of one by the other. One was writing differences between the two papers, as he now puts it, while the other was listening to and acting as scribe in making interlineations and additions to only one

paper. I should think even you, Governor, ought to see the difference between those two statements.

Mr. Bates—I am stating what the witness said and you are simply giving your own theory.

Mr. Whipple—I am stating what the witness says and you have evidently not been listening to it—

Mr. Bates—I have to listen to you all the time.

Mr. Whipple— otherwise, you would have known something about it.

Mr. Bates—I have to listen to the witness once in a while.

Mr. Whipple—It is because you have not listened to the witness that now you misquote.

Mr. Krauthoff—The net result is, after all, if Your Honor please, that the directors proposed one memorandum and the trustees proposed the other, and they did not come to an accord.

Mr. Thompson—We do not concede that that is a fair statement.

Mr. Whipple—We do not agree to that at all; that is an easy way out.

The Master—I think the only way would be to get what the witness means to say and leave it there; then you can argue it afterwards.

Mr. Streeter—If I may be allowed to state it, the net result is that, on a most important document, this witness cannot tell whether it was done on the 10th or 11th, cannot tell whether it was done at a joint meeting or the next day, with Mr. Eustace, before meeting, when another document was presented. That is the net result of it.

Mr. Krauthoff—Excuse me, General. I should have stated that on March 11, 1919, the record shows another interview between the directors and the trustees, at which the document which the trustees—

Mr. Streeter—I won't try to have the last word with you. We will argue that when we come to the point later, as to what the net result of this is.

Mr. Krauthoff—I am not talking about the net result.

Mr. Streeter—That is what I am talking about.

Q. May I call your attention to this, Mr. Dickey. The directors' records show that on March 11, 1919, at 12 o'clock Mr. Dittmore left the meeting, and the remaining directors had an interview with Trustees Eustace, Ogden, and Rowlands of The Christian Science Publishing Society, and at 1:15 p.m. the meeting adjourned. This memorandum which the trustees had prepared, Exhibit 681—was that presented the next day at the trustees' meeting with the directors? A. It was.

The Master—One moment.

Mr. Whipple—The next day after that.

Mr. Krauthoff—I mean March 11, 1919.

The Master—One moment. Was that presented on March 11?

Mr. Krauthoff—Yes. That was presented March 11.

The Witness—Yes.

The Master—Unless you put it in that way I am afraid you will get into confusion again.

Mr. Krauthoff—Thank you very much.

The Witness—It was.

Q. What was said by the trustees or by any of the directors on March 11, 1919, with respect to the memorandum 681 which the trustees brought over? A. I said, "Well, there are quite a few differences"—

Q. I beg pardon; that is Exhibit 682. Go ahead, Mr. Dickey. A. I said, "There are quite a few differences between this proposal and the one we gave to you yesterday," and Mr. Eustace said, "Yes, there are." I pointed out, by comparison, what some of them were, and asked him why they made that. He said that was their point of view, and that was the only agreement they would sign. After having pointed several of these out, I said, "Well, now, Mr. Eustace, it is very evident from what you say today that you have changed entirely from your attitude of yesterday." He said, "We have nothing of the kind." I said, "I beg your pardon; you are now making statements verbally to me which you have never made to me before, namely, that you believe that the Board of Directors has nothing whatever to do with anything that goes on in the publishing house." He said, "That is exactly what I say and exactly what I mean." "Then," I said, "You have never stated that to me before in any conversation we have ever had, and I am very much disappointed at the result of this interview." The other directors expressed themselves—I cannot tell the name of the individual and what he said—but just before they left Mr. Rowlands asked, "Well, Mr. Dickey, has anything been accomplished today?" I said, "Yes, a great deal; we have found out now just where the trustees stand and what they are trying to do, and I think our interviews are at an end."

Q. Was there any conversation in which the word "mask" was used? A. Yes. I said, "You have dropped the mask that you have been wearing all this time, and I now see clearly just what you have meant and what you mean now."

Q. While these interviews were going on, Mr. Dickey, I call your attention to the record of Feb. 26, 1919, in which each member of the board was requested to prepare reasons why one of the trustees should be removed. Did you prepare such reasons? A. I did.

Q. In writing? A. Yes.

Q. What did you do with the reasons? A. I gave them to Judge Smith.

Q. When did you prepare them? A. I prepared them after Judge Smith made the request; I gave my reasons to him.

Q. Now, Mr. Dickey, did Judge

Smith give those reasons back to you?

A. He did.

Q. And have you them now? A. I have not.

Q. What did you do with them? A. I destroyed them at once after receiving them.

Q. This question of why one of the trustees should be removed—state the circumstances with respect to that.

Mr. Whipple—That I object to, if Your Honor please.

The Master—Are we now going back to Feb. 26?

Mr. Krauthoff—No, if Your Honor please. I am still about these reasons. I will leave out the question of Feb. 26.

Q. Did the question then arise, Mr. Dickey, and what was said about it, about removing one trustee or removing three trustees?

Mr. Whipple—I object, if Your Honor please.

The Master—"Then." What do you mean by "then"?

Mr. Krauthoff—After March 11, 1919.

The Witness—Yes, the records will show what we did.

Q. Well, the records show that you removed one? A. Yes. That was discussed with the directors, if that is what you mean.

Mr. Krauthoff—Yes, that was discussed with the directors. If Your Honor please—one moment, Mr. Dickey—this question of removing one of the three trustees presents itself in this case in a double aspect. The claim of Mr. Dittmore is that all three—

Mr. Whipple—I pray Your Honor's judgment. Why is Mr. Krauthoff addressing the Court? There is no question that has not been answered. I do not understand the purpose of this address or how it fits in.

The Master—Why is it necessary to make any statement about it? Why can't you go on with your examination of the witness?

Mr. Krauthoff—I suppose, if Your Honor please, the only explanation I can make is that, being a counsel from abroad, I have fallen into Mr. Whipple's habits in the courts of Massachusetts, in making statements frequently and often.

Mr. Whipple—You ought not to discredit me by saying that you are imitating me.

Q. Now, Mr. Dickey, did you have any conversation thereafter with your fellow members of the Board of Directors with respect to removing one trustee in contradistinction to removing all three? A. We did.

Q. Please state what was said in those conversations?

Mr. Whipple—I pray Your Honor's judgment.

Mr. Krauthoff—Now may I make the statement?

The Master—Why should we have all the discussion in the Board of Directors on that subject brought out at length?

Mr. Krauthoff—The question, as I

was about to say a moment ago, arises in this case in a double aspect. Mr. Whipple is complaining of the failure of the Board of Directors in not removing all three of the trustees, on the ground that if any one of the trustees should have been removed all three should have been removed, and our failure to remove all three is evidence of the fact that in truth no ground existed to remove one. That is the contention of Mr. Whipple. On the other hand, Mr. Dittmore is contending that our failure to remove all three of the trustees shows a lack on our part, of the directors of The Mother Church, in the discharge of their duties, and has a bearing on their action in removing him from office.

Mr. Whipple—If Your Honor please, let me say that the contention attributed to me by the learned counsel has never been made, and in my wildest flights of imagination I have never thought of complaining because all three trustees were not removed rather than one—never. Our complaint is that you attempted to remove one—a palpably futile, baseless proceeding. That is our complaint.

Mr. Krauthoff—Well, then, I will not press that inquiry at this time.

Mr. Whipple—Well, I would not.

Mr. Krauthoff—I will take it up when I come to another phase of the case.

Q. Mr. Dickey, coming back to Exhibit 680, are you now able to state what changes were made in that document after you left the trustees?

The Master—Pardon me, I think now, General Streeter, this is the information that you were in search of a while ago.

Mr. Streeter—I thank Your Honor.

A. I couldn't without comparing it with the document which they returned to me that night. That differed somewhat from this one.

Q. Have you that document? A. I have not. It is here in evidence.

Mr. Streeter—No, it is not in evidence.

Mr. Krauthoff—I beg pardon, Mr. Dickey; I haven't asked you for it.

The Witness—Perhaps I have it.

Mr. Streeter—We never have seen it.

The Witness—I will show it to you.

Mr. Streeter—I mean the copies that they sent over to him that night, which he says were changed.

The Witness—I have it here, General.

Mr. Streeter—Now, if you can tell the difference we don't want to have this all printed in again.

The Witness—The only way I could tell the difference would be to read it over with somebody. I will go over and do it with you, General, if you like.

Mr. Whipple—It had occurred to us that if that difference was so important as to make it rejected—as to be the basis of rejection—it might have remained in your mind what the difference was.

Mr. Bates—No one has said it was

the basis for rejection except Mr. Whipple.

Mr. Whipple—Except that the witness has testified under oath. He said that, and other things.

Mr. Bates—Why did you leave out the other things?

Mr. Whipple—Because I don't need to state them all.

Mr. Bates—You need to tell the whole truth once in a while.

Mr. Whipple—I do nothing else.

The Master—Now, what course shall we take to get this evidence in in the shortest possible form?

Mr. Krauthoff—It is now 3 o'clock. It has not been our practice to take an intermission in the afternoon. I can defer it until tomorrow morning.

The Master—How long would it take you to look it over?

Mr. Krauthoff—I do not know.

Mr. Streeter—It will be satisfactory to us if he will furnish an authenticated copy of what the trustees sent over. We will make our own comparison.

The Master—Can you do that?

Q. Have you there a copy of that which the trustees sent to your house? A. I have.

Q. Have you one or two of them?

Mr. Streeter—Let it be marked for identification so we will know what we are about.

The Witness—Here is the original.

The Master—Is that the document that he produced?

Mr. Krauthoff—We offer it for identification as Exhibit 683.

The Master—I understand that is what the trustees sent to him, up to his house. Is that right?

Q. That is what the trustees sent to your house on March 6, 1919? A. It is.

Mr. Streeter—Let the stenographer put right on there what it is, please.

The Master—What he will put on will be "Exhibit 683," I think.

Mr. Streeter—Well, all right.

[The stenographer inquired if the document is to be marked as an exhibit or for identification merely.]

The Master—No; you may mark it for an exhibit.

[The memorandum above referred to, relative to the relations between the directors and the trustees, is marked Exhibit 683.]

The Master—Now, can't you turn both documents over to General Streeter and let him find out what the difference is?

Mr. Streeter (taking Exhibit 683)—We will look it over.

Q. Following the meeting of March 11, 1919, did Mr. Neal return to Boston? A. We telegraphed for Mr. Neal to come home.

The Master—Well, did he return? That is the question.

The Witness—We did, and he came home.

Q. And did you and Mr. Merritt and Mr. Rathvon discuss with Mr. Neal the situation with respect to the trusteeship? A. Yes, sir.

Q. On March 17, 1919, the record of the Board of Directors shows that Messrs. Dittamore, Dickey, Merritt and Rathvon were present, and then the resolution was offered which has heretofore been read in evidence, purporting to remove Mr. Rowlands from office. Had the subject matter of that been taken up with Mr. Neal by yourself and Mr. Rathvon and Mr. Merritt? A. It had.

Q. And what had Mr. Neal said about it? A. Mr. Neal said that action was—

Mr. Whipple—Just a moment. I cannot see how these private conferences between the directors in preparing for the proceedings that they were about to enter upon can be of importance, unless they are brought out in cross-examination.

The Master—Why should we go into that now?

Mr. Krauthoff—My only purpose is this, if Your Honor please. Mr. Neal was not present when the resolution of March 17, 1919, was adopted, and our purpose was to prove that the subject matter of that resolution had been taken up with him and had met with his approval.

Mr. Streeter—Well, I want to object.

The Master—Don't the records of the meeting say something about that?

Mr. Streeter—I assume—I saw Mr. Neal here the other day—he is in good health now, isn't he, and here?

Mr. Krauthoff—Well, he is in Boston.

Mr. Streeter—And you expect to have him as a witness, do you not?

Mr. Krauthoff—That is our present intention.

Mr. Streeter—Yes, sir. Well, it is our desire that you shall have him, and we prefer to ask Mr. Neal the questions in regard to this matter rather than to have Mr. Dickey testify about it. His reasons for not being present at the dismissal of Rowlands, and the expression of his fellow-directors on March 17, would very much better be stated by him, and as he is to be a witness I suggest that this witness be excused from testifying for Mr. Neal.

Q. Recurring to the resolution of March 17, 1919, relating to Mr. Rowlands as a trustee of The Christian Science Publishing Society, there is one paragraph which reads as follows:

"Whereas Mr. Rowlands evidently has other interests which prevent him from giving sufficient time and attention to the business of The Christian Science Publishing Society." Had you at that time had your attention directed in any way to Mr. Rowlands' absence from Boston? A. Yes. It was quite evident to us that—

Q. I beg your pardon. In what manner did this come to you, Mr. Dickey? A. Well, it came in different ways. Sometimes through the trustees in telling us that Mr. Row-

lands was not in Boston. We learned it through information being handed from one to another that Mr. Rowlands was out of the city.

Q. At the time that Mr. Rowlands became a trustee in 1917, was there any discussion then as to the time that he would be absent from Boston in taking up his personal affairs with the Board of Directors? A. Not with me personally.

Q. Or with the Board of Directors, so far as you know? A. I don't know as he had any conversation in that particular with the Board of Directors. We learned that from the trustees.

Q. In your conversations with the trustees from time to time, Mr. Rowlands in particular, was the question of his absences from Boston noted in any way? Was anything said about those? A. Yes, we spoke about them.

Q. And what, if anything, did Mr. Rowlands say about his absences from Boston? A. We did not ask him to explain to us why he was away, but when he returned and we saw him he said he was away on business.

Q. I mean, Mr. Dickey, in these various conferences where the points of difference were brought out, and you were making your contentions back and forth about the Deed of Trust and the Manual—in those conferences was anything said about Mr. Rowlands' absences from Boston? A. Not that I recall, except the time I visited Mr. Eustace and Mr. Ogden.

Q. That was in Mr. Rowlands'— A. Then they said that Mr. Rowlands was away.

Mr. Krauthoff—That as to Mr. Rowlands may be stricken out, if Your Honor please.

Q. That was in Mr. Rowlands' absence? A. Yes.

Q. Mr. Dickey, with respect to your relations with Mrs. Eddy, did you become one of the trustees of her property under an instrument of trust that she had executed in her lifetime? A. I did.

Q. Did you serve as treasurer of The Mother Church; and if so, for what length of time? A. I did.

Mr. Whipple—If Your Honor please, this looks like beginning right at the beginning. All these questions were put, or similar ones, when we started. You really are not going to begin again?

Mr. Krauthoff—No, if Your Honor please, I am going to take up Mr. Whipple's bill in equity and ask some questions—

Mr. Whipple—I thought you had asked something in relation to that before, inasmuch as that started the controversy. I thought you had been guiding all your questions with respect to it.

Mr. Krauthoff—Not entirely, if Your Honor please.

Mr. Whipple—You seem to have just discovered it.

The Master—Well, come along with the question and we will see what we will do with it.

The Witness—I was treasurer for about five years of The Mother Church.

Q. This document which has been filed by the plaintiffs in this case, the Bill in Equity, has been the subject of a very careful study on your part? A. I have read it through a number of times.

Mr. Krauthoff—Now, if Your Honor please, if you will take the printed document of the answer of the defendants, and the Bill in Equity of the plaintiffs printed on opposite pages, on page 15.

Q. Calling your attention to the allegation in the fourth paragraph of the bill with respect to "The conception and plan of Mrs. Eddy for the promotion and extension of the religion of Christian Science," it being alleged in the bill that, as taught by her, it involved two general branches of activity. Will you please state from your understanding of Christian Science, and from your experience as a member of the Board of Directors, and your experience in the service of Mrs. Eddy, what was the conception and plan of Mrs. Eddy for the promotion and extension of the religion of Christian Science as taught by her?

Mr. Whipple—We object to that, if Your Honor please. The averments in the bill refer to the indisputable facts which were set forth by Mrs. Eddy in the Deed of Trust which she executed after due consideration. All other averments are founded, not upon interpretation or hearsay evidence from Mrs. Eddy, but upon papers which she herself had prepared and she herself signed. And the two deeds, the Manual and the other instruments that are in the case that were inspired by Mrs. Eddy, are the basis and the entire basis of those averments. In effect counsel asks this gentleman to construe the writings of Mrs. Eddy.

Mr. Krauthoff—Our thought about that, if Your Honor please, is this: here is the general allegation in the bill, which is not limited by the bill to any particular thing, but is pleaded in generalities. Now, we were expecting to ask of this witness and to have his answer based upon Mrs. Eddy's writings, upon what Mrs. Eddy did, as the statement of one familiar with the whole literature upon a subject which in its nature is too extensive to be brought before the Court in its entirety.

The Master—Those allegations, I think, are to be judged by the Manual and the Deed of Trust.

Mr. Krauthoff—Well, in that event, of course the evidence of the witness would not be important.

The Master—Including, of course, the evidence relating to those two documents.

Q. On page 23 of the bill, Mr. Dickey, the allegation is that as the results of the administration of the trust by the present trustees the affairs of The Publishing Society have been highly prosperous and success-

ful. To what extent have other incidents contributed to the success of the Publishing Society than the administration of the trust by the trustees? A. The active—

Mr. Whipple—I pray Your Honor's judgment.

The Master—One minute. (Referring to pleadings.) Go on.

Mr. Whipple—We object, if Your Honor please, to that question which asks for the opinion of this witness as to what has caused the success of the administration of the trust. And apparently admitting its success, as the witness impliedly does, what difference does it make what the causes are to which it is due, so long as the trustees have done nothing to prevent its being successful?

The Master—Just what is the issue there?

Mr. Krauthoff—As I understand it—

The Master—You deny, apparently, that as a result of the administration of the trust by the trustees the affairs of the Publishing Society have been highly prosperous and successful. You do not deny that they have been prosperous and successful to some extent, do you?

Mr. Krauthoff—No. We say that they have been highly prosperous and successful, but we aver—

The Master—I am reading from the middle of page 24—"Defendants deny that the affairs have been highly prosperous and successful." Now, is that a mere question about "highly"?

Mr. Krauthoff—No. The point is this, if Your Honor please: as we read the bill the success and prosperity of the Publishing Society was claimed to be due to the results of the administration of the trust by the plaintiffs, and on the theory that the expression of one is the exclusion of the other, it has been supposed that the prosperity and success were entirely due to the administration of the trust by the trustees, and that no other incidents contributed to it. It becomes important in this case, if Your Honor please, as bearing upon the theory expressed by Mr. Watts that, notwithstanding the fact that the Publishing Society would lose all of its present subscribers, that the Publishing Society could still continue in business and get a new lot of subscribers to take their places. The point we desired to bring out—

The Master—I can't think that it depends on that. The issue here is as to what has produced the prosperous and successful result of the affairs of the Publishing Society during the period in question. You say, not solely the administration by the trustees, there were other causes. That is what I make out of the bill and answer.

Mr. Krauthoff—Yes.

The Master—Does anybody deny there were other causes?

Mr. Whipple—Oh, not at all, Your Honor.

The Master—Is it a question for

evidence there? Is there any real dispute on the fact?

Mr. Whipple—We make no allegation excluding other causes. All we desired to allege was that we had administered properly the trust that was in our hands, and that we had done everything we could to work harmoniously with the directors; that we conceded or acceded to everything they asked in regard to any practical thing; but when they asked us to sign these papers we would not do it. That is all that the averments amount to in substance.

Mr. Krauthoff—The point, if Your Honor please, at some point in the case, is that the prosperity of this Publishing Society is due to the fact that it is a part of the comprehensive scheme for the promotion and extension of the religion of Christian Science as represented by the government of The Mother Church, and that its success and prosperity is due entirely to that fact, and that separated from that connection its success and prosperity would be nil.

Mr. Whipple—We have never claimed otherwise. We have always asserted that the prosperity was due to the inspiration of Mrs. Eddy, or attributable to her, and worked out through the instrumentality of these trustees, who had wise business judgment.

The Master—I do not see any controversy of fact there that needs to have the evidence brought on the one side and the other.

Mr. Krauthoff—Now, if Your Honor please, on page 25 of the printed—

The Master—I still understand that you deny that the affairs of the Publishing Society, as administered by the trustees, have been highly prosperous and successful.

Mr. Krauthoff—We first, if Your Honor please, took the language of the bill and denied that they had been highly—

The Master—Well, I understand now you do not deny they have been prosperous and successful.

Mr. Krauthoff—The theory of the pleadings on this, if Your Honor please—

The Master—Do you insist on the denial that they have been highly prosperous and successful?

Mr. Krauthoff—I was first directing my attention to the meaning of the word "affairs." We consider the word "affairs" to be a word including its spiritual and financial prosperity and activity. We thereupon denied the exact language of the bill:

"Said defendants deny that the affairs of the Publishing Society have been highly prosperous and successful" on the theory that we had to be specific and admit or deny the bill as pleaded; and then said,

"But they aver that the financial affairs of said society have as a whole been successful, but deny that such success is the result of the adminis-

tration of said trust by said present trustees."

The Master—Now, it being admitted that the administration of the present trustees is not the whole explanation of the success, is there really anything there to dispute about it?

Mr. Krauthoff—No, not in the face of that admission. I was proceeding to another point, if Your Honor please. And I wanted to make a correction in a statement that we have in our answer on page 26. On page 25, at the bottom of the printed matter, is an allegation in the bill as to \$450,000, or a sum in excess thereof, having been paid over to the directors for the period of six months ending Oct. 1, 1918; and in our answer on page 26, we separate that into two amounts. And I understand now there is no controversy between us as to the fact that the sum of \$287,103.11 was paid to the treasurer of The Mother Church as earnings and profits of the business for the period of six months ending Oct. 1, 1918; and that \$175,199.45 was paid to the six Trustees under the Will of Mary Baker Eddy, of whom the then directors constituted five. The correction I desired to make was this, if Your Honor please: we said that the money paid over to the Trustees under the Will of Mary Baker Eddy represented royalties, and upon a further examination of that contract between the Trustees of the Will and the Publishing Society we find that that is the profits of the sale of Mrs. Eddy's works.

The Master—Do you want to amend?

Mr. Streeter—If Your Honor please, we are interested in that matter—

Mr. Whipple—His Honor asked if you wanted to amend.

Mr. Krauthoff—I do not think the matter is of sufficient importance to warrant the making of an amendment, but we answered it because it was pleaded in the bill. Neither the amount nor the details of that are vital or controlling one way or the other.

Mr. Streeter—Well, Mr. Krauthoff, that depends upon the contract of October, 1917, which was made with the New Hampshire Trust, doesn't it?

Mr. Krauthoff—Yes.

Mr. Streeter—I understand that to be so.

Q. Mr. Dickey, with respect to the payment of this sum of money that has been referred to here—\$287,103.11 plus \$175,199.45—to what extent is the ability of the Publishing Society to produce profits at that rate due to the fact that it is the recognized and established Publishing Society of The Mother Church?

Mr. Whipple—We object to that, if Your Honor please.

The Master—I do not see how—

Mr. Whipple—I do not care to argue it. We thought it was quite clear that it would not be admitted.

Mr. Krauthoff—If Your Honor please, we offer that upon the theory

that the duty of the plaintiffs under that Deed of Trust is to promote and extend the religion of Christian Science, and that that is done most effectively by there being the established Publishing Society of The Mother Church, and that any step on their part which would lead to a cessation of that relationship would result in disaster to the trust that they are administering.

Mr. Whipple—Why, if Your Honor please, there is no possible way in which there can be a cessation of that relationship. Mrs. Eddy, in her wisdom, so left this whole matter that there cannot be any such separation, strive as these directors may. They cannot prevent it. She made it the organ of the Church and these people cannot unmake it. She provided in this trust for the extension of the doctrines of Christian Science and how it should be done, and appointed trustees to do it, and these gentlemen, if they want to, cannot prevent it. They did not make this trust, or the Publishing Society or the publications the organ of the Church. She made them and they cannot unmake them.

Mr. Krauthoff—May I make one statement in connection with what Mr. Whipple has said? It is quite true that the directors cannot separate the Publishing Society from The Mother Church, and neither can the trustees. We are now anticipating a situation where the Court is called upon to render such a decree, and we are desirous now of pointing out what the result of such a decree would be.

Mr. Whipple—Such a decree as what?

Mr. Krauthoff—Separating the Publishing Society—

Mr. Whipple—Pardon me. We ask for no such decree. We ask merely for a decree that prevents this trust from being destroyed by these directors, Mrs. Eddy's trust, the trust that she wanted followed. That is the temporary injunction, an injunction to prevent these directors from exercising their authority to injure this trust and these publications. It is an injunction to prevent the destruction by these directors of a sacred trust created by Mrs. Eddy. That is the decree that we ask for against the directors, and we say you can't do it, and the Court will protect this Publishing Society and this trust of Mrs. Eddy's against their attack.

Mr. Krauthoff—If Your Honor please, the Court will protect the trust established by Mrs. Eddy from attack of error of every sort, no matter whence or where it comes. The point we desire to make is this, in passing: At the proper time in the argument of this case it will be pointed out to Your Honor that Mrs. Eddy's work in establishing this trust was part of the comprehensive scheme for the promotion and extension of the religion of Christian Science, and is to be viewed as a whole and cannot be segregated into fragments. At that time it will

also be pointed out that they who take the sword will perish by the sword, and they who contend for the segregation of fragments must take the responsibility and the logic of that result of being segregated into a fragment, which is extinction. At this time we desire to show by this witness that the present prosperity of the Publishing Society is due to the fact that it is the established Publishing Society of The Mother Church, and that the prosperity of the whole is dependent upon the healing power of Truth and Love as reflected in the writings of Mary Baker Eddy.

The Master—I do not understand that anybody denies that?

Mr. Whipple—Not at all; not at all. We have repeatedly said, in substance, that the prosperity of these publications was due to Mrs. Eddy and Mrs. Eddy's inspiration, and that we are defending, these trustees are defending them, defending their trust and invoking the aid of the Court to do it.

Mr. Krauthoff—Of course, if Your Honor please, the statement that I made was with respect to Mrs. Eddy's plan as a comprehensive whole. The plaintiffs in this case have tendered the issue that that whole plan cannot be carried out; that this Manual is inoperative because, as they say, it is in violation of the laws of the Commonwealth of Massachusetts; and we are now directing our testimony to the state of affairs which the plaintiffs claim are the true state of affairs, namely, the extinction of Mrs. Eddy's Manual. We have the right to show what is the result to the trust of the logic of the contention that the Publishing Society is not subject to the control of The Mother Church.

The Master—I am unable to say that the opinion of this witness on the question you propose to him would be proper evidence in the case. I shall exclude it.

Mr. Krauthoff—The sixth paragraph of the Bill in Equity refers to The Christian Science Board of Directors—

The Master—I take it for granted that you reserve your rights under that ruling?

Mr. Krauthoff—Oh, certainly, if Your Honor please, and we will save an exception to it for that purpose, and it may come up again in the case in another form.

Q. The allegation in the sixth paragraph of the bill is that The Christian Science Board of Directors (page 27, if Your Honor please)—

The Master—I have it.

Q. —are directors of only one of these Christian Science churches, to wit, The Mother Church situated in Boston. Will you please state in a general way the nature and character of the activities of The Mother Church as they are worked out in practice?

Mr. Whipple—That, if Your Honor please, we objected to, and upon our objection it was excluded.

Mr. Krauthoff—The Court—

The Master—Well, he has now got in the way in which they are worked out in practice. He is now asking the witness' opinion merely.

Mr. Whipple—Very well. If the witness observes that question, we have no objection.

The Master—It seems to me that the issue made by paragraph six of the bill and the answer to that paragraph is a mere question of the construction of the Manual—

Mr. Krauthoff—We desire—I beg pardon.

The Master— —and that we have, having the Manual and its history now before us, all the material that is necessary for the determination of the issues there made. But if you think that this witness can add anything to what we have got already in regard to the practice, you may go on and ask him.

Q. First, I will call your attention to the disasters of a public nature, such as floods, or hurricanes, or earthquakes. What does The Mother Church do in such cases with respect to the cause of Christian Science as a whole? A. I recall the case of Dayton, Ohio, where they suffered from a severe flood. The Mother Church started a relief fund at once and through its organization in Dayton, The Mother Church furnished relief to sufferers there, to non-Christian Scientists as well as to Christian Scientists. It has also contributed in cases like the Salem fire, where they had a committee appointed by the directors of The Mother Church who worked there to furnish relief to the sufferers. They sent a committee on a special train from Boston to Halifax at the time of the disastrous explosion of TNT, I guess they call it, in Halifax Harbor. It was the only and first relief train that went through in 24 hours from Boston to Halifax, and they not only took Christian Scientist money and supplies, but they took nurses and doctors, Red Cross workers, from Boston to Halifax; they established a relief headquarters there and worked constantly, and even yet that fund has not been entirely disposed of. At the time of the earthquake in Italy—

The Master—Pause a moment there, Mr. Dickey, if you please. You have now got through with the Halifax incident. I would like to ask what light you think that incident, take it as a specimen, throws on the nature of the relations between The Mother Church and the other Christian Science churches other than The Mother Church?

Mr. Krauthoff—It throws this light, if Your Honor please, that in all of these things such as he has mentioned The Mother Church speaks for the Christian Science movement as a whole, including the branch churches, and the branch churches, instead of endeavoring to act separately with respect to each of these incidents, sent their contributions to The Mother Church, and it is all done

through this organization, which we claim to be the central organization.

The Master—That is so obvious a matter of convenience that I am unable to see that it throws any real light on the dispute as to their precise relations indicated by those paragraphs of the bill and answer.

Mr. Krauthoff—Well, I will pass on, if Your Honor please, to other incidents that may bring that out in more relief.

Q. With respect to the matters of war relief and camp welfare activities in the recent war, or the present war (the treaty of peace not yet being signed), who acted for the Christian Science movement as a whole?

Mr. Whipple—Now, if Your Honor please—

The Master—If anybody did.

Mr. Whipple—Isn't that the same thing?

The Master—Was there anything different done from what was done in the Halifax case, namely, that The Mother Church provided the money and got contributions from the branch churches?

Mr. Krauthoff—It was done upon a more extensive scale. That was the difference.

Mr. Whipple—I do not want to interpose for a moment to prevent this recital of the benefits and the benefactions of The Mother Church—

The Master—No; nobody does.

Mr. Whipple— —of this great denomination.

The Master—Nobody does. The question is, what is its precise bearing on the issues made by the bill?

Mr. Whipple—It seems to me that, as far as concerns the averments, which are purely with regard to matters of church government, it has nothing whatever to do with it. Here is what we allege, and we base the entire statement of paragraph 6 on certain articles in the Manual—

The Master—Printed right here?

Mr. Whipple—Yes.

"Local self-government. Section 1. The Mother Church of Christ, Scientist, shall assume no general official control of other churches, and it shall be controlled by none other.

"Each Church of Christ, Scientist, shall have its own form of government. No conference of churches shall be held, unless it be when our churches, located in the same State, convene to confer on a statute of said State, or to confer harmoniously on individual unity and action of the churches in said State.

"Sect. 10. In Christian Science each branch church shall be distinctly democratic in its government, and no individual and no other church shall interfere with its affairs."

Now, the averment that we make as to Mrs. Eddy's providing for democratic Church government instead of an ecclesiastical tribunal such as we are hearing about now, or a hierarchy, is all based upon Mrs. Eddy's

own statements, together with one other, that

"Each church shall separately and independently discipline its own members—if this sad necessity occurs."

It provides that The Mother Church shall not do it, has no power whatever to do it. That is Mrs. Eddy's conception of her own words, and we have set forth exactly the foundation of the general claim that we have made in this Paragraph 6 with regard to the structure of the Church government and the relation of The Mother Church to the branches. Now, no matter how bountiful The Mother Church and the branch churches through The Mother Church may be in their benefactions in time of disaster—and it is a proud record—what does that have to do with the question of the extent to which The Mother Church can control branch churches, in view of Mrs. Eddy's own statement as to Church structure and government?

Mr. Krauthoff—Now, if Your Honor please, Mr. Whipple has several times in the last few days seized upon the words "ecclesiastical tribunal." One day he couples it with the doctrine of "Papal infallibility," and today he couples it with the word "hierarchy." Every church, no matter how plain or how simple it may be in its government, is, when it comes before a court of justice, treated under the terminology as an "ecclesiastical tribunal," whether it is 10 people getting together in a room and governing their own affairs, or whether it is the head of the Church of Rome. As to what this Manual means that Mr. Whipple has copied in the sixth paragraph of the bill, nobody can take the Manual and cut out of it a few sections like that and plead them as the truth about the Christian Science movement. To begin with, the words "local self-government" mean exactly what they are—local self-government; that is, self-government in the affairs of the branch church. We say that these benefactions, being exercised through The Mother Church with the consent and cooperation of the branch churches, are evidence of the general consensus of opinion in the Christian Science movement that in all things in which the Christian Science movement shall speak as a whole it is done through The Mother Church, and that one of the things in which it should be treated as a whole is in respect to the conduct of the affairs of the Publishing Society which publishes the literature sold in The Mother Church and in its branches. Nobody can understand this Manual by taking out some words of it and saying these words mean this, without some concept of the general scope and plan of The Mother Church, of its branches, and of the general scope and plan of the Christian Science movement, and without some knowledge of Mrs. Eddy's writings, any more than a forger could come to this country and

tear out of the Constitution of the United States a clause with respect to interstate commerce and have any concept what it meant without reading the debates of the Constitutional Convention and the decisions of the Supreme Court of the United States.

The Master—Of course, we have got to consider the whole Manual, no doubt about that, but I do not think this is the place to argue the whole question now. The benefactions, and the manner in which they have been administered you have shown. There is no dispute about it, as far as I can discover. Now, haven't you got enough about that?

Mr. Krauthoff—We have, if Your Honor please. I understood that Mr. Whipple had made some motion to strike out something, or made some objection.

Q. Mr. Dickey, with respect to legislation which may affect the cause of Christian Science as a whole, who acts for the Christian Science movement in that particular? A. On certain occasions—

Mr. Whipple—Just a moment.

The Master—One moment.

Mr. Whipple—I pray Your Honor's judgment.

The Master—I do not think that that is a question that he can answer generally; in fact, he did not try to, as I judge. He began, "On some occasions" this or that has been done.

Mr. Krauthoff—Is the objection that the question is too general, or that it is incompetent?

The Master—Can you indicate the nature of your objection, Mr. Whipple?

Mr. Whipple—We think that it is entirely immaterial and beside any issue in this case. Who does that? The trustees do not claim the right to do it.

The Master—If there is a settled practice about it, I think he may show it.

Q. Will you continue, please?

The Master—But he can't show it by testifying what has been done on some occasion only.

Q. What is the general practice in the Christian Science movement with respect to matters of legislation? Who appears for Christian Science as a whole in such instances?

Mr. Whipple—If Your Honor please, it does not seem to me that he has shown that he could testify with regard to that.

Mr. Krauthoff—He has been a director of The Mother Church.

Q. Are you familiar with the practice of The Mother Church with respect to protecting the cause of Christian Science when it becomes affected by pending legislation? A. I am.

Q. And what is the practice of The Mother Church in that particular? A. The practice is that when a Christian Scientist in any part of the country is arraigned before the court—

Q. No. I am referring to legislation. A. Legislation?

Q. Yes. A. I beg your pardon. I thought you said litigation.

Q. No. A. Whenever a bill is introduced in any of the state legislatures, that is inimical to Christian Science and the practice thereof, The Mother Church is represented there and they take all the steps that they legitimately can to prevent the passage of legislation that would destroy the practice of Christian Science.

Q. Or in any way affect the cause? A. Or in any way affect the cause of Christian Science.

Q. Does that also relate to questions affecting the public health? A. It does.

The Master—You mean legislative questions, I suppose?

Mr. Krauthoff—Yes.

Q. Does it become necessary at times to control the activities of Christian Scientists in that respect? Perhaps I do not make it clear. A. You do not. I don't know what you mean by that, Mr. Krauthoff.

Q. Well, I will not press that question at this time because I think we have fully covered it. With respect to litigation that may be pending in any of the courts of the world that may affect the cause of Christian Science as a whole, what is the practice of The Mother Church with respect to that? A. The Mother Church furnishes counsel and gives assistance to the defendant.

Mr. Whipple—Are these things done under any specific provision of the Manual, Mr. Krauthoff, do you understand?

Q. Under what provision in the Manual are these activities exercised, Mr. Dickey?

The Master—You mean now furnishing counsel to litigants?

Mr. Whipple—And the legislative activities.

Mr. Krauthoff—If Mr. Whipple asks me, I understand it is done under the provision—

Mr. Whipple—No, I did not. I thought I was prompting you to ask the witness.

The Master—I only want to know what you are talking about.

Q. Is that done under the provision of the Manual that The Christian Science Board of Directors shall transact the business of The Mother Church? A. That is one of them.

Mr. Whipple—And where is it stated in the Manual that this is the business of The Mother Church?

The Witness—It is the business of The Mother Church to look after its branches and the members of The Mother Church living in different parts of the world—to look after their welfare.

Mr. Whipple—That, if Your Honor please, I ask to have stricken out.

The Master—Yes; I think we will have to strike that out.

Mr. Whipple—That seems to be a dictum of the ecclesiastical tribunal, and not Mrs. Eddy's Manual.

The Master—That begs the question. Now there was a question asked about some specific provision of the Manual; I would like to get that.

Mr. Whipple—I was asking if there was any provision of the Manual under which the directors were acting, as described by the witness, either in their legislative activities or in their litigating activities. I asked Mr. Krauthoff if he would not request the witness to point out under what provision of the Manual that was.

The Master—Would it be convenient for you to do that?

Mr. Whipple—He suggested that it might be under the provision which provides for their attending to the business of The Mother Church, but that begs the question. What points out that that is the business of The Mother Church—what provision of the Manual?

The Master—Now, one moment. Can you refer me to the provisions of the Manual?

Mr. Krauthoff—I will do that presently. I find myself a little embarrassed in trying to argue in response to Mr. Whipple's argument, and examine the witness at the same time.

The Master—Take all the time you need; we don't want to hurry you.

Mr. Krauthoff—Thank you; I appreciate that.

Q. With respect to the activities of The Mother Church on these questions of legislation and litigation, your attention was called by counsel to the provision of the Manual, "The business of The Mother Church shall be transacted by its Christian Science Board of Directors," in Section 6 of Article—

The Master—What provision is that? I didn't get it.

Mr. Krauthoff—The top of page 27, Section 6.

Mr. Whipple—Of what?

Mr. Krauthoff—Of Article I of the Church Manual.

The Master—Page 27 of the eighty-ninth edition, at the top of the page.

Q. You stated that that was one of the provisions in the Manual. Have you any other provisions now in mind? A. The Committee on Publication collects and sends in to The Mother Church information in regard to questions of that character.

Mr. Whipple—Where is that provision?

The Witness—I don't know that there is any specific provision with regard to legislation that directly bears on that.

Mr. Whipple—Or on litigation?

The Witness—Yes.

The Master—Article XXXIII deals with the Committee on Publication. Is there anything in the sections of that article—

Mr. Whipple—Page 97, if Your Honor please?

The Master—Yes, page 97—which



requires or which charges the Committee on Publication with the duty of keeping the directors informed with regard to litigation or legislation?

Mr. Krauthoff—Why, in practice it is done, if Your Honor please.

Mr. Whipple—No. We were just asking about—

The Master—My inquiry was only whether there was any specific provision about it.

Mr. Krauthoff—Yes. Well, it says there—

Mr. Whipple—Practices may have grown up that were never warranted by anything Mrs. Eddy said.

Mr. Krauthoff—We will get to that in a moment.

Mr. Whipple—Why not get right to it?

Mr. Krauthoff (reading)—

"It shall be the duty of the Committee on Publication to correct in a Christian manner impositions on the public in regard to Christian Science, injustices done Mrs. Eddy or members of this Church by the daily press, by periodicals or circulated literature of any sort."

Mr. Whipple—That doesn't seem to refer to litigation or legislation.

Mr. Krauthoff—Now, if Your Honor please, with respect to the duties of the Committee on Publication, I am reminded that in Section 6 of Article I of the Church Manual—Your Honor first asked me about a provision in Article XXXIII—I am advised that in Sect. 6 of Article I of the Church Manual, on page 27, it says:

"The manager of the general Committee on Publication in the United States shall order no special action to be taken by said Committee that is not named in the Manual of this Church without consulting with the full Board of Directors of The Mother Church and receiving the written consent of said board."

The Master—Well, that sends us to Article XXXIII to find out what the provisions are with regard to the Committee on Publication.

Mr. Krauthoff—I am not now undertaking to construe Article XXXIII of the Manual; the provision there is found in Section 2 of Article XXXIII. What we are trying to prove by this witness is the practice of The Mother Church in speaking for the cause of Christian Science as a whole in all matters of litigation and legislation which affect the cause.

Mr. Whipple—But of course they would adopt no practices that were not provided for in the Manual lest they might be contrary to the wishes or inspiration of Mrs. Eddy. I thought perhaps having studied this for so many months as you said you had you could point out readily the thing that warranted such activities as you are describing. Perhaps it would help you some to look at page 78, Section 7, of Article XXIV, "Debt and Duty." That seems to throw some light on it; I am not quite sure whether it would

help your theory or justify the practices.

Mr. Krauthoff—Now, if Your Honor please, if I may continue. Is there any question pending that the Court has addressed to me that I have not answered?

The Master—No, I think you have fully answered all my questions.

Mr. Krauthoff—Thank you.

Q. Now, Mr. Dickey, you have stated the activities of The Mother Church as a whole with respect to questions of legislation and litigation. Did The Mother Church as a whole take up the matter of the Benevolent Association, as it is called? A. It did.

Q. And that is being built under the auspices of The Mother Church? A. It is.

Q. With donations from branch churches and individual members? A. Yes.

Q. The permanent activities—

Mr. Thompson—Just a moment. Don't you want to bring out, Mr. Krauthoff, that that is a separate corporation?

Mr. Krauthoff—I am not treating the Benevolent Association as a legal entity just now.

Mr. Thompson—Well, apparently not.

Q. The permanent activities of The Mother Church are set forth in the Manual? A. Yes, sir.

Mr. Whipple—What? I didn't catch that.

Mr. Krauthoff—The permanent activities.

Mr. Whipple—Well, are these others ephemeral or temporary?

Mr. Krauthoff—No; they are intermittent, if Your Honor please.

Mr. Whipple—Intermittent! Well, if they are intermittent how do they show any system of regular procedure? His Honor accepted them on the ground of their being a practice, and I understand you are trying to justify them under the Manual, with what success appears on the record. Now you say they are only intermittent activities.

Mr. Krauthoff—I didn't say the activities were intermittent.

Mr. Whipple—Well, what did you say about intermittent?

Mr. Krauthoff—To be more precise, and comply with Mr. Whipple's notions of the use of language, the occasions which call for their exercise are intermittent in their nature. We do not have war every day, and we do not have earthquakes every day.

Mr. Whipple—Well, the poor you always have with you.

Mr. Krauthoff—I beg pardon?

Mr. Bates—We always have war when Mr. Whipple is present.

Mr. Whipple—Oh, no, you do not.

Mr. Krauthoff—And we do not always have matters of legislation pending, and we hope some day to be out of the realm of litigation.

The Master—I do not find in the Manual anything about the Benevolent

Association. Am I wrong in saying that there is nothing in the Manual about that?

Mr. Krauthoff—It is not mentioned specifically in the Church Manual.

The Master—Thank you.

Q. Now, the activities of a permanent nature, as I understand, include the Board of Lectureship and the Board of Education and the Reading Rooms and the Committee on Publication? A. They do. Shall I explain that?

Q. I beg pardon? A. Could I explain the working of the—

Mr. Whipple—If you will pardon me, aren't those provided for in the Manual?

Mr. Krauthoff—They are provided for in the Manual and I am not going into them in detail.

Mr. Whipple—Well, why do more than point out the Manual?

Mr. Krauthoff—I was not, Mr. Whipple.

Mr. Whipple—Very good.

Q. Now, Mr. Dickey, in addition to the activities which you have mentioned, are there other activities of a general nature affecting the cause of Christian Science as a whole in which The Mother Church takes charge of the situation? A. There are.

Q. Don't mention them; that is enough for the present. A. All right.

The Master—If we are going to have that testimony we shall have to know what they are, sha'n't we?

The Witness—Why, certainly.

Mr. Krauthoff—Well, if Your Honor please, the nature and range of them is so great that—I shall be very glad to furnish them.

Q. Will you state further, Mr. Dickey, what the nature and range of them are? A. Why, there is a Board of Lectureship that is elected annually by the Board of Directors according to the requirements of the By-Laws.

The Master—We have got that. That isn't exactly what you asked him for, is it?

Q. Well, we will move on. A Board of Lectureship gives lectures around the world? A. They deliver lectures only to branch organizations of The Mother Church.

Q. But around the world? A. Around the world, yes.

The Master—That is all in the By-Laws—the Manual?

Mr. Krauthoff—Yes.

Q. Now, then, the reading rooms that I mentioned are mentioned in the Manual. I am not speaking of anything specifically mentioned in the Manual, but I am now talking about the general range of activities that come before you from day to day in which The Mother Church stands for the cause of Christian Science as a whole. A. There is the appointment of chaplains—

Mr. Whipple—I think that is too general. Ask him what they do, either in permanent activities or—

The Master—He had already stated

that there were many such branches of activity, and Mr. Krauthoff apparently intended to leave him there. My suggestion was that if that was of any importance we should have to know what those branches of activity were.

Mr. Whipple—That I would be very glad to have but Mr. Krauthoff was putting another question, and not the one that Your Honor directed his attention to. If there are any other activities it seems to me quite right that he should state them.

Mr. Bates—I submit, Your Honor, that Mr. Whipple should present his objection, if he has one, and not tell Mr. Krauthoff how to put his questions instead of objecting to them.

Mr. Whipple—Why, you couldn't do that.

The Master—Perhaps the quickest way to do will be to let the witness complete his statement regarding those other branches of activity to which we have been referring.

The Witness—The Mother Church—

The Master—He should understand that he is not to mention anything that is specifically provided for in the Manual nor to mention anything he has been over already.

The Witness—The Mother Church took an active part in the late war by having chaplains appointed, both naval and military. They employed them and paid them an annual salary in addition to what they drew from the government. They established—

The Master—Well, that is a branch of activity, appointing chaplains for the troops in service in the field. Isn't that enough about that?

Mr. Krauthoff—I think so.

The Master—Now, another.

The Witness—They established war relief work in all the military camps and cantonments of the United States, furnished rest houses, reading rooms, and supply stations for the soldiers. They had a Comforts Forwarding Committee that was organized under the auspices of The Mother Church, had branches in all the large cities of the country and in many of the smaller places, where knitted goods were furnished and sent to distributing centers.

The Master—You needn't go into the particular description.

Q. Don't go into the particular description. A. Yes.

Q. What about the distribution of literature? A. There is a distribution of literature work done and a committee appointed by the directors of The Mother Church to look after that work.

The Master—Isn't that the Committee on Publication?

The Witness—No, sir.

Mr. Krauthoff—No, if Your Honor please; the Committee on Publication looks after articles in other papers.

The Master—Yes.

Q. What is done with respect to services in prisons which are not near a branch church? A. The Mother Church has appointed men to conduct

services in the prisons, some of the prisons of the country.

Q. What other activities of The Mother Church come to you now, Mr. Dickey? Does the question of the relation of the Christian Science movement to other organizations, such as religious bodies or other institutions, come within your care, in practice? A. I didn't catch your question.

Q. Does the relation of the Christian Science Church as a whole to other religious bodies come within the practice of The Mother Church? I mean, through its Board of Directors. A. It does.

Mr. Whipple—I pray Your Honor's judgment as to that. If there are things that are done in relation to other churches let the statement be made.

The Master—I think he is following out the line which I suggested. Go on.

The Witness—There are a great many By-Laws in the Manual—

The Master—Oh, no; leave that out for the present.

Q. The general question of the relation of the Christian Science movement as a whole to other organizations, such as religious bodies, fraternal organizations, labor organizations—does that come within the practice of the Board of Directors of The Mother Church? A. That includes business that would be done by the Board of Directors if the occasion required it.

Q. Has it been done? A. It has been.

Q. The Board of Directors is practically continually in session? A. Well, they are in session about four days in every week.

Q. All the year round? A. Yes, the year round.

Q. Something was said by Mr. Whipple about the activities of the Church with respect to legislation and litigation, as dependent upon that which Mrs. Eddy did or authorized in her lifetime. Are you familiar with the practice of The Mother Church with respect to litigation and legislation as affecting the cause of Christian Science as a whole in the lifetime of Mrs. Eddy? A. I am.

Q. What was the then practice? A. The Mother Church was interested whenever the cause as a whole was attacked.

Mr. Krauthoff—It is now 4 o'clock, if Your Honor please.

The Master—We will stop here.

Mr. Streeter—If Your Honor please, before we adjourn, if Mr. Krauthoff could tell us or give us some sort of a notion as to when he will be through with Mr. Dickey, so that we can know something about the time of cross-examination, it would be very convenient, if he can do it.

Mr. Krauthoff—Well, I shall be able to state more definitely in the morning.

Mr. Streeter—Can't you tell us something about it tonight?

Mr. Bates—No one can forecast how

much time you and Mr. Whipple will take up.

Mr. Streeter—Oh, for heaven's sake, lay that aside. Can't you give us some idea? Will you be through tomorrow morning, probably?

Mr. Krauthoff—I cannot tell just now, General.

Mr. Streeter—Are you sure to go on three or four days longer?

Mr. Krauthoff—Well, I don't know that, either.

Mr. Streeter—Well, God help us.

[Adjourned to 10 a. m., Wednesday, July 23, 1919.]

July 23, 1919

TWENTIETH DAY

Supreme Judicial Court Room,  
Boston, Massachusetts, July 23, 1919.

Adam H. Dickey, Resumed

Q. (By Mr. Krauthoff.) Mr. Dickey, with respect to the relationship of the branches of The Mother Church to The Mother Church, and the compliance by the branch churches with the requirements of the Manual of The Mother Church, has the Board of Directors exercised any powers under that? A. They have.

Mr. Whipple—Just a moment. I could not hear that question on account of the noise outside.

Mr. Krauthoff—Will you read it to me, please?

[The question is read.]

Mr. Whipple—Well, I want to object to that, unless we have pointed out what there is in the Manual giving any such authority, and the specific instances, if any.

The Master—This question appears to call for specific instances.

Mr. Whipple—If Your Honor please, there is nothing in the Manual giving any such right or authority, if we read it intelligently. Article XXIII, Section 1, says:

"The Mother Church of Christ, Scientist, shall assume no general official control of other churches"

The Master—You read that yesterday. I think I shall let him answer, subject to your objection. What we are after now is to find out what course of practice has been followed, and to what extent, and by whom it has been acquiesced in.

Mr. Whipple—Yes, Your Honor.

The Master—It is all taken subject to your objection.

Mr. Whipple—And Your Honor carries in mind also—

The Master—You stated the grounds of your objection, that it is contrary to the Manual for the directors to exercise any such supervisory authority as he refers to.

Mr. Whipple—Yes, Your Honor.

The Master—Go on, Mr. Krauthoff. Get it in as brief a form as you can.

Q. Have instances arisen in which branch churches overlooked the requirement of the Manual with respect

to holding one lecture annually?  
A. There have.

The Master—Now you are following a little different line from that indicated by your question. Were you not going to have him state what the practice has been?

Mr. Krauthoff—Yes; I was going to follow that now.

The Master—Going to follow it by leading questions before he has stated all that he can state without them?

Mr. Krauthoff—Well, I was calling his attention to a particular subject.

The Master—Has the time come for that?

Q. In what particulars has the board taken up the question of the relation of the branch churches to The Mother Church? A. Why, there are 55 or 60 by-laws in the Manual requiring—

The Master—Now, pause a minute. Strike that out. Confine your attention to the particular question, and answer that, and we shall get along very much faster, if you can do that.

The Witness—Yes, sir. Thank you.

The Master—I am aware that you will have difficulty in doing that, but try.

The Witness—May I hear that question again?

[The question is read to the witness as follows: "In what particulars has the board taken up the question of the relation of the branch churches to The Mother Church?"]

A. Whenever a branch church has disobeyed or broken a by-law of The Mother Church, the directors have taken the matter up, and either had a right adjustment made, or taken action in the way of discipline against the branch church.

Q. In what particular instance? State the kind of things that arose.  
A. Well, in regard to fulfilling the requirement of the Manual in reference to lectures, holding lectures every year; also in regard to the recognition of other branch churches in the same city, and the requirement that they shall maintain Christian fellowship with each other.

Q. Are you able now to state the instances? Mr. Whipple intimated that we would be required to show the instances, but I think that that would extend the inquiry—

The Master—If he can state specific instances, that is what you have been trying to get him to do, is it?

Mr. Krauthoff—I was trying to do it generally. Mr. Whipple called for specific instances.

The Witness—There is one specific instance—

Mr. Whipple—If Your Honor please, before the question there goes any further, may I call your attention and that of counsel to another provision of the Manual of which we have not before spoken? I do not assume that it will change Your Honor's ruling, but I think, in justice to our position—

The Master—You wish to state a

further ground of objection to the inquiry?

Mr. Whipple—Yes, Your Honor.

The Master—Refer to it as briefly as you can. We all have the Manual.

Mr. Whipple—Article XXXV of the Manual is as follows:

The Master—Is it necessary to read it?

Mr. Whipple—It is only a line and I think it is perfectly clear:

"For The Mother Church Only. Section 1. The Church Manual of The First Church of Christ, Scientist, in Boston, Mass., written by Mary Baker Eddy and copyrighted; is adapted to The Mother Church only."

The Master—Now, you may continue.

The Witness—There have been other cases where Christian Science churches have had readers who were not members of The Mother Church, and the directors have taken that into consideration and required the Church to obey the by-law.

Mr. Krauthoff—We offer a letter from the directors to the trustees of The Christian Science Publishing Society of April 13, 1916. I have a letter press copy of it. The original, of course, is in the possession of the trustees.

The Master—Is this something referred to yesterday?

Mr. Krauthoff—No.

[The letter press copy referred to is passed by Mr. Krauthoff to Mr. Whipple.]

Mr. Whipple—What is this pertinent to?

Mr. Krauthoff—That, if Your Honor please, is offered to show an action by the directors with respect to the manner of printing Christian Science pamphlets in foreign languages.

The Master—It would properly have come in earlier in your examination, would it not?

Mr. Krauthoff—Chronologically, yes.

The Master—It is something you have discovered since, is it?

Mr. Krauthoff—Something which I have found in the course of my research, which I thought would be helpful, and which will only take a few minutes. I am not going to examine upon it.

Mr. Whipple—The communication does not seem to me to be of any importance one way or the other. I do not think it is material. If you will hand it to His Honor and His Honor rules it is, we will say nothing about it.

[The letter press copy referred to is passed to the master.]

The Master—It is a communication from the directors to the trustees. I think that you may put it in if you deem it of any consequence. I may say that I do not, at present, see that it is of any significance, but I should have to say the same thing about a good many other communications from the directors to the trustees that have been put in. If you think

it is necessary to complete the history, you may put it in.

Mr. Krauthoff—Thank you very much.

"April 13, 1916.

"Trustees of The Christian Science Publishing Society,  
"Boston, Massachusetts.

"Dear Friends:

"At a special meeting of this board held April 13 the following vote was passed.

"The secretary was instructed to notify the trustees of The Christian Science Publishing Society that in the publication of pamphlets and other Christian Science literature in foreign languages the term 'Christian Science' should be translated into the proper words of such foreign language, with the exception that the first occurrence of the term 'Christian Science' in the text of any translation shall be immediately followed by the words 'Christian Science' in English, printed in parentheses; this rule being based on the assumption that all such translations of pamphlets shall be printed with the original English and the translation on opposite pages.

"Very sincerely,

"CHRISTIAN SCIENCE BOARD OF DIRECTORS."

[The letter press copy of which the foregoing is a copy is marked Exhibit 684. R. H. J.]

The Master—If my recollection is correct, we have had something else on the same subject.

Mr. Krauthoff—I think it has been mentioned.

Q. Mr. Dickey, have you in your hands the Christian Science pamphlet printed alternately in English and Spanish? A. Yes, sir.

Q. And does the manner of the printing of that pamphlet correspond with this letter I have read? A. It does.

Mr. Whipple—May I ask, Mr. Krauthoff, what you think the significance of that evidence is?

Mr. Krauthoff—Why, the significance of this evidence is that the directors directed the manner in which the words "Christian Science" should appear in these pamphlets in foreign languages, and the trustees obeyed the direction.

Mr. Whipple—Well, now, if Your Honor please, I will defy counsel to point out, in the whole history of the relations with these trustees since they have been in office, a single case where a reasonable suggestion, indeed, almost any sort of suggestion, that has been made by these directors the trustees have not complied with. They have regarded it as a matter of duty to do it, gladly do it, when the beneficiaries were making suggestions which were for mutual interest; and why should we cover this record with a lot of instances where they have done it?

The Master—I suggest, in view of that statement, that the record con-

tain a memorandum to the effect that the suggestion made by the directors in the letter of April 13, just put in, was complied with by the trustees.

Mr. Krauthoff—That is satisfactory. I did not expect to put the whole pamphlet in evidence. I was simply going to have them marked for identification.

The Master—If that memorandum is put on the record, substantially in the form that I suggest, there will be no occasion for that, will there?

Mr. Krauthoff—No, that would be all right. Thank you.

The Witness—Mr. Krauthoff, may I speak to you, please?

The Master—Mr. Krauthoff, I think Mr. Dickey desires to say something to you.

The Witness—Could I speak to you just a minute?

[Mr. Krauthoff goes to the witness stand and confers with the witness.]

Mr. Krauthoff—I will hand Mr. Whipple a number of other pamphlets in foreign languages that I shall be glad to have him examine with a view to seeing to what extent the trustees continued to follow that suggestion.

Mr. Whipple—In view of the statement I have made, I do not care to look at them at all. I have asked you to point out a case where these trustees have not complied with any reasonable suggestion that the directors had made, and you cannot do it.

Q. I call your attention to a pamphlet on Christian Science translated into Dutch, containing a lecture by Mr. Chadwick. State whether the name "Christian Science" appears in the Dutch translation in the Dutch language or in the English language.

Mr. Whipple—I pray Your Honor's judgment.

The Master—It seems to me, in view of the agreement that the directors' suggestion or requirement, by whatever name you may call them, were complied with, it is not necessary.

Mr. Krauthoff—That was true in the case of the Spanish translation. I am now offering, in the case of the Dutch translation, a pamphlet to show that they did not do it.

Mr. Whipple—Who did not do it?

Mr. Krauthoff—The trustees.

Mr. Whipple—What trustees?

Mr. Krauthoff—The trustees of The Christian Science Publishing Society.

Mr. Whipple—I am talking about these gentlemen.

Mr. Krauthoff—Well, these gentlemen, the plaintiffs in this case, did not do it in the case of this Dutch pamphlet that I am now calling to the attention of the witness, which I offered to show to Mr. Whipple.

The Master—In how many instances do you claim that the letter, Exhibit 684, was not complied with?

Mr. Krauthoff—I have here some three or four pamphlets which I will state generally to the Court.

The Master—Do you mean that there are three or four instances that

you expect to show in which the trustees did not comply?—

Mr. Krauthoff—Well, this letter—

The Master—With Exhibit 684, if that is the number?

Mr. Krauthoff—Yes.

The Master—Then you had better put them in all at once, I think.

Mr. Krauthoff—I was going to do that.

Mr. Whipple—Just a moment, if Your Honor please. I do not think counsel can put them in until he shows that they were printed—were printed after the date of this letter which he has put in.

The Master—I am expecting that the date of the pamphlets will show that.

Mr. Whipple—Let us see if it does.

The Master—When you offered those pamphlets to Mr. Whipple before you did not tell him what you thought they showed. Now that you have told him let him look at the pamphlets, and show them all to him, so as to see if we cannot deal with them all at once.

[The pamphlets are handed to Mr. Whipple.]

Mr. Whipple—May I take that letter a moment, if you please?

The Master—Where is Exhibit 684? Until we get the terms of that letter I do not see how we could do anything with these. (The letter is produced.) We now have the original.

Mr. Krauthoff—I will leave with Mr. Whipple a Spanish pamphlet, which we claim is correct, to compare. (Handing pamphlet to Mr. Whipple.)

Mr. Whipple—You have handed me one in Dutch by Chadwick, have you, which you say does not comply?

Mr. Krauthoff—Yes.

Mr. Whipple—Now, this letter says "that in the publication of pamphlets and other Christian Science literature in foreign languages the term 'Christian Science' should be translated into the proper words of such foreign language, with the exception that the first occurrence of the term 'Christian Science' in the text of any translation shall be immediately followed by the words 'Christian Science' in English."

Mr. Krauthoff—If Your Honor please, I prefer—

Mr. Whipple—Now, in this which has been handed to me—

The Master—One moment, Mr. Whipple.

Mr. Krauthoff—If Your Honor please, I prefer to state these pamphlets myself and not have Mr. Whipple state them. They are my evidence, I am offering them, and I have shown them to him as a matter of courtesy. I think I have the right to state what it shows.

The Master—Has he identified the pamphlets in any form? No, he has not. You have shown them to Mr. Whipple.

Mr. Whipple—I beg pardon—

Mr. Krauthoff—I have shown the pamphlets to Mr. Whipple.

The Master (to Mr. Whipple)—Have you completed your examination of the pamphlets?

Mr. Whipple—No. I want to speak of each one as I complete it.

Mr. Krauthoff—If Your Honor please, I insist that I have the right to state my evidence.

Mr. Whipple—The trouble is you don't state—

The Master—One moment, gentlemen.

Mr. Whipple—Your evidence right.

The Master—One moment, gentlemen. Mr. Krauthoff has followed a course suggested by me in the hope that we might be able to deal with these pamphlets all at once.

Mr. Whipple—Very well, Your Honor.

The Master—In an endeavor to save time.

Mr. Whipple—I have been handed seven pamphlets. The first—

Mr. Krauthoff—Now, if Your Honor please—

The Master—Pause a moment. You have examined them all you desire for the present, have you?

Mr. Whipple—Yes, Your Honor.

The Master—Will you hand them back, then, to Mr. Krauthoff?

Mr. Whipple—I would like to identify the ones I hand back.

Mr. Bates—We didn't identify them when we handed them to you.

The Master—Suppose you give them to Mr. Krauthoff first and see what he wants to do about them. We will see that the identification is properly taken care of.

Mr. Whipple—Well, then, would Your Honor let him identify them now. I want to have them identified because we do not want—

The Master—We will have them identified.

Mr. Whipple—Yes, Your Honor.

The Master—You have seen them now and you know what they are.

Mr. Whipple—Yes.

The Master—Now, what course, Mr. Krauthoff, do you desire to take with them?

Mr. Krauthoff—I shall have them all marked for identification.

The Master—Well, first, I suppose, finding out what the witness has got to say about them, if anything. Perhaps he hasn't anything.

Mr. Krauthoff—The pamphlets speak for themselves, if Your Honor please.

The Master—Very good. You identify them, then, as speaking for themselves?

Mr. Krauthoff—Yes.

The Master—In what manner will you identify them? Is there a date on them?

Mr. Krauthoff—The copyright date appears on the title page.

The Master—Very good. Now, what is the first one?

Mr. Krauthoff—Mr. Whipple asks that they all be marked for identification.

Mr. Whipple—Oh, no; I ask that each one be identified—be stated on the record what it is.

The Master—That is just what I am going to have done.

Mr. Whipple—That is what I want to have done.

The Master—Very good.

Mr. Krauthoff—The first one, if Your Honor please, is a pamphlet entitled, "Answers to Questions Concerning Christian Science," by Edward A. Kimball, C. S. D. The title page says, "Copyright, 1919, by The Christian Science Publishing Society."

The Master—I suppose that is a translation, isn't it?

Mr. Krauthoff—That is a translation into Spanish, with the English and the Spanish printed on opposite pages.

The Master—Spanish. And the date was what?

Mr. Krauthoff—1919.

The Master—Let that be identified.

Mr. Krauthoff—Now, that is the pamphlet, if Your Honor please—

The Master—Before you state anything more about it let it be identified.

Mr. Krauthoff—Very well.

[A copy of the pamphlet entitled "Answers to Questions Concerning Christian Science," by Edward A. Kimball, C. S. D., is marked Exhibit 685, for identification.]

Mr. Krauthoff—Next, the pamphlet "Christian Science Healing vs. Mental Suggestion," by Frederick Dixon, copyright, 1916.

The Master—That first copyright I understand was 1919?

Mr. Krauthoff—1919.

The Master—What is the language there?

Mr. Krauthoff—French.

[A copy of the pamphlet entitled "Christian Science Healing vs. Mental Suggestion," by Frederick Dixon, is marked Exhibit 686, for identification.]

The Master—The next.

Mr. Krauthoff—The next is a pamphlet entitled "Confidence and Supply," copyright, 1918, by The Christian Science Publishing Society, containing several articles.

The Master—Language?

Mr. Krauthoff—French.

[A copy of the pamphlet entitled "Confidence and Supply," in French, is marked Exhibit 687, for identification.]

Mr. Krauthoff—The next is a pamphlet, "Christian Science, or Deliverance from Evil," a lecture delivered by William P. McKenzie, C. S. B., Copyright, 1919.

The Master—What is the language?

Mr. Krauthoff—Dutch.

[A copy of the lecture entitled "Christian Science, or Deliverance from Evil," in Dutch, is marked Exhibit 689, for identification.]

Mr. Krauthoff—May I have that one I handed over just now?

The Master—Mr. Krauthoff, I wish you would complete this before you raise any other issue.

Mr. Krauthoff—I just want to point out to Mr. Whipple, if Your Honor please.

The Master—Never mind that now. Let us get these in and identified first.

Mr. Krauthoff—"Christian Science, the Resurrection and the Life," a lecture delivered by Clarence W. Chadwick, C. S. B., copyright 1919, by The Christian Science Publishing Society.

The Master—What language?

Mr. Krauthoff—Dutch.

The Master—They are all translations, I understand?

Mr. Krauthoff—All translations.

[A copy of the pamphlet "Christian Science, the Resurrection and the Life," in Dutch, by Clarence W. Chadwick, is marked Exhibit 688, for identification.]

Mr. Krauthoff—"Christian Science, Its Results." A lecture delivered by William R. Rathvon, C. S. B., copyright 1918.

The Master—The language?

Mr. Krauthoff—Language, French.

[A copy of the pamphlet "Christian Science, Its Results," in French, is marked Exhibit 690, for identification.]

Mr. Krauthoff—I have marked for identification six; I find that one of them is a duplicate of one I have already identified—the one by Mr. McKenzie.

The Master—That you withdraw, then?

Mr. Krauthoff—I was going to show that to Mr. Whipple, so he might be convinced.

The Master—Why show it to him, if it is only a duplicate of what he has got already?

Mr. Krauthoff—That is the reason I do not offer the seven, I only offer the six.

The Master—You may now make your statement, Mr. Krauthoff, as to the purpose for which you offer them—to show what?

Mr. Krauthoff—Exhibit 685. On the left-hand side of page 2 appear the words "Christian Science" in the English language. On the right-hand side first appear the words "Christian Science" in the Spanish language, followed by the words "Christian Science" in the English language, in parentheses. On the same page, on the left-hand side, appear the words "Christian Scientists" in English. On the right-hand side appear the words "Christian Scientists" in the Spanish language, followed by the English words in parentheses.

Mr. Whipple—I shall ask Your Honor to compare them with the others later, so perhaps you will be good enough to look at it. (Handing pamphlet to the Master.)

Mr. Krauthoff—In Exhibit 686, on page 18, the words "Christian Science" appear, so far as my examination discloses, for the first time—on page 18, on the right-hand side, in the English language. They appear on the right-hand side in the French language

without any English equivalent in parentheses following.

In pamphlet 687 the words "Christian Science" appear, so far as my examination discloses, for the first time, on page 11, in the English language; they appear on the opposite page 11 in the French language without any English equivalent in parentheses.

Mr. Whipple—May I call attention to the fact, please—

Mr. Krauthoff—There is something about that pamphlet Mr. Whipple has called my attention to which should also be stated.

Mr. Whipple—This pamphlet consists of several articles. In the first article—

The Master—Well, need you comment on anything more than what Mr. Krauthoff points out about it? He offers it to show what he points out.

Mr. Whipple—I thought Your Honor would like to notice all the facts about it—namely, that in the first article, for instance, the words "Christian Science" do not occur at all.

The Master—I do not think we need bother about that. I will take what Mr. Krauthoff points out for the present.

Mr. Whipple—Very well.

Mr. Krauthoff—Exhibit 688, the words "Christian Science" appear in the second line of page 2 in the English; they also appear on the opposite page in the Dutch in this form: the words "Christian Science" are printed in the English language, followed by the Dutch signification in Dutch, and through the course of the pamphlet the words "Christian Science" are printed in the English language.

Mr. Whipple—Do you think that does not comply with the suggestion?

Mr. Krauthoff—It is the reverse of the suggestion.

Mr. Whipple—Oh, I see. That is, instead of putting the English words last, you put the English words in front instead of behind.

Mr. Krauthoff—Yes. And instead of having the words "Christian Science" in the pamphlet in the Dutch language, it is continued through the course of the pamphlet in the English language.

Exhibit 689, the words "Christian Science" appear in the English language at the bottom of page 2 of the English page; and they also appear on the Dutch page at the bottom of page 2 in the English language without any translation into Dutch at that point. On the next page, page 3, the words "Christian Science" appear again with the Dutch signification in parentheses, following the English words, and through the course of the pamphlet the words "Christian Science" appear in the English language.

In Exhibit 690 the words "Christian Science" appear on page 2 in the English language, and also on page 2 of the French translation in the French language without any English equivalent in parentheses or otherwise.

May I see those books again, if

Your Honor please? One of them was copyrighted in 1916, and I want to point that one out, because I have no knowledge of whether that was issued before or after the letter.

Mr. Whipple—May I call your attention to the fact that on the title page, where the terms first occur, that it is translated—the French, “La Science Chrétienne Les Résultats.”

Mr. Krauthoff—That is on the title page, but as we understand it, it was to be in the pamphlet itself.

Mr. Whipple—I see. That is, it first appears on the title page, and you claim that was not in the pamphlet. That is a serious violation of your suggestion.

Mr. Krauthoff—Exhibit 686, I wish to mention, has the mark on it “Copyrighted, 1916.” I am not able to state whether it was issued before or after the letter. If that is regarded as vital as applied to that pamphlet, why that pamphlet we withdraw.

The Master—Can you state as to the three of these exhibits copyrighted in 1919—whether they were issued before or after the beginning of this suit?

Mr. Krauthoff—No, I cannot.

The Master—You offer them all as instances of non-compliance by the trustees with Exhibit 684, if I understand you?

Mr. Krauthoff—Yes, and as indicative of the confusion that arises when two separate departments are undertaking to handle the same subject matter, namely, the introduction of Christian Science into the foreign languages.

The Master—Were those instances of non-compliance the subject of any further communication between the directors and the trustees?

Mr. Krauthoff—So far as I am advised, not.

Mr. Whipple—Do you offer those papers?

Mr. Krauthoff—Those are offered in evidence, not as exhibits in full, but merely to the extent I have read from them.

Mr. Whipple—We object to them because they are too trivial.

The Master—Just a moment. Is what you are going to read something that has to do with this?

Mr. Krauthoff—Yes, if Your Honor please. But I am through with offering them in evidence.

The Master—Well, it has nothing to do with your offer, then?

Mr. Krauthoff—No.

The Master—Now, Mr. Whipple.

Mr. Whipple—I think that in every case there is a substantial compliance with the possible exception of one, which was apparently an inadvertence. I think they are too trivial to be dignified by being marked as exhibits.

The Master—I can't see that they are of any importance. But we will do this, I think, at present: mark them for identification—in fact, they

have already been marked for identification. Is it admitted that the points in their contents to which Mr. Krauthoff has called attention do appear from the exhibits themselves? Is there any controversy there?

Mr. Whipple—I find it difficult to answer it because he has not pointed out in every instance the right place.

The Master—You were looking over his shoulder, and I did not—

Mr. Whipple—Yes.

The Master— I did not know but it was possible you might dispute some statement that he then made as to the contents.

Mr. Whipple—Well, for instance, he said that this occurred for the first time in the text. I don't know whether it did or not. Something that he read he said occurred for the first time in the text.

The Master—Well, that was not—

Mr. Whipple—When several pamphlets are put in together I don't know whether the rule applies or not. I tried to point out to Your Honor that if it was the printing of a particular pamphlet, that you could not apply the rule, because there were several articles, several pamphlets combined together. The term “Christian Science” does not appear in most of them, so that I could not admit that the rule is violated.

The Master—No, I should not expect you to admit that. I am only asking as to what he stated regarding the contents as they appear in the pamphlets themselves. Is there any dispute about that?

Mr. Whipple—That is all right. But this statement that the letters or words occurred for the first time in a particular place, I cannot accept, because I did not have a chance to look the text over.

The Master—Oh, I see what you mean; I did not understand that at first.

Mr. Krauthoff—Well, if Your Honor please, suppose that Mr. Whipple examines further, and if he desires at any time to correct the statements I have made he has that privilege, of course, and we can move on to something else.

The Master—The pamphlets having been marked for identification, we will let that matter stand as it is for the present.

Mr. Krauthoff—Yes, Your Honor.

The Master—Mr. Whipple can examine them further or not as he desires. If you offer them hereafter as exhibits in the case we will see what we will do.

Mr. Krauthoff—Yes. I have no intention of offering them further than I have, Your Honor. That is, I offered them for the purpose of showing the things which I read.

Q. Mr. Dickey, has the question arisen in the practice of The Christian Science Board of Directors with respect to the propriety of books being published written on Christian Science

by others than Mary Baker Eddy? A. It has.

Q. And has the Board of Directors indicated a ruling on that? A. They have.

Q. In the case, among others, of the Kimball book? A. Yes.

Q. Do you regard the question as one of the questions affecting the cause of Christian Science as a whole? A. I do.

Q. Mr. Dickey, referring to Document 1443 on page 43 of Letters and Miscellany, Vol. 12—is that your signature to that letter? A. Yes, sir.

Q. And was that written by you at the direction of Mrs. Eddy? A. It was.

Mr. Whipple (after examination of letter)—Yes, we would be very glad to have this put in. We were intending to put it in ourselves; so that we are agreed on it.

Mr. Krauthoff—This is a letter which reads as follows:

[Copy of Exhibit 691]

“Chestnut Hill, Massachusetts, Aug. 9, 1908.

“Mr. William B. Johnson, Secretary, “Christian Science Board of Directors, “Boston, Massachusetts.

“Dear Brother Johnson:

“In reply to the letter from the Board of Directors to Mrs. Eddy, asking her to outline the scope of the proposed daily newspaper, she has nothing to add to her request. She wishes me to say, however, that in her letter of the 28th ult., speaking of six pages of letters being too many, she referred to The Monitor and not to the Sentinel. Kindly see that this is corrected.

“Our Leader has sent an official request to the Christian Science Board of Trustees to get the daily paper out without delay.

“Sincerely yours,

“ADAM H. DICKEY, Secretary.”

[Letter, Adam H. Dickey, secretary, to William B. Johnson, secretary Christian Science Board of Directors, Aug. 9, 1908, is marked Exhibit 691.]

Q. In Exhibit 691, Mr. Dickey, reference is made to a previous letter of the 28th ultimo? A. Yes, sir.

Q. Which I believe has already been introduced in evidence? A. Yes.

Mr. Krauthoff—I am sorry I cannot give the exhibit number at this time.

Q. In that letter there was an error that was corrected by this as to the words “Monitor” and “Sentinel.” A. Yes.

Mr. Krauthoff—I desire to read a statement from Mrs. Eddy in The Christian Science Journal for October, 1904:

“Take Notice.

“All inquiries, coming directly or indirectly from a member of The Mother Church, which relate in any manner to keeping or breaking one of its By-Laws, shall be addressed to The Christian Science Board of Directors, and not to the Pastor Emeritus.

“MARY BAKER EDDY.”

[Statement from Mrs. Eddy as appearing in The Christian Science Journal for October, 1904, page 448, as read by Mr. Krauthoff, is offered in evidence as Exhibit 692.]

Q. In your work as secretary, Mr. Dickey, did you have occasion to notice the extent to which Mrs. Eddy dealt with the Board of Directors of The Mother Church? A. I did.

Q. Please state generally the nature and extent of the manner in which she dealt with the directors.

Mr. Whipple—I pray Your Honor's judgment.

Mr. Krauthoff—That is offered, if Your Honor please, for the purpose of showing the practice of Mrs. Eddy, with a view of revealing her state of thought as to who was at the head of the Christian Science movement.

The Master—We know already that there were very frequent communications between Mrs. Eddy and the Board of Directors. We have had a good many of them read, haven't we?

Mr. Krauthoff—Yes.

The Witness—Shall I answer the question?

The Master—One moment. What do you propose to add to that?

Mr. Krauthoff—Just the state of it in a general way, and not the particulars.

Mr. Whipple—I should think the particulars were a good deal more important than anything else. I should think that the particulars were the most important things, if any of it is important, as bearing upon the issue.

The Master—The question is the extent to which she dealt with the Board of Directors. I do not know that I quite understand what you mean by that.

Mr. Krauthoff—Well, I mean, how frequently—

The Master—Oh, how frequently?

Mr. Krauthoff—And upon what range of subjects, to what extent she referred matters to the board, with a view of showing whether she regarded them—

The Master—One moment. How frequently and upon what subjects, the witness may answer.

A. It was her practice to refer everything in the nature of Church policy—

The Master—I was afraid we should get into some trouble of that kind. He is not answering the question. How frequently and what subjects?

Q. First, how frequently? A. Invariably when certain subjects were brought to her attention for decision, she would refer them to The Christian Science Board of Directors.

Q. I mean, did that happen every day, or how often? A. It happened, not every day; sometimes more than every day for a period, afterward, perhaps, not more than once in three or four days. It would vary. But when questions came from the Board of Directors to her—

Q. One moment, Mr. Dickey. We

have asked you how frequently. Now, state the nature of the subjects which Mrs. Eddy referred to the Board of Directors, as briefly as you can. A. Questions with regard to class teaching, admissions to the college, practice and regulation of branch churches; but more particularly questions that were up before the Board of Directors that they had received from the field, that they hesitated to decide for themselves without referring them to her. When they did refer such questions to her it was her invariable custom to send them back and say, "I require that you act on this according to your best judgment." Then she has frequently said to me, "Let me know what they do with that."

Mr. Whipple—I pray Your Honor's judgment.

Mr. Krauthoff—That part is not proper.

The Witness—I beg pardon.

Q. Did Mrs. Eddy refer questions relating to the literature of the Christian Science movement to the Board of Directors? A. . . .

Mr. Whipple—That I object to, if Your Honor please. If there are any references of that sort, he may put them in evidence and then we will know what they are, and under what circumstances; but to have one of the real issues of the case disposed of in that way—

The Master—I will exclude that question.

Mr. Whipple— —we must object.

The Master—You must come to specific instances, if you desire.

Q. In your experience in Mrs. Eddy's household, were the directors called to her house for conference? A. Some of them; very frequently.

Q. Do you recall that the trustees were at any time called? A. Not during my term of office as her secretary, with one exception. I believe Judge Smith was called there on one occasion. He was a trustee, I think, but he was not called on a question regarding business matters with relation to the Publishing Society.

Mr. Whipple—I would like to suggest, if Your Honor please, that the question which Your Honor excluded was answered; the witness had interjected his answer before we objected. I understand that answer will be stricken out as if it had not been given.

The Master—I think so.

Mr. Krauthoff—I was talking to Judge Bates. As I understand, that relates to the question and answer with respect to the communications about literature?

Mr. Whipple—Yes.

The Master—Read the answer as the witness gave it.

[The question, "Did Mrs. Eddy refer questions relating to the literature of the Christian Science movement to the Board of Directors?" and the answer thereto are read by the reporter.]

The Master—That, I think I struck out.

Mr. Krauthoff—The Court struck it out.

Mr. Whipple—Yes, Your Honor.

The Master—And I told you that you might show the specific instances.

Mr. Whipple—The witness was very prompt with his answer.

Mr. Krauthoff—Yes.

The Master—You dropped that subject and you asked him then, whether the directors were called to her house, and he said that they were, frequently, and that one of the trustees was called there only on one occasion. He described that occasion, and there is something in his answer there to which Mr. Whipple objected. What was that?

Mr. Whipple—No, Your Honor. I reverted to the former matter that you have dealt with, because the witness interjected his answer before you had ruled and I did not want it to appear in the record.

The Master—Very good.

Q. Did you wish to add something, Mr. Dickey, to your answer?

A. Yes, sir, if I may. Mr. McLellan, as the editor-in-chief of all the periodicals, was required weekly to come to Mrs. Eddy's home for a consultation with her regarding his work as editor; not only once a week, but many times during the week he was called on similar occasions; and, if I may be allowed to state it, the fact is that all of Mrs. Eddy's directions regarding the periodicals and what should be published went through the chairman of the Board of Directors, who was at that time also the editor-in-chief of the periodicals.

Mr. Krauthoff—If Your Honor please, to the extent that the directions from Mrs. Eddy on the literature may have been in writing other than as heretofore introduced, I have not those at hand now, and if I find any more that are desired to be introduced, we will bring them to the attention of the Court.

If Your Honor please, I have reached a point in Mr. Dickey's testimony where I am desirous of taking the direction of the Court. We have examined him, so far as it was possible, restricting it to the issues raised in the case of Eustace v. Dickey. I am not clear whether he is open to cross-examination at this time on the Dittemore case or not, or whether it is open to me to proceed now to take Mr. Dickey's testimony in the Dittemore case. It is agreeable to us to now take his testimony in the Dittemore case, and subject him to cross-examination on that issue, or it is agreeable to us not to take his testimony in the Dittemore case, with the understanding that at this time he is not open to cross-examination on the Dittemore case.

The Master—I should think that if you were to close his direct examination at this time, he would be open to cross-examination by Mr. Dittemore's

counsel if they so desire on anything which he has stated which may be evidence in that case.

Mr. Krauthoff—On anything that he has stated, but would he be open to cross-examination generally as to the Dittmore case?

Mr. Streeter—I understand so, and I understand that that has been the agreement from the beginning.

Mr. Thompson—That was certainly the plain effect of the elaborate discussion on the first day of this hearing, confirmed later by a discussion in which Governor Bates participated, and in which the whole matter was thrashed out again. I do not see any reason for continually raising matters of this kind that have been agreed to and disposed of.

The Master—All right, now, Mr. Thompson. What about continuing the examination from this point with regard to the Dittmore case only?

Mr. Thompson—That would be to permit this gentleman to deny a case not already in. I do not believe Your Honor ever expected, certainly it never dawned on us, that any ruling was being made whereby, before Mr. Dittmore's case goes in, it should be contradicted. That certainly was not in the contemplation of anybody. This matter had to be arranged somehow, and it was arranged in this way; and it may be that counsel now wish they had not done it, but it has been done and it is too late to withdraw from it. It is a very convenient arrangement.

The Master—I do not think you are likely to suffer any real prejudice, whichever way it is done.

Mr. Krauthoff—We will proceed at this time to offer Mr. Dickey's testimony in the Dittmore case.

Mr. Streeter—We pray Your Honor's judgment.

The Master—To that the other counsel object, and I suppose we will have to follow the same course that was followed before. None of your other witnesses has yet been examined with sole reference to the Dittmore case.

Mr. Krauthoff—We have introduced no witness up to this date except witnesses testifying as to the records, and in the introduction of records they have been introduced indiscriminately without regard to the Dittmore case or the Eustace case. The point that we desire to make about it, if Your Honor please, is this, that the two cases are being tried together. That does not mean that every form of procedure is, for that reason, to be lost; and I do not know of any agreement that anybody made in this case that is a final and binding agreement about the extent to which these witnesses are open to cross-examination. Heretofore, when a question arose, Your Honor said that if it brought about any inconvenience you would then rule upon it. We are now asking the privilege of examining Mr.

Dickey as to the incidents of the Dittmore case.

Mr. Thompson—The agreement is right before me here. I do not know whether Your Honor has referred to it lately. On this last printed document, page 5, it was discussed. Perhaps I had better refer to it inasmuch as so much has been said about it:

"The Master— . . . The plaintiffs will then begin in that case (that is, the Eustace case) and put in their evidence, and then the defendants, first, those represented by Governor Bates and his associates, and then—"

The Master—One moment. I do not think that this needs to be taken down again by the stenographer in the record.

Mr. Thompson—I do not think it is necessary.

The Master—Give the reference to the page and let him take that down.

Mr. Thompson—It is on page 5 of the printed record. Then there was some more discussion about the examination of the witnesses and I said this:

"I don't think it makes much difference. . . . I could not hear him very well." Then I repeated it:

"I said it seemed to me we should be carrying out . . . limited to what is opened in direct." Then Mr. Whipple said something, and the matter is left right there.

Now, that was a plain understanding—

The Master—You have read it, I think that that will do.

Mr. Thompson—And I do not see any reason for opening it again.

The Master—Mr. Krauthoff, is there any special or particular reason why Mr. Dickey should be now examined in the other case?

Mr. Krauthoff—There is no special or particular reason why he should be examined or cross-examined. The point that—

The Master—If it appeared that you would be in danger of losing evidence unless it were taken at a given time, we might consider that. There not being any such situation suggested, I think I shall have to rule that—

Mr. Bates—Will Your Honor hear me just a moment on that matter? Mr. Thompson has read a portion of the statement, and he has read sufficient to show that it was understood that it was to be left optional, when a witness was on the stand, as to whether or not we would examine him on both cases. I think it would be eminently contrary to all rules and procedure and unfair to us, if we were not allowed to examine our own witnesses before they are cross-examined on this case. I am perfectly ready to do whichever way Your Honor suggests, but if Mr. Thompson and General Streeter are to be allowed to go into a general cross-examination of Mr. Dickey on matters to which he has not testified in the other case, then certainly, while he is on the stand, we should have the corresponding right and privilege to examine

him in chief in regard to it, and we have never assented to anything to the contrary. It seems to me to be a first principle, if Mr. Dickey is to be examined on those questions, that we have the right to ask him first as our witness, while he is on the stand, or else they should be precluded in their cross-examination from examining him as to anything except that which we examined him on, and when their case is introduced—

Mr. Thompson—Your Honor, may I make two suggestions? One is that, in our state practice, to answer the idea that there is some inherent right on the part of counsel to put his own witness on first, it is the commonest thing in the world to call the adverse party or witness and examine him first. The second point that I would like to make is this, that I have been in three consolidated cases in the last 20 years, one of them of considerable importance, in which Mr. Whipple himself was interested, in the Subway explosion cases, some 15 years ago, when the exact arrangement made here was made there. Nobody thought it was doing any injustice. It was a matter of convenience and nobody suffered from it. The other would result in the situation that before we have offered any evidence in our case, it could be contradicted, and that certainly would be flying in the face of the first principles of judicial administration. I ask Your Honor to enforce the agreement, and enforce a convenient, practical, and customary rule of consolidating cases. That is all this is.

Mr. Bates—May I call Your Honor's attention to what would result from Mr. Thompson's rule.

First, he is asking for something that he is denying to us. That in itself is contrary to all equity. In the second place, if his method of procedure is followed, it will result in our being allowed then to examine Mr. Dickey, after he had completed his cross-examination, on these very matters which could be put in better by examining him now than without any previous cross-examination. In other words, he does not save any time. We will have to go into it after he has gone into it. He is simply asking to be allowed to reverse the natural order.

Mr. Thompson—I think that is a confusion of thought. I have nothing further to say.

The Master—I am unable to believe that you will suffer any prejudice if you follow the course suggested by Mr. Thompson.

Mr. Bates—I recognize that it is a matter entirely within Your Honor's discretion, but it seems to me to be absolutely contrary to all principles of equity, that we should not be allowed to examine Mr. Dickey on these matters, if Mr. Thompson is insisting that he is going to examine him on them. We certainly think that we should be allowed to do it now, if he



is going to be allowed to follow it up, and there cannot be any saving in time. Mr. Thompson may have had some peculiar experiences, but I know of no such precedent.

Mr. Streeter—I suppose, Your Honor, that the same principle should be followed here that is followed in other jurisdictions, and that is, that when counsel make an arrangement at the beginning of a trial, it will be carried out.

Mr. Bates—And the arrangement as made at the beginning of the case was exactly as I have stated it.

Mr. Streeter—It was not.

Mr. Bates—It was to be left optional with us to examine a witness provided you did not intend to cross-examine him.

Mr. Streeter—It was not.

The Master—You did not, at the outset of the trial, deal with this specific point so as to present to my mind any final determination about it.

Mr. Krauthoff—There is nothing in the arrangement to which Mr. Thompson refers that bears in the least upon the direct examination of a witness. It says that any witness offered in the Eustace case may be cross-examined in the Dittmore case.

Mr. Thompson—I think that it will be well for you to read that document before you comment on it, Mr. Krauthoff.

Mr. Krauthoff—I was taking Mr. Thompson's reading of it.

Mr. Thompson—I doubt if you can remember it long enough to quote it. I certainly had in mind the point, Your Honor, as mentioned by you, and brought it out twice with great elaboration. I had it firmly fixed in my mind, because I had been confronted with it in the three other cases, and I was only suggesting the arrangement which Judge Lilley made in one case and I do not remember the other two cases; but it is very commonly, as Your Honor is as well aware as I am, made in our courts. I think that Governor Bates is laboring under a confusion of mind about the subject. He has got something in his head that is not here. A consolidation means something, and it certainly does not mean that a man can disprove a case before anybody has testified in its favor. That would be an anomaly. As he says, he has a chance to examine his client on redirect; that is all he needs.

The Master—I am still unconvinced that the specific question you now raise was in the minds of all the counsel at the time when we had that agreement made.

Mr. Bates—May I read, Your Honor, something that Mr. Thompson did not read?

“Mr. Bates—I assume that in examining witnesses who are offered in one case that it will be proper at the time of their original examination to also examine them in regard to matters which they may know which may affect the second case.

“Mr. Whipple—We make no objection to that, although we are not concerned in the question.

“Mr. Thompson—I don't think it makes much difference. I should suppose all the benefits of consolidation would be secured if it were understood that in the cross-examination of witnesses in the case of Eustace v. Dickey matters could be gone into, if there are any, which are solely relevant in the case of Dittmore v. Dickey.”

Mr. Bates—Then the statement which Mr. Whipple read about my assuming from what was stated that it was left optional with the counsel is something which I have not been able to put my eye on, but which Mr. Thompson himself read.

Mr. Thompson—Carry that right out. We examine your client, and you examine on redirect. Carry that right out, that is the way it will work. Don't you see you get every benefit of it? Your difficulties are imaginary, they do not exist. That is what I meant. I did not mean you could put him on first to disprove our case, before we had offered any evidence in support of it.

The Master—Except so far as he has already introduced evidence tending to disprove your allegations.

Mr. Thompson—Certainly. That has been true in one or two instances, where we did not think it was worth while, it was so trivial.

Mr. Bates—I will also read Mr. Thompson's statement, or, rather, I will read mine first:

“Mr. Bates—My question pertained merely to the question as to whether or not it would be necessary to disprove of the witness when he first appears, and to get all the evidence out of him on both cases, or whether it would be optional to us at that time to examine him in the second case, or call him again later.

“Mr. Thompson—I don't think there is the slightest difference of opinion between Governor Bates and myself. It appears to me that we mean exactly the same thing. Beyond that, if he meant that while Mr. Whipple was trying his case he might introduce some witness himself having nothing to do with Mr. Whipple's case, and examine him in the Dittmore case, that I think would be a foolish performance. As I now understand it, I think there is no difference between us whatever.”

Mr. Thompson—Certainly. We cross-examine, then on redirect you take the matter up. That is as I understand it. Everybody would understand that from the reading of it. That is what we are urging now.

The Master (examining the record)—I think I shall rule that Mr. Thompson or General Streeter may cross-examine on any of the witness', Mr. Dickey's evidence, which is relevant in the Dittmore case. If he tries to extend the cross-examination beyond that point, if it should appear that

any real injustice is going to be done by permitting him to do so, I will reserve the right to stop him at that point.

Mr. Thompson—And if we are so stopped I assume, if we regard it important, the time will come in the case when we can go ahead on the matter on which we were stopped.

The Master—I suppose we are here to listen to all the evidence which any party has a right to introduce, endeavoring, so far as we can, to prevent any disadvantage being suffered by any party with regard to the particular time at which it is introduced. I do not myself anticipate that there will be very much trouble when you get into it.

Mr. Thompson—I don't believe there will be the slightest trouble. I imagine that the cross-examination within the limits adjudged by Your Honor will probably be all we want, because the whole case has been opened, there is very little left that has not been discussed.

The Master—Well, all right.

Mr. Krauthoff—There are one or two incidents, if Your Honor please—

The Master—You are not through? All right.

Q. Mr. Dickey, recurring to the question of Mr. Rowlands' absence from Boston, in the work of the board and the trustees, how frequently did that come to your attention? A. I don't remember just how often, but on a number of occasions when—

The Master—He mentioned a number the other day, didn't he?

The Witness—When the trustees met with the—

Mr. Krauthoff—I don't recall that he did; he mentioned generally.

The Witness—With the directors, Mr. Rowlands was absent, and when we asked why on one occasion Mr. Ogden stated that he was away closing up his business; that the trustees had agreed with him when he came there that he might have until the first of the year in which to close out his affairs and finish some unfinished matters, and after that time he would come and reside permanently in Boston.

Q. The first of which year, Mr. Dickey? A. The year following his election.

Q. He was elected in— A. 1918, that would be—the first of 1918.

Q. Did you have instances where appointments were delayed because of Mr. Rowlands' absence? A. We did have several instances where we were to have conferences—

Mr. Whipple—Just a moment. Now, if there were instances let us have them, then you can decide how trivial they were, or how important; but this wholesale statement taking the place of real evidence—

The Master—There were several instances when business was delayed; he may specify those instances if he can.

Mr. Whipple—Yes.

Q. Do you recall any of those instances other than those shown by the correspondence in the case? A. I do recall one instance where one meeting was delayed for a number of days because of Mr. Rowlands' absence. I think perhaps our records would show that. I don't think I can recall the date.

The Master—We have had the records, and you are asking him for something beyond the records, aren't you?

Mr. Krauthoff—Yes.

Q. I am asking you for something not shown by the correspondence or the records. A. I cannot state exactly what the conference was about nor the date of it, but I do remember that there were several of those instances.

Mr. Whipple—That, if Your Honor please, I ask to have stricken out.

The Master—Strike it out.

Q. Mr. Dickey, in the conversations with the trustees to which you have testified, growing out of this controversy, had you any desire to obtain anything for yourself individually or anything for the Board of Directors as individuals, or was your desire to maintain the Church Manual in its integrity as you understood it? Don't answer the question.

Mr. Whipple—I see no reason for this recitative on the part of counsel. That is not a question. That is reciting something counsel has in his mind and asking the witness to assent to it. Sometimes they are called leading questions. This seems to be a coercive sort of question. I object to it.

Mr. Krauthoff—If Your Honor please—

The Master—I think, Mr. Krauthoff, I have, generally speaking, excluded questions directed to the witness' individual state of mind at the time of a given action.

Mr. Krauthoff—This is bearing upon his good faith, if Your Honor please; and you will recall that Mr. Whipple examined Mr. Eustace very generally upon how he conducted the affairs of his trusteeship, did he always act in the highest manner, and did he always do what he thought was right?

The Master—I certainly ought to allow you the same right which I have allowed Mr. Whipple. Now, let us see. What did he ask Mr. Eustace of that nature?

Mr. Krauthoff—It is now 11:30. We will find it during the intermission.

The Master—If you can show me any instance in which Mr. Whipple was allowed to put such a question I shall certainly feel myself bound to allow you the same privilege.

Mr. Thompson—We should interpose an objection also on other grounds, if Your Honor please. The question is so obviously inadmissible in *Dittmore v. Dickey* that we should have to object to it there. There is one part of it, the last part, that when we reassemble I would like to have read, and I think Your Honor will see that

it is an objectionable question—one part is particularly objectionable.

The Master—I suppose we need not be quite so particular about leading questions in a hearing of this kind as we might have to be under other circumstances.

Mr. Thompson—It is leading, and I think objectionable for that purpose, but my objection was not based so much on its being leading as on its being a general attempt, a sweeping attempt, to give a man a good character at one fell swoop, and let it go at that. I don't think he ought to be allowed to testify whether he was trying to sacrifice himself or benefit himself or the directors, and all that sort of thing. It is to be inferred from what he said and what he did.

The Master—His testimony would certainly be entitled to very little weight, whatever it might be.

Mr. Whipple—Our objection was perhaps more—

The Master—The objection to leading questions is mainly that they raise objections and take up time.

Mr. Krauthoff—If objection is made to the form of the question I will recast it.

Mr. Whipple—I think you should have said that your question, instead of being a leading question, was a misleading question.

The Master—Now, suppose we take a recess and see if you cannot find some way in which you will ask a question that won't be objected to.

Mr. Thompson—If he wanted to put the single question, Does Mr. Dickey regard himself in every way as an admirable and good man, I should not object to it. That is what it amounts to.

Mr. Streeter—That is just what it amounts to, and we will admit that he would make that admission.

[Short recess.]

The Master—You may go on, Mr. Krauthoff.

Mr. Krauthoff—Now, if Your Honor please, on page 38 of the printed record, at the end of the first column on page 38—at that point in the record Mr. Whipple was examining Mr. Eustace with respect to the resolution dismissing Mr. Rowlands, and he asked this question:

"Now, did you notice in any respect whatever anything that Mr. Rowlands said or did in connection with the discharge of his duties as trustee, which indicated that he did not understand or recognize the importance and necessity of promoting the interests of Christian Science, or indicating that he was not following the directions given by Mrs. Eddy in the Church By-Laws?"

That was objected to as leading; and Mr. Eustace was permitted to say, "Not in one single instance."

Mr. Whipple—He said, "Never in the slightest," didn't he?

Mr. Krauthoff—That answer was, "Not in one single instance." Then he was asked—

The Master—One minute, please.

Mr. Krauthoff—I beg your pardon?

The Master—I do not find there that Mr. Whipple was inquiring of the witness regarding the witness' own state of mind. Do you?

Mr. Krauthoff—He was there asking generally as to the actions of Mr. Rowlands.

The Master—Now, should you come to some witness of whom you desire to inquire whether there was anything said or done by Mr. Dickey which indicated this or that, a different situation will be presented, and one which much more resembles the one that we have here, as I understand it.

Mr. Streeter—Now, Your Honor, can't we save time? Can't everybody save time by letting Mr. Dickey answer that question and say that he regards himself as a real good man, and then go on with something else?

The Master—Well, that is hardly a fair statement of the question, General Streeter.

Mr. Krauthoff—That is not what Mr. Dickey means to say, as I understand it.

The Master—Well, we will not dispute about that. So far as I am concerned, I should have no objection to your putting the question and getting an answer, but it is now presented to me whether I will admit it against objection, and I am bound, if I find it objectionable, not to admit it solely in my discretion.

Mr. Krauthoff—May I point out the statement by Mr. Whipple in the second column on page 38? Mr. Whipple asked Mr. Eustace:

"I will ask you whether you noticed anything in what he said or what he did, or in any action on his part indicating such a disposition?" being the disposition accredited to him by the resolution.

Mr. Krauthoff—We object to that question as leading in form.

Mr. Whipple—May I suggest, if Your Honor please, on the record that the question is not leading. It is a direct question. The only way to negative a proposition, as I understand it, is by putting a direct question, and the ancient custom of a circumlocutory or circumambulatory question that hides from everybody the thought that you have in putting the question has entirely disappeared, I had supposed, and that direct questions which were reasonable and to the point were always permitted.

Then I will not press it further at this time; I think those cover the situation. I will show what Mr. Whipple proved by Mr. Rowlands.

The Master—I will ask you, now you have examined further, isn't it now plain to you that that situation bears no resemblance to this?

Mr. Krauthoff—Since Your Honor has ruled.

The Master—No; I only ask if you do not agree with me now?

Mr. Krauthoff—I do after you have ruled. You recall the instance of the

lawyer who said he had supposed it was the law until the Court decided otherwise and then he knew better.

Mr. Whipple—All that meant was that the lawyer was learning something every day.

Q. Mr. Dickey, what was the practice of Mrs. Eddy with respect to approving the proofs of articles to appear in the periodicals? A. Articles of importance or articles that made any reference to Mrs. Eddy herself or her actions, or articles written by her, were always submitted to her in proof, and after she had read the article, or made such corrections as she desired, she turned the paper over and wrote her name "Eddy" on the back of the proof.

Q. Is that her signature on the back of the document I am now handing you? A. It is.

Q. And the interlineations on the face of it in pencil—in whose handwriting are those? A. They are in my handwriting.

Q. Were those made at the time that you were her secretary? A. They were.

Q. At her direction? A. And at her request.

Q. Before her name was written on the back? A. Before.

[The paper in question is submitted to counsel.]

Mr. Krauthoff—We offer this in evidence.

The Master—We have had a great deal of the same kind of matter before, but this is something additional, I suppose?

Mr. Krauthoff—Yes, Your Honor (reading):

"Take Notice

"I approve the By-Laws of The Mother Church, and require the Christian Science Board of Directors to maintain them and sustain them. These directors do not act contrary to the rules of the Church Manual, neither do they trouble me with their difficulties with individuals in their own Church, or with the members of branch churches.

"My province as a Leader—as the Discoverer and Founder of Christian Science—is not to interfere in cases of discipline, and I hereby publicly declare that I am not personally involved in the affairs of the church in any other way than through my written and published rules, all of which can be read by the individual who desires to inform himself of the facts.

"MARY BAKER EDDY.

"Oct. 12, 1909."

On the reverse, the word "Eddy," as the witness testified, in the handwriting of Mrs. Eddy, and published in The Christian Science Sentinel of Oct. 16, 1909.

Mr. Whipple—You have verified that, have you?

Mr. Krauthoff—Yes. That is all for the present, Your Honor.

## Cross-Examination

On Behalf of Defendant Dittmore

Q. (By Mr. Streeter.) Mr. Dickey, you were chairman of the Christian Science Board of Directors from June, 1918, to June, 1919? A. I was.

Q. As such chairman were you the visible, authorized and recognized head of the Christian Science Church and religion and movement throughout the world? A. No, sir.

Q. Who was? A. This Church has never had but one Leader, General, and that is Mrs. Eddy.

Q. I did not ask you that question; I asked you who was? A. Mrs. Eddy.

Q. Mrs. Eddy had passed through that change which the world calls death, and we here call passing on, some seven years before? A. Yes, sir.

Q. I ask you, who was the recognized head of the Christian Science religion throughout the world between June, 1918, and June, 1919, if it was not yourself as chairman of the Christian Science Board of Directors? A. It was not I.

Q. Who was it? A. The Board of Directors of The Mother Church.

Q. Of which you were a member? A. Yes.

Q. And you were the chairman of that board? A. I was.

Q. And had the powers that are ordinarily attributable to the office of chairman of such a body, did you not? A. No, sir.

Q. You did not? A. No. Would you like me to explain, General?

Q. No, I won't bother you to explain. You first knew Mrs. Eddy when, personally? A. 1907—no, 1897, I first saw her and heard her. I had no personal interview with her until Feb. 5, 1908.

Q. That was after she had removed from Pleasant View at Concord to Chestnut Hill? A. It was.

Q. Did you enter upon her service in February, 1908? A. Yes.

Q. And, as you say, you knew her intimately from that time until the time of her death or passing on? A. I did.

Q. Won't you state in a general way a brief description of Mrs. Eddy, not only physically, but her mental characteristics? A. It would be a difficult thing to describe Mrs. Eddy, but I shall endeavor to do so. She appeared to be a woman of medium height, quite elderly in appearance, not what you would call robust but rather of slight stature, she had a wonderfully intelligent face, was quick and active in her mental perception and recognition of what was going on about her; she had a wonderful capacity for reading character and understanding the thought of those with whom she came in contact; she was quick in reading an article to detect the gist of it, and the purport and trend of what the author was saying; in short, Mrs. Eddy was the most remarkable character I ever became acquainted with.

Q. Let me ask you: was she frail in body or had she the appearance of being very frail? A. She had the appearance of not being a robust woman.

Q. Was she of commanding personality? A. She was.

Q. Did she exact and command explicit obedience from all of her household? A. She did, together with the respect and love of them all.

Q. Had she a way of commanding with her eyes, telling you or Mrs. Sargent or the others what she wanted done? A. General, I do not think I can answer your question intelligently.

Q. Then don't try. Had she very piercing, intelligent, brilliant eyes? A. She had.

Q. Did she require the same obedience from all connected with her church—that is, all the officials connected with her church—that she did of those of her household? A. She did.

Q. The directors, at that time, in 1908, were Mr. McLellan, Mr.— No. In 1908 you may state who they were. Mr. McLellan was one of them, and Mr. Stewart. A. Mr. McLellan, Mr. Knapp, Mr. Stewart, Mr. Chase, and Mr. Johnson.

Q. And whether they and their successors— A. I didn't hear your question, General.

Q. And whether those directors and their successors, up to the time of her passing on, implicitly obeyed her slightest wish and complied with everything that she desired? A. They did in so far as they were able.

Q. And at the time of her decease the directors were Mr. McLellan, Mr. Dittmore, Mr. Neal, Mr. Stewart, and yourself, were they not? A. No, sir.

Q. What? A. No, sir.

Q. Who were they? Where have I stated that wrongly? A. Mr. Chase was a director. Mr. Neal was not.

Q. I see. Mr. Neal was elected in 1912? A. I believe so.

Q. You were the last one elected— The Master—Will you excuse me a minute? I would like to get the names of those directors.

Mr. Streeter—The directors at the time she died?

The Master—Yes.

Mr. Streeter—They were Mr. McLellan, Mr. Stewart, Mr. Dittmore, Mr. Dickey, and Mr. Chase.

The Master—Thank you.

Q. Mr. McLellan had been a director a long time, had he not? A. He had.

Q. Since 1903, perhaps? A. I don't know the date of his appointment.

Q. When was Mr. McLellan made chairman of the board? A. I don't know.

Q. It was before you became a director, was it? A. It was.

Q. And he was the editor-in-chief of all the periodicals? A. Yes.

Q. And Mrs. Eddy had the greatest and most implicit confidence in Mr.

McLellan, did she not, or appeared to have? A. She did not.

Q. Did she appear to have great and implicit confidence in Mr. Stewart? A. I never had an opportunity to see that expressed.

Q. Well, I will assume, Mr. Dickey, that she had great and implicit confidence in yourself as her director, and leave it there. You will admit that, I suppose? A. Thank you, sir.

Q. You will admit it, will you? A. I certainly would, and do.

Q. Now, at the time of her passing on she had one director to whom she gave implicit confidence and trust, and that was Adam H. Dickey.

Mr. Krauthoff—If Your Honor please, if that is a statement, we object to it as not borne out by the evidence.

Mr. Streeter—Oh, now, don't get fussy, and don't get worried. There is not anything going to get away from anybody before this judge.

The Witness—May I say a word to—  
The Master—One moment.

Mr. Krauthoff—If Your Honor please—

Mr. Streeter—What is the use of taking time—

The Master—Your statement can hardly be regarded as a summing up of what this witness has testified to.

Mr. Streeter—No; I do not claim that it is. Now, won't you please sit down, Brother Krauthoff? You will not get hurt, I assure you.

Mr. Krauthoff—I move that that statement made by General Streeter be stricken from the record.

The Master—His statement? You mean his question, do you not?

Mr. Krauthoff—He did not put it in the form of a question. He made the statement, and then proceeded to ask a question.

The Master—That is often the case on cross-examination.

Mr. Krauthoff—I move that the statement be stricken out as not borne out by anything that preceded it.

The Master—This being cross-examination, I do not think that I need to strike it out.

Mr. Streeter—Now, please sit down and don't bother me.

Q. Now, Mr. Dickey, you have spoken of the obedience and the affection of those around her for Mrs. Eddy, and I suppose that you had the same feeling of affection and sense of obedience to her wishes? A. I think I had more than was exhibited by some.

Q. Well, I am not seeking to have you fly-blow your contemporaries, but I can't help it if you do; but I am speaking about you, only about you. You had that sense of obedience and loyalty, didn't you? A. I did. I would be very glad, General, if you would confine your questions to me personally. I deprecate very much bringing in this question of what Mrs. Eddy thought of other peo-

ple. I am sorry to have to answer that question.

Q. Well, of course you have got to answer truthfully? A. I have.

Q. Now, let us stick to that proposition. A. Certainly. That is the only reason why I answered it.

Q. Sure. Now, when you were appointed a director did you have a sense of obligation that, as a director, it was your duty to carry out Mrs. Eddy's wishes—A. It certainly was.

Q.—with reference to these matters? A. Yes, sir.

Q. When you became a director, if any question arose calling for your decision or action, did the fact that you thought Mrs. Eddy would want you to do one way influence your action to do it that way? A. Not if it was not right, General.

Q. Do you mean to intimate that Mrs. Eddy would have wanted you to do what was not right? A. No, she would not.

Q. Then when you came to performing an act as director, if you had an opinion as to what Mrs. Eddy would have wanted you to do, did you have any sense of obligation that you should do it that way? A. I did.

Q. And was it your purpose from the time you were elected down to now to so act as a director as in your judgment would meet with her approbation if she could see you? A. It was, coupled with the fact that Mrs. Eddy asked her followers to follow her only as she followed Christ. That was her direct instruction.

Q. Then you would follow Christ the same as Mrs. Eddy, of course, in your action. Now, what did you understand were the powers of the Board of Directors to which you were elected in 1909? A. The powers given to them in the Manual of the Church.

Q. Won't you state your understanding of what the powers of that board were as established by Mrs. Eddy? A. In short, they were intrusted with the transaction of the business of The Mother Church.

Q. Anything else? A. And the enforcement of the By-Laws of The Mother Church.

Q. Mr. Dickey, did you not understand that she left this Board of Directors with the broadest powers of supervision over all the affairs of not only The Mother Church but of the Christian Science religion generally? A. Under the restrictions of the Manual, yes.

Q. Are there any restrictions in the Manual with reference to the breadth of the powers of the directors? A. I think so. The powers of the directors had to be exercised in an orderly and in a Christian manner.

Q. Did you understand that the board had general supervision and directory power over all the affairs of The Mother Church, not only spiritual but financial? A. Within certain limitations, yes. I don't think that that gave them absolute power to do any-

thing and everything that they might have desired to do.

Q. Did you understand that this board were vested with final authority on all matters affecting the policy of the Church? A. In so far as it was required by—

Q. Please answer the question directly. A. Well, General, your word "all" is a wide word. I don't know that I would like to say that they were intrusted with everything.

Q. Is this statement made in your answer to the Eustace suit approved by you—A. Yes.

Q.—namely,  
"that The Christian Science Board of Directors is intrusted with the general direction and supervision of the Christian Science movement in all of its departments; that The Christian Science Board of Directors has in relation to the trustees final authority in regard to the editorial policy of the official organs of The Mother Church and final authority in regard to all matters affecting the policy of The Mother Church or the cause of Christian Science?"  
A. Yes.

Mr. Whipple—Perhaps General Streeter will allow me to interrupt?

Mr. Streeter—Yes.

Mr. Whipple—I do not understand that this cross-examination affects or is a part of the Eustace case.

Mr. Streeter—I want to say that, so far as these questions that I am putting are concerned, I am not thinking of the Eustace case, and I am asking Mr. Dickey only for his understanding, not what the actual power is, but what his understanding of the power is.

Mr. Whipple—I understood that this cross-examination affected the Dittmore case.

Mr. Bates—Well, may it please Your Honor, I think that we ought to have a definite understanding in regard to that. Mr. Dittmore is also a defendant in the Eustace case, and I assume that this cross-examination applies to both cases, and I suppose that, in so far as it is material, it is offered in both cases. Where it is not material, of course it will not be considered.

Mr. Streeter—That is quite true. Is there anything required of me? I say that that is quite true.

The Master—I see nothing for me to rule on at present.

Mr. Whipple—Well, except on the general question as to whether the cross-examination is a cross-examination in the Eustace case, or whether the evidence elicited by questions is to be considered merely in the Dittmore case.

The Master—I do not think that I need rule generally on that proposition. If any given piece of testimony brought out by cross-examination by counsel for Mr. Dittmore is distinctly objected to as evidence in the other case, I think that some special reason should be shown for not so regarding it.

Mr. Whipple—Very well.

Q. With reference to the powers and the status of the Board of Directors, I will ask you if, so far as Mrs. Eddy could have any successor, so far as there could be any successor to her, do the Board of Directors, as you understand it, represent that succession?

Mr. Whipple—Just a moment. A. Yes, sir.

Mr. Whipple—Before that question is answered, I should like to object to it as having any probative effect in the Eustace case, because we say that his opinion cannot have any effect in that case as establishing the fact.

The Master—That would be my view of the matter, but—

Mr. Whipple—That is—

Mr. Streeter—I am only—

The Master— —but this is cross-examination, and, to a certain extent, it is open to cross-examining counsel to get at the views of the witness on those points. If he states his views, it does not follow that his views are going to be accepted by the Court.

Mr. Streeter—I suppose that that is so. It is only getting at his understanding of it.

Mr. Whipple—I got on my feet simply because Your Honor indicated that perhaps I ought to direct attention to matters to which we objected. Now, we have not the slightest objection to there being taken in the Dittmore case the opinion of Mr. Dickey as to whether his board succeeded to Mrs. Eddy's powers at all; but all we desire to say is practically what Your Honor has said, that we do not think that that is conclusive, or of any probative effect, in our case. The mere fact that by accident it was brought out in cross-examination, as it could not have been brought out in the direct examination, does not increase, or, indeed, give to it any probative effect, and I understood that to be the substance of what Your Honor stated.

The Master—I think that that may be true.

Mr. Streeter—Will you read the question and answer? He answered it, I believe.

[The question and answer are read as follows:

Q. With reference to the powers and the status of the Board of Directors, I will ask you if, so far as Mrs. Eddy could have any successor, so far as there could be any succession to her, do the Board of Directors, as you understand it, represent that succession? A. Yes, sir.]

Q. Do you understand that the Board of Directors, or any member of that board, hold those powers for themselves personally, or in trust? A. Not for themselves, and only in trust.

Q. For whom do the Board of Directors hold and exercise those trust powers which you have described?

Mr. Krauthoff—Now, if Your Honor please, as to that question, that is a conclusion of law, and we object to it.

Mr. Streeter—Well, now—well, I beg your pardon—I can't stop you; I

beg your pardon. I want to say this, Your Honor, that I am proposing to ask this gentleman various questions as to his understanding. What he may say will not be conclusive, or even, perhaps, operative on the mind of the Court, so far as any question of law is concerned. I am getting at his understanding so that we can judge of his actions as based on that understanding. I should think that that ought to help you out, Mr. Krauthoff.

Mr. Krauthoff—As we understand the Dittmore case, if Your Honor please, one of the issues is whether the world at large—in other words, whether certain documents created a charity—

Mr. Streeter—I object to your undertaking to coach Mr. Dickey. He is a perfectly competent gentleman to answer questions and I do not see why you should interrupt the examination for the purpose of telling the witness—

The Master—I do not see how I can forbid Mr. Krauthoff to object to questions put, and state his reasons. You may conclude, Mr. Krauthoff.

Mr. Krauthoff—One of the issues is as to the nature of the trust, and that is evidenced by written documents, as to which the evidence of this witness would not be controlling upon the Court in any way.

The Master—Well, you seem to agree, both of you, about that.

Mr. Krauthoff—I have no objection to having the witness state his own concept, with the understanding that it is not offered as evidence of the true state of the case.

The Master—I should not suppose it could be accepted in any other way.

Mr. Krauthoff—Just so it is understood, as we go along.

The Master—Yes.

Mr. Streeter—It was understood before you got up.

The Witness—My intention—

Mr. Streeter—Wait a minute. What is the question, if there is a question?

[The question is read by the stenographer: "For whom do the Board of Directors hold and exercise those trust powers which you have described?"]

Mr. Streeter—Yes, that is right.

A. For the whole world, for all mankind. That was my intention, to answer that way, before Mr. Krauthoff spoke.

Q. Are the members of The Mother Church the true beneficiaries under this trust? A. They are beneficiaries in common with every human being.

Q. In your conception, what interests have the members of The Mother Church as beneficiaries in this spiritual and financial trust of which you are the manager? A. If I may enter into a little explanation, General—

Q. No; I would like to have you answer the question directly. A. Will you repeat the question, please?

[The question is read by the stenographer.]

A. An interest that is common with everybody.

Q. Well, now, will you state spe-

cifically what beneficial interests the members of The Mother Church have in the millions of dollars' worth of property in your and your associates' hands.

Mr. Krauthoff—If Your Honor please, we object to that as calling for a conclusion of law.

Mr. Streeter—Oh, I wish you wouldn't do it. I am asking this gentleman's conception of it.

The Master—I thought we had been over that.

A. My conception of that is this: that there is no moneyed interest which may accrue to a member of The Mother Church. The interest of a Christian Scientist as a member of The Mother Church is that he has, through the wide channels offered by The Mother Church, an opportunity to do good. A man joins a Christian Science church, not to get a personal benefit himself, but it affords him a means to benefit the world.

Q. Now, I don't want an address from you on that. I asked you about the interests of the members of The Mother Church. A. You asked my conception of it, General.

Q. Sure.

The Master—I think you will have to allow him a certain latitude in answering such a question as that. You may complete your answer.

The Witness—I finished it, if the stenographer got it; I don't know.

Q. You were denying in your answer—

The Master—One minute. I think the witness wants to see whether his answer is correctly taken down.

[The answer is read by the stenographer.]

The Witness—That is right.

Q. In the Dittmore bill, page 3, paragraph 6, he charges that the duties imposed upon The Christian Science Board of Directors "were imposed upon them as directors of said Church for the benefit of its members, who became and are the sole beneficiaries of said trust, and, as such sole beneficiaries, were and are legally and equitably entitled to have such trust property administered for their benefit, and are also entitled to have the business of the trust known as The Christian Science Publishing Society, of which they are also the sole beneficiaries, properly administered for their benefit." Do you admit the truth of that allegation? A. No, sir.

Q. In what respect is it not true?

A. It is not true in the respect that the members of The Mother Church are the sole beneficiaries.

Q. In your judgment are the members of The Mother Church sufficiently beneficiaries of this money trust which you are administering— A. I couldn't agree to that; it is not a money trust.

Q. Now, Mr. Dickey, you and I know each other. A. Well, General, I thought I would save your time.

Q. And I suggest that you wait until I get through. A. Yes, sir.

Mr. Streeter—Strike that question out, please, Mr. Stenographer.

Q. Now, Mr. Dickey, are the members of The Mother Church interested, or do they have any special interest, in the administration of the financial affairs which were placed in your hands as trustee? A. They do.

Q. In your conception have the members of The Mother Church the right to full and accurate knowledge of your doings as a trustee? A. They have.

Q. How many members of The Mother Church are there? A. I do not know.

Q. Is that an accurate answer or what I am led to define as a metaphysical answer? A. That is the absolute truth, in its ordinary, everyday application.

Q. That is what I want to get. A. I don't know how many members The Mother Church has.

Q. About how many?

Mr. Krauthoff—If Your Honor please, we desire at this time to call the attention of the Court to the fact that the Church Manual, which is binding on Mr. Dittmore in every particular, forbids numbering the members of the Christian Science denomination; and Mr. Dittmore, appealing to the Church Manual for his right to sit on the Board of Directors, cannot, through his counsel, ask a question the answer to which violates the Church Manual.

Mr. Streeter—I will withdraw the question. I will assent to the secrecy with which you undertake to surround a portion of this case.

The Witness—General, it is not secrecy.

Mr. Krauthoff—We object to that statement of counsel. We are standing here upon the Church Manual, which binds Mr. Dittmore absolutely. It is not a question of secrecy; it is a question of following the Manual, which binds Mr. Dittmore.

Q. How many Christian Scientists are there in the world, as you believe?

Mr. Krauthoff—We object to that question as being the same one in another form, and in violation of the Church Manual.

The Master—I cannot exclude—

Mr. Streeter—I am advised to withdraw that question. I did not suppose that it was an improper question.

Q. Whether it is stated frequently that there are more than a million Christian Scientists in the world? I mean, stated generally. A. Oh, I think there are more.

Q. Many more? A. Many more, yes, and they are coming all the time.

Q. Do you as directors have control of two branches or functions: one the spiritual side of the Christian Science religion, and the other the management of the financial resources used in support of that spiritual side? A. We have the management of the spiritual and temporal affairs of The Mother Church.

Q. And you have the absolute management, have you not, of both? A. I believe so.

Q. Was Mrs. Eddy's fundamental purpose, as you understand it, to use all means to promote and extend the doctrines or religion of Christian Science as taught by her? A. All legitimate and righteous means—it was her purpose.

Q. And was that her fundamental purpose as distinguished from building up a financial power, on the financial side of it? A. That was. Her work was in the interest of humanity.

Q. Did she leave all her fortune, or the residuum of her fortune, for the promotion and extension of the doctrines of Christian Science as taught by her? A. She did.

Mr. Krauthoff—The exact word is "religion," I believe, is it not, General?

Mr. Streeter—Well, do you object to the word "religion"?

Mr. Krauthoff—No. I assume that in stating her will you would prefer to state it accurately.

Mr. Streeter—Well, if you will sit down I will undertake to put my examination in a way that I shall not meet with the disapprobation of the Court.

Mr. Krauthoff—Then, if Your Honor please, if it becomes an issue as to that, we make the point that the will of Mrs. Eddy is the best evidence of its contents. I was seeking to have the General state it accurately. If he prefers to disregard my assistance, we make the objection that the will is the best evidence of its contents.

Q. Mr. Dickey, do you understand that Mrs. Eddy left the great bulk of her property in her residuary estate for the purpose of promoting and extending the doctrines of Christian Science as taught by her?

Mr. Krauthoff—As to that, if Your Honor please, we make the same objection, that the will is the best evidence of its contents.

The Master—Very likely it is, but it is the witness' understanding of those contents which is being inquired about.

The Witness—I do.

Q. She left an estate where the residuum is nearly three millions of dollars for that purpose, did she not? A. It was estimated at that.

Q. Does it amount now, in the hands of the trustees, to more than two and one-half million dollars? A. Do you mean in tangible securities, General, or in copyrights?

Q. I mean in value. A. I think it does.

Q. That estate is in charge of the New Hampshire courts, is it not? A. The trustees were appointed by the New Hampshire courts.

Q. Will you answer the question? That estate is in charge— A. Well, General, I don't know just how much you mean by "in charge of." The trustees, as I understand, handle the

estate, and they report to the court in New Hampshire.

Q. They were appointed by the court in New Hampshire, were they not? A. They were.

The Master—He said so.

Q. I want to get at some general fundamental questions at the outset. After Mrs. Eddy's passing on, in December, 1910, her will was probated in Merrimack County, New Hampshire, was it not? A. It was.

Q. And that court appointed a New Hampshire trustee and the five directors of The Mother Church as statutory trustees to manage that estate, did it not? A. They were not appointed as the directors; they were appointed as five individuals. I wanted very much to have them appointed as directors.

Q. Yes, I know that. So that since 1913, after the contest over her will had been settled, the trust has been managed by six trustees? A. Yes, sir.

Q. Appointed by the court? A. Yes.

Q. Of which Mr. Josiah E. Fernald, of Concord, is the New Hampshire representative? A. He is.

Q. And the five directors, as individuals, if you please, are the other trustees? A. Yes.

Q. With the order of the court that the corpus of that trust property shall not be removed from New Hampshire? Is that correct? A. I believe it is.

Q. In addition to this trust fund, which was left by Mrs. Eddy for the promotion and extension of her doctrines, what other properties had been accumulated by her and through her influence in The Mother Church, of which the directors took control? A. Real estate in Massachusetts, personal property in her home—

Q. Is that all? A. Real estate in New Hampshire; her home, Pleasant View, was left to the directors with the request that it be sold.

Q. What is the money value of the resources of The Mother Church which you and your four associates are handling as trustees? A. I do not know at this time, General; I would have to consult our books to find out.

Mr. Streeter—Governor Bates, would you be good enough to furnish us the audits of the Church fund and affairs for the last four or five years? I don't want all of them—if I could have one, say, for 1915.

[Mr. Streeter confers with counsel.]

Mr. Bates—The reason for my hesitation is my doubt as to whether or not any of what you ask for is material in this case. If it is we will try to have it here.

Mr. Streeter—I think it is.

Q. Which do you regard as your highest responsibility—personally regard as your highest responsibility—the carrying out of Mrs. Eddy's fundamental purpose of promoting and extending the doctrine of Christian Science as taught by her, or the building up of the financial side of the organi-

zation? A. My greatest responsibility is in upholding and supporting the church government which she has established and using every endeavor to promote and extend the religion of Christian Science as taught by Mrs. Eddy.

Q. Now, the financial management is only incidental to the main, fundamental purpose. Isn't that correct? A. That is all.

Q. That is all? A. Yes, sir.

Q. And all this money and accumulations of money, are in your hands solely for the purpose of promoting and extending her doctrine, are they not? A. As a means to carry that out—

Q. Will you just wait and answer my questions? A. Yes.

Q. All these moneys and these accumulations are in your hands in trust for the sole purpose of using them to promote and extend the doctrines of Christian Science? A. That is true.

Q. That is absolutely right, is it? A. Yes, sir. In my opinion.

Q. I want to ask a few more general questions. What are the fundamental principles of the religion of Christian Science apart from its healing? A. They are found in the church tenets.

Mr. Streeter—I want, if Your Honor please—they are brief—I have a strong desire to incorporate those tenets into the record.

The Master—They are in every edition of the Manual, are they?

Mr. Streeter—Yes.

The Master—We have numerous editions of the Manual in here.

Mr. Streeter—I know it, Your Honor, but there are good reasons why I would like to have those incorporated in the record.

The Master—If I am not mistaken they have already been read into the record.

Mr. Streeter—Oh, no, they have not, if Your Honor please. They are about the only thing that has not been.

The Master—Well, I am obliged to say that I see no occasion for it, but if no counsel objects I suppose they are to be put in.

Mr. Krauthoff—Which edition are you reading from, General?

Mr. Streeter—I am reading from the seventy-eighth edition. This is 1909. The tenets have not been changed, have they?

The Master—The seventy-third edition I think you better read from.

Mr. Streeter—The seventy-eighth was just the same:

“Tenets

“Of The Mother Church.

“The First Church of Christ, Scientist.

“1. As adherents of Truth,”—

The Master—Can't you let the stenographer copy it in?

Mr. Streeter—Yes, just as well.

The Master—You can ask any questions you desire about it on the assumption that you have read it, and that it has been copied in.

[The tenets of The Mother Church, The First Church of Christ, Scientist, as appearing in the seventy-eighth edition, page 15, read as follows]:

“1. As adherents of Truth, we take the inspired Word of the Bible as our sufficient guide to eternal Life.

“2. We acknowledge and adore one supreme and infinite God. We acknowledge His Son, one Christ; the Holy Ghost or divine Comforter; and man in God's image and likeness.

“3. We acknowledge God's forgiveness of sin in the destruction of sin and the spiritual understanding that casts out evil as unreal. But the belief in sin is punished so long as the belief lasts.

“4. We acknowledge Jesus' atonement as the evidence of divine, efficacious Love, unfolding man's unity with God through Christ Jesus the Way-shower; and we acknowledge that man is saved through Christ, through Truth, Life, and Love as demonstrated by the Galilean Prophet in healing the sick and overcoming sin and death.

“5. We acknowledge that the crucifixion of Jesus and his resurrection served to uplift faith to understand eternal Life, even the allness of Soul, Spirit, and the nothingness of matter.

“6. And we solemnly promise to watch, and pray for that Mind to be in us which was also in Christ Jesus; to do unto others as we would have them do unto us; and to be merciful, just, and pure.

“MARY BAKER EDDY.”

Mr. Streeter—We will hope to have the financial statements here this afternoon.

Q. Now, Mr. Dickey, there are two suits here, as you understand it? A. Yes, sir.

Q. Both arising from separate actions taken by a majority of your Christian Science Board on March 17 last, are they not? A. Yes.

Q. What do you understand is the issue, the real issue, in the Eustace suit?

Mr. Krauthoff—Why, if Your Honor please, in the interest—

Mr. Streeter—You have taken several days, and I wish you would give me a little bit of a chance. I am only testing Mr. Dickey's understanding of the questions at issue. I do not expect that his answer will affect Your Honor's judgment, as to what the issues are. I should like to know that he understands what the issues are. A. I think the issues are as set forth in the bills of the plaintiffs.

Q. What are the two claims—the claims of the trustees on the one hand and of your board on the other, that are in controversy here?

Mr. Krauthoff—We object to that, if Your Honor please. The issues in the Eustace case are disclosed by the pleadings and not by the testimony of witnesses.

The Master—I am obliged to say that I cannot see why the witness

should be asked as to his understanding as to the issues disclosed by the pleadings in the case.

Mr. Streeter—Well, if Your Honor please, I am content.

Q. What do you understand are the issues in the Dittmore case?

Mr. Krauthoff—We object to that.

The Master—Why is that any different?

Mr. Streeter—I thought I was right; perhaps I am not.

I will state to Your Honor what I understand the issues in the Dittmore case are, and that is, first, whether they had power to expel him—

Mr. Bates—I object to his making a statement at this time; he is examining the witness.

The Master—I do not think I would go into that now, General Streeter; it takes up time to no purpose.

Q. Well, did you think you had power to turn Mr. Dittmore out? A. I think we were empowered—

Q. Will you answer that yes or no? A. Well, I did not like your expression “turn him out.”

Q. Did you think you had power to expel him from the board? A. We did.

Q. On what was that power based, in your opinion? A. On the power given to the directors in the Manual of The Mother Church.

Q. Did you think that was an absolute power? A. I thought it was sufficient to do what we did.

Q. I pray you to answer the question. Did you think you had the absolute power to turn him out? A. Well, I would not use that word “absolute” in my statement, General.

Q. What word would you use? A. I would use, “power.” I would say we believed we did have the power. Now, whether that was absolute or not—

Q. Did you think that power was such that your action could not be reviewed by anybody? A. I had no thought about that, General.

Q. Well now, didn't you? A. I had no thought that it was exempt from review by anybody. I didn't know what action the—

Q. Were you advised by counsel that you had the power—that under the Manual you had the power to turn out Mr. Dittmore? A. The directors were advised that we did have that power; and you gave that advice to us at one time, General.

Q. Well, I agree, I agree; and if you had always followed my advice you never would have been here. A. Well, if we had followed your advice, then Mr. Dittmore would not have been here.

Q. Pardon me a minute. Did you understand that you could exercise that power irresponsibly and without review by the courts? A. I did not go into that, General, whether we could do it—

Q. Didn't you talk with Judge Smith about it? A. I did not talk

about irresponsibility and absolute power.

Q. Oh, no. Didn't Judge Smith advise you that you could turn him out and there could not be any review of your action? A. His advice did not extend as far as you have indicated.

Q. When you turned Mr. Dittmore out, did you understand your action was final? A. We thought we had the right to do that.

Q. How old are you? A. Fifty-five, past.

Q. You are not conscious of any impairment of hearing? A. No, sir. Don't you hear me, General?

Q. Or any impairment in your mental faculties either, are you? A. They are fine, General—fine.

Q. Well, all right. If you are competent, will you please listen to that question and answer it? A. Yes.

Mr. Streeter—The stenographer will read it.

[The question is read by stenographer as follows: "When you turned Mr. Dittmore out, did you understand your action was final?"]

A. Yes, we thought it would be.

Q. Did you understand or believe that after you turned him out he had no remedy against any exercise of the power? A. I did not go that far in the deliberations or considerations of it, General, to make that decision. I did not know what power he might have. I was perfectly willing that he should exercise any power that might be accorded him.

Q. Well, you do not mean to say, Mr. Dickey, that you and the other two directors on the 17th of March—A. Other three, General.

Q. What? A. The other three.

Q.—the other two, sir, directors, on the 17th of March, exercised the power to expel your senior associate from that board without getting any advice from counsel as to what might happen in case you did? Did you mean to say that? A. Well, we knew that most anything might happen.

Q. Will you answer the question? Did you do that without getting advice of counsel as to what might happen if you did exercise that power? A. I do not recall, General, that we asked counsel just what might happen if we exercised that power. My—

Q. Now, let us not play around words. Did you confer with counsel? A. Yes.

Q. Before exercising the power to turn him out? A. Yes.

Q. With whom? A. With Judge Smith.

Q. With whom else? A. Yourself, General, is the only one that has ever been put up to, that I know.

Q. Now, Mr. Dickey, you know that that advice was given years ago—A. It was given—

Q.—as you know. A. Given concerning the same man and for the same reasons that are now—

Q. Pardon me a minute. You know that you never got any advice from

me that you had the right to exercise that power without review and supervision as to the soundness of it? A. That was the way it was given to me—that all we had to do was to hold a meeting and put him out, and that was the end of it.

Mr. Streeter—Well, Your Honor, I do not quite know what to say. I do not want to enter into a controversy with the gentleman. I think I can take care of that statement a little later.

Q. Did you have that from me or from somebody else? A. No, sir, not from you; that was reported to the board.

Q. This is hearsay. Did you think you were responsible to anybody for your acts in turning him out? A. Our responsibility was—

Q. One moment. Did you think you were responsible to anybody—A. To any person, you mean?

Q. Yes. A. No, I think not, General.

Q. Well, that answers the question. Did you confer with any other lawyer in Boston except Judge Smith? A. I do not think we did; I don't remember doing so.

Q. Did any other lawyer in Boston except Judge Smith know what you intended to do? A. I do not know. I do not remember personally talking to anybody but Judge Smith.

Q. Now, Mr. Dickey, you undoubtedly have not forgotten if you took anybody's advice but Judge Smith's, and I ask you to state candidly, did you advise with anybody about turning Mr. Dittmore out excepting Judge Smith? A. My best belief, General, is that we did not.

Q. You did not? When did the idea first occur to you to turn him out? A. It was first presented to me shortly after I came on the board.

The Master—I will call your attention to the fact that it is now 1 o'clock.

Mr. Streeter—Well, that is all right. [Recess until 2 p. m.]

#### AFTERNOON SESSION

Mr. Streeter—Shall I proceed? The Master—You do not desire to wait for Mr. Whipple, do you?

Mr. Strawn—No.

Q. (By Mr. Streeter) Mr. Dickey, when did the controversy between the Christian Science board and the trustees first start? A. I didn't hear your question, General.

Q. When did the controversy between the Christian Science board and the trustees of The Christian Science Publishing Society begin? A. I think in 1916 it began to assume an aspect that looked serious.

Q. Had it not begun prior to that time in some respects? A. Well, there were mutterings.

Q. As early as 1914? A. I think earlier than that, General.

Q. Well, what were the first mutterings? A. The first intimation I had of any difference that might arise between the trustees and directors

was presented to me in a conversation I had with Mr. Eustace in the Ericson Hotel, in the winter of 1912, I believe.

Q. Well, what differences of opinion were there expressed as to the relative relation of the two boards?

The Master—The Ericson Hotel is in what city?

The Witness—In Boston, on Commonwealth Avenue. I did not catch your question, General.

Q. What was said which led you to think that those were the first mutterings of discontent? A. Mr. Eustace asked me if I had ever seen the Deed of Trust that Mrs. Eddy had created, or had executed, creating the trust under which the Publishing Society operated. I said No, I had not seen it. "Well," he said, "you know it is a very wonderful instrument, really, something that you ought to see. I have a copy here, and if you would like I will give it to you." I said, "Yes, I would like to have one." And he went on at length and expatiated on what he considered to be Mrs. Eddy's wonderful wisdom and foresight in the terms of this Trust Deed. I took the deed away with me and read it. I saw him afterward on different occasions, and the subject was touched on very lightly. I told him I didn't agree with his interpretation of the Deed of Trust—

Q. Well, you have not stated that he made any interpretation. Did he make an interpretation at that time? A. Well, it was an intimation rather than an interpretation.

Q. An intimation of what? A. He intimated that Mrs. Eddy had given unusual—what I considered unusual powers to the trustees in the exercise and control of the publications and the literature of the Christian Science Church.

Q. He intimated, did he, that the powers of the directors over the periodicals were not so paramount as you had supposed? A. That was included in his suggestion, yes.

Q. Well, now, did any actual thing break out other than these mutterings which you have referred to? A. Not that I can recall, until about February, 1916.

Q. Well, somebody has intimated that there was something in 1914? A. Doubtless there was, General.

Q. Do you remember it? A. I do not remember the specific incident.

Q. Well, then, let us come to 1916. That was in February. Now, what was the first thing that you noticed with reference to any differences of view? A. Well, the points that were taken up by the directors in what—

Q. I wish you would state specifically. I am not asking you generally, but I am asking you specifically, what was the first point of difference that presented itself? A. If I might be allowed to take that memorandum in my hand that we had at that time it will assist me somewhat. I don't recall just specifically what the first instance was that our attention was called to.



Q. I have no objection. A. This was a growth, General. It didn't come upon us suddenly.

Q. I have no objection to your taking the memorandum. Of course you know I shall have the opportunity of seeing it if you take it. (A pamphlet is passed by Mr. Krauthoff to the witness.) Do you refer to the Dittimore memorandum? A. That is the one.

[Mr. Krauthoff passes another document to the witness.]

Q. Do you find it? A. Yes. General Streeter, there is nothing on here that refreshes my memory in regard to the first breach that there was between the Christian Science directors and the trustees.

Q. Well, Mr. Dickey, on the 15th day of February, 1916, Mr. McKenzie wrote a letter? A. Yes.

Q. Was Mr. McKenzie then the chairman of the board? A. I think he was.

Q. What was the occasion of Mr. McKenzie's writing that letter? A. I cannot recall.

The Master—Have we had the letter in evidence?

Mr. Streeter—Yes, Your Honor.

The Master—What is the number?

Mr. Streeter—It is Exhibit 324, and begins on page 318.

Q. Can you not remember what the occasion of writing that letter was? A. I don't remember it now, General, no.

Mr. Streeter—Well, then, Mr. Krauthoff, will you let me see the record of Feb. 15, or about that time, 1916?

[A book of directors' records is passed by Mr. Krauthoff to Mr. Streeter.]

Q. The record of Feb. 15, 1916, shows that a special meeting was held. There were present Messrs. Dittimore, Dickey and Neal. The board had a conference with the three trustees of The Christian Science Publishing Society. The trustees left with the board a letter addressed to the directors, under date of Feb. 14. Do you think that is the one? A. I believe it was. That is Mr. McKenzie's letter.

Q. Now, have you no idea what caused the writing of that letter, Exhibit 324? A. I don't recall of any specific act.

Q. Well, do you remember what soon after that happened to arrest attention? A. I don't, General.

Q. Well, now, you had a meeting on Feb. 24, 1916? A. Yes, we did.

Q. And a very important meeting, too? A. Yes.

Q. Well, what was the occasion of that meeting? A. At that meeting that letter, or that memorandum, prepared by Mr. Dittimore, was gone over by the directors and approved by them as being a proper instrument to present to the trustees for their signatures, occasioned by the fact that there had been some differences expressed in various ways regarding the functions of the two boards—I mean by

that the Board of Directors and the Board of Trustees.

Q. But you can't remember what they were? A. I don't remember just what it was.

Q. Now, when this Dittimore memorandum was presented to the meeting, the joint meeting, what happened? A. The memorandum was read to the trustees and discussed and approved by them, with the exception that they declared that they thought it was not wise to attach their signatures.

Q. Well, do you mean that Mr. Eustace and Mr.— A. McKenzie and Mr. Hatten.

Q. Mr. Eustace, and who were the other two? A. Mr. McKenzie and Mr. Hatten.

Q. Yes. Do you mean to say that they all approved the memorandum? A. They did.

Q. And in substance agreed to it? A. Yes, sir.

Q. Without reservations? A. Except that they would not sign it.

Q. Yes. So far as the document itself was concerned, whether they agreed to it, all of them? A. They made no reservations then that I remember.

Q. Well, now, from this agreement did you and Mr. Dittimore and Mr. Neal understand that all differences had been settled?

Mr. Strawn—I object to their understanding, if the Court please.

Mr. Streeter—No; I ask about his personal understanding. It cannot affect the others. Your personal understanding, your personal state of mind.

A. My understanding was that from that time on what was stated in that agreement would be adhered to strictly by the trustees and by the directors, just the same as though they had attached their signatures thereto.

Q. And I think you expressed it that, so far as Mr. Eustace was concerned, he had made a gentleman's agreement with you?

A. He stated that he would have no objections to signing it were it not for the fact that it might be considered as creating a new by-law, and on those grounds he said he would prefer to withhold his signature; but he did agree to abide by the stipulations of the memorandum, and referred to it as a gentleman's agreement.

Q. When after that was the first question that was raised? A. I don't remember the date, General, and I don't remember the exact circumstance. I would have to—

Q. Now, as I understand you, Mr. Dittimore made this draft? A. Originally it was Mr. Dittimore's draft, as the clerk of the board—as secretary, rather, of the board.

Q. Yes, as secretary of the board he made this draft, and this is his draft, is it not? A. I think not. I think the directors went over it and

made some suggestions and changes in it.

Q. But this is substantially Mr. Dittimore's draft? A. Yes, yes.

Q. And the nib of this document is perhaps in the last paragraph:

"It shall be accepted in theory and demonstrated in practice that The Mother Church is one institution, and that the responsible authority for its direction in all of its departments is not divided, but has been definitely established in The Christian Science Board of Directors."

You all agreed to that, didn't you? A. We did.

Q. And Mr. Dittimore phrased that, and have you at any time observed any departure by him from the principles of that draft? A. I have not.

Q. No, sir. From that date to this Mr. Dittimore has, notwithstanding any other difference—Mr. Dittimore has stood squarely on that draft, has he not? A. I have never known him to deviate from that.

Q. Not in the least? A. No, not in the least.

Q. Now, can't you remember when you got the first evidence that Mr. Eustace was breaking this gentlemen's agreement, as you say? A. I don't remember it, General. I kept no memorandum or diary of what transpired.

Q. How long should you say it was before there was any deviation from this solemn agreement on the part of these gentlemen? A. Well, it might have been a year or more.

Q. Well, what was the first thing that came up to call your attention to it? A. I could not tell now unless I had something to refer to to refresh my memory.

Q. Well, was it a year? A. It might have been a year or more.

Q. Well, was it as much as 18 months? A. General, I do not know. If I knew I would be glad to tell you.

Q. And you can't tell, either, what the first outbreak was? A. Not at this moment. Now, may I explain to you why I—

Q. No, no. I don't care for it. A. All right.

Q. Well, had anything come up showing a variation from this agreement before April or May of the following year, 1917? A. Well, that I don't remember. I am sorry, but if you will indicate what it is you are working up to, I will—

Q. Oh, I am asking you; I want to get at your best judgment about this. Can you remember that any outbreak occurred between Mr. Eustace and yourself, meaning the two boards, for two years up to 1918—the spring of 1918? A. I remember nothing in the nature of an outbreak, General.

Q. Anything that excited your suspicions that they were not acting entirely in accordance with the memoranda? A. I can't state, I am sorry to say.

Q. Now, have you and Mr. Dittmore been in entire accord during those two years? A. I think we had been on what might be called quite intimate terms.

Q. Had you been in entire agreement? A. No, not on everything.

Q. Now, Mr. Dickey, on April 25, 1918, Mr. Dittmore filed with the board a letter, under that date (which is Exhibit 220, Your Honor, on page 295), in which he opened up very many things that were going on wrongly inside of the board? Do you remember that? A. I don't remember. Mr. Dittmore—

Q. He begins that letter by saying: "After my remarks yesterday on the serious conditions which this board and the Christian Science movement are facing—" A. I remember that letter, General.

Q. "— one of the members said he would be glad to know what I believed the remedy to be." A. Yes.

Q. And did you take note of that letter? A. I did.

Q. Did you approve of it? A. I beg pardon?

Q. Did you approve of it? A. I think not.

Q. Were his suggestions sound or unsound? A. I thought they were very extreme, General.

Q. Very what? A. Extreme.

Q. In what respect? A. Well, I think they made charges that were exaggerated.

Q. What charges did he make that were exaggerated? A. If you will let me have the letter, General, I will be glad to review it and point them out.

The Master—It is a pretty long letter.

The Witness—Yes.

Mr. Krauthoff (handing letter to witness)—May I ask what is the pending question?

The Master—He is asked to point out in the letter, Exhibit 220, the charges to which he refers as being in his opinion extreme. Is that right?

Mr. Streeter—Yes; and unsound.

Mr. Krauthoff—Now, if Your Honor please, at this time we desire to make an objection to that question as irrelevant and immaterial, because it presents a vital issue in the trial of this case. If we are to enter upon the unsoundness, the relative unsoundness or the extreme views that Mr. Dittmore took upon all of these subjects of controversy, quite a large number in extent, we would never get through trying this case within any reasonable bounds. Our theory of the case is that it is not a question whether Mr. Dittmore was intrinsically correct in what he said or did, but that the whole issue depends upon the manner in which he presented his controversies—the behavior, the treatment of his associates, the contentions that he made, and the manner in which he made them.

The Master—I certainly do not in-

tend to have the question of the soundness or unsoundness of Mr. Dittmore's views as expressed in that letter gone into if I can help it. That is not what General Streeter asks.

Mr. Streeter—No, sir.

The Master—He wants to know what this witness criticizes as unsound.

Mr. Krauthoff—And that Your Honor holds is proper?

The Master—I see no reason why not, in cross-examination.

Mr. Krauthoff—Accurately speaking, this is their direct case, the direct examination of this witness in the Dittmore case.

The Master—If we regarded it as such it would be the direct examination of an adverse witness, would it not?

Mr. Krauthoff—Yes, if Your Honor please.

The Master—I think you may go on.

The Witness—Now may I ask the question?

The Master—I think you better first point out what General Streeter asks you to.

Mr. Streeter—Mr. Stenographer, he wants the question.

The Master—No; I thought you asked if you might ask a question.

The Witness—No. Pardon me, I want the question repeated.

The Master—Give him the question.

[The question is read by the stenographer: "What charges did he make that were exaggerated?"]

A. What charges did I make of exaggeration?

Q. What charges did Mr. Dittmore make that in your judgment were exaggerated or unsound?

The Master—In that letter.

Mr. Streeter—How?

The Master—In that letter.

Q. In that letter. A. Yes, sir. (Examining letter.) He says here:

"I have decided to briefly and hastily outline some of the needs and reforms which are essential as a beginning. The first is an unselfish love for the cause of Christian Science expressed in a willingness to subordinate every personal pleasure to the vital duties of the movement which the members of this board have been chosen to direct."

The Master—Now, will you excuse me a moment, Mr. Dickey?

The Witness—Yes, sir.

The Master—We seem likely to be getting the whole letter into the record over again.

Mr. Streeter—I do not want it; I want him to point out anything—

The Master—I will ask Mr. Dickey to recall that he is only asked to point out charges in the letter which he regards as unsound—charges. A. Well, the sentence I have just read contains the intimation that the members of the Board of Directors had not expressed a willingness to subordinate every personal pleasure to the vital issues of the movement.

The Master—Do you regard that as a charge, General Streeter?

Mr. Streeter—No. No, and nobody else would.

The Master—Do you think that what you are getting on this method of inquiry is going to justify the time spent on it?

Mr. Streeter—I am afraid not.

Q. If there is any charge in that letter against his co-directors, or anything in that letter that is not sound in your judgment, you just simply point it out in the briefest possible way. A. Yes.

Q. Where it may be. A. He says:

"Why should we expect that The Mother Church attendance, for instance, should come out of its years of stagnation and increase unless we produce the occasion for it?" I dispute the correctness of that statement. He says:

"Why should we expect the real estate fund of The Mother Church to grow and meet our needs when there is the opposite of love, compassion, and unity expressed on this board?" I consider that that is a charge against the other members of the board, charging them with expressing the opposite of love, compassion, and unity.

Q. Yes. A. I did not consider that Mr. Dittmore was justified.

Q. No. You have answered that. Now, is there any other charge there? A. Well, I will read on and see:

"We have been agreeing with animal magnetism to move when it is willing."

We had done nothing of the kind; that was another charge that was unfounded.

Q. Yes. A. (reading):

"The various forms of the hidden hand of telepathy playing upon the weaknesses of those who are not seeing the foe in ambush necessarily hide also the hand of God, which is always ready to save when consciousness is ready to accept the guidance of Principle."

I question Mr. Dittmore's correctness in attributing that form of weakness to the other members of the board.

Mr. Streeter—Your Honor, I find that Your Honor is right about it; I cannot get an answer to this question without having that letter read.

Mr. Bates—I submit, Your Honor, he is getting an answer to his question, exactly, and as concisely as it could be stated.

Mr. Streeter—Well, I am content if Your Honor is content. I should like to have him point out, as he is starting to, what there is in this letter that is not a sound statement on the part of Mr. Dittmore, or is an exaggerated charge, if we can do it without taking so much time on it.

A. (Continued.) Well, now, listen to this:

"Lovingly, but firmly, this board must sooner or later eliminate the belief that the Publishing Society is a separate institution. This board must

also be able to judge righteous and impartial judgment on matters presented to it, regardless of the relationship to us of those essential to our inquiry. Arrogance, autocracy, Pharisaism, unmercifulness, and incompetence which cannot be healed must be ruled out, or those expressing these qualities must go."

Q. What's the trouble with that; isn't that sound? A. The trouble with that is that Mr. Dittmore had been, and was then and has since, been accusing his fellow board members of expressing the qualities just described in that paragraph.

Q. That is your objection to it, is it? A. That is one of them. There are other things in here that I do not object to, General.

Q. How is that? A. There are other things in here that I do not object to.

Q. As a result of this letter being laid before the board was it voted at that time that Mr. Dittmore be one of a committee to suggest remedies? A. Mr. Dittmore was appointed a committee by the board to inquire into the circulation of The Monitor. That is the first recollection I have of his being appointed a committee.

Q. Now, Mr. Dickey, was he appointed to make a report upon the general situation and his suggestions of what should be done to help out the Christian Science Board? A. Yes, he was. He was appointed at two different times, first to investigate—

Q. Well, I am talking about this time. A. Well, I think this time he and Mr. Neal were both appointed, but let me confirm that by the record, please.

Q. Well, we will agree to that. Did he make a report on May 23, 1918, which is printed, and is a copy of Exhibit 553? A. Well, I don't remember the number, but if I could see the report I could tell you.

Mr. Streeter—Well, your counsel will.

Mr. Krauthoff—What is the printed page?

Mr. Streeter—Printed page 400.

The Witness—It is not 400 in this book.

Mr. Streeter—The number of the exhibit is 553. (Document is handed to the witness.) The letter is May 23, 1918—or the report.

A. Now, in the first place, Mr. Dittmore was not appointed a committee on ways and means, he was asked to embody his ideas of how to correct the abuses which he claimed were in the publishing house into concrete form; asked if he would put his suggestions down.

Q. Yes. A. The members of the board had been listening for a long time to Mr. Dittmore's complaints, and I made that request myself, that Mr. Dittmore just put his—

Q. Now, did he make a report in this letter of May 23? A. He made this which he says is a report of a

committee on ways and means. Now, he was not appointed a committee on ways and means; he was just asked to embody his views in a written statement.

Q. Well, Mr. Dickey, can you read? A. Yes.

Q. If you can you will note that this is not a report of a committee on ways and means but is a report on ways and means, which you say you had asked him to report on. You are mistaken. Now, I want to call your attention to that report. A. Yes, sir.

Q. The third paragraph from the last, on the right-hand column. A. Well, I have it in letter form here.

The Master—He hasn't got the printed report before him. What page?

Mr. Streeter—Page 400.

The Master—If you want to question him about the printed report give him a copy.

Mr. Streeter—I do. I haven't got another copy.

[Copy of the printed report is handed to the witness.]

Q. Now, on the right-hand column of page 400, the third paragraph from the bottom:

"As one of its duties the Sentinel should operate as a connecting link, etc. This should not be done by having the Sentinel less spiritual, but more broadly spiritual and more universal in its appeal and with a keener insight into the spiritual meaning of world affairs."

Have you any objection to that? A. None whatever.

Q. The next item:

"Men and women in every walk of human life need to have given them a hint of the spiritual side of their daily responsibilities."

Have you any objection to that? A. No.

Q. At the top of the next page, first paragraph:

"The directors and editors should be in such close touch with the movement and with world affairs that the first symptoms of any evil which could become far-reaching in its undesirable or dangerous results would be checked and nullified by quick work through the Sentinel."

Do you disapprove of that recommendation? A. Why, I should not approve of that, General.

Q. Do you disapprove of that recommendation? A. Why, I should not approve of that, General.

Q. Then I won't ask you any further. Take the next one:

"The editors should have a definite plan in the arrangement of their material."

Do you approve or disapprove of that? A. That would depend upon just what was meant there by "a definite plan."

Q. Well, do you approve of that as it is stated: "The editors should have a definite plan in the arrangement of their material"? A. I do not know what he means by that.

Q. Then you can't answer that

question? A. Not until I get a little further light.

Q. Well, we will leave that question. You can't answer it. The next item:

"The testimonials are the personal experiences; the articles should not be."

Do you approve of that in this report? A. To a certain extent, yes. I think that is a good suggestion.

Q. The next item:

"The periodicals should show the world that Mrs. Eddy's revelation must grow and expand in human consciousness until it fills the whole earth."

Do you approve or disapprove of that? A. I think we ought to approach a subject like that cautiously, General.

Q. Do you approve or disapprove of that item in this report? A. Have I got to approve or disapprove?

Q. I ask you, yes. A. Well, yes and no, General.

Q. The next item:

"Christian Scientists need to know what Christian Science really is—its lineage and destiny—and the individual Scientist's responsibility."

Is that item of the report sound or not? A. I do not think that is sound for publication in our periodicals—a question of class teaching that belongs to the teachers in the field and not to the editors.

Q. Take the next one:

"The responsible heads of our periodicals should confer with, and develop the natural abilities of all writers of promise."

Do you approve or disapprove of that item? A. I submit that that is an impossibility.

Q. Well, take the next:

"New contributors should be found, especially among progressive students who are active and successful practitioners and teachers."

Do you approve or disapprove of that? A. If the right methods were employed I would approve of it.

Q. Do you approve of that item of the report? Is it sound or unsound? A. I could not state unless you allowed me to qualify it.

Q. No; if you can't state, of course I will pass it. The next item:

"The exchanges in the Sentinel are not always honest inasmuch as the article as a whole, if published, would usually contradict the sentiment of the detached sentence or paragraph quoted."

Is that sound or not? A. I could not agree with that, General.

Q. Well, take the next:

"There should be less cant and stereotyped formality in regard to Mrs. Eddy, and a deeper, wiser estimate of her life and work."

Do you approve or disapprove of that item of his report? A. That would depend upon who wanted to furnish the wisdom and the wiser estimate of her life and work.

Q. If that is the best answer you

can make— A. Yes, it is, General, I think. And then I cannot agree that there is cant and stereotyped formality in our periodicals. I question that decidedly.

Q. Pardon me; I asked you whether you approved or disapproved of it. You say you can't answer? A. No, I didn't say I couldn't answer it.

The Master—I think the last part of his answer is quite responsive as quoting the part he said he did not agree with.

Mr. Streeter—Oh, yes. I did not get it.

Q. Now, the next item, the second item from there:

"Introductions to lectures"—

A. Why don't you read the next one, General?

Q. What? A. Read the next one.

Q. The second item:

"Introductions to lectures when given by Christian Scientists are not usually important." A. You have skipped one there, General.

Q. What? A. You have skipped one there.

Q. Will you answer my question? A. Yes.

Mr. Krauthoff—If Your Honor please, at the time I was engaged in reading records General Streeter pointed out the value of taking up—

Mr. Streeter—Pardon me a minute. I will take the time; His Honor doesn't want me to, but I will.

Q. This is the one I skipped, simply because it was a little long.

The Master—How much more of this is there?

Mr. Streeter—Why, there is a lot more, and I was trying to get—

The Master—I am obliged to say that I think you are wasting time.

Mr. Streeter—I think so. I entirely agree with Your Honor. That is quite true.

The Witness—I wish you would read the next one, General.

Mr. Streeter—I am going to pass it.

Q. We can sum it up, Mr. Dickey, by saying that Mr. Dittmore was asked to make a report and he did make the report, and what we have been reading from is the report. A. I think the record of our meeting there is the best evidence of what he was asked for.

Q. Well, have you any objection— A. And this we all considered as a presumption on Mr. Dittmore's part and an unwarranted criticism of the Board of Directors and the Publishing Society and all the editors and everything connected with the Publishing Society.

Q. Who do you mean by "we"? A. The Board of Directors, of which I am one.

Q. Who? Who on the board? A. I will change that and say, I.

Q. Who do you mean on the board? A. I.

Q. Who else? A. I will let them speak for themselves.

Q. Oh, no, you have undertaken to say here, "We all criticized it." Now,

who? This is May, 1918. A. My understanding was that all of the members of the board present at that time expressed the sense that this was not—

Q. Who were they? A. They were Mr. Stewart—I don't know that Mr. Stewart was present at that time.

Q. What members of the board criticized Mr. Dittmore in his effort to report on needed reforms in the organization? A. I did, Mr. Neal did, Mr. Merritt did.

Q. Who else—Mr. Rathvon? A. I do not know. I do not believe Mr. Rathvon was there then. I do not think he was a member of the board. Mr. Stewart was, and I just don't recall whether Mr. Stewart expressed himself; but my belief is that he did, General. There is one paragraph I would like to read there, that you have left out, General.

Mr. Streeter—Well, I haven't any objection if the Court wants to let this witness—

The Master—I can see nothing more that all this amounts to than the fact stated by the witness that they did not agree with what Mr. Dittmore said in his report.

Mr. Streeter—That is all. That is all it does amount to, if Your Honor please.

The Master—I am unable to see at present why we should go through the letter and pick out just what they approved and just what they disapproved.

Mr. Streeter—No, that is right.

Q. Up to this time you say you had had no outbreak with the Board of Trustees, or no differences of opinion? A. No; I said we had our first one in February, 1916, and perhaps—

Q. No, no; I mean since February, 1916. A. I really do not know, General, without consulting our record. I can't carry all these things in my thought.

The Master—I think the witness made that pretty clear.

Q. Now, on Aug. 15, 1918, you had a meeting and there was a discussion there about the automobile? A. Yes.

Q. Was that the first time that there had been any discussion? A. Well, I think that was one of the first times, if not the first time, when we had any real unpleasantness.

Q. Then immediately after that there came a decided hostility between the two boards, did there not? A. Yes, I think that marked a period of considerable hostility.

Q. Now, at that time—Aug. 15—during this period was Mr. Dittmore very persistent in desiring the board to get information from the trustees with reference to the affairs of the Publishing Society? A. Yes, he was quite insistent.

Q. On Aug. 15 he offered a resolution calling for a large amount of information, 12 different questions—calling for the total operating expenses, average paid circulation, pay

roll, and so on. Did you approve of that? A. Yes.

Q. Getting that information? A. Yes.

Q. Now, at that meeting of Aug. 15 you said in your testimony that there was a statement by the trustees about the rights they claimed under the Deed of Trust as distinguished from the Church Manual; you said there was a difference of opinion expressed as to whether the Trust Deed could be observed in conformity with the Manual, and you maintained that it could. Is that correct? A. You are not speaking quite loudly enough for me, General.

Q. Did you on Aug. 15 maintain that the provisions of the Trust Deed were not inconsistent with the provisions of the Manual? A. Yes, sir.

Q. And you think that is so now, do you? A. I do.

Q. And did you think so Sept. 11? A. I did. You mean, what year?

Q. I mean, 1918. A. Yes, I did.

Q. And you agreed with the trustees on that point? A. Well, I did not do it because it agreed with the trustees; I did it—

Q. Oh, no. A. —because I felt it.

Q. Because you thought it was so? A. Yes.

Q. In other words, Mr. Eustace said that they were going to act in conformity with the Trust Deed and with the Manual? A. Yes.

Q. And you thought they could? A. Surely.

Q. And has that been your theory all along? A. Yes.

Q. And has Mr. Dittmore entertained exactly the contrary theory—that they could not operate the two under the Deed of Trust and the Manual without conflict and that the Manual was paramount? A. Well, I did not so understand Mr. Dittmore. I do not know what he may have thought about it.

Q. What is the controversy between you and the trustees today? A. Well, you asked me that question at the outset.

Q. I ask you now. I assumed, supposed, Your Honor, that he insisted on the paramountcy of the Manual, and that where the Manual conflicted with the Trust Deed that the Manual governed, and that Mr. Eustace contended that there was no conflict but that he had the right to interpret the Trust Deed and the Manual. Now, I want to know where the real difference is.

Mr. Krauthoff—We object to that for the reason that the difference is disclosed by the pleadings and the evidence as it will be developed.

The Master—I think you have asked him too broad a question when you ask him to state what is the issue between you and the trustees today. I shall have to exclude that.

Mr. Streeter—I did exclude that, I abandoned that.

Q. I ask you now, Mr. Dickey, if you claim that there is no conflict between the Manual and the Trust Deed?

A. They can be worked out in perfect harmony with each other. Yes, sir, that is my contention.

Q. And Mr. Eustace claims the same thing, does he?

Mr. Krauthoff—Now, if Your Honor please—

Q. Does he? Has he to you?

The Witness—My counsel is objecting.

Mr. Krauthoff—As to what Mr. Eustace claims, that will have to be determined by the Court from the evidence.

The Master—The question is, Has Mr. Eustace so claimed to you, to the witness? A. Yes, that is, that they can be worked out in perfect harmony.

Q. Now, if you both agree on that proposition, where is your point of difference? A. Well, I think that Mr. Eustace has a very large mental reservation on that subject.

Q. In what respects? A. That he maintains that he has a right to put a metaphysical interpretation on the Manual that I don't put on it.

Q. Now, what is the difference between a metaphysical interpretation and an ordinary interpretation, such as ordinary men use? Won't you explain that? A. Well, his claim is that each man has a right to his own metaphysical interpretation. Now, I don't know what his would be.

Mr. Krauthoff—If Your Honor please—

Mr. Streeter—What is it?

Mr. Krauthoff—Well, there is no question pending. Excuse me.

Q. Well, what do you understand by a metaphysical interpretation? A. I have never used that expression in connection with my views of the Manual.

Q. I didn't ask you that question. A. Well, General, if I may be allowed to go into this subject—I thought that that was barred—

Mr. Krauthoff—If Your Honor please, we object to the question. The difference of opinion between the trustees and the directors, if any, is disclosed by these documents, in which they did not agree with each other; and for this witness now to undertake to tell what Mr. Eustace's position is in this case simply opens up the door to cross-examination on the part of Mr. Whipple, and that would lead nowhere.

Mr. Streeter—No; I am not asking that question; I am asking a general question—What does metaphysical interpretation mean?

The Master—I am unable to believe that that inquiry can lead to any profitable result for the purposes of this case.

Q. You are taking the Trust Deed and the Manual and looking at them in the ordinary sense, are you not?

Mr. Krauthoff—Now, if Your Honor please, we object to that question as calling for a conclusion.

The Master—Do you insist on the question, General Streeter?

Mr. Streeter—Yes, Your Honor.

Why, Your Honor, here is a situation where the trustees claim that under that Trust Deed they are absolutely independent, it is an independent concern, and they can go on without the supervision of the directors. Now, the By-Laws are to my ordinary interpretation entirely in conflict with that. But Mr. Dickey says that they are not in conflict, and Mr. Eustace has said that they are not in conflict, and, if they are not, I do not know what this trouble is about.

The Master—I do not understand that either party thinks that they are in conflict provided you give to the Trust Deed and to the By-Laws respectively the interpretation contended for—

Mr. Streeter—Their interpretation.

The Master—by either side. They differ in their construction of the Trust Deed and the By-Laws, but, accepting the construction of either of them as correct, that party does not say that they are in conflict.

Mr. Krauthoff—The point that I want to make, if Your Honor please, is merely in the interest of saving time. The General is calling on Mr. Dickey now for the operation of his consciousness, and asking him as to what his mental concept of this Deed of Trust—

The Master—He has not asked him any question about his mental concept yet. When he does, we will see.

Q. Well, do you think the board has, under Article XXV of the By-Laws, power to declare vacancies in the Board of Trustees? A. I do.

Q. Do you understand that Mr. Eustace thinks so? A. I don't know what he thinks.

Q. Well, does he claim that you haven't? Has he claimed to you that you haven't? A. No; he says we have if we have a reason that will be accepted by a court.

Q. Now, do you claim—

Mr. Krauthoff—Now, if Your Honor please—

The Master—How can this be profitable? I think you are wasting time, General Streeter.

Mr. Streeter—Well, I don't know but I am. I want to—

The Master—You are asking him what Mr. Eustace said. Now, what Mr. Eustace' construction of this or that is, to my mind does not get us any further in the case. It is possible that you may be allowed to inquire of him as to his construction, and I do not see how you can go any further in getting Mr. Eustace' construction through him than by asking him what Mr. Eustace has said to him on the subject.

Mr. Streeter—That is all that I am after.

The Master—Make it clear, then.

Q. Just briefly, do you claim under Article XXV, Section 4, the right of the board to elect the editors and managers? A. I do.

Q. Has Mr. Eustace said to you

that he admits that claim? A. He has made a statement at one time in accord with that, and at another time he has made the opposite statement.

Q. Do you claim that under Article XXV, Section 5, the Christian Science board have the right to decide whether every one connected with the Publishing Society is suitable? A. I believe that that By-Law is operative, and that the directors are empowered to take action on that By-Law.

Q. Does Mr. Eustace admit to you that your contention is right? A. No, he does not. He thinks that our contention is not right.

Q. Under Article VIII, Section 14, do you claim the right to see that the periodicals are ably edited? A. Yes, indeed, General; that is our—we are obligated to do that.

Q. Does Mr. Eustace admit to you that your claim is correct? A. He has admitted that to me, but he does not admit it today.

Q. Well, when you, on Sept. 11—by the way, before we come to that, let me see the record of July 30, 1913, please. (A volume of the directors' records is passed by Mr. Krauthoff to Mr. Streeter.) Mr. Dickey, on July 30, 1913, Mr. Dittmore moved,

“that hereafter no discipline of any kind, either the removal of cards from the Journal, the removal of Sunday school teachers or officers, or any other form of discipline, shall be taken without first giving the accused an adequate opportunity to be heard in their own behalf.”

I do not find that in the record. Why not? A. I believe that that was a motion that had no second, was it not, General?

Q. Yes, it was not seconded. A. Yes.

Q. Now, what is your practice over there with reference to your records if a member makes a motion on an important subject and it is not seconded? Is there any record made of the motion that is made? A. No.

Q. Why not? A. Our custom is not to do that.

Q. If— A. In other words, we do not record motions that are not seconded.

Q. Nor do you record any motion that is not acted upon, do you, on which action is not taken? A. Well, if it is seconded it is recorded.

Q. Now, haven't there been many actions taken that were afterward eliminated from the records by a majority vote of the board? A. Not many, General. There have been some.

Q. There have been several? A. There have been some, yes.

Q. How do you justify that? A. Well, we have at some times taken action and found after a further discussion that such an action was not the wisest measure to carry out, and by agreement with all the members of the board we have rescinded that action, and then, under motion and discussion, have eliminated it from the minutes so as not to cumber up our

records with motions that were carried and afterward rescinded.

Q. So that your records do not and cannot reflect the exact condition of matters carried on in the board? A. Why, yes, I think they do reflect the exact condition, namely, if we have made a mistake—and we are not infallible—and have made a motion that we see is not wise to carry into effect, it may be that we will rescind it, and that the minutes will show that such action was rescinded, or it may be that it will be eliminated entirely from the minutes.

Q. The majority of the board determine about that, don't they? A. That is the unanimous action, generally. We never do anything in the elimination of records that is not unanimous; it is always agreed to by every member of the board.

Mr. Streeter—Your Honor, I am very sorry to trouble you, but I do not find myself in a physical condition where I feel like going on this afternoon. I am sorry to admit it.

The Master—I very much regret to hear that.

Mr. Streeter—I am sorry to admit it, but that is the fact, and I should like an adjournment to tomorrow morning, and if I am not in a situation then to proceed, we will arrange to go on otherwise.

Mr. Krauthoff—That is agreeable to us.

Mr. Streeter—How is that?

Mr. Krauthoff—I say that that is agreeable to us; and I am sorry to know that you feel that way.

The Master—Is it possible that we can get along to any extent in the case in your absence?

Mr. Streeter—Oh, yes, they could put on somebody else. Mr. Thompson will be here.

The Master—I was wondering if some way could be contrived whereby you could be relieved, as of course you ought to be, and the remaining part of the afternoon saved for some purpose.

Mr. Streeter—I shall be very glad if they can do that. I do not know what arrangement can be made.

Mr. Whipple—I am willing to cooperate in any way.

The Master—What do counsel say about that?

Mr. Bates—We have no objection if Mr. Whipple wants to proceed with his examination of Mr. Dickey, although we think it would tend to confusion. We had expected that Mr. Dickey's cross-examination would take the rest of the day, and we are not prepared to go on with any other witness at this time.

The Master—What do you say, Mr. Whipple?

Mr. Whipple—I did not catch the suggestion.

Mr. Bates—I said that we should not object to your going on, if you wish to, with the examination of Mr. Dickey, although I think it would tend

to create confusion to do so before General Streeter gets through.

Mr. Whipple—Well, I had just as lief.

Mr. Bates—There are only 45 minutes remaining.

Mr. Whipple—I had just as lief go ahead; but in what Mr. Dickey has stated we do not find very much that we think concerns the vital issues of the case, and our cross-examination, in my judgment, will not take the rest of the afternoon. It would be very short. I had just as lief cross-examine him now as later.

The Master—This is an unexpected emergency. Of course, I should not require either party to go on if they regarded it to their disadvantage; but if any arrangement, now that we are all here, can be agreed on by which we can save time, we had better do it.

Mr. Whipple—I will take the direction of the Court. I had expected to put only such few questions as I had planned to direct to this witness after General Streeter had finished. I had just as lief do it in advance.

Mr. Bates—I assume, Your Honor, that General Streeter may bring out matters also from Mr. Dickey's examination which Mr. Whipple would like to ask about, and I think, on the whole, that we had better adjourn. It will be a matter only of 40 minutes.

The Master—Your preference would be to stop here?

Mr. Whipple—I am subject to Your Honor's direction. I had just as lief take up the cross-examination that we had planned. It will not be very long, but it will bring out a few points that we desire to elicit. We are not involved, of course, in this controversy with Mr. Dittemore, and the most that Mr. Dickey has testified to seems to concern that controversy rather than the narrower issue that is involved with the trustees.

The Master—Your preference still is to stop, Governor Bates?

Mr. Bates—I should prefer to, Your Honor.

The Master—Then, if that is your preference, I think that we ought to do so.

Mr. Whipple—I shall not press it. I will wait until the other cross-examination is finished. I understand that you cannot conveniently start with another witness, can you?

Mr. Bates—Not conveniently today.

Mr. Whipple—I understood you to say that you were not prepared with another witness.

The Master—I so understood it. And perhaps, now that counsel are all here, I may ask a question at this stage. A point was suggested yesterday as having been at some time or other more or less in controversy. It was this: Whether or not there is anything in the Manual requiring the trustees under the trust deed to be members of The Mother Church?

Mr. Bates—There is none.

Mr. Whipple—I understand that there is nothing. I understand that

the requirements as to the trusteeship, or the character or characteristics of the trustees, are provided for in the deed itself.

The Master—I had been looking into that a little myself, and I wondered if there was any controversy about it.

Mr. Krauthoff—The Deed of Trust requires the trustees to be loyal and consistent believers and advocates in the principles of the religion of Christian Science as taught by Mary Baker Eddy.

The Master—Quite so. Does that imply that they must be members of The Mother Church?

Mr. Krauthoff—It is our contention that that contemplates—the whole situation in which the deed was executed contemplated that the trustees would be members of The Mother Church.

The Master—It rests upon the requirement which you have just referred me to, does it, your contention?

Mr. Krauthoff—So far as the Deed of Trust is concerned, yes.

Mr. Whipple—May I ask whether it is—

The Master—Will you give me that again, so that I can mark it?

Mr. Strawn—It is paragraph 9 of the Deed of Trust.

Mr. Krauthoff—I am speaking now of the Deed of Trust, if Your Honor please.

The Master—No, I am speaking of the Manual. You referred me, I think, to something in the Manual.

Mr. Krauthoff—I was speaking of the Deed of Trust.

The Master—I beg your pardon. Mr. Krauthoff—In the Manual, if Your Honor please, on page 65, Sec. 3 of Art. XXII reads as follows:

"It shall be the duty of the officers of this Church, of the editors of the *Christian Science Journal*, *Sentinel* and *Der Herold*, of the members of the Committees on Publication, of the Trustees of The Christian Science Publishing Society, and of the Board of Education promptly to comply with any written order, signed by Mary Baker Eddy, which applies to their official functions. Disobedience to this By-Law shall be sufficient cause for the removal of the offending member from office."

The Master—What is there in that that requires trustees to be members of The Mother Church?

Mr. Krauthoff—It is assumed in that that they are members. There isn't any specific provision in the Manual that any of the officers of the Church is required to be a member of the Church. We assume, in our presentation of it, that no one can be connected with a church as an officer of it who is not a member of it; that no one can be a loyal and consistent believer and advocate of the principles of Christian Science—that is under the Deed of Trust, again. But, under the Manual, we have assumed that anybody connected with the Church was to be a member of the Church. There

is nothing in the Manual which requires the readers, or the President of the Church, or the clerk, or the treasurer, or any of the officers of the Church to be members of it.

The Master—Aren't you mistaken about the readers?

Mr. Krauthoff—I may be.

The Master—I thought there was an express provision requiring the readers—

Mr. Krauthoff—The readers of branch churches are required to be members of The Mother Church. I will see what the other is. Yes; they must be members of The Mother Church—the readers.

The Master—There is an express provision there, isn't there?

Mr. Krauthoff—As to readers; but as to the directors and the president and the clerk and treasurer, and some other officers who do not now come to mind, there is no express requirement that they shall be members of The Mother Church. It comes by construction rather than by specific provision.

The Master—Well, that is a point, then, on which you differ. It is agreed that there is no express provision. You differ on the construction of the Manual on that point.

Mr. Krauthoff—And of the circumstances. Now, there is another thing to which we desire to call attention.

Mr. Whipple—Before you leave that subject will you let me ask if you really mean to say that people cannot be loyal Christian Scientists who are not members of The Mother Church, that the members of the branch churches throughout the world are not loyal and conscientious Christian Scientists, or may not be?

Mr. Krauthoff—I made no such statement, if Your Honor please.

Mr. Whipple—Well, I would like to have that. Do you admit that they may be?

Mr. Krauthoff—I said within the meaning of this Deed of Trust.

Mr. Whipple—No; within the meaning of plain, common-sense English—loyal and consistent Christian Scientists.

Mr. Krauthoff—There are members of branch churches who are loyal and consistent believers and advocates of the principles of Christian Science as taught by Mary Baker Eddy who are not members of The Mother Church.

Mr. Whipple—Well, why don't you put it just exactly in those terms—loyal Christian Scientists?

Mr. Krauthoff—I am using the language of the Deed of Trust, if you please.

Mr. Whipple—All right. Then you admit they may be what is described in the Deed of Trust and still not be members of The Mother Church?

Mr. Krauthoff—I said they may come within the language of the Deed of Trust—

Mr. Whipple—Yes; that is right.

Mr. Krauthoff— —but as applied to the office of trustees under this deed, every trustee who has ever acted was

a member of The Mother Church. The plaintiffs in this case are members of The Mother Church; they have not resigned as members of The Mother Church; and we say that, taking the circumstances of the Deed of Trust, and the Deed of Trust and the Manual in its entirety, that no one can be a trustee under that deed who is not a loyal member of The Mother Church.

Mr. Whipple—Well, of course we absolutely disagree with that so-called construction. I guess you are getting into the metaphysical interpretation there, because it is entirely beyond common sense—if that is what it means—the metaphysical.

The Master—Paragraph 9 of the Deed of Trust was what you referred me to, as I understand it?

Mr. Whipple—Yes, Your Honor.

Mr. Krauthoff—Yes, Your Honor.

The Master—"Loyal, faithful, and consistent believers and advocates."

Mr. Whipple—"And advocates."

The Master—Now, your contention is that, taking the circumstances of the Deed of Trust into account, that must be construed to mean that the trustees shall be members of The Mother Church?

Mr. Krauthoff—Yes.

The Master—That the other side deny.

Mr. Krauthoff—They deny.

Mr. Whipple—What we say is, and we offered evidence tending to show, that all of the trustees were members of The Mother Church, so as to put beyond cavil and controversy the fact that they were "loyal, faithful, and consistent believers and advocates," because that fixes the stamp upon them. But what we claim is that there are thousands and hundreds of thousands just as loyal, just as faithful, and just as consistent, who are not members of The Mother Church; and I should like, if the directors authorize a declaration to the contrary—I should like to have it done; the field would be interested to know it.

The Master—Well, I am much obliged to you gentlemen for stating to me your respective views regarding that matter, and shall we stop here until 10 o'clock tomorrow?

[Adjourned to 10 a. m., Thursday, July 24, 1919.]

July 24, 1919

#### TWENTY-FIRST DAY

Supreme Judicial Court Room,  
Boston, Massachusetts, July 24, 1919

The Master—Shall we go on?

Mr. Bates—General Streeter was cross-examining yesterday.

Mr. Thompson—If Your Honor please, General Streeter, under the advice of a physician, feels that it would be wiser for him not to attend these hearings for the next few days at least. It is possible that he will desire to take a summer vacation be-

fore coming back. There is nothing serious the matter with him, I am happy to say.

The Master—We are all very glad to hear that fact, Mr. Thompson.

Mr. Thompson—I knew Your Honor would be. But I think the long-continued hearing, together with the great heat, has been a rather severe strain for a man of his years, and I think, therefore, that he will not be able to return until after whatever adjournment we take. We feel further that it will be a great pity to delay the case, although we lament exceedingly the loss of power which we shall experience by not having General Streeter here; yet we think, for the interests of our own client as well as for the interests of everybody concerned, that it would be better to proceed, at least for a time, into next week, in the hope that we may accomplish something in the way of finishing at least the defense in *Eustace v. Dickey*, so far as the directors are concerned. In regard to finishing the cross-examination of Mr. Dickey and the cross-examination of further witnesses for the directors, it has occurred to us that we shall have the right, in any event, to summon them as hostile witnesses and cross-examine them if we see fit in our own case when putting in the case of *Dittemore v. Dickey*. At the present time, with Your Honor's permission, I will conclude the cross-examination of Mr. Dickey for the present, and very likely cross-examine any other witnesses who may be put on by the directors to such extent as may seem desirable now, with the understanding that that will not prevent General Streeter, when he returns, which I think will be in the autumn, from recalling them if he desires and cross-examining them further. I think that I am speaking of a matter of right which does not require any action of the Court, but I may be mistaken, and I therefore submit it to Your Honor as a plan which seems fair, and which, if it does require action on the part of Your Honor, I have no doubt Your Honor will assent to. I should be surprised if anybody, under the circumstances, would make any serious objection. We are very much disturbed by this unfortunate event that has happened, and this appears to be the best way out of it from the standpoint of all persons concerned, I think. I do not know what views Governor Bates will have on this. I have some intimation of what Mr. Whipple will think, but perhaps he will state it for himself.

Mr. Whipple—That arrangement is perfectly agreeable to us. We are exceedingly anxious, for reasons which are not personal to the trustees but which affect the orderly procedure in the case and affect the great Christian Science movement, to proceed to a finish with this case, the pendency of the issue of which leaves the relations of the trustees and directors in a very unfortunate condition. It is manifestly for the interests of all that the

case should be finally disposed of as promptly as possible, and I think, therefore, that the suggestions which Mr. Thompson makes, which are perhaps in a measure resulting from an appreciation of things that I have just spoken of and the reasons which we have advanced to him for going on, might properly be followed.

Mr. Bates—I assume, Your Honor, that the suggestions that are made by Mr. Thompson do not affect the Eustace case as Mr. Whipple construes those suggestions.

Mr. Whipple—I beg your pardon?

Mr. Bates—I assume that Mr. Thompson's suggestions in regard to delay you construe as not affecting the Eustace case in any way.

Mr. Whipple—That is quite true, except so far as Mr. Thompson, in behalf of his client, has a right to cross-examine the witnesses in the Eustace case, and that he might, I suppose, insist that both cases be held up and suspended, and that is the theory on which I offered these suggestions as to the importance at least of finishing and getting a final decree as promptly as possible in the Eustace case.

Mr. Bates—Do I understand that you would assent to leaving the Eustace case open until autumn to determine whether or not at that time General Streeter desired to further cross-examine the witnesses in that case?

Mr. Whipple—I do not understand that that is the proposition.

Mr. Bates—I thought that you did not, and I assume, therefore, that you understand that the Eustace case is to be completed; and that being so, of course the suggestions do not affect you, because they do not delay the completion of the Eustace case.

Mr. Whipple—They affect me in this respect, that it enables me to finish the Eustace case which otherwise we might not be able to do.

Mr. Bates—Well, the suggestions for delay until autumn, and keeping the case open for cross-examination by General Streeter in the autumn, do not affect your case, as you understand. They affect the Dittmore case only.

Mr. Thompson—That is a mistake in one respect.

The Master—Is not the difficulty there that Mr. Dittmore is at least, in a sense, a party to the Eustace case?

Mr. Thompson—Yes.

Mr. Bates—I was pointing out the fact that, as I understand it, Mr. Whipple does not consider that his adoption of this suggestion in any way prevents the closing up of the Eustace case.

Mr. Thompson—You are mistaken in one respect, to which His Honor has called your attention. Mr. Dittmore is a defendant in the Eustace case. Now, I intended to say when I first spoke—it was an oversight that I did not say it, and I now do say it—that we should expect, if we agree to go

ahead now, with the loss of General Streeter, which is a serious one for our case—we should expect that Mr. Whipple would agree that the Eustace case might be kept open to the extent that Mr. Dittmore's testimony in that case might be put in in the autumn and not now, if he desired to testify in the Eustace case as distinguished from his own case. In other words, that his testimony when given in his own case might be deemed to be, so far as applicable, and so far as he wishes to make it so, his testimony as a defendant in this case. Of course, the situation is very singular. He cannot be called upon to testify at all in the Eustace case unless there is some evidence that he is a director. He is sued only as a director. He contends that he is a director in the Dittmore case, and Mr. Whipple has not yet taken any position at all on that subject. Of course, it would be theoretically Mr. Whipple's function, if he desires to get a decree against Mr. Dittmore, to offer evidence that Mr. Dittmore is a director and has not been properly expelled. Mr. Whipple has not yet offered any such evidence; therefore, theoretically, Mr. Dittmore is not called upon to testify in Mr. Whipple's case. I think the best solution of that rather fanciful, although rather sound technical contention, is that Mr. Dittmore's testimony should be regarded as testimony in defense of the Eustace case as well as in his own case of Dittmore v. Dickey, and, in that sense, my proposition does affect very materially the closing of the case of Eustace v. Dickey.

Mr. Whipple—I understand that Mr. Thompson's suggestion is that after the defendant directors have introduced the rest of their case in defense, he may then desire to proceed with Mr. Dittmore's defense in that suit, in the trustees' suit. I understand, also, that he may not, and that he does not, wish to be called upon at this moment to decide that question.

Mr. Thompson—That is exactly it.

Mr. Whipple—I understood Mr. Thompson's position to be that as a result of my conference with him last evening, in which I urged strongly that he assist in facilitating the finishing of the trustees' case if possible, and that seemed to me to be entirely reasonable. I told him that I did not think that we needed to call upon him to decide now, with the other perplexing things that he has to decide, whether and to what extent he would want to offer evidence in defense of the trustees' suit. If he does, he ought to have that privilege, and ought to have it in a reasonably convenient way, and to any arrangement in that respect that Your Honor approves we should assent.

Mr. Bates—Your Honor, I regret exceedingly General Streeter's ill health, and I sympathize with him; but every one has been staying here

through this heated term for weeks in order that these important questions might be decided. There are other counsel associated with General Streeter who are perfectly competent to go on and finish examination of the witnesses and the case. We would be glad to accede to any suggestion for a delay of a few days that might be to Your Honor's approval, in order to accommodate General Streeter and his associate counsel. I do not think, under the circumstances, in view of the complications that might result from these matters being in controversy, that we should be expected to agree to an indefinite postponement of the conclusion of their case. I think that we should have some definite intimation as to what is involved in this suggestion, and that we should, with such reasonable delay as Your Honor might think necessary in order to allow General Streeter to return—I do not understand that his condition is such as to be serious, according to his associate counsel—I think that we should go on for any reasonable time and complete both of these cases.

Mr. Thompson—Do I understand you to say that you think we should go right through the month of August?

The Master—I do not think that that would be at all necessary.

Mr. Bates—I think that the cases can be completed probably inside of a week or ten days.

Mr. Thompson—Why, I am very sorry—

The Master—Pardon me. Perhaps this will be a good time for me to make a suggestion. I would like to ask what would be the objection to going on, now that we are all here, to the point of completing the evidence, so far as you have any to offer, in Eustace v. Dickey, and at that time to see how matters then stand, and to consider then further the question of an adjournment or continuance of the hearing in the light of such information as we might then have?

Mr. Bates—That would be entirely satisfactory to us, Your Honor, if one single statement made by Mr. Thompson is cleared up. He suggested that he was going to cross-examine Mr. Dickey this morning in place of his associate, General Streeter, and at the same time that he wanted it left open so that General Streeter, when he comes back, could also give him a cross-examination. I assume that either one or the other should complete the cross-examination now.

Mr. Thompson—Oh, no.

Mr. Bates—That is what I understood you to say.

Mr. Thompson—You understood my statement with perfect correctness. I will come to that in a moment. I want to correct one mistake of yours. Mr. Whipple will confirm me, because he was present when the physician examined General Streeter. The doctor states that it would be entirely unwise for General Streeter to at-



tempt to come back or sit in these hearings and take any active part without a long summer vacation; so that General Streeter's return until October to take any active part in this matter is entirely out of the question. In regard to this suggestion that you have made about double cross-examination, I call your attention to the fact that you put a witness on in the case of Eustace v. Dickey under an agreement made, discussed, modified, and established by His Honor. General Streeter was cross-examining that witness. I propose, with the consent of the Court—and I need to ask it only in one respect—to complete that cross-examination, the rule, of course, being that two counsel cannot cross-examine the same witness. That rule is subject to exception, I assume, when one is taken suddenly ill. That is the only favor I ask.

Mr. Bates—I do not object to your doing that.

Mr. Thompson—I have a perfect right next autumn when I open the case of Dittmore v. Dickey to summon all your clients, put them on the stand, and, under the statutes of Massachusetts, cross-examine every one of them as hostile witnesses. I ask no favors. That is all I meant by double cross-examination. The present cross-examination is the result of a settled agreement, ratified and ordered by the court, and on that I stand.

Mr. Bates—Of course, Your Honor, we do not agree to that.

The Master—Will it be necessary to have that matter decided now? Possibly the exigency may never arise.

Mr. Bates—There is no objection to Mr. Thompson's going on now in the cross-examination, but we certainly should raise objection if they put Mr. Dickey on in that case and attempted to cross-examine him on the same matters again.

Mr. Thompson—I do not think that it would be on the same matters.

Mr. Bates—If you are going to examine him now, you cannot examine him then.

The Master—I should not permit that.

Mr. Bates—That is what I supposed.

The Master—But as to their right to summon any witness presented now, asserted by Mr. Thompson, why can't we see about that when he undertakes to exercise that right?

Mr. Bates—I have not disputed that right. I have merely disputed the right to cross-examine the same man on the same matters twice.

Mr. Thompson—Whenever you find me so feeble-minded as to attempt to put the same questions again to the same witness, I think I shall yield to your suggestion. If you ever find me doing that, I invite you to call my attention to it. I wish to say one thing more. You are entirely in error as to finishing this case in a week. It will take at least three or four days in order to put in through Mr. Ditt-

more the mass of material which he has here.

The Master—The longer it is going to take, the greater the desirability of our proceeding now with as much expedition as we can. Therefore, I think that my suggestion is the one which we all ought to adopt.

Mr. Thompson—I do not understand Your Honor to have ruled upon the right asserted by me to summon Mr. Dickey later, or any director, in the case of Dittmore v. Dickey?

The Master—No, I distinctly said that I do not see the necessity of passing on that question now.

Mr. Bates—I understand Your Honor's suggestion is that we shall proceed and go as far as we can, and then it will be determined as to what other action will be taken, or what delays shall be had?

The Master—That is my position about it.

Mr. Bates—That is entirely agreeable to us.

The Master—Won't that be the best way?

Mr. Bates—I think so.

The Master—You have all now invested pretty heavily in time and money and print and paper not to go ahead with this case as quickly as we can, and we all ought to do all we can to see to it that that investment does not go for nothing.

Mr. Bates—That is entirely agreeable.

The Master—Shall we proceed?

Mr. Krauthoff—If Your Honor please—

Mr. Whipple—Before proceeding with the—

The Master—One moment. Mr. Krauthoff has something to say.

Mr. Krauthoff—Not on this subject.

Mr. Whipple—Before proceeding with the cross-examination may I advert to certain questions that Your Honor put to counsel last evening just before adjournment as to the necessity of the membership of the trustees?

The Master—I did not go any further, I think, yesterday afternoon than to ask counsel to state their respective views to me.

Mr. Whipple—I do not care to state any views further, but I would like to put on the record at this time references in the Manual which seem to me to be germane to this subject.

Mr. Bates—Doesn't Your Honor think that should be done in connection with Mr. Whipple's argument finally?

The Master—I think I should prefer that you would not do that at present if it is objected to.

Mr. Whipple—Well, very well. It seemed to me that they would come in better in the place where you put the inquiry.

The Master—No. I got a sufficient statement for my purposes at that time. Of course the matter will have to be taken up again in argument.

Mr. Whipple—I quite understand that.

The Master—There will be full opportunity. Nothing that I have said or inquired, or nothing that any counsel has said in reply to my inquiry, will make any difference when we get to the arguments.

Mr. Thompson—May I say a word, Your Honor? Mr. Demond feels, and I think perhaps with some justice, in the extreme solicitude for Mr. Streeter's views in this matter, that perhaps I have not even yet left the question of his right, if he desires to cross-examine this witness, as he would like to have it left. I would therefore like to say again that I would like to inquire whether any obstacle now occurs to Your Honor to prevent General Streeter in the autumn, if he desires, in the case of Dittmore and Dickey, from examining these directors, his opponents in the case, on matters not already gone over by him or by me here?

The Master—I do not see anything in that. I see no question raised by what you now say that is not covered by what I have already said. We will determine that question when we get to it.

Mr. Thompson—That is, we shall have to tell General Streeter that that question cannot be determined now. I would like very much—of course he is very anxious—to know what he will be permitted to do when he returns. I know it is a little irregular in advance of the actual arising of the situation to ask the Court to rule; but in view of all the circumstances it would greatly allay his apprehension if he could have some intimation—perhaps there would be no objection on the part of counsel to it—that I could carry to him the message, to that limited extent, that if he desires to cross-examine he would not be prevented. It would greatly relieve his mind, I think.

The Master—I have not foreclosed the question at all. I have merely left it open; and the determination of the question, as it appears to me, will so much depend upon the circumstances existing when the question arises in regular order that it cannot be satisfactorily determined now. It will depend a good deal on what you want to ask.

Mr. Thompson—I assume that.

The Master—And I have considerable hope that by the time we get to that point you will find that there isn't anything left that you want to ask. Now, we will hear what Mr. Krauthoff has to say.

Mr. Krauthoff—If Your Honor please, Mr. Thompson spoke of the directors as hostile witnesses. I assume that is an inadvertence; he means adverse witnesses. They are not necessarily hostile just because they are defendants in the case. Mr. Dickey feels that in one statement he made yesterday with respect to the memory of a gentleman not now living he was not entirely just to the situation, and he would like to cor-

rect that at the earliest opportunity, and if I may ask him now, if Mr. Thompson—

The Master—Is there any objection?

Mr. Thompson—Don't you think you had better wait until the re-direct examination? That would be the proper time to make such corrections.

Mr. Krauthoff—Well, the nature of it is such that Mr. Dickey would like to do it right away, if Your Honor please.

Mr. Thompson—I do not see any occasion for interrupting the cross-examination.

The Master—It may shorten the cross-examination if you let him correct it now.

Mr. Thompson—I wasn't going to ask him anything about it at all myself. I suppose he means Mr. McLellan, doesn't he?

Mr. Krauthoff—He desires to correct a statement now he made about Mr. McLellan, and he desires to do it at the earliest possible opportunity.

Mr. Thompson—Well, it is irregular, but if Your Honor thinks it ought to be done I don't know that I shall press the objection.

Adam H. Dickey, Resumed

Q. (By Mr. Krauthoff.) Mr. Dickey, on yesterday you were asked a question with respect to Mr. McLellan. Do you desire to make some explanation as to that? A. I would like to.

Q. Just state it as briefly as possible. A. I thought Mr. Streeter asked me if Mrs. Eddy had absolute and implicit confidence in Mr. McLellan, and I said "No." I expected that there would be some further colloquy on that, but I lost sight of the question and went on. I would like to say that Mrs. Eddy did have a great deal of confidence in Mr. McLellan; that he was a counselor and adviser of hers, and she relied on him a great deal. She also relied on her publisher, Mr. Stewart—

Mr. Thompson—I don't think there is any occasion for that.

The Master—Now he is going beyond the correction of his statement.

Q. You are not asked as to Mr. Stewart. A. All right.

Mr. Bates—Yes, he was; he was asked as to Mr. Stewart.

The Witness—I thought—this is my own thought about it—I didn't confer with counsel until I came in here—

Mr. Thompson—We are not asking for that, sir. You will be kind enough to confine yourself to the question.

The Master—Strike that out. Finish his correction—confine him to corrections of his testimony.

Mr. Krauthoff—Excuse me, if Your Honor please. He was also asked about Mr. Stewart, who is not now living, yesterday.

Mr. Thompson—This can go in on re-direct; there is no occasion for interrupting the cross-examination.

Mr. Krauthoff—I have not asked

him about Mr. Stewart; I will take the liberty of asking.

Q. Do you wish to make any correction with respect to Mr. Stewart?

Mr. Thompson—I pray Your Honor's judgment.

A. I would like to.

The Master—If it is in correction of his testimony.

Q. Any correction of your testimony of yesterday.

The Master—If he wants to say anything different now, if he now finds he was wrong in something he said yesterday, I will now give him an opportunity to correct it. He should not go beyond that.

Q. Following the direction of the Court, Mr. Dickey— A. I would like to say that Mrs. Eddy also had great confidence in Mr. Stewart.

Mr. Thompson—You said that yesterday. How is that a correction?

The Master—I do not remember the exact language used yesterday. Now, Mr. Thompson, you may proceed.

Cross-Examination  
On Behalf of Defendant Dittmore  
(Continued)

Q. (By Mr. Thompson.) You spoke about letters from Mr. Dittmore to which you objected. You have heard a number of letters read, haven't you, that Mr. Dittmore wrote? A. Yes.

Q. Letters read during the course of this hearing. Now, can you think of any other letter in particular—I am not asking you in general—to which you took objection of the kind you have described yesterday? If so, let us know what it was by date or other description, so that we can get it into the case. A. There is another letter that has not been introduced.

Q. Please identify it so that we can put it in. (The witness examines papers.) Have you got it? Have you got the letter with you? A. No, sir.

Q. Where is it? A. In the files of the clerk of the Church.

Mr. Thompson—Is anybody getting it out?

Mr. Krauthoff—What is the date or the subject?

The Witness—I am just looking that up. There is a letter, unless it is in—I am not certain about that—of April 24; another one of April 25.

Q. Well, I am asking you about letters not already introduced in evidence.

Mr. Krauthoff—Excuse me, Mr. Thompson. I have a collection of Mr. Dittmore's letters that I will, with your permission, give to Mr. Dickey.

Mr. Thompson—Go ahead and give them to him, only you ought to know whether these have been introduced or not. Perhaps I can tell when I see the copy. April 25 is in, if that is the one you refer to.

The Witness—There is also one of Aug. 21.

Mr. Thompson—Now, there is one of April 24. I think you are right, that is not in. I would like to have you produce that, will you, Mr. Krauthoff,

or whoever has got control of these documents? Have you the letter of April 24?

Mr. Krauthoff—Is that a letter, Mr. Thompson, or a memorandum?

Mr. Thompson—A letter, not a memorandum. Follow this, will you, Mr. Dittmore—I will read this into the record. This is a copy of a memorandum presented and read at the meeting of the directors on April 24, 1918, by Mr. Dittmore.

[Memorandum prepared by Mr. Dittmore, read in Board of Directors April 24, 1918, offered in evidence as Exhibit 694, and read by Mr. Thompson as follows:]

[Exhibit 694.]

"The Christian Science Church is today facing the most vital hour in its history. Deprived of the wise and vigilant personal direction of its Founder and Leader, that body upon whose shoulders she has placed the responsibility for its direction, has not risen to the approximate demonstration of that standard of mankind (manhood?) which she said should be her successor (Miscy. p. 346).

"Mrs. Eddy has led the Christian Science movement through the wilderness under that divine inspiration which she was given 'upon the mount,' and today history is repeating itself. Israel is waiting to be led by an uplifted vision of the ever-present Christ, across the turbulent Jordan of a burning and blood-stained world into the promised land, even 'unto the great river'—'Divine Science.'

"Why is this board failing to meet its responsibilities? The answer to this question is both epitomized and analyzed by Mrs. Eddy in the 'Allegory' in 'Miscellaneous Writings.'

"Three roads lay open today before the Christian Science movement. The first—a continuation of the apathy, stupor, and inaction to its inevitable conclusion.

"The second—To become a great ecclesiastical hierarchy, rich, powerful politically, materially efficient, in fact the embodiment of organized material power. Hunting heretics, issuing dogmas and official interpretations, and with officialdom holding tight to its 'offices' until death do them part. At the present moment the Church is halting at the juncture of these two roads.

"The third way is the fulfillment of the hopes and prayers of the beloved Founder of this great Cause. It demands the raising of a new standard for the world. It includes the responsibility for this board to reverse itself and instead of falling asleep, to arise, awake. To root up the trees which Principle has not planted and to prevent their standard from being soiled by jealousy, pride, hatred, or worldly policy—to recognize and destroy the hidden hand of hypnotism which is paralyzing the efforts of individuals and nations as well as of this board.

To recognize that this board is the battleground for the mental conflict between impersonal good and impersonal evil, and to keep before us in letters of fire Mrs. Eddy's words: "The true Science—Divine Science—will be lost sight of again unless we arouse ourselves. This demonstrating to make matter build up is not Science."

"This constant examination of the details of our increasing limitations and regretting the necessities for our present curtailments constitute dabbling with effects instead of analyzing and remedying causes.

"The constant decrease in members admitted to The Mother Church since 1915, which has today reached a point where on April 20 we were 541 less than on last year's spring admission, alone surely must mean something.

"The constant deficit on The Monitor, amounting this year to almost \$100,000 in addition to the more than a million lost to the Cause through The Monitor during the past few years, the necessity for cutting down so greatly our work for the army and navy through the trustees under Mrs. Eddy's will when we have before us the greatest opportunity ever presented.

"The abandonment of our administration building, the stopping of our efforts toward a new printing plant—

"Surely all of these things and many others indicate something which this board must recognize and sooner or later remedy—for the responsibility is primarily upon The Christian Science Board of Directors.

"J. V. D.

"April 24, 1918—E. M. L."

Mr. Thompson—Now you have got another one, you said, of Aug. 21?

Mr. Krauthoff—Do you wish to say something, Mr. Dickey?

The Witness—I think the word is "mankind," and not "manhood," as he read it in the original.

Mr. Thompson—Aug. 21. Have you got that letter?

Mr. Krauthoff—Mr. Thompson, in the document that came to us the word is "mankind."

Mr. Thompson—"Mankind," is it? Well, change it from "manhood" to "mankind," if you like it any better. It was intended to be "manhood."

Q. Now, have you got one of Aug. 21? While you are finding the letter of Aug. 21, I understand you also desire to have me put in another one, a short letter of April 25, do you? Is that right?

Mr. Krauthoff—Just as you wish.

Mr. Thompson—No, it isn't what I wish. I am asking your client to mention any particular letters that he regards as most objectionable, written by Mr. Dittmore. He has mentioned one, which I have read. He also mentioned another, of Aug. 21, which I have been calling for and have not yet got; and Mr. Abbott just said that he had in mind to mention another one, I think one of April 25, in addition to the letter of April 24 already in. Now,

I want them all—all that you regard as objectionable.

The Witness—April 25.

Mr. Thompson—Very well; I will read it, then. Just follow it, if you have the original, and see if it is correctly read.

[A letter, Mr. Dittmore to the directors, April 25, 1918, is offered in evidence as Exhibit 695, and is read by Mr. Thompson, as follows:]

[Exhibit 695.]

"April 25, 1918.

"The Christian Science Board of Directors,

"105 Falmouth Street, Boston, Massachusetts.

"Dear Friends:

"After the board meeting yesterday I desired to confirm the statements I made in regard to the limited circulation of The Monitor in Boston and suburbs. I find that I was, in fact, somewhat over-optimistic. Our ten years' work for The Monitor has accomplished a net paid circulation to bona fide subscribers in Boston proper of 2276, and in Greater Boston an additional 875, and in the Greater Boston district and all of the suburbs, numbering about 25 municipalities, the grand total is 5797.

"Bona fide subscriptions in Greater Boston stand third of the great cities, Chicago being first, New York second, Boston third, with London very close to Boston. It would be unbelievable to the field that such a situation could exist.

"Very sincerely,

"J. V. DITTEMORE."

Mr. Thompson—Now, let us have the one of Aug. 21.

The Witness—May 27.

Mr. Thompson—I am speaking of letters not already in.

The Witness—I am not aware that this one is in—May 27.

Mr. Thompson—Here is the letter of May 27 which the witness speaks of as objectionable.

Mr. Whipple—May 27?

Mr. Thompson—May 27, 1918. "The Christian Science Board of Directors"—It is stamped, "Read May 28," and stamped, "Read June 20," stamped, "Read July 2," and it is stamped, "Received May 28." It was received May 28 and read three times on different occasions, apparently. (Reading:)

[Copy of Exhibit 696]

"John V. Dittmore, C. S. B.,

"236 Huntington Avenue,

"Boston, U. S. A.

"May 27, 1918.

"The Christian Science Board of Directors,

"105 Falmouth Street,

"Boston, Massachusetts.

"Dear Friends:

"I wish to modify and supplement my report of May 23 by the following recommendations in accordance with the vote of The Christian Science Board of Directors on April 25, 1918, which was a request that I should

'formulate and present to this board a plan designed to carry out and put into operation the recommendations made in his (my) letter of April 25 with regard to the improvement of the Christian Science periodicals':

"1st. That William P. McKenzie be reelected editor of The Christian Science Journal, Christian Science Sentinel, Der Herold der Christian Science, and Le Héraut de Christian Science for the coming year.

"2d. That an editorial organization committee be appointed by The Christian Science Board of Directors with authority to put into effect such changes as will bring about the improvements outlined in the report of May 23.

"3d. That this committee be composed of one director, one of the trustees of The Christian Science Publishing Society, and the editor, Mr. McKenzie.

"4th. That Mr. McCrackan and Mrs. Knott be reelected as associate editors for the coming year, but that they be given ample time for their work of teaching and practice, with a view to making their service that of contributing editors one year hence, if such seems for the best interests of all concerned at that time.

"5th. That Samuel Greenwood be made a contributing editor for the coming year, such employment to include the writing of editorials and such other service for the upbuilding of the periodicals as he can render. This plan would not contemplate Mr. Greenwood removing to Boston for residence, but would probably necessitate two or three trips to Boston during the year.

"6th. That the following named persons serve as editorial assistants in such capacity as their talents would seem to justify: Mr. Theodore Stanger, Mr. Elisha B. Seeley, Mr. Samuel F. Swantees, Mrs. Caroline Getty.

"Respectfully submitted,

"J. V. DITTEMORE."

"JVD-L"

[Letter as read by Mr. Thompson. Dittmore to Christian Science Board of Directors, May 27, 1918, marked Exhibit 696.]

Q. Now August 21, please. A. Before that there is August 15.

Q. All right, let us have the original. A. I would like to ask when you read that that you leave the names of the persons out.

Q. No matter about that, sir. I want the letter, the one I asked you for. I have asked you a question and you are answering it.

Mr. Krauthoff—August 15, 1918?

Mr. Bates—Does Your Honor not think that that is a proper request for the witness to make, at least for Your Honor's determination as to whether or not the names shall be read in an instrument?

Mr. Thompson — My impression is that before I consent to suppress testimony I will have to look at it.

Mr. Bates—My impression is, that you have no right to treat a witness in that way. He has a right to call to the attention of the Court that there are names of private parties in the document—

The Master—That would be in accordance with our practice so far in examination. Have you produced the letter?

Mr. Thompson—I haven't seen it, sir. When I have seen it I will be in a position to produce it.

The Master—You have asked for it.

Mr. Thompson—I have asked for it. He is talking about letters which he regarded as objectionable.

The Master—That is all.

Mr. Thompson—I asked him to produce them.

The Master—I understand.

Mr. Thompson—I do not feel kindly toward suppressing any part of letters which I am charged with having written and which are said to be objectionable.

The Master—No, but so far in reading these letters on numerous occasions names have been omitted by general consent.

Mr. Thompson—Very well, sir.

The Master—I cannot regard it as unreasonable for the witness to inquire whether that is to obtain on this occasion.

Mr. Thompson—Perhaps when I see the letter I shall be in a better position to answer the inquiry.

Mr. Abbott—Here is a copy. We haven't found the original yet.

The Master—It does not seem to me that you can call the omission of names under such circumstances "suppressing testimony."

Mr. Thompson—I cannot tell, sir, till I see it. He is accusing me of writing objectionable letters. Perhaps the very thing he objects to would turn out not to be objectionable if the names were disclosed. I cannot tell till I have seen it.

Mr. Krauthoff—May I submit a copy to Your Honor (handing letter to the Master)? Our request is that the names be not read in the court room, nor, of course, printed in the record.

Mr. Thompson—It is perfectly obvious that the name here should not be disclosed. I should not have disclosed it anyway without any request from the witness.

Mr. Abbott—Here is the original (handing paper to Mr. Thompson).

The Master—There is no occasion, then, for any controversy about it, I suppose.

Mr. Thompson—None whatever. This that they have handed me is apparently a pencil memorandum, afterwards typewritten by somebody. The pencil memorandum contains many erasures and I am trying to find out whether the typewritten copy is a copy as erased or not. Apparently it was not a letter in the real sense of the term at all.

Mr. Abbott—This seems to be all right.

Mr. Thompson—This is a document not addressed to anybody, marked "Copy," and Mr. Dittemore has the original in his pencil handwriting, dated Boston, Aug. 15, 1918, and the original stamped "Read Aug. 19, 1918," and "Received Aug. 19." (Reading)

[Copy of Exhibit 697]

"Boston, Aug. 15, 1918.

"In reply to the request of the chairman that I state my reasons for not voting in favor of sending to Mr. [blank] the further letter approved by the board and sent to him today, I will say that my reasons include the following:

"1. I do not believe that this matter has been or is being handled for the good of either the C. S. movement or of Mr. [blank].

"2. I have never heard of misconduct by Mr. [blank] except from members of this board or from those to whom members of this board have talked or been in communication with. Therefore I am not convinced that the course of the board in this matter is being forced by the demands of the field as is claimed.

"3. This board investigated the alleged slanderous charges of Mrs. [blank] against her husband a number of months ago and exonerated Mr. [blank]. So far as I have been made aware the charges which have been pursued against Mr. [blank] since the last annual meeting are substantially the same charges except the claim of unsatisfactory work in connection with his duties as an editor.

"4. I do not agree with the charge that Mr. [blank] work as an editor is unsatisfactory or inconsequential, on the contrary I am convinced that his services have been and are of a value to the cause of C. S. which cannot easily be overestimated.

"5. No member of The Mother Church values personal purity more than I and until the claim has been put into circulation in Boston within the past few weeks that I approve of free love and therefore 'support' Mr. [blank], neither Mrs. [blank], nor I have had such a claim to face in our entire previous experience as Christian Scientists.

"6. I consider the methods employed in this case by the board and by its 'investigating committee' to have been foreign to the just and compassionate teachings of C. S. I consider the many declarations and suggestions, by members of this board that Mr. [blank] is mentally unbalanced to have constituted mental malpractice.

"7. If no reasons based upon C. S. teachings had obtained, I would still have objected to the letters that have been sent to Mr. [blank] on the purely human ground that they are libelous and I know of no evidence sufficient to constitute a successful defense in an action for libel against the members of this board.

"JOHN V. DITTEMORE."

[The pencil memorandum in handwriting of Mr. Dittemore, dated Aug. 15, 1918, as read by Mr. Thompson, marked Exhibit 697; typewritten copy thereof marked Exhibit 697a.]

Q. Now, you have another one you thought was objectionable,—Aug. 21? A. There is another one, Mr. Thompson, dated Aug. 19, from Mr. Dittemore.

Q. All right. Let us have them all—all the objectionable communications in writing we want to have now. We want to know the worst.

Mr. Krauthoff—Aug. 19?

Mr. Thompson—If you will only let me have them quickly.

Mr. Krauthoff—We are finding them as rapidly as we can.

Mr. Thompson—I want to save time.

Mr. Krauthoff—Have you in mind the subject, Mr. Dickey, when you said Aug. 19?

The Witness—Yes, on the subject of the chairman authorizing Mr. Merritt to withdraw a memorandum after he had handed it to him.

Mr. Thompson—Who is testifying now? Are you asking questions?

Mr. Krauthoff—I was asking Mr. Dickey what the memorandum of Aug. 19, 1918, was.

Mr. Thompson—I am cross-examining the witness.

Mr. Krauthoff—I shall be very glad to take Your Honor's direction. I had not thought it was proper to speak to a witness privately while he was on the stand.

Mr. Thompson—It is not proper; the proper way would have been to talk to me and I would have taken the matter up with the witness. But as long as you want to talk to him, go ahead and do it.

[Paper handed by Mr. Krauthoff to Mr. Thompson.]

Mr. Thompson—Here is a document in the form of a pencil memorandum stamped "Received August 19, 1918," "Read August 20," and "Read August 19." It is not addressed to anybody. It is in Mr. Dittemore's handwriting. (Reading:)

"In response to the inquiry of the chairman as to whether there were any corrections or alterations to the minutes of the meeting of Aug. 13th, I respectfully state that the following addition is necessary before the minutes will correctly record the said meeting.

"Mr. Merritt presented to the board and read a draft of a letter which he proposed for the board to send to Mrs. Mary Beecher Longyear in answer to her communication of July 20, 1918. This letter was filed with the secretary who was later instructed to include it with other items to be sent to Judge Smith for his information in connection with Mrs. Longyear's relations to the historical work of The Mother Church.

"Boston, Aug. 14, 1918.

"JOHN V. DITTEMORE."

Then comes the following:

"I wish to file a protest against the unprecedented irregular and illegal action of the chairman of this board in permitting an important document, a draft of a letter presented and read to the Board at its regular meeting of Aug. 13th by Mr. Merritt and filed with the secretary of the board, to be removed from the custody of the board without any copy of it being kept, thereby preventing a most important piece of evidence, on one of the most vital matters connected with the cause of Christian Science, and a matter which the board then had and now has under consideration, from being available in the consideration of the said matter.

"JOHN V. DITTEMORE.

"Boston, Aug. 14, 1918."

On the margin is written in blue pencil, in a handwriting which I understand to be that of Mr. Dickey and will suppose to be unless he corrects it, the following:

"The Chair rules that this be filed but not spread upon the minutes. Aug. 20, 1918."

Q. That is your handwriting, isn't it, on the margin? A. I haven't seen it, sir.

Q. All right. (Handing paper to witness.) I will show it to you. Will you kindly look at this writing in blue pencil on the margin and state whether it is yours or not? Yes or no. Will you look at it? Can't you read it? A. I think that is mine.

[Pencil memorandum in Mr. Dittimore's handwriting, dated August 14, 1918, as read by Mr. Thompson, marked Exhibit 698.]

Q. Now have you got any other letters? A. August 21 there is a memorandum.

Q. Well, let us have that. I have been calling for that letter, I think, now, about 20 minutes.

Mr. Krauthoff—Would Mr. Thompson be good enough to inquire of the witness as to the subject? It is more easily located in that way.

Q. Do you remember what the subject of the letter of August 21 was? Yes or no? Mr. Dickey? A. It was an objection—

Q. I haven't asked you what it was. Do you remember affirmatively as you sit there what it was? Yes or no. A. I do know what it was.

Q. What was the subject of it? A. An objection to the ruling of the Chair.

Mr. Thompson—Very well. (To Mr. Krauthoff.) Does that help you to get it?

The Witness—Dated Aug. 21.

Mr. Krauthoff—May I suggest to Mr. Thompson that he go on until we do find it? Miss Warren is looking for it.

Q. Do you think of any other letter—if so, what is the date of it—of an objectionable character from your standpoint, written by Mr. Dittimore to that board? Yes or no. A. At this point all of Mr. Dittimore's letters—

Mr. Thompson—One moment. I ask that that be struck out.

The Master—No. Any other single letter.

Q. If you will give strict attention to the question. A. I shall have to go through them, then, because we received a great number of letters.

Mr. Thompson—I ask that that be stricken out.

Q. I haven't asked you that, sir. If you can't answer the question, all you have to do is to state that. A. I can't answer that question, Mr. Thompson, in the way you put it.

Q. Can you now as you sit there from memory think of any other letter, either by subject or date or any other method of indication, which you regarded as particularly objectionable? Yes or no. A. I cannot at this moment recall—

Q. Very well. Now you have answered the question. The great subject of controversy between the directors and the trustees was whether or not, to put it in a word—will you give attention, please, to my question? A. I think there is a question still unanswered that you asked me.

Q. I don't think of any, sir. A. I remember—

Mr. Thompson—No matter. Go right ahead. I ask that the witness be checked.

The Witness—You asked me what I objected to in Mr. Dittimore's letters, and these letters were brought forth for the purpose—

Q. I haven't asked you that. That question is not before you at all. You have counsel here. Kindly maintain the position of witness and not of counsel. I will ask you to give attention to the question. The principal subject of controversy between these directors and these trustees was whether the directors had supervisory power over the general activities of the trustees, or not, was it not, sir? A. Yes, sir.

Q. And from the beginning to the end you maintained that they had, didn't you? A. Yes, sir.

Q. And you regarded that contention as essential to the maintenance of the unity of this Church, did you not? A. Well, I didn't regard the contention as essential.

Q. The claim, the position, the proposition, or whatever you call it? A. I regarded the fact as essential.

Q. You regarded the maintenance of—we will call it that truth as essential. did you not; any attack on that you thought would be injurious, seriously, to the Christian Science Church? A. I thought it would be injurious seriously, yes.

Q. You have answered the question. And Mr. Dittimore thought so, too, didn't he? A. I believe that he did.

Q. Yes. Now from time to time you made many personal efforts to see if you could not be the means of reaching some solution of this controversy between the two bodies, did you not? A. I did.

Q. They included interviews with individual members of the trustees, did they not? A. Yes, sir.

Q. And also with the trustees as a whole? A. Yes.

Q. Among those interviews was an interview with Mr. Eustace and others concerning Mr. Dittimore's memorandum of February, 1916, was it not? A. Yes.

Q. Which you have already described? A. Yes.

Mr. Thompson—Will you let me have that paper with Mr. Dittimore's marks on it, the Dittimore memorandum as marked up at that conference of the trustees?

[Exhibit 680 produced.]

Q. You remember this paper, Exhibit 680, don't you, that you have already testified about? A. Yes, sir.

Q. Marked with your handwriting on the margin. How long do you think, approximately, was the interview at which you discussed this paper with the trustees? I do not care for the exact time; was it 10 minutes or an hour and a half? A. Probably an hour and a half.

Q. That was time enough to go over every one of these propositions with very great care and attention, wasn't it? A. Yes.

Q. And each one was gone over? A. It was.

Q. Both by you and by Mr. Eustace speaking for the trustees? A. We did it all together.

Q. You did it all together? A. Yes, sir.

Q. Did Mr. Eustace do most of the talking on behalf of the trustees? A. He did.

Q. He made some suggestions for changes in phraseology, did he not? A. He did.

Q. You made some, too, didn't you? A. I did.

Q. He agreed to some of your changes, didn't he? A. He did.

Q. You agreed to some of his, didn't you? A. I did.

Q. And some of the statements in this memorandum were entirely eliminated, weren't they? A. Yes.

Q. Did he agree to that? A. He did.

Q. He agreed to it? A. Yes. Now, I would like to qualify that, Mr. Thompson.

Mr. Thompson—I do not want any qualification; I ask you to keep to the question and answer.

Mr. Krauthoff—If Your Honor please—

Mr. Thompson—One moment; he has not any right to qualify the answer whatever.

Mr. Krauthoff—We protest that the witness has the right to explain his answer after he said that he agreed. He has the right to do it now.

The Master—No, not necessarily at the moment. If it is objected to by Mr. Thompson I shall have to let Mr. Thompson continue.

Q. When you had this conference with these trustees you were of course

acting in good faith, were you not?  
A. Surely.

Q. You were not going there for the purpose of misleading these trustees, were you? A. Not by any means.

Q. You were going there in an honest, sincere attempt to see if by changes in phraseology, by eliminating matters which seemed to them peculiarly objectionable and to you not very important, you could not reach a document which you would be personally willing to recommend, were you not? A. No; that was not the case.

Q. Did you give these trustees to understand when you talked with them about changes, especially about changes that they suggested, that when you assented to a change in phraseology suggested by Mr. Eustace you would decline to recommend that to your directors? I want that answered categorically yes or no.

Mr. Krauthoff—Now, if Your Honor please, we object to that question, because it assumes a state of facts, upon which the evidence is not in.

Mr. Thompson—I have assumed absolutely nothing, sir. And you have no right to interrupt my cross-examination of this witness and coach your witness.

Mr. Krauthoff—I am not coaching my witness; I object to that statement.

Mr. Thompson—You are interrupting the moment the shoe begins to pinch; you have done it repeatedly throughout this case, and I am not going to stand for it.

The Master—I think Mr. Thompson is entitled to have an answer to that question.

Mr. Krauthoff—May I suggest the point of my objection?

The Master—You have stated it already, I think.

Mr. Krauthoff—I have not. Mr. Thompson interrupted me before I was able to say anything. The question assumes that Mr. Dickey assented to these changes.

Mr. Thompson—Now, if Your Honor please, that is very unfair. I am trying to do my duty to my client, and I can't do it if every time I put a question that is embarrassing to the witness this gentleman steps in and tells the witness what to say.

Mr. Krauthoff—Upon that, Mr. Thompson asked a question which the witness had not fully answered, and until that question is fully answered it cannot be assumed that Mr. Dickey assented to anything.

Mr. Thompson—I have not asked him to assent to anything, sir, and if you had listened to the question you would have found it out. I believe he did know it too.

The Master—I think Mr. Thompson is entitled to have the question answered. Proceed.

Mr. Thompson—I ask leave to proceed without interruption.

The Master—May I have the question, please?

Q. When you were talking during that hour and a half, or two hours,

with these trustees about changes of phraseology, discussing this document word by word, or sentence by sentence, weighing in your mind the significance of the alterations suggested by Mr. Eustace and finally, in some particular cases, assenting and writing the word "Yes" opposite the suggestion made by him, which suggestion you had written in your own handwriting, did you, when writing that word "Yes" and when writing in his suggestion, tell him directly or indirectly that by so doing you did not mean to commit yourself even to recommending that to your Board of Trustees? I want that answered Yes or No. A. Not each time.

Q. No, very well. Did you, Mr. Dickey, at any time—please note this question— A. Yes, sir.

Q.—during that interview tell Mr. Eustace, not that you, of course, could not agree and bind your board—I am not asking you that—did you give him to understand fairly so that he, as a reasonable man, could know what you meant, that not only could you not bind your board by any of these "Yeses" that you wrote on this paper, but that you yourself were not even prepared to recommend to your board to accept these suggestions? I want it answered. A. I gave him strictly to understand that I could not recommend—

Q. So that—

Mr. Krauthoff—If Your Honor please—

The Master—Let him finish his answer.

Mr. Thompson—He has finished. He has answered that he gave him strictly to understand it.

The Witness—Gave him strictly to understand that I could not recommend.

Mr. Thompson—I ask that his answer be stricken out as not responsive, sir. The question was perfectly clear and definite, and he is evading.

Mr. Krauthoff—We ask that the intimation of counsel that the witness is evading the question be stricken out.

Mr. Thompson—Can't you let the cross-examination alone?

The Master—I think you are interrupting too much with the cross-examination. The answer may stand.

Mr. Thompson—Very well, sir.

The Master—Mr. Thompson may repeat his question and I want the witness to answer it categorically, yes or no.

Mr. Krauthoff—Without interruption by Mr. Thompson.

The Master—Without interruption by either party.

Mr. Thompson—Or by you.

Q. Now, will you listen to this question: when you were there during that time, talking with these men, talking with Mr. Eustace, and an occasion arose where a change of phraseology was suggested by him, discussed, and finally written in by you and the word "Yes" written on the margin, did you at any time, with ref-

erence to such a change, suggest to Mr. Eustace in any form of words, not that you could not agree on behalf of your board—that is not what I am asking—but that you would not even recommend it to your board? Yes or no. A. Yes.

Q. So that you mean to advise His Honor here and the rest of us that you spent an hour and a half carefully discussing changes with a view to reaching a solution of the difficulty, as you say, and informed your opponent that you were not bound even personally to suggest or even help along one bit the adoption of the changes that you were making on that document? Is that what you mean? A. You go further than I went.

Q. I think not. We will try it again. It is of some consequence, and I want you to listen to these questions and consider them carefully. A. If you would shorten your questions a little, Mr. Thompson—

Mr. Thompson—Wait a minute.

The Master—Yes, your questions are rather too long.

Mr. Thompson—I will make them shorter, sir.

Q. You went there, as you have stated, for the purpose of doing what you could to bring about a solution of a controversy, did you not? A. I did, indeed.

Q. You did indeed? A. Yes, sir.

Q. And you thought that what you were doing was assisting to that end, did you not? A. Yes, sir.

Q. Take a certain particular case where Mr. Eustace suggested a change in phraseology. Just look at that paper and point out one such case (handing paper to witness). A. The word "concurrently" you will find the first time it is used.

Q. I want you to point it out right on that paper. A. There is the word, the word "department."

Q. I want you to find the word that he suggested to be written in and that is written there in your handwriting if you can find it. A. That is what you just asked me, was it not?

Q. Yes. A. That is what I am telling you. This word "department" was deleted at Mr. Eustace's request.

Q. Yes. A. The word "function" was put in the margin with his consent.

Q. Who suggested the word "function"? A. I did.

Q. Well, find a word that he suggested and that you wrote in. A. Yes, sir. Here is the word—the words "written approval" were scratched out and the word "concurrent" put in at Mr. Eustace's request.

Q. He suggested the word, did he? A. Yes.

Q. And that is your handwriting, is it? A. Yes.

Q. Is it your understanding that at the time you wrote that word in, in accordance with Mr. Eustace's suggestion, he knew that you were not prepared to recommend to the Board of Directors that they should assent

to that change? Yes or no. A. You are asking my understanding?

Q. I want you— A. I could not understand what he was thinking.

The Master—No, he did not ask you for your understanding, as I got it.

Mr. Thompson—No, sir.

The Witness—I beg Your Honor's pardon. May the question be repeated?

Mr. Thompson—We will strike it out.

The Witness—But that is true. You did ask me for my understanding.

Mr. Thompson—I don't care whether it is true or not. We won't delay that way.

Mr. Krauthoff—Now, if Your Honor please—

The Master—The question is, Did he, Mr. Eustace, understand?

The Witness—Please repeat the question.

Mr. Thompson—No matter; we won't discuss it. That is what was intended. If it was not, we will repeat it.

Mr. Krauthoff — If Your Honor please, I move that the statement of Mr. Thompson that the witness wanted delay and that Mr. Thompson would not have it, be stricken from the record as an unwarranted assumption on his part.

The Master—I think we will let that statement disappear from the record. I do not think it is necessary.

Q. Will you listen to this question? Take this word "concurrent" which was written in at Mr. Eustace's suggestion by you. When you wrote that word in, did you think any progress had been made in the solution of this difficulty? Yes or No. A. Very little.

Q. Did you think any at all had? A. Yes, but very little.

Q. Very little. The progress did not consist in the fact that you personally assented to that word, did it? A. Not altogether.

Q. Did it at all? A. To a very slight extent.

Q. Did you, as a matter of fact, personally assent to that word? A. No.

Q. Did you believe that it would be a good change? A. No.

Q. Did you think it was a bad change? A. I did not think it was impossible.

Q. Did you think it was a desirable change to make? A. No.

Q. Did you think it helped on the cause of settlement at all? A. Somewhat.

Q. Somewhat. Did you think it would have helped on that cause of settlement if Mr. Eustace had known that you were not prepared even to recommend it, let alone vote for it before that Board of Directors? A. I don't know.

Q. You don't know. Do you believe that Mr. Eustace did so understand with reference to all these changes, whether suggested by you or by him, as to which "Yes" was written down on the margin? Do you think he did understand not merely that you

were not even binding your directors but that you were not even personally going to recommend it to them? A. I don't know what he understood.

Q. Did you think if he had understood that that he would have spent an hour and a half with you in this laborious consideration of this paper? A. I couldn't tell you that.

Q. You never saw any sign, did you, that Mr. Eustace, whatever else he might be, was a fool? A. No.

Q. Why did you write "Yes" opposite these changes that were made on this paper? A. Because I was willing to take that as a basis so that I might know exactly what Mr. Eustace and his associates had in their thought with respect to an agreement which we might arrive at and present it to my associates.

Q. Did you want to have him know what you had in your thought when you wrote "Yes" there? Yes or No. A. I told him a great deal what was in my thoughts.

Q. I don't want that. I want a categorical answer. Did you intend by writing the word "Yes" opposite any of these changes that Mr. Eustace or his associates should find out or know or have reason to know what was in your thought? A. I was perfectly willing that they should know what was in my mind.

Q. Was it in your thought that these were desirable changes after you had written "Yes" on the paper? A. It was desirable for the purposes for which I wanted it.

Q. Was that purpose for the purpose of recommending it to your directors to be put through as a compromise? A. The purpose was only presenting it to them, not for recommending.

Q. By "presenting" do you mean physically handing the paper to three or four men? A. Yes.

Q. And nothing more? A. That is all I did.

Q. Do you mean anything more than that? Do you mean anything more than physically handing the paper? A. Of course, I could not hand it physically without doing some thinking.

Q. Do you mean by "presenting," Mr. Dickey, that you would present it to your directors in good faith as a basis arrived upon by you and these trustees, which, in your judgment, ought to be, or it was desirable should be, accepted by the directors? A. You have spoiled the question by asking what my judgment was.

Q. Never mind my spoiling the question. A. There are two questions involved in that one statement.

Q. We will take it back if it puzzles your acute mind. A. It does not puzzle me; it is perfectly clear what you want me to do.

Q. Is it? A. Yes.

Q. We will try it again. A. Yes.

Q. When you presented that paper to your directors, did you recommend

at all directly or indirectly, that they adopt the changes? Yes or No. A. No.

Q. Did you ever tell Mr. Eustace that you would recommend them? A. No, sir.

Q. Did you give him to understand that you would recommend it? A. No, sir.

Q. Did you think that it was an honorable thing for you to go and deal with these trustees on a basis of reaching a settlement when you had in your mind not to be bound even to the extent of recommending what you were writing "Yes" against? A. I do.

Q. I just want to find out your sense of honor. A. I thought it was perfectly honorable and necessary.

Q. You have answered the question, and have made the necessary disclosure. Now, take the other conferences that you had with the trustees in reference to documents and papers in your efforts to reach a compromise in this case. You had other conferences, too, with them, did you not? A. Yes.

Q. They came to see you subsequently with a paper which they presented? A. Yes.

Q. That paper was gone over too, wasn't it? A. Yes.

Q. And marks were made on the margin of that, too, weren't there? A. I didn't make them.

Q. Somebody did, didn't they? A. I don't know.

Q. You don't know. The clauses were talked over, weren't they? A. Yes.

Q. And some sort of what we might call an agreement or understanding or meeting of minds was reached tentatively in regard to some of those papers, wasn't it? A. No, sir.

Q. No. No further even approximations to an agreement were ever reached after that conference between you and the trustees; is that right? A. No.

Q. Did it ever occur to you that one reason why your negotiations never went any further was that the trustees might have felt slightly aggrieved, perhaps, that you having spent this time, ostensibly trying to reach an agreement, it turned out you had not meant to agree in any sense of the word at all? A. No.

Q. You don't think so. Now, let us have that paper once more. I did not mean to give it back to you quite so soon. (To Mr. Krauthoff.) You have another memorandum or agreement on which some changes were made, which I think is the one I want now. (To the witness.) Now, calling your attention to Exhibit 681, marked "Read and discussed at meeting with trustees, March 10, 1919"—

The Master—Pardon me. What is this? Is this the letter you have been hunting for?

Mr. Thompson—No, sir, it is another paper entirely; it is Exhibit 681.

Q. You identify that as having been marked and seen by you before,

do you? That has been in the case, I think. A. Yes.

Q. You were questioned about this paper, were you not? A. Yes.

Q. Whose handwriting are these pencil interlineations in? A. That is mine.

Q. Yours? A. Yes.

Q. Who made that erasure indication there, circular mark on the first page? A. It is very faint. I have to look at it.

Q. Very well. Take a look at it. A. What was it you wanted?

Q. Who made that mark around the words? A. I did.

Q. And there are one or two other such marks. Here is another one on the second page, with a delete mark there. Who made that? A. I did.

Q. You did? A. Yes, sir.

Q. Those marks were made in connection with some talk between you and the trustees in reference to a compromise, were they not? A. Those marks were made for my own information.

Q. Who was present when they were made? A. All of the trustees and two of the directors besides myself.

Q. Where was it? In the directors' room? A. In the directors' room of The Mother Church.

Q. Did the trustees see you make these marks? A. I think they saw me writing. I don't know what they—

Q. Did they have any copy of the paper? A. No.

Q. Who drew this paper? Is this Judge Smith's memorandum? A. I believe now that it is.

Q. You think that is Judge Smith's. In what connection did you strike out the words "Mrs. Eddy" and write in the words "of Mrs. Eddy's published writings," and so on? A. That was the result of a discussion between the members of the Board of Directors and the trustees.

Q. What do you mean by the result of a discussion? What do you mean by that? A. I mean I wrote that down after finding out what the trustees thought ought to go in there instead of what was there.

Q. You mean to tell us that you wrote down something that you thought would be satisfactory to the trustees? A. That is what I said.

Q. That is what you said? A. Yes; for my own information.

Q. For your own information? A. Just for my own guidance.

Q. I am not asking for whose information it was, but I am asking under what circumstances it was written. You have told me— A. I wrote it under circumstances that I wanted it for my own information.

Q. That may all be. You told me you wrote it because, after discussing it, you thought it was satisfactory to these men? A. No.

Q. You thought it was unsatisfactory, did you? A. No. I wrote it for my own information as being an ex-

pression from them which they suggested ought to go in there.

Q. Did you give— A. I don't know whether they would have accepted that or not.

Q. Did you give any indication when you wrote that in as to whether or not it would be satisfactory to you? A. No.

Q. Are you sure? A. Sure; very sure about that.

Q. You did not give any of these three men, or any other men, to understand, either directly or indirectly, after the talk which led to the writing in of those words and the striking out of the other words, that you in any way or in any sense assented to that change? A. I did not in any way or sense or intimation or information.

Q. And you are prepared to stand on that answer? A. Yes, sir.

Q. You understand the nature of an oath, of course, don't you? A. Well, I hope I do.

Q. You hope so; I think you ought to. The same is true as to the striking out marks here? A. Yes.

Q. You made those as the result of talk and otherwise which would indicate to you what you thought these men would agree to? A. Yes.

Q. So when you struck out these words referring to the trustees, "and they are subject to the general supervision of the Board of Directors in accordance with the provisions of the By-Laws and Trust Deed," you didn't mean by that striking out to indicate that under any circumstances you would agree to that, did you? A. Not by any means.

Q. You struck it out so that you might learn and keep in your memory, and not forget, that that was what these men wanted? Is that it? A. At that time.

Q. At that time. You thought you might possibly forget it? A. No, I did not think that at all.

Q. If you did not make a note of it? A. I didn't think that I might possibly forget it.

Q. But still you were not sure enough that you would remember it so but what you wanted to make it clear to your own mind that that would have to be struck out or else you would never satisfy these men? A. That doesn't describe the situation at all.

Q. Now, the striking out of that sentence, which you have already stated to me in the earlier part of your examination was the very heart of the whole controversy—does the striking out of that— A. I will have to see that again if it is the heart.

Q. You may look at it a little later, Mr. Dickey.

Mr. Bates—Let him see it now, if it is the heart.

Q. Does the striking out—

Mr. Bates—Let him look at it if you are going to ask a question about it.

Mr. Thompson—No, he won't look at it now—not on your life, Governor. That is too easy. We have had enough

of this interfering with the cross-examination, both by the counsel and client.

Q. The striking out of that sentence in these words, "and they are subject to the general supervision of the Board of Directors in accordance with the provisions of the By-Laws and Trust Deed," did not indicate in the remotest way that under any circumstances whatever you would be prepared to assent to it, did it? A. No; and it is not stricken out, either.

Q. It has got a line around it and the mark "d" on the margin, hasn't it? A. That is true.

Q. That is the sign to strike out, isn't it? A. That is the sign for "delete," yes, sir.

Q. Now, I want to talk about something else for a little while, Mr. Dickey. A. Yes, sir.

The Master—I suggest if that other letter has been found that it would be well to complete that.

Mr. Thompson—I agree with that heartily. I think it is important, and I have been after the letter.

Mr. Krauthoff—If I may ask the witness for the memorandum to which he referred when he called attention to it we might be able to locate it. We have not been able to locate it.

Mr. Thompson—Mr. Dickey located it when he said, in answer to my question, it was something objectionable in the letter of Aug. 21. I would like to see it very much and see how objectionable it was.

Mr. Krauthoff—He said, if Your Honor please, it was an objection by Mr. Dittmore to a ruling of the Chair, as I recall it.

Mr. Thompson—Don't you recall that I asked him to produce all these letters which he regarded as objectionable, and this was one of them.

The Master—Oh, well, Mr. Krauthoff suggests that the witness says it was an objection by Mr. Dittmore to a ruling of the Chair.

Mr. Thompson—Certainly; that is true.

The Master—Perhaps that will help him find it.

Mr. Krauthoff—Can you describe it more fully?

The Master—No, I think that is enough for a description.

The Witness—I can tell something that I think will throw light on it.

Mr. Thompson—Then do it at the intermission and do not interrupt my cross-examination; let it go.

Q. The By-Laws of this Church contain various provisions for disciplining members, don't they? A. Yes, sir.

Q. You can discipline a single member, a simple member, and you can discipline a reader, lecturer, or various other officers of the Church, can't you? A. Yes, sir.

Q. If they do things that are not right? A. Yes, sir.

Q. Now, the By-Laws—I won't take time to go over them in detail, although I have them here and can do



it if your memory is not fresh on them—it has been the practice under those By-Laws if a man is accused of any offense which seems to make discipline necessary, to call that man in and hear what he has got to say about it, hasn't it? A. Yes.

Mr. Krauthoff—If Your Honor please.

Mr. Thompson—Well, the witness has answered.

Q. And that practice has been pretty invariably followed, hasn't it, by your Board of Directors? A. Yes.

Mr. Krauthoff—If Your Honor please—

Mr. Thompson—What is the matter with you?

Mr. Krauthoff—Nothing whatever. If the witness will give me an opportunity—

Mr. Thompson—You are not affected by hypnosis, are you?

Mr. Krauthoff—I submit that I am entitled to present my objections without these remarks by Mr. Thompson being inflicted upon me.

Mr. Thompson—I don't think they will hurt you.

The Master—I think it is desirable in the highest degree to avoid interrupting a cross-examination; it requires a very serious reason to justify that.

Mr. Krauthoff—And I can only justify my interruption by being permitted to state my reasons accurately, and when that opportunity arises I will do it.

The Master—Proceed, Mr. Thompson.

Q. Approximately—I am not asking for exact figures—approximately how many cases of discipline have come before your Board of Directors in the manner I have indicated during the last three or four years?

Mr. Krauthoff—Now, if Your Honor please, we object to that question for this reason. The plaintiff in this case complains of his dismissal as a member—

Mr. Thompson—Now, just see this.

Mr. Krauthoff—As a member of the Board of Directors, without notice and without hearing, under a clause of the Manual which applies only to a director—

Mr. Thompson—Now, just think of that.

The Master—One moment.

Mr. Krauthoff—With respect to which—

The Master—Let him finish. Is that all?

Mr. Krauthoff—Only one director has been dismissed. The practice of the board with respect to instances arising under other sections of the By-Laws can throw no light upon the controversy and is wholly irrelevant.

Mr. Thompson—Now, let me say—

The Master—Pause a moment. You needn't say anything, Mr. Thompson. To my mind that constitutes no objection whatever to the propriety of this question in cross-examination. Mr. Thompson may continue.

Q. Now will you tell me about

how many cases of discipline of the kind I have indicated to you have come before your board during the last three or four years? I don't want the exact number. What is it, one or two? A. I haven't the remotest idea.

Q. Was it half a dozen? A. More than that.

Q. Ten or 15, 20, roughly? One hundred? Put it somewhere. A. Oh, wait just a moment.

Q. I don't care for exactness. A. Over 15 or 20, I should say.

Q. That will do, that is all right; that is good enough. A. But perhaps that is a high number, it may not have been that many.

Q. Mr. Dittmore suggests it was nearly a hundred. Do you think that corresponds to your recollection? A. Well, I wouldn't think so, no.

Q. Well, along somewhere 15, 20, something like that, you think? It doesn't make much difference. More than one, anyway? A. In how long a time did you say?

Q. Three or four years. I am not trying for exactness now. A. I can only make a guess, Mr. Thompson, because I didn't do anything at all to keep track of those things. It may be between 20 or 30.

Q. That would be your best recollection at the present moment? A. I think that would be a fair estimate without any data.

Q. Very well. Now, among those cases of discipline were there any lecturers, that occur to you now? A. Yes.

Q. Were there any church readers? A. I don't remember any readers.

Q. Do you remember in all your experience as a director ever having occasion to discipline a church reader? I don't care who it was, I won't bother with that. A. Possibly the reader of a branch church, but not a reader of The Mother Church.

Q. A reader of some branch church? A. I say perhaps, because a man might have been brought in—

Q. No. All I want is just a definite answer, yes or no, to it. Do you remember ever having occasion before this to declare a vacancy on the Board of Trustees while you were on the Board of Directors? A. No, sir.

Q. While you were on the Board of Directors did you ever have occasion before to vote on a motion to dismiss a member of the board—yes or no—before March 17? A. Board of Directors?

Q. Yes. A. No, sir.

Q. When you discipline a member of the Church for violation of the By-Laws, or discipline a reader or lecturer or whatever it may be, you do it frequently, don't you, on complaint made by somebody? A. Yes.

Q. And when a person makes a complaint you require him to state in substance, in intelligible form, what it is he is complaining of, don't you? A. Yes.

Q. Then you are not satisfied to discipline a man, eject a man from the Church, merely on the unsup-

ported statement of somebody else, are you? You want to hear the man orally, don't you—the complainant? A. There have been cases where we have taken action without hearings from the man.

Q. But generally you expect that it is a fair thing and just thing, before you take such a serious step as to expel a person from the Church, to give that person a chance personally to come before you and explain away the charges made against him, whether true or false, don't you? A. Yes. I don't remember of ever having taken that action.

Q. But that would be consistent with your notion of fair dealing, wouldn't it? A. Yes.

Q. And that would be so however humble the individual was who was before you for discipline, wouldn't it? A. Yes, sir.

Mr. Thompson—Now, with the intimation of Mr. Krauthoff I will suggest, if Your Honor please, that it is about time for the intermission, and perhaps I can get along better if we should take it now.

The Master—If that is agreeable to everybody we will pause here for a few minutes.

[Short Recess]

Mr. Thompson—I am handed a paper which is said to be the memorandum of Aug. 21; the memorandum that I have been calling for.

Q. It was the practice of your board to put a stamp on all letters or documents filed with your board, was it not, indicating that they had been filed? A. Yes.

Q. And if they were read it was the practice to put a stamp on indicating that they had been read, and the date thereof.

The Master—I think we have already had that.

Mr. Thompson—Yes.

The Witness—Of recent years that was true.

Q. Now this document handed to me of Aug. 21, 1918, I observe has no stamps of any kind upon it. Does that indicate anything as to whether it was or was not actually presented to the board? A. It was presented verbally to the board by Mr. Dittmore and afterward he gave it to me in writing in confirmation of what he stated verbally.

Q. Did it ever become part of the records of the board? A. No.

Mr. Thompson—I will read it just the same:

[Copy of Exhibit 699.]

Memorandum

"August 21, 1918.

"My objection to the ruling of the Chair, a copy of which was handed to me, is as follows:

"That, although the Chair might rule that my answers to its question requesting my reasons for not voting in favor of sending a certain letter to (Blank), it is not within the province of the Chair, under any rules of

parliamentary procedure, with which I am familiar, for the Chair to pass judgment on the validity or propriety of my reply or to make his ruling the opportunity for presenting the personal opinions contained in the last sentence of his said ruling."

[Memorandum as read by Mr. Thompson, dated Aug. 21, 1918, marked Exhibit 699.]

The Witness—In looking for that I also found some others, Mr. Thompson.

Q. Let us have them, if you can produce them quickly. A. All the letters which Mr. Dittmore wrote to us were objectionable.

Mr. Thompson—You have said that three or four times.

The Witness—I would like to—

Mr. Thompson—I ask that it be stricken out, sir; it doesn't answer any question.

The Witness—You asked me what other letters I have found that were objectionable. I have found a great many.

Q. And you took that occasion to put in an answer which three times had been ruled out by the Court, and which you knew was improper, didn't you? A. I thought I had a right to give you all the letters that you called for.

Q. You knew that what I asked you for, with an emphasis that could not be misunderstood even by you, was for you to identify any letter now stuck out in your mind as particularly objectionable; you knew that perfectly well, didn't you? A. I—

Q. Yes or no, Mr. Dickey. Didn't you so understand my inquiry? A. I didn't understand that I had to do it on the spur of the moment.

Q. The spur of the moment doesn't include five or 10 minutes' intermission, does it? A. No, but I have them now.

Q. Didn't you understand that perfectly well? Let us have an understanding here now. Didn't you know as a matter of fact that what I was calling for was particular letters that you now remember to have been objectionable? Didn't you know that that was what I was calling for? A. That is true.

Q. Very well. Now stop right there; you have answered that question. Did you think after you had produced this letter of March 21 that it was proper for you to go on and say that all Mr. Dittmore's letters were objectionable? Did you think that was proper?

The Master—Do you mean March 21? Mr. Thompson—Aug. 21, I think it was.

The Master—You said March.

A. In answer to your previous question, yes.

Q. You thought it was proper? A. I did.

Q. Although you knew that no question had been put that called for that answer, and after it had been once or

twice stricken out when you had volunteered it? A. I did not know it had been stricken out.

Q. Very well. A. Mr. Thompson, you haven't given me a chance.

The Master—I think you will have to pause there.

Mr. Thompson—Strike that out.

Q. Have you ever been on the witness stand before? A. I think once, a great many years ago.

Q. Have you ever heard that it was the duty of a witness to listen to a question before he answers it?

The Master—I do not think we had better go into that, Mr. Thompson.

Mr. Thompson—Very well, sir.

The Witness—My common sense would tell me that.

The Master—Strike that out.

Q. Now take this document of Aug. 21. Do you remember this meeting of Aug. 21 at which this controversy arose? A. I do remember—

Q. You remember—very well, you have answered it. You remember Mr. Dittmore, in the course of the protest that he made against certain actions of yours as chairman, using the word "Prussian"? Yes or no. A. Oppression?

Q. No, Prussian, Prussian; German—Prussia. A. Prussian?

Q. Yes. A. Oh, yes, he used that many times.

Q. Very well; you remember it. That is all I am asking. A. Yes.

Q. And he used it with reference to certain action of yours as chairman which he regarded as improper, didn't he? A. Yes.

Q. Do you remember that Mr. Dittmore protested against any other language of yours at that meeting, Mr. Dickey? A. No.

Q. Do you remember any joke that you made at that meeting at which he protested as being improper for any gentleman to make anywhere? Yes or no. A. Yes.

Q. Do you remember that the joke you then made was a lewd and lascivious remark? A. No, sir.

Q. You remember that it was a joke no woman could hear and stand without a blush? Yes or no. A. No.

Q. You remember that Mr. Dittmore protested, not once but many times, against your habit of lewd and nasty conversation in these meetings? A. That is absolutely false and untrue.

Q. All you have to do is to say No. A. Well, I want to emphasize it.

Q. Your emphasis will be duly noted, sir. Just answer No. It is not the fact, is it, Mr. Dickey, that the real cause of this ousting of Mr. Dittmore had nothing to do with the controversy between the directors and trustees? That is not true, is it? A. That was one of the things, Mr. Thompson, in connection with the others.

Q. Isn't it a fact, Mr. Dickey, that Mr. Dittmore's attitude, the principles for which he stood in this controversy between these two boards, had nothing whatever to do with his

dismissal from that board? Isn't that the honest truth, sir? A. I don't think Mr. Dittmore was standing for principle at all.

Q. Can't you answer that, sir? A. I can't. I would like to hear it again, if you please.

Q. All you have got to do is to say so if you can't answer it. A. Please restate the question. I will try to answer every question you put.

Q. All you have got to do is to say so. I will put it again and I don't want explanation, I want a categorical answer Yes or No. A. Yes, sir, I will give it to you.

Q. Isn't it the truth, sir, that the position that Mr. Dittmore took, the opinions he expressed as to what ought to be done in this controversy between these two boards, was not in any degree the cause that actuated his removal from that board? Yes or no. A. It was in some degree.

Q. Was it in any material degree, sir? A. Yes, sir.

Q. Was it a substantial reason for ejecting him from that board—the position that he took on that controversy? A. It was merely—

Q. You have answered it— A. (continued) —one of the many reasons.

Q. I don't want that, sir. I haven't asked one of the many reasons. I ask that that be struck out. It is important I get my answers straight. Isn't it—

Mr. Bates—I submit, may it please the Court—

The Master—That is equivalent to an answer, "It was," I think.

Mr. Bates—I want to submit, Your Honor—

The Master—I so take it—

Mr. Bates— —that Mr. Thompson is interrogating in regard to matters which we were not allowed to ask this witness in direct examination, notwithstanding my protest. Your Honor's ruling was that you would allow Mr. Thompson to proceed and see how far he ought to go. But Your Honor should have that in mind—

Mr. Thompson—There is no question before the Court now, Governor.

The Master—I don't know about that. If you are now cross-examining on something which I have forbidden the witness to be examined upon in direct, that is a matter to which counsel has a right to call my attention.

Mr. Thompson—I haven't put any question. He is arguing—

Mr. Bates—I am referring to all of these questions.

Mr. Thompson—They are all in. Your objection—

The Master—One moment. I want to get this straight.

Mr. Bates—I want to refer to it now in order that His Honor may recall the fact that he stated that no injustice would be done by this method of procedure. I stated that it was offering the opportunity to Mr. Thompson to cross-examine on matters which we

had not been permitted to go into on direct.

The Master—What is it that you have not been permitted to go into?

Mr. Bates—Into any of these matters relating to the Dittimore case.

Mr. Thompson—Oh, they have all been gone into, Governor; you are mistaken.

Mr. Bates—All these subjects that you have brought up and these letters that you have put in today. I want to say, Your Honor, I will not object to its proceeding providing counsel conducts himself as counsel ought to. I have sat here and been outraged by his manner.

Mr. Thompson—You have!

Mr. Bates—He has not the manner of a counsel; he has not the manner except of a counsel in the police courts. There is no reason for treating a witness in the manner in which the counsel has done.

Mr. Thompson—That is right; that is good stuff, Governor.

Q. Now let us go back to this meeting of Aug. 21.

The Master—One moment. I do not quite see where you leave us. You tell me that I am permitting cross-examination on something that I restricted inquiry about on direct. I do not look at it in that way. I do not see that.

Mr. Bates—Your Honor would not allow us to take up the matter of the Dittimore case in the direct examination of this witness. Mr. Thompson is going into it in full.

The Master—The witness told the whole story, did he not?

Mr. Bates—Certainly not. There were many letters which we were going to put in that we were not allowed to put in.

The Master—I thought you went over the whole ground.

Mr. Thompson—He did, sir.

Mr. Bates—Only in regard to the Eustace case, Your Honor.

Mr. Thompson—Oh, that is not so.

Mr. Bates—Your Honor said that you thought we ought not to do that.

The Master—What they did in regard to Mr. Dittimore's dismissal was necessarily a part of the testimony in the Eustace case, was it not?

Mr. Bates—Certainly not. There were many things in the Dittimore case which showed the reasons that led up to Mr. Dittimore's dismissal which have not been put in evidence. It is drawn out particularly now by this statement.

The Master—Well, that may be true, but a great part of what is material in the Dittimore case has gone in, and properly gone in.

Mr. Bates—Some things have, but only so far as they were connected with the Eustace case. The matters which relate to Mr. Dittimore's dismissal, the various things which led up to it, have not been stated to Your Honor, and Mr. Dickey has not been inquired of regarding them.

The Master—Of course, counsel are only to cross-examine on what the witness has testified to.

Mr. Thompson—Why, if Your Honor please, I do not think Your Honor wants me to argue that. Governor Bates has seized this opportunity to revert to the original theoretical question that he has discussed five times already here, and each time it has been ruled against him. He has simply made this an occasion for reopening that question.

The Master—If it is nothing more than that I cannot forbid counsel to go on, Governor Bates.

Mr. Bates—Does Your Honor think that those personal questions which were asked Mr. Dickey a few moments ago had any relation to any matter concerning this case or anything that has gone in evidence.

Mr. Thompson—That was not the ruling, sir. Your Honor never ruled that I should be limited only to matters that had been gone into in the Eustace case, in the sense that they were matters that bore solely on the Eustace case. Your Honor said that you would put only one limitation on this cross-examination; if matters were brought up that had two characteristics—first, which bore only on the Dittimore case, and, secondly, which had not been in any way referred to in the previous examination—then you would consider whether you would exclude them. That is all you said, and I have lived right up to that ruling.

The Master—I think that must be so.

Mr. Bates—Your Honor's statement was:

"If he tries to extend the cross-examination beyond that point, if it should appear that any real injustice is going to be done by permitting him to do so, I will reserve the right to stop him at that point."

The Master—Yes.

Mr. Bates—I think that point, Your Honor, has been reached. He is attempting to confine this witness to his own interpretation of what actuated the witness. He assumes, for instance, in the last question, that the matter of Mr. Dittimore's dismissal was merely a matter concerning the dispute over the trustees. There were many disputes that we should have shown; we should have shown a constant hostile attitude on the part of—

Mr. Thompson—The Governor, I think, is forgetting that we are dealing here with a set of rules—rules of evidence, that there are traditional methods of putting questions, and it does not follow that the question ought to be objected to because you think the answer would not be favorable to your side.

Mr. Bates—I am perfectly satisfied with the answer.

The Master—I do not think that is a fair criticism of Governor Bates' objection. Your objection has not come

until now, after most of what you object to has gone in.

Mr. Bates—No, Your Honor, I have stood it so long that I thought Your Honor would see where the injustice came about in allowing Mr. Thompson to cross-examine the witness on matters that we had not been allowed to examine him on in chief.

Mr. Thompson—That is your old point; you have raised it again and again.

Mr. Bates—Yes, and His Honor said if he saw an injustice was being done he would stop it.

Mr. Thompson—With great deference, Your Honor did not say that.

Mr. Bates—It is right here, and I have just read it from the record.

The Master—There is no doubt that I said what you read.

Mr. Thompson—Not in the sense that he puts it.

The Master—I am unable to see that any particular injustice is being done.

Mr. Bates—I cannot make it plainer, Your Honor, than that the injustice comes in allowing him to put words into the mouth of a witness in the form of a question, and then ask him yes or no, and various other ways, when the witness should be allowed first to have stated the situation as it is.

Mr. Thompson—I really do not think you appreciate the significance of cross-examination. It is customary, in my limited experience—some 30 years—in cross-examination to put a question in a leading form occasionally, and I never have heard it objected to on that ground.

Mr. Bates—If your cross-examination had been conducted in a dignified, calm manner, and had not exhibited so much nervousness and so much insistence that you should have an answer your own way, and to prevent the witness from making any explanation whatsoever, I would not have objected.

Mr. Thompson—Very well.

Mr. Bates—But when you are cross-examining a witness on matters which he has not been allowed to testify to first in chief, then it is proper that he should be given an opportunity to make the explanation as he goes along. If he is not, there is an injustice.

The Master—He will get a chance sooner or later to make any explanation that justice requires. You may be sure of that.

Mr. Thompson—It seems to me—

The Master—Pause one moment. You are aware, Governor Bates, no doubt, as we all are, of the practical impossibility of obliging, compelling, any counsel to change or modify his habitual manner of cross-examination—

Mr. Bates—That is one reason, Your Honor, why I thought it was better to have the examination in chief first.

The Master—And doing so results only in a waste of time, according to my experience. Of course that will all be duly weighed in considering the evidence, and in a hearing of this kind

I do not believe that any serious damage results to anybody. Now let Mr. Thompson go on and see if he is going to ask him anything that you object to.

Q. Mr. Dittmore at that meeting where you had the controversy and this memorandum was filed of Aug. 21, objected to certain jokes made by you and Mr. Merritt on the ground that they were vulgar, didn't he? Yes or No? A. He said—

The Master—Pause one moment. A. (Continued)—at that time—

The Master—Pause one moment before you answer. (To Mr. Bates.) Now take this—this is examination regarding what took place at a certain interview about which the witness has testified.

Mr. Bates—I do not object to that, Your Honor.

The Master—You do not object to it. Go on.

Q. I just want that answered yes or no—not whether it was true. A. He made an objection.

Q. On that ground? A. That is what he said.

Q. That is what he said. That is all I have asked you—not what the fact was, but what he said. A. I would like to tell you the joke if you would hear it.

Q. I doubt if you would care to tell the real joke; you would like to tell what you want us to believe was the joke.

The Master—As you are not asked to tell it, please remain silent about it until you are asked.

The Witness—Yes.

Q. Now coming back to these hearings. We were talking about discipline before the intermission. Do you remember? A. Yes, sir.

Q. Did you during the intermission talk with your counsel about the examination? A. Yes.

Q. Whom did you talk with? A. Mr. Krauthoff.

Q. Have you before going on the witness stand here gone over with your counsel the testimony you were going to give? A. I have gone over a great deal of it, yes.

The Master—Can't we assume that he has?

Mr. Thompson—Assume that he has.

Q. During the intermission you discussed with him the bearing of this question of discipline of directors and discipline of members, didn't you? A. No.

Q. Was anything said about a relation between disciplining and disciplining members? A. What he said to me—

Q. No, yes or no. A. No.

Q. That subject was not discussed between you and Mr. Krauthoff? A. Yes.

Q. It was? A. It was not.

Q. It was not. You have said that in disciplining ordinary members you gave them what we ordinarily call a hearing, usually, haven't you? A. Yes.

Q. Have you ever expelled a mem-

ber of the Christian Science Church without giving him a hearing? A. Yes, sir.

Q. How many times, roughly—half a dozen? A. Three or four, perhaps.

Q. Three or four? Were those cases where the people asked for a hearing and you didn't give it to them? A. I think we have on some occasions.

Q. That is, there are cases where people— A. Yes; they are rare, however.

Q. There are rare occasions where people who were about to be expelled have asked you to give them a chance to be heard, and you have refused it? Is that so? A. No.

Q. That is, when they— A. Pardon me, let me explain. In one case a man was in the penitentiary, and we couldn't wait until he got out, so we couldn't give him a hearing.

Mr. Thompson—I ask that that be struck out.

The Master—Why isn't that a fair answer?

Mr. Thompson—I asked him whether there were any cases.

The Master—The answer, then, may stand; there was one case.

Mr. Thompson—There was one case.

Q. Was there ever any other case where a man wanted a hearing and you didn't give it to him? A. Not where he wanted a hearing and it was possible to give it to him, that we didn't give it to him.

Q. Was there ever any case where a man wanted a hearing and you expelled him without giving him a hearing? Yes or no. A. Not if it was possible at all to give it to him.

Q. I haven't asked that, sir. Whether it was possible or not, do you remember any case where your board has expelled a member of the Christian Science Church without in fact giving him a hearing where he wanted a hearing? Yes or no. No matter whether it was possible to give it or not. A. Yes, I think we did do that.

Q. Do you recall that Mr. Dittmore in any of these meetings in the period from February, 1916, down to March 17, 1919, ever raised in the board an objection to the practice of the board in reference to giving people hearings? Yes or no. A. That was not the practice.

Q. Do you remember that Mr. Dittmore ever in the period from February, 1916, to March 17, 1919, raised in the board an objection to the methods of the board with respect to discipline? Yes or no. A. He wrote us a letter on that subject.

Q. Then you do remember such a case? A. Yes.

Q. Do you remember more than one occasion when Mr. Dittmore, either orally or in writing, made such objections? A. I think he made two about the same time.

Q. Is that all you remember? A. He was on that particular line at that time. He made two.

Q. He made two? A. Yes.

Q. And the purport of those objections was that he thought the board was not trying the accused persons fairly, wasn't it? A. Yes.

Q. And the reason he thought that they were not trying them fairly was that the board was not giving what he thought was a fair hearing to these people accused? Wasn't that it? A. I haven't the remotest idea what his reason was; I only know he did it.

Q. Then your answer is that you don't know what his reasons were? A. I do not know.

Q. What is your conception of a hearing in the sense of a fair hearing before you expel a person? What do you think that includes? What is a fair hearing in your estimation? A. I think that the accused should be given an opportunity to present his side of the case to those who are going to sit in judgment upon him, so that they may know all the facts when they are operating the discipline.

Q. It certainly, in your opinion, would not be characteristic of a fair hearing if the tribunal had made up its mind one way or the other before hearing a person, would it? A. No.

Q. An essential characteristic of a fair hearing, in your opinion, is that the tribunal should keep its mind open until it has heard the evidence? Isn't that so? A. Yes.

The Master—What do we gain by having the witness say all that? Do any of us disagree as to what is a fair hearing?

Mr. Thompson—Only on the question of good faith, if Your Honor please.

Q. How many days, roughly—I am not asking the exact number, but about how many days was it before March 17, in the year 1919, that you consulted Judge Smith in regard to the contemplated action of removing Mr. Dittmore?

Mr. Krauthoff—Now, if Your Honor please—

Mr. Thompson—That was gone into on direct, sir.

The Master—The witness certainly testified that Judge Smith was consulted.

Mr. Krauthoff—Not about removing Mr. Dittmore.

Mr. Thompson—Yes, he did; he did.

Mr. Krauthoff—No. (After conference with associates.) I find I am in error about that.

The Witness—I think it must have been.

Mr. Krauthoff—It was on General Streeter's examination. He was asked about the removal of the trustees, but not the removal of Mr. Dittmore.

Mr. Thompson—The subject was gone into. I know that the matter was brought up sufficiently to justify this question about how many days.

Mr. Krauthoff—It has no relation whatever to the Eustace case.

Mr. Thompson—It has every relation to the Eustace case, because the same hearings were demanded by nat-

ural justice for Mr. Dittmore as were demanded by natural justice for Mr. Rowlands.

The Master—I am quite unable to see that. I think it has a fair relation to the Eustace case. He may fix the date if he can.

Mr. Thompson—I was not asking for the date, but approximately how many days before March 17, and during the year 1919, did you first consult Judge Smith in regard to the contemplated action of removing Mr. Dittmore?

The Witness—As nearly as I can estimate, about 730.

Q. I said, the year 1919—did you hear it? A. I don't know. I thought you asked me how many days prior to March 17, 1919.

Q. Wait a minute. Didn't you hear me say, how many days before March 17, and in the year 1919? I knew you wanted to do that, so that I put it "1919." Didn't you hear it? A. I don't know that I did just that way.

Q. Now, you hear it now, don't you? A. Yes, I do now.

Q. Now, answer it the way I put it. A. Well, that would include nearly all the days of 1919.

Q. That is what I want. That is, all the days, practically, of 1919, before March 17—I do not mean absolutely literally, but substantially all the days you were talking over with Judge Smith the possibility of ejecting Mr. Dittmore, were you? A. No, that was not your question as I understood it.

Q. Well, Mr. Dickey, will you kindly give attention to the language of my question and not to what you think you would like to answer? Now, please listen to the question. A. Yes, surely.

Q. Take the 1st of January, 1919. How long after that time was it, as nearly as you can remember that you first took up with Judge Smith, either orally or in writing, the question of the right of the Board of Directors to dismiss Mr. Dittmore? That is a plain question. A. Well, that was a question that we had decided long before that.

Q. I haven't asked you that, sir.

Mr. Thompson—I ask it be struck out.

The Master—Strike it out.

The Witness—Well—

Q. Can you answer it directly, or can't you? A. I will try to, yes.

Q. Don't try to put in something else, Mr. Dickey. A. No, I won't. I just want to give you an exact answer to your question.

Q. I don't want what you want to give me; I want a direct answer in reply to my question and nothing else. I will put the question again. Start with the date Jan. 1, 1919. A. Yes.

Q. How long after that date, or even on that day, was it that you began to talk, or did talk, whether you began or not, with Judge Smith about ejecting Mr. Dittmore? A. Probably 30.

Q. Thirty what? A. Days, after Jan. 1.

Q. That is, Feb. 1 you began to discuss that with Judge Smith, or that year? Is that it? A. We did not begin in that year. We discussed it in that year.

Q. Wait a minute; I didn't ask you that, sir. You know, don't you— A. No, I don't; I am trying to tell you just the exact truth.

Q. Are you? A. Yes, I surely am.

Q. Isn't what you are trying to tell me something that will help your case? A. Not by any means—

The Master—I think I would like to put in a question there, if I may.

Mr. Thompson—Very well, Your Honor.

The Master—When was your first talk with Judge Smith on that subject after Jan. 1, 1919?

The Witness—Probably 30 days after. I was away nearly all January and returned Jan. 21.

The Master—I did not want the last. You say probably about—

The Witness—Thirty days after Jan. 1.

Q. That will take it to about Feb. 1, won't it? A. Yes.

Q. And from that time on, until March 17, you were talking with him off and on about that subject, weren't you? A. To some extent, yes.

Q. And the same is true about the dismissal of Mr. Rowlands, isn't it? A. Yes.

Q. Did you during that time, from Feb. 1 up to March 17, tell Mr. Dittmore that you were talking over with Judge Smith the possibility of expelling him? A. No.

Q. Did you tell Mr. Rowlands during that time that you were talking over the possibility of expelling him? A. There was something said in one of our meetings—

Q. I didn't ask you that— A. —regarding the expelling of a member.

Q. Did you tell Mr. Rowlands—not some other member, but Mr. Rowlands, I mean—

The Master—If there was something said at a meeting where Mr. Rowlands was present, I suppose that is equivalent to telling him, isn't it?

Mr. Thompson—That is not what I am after.

Q. Did you ever bring it home to Mr. Rowlands personally, so that he would know? A. No.

Q. So that the fact is that you were holding the directors' meetings with Mr. Dittmore at least from Feb. 1, right along, and had in contemplation his dismissal from that board, and did not say a word to him about it? Is that so? A. I would not like to say "contemplation." We had it under consideration.

Q. Consideration? A. Yes.

Q. With that modification the answer would be "Yes," wouldn't it? A. Yes.

Q. Now, there is one other subject I want to talk to you about a minute. Did you know that during that period from Feb. 1, 1919, up to March 17,

Judge Smith was constantly calling upon Mr. Dittmore personally and privately at his rooms and having friendly conversations with him? Did you know that? A. I knew that he had called some.

The Master—Did you know it or not?

Q. Did you know it or not? A. No, not constantly.

Q. Did you know that he was occasionally calling upon him and having these friendly conversations with him in his room? A. I knew he was calling on him; I didn't know whether the consultations were friendly or not.

Q. Did you ever get a report from Judge Smith of what was said at those private conversations in Mr. Dittmore's room? A. Yes.

Q. So that the real truth of the matter is, isn't it, Mr. Dickey, that you and some of your fellow directors—you, at least—had made up your minds along at least as early as Feb. 1 that it would be a good thing to get rid of Mr. Dittmore, and perhaps Mr. Rowlands also, that you were sending Judge Smith as an emissary, unknown to Mr. Dittmore, to pump him in his private room, that you were getting reports from Judge Smith about what Mr. Dittmore said, and that you were not telling Mr. Dittmore anything about it? That is a fact, isn't it?

The Master—One moment. I cannot permit that question, "to pump him in his private room." I don't think that is proper.

Mr. Thompson—I will take that out.

The Master—One moment. I think you will have to frame that question again.

Mr. Thompson—I will strike it out.

The Master—Try not to make it quite so long.

Q. You were sending Mr. Smith, or Judge Smith, as you call him, to Mr. Dittmore's room during the period Feb. 1 to March 17 to get information, weren't you? A. No, sir, not at all.

Q. You were receiving reports from Mr. Smith during the period Feb. 1 to March 17 about interviews that were taking place between him and Mr. Dittmore in Mr. Dittmore's private room, weren't you? A. No.

Q. Didn't you just say that Judge Smith was reporting to you conversations he had had— A. I said—

Q. Wait a minute—with Mr. Dittmore in his private room? A. I was not aware that I said so.

Q. If you did say that was it true? Was it true? A. Not in the way you are presenting it.

Q. Not in the way I mean it? A. No.

Q. In some other way? A. I would like to state what we did.

Q. You will have an ample opportunity to expatiate and expound to your heart's content a little later when your counsel gets hold of you. Did you know, during the period from February, 1916, down to March, 1917,

there were various particular subjects under discussion between Mr. Dittmore and Mr. Eustace concerning possible improvements that might be made in the Publishing Society? I have not asked what they were. A. I think you said, 1917. Did you mean—

Q. 1916, down to 1919—down to March, 1919. A. Pardon me. I noticed that omission and I did not catch all of your question. Please repeat it.

Q. Now we have got it. A. Please repeat the question.

Q. Do you know that during the period from February, 1916, down to March, 1919, Mr. Dittmore was in conference from time to time with Mr. Eustace with reference to various possible improvements in the condition of the Publishing Society? I have not asked you what— A. No, sir.

Q. You didn't know it? Did you ever hear of any question raised between the two boards as to Mr. Eustace's correspondence with the field about Roman Catholics? A. Yes, in a certain connection.

Q. Did you know that Mr. Dittmore and Mr. Neal were appointed a committee to take that up with him? A. Yes.

Q. Did you ever— A. Took—

Q. You have answered it. A. Not that particularly, Mr. Thompson; but to take everything up.

Q. To take everything up? A. Yes.

Q. To take all the matters that might come up between the boards up with Mr. Eustace? A. That is right.

Q. How long was Mr. Dittmore on that committee? A. A long time. I don't know exactly.

Q. When did he stop being on it? When you expelled him on March 17? A. No; I think he stopped quite a while before that.

Q. When was it? A. I don't know.

Q. Did he stop because he was forbidden by a vote of the board to do any more? A. No.

Q. Did he stop voluntarily, of his own accord? A. I couldn't tell you.

Q. You don't know how it happened? A. No; he never made a report.

Q. Very well, you have answered it. Did you know one of the subjects that was taken up between this committee and Mr. Eustace was the limitation of floor space for the sale of Mrs. Eddy's works? A. I don't know what he did, but I believe Mr. Dittmore made a statement of that kind to the—he made a complaint to the directors. I don't know what he did with Mr. Eustace.

Q. Did you know another subject that was taken up by that committee with Mr. Eustace was some conduct of Mr. Ogden's? A. I heard so.

Q. Did you know another question that was taken up between that committee and the trustees was the right of the directors to fix the limits of the salaries of the Publishing Society employees? A. We did not have a report from them, and I do not know what they took up.

Q. And did you know that another question—I say know—I mean, did you know either directly by letters or hearing— A. That was not reported on specifically.

Q. Wait a minute. I mean to include by "know" what was reported orally or what Mr. Dittmore may have told you. Now, with that in mind, answer the further question I will put: Did you know that committee took up with the trustees at some time during February the right of the directors to approve appointments to the Bible Lesson Committee? A. No, not specifically.

Q. Did you know that Mr. Dittmore from time to time was investigating Mr. Watts' treatment of the employees of the Publishing Society? A. I heard him say he was.

Q. Did you ever hear him present any letters to the directors that he had obtained from various gentlemen concerning that matter, or from women? A. Some of the ex-employees, you mean?

Q. Yes, and others. A. I think he did, but I don't know that the letter was presented to the board.

Q. I am not asking you that, Mr. Dickey. A. Am I asked if the letters were presented to the board?

Q. I did not ask who the letters were from.

Mr. Krauthoff—If Your Honor please, he did ask him if he did not present letters from former employees complaining of Mr. Watts' treatment of them.

Mr. Thompson—I think I put in "ex-employees."

The Master—That would be my impression, but there are so many words and they come out so quickly in Mr. Thompson's questions that I can't be sure.

Mr. Thompson—I will make them slower.

The Master—It does not seem to me to be important enough to go back and read what was said.

Mr. Thompson—I do not think so. This is a matter we went over with Mr. Eustace—that is all.

Q. Did you know that another matter that was taken up from time to time was the matter of the Sentinel and the news articles in it—some objection had to them? A. I don't know that he took that up with the trustees.

Q. Did you know that he took up with them the question of The Monitor war relief fund? A. I do not recall that.

The Master—Why are these specific questions important in this connection?

Mr. Thompson—Only this, sir—

The Master—It has appeared that he knew a number of questions were taken up. Why isn't that as good as more?

Mr. Thompson—It might appear later if I should inquire of him if any difference of opinion developed between him and Mr. Dittmore upon

any of these particular applications of the general theory of supremacy—we might get some light on what the real trouble was here. If Your Honor thinks, however, it is too much, I will stop it. I do not want to press it a single minute beyond what Your Honor thinks is proper or helpful. I had it in mind, however, and it seemed—

The Master—If you have any question where differences of opinion came up, can't you ask him directly about them without going through the whole list?

Mr. Thompson—Unless the question came up I don't know that there would be any difference of opinion.

Q. Did you know that there was at one time a question Mr. Dittmore was raising about the extravagance of the trustees? A. Yes, I think he mentioned that to the board.

Q. You have answered it. Did you find yourself differing with him in opinion on that subject? A. No.

Q. Do you remember a question that he raised about the trustees selling advertising space in The Monitor and not correctly representing the extent of the circulation? Do you remember that subject came up at one time? A. Yes, it did come up—I do not recall the circumstances.

Q. You have answered it. Did you find yourself differing in opinion with Mr. Dittmore on that subject? A. I did.

Q. You did? A. Yes.

Q. You thought they were not misrepresenting the circulation? A. I did not know whether they were or not, but I was not inclined to accept Mr. Dittmore's version of it.

Q. His figures? A. Yes.

Q. Did he show you any figures he had obtained? A. He read some figures.

Q. You thought they might not be accurate? A. I didn't know what they were.

Q. Of course Mr. Dittmore took a very decided position on the right of the directors to have the final say as to what went out as Christian Science literature, didn't he? A. Yes, he did.

Q. And you agreed with him on that, didn't you? A. Yes.

Q. That was one of the fundamental issues, wasn't it? A. It was.

Q. And on this question of the power of the trustees to formulate rules for the recognition of practitioners' cards and church cards—you did not differ with him on that, did you? A. He did not differ with me, either.

Q. Well, that is right. And you did not differ with him, did you, on the point that if the trustees had prevailed on all these matters the unity of the Church would be greatly impaired? A. That was my opinion.

Q. And his too, wasn't it? A. I think it was.

Q. Now, did Mr. Dittmore ever raise in the directors' meetings the question of whether the affairs of the

treasurer's office of this Church ought not to be investigated? Yes or no? I do not care what he said, did he raise that question? A. That was not just the way it came up. An investigation—

Q. Did he raise the question that there ought to be a better system of auditing and accounting in the treasurer's office? A. I think not, in just that way.

Mr. Krauthoff — If Your Honor please—

Q. Did he raise any question about the treasurer's office? A. Yes; he said something about it.

Mr. Thompson—That is all.

Cross-Examination on Behalf of the Trustees.

Q. (By Mr. Whipple.) Mr. Dickey, were you acquainted with Mr. Eustace before he became a member of the Board of Trustees? A. Yes, sir.

Q. How long had you known him? A. Since—well, either 1900 or 1901.

Q. Where had you met him? A. I first met him in Boston.

Q. In 1900 or 1901? A. Yes, sir.

Q. How frequently did you see him after that until the date when he became a trustee? A. Not quite as often as once a year, but I saw him perhaps, in 10 years, six or eight times.

Q. The acquaintance was not enough so that you became what would be called friends, I take it? A. No, sir.

Q. But it was enough so that you had esteem and respect for him? A. Yes, sir.

Q. And he became a member of the Board of Trustees in 1912, which was a couple of years after you had gone onto the Board of Directors? A. Yes.

Q. When you heard of his election as a trustee you cordially approved it, did you not? A. I approved it.

Q. You felt a feeling of satisfaction that the appointment was a good one? A. Yes.

Q. Now, you had known Mr. Ogden before his appointment for a good many years? A. Before his appointment as what?

Q. As trustee. A. Yes. I knew him as the business manager of the publishing house.

Q. And in that capacity you had grown to have confidence in him and respect for him, had you not? A. I had.

Q. So that you felt a cordial approval when he was promoted and became a member of the Board of Trustees? A. I approved it.

Q. Did you have some mental reservation about it such as you indicated by your hesitation? A. No, I was just—I had no cause for making it quite so cordial as you have put it. It was an approval, however.

Q. Therefore there was what you might describe as possibly a slight mental reservation? A. His appointment was satisfactory to me.

Q. Had you known Mr. Rowlands before his appointment? A. Yes.

Q. And you knew something of his standing as a business man? A. Not personally, but I had heard something about his standing.

Q. Had you investigated? A. No, sir.

Q. Had you met him personally? A. Just very briefly.

Q. But you knew that he stood—or held a very high position in the business world? A. I didn't know anything about his position. I knew that he was in the lumber business and was looked upon as a successful man.

Q. As a successful business man? A. Yes, sir.

Q. One whom you thought would add strength to the board, as a business board? A. Yes, I thought that.

Q. Now, after the appointment of these gentlemen, say after the appointment of Mr. Eustace, the Board of Directors had offices which were not far from those of the Board of Trustees, did they not? A. No, that is not quite the case, Mr. Whipple.

Q. How far were they apart? A. Oh, 600 or 800 feet.

Q. Well, that isn't very far apart. A. Well, they are not in adjoining rooms or not in the same building. There are two streets and a park intervene between the offices.

Q. You are over on Huntington Avenue and the Christian Science publishing building is right adjoining the Mother Church? A. Yes, that is correct.

Q. But of course after their appointment the Board of Trustees had a good deal of occasion to communicate with them as to matters having to do with the Publishing Society on a variety of matters? A. You mean communicate with the Board of Directors?

Q. With the Board of Trustees. A. I thought you said the Board of Trustees had occasion to communicate with them frequently, and I wanted to know if you meant the trustees communicated with the directors frequently.

Q. Well, I really meant the directors with the trustees. A. Yes.

Q. But I referred to intercommunication between the boards. A. Yes; there were frequent conferences.

Q. Now, you understood or claimed to be a member of the board representing the beneficiary of this trust of which Mr. Eustace and his associates were trustees, did you not? That is, The Mother Church was the beneficiary, and you as a member of the Board of Directors claimed to represent that beneficiary? A. Yes; but of course, The Mother Church was not the exclusive beneficiary.

Q. What other beneficiary was there of that trust, in your view? A. All Christian Scientists, people who might become interested in Christian Science, or readers of the publications of The Christian Science Publishing Society, became beneficiaries.

Q. So that in representing the Church you did not represent the sole

beneficiary of that trust, as you viewed the matter? A. That is the way I looked upon it, yes, sir.

Q. But in a financial sense, that is, the sense of being a financial beneficiary, The Mother Church, or the treasurer of The Mother Church, was the beneficiary? A. Yes, sir.

Q. And of course as the Board of Directors of the Church, you felt a distinct interest in the success, in the financial success, of the administration of the trust? A. Well, our interest in the financial success was not as great as it was in the success of carrying out the purpose and object of the trust.

Q. You regarded that, namely, the work which they did in the spread of Christian Science, the spread of its doctrines, the more important part of the trust? A. That is true.

Q. And you were, as a board, more interested in that even than you were in the results of their financial administration? A. Yes, sir.

Q. But of course you were interested in that? A. Yes.

Q. Now, as to both matters, I suppose your interest was represented in inquiries that you made of the Board of Trustees? A. Yes, to some extent.

Q. Did you during the period from, say, 1912, when Mr. Eustace went on to the board, make inquiries of the Board of Trustees as to the administration of their trust in various matters and particulars? A. Well, it was not always directed as an inquiry, but as a matter of interest we did confer with them frequently and ask questions.

Q. I am now referring to the inquiries. While your communications did not consist entirely of inquiries, you did make inquiries? A. Yes, we did.

Q. And made them from time to time in order to ascertain what was being done in the administration of a trust in which you were so greatly interested? A. Yes.

Q. Now, was there ever an inquiry addressed to the board up to, say, the first of January, or up to the time of the discharge of Mr. Rowlands, or the attempted removal, that was not answered by the trustees fully and fairly? A. I think so, yes.

Q. I beg pardon? A. I think there was.

Q. When? When was it and what was it? A. With regard to the acceptance of the cards of Christian Science practitioners throughout the country.

Q. Was that in writing—this inquiry? A. No; I think that was mainly done in consultations and interviews with the trustees.

Q. I am talking about inquiries now. Who made the inquiry to which you refer, and of whom was the inquiry made? A. Well, by inquiry do you mean written inquiry, or verbal?

Q. No. You said there was no written inquiry that you made of the

Board of Trustees that was not fully answered, as I understood you. That is so, is it? A. No, I didn't quite understand that, Mr. Whipple.

Q. Well, now, I will ask you. Was a written inquiry as to the administration of the trust addressed by the directors to the Board of Trustees, after 1912, and up to the time of this trouble—is there one that you carry in mind that was not satisfactorily answered? A. Yes, sir.

Q. Produce it, please, or a copy of it. A. Well, there is a resolution that we passed with regard to the salaries of the appointees—

Q. If you will pardon me, I am not asking about resolutions. I am asking about written inquiries addressed to the trustees. A. That was a written—

Q. Will you please produce, or identify so we can produce, any such written inquiry? A. I think our records will show that we made some inquiries.

Q. Well, pardon me, I am not concerned in what you think. I am concerned merely in your production of the paper which I have asked for. A. I will be glad to do that if I may consult our records.

Q. Certainly; you may ask any of the assistants that you have here to assist you in the production. Haven't you in mind the date of it? A. No, I have not.

Q. Can't you tell what year it was in? A. Yes, in 1919.

Q. What part of 1919? A. I think in February.

Q. In February? A. Yes. I believe that has been introduced in evidence, Mr. Whipple.

Q. That was after you had been advised by Governor Bates to make inquiries—make frequent inquiries? A. I think there were some before that, Mr. Whipple.

Q. Well, no; I am now talking about this particular one which you have identified as an inquiry about salaries. That was after Governor Bates instructed you or advised you that it would be, in substance, a good idea to ask a good many questions? A. Well, I am not quite clear as to that, whether it was after or before.

Q. Well, we have both of them recorded. I understand? A. Yes.

Q. Both your inquiries, a copy of which you are going to furnish us with, and we have recorded in your minutes when the Governor gave you this inquiry advice? A. Yes; I recall that.

Q. You recall that, do you? A. Yes.

Q. Well, now, are there any other written inquiries that you ever addressed to the Board of Trustees to which you did not receive an answer? A. I don't remember any now, unless they are in evidence in this case.

Q. You don't have in mind any? A. I don't recall any, no—no written inquiry.

Q. Have you requested anybody to

make search for that paper which you have attempted to identify? A. No; I have not had an opportunity.

Mr. Whipple—I don't see any activity among your assistants or the attorneys in looking for it. Perhaps if you will stimulate them in some way we might get it.

Mr. Krauthoff—If Your Honor please with respect to that, the state of the records is such that we will make the examination at noon.

Mr. Whipple—Why not now? You seem to have several people there who might be looking for it. We don't like to postpone so many of these things and go back, if we can help it, Mr. Krauthoff.

Mr. Krauthoff—I appreciate that.

Mr. Whipple—We like to have them in the record at the same time, and we like, to use a home phrase, to rake behind the cart as we go along.

Mr. Krauthoff—If we find any letter that we have addressed to the trustees that was not answered, between now and 2 o'clock, we will give it to you, Mr. Whipple.

Mr. Whipple—Well, all right. Will you search for it in the meantime?

Mr. Krauthoff—Certainly.

Mr. Whipple—Why not go at it now, because I would like it before one, if I could?

Mr. Krauthoff—We will give it to you.

Mr. Whipple—I don't want to place too great a burden on you, Mr. Krauthoff, but with all your corps of assistants—

Mr. Krauthoff—Thank you.

Mr. Whipple—But if you could, without danger of sunstroke, or anything like that, I would be glad to have you.

Mr. Krauthoff—Your solicitude is appreciated.

Q. Now, I will ask you if any oral inquiries were addressed by you to any of the Board of Trustees during this period of time which were not answered? I mean, concerning the administration of that trust. A. I don't recall any, Mr. Whipple.

Q. Then, before we leave that subject, may we see if we are in a common understanding? From the time Mr. Eustace became a member of the board, up to the time of the attempted removal or proceeding for the removal of Mr. Rowlands, the board had never addressed any inquiry to the Board of Trustees with regard to the administration of their trust which was not replied to, except possibly a communication, which you have referred to, regarding salaries? A. I think there was quite a long communication or colloquy when we asked them what they paid their counsel. I don't recall that we got a reply to that.

Q. Yes, you did, if you will pardon me. A. Oh, well, then, I will accept that, but I didn't think it was satisfactory. There might have been a reply.

Q. They told you what they had

paid their counsel, didn't they? A. My recollection is not that way, Mr. Whipple.

Mr. Whipple—Well, now, I will ask you to produce that letter in which there was a reply from the trustees stating exactly what they had paid to their counsel. I trust that won't unduly burden you, Mr. Krauthoff—and get it before one, if you can.

Q. Well, now, this was contained in one letter, this question, or these two things, namely, the salaries of the Board of Trustees—oh, not the salaries of the trustees; the salaries of some of their employees. Was that what you inquired about? A. Yes.

Q. But aside from what is contained in that letter, it is true, is it not, that between the dates mentioned there was never an inquiry put by the directors or any of them to the trustees that was not answered? A. I don't recall any specific instance now, Mr. Whipple, that was not answered.

Q. And you can't remember whether that letter was answered in full or in part? A. I could not without consulting the records. The correspondence didn't pass through my hands, of course, you will understand.

Q. Well, I am asking you these questions hoping you will so verify the facts as to give us accurate statements? A. Yes, sir.

Q. And you will endeavor to do so, will you not? A. Yes, indeed.

Q. Now, you put questions with regard to the financial administration of the trust, did you not? A. I think we did.

Q. And you received answers, did you not? A. I believe so.

Q. I am referring to the same period of time, and all my questions refer to that. A. Whatever the records show, Mr. Whipple, I will agree to.

Q. You naturally would. A. Yes.

Q. But I am now probing your memory. A. I see.

Q. And I want you to give us the benefit of your memory. Now, during this period of time—during the same period of time, the board made suggestions—the Board of Directors made suggestions to the trustees as to what they would like to have done, or what they would suggest being done from time to time, did they not? I mean, of practical administrative matters? A. Yes, they did.

Q. During this entire period? A. Yes, sir.

Q. Now, were those in writing? A. Some of them.

Q. Well, take first those in writing. Do you remember any such suggestions in writing as to the practical things to be done; actual things to be done that they did not comply with? A. I don't recall any now that they did not comply with.

Q. Exactly. Now, were there oral requests, or informal requests, or suggestions addressed to the trustees with regard to the administration of



their trust during this period? A. Yes, sir.

Q. Several of them from time to time, were there not? A. Yes.

Q. Made in a spirit of friendly and harmonious cooperation? A. Yes.

Q. Were there any of those things, practical matters, actual matters, wherein or in respect to which these suggestions of the directors were not complied with? A. I think there were.

Q. Name one. A. The—

Q. Now, I want you first—I shall want you to tell who made the request; of whom the request was made, or to whom it was addressed, and the conversation about it. A. The trustees came to a meeting of the directors and asked them about a request that had come for changing the name of the First Church of Christ, Scientist, in Berlin, Germany. The German translation did not seem to be satisfactory to the Germans, and they wanted it changed. We recommended to the trustees that they make that change. I do not understand that they took our recommendation.

Q. Now, when was that? A. That might have been in 1917, or early in 1918, as nearly as I can place it.

Q. Of course it might have been most any time? A. No, it could not have been.

Q. But since you are testifying about it, I would like to have you identify it a little closer. Is there any record of it? A. I believe there is. There ought to be.

Q. Will you find out where in the record it is? Can you do it? A. I don't think I can. I am depending—

Q. Can you inspire or request any of your corps of assistants who are here to do it? A. That is one of the things they might look up, if they can find it. If they can't find it, I should take that as evidence that it was entirely an oral conversation that was not entered in the records.

Q. Of course you realize that that I didn't ask? A. No, that is true.

Q. The thing that I asked was whether it was not of such inconsequence, such an inconsequential matter, that it was not recorded? A. It must have been so considered then, Mr. Whipple, because it was not in the records.

Q. Yes, exactly. Now will you tell us another instance of that, an instance similar; an instance where a request was made to do a practical and real thing which was not complied with? A. I think that request that we had up at that time about putting the English words "Christian Science" and the translation in parentheses afterward, and thereafter in the pamphlet using the translated word. I think that was consequential.

Q. When did you discover that—these omissions, if there are any, to comply with the strict letter of that rule? When were you first advised of that? A. I think about 10 days or so, two weeks, possibly, ago.

Q. That is right. You had never heard of it before that? A. No.

Q. You had never heard of it until with the meticulous scrutiny— A. Well, pardon me; I had noticed it myself before that, Mr. Whipple, but made no complaint about it.

Q. I see. You made no complaint about it and had no real knowledge about it? A. Yes, sir; I had some knowledge about it.

Q. Did you know it had been done? A. I did, yes.

Q. But you made no complaint about it? A. No.

Q. But you approved of your counsel digging out that or investigating and bringing forward that matter as a real, purposeful refusal of the trustees to accept suggestions from the Board of Directors? A. No, I called attention of counsel—

Q. That is the only question: You did approve of your counsel doing it? A. Well, but I was going to tell you he didn't do it; but I did it.

Q. You are the one who was responsible? A. I am the man.

Q. Did you think it was pretty trivial? A. No, I didn't. I thought it was an indication of an unwillingness on the part of the trustees to carry out the request of the board; just an indifference.

Q. You made no complaint about it and didn't call it to their attention? A. No.

Q. But you thought while it was not of sufficient importance to call it to the attention of the trustees with a view to correcting it on the chance that it might be an inadvertence entirely—you thought it was of sufficient importance to call it to the attention of His Honor— A. I did.

Q. — in a solemn hearing? A. I did.

Q. And your counsel, if he did not approve, acquiesced in presenting those things which some might think were trivialities? A. I presume that is the fact.

Q. Yes. You couldn't say whether he approved or merely acquiesced. But to pursue the subject. Any other requests made by the Board of Directors of the trustees during this period, or suggestions made by the Board of Directors to the trustees during this period, or suggestions as to the administration of the trust, this great trust involving many millions of dollars, that they didn't comply with? A. Our committee—

Q. Oral ones; oral suggestions. A. A great many requests were made through the committee consisting of Mr. Dittmore and Mr. Neal.

Q. Well, are these things that you have any knowledge about? Because if you have not, we want to save something for Mr. Neal and Mr. Dittmore to testify. A. Yes.

Q. Have you personal knowledge of that? A. Not at this moment; I do not recall that.

Q. Have you any information about

any of them? A. I believe I would be able to get the information before—

Q. They are so trivial in nature that, having the question put to you during the progress of this case and after you have prepared yourself for testimony, that you cannot remember one of them? That is so? A. I didn't prepare myself on that line, Mr. Whipple.

Q. That is, you didn't prepare yourself on the line of stating to the Court things that these trustees had done of which you did not approve—I mean actualities, real things, of the suggestions that you have made that they had not followed? You mean to say you did not prepare yourself on that? A. I did not individually prepare myself for that.

Q. And still there must have been a glimmering that some such thing as that was important if you brought out, what apparently everybody had forgotten, that in their foreign publications these gentlemen had violated or had not complied with your instruction, in that in one case at least they had put the English words before the German words or Dutch words rather than after? A. Left the foreign word out, Mr. Whipple.

Q. Well, in one case complained of by your client it was that they put the English word in front of the Dutch word when your instructions or suggestions were that it should have been behind it? A. I don't know what my client complained of.

Q. Well, he isn't your client— A. Well, you said—

Q. He passes as your attorney. Did I call him your client? A. Yes.

Q. I beg your pardon. I thought he was your attorney and it was my inadvertence. A. Yes, he is.

Q. Don't follow my inadvertences, Mr. Dickey. A. No, I shall not.

Q. That is right; I have no right to mislead you. I am trying to lead you in the right path. Now are there any other things of equal importance, requests that you can think of, oral requests that you made yourself or have any information about— A. Yes.

Q. —that you can name? A. Yes.

Q. You have evidently thought of something? A. In regard to the method of advertising practitioners and churches in The Christian Science Journal.

Q. When did you make that request? A. We made that a number of times, dating—

Q. When first? A. Dating back to perhaps 1914 or 1915.

Q. Any of them in writing? A. Not in writing.

Q. Did you ever make one of those requests personally? A. I did.

Q. To whom? A. To Mr. Eustace.

Q. When? A. I remember talking to Mr. Eustace in the lobby of the church.

Q. Oh; when you made the request or suggestion? A. When?

Q. Yes; not when you talked with

him about it. A. Well, I had to talk to him to make it.

Q. That is right, but you might talk with him without making it. A. Yes.

Q. That is right. Now I want you to give us the talk when you made it. A. We are agreed on that, Mr. Whipple.

Q. Well, I was afraid we were not. A. Surely.

Q. To proceed. Please tell us the talk and the circumstances, because you see if we should not agree with you in memory we are entitled to know the time and place and what you claim was said. A. Well, it may be difficult for me to state the exact date. It was some time during 1917 or early in 1918, I think.

Q. Now won't you tell us what you said— A. Yes.

Q. —and who was present? A. He and I alone talked in the lobby of the church.

Q. Oh, it was an informal thing, then? A. Yes.

Q. You were not representing the board? A. Yes, I think that is what you asked me.

Q. You are quite right; I did ask you for it, but I was merely commenting on the fact that it turned out to have been informal. A. Yes.

Q. In the lobby of the church? A. Yes.

Q. Now, won't you tell us what you said to Mr. Eustace about that? A. Yes. I called his attention—

Q. Just tell us what you said.

The Master—Just say what you said.

A. I said, "Don't you think that you are carrying these inquiries to practitioners a little too far and making it difficult for them to get into the Journal?" Mr. Eustace said, "Why, no, I don't think we are." "Well," I said, "the directors are receiving letters from practitioners and people whose cards ought to be in the Journal, apparently, stating that they cannot get their cards admitted." I recall one instance, the organist of The Mother Church—

Q. To him? Is this what you said to Mr.— A. No, this I didn't say to him.

Q. Oh, I won't trouble you to tell anything except what you told Mr. Eustace. A. I did not refer to that one at that time to Mr. Eustace.

Q. Please finish the conversation which you say you had. A. Well, Mr. Eustace said he didn't think we were warranted in making that objection. "Well," I said, "you can think that over. I think it is quite a serious matter." I believe that was the substance of the conversation.

Q. That is all? A. Yes.

Q. Now, in point of fact, the matter of the cards, the inquiries made, the scrutiny into the character of the people applying—these questions were on blanks, were they not? A. Yes.

Q. Blanks that had been in use for

a good many years had they not? A. No, that is not the case.

Q. Had they ever been approved by the Board of Directors? A. They had not.

Q. Are you quite sure of that? A. Yes, sir; that was one of the causes of our inquiry.

Q. But they had been in use for a good many years? A. No, they were comparatively new blanks that had been prepared.

Q. Well, now, when did you talk again with Mr. Eustace about that, or with any of the members of the Board of Trustees? A. That was at a meeting of the Board of Directors.

Q. Is it recorded? A. I am not sure that it is, Mr. Whipple.

Q. Not recorded? A. Probably not. We did not always record conversations.

Q. Evidently not. A. No.

Q. But one would think that complaints against the Board of Trustees of sufficient importance to be dignified in such a hearing as this might have found repose, or something else, in your records—found a place? A. Well, we did not advance these as complaints against them.

Q. Well, here is a suggestion. A. Yes.

Q. Who were present at the meeting of the Board of Directors at which this matter was again touched upon? A. The occasion—I don't know that I would say again, but the occasion that I am referring to was one on which Mr. Eustace and Mr. McKenzie and Mr. Hatten were present.

Q. I thought you said it was at a meeting of the Board of Directors? A. The Board of Directors, with the trustees present.

Q. Mr. Eustace, Mr. Hatten, and Mr. McKenzie— A. Yes, sir.

Q. —were then trustees? A. Yes, sir.

Q. That must have been before 1917? A. Yes, it was.

Q. Oh, you are working backward instead of forward? A. I am going back in this instance, yes, sir.

Q. Well, you see I asked you to give me the first time that you had ever spoken of it, and where it had been spoken of in a way that you had personal knowledge of, and you began with 1917. A. I gave you that individual instance at that time. There was another occasion.

Q. Yes; and now you are going back to a time prior to the time when Mr. Rowlands— A. Yes. Is that all right for me to go back?

Q. Yes, if you will only give us notice whether you are going back or forward, because we cannot always tell, you know, because you are so quick about it. A. You are not so slow, Mr. Whipple.

Q. No, I am trying to keep up with you, but you must give me fair notice, because I may be going ahead when you are going back. Now you have told us you were going back.

What is the date of it? A. I didn't tell you I was going back, but—

Q. Well, you indicated you were—I won't say crawl-fishing, but you were going back in point of date merely? A. That was an occasion—

Q. Tell us what the date was. A. That was perhaps early in 1917.

Q. Early? A. Yes.

Q. When Mr. Hatten and Mr. McKenzie were on the board? A. When they were on the board.

Q. On the board. Now who said something, and to whom did they address the remark? A. Mr. Stewart produced a letter from an acquaintance of his and read it, asked the trustees if they thought that their actions were justified in keeping this person out of the Journal, and at that time there was quite a lengthy discussion in which we all participated more or less. I know at that time that I made the statement that I thought the trustees were too drastic, and that they were merely keeping some people out of the Journal who should legitimately be there—

Q. Well, what did the spokesman of the trustees reply to that? A. Mr. Eustace defended the position of the trustees at that time.

Q. Well, perhaps so. Let us hear what he said, then we can tell. What did he say? A. I don't recall his words, Mr. Whipple; I don't think I can—

Q. Can you give us the substance of what he said? A. The substance of it was that their experience had made it necessary that these inquiries go into a great many details.

Q. Anything more than that? A. That is about along the line in which he talked.

Q. And in substance said he thought the trustees were performing their duty correctly, didn't he? A. Said they were doing what?

Q. He said he thought the trustees were performing their duties correctly, didn't he? A. Yes, he did.

Q. And Mr. Hatten and Mr. McKenzie, who were present—neither of them disagreed with him? A. I didn't hear them disagree.

Q. And you say that no change was made? A. I think that after several attempts on our part they did make a change.

Q. Oh, I see. I am asking you for instances where suggestions which you made were not complied with. A. Well, we made—

Q. And you are now giving it as an incident where your persuasive eloquence, or reasons, apparently resulted in your views being adopted? Am I right? Is that so? A. Yes, sir.

Q. Well, then, you see you have answered with an entire misconception as to what my question was, because that is one of the instances where your suggestions were followed, isn't it? A. Yes, sir, eventually.

Q. Eventually, yes. Well, you see I was asking about changes where they were not. A. True enough.

AFTERNOON SESSION

Q. Were you so—I won't ask if you were hard pushed to it, but that was an inadvertence, wasn't it? How can you tell us any other suggestions the directors made during all this time that really were not complied with, that really were not approved and acted upon by people who were working to coordinate their activities in a friendly and kindly way with those of the directors? A. In the case of Mr. and Mrs. Norledge in Paris, France, the facts were that they had their cards in the Journal as practitioners, and—

Q. Now if you will pardon me, just state the request; just state the conversation. A. The request came that their cards should be placed in the French periodical corresponding to the Journal.

Q. Was this in writing, a request of the directors? A. I don't recall that it was, Mr. Whipple.

Q. Well, now, what is the date of it? A. That was a comparatively recent date. I am going forward now.

Q. Thank you for giving us notice. How recent? Since the suit started? A. No, before the suit.

Q. Well, when was it? A. Some time this year, in the early part of this year.

Q. Was it made a matter of record? A. That I do not recall. I think that is of record, Mr. Whipple.

Q. And in looking up these matters to testify as to things which the trustees had not done which the directors think they ought to have done, haven't you looked that up to see whether it was a matter of record or not? A. I left that to counsel, Mr. Whipple.

Q. Apparently you didn't leave this Dutch pamphlet to your counsel. A. I did. I handed it to him and left it with him.

Q. Oh, I thought you looked it up? A. Yes. I found it. I wasn't looking for it.

Q. Has counsel notified you that he has found any record of any such thing? A. No, not as yet.

Q. Not as yet. Now who made any request on the trustees, and to which one of the trustees was the request addressed? A. That I can't tell you without looking the record up.

Q. Well, you can't help us about that. Are you sure one was made? A. I am sure a request of some kind was made.

Q. But what it was, or who made it, or when, you cannot help us? A. No, not exactly.

Q. Then really you do not rest much of your case upon that, do you?—a thing to which you are so vague as that? A. I was not resting very much of the case on that.

Q. No, I should judge not, if you cannot tell us anything about it.

The Master—We will pause till 2 o'clock.

[Recess till 2 p. m.]

Mr. Whipple—If Your Honor please, a copy of a letter from the directors to the trustees, under date of March 3, 1919, and an original of a letter of Mr. Watts of March 21 to the directors, were handed to me just before we suspended for luncheon. This correspondence refers to two letters of the directors to the trustees, dated respectively Feb. 27 and March 13. In order, therefore, to make the full correspondence intelligible, I would like to get those two letters. Mr. Watts would naturally have the originals, but he has not come in yet. Have you copies, Mr. Krauthoff?

Mr. Krauthoff—I beg your pardon?

Mr. Whipple—Have you the copies?

Mr. Krauthoff—I thought I gave you two letters—our letter and your answer.

Mr. Whipple—I thought perhaps you did not hear what I was stating.

Mr. Krauthoff—I was looking for something else.

Mr. Whipple—I am now calling for copies of letters from the directors to the trustees, dated respectively Feb. 27 and March 13.

Mr. Krauthoff—May I have them just a minute? (Papers handed to Mr. Krauthoff.) Our information is that they have been introduced in evidence. They are both asking for certain information of a financial nature. They have both been read in evidence.

Mr. Whipple—Can you tell me the numbers?

Mr. Krauthoff—No, I cannot.

Mr. Whipple—I will offer the letters, or copies which I asked for and which have been handed to me. The first is a copy of a letter, dated March 3, 1919, bearing the legend: "Read Mar 11 1919 The C. S. Board of Directors" and "Read Mar 17 1919 The C. S. Board of Directors"; and is as follows:

[Copy of Exhibit 700.]

"March 3, 1919.

"Board of Trustees,

"The Christian Science Publishing Society,

"Boston, Massachusetts.

"Dear Friends:

"I am instructed by The Christian Science Board of Directors to ask you to please let the board know the amounts that have been paid for attorneys' fees by the trustees of the Publishing Society during the past six months, including the names of such attorneys and the amounts paid to each.

"Also please advise if any legal services have been rendered to the trustees during this period which have not yet been paid for, and if so, the amount of such unpaid obligations.

"Sincerely yours,

"Corresponding Secretary for The Christian Science Board of Directors.  
"CEJ"

The Master—That we have had in, haven't we?

Mr. Whipple—I should think so, if Your Honor please.

The Master—Well, if it is in it can be referred to by the exhibit number without recopying?

Mr. Whipple—No, it should not be recopied. This copy is stamped with the legend: "Read March 11, The Christian Science Board of Directors," and "Read March 17, 1919, The Christian Science Board of Directors." Can anyone tell me what the number of that is? (No response.) Mr. Withington thinks that the letter itself has not gone in. I think that the vote is what went in, if Your Honor please—or, at least, it has been suggested to me that that is a fact, and it sounds reasonable.

The reply is dated March 21, 1919, and it bears the legend, "Read March 22, 1919, The Christian Science Board of Directors." It is from the office of the business manager and is addressed to The Christian Science Board of Directors, and is as follows:

[Copy of Exhibit 701]

"The Christian Science Publishing Society, Boston, U. S. A.

"March 21, 1919.

"The Christian Science Board of Directors,

"Falmouth and St. Paul Streets,

"Boston, Massachusetts.

"Dear Friends:

"The Board of Trustees has requested me to send you the inclosed figures requested in your letters to them of Feb. 27 and March 13. The trustees took them to the conference with your board on Monday last, as stated in my letter of March 14, but through press of other business did not leave them.

"The trustees have also requested me to advise you of the amounts which have been paid by the Publishing Society for attorneys' fees, but I have deferred giving this information inasmuch as no bill has been received from Messrs. Whipple, Sears and Ogden. The charges thus far paid are as follows:

"To Justice Charles E. Hughes of New York, \$2750.00.

"To Winston, Strawn and Shaw of Chicago, \$3500.00.

"With best wishes,

"Yours sincerely,

(Signed) "JOHN R. WATTS  
"Business Manager."

"JRW-F7  
incl."

Mr. Whipple—I think we had better have these marked.

[Letter, Board of Directors to Board of Trustees, March 3, 1919, is marked Exhibit 700.

Letter, John R. Watts, business manager, to Board of Directors, March 21, 1919, is marked Exhibit 701.]

Mr. Whipple—Now, if Your Honor please, the second letter refers to a letter of Feb. 27, 1919, in which the directors asked for certain informa-

tion of the trustees. The letter has not been put in, as I am informed—the original has not because I hold it in my hand. I will read it.

[Mr. Whipple reads original letter, dated Feb. 27, 1919, a copy of which has heretofore been marked Exhibit 665.]

Mr. Whipple—Now, this legend appears at the bottom in penciling:

"3-3-19. Divd. report on cables and reported that other information would be forthcoming."

I think possibly this had better be marked with the number of the original exhibit and the letter "a," because of this memorandum at the bottom.

Mr. Thompson—That is Exhibit 665, appearing on page 448 of the printed record.

[Letter from C. E. Jarvis to Board of Trustees, Feb. 27, 1919, duplicate of which has been marked Exhibit 665, is marked Exhibit 665a.]

Mr. Whipple—The other letter, the one of March 13, 1919, is from Mr. Jarvis to the Board of Trustees (reading). Now, is that an exhibit?

Mr. Thompson—Yes, that is an exhibit. It is on pages 448 and 449 of the printed record and is marked Exhibit 669.

Q. Now, in this connection, Mr. Dickey, I want to call your attention to a memorandum in the directors' meeting of Feb. 27, the date of the first letter, Exhibit 665a, which I just referred to:

"The directors had a conference with Judge Clifford P. Smith and ex-Governor John L. Bates and Mr. Leon M. Abbott in connection with the next step to be taken by the directors toward the removal of one or all of the trustees of the Publishing Society."

You remember that occasion, don't you? A. I did not hear all of your conversation over there. I did not know it was intended for me.

Q. I thought I directed the question to you. A. No, sir, I heard your question now, but you referred there to something that you had just been discussing about letters. I did not hear that.

Q. No, I think not. A. What I did not understand was what you meant by "in this connection."

Q. Well, it is in connection with the two letters which I have just read. A. I did not hear you read those letters.

Q. I am sorry for I thought I read them quite distinctly. A. I did not think you were reading them for me, and I did not hear what you said.

Q. Well, I was not reading them for you, but I was reading them as exhibits in the case, but I hoped you would hear them.

[Question read by stenographer as follows:

"Now, in this connection, Mr. Dickey, I want to call your attention to a memorandum in the directors' meeting of February 27, the date of the

first letter, Exhibit 665a, which I just referred to:

"The directors had a conference with Judge Clifford P. Smith and ex-Governor John L. Bates and Mr. Leon M. Abbott in connection with the next step to be taken by the directors toward the removal of one or all of the trustees of the Publishing Society."

"You remember that occasion, don't you?" A. Yes, sir.

Q. Then your memorandum says: "Governor Bates was of the opinion that the board ought not to do anything for the present in the way of dismissing the trustees lest this action might throw the directors into court unprepared." A. Yes.

Q. You remember that advice? A. Yes.

Q. Did he explain how the dismissal of one or all of the trustees would throw you into court unprepared?

Mr. Krauthoff—We object to that question, if Your Honor please.

The Master—Why is not counsel entitled to have the witness' memory examined about all of this?

Mr. Krauthoff—As to what his counsel told him?

The Master—I do not hear any objection that he is expected to violate any privilege.

Mr. Krauthoff—Well, we object to his telling what the counsel told him. His counsel's advice is not a subject of inquiry.

The Master—Are you going to insist in view of that objection?

Mr. Whipple—Oh, yes, if Your Honor please. It is put into the record, and, besides, Mr. Krauthoff may not be familiar with the rule in Massachusetts, laid down in 101 Mass., which states that when a person, a party to a suit, takes the witness stand, he waives his privilege and he may be inquired of just as fully with regard to conferences with his counsel as on any other subject. In some states they are not quite as enlightened as that and they still cling to the old doctrine that counsel may be the repository of any unwholesome secret that the client wants to put into his mind, and he has got to keep it.

Mr. Krauthoff—It having become a matter of Massachusetts law, if Your Honor please, I will yield to one of my associates on that.

Mr. Whipple—All right.

Mr. Bates—I do not understand the rule of law, Your Honor, to be as Mr. Whipple has stated it. Personally, however, I do not object to any conversation which I have had with the client being presented now in evidence.

Mr. Whipple—It would be a good idea for you to look it up, Governor, because I have found quite a number of lawyers that did not know it, and it is an important matter of procedure.

Mr. Bates—And I have also found that you are frequently incorrect in your statements.

Mr. Whipple—Well, you have never been able to point them out, and I have repeatedly pointed out your ignorance.

Mr. Bates—It is a hopeless task to point out all your inaccuracies.

Mr. Whipple—You ought to find one when I am finding so many to point out in regard to you.

The Master—While you gentlemen indulge in these remarks on one side and the other the progress of the case is certainly delayed.

Mr. Whipple—That is very true, but I should not do it except I am afraid if I did not do it the Governor would feel he was not being taken proper notice of.

The Master—My understanding agrees with Mr. Whipple's.

Mr. Bates—I have no objection, Your Honor.

The Master—If you have no objection I will permit the question.

Mr. Whipple (to the stenographer)—Perhaps you will be good enough to read the question. I am sorry to trouble you so many times, but it seems to be necessary.

[The question is read by the stenographer as follows: "Did he explain how the dismissal of one or all of the trustees would throw you into court unprepared?"]

A. He did not; he just made that statement in a general way.

Q. That the removal of one or all of the trustees might throw the directors into court? A. Yes, sir. We understood at that time that the trustees—

Q. Pardon me; that is what he said,—"might throw them into court, and throw them into court unprepared"? A. Yes. That is quite an explanation in itself, I should think.

Q. Well, I did not ask for an explanation; I was just looking at you, that is all, but if you were moved by the spirit to say something there is no harm done, I guess. A. No; I just love to have you look at me, Mr. Whipple.

Q. I suppose you think it is sort of a blessing? A. No; I like the faces you make.

Q. "He advised the board to prepare its case in such a way that if brought into court the board would be prepared to give its reasons for removing one or all of the trustees of the Publishing Society." You remember his advising that? A. Yes. I spoke about—

Q. That is, if you had not any case prepared, that you prepare one? A. No, no. Do you want me to answer that—

Q. No; I want you to answer the question. You have been instructed several times that that was a wise thing for a witness to do. A. Ask me about the first one.

Q. I will ask you one: Did he advise that you should prepare your case? A. Yes, in a general way.

Q. In a general way? A. He said we ought not to go into a thing of that

kind unprepared in case there was any litigation.

Q. Yes. Then it says that counsel encouraged the directors to continue to make requests of the trustees for the proper fulfillment of their duties. You remember his doing that, don't you? A. Yes, sir.

Q. Then that same day— A. What?

Q. Then that same day you wrote a letter to the trustees asking them to give you a statement of their monthly outlays and expenses of each month, for the six-month period ending Sept. 30, and then up to Jan. 31. A. Yes.

Q. That was in pursuance of the advice of the Governor that you prepare your case? A. His advice was that we keep right on.

Q. Well, pardon me— A. Yes. Q. —to prepare your case? A. Prepare your case—and I would like to add to that, he said keep right on doing just what you are, and ask—“You have a perfect right to ask questions and I would advise you to continue to do so.”

Q. To continue to ask questions? A. Yes.

Q. Well, what had the asking of questions to do with preparing your case, he finding you at that time unprepared? A. Well, I don't know; that is one of the legal mysteries that I have not gone into.

Q. That is one of the mysteries that the Governor propounded that you have not been able to solve? A. No, I didn't say that.

Q. Well, now, what had the asking of these questions about financial expenditures to do with preparing your case? A. I really don't know.

Q. Well, I see. I thought you spoke of that as one of the mysteries you had not solved? A. No, I didn't say that.

Q. You had never asked for any monthly statements of expenses and receipts from the trustees before that, had you? A. I think not, Mr. Whipple.

Q. Well, you know you hadn't, don't you? A. I don't remember that we did at all.

Q. That is as strongly as you can put it—you don't remember that you did? A. That is right.

Q. Don't you remember that you never had? A. Well, I wouldn't say that, because we might have done so.

Q. Yes, exactly. Then you moved a little later to ask how much the trustees had paid for legal expenses.

Mr. Whipple—That appears on March 3, if Your Honor please, if I may direct Your Honor's attention to it, and also that of the witness.

The Master—I remember it.

Q. Now, I will call your attention to this and see if it accords with your memory. In your minutes of March 3:

“The directors had an interview with Judge Clifford P. Smith, who read to the board two letters from

himself to the board, both dated March 1, one recommending that the Board of Trustees of the Publishing Society be composed of three editors, and recommending that an early selection be made of a business manager for the Publishing Society, the other conveying an opinion expressed by former Governor Bates in a conversation with Judge Smith that the board make frequent demands on the trustees for information.”

Did Judge Smith say that you had not been making sufficiently frequent demands? A. No, I don't think he said that.

Q. Well, did he make any suggestion as to why you should again record in your minutes the making of frequent demands on the trustees, when you hadn't been making frequent ones before? A. Why we should record in our minutes? No, he made no suggestion of putting anything in our minutes.

Q. Well, did he state any reason why he reminded you of the Governor's advice that you make frequent demands? A. I don't believe he gave any other reason than just the statement in the letter, that I recall.

Q. I beg pardon. A. I do not recall that he gave any other reason beyond just the statement in the letter.

Q. Well, this is not a letter— The Master—A letter from Judge Smith.

Mr. Whipple—Oh, I think I am right. Now, let us see those letters, perhaps they will give the reason. Perhaps you hadn't been brisk and diligent enough in making demands, so you needed your activities stimulated. Have you the letter?

The Witness—Is that a question that you are asking me?

Mr. Whipple—I beg pardon?

The Witness—Is that a question you are asking me?

Mr. Whipple—Well, it was a hint so that you could answer it if you wanted to.

The Witness—No; I thought that we were getting along fairly well without any stimulation.

Q. Then this spur of your counsel—two of them, in two written letters—that you make frequent demands, you didn't think the board needed? A. Not as a spur.

Q. As a reminder? A. As an act of wisdom.

Q. As an act of wisdom? A. Yes.

Q. Even though they were doing it without? A. Perhaps he might have thought we were not making enough demands.

Q. That is just what I suggested. A. Yes.

Q. That evidently your counsel didn't think you were making enough demands, that is, you were not preparing your case fast enough, as you understood? A. Well, our preparing our case did not consist in making demands.

Q. Well, what was the object of

making demands? A. So that we might have a good fair reason for dismissing one of the trustees in case they declined to comply with the reasonable demands that we made.

Q. I see; that was it. That is just it. That is, the demands were made with the hope that these trustees would refuse some reasonable demand? A. Not by any means—not by any means.

Q. With the expectation— A. There never was a moment when this case could not have been settled.

Q. Just a moment. With the expectation that they might refuse those demands, reasonable demands, and then they could be put out? A. No, sir.

Q. I thought that was what you said just a moment ago. A. With the expectation that if they did refuse those reasonable demands we would have their refusal on record.

Q. I see. And if they didn't, then the play, as far as that aspect of it was concerned, was up? A. Well, I don't know what you mean by the play. But we were seriously trying to avoid litigation, and contention of every kind and make a righteous adjustment of our differences.

Q. I see. And that is why you wrote letters to them frequently, making frequent demands, having in view that if they did not reply to them you would have an excuse to remove them? A. You notice we didn't do that.

Q. Pardon me. Isn't that so? A. We didn't do that, Mr. Whipple.

Q. Why, you made your demands? A. We didn't write frequently.

Q. Not frequently enough? A. No.

Mr. Whipple—Now, have you got those letters?

Mr. Krauthoff—They are letters from Judge Smith to the directors that you are asking for?

Mr. Whipple—I think so. I beg pardon. I thought there were two letters from Judge Smith. Oh, no, I do not care for those, I thought the Governor had written. I am sorry I troubled you. It was a quotation of a conversation from the Governor, I find from the record.

Q. Well, you made frequent demands in accordance with the Governor's suggestion made on the day when he found you were not prepared to go into court, or he thought you were not? A. Not as many as we did before.

Q. That is, after having made demands, then the Governor advised you to keep on making them, and then he advised you again to make frequent demands? A. The Governor?

Q. Yes; in conversation with Judge Smith. A. Aren't you a little mixed on that, Mr. Whipple?

Q. I guess not. Let me read and see:

“The other conveying an opinion expressed by ex-Governor Bates in a conversation with Judge Smith, that the board make frequent demands upon the trustees for information.”

Well, you are mixed up on it, aren't you? A. It is a conversation which Governor Bates had with Judge Smith.

Q. Yes, that is right—which Judge Smith reported to the board. You didn't think it affected the validity of the Governor's opinion that it came through Judge Smith, did you? A. I don't think it was impaired any by having it presented to us by Judge Smith.

Q. Not impaired the slightest, so you got it. Then after you had received this opinion that you should keep making demands, an opinion delivered the same day on which he told you you were not prepared to go into court, and then a few days later told you through Judge Smith to make frequent demands, you didn't make demands as frequently as you had before he advised you? A. No, we did not.

Q. You couldn't think of anything to demand, could you? A. Oh, there was a great deal we could have demanded.

Q. But you didn't follow your counsel's advice? A. We didn't make any more frequent demands after that than we did before.

Q. You said you made less frequent demands, didn't you? A. Yes.

Q. What? A. Yes.

Q. Now, was Judge Smith helping to prepare the case? A. We were not preparing a case at that time.

Q. Well, the Governor said you ought to? A. We didn't prepare a case.

Q. The Governor said you ought to prepare so you wouldn't be called into court unprepared, didn't he? A. He said something that you could construe as that.

Q. Well, he said what appears, probably, in your record? A. Yes.

Q. Now you say you were not preparing your case. There is reference in the record to a letter from Judge Smith just before you went south. It was Dec. 19. Will you produce that, please—Dec. 19 of 1918?

Mr. Whipple—In the records of Dec. 19, 1918, page 205:

"Letters were read from the following:

"Judge Clifford P. Smith, dated Boston, Dec. 19, presenting further recommendations with reference to the conference between the Board of Directors and the Board of Trustees set for 10 o'clock this day."

Have you that, Mr. Krauthoff?

Mr. Krauthoff—I am handing to Mr. Whipple a letter dated Dec. 19, 1918, addressed to The Christian Science Board of Directors, signed Clifford P. Smith, manager of Committees on Publication.

Mr. Whipple—I offer this letter, if Your Honor please. It is on the heading, Committee on Publication, of The First Church of Christ, Scientist, 19th December, 1918. It bears the legend: "Read, Dec. 19, the C. S. Board of Directors." It also bears another one

giving the hour of the day on which it was read.

The Witness—Received.

Q. Received? A. Yes, sir.

Q. Thank you. That doesn't say received, but that is what it means, is it? A. Yes.

[A letter from Judge Clifford P. Smith to the directors, dated Dec. 19, 1918, is offered in evidence and marked Exhibit 702, and is read by Mr. Whipple, as follows:]

[Exhibit 702.]

"Dec. 19, 1918.

"The Christian Science Board of Directors,

"105 Falmouth Street,  
"Boston, Massachusetts.

"Dear Friends:

"After having drafted and further considered the memorandum of particular directions to be given by the directors to the trustees at their meeting today, I would recommend that such directions be mentioned early in today's meeting, and read to the trustees at some suitable time during the meeting. One reason for this recommendation is that the trustees may be uncertain as to just what the directors expect to require of them now, and reading these directions would tend to assure them that the directors do not contemplate anything arbitrary or unreasonable. Another reason is that the position of the directors would be strengthened, in the view of the field or a court of equity, by giving these or such particular directions at the same time when the directors insist on their basic position."

The Witness—Yes, sir. Don't you think that was a wise advice?

Mr. Whipple—Yes—the fine Machiavellian hand; but in connection with all this innocence about never expecting to be haled to court it looks like a roaring farce.

[Mr. Whipple concluded the reading of the letter:]

"For the latter reason, and for the further reason that all of the particular directions present a stronger case than any one of them, I feel quite sure that your directions to be mentioned at today's meeting should not be limited to a single one, but should include whatever you really consider needful at this time.

"Cordially and sincerely yours,

"CLIFFORD P. SMITH,

"Manager of Committee on Publication.  
"CPS:HM"

Q. Now, do you think he was assisting in the preparation of your case with reference to "a court of equity"? A. He was assisting us, of course, but the trustees were the only ones who knew there was going to be a lawsuit. We didn't. We hoped all the time that there would not be.

Q. You hoped, but were getting ready? A. Yes.

Q. Yes, getting ready? A. Yes, sir. I submit that that also was a wise thing to do.

Mr. Bates—They hadn't engaged at-

torneys in Chicago and New York, though, at that time.

Mr. Whipple—Oh, no; they were engaging—no, not at that time—

Mr. Bates—They hadn't been preparing for months, in other words.

Mr. Whipple—They would have been better off if they had employed some competent counsel. Don't you think so, Governor Bates? They didn't come to you as soon as they should?

The Witness—We took members of The Mother Church, Mr. Whipple.

Mr. Whipple—I see; that was what you did. Is the Governor—

The Master—I want to ask you gentlemen if it doesn't seem to you that all that is really important in all this could be put in in a very much briefer time?

Mr. Whipple—I will try to, if Your Honor please.

Q. May I call your attention to Section 8 of Article XXV of the By-Laws, about the middle of that provision? No, I will read the whole of it:

"Only the Publishing Society of The Mother Church selects, approves, and publishes the books and literature it sends forth. If Mary Baker Eddy disapproves of certain books or literature, the Society will not publish them. The Committees on Publication are in no manner connected with these functions."

The Witness—Pardon me, Mr. Whipple, you asked me a question a while ago that I have not completed.

Q. Well, suppose you answer this, because your mind might get off of this one. A. Then you will bring me back.

Q. Well, I will try to, but I cannot always control you.

The Master—Answer the present question and then we will see what remains.

Mr. Krauthoff—The present question consists of a quotation from the Manual which is in evidence.

The Master—Very well; if we haven't got it all let us have it now.

Mr. Whipple—I haven't finished it. The trouble is the witness referred me back and then you interrupted.

Mr. Krauthoff—Now that we are really coordinated—

The Master—Now complete your question, please, Mr. Whipple.

Q. Do you remember that provision of the Manual? A. Yes, sir.

Q. Then in the letter that Judge Smith wrote, which I just read, and your conferences with him, it was not as the "Committee on Publication" but as counsel, I take it? A. We employ Judge Smith in a dual capacity.

Q. I see. A. He was the Committee on Publication of The Mother Church; and when we appointed him to that office we also arranged with him that he should give us such legal advice as we might need from time to time.

Q. And so this letter, although it was signed "Committee on Publication," was really your counsel? A. Yes, sir.

The Master—Now if the witness

thinks that a question is pending which he has not answered, perhaps we had better fix that matter.

Mr. Whipple—Yes, sir.

The Witness—You asked me if I could recall instances of refusal on the part of the Publishing Society to comply with requests made by the directors.

Q. When did I ask you that? A. At the beginning of this subject that we are on now, before—

Q. Well, that was before noon? A. Yes, it was.

Q. This forenoon? A. Yes, but I had not finished at 1 o'clock.

Q. Apparently you had finished as far as you could remember? A. Yes.

Q. And knowing that the reservoir of your thoughts might be filled up in the meantime, I purposely started on another subject. A. Won't you now let me go back and answer your question?

Q. No, I guess I wouldn't. A. I would like to.

Q. Because we are spending a good deal of time; but you know the examination is not run wholly for letting you do as you like to; partly to extract information. A. Yes.

Q. I call your attention to Exhibit 23, a copy of a letter dated Feb. 6 from Governor Bates and his associates, addressed to Mr. Strawn. It is sent with the legend, "Seen Feb. 12, 1919, by the Board of Trustees." Can you tell when that letter was called to your attention? (Paper handed to witness.) Mr. Krauthoff will remind you when that was called to the attention of the board, and I will ask you if it was not on Feb. 6? A. I do not recall this letter, Mr. Whipple.

Q. Well, I will agree that Mr. Krauthoff may hand you a letter which was sent to you, which will perhaps refresh your recollection.

Mr. Krauthoff—Feb. 6, inclosing a copy.

Mr. Whipple—Let him keep the other, Mr. Krauthoff.

Mr. Krauthoff—Yes.

Mr. Whipple—Let him keep the real exhibit. (To witness) You may use that which Mr. Krauthoff handed you merely to refresh your recollection.

Mr. Krauthoff—The letter that was sent to the board, Mr. Whipple, the copy, was the one addressed to Judge Hughes. The one you are showing Mr. Dickey is the one addressed to Mr. Strawn, but I understand they are the same letters.

Mr. Whipple—So do I.

Q. Now, if I shall not interrupt your thought, may I call your attention to the report that Judge Smith made on the evening of Feb. 1, the day the agreement was reached? A. Yes, sir.

Q. (Reading)

"Judge Smith met with the directors to report the progress of the joint conference between counsel representing" (the respective parties). "After a thorough discussion of the situation, Mr. Dittmore prepared a

written statement expressing his view, which was read to the board.

"The following motion was offered by Mr. Dickey, seconded by Mr. Neal, and carried:

"In ratification of the agreement proposed by counsel, I move that we accept the concession made by the trustees and that we await further developments."

You remember that vote? A. Yes.

Q. You framed it, did you not? A. I did.

Q. Did you understand that anything had been agreed upon by counsel who had labored for some time to compromise this situation? A. I did.

Q. Was a report made as to what had been agreed upon? A. Judge Smith brought us a verbal report.

Q. You didn't see any paper? A. Not on the occasion of his first visit.

Q. Now, without going into it, what did you understand the directors on their part agreed to do? A. The directors agreed to continue to meet with the trustees.

Q. Had they refused to meet before? A. No.

Q. Then it was not an agreement? A. And—I was not through, Mr. Whipple; I speak a little deliberately. They agreed to continue to meet with the trustees and see if those could not be worked out through demonstration—our differences.

Q. Well, the meetings were for the purpose of administration of the business of the boards, were they not? A. Which meetings?

Q. The meetings that the trustees and directors were to have? A. No, we did not administer the business of the board with the trustees.

Q. Oh, you understood that the meetings were merely for the purpose of discussing your controversies? A. Our meetings were for the purpose of endeavoring to come at a wholesome understanding and adjustment of our differences through conferences arranged by our counsel to take place each Monday.

Q. And then all that you understood the directors to agree to was to meet and have conferences? A. Yes, sir.

Q. And talk over the— A. The control of the practitioners' and churches' and nurses' cards for advertisement in the Journal.

Q. All of which had been done by the trustees at the request of the Board of Directors? A. Yes, sir.

Q. Theretofore? A. Yes, sir.

Q. And that is all you understood— A. Many years before, yes.

Q. That is all you understood by the agreement? A. Yes, sir.

Q. Was any discussion held at the time as to what you meant—"We await further development"? "We accept the concession and we await further development"? Now was there a discussion as to what was meant after this agreement had been entered into in good faith by counsel and the parties, as to what you meant by

awaiting further developments, accepting the concession? A. Why, as I understand, further developments were—

Q. Pardon me, you will notice I didn't ask you what you understood by further developments. Was there any discussion in the Board of Directors when you drafted that vote in that way and put it through as to what was meant by awaiting further developments after this settlement had been made by counsel? A. I don't remember that there was any discussion beyond the passing of the motion.

Q. Will you say that there was not? A. No, I wouldn't, because it is quite likely that we intended that motion to mean that we would—

Q. If you will pardon me, I didn't ask you your interpretation of it. A. All right.

Q. If you will observe my question—of course, if it meant mental relief to you to say something about it, I shouldn't object seriously. A. No, it doesn't relieve me mentally at all to talk.

Mr. Whipple—Well, that is it. Then there is not the slightest reason for saying anything beyond the answer to the question. Will you let me have that memorandum of March 6 that Mr. Thompson was using this morning, the one that Mr. Dickey used with the trustees? I mean the Dittmore memorandum. Exhibit 680 is what I want. (Paper produced.) (To the witness.) If you won't mind, we will look this over together.

The Witness—Come over, Mr. Whipple.

Mr. Whipple—Thank you.

The Witness—I just love to get closer to you.

Q. Now I call your attention to Exhibit 680. You were questioned about it some this morning, you remember? A. Some questions, yes.

Q. Some questions, and questioned some. Now you went over to see the Board of Trustees on a purposeful errand? A. Yes.

Q. And that purpose was to see if you could not get some basis of compromising the controversy? A. I didn't expect to go there to compromise; I went there to see—

Q. Pardon me, pardon me. A. I thought you asked me what I went for.

Mr. Whipple—Oh, no. Won't you read, Mr. Stenographer, the question, and (to the witness) if you will focus your mentality on that you will see that I didn't ask you that. You see your mind jumps to conclusions.

The Witness—Mine is all ready at every conclusion.

[The stenographer read as follows:

"Q. Now you went over to see the Board of Trustees on a purposeful errand? A. Yes.

"Q. And that purpose was to see if you could not get some basis of compromising the controversy?"

The Witness—I did not go for a basis of compromise.

Q. I see; I had thought you did. I had thought you had testified that

you went over to see if you could not discover some basis for compromise. If you have so testified you want to withdraw it? A. With regard to the word "compromise," as I understand the meaning of it, I was not there for the purpose of making a compromise.

Q. Well, were you there for the purpose of seeing whether you could get some basis for an agreement? A. Yes.

Q. But not an agreement of compromise? A. No.

Q. An agreement whereby you should have your way? Was that it, or whose way was it? A. We wanted God's way.

Q. No; pardon me; was it your way? A. No—

Q. Or God speaking through you and nobody else? A. It was God's plan and a righteous adjustment that I was trying to consummate.

Q. Isn't an adjustment a compromise? A. I wouldn't call it so.

Q. That is, you went without the slightest idea of compromising any of the claims of the directors? A. That is it, yes.

Q. Not the slightest. Then it must have been to persuade the trustees to accede to your claims? A. Largely so, yes, sir.

Q. Yes, that was it. Now, did you tell them when you came there that you came for the purpose of persuading them to accept the claims of the directors? A. Not in those words.

Q. Did you say anything about seeing if you could not settle the controversy? A. Yes.

Q. By fair compromise? A. No.

Q. Nothing of the sort? A. Not compromise.

Q. And it didn't enter your head that the directors should concede one jot or tittle of their claims when you went there, did it? A. That was not my intention.

Q. And you say that you went to that interview with the thought in your mind that you would not concede one jot or tittle of the directors' claim? Is that correct? A. Hardly, Mr. Whipple.

Q. Well, was there anything in the directors' claims that you were ready to concede when you went there? A. I do not recall that there was.

Q. Well, then— A. There may have been—

Q. Then so far as you remember, you went there with the purpose not to concede one thing with regard to the directors' claim? A. Not to concede anything that was right.

Q. I am not asking about—you confine the directors' claims with right, and although you may have the opinion they are right, it is not shared. Now, then, will you answer my question? You know what the directors' claims were, don't you? A. Yes.

Q. Well, now, when you went to that interview did you go with the determination that you would not con-

cede or that the directors would not concede anything from those claims?

A. The claims, as I said—

Q. No, pardon. A. Yes.

Q. That can be answered categorically, and if you want to answer it fairly I will ask you to do it. A. I went there with the idea that we would not concede—

Mr. Whipple—I pray Your Honor's judgment.

The Master—I think you ought to answer directly first and see then if any explanation is necessary.

A. I did not intend to concede any of the directors' claims based on the Manual.

Q. Or to negotiate with reference to any such concession? A. No.

Mr. Whipple—You have talked of something—I will ask, if Your Honor please, to have that question answered categorically which I put. His Honor so ruled.

The Witness—Yes, I will be glad to. What is the question, please?

Mr. Whipple—(To the stenographer.) Will you read that question again?

[Question read as follows: "Q. Well, now, when you went to that interview did you go with the determination that you would not concede or that the directors would not concede anything from those claims?"]

A. I did not.

Q. Did you go— A. Now the claims were not sufficiently well defined at that time so that they were definite and positive, except as we intended that those claims should rest on our duties as outlined in the Manual of The Mother Church.

Q. Have you any conception or clear conception or definition as to what those claims were? A. Yes.

Q. What were they? The claims you have just described as based on your conception of the Manual? A. They were that the directors should elect the editors of the Christian Science periodicals, that they should elect the business manager, that they alone should determine the policy of the Christian Science publications, that they should have the right to dismiss for any cause that to them might seem expedient—a member of the Board of Trustees, that they should have the right to ask for the dismissal of any person in the employ of The Christian Science Publishing Society or connected therewith who was not suitable.

Q. Anything else? A. Those are the main points, Mr. Whipple.

Q. Well, tell us those that were not main, because this is an important point which I want you to clear up, because I do not want you to think up something or think of something later after we have passed another milestone of the inquiry.

The Witness—What are the ones I have mentioned? May I have them repeated?

Mr. Whipple—Certainly. (To the stenographer.) Will you read them? [Answer read by the stenographer.]

A. And that under the by-law, that

they should transact the business of The Mother Church. The directors were responsible for a general oversight of the publication of the periodicals of The Mother Church.

Q. Anything else? A. I think that is all I can recall just now. There may be something else; I do not know of it just now.

Q. You see what I would like to avoid if I can is having you come in tomorrow morning to try to answer this question I am now putting to you. I would rather get all your answer now. You wanted a little while ago to answer a question I put to you this forenoon, and that is not an orderly record, so I will give you— A. But I hadn't finished, Mr. Whipple; 1 o'clock came, and we suspended.

Q. I think the record will not confirm your view of it. I think we had exhausted your memory. However, apply your mind now, not to answering that question that you think you did not answer this forenoon, but the question I have now put to you: If you can think of any other claims, with reference to which you went to this meeting determined that you would not concede one jot or tittle. A. I do not think of anything else now, Mr. Whipple.

Q. All right. Now, will you tell us what the claims were that the directors had made, or had in mind, regarding which you were willing, when you went to that interview, to make concessions? A. I did not have anything in my mind that was contained in the memorandum I read to them that we were willing to concede.

Q. I am not talking about the memorandum. I am talking about that— A. That is all I had in mind.

Q. Now, then, I will ask you what the claims were that you had in your mind that you had any thought of conceding? A. I had none.

Q. Then we come back to where we were quite a while ago; that when you went there you had in mind the directors' claims, and you went with a purpose of not conceding one jot or tittle from those claims; that is correct, is it? A. Not the ones that were based on the Manual.

Q. Well, those were all you had in mind, weren't they? A. Yes.

Q. That is all. Why couldn't you answer the question frankly and say that you went there with certain claims in your mind with reference to which you had determined that you would not compromise or concede one jot or tittle. A. Yes.

Q. That is fair. It has taken quite a while to get that, but it is worth it now that we have it. You brought with you this paper which has been marked Exhibit 680, didn't you? A. Yes.

Q. And in the form in which it now is, except for the penciling; is that correct? A. Yes.

Q. Well, now, where do you find incorporated there the claims which



you have stated that you had in mind that you did not propose to concede? Point them out. Do you want to have them read to you as you just gave them so that you can point out, as each one is read, the place and paragraph that covers that claim? A. Not just now.

Q. Have you those sufficiently clearly in mind so that you can repeat them and point out the paragraphs in this proposed agreement which covered them? I think there were six or seven of them, and I hope you will get the order as you had it before and give us the paragraph. State each claim and the paragraph. A. I think they are all embodied in this one paragraph.

Q. Well, read it. A. "It shall be accepted in theory and demonstrated in practice that The Mother Church is one institution and that the responsible authority for its direction in all of its departments is not divided but has been definitely established in The Christian Science Board of Directors."

Q. That is, all your demands and claims were incorporated there? A. I think that one clause includes everything.

Q. Why did you have all the rest of those things—three or four pages?

A. So that there might be no question in the future arising as to a disagreement of what this clause might mean.

Q. Did you explain that to the—

A. No.

Q. —trustees? A. No.

Q. That was not by any chance camouflaged—the rest of it, was it?

A. No, sir, no camouflage about my visit there at all.

Q. I wasn't talking about your visit. I was talking of your paper. A. The paper was with me on my visit.

Q. I supposed it was; you so testified. A. That was part of my visit.

Q. That would not prevent your papers being camouflaged, would it?

A. Yes.

Q. Except your rectitude of purpose, and that sort of thing? A. Thank you, Mr. Whipple. I am glad that you acknowledge that.

Q. Yes. Well, I am very glad to acknowledge it and I wish I saw more evidence of it. A. Well, you would if you knew me better.

Q. I am coming to know you pretty well, and what is more to the point, a lot of people are who never knew you before. A. That is true.

Q. That is it. Now, then, take the first: "The relations, duties, and responsibilities of The Christian Science Board of Directors and the Board of Trustees must necessarily be based not upon single detached sections and sentences," etc. You read that to the trustees, did you? A. Yes.

Q. You did not show this to them? A. I handed it over to them after we had discussed it.

Q. With these words "Yes" and "No" on it? A. Yes.

Q. And then you wrote "Yes"? A. After the trustees consented to ac-

cept the terms of that first paragraph I wrote "Yes."

Q. That is it. That is, you merely asked them if they would agree to that and they said "Yes"? A. They said "Yes."

Q. And you did not agree to it at all? A. I did not make any objection to it.

Q. Did you agree to it? A. Yes.

Q. Then you agreed to it? A. Yes.

Q. That is it. I thought you said this morning that you did not agree to anything? You told Mr. Thompson so? A. No, this is what I told Mr. Thompson—

Q. No, pardon me, I did not ask you that. I asked you, did you not tell him that when you wrote "Yes" it did not mean that you agreed to it? A. It did not mean—

Q. Pardon me, I am asking you what you said to Mr. Thompson. Didn't you tell him this morning that when you wrote that word "Yes" it did not mean that you agreed to the paragraph indicated? Didn't you say that? A. Not with reference to that particular one. I was talking about all of them, the whole—

Q. Oh, I see. A. Yes.

Q. That is, you thought he asked you about all the "Yeses"? Is that it? A. In a general way.

Q. Well, pardon me a moment. A. Yes.

Q. Did you think, when he put the question as to whether you by writing "Yes" assented to what was bracketed opposite it, that what he meant was the whole? A. He asked me—

Q. Pardon me; answer the question. A. No.

Q. Now, then, is it true that when you wrote that word "Yes" you wrote it as indicating the assent to that of the trustees and your own assent? A. That is true, that I agreed.

Q. Pardon me. Will you answer that question?

Mr. Bates—I think you should state which "Yes" you have reference to, Mr. Whipple.

Mr. Whipple—The one opposite Paragraph 1 is the one I am talking about.

Mr. Bates—Thank you for identifying it.

Mr. Whipple—I had already done it.

Mr. Bates—I did not so understand.

Q. Will you answer the question? A. I did agree—

Mr. Whipple—Pardon me, will you read the question?

[The question is read to the witness as follows: "Now, then, is it true that when you wrote that word 'yes' you wrote it as indicating the assent to that of the trustees and your own assent?"]

A. No, because you coupled my assent with theirs. I was assenting to a different proposition to what they were assenting to. They assented and gave their consent to that first paragraph. I assented to it as taking that

over to the directors as a basis of agreement.

Q. I see. I thought you said that you did not go there for the purpose of getting a basis of agreement. A. I said a basis of compromise.

Q. Did you go there— A. I did not go there—

Q. —to get a basis of agreement? A. I did.

Q. An agreement in which you were to concede absolutely nothing? A. An agreement in which the trustees were to comply with the By-Laws of The Mother Church.

Q. Yes; and the directors to concede absolutely nothing? A. There was nothing for us to concede.

Q. Yes, that is it. A. I could not concede something that was against the fundamental, basic laws of The Mother Church.

Q. Then what you say is that your visit was not for the purpose of getting a basis of agreement, but to persuade the trustees to sign something which you wanted them to sign? A. That was the agreement; that was the basis of the agreement I went for.

Q. That is all you went for? A. All I went for—

Q. Not for the purpose of making a constructive agreement that would give due regard to their views and those of the directors as well? A. I could not do that for the directors—

Q. Pardon me a moment. But to impose the will of the directors upon that board. A. Now, don't go away; come back here.

Q. Wasn't that it, sir? A. I didn't think it was.

Q. You did not think it was. I will leave you to show if you can that it was not. A. Let me hear that question again?

Mr. Whipple—No, I think you have answered it. That is all.

The Witness—Can't I hear that again?

Mr. Whipple—I think I have been near you long enough.

Q. Now, at some time you had a talk with the trustees at which you quoted something about extravagance? A. Yes

Q. Can you quote that again? A. I will try.

Q. Thank you. A. I said that it had been brought to the attention of the directors that the trustees had purchased a limousine.

Q. Yes. A. For their use, and we—

Q. Pardon me. You remember the subject, but I want to get that quotation that you gave with regard to extravagance. That will make it shorter. A. What quotation are you referring to?

Q. Why, in your direct examination you said that you quoted to them something from Mrs. Eddy's writings about extravagance or the necessity of economy, etc. A. I did make reference to that in the course of that conversation.

Q. Yes. Well, now, will you quote

it again for us? A. That is from the Manual and I would like to read it.

Q. Was it from the Manual or Mrs. Eddy's writings? A. Yes.

Q. Can't you quote it? A. I could, but I—

Q. Try it. A. I am required to read it from the book.

Q. The Manual requires it, does it? A. Our practice is to read those things. When we are quoting from Mrs. Eddy's writings, our practice is to read from the book.

Q. I think that is a very good thing for people with infirm memories. A. Yes, that is a good thing.

Q. If you can find it, let us hear you read it, and be sure it is the same thing you quoted in your direct examination, that is all. A. "God requires wisdom, economy, and brotherly love to characterize all the proceedings of the members of The Mother Church, The First Church of Christ, Scientist." I read that from the Manual of The Mother Church, written by Mrs. Eddy.

Q. Well, I think the other day you stopped at this point: "God requires wisdom, economy," and you did not add the "brotherly love"; but that is what you meant to quote, the whole thing? A. That is what I did quote originally.

Q. Now, that is required of all members of The Mother Church, is it not? Just look at it and see. A. Yes, sir.

Q. That is the requirement? A. Yes.

Q. Including the officers of The Mother Church? A. Yes, sir.

Q. And you felt that that enjoined a duty on all officials, in respect to the administration of their trust? A. Yes.

Q. And the salaries they charge? A. Salaries they charge?

Q. Salaries they receive. A. Yes.

Q. And other expenses? A. Yes.

Q. It applied to the directors as much as to the trustees? A. Yes, sir.

Q. And therefore you would not criticize anyone else without disclosing yourself what you were receiving, naturally? A. No, indeed.

Q. Well, now, in point of fact, at the time that you made that quotation as to economy, will you state what the directors were receiving from all sources by way of emolument or compensation for what they were doing?

Mr. Krauthoff—That is objected to as immaterial for the purpose of any issue in this case.

Mr. Whipple—Well, now, if Your Honor please, I will say just a word. We cannot so regard it, because of the standard that the heads of the Church set themselves must have some effect upon those who are fixing the salaries of others and the trustees' salaries as well. You see, the question of economy is always correlative. What might be economy for one would be wild extravagance for another. We have got to have some

sense of proportion about it, and in order to judge whether the trustees are getting too much, we must have some standard of comparison with others engaged in similar pursuits, and especially we might take as the standard parties who set themselves up as critics.

Mr. Krauthoff—There is no controversy in this case about the salaries of the trustees. That was fixed by an order of the directors of The Mother Church, and the trustees are drawing their salaries without criticism from anybody.

The Master—There is, however, a good deal of question, is there not, about complaints made by the directors against the trustees?

Mr. Krauthoff—With respect—

Mr. Whipple—For extravagance.

Mr. Krauthoff—One item was that automobile, which has nothing to do with the question before us.

Mr. Whipple—Oh, if it is that poor \$1200 automobile it is another one of those trivial things.

The Master—The charge in regard to the automobile was a charge of extravagance, as I understand it.

Mr. Krauthoff—Yes.

The Master—I think this question is proper in cross-examination on that point.

A. The present salary of the directors is \$10,000 per annum.

Q. Do they give their time exclusively to the work as directors, or do they have other emoluments? A. They have other duties and other emoluments.

Q. Well, I ask you to give us a statement of what their income was from all sources from— A. Do you want my private income?

Q.—from Mrs. Eddy—oh, no—from the trust imposed by Mrs. Eddy. A. Yes.

Q. I do not care about your private income, sir, but what you are drawing from the fund which would otherwise go for the spread and development of Christian Science. A. Yes, sir.

Q. How much do you get as a trustee under her will? A. I would have to compute that, because that is on a basis of percentage settled by the Court.

Q. What did you receive last year? A. I couldn't tell that without looking it up.

Q. Will you look it up tonight? A. Yes, sir.

Q. And let us know in the morning? A. I will be glad to.

Q. It is approximately \$4500 to \$5000? A. Perhaps \$4500 is the correct or nearly correct figure.

Q. All right. That comes from money which was devoted by Mrs. Eddy to the spread of Christian Science? A. Yes, sir.

Q. What other sources of income? A. That is all, such as you have described.

Q. Now, you have a private office free, do you not, in the building owned

by The Mother Church? A. I do not call it private.

Q. It is a rented office? A. Yes, sir.

Q. You do not pay anything for it? A. No.

Q. And a secretary? A. That is right.

Q. And you there practice your profession? A. No.

Q. Where do you practice your profession? A. In my home.

Q. Well, so you devote time to the practice of your profession? A. Not very much; some.

Q. That is Christian Science? A. Yes.

Q. And get an income from it, do you not? A. Yes.

Q. What? A. Yes.

Q. An income from people who consult you for healing? A. Yes.

Q. Now, you teach a class, too, don't you? A. Yes.

Q. And you get an income from that? A. Yes.

Q. That I suppose, you call your private income? A. I would.

Q. Yes. You have been teaching for some time, haven't you? A. Yes.

Q. So that you can command good returns for your services as a teacher? A. I can't go beyond the requirements of the by-law, Mr. Whipple.

Q. Exactly. So that in your many activities outside of what you do as a Christian Science director, you are one of those who administer the trust of Mrs. Eddy under her will? A. Yes.

Q. And you also practice Christian Science and have patients for the purpose of healing, and you also have a class? A. Most of my practice is gratuitous.

Q. You also have a class? A. I would like to tell you about my practice.

Q. I really don't want to inquire into your private affairs. You have a class? A. You are intimating that I am receiving emoluments from a source from which I do not receive them.

Q. I am intimating nothing whatever. You said you got a financial return from your practice. A. Yes. It is very small, but most of my practice is—

Q. Well, pardon me. I have not asked you about it because you said you did not want to be asked about your private income. A. I asked you if you wanted to know what my private income was.

Q. And I said No. A. I didn't say I didn't want to be asked.

Q. Well, let us not get any red herring across the trail. Tell us now a little more about your class work. It takes some time, doesn't it? A. Yes.

Q. How many classes? A. One class yearly.

Q. One class yearly? A. Yes.

Q. That is as much as any Christian Scientist who is not a director and who has not these other sources of income is permitted to take? A.

They are all limited by the By-Laws of The Mother Church to one class yearly.

Q. Now, do you indulge in any other activities in connection with the Church that are income producing?

A. No, sir.

Q. None whatever? A. I don't recall any.

Q. You are aware, of course, of the existing by-law in the Manual, under Section 9, Duties of Church Officers: "The salary of the members of the Board of Directors shall be at present \$2500 each annually"? A. Yes, sir.

Q. That was a salary fixed at the time the Board of Directors gave up other sources of income which they had in church work? A. Yes.

Q. It was fixed in Mrs. Eddy's lifetime? A. Yes.

Q. And was fixed as a result of a letter from her approving it, was it not? A. Yes.

Q. And that letter has been put in evidence; and I have read correctly the provision of the Church Manual with regard to the salaries of directors, just as correctly as you read that with regard to economy and brotherly love, haven't I? A. Yes, sir.

Q. That is all, sir. Well, it has been called to my attention that in The Christian Science Journal your advertisement as a teacher is as follows: "Adam H. Dickey, C. S. D., Teacher, 236 Huntington Avenue." A. Yes, sir.

Q. That isn't your home, is it? A. No.

Q. That is your office? A. That is a building—

Q. That is your office, isn't it? A. That is a building where my office is located, and also a hall until quite recently wherein I taught.

Q. But it is not your home? A. No. I said I did my practice in my home. Now, my teaching and my practice are two different things.

Q. But this is your advertisement as a practitioner, isn't it? A. And teacher.

Q. Is it as a teacher? A. Yes, sir.

Q. Oh, practitioner and teacher. Well, how is a person reading it—

A. It doesn't say the words "Practitioner and Teacher"; it says "Teacher." Q. How is a person reading it who wants to get your services as a teacher to know where your home is? A. They correspond with me at my office.

Q. I see. Supposing they don't want to correspond, suppose they want to visit you, have they got to go to your office to find out where your home is? A. No.

Q. That is all. A. They generally find me without much trouble.

Mr. Whipple—Yes, evidently, if they want to consult you.

Mr. Krauthoff—If Your Honor please, on yesterday the direction of the Court was taken with respect to the direct examination of Mr. Dickey on the issues in the Dittmore case, and I assume, without going into the

subject again, that any redirect examination of Mr. Dickey which relates to the Dittmore case is proper in the Dittmore case at the time that the defense is put in in that case.

Mr. Thompson—I think that is correct, if you mean the usual redirect examination in Massachusetts, limited strictly to matters gone into on cross.

Mr. Krauthoff—I mean that have relation to the Dittmore case.

Mr. Thompson—That doesn't make any difference, what case it relates to. If it is gone into on cross you have a right to redirect on it.

Mr. Krauthoff—I don't want any misunderstanding about that, if Your Honor please. In our opinion, Mr. Thompson has gone into a good deal on cross-examination which relates only to the Dittmore case, and as to that we shall not now examine on redirect upon the understanding that in the Dittmore case we have the right to go fully into everything that relates to that case.

Mr. Thompson—No such understanding with me, sir.

Mr. Krauthoff—I am not asking you, sir.

The Master—That is a point that I this morning, if I recollect rightly, declined to settle at this particular time.

Mr. Krauthoff—In order not to have any misunderstanding I shall now proceed on redirect as to the issues in the Dittmore case.

Mr. Thompson—Only such as I have touched on cross.

Mr. Krauthoff—If Your Honor please, to be limited to what Mr. Thompson went into on cross-examination in the Dittmore case would present this anomaly. We would then be examining Mr. Dickey twice on the same things—

Mr. Thompson—Perhaps I can clear it up in a way that will be satisfactory to you by making this suggestion. You some time will want to put this gentleman on, if I am not mistaken, to meet the testimony which will be introduced by Mr. Dittmore in his own case.

Mr. Krauthoff—Yes.

Mr. Thompson—When you do, of course the whole scope of the case will be open to you and there will be no limitation of any kind on your examination. I would suggest to you if you desire to defer the testimony of this witness in the Dittmore case until after Mr. Dittmore has put his case in and you are meeting it, I have no objection to that proceeding.

Mr. Krauthoff—Well, that is precisely my understanding, if Your Honor please, but I did not want then to be met with the objection that I was asking about something that Mr. Dickey was asked about today on cross-examination.

Mr. Thompson—I do not want to be unfair, and I think that is a very fair suggestion on your part.

The Master—I see no misunderstanding at present.

Mr. Krauthoff—Very well.

Redirect examination.

Q. (by Mr. Krauthoff)—Now, Mr. Dickey, I have one question to ask you, and do not answer it. Have you been conscious, or are you now conscious, of anything that you have done in this entire discussion with the trustees upon the one hand and the directors upon the other, except a desire on your part to sustain the Manual of The Mother Church and the Deed of Trust under which the trustees hold their office?

Mr. Whipple—I really must object to that, if Your Honor please. It seems to me it is the precise kind of question Your Honor has repeatedly excluded.

Mr. Krauthoff—Now, if Your Honor please, when I asked that question before Your Honor was good enough to say that if I could find where Mr. Whipple did it you would let me do it, and I have now the questions that Mr. Whipple propounded to Mr. Rowlands. "Have you been conscious during this time that you have been?"—

The Master—Will you give me the reference?

Mr. Krauthoff—It is in the direct examination of Mr. Rowlands. I haven't the printed record here.

Mr. Thompson—You understand that we also interpose an objection to such a question, as far as it relates to the Dittmore case.

Mr. Krauthoff—It is on page 139, in the middle of the page, in the middle of the column. Mr. Rowlands was asked this question:

"Have you been conscious during this time that you have been trustee of neglecting any of the work required of you by the board or by the Deed of Trust?"

In the next column:

"Q. Well, now, let me ask you in the first place whether you have ever been conscious of not in every way conforming to the rules which are required of a good Christian Scientist?"

"Q. Have you, to your knowledge, failed to understand or recognize the importance and necessity of promoting the interests of Christian Science by following these directions given by Mrs. Eddy in the Church By-Laws?"

Mr. Whipple—Where are those, please?

The Master—Page 139.

Mr. Whipple—I have that.

The Master—The third column.

Mr. Krauthoff (reading):

"Q. Have you been conscious of inventing or adopting interpretations of the Church By-Laws that pervert their meaning and annul their effect?"

Mr. Thompson—Those were statements taken from the bill, weren't they?

Mr. Krauthoff—I beg pardon?

Mr. Thompson—Weren't those paraphrases of the bill itself?

Mr. Krauthoff—No; those are statements with respect to the resolution of dismissal.

Mr. Thompson—I understood they were taken from your answer.

Mr. Krauthoff—They are based upon the resolution of dismissal. Next page:

"Q. Are you conscious of allowing a sense of self interest to interfere with the interests of Christian Science, your selfish interest interfering with the interests of Christian Science?"

"Q. Are you conscious of having done anything, as a trustee or otherwise, except for the promotion of Christian Science?"

"Q. Have you consciously become self-assertive, contentious, or disposed to make trouble without regard to consequences?"

Mr. Thompson—Those were the charges, weren't they?

Mr. Krauthoff—No; in answer to the charges made in the bill against Mr. Dickey, we are asking the question as to what he is conscious of.

Mr. Whipple—What are the charges made in the bill against Mr. Dickey?

Mr. Krauthoff—Well, I thought it was pretty full of charges: Arbitrary action, capricious action, and a desire to arrogate unto themselves power that they did not possess, in building up a great religious oligarchy, and I forget, there were so many of them.

Mr. Whipple—Did you think there was any petition for Mr. Dickey's removal, with charges filed against him, and a request that he be removed on those grounds? Because if there were I should quite agree that it was a parallel case. You have made certain charges against Mr. Rowlands and attempted to remove him. I asked him whether consciously he had done or was guilty of any of those things. If it has occurred to you on account of the way that matters have turned that there is a ground for the removal of Mr. Dickey as to which he ought to defend himself, you very naturally would put the questions that you have.

Mr. Krauthoff—Certain charges are made against Mr. Dickey as a ground for undoing his action.

Mr. Whipple—Why not take those grounds and ask him if he is conscious of being guilty of any of those things?

Mr. Krauthoff—We have the right to ask him the question that I have just propounded.

Mr. Whipple—That I think you will have to submit to the Court.

Mr. Krauthoff—We are so submitting it.

Mr. Whipple—Your mere asserting it will not determine it.

Mr. Krauthoff—We are so submitting it.

The Master—When a similar question was pending not long ago—I don't remember just when—my recollection is that you stated that Mr. Whipple had asked Mr. Eustace similar questions.

Mr. Krauthoff—I was wrong about that.

The Master—It proved not to be the fact.

Mr. Krauthoff—Mr. Rowlands.

The Master—Now it appears that

these questions were put to Mr. Rowlands, to which you have just referred me, and by his own counsel. It doesn't appear that I allowed them to be put against objection, does it?

Mr. Krauthoff—No, Your Honor.

The Master—So that is hardly a precedent, is it?

Mr. Krauthoff—I thought it was a case of judicial precedent rather than judicial estoppel.

The Master—Wouldn't it have been a good deal nearer precedent if I had permitted those questions to be put against objection?

Mr. Krauthoff—Yes, Your Honor. Well, we submit that question upon the whole record. I suppose, after all, that is what determines it, not the answer of any witness, on either class of questions.

The Master—I do not think the answering of the question would really add anything to the case; and I may say the same thing about the questions asked Mr. Rowlands, I think.

Mr. Krauthoff—We have nothing further to ask at this time.

The Master—Well, Governor Bates, what will you do next?

Mr. Bates—If Your Honor will pardon me just a moment. We have sent down to the clerk's office for a deposition. We did not expect to use it until tomorrow but I think we can put it in now.

Mr. Whipple—I did not catch your remark.

Mr. Bates—I said we had sent for the deposition of Judge Hanna.

Mr. Thompson—We might take a recess.

Mr. Whipple—I was going to suggest, in order to facilitate a somewhat long and weary trial, that we go on with a living witness for a while, but if you don't want to I won't press it.

Mr. Bates—We have had a very much alive witness on the stand.

Mr. Whipple—Yes, he is, and we like them that way.

The Master—I suppose we shall have to hear it read in open court, at some time; there will be no agreement possible that it should be submitted just as it stands?

Mr. Whipple—We will agree that it shall be submitted as it stands, with our objections to be passed upon by Your Honor without argument, and thus save a little time, because none of us want to take any more time than is necessary, and as His Honor is good enough to say that he will read this out of hours, why can't it be done?

Mr. Bates—Some of the rulings that Your Honor will be required to make on the questions of this deposition will apply equally to other witnesses, and it is because of that that I think it will be necessary to put this in, in order to obtain Your Honor's rulings.

The Master—Very well; if that is the state of facts, undoubtedly.

Mr. Whipple—Why not put on the other witnesses and get the rulings there? I will agree to submit this

and let His Honor make the rulings without any argument. If you want to argue them why can't you argue them when you put on your other witnesses, if the same questions are involved? It is merely to expedite the hearing, because I think all of us are conscious of the fact that we must occasionally speed up.

The Master—Of course you must do it by consent, and if they are not inclined to consent we will have to hear the deposition read.

Mr. Bates—I fail to see how it could be expedited, if Your Honor please.

Mr. Whipple—I withdraw it.

Mr. Bates—Because Mr. Whipple has objected.

Mr. Whipple—I withdraw it.

The Master—Probably we will get along quicker if you read the deposition.

Mr. Whipple—Go right along; just name our objections as you read the questions.

The Master—Is that on interrogatories filed?

Mr. Bates—On interrogatories propounded—

The Master—On commission—taken on commission?

Mr. Bates—Yes, Your Honor.

The Master—And have you had it transcribed so that the answer follows the question?

Mr. Bates—Yes, Your Honor, it is so taken. It is the deposition of Septimus J. Hanna, Pasadena—

Mr. Whipple—If you will pardon me, have you a copy that you can furnish us, so that we can follow it?

Mr. Bates—No, I have not. I have assumed you had copies.

Mr. Whipple—No; you have never furnished us with one, and we couldn't take it from the record.

Mr. Thompson—The same is true of us.

The Master—I understand you have had it transcribed—

Mr. Bates—We have.

The Master—So that the answer follows the question?

Mr. Bates—Yes, Your Honor.

The Master—Why don't you let the other counsel follow in the deposition the questions and answers as you read from the copy?

Mr. Bates—Here is one copy of the whole thing.

Mr. Thompson—Personally I would rather take the original and let you read the copy, then we can see if any inadvertent errors have crept into the copy.

The Master—Then we will know we have a correct copy when we get through.

Mr. Bates—Well, I have no objection to your doing that.

This transcription, if Your Honor please, in which the interrogatories and answers follow each other respectively, was made by the commissioner who took the deposition. (Handing deposition to Mr. Thompson.) Now you may take that if you like.

Mr. Thompson—I am afraid, Mr.

Whipple, it will be necessary for you and me to cooperate to a certain extent.

Mr. Whipple—I will inspect it.

Mr. Bates—Will you give the date?

The Master—I take it for granted the deposition has been duly opened and filed?

Mr. Bates—Yes, Your Honor.

The Master—There is no objection as to any matter of form.

Mr. Bates—I was going to read those notations, but I had passed over the original, so I thought Mr. Thompson might read them.

Mr. Thompson—Will you pause just a minute till we see what happened here? Here are the interrogatories.

The Master—Deposition of Septimus J. Hanna on commission, taken when and where?

Mr. Thompson—This was taken, sir, on the 24th day of June, 1919, before a notary public in and for the County of Los Angeles, State of California, whose name is so written that I am personally unable to decipher it. Can you decipher it, Mr. Whipple?

Mr. Whipple—It looks like Wright, with some legend in front of it.

Mr. Thompson—Possibly the commission will indicate.

Mr. Whipple—T. W. Wright.

The Master—Now you may proceed. There is no need to require you to stand up while reading it.

Mr. Bates—I don't mind, Your Honor. I think perhaps the reporters can hear me a little better if I stand. I thank you for the suggestion.

Mr. Whipple—We have no objection before reaching No. 9. We object from 9 to 33 inclusive, and 35, 39, 42, and 43; so you can read right ahead up to interrogatory 9. I understand the stenographers will take the questions and answers so that we shall have this in the record.

Mr. Bates—I so understand. (Reading deposition of Septimus J. Hanna:)

[Copy of Deposition.]

"Deposition of Septimus J. Hanna, Esq., of Pasadena, in the State of California, in the matter of the suit now pending in the supreme Judicial Court for the County of Suffolk, Commonwealth of Massachusetts, between Herbert W. Eustace et als. as plaintiffs, and Adam H. Dickey et als., as defendants.

"1. State your name, residence and present occupation.

"Answer: Septimus J. Hanna, Pasadena, California, teacher and practitioner of Christian Science.

"2. State briefly your occupations and places of residence previous to 1892.

"Answer: Beginning with the year 1866, I was engaged in the practice of law, first at Council Bluffs, Iowa, second at Chicago, Illinois, and, third, at Leadville, Colorado, down to and including the year 1890. During these years, among other official positions, I was judge of the County Court of Pottawattamie County, Iowa, and

Register of the United States land office at Leadville, Colorado, under President Arthur. After 1890 I gave my attention to Christian Science work.

"3. Were you acquainted with Mary Baker Eddy, the Discoverer and Founder of Christian Science?

"Answer: I was.

"4. If your answer to the previous interrogatory is in the affirmative, state when you first met her and the occasion and circumstances of meeting her.

"Answer: I first met Mrs. Eddy during the summer of 1892. It was simply a casual meeting at her temporary home in Roslindale, Massachusetts.

"5. Were you one of the Christian Science workers connected with the Christian Science movement?

"Answer: I was.

"6. If your answer to the previous interrogatory is in the affirmative, state how and when it was that you came to be one of said workers.

"Answer: In September, 1892, I was called by Mary Baker Eddy to take editorial charge of The Christian Science Journal. Responding to the call, I remained in that capacity until 1902, when I was appointed to the Board of Lectureship. During a part of this time, I was pastor of The Mother Church, The First Church of Christ, Scientist, in Boston, Massachusetts, and when the order of service was changed from delivering discourses on Christian Science to reading selections from the Bible and 'Science and Health with Key to the Scriptures,' I became First Reader in The Mother Church, holding this position for about eight years. I was also a member of a body established by Mrs. Eddy through the directors of The Mother Church, at first called 'First Members' and later changed to 'Executive Members.' During these years, also I was more or less active in various ways in connection with the movement and in assisting in establishing the various branches of its activities.

"7. State fully the different positions you occupied in the Christian Science movement, the times that you held these positions, and state fully the nature and extent of your acquaintance and association with Mrs. Eddy.

"Answer: I held the office of editor-in-chief of The Christian Science Journal for about 10 years. The Christian Science Sentinel was established while I was editor of the Journal. The first issue, then called the Christian Science Weekly, was issued Sept. 1, 1898. On Jan. 26, 1899, it was changed to its present name of Sentinel. I was editor of this publication, also, until 1902. I was Pastor and First Reader in The Mother Church, The First Church of Christ, Scientist, in Boston, Massachusetts, from 1894 to 1902. I was a member of the Board of Lectureship from 1902 to 1912. I was elected a First Member of The Mother Church Feb. 12, 1895, remaining as such until I became a

lecturer. My other activities were of such a nature that I cannot very well fix the dates, but they all occurred during the years above-mentioned. From the time I first met Mrs. Eddy as above stated, at Roslindale, I saw her frequently, first at her home on State Street, Concord, New Hampshire, and thereafter at her home known as 'Pleasant View.' During the earlier years of the church and editorial work I saw her at frequent intervals in connection with the work. In the later times I did not see her so often, but was more or less associated with her personally down to the time of her death.

"8. Were you a First Member and later an Executive Member of The Mother Church?

"Answer: I was, as above stated.

"9—"

Mr. Bates—This is a question that Mr. Whipple objects to (reading interrogatory):

"9. There is attached to these interrogatories, marked 'Exhibit 1' a printed copy of Plaintiffs' 'Bill in Equity,' beginning on page 42 of which is a copy of a Deed of Trust entitled 'Deed of Trust—'"

This is in quotations.

"Deed of Trust. The following is a copy of the Deed of Trust constituting the Board of Trustees—organizing The Christian Science Publishing Society.' Are you familiar with the circumstances surrounding the making of this instrument?"

Do you object to the answer, Mr. Whipple?

Mr. Whipple—Not if he answers it simply yes or no.

Mr. Bates—Well, it amounts to that. (Reading):

"Answer: I was somewhat familiar with such circumstances.

"10. If your answer to the previous interrogatory is in the affirmative, state fully and in detail these circumstances."

Do you object to that answer?

Mr. Whipple—I will waive the objection to that answer. The ground of the objection, Your Honor will readily understand, and so long as the answers are harmless, or at least outside that ground, I do not press the objection.

Mr. Bates (reading answer to interrogatory 10)—

"Answer: The circumstances as nearly as I can recall them were that I had some correspondence with Mrs. Eddy on the subject of said Deed of Trust and was present at at least two meetings in which said Deed of Trust and the circumstances leading to its execution were discussed. These meetings were at Mrs. Eddy's home at Pleasant View.

"11. Do you know whether at about the time of the making of said Trust Deed Mrs. Eddy herself had prepared an instrument or writing relating to substantially the same subject matter?"

Mr. Whipple—I waive the objection.

Mr. Bates—That is already in evidence. (Reading answer to interrogatory 11):

"Answer: I do.

"12. There is attached to these interrogatories in printed form marked Exhibit 2, under the title, 'A Gift to The Mother Church, and a Grant of Trusteeship,' what purports to be a copy of a letter by Mary Baker G. Eddy to 'My Beloved Students,' also copy of an instrument signed and sealed by her and dated Jan. 15, 1893. Please examine this exhibit and state what it is, also state fully how said letter and said writing or instrument came to be printed, and whether or not they were published, and if not, why not."

The letter referred to in that question, Your Honor, has been introduced as Exhibit 463 and is to be found on page 2005 of the stenographer's record. The instrument referred to is substantially—there was a little editing done apparently by Judge Hanna. It is almost exactly the same in wording as Exhibit 464, which is found on page 2007 of the stenographer's report.

Mr. Whipple—We will waive the objection.

Mr. Bates (reading answer to interrogatory 12)—

"Answer: I have examined the exhibit mentioned, and find the first to be a letter addressed, as I remember, to the directors of The Mother Church and the First Members of said Church. The instrument I find to be a copy of a Deed of Trust prepared by Mrs. Eddy. Mrs. Eddy sent said letter and Deed of Trust for publication in the February, 1898, issue of The Christian Science Journal, and in accordance with her request I had said documents printed for publication as indicated by Exhibit 2. Before the Journal was sent out, I was requested by Mrs. Eddy not to publish said documents, but to prepare an article as editor, stating the substance of said documents. This I did, and the article appearing on the first page of The Christian Science Journal for February, 1898, was published as a substitute for what had been printed, as shown by Exhibit 2." That article, if Your Honor please, has been introduced in evidence as Exhibit 465, and is found on page 2011 of the stenographer's report. (Reading):

"13. Did you prepare the article published in The Christian Science Journal for February, 1898, beginning on page 661, entitled 'A Gift to The Mother Church, and a Grant of Trusteeship,' a copy of which is hereto attached marked Exhibit 3?"

Mr. Whipple—Objection waived.

Mr. Bates (reading)—

"Answer: I did.

"14. If your answer to the preceding interrogatory is in the affirmative, state how you came to prepare said article."

I assume the objection is waived.

Mr. Whipple—Objection waived.

Mr. Bates (reading answer to interrogatory 14)—

"Answer: I have already explained, in my answer to Question 12, as fully as I can.

"15. Did you have any conversation, or conversations, with Mrs. Eddy prior to the making of said trust instrument, dated January 25, 1898, in reference to her reasons or purpose in making it."

Mr. Whipple—Which one did you read?

Mr. Bates—15.

Mr. Whipple—Objection waived.

Mr. Bates (reading answer to interrogatory 15)—

"Answer: I was present on at least two occasions, when said Trust Deed and its purposes and reasons for its execution were talked over. I participated, in part, in such conversations.

"16. If your answer to the previous interrogatory is in the affirmative, state the times, circumstances, occasions, and number of said conversations and state fully what she said in reference thereto."

Mr. Whipple—If Your Honor please, the answer is quite a long one and I have never had opportunity to go over it. I have never seen the deposition until this afternoon. I think from a cursory review that some parts are objectionable and some are not. I will stop now and look it over, or will look—

Mr. Bates—That is agreeable; it is 4 o'clock.

Mr. Whipple—Perhaps as it has now reached the time of adjournment I had better read the answers over during the evening.

[Adjourned to 10 a. m., Friday, July 25, 1919.]

July 25, 1919

## TWENTY-SECOND DAY

Supreme Judicial Court Room,  
Friday, July 25, 1919

The Master—Shall we continue with the deposition, Governor Bates?

Mr. Bates—Yes, if Your Honor please. Here is an extra duplicate of the same copy that I am reading from. Possibly if Your Honor had it it might be of assistance to you.

Mr. Thompson—May I make a correction? On page 517 of the printed record the witness is reported here as stating: "As nearly as I can estimate, about 30." In the typewritten volume it reads correctly: "As nearly as I can estimate, about 730." It is the first instance I have found where the printed record has not been strictly accurate, and that is a mere printer's slip. It should be 730 instead of 30.

Mr. Bates—What is he testifying about?

Mr. Thompson—He is testifying as follows:

"Mr. Thompson—I was not asking for the date, but approximately how

many days before March 17, and during the year 1919, did you first consult Judge Smith in regard to the contemplated action of removing Mr. Dittmore?"

"The Witness—As nearly as I can estimate, about—"

"730" it reads in the typewritten volume and in the printed volume, on page 517, it reads "about 30." I should like to have that error noted now so that there may be no mistake about it later if it should be referred to in argument. It should be 730 instead of 30.

Mr. Krauthoff—The witness stated 730.

Mr. Thompson—That is agreed to.

I should further like to ask if it may not be understood, as I suppose it is understood, to save me from recalling Mr. Dickey for one question, that at the conference when he testified that Mr. Eustace asked him why he did not clear up his own board and made a reference to a "hidden hand," Mr. Dickey understood by the words "hidden hand" Mr. Dittmore. That is true, isn't it?

Mr. Krauthoff—I am not able to state what Mr. Dickey understood.

Mr. Thompson—You are not able to state it. Perhaps you will ask him if that is a fact, if he is here.

Mr. Bates—He is not here. He will be in a little later this morning.

Mr. Thompson—If you will ask him during the morning it will save my recalling him one question.

Mr. Bates—I thought it might assist Your Honor if you could be looking over a duplicate of what I am reading. I had just read Interrogatory 16, which I will reread:

"16. If your answer to the previous interrogatory is affirmative, state the times, circumstances, occasions, and the number of said conversations, and state fully what she said in reference thereto."

Mr. Whipple—If Your Honor please, we are unable to agree that our objections to this answer should be waived. I think that the inquiry is entirely immaterial. If it has any purpose at all, as we must assume that it does, it must be to vary, alter, modify or control the written instrument by oral declarations, and of course declarations can never be received for such a purpose. I am influenced in maintaining this objection by the fact that the witness seems to be strangely mixed with regard to the historic facts which he attempts to state. An analysis of the answer would show—although that is not, of course, the legal basis of the objection—the incorrectness of the answer. Palpable incorrectness in some respects would not constitute a basis of objection. The legal objection is what we have stated.

The Master—Mr. Bates, you were going to say something?

Mr. Bates—Not unless Your Honor cares to hear me on the question. I think it is plain, Your Honor, that

there is a question of law involved here which, ultimately, will have to be determined probably by the full court. The full court cannot determine the question unless the facts have been presented to it. If Mr. Whipple desires to take any exception, he can take exceptions to the evidence and his rights are then saved and he can argue the question before the full court; but if the evidence is excluded, it is of course evident that in that case, if the Supreme Court should decide that it ought to have been admitted, then the case would have to be referred back and much time would be unnecessarily lost. So far as the question itself is concerned, I am ready to argue on it if Your Honor thinks it is important to argue it at this time.

Mr. Whipple—What the Governor has stated is not correct at all as a matter of procedure. He can argue in the Supreme Court that this evidence which will go up with this exception ought to have been admitted, and if the Supreme Court should admit it they would not again refer it to the Master. They would themselves deal with the other facts in company and in connection with the facts here presented if they thought they were admissible. The defendants can argue their case in the Supreme Court precisely as well irrespective of the rule; but it is so obvious, we think, that this statement by Judge Hanna of conversations of the grantor at about the time of making the deed as to its purposes, as to what she intended and wanted to accomplish, is not admissible, that we think the ruling should be made. It can't be said that it is to interpret the instrument, because there are no latent or patent ambiguities in the instrument. It is perfectly clear in its terms. That is, nothing has been pointed out at least that is ambiguous.

Mr. Bates—I submit, Your Honor, that the issues which are tendered in the manner that they are tendered make this evidence entirely competent. It is of great importance from our view, and I think also from Mr. Whipple's view—I judge so from the insistence of his objection. They have tendered issues in regard to the intent of Mrs. Eddy and they have not confined them to the intent as shown by the Deed of Trust. They have gone outside of that and alleged that she had certain intentions in regard to this trust and in regard to her plan for the movement and for the promotion of it. They have alleged that in Paragraph 4, and in Paragraph 6, they have gone further and shown that they intend, or did intend, to try to prove that she had the intent which they claim, not by the trust instrument but by By-Laws which they quote in regard to the government of branch churches, etc. In other words, even in their bill they bring in other things to attempt to modify or if not to modify, to explain—I will

put it that way—to explain the Trust Deed and the provisions of it. There are other issues which they have tendered which would make this competent. For instance, in Paragraphs 7 and 8 they allege that the directors are trying to conduct the business differently from what it has been conducted, or to cause the trustees to conduct it differently. They allege that we are trying to have them conduct it according to alleged statements made by Mrs. Eddy long after the Deed of Trust. This answer contains a statement made by Mrs. Eddy at the time of the execution of the Deed of Trust. Under the allegations of Paragraphs 7 and 8 this is admissible. I think this answer is also admissible under the allegations of Paragraph 16, where they say the directors have planned to overthrow the trust as intended and created by Mrs. Eddy. We have the right to show what she said at the time that she made this Trust Deed as to her intentions, where they have even in their bill gone outside of the deed to show what they thought she intended.

The rule that provides that one cannot qualify or alter a written instrument has been stated to be more flexible than almost any other principle of law; that there are more exceptions to the rule, and the courts have constantly been construing it with greater and greater liberality; and that applies to the courts of Massachusetts as well as to the courts of the rest of the land. We do not offer this to change the trust in any way. It is not at variance with it. It is in explanation of it; and one of the first exceptions to the rule that has been mentioned by Brother Whipple is the exception that while you cannot introduce evidence to modify, you can introduce evidence to explain what the parties had in mind at the time that the instrument was executed. This deed itself, the Trust Deed, refers to many matters which cannot be given any meaning except as explained by extrinsic evidence. For instances, it refers to a Board of Directors; it refers to First Members; it refers to the Manual; it refers to By-Laws. Those things all of them have to be explained by outside evidence. It has some words in it which are of doubtful meaning, at least ambiguous. The question as to what Mrs. Eddy meant by the term "help," for instance, has already been referred to several times. But, apart from that, there are, in Section 3 and in Section 8, statements that may well be explained by evidence as to what Mrs. Eddy said and did at the time the trust was executed, and by her course of conduct and the course of conduct of all parties that have any interest in the trust from that time on. In Section 3 she refers to the fact that she reserves the right to give directions, for instance. Now, we submit that we have the right to introduce evidence that at the time of the making of this deed she stated to the

parties how she expected to give those directions and the manner of them.

The Supreme Court of Massachusetts has allowed, in a fairly recent case, an explanation of the word "estate" in a written contract where the rights of others than the parties to the contract were involved—allowed the explanation that the word "estate" meant an estate subject to a lease. And the Supreme Court has also permitted the explanation of a statement to the effect that taxes were to be apportioned, and in that it made the significant statement that, while there was the ordinary and well-accepted meaning as to what that might mean, nevertheless they had a right to show that it meant something different from that, and that therefore the evidence was properly received.

Section 8 of the Deed of Trust also contains the interlineations, if Your Honor remembers, that General Streeter says he wrote in there at Mrs. Eddy's request giving her the right to make changes. We submit that statements made at the time showing how she proposed to make changes come in properly to explain, not in opposition to or in violation of anything in the deed, but to explain what she meant by it. And here is a contemporaneous statement of Mrs. Eddy in connection with this matter, made to one who was one of those upon whom she chiefly depended at the time. I submit that that is capable of such explanation as the courts have allowed in other cases.

I also submit that, under the Massachusetts cases, this evidence is permissible as showing the contemporaneous understanding and construction which the parties themselves put upon instrument, and that it also has a bearing—

Mr. Whipple—What parties?

Mr. Bates—I refer to all the parties, —the trustees, and Mrs. Eddy herself, and the beneficiaries or those whom you call the beneficiaries.

Mr. Whipple—The trustees were not present at the conference?

Mr. Bates—No; but we have introduced it as a part of the course of conduct which has been pursued uninterrupted.

Mr. Whipple—This was not a course of conduct.

Mr. Bates—And there are Massachusetts cases which also state that a course of conduct throughout a long period of years showing how the parties interested have accepted and treated and construed the instrument, has great weight with the Court.

Mr. Whipple—But this that you are offering is a conversation which took place before.

Mr. Bates—This is the beginning of a course of conduct which took place practically at the time. I might also add that the cases are inclined to the view—they do show absolutely that where a word is used it is possible to introduce evidence to show that the

parties who used it used it in a sense different from the ordinary sense or interpretation. So that on the question of the law involved, I submit we have the right to introduce this matter. On the question of the issues, some of which are apart from any question of the construction of the deed, we have the right to introduce it; and on the further question, that we have the right to have these facts found by Your Honor for such bearing as the full court may later determine that they have upon the case, is one of the essential reasons for this matter being before Your Honor.

Mr. Whipple—I do not understand the rule of law as stated by Governor Bates, or, at least, it is very inadequately stated. I understand the rule to be that you may never offer evidence of previous or contemporaneous declarations of a donor as to what she meant by the deed, for the purpose of altering or modifying or in any way controlling its provisions, and I do not understand that there is such a multitude of exceptions as the Governor has suggested. What he has suggested are not exceptions to the rule; they are a part of the rule; and that is that, while you may not offer statements in order to control or modify, you may offer statements which will clear up ambiguities of expression, or doubtful meanings, or interpret the words that are used.

But the evidence offered here is not offered for any such purpose. There is no indication in anything that has been said by counsel that any particular word is ambiguous or that there is any provision that cannot be easily understood, or that anything that the witness states interprets it in any way whatever. It is a statement of elementary principle by the learned counsel, without application to the legal situation which he attempts to deal with.

He says that we have made it admissible—and this is the first point of his argument, as I understand it—that the plaintiffs have made this admissible because they have made allegations in the bill with regard to Mrs. Eddy's intent, and that therefore they may show by her declarations, oral declarations, what her intent was; not that we have offered any evidence or made any allegations as to what her intent was with regard to this particular deed, but that because in other respects we have made averments as to what her intent was, that therefore the field is open to him to show what her intent was on any subject or proposition which he desires to put in.

Now, let us see how his argument bears analysis in that respect. The averment to which he refers is in Paragraph 4 of the bill. Let us see what that is:

"The conception and plan of Mrs. Eddy for the promotion and extension of the religion of Christian Science, as taught by her, involved two gen-

eral branches of activity. The first, the organization of churches. . . . The second, by increasing the circulation throughout the world of publications containing the truths of Christian Science. . . . These two branches of activity, both calculated to develop and enlarge the Christian Science movement, so-called, Mrs Eddy determined to put into the hands of different sets of trustees, reserving to herself in respect to each and both, a large measure of power to control."

Now, all the intent that we attribute to Mrs. Eddy in those declarations is an intent shown by her own written documents. They are nothing but statements in the bill of what the written documents, the two Deeds of Trust, show. We go on to say:

"Mrs. Eddy accordingly . . . through the Deed of Trust of Sept. 1, 1892, . . . placed with the Christian Science Board of Directors certain duties in relation to The Mother Church. . . . Several years later . . . she conveyed to the Board of Trustees her property used in The Christian Science Publishing Society."

That is all we say. We make a statement as to what her purposes were as indicated by the instruments which she had composed and signed and executed and delivered. We are making no reference to any intention that she has, as proved by the memories of people, by her declarations, attempting to show that they are contrary to her written documents. These are comments upon her written document which we do not seek to modify or control but merely indicate the purpose of, and it lays no foundation whatever for any such suggestion as counsel has made.

Mr. Bates—Will you read the last of that allegation, where you allege that on information and belief you accordingly aver?

Mr. Whipple—Whereabouts?

Mr. Bates—The last part of that paragraph.

Mr. Whipple—Yes. That it "was in pursuance of a distinct purpose on the part of Mrs. Eddy, the Founder of The Mother Church and the Donor of both trusts, to keep the affairs of the Publishing Society under a separate control and management from that of her Church." And that our information and belief come from the two papers that are signed by her.

Mr. Bates—You do not so allege.

Mr. Whipple—That is the fair import of the averment and we have offered no other evidence.

Mr. Bates—I do not think it is the fair import.

Mr. Whipple—Of course you do not. You have queer thoughts about this whole proposition and we cannot account for those at all. We have to argue upon the statements of plain truths which would appeal to the ordinary mind.

Mr. Bates—Well, don't you call your statements—

Mr. Whipple—Paragraph 6—I beg your pardon?

Mr. Bates—Don't you call your statements statements of plain truth when you aver that on information and belief?

Mr. Whipple—Yes, and you ought to understand that.

The Master—What paragraph is that?

Mr. Bates—That is the last part of paragraph 4.

Mr. Whipple—I have just read it, if Your Honor please.

Mr. Bates—It is on page 15, this is at the bottom of page 15, the last line and the next page.

Mr. Whipple—I was waiting for Your Honor to see it.

The Master—Go right on.

Mr. Whipple—Your Honor will agree, I think, that no evidence whatever has been offered, or could be offered, as to her purpose contrary to the terms of the Deeds of Trust, but in accordance with them.

Then it is said that Section 16 of the bill opens the question:

"The plaintiffs aver upon information and belief that the things which the directors have done in demanding the resignation of the plaintiffs as trustees and in attempting to remove from his office the plaintiff Rowlands are done in pursuance of a plan which the defendant Dickey (and others) have heretofore contrived, to which plan said defendants expect to secure the assent of the defendant Knott; that said plan involves a deliberate attempt by the directors to force the trustees out of the offices which they hold in order to place therein either three of the directors themselves or three persons who will be subservient to the directors and manage said trust and the affairs of the Publishing Society in subservience to the defendants; that said plan contemplates that the trust created by Mrs. Eddy in respect of the Publishing Society and which she specifically provided should be dominated and controlled by trustees other than directors of The Mother Church shall hereafter be dominated and controlled by said directors."

There we refer to the deed itself as showing Mrs. Eddy's intent, and not any intent expressed on the outside—averments which are usual and proper in a bill—commenting upon and pointing out the intent as shown in the written document which we have under discussion. But by what curious operation of the mind counsel can say that a conversation with Judge Hanna before this deed was executed has any bearing upon the proposition which is stated by us in paragraph 16, I am utterly unable to comprehend. It is a mental operation that I cannot quite understand, and possibly therefore I do not do justice to the argument.

Then another ground is taken, although they seem to be confounded in the mind that is expressing the argu-



ment, and that is that the deed itself does need explanation and interpretation, and that this evidence of Judge Hanna will enable you to interpret some of the terms of the deed that are ambiguous, as, for instance, First Members. Well, I quite agree that evidence is proper as to what First Members are, and we have had it; but Judge Hanna does not suggest, or his deposition is not taken to tell us, what First Members are. It is taken for an entirely different purpose. If there were really any words in that deed that have not been explained I would quite agree that the rule applies that you should offer evidence, or might offer evidence, of the interpretation of the words that she used, but not the interpretation of her intention. That mere statement shows how utterly beside the mark the suggestions of counsel are—the real mark of the legal admissibility.

But let us refer to the parts of the instrument that are merely referred to in what has been said. It is said that Section 3 is ambiguous. It reads as follows:

"Said trustees shall energetically and judiciously manage the business of the Publishing Society on a strictly Christian basis, and upon their own responsibility, and without consulting me about details, subject only to my supervision, if I shall at any time elect to advise or direct them."

What word or what sentence is there contained in that that is ambiguous, that Judge Hanna, remembering a conversation in the mists of thirty or forty years ago, can help us to interpret—something that we need to send to California for to find what Mrs. Eddy meant?

That they shall "manage the business of the Publishing Society on a strictly Christian basis."

If we in this part of the country did not know what a strictly Christian basis was, or if it was said that Mrs. Eddy used those terms in a way and with an interpretation known only to her and a few of her associates, and that it meant something different from what ordinary people think it means, then such evidence could be introduced. That would be an illustration of what Governor Bates calls an exception to the rule, but which I understand to be a part of the rule, but it is not offered for any such thing as that. It is offered, and counsel ought to be frank about it, to show that Mrs. Eddy did not mean what she appears to have meant, to contradict or to control the terms of this deed and not to interpret it.

Then he says paragraph 8 needs interpretation. Let us see what that says:

"Said trustees shall have direction and supervision of the publication of said Quarterly, and also of all pamphlets, tracts, and other literature pertaining to said business, using their best judgment as to the means of preparing and issuing the same, so as

to promote the best interests of the Cause, reserving the right to make such changes as I may think important."

It is perfectly obvious, as Your Honor has suggested, that it means reserving the right to make changes in the literature such as she thinks important. There isn't any need of help with regard to that, and if there is Judge Hanna does not give it, and the question is not put for any such purpose as that. I do not overlook the statement that he says that it may aid us in determining something about how she would advise or direct them. But that does not help us in the slightest. This statement of Judge Hanna does not bear on that subject at all. I suppose there is a vague hope that it might, as a basis of argument, but an inspection of what he says shows that he does not—nothing whatever. There is no ambiguity in the deed. There is nothing that needs explanation, there is nothing ambiguous about it or doubtful in its meaning whatever. It can be interpreted, and must be, by the Court, as plain words are used. There are no unusual words used in an unusual or technical sense that need to be explained, and if there were the evidence of Judge Hanna does not explain or interpret them in any way whatever. It is as plain and palpable an attempt to offer evidence to control and vary the terms of a written instrument as is often presented.

The Master—Mr. Thompson, do you desire to say anything?

Mr. Thompson—I am not a party to this particular controversy, sir. I dare say the same matter will come up in reference to certain objections made to the cross-interrogatories filed by me on behalf of Mr. Dittmore, but I do not feel called upon to enter into this particular controversy between Mr. Whipple and Governor Bates.

The Master—Am I now dealing with the question alone? The answer has not been read and I have only glanced it over. If I am to deal with the question alone, how is it possible for me to say that nothing called for by the question—it calls for a good deal—could be material for any purpose in the case? I do not quite see my way to do that. It would require me to peremptorily exclude the question, strike it out of the deposition, and everything said in answer to it. It is quite possible that when we come to the answer something in it may be admissible for some purposes, and other things plainly not. It strikes me that the best way is to take the question and answer subject to the objection and deal with it hereafter as to what is and what is not admissible. Should I take that course I should not by any means be intimating in any way that what is said in the deed can be controlled or contradicted by oral evidence given by Judge Hanna in answer to the question.

Mr. Whipple—I had argued on the assumption that Your Honor had

looked over the answer, and that, if Your Honor had not, that you would examine it; and it had occurred to me, although I did not think to state it when I was on my feet before, that some parts of the answer, while they are entirely immaterial, do not seriously violate any rule. I would suggest that it has some advantages, if Your Honor felt like dealing with this as we read it, to go along. Of course there are advantages in taking the whole thing into the record and then dealing with it later. I feel, and I think perhaps Your Honor will feel after you look it through more carefully, that the advantages of dealing with the whole answer, in order that it might help us in directing the future course of the hearing, would have outweighing advantages. The hearing has been very, very much prolonged, and I think every one must feel, as Your Honor has expressed, that a good deal has gone in that is immaterial. I think if this could be dealt with now, at least provisionally, it might have the advantage of shortening up a good deal the taking of evidence which it must be sure will not have appreciable weight later. But I submit the entire matter to Your Honor's judgment and we shall take it without exception or objection; I mean, as to the method of dealing with the matter.

The Master—I think you may read the answer, Governor Bates, but by permitting you to read it I do not agree by any means that all this is evidence.

Mr. Bates—(Reading answer to interrogatory 16):

"The first of these conversations took place at Mrs. Eddy's home at Pleasant View several days before the execution of the Deed of Trust attached to the 'Bill in Equity' marked Exhibit 1. At this time Mrs. Eddy explained her reasons for establishing such a trust and her purposes and expectations with reference to it. I am not able to recall all she said,

nor her exact words, but she said in substance the following: That she had had so much trouble and annoyance with a Board of Trustees which had been established in connection with the Deed of Trust of Sept. 1, 1892, attached to the 'Bill in Equity' as Exhibit B, which board was to some extent auxiliary to the Board of Directors established by said trust deed—"

The Master—Pause a minute. Which board? Perhaps I am getting a little—

Mr. Whipple—That is one of the things I had in mind when I stated the vague conception and the inaccuracy of Judge Hanna's memory, because here for the first time we hear of a Board of Trustees that has never been heard of before in this hearing—that is, a Board of Trustees in connection with the building of the church. There is no instrument creating any such thing that we have ever had called to our attention, and apparently Judge Hanna is all mixed

up about it, or else he has in mind something that he calls trustees that were not.

Mr. Bates—I thought you wanted to shorten the record. Why do you ramble on and never stop?

Mr. Whipple—Well, that is not rambling on; that is pointing out the difficulty—

The Master—I would not go into that now. Perhaps it is not worth while to stop on this at present, but the meaning there is not clear to me. What is meant by "which board was to some extent auxiliary to the Board of Directors established by said Trust Deed"? Is that clear to you?

Mr. Bates—I think he has reference, although he calls it the "Deed"—I think he referred to another deed, or to another trust which has not been introduced in evidence.

The Master—Is not going to be?

Mr. Bates—I do not think we shall find it material, and this portion of the answer we do not attach any special significance to.

The Master—I do not see how we can ever understand under those circumstances what was being talked about.

Mr. Bates—Well, it is a matter, Your Honor, which we can clear up. I mean, we have the evidence and will put it in, so that Your Honor will see exactly what it refers to.

The Master—If you think it is necessary.

Mr. Bates—We will put it in, if there is any confusion in regard to it, and I think the statement as he makes it leaves it rather confused.

Mr. Whipple—You think it is confused?

Mr. Bates—Why, I think so. I think he refers to a trust which is not the same as the one you refer to.

Mr. Whipple—Why do you ramble on talking about his confusion? I have already said it, and you might assent to it.

Mr. Bates—If you just simply talk about confusion, that is one thing; the trouble is that you add confusion and make it worse confounded by objecting.

The Master—I think you may go on and read the answer. I merely called attention to the fact that those lines are not at all clear to me—what they mean.

Mr. Bates (reading):

—"which board was to some extent auxiliary to the Board of Directors established by said Trust Deed, that she wished as far as possible to avoid a repetition thereof; she said that when a movement to erect a church edifice began, a controversy arose between the said directors and the said trustees; that this controversy had resulted in an open breach between the two boards which caused much vexation, delay and expense in carrying forward the building of the church edifice; she said that she was advised by her counsel that a law of Massachusetts relating to religious organi-

zations or churches, prohibited the conduct by such organizations of anything in the nature of ordinary business, and that it was for this reason largely that she wished the said trust established; also that she and the directors might thereby be relieved of the detail work necessarily connected with the publications of the movement; that she wished especially in establishing the new trust to protect and preserve the literature of the movement in its purity and from aggressive attempts by enemies of the movement to adulterate the literature by injecting into it thoughts and teachings which would tend to becloud or destroy her teachings of Christian Science and thereby create chaos and confusion in the Christian Science ranks as well as to misrepresent her teachings to the outside world; that she also desired to prevent the future misuse or wrongful appropriation of the funds of the Church and Publishing Society by the officials thereof, as had once been done; and that she desired to make a gift to The Mother Church of The Christian Science Journal and all property connected therewith excepting the copyright. During the course of her remarks Mrs. Eddy referred several times to the controversy and breach between the Board of Directors and the former trustees of the Publishing Society and said that a recurrence of such a condition must be guarded against and prevented. She also repeatedly referred to the necessity for protecting the literature and to this end it must be kept within the jurisdiction of the directors and the First Members of The Mother Church as far as possible. She said that everything must be kept within the jurisdiction of the directors and the First Members as far as was possible under the Massachusetts law. She said that as an aid to protecting the literature in the way she wished, the directors of The Mother Church and the First Members must have the power to appoint editors of the Christian Science periodicals, and that she and said directors and First Members must have such power and control over the trustees of the Publishing Society that in case they did not properly and faithfully discharge their duty their offices might be declared vacant.

"I was also present when the Deed of Trust marked 'Exhibit A' in the 'Bill of Equity' was executed by Mrs. Eddy. Mr. Walker, now of the Supreme Bench of New Hampshire, then a member of the firm of Streeter & Walker of Concord, New Hampshire, was present and read the Deed of Trust which had been prepared by said firm. At this time the aims and purposes of the Deed of Trust were again talked over, and Mrs. Eddy repeated substantially what she had said on the previous occasion above mentioned. I do not recall that she said anything different from or in addition to what she had before said,

other than this: That by-laws must be prepared and published in the Manual of The Mother Church setting forth her wishes and purposes with reference to this trust."

The Master—No, what Deed of Trust is referred to in the last paragraph? No date is given there.

Mr. Bates—Exhibit A of the plaintiffs' Bill in Equity. The deed under which the Publishing Society operated—1898.

The Master—At the beginning of the answer the witness speaks of the Deed of Trust attached to the Bill in Equity marked Exhibit 1. Is there any Exhibit 1 annexed to the Bill in Equity?

Mr. Thompson—Yes, here it is.

Mr. Withington—That is Exhibit 1 to the deposition.

Mr. Thompson—The Bill in Equity is apparently marked Exhibit 1. That came off the deposition. That contains both deeds, I think.

Mr. Bates—You see I haven't the original here; Mr. Thompson has it.

Mr. Thompson—Here it is. It fell off the deposition.

Mr. Bates—That is what he had reference to. It is the Bill in Equity filed by the—

The Master—Well, the Bill in Equity is all the witness says is marked Exhibit 1. Is that right?

Mr. Bates—He says the Deed of Trust attached to the Bill in Equity is marked Exhibit 1. He means the Bill in Equity is marked Exhibit 1; there is where the point comes—it is the Deed of Trust.

The Master—Then we come to the point that there is more than one Deed of Trust attached to the Bill in Equity, don't we?

Mr. Bates—Yes, Your Honor, there is Exhibit A and Exhibit B.

The Master—How do we know which one he is talking about?

Mr. Bates—I think it is identified by the previous question:

"Did you have any conversations with Mrs. Eddy prior to the making of said trust instrument dated Jan. 25, 1898?"

That is the fifteenth question, which immediately precedes this, and is the basis for the sixteenth question. That identifies the one to which he refers.

The Master—Then when we come to the second paragraph of his answer: "I was also present when the Deed of Trust marked Exhibit A in the bill in equity was executed by Mrs. Eddy." Exhibit A is the Deed of Trust of Jan. 25, 1898, which is the same one he was talking about before.

Mr. Bates—There were two conversations, yes. He was present before, and also present when it was executed.

The Master—Isn't he talking about two different deeds of trust?

Mr. Bates—The same one, as I understand, Your Honor.

The Master—The answer is rather strangely expressed if that is true.

Mr. Bates—I think that Your Honor will—

The Master—Perhaps you are right.  
Mr. Bates—conclude he must have been talking about the same one—there can't be any question about that.

The Master—Yes. "I was present at a talk before the execution of the Deed of Trust, also present when the Deed of Trust was executed"—that is the sense of it, is it?

Mr. Bates—Yes, Your Honor.

The Master—Here are statements made, according to the witness, by Mrs. Eddy, at least in the first conversation to him in private, no one else present. I think I have already excluded testimony to conversations under those circumstances, haven't I?

Mr. Bates—I did not understand that Your Honor had made any ruling as broad as that. There was one question came up in regard to a statement made by Mrs. Eddy long years afterward, where there was no one present, made to a party, apparently not in any way connected with any special business, which Your Honor excluded.

The Master—I think you are right.

Mr. Whipple—Doesn't the Manual provide, by Mrs. Eddy herself, that she shall not be quoted orally? That is, what she wants said shall be from her writings.

Mr. Bates—If you are willing to take as your guide in the adjustment of this case what Mrs. Eddy has said in writing we would not have any controversy here.

Mr. Whipple—We have abided by the Manual much more strictly than either you or your clients, and we appear to know more about it.

The Master—Oh, do we get any farther by raising disputes of that kind?

Mr. Whipple—If Your Honor please, what I referred to was the provision—

The Master—Yes, I understand it, I think.

Mr. Whipple—Under "Private Communications," Section 3.

The Master—I think I remember what you refer to. I think it would be better, with the consent of counsel, to postpone this ruling until we have gone over the whole deposition.

Mr. Whipple—I will be glad to do that if I may observe at this point what we would like to have stricken out, because that will make the—

The Master—Suppose you do that,—point it out as briefly as you can.

Mr. Whipple—Beginning near the end of the first paragraph of the answer—that is the long paragraph:

"She also repeatedly referred to the necessity for protecting the literature and to this end it must be kept within the jurisdiction of the directors and the First Members of The Mother Church as far as possible. She said that everything must be kept within the jurisdiction of the directors and the First Members as far as was possible under the Massachusetts law. She said that as an aid to protecting the literature in the way she wished, the directors of The Mother Church and the First

Members must have the power to appoint editors of the Christian Science periodicals, and that she and said directors and First Members must have such power and control over the trustees of the publishing society that in case they did not properly and faithfully discharge their duty their offices might be declared vacant."

The very last sentence is in accord with the Deed of Trust, and the rest—the only effect of it would be to contradict the terms of the Deed of Trust. And in that connection may I point out—

The Master—May I mark what I have before me?

Mr. Bates—Certainly.

The Master—You desire to strike out at the end of the first paragraph of the answer from the words "she also repeatedly," and so forth?

Mr. Whipple—Yes.

The Master—To the end of the paragraph?

Mr. Whipple—Yes, although we do not seriously object to what appears of the Trust Deed; that is, that if they did not faithfully and properly discharge their duties their offices might be declared vacant. That is, I should be perfectly willing that the words that I just read "that in case they did not properly and faithfully discharge their duties their offices might be declared vacant" be left in.

The Master—"And that she and said directors and First Members must have such power and control," and so forth—leave that in?

Mr. Whipple—No, not that.

The Master—Then you split the sentence. I don't see how you are going to do that.

Mr. Whipple—Well, if you cannot split the sentence it should all go out, but the latter part of it is coordinated in the Trust Deed, and the earlier part is contradictory to it.

The Master—Is that all?

Mr. Whipple—If I may make an observation in regard to that first, the statement "The directors of The Mother Church and the First Members must have power to appoint editors of the Christian Science periodicals"—that is contradicted by the Church Manual, which existed at the time, because that power was not given to the directors until years after, and was never given to the First Members. So that it contradicts the Manual as well as the Trust Deed. And this sentence, "She also repeatedly referred to the necessity for protecting the literature and to this end it must be kept within the jurisdiction"—that, we say, contradicts the Manual.

Mr. Bates—That is an argument as to the value of the testimony; it is not a reason for striking it out.

Mr. Whipple—Well, it contradicts the Deed of Trust and also the Manual. Now, in that connection, may I call attention to the last sentence of the second paragraph: "That By-Laws must be prepared and published in the Manual of The Mother Church setting

forth her wishes and purposes with reference to this trust." That is why I referred to the fact that the Manual was prepared directly contrary to what Judge Hanna said was her intention. I have pointed out all that we care to have stricken out in that last answer.

The Master—Let us see just how we stand there. You contend that in any event if any of the answer stands, for any purpose, what you have indicated must be stricken out?

Mr. Whipple—Yes, Your Honor. That is, we can see no ground on which it can be admitted, and we see a clear ground for its exclusion in that it is contradictory to the terms of the Trust Deed itself, and if there were any question of discretion involved you would consider also the fact that it is contradictory to the terms of the Manual. Although I agree that the latter part of it—

The Master—Now, passing that for the present, you might go on to the next question.

Mr. Bates—We do not admit, of course, Your Honor, that it is contradictory to either the Trust Deed or the Manual.

Mr. Whipple—I do not ask for any admission. I said that upon the documentary evidence already in the case.

Mr. Bates—We state that there is nothing in it except what is entirely consistent with everything that is stated in the deed, and it is merely explanatory of it.

The Master—Are you going to use that evidence for the purpose of adding something to the deed that is not there?

Mr. Bates—Certainly not.

The Master—That is not expressly there?

Mr. Bates—Well, we claim that the powers which were given to the directors and the First Members under the deed would include everything that she has provided for, either under the by-laws or otherwise. It is merely an indication as to how she expected those words in the deed to be construed.

The Master—You can't by construction add something to the deed that is not there.

Mr. Bates—No, Your Honor, but when the deed places the power of the removal in the Board of Directors and First Members, it places by implication a power of supervision that would give them the right to insist on an appointment of editors or of any of these other things which she mentioned—the greater power includes the less. Now, this statement here—this is explanatory, but it is not in addition to what is already stated in the deed. At least, that would be our contention. And inasmuch as we make that contention, and make it in good faith, and I think shall prevail on it, we have a right to have the facts which bear on it come before the full court, so that when it comes to decide that question it will have the facts before it, and say

whether they have a bearing on it or do not. I understand, however, that that question is held in abeyance, and that we are to proceed at this time.

The Master—I want to get all the light I can on it. Now, you may go on to the next question.

Mr. Bates (reading)—

"17. Did you, prior to the time of the execution of said trust instrument, dated January 25 (see Exhibit 1)"—

The Master—Now there again.

Mr. Bates—Well, Exhibit 1 was this exhibit, Your Honor, which included the whole bill.

The Master—What we understand as Exhibit A?

Mr. Bates—No, Exhibit 1 included all the exhibits that are attached to the bill, you see. It includes the bill also.

Mr. Whipple—The bill, too.

The Master—"Dated Jan. 25"—I suppose that means 1898. It does not say so. That is in fact the trust instrument which the bill calls Exhibit A?

Mr. Bates—That is right, Your Honor.

The Master—All right.

Mr. Bates (reading interrogatory 17)—

"ever have any conversation with Mrs. Eddy in reference to her plan and conception for the promotion and extension of the religion of Christian Science as taught by her?"

The Master—That stands or falls by the action on interrogatory 16.

Mr. Bates (reading answer to interrogatory 17)—

"Answer: Only as above stated.

"18. If your answer to the previous interrogatory is in the affirmative, state fully the times and occasions of said talks with Mrs. Eddy and what she said to you in reference thereto.

"Answer: I can make no further answer.

"19. If your answer to the second preceding interrogatory is in the affirmative, and you have not already fully answered this question, state fully what, if anything, Mrs. Eddy said to you in reference to the number of general branches of activity comprised in her conception and plan for the promotion and extension of the religion of Christian Science, as taught by her and what, if anything, she said as to the relationship of each activity toward the other activities, and what, if anything, she said as to the relationship of these activities toward The Mother Church.

"Answer: I am not able to recall anything more than I have already stated.

"20. What, if anything, did Mrs. Eddy say in reference to the relationship of the trustees of The Christian Science Publishing Society to The Christian Science Board of Directors?"

"Answer: In substance, what I have already stated.

"21. What, if anything, did Mrs. Eddy say in reference to the relationship of the work of The Christian

Science Publishing Society to The Mother Church?"

"Answer: Same answer as to last question.

"22. Did Mrs. Eddy at any time state to you her conception as to the relationship The Mother Church was to bear to the Christian Science movement?"

"Answer: Not other than as above stated, so far as I can remember.

"23. If your answer to the previous interrogatory is in the affirmative, state fully what she said in reference thereto.

"Answer: I have already done so.

"24. Prior to the execution of said trust instrument (see Exhibit 1), under what plan and by whom had the business of The Christian Science Publishing Society been conducted? Now is there an objection to that?"

Mr. Whipple—Yes, Your Honor. I cannot see that it makes any difference who were conducting it.

Mr. Bates—I think that it may be helpful, Your Honor, in one phase of the other answer to have that answer also.

Mr. Whipple—To have it what?

Mr. Bates—To have this answer also. It will help His Honor in coming to a decision as to what Judge Hanna meant in his reference to the controversy between the directors and the trustees.

The Master—Is there in the deed somewhere a reference to the prior conduct of the publishing business?

Mr. Bates—There has been some reference in evidence, but I do not think any document has been put in.

The Master—I thought there was some document here.

Mr. Thompson—Yes, there is; Exhibit A, in the preamble of the deed of 1898.

The Master—Oh, yes, certainly that is true.

Mr. Bates—Exhibit A—

The Master—It is hard to hold everything there is in these documents in mind at once. It seems to me at present—of course, I have got to hear Mr. Whipple about it—that it may be proper to explain in connection with that Deed of Trust something about "the business heretofore conducted by said Christian Science Publishing Society."

Mr. Whipple—Your Honor will indulge me a moment. I must confess I do not know just what Your Honor is referring to.

The Master—Let me state, then, Exhibit A—

Mr. Whipple—I have that.

The Master—paragraph 1, after the "be it known," the introductory paragraph, provides:

"1. Trustees shall hold and manage property and property rights exclusively for the purpose of carrying on the business which has been heretofore conducted by The Christian Science Publishing Society, in promot-

ing the interests of Christian Science;"

Now, that refers us back to the introductory paragraph which I skipped, and you will find in there a good deal about The Christian Science Publishing Society.

Mr. Whipple—Yes, Your Honor—but this question does not bring out anything with regard to that except the manner in which it had been composed. "Under what plan and by whom had the business of The Christian Science Publishing Society been conducted?" It seems to us it does not make any difference as to the plan under which it has been conducted. But in another aspect, if Your Honor please, we regard the question as of some importance, because the answer is that it had been conducted—and we understand it to be a fact—by the directors of The Mother Church, because they constituted a majority of the directors of the corporation known as the Publishing Society. The fact that Mrs. Eddy having it conducted by the directors under another name, took it entirely out of their hands and did not allow the directors to be represented on the new Board of Trustees, carries a good deal of significance.

The Master—Isn't that rather an argument on what conclusion is to be drawn?

Mr. Whipple—It really is, if Your Honor please. I was explaining why we were inclined not to object very strenuously to its being admitted, because we thought it was in our favor in that respect.

The Master—You may read that, then. I think it is probable enough that I may desire to admit that.

Mr. Bates: (reading answer to interrogatory 24)—

"Answer: By the Directors of The Mother Church and the First or Executive Members thereof, and under an unincorporated society called The Christian Science Publishing Society which was controlled entirely by the Board of Directors of The Mother Church and the First or Executive Members, all being at that time under the personal direction of Mrs. Eddy. There was appointed by The Mother Church authorities or Mrs. Eddy a person who was called 'manager' of the Publishing Society.

"25. Were you familiar with the handwriting of Mary Baker Eddy and did you ever see her write?"

"Answer: I was familiar with Mrs. Eddy's handwriting, but I have no distinct recollection of ever having seen her write.

"26. Attached thereto and marked Exhibit 4 is a copy of what purports to be a letter written by Mary Baker Eddy over the signature M. B. Eddy, dated Jan. 17, 1898."

Mr. Bates—These three questions, Your Honor, come together before any answer.

"27. Attached hereto and marked Exhibit 5 is a copy of what purports

to be a letter written by Mary Baker Eddy under the signature M. B. Eddy, dated Jan. 18, 1898.

"28. What became of these original letters? (Exhibits 4 and 5.)

"Answer: The originals of these letters were sent by me somewhat over two years ago to the directors of The Mother Church, The First Church of Christ, Scientist, in Boston, Massachusetts, at their request.

"29. Were these letters?"

Mr. Whipple—Haven't those both been admitted in evidence?

Mr. Bates—They are both in evidence.

The Master—If we have them already in evidence you need not spend much time about them now, I suppose. Go on.

Mr. Bates (reading)—

"29. Were these letters, copies marked Exhibits 4 and 5, received by you from Mrs. Eddy, and if so, when?"

"Answer: They were and, as I remember, on the day following their date. It is possible they may have been received the same day, but I am not sure.

"30. To what do said letters relate?"

Mr. Whipple—If Your Honor please, we think the letters themselves would show that.

The Master—Is the answer of any importance?

Mr. Whipple—None whatever, I judge. The next one may be.

Mr. Bates (reading answer to interrogatory 30)—

"Answer: They relate to the Deed of Trust prepared by Mrs. Eddy herself to which she refers in her letters"—

The Master—I suppose he means in the letters just previous?

Mr. Bates—Yes, Your Honor.

The Master—The letters. Very good.

Mr. Bates (reading remainder of answer to interrogatory 30)—

"—as 'a woman's document.' It is dated Jan. 15, 1898.

"31. Do they relate to an amendment to a by-law of The Mother Church, which originally provided that 'No Board of Trustees shall ever be formed by or between the members of this church, or shall exist in The Mother Church,' and which was amended by adding thereafter the words 'Except the trusteeship be constituted by the Pastor Emeritus?'"

Do you object to that, Mr. Whipple?

Mr. Whipple—It does not seem to me that it adds anything.

Mr. Bates (reading answer to interrogatory 31)—

"Answer: The first of said letters related to such an amendment of the by-law, but the last only indirectly."

The Master—The letters must speak for themselves. The witness has added nothing in all these last answers.

Mr. Bates (reading)—

"32. Attached to these interrogatories as Exhibit 6 is an extract from The Christian Science Journal of October, 1895, containing an extract from a letter from Mrs. Eddy to the editor

of the Journal. Did you receive the letter from Mrs. Eddy, of which this is an extract? If so, state when and the circumstances.

"Answer: I did receive such a letter, either on the day of its date or the day following. I do not recall the circumstances other than as related by the letter and the by-law itself. The by-law was for publication in the Manual."

The Master—Have we had that?

Mr. Bates—I had a copy, with the number of the exhibit marked.

The Master—Go on if you are not prepared to answer now. I did not know but what it had already gone in evidence.

Mr. Bates—I think it is already in, Your Honor.

The Master—If it is already in I suppose you can pass over this without much remark. Go on.

Mr. Bates (reading)—

"33. Have you in your possession the original of this letter, and if not, state if you know what became of the original of said letter.

"Answer: I have not the original of this letter in my possession and am not aware that I have ever had it since leaving Boston. It may be among the letters in the possession of the directors of The Mother Church.

"34. Are you familiar with the Church Manual of The Mother Church?"

"Answer: I am fairly familiar with the Church Manual of The Mother Church.

"35. Is the extract from a letter in Miscellaneous Writings, by Mary Baker Eddy, printed on the page following the title page of the Church Manual taken from this letter, a copy of which is marked Exhibit 6, and if so how did it come to be printed in the Manual?"

Mr. Whipple—We must object to that and insist upon our objection.

The Master—You have got the letter in.

Mr. Bates—And the Manual is in, Your Honor, and that is the statement to which reference is made (handing Manual to the master).

The Master—Do we need the witness to tell us whether it is taken from that letter or not? If it corresponds word for word?

Mr. Bates—I don't think there is anything to show where it comes from. At any rate he identifies it as having come from Mrs. Eddy to him.

The Master—Is it worth while to spend time on that objection, Mr. Whipple?

Mr. Whipple—No, Your Honor.

The Master—Go on.

Mr. Bates (reading answer to interrogatory 35)—

"Answer: It was so taken, but I cannot say that I know why it was printed in the Manual.

"36. Prior to Jan. 25, 1898, had there been any difficulty in the Christian Science movement in regard to spurious literature, or literature issued from unauthorized sources?"

"Answer: Ever since my connection with the Christian Science movement there has been more or less difficulty with unauthorized and spurious literature.

"37. If your answer to the previous interrogatory is in the affirmative, state fully said difficulty with respect to spurious or unauthorized literature.

"Answer: In a general way, there has been difficulty in keeping the literature issued by the Publishing Society clearly within the teachings of Christian Science as given to the world by Mrs. Eddy. Much claiming to be Christian Science, but which is not Christian Science at all, has been published by various publishers over the country, without the knowledge or consent of Mrs. Eddy or any of the authorities of The Mother Church or of The Christian Science Publishing Society. This is still true. There has also been much complaint on the part of Christian Scientists themselves that many things published of late years in our authorized periodicals are not in accordance with the teachings of Mrs. Eddy.

"38. Did you shortly prior to Jan. 25, 1898, have any conversation with Mrs. Eddy with respect to spurious or unauthorized literature?"

"Answer: Mrs. Eddy has said so much on this subject that I cannot now recall any specific things. If admissible, I can only say that she almost constantly admonished those having charge of the Christian Science literature to guard and protect it against the spurious and imitative.

"39. If your answer to the previous interrogatory is in the affirmative, state what Mrs. Eddy said in reference to spurious or unauthorized literature."

Mr. Bates—That is objected to, and, I presume, withdrawn, Mr. Whipple?

Mr. Whipple—Yes.

Mr. Bates—(reading answer to interrogatory 39)—

"Answer: I cannot give any more definite answer than the previous one.

"40. What were the regular periodicals of the Christian Science Church at the time the Trust Deed, of which Exhibit 1 contains a copy, was made?"

"Answer: The Christian Science Journal and the Christian Science Sentinel, were the only periodicals then published by The Christian Science Publishing Society."

Mr. Bates—I might say in passing, Your Honor, that Judge Hanna makes an error there. The Christian Science Sentinel was not in existence at that time.

The Master—Well, isn't it a little unfortunate inasmuch as Exhibit 1 contains copies of two deeds, one dated in 1898 and the other dated in 1892, he didn't tell us which one he refers to?

Mr. Bates—Yes, Your Honor, except his whole testimony has been in regard to the Trust Deed of the Publishing Society, which was the 1898 deed. That is, it is unfortunate he does not identify it better, but, on the other

hand, there can be no question of confusion, because his whole testimony is in regard to that one Trust Deed. The confusion, such as it is, arose from the fact that there was attached to the interrogatory a copy of the bill, and the bill contained a copy of the exhibits. The copy of the bill was marked Exhibit 1 and it contained copies of the exhibits.

The Master—Oh, I see how it came about. It makes it difficult to follow.

Mr. Bates—I agree with Your Honor. (Reading:)

"41. Were the Christian Science Sentinel, The Christian Science Monitor, Der Herold der Christian Science, and Le Héraut de Christian Science being published on Jan. 25, 1898, or were they first published at a later period of time?"

"Answer: Only the Christian Science Sentinel (then called the Weekly) was published prior to that date, its first issue being Sept. 1, 1898."

Mr. Bates—Your Honor will see that in that answer he corrects what was evidently an inadvertence. It is in answer to the fortieth question.

Mr. Whipple—I do not see how it was published before the Trust Deed.

Mr. Bates—Well, it was not. He puts the date right.

Mr. Whipple—Well, he says the Christian Science Sentinel was published at the date of the deed.

Mr. Bates—I called attention to the fact that that was undoubtedly an inadvertence on his part and that the correct statement is made in the answer to 41.

Mr. Whipple—No, I should think his answer to 41 was not correct. He was asked, "Were the Christian Science Sentinel" and the other papers "published on Jan. 25, 1898"? He said, "Only the Christian Science Sentinel . . . was published prior to that date, its first issue being Sept. 1, 1898." How can Sept. 1, 1898, be prior to Jan. 25, 1898?

Mr. Bates—We will not argue that. It cannot be. That is, it is perfectly evident that is what he wanted to say.

Mr. Whipple—It is perfectly evident that it is a mistake, isn't it?

Mr. Bates—That is what I say.

Mr. Whipple—You said that his other answer was correct, and this was not.

Mr. Bates—I said that the last part of his answer gives the correct date.

Mr. Whipple—Pardon me, that was not what you said.

The Master—Fortunately, you do not depend upon Judge Hanna to show what the true state of things was.

Mr. Bates—Not on this matter.

The Master—Regarding this publication—on that matter.

Mr. Bates (reading)—

"42. During the period that you were editor of The Christian Science Journal, state the relationship of The Christian Science Publishing Society to The Mother Church, The First

Church of Christ, Scientist, in Boston, Massachusetts.

"Answer: My understanding of the relationship was that the Publishing Society was under the jurisdiction and control of the Board of Directors of The Mother Church, the First or Executive Members thereof, and of Mrs. Eddy herself. This understanding was acquiesced in, so far as I am aware, by all interested."

Mr. Whipple—Now, if Your Honor please, we object, of course, to that answer. Plainly the latter part is not responsive and the earlier part, his understanding, is not of the slightest consequence of what the relationship was. It was an opinion and an inference.

The Master—I do not carry in my mind the exact period during which he was editor of the Journal. What was that? He stated it, but I did not carry it along.

Mr. Whipple—I am not sure that he has stated it.

Mr. Bates—From September, 1892, until 1902, 10 years, when he went on to the Board of Lectureship. That is in the answer to the sixth interrogatory.

Mr. Whipple—His answer is, "My understanding of the relationship was—"

The Master—If he had left it there I should exclude it; but he says his understanding was acquiesced in.

Mr. Whipple—So far as I am aware he was not asked that, if Your Honor please. He was not asked as to acquiescence in the understanding. He was not a trustee of the Publishing Society at all, Your Honor will notice. He was an editor or an employee of the Publishing Society.

The Master—Well, you are nearly through, you may complete it.

[Mr. Bates continued the reading of the deposition, as follows:]

"43. State any further facts within your knowledge not already testified to by you in these interrogatories bearing on the relationship between The Christian Science Publishing Society and The Mother Church.

"Answer. I know of no additional fact or facts unless it be that, until recently, there was complete harmony between said Publishing Society and The Mother Church, after the abolition of the first Board of Trustees referred to in previous answers. What I mean to say is, that after the creation of the trust by the Trust Deed of January 25, 1898, there was such harmony until the recent controversy arose."

Mr. Thompson—Now, in regard to the cross-interrogatories, I think Mr. Demond will take care of that.

The Master—I don't get what you say.

Mr. Thompson—We filed a number of cross-interrogatories, and I think it is customary for the person who filed them to read them. In this instance Mr. Demond, who is associated

with us, or I am associated with him, will take care of it.

Mr. Whipple—Does Your Honor think it better to deal with these answers now? The cross-interrogatories do not concern us very much, although we have objected to them.

The Master—There are some cross-interrogatories proposed by you, I suppose?

Mr. Whipple—No, Your Honor.

The Master—The only party who cross-examined was Mr. Dittmore?

Mr. Whipple—Yes, Your Honor. I think I must withdraw what I stated, because I think some of the cross-interrogatories bear upon Mr. Dittmore's defense in our case. I do not think that I should state broadly that they had to do entirely with Mr. Dittmore's case.

Mr. Bates—You have objected to several of them, so I assume you thought they had something to do with your case.

Mr. Whipple—That would seem to be a logical reason.

The Master—I think as long as I have undertaken to hear the whole deposition before finally ruling I will hear the cross-interrogatories.

Mr. Whipple—Would Your Honor care to have us indicate those to which we have objected?

The Master—If you desire, certainly. Mr. Whipple—I mean, if we indicate it once for all?

The Master—If it is equally convenient to you I should like to have them called to my attention when they are read. If there is no objection, go on, Mr. Demond.

Mr. Whipple—I will hand to Your Honor a copy of our objections.

The Master—Very well.

Mr. Demond—Cross-interrogatories filed by the defendant, John V. Dittmore—

The Master—I will do the best I can to follow them as he reads it.

Mr. Whipple—I won't trouble Your Honor; I will point out when he reads the one that is objected to.

[Mr. Demond proceeds to read the cross-interrogatories, as follows:]

"X-Int. 1. Please state as nearly as you can remember during what period it was that you had any personal knowledge of the affairs of The Mother Church in Boston, or of the relations between The Christian Science Board of Directors and the trustees of The Christian Science Publishing Society.

"Answer: My knowledge of the affairs of The Mother Church in Boston dates in greater or less degree from the time I became the editor of The Christian Science Journal in September, 1893. In such capacity I was brought more or less in contact with the affairs of the Publishing Society as said society was conducted prior to the trust established Jan. 25, 1898. After that, in my editorial capacity, I was in constant relations with the Publishing Society under the new trust until I retired from the editor-

ship, in 1902. Since that time my relations have not been other than those of the average Christian Science worker.

"X-Int. 2. During how long a time after Jan. 25, 1898, the date of the deed referred to in Direct Int. 9, did you have any personal knowledge of the actual relations between The Christian Science Board of Directors and the trustees of The Christian Science Publishing Society in their official capacities?

"Answer: My active relations ceased when I retired from the editorship at the close of June, 1902."

Mr. Demond—Cross-interrogatory 3. Mr. Whipple objects to this:

"X-Int. 3. Please state in general terms the extent of your familiarity with the affairs of The Mother Church in Boston from Jan. 25, 1898, down to the time when you ceased to have personal knowledge thereof."

Mr. Demond—Do you press that objection, Mr. Whipple?

Mr. Whipple—No.

"Answer: I have answered this question as fully as I can in my answers on direct examination.

"X-Int. 4. Please state with how many of the individual members of The Christian Science Board of Directors from time to time, and of the individual members of the Board of Trustees of The Christian Science Publishing Society from time to time, you were personally acquainted during the period Jan. 25, 1898, down to the time when you left Boston, and give their names as nearly as you can remember.

"Answer: During the time mentioned, to the best of my recollection, I was personally acquainted with Ira O. Knapp, William B. Johnson, Stephen A. Chase and Joseph Armstrong of The Christian Science Board of Directors, and also Archibald McLellan. Of the trustees, I was personally acquainted with Edward P. Bates, James A. Neal, William P. McKenzie, Thomas W. Hatten, and Joseph B. Clark.

"X-Int. 5. Please state how close your familiarity was with the affairs of The Christian Science Publishing Society from Jan. 25, 1898, down to the time when you left Boston.

"Answer: In my position as editor my relations were necessarily close with the Publishing Society.

"X-Int. 6. How long did you live in Boston and when did you leave Boston?

"Answer: I lived in Boston from September, 1893, to June, 1902. I left Boston in September, 1902, permanently.

"X-Int. 7. Referring to Article I, Sect. 5, of the By-Laws, which reads:

"The Christian Science Board of Directors shall consist of five members. They shall fill a vacancy occurring on that board after the candidate is approved by the Pastor Emeritus. A majority vote or the request of Mrs. Eddy shall dismiss a

member. Members shall neither report the discussions of this board, nor those with Mrs. Eddy."

"Please state as nearly as you can at what time said by-law in its present form took effect.

"Answer: I do not remember the exact time when this by-law took effect, and can think of no data by which I can refresh my memory. In a general way, I may say that my recollection is that this by-law became operative prior to or in 1903.

"X-Int. 8. State as nearly as you can the history of Art. 1, Sec. 5 of the By-Laws, with especial reference to the different forms, if any, that it assumed before it assumed its present form.

"Answer: I am not able to recall that history.

"X-Int. 9. Please state, so far as your memory serves you, what were the newspapers, periodicals, books, pamphlets, or other publications published by The Christian Science Publishing Society after the execution and delivery of the deed of Jan. 25, 1898, referred to in Direct Int. 9."

The Master—That is objected to.

Mr. Whipple—We waive our objection.

Mr. Demond—You waive your objection?

Mr. Whipple—Yes.

"Answer: The Christian Science Journal, the Christian Science Sentinel, The Christian Science Quarterly, The Christian Science Monitor, Der Herold der Christian Science, Le Héraut de Christian Science, have been published by the Publishing Society since the date mentioned; also Science and Health with Key to the Scriptures, Miscellaneous Writings, First Church of Christ, Scientist, and Miscellaneous, Unity of Good and Other Writings, Christian Healing and Other Writings, Christian Science Hymnal, Christ and Christmas, the Church Manual, Concordance to Science and Health, Concordance to Mrs. Eddy's Published Writings Other than Science and Health. As to the various pamphlets and other miscellaneous publications of the Publishing Society, I am not now able to recall them. Mrs. Eddy's books were published by the Publishing Society after the death of Allison V. Stewart.

"X-Int. 10. Referring to Direct Ints. 15 and 16, did not Mrs. Eddy state to you in substance that her purpose in establishing The Christian Science Publishing Society was primarily to publish The Christian Science Journal and, secondarily, various tracts written by her or her adherents?"

Mr. Whipple—Objection waived.

"Answer: I do not recall that Mrs. Eddy made such a statement in so many words, but I feel sure that what she did say in the course of the entire conversation would bear such a construction, or raise such an implication.

"X-Int. 11. Please state what, as a matter of fact, The Christian Science

Board of Directors did do during the period when you had personal knowledge thereof in reference to supervising the work of The Christian Science Publishing Society, determining what publications it should publish, and selecting editors and managers of said society, and with reference to the selection or service of the other employees of said society."

Mr. Whipple—We insist upon our objection there, largely because the answer is not responsive. In other words, it states a conclusion and does not state a fact.

Mr. Demond—I haven't read the answer myself. The question, of course, relates directly to this issue of actual practical construction that has been very largely gone into on this trial.

Mr. Whipple—This part of the answer we do not object to:

"So far as I recall during all the time of my connection with the publications the directors selected the editors of the periodicals."

Next, about their general supervision, is a matter of opinion and conclusion and not a statement of a fact. Omitting that, the remainder of the answer is not objected to, if you will omit simply what I indicated, the words as to general supervision.

Mr. Demond—Shall I read the entire answer, Your Honor?

The Master—One moment. I do not see now that we ought to strike that out of the answer—those words by themselves. If the answer goes in, in other words, I think the whole of it better go in.

Mr. Whipple—Then I should like to have it excluded.

The Master—The difficulty arises, does it not, from the question, What are you going to mean by "general supervision"? The term is so indefinite and capable of so many different meanings.

Mr. Whipple—That is the objection that we make to it.

The Master—It does not strike me that—

Mr. Whipple—Of course we concede, and always have conceded, or, rather, I should say asserted, that as the representatives of the beneficiaries of this trust in a financial sense the directors of The Mother Church are interested in the administration of the trust and had a right to see that it was properly conducted. We do not call that a supervision. In one sense it might be. Every beneficiary of a trust has certain rights with regard to the trust which must be regarded. If that is what is meant by "supervision" we not only do not object to it, but we assert it.

The Master—I thought so.

Mr. Whipple—But if it is meant that the authority which the Trust Deed gave to the trustees was to be usurped by somebody else, that sort of supervision they never had and never were entitled to, and it was never conceded to them.

The Master—I do not think this assists at all in proving anything about it, one way or the other.

Mr. Demond—The objection would seem to relate to the weight rather than the admissibility of that answer.

The Master—You may go on. I admit it. I decline to strike it out at present.

“Answer: So far as I recall during all the time of my connection with the publications the directors selected the editors of the periodicals and had a general supervision of the affairs of the Publishing Society. My best recollection is that the trustees selected the immediate employees of the Publishing Society, including its manager. I recall no instances in which the directors censored the editorials or articles appearing in the publications; that was left to the editors.

“X-Int. 12. Is it not a fact that during the period covered by your personal knowledge, the Christian Science Board of Directors exercised supervision over The Christian Science Publishing Society trustees in respect of determining what publications it should publish, selecting the editors and managers of said society, and determining the selection and service of the other employees of said society, or their retention in office?”

Mr. Whipple—We object to the question.

Mr. Demond—This question becomes specific as to what is meant by supervision.

The Master—I am unable to see that, Mr. Demond.

Mr. Demond—It specifies.

The Master—You leave out general supervision and you say “exercised supervision.” It is certainly no more definite.

Mr. Demond—Exercised supervision in respect to certain specified subjects, Your Honor.

The Master—And he answers that they did exercise the general supervision mentioned, but you did not ask him about general supervision. I won't strike it out. You may go on. This is cross-examination.

“Answer: As to the first part of the question, I would say the directors of The Mother Church did exercise the general supervision mentioned; but as to the details embraced within the latter part of the question, I am not now able to recall any specific instances.

“X-Int. 13. During the period of which you have personal knowledge was any objection ever made by any of the trustees of The Christian Science Publishing Society to such supervision of the affairs of said society as you have testified was during said period exercised by The Christian Science Board of Directors?”

Mr. Whipple—We insist upon our objection to that.

The Master—“As you have testified.” That I think I shall admit.

“Answer: None whatever, within my recollection.

“X-Int. 14. During the period of

which you have personal knowledge was there not as a matter of fact a uniform practice, and acquiescence therein on the part of The Christian Science Board of Directors, the trustees of The Christian Science Publishing Society, and the members of The Mother Church, in reference to the relations between The Christian Science Board of Directors and the trustees of the Publishing Society?”

“Answer. There was.

“X-Int. 15. During the period of which you have personal knowledge, you may state whether any trustee of the Publishing Society ever to your knowledge objected to such degree of supervision by the directors of the affairs of said society as you have testified existed during said period.”

Mr. Whipple—There we must insist on our objection; nothing specific about it.

The Master—I don't think it adds much of anything.

Mr. Whipple—No. I find myself in agreement with Your Honor on that.

The Master—However, I shall admit it.

“Answer: Never to my knowledge.

“X-Int. 16. During the period of which you have personal knowledge, was there ever to your knowledge any dispute between the trustees of The Christian Science Publishing Society, or any of them, and The Christian Science Board of Directors, or any of them, concerning the interpretation of such of the By-Laws as refer to the relation between the Board of Directors and the trustees, or define the respective duties of the directors and the trustees in reference to the affairs of the Publishing Society?”

“Answer: There was not.

“X-Int. 17. Was there, so far as your knowledge goes, ever an instance before March 17, 1919, of action by The Christian Science Board of Directors declaring a vacancy or vacancies in the trusteeship of The Christian Science Publishing Society, or otherwise attempting to remove one of said trustees?”

“Answer: There was not.

“X-Int. 18. Was there to your personal knowledge ever prior to March 17, 1919, an instance of the dismissal of a member of the Board of Directors by a majority vote of the Board of Directors?”

“Answer: There was not.

“X-Int. 19. Do you know of any instance where Mrs. Eddy dismissed a member of the Board of Directors, either with or without a hearing? If so, please state what and when said instance was.

“Answer: I know of no such instance.

“X-Int. 20. Is it not a fact that in every instance known to you of the dismissal of a director, the director dismissed was given notice and an opportunity to be heard, either formally or informally, on charges preferred against him?”

Mr. Demond—Do you press your objection to that, Governor Bates?

Mr. Bates—No.

The Master—Now, in view of the answer to interrogatory 19, what is the use of printing that question and answer in the record of the case?

Mr. Demond—Question 19, if Your Honor please, relates to the dismissal of a member of the board by Mrs. Eddy.

The Master—By Mrs. Eddy, that is true; but if he says he knows no instance of the dismissal of a director, what is the use of having questions and answers that ask him the circumstances based upon a supposition that he does know of such an instance?

Mr. Demond—That would appear to be so, Your Honor.

The Master—That would enable us to omit a good many of these questions and answers, wouldn't it?

Mr. Thompson—Not a good many.

The Master—If you see any way of shortening it, please adopt it; if you do not, go on.

Mr. Demond—Answers 20 and 21 are both rendered immaterial by the answers to interrogatories 18 and 19, and may be omitted.

Cross-interrogatory 22:

“To what extent as a matter of fact during the period covered by your personal knowledge have the activities not only of The Mother Church, but of the Christian Science movement in general, been under the control or supervision of The Christian Science Board of Directors?”

Mr. Whipple—We insist upon the materiality of that question.

Mr. Demond—Well, the answer is—

The Master—It adds nothing to our knowledge, does it?

Mr. Demond—It does not come down to any specific issue. The answer is:

“To a very large extent.”

Mr. Whipple—Might not that be omitted in the printing? Do you think it adds much?

Mr. Thompson—I don't think it adds much; I don't see any reason for excluding it. It does not make any difference one way or the other.

The Master—Go on.

Mr. Demond (reading cross-interrogatory 23)—I suppose you do not insist on your objection, in view of the answer?

Mr. Whipple—No.

The Master—Can't you all agree to omit that?

Mr. Demond—The answer is, he has no recollection. I do not see why that can't be omitted.

The Master—Twenty-three omitted by consent.

Mr. Demond—Cross-interrogatory 24:

“Referring to the preceding cross-interrogatory, is it not true that Mrs. Eddy never said that her purpose in selecting different individuals for said two offices was in pursuance of a plan to make the trustees of the Publishing Society independent of the supervision



of the Christian Science Board of Directors?"

Mr. Whipple—I think, if you do not mind, let that stand.

Mr. Demond—(reading answer to cross-interrogatory)—

"I never heard her say anything on the subject that I remember of, in any specific way. If she did say anything to that effect, it was in the interviews I had with her as stated in my answers to questions in the direct examination.

"X-Int. 25. Did Mrs. Eddy in your hearing ever state in substance that it was her purpose to subordinate the Publishing Society Trustees to the control of The Christian Science Board of Directors?"

"Answer: She never did, unless as stated in my direct examination.

"X-Int. 26. Referring to the persons originally denominated 'First Members,' and afterward 'Executive Members,' of The Mother Church, please state how many persons constituted said First Members, and if the number was changed from time to time, state the number of persons who from time to time constituted said body known as First Members?"

"Answer: I do not recall the changes made in the number of First Members, although there were some changes. My best recollection is that during the time I was a member there were 40.

"X-Int. 27. Who, if you know, selected the persons who filled from time to time the office of First Members of said Church?"

"Answer: My understanding was that they were selected by Mrs. Eddy through the directors of The Mother Church."

Mr. Whipple—Doesn't the record which we have before us now of the proceedings contradict that?

Mr. Thompson—I don't feel sure that it does; I don't know. I don't think we have much evidence on how they were picked out.

Mr. Whipple—I think there is a provision that they must be elected by the unanimous vote of the members of the Church.

Mr. Thompson—The First Members.

Mr. Whipple—However, we will discuss that later.

Mr. Demond (reading)—

"X-Int. 28. Who, if you know, selected the persons who filled from time to time the office of Executive Members of said Church?"

"Answer: I have the same understanding with reference to these that I had with reference to the First Members. They were the same body under a different name.

"X-Int. 29. In whom was the government of The Mother Church vested as a matter of fact on Jan. 25, 1893?"

"Answer: The Christian Science Board of Directors under the supervision of Mrs. Eddy, or, rather, The Christian Science Board of Directors jointly with the First or Executive Members although the authority of

the First or Executive Members was limited to certain acts, all under the supervision of Mrs. Eddy.

"X-Int. 30. Is it not true that on Jan. 25, 1893, the government of The Mother Church was vested partly in the First Members and partly in The Christian Science Board of Directors?"

"Answer: As stated in my last answer, yes.

"X-Int. 31. What part did Mrs. Eddy herself take, if any, in the government of The Mother Church during the period of which you have personal knowledge?"

"Answer: There were times when she took a very active part, and other times when she declined to take part, leaving it to the Directors and Executive Members. Generally speaking, however, I think it proper to say that she took an active part.

"X-Int. 32. Referring to Art. XXV, Sec. 3, of the By-Laws, please state as nearly as you can recollect when said by-law was adopted, especially the part thereof reading: 'The Christian Science Board of Directors shall have the power to declare vacancies in said trusteeship for such reasons as to the Board may seem expedient'?"

"Answer: I have no recollection as to the time other than as indicated by the Manual itself."

Mr. Demond—Do you insist on your objection?

Mr. Whipple—Not in view of the answer.

The Master—He says he has no recollection, so that we need not spend much time on it.

Mr. Demond (reading)—

"X-Int. 33. After Art. XXV, Sec. 3, of the By-Laws took effect, was ever any question raised, to your knowledge, and during the period of which you have personal knowledge, by the trustees or any member of the Board of Trustees, or by the directors or any member of the Board of Directors, as to the validity of said by-law, or as to whether said by-law was consistent with the provisions of Par. 10 of the Trust Deed itself? If any such question was raised, please state by whom and when it was raised, and what was actually done about it.

"Answer: There never was any such question raised within my knowledge.

"X-Int. 34. Did you have anything to do with the organization of the First Church of Christ, Scientist, in Boston in September, 1892? If so, state what you had to do with said organization.

"Answer: I had nothing to do with it.

"X-Int. 35. During the period of which you have personal knowledge, what was the method by which the so-called By-Laws of the Church were formulated and took effect?"

Mr. Whipple—Objection waived.

"Answer: Some of them were prepared by Mrs. Eddy herself, while others were prepared by the Directors or First or Executive Members or some individual member thereof and sub-

mitted to her for her approval or otherwise.

"X-Int. 36. During the period of which you have personal knowledge, did any by-law of said Church ever originate with any person except Mrs. Eddy?"

"Answer: None that I am aware of. Mrs. Eddy suggested and originated all by-laws, leaving the actual preparation thereof, in some instances, as stated in my last answer.

"X-Int. 37. During the period of which you have knowledge was any by-law, so far as you can remember, that Mrs. Eddy had drafted ever altered or modified by or at the suggestion of any other person or persons or official bodies, and if so, by whom?"

"Answer: Nothing of this kind ever occurred within my knowledge.

"X-Int. 38. During the period of which you have knowledge, what, if anything, was actually done in reference to by-laws aside from what Mrs. Eddy herself did in reference to the same?"

"Answer: Nothing except as stated in the previous answers.

"X-Int. 39. At the time of the organization of The First Church of Christ, Scientist, of Boston, in September, 1892, were any papers drawn in connection with or as part of said organization? If so, please annex the originals if you have them or copies if you have not the originals, or, if you have neither copies nor originals, please state from your memory as well as you can what was the substance of all such papers.

"Answer: I have no recollection of any such papers.

"X-Int. 40. At the time of the organization of said Church, were any agreements made in writing concerning tenets, rules, or by-laws to be thereafter prepared by Mrs. Eddy? Please answer this question yes or no.

"Answer: I know of none such."

Mr. Whipple—Do you think these answers, where he says he doesn't know—that the questions need be printed?

Mr. Thompson—I think on the whole it is just as well. A great deal has been said about it.

Mr. Whipple—Very well.

The Master—Possibly the fact that one of the original members—and I understand this witness to have been one—am I right?—

Mr. Thompson — He was a very prominent member of the Church.

The Master— —had no recollection of any such thing, may well become important.

Mr. Whipple—Yes.

Mr. Thompson—It may have a little bearing.

Mr. Demond — Cross-interrogatory 41 may be omitted in view of the preceding answer. (Reading:)

"X-Int. 42. Of whom did the congregation referred to in the deed of Sept. 1, 1892, annexed to the plaintiffs'

Bill in Equity, at that time consist, if you know?

"Answer: My understanding is that the congregation then was made up largely of Christian Scientists and those interested in Christian Science in Boston and in the vicinity of Boston, although the services then held were open to all.

"X-Int. 43. Is it not true as a matter of fact that by long-continued, uniform and unbroken practice, during the entire period of which you have personal knowledge, and prior to March 17, 1919, the members of The Mother Church have been regarded by the directors, by the members, and by all other persons interested, so far as you know, as the beneficiaries of the trust established by the deed of Sept. 1, 1892?"

Mr. Demond—Do you insist upon the objection to that, Governor Bates?

Mr. Bates—No.

Mr. Demond (reading answer to X-Int. 43)—

"Answer: It is true.

"X-Int. 44. Is it not true as a matter of fact that by long-continued, uniform and unbroken practice, during the period of which you have personal knowledge, and prior to March 17, 1919, the members of The Mother Church have been regarded by the trustees of the Publishing Society, by the members, and by all other persons interested, so far as you know, as the beneficiaries of the trust established by the deed of Jan. 25, 1898?"

"Answer: According to my understanding, it is true.

"X-Int. 45. What, if you know, has been the uniform and unbroken construction and interpretation of the deed of Sept. 1, 1892, by all persons interested therein, or having occasion to act thereunder, in reference to who are the beneficiaries of the trust thereby established?"

"Answer: It is my understanding that the members of The Mother Church have been generally regarded as the beneficiaries of said trust.

"X-Int. 46. What, if you know, has been the uniform and unbroken construction and interpretation of the deed of Jan. 25, 1898, by all persons interested therein, or having occasion to act thereunder, in reference to who are the beneficiaries of the trust thereby established?"

"Answer: I would make the same answer to this question as I made to the last one.

"X-Int. 47. State, if you know, when, with reference to Jan. 25, 1898, each of the following by-laws took effect, to wit:

"Art. I, Secs. 6 and 7.

"Art. VIII, Sec. 14.

"Art. XI, Secs. 1 and 5.

"Art. XXV, Secs. 1, 3, 4, 5, and 9.

"Answer: I cannot state when any of these by-laws took effect, excepting as indicated by the Manual itself. I have no independent recollection thereof.

"X-Int. 48. During the period of

which you have personal knowledge, was ever any question raised to your knowledge by any trustee of The Christian Science Publishing Society, or member of The Christian Science Board of Directors, or member of The Mother Church, concerning the relation between the provisions of the deed of Jan. 25, 1898, and by-laws adopted subsequently thereto? Please answer this question yes or no.

"Answer: No.

"X-Int. 49. —"

Mr. Whipple—You might omit that.

Mr. Demond—Oh, yes.

"X-Int. 50. Is it not true that during the period over which your personal knowledge extends there was a uniform acquiescence on the part of the trustees of the Publishing Society, The Christian Science Board of Directors, and the members of The Mother Church, in the view that by-laws adopted subsequently to Jan. 25, 1898, and bearing upon the provisions of the deed of that date, were to all intents and purposes amendments of that deed?"

Mr. Whipple—We insist upon our objection to that, because we have never heard before that amendments to a trust deed could be brought about in any such way.

Mr. Demond—One of the main questions in the Eustace case, as I understand it, Your Honor, between the plaintiff trustees of the Publishing Society and the directors of The Mother Church, and also Mr. Dittmore, who upon that question stands with the directors as against the trustees, is, whether in certain particulars the Deed of Trust was in legal effect amended by provisions subsequently inserted in another instrument, namely, the Church Manual or By-laws of the Church, at the instigation of the founder of the trust, Mrs. Eddy, and acquiesced in during all the years after the adoption of those particular by-laws, until this controversy became acute, by all persons interested, including the Publishing Society trustees. We offer this answer, not, of course, as in any way concluding any legal question which Mr. Whipple may raise as to whether the Trust Deed could become amended in that way, but as showing what the fact was as to the construction, practical construction, placed by the parties interested upon this situation—their understanding and their acquiescence. It is simply on the same line as all the evidence that Your Honor has let in upon the question of acquiescence, and when Your Honor has all the facts the question of whether such an amendment can legally be made can be determined.

The Master—I don't see how the acquiescence he talks about meant anything if the question was never raised.

Mr. Whipple—That was the point I had in mind. He so testifies, the question was never raised.

Mr. Demond—As Mr. Thompson suggests, brother Whipple's objection would seem to come about to this: That because nobody ever questioned the binding force of these By-Laws, and therefore the deponent, Judge Hanna, never heard of any dispute regarding their binding force, therefore the fact of acquiescence becomes of no consequence.

The Master—I think I shall admit the question, but I shall state that what he talks about by acquiescence here is to my mind clearly not such acquiescence as could have any weight for the purpose mentioned.

Mr. Demond (reading)—

"X-Int. 51. Is it not also true that during the period of which you have personal knowledge there was a uniform and unbroken acquiescence on the part of the trustees of the Publishing Society, The Christian Science Board of Directors, and the members of The Mother Church, in the view that all by-laws adopted subsequently to Sept. 1, 1892, and having to do with The Christian Science Board of Directors, or the functions, powers, duties, or obligations of said board, were to all intents and purposes amendments of said deed of Sept. 1, 1892?"

Mr. Whipple—We interpose the same objection.

The Master—The same ruling, and I understand, the same objection. Cross-interrogatory 51 is only an amplification of 50.

Mr. Demond (reading answer to cross-interrogatory 51)—

"It is true, according to my understanding."

Mr. Thompson—Oh, no, they are two different deeds.

Mr. Whipple—One is the deed to The Mother Church of the Church property.

Mr. Thompson—All right.

Mr. Demond—Two phases of the same question. One relates to one deed and one to the other. (Reading:)

"X-Int. 52. To what extent have you been personally familiar with the publications published by The Christian Science Publishing Society during the past five years?"

"Answer: Only as a subscriber and reader thereof.

"X-Int. 53. Has or has not the quality of the mechanical work of the publications published by The Christian Science Publishing Society during the last five years deteriorated?"

Mr. Whipple—We think, if Your Honor please, it is objectionable.

Mr. Demond—What is the ground of the objection? The form of the answer?

Mr. Whipple—I do not think he is an expert in these matters. He has looked them over only as a subscriber and reader.

The Master—There is nothing significant, in my opinion, either in the question or answer. If you insist on your objection—

Mr. Demond—It is an issue tendered by the bill and—

The Master—I will ask whether the evidence shows the raising of any such question as that between the parties in this case?

Mr. Whipple—It never has been raised.

The Master—I do not recollect any.

Mr. Whipple—I am not sure but that the Dittmore answer raises something of that description, but the directors' answer does not. That is, of the de facto directors.

The Master—Has Mr. Dittmore complained of the deterioration in mechanical quality?

Mr. Demond—Yes, Your Honor.

The Master—Very good; read it.

Mr. Demond—And as to Judge Hanna's being an expert, why of course he was editor of the Journal here for a long period, as already appears. The answer is—

Mr. Whipple—What he asks about here is not the editing; it is the quality of the mechanical work of the publication. He is not asked about—

The Master—May we not credit an editor with being to some extent a judge of the mechanical work on the paper?

Mr. Whipple—Yes, Your Honor, but that is not what he is supposed to specialize in.

Mr. Demond—He would be in rather a better position to judge of the mechanical quality of a newspaper than a blacksmith.

The Master—Go on.

Mr. Demond (reading answer to cross-interrogatory 53)—

“In my opinion, it has in some respects.

“X-Int. 54. How familiar are you with the characteristic tenets and doctrines of the religion of Christian Science as taught by Mrs. Eddy?”

Mr. Demond—Do you press your objection, Mr. Whipple?

Mr. Whipple—No.

Mr. Demond (reading answer to cross-interrogatory 54)—

“It is not easy for me to say just how familiar I am therewith, but I hope and trust that I am sufficiently familiar therewith to be intelligently guided thereby.

“X-Int. 55. If you have said that you have during the past five years been familiar with the various publications published by The Christian Science Publishing Society, state whether or not you have observed in said publications or any of them the advocacy or maintenance of views and tenets inconsistent with or antagonistic to the doctrines of Christian Science?”

Mr. Whipple—I should think we had better insist upon our objection there, because the judge very modestly disclaims any knowledge further than what is necessary to be intelligently guided himself.

The Master—Now when we come to 56 he says that he cannot intelligently testify without making an examination of the periodicals such as he has not been able to make.

Mr. Whipple—Yes.

The Master—What do we gain by his testimony? It is insignificant. I should recommend leaving it all out.

Mr. Demond—Well, that is an issue that is raised by the Dittmore answer.

The Master—I understand that, but as the witness has not been able to give us any specific information about it, what can it amount to?

Mr. Demond—It is simply a question of whether the answers to these two or three questions are of enough weight. If Your Honor thinks they are of so little weight that for that reason they should not be read, well and good; I will omit them.

Mr. Thompson—He is an old member of the Church and everybody regards him with great respect. I don't know why he is not competent to answer.

The Master—That is my personal opinion about it. If anybody insists on having it in I shall not exclude it.

Mr. Demond (reading answer to cross-interrogatory 55)—

“I have observed statements in some of the publications which are not consistent with my understanding of the teaching of Christian Science.

“X-Int. 56. If you answer the preceding interrogatory in the affirmative, please state in particular what the views and tenets are that you have observed to be inconsistent with or antagonistic to the doctrines of said Church.

“Answer: I cannot intelligently answer this question without making a careful examination of such periodicals, and this I have neither the time nor the opportunity now to do.”

The Master—Are you going to leave that in?

Mr. Thompson—I think it is just as well.

The Master—Suppose he had specified—as I remarked before, I do not suppose either the Master or the Court will be expected to pass on doctrinal questions.

Mr. Thompson—I am afraid if we were confronted, as we do not appear to be very seriously, with a question of doctrine, in view of the other allegations in the bill, it would be just as necessary for Your Honor to pass on that question whether the trustees were heretical as it was in the Andover case for the Supreme Court to pass on the question whether the trustees of the Andover Theological Seminary were teaching the doctrines of the Congregational Church in their purity.

The Master—According to my recollection they did not pass on the question.

Mr. Thompson—I think they did. Perhaps they said it didn't make any difference.

The Master—They said there was an ecclesiastical tribunal which settled all that, which they could not review.

Mr. Thompson—I do not recall the decision in that way.

The Master—Am I not right?

Mr. Dane—I think you are.

Mr. Thompson—Do you remember the case, Governor Bates? It was very vague in my own mind, but there is an issue here of heresy. Now if we had a witness here who could find out the particulars of the heresy, I suppose Your Honor would have to hear it.

The Master—I am not prepared to agree with you that I should, and I am very clear upon the point that this witness adds nothing to the purpose on such an issue if there is one.

Mr. Thompson—It is so unimportant—what he says is of slight consequence, because he has not had time to examine the details, that I do not feel inclined to press it very much.

Mr. Demond (reading)—

“X-Int. 57. Referring to the deed of Jan. 25, 1898, please state, if you know, whether Edward P. Bates, James A. Neal, and William P. McKenzie, were on Jan. 25, 1898, First Members of the Church, and if so, how long thereafter they remained First Members.

“Answer: As I remember, they were First Members at that time, but I do not know how long they remained as such.”

Mr. Demond—The Court will note that the three persons named in this question were the original Publishing Society trustees named in that deed.

The Master—Nobody disputes they were the First Members. That was stated the other day. I did not hear any dispute of it.

Mr. Demond (reading)—

“X-Int. 58. State, if you know, whether at the time of the execution and delivery of said deed of Jan. 25, 1898, to said Bates, Neal and McKenzie, there was any agreement or understanding between them and Mrs. Eddy on the subject of a possible subsequent alteration, modification, or amendment of the provisions of said deed by By-Laws. Please answer this question yes or no.

“Answer: No.

“X-Int. 59. If you answer the preceding interrogatory in the affirmative, state whether said agreement or understanding was oral or in writing, or partly oral and partly in writing.”

Mr. Demond—Do you wish that read, in view of the preceding answer?

Mr. Whipple—No.

Mr. Demond—“Cross interrogatory 60. If you answer cross interrogatory 58”—60 may also be omitted, because it is rendered immaterial by the answer to 58.

Mr. Whipple—Also 61.

Mr. Demond—Correct. Sixty-one may be omitted. (Reading):

“X-Int. 62. Will you kindly read the bill of complaint in the case of Dittmore v. Dickey et al. of which a copy is hereto annexed, made part hereof, and marked ‘Dittmore's Exhibit A,’ and the answer of the defendants therein hereto annexed, made part hereof, and marked ‘Dittmore's Exhibit B.’

“Answer: I have read them.

“X-Int. 63. Have you a copy to

which you can refer of the eighty-ninth edition of the book entitled 'Church Manual of the First Church of Christ, Scientist, of Boston, Massachusetts, by Mary Baker Eddy'?

"Answer: I have.

"X-Int. 64. Are you familiar with the contents of the book referred to in the preceding interrogatory?

"Answer: Fairly so.

"X-Int. 65. Please state when you first came to know Mrs. Eddy personally.

"Answer: I met her first in the summer of 1892.

"X-Int. 66. To what extent after you came to know Mrs. Eddy personally did you become familiar with her views and purposes in reference to The First Church of Christ, Scientist, in Boston, commonly called 'The Mother Church'?

"Answer: I should say to a very considerable extent.

"X-Int. 67. How closely associated were you with Mrs. Eddy's activities from the time when you first became a member of her Church?

"Answer: I was closely associated with a number of her activities, but I cannot say that I was associated with all of them.

"X-Int. 68. To what extent during the period over which your personal knowledge extends did The Christian Science Board of Directors actually exercise jurisdiction or supervision over branch churches, and over the activities of the Christian Science movement generally other than those immediately connected with The Mother Church in Boston?"

Mr. Whipple—That has been a question in dispute and it is only a general answer, if Your Honor please. There is nothing specific. It is the kind of question and kind of answer that Your Honor has excluded because it was not specific—I mean in the testimony that has been offered orally.

The Master—Do you want it in? "They exercised more or less jurisdiction and supervision over the entire work . . . including the branch churches." How much wiser are we, now we know that?

Mr. Thompson—I am not prepared to say, sir.

The Master—Then again, we are left very uncertain what he means by supervision. Do you want it in?

Mr. Demond—I do not particularly care. If the counsel for the directors would like it in I will read it.

Mr. Bates—We would like to have it in, Your Honor; we think it is of importance.

The Master—Read it.

Mr. Demond—The objection goes to the weight rather than the admissibility. (Reading answer to cross-interrogatory 68.)

"It is difficult to state just the extent of such jurisdiction or supervision, but I am aware that they exercised more or less jurisdiction and supervision over the entire work of

Christian Science, including the branch churches.

"X-Int. 69. To what extent, so far as your knowledge goes, have the members of The Mother Church participated in the adoption of By-Laws?

"Answer: No one outside those officially appointed to that branch of the work had anything to do with the adoption of the By-Laws.

"X-Int. 70. Since March 17, 1919, have you received any communication, oral or in writing, from Adam H. Dickey, James A. Neal, Edward A. Merritt, William R. Rathvon, and Annie M. Knott, or any of them, concerning the dismissal of John V. Dittmore from the Board of Directors on that day? Please answer this question yes or no.

"Answer: Yes; subject to the following explanation, that I received letters only from Adam H. Dickey and William R. Rathvon of those mentioned.

"X-Int. 71. If you answer the preceding interrogatory in the affirmative, please annex to your answer to this interrogatory the originals or copies of any such communication or communications as may have been in writing, and state the substance of such communications, if any, as were oral.

"Answer: I have had no oral communications from any of them. The letters received from Mr. Dickey and Mr. Rathvon were confidential and related only in part to anything connected with Mr. Dittmore. I do not therefore feel at liberty to attach the originals nor copies of such letters to this answer unless specifically required to do so by the Court.

"X-Int. 72. Have you since March 17, 1919, received any written communication from the firm of Bates, Nay, Abbott & Dane, of Boston, concerning either the case of Eustace v. Dickey, in which the direct interrogatories in this case have been filed, or concerning the case of John V. Dittmore v. Adam H. Dickey, et al., to which your attention has been called by the annexing of a copy of the bill of complaint and answer to a previous cross-interrogatory, or concerning interrogatories to be filed to you in either case? Please answer this question yes or no.

"Answer: Yes.

"X-Int. 73. If you answer the preceding interrogatory in the affirmative, please annex to your answer to this interrogatory the originals or copies of every such communication.

"Answer: The only communications I have received are a telegram from Bates, Nay, Abbott & Dane, dated April 5, 1919, of which the following is a copy: 'Please mail at once to us or Clifford P. Smith complete statement of your knowledge of Trust Deed establishing Publishing Society and By-Laws in Manual relating to same give details and date and places of conversations with Mrs. Eddy and Judge Walker leading up to the Deed of

Trust and especially as to why directors or church was not made grantee include Mrs. Hanna's statement, anything to show Mrs. Eddy's intent in most important give us name of notary public in Pasadena whom we can get to take depositions'; and a letter from Judge Clifford P. Smith of which the following is a copy: 'Accept many thanks for your letter of April 10 and the statement which came with it. It will enable counsel for the directors to prepare questions for taking your deposition. For nearly three-quarters of a year, the attitude toward the By-Laws and government of The Mother Church, shown by Messrs. Eustace, Ogden, and Rowlands, has been a constant menace. The bringing of their suit has to some extent brought relief to the directors. From that time much could be left to counsel, and all developments since the suit began have been favorable. The loyalty and unity of the Christian Scientists have furnished occasion for great gratitude.

(Signed) "CLIFFORD P. SMITH."

"X-Int. 74. Have you since March 25, 1919, the date of the filing of the bill in equity in the case of the trustees against the directors, in which the direct interrogatories were filed to you, or since April 29, 1919, the date of the filing of the bill in equity in the case of Dittmore v. Dickey et al., to which some of the cross interrogatories relate, been interviewed by any attorney acting on behalf of Adam H. Dickey, James A. Neal, Edward A. Merritt, William R. Rathvon, and Annie M. Knott, or any of them? Please answer this question yes or no.

"Answer: No.

"X-Int. 75. If you answer the preceding interrogatory in the affirmative, please give the name or names of all such attorneys, and state the substance of the oral communications, if any, made by each of them to you on the subject of either of said suits, or in reference to Mr. Dittmore's connection therewith, or his conduct as a member of The Christian Science Board of Directors.

"Answer. A Mr. Douglass Edmunds, attorney, of Los Angeles, and who is also a notary public, about a month ago called upon me, saying that the matter of taking some depositions in the suit of Eustace v. Dickey had been referred to him, and he supposed I was included among those whose depositions he was to take. He said nothing to me whatever about the suit or the issues involved, but simply requested me to hold myself in readiness to give my deposition when notified. Other than this, I have had no interviews with any attorneys or anyone else in reference to these cases.

"X-Int. 76. Is the condition of your health such that you could, if needed, come to Boston to testify orally before the master in either of these two cases?

"Answer: The condition of my health is such that I could go to Boston if

needed, but since I am giving in this deposition all I could say if personally present, I see no reason either for my going to Boston or for the question asked.

"X-Int. 77. Your attention is called to the following passage in paragraph 33 of the answer of the defendants Dickey, Neal, Merritt, and Rathvon, to the bill of complaint of John V. Dittmore, to wit,

"Said defendants deny that plaintiff's conduct was never complained of by any other of the authorities of said Church except the present defendants and the Publishing Society trustees; but on the contrary they aver that former members of said Board of Directors have in the past many times complained of the plaintiff's conduct as a director, and have discussed the advisability of and favored dismissing him from said board;" and you are asked whether you ever heard any complaint made of the plaintiff's conduct as a director, or any discussion of the advisability of dismissing him from said board, prior to the time when the present controversy between the trustees of the Publishing Society and the Board of Directors arose.

"Answer: I never did.

"X-Int. 78. Please state how long and how well you have known John V. Dittmore.

"Answer: I have known Mr. Dittmore for about fifteen years, but can only say that I have known him well, in the personal sense, for about two years and a half.

"X-Int. 79. Please state, if you know, whether said John V. Dittmore is a firm and consistent believer in the doctrines of Christian Science as taught in the book entitled 'Science and Health, by Mary Baker Eddy, beginning with the seventy-first edition thereof.'

"Answer: I believe him to be such.

"X-Int. 80. Have you ever known anything in the conduct, words, or writings of John V. Dittmore inconsistent with the tenets and doctrines of Christian Science as taught by Mrs. Eddy? If so, what?

"Answer: I have no personal knowledge of any such thing.

"X-Int. 81. Are you sufficiently familiar with the conduct, words or writings of Herbert W. Eustace, David B. Ogden, and Lamont Rowlands, or any of them, to form an opinion whether they or any of them are loyal, faithful, and consistent believers and advocates of the principles of Christian Science as taught by Mrs. Eddy in her book 'Science and Health with Key to the Scriptures'? Please answer this question yes or no.

"Answer: I am not able to answer this question by yes or no. I do not know—"

Mr. Whipple—Just a moment. I think that ought to end it. He is asked to answer the question yes or no—whether he can. If he does not know whether he can give an opinion about them, nobody else does; and having

thus answered it seems to me it automatically excludes the rest of it. Besides, the subject matter is not admissible, we submit. But it is not worth while to discuss that because he says he cannot answer it yes or no, which means that he doesn't know whether he can give an opinion or not; and if he doesn't know whether he can give a righteous opinion on it he ought not to try it.

The Master—Have you anything to say in reply to Mr. Whipple?

Mr. Thompson—I do not personally believe that this answer is legally admissible. This answer is not responsive, and although it contains matter which possibly Governor Bates may care to put in, I do not care at this stage of the case, in view of what has happened here, to press what is plainly an irresponsible and inadmissible answer.

The Master—I am clearly of the opinion that the witness' answers to 81 and 82 are not admissible evidence.

Mr. Bates—We do not consider them of any consequence.

The Master—Then we will all agree that they may disappear from the case, I suppose. Now, have counsel anything further to say in regard to interrogatory 16?

Mr. Thompson—Your Honor, I have got something to say about cross-interrogatory 70 when the proper time comes.

The Master—Hold on a minute; 70?

Mr. Thompson—Yes. I asked him to annex letters which he had received from the directors, or any of them, or copies of them, to his answer. He said he did receive a letter from Mr. Dickey and another from Mr. Rathvon, bearing on the issues in the Dittmore case, and he declined to annex them. I am entitled as a legal right to have those letters, and I now call for them, for the copies of the letters, from the writers thereof or from their counsel here in court. It is a pretty serious thing for a witness to refuse a legal request like that. We have the highest respect for Judge Hanna, and realize that his motives were of the very best in trying to keep these letters out. Nevertheless, we think that if he understood what is really taking place here he would not have refused to do it. However commendable and charitable his motives are, no doubt, in his answer here, I think I have a right to call on Mr. Dickey and Mr. Rathvon, and I do so call, or upon their counsel, to produce copies of those two letters—of the respective letters.

The Master—Now we will see what their counsel do about it.

Mr. Whipple—I would like to see those letters produced.

Mr. Thompson—We cannot tell what the letters may have said or what effect they may have had upon Judge Hanna's mind. It is possible that they were letters putting forward Mr. Dickey's and Mr. Rathvon's views of Mr. Dittmore which would, to the

mind of any man, be highly prejudicial to Mr. Dittmore's character, and so forth. We would like to see what these men are doing to witnesses whom they expect to have testify in the case.

The Master—Has Judge Hanna said anything to Mr. Dittmore's prejudice in this deposition?

Mr. Dane—Not a word.

The Master—I do not find anything.

Mr. Thompson—I do not think he has. I think he is above being influenced in that way; I know he is. On the other hand, what would it lead you to think and infer about the particular parties to a lawsuit who would, while the case is pending, and to a witness who is expected to testify, write a prejudicial and partisan attack upon a defendant? I don't say they did. All I can say is that when we look at the letter we can find out. It would not be evidence of good faith or a proper conception of justice for them to write to a man they expected to summon, to whom they were sending such telegrams as were put in here, a violent and partisan attack upon Mr. Dittmore. If they haven't done it, why, let them produce the letter; if they have done it we are entitled to know it.

Mr. Bates—I understand you would like Mr. Rathvon's and Mr. Dickey's letters?

Mr. Thompson—A copy of the part that relates to Mr. Dittmore.

Mr. Bates—With the understanding that you will put them in, we are very glad to hand them to you. (Handing letters to Mr. Thompson.)

Mr. Thompson—Have you seen these, Mr. Whipple?

Mr. Whipple—No, I have not looked at them. I assumed that they were not introduced in the Dickey case.

Mr. Thompson—I am going to read them all. They have a marked bearing upon your clients and upon your case, and perhaps if you should read them you would not object to their going in evidence in your case. I will hand them to you.

Mr. Whipple—Might I decide that after I heard them read?

Mr. Thompson—Very well.

Mr. Whipple—I haven't read them yet and I would merely like to protect myself against any unproved sayings on the part of the directors. I have not felt that I could indorse very many of their outgoings.

Mr. Bates—They do not need your indorsement.

Mr. Whipple—Well, perhaps not. They have been trying to get them into the case a good deal, through your assistance.

The Master—Do I understand you are going to read them?

Mr. Thompson—Yes, sir.

The Master—The whole of them?

Mr. Thompson—Yes, sir.

The Master—Both that part which relates to Mr. Dittmore and that part which does not?

Mr. Thompson—Yes, sir.

The Master—That is all you called for.

Mr. Thompson—Well, they are offered to me as a whole and I should much prefer to put them in as a whole, because the part that relates to Mr. Dittmore is so related to the whole.

The Master—Proceed, then, and let your statement begin in this way or to this effect: I now read the letters referred to by Judge Hanna in his answer to cross-interrogatory 70.

Mr. Thompson—Filed by Mr. Dittmore.

The Master—Cross-interrogatory 70 will be enough, won't it?

Mr. Thompson—Well, cross-interrogatory 70 filed by Mr. Dittmore.

The Master—Very well—in the deposition just read.

Mr. Thompson—Yes, sir.

Mr. Whipple—May we offer the formal objection that they should not be considered in the Eustace and Dickey case, unless later we should see fit to waive that objection.

Mr. Thompson—Being copies handed to me by Governor Bates with the statement that they are copies of the original letters, the originals being in the possession of Judge Hanna. First is a letter from Mr. Rathvon, I assume, although—yes, it is initialed "W. R. R.," dated April 15, 1919. It contains a good many pencil alterations and additions, but I am informed by Mr. Buffum, and also by a pencil note on the margin, that the letter as sent contained no such changes, and was as it reads in typewriting. Therefore I shall read it as it is in typewriting. I should like, however, to indicate what the changes are that have been made in pencil, to indicate the change of thought on the part of the writer after he had sent the letter.

The Master—I don't think you better indicate that now. I think that as you read it in connection with Judge Hanna's deposition you should read it just as Judge Hanna received it.

Mr. Thompson—Precisely. I was going to, sir; then I was going to—

The Master—And leave it there for the present.

Mr. Thompson—Very well. The pencil notes will go in and be subject to comment later, I suppose, in argument.

Mr. Bates—No, the pencil notes will not go in.

Mr. Thompson—Oh, yes, they will go in—I won't take them unless those pencil notes go in—because they are the most significant part of the whole thing. They show the terror of the man, the change of heart, the wabbling of the man in his mind, fear, and everything else.

The Master—Mr. Thompson, pardon me, never mind what they show now.

Mr. Thompson—I want them, sir.

The Master—You will not get them in in connection with Judge Hanna's deposition; whether they may come in

in some other connection I will not now say.

Mr. Thompson—Did Your Honor hear what Governor Bates said to me: "I will hand you these letters on condition you put them in"?

The Master—He offered the letters. The pencil memoranda I do not regard a part of the letter.

Mr. Thompson—Then I am at liberty to call the writer and find out who made those pencil marks.

The Master—I go no further than to say that we want now only the letters as Judge Hanna received them.

Mr. Thompson—Very well. I will read the letter itself, with the understanding that it shall be marked but no further changes shall be made in it until I have had a chance to examine the writer.

Mr. Thompson (reading)—

[Copy of Exhibit 703].

"15 April 1919.

"Judge Septimus J. Hanna,

"803 Oakland Avenue,

"Pasadena, California.

"My dear Judge:

"If I could have talked with you as often as you have been in my thought during the past month or six weeks, we would certainly have had a long visit together and you might have heard some things that would have relieved you of a great deal of conjecturing.

"The stirring events that have followed the occurrences of March 17th, when a trustee was removed, a director retired and a new director elected, have added some unprecedented pages to the history of our movement.

"You are probably aware that as soon as the 'Bill in Equity' was filed, an injunction was clamped upon us which has effectively prohibited our doing anything towards correcting any of the numerous reports and misapprehensions of the situation that have been circulating through the Field. It is probable that the taking of evidence before a master will begin next week, although there may be further delays which we have been thus far unable to prevent. As the trial develops, many things which are now obscure and perplexing will be made clear to all.

"In our conversation with people from different parts of the Field, as well as in the great mass of correspondence which reaches us, it is evident that the reasons for removing Mr. Rowlands first, have caused much comment and conjecture. They are simple enough. Apart from the fact of his views being, perhaps, more radical than either of the others on the points involved in this controversy, he was the last man appointed, has large business interests which have required a great part of his time and, not being a teacher, has no association of students who would be greatly embarrassed if their teacher was officially discredited. It was hoped that the removal of anyone would open the eyes

of the others to what they blindly refused to see, yet which was apparent to every one with unimpaired vision.

"Much might be said about the complications caused by Mr. Dittmore's attitude in this affair and the effect of certain statements made in his answer. As every misrepresentation or partial presentation of facts will be corrected by the evidence to be presented, I need say but little to you on this point.

"However, it is only fair that it should be known that his removal was not undertaken hastily or without thorough consideration of all it involved. It has been a matter of common knowledge hereabouts for a long time past, that Mr. D. could not get along with the board and the board could not get along with him, and as unity of thought and action were essential in the crisis that was confronting us, and as matters internally were steadily growing worse instead of better, there was but one thing to do. Although his friends had repeatedly pointed out to him the inevitable result, he took the bit in his teeth and plunged ahead. The misstatements about the Board of Directors made in his answer will be effectively refuted at the trial.

"It should be clearly understood, however, by those who are at all interested in this side issue, that the action of the board in removing Mr. Dittmore was wholly unanimous, although his answer would imply otherwise. Mr. Neal was in the city but unable to be present. He advised with us constantly and heartily concurred in our action. The change that has come over our daily meetings since Mrs. Knott is with us cannot be set forth in words.

"I would not have you infer from this, however, that there is any personal animosity between Mr. Dittmore and the majority of the members of the board. It is true that he has placed himself, as an attorney recently put it, 'where he can throw a brick at any head that shows itself,' yet there is no desire that I know of to bring upon him anything that he does not bring upon himself. He is still a member of the Benevolent Association Board, and of the Trustees under Mrs. Eddy's Will, and meets with us regularly.

"Your metaphysical analysis of this whole affair has doubtless shown you that it is but a reflex of world conditions and that the whole world will share in the blessings that will follow its righteous solution here in Boston. I may say to you that those of us most deeply concerned are in no way cast down or dismayed, but are confidently working, watching and praying that God's omnipotence, omniscience and omnipresence, will in due season bring about the solution of the problem which had to be solved scientifically before the next onward step in our great movement could be taken.

"Personally I am not going to be

surprised if the whole structure should suddenly collapse and the intricacies of human law be set aside for that simple yet sublime law, the fulfilling of which is love.

"I need hardly mention to you that the attorneys for the plaintiff might object to my writing you such a letter as this and claim a violation of the injunction, but such you know is not my intention and I am sure you will agree with me that what I have written needs to be used discreetly.

"With all good wishes, I remain  
"Cordially yours"

The Master—"Cordially yours," who?

Mr. Thompson—It is not signed, but it is initialed "WRR-F." I would like to have that marked. Does Mr. Whipple still object to it?

Mr. Whipple—I will waive objection, if Your Honor please. That may be considered in our case.

[Copy of letter to Judge Septimus J. Hanna, without signature but initialed "WRR-F", dated April 15, 1919, is marked Exhibit 703.]

Mr. Thompson—Now, I would like to read a letter from Mr. Adam H. Dickey. It is in typewriting, marked "Copy." (Reading:)

[Copy of Exhibit 704]

"Boston, April 15, 1919.

"Dear Judge Hanna:

"Thank you for your letter of the 7th inst., and for your renewed assurances of support of the government of The Mother Church. I will try to give you my version in reply to two of the questions contained in your letter, and will then turn it over to the directors for reply to the other questions."

By the way, I should like at this point to call for the letter of Judge Hanna to which this was a reply—namely, the letter of April 7.

The Master—Well, I do not think that that letter had better come in in this connection.

Mr. Thompson—I merely wanted to register the call for it at some proper time.

The Master—Yes.

Mr. Thompson (continuing reading)—

"Why did the directors single out Mr. Rowlands as the trustee to be removed? We were trying to keep the Church and our Cause out of the courts; and instead of bringing a suit against the trustees and asking that they all be removed at once, the majority of the board agreed to select one of the trustees and dismiss him first, so that the remaining two could comply with the terms of the Trust Deed and fill the vacancy. The next question was to decide which one of the trustees to dismiss. We naturally followed the line of least resistance and did that which would seem to cause the least upheaval. They were all three equally guilty of deliberate disobedience to The Mother Church Manual.

"Mr. Rowlands was the last man to come on the Board of Trustees. He was the one least acquainted with the business of the Publishing Society. He had other important and outside interests which required a great deal of his time, taking him away from Boston on long trips for weeks at a time. He was not as closely identified with the work as either of the other men, either in teaching or practice, and it seemed to us that it would cause less of a commotion to dismiss him than it would to dismiss either of the other two.

"Again, we thought that if we succeeded in dismissing one of the men, it might possibly bring the other two trustees to their senses and they would appreciate that we were determined to see that the By-Laws of the Manual were enforced. We considered that if there could be an awakening, accompanied by a recantation of their impossible position, it might be better for the Cause and for all concerned to allow them to remain, provided they appointed some one to succeed Mr. Rowlands who would be acceptable to the Board of Directors.

"We were not dealing with men, nor did we take into consideration the personal attitude or mental qualities of any of the trustees beyond what is above stated.

"I am aware that I have been charged with collusion with Mr. Eustace, and that I was endeavoring to retain him as a trustee and support him in his wrong attitude toward the Church Manual, in return for his having pushed the publication and circulation of the pamphlet 'Possession.'"

The Master—I didn't get that.

Mr. Thompson—"Possession"; it is the name of a pamphlet, sir. There was one pamphlet on "Purification" and another on "Possession." Mr. Dickey wrote the one on "Possession," I understand.

The Master—We have not had any evidence about it so far, have we?

Mr. Thompson—Yes, sir, I think we have.

The Master—There was one on "Purification."

Mr. Thompson—Well, there is evidence that Mr. Dickey wrote the pamphlet on "Possession."

The Master—All right.

Mr. Thompson (continuing reading)—

"This was charged to me nearly a year ago by one of the members of the board. It did not come as a hint or as mere innuendo; it was an open and a definite charge as above stated, and entirely unsupported by facts. My reply to this accusation then was, and now is, that before presenting this article to the Journal for publication I submitted it to each member of the then Board of Directors, who pronounced it sound and scientific. It was then accepted by the editor-in-chief, passed upon by the associate

editors, and published in the Journal as usual. I was not aware that the Publishing Society was preparing to issue the article in pamphlet form and knew nothing of that fact until a final proof was sent to me by them. I spoke to Mr. Eustace at the time and asked him if he thought it was wise to distribute this in pamphlet form, even if there was a single objection to it. He was very insistent and firm in his statement that the article contained the truth and should be published and distributed. I do not know how many copies were printed. I have taken no interest in the circulation of the pamphlet, but have simply allowed it to take care of itself.

"I know that some time after the publication of this article some objection appeared to it, and this has grown somewhat, although I rarely hear anything about it. I know that Mr. Dittmore has changed his attitude entirely since its publication, and that there is some opposition to it on the Pacific coast. However, the article contains exactly what Mrs. Eddy taught me while in her home, it is substantiated by her writings, and needs and receives no defense from me. If it is the truth, it will stand; if it is not the truth, it will perish along with everything else that is contrary to Christian Science.

"Why did the directors remove Mr. Dittmore? First I might say that it was not for any of the reasons which I have seen as given out by him. He was dismissed because he took independent action in the consideration of questions which came before our board, contrary to the views and admonition of the other members. He undertook as a single member to do what the other members seriously objected to. His opposition and objection to the transaction of business by the directors grew to such an extent that in many cases it became impossible for the board to do business with Mr. Dittmore present. He assumed an attitude of offensive superiority, made accusations against the other members of the board which were damaging in their character, and so conducted himself as to greatly interfere with the deliberations of the board and its conduct of the business of The Mother Church.

"Mr. Dittmore was admonished and pleaded with to change his tactics, but to no purpose. He persisted in his offensive methods until it became impossible for the board to any longer work in harmony with him, and he was therefore dismissed by resolution, a copy of which was furnished him.

"I have given you a few of the reasons why Mr. Dittmore was dismissed, but perhaps they are sufficient to enlighten you. We suffered through many months of patient endeavor to correct these things before we finally decided to take action. When we did, it was the unanimous action of those present. Mr. Neal was not able to attend the meeting, but he was aware of what was being done and concurred

in the action dismissing Mr. Dittmore and the election of Mrs. Knott.

"With all good wishes, I am,

"Very sincerely yours,

(Signed) "ADAM H. DICKEY."

I would like to have that marked. Is there any objection?

Mr. Whipple—We waive our objection to that letter.

[Letter, Adam H. Dickey to Judge Septimus J. Hanna, April 15, 1919, is marked Exhibit 704.]

Mr. Thompson—Now, would it be appropriate to have Judge Hanna's letter in, Your Honor, that he replies to?

The Master—No, I think not.

Mr. Thompson—Very well, sir.

The Master—I have allowed you to put those two letters in on the theory that they are documents which Judge Hanna ought to have made a part of his deposition.

Mr. Thompson—I understand it, sir.

The Master—You now have the deposition complete.

Mr. Thompson—Yes, sir.

The Master—Now, that leaves, with regard to Judge Hanna's deposition, only the disposition of interrogatory 16 and the answer thereto, interrogatory 42 and the answer thereto. I am unable to think that the best way to deal with them is to strike them from the record, no matter how objectionable they may be. I am, however, prepared to rule that the question and answer, and particularly that part identified by Mr. Whipple, are neither material nor competent evidence for the purpose of adding to or modifying in any way the Deed of Trust. Whether they are material and competent for any other purpose in the case I am not prepared to rule finally at present. That opens a very wide field. I think that the disposition I make of interrogatory 16 and the answer will be sufficient at present. In regard to interrogatory 42 and the answer to the same, I rule that it is neither competent nor admissible for any purpose. The rights of both parties are to be preserved, of course, in the usual way, so far as necessary.

[Recess until 2:10 p. m.]

#### AFTERNOON SESSION

Mr. Thompson—If Your Honor please, I am permitted by Governor Bates to say that when Mr. Dickey, in giving testimony that Mr. Eustace said, "Why don't you clean up your own board, you know the hidden hand," he, Mr. Dickey, understood Mr. Eustace to refer to Mr. Dittmore. That is understood, and I need not recall him for that purpose. By the "hidden hand" he understood Mr. Eustace to refer to Mr. Dittmore. I assume that to be admitted.

Mr. Bates—We admit that was his understanding.

The Master—That was a conclusion of fact drawn by Mr. Dickey. The fact that he did draw that conclusion is admitted.

Mr. Thompson—Yes.

The Master—What is the next step?

William P. McKenzie, Sworn

Q. (By Mr. Dane) Will you please state your full name, Mr. McKenzie?

A. William P. McKenzie.

Q. And where do you reside? A. Cambridge.

Q. What is your present position? A. Editor of The Christian Science Journal, Sentinel, Der Herold, and Le Héraut.

Q. I will have to ask you to keep your voice up, Mr. McKenzie, just as far as you can, so that we can all hear. You were one of the original trustees under the Trust Deed of Jan. 25, 1898? A. Yes.

Q. And who were the other two? A. Mr. E. P. Bates and Mr. James A. Neal.

Q. On that date, namely, Jan. 25, 1898, were you a First Member of The First Church of Christ, Scientist? A. Yes.

Q. And were the other two trustees also First Members? A. They were.

The Master—That being admitted, I suppose you might have saved the trouble of proving it by him.

Mr. Dane—I am not going any further with it.

Q. When did you become a First Member? A. Oct. 6, 1894.

Q. When did you first meet Mrs. Eddy? A. On Christmas Day of 1894.

Q. Won't you state briefly your relations with Mrs. Eddy from that time until the time of her passing in 1910, and what the character of your relations with her was? A. From that time when I met her I felt the fullness of devotion to her and to the work that she was carrying on. I served her as a son might all the years that she was with us.

Q. Did you see her frequently? A. Not very often.

Q. Did you have communications from her? A. Frequently.

Q. Were you a member of the body known as First Members when the name of that body was changed to Executive Members? A. Yes.

The Master—Give us the date there, will you?

Mr. Dane—1903.

The Master—What day?

Q. Can you recall, Mr. McKenzie, the day of the month and the month in the year of 1903 that the name of "First Members" was changed to "Executive Members"?

The Master—I thought it was already a matter of evidence.

Mr. Dane—It is, Your Honor.

The Master—I was going to ask you to give it to me.

Mr. Dane—I have not at this moment the reference to the exhibit.

The Master—Oh, I didn't mean that you should bring it out from this witness; I only wanted whatever had appeared about it.

Mr. Abbott—It is stated in the bill, I think. The Bill in Equity, I think, states it.

The Master—Very likely.

Mr. Dane—It was 1903.

The Master—Your question to the witness about it may go out of the record?

Mr. Dane—Yes.

The Master—You don't want it, do you?

Mr. Dane—No.

The Master—Strike it out. I was just getting the date for my own benefit.

Mr. Dane—Yes, I understand. I think I can furnish that (examining copy of bill).

The Master—I won't delay you for it now; go right on.

Q. Were you a member of that body known as Executive Members in 1908? A. Yes.

Q. What was the character of the business that was done by the First Members between the time that you became a First Member and the time that the name was changed in 1903?

Mr. Whipple—I am sorry, but I did not catch the earlier part of that question.

[The last question is read.]

Mr. Whipple—I must object to that. The records show it, so far as it is of importance, and the records were put in and gone over with meticulous care.

Mr. Dane—The records show that the First Members did adopt the By-Laws and adopted amendments to the By-Laws.

Mr. Whipple—Yes.

Mr. Dane—Here is a man who was a member of that body, and I simply desire, by one direct question, to bring out the general nature of the business that that body did.

Mr. Whipple—Well, it is not the general nature that we are concerned with here; it is the specific things that were done that have a bearing upon this case; and if the evidence is useful in any respects it will be useful only if we have it in a way that it can prove something.

The Master—I see no objection to his stating generally what the general nature of the business done by the Executive Members was.

A. They received members into the Church. They had to deal with cases of discipline of churches and individual members. They accepted and passed upon By-Laws for the Church sent by Mrs. Eddy.

Mr. Dane—I can now supply Your Honor with the date of the change.

The Master—Thank you.

Mr. Dane—The change from First Members to Executive Members. It was March 17, 1903; and the date on which, as we claim, the Executive Members were disbanded is July 8, 1908.

Q. Mr. McKenzie, after July 8, 1908, had the members who were at that time known as Executive Members transacted any business? A. No.

Q. Was there a time when you were a member of the body known as First Members when that body ceased to transact business of the Church? A. Yes.



Q. Can you give us the year in which that body ceased to do business? A. 1901.

Q. Since 1901 has that body transacted any business of the Church? A. Not that I know of.

Q. Since 1908 has there ever been a meeting of the body which was then known as Executive Members? A. Not to my knowledge.

Q. Did you ever know of a by-law or an amendment to a by-law that was proposed by Mrs. Eddy for adoption while you were a member of the First Members that was not adopted by the First Members? A. No, I do not.

Q. And do you know of any by-law or amendment to a by-law ever adopted by the First Members that was not proposed by Mrs. Eddy for adoption? A. No, I do not.

Q. I wish you would state briefly what positions you have held in Christian Science, beginning with the time when you first held any position in Christian Science. A. My first position was that of so-called First Member. Later I was Second Reader in one of the branch churches. Then I was a member of the Bible Lesson Committee. Later I became a member of the Manual committee, a trustee of The Christian Science Publishing Society, a member of the Board of Lectureship, and, for a second time, I was First Reader—I mean for a second time I was reader, this time First Reader; and then I have been editor for two years.

Q. How long were you a trustee under the Trust Deed of Jan. 25, 1898? A. From that date until July of 1917.

Q. Since that date you have been editor of the periodicals, as you have stated? A. Yes.

Q. Now, I want to refer to the Manual committee of which you were a member. For what period of time were you a member of the Manual committee? A. My first experience in that work—I do not think it was called a committee. Judge Hanna was asked by Mrs. Eddy to make a revision of the Manual, and I believe he was asked to call for my assistance. That was in the early part of 1897.

Q. Did you and Judge Hanna work together in making a revision of the Manual in 1897? A. Yes.

Q. And what was that revision called? A. It was published as "Revised Edition."

Q. Now, Mr. McKenzie, whether or not this revised edition—

The Master—Has it a number?

Mr. Dane—It is not an exhibit. Oh, you mean its number. It is the seventh.

Q. Is that known as the Seventh Manual? A. I believe it is both the sixth and the seventh edition.

Q. That is, it was a revision of the sixth and seventh? A. It would be a revision of the fifth, and the sixth and seventh were both published, as I recollect, under the title "Revised Edition," not numbered.

Q. And that was published in 1897?

A. Yes, sir.

Mr. Whipple—We have not had a copy of that, have we?

Mr. Dane—Not yet.

Q. You worked with Judge Hanna in making that revision? A. Yes.

Q. Now, won't you state briefly what you did in making up that revision—how the work was done? A. Different by-laws had been added from time to time and the articles were not quite clear. By-laws belonged in one article which might properly be placed in another one, and the request was to make a complete revision. We did that by taking the pages and relating the sections together in such a way as to get articles which were properly constructed. There were a number of repetitions, and we marked these, and then this dummy, if I might call it that, was sent to Mrs. Eddy for her supervision and examination.

Q. Subsequently did you get this dummy edition back from Mrs. Eddy? A. It came to Judge Hanna.

Q. And following that was the edition printed and published? A. Yes.

Q. Is this the edition about which you have just testified (handing a book to the witness)? A. Yes.

Q. Now, Mr. McKenzie, whether or not this edition which you have identified as the revised edition—

The Master—You mean that is a copy of the edition? You do not mean that it is the original book which he put together, do you?

Q. I do not understand, Mr. McKenzie, you mean to say that this is the original book? A. One of them; one of the editions.

Q. And were they all the same? A. So far as I know.

Q. The revised edition? A. Yes.

Q. And were they published and used at that time by the members of the Church? A. Yes.

Q. As the Manual of 1897? A. Yes.

The Master—That contains no statement that it is an authenticated copy of any edition.

Mr. Dane—There is no such specific authentication in the book itself.

The Master—It is just like the others in that respect.

Mr. Dane—Each stands in that respect like the others.

Q. Mr. McKenzie, whether or not this edition about which you have testified was the edition of the Manual which was in existence and in common use at the time of the execution of the Trust Deed of Jan. 25, 1898? A. Yes, I believe it was.

Mr. Whipple—Have you had that marked as an exhibit?

Mr. Dane—I beg pardon?

Mr. Whipple—Have you had that marked as an exhibit?

Mr. Dane—I was just going to have it marked.

Mr. Whipple—May I look at it before you offer it?

Mr. Dane—Certainly. (Handing copy of Manual to Mr. Whipple.)

Q. I will ask you, if I may, while

counsel are examining the book, Mr. McKenzie, it is true, is it not, that in the edition of 1897, about which you have testified, there is no article relating to the Publishing Society? A. No, there is none.

Mr. Whipple—And that of course refers to the Publishing Society that was then in existence as a corporation?

Mr. Dane—As a corporation.

Mr. Whipple—Having officers and stock.

Mr. Dane—There is no reference in it to any publishing society.

Mr. Whipple—Quite right.

The Master—Let me ask if there are plenty of copies of that edition?

Mr. Dane—Of that particular edition? They are not very plentiful; I am informed there may be some duplicates. I may be able to furnish some.

The Master—I thought perhaps if you had a spare one you might let me take that.

Mr. Dane—I would be glad to.

The Master—But any time will do.

Mr. Dane—There is one that I have used; I think you may take that. (Handing copy of Manual to the Master.)

The Master—I will ask also whether you have put in here a copy either of the fifth, sixth or the seventh edition?

Mr. Dane—There is not. This is a revised edition, which I understand covers the fifth, sixth and seventh, according to the witness' testimony.

The Master—Well, I so understood his testimony, but I gathered from it that there was, in addition to this revised edition, 1897, also published a fifth, a sixth, and a seventh edition, the sixth and seventh corresponding exactly with this, but being published nevertheless as the sixth and seventh editions. Is that a correct statement?

Mr. Dane—Perhaps I can inquire and clear up that.

The Master—Well, all right.

Q. Mr. McKenzie, subsequent to the publication of the revised edition about which you have testified, were there published and in use a fifth and sixth edition? A. That is what I believe; that the editions were numbered up until the fifth, and then the sixth and seventh published with the title "Revised Edition," and not numbered.

Q. Well, is it true that the revised edition—

The Master—That is exactly the point I wanted to get at.

Q. Then I was going to ask just this question: If it is not true that the seventh edition superseded the fifth, sixth, and seventh, that were in existence at the time of the publication of the revised edition? A. Yes.

Mr. Whipple—You mean superseded or succeeded?

The Witness—Succeeded.

Mr. Dane—Succeeded.

The Master—Now, I gather that this was published, as he says, in 1897. The last preceding it was the fifth, published as the fifth, and there were

no editions published as sixth and seventh, or called sixth and seventh.

Mr. Dane—That is my understanding of the testimony.

The Witness—It is my understanding, too.

The Master—The next edition after this was the eighth?

Mr. Dane—Was the eighth.

Q. Now, I desire to show you, Mr. McKenzie, a letter that has the document number 4870, and ask you who wrote that letter, who signed it, and to whom it was written? A. It was a letter written by Mary Baker Eddy, is signed by her, and it is addressed to me.

Q. And when did you receive that letter? A. I wrote on that letter "February, 1898 (second week)."

Q. When did you write that? A. That was written about the time of the receipt of it.

Q. And is that the date of its receipt by you? A. To the best of my knowledge. It was not dated.

Q. You wrote on there on about the date that you received it? A. Yes.

Q. "February, 1898?" A. Second week.

Q. And, in parentheses, second week? A. Yes.

Mr. Dane—I am going to offer this letter. Do you want to see it?

Mr. Thompson—We have no objection to this document (referring to a copy of the Church Manual) that has been under discussion, the revised edition. If I might be permitted, for my own convenience later in referring to that, I should like to refer to pages 22 and 23, and the provision therein that it shall be the duty of the First Members to call a special meeting for the purpose of considering the questions relating thereto, and requiring the Committee on Finance to visit the Board of Directors. That may have a bearing on the construction of the true meaning of certain provisions in the existing Manual called the eighty-ninth edition.

Mr. Dane—You have no objection to this exhibit?

Mr. Thompson—No, no objection. On the contrary, I would like to have it go in.

Mr. Dane—I would ask to have it marked now as an exhibit.

[A copy of the Church Manual, Revised Edition, 1897, is introduced in evidence and marked Exhibit 705.]

Mr. Thompson—I do not care to read this letter any further. No objection.

Mr. Dane—I will read the letter into the record.

Mr. Thompson—I notice part has been erased.

Mr. Dane—Document No. 4870, in an unbound volume, No. 37, of Letters and Miscellany.

[A letter from Mrs. Eddy to Mr. McKenzie, February, 2nd week, 1898, Document No. 4870, in Letters and Miscellany, is offered in evidence as Exhibit 706, and is read by Mr. Dane, as follows:]

"Pleasant View,  
"Concord, N. H., Feb. 1898,  
"(2nd week)

"My beloved Student

"Your Manual contains all that I know now of importance to add Oh may God give us rest and peace hereafter and forever.

"Please note changes on p. 24, Art. II and pp. 34-43.

"My prayer is now May Israel be the Israel of the Lord You have no conception of the mental crimes that unless stopped are to be met as God demands. He will not always let the sinner go unpunished I thank Him for giving me you and pray that you be kept unspotted from the world; precious James is safe in God even as all are who abide in Him as you two do, and dear Mr. Bates is most useful when on the right line Help him to keep thus I never despair of any one till the last hope of their present career is gone and I see that I can do no more for them.

"With love mother

"MARY BAKER EDDY"

Q. Now, Mr. McKenzie—

The Master—What is the book there referred to?

Mr. Dane—I was about to ask.

Q. Mr. McKenzie, what Manual did Mrs. Eddy refer to in that letter? A. She was referring to the make-up of the eighth edition.

The Master—What was the date of that letter?

Mr. Bates—Second week in February, 1898.

Q. I show you this book and ask you if that is a copy of the Manual referred to in that letter? (Handing copy of Manual to witness.) A. Yes. Article II is about The Christian Science Publishing Society.

Q. And on what page does it appear? A. Page 27.

The Master—Did I get his statement correctly, that this revised edition was the one in use Jan. 25, 1898?

Mr. Dane—Yes.

The Master—Now, we have a letter in February, 1898, referring to a copy of the Manual which he says was the eighth edition.

Mr. Dane—Yes, Your Honor. It must have followed very soon after the adoption of the trust deed, and in it appears for the first time the article relating to the Publishing Society, the Publishing Society having been created by the trust deed of Jan. 25, 1898.

Mr. Whipple—I do not understand that there is anywhere in the records of the First Members any record of the adoption of this eighth edition. Am I right?

Mr. Dane—I think not as an edition. I might elicit that fact later. I have seen no such record in my examination.

Q. Mr. McKenzie, what appears in that book between pages 34 and 43?

Mr. Whipple—What pages?

Mr. Dane—34 and 43. They are the pages referred to in the letter.

A. 34 to 38 is about communion

service, reading in public, and seating strangers. Then follows 37 to 45, discipline.

Q. I don't care about that. Was this book which you now have a copy of the eighth edition of the Manual that was published and used by the members of the Church in 1898? A. Yes.

Q. I will ask you whether or not in any prior edition of the Church Manual there appeared any provision relating to The Christian Science Publishing Society? A. No.

Mr. Whipple—Shouldn't your question be any Christian Science Publishing Society, because there are different organizations that went under that name?

Mr. Dane—I am willing to accept that amendment.

The Master—Under those circumstances won't it become important for us to know something about the date of the adoption of that eighth edition?

Mr. Dane—Well, I had intended, if Your Honor please—

The Master—If you say you are going to show it later, all right.

Mr. Dane—Well, I think I shall; but I had intended for the purposes of this witness' examination to leave it in this way, namely: To show the revision by him and Judge Hanna of the seventh edition, containing nothing about the Publishing Society, and then the letter from Mrs. Eddy, received the second week in February, after the Trust Deed of Jan. 25, 1898, and the article in the eighth edition which was referred to by her in that letter, containing for the first time the subject of The Christian Science Publishing Society. As to the precise date of its adoption, I did not intend and it would not be convenient for me to go into it with this witness.

Mr. Whipple—Perhaps Your Honor noticed that I asked counsel if he knew of any vote of the First Members or anyone else adopting the eighth edition, and he said that he had not yet found any; and so I assume that he relies for such adoption as it ever had upon something else than a vote of the First Members. May I take the book, please?

Mr. Dane—Certainly. Of course it is true that in every subsequent edition of the Manual—Mr. Whipple will not dispute this—the subject of The Christian Science Publishing Society is treated as a subject in the Manual, and that continues down through those various editions of the Manual which were adopted either by the First Members or by the directors, into the seventy-third edition, which was established as a standard, and appears in the present eighty-ninth edition in a somewhat altered form.

Mr. Whipple—Yes; but the fact remains that there are quite a number of so-called editions that were put out and circulated which were never adopted by any vote of the First Members or anybody else.

The Master—I take it that it re-

quires an adoption to make any one of these editions the Church Manual, doesn't it?

Mr. Dane—I would not agree with Your Honor's statement unless it was added that a ratification might be tantamount to an adoption.

Mr. Whipple—Ratification by whom?

Mr. Dane—By the Church membership, by Mrs. Eddy. The source of these By-Laws is not the Church membership, it is Mrs. Eddy.

Mr. Whipple—Well, in one aspect that may be so, but if you are a church organization that presents another aspect.

Mr. Dane—Emanating from that source of authority it would be received by the Church membership and used by the Church membership, acquiesced in by the Church membership, and always has been.

The Master—Let us take that statement for the present. Then we have this situation: we have got proof regarding a revision of the fifth edition, resulting in the production and adoption of this revised edition, which is called Revised Sixth or Seventh, indiscriminately. Now, it appears that after that there was still another revision, because the next edition in order of time has a good deal added to it. It seems to me that we need to know the date of the adoption of that revision, by whomsoever it was adopted, whether by Mrs. Eddy or by whomsoever else, what was the precise date of its adoption, when did it become the Church Manual.

Mr. Dane—It received the approval of Mrs. Eddy the second week of February, 1898, according to the testimony and her letter in which she says that "Your Manual contains all that I now know of importance to add." That is, to add to the preceding Manual.

The Master—Yes. And that letter is connected with what you produce as the eighth edition only by the testimony of this witness.

Mr. Dane—Yes, Your Honor.

Mr. Whipple—Who does not produce the—

The Master—Authenticated copy to which Mrs. Eddy refers.

Mr. Whipple—Yes.

Mr. Dane—Why, no. There is, so far as I know, no authenticated copy of the eighth edition.

Mr. Whipple—Why, it was authenticated, whatever came in that letter from Mrs. Eddy.

Mr. Dane—That is exactly what I claim—that that was an authentication of this very edition of 1898, in this letter.

Mr. Whipple—No, the copy that came in the letter was the authentication.

Mr. Dane—And this is the copy that came—

Mr. Whipple—This is?

Mr. Dane—According to the witness' testimony.

Mr. Whipple—Oh, no, he didn't say that this is the copy that came.

The Master—I don't think that.

Mr. Whipple—He says that this is a copy of the copy that came.

Mr. Dane—Well, that may be true. This is a printed copy of that edition which was authenticated by Mrs. Eddy's letter of February, 1898.

The Master—One copy of which was authenticated.

Mr. Dane—Yes. I would like to mark this—

Mr. Whipple—Now, if Your Honor please, it would, I take it, not be useful to put in the whole Church Manual of 1898 as is expressed here. What we are dealing with is the article which has to do with The Christian Science Publishing Society, and if there is any basis for the contention that the defendants have advanced, it would rest upon what was then for the first time put into the Manual about The Christian Science Publishing Society, and why should we not, instead of having this book marked as an exhibit, read into the record all it says—there are only three sections—about The Christian Science Publishing Society, because on their contention this is what Mrs. Eddy said with regard to the management and Deed of Trust of the Publishing Society contemporaneously with the deed, not some subsequent one—that would not be contemporaneous. This is what you are trying to prove is contemporaneous, and why not have that read into the record as a basis of your claim and then see how the other things have been built up or grafted on, or, as Mr. Krauthoff says, unfolded, later?

Mr. Dane—Mr. Whipple has not at all stated our position in that respect. This is put in, just as I have previously stated, as showing the first time when the subject of the Publishing Society was dealt with by Mrs. Eddy through the instrumentality of the Manual, and it is not limited to that edition, it continues through the various succeeding editions.

The Master—Well, one step at a time. I think I shall let him mark the book. I am not sure that is all that we shall want to refer to in it.

Mr. Whipple—May we read that part of it into the record?

The Master—I don't think I would just at this stage. It may lead us off into some dispute about something.

Mr. Whipple—Perhaps Your Honor will run your eye over it. We regard that as quite important. (Handing Manual to Master.)

The Master—Well, it is proper enough for you to identify the sections which you think are important, but I do not think we will read them into the record now.

Mr. Whipple—It is Article XI, is it not, Your Honor, Sections 1, 2 and 3? And are we agreed that that is all that is said in this Manual in regard to the Publishing Society?

Mr. Dane—No, I am not prepared to make that agreement.

Mr. Whipple—Look it over sometime and see if you cannot agree to that.

Mr. Thompson—I might suggest that there may be reasons why we should like to examine it.

The Master—Mark it as an exhibit. [Copy of eighth edition of Manual, date 1898, is marked Exhibit 707.]

Mr. Thompson—May I look at it a minute? I haven't seen it.

Mr. Dane—You may. I want to ask one or two questions about it.

Mr. Thompson—Just a minute. (Exhibit 707 handed to Mr. Thompson.)

The Master—If Mr. Dane wants to go on—

Mr. Thompson—Very well.

Mr. Dane—There are one or two questions.

Mr. Thompson—I don't find what I was looking for.

The Master—I think you better go on with the witness now. You will have an opportunity later to take that Manual.

Q. Mr. McKenzie, is this book that has been marked Exhibit 707 a copy of the Manual that was referred to in Mrs. Eddy's letter to you of Feb. 18—

Mr. Whipple—You mean, an exact copy, I take it?

Q. (Continued.)—of Feb. 8, 1898? A. To the best of my knowledge, it is.

Q. I call your attention to page 3 of the so-called revised edition of the Manual, Exhibit 705, and ask you if you have any knowledge as to how that excerpt from Mrs. Eddy's writings came to be printed in the Manual? (Handing Manual to witness.) A. Yes.

Q. Will you state, please. A. I wrote to her that I thought this paragraph in "Miscellaneous Writings" was a splendid statement of the real meaning of the Manual and that it would be helpful to those who studied the Manual to have that preface or foreword, and it came back approved.

Mr. Whipple—Was that in writing that came back approved, you say? Because we have not been accepting these statements, offhand statements, of that sort on important subjects.

The Witness—It came back in its place with the rest of the Manual.

Mr. Whipple—Well, where is the correspondence, where is what came back?

The Witness—Nothing but itself.

Q. There was no letter from Mrs. Eddy? A. No letter from her.

Q. You made the suggestion that you have stated, and subsequently what happened? A. We sent up the proof sheet with that in.

Mr. Whipple—Well, who?

The Witness—And it came back with the rest of the matter approved.

Mr. Whipple—Well, where is the approval? We have had—

Mr. Dane—Well, I suspect that it is in the possession of your clients somewhere. Mr. McKenzie at that time was a trustee of the Publishing Society.

Mr. Whipple—Well, you have not

asked us to produce it, and we have not been able to find it.

Mr. Dane—And the proof sheets—we have not been able to get all the proof sheets of the Manuals from your custody, or the custody of your clients. You have handed us some—

The Master—Well, you haven't it—that will be enough for the present.

Mr. Dane—We haven't it.

Q. Now, Mr. McKenzie, has that extract from Mrs. Eddy's writings appeared in every subsequent edition of the Church Manual? A. So far as I know, it always has.

Q. How long a time did you serve on the Manual Committee? Have you stated? A. I have notices of appointments.

Q. If you can, just confine yourself to the approximate time that you served on the Manual Committee. A. From 1898 to 1903.

Q. During that time were the duties of the Manual Committee in making up the various editions of the Manual as you have stated? A. Yes. It was proof reading and taking charge of the matter so far as the printing was concerned.

Q. After the material was collected and put in its correlated place in the Manual, what was done with the dummy edition in each instance? A. Always sent for Mrs. Eddy's approval.

Q. Subsequently was any edition of the Manual ever issued, so far as you have personal knowledge, except that it had received Mrs. Eddy's approval?

Mr. Whipple—Just a moment. What knowledge has he except when he was on the committee?

Mr. Dane—That is all.

Mr. Whipple—Well, that is all right.

Mr. Dane—Then we are agreed as to that?

Mr. Whipple—And he said it was always sent to her and came back with her approval during those years.

Mr. Dane—If he has, that is all I am asking. I was not aware that he had quite answered it.

The Master—The last question, perhaps, did not contain the limitation of his term of service on the Manual Committee.

Mr. Dane—Perhaps it did not. I think I said, within his personal knowledge.

Q. During the time that you were on the Manual Committee, Mr. McKenzie, was there ever a Manual published but that had first received Mrs. Eddy's approval as you have stated? A. Not to my knowledge at all.

Q. While you were a member of that committee, of course you would have known if there had been a Manual published without her approval? A. I certainly would.

Q. Now, Mr. McKenzie, shortly after you became a trustee under this Trust Deed, was there occasion for filling a vacancy in the Board of Trustees? A. Yes.

Q. About when did that occasion

arise? A. It was in August of 1898, as I remember it.

Q. Did you, as a member of the Board of Trustees at that time, take up with Mrs. Eddy the question of filling the vacancy on the Board of Trustees? A. Yes.

Q. I show you a letter dated Aug. 11, 1898, and ask you if that is your letter? A. Yes, it is.

Q. You wrote it? A. I did.

Q. And sent it to Mrs. Eddy? A. Yes.

Q. On the date that it bears? A. Yes, sir.

Mr. Dane—I offer this letter.

Mr. Whipple—How is it material or important? We have gone all over this once.

Mr. Dane—No, we haven't gone into it.

The Master—Will it be followed by a letter from her?

Mr. Dane—It will, yes.

Q. While Mr. Whipple is examining the letter I will ask you, referring to the letter of February, 1898, from Mrs. Eddy, to you, who is referred to by "James"? A. That is Mr. James A. Neal.

Q. He was then one of your co-trustees? A. Yes.

Q. He is now a member of The Christian Science Board of Directors? A. He is.

Q. And who is referred to by Mr. Bates? A. Mr. E. P. Bates, who was one of the trustees of the original board.

Mr. Whipple—We submit the question of materiality without argument or comment.

Mr. Dane—I did not catch that.

Mr. Whipple—I said, we will submit the question of materiality without argument or comment.

The Master—I gather that the letter is offered as one step in the series of correspondence. He says he is going to put in a reply to that, as I understand him.

Mr. Dane—Yes, I intend to follow that letter with a letter from Mrs. Eddy upon that same subject. It is almost contemporaneous of this very—

The Master—Never mind what it is. If you are going to get a letter in reply from Mrs. Eddy, why not go ahead and get it?

Mr. Dane—I was waiting for Mr. Thompson to read the letter.

Mr. Thompson—We do not object to that (handing paper to Mr. Dane).

Mr. Dane—Then I offer this letter of Aug. 11, 1898, on the letterhead of The Christian Science Publishing Society, 95 Falmouth Street:

"Boston, Massachusetts, Aug. 11, 1898.  
"Our Beloved Mother:

"At a meeting of First Members held this morning it was shown by one of the trustees that upon two of them had fallen three-fourths of the responsibility, owing to the frequent absence of the third trustee—these absences in six months being 30 per cent of the whole time. Also that

since deprived of the position and salary of assistant in the office his announced intention of being here less frequently would leave almost the whole responsibility of the business with two of the trustees. The vote was unanimously taken that the trusteeship of Mr. Edward P. Bates be declared vacant.

"The Pastor Emeritus reserves the right to fill such a vacancy by appointment, hence the action is reported now to her.

"Otherwise the two remaining trustees are to nominate, and the First Members by unanimous vote to elect the successor.

"We are sure that our Mother knows what is best to be done in the divine order, and we wait to hear.

"With the feeling of relief and hope and joy for future work,

"Faithfully thine,

(Signed) "WM. P. MCKENZIE,  
"Sec."

Mr. Whipple—Now, if Your Honor please, that is exactly in accordance with the Deed of Trust, I think, except that it leaves out the directors. How do you claim that that is in the Deed of Trust different from what we contend for?

Mr. Dane—In just this way, Your Honor—

The Master—I should like to hear what Mrs. Eddy says to it before I pass any judgment upon it.

Mr. Whipple—Very well, Your Honor.

Mr. Dane—While her letter is being looked up, there was another letter from Mr. McKenzie to Mrs. Eddy, following the one of Aug. 11.

The Master—Before her reply?

Mr. Dane—Before her letter came to Mr. McKenzie. Probably that had better be read before Mrs. Eddy's letter to Mr. McKenzie.

The Master—Well, you will have to show it, I suppose, to the other counsel.

[Paper is handed to Mr. Whipple.]

Mr. Whipple—We must object to that, that it does not comply with either the Trust Deed or the Manual, or anything else that is in the case. It can't possibly be a construction of a deed different from the terms itself or different from the Manual. It simply shows that Mr. McKenzie did not happen at the time to know what the terms of the Trust Deed were, I should think; or else he was inventing a method that Mrs. Eddy did not provide.

Mr. Dane—I am prepared at any time to make a statement of what I claim the bearing of this is. I understood Your Honor's suggestion was to get the letters in.

The Master—I did suggest to get Mrs. Eddy's reply, to see what she said about it.

[Letter, William P. McKenzie to Mrs. Eddy, Aug. 11, 1898, is marked Exhibit 707½.]

Mr. Dane—You make no objection that this is not Mr. McKenzie's letter"

Mr. Whipple—No, I am willing you should read it subject to our objection and subject to His Honor's ruling about it.

Mr. Dane (reading)—  
"Christian Science Publishing Society,  
"95 Falmouth Street,  
"Boston, Massachusetts.

"Aug. 19, 1898.

"Our Beloved Mother:

"Yesterday I received from Mr. Frye a telegram reporting that Mother declined to fill by appointment the vacancy on the Board of Trustees: So at the regular meeting today of the board, the first business was the nomination, by the remaining members, of Septimus J. Hanna to fill the vacancy. This nomination is reported to you, and the next step will be to call a meeting of the First Members, and secure an election by an unanimous vote, if the appointment meets Mother's approval. The meeting will be called for 10 o'clock tomorrow (Saturday) morning. If a reply is sent to me please address 2 Cumberland Street.

"With loving thought and gratitude,  
"WM. P. MCKENZIE,  
"Sec."

Mr. Whipple—The last part of it, you say, suggests a procedure that is not named in the Deed of Trust and certainly was not in the Manual or indeed anywhere else.

Mr. Dane—It was in the Manual at that time.

Mr. Whipple—What was the Manual?

The Master—Won't you please now get Mrs. Eddy's reply to that?

Mr. Dane—I am endeavoring to, Your Honor.

The Master—Then when we get the whole correspondence I will see what can be done about it.

[The letter of which the foregoing is a copy, dated Aug. 19, 1898, is marked Exhibit 708. F. H. B.]

Mr. Dane—I offer now a letter, document No. 4871b, from Mrs. Eddy, addressed to "My beloved son."

Mr. Whipple—Is there a date on it?

Mr. Dane—Aug. 20, 1898, at the end of the letter.

Q. I show you the letter just referred to. Mr. McKenzie, and ask you if that is Mrs. Eddy's letter to you of Aug. 20, 1898? A. Yes, it is.

Mr. Dane (reading)—

"Pleasant View,  
"Concord, New Hampshire,  
"Aug. 20, 1898.

"My Beloved Son:

"Your letter cheers me a little even mid nameless trials at home about help outside and within. The dear Manns are treasurers in help but more is needed.

"The dignity of our cause and the good of the students demand of us to publish a weekly newspaper. Please name it a little more graphically, e. g. Christian Science Messenger.

"I hereby say that I respectfully decline to use my privilege in choos-

ing or refusing a candidate for membership on the Board of Trustees.

"With love, mother,  
"MARY BAKER EDDY."

[The letter of which the foregoing is a copy is marked Exhibit 709. F. H. B.]

Mr. Whipple—If Your Honor please, may I take this opportunity to withdraw a statement that I made a moment ago with regard to what was in the Manual at that time? It has been called to my attention that there was a provision in the Manual that in case Mrs. Eddy did not see fit to exercise her right, the candidate proposed for the office should be elected by unanimous vote of the First Members of the Church. That was amended in August, 1898.

Mr. Dane—Oh, yes.

Mr. Whipple—And never was in again.

Mr. Dane—That is true. We are dealing now—

The Master—Amended in August, 1898?

Mr. Dane—Yes.

The Master—That correspondence is in August, 1898.

Mr. Dane—Yes.

Mr. Whipple—Amended at this very time—within a very few days.

Mr. Dane—The point that I desire to make is just this—

The Master—You mean in regard to the admissibility of these letters?

Mr. Dane—No, I don't know that they are now objected to.

Mr. Whipple—I do object, yes.

The Master—Why shouldn't we have them as showing the procedure followed and apparently with Mrs. Eddy's approval, in regard to that vacancy?

Mr. Whipple—There is nothing that shows Mrs. Eddy's approval. The only thing that she said in her letter was, otherwise than referring to the distresses in connection with her household, that she did not see fit to nominate.

The Master—Yes. But had she not been notified by the trustees' letters of the procedure which they proposed to carry out in case she took that position?

Mr. Whipple—She said nothing about it.

The Master—She said nothing about it.

Mr. Whipple—Yes. Now, do you propose to show that that was done?

Mr. Dane—No, I propose to leave it. I propose to leave it right where it is.

Mr. Whipple—Yes, because you cannot show that it was done.

Mr. Dane—It is not necessary for my present purpose—

Mr. Whipple—Well, you have a strange purpose.

Mr. Dane—To show the construction placed upon this instrument by the parties in interest, namely, the Donor herself and the trustees of the instrument.

Mr. Whipple—Now, I object to it for that reason and His Honor has not admitted it for any such reason. It

is not a construction of the instrument at all; it is an attempt to follow a by-law that was changed before anything else was done, as I am informed. Am I right in that? The First Members never did elect, and Mrs. Eddy, before they elected, approved of a by-law which dispensed with their taking any action. It is not in the slightest degree an interpretation of the deed.

The Master—Why shouldn't we have the whole history and then see what conclusions we draw from it?

Mr. Whipple—Why, because Mr. Dane won't offer the whole history and he wants to leave it right there, although he knows that nothing was done.

Mr. Dane—Why—

The Master—He can't put into the history what didn't take place.

Mr. Dane—I have admitted what you said.

Mr. Whipple—He can put in the fact that nothing did take place.

Mr. Dane—I admitted all that Mr. Whipple has just stated, and having admitted, I have made the point that I desired to note.

The Master—I think we will have the letters and the fact that the by-law on that occasion was not complied with, if it be a fact.

Mr. Whipple—And that it was changed.

Mr. Dane—Of course the only purpose for which this could be admissible is not what was actually done at the time, but what the trustees under the instrument and the Donor herself understood to be the operation of the By-Laws upon the Trust Deed.

The Master—That is an argument which perhaps is justified by the history and perhaps not, but we will get the history.

Mr. Whipple—Now, if Your Honor please, Mr. Dane says that he admits that no action was taken in pursuance of it, and we have asserted, and I understand he admits, that the by-law was changed before anything was done. May we not call attention to the change, which appears in the minutes of the meeting of the First or Executive Members—

The Master—One moment, Mr. Whipple. Perhaps that is the next thing Mr. Dane is going to show.

Mr. Whipple—No, he said he was not.

Mr. Dane—No, I do not object to Mr. Whipple's showing it if he wants to.

The Master—If it appears there on the record, couldn't we shorten it by having an admission that the by-law was changed by vote of such and such a board on such and such a date?

Mr. Dane—I think we could.

Mr. Whipple—The admission would not be shorter than to read the vote; it is only a few lines.

The Master—Very good, read it.

Mr. Whipple—At a special meeting

of the First Members, on Aug. 25, 1898, it was voted—

“that the second paragraph of Section 1 of Article XI, page 28, of the Church Manual, eighth edition, be amended by striking out the words following: ‘the remaining trustees shall fill the vacancy.’ The words to be stricken out are: ‘and the candidate proposed for this office shall be elected by a unanimous vote of all the First Members of said Church.’”

Mr. Dane—What is the date of that meeting?

Mr. Whipple—Aug. 25, 1898.

Mr. Dane—I had not intended to follow that up, but in view of the fact that the record of that meeting has been read into this record I now offer a letter from Mr. McKenzie to Mrs. Eddy of the same date, namely, Aug. 25, 1898, and I ask you, Mr. McKenzie, whether that is your letter that you sent to Mrs. Eddy on that date?

Mr. Whipple—Aug. 28, is it?

Mr. Dane—25.

The Witness—Yes.

Mr. Dane—Aug. 25, 1898, on the letterhead “Christian Science Publishing Society, 95 Falmouth Street.”

Mr. Whipple—Let this be taken subject to our objection and exception in the same way.

The Master—Yes.

Mr. Dane (reading)—

“Boston, Mass., Aug. 25, 1898.

“Our beloved Mother:

“As the business sent us yesterday required haste we acted promptly as requested. No power of election is placed in our hands when the Pastor Emeritus makes an appointment—so we simply put the appointment on record. Since receiving a communication this a. m. we have telegraphed Mr. Tomlinson not to come unless he is again called. In the former message we did not tell him of the appointment, but only asked him to come here on Friday, a. m. We have just this moment received the resignation of Mr. Armstrong as business manager, and as our instructions with the Deed of Trust were to retain him, we conclude that this resignation comes through direction and it will be acted upon at the regular meeting Friday morning—as we are advised that further instruction may be expected today. The resignation is worded ‘to take effect Sept. 1, 1898, or until my successor is appointed’; so time will be given to secure a successor.

“The change in the by-law this morning places the responsibility of filling a vacancy again with ‘the remaining trustees’; but we shall await promised directions. Shall we have guidance in the matter of securing a business manager? With love from ‘The Board of Trustees,’

“WM. P. MCKENZIE.”

[The letter, of which the foregoing is a copy, is marked Exhibit 710. F. H. B.]

Q. Now, Mr. McKenzie, I wish to inquire of you about what was the

practical difficulty which the trustees confronted with respect to filling the vacancy that was created on Aug. 11, 1898? A. The By-Laws said that—

Mr. Whipple—I pray Your Honor’s judgment as to that.

The Witness—The By-Laws said that it required—

Mr. Dane—Just a moment.

The Master—Why can’t you stop with the history of what was done?

Mr. Dane—I wanted to show by just one question what the occasion was for the amendment of the by-law. That was amended so as to eliminate the requirement that the unanimous vote of the First Members should be necessary.

The Master—What difference can that make? The by-law was amended.

Mr. Dane—Yes, it was amended.

The Master—Why are you required, some question made about it, to show the occasion for it?

Mr. Dane—I don’t think I am required, and I would have left it some time ago, except for Mr. Whipple’s reading the record of that meeting into this record. Now I think I ought in fairness to my case to be allowed to put just one question. This man was then a trustee and was a First Member, and I simply desire to inquire of him what the occasion was for the securing of the amendment to the by-law.

The Master—I cannot see what the occasion adds to the case, it being admitted that that action was in fact taken.

Mr. Dane—The vote of the First Members states nothing whatever as to the reason why—

The Master—Why need it? Why should it? What reason would there be for it to state the reason?

Mr. Dane—I will be glad to state the reason if the Court desires.

The Master—I know, but why were they called upon to state any reason?

Mr. Dane—I don’t expect they were called upon to state any reason. I should think it might be possibly helpful on this record to have the reason appear.

Mr. Whipple—Why, if Your Honor please, here is a vote of a number of people. One might have one reason and one another.

The Master—I am afraid I shall have to exclude that, Mr. Dane.

Mr. Dane—Then I think in order to save whatever rights there may be, I make the offer to prove by this witness that the occasion for obtaining the amendment of the by-law referred to was in order to do away with the practical impossibility of securing a unanimous vote of that body of members known as the First Members, of whom there were a large number at that time, and located a considerable distance from the city of Boston. And with that offer of proof I won’t spend any more time on it.

Q. Mr. McKenzie, when you became—

Mr. Whipple—If Your Honor please,

of course that offer is not accompanied by any offer to call all the different people who voted to show what was in their minds, and the reason. It is merely offered to show it by this witness as to what was in the mind of somebody else.

The Master—I think I shall have to consider that disposed of for the present. You may go on, Mr. Dane.

Q. When you became a trustee, Mr. McKenzie, in 1898, who was the editor of the periodicals? A. Judge Hanna.

Q. Who? A. Judge Hanna.

Q. Was there more than one editor? A. His wife was his assistant.

Q. At that time, namely, Jan. 25, 1898, what periodicals were in existence? A. The Journal might be called the only periodical. The Quarterly Bible Lessons were also published.

Q. When was the weekly paper established? A. It began to be issued in September, 1898.

Q. And can you tell us when the next publication was established, and what it was? A. Der Herold der Christian Science was established in 1903.

Q. And the next one? A. The next one was The Christian Science Monitor, in 1908.

Q. And the next? A. Le Héraut de Christian Science, in 1918.

Q. And that is the last one, is it? A. The last one.

Q. During the period of time from 1898 to 1901 was there an editor selected in addition to Mr. and Mrs. Hanna? A. Mr. Gross was appointed as assistant to Judge Hanna on the Sentinel.

Q. And how was he selected, by Mrs. Eddy or otherwise?

Mr. Whipple—If there is correspondence why don’t you put it in? If there was any article in the Manual that you say was complied with, why not put that in?

Mr. Dane—No, there was no article in the Manual at this time with relation to the election of editors. This was a period of time up to 1901.

Mr. Whipple—But the Manual provided how they should be appointed, didn’t it? A. His name was recommended to Mrs. Eddy, and his qualifications described, and she approved him.

Q. From 1901 down to 1917, when you ceased to be a trustee under this instrument, did the trustees of the Publishing Society elect the editors? A. No.

Mr. Whipple—Just a moment. I didn’t catch that question.

[The question is read by the stenographer.]

Mr. Whipple—If Your Honor please, there is no reason for their electing the editors. They hired the editors. They employed them and made an arrangement to pay them a salary. That question is not pertinent. There is no provision in the trust deed to elect them.

Mr. Dane—They may have elected them and may not have elected them; I am just asking.

The Master—Can't you ascertain what was done with regard to election, selection, appointment, or whatever you call it, of the editors, without asking some question that will be objected to?

Mr. Dane—I will endeavor to do that. I did not anticipate objection to that one.

Q. Mr. McKenzie, from 1901 to 1917, when you ceased to be a trustee, won't you state what was done by the trustees with reference to the selection of editors?

Mr. Whipple—Now, if Your Honor please, at very great length Mr. Krauthoff went into every record with regard to it. We have the records before the Court. Why should we take time to go into evidence of all these things with the witness, after they have selected the manner in which they would prove it?

Mr. Dane—If Mr. Whipple will concede on this record that during that period of time the editors were elected by The Christian Science Board of Directors I will withdraw the question.

Mr. Whipple—We will make no concession about it because the evidence is before this Court, and you cannot go beyond it.

The Master—You cannot ask him to adopt your word elected except so far as that word is backed up by the evidence to which you refer. If it be true that the procedure in the case of inaugurating an editor, getting an editor, whatever you call it, appears fully by the evidence already introduced, I do not think you ought to go into it over again with this witness.

Mr. Dane—I do not intend to pile up much cumulative evidence. If Your Honor takes that view I will not press it. I think I should, however, ask this question:

Q. Mr. McKenzie, during the period of time that I have indicated, namely, from 1901 to 1917, do you recall any instance when the trustees of the Publishing Society elected an editor of the periodicals? A. No.

Mr. Whipple—That I object to, for the same reason. The trustees' records are fully open and what they did is there recorded. It is the same thing that Your Honor ruled out, that is, the use of the word election is now made a part of the question. We have not objected that what was done should appear in the record and the records are all in. It is an attempt simply by using that word election, which is not provided for in the Deed of Trust to import something into these proceedings which he apparently is not satisfied with—into these records which he has had, that he is not satisfied with that is not there.

Mr. Dane—I have no objection to substituting the word selection for the word election and in that amended form I will—

Mr. Whipple—Well, then, what was done appears in the records, does it not? He doesn't know what the directors did because he was not a director. What the trustees did was recorded.

Mr. Dane—Well, I do not understand that I am confined to the records, which you have maintained here are not in any sense official records. But here is a man who was a trustee of this Publishing Society during that period of time. I think it is competent to—

Mr. Whipple—Then your question should be—

Mr. Dane— --to inquire of him what he did in his official capacity as trustee and what he knows about what was done with reference to the selecting or choosing the editors of the periodicals.

The Master—Is it now true that we have had the trustees' records put in—these trustees, of whom he was one?

Mr. Dane—I do not understand that the trustees' records on this question have been put in back to this period of time about which I am inquiring.

Mr. Whipple—I understand that they have been—every record with regard to it; and if they have not and if you have any particular employment or induction of an editor you should point it out and ask what was done, if you are not satisfied with the record about it, and not attempt to generalize or import something into the proceedings that is not there by the implication and inference of your question.

The Master—If it be true that the trustees' proceedings in respect to the matter referred to have all been put in by their records, I am going to exclude this inquiry.

Mr. Dane—My belief is confirmed by my associates, that those records are not in. I desire simply one question to cover this entire period and then I shall leave it.

Mr. Whipple—Of course you will. That is, you want to avoid putting in instances, and get some assumptive narrative that will cover the defects of your attempt with regard to each particular instance, and that is just what we object to.

The Master—My impression is that at least some of the trustees' records, the proceedings relating to those matters, have been put in. I am going to exclude this question until you can show me that the trustees' records on the subject have not been put in.

Q. Now, Mr. McKenzie, during this period of time, from 1901 to 1917, during which you were a trustee, was there ever an editor of the periodicals installed in office except one selected or chosen by The Christian Science Board of Directors?

Mr. Whipple—I pray Your Honor's judgment. He doesn't know anything about what the directors did because he was not on the directors' board.

The Master—The best evidence of that is the directors' records.

Mr. Dane—That may be, but I submit—

Mr. Whipple—And we have all their meetings and all their correspondence in; and it has appeared that in the majority of cases, and almost all of them, they never said a word to the trustees.

Mr. Dane—The directors' records would certainly disclose what the directors did with reference to the selection of editors, but it might be possible that the directors having elected an editor, the trustees failed to install him in office, and this question is upon that point, and that point only.

Mr. Whipple—If there was such an instance, direct his attention to it and let him testify to it, instead of trying to put in by wholesale in this way to make up the defects of your evidence.

Mr. Dane—That is what I am asking him, if there was any instance. If there is, I want him to specify it.

Mr. Whipple—The records show that.

The Master—I think I shall exclude the inquiry as the matter stands.

Mr. Dane—I beg pardon?

The Master—I think I shall have to exclude it as matters stand.

Mr. Dane—Then I desire, for the saving of my rights—

The Master—All right; go right on.

Mr. Dane—I simply offer to prove that during this period of time, from 1901 to 1917, no editor of the periodicals was ever installed in office except he had first been selected or chosen by The Christian Science Board of Directors.

Mr. Whipple—I have no objection to your proving that if you try to do it by proper evidence, but this is not proper evidence.

The Master—I exclude the question from this witness.

Q. While you were a trustee, Mr. McKenzie, were there conferences held between the trustees and the editors of the periodicals? A. Occasionally, yes.

Q. And, in general and briefly, what were the subjects of such conferences that were taken up?

Mr. Whipple—Between the trustees and the editors?

Mr. Dane—The editors.

Mr. Whipple—How is that material? I object to it because I cannot see its materiality. I cannot see any issue that it bears on.

Mr. Dane—I propose to show, if Your Honor please, that during this period of time when this witness was a trustee that there were conferences between the trustees and the editors; that those conferences were upon subjects that did not relate to the editorial policy of the periodicals; that there were no conferences of such a character held during the time that this gentleman was a trustee.

Mr. Whipple—What difference does that make?

Mr. Dane—Upon our theory of this case it is important.

Mr. Whipple—I don't think it makes any difference at all. The fact that they had conferences we have not objected to. It is very natural that the employer should have with their employees. To go into the subject matter of all those conferences, as we should have to in order to find what they were really about, would be even more protracted and tedious than you have made the trial so far.

Mr. Dane—I am not going into particular subjects.

Mr. Whipple—Well, of course, you are not; you are going to just avoid them; you are going to put in some generality and substitute it for real evidence.

Mr. Dane—You have made the claim in this case that the directors had nothing to do whatever with the editorial policy of these periodicals; that the trustees are the ones in control of that matter, and I propose to show that that is not the fact.

Mr. Whipple—You may show it, if you please, by proper evidence; but the trouble is you do not seem to appreciate the probative value of evidence. You take an interchange of courtesies as between two boards for something indicating a control of one over the other.

Mr. Dane—This is not an interchange of courtesies.

Mr. Whipple—There is nothing in regard to control here that you are offering.

Mr. Dane—This is no interchange of courtesies between two boards.

Mr. Whipple—I am talking generally now, just as you spoke generally.

Mr. Dane—This is correspondence between The Christian Science Board of Directors and the editors of the periodicals and newspaper.

Mr. Whipple—What they talked with their employee about is entirely immaterial, as we claim, if Your Honor please.

Mr. Dane—We claim otherwise.

Mr. Whipple—If it is their view as to what was talked about in the editorial offices you would have to have the whole conversation, you know that.

The Master—I shall be unable to admit that inquiry at present.

Mr. Dane—I do not like to keep taking exceptions to Your Honor's rulings.

The Master—You need not hesitate in the slightest, Mr. Dane.

Mr. Dane—I should like to offer at this time to prove by this witness, who was a trustee from 1901 to 1917, that there were conferences during that period between the trustees and the editors of—

The Master—That you have proved; don't go over that again.

Mr. Dane—the periodicals; and that the nature of those conferences did not relate to the editorial policy of the periodicals, but to the admin-

istration of the office of the editor, the employees under him, and certain mechanical features of the periodicals.

The Master—That being objected to I will exclude it.

Q. Mr. McKenzie, what trustees of The Christian Science Publishing Society were appointed while you were a trustee? A. Mr. Hatten, Mr. Clark, Mr. Stewart, Mr. McCrackan, Judge Smith, Mr. Neal the second time, Mr. Eustace—

Mr. Whipple—All this is in evidence, if Your Honor please. Why repeat it? It is on the Trust Deed itself where they all have signed their names showing the dates when they were appointed.

The Master—I suppose this is only introductory to something else.

Mr. Dane—It is a preliminary question.

The Master—It may be useful to get the witness' mind where you want it.

Q. Those trustees were appointed how, Mr. McKenzie—by the remaining trustees?

Mr. Whipple—That I object to, because the record shows, and the record has been put in with regard to the election of every one of them. Why duplicate and repeat?

The Master—I think that is objectionable in the same way, isn't it, that your former question was?

Q. Well, Mr. McKenzie, in the case of which one, or which ones, of these trustees that were appointed while you were a trustee, were the directors consulted, if they were consulted, in reference to any of them?

Mr. Whipple—That I object to, if Your Honor please, because it is entirely immaterial whether they were consulted or not. The Trust Deed provides a way for their selection, and the records show the way in which they were selected.

Mr. Dane—And the Manual provides that no one shall be connected in any way with The Christian Science Publishing Society who is not accepted as suitable by The Christian Science Board of Directors and Mrs. Eddy.

Mr. Whipple—What of it? That is not a part of the Trust Deed.

Mr. Dane—I claim that that is operative.

The Master—This witness was one of the trustees during the period?

Mr. Dane—Yes.

The Master—And the trustees during that period had to take certain proceedings when there was a vacancy. I think he may state what proceedings were taken.

Q. Mr. McKenzie, what proceedings were taken in the matter of selecting a trustee to fill the vacancies on the Board of Trustees while you were a trustee? A. Mr. Hatten came in by appointment of Mrs. Eddy—

The Master—Oh, no; that is not what you want him to state.

Mr. Dane—No.

Q. Don't go into particular appointments; simply state whether or

not—I think I will have to revert to my other question—whether or not in the selection of these trustees the directors were consulted? A. In some cases.

Mr. Whipple—That I object to, because he has just said that Hatten was appointed by Mrs. Eddy. Apparently there was a difference.

Mr. Dane—I am trying to get at that, Mr. Whipple.

Mr. Whipple—Yes, but your ways are so curious of getting at evidence.

The Master—I think you are wasting time.

Mr. Whipple—I agree with that, Your Honor.

Mr. Dane—Then why don't you let me go ahead?

Mr. Whipple—Because you do not go in the right way.

Mr. Dane—That is the way you look at it.

The Master—I am going to admit that question and answer. Go right on, Mr. McKenzie.

A. (Continued.) The second appointment by Mrs. Eddy was Mr. Clark—

The Master—No; that is not what you are asking of him.

Mr. Dane—No, that is not the question.

The Witness—Please give that to me again.

Q. In the case of which one, if any, of the trustees which were selected during your incumbency were The Christian Science Board of Directors consulted? A. Mr. Stewart, Mr. Eustace—

Mr. Thompson—What? I can't hear that.

Mr. Dane—Mr. Stewart and Mr. Eustace, he said.

A. (Continued.) I think in the case of Mr. McCrackan the matter was referred to the directors before it was referred to Mrs. Eddy.

Q. Well, that is what I want in every case, where the directors were in any way consulted about the choice of the trustees. Now, you have named Mr. Eustace, Mr. McCrackan, Mr. Hatten, and who? A. Mr. Hatten was a direct appointment by Mrs. Eddy.

Q. Now, who are there of the trustees in connection with whose appointment the directors were consulted? A. Mr. McCrackan—

Mr. Whipple—You mean, by the trustees, I suppose.

A. (Continued.) Mr. Stewart and Mr. Eustace.

The Master—This is by the trustees?

Q. Now, will you name them again? A. Mr. McCrackan, Mr. Stewart, and Mr. Eustace.

Q. Was Mr. Merritt chosen while you were a trustee? A. Yes, I should have added Mr. Merritt, because that is in evidence already.

Q. Yes. Now, when were you elected editor of the Journal, the Sentinel, and Der Herold, Mr. McKenzie? A. On July 23 of 1917.

Q. Have you the notice of your appointment? A. Yes, sir.



Q. Or election? A. Yes, sir.  
Mr. Dane—I offer this letter of July 23, 1917.

The Master—From whom?  
Mr. Whipple—A letter from the directors—

Mr. Dane—From The Christian Science Board of Directors to Mr. McKenzie, and Mr. McKenzie to the Board of Directors—his reply.

Mr. Whipple—That is *res inter alios*. I do not think that is of any consequence. The trustees did not participate in the correspondence.

Mr. Dane—I do not understand that that renders this inadmissible upon a phase of this case upon which considerable evidence has been taken as to the course of conduct through the—

The Master—I can't see that it adds—

Mr. Whipple—This has all been put in in another way.

The Master—I can't see that it adds anything.

Mr. Dane—It may be that this particular piece of evidence is cumulative.

The Master—Let us leave it out, then, Mr. Dane.

Mr. Dane—If it is I do not want to put it in. I do not want to take any risk of not proving this case, however.

Q. Now, Mr. McKenzie, coming to a time while you were editor of the periodicals, and you are still the editor, are you not? A. Yes.

Q. What, if anything, was your practice in reference to submitting to the trustees the proof sheets of the editorials and the metaphysical articles?

Mr. Whipple—Does Your Honor think that is material?

Mr. Dane—It bears on the proposition of the control of the editorial policy.

Mr. Whipple—How can it affect any issue here what his employers asked Mr. McKenzie to do, or what Mr. McKenzie did in regard to writing these editorials, or submitting them to the trustees? How does it affect any real issue in this case?

Mr. Dane—During this time some of the present trustees were in office as trustees. One of the issues in this case is whether or not The Christian Science Board of Directors has the control of the editorial policy of these periodicals. As bearing upon that issue this evidence is offered.

The Master—I think I will have to let him state what he did about the proofs while he was editor.

Q. Now, go ahead. A. Upon the day that I accepted the editorship, which was the 26th—

The Master—You are not asking him to begin that way, are you?

Mr. Dane—No, leave that out, Mr. McKenzie, and come directly to the answer of the question as to what your practice was as editor in reference to submitting proofs of the editorials and the metaphysical articles.

The Witness—I did not.

Mr. Whipple—That assumes that he had any practice about it.

Mr. Dane—Yes.

The Witness—We did not do it.

Q. You did not submit them to the trustees? A. No.

Q. What was your practice in that respect? A. The practice was to prepare copies which were sent to the office of the business manager and by him transmitted to the directors.

Q. What was the practice in respect to releasing the periodicals the proofs of which had been sent in the way you have stated? A. For a time we did not release the periodicals until we had had from the directors' office an actual release; afterward that was arranged to be automatic—that if we did not hear at a certain time the periodicals would then be printed.

Q. While you were a trustee under this Trust Deed, up to 1917, did you ever hear of any claim or question being raised by any Board of Trustees or by any member of a Board of Trustees, that the By-Laws of The Mother Church were not applicable to and binding upon them in the discharge of their duties under the Trust Deed? A. No.

Mr. Whipple—That we object to, Your Honor. It does not appear that any such question ever arose.

The Master—The answer would go to show nothing more than that no such question ever arose, wouldn't it?

Mr. Whipple—Yes.

Mr. Dane—That is it.

Mr. Whipple—But the implication is that the question had arisen.

Mr. Dane—No, it is not any such thing. One question here is—

The Master—I do not think contradictions of that kind will help us any. I think I shall let him answer. He has answered already.

Mr. Dane—The answer is, no.

The Master—Yes.

Q. During that same period of time, Mr. McKenzie, within your knowledge, did any Board of Trustees or any member of the Board of Trustees ever make claim or raise the question that up to 1901 the First Members and the Board of Directors did not have the power to declare a vacancy on the Board of Trustees? A. No.

Mr. Whipple—I make the same objection, if Your Honor please.

The Master—One moment. You are now getting away from the time when he was a trustee himself, are you?

Mr. Dane—No; during the time that he was a trustee, and up to the year 1901; namely, from the date of the execution of the instrument in 1898 up to 1901. I am asking him whether, within his knowledge, any claim was ever made that the First Members, together with the Board of Directors, did not have the power to declare a vacancy on the Board of Trustees.

The Master—Well, he may answer, but unless it appears that there was

some occasion for making any such claim it won't add anything to what we have got.

Q. Did you answer, Mr. McKenzie? A. I said, no.

Q. Since 1901, and up to the time that you ceased to be a trustee in 1917, or, we will say, up to the first of 1917, did you ever know of any claim being made by any Board of Trustees, or any member of any Board of Trustees, that The Christian Science Board of Directors did not have the right to supervise the editorial policy of the periodicals?

Mr. Whipple—We make the same objection to that.

The Master—Subject to your objection he may answer.

The Witness—Pardon me.

Mr. Dane—You may answer. That is, up to 1917. Did you get the question?

The Witness—Yes.

A. The question did not come up because the editor was a member of the Board of Directors.

Q. That was Mr. McLellan? A. Mr. McLellan.

Q. During the entire period of time in which you acted as a trustee, from 1898 to 1917, was the claim ever made by any Board of Trustees, or by any member of a Board of Trustees, so far as you know, that the—

The Master—This is while he was a member of the Board of Trustees?

Mr. Dane—While he was a member, of the board.

The Master—Was the claim made by you or any member of the Board of Trustees?—that is what it comes to, isn't it?

Mr. Dane—Yes. By any member of the Board of Trustees during his entire incumbency, which covered 19 years.

The Master—During the time he was a trustee himself?

Mr. Dane—Yes.

The Master—Well, your question is this: "Did you, or any fellow member of your board, make such a claim?" isn't it?

Mr. Dane—That is what it amounts to.

The Master—The way you put it, I got confused—"any other Board of Trustees." There was one Board of Trustees all the time, wasn't there?

Mr. Dane—Oh, no; the Board of Trustees was continually changing in its personnel.

The Master—It was the same board; the members might change.

Mr. Dane—It was the same board, under the same instrument.

The Master—I think you better put it: Did you or any other member of your board.

Mr. Dane—Very well, I will adopt Your Honor's suggestion.

Q. During the time, Mr. McKenzie, that you were a trustee under this Trust Deed, from 1898 to 1917, did you or any other member of the Board of Trustees during that entire time ever make a claim or raise the

question that The Christian Science Board of Directors did not have the right to determine the suitability of any person connected with The Christian Science Publishing Society? A. No.

Mr. Whipple—That we object to, if Your Honor please, because there is no evidence that the question ever arose.

The Master—Quite so. But I shall admit it subject to your objection.

Mr. Dane—Has he answered that question?

The Witness—I said, no.

Mr. Dane—It is 4 o'clock.

Mr. Thompson—Would it be proper before we adjourn for me to put an inquiry to Governor Bates or his associates as to what the prospect is that he can complete his case next week? It makes a good deal of difference in my personal affairs and my office.

Mr. Bates—We expect to do it, Your Honor, next week.

Mr. Dane—I think we can do it, Mr. Thompson.

Mr. Thompson—Could you give any idea as to how many witnesses you expect to put on?

Mr. Bates—Roughly, I should not think there would be more than six or seven more, and they will be much shorter than the witnesses that have been on.

Mr. Thompson—Are the other directors going on?

The Master—Let me inquire whether any arrangements have been made as to our next place of meeting.

Mr. Bates—Mr. Whipple has made such arrangements.

Mr. Whipple—If Your Honor please, the custodian in the hall told me that the custodian of the building knew that we would be provided for next week, and he was not quite sure what room had been provided, but he thought we could have any one of the court rooms. I understood he was to send some one up here before 4 o'clock and let us know about it. But he said, if he did not, that the place of meeting next Monday would be posted on the bulletin in the main hall of the court house. It will probably be the Fifth Session jury room. We will ascertain and let Your Honor know the exact room prior to our assembling. And those who are interested to attend the hearings can find out where it is to be by looking at the bulletin in the hall Monday morning.

The Master—All right. We will adjourn, then, until Monday morning next at 10 o'clock, at the place to be indicated on the bulletin board.

[Adjourned to 10 a. m., Monday, July 28, 1919.]

July 28, 1919

TWENTY-THIRD DAY

Room 424, Court House  
Boston, July 28, 1919

Mr. Thompson—There is an error,

if Your Honor please, in the printed volume—I cannot put my hand on the page—where a remark that I made to Mr. Krauthoff about interruptions reads as if I had addressed it to Your Honor. It is a mere trifle as far as the merits are concerned, but it would indicate an apparent discourtesy which I wish to disclaim. I will later find the page, so that there may be no difficulty in identifying the error. I am alleged to have said that I did not care for interruptions from Your Honor, when in fact I said that I did not care for them from Mr. Krauthoff. It reads very queerly in the printed record here.

The Master—I doubt if it will do any harm.

Mr. Thompson—It would do harm to me, sir, personally, to think that I had said such a thing, which I did not say, as a matter of fact.

William P. McKenzie, Resumed

Direct Examination, Continued

Q. (By Mr. Dane.) Mr. McKenzie, referring to Exhibit 707, the Manual of 1898, I will ask you whether or not that is the Manual—

The Master—Could you put on the edition there?

Mr. Dane—The eighth edition.

Q.—whether or not the By-Laws contained in that edition of the Manual were recognized as the By-Laws of The Mother Church by the trustees of the Publishing Society at the date on which that Manual was issued?

Mr. Whipple—That I must object to, if Your Honor please.

Mr. Dane—We had thought, if Your Honor please, that a recognition of the—

The Master—It seems to me that when you have proved that these By-Laws are lawfully adopted by the body having authority to adopt them, you may presume, until the contrary appears, that they were accepted as such.

Mr. Dane—It had seemed to us, if Your Honor please, that in the case of the Manuals as to which there is no record of the adoption of them in their entirety, that this evidence would be admissible to show, on the part of those in interest, a recognition of the By-Laws as in the sense of secondary evidence.

The Master—Is it now admitted that there is no record of the formal adoption of the By-Laws contained in the book you refer to?

Mr. Dane—In the book I refer to as a whole.

The Master—You now desire to show recognition and acquiescence subsequent to their publication, the date of which perhaps you have fixed, in the particular By-Laws now under consideration?

Mr. Dane—That was the purpose of it.

The Master—Why do you limit it to the trustees?

Mr. Dane—I did not intend to limit it to the trustees.

The Master—Your question limits it to the trustees.

Mr. Dane—I think that is a proper suggestion and I will make the question broader, in one question. I had intended to follow it up.

The Master—Why not do it all in one question?

Mr. Dane—I think that would be the better way.

Mr. Whipple—I understand this particular question is withdrawn?

Mr. Dane—This particular question I withdraw.

Q. I ask whether or not, Mr. McKenzie, the By-Laws contained in the Manual which I have shown you, of 1898, were recognized and acquiesced in as the By-Laws of The Mother Church—

The Master—Pause before you answer.

Q.—at the time that the Manual was issued?

Mr. Whipple—That I must object to, and I object to it because he asks the witness to state a conclusion, one that Your Honor must find. Whatever this witness observed with regard to the volumes which are like those which are before him, if he observed anything, I should not object to being stated under Your Honor's ruling that you have made heretofore, a ruling to which broadly we made objection because of the legal propositions which we submitted at the time. But to ask an inference, whether it was recognized and acquiesced in—what is a recognition? A recognition, in one sense, is that when he sees the book he recognizes what is on the face of it.

The Master—I hardly think that.

Mr. Whipple—He did not of course mean it in that sense; but anything that he observed being done with regard to it, if he did see anything being done, if he saw people reading it or if he heard them quoting it, or things of that sort, it would be proper testimony, we think. But the broader statement which is based upon inference we think is not admissible.

The Master—I think I shall allow him, in view of his position in the religious body with which we are here concerned, to make a general statement regarding that matter, subject to your objection, and of course subject also to cross-examination hereafter. (To the witness) You may answer.

Q. Have you the question in mind, Mr. McKenzie? If not, it may be read. A. I would rather have it restated, if you please.

Mr. Whipple—I understand that the question means recognized and acquiesced in as a Manual, and not as controlling any other instrument.

The Master—Not as what?

Mr. Whipple—Not as controlling any other instrument, but as a Manual.

The Master—I could hardly interpret the question in any other way than in the way you state.

Mr. Whipple—Just as a Manual. We think it is very obvious—

The Master—As a by-law.

Mr. Whipple—That the purpose of putting the question is something more than that; that is, that some people recognized it as being superior to some other statement of Mrs. Eddy.

The Master—Oh, no; recognized as the By-Laws for the time being of the religious body. That is what I understand by the question.

Mr. Whipple—Well, meaning that that is the question, that puts quite a different face on it.

Mr. Dane—That is all that I meant by the question.

[The question is read by the stenographer: "I ask whether or not, Mr. McKenzie, the By-Laws contained in the Manual which I have shown you, of 1898, were recognized and acquiesced in as the By-Laws of The Mother Church at the time that the Manual was issued?"] A. Yes.

Q. At that time. I beg pardon? A. Yes, indeed.

Q. Some testimony has been given in this case about a letter, Mr. McKenzie, that was written or supposed to have been written, on Feb. 15, 1916. That is Exhibit No. 324. Were you on that date a trustee of the Publishing Society? A. Yes.

Q. Did you take a part in the preparation of that letter? A. Yes.

Q. Who were the other trustees at that time?

The Master—That is a matter there can't be any controversy about, isn't it?

Mr. Dane—I think not. I will pass it; I will withdraw it.

The Master—We have got the dates of their appointment, haven't we?

Mr. Dane—Yes. They appear on the Trust Deed itself.

The Master—If you want it to appear at this point on the record, why not state it? It will not be questioned, probably.

Q. Were the trustees at that time Mr. McKenzie, Mr. Hatten, and Mr. Eustace? A. Yes.

Q. Did all three trustees take part in the preparation of that letter?

The Master—Does it purport to come from them?

Mr. Dane—Yes.

The Master—Cannot we presume that they did?

Mr. Whipple—If Your Honor please, we say that the letter was never sent or delivered.

The Master—I understand that.

Mr. Whipple—And it was never signed.

Mr. Dane—That is why I am going into this evidence, on account of the intimations that have been made.

Mr. Whipple—We have had the testimony of another witness to quite a different proposition.

The Master—I want to see if you can't go into it at a little more rapid rate, Mr. Dane.

Mr. Dane—I will try to.

The Master—It purports to come from the trustees, and we now know who the trustees were.

Mr. Dane—Yes.

The Master—If there is any question about any of the other trustees not having participated, it is proper to go into it; but I do not imagine there is any.

Mr. Dane—I understood Mr. Whipple to make that objection.

The Master—No, I do not understand that is the objection, that the other trustees took no part in it.

Q. Did the three trustees sign that letter, Mr. McKenzie? A. In its final form, yes.

Q. And after they had signed it, what was done with it? A. It was presented to the directors.

Q. Were you present? A. Yes.

Q. Were the other two trustees present? A. Yes.

Q. And can you tell at what time it was presented? A. To the best of my knowledge it was at our conference on Feb. 24.

Q. Of what year? A. 1916.

Q. Now, Mr. McKenzie, subsequent to that date, and on or about Sept. 30, 1918, was that same letter again presented to Mr. Eustace for his signature? A. No.

Q. Was it ever presented to him subsequent to the time he first signed it, for his signature? A. He asked for a copy of it at that date that you mentioned, and I was able to give him one.

Q. That is, on or about Sept. 30, 1918? Did you give him a copy? A. Yes.

Q. What, if anything, was said at that time by him with reference to the matter? A. Nothing at all.

Mr. Whipple—Do you expect to contradict Mr. Eustace?

Mr. Dane—Yes.

Mr. Whipple—Very well.

Mr. Thompson—What did he say, "Nothing at all"?

Q. What was the purpose, Mr. McKenzie, of presenting it to him?

Mr. Whipple—That I object to.

Mr. Dane—I will withdraw it.

Q. Did Mr. Eustace, on or about that date, say that he could not sign the letter, did not approve of it, or something to that effect? A. That question never came up.

Q. Did he ever say to you in respect to that letter, when it was presented to him, or called to his attention, that he had gotten far past that? A. That was about Jan. 30, I think.

Q. Of what year? A. 1919.

Q. Jan. 30, 1919. Was the letter then presented to Mr. Eustace?

Mr. Whipple—Just a moment, if Your Honor please. A. Yes, I asked him if he—

The Master—One moment.

Mr. Whipple—Just a moment. This is after the controversy had arisen and it is for the purpose of contradicting Mr. Eustace. Mr. Eustace was not inquired of about any such thing as that.

Mr. Dane—This is before the bill

was brought. It is along the line of the testimony relating to who has changed the relationship, or who was attempting to change the relationship that has always existed between the two boards.

Mr. Whipple—I thought it was along the line of acquiescence and showing what the line of conduct between the parties had been. That has been the ostensible excuse of putting such evidence in before.

The Master—If there was an interview about Jan. 29, 1919, with Mr. Eustace, at which he said something relating to the letter, I think they may bring it out. I do not understand the rule here—it would be elsewhere—that Mr. Eustace should have been asked in cross-examination about it before any evidence can be offered.

Mr. Whipple—If it is generally in contradiction I assume it would not be necessary.

The Master—No. State what he said.

Q. Now, Mr. McKenzie, on the occasion of 1919 which you have referred to, will you kindly state what Mr. Eustace said in reference to the letter of Feb. 15, 1916?

The Master—Feb. 15?

Mr. Dane—Yes; the date of the letter was Feb. 15, 1916—the original that is in. A. May I state what I said first?

Q. You may if it is necessary to state intelligently what Mr. Eustace said. A. I told him that I had been present at a meeting of the Board of Directors and had heard read in some records what has been called the Dittmore memorandum, and no mention was there made of the fact that the trustees had offered a letter stating their position, and I thought that the minutes were not correct and that we should send over a copy of our letter of Feb. 15, 1919, so as to have the minutes correct. Q. 1916? A. 1916.

Q. Then what did he say; or what more did you say? A. Well, in order to complete that I had to write to Mr. Hatten and get his signature.

Q. Well, you did get Mr. Hatten's signature? A. Yes. So that it was on Feb. 28 or thereabouts that I finally presented it to Mr. Eustace with my own signature and Mr. Hatten's signature, and asked him if he would sign it so that we could—

The Master—Now, we are mixing up two conversations.

Mr. Dane—Yes.

The Master—Have you completed the conversation of January 20?

Q. Have you now completed all that occurred at the conference of Jan. 20, 1919, when you first spoke to Mr. Eustace about the letter? A. I think so.

Q. Then subsequent to that you sent it to Mr. Hatten? A. Yes.

Q. And obtained his signature? A. Yes.

Q. And then later you presented it again to Mr. Eustace? A. Yes.

Q. And about when did you the second time present it to Mr. Eustace?

A. That was on or about the 28th of February.

Q. 1919? A. Yes.

Q. Now, will you state what was said, or in substance what was said? A. Well, he said he thought they had got far past that, but that he would take it and consider it.

The Master—I now understand that the language he has just repeated was not the language used on Jan. 20. Is that right?

Mr. Dane—I understand it was used in February, the latter date.

Q. I want you to identify one letter. I show you this letter, Mr. McKenzie, dated September 6, 1898, and ask you if you wrote that letter to Mrs. Eddy on Sept. 6, 1898? A. Yes.

Mr. Dane—Mr. Whipple, have you here, and will you produce, any communications from Mrs. Eddy between Sept. 6, 1898, and Sept. 10, 1898, whether letters or telegrams or other communications to the trustees or any of them at that time.

The Master—Do you want to get in the reply to that letter?

Mr. Dane—I am trying to. I have one of Sept. 10 which may be the reply to it, although it does not definitely refer to it.

The Master—Wouldn't it assist matters if you now showed the letter and reply directly to Mr. Whipple?

Mr. Dane—I will be very glad to. (Showing paper to Mr. Whipple.)

The Master—You have not shown him the letter, have you?

Mr. Dane—I beg your pardon?

The Master—Have you shown him the letter?

Mr. Dane—I have a copy of what I presume to be the reply. It is dated Sept. 10. It does not specifically refer to the letter of Sept. 6 (handing paper to Mr. Whipple).

Mr. Whipple—The only letter that we have within those dates, the dates mentioned by counsel, apparently dealing with the subject matter, is one dated Sept. 8, 1898, in what purports to be the handwriting of Mrs. Eddy herself. I will hand that to you (handing paper to Mr. Dane). I return this copy. We do not find the original of any such letter (handing paper to Mr. Dane).

Mr. Dane—And you have no other letter?

Mr. Whipple—No.

Mr. Dane—I offer this letter of Sept. 6, 1898, which the witness has identified.

The Master—Together with the reply to it, produced by Mr. Whipple?

Mr. Dane—Together with the reply produced by Mr. Whipple, Sept. 8, 1898.

Mr. Whipple—What is the date of the McKenzie letter?

Mr. Dane—Sept. 6.

Mr. Whipple—Well, I should think that probably was the reply, although it does not in terms refer to it.

Mr. Dane—It does not in terms refer to it.

The Master—Is there now any dis-

pute about the fact that the correspondence referred to passed?

Mr. Whipple—I am sorry, I was diverted and did not hear that.

The Master—Is there now any dispute about the fact that the correspondence which he has in his hand, those two letters, passed—actually passed?

Mr. Whipple—I know nothing about it except what Mr. McKenzie has testified to, and I understand that his testimony is in substance that he sent the letter which appears to be an original letter from him, and I think he ought to be asked if he received the reply which we have handed to Mr. Dane.

Mr. Dane—Do you think that is necessary?

The Master—He ought to unless it is admitted that the correspondence passed between the parties.

Mr. Whipple—Yes.

Q. Mr. McKenzie, I show you the letter handed me by Mr. Whipple, dated Sept. 8, 1898, and ask you if you received that letter from Mrs. Eddy on or about that date? A. This is a letter addressed both to myself and—

The Master—Whether or not you received it?

Q. Did you receive it? A. Yes.

Mr. Dane—I will offer the letter from—

The Master—One moment. Now, we have got the fact. Now, as for the admissibility of the letters, is there anything to be said?

Mr. Whipple—No, Your Honor.

The Master—Go on.

Mr. Dane—Letter from Mr. McKenzie to Mrs. Eddy (reading):

"2 Cumberland Street, Boston, Mass.  
"Sept. 6, 1898.

"Our beloved Mother:

"Your last letter, promising us one of your faithful ones to assist on the Board of Trustees for a time, is read by us to mean that you approve of the nomination sent you, of Thomas W. Hatten. We proposed to act at once in appointing him, but find this forbidden in the Manual. It is true that from one place the order to appeal to the First Members for an election has been removed, but, while in that place (page 28, ninth edition) the same words as in the Deed of Trust are now used, directing that the 'remaining trustees shall fill the vacancy,' on page 14 of the ninth edition it is still said that the trustees 'shall not fill a vacancy except the candidate is approved by a unanimous vote of all the First Members of this Church.' It is, moreover, stated that the law cannot be changed except by consent of the Pastor Emeritus.

"The moral right, and possibly the legal right to elect the nominee whom you have approved may be with us; but there are grave objections to acting in any way that the First Members might feel to be neglect of their privilege or authority in the matter. The 'remaining trustees' desire to abide so clearly within the letter of the law

that there can be no just criticism of what is done. We feel that all concerned are governed by the Manual. If the appointment be not made by the Pastor Emeritus, the Manual seems to define rigidly the action of the remaining trustees, and there are some difficulties in the way of a unanimous vote, since as now arranged it requires the personal presence of every voter, and all the First Members—the arrangement for votes by letter applying only when First Members are to be elected, or a change to be made in a by-law.

"We are well aware of some of the currents in mortal mind at this time, and desiring to act neither too fast nor too slow, we are trying to guard all points, so that what is done will stand secure. We are reluctant to appeal to the Pastor Emeritus, but when stopped in our action by the laws made by her, we can do naught else; for the wisdom which gave the law will apply the law, interpret the law, or change the law.

"Our regular meeting takes place at 9 a. m., Friday; and there will be time before that hour to hear by telegraph, if prompt action is required. If the nomination is to be placed before the First Members, according to the present law, we shall do so. It might be well, however, if this action with the possibilities of discussion, argument, scheming, and perhaps division of the vote, might be avoided; and the two trustees are ready to bear any responsibility cheerfully, that they can legitimately assume.

"With loving thought from them both,

"WM. P. MCKENZIE."

[The letter of which the foregoing is a copy is marked Exhibit 711. R. J. M.]

The letter in reply, on the letter-head of Pleasant View, Concord, New Hampshire, is as follows:

"Pleasant View,

"Concord, N. H.

"Rev. W. P. McKenzie & James A. Neal  
"My dear Board Trustees

"I hereby appoint Thomas W. Hatten to fill the vacancy on your board.

"With love

(Signed) "MARY BAKER EDDY.

"Sept. 8, 1898."

Mr. Whipple—May I trouble you for the return of the original, and have the copy marked? And what are the numbers of the exhibits?

The Reporter—The first one is 711, and the next one will be 712.

[A copy of the letter from Mary Baker Eddy to Rev. W. P. McKenzie and James A. Neal, dated Sept. 8, 1898, of which the foregoing is a copy, is marked Exhibit 712. R. J. M.]

Mr. Whipple—Have you a copy of the McKenzie letter that I could use? Or we may keep the original, and give the copy to the stenographer for transcribing.

Mr. Dane—I have done that.

Mr. Whipple—Yes. Thank you.

Mr. Dane—Do you wish to see this one again?

Mr. Whipple—Yes. I may want to inquire about it. Have you finished?

Mr. Dane—Yes.

#### Cross-Examination

Q. (By Mr. Whipple.) Mr. McKenzie, I want to direct your attention to certain interviews which were had before the Board of Trustees and the directors in February of 1916, in which the relations of the two boards were a subject of discussion. Do you have those interviews in mind? A. I do.

Q. When was the first one, or about when? A. The first important one was on Feb. 13. I think.

Q. How many were there? A. There are three that I remember distinctly.

Q. What was the date of the next one? A. On the 15th.

Q. And the next one? A. The 24th.

Q. Mr. Hatten was at the time clerk of the board, was he not? Well, I shouldn't ask you that. I will show you the records (placing a book of records before the witness). A. Yes, Mr. Hatten kept the minutes at that time.

Q. Now, as of Feb. 14, it appears that on that day, on Monday, there was a meeting with the Board of Directors from 2 to 4 p. m., does it not? A. Yes, it does.

Q. To attend to regular business, it says. A. Yes.

Q. But having looked at that record, you see no reference to any discussion of the relations of the boards? A. No. I do not.

Q. But it is your clear memory that the first important discussion was on that day? A. That is as I remember it.

Q. And you have given thought to it, have you not? A. Yes.

Q. It has been called to your attention off and on for the last six months or so, or longer, has it not? A. Well, it has been brought to my attention occasionally.

Q. During that period? A. Yes.

Q. And you have talked with the Board of Directors about it, too, haven't you, during that period, with some of its members? A. Just once.

Q. Now, turning to the record of Feb. 15, page 182 of the records of the trustees, there is a memorandum which I think has already been put in evidence, but which I will refer to:

"Special meeting of the Board of Trustees convened at 2:45 p. m., after a conference with the Board of Directors at 2 p. m. A letter was prepared by the trustees setting forth their view of the duties, responsibilities and work of the trustees, and delivered to the directors. A conference was held with Mrs. Ritchie," etc.

Q. It appears that that letter was delivered on Feb. 15, if we are to give credit to your own records, doesn't it? A. It does.

Q. Would that accord with your memory? A. Yes.

Q. And not on Feb. 24, is that correct? A. If I may state what happened I should be glad to.

Q. If you don't mind, I would like to have your answer given categorically. The letter was not presented on the 24th, then, was it? A. It came up the second time, as I remember it.

Q. Yes, but it was on the 15th that it was presented? A. Yes.

Q. Now, the record of a meeting of Feb. 24—I will ask you to observe this, if you please—it was on a Thursday—it is as follows:

"A conference was held with the Board of Directors in The Mother Church from 2:15 to 3:15 p. m. A good working basis was arrived at and agreed to by all. A meeting of the directors was arranged for 2 p. m., Monday, Feb. 28."

That is what happened on the 24th. Does that accord with your memory of what happened? A. It is an incomplete record.

Q. It is incomplete, of course, but I mean it accords with your memory so far as results are concerned? A. It does.

Q. Do you know what became of that letter that was presented on the 15th and dated the 15th? A. I am not absolutely sure.

Q. You were sure before you had a talk with the directors, were you not? A. No.

Q. Weren't you? A. No.

Q. You were asked last September to put in writing what you remembered about this, were you not? A. Yes.

Q. And you did? A. Yes.

Q. And you remembered then what became of that letter, didn't you? A. I said what I believed.

Q. Haven't you a copy of that letter? A. I have the original draft, yes.

Q. Of the letter that you sent to Mr. Eustace last September? A. Oh, yes, yes. I have that.

Q. You have a copy of that. And you stated then what your memory was as to what happened about that letter, did you not? A. Yes.

Q. A memory which was consistent with the fact that nobody can produce it? A. Exactly.

Q. Your memory then was what as to that letter—your memory last September as to what became of that letter? A. My memory still is that as a result of our conference on Feb. 24, I believe it was, we agreed to tear up our papers and work on together as Christian Scientists, and that Mr. Eustace, as I believed—

Q. I am asking about what became of the letter. A. Well, to my best knowledge, it was torn up at that time.

Q. Exactly. And also the Dittimore memorandum? A. Also the Dittimore memorandum.

Q. Yes, that is it. That was your

memory, then, and it is your memory now? A. Yes.

Q. Which accounts for the fact that neither the original Dittimore memorandum nor the original letter can be produced? A. It does.

Q. And that is what you wrote last September, in substance, without the slightest hesitation? A. It is.

Q. Now, isn't it a fact, sir, that some time after that you were summoned before the Board of Directors and had an interview with the Board of Directors on the subject matter of their differences with the trustees? A. I had an interview, yes.

Q. When was it? A. On the 24th of January.

Q. Yes. —

The Master—Wait a minute. The 24th of January?

Mr. Whipple—January of the present year.

The Witness—Yes.

Q. A meeting at which pretty firmly you were requested to state where you stood in this controversy? A. Well, I did state where I stood.

Q. Well, you understood that that was what you were summoned for, did you not? A. No.

Q. Were you not told that they wanted to know where you stood? A. I had already stated that in a letter.

Q. Yes. Now, was it that time—A. No.

The Master—Wait a minute. He has not finished putting the question yet.

The Witness—I beg your pardon.

Mr. Whipple—You must not have your answers all ready before I even ask the questions, because they do not fit, you see. I may ask a different question from what you thought.

Q. Now, in your testimony this morning, if I minuted it correctly, you said that you came to Mr. Eustace, and told him that you had been at a meeting of the Board of Directors? A. Yes, I did.

Q. Yes, and you had? A. I had.

Q. And had heard something, or failed to hear something, mentioned at that board? A. A different meeting, however.

Q. I thought you said that you had attended only one meeting? A. No.

Q. Well, when was this meeting that you referred to in your conversation with Mr. Eustace? A. That was on the 25th of January.

Q. Well, then, if you said that you had had only one meeting with them, that was not right, because you had one on the 24th and one on the 25th? A. I don't remember of saying that I had only one meeting.

Q. Very likely I am mistaken, but I did understand you to say that you had only one. A. No.

Q. But it is a fact that you had one on the 24th and one on the 25th? A. That is correct.

Q. And when did you see Mr. Eustace in relation to the one which you testified to as taking place on the 24th? A. That, as far as I remember, was the 30th of January.

Q. Yes. Now—  
The Master—On what day? On the 30th?

The Witness—Of January.

Mr. Whipple—The 30th of January of the present year. That is, his talk with the directors was on the 24th, and he told Mr. Eustace about it on the 30th.

Q. Is that right? A. I beg your pardon. I said the 25th.

Q. The 25th? A. Yes. There were two meetings, I told you, the 24th and the 25th, and it was on the 25th that this matter of the memorandum came up.

Q. Won't you repeat what you stated to Mr. Eustace?

The Master—I very likely misapprehended what he said about his interviews with Mr. Eustace. I am not certain whether he means to say that they were on the 24th and 25th or the 30th.

Q. Will you state to His Honor about them? A. My interview with the directors—

The Master—No; with Mr. Eustace.

The Witness—was on the 25th of January, and it was on the 30th that I referred to matters in discussion with Mr. Eustace.

The Master—Then there was no talk with Mr. Eustace on the 25th or the 24th—am I right?

The Witness—Not that I know of.

Q. But you did talk on the 30th? A. Yes.

Q. With Mr. Eustace in relation to a talk or something you had observed at the directors' meeting on the 24th—is that right—on the 25th? A. On the 25th.

Q. Well, now, did I take you right that you told Mr. Eustace on the 30th that you had been present at the meeting of the Board of Directors and heard a Dittmore memorandum referred to, but that there was no mention of the trustees' position, and suggested that a copy of the trustees' position as stated in a letter be sent to them? A. Yes.

Q. At that time the directors hadn't any copy of that letter, had they? A. I am not able to say.

Q. Well, you didn't see one in their possession, did you, at that time, on the 25th? A. I didn't see one, no, that I remember of.

Q. And, in point of fact, you furnished them with the copy they had? A. I think not.

Q. I thought you said you furnished them with a copy, didn't you? A. Well, what I said in testimony was that I furnished Mr. Eustace with a copy on his request.

Q. Didn't you say that you furnished the directors with a copy? A. I don't remember of saying that.

Q. Well, didn't you? A. I don't know.

Q. Well, do you know how they got a copy, if you didn't furnish it? A. I do not know; no.

Q. Because the original which was

signed was destroyed on the 24th of February? A. Yes.

Q. And then you kept a copy of it? A. That is, I have the original draft.

Q. Well, you have the original draft from which the final draft was made? A. And it was from that I furnished copies to Mr. Eustace.

Q. And whether that was in exactly the shape of the final draft that was torn up you don't know? A. I believe it was.

Q. Well, you have the original draft of fact, do you? A. Well, I have a moral certainty.

Q. You are not able to produce a carbon copy— A. No.

Q. —of the one that was present at that meeting, what was torn up, are you? A. No.

Q. All that you had was the draft of the original letter? A. That is all.

Q. From which, after a conference, the final draft was made? A. Yes, that is true.

Q. Conference with the trustees? And, so far as you know, last September, that was the only copy or approximate copy of that letter in existence? A. So far as I know, yes.

Q. Well, then, didn't you furnish a copy of that at the request of the directors? A. I don't know that I did or didn't.

Q. Can't you remember between now and last September as to whether you had furnished a copy to them? A. No.

Q. I beg pardon? A. No, I do not remember of furnishing them with a copy, Mr. Whipple.

Q. Will you say you did not? A. I say I think I did not.

Q. Now, on the 25th, when you were there, and noticed that they didn't have a copy of that letter, although they had dug out the old Dittmore memorandum, or a copy of it, did you remind them of a letter which had been prepared and presented to the directors, and then torn up? A. I discussed matters with Mr. Dittmore.

Q. Did you remind them of that letter? A. I think not, because my conference with Mr. Dittmore was rather aside.

Q. You didn't remind the directors? A. I don't remember.

Q. You did remind Dittmore? A. Yes.

Q. And Dittmore didn't have a copy of that letter, did he? A. I don't know.

Q. Well, he didn't tell you he had one, did he? A. He didn't tell me he had one, no.

Q. And you were speaking aside with Mr. Dittmore and reminded him of that letter. Did you remind him that it was torn up at the time? A. No.

Q. Did he tell you that he had preserved a copy of that Dittmore memorandum, so called, which had also been torn up? A. He read the copy from some record.

Q. Oh, I see. He got the records

and read a copy of that from some record? A. Yes.

Q. What record was it? A. Well, at the time I thought it was the minutes of the directors.

Q. The directors? A. But I don't know.

Q. Did you remind him then—Mr. Dittmore—that the whole episode ended by Mr. Eustace saying, "Come now, let's tear up these papers and work along together as Christian Scientists," and that everybody felt relieved and the documents were torn up and thrown into the waste basket? A. No, I did not.

Q. You didn't tell him that, but you knew you had written it to Mr. Eustace, didn't you? A. Yes.

Q. Now, this is the letter, isn't it, which you sent to Mr. Eustace on Sept. 21, duly signed by you? (Handing letter to witness.) A. Yes, sir, that is the letter.

Q. Did you give a copy of that letter to the counsel for the directors before they called you as a witness? A. I believe they have a copy.

Q. Did you furnish them with a copy of it before Mr. Dickey took the stand and testified as he did about this business, or have you furnished them with a copy of it since then? A. Well, I am sure I can't say.

Q. Were you here when Mr. Dickey testified on that subject as to what the result was of those interviews? A. Yes; part of the time.

Q. You remember his saying that the things represented were agreed upon by a sort of gentlemen's agreement, but that they didn't want to sign, or something of that sort? Did you hear that testimony? A. Yes.

Q. And had you given a copy of this letter, do you think, to him or to the counsel for the directors before he testified to that sort of thing? A. Well, I couldn't say, Mr. Whipple.

Mr. Whipple—I offer this. Counsel have a copy of it, so perhaps I will read it. It is on the heading of The Christian Science Publishing Society.

Mr. Thompson—Is this against Dittmore?

Mr. Whipple—No, except against your defense to our suit.

Mr. Thompson—Then perhaps I had better take a look at it.

Mr. Whipple—I don't think it affects Mr. Dittmore at all; he was brought in, in the verbal conversation. [The letter is examined by Mr. Thompson.]

Q. By the way, did you give Mr. Dittmore a copy of that letter at the directors' meeting which has already been referred to, or subsequently? A. Please specify what letter.

Q. I mean the letter which was destroyed. A. Of Feb. 15?

Q. Feb. 20—yes, on Feb. 24—or a copy from your original.

Mr. Dane—I submit it to Your Honor.

The Master—I see no sufficient reason for excluding the notes.

A. I am not sure that I gave him

one; I think that I had one with me at the time.

Q. Did you show it to him? A. Yes, I think so.

Mr. Thompson—We have no objection to that. (Referring to letter of Sept. 21, 1918, from Mr. McKenzie to Mr. Eustace.)

Mr. Dane—I think we shall object to the letter—a letter written by the witness to Mr. Eustace, on Sept. 21, 1918. I do not understand that it is any contradiction of what he has testified to.

Mr. Whipple—I think in effect it is.

Mr. Dane—I think that is an expression of his opinion.

Mr. Whipple—Oh, no.

Mr. Dane—It may subsequently have been changed for all we know.

Mr. Whipple—Yes; I think it was very much, because he saw the directors, or was called before them within a day or two, and then he seemed to have changed entirely.

Mr. Dane—I submit it to Your Honor.

The Master—I see no sufficient reason for excluding the letter on cross-examination—a letter written by this very witness about this very matter.

Mr. Dane—I assume—

Mr. Whipple—It is on the heading of The Christian Science Publishing Society, stamped with this legend: "Seen, Sept. 26, 1918, by the Board of Trustees."

The Master—Sept. 26?

Mr. Whipple—The letter is dated Sept. 21, 1918. It is stamped as having been seen by the Board of Trustees on Sept. 26.

[A letter from Mr. McKenzie to Mr. Eustace, dated Sept. 26, 1918, is marked Exhibit 713, and is read by Mr. Whipple, as follows:]

[Exhibit 713]

"Sept. 21, 1918.

"My dear Eustace:

"You have asked me to recall my memories of conferences which we had with the committee of the Board of Directors in February, 1916. You remember that we had a very satisfactory conference with the directors on Jan. 1, 1914, and having come to see that we had been looking too much upon the chairman of the board as a representative, we had decided that we would do business with no one member but only with the Board of Directors as a whole. The result of that 1914 conference was the chain of events which led to the establishment of The Monitor on a right basis so that it could authoritatively discuss Principle.

"Well, when we were invited to this conference I went over with high hopes that we should be able to sit down in fellowship and discuss our true relationship and mutual duties. It was therefore somewhat of a surprise when I found that a document had been drawn up by one of the three directors, in which an endeavor was made to decide for us what our

relationship to the Board of Directors should be. For a moment it seemed almost as if the view was being taken that the trustees were dangerous men whom it was not safe to have at liberty, and handcuffs were provided to which they were expected to submit and make no trouble about it. During the first conference we made an endeavor to show that some of the statements made should be modified, and a few verbal amendments were accepted in the document spoken of."

Q. If I may interrupt myself, this document referred to was the Dittmore memorandum, was it not? A. It was.

Mr. Whipple—That was presented to you at that time.

"This document brought out clearly a theory as to the way in which the directors should 'control.' At the second conference it was enunciated clearly that the trustees must be considered as subordinate in their position. Mr. Hatten's loyalty to the Leader of the movement caused him to be stirred at this point, because he felt that in the Deed of Trust Mrs. Eddy had very fully and clearly defined her intention with regard to the Publishing Society and its trustees.

"In the preparation for the third conference we deemed it well to draw out a letter or communication as coming from us to the Board of Directors, reviewing the history of the Publishing Society, in brief, indicating the conditions under which the Deed of Trust was given, and bringing out the advantage of good understanding and good fellowship between the trustees and directors. This communication seemed to cover the important points brought out in the other document, but did not agree that the trustees should in any way forswear or yield up their rights and duties under the Deed of Trust so as to become subordinate to the will of the directors.

"When this letter was read, with its reasonable affirmations, the point was brought out in response that evidently we were not going to submit and that therefore no more discussions would be had until there was the full board. The indication in this seemed to be that, as one member of the board who was absent had shown himself bitterly critical and antagonistic to the trustees, on his return there would be an increase of power to bring compulsion to bear on the trustees.

"At that moment, when mesmerism seemed to have reached an acute point, I believe it was you who laughed and said, 'Come now, let us tear up these papers and work along together as Christian Scientists.' Everybody felt relieved and the documents were torn up and thrown into the waste basket.

"I have the assurance within myself that in framing the Deed of Trust Mrs. Eddy's desire was to safeguard the movement. If it should ever happen that the Church might be divided into schismatic political parties, the unity of the movement could still be pre-

served through the Publishing Society. The Deed of Trust is absolutely emphatic in calling for and demanding demonstration of Christian Science. If any trustee should fail in respect to demonstration the Directors have the authority to remove him from office and the remaining trustees have the duty of electing his successor. There is, indeed, a great difference between the attitude of waiting upon God for guidance and bringing out into demonstration the truth that justifies itself by its results, and the attitude of feeling subordinated to a tribunal and unable to act until from time to time decisions have been reached by that tribunal.

"Now that the Publishing Society is publishing Mrs. Eddy's works, I feel that it is rock-founded as never before, and I know that the demonstration of the Publishing Society and its trustees, officers and workers in supporting the Church and extending the knowledge of the movement represents an agency of incalculable value whereby the labors of the directors will be lightened, their hands strengthened, and their hearts comforted.

"But in the future as in the past it must be demonstration rather than human planning, patient waiting upon God rather than the giving of orders, and above all a recognition of Mrs. Eddy's leadership as not having been superseded that will insure success.

"This is considerable of a preaching, but you asked for it and so you get it.

"Yours faithfully,

"WILLIAM P. MCKENZIE."

Q. Now, at about this time, that is, about Sept. 20 to Sept. 30, of last year, you were in conference from time to time with the trustees in which there was mention, was there not, of the difficulties which had broken out and seemed to be for the moment acute as between the directors and the trustees? A. They were mentioned, yes.

Q. And you were made aware that the trustees at that time prepared a communication which was ultimately dated Sept. 30, which they proposed to send to the directors as a statement of their position? A. I think I knew about it.

Q. You think so. Don't you know so? A. No, because I never had a copy of it.

Q. Wasn't it read to you? A. I believe it was.

Q. Well, you say you believe it was. Don't you know it was? A. No, I do not, Mr. Whipple.

Q. You can't remember whether so important a matter as a declaration by the trustees— A. I remember later that Mr. Eustace asked me to receive a copy of it, and I declined.

Q. But he read it to you? A. What?

Q. He read it to you? A. Well, he may have.

Q. Well, didn't he send you a copy of it later? A. No; he sent me some

selections from that document which applied to the editorial department.

Q. When did you first see a copy of that letter? A. What letter, please?

Q. The letter of Sept. 30, from the trustees to the directors.

Mr. Whipple—May I take that letter itself? That is in evidence. (Letter produced.) It is Exhibit 47a. (To the witness) You had better take a look at it.

The Master—I didn't get that number.

Mr. Whipple—47a. Just take a look at it. (Handing paper to witness.) Well, it should be Exhibit 4a, but it surely has got a 47 there.

Mr. Withington—I think it was marked twice.

Mr. Whipple—Why?

Mr. Withington—Well, I think that was one time afterward. It is marked twice, both 47 and 4a.

Mr. Whipple—How does that happen?

Mr. Withington—I do not know. I think there was another copy of it used in another case, and they marked that at the same time.

Mr. Whipple—Well, which was it marked in the other case?

Mr. Withington—No; they are both marked in this case; both those exhibit numbers were given to it.

Mr. Whipple—That is extraordinary. If Your Honor please, I am perplexed to know just what to call it.

Mr. Withington—The proper number is 4a.

Q. You have looked it over, have you? "4a," we will call it. Mr. McKenzie, you have seen it? A. Yes.

Q. Now, when did you first see a full copy of it? A. To the best of my recollection, when it was published in the testimony here.

Q. Now, what parts of it were read to you? Won't you look it over and tell us what parts Mr. Eustace read to you? A. (Examining letter.) Well, I can't tell you.

Q. Do your best on it. A. Because he may have read it all.

Q. Well, did he? Isn't that a fact? A. Mr. Whipple, I have tried to search my memory for this—for the events—and I have no copy of this in my files, and I really cannot remember what happened.

Q. Well, do your best. Don't you think it is your best recollection that he read the whole letter to you? A. Why, I think so, yes.

Q. And don't you think he showed you the text of it? A. Well, I don't know.

Q. Now, may I call your attention to the record of a meeting of the Board of Trustees on Sept. 30, 1918, at 10 a. m.:

"Messrs. Eustace, Rowlands, and Ogden present.

"The meeting opened with the usual prayer.

"The trustees spent the morning session considering the draft of a letter to The Christian Science Board of

Directors, reaffirming and amplifying the statements made to the directors relative to the Deed of Trust at the time of their conference Sept. 11.

"After drawing up the first copies of this letter, it was given to Mr. McKenzie, the editor of the Journal and Sentinel, who was one of our Leader's original appointees on the Board of Trustees, and who served for 19 years on that board."

Then it speaks of having given a copy to Mr. Dixon and to Mr. Watts, and then this follows:

"Each assented to and approved of the contents."

A. Well, that is a better record than my memory.

Q. You accept that record, will you? A. I think it is likely to be true.

Q. Yes. You do not remember in any way having dissented from the propositions stated in the letter when Mr. Eustace read it to you, do you? A. I did not declare myself at that time, but I was very much troubled over the whole situation.

Q. Well, that is all right, and I have no objection to that statement; but be careful now that we get what you said. A. Yes.

Q. And not your reserved thoughts. A. Quite true. I did not speak—

Q. In dissent— A. What I thought.

Mr. Thompson—What is that answer; I didn't get it.

Q. Do you mean to say you spoke something you didn't think? A. No, I did not.

Q. Very well. But you did not dissent? A. I did not dissent.

Q. And you accepted the record as a true statement? A. Oh, yes.

Q. I beg your pardon? A. I did.

Q. Now then, at some time after this meeting of the Board of Directors or the meetings on Jan. 24 and Jan. 25 you undertook something in the Board of Directors' behalf, did you not? A. I do not understand it that way.

Q. Well, you undertook to resurrect or galvanize that old letter of Feb. 15, 1916, which had been destroyed, did you not, and get the signature of all the trustees to it again? A. Oh, yes.

Q. Yes, that is what I meant. A. Yes.

Q. And that in effect would resurrect and galvanize it, or reg galvanize it. You knew what I meant by it? A. I thought it was a splendidly fair statement.

Q. Yes, I see. A. I thought it could be a basis for—

Q. Pardon me; that is not what I asked you, and I shall have to move to strike out something if you do not answer the questions in cross-examination. You undertook that task at the suggestion of the Board of Directors, did you not? A. No.

Q. I beg your pardon? A. No.

Q. Did anyone assist in preparing any of that literature which you pre-

pared to Mr. Eustace for his signature? A. No.

Q. Did you submit it to the Board— A. Pardon me. Mr. Hatten agreed to it and signed it.

Q. Well, that I didn't ask you. I was asking about any assistance in the cabinet work, the preparation. A. No, sir.

Q. Did you submit it to the directors before you tried to get Mr. Eustace to sign it? A. Not at all.

Q. They knew nothing about it? A. Nothing at all.

Q. That is what you undertook on your own initiative, so to speak? A. Quite so.

Q. But it was after the interview with the directors in which you called their attention to the fact that they apparently had not in mind this letter? A. No.

Q. Or at least, in which you had noticed that they had not in mind this letter? A. No.

Q. It was after that, wasn't it? A. No.

Q. When did you draft this letter in which you tried to galvanize the old 1916 agreement into something alive with signatures attached to it? A. The first reference to that letter was on Jan. 22, when I spoke to Mr. Eustace about it in a meeting of the trustees.

Q. But what I am now speaking of is the directors' relation to it. A. Well, they had no relationship to it at all.

Q. Had you talked with them about preparing a letter to them? A. That was a different letter altogether.

Q. What? What is a different letter? A. The directors asked me to make a statement in regard to the relationship of the two boards, which I did under date of Jan. 27.

Q. That is not what I am asking about at all; I am asking about your endeavor to get Mr. Eustace's signature to the old agreement which had been torn up. A. That was my own affair.

Q. That was your own affair? A. Yes.

Q. It started on your own initiative? A. Yes.

Q. With no knowledge on the part of the directors? A. None that I know of.

Q. Well, that would seem to be justified, because Mr. Dickey has testified he did not know it had been torn up. Now, at the meeting of directors on Jan. 25, you heard them reading from their minutes as to the conferences with the full Board of Trustees in February, 1916, didn't you? A. Yes, I heard Mr. Dittmore read them.

Q. Yes. And the minutes you heard read gave in full a series of rules proposed by the directors for the government in action of the trustees—otherwise, the Dittmore memorandum? That is so, isn't it? A. Yes, the Dittmore memorandum was read.

Q. The trustees did not agree to bind themselves by any rules except



those given in the Manual and the Deed of Trust and presented a proposal for fellowship in work which was read by you as chairman of the Board of Trustees, but it was not considered acceptable to the directors. That is a fair summary of what happened in 1916, in February, is it not? A. We did not sign the memorandum and they did not accept our proposal.

Q. Pardon me. What I stated was—perhaps that is all right. A. Yes.

Mr. Whipple (to the stenographer)—Will you read that answer?

[Answer read by stenographer as follows: "We did not sign the memorandum and they did not accept our proposal."]

Mr. Whipple—Yes.

Q. Then you thought that the letter should have been recorded as the minutes are not complete without it, and you wanted to get Mr. Eustace to sign another copy of it so that it might be recorded? A. Yes; so that it might be a matter of history.

Q. Yes. Then you see just the situation which Mr. Dickey testified to when he was a witness would have been restored. That is, there would have been recorded this agreement or statement of position which had really been destroyed. That is so, isn't it? A. It would have been recorded, yes.

Q. Yes, that is right. And as it is there is not any record or reference to any such thing, and the paper was actually destroyed with the comment which you have already testified to? A. I believe that was the case.

Q. And what you were trying to do was to bring about a situation, which, if you could have brought it about, would have been a little more consistent with what Mr. Dickey testified to, wouldn't it? A. Well, what I wanted to see—

Q. No; pardon me. You see, we have to keep a little bit of a straight-jacket on cross-examination, because you have so much liberty on the direct, and my questions are not an excuse merely to let you talk as you please, but to get an answer. A. True. Will you restate that?

[Question read by stenographer as follows: "And what you were trying to do was to bring about a situation, which, if you could have brought it about, would have been a little more consistent with what Mr. Dickey testified to, wouldn't it?"]

A. Yes.

Q. But of course when Mr. Eustace refused to sign it, you failed? A. Well, he still has it; I don't know—

Q. Yes, that is right—he still has it, Mr. Dickey has not. Now, in view of what you testified to a moment ago, I direct your attention to the record of a meeting of the Board of Trustees, Feb. 26, 1919, at which, according to the record, you were present and took a part. Do you remember being there and what was discussed? A. No, not at this moment.

Q. Well, let me read it and see if

that accords with your memory. A. Yes.

Q. (Reading:)

"The regular meeting of the Board of Trustees convened Wednesday, Feb. 26, 1919, at 2 o'clock, with all members present. The meeting opened with the usual prayer. The minutes of the previous meeting were read and approved.

"Mr. McKenzie came to the meeting and general questions relative to the editorial work were discussed. In the course of conversation, Mr. McKenzie brought up the question of his desire to enter a protest against an action taken by the Board of Directors of The Mother Church three years ago in recording the directors' memorandum which was under consideration and had been rejected."

If I may interrupt myself in reading, you referred there to the Dittmore memorandum, did you not? A. That is not my phraseology, however.

Q. You mean, what I have read is not yours? A. No.

Q. Of course it was not, because you were not secretary of the meeting. But the reference was to the Dittmore memorandum, was it not? That is the only memorandum that you had three years ago? A. Yes, it appears to be to that.

Q. And you are represented here as entering a protest against the action taken by the directors three years ago in recording that memorandum which had been rejected. You notice that, don't you? A. Yes. I say, that is not my phraseology.

Q. Well, is it in substance correct? A. No. What I objected to was not—

Q. Oh, pardon me. A. —of recording our letter.

Q. Pardon me. Well, that is a fair answer. A. Yes.

Q. I won't object to it. A. Yes, of course it is.

Q. But you say that this record you do not think is right because it does not agree with your memory? A. Because the word "reject" was not used to my knowledge.

Q. Well, did you say that you desired to enter your protest against the action taken by the directors three years ago in recording the directors' memorandum which was up for consideration and had been rejected, or some other word equivalent to "reject"? A. No, my protest was entirely on leaving out our letter.

Q. But that was also rejected? A. Well, but if one was recorded why should not the other be recorded in the interests of fair play?

Q. Now, let us see what the rest of this record is, if you will follow it. A. Yes.

Q. And see if either accords with your memory or stimulates it. A. Very good.

Q. (Reading:)

"Mr. McKenzie stated that in one of his recent conferences with the Board of Directors they had read to him the minutes of a meeting in 1916 in which the Board of Directors had included

the contents of a memorandum which had been presented to the trustees, and which, as Mr. McKenzie stated, had been rejected by the trustees, and which had been agreed by Mr. Dickey, Mr. Dittmore and Mr. Neal, as members of the Board of Directors present, and Mr. McKenzie and Mr. Hatten and Mr. Eustace, as members of the Board of Trustees of the Publishing Society, that everything in connection with the memorandum should be in substance wiped out, and that we should all work together as Christian Scientists under the spirit of the Manual and the Deed of Trust. This was unanimously agreed to by the six present, and, as Mr. McKenzie said, it was an absolute breach of confidence, to say nothing of being untrue, to have the memorandum recorded in the minutes of the Board of Directors, when it had in substance been settled to consider it torn up."

Q. Does that either— A. Yes, I think that is a fair statement.

Q. Is that a fair statement of what you said? A. Yes.

Q. And what you sincerely felt? A. Yes.

Q. There are no mental reservations this time? A. Well, I was just simply interested in fair play.

Q. No, pardon me; there were no mental reservations on the subject? A. Well, you will have to explain what you are after, please.

Q. I won't trouble you with an explanation; if you do not know what mental reservations are in expressing your statements in regard to a particular subject, I am not going to press it with you, because I am afraid I could not make it quite clear. Now, Mr. Hatten is living, isn't he? A. Yes.

Q. Is he present in the court room? A. I don't know.

Q. Have you seen him here? A. I have not.

Q. At all? A. I have not.

Q. Have you seen him at the office of the attorneys of the directors? A. I have not seen him for quite a long time.

Q. But he was present at all these interviews in February, 1916, wasn't he? A. He was, yes.

Q. Just as much present as Mr. Dickey was? A. Yes.

Q. Every time? A. Yes.

Q. Now, have you talked with him as to his memory of what happened at that time? A. No, I have not.

Q. Have you known of the directors or their counsel asking him about it? A. I know nothing about it.

Q. Neither directly nor indirectly? A. Neither directly nor indirectly.

Q. But you know his handwriting, don't you? A. I do.

Q. Didn't you know he was asked to make a statement in writing of what he remembered about these occurrences—to make a statement in or about last November, and that he did so?

Mr. Dane—Asked by whom?

Mr. Whipple—Asked by one of the Board of Trustees, Mr. Eustace, to make a statement to Mr. Eustace of what he remembered about it.

The Witness—I am not sure as to that.

Q. Well, you are not sure as to it? A. Why, I don't remember any—that that was brought to my attention.

Q. Well, will you look at this signature, just the words, "Sincerely yours, Thomas W. Hatten, Boston, Massachusetts, November 26, 1918"—unquestionably those are in the handwriting of Mr. Hatten, aren't they? A. They are.

Q. You know that Mr. Hatten did say something in these meetings in February, didn't he? A. Yes. I have already—

Q. He said something in these meetings with the directors in February, 1916, didn't he? A. That is mentioned in the letter that you read, my letter.

Q. Let us look at that. Thank you for that suggestion. Where is that letter?

Mr. Strawn—Feb. 15?

Mr. Whipple—Feb. 15. No, the letter of Sept. 21. Haven't you a copy of it?

Mr. Strawn—I don't find one here now.

Mr. Whipple—You must have copies of these letters as they are put in.

Mr. Strawn—No, I don't seem to have a copy. Where is the original? Have you the original there?

Mr. Watts—No.

Mr. Whipple—Every minute, you know, we are liable to want to use any of these letters, so that it will be convenient to have copies ready. I want the letter of Sept. 21. If we have a copy of it it does not make any difference if the original is gone, but otherwise we may have to stop the trial while we are waiting for a letter. We should have a copy of every exhibit that goes in. We ought to have a copy ready that can be furnished promptly when it is asked for.

[Mr. Watts passes to Mr. Whipple a copy of the letter referred to.]

Q. What you referred to in your letter of Sept. 21 in what you said just now, I take it, is this—I take it that it is your reference to Mr. Hatten—my eye does not fall on it at the moment. Will you look at it and see (passing to the witness the letter referred to)? Tell us what you referred to.

The Witness—That (pointing).

Mr. Whipple—Thank you.

Q. You point to this:

"Mr. Hatten's loyalty to the Leader of the movement caused him to be stirred at this point, because he felt that in the Deed of Trust Mrs. Eddy very fully and clearly defined her intention with regard to the Publishing Society and its trustees."

That states very concisely and broadly just Mr. Hatten's position at the time of those interviews when the Dittmore proposition and the

trustees' letter were both torn up, does it not?

Mr. Dane—I object to that. I object to the question to this witness which sought to have him say that what is expressed in this letter states very clearly and precisely Mr. Hatten's views.

Mr. Whipple—That gives the substance—No, it is not Mr. Hatten's views; it states the substance of what Mr. Hatten said at these interviews. I do not want to ask him to go at length into Mr. Hatten's statement.

The Master—I did not so understand your question.

Mr. Whipple—That is what I meant.

The Master—It comes to this, whether that is a correct representation and summing up of what Mr. Hatten said at that interview.

Mr. Whipple—Yes, Your Honor. Will you read the question that I put?

[The reporter reads as follows: "That states very concisely and broadly just Mr. Hatten's position at the time of those interviews when the Dittmore proposition and the trustees' letter were both torn up, does it not?"]

That is what I stated.

Mr. Dane—That points out exactly the objection. It asks him if that states clearly and precisely Mr. Hatten's position at that time.

Mr. Whipple—Yes.

Mr. Dane—I understand that Your Honor does not want that.

The Master—That is not what you want, is it?

Mr. Whipple—Well, his position as indicated by what he said. I will revise the question.

Mr. Dane—Thank you.

Mr. Whipple—Let me read that again, because no doubt you have been diverted by this.

The Master—Would we not shorten it up if you put another question? Put your question in the sense that I supposed you intended to put it.

Q. Does this state a fair summing up of Mr. Hatten's statement at the meeting in February, 1916: "Mr. Hatten's loyalty to the Leader of the movement caused him to be stirred at this point, because he felt that in the Deed of Trust Mrs. Eddy had very fully and clearly defined her intention with regard to the Publishing Society and its trustees"? A. It states the substance of what he said.

Q. Yes, at the time, and in the presence of the directors who had assembled—is that correct? A. Yes.

Mr. Whipple—I will just ask to have the paper identified to which Mr. Hatten's signature is subscribed. There are four sheets of it. Will you mark it for identification?

[The document described is marked 714 for identification. R. J. M.]

Q. Is Mr. Hatten a Church official now? A. Please explain.

Q. Mr. Hatten, is he a Church official, or in the employ of any of the departments of the Church? A. I don't think so.

Mr. Thompson—I can't hear you, sir. The Witness—A practitioner—do you mean that?

Q. He is a practitioner? A. Yes. Q. And he lives in Boston or its vicinity? A. Yes.

Mr. Whipple—That is all. Mr. Thompson—Will Your Honor take a recess now?

The Master—We will stop for a few minutes.

[Recess from 11:46 to 11:59 a. m.]

Mr. Thompson—You would rather have your redirect before I cross-examine on my case, wouldn't you?

Mr. Dane—I think that perhaps you had better cross-examine first.

Mr. Thompson—All right. I will go ahead.

Cross-Examination on Behalf of Defendant Dittmore.

Q. (By Mr. Thompson.) Mr. McKenzie, how long have you known Mr. Dittmore, roughly speaking, approximately? A. Perhaps six or seven years, I am not sure.

Q. Six or seven years. Your relations with him have been on the whole pleasant, have they not? A. Kindly.

Q. Kindly. You have had some correspondence with him, have you not? A. Yes.

Q. You have looked to him for assistance occasionally in matters connected with Christian Science, have you not? A. No.

Q. What? A. No.

Q. Have you ever received any help from him of that kind? A. Not that I remember of.

Q. You found him a man devoted to the cause of Christian Science, did you not? A. As he saw it, yes.

Q. Yes; and as you saw it, too, didn't you? A. No.

Q. Do you mean that? Do you mean that, Mr. McKenzie? A. Yes.

Q. Well, see if some of these little leaflets that I have here will refresh your recollection. (Showing leaflets to witness.) Have you ever read any of his articles on Christian Science? A. Yes, I think I have.

Q. You have answered it. Did you approve of them?

The Master—That is a pretty general question.

Q. I mean, were they consistent with your ideas of a loyal supporter of the true doctrines of Christian Science? A. On the whole, yes.

Q. Is that your signature to a letter of May 17, 1918? Just look at your signature without regard to the letter. A. That is my signature.

Mr. Thompson—I will offer this letter.

Q. Is this your signature on another letter here, of April 26, 1917? A. That is my signature.

Q. And on still another one, of May 9—the year not stated? A. That is my signature.

Q. And did you send Mr. Dittmore a telegram on Dec. 2, 1916, when you were in Syracuse? (Showing tele-

gram to witness.) Take a look at that telegram and see if that is anything you sent him. A. Yes.

Q. You recognize that, don't you? A. Yes; that is the one.

Mr. Thompson—Now, I offer these documents as indicating the relations of Mr. McKenzie with Mr. Dittmore and his views about him at different times during a period of years.

[The documents above identified are handed to counsel.]

Q. You were formerly a Presbyterian clergyman, were you not, before you became connected with Christian Science? A. For a short time, yes.

Q. What? A. For a short time, I was.

Q. You were educated for the Presbyterian ministry, were you? A. Yes.

Q. Where were you educated? A. Toronto University, and then Knox College.

Q. Toronto University? A. Yes.

Q. Then what college? A. Knox College.

Q. Where is that? A. In Toronto.

Q. You are a Canadian? A. Yes. Auburn Theological Seminary after that.

Q. Canada? A. In Auburn city.

Q. Where is that? A. In New York State.

Q. Do you recollect anything about Mr. Neal's leaving the Board of Trustees of the Publishing Society in 1898? A. Yes.

Q. You were acquainted with Mr. Armstrong in his lifetime, were you not? A. Yes.

Q. Did you ever see a letter that Mrs. Eddy wrote to Mr. Armstrong about Mr. Neal? Yes or No. A. No.

Q. Was it ever read to you? I want your best memory. A. Well, I can't say. There may have been many letters. I remember of no letter.

Q. Do you, sir, remember of a letter of Mrs. Eddy to Mr. Armstrong stating why she desired Mr. Neal to leave the trustees?

Mr. Dane—Just a moment.

Q. Yes or No. A. Yes, I do.

Q. You do? A. That was to the best—

Q. You have answered me; I don't want anything more than that. Just confine yourself strictly to the questions, please.

Mr. Thompson—Have you got the letter, Mr. Bates?

Mr. Bates—Yes. I would be very glad to put it in, too.

Mr. Thompson—I guess not, because if you had the letter I mean you wouldn't be glad to put it in. Have you got the letter?

Mr. Bates—I understand those letters are not here.

Mr. Thompson—Well, you know of such a letter, don't you?

Mr. Bates—Well, I know of a letter that we would be very glad to put in.

Mr. Thompson—Very likely. Then I don't believe it is the right one. I am

talking now of a letter of Oct. 13, 1898, from Mrs. Eddy to Mr. Armstrong.

The Master—That appears to me to have a very remote relation to the cross-examination of this witness.

Q. In that letter do you recollect Mrs. Eddy saying anything about Mr. Neal's holding any office?

Mr. Dane—One minute; I object to that.

The Master—Let him finish his question.

Mr. Dane—He is stating the substance of a letter.

Mr. Thompson—I have called for it.

Mr. Dane—That doesn't make it admissible.

Mr. Thompson—Doesn't it?

The Master—Pause a moment. You say that is a letter you have called for?

Mr. Thompson—Yes.

The Master—I think we will wait and see what the letter is before we examine further about it.

Q. I understood you to tell Mr. Whipple that you were present at this trustees' meeting of Sept. 30, 1918, where a letter was prepared to the Board of Directors? A. Yes.

Q. Did you tell him that you did not approve that letter? A. No; I said that I had given assent to it.

Q. You did give your assent to it. Well, did you write to The Christian Science Board of Directors on Jan. 27, 1919, a letter?

Mr. Bates—We would like to look at that; let me look at that.

Mr. Thompson—You have looked at that.

Mr. Bates—Well, I have got a right to look at it.

Mr. Thompson—No, I don't think so; you have seen them once.

Mr. Bates—I have a right to look at them again.

The Master—Well, if you don't give Governor Bates full opportunity to examine them we cannot admit them.

Mr. Thompson—Haven't you read the letters once?

Mr. Bates—I propose to show them to Mr. Smith; he is counsel in the case and he wants to see them.

Mr. Thompson—I don't care to have these letters spread all around among your associates; I don't know whether he is counsel or not. He has been counsel in one proceeding and also a criminal defendant in one proceeding.

Mr. Bates—I submit to Your Honor that that should be struck out.

Mr. Thompson—If you haven't had the letters enough you may take them; I don't care to have them spread around among your associates.

The Master—I shall have to rely on Governor Bates.

Mr. Bates—Judge Smith is one of the counsel in this case, he certainly has a right to look at them.

The Master—You are showing them, as I understand, to your associate counsel.

Mr. Bates—He is one of the counsel in the case.

Mr. Thompson—Of course if you take that position I suppose theoretically and technically he has a right to see them. Will you now produce the letter of Jan. 27, 1919.

Mr. Dane—I have a copy of a letter of Jan. 27, 1919, that was not sent to the Board of Trustees, which I understand is the same letter.

Mr. Thompson—He can tell.

Mr. Dane—Yes.

Mr. Thompson—The witness will say this is a copy of the letter he sent?

Mr. Dane—That is the letter.

Mr. Thompson—I would like to identify that. Any objection to that going in?

Mr. Dane—Not the slightest; we want it to go in.

Mr. Whipple—I do not understand it is being offered in the Eustace case.

Mr. Thompson—No, it is not.

Mr. Whipple—And if it is not, and does not become admissible there, I do not care for it.

The Master—What is the date?

Mr. Thompson—Jan. 27, 1919.

Mr. Dane—If the letter is not being offered in both cases we shall offer it in the Eustace case, if you prefer it.

Mr. Thompson—I am offering it in one case now, that is all.

Mr. Bates—Am I wrong, if Your Honor please, in stating that if a paper is offered in one case it is admissible in both cases if it is admissible at all?

Mr. Thompson—Certainly; we are all agreed on that.

Mr. Bates—Then I don't think you should limit it.

Mr. Thompson—I have the right to offer it and to limit it in any way I please.

The Master—Let him offer it, and if it is objected to in the Eustace case, why, we will see what is to be said about it.

Mr. Bates—Well, I understand it is offered in both.

Mr. Whipple—It is objected to in the Eustace case, if Your Honor please, but I understand that it is not offered in the Eustace case.

Mr. Thompson—I don't offer it in that case. Governor Bates says he is going to later. I suppose he can do that.

The Master—If it goes in and it is material in the other case I suppose counsel will have a right to use it for the purposes of that case.

Mr. Whipple—I understand that Governor Bates expects to offer it in the Eustace case.

The Master—Yes.

Mr. Bates—No, I do not.

The Master—Now he says he does not.

Mr. Whipple—Oh, I thought you did.

Mr. Bates—That is just what I asked to have straightened out. I understand the offering of it now so far as

material makes it evidence in both cases.

Mr. Whipple—I do not so understand it, if Your Honor please. I understand that a letter may be admissible in one case and may not in the other, and that ultimately Your Honor will rule as to whether it is admissible in a particular case. For instance, in this case both the defendants agree that it may be admitted in the Dittemore case.

The Master—You object to it in your case?

Mr. Whipple—Yes, Your Honor.

The Master—And I admit it subject to the objection.

Mr. Thompson—Perhaps after Your Honor hears it it may be easier to determine whether it is admissible in the other case. This letter is dated Jan. 27, 1919, 10 Concord Avenue, Arsenal Square, Cambridge, Mass., addressed to The Christian Science Board of Directors, Boston, Massachusetts, reading as follows:

"Dear Friends"—

The Master—One minute. A letter to the directors?

Mr. Thompson—Yes, sir.

The Master—By the witness?

Mr. Thompson—Yes, sir.

The Master—Go on.

[A letter from Mr. McKenzie to the directors, dated Jan. 27, 1919, is marked Exhibit 715, and is read by Mr. Thompson, as follows:]

[Exhibit 715]

"10 Concord Avenue

"Arsenal Square

"Cambridge, Massachusetts.

"Jan. 27, 1919.

"The Christian Science Board of Directors,

"Boston, Massachusetts.

"Dear Friends:

"I stand unequivocally with the Board of Directors as the authority of The Mother Church. When Mary Baker Eddy made The Christian Science Publishing Society 'a gift to The Mother Church,' I was one of the First Members who accepted the gift, and I saw the Publishing Society become an integral part and a useful function of The Mother Church. The whole thing was included in the gift—property rights, business assets, copyrights and good will, except that Mrs. Eddy continued for a time to hold herself the copyright of the Journal. A Deed of Trust empowered a Board of Trustees to hold and conduct the business, giving specific directions. Mrs. Eddy afterwards, from time to time, recognized that the Publishing Society had become an integral part of The Mother Church, for she devoted an entire article in the Manual and several scattered By-Laws to the defining of the duties of the directors, the trustees, the employees, as well as individual members of The Mother Church throughout the world in their relationship to the Publishing Society. Concerning these By-Laws she says (Miscellany, p. 358): 'I approve the By-

laws of The Mother Church, and require the Christian Science Board of Directors to maintain them and sustain them.'

"In its relationship to the Board of Lectureship, for example, the directors do not govern its operations by personal control, but by constitutional authority. Their relationship to the Publishing Society, I believe to be, in like manner, constitutional authority quite clearly defined in the Manual. During the many years when I was a trustee, I recognized,

"1. That, as a member of The Mother Church, I was under its discipline, and that in the Manual I had the true ideal for the character and conduct of a Christian Scientist, and the rules for order and obedience as a Church member set forth.

"2. That as a trustee, I was trusted to be exemplary in my obedience to the Manual in all its requirements, and that in the Deed of Trust I received specific instruction in regard to my special duties as a trustee.

"The question seems to have been raised, Who owns the Publishing Society? Any theory of law which claims that the trustees, or any one of them, can assume personal possession of the Publishing Society and take it out of The Mother Church, or control it as being under any authority separate from that of The Mother Church, I hold to be metaphysically untenable. Like the land on which the Church was to stand, it was 'conveyed through a type representing the true nature of the gift; a type morally and spiritually inalienable, but materially questionable—even after the manner that all spiritual good comes to Christian Scientists, to the end of taxing their faith in God, and their adherence to the superiority of the claims of Spirit over matter or merely legal titles.' (Misc. Writings, 140.)

"No trustees can assume to have possession of the business. What they have received is a trust involving duties and obligations defined in the Manual of The Mother Church, to which the business belongs, and in the Deed of Trust itself, and quite inevitably, any trustee is metaphysically out of office when he becomes untrustworthy in respect of his trust, in which case it becomes the duty of the directors to declare his office vacant, and the remaining trustees have the duty of filling the vacancy.

"The directors as the authority of The Mother Church, must maintain the By-Laws affecting the Publishing Society, as well as those specifically affecting both trustees and employees, advertisers in the Journal, and members whose privilege and duty it is to be subscribers. But it is very important that the directors should not, by virtue of their authority, themselves claim ownership of the Publishing Society, or personal control of its affairs, or insist on any theory regarding the conducting of the business otherwise than as specified in

the Manual and the Deed of Trust. In working with the Board of Lectureship, the directors do not look on the lecturers as subordinates or employees, but surely as fellow workers. It would solve many difficulties if the directors should find themselves ready to work with the trustees, viewing them as fellow workers and colleagues. There is no reason in heaven or earth (let us cut out any reason from hell) why this should not be done. Respect, courtesy, kindness, patience, forgiveness, when necessary, make an impregnable wall against division. Mrs. Eddy says, 'Schisms, imagination, and human beliefs are not parts of Christian Science; they darken the discernment of Science; they divide Truth's garment and cast lots for it.' (Miscellany, 206.)

"I believe then with all my heart that the Publishing Society should rest where Mrs. Eddy placed it, in The Mother Church as an accepted gift. As one of the First Members who accepted that gift, standing, I am sure, in full agreement with the vast multitude of Church members in the world, I repudiate any theory, legal or otherwise, which would claim the Publishing Society as the possession of any person or persons. If any such claim has been made, then The Christian Science Publishing Society should be 'rescued from the grasp of legal power, and now it must be put back into the arms of Love, if we would not be found fighting against God.' (Misc. Writings, 140.)

"I am sending an identical letter to the Board of Trustees.

"Yours faithfully

(Signed) "WM. P. MCKENZIE."

The Master—Now, the only importance of all that here is as it tends to contradict or qualify something that he has testified to in the case.

Mr. Thompson—That is all I am talking about.

The Master—The tendency is slight either way, isn't it?

Mr. Thompson—Well, I do not know, sir; I think that he has been on every side of this matter.

Q. When you wrote that letter, Mr. McKenzie, you had had two interviews a day or two before with the Board of Directors, hadn't you? A. Two interviews, ycs.

Q. You had been asked by the Board of Directors, and especially by Mr. Dittemore, to declare your position one way or the other in this controversy, had you not? Yes or no. A. Yes.

Q. And you had at first declined to do so, had you not? A. No.

Q. Did you do so the very first time you were asked by Mr. Dittemore? I want you to think carefully. A. The first time I was asked was by a letter.

Q. No; at those meetings Jan. 24 and Jan. 25. Jan. 25 was the one, wasn't it, when you were asked to declare your position? That is a fact, isn't it? It was on Jan. 25, wasn't it?

A. That was not the purpose of the meeting.

Q. What? A. I say, I didn't understand that was the purpose of the meeting.

Q. I haven't asked you that, sir, and if you will kindly note the question and answer that and not something else; no matter what the purpose of that meeting was. When you went to the meeting of Jan. 25 it was then and there that you were asked to declare your position, was it? Yes or no. A. No.

Q. When was it—the meeting of Jan. 24? A. I wasn't asked that question.

Q. Were you asked to state how you stood? A. Yes.

Q. Who asked you—what individual? A. I think it was Mr. Merritt who asked me, or wrote a letter.

Q. Did Mr. Dittmore ask you? A. He said that—

Q. I haven't asked you that, sir. Did Mr. Dittmore ask you to state where you stood, in substance? A. In substance, yes, but my—

Q. Answer the question, please. A. All right.

Q. No matter about your desire to put in anything else. In fact, Mr. Dittmore questioned you quite severely and quite at length, did he not, at that meeting of Jan. 25? Isn't that true? A. No.

Q. Didn't you finally say to Mr. Dittmore, "Those who give mercy may get mercy," or words to that effect, in substance? A. That had nothing to do with my case.

Q. I don't ask you that, sir. Did you say that? A. I certainly did.

Q. Then you have answered it; keep right to the point. And you say that had nothing to do with the discussion that then took place, whether or not you had been on every side of this controversy, did it? A. It had nothing to do with it.

Q. Was anything said to you at that meeting to the effect that you had been on every possible side of this controversy and the time had come to get on one side or the other? A. No.

Q. That idea wasn't expressed to you? Are you sure? A. No.

Q. Not in any form of words? A. Not in any form of words.

Q. And it was in consequence of that interview of Jan. 25, wasn't it, that you wrote that letter that I have just read? A. It was in answer to the request that I should write a statement of the case.

Q. Yes. Do you think that letter is consistent with the letter to the trustees of Sept. 30 that you say you approved? A. No. I do not.

Q. When you approved the letter of Sept. 30 you were approving something that you knew at the time was not true, weren't you? A. No; I didn't see where it was leading.

Q. When you approved that letter

of Sept. 30 did you understand it? A. I didn't approve it, I assented to it.

Q. When you assented to that letter and assented to the sending of that letter, did you thoroughly comprehend the letter that you had been asked to assent to? A. Well, as I said, I didn't see where it was leading.

Q. I don't mean that, sir; you may not have seen the consequences of your act; that is a very different proposition. The question is, did you understand the phraseology used and know what you had assented to? Yes or no. A. No.

Q. You mean to say, then, that you, a college graduate, instructed in a theological school, given ample opportunity to read that document, were unable to comprehend the phraseology used there? Do you mean to tell us that? A. No.

Q. The fact of the matter is you thoroughly understood it, didn't you, before you assented to it? Is that true, sir? A. No, it is not.

Q. You have been the editor of these publications for a number of years, haven't you? A. Two years.

Q. You are a man supposed to have some literary capacity, aren't you? You think you have, don't you? A. I don't know.

Q. You were selected to write as a literary man—to write the editorials in some of these publications, weren't you? A. Yes.

Q. Do you mean to tell us still that you could not, with an ample opportunity to estimate the meaning of that letter of Sept. 30—that you were unable to determine its significance—do you mean to tell us that still? A. I mean to say—

Q. I don't want that; do you mean that—do you mean that? A. I will have to explain.

Q. I don't want any explanation. Do you mean that, sir—that you could not, with ample opportunity to read and consider that letter of Sept. 30—that you were unable to determine its significance? Are you willing to say yes or no to that question? Are you willing to answer that directly? A. I would rather explain.

Q. I know you would, but I am not willing you should explain. You will have ample time later to explain. I want an answer to that question, yes or no. I am entitled to it legally. A. Will you repeat it, then?

Q. Do you mean to say, sir, that with ample opportunity to read and consider that letter of the trustees of Sept. 30, you, with the education you have and the training you have had, were unable to understand the significance of that letter? Yes or no. A. Yes.

Q. Well, when did you first come to the realizing sense of the significance of that letter of Sept. 30? I want a date as near as you can give it. A. On the 22nd of January.

Q. The 22nd of January of this year? A. Of this year.

Q. Did anyone help you, any human being help you, to reach that sense of the meaning of that letter; and if so, name the man. A. No, I don't think so.

Q. Did you come to that realizing appreciation of the significance of that letter all alone, by sitting down and thinking about it? A. I came to understand—

Q. I don't want that. Did you do it alone or with any help? A. I did it alone.

Q. Did it alone? How many weeks or months did it take you alone to realize the significance of that letter of Sept. 30, as near as you can now approximate it?

The Master—He has given you a date, I think.

Mr. Thompson — I don't know whether he was doing it all the time, sir, or only a part of the time. I want to find out whether his labor was continuous or interrupted in trying to understand the significance of that letter.

The Witness—I was studying the situation all the time.

Q. How much were you studying the letter, not the situation? A. Which letter?

Q. The letter of the trustees of Sept. 30. A. I never had the letter in my possession, so that I was not studying it.

Q. Did you ever have a copy of it? A. Not that I know of.

Q. Are you willing to say you never did, sir? A. No.

Q. You know you did, don't you? A. I do not.

Q. What? Why do you hesitate about it, sir? A. Simply because I have been all through my records and I have no copy of the letter anywhere.

Q. Don't you know, sir, that you were given ample opportunity to read and appreciate that letter of Sept. 30 before your assent was given to it? A. On one occasion, yes.

Q. Then you began to think, not of the letter, but of the situation, you say, did you? A. Yes.

Q. And the situation included your position as editor, didn't it? Yes or no. A. That was of no importance.

Q. I don't care whether it was of importance or not; it was a factor, wasn't it? A. I don't know.

Q. You don't know? Are you willing to say that among the elements of the situation which you reflected on was not the fact that unless you altered your position you might lose your job? A. I never considered it at all.

Q. You never considered it? What is your salary? A. \$9000.

Mr. Thompson—\$9000. Now, I want to put in these other letters about Mr. Dittmore. The first is a telegram of Dec. 2, 1916, addressed to Mr. Dittmore, and dated Syracuse, New York:

"I feel your kindness like a big

blessing Kellogg at Keith's hopes to meet you install introducing Adams House over Sunday.

(Signed) "McKENZIE."

Q. What was the kindness of Mr. Dittimore that you felt like a blessing? A. I don't remember now.

Q. Do you think there was any kindness, after all, now you come to think of it? A. Well, that was a true statement.

Mr. Thompson—A true statement.

The Master—Could you offer those in chronological order, beginning at the beginning?

Mr. Thompson—I am trying to.

The Master—Let us have them all marked together—the significance is so small in any event.

Mr. Thompson—I hope Your Honor will not decide finally on their significance until you have had an opportunity to consider and look at them.

Now, take this letter of April 26, 1916:

"My dear Dittimore:

"I want to thank you for your Christianly kindness in coming to talk with us."

Do you remember what that was about? Who is "us"? A. Please give me the date.

Q. That was back on April 26, 1916. A. I think that would be the trustees.

Q. The trustees. You thought that his conduct then in coming to talk with them was characterized by Christian kindness, did you? A. Yes.

Q. (reading letter:)

"Have faith in results though they slowly ripen."

That also had reference to the trustees, didn't it? A. The business, yes.

Q. And the results you wanted him to have faith in were the results that he, as a director, was trying to bring about in the meantime, wasn't it? A. That we all were trying to bring about.

Q. Well, he—he also. That is true, isn't it? A. Well, he was not the manager of the business.

Q. (reading:)

"A good word from the textbook is: 'This Science of being obtains not alone hereafter in what men call Paradise, but here and now' (285:3). Slowly enough it dawns upon us that 'Progress is the maturing conception of divine Love'—"

some quotation I can't make out—  
"This progress is undoubtedly in some ways being made by the Publishing Society. This is encouragement among a thousand shortcomings.

"Yours lovingly,

"WM. P. McKENZIE."

You thought there were a thousand shortcomings in the Publishing Society, and he was helping you to overcome some of them, didn't you? Isn't that the sense of it? A. Yes.

Q. At that time your views agreed with his, didn't they, about the Publishing Society? Yes or no, sir. At that time. A. Partly.

Q. Well, this is a pretty sweeping

indorsement you give him there in the letter, isn't it; you thank him for what he was trying to do to help you out. That is true, isn't it? A. That is true.

Q. Yes. Now, here is another one of May 9—perhaps you can state the year; it is not stated here:

"My dear Dittimore:

"Having failed to get you by phone I want to tell you in some sure way what a splendid letter you sent our Church here on May 3."

What church was that? A. Where is it dated?

Q. Cambridge. A. Probably the Cambridge Church.

Q. Do you remember anything about the episode? A. Not at present.

Q. "There was wisdom, kindness, and safety in it." Do you remember that? A. No, I do not.

Q. You were not in the habit of writing to Mr. Dittimore a sentiment which you really did not believe, were you? A. Certainly not.

Q. So that at this time you thought Mr. Dittimore's attitude showed wisdom, kindness, and safety, did you? A. I did.

Mr. Bates—Did you say his "attitude"?

Mr. Thompson—Yes, I did say his attitude.

Mr. Bates—Is that what the letter said?

Mr. Thompson—I have read it. I object to your interrupting my cross-examination.

Mr. Bates—Will you kindly inform me whether that is what the letter says?

Mr. Thompson—I will not inform you. You have seen it and read it, and you have no right to interrupt my cross-examination.

Mr. Bates—I submit, Your Honor, he has no right to put a question where he misstates what is in the letter.

Mr. Thompson—I have not misstated what is in the letter.

The Master—If he does it will be the worse for him in the long run.

Mr. Bates—I simply direct his attention to it.

Mr. Thompson—You are directing attention to what does not exist.

The Master—I think you had better both of you stop the discussion at this point.

Mr. Thompson—Very well. I wish to say that I was not undertaking to misquote from that letter—

The Master—Never mind, Mr. Thompson; go on and read the letter.

Q. At that time you thought there was wisdom, kindness, and safety in Mr. Dittimore's general attitude—and I repeat the word "attitude"—toward Christian Science and your particular Church, didn't you? Yes or no. A. Yes.

Q. "The meetings proposed were abandoned, with an opening of many eyes to genuine metaphysics."

At that time you thought Mr. Dittimore

more had caused many eyes to be opened to genuine metaphysics, didn't you? A. Yes.

Q. Well now, take this letter of May 17, 1918, addressed to Mr. Dittimore. It is on the heading of The Christian Science Publishing Society: "Dear Mr. Dittimore:

"I have just received the first printed copies of the Sentinel for May 25, and am glad to see what a good make-up has appeared in spite of the many changes.

"Let me thank you earnestly for your timely article which I am sure will help to put courage and assurance into the hearts of many who are tempted to waver because of what they listen to these days.

"Very sincerely yours,

"WM. P. McKENZIE."

Do you remember writing that letter? A. Yes.

Q. And you remember that at that time you had confidence in Mr. Dittimore's capacity as an interpreter of Christian Science, didn't you? A. As far as that article is concerned.

Mr. Thompson—Yes.

The Master—Now, that is all?

Mr. Thompson—That is all; yes, sir.

The Master—You may fasten those together and give them an exhibit number, and then follow them up by a, b, c, and so forth.

[Telegram addressed John V. Dittimore, signed McKenzie, dated Syracuse, N. Y., Dec. 2, 1916, is marked Exhibit 716;

Letter, Mr. McKenzie to Mr. Dittimore, dated Cambridge, April 26, 1916, is marked Exhibit 716a;

Letter, Mr. McKenzie to Mr. Dittimore, dated Cambridge, May 9, is marked Exhibit 716b;

Letter, Mr. McKenzie to Mr. Dittimore, dated Boston, May 17, 1918, is marked Exhibit 716c.]

Mr. Thompson—Now, will you let me see the trustees' records, Mr. Whipple, of Sept. 30, 1918?

Mr. Dane—I have them, Mr. Thompson.

Mr. Thompson—You have them, have you? I think before I come to that I will inquire about one more letter.

Mr. Dane—Here they are (handing records to Mr. Thompson).

Mr. Thompson—Thank you very much.

Q. You knew that, way back in 1916, and for a considerable time after that year, Mr. Dittimore and Mr. Neal were on a committee of the directors to make visits to the trustees and generally supervise the action of the trustees, did you not? A. Yes.

Q. And you never objected to their doing so, did you? A. No.

Q. You found the assistance that they gave helpful, did you not, generally? A. Yes, possibly.

The Master—In what year?

Mr. Thompson—1916, and from that time on for several years. It could only be three years, anyway.

Q. Do you recollect that Mr. Dittmore and Mr. Neal were making an investigation into certain postage accounts and circulation expenses in November, 1916? A. I am not sure of the date, but there was this committee.

Q. Well, see if looking at this letter, which is a carbon copy with the signature and all, addressed to you by Mr. Dittmore on Nov. 7, 1916, will refresh your recollection. Perhaps you can read it through (showing paper to witness). A. (After examination.) Yes, Mr. Thompson.

Mr. Thompson—I will show it to you, Governor Bates. I don't think it will help you to know much about it (showing paper to Mr. Bates).

Mr. Bates—No objection.

Mr. Thompson—Mr. Whipple, would you like to see this before I introduce it? If it will shorten matters, I will offer it simply in the case of Dittmore v. Dickey, and then if you desire to re-offer it, you can put it in (handing paper to Mr. Whipple).

Mr. Whipple—Yes, I would rather not have it offered. I take it, if Your Honor thinks it has a bearing on our case it will be admitted, whether it is offered in our case or not.

The Master—I suppose that is what it will come to, but I think if you regard it as inadmissible in your case you had better now mark it so by objecting to it.

Mr. Whipple—I should like to interpose that objection. I should like to have it restricted to the Dittmore case.

Mr. Thompson—All right, that is perfectly agreeable to us. (Reading:)

"Nov. 7, 1916.

"Rev. William P. McKenzie, Chairman,  
Board of Trustees,

"The Christian Science Publishing Society,

"Boston, Massachusetts.

"Dear Mr. McKenzie:

"The question we asked two or three weeks ago and which was referred to again yesterday was this:

"Why should the postage account under the heading 'circulation expense' have increased approximately \$15,000, when the circulation was increased only approximately 5000 copies. In other words, on that increase in circulation of 5000 copies, the actual postage would indicate a cost of \$3 on each subscription for postage alone, whereas the entire estimated postage for 1915 was \$77,000 to care for a total circulation of 68,000 copies."

"Very sincerely,

"J. V. DITTEMORE."

[Letter, Mr. Dittmore to Mr. McKenzie, Nov. 7, 1916, is marked Exhibit 717.]

Q. 68,000 copies. You recollect that episode, do you not? A. Yes.

Q. And that matter, after investi-

gation, was corrected, was it not? A. I think so.

Q. Yes. There was a very considerable loss pointed out by Mr. Dittmore which you were able afterward to correct, weren't you? A. I am not sure of the details, Mr. Thompson.

Q. Well, I am not asking for details; I am asking about the fact of a considerable money loss which he had put his finger on and called to your attention, and you were able to correct it. That is the truth, isn't it, of that transaction, in general terms? A. In general terms I think it was a matter of bookkeeping.

Q. It was a matter, however, that involved a loss, did it not? A. I don't know.

Q. You don't know?

Mr. Thompson—Have you a letter from Mr. McKenzie to The Christian Science Board of Directors, dated Feb. 14, 1916?

Q. Were you here when the records of the trustees were read in which it was said that you stated that hereafter you were going to be the editor, inasmuch as heretofore you had not been, because Mr. Eustace was really the editor and had influenced you on the subject of the periodicals—did you hear that stated? A. I was not here.

Q. As a matter of fact, you did say that, did you not? A. No.

Q. In substance you stated that Mr. Eustace had been a dominating factor on the board, did you not? A. Yes, I stated that Mr. Eustace's position was—

Q. Yes, you have answered the question.

The Master—What was the date of that?

Mr. Thompson—That statement was made Jan. 29, 1919. I will read it to you to refresh your recollection.

Mr. Dane—Have you got the exhibit number?

Mr. Thompson—No; I will give it to you in a moment.

Q. You stated to Mr. Watts, did you not, along about that date, January, 1919, that after that time you were going to be the editor, inasmuch as up to that time you had not been because Mr. Eustace had really been the editor through influencing you on the subject of the periodicals, or words to that effect? I am not asking for the exact words, but in substance that is what you said to Mr. Watts, wasn't it? A. That is his statement of the case.

Q. That is the true statement, in substance? Leave out his exact phraseology. You conveyed that idea to him, didn't you? A. Well—

Q. Isn't that true, Mr. McKenzie? A. Possibly.

Q. Well, not only "possibly," but probably, isn't it? A. It is not what I said, of course—

Q. What? A. It is not what I said, of course.

Q. I keep telling you, sir, I am not trying to hold you to the exact words,

but did you in substance convey that idea to him—yes or no. A. Yes.

Q. And it was true, too, wasn't it? What you said to Watts was true, wasn't it? A. Partly.

Q. Do you mean to say you said to him, intentionally, anything that was not partly true? A. What I said to him was just—

Q. No matter what you said to him, sir. Whatever it was you said to him, you told him the exact truth, didn't you? A. Well, that is his interpretation of it.

Q. I didn't ask you that, sir. Can't you listen to my questions? I am not asking you what you said, whatever it was I don't care. But whatever you said to Watts on that subject, you meant to tell him the truth when you said it, didn't you? What? A. I did.

Q. You did tell him the truth, didn't you? Whatever you did say was the truth, wasn't it? A. Yes.

Q. Is there any reason for hesitating on a question like that, Mr. McKenzie? A. Yes, there is a good deal.

Q. There is, is there? Well, we will see what it is later. Mr. McKenzie, see if this refreshes your recollection about your not having had a copy of that letter of September 30. The record of the trustees of that date: "After drawing up the first copies of this letter it was given to Mr. McKenzie, the editor of the Journal and Sentinel, who was one of our Leader's original appointees upon the Board of Trustees, and who served for 19 years on that board. A copy was also given to Mr. Dixon, to Mr. Watts," and so on. Does that refresh your recollection, that a copy was given to you—five copies made and one given to you? Isn't that true? A. No, it is not.

Q. You are not prepared to deny that is true, are you? A. No; I said I assented to that record a while ago.

Q. Very well. Now, did you state this to the trustees at their meeting of Oct. 1, 1918? See if this refreshes your recollection:

"Mr. McKenzie was asked to come to the meeting to give the trustees information why the Deed of Trust had never been recorded."

Do you remember of being asked to come to the meeting for that purpose? A. Yes, I do.

"Mr. McKenzie stated that the withholding from record was not in accord with any special instruction from Mrs. Eddy, but that the Board of Trustees in the early years felt that it was a protection to the general situation to give the subject matter of the Deed of Trust some public record."

Did you tell them that? A. I remember that very well.

Q. Was that a truthful statement that you made to them? A. Yes.

Q. And you stand by it now? A. Yes.

Q. Do you remember this, Mr. Mc-

Kenzie, on Oct. 2, 1918, coming to the meeting, and this occurring:

"Mr. McKenzie was asked to come to the meeting in order to give the trustees and the business manager information regarding the incidents concerning the Publishing Society which preceded the making of the Deed of Trust by our Leader."

Do you remember that? A. Yes, I remember that very well.

Q. "A copy of Mr. McKenzie's statements was recorded by the assistant secretary of the Board of Trustees, and will when transcribed be submitted to Mr. McKenzie for approval"—

Was it ever submitted to you? A. I don't remember that.

Q. "—after which this record will be placed on file in the folder mentioned in the minutes of the meeting of Sept. 30, marked 'Deed of Trust.'" You don't remember anything further about that? A. No.

Mr. Dane—What year is that, Mr. Thompson?

Mr. Thompson—Oct. 2, 1918.

Q. Do you remember this:

"The trustees consider the statement made by Mr. McKenzie, one of the original Publishing Committee appointed by Mrs. Eddy, a former First Member and a member of the Board of Trustees from the time of the institution of the Deed of Trust for 19 years following, to be of great value for historic purposes, and they expressed their gratitude and appreciation to Mr. McKenzie for telling us these incidents, that they might be made a part of the trustees' record."

Do you remember of telling them of those incidents? A. I think I passed over some letters that I had from Mrs. Eddy, Mr. Frye, and other letters.

Q. Where are those letters now, do you know? A. I suppose the trustees have them still.

Q. Didn't you tell them, didn't you give them an account of the original proceedings in regard to the establishment of this Publishing Society? A. Yes.

Q. Did you tell them in substance that Mrs. Eddy intended it to be an independent means of spreading Christian Science, independent of the directors? A. No.

Q. Did you tell them that she intended it to be subordinate to the directors? A. No.

Q. Did you discuss that question at all? A. I don't remember.

Q. But this was the very time, Mr. McKenzie, when the matter was up for discussion vividly, and letters were being written on it, wasn't it? A. It may be.

Q. Do you mean to say, sir, that when you were asked to give, at this critical time, September and October, 1918, when these trustees asked you for information concerning the early history of this Publishing Society, you said nothing bearing upon the relations between the trustees and the di-

rectors—do you mean that? A. I never took up any position—

Q. I don't want that, sir. Did you or did you not tell them, in response to their request, when you were giving them these data—did you give them any data bearing upon the relation of these two bodies? Can you answer that Yes or No? A. I gave them all the data I had.

Q. What? A. I gave them all the data I had.

Q. Did any of those data bear on the question of the relations between these two boards? A. I don't know.

Q. That was what you were asked for, wasn't it? That was why they were interested in it, wasn't it? A. No; they were trying to get the history of the case.

Q. Do you mean a history of the case simply for speculative abstract purposes, without reference to anything having to do with the controversy existing between these two boards—Do you mean that? A. There was no controversy at that time.

Q. There wasn't? Well, I thought the letter of Sept. 30 was a pretty strong assertion of something which you now say is not so, don't you? A. It was an endeavor to state one—

Q. Well, there was a controversy going on, wasn't there? A. I don't remember. I didn't look on it as a controversy then.

Q. Well, let us see whether there was or not. You can't give us anything for which you thanked these men? You can't give us now any fact that you gave these men, for which they thanked you on their records, which had any bearing on the relations between these two boards? A. Everything I gave them—

Q. Everything you gave them had a bearing— A. —was a history of the trust—

Q. Mr. McKenzie, what you were trying to do for these men at that time was to furnish them with historic data which would back up their letter of Sept. 30, was it not? Isn't that true? A. No.

Q. Were you trying to furnish them with data which would discredit their position? A. I was simply trying to bring out the situation.

Q. Didn't you tell them in substance, or convey to them in substance, the information that you had furnished would assist them to make out a case? Yes or no, Mr. McKenzie? A. I will say yes to that question.

Q. You did. Do you think now— A. To make out a case.

Q. You did. Wait a minute, sir. Do you think now, sir, that that information would assist them to make out a case? A. If I had the information here I could tell you.

Q. What you were doing, Mr. McKenzie, in fact, was to act as their agent to get up facts to back up their case here, wasn't it? A. Not at all.

Q. Not at all? A. It was to bring up—

Q. You need not answer any more.

You have answered my question. Now, then, see if this recalls anything to your mind—January 8, 1919, from the trustees' records:

"Mr. McKenzie came to the meeting and discussed questions relative to the editorial department."

Now:

"In response to an inquiry, Mr. McKenzie admitted that he had received a letter from the Board of Directors, evidently similar to that received by the business manager."

Do you recollect that letter? A. I do, very well.

Q. That was a letter in which you were asked to state your position, wasn't it, in substance? A. No.

Q. It was not. Have you got the letter? A. Yes.

Q. Let us see it. A. Here is the letter (passing a paper to Mr. Thompson, who passes it to Mr. Whipple).

Mr. Whipple—Hasn't that been put in?

Mr. Thompson—I don't know whether it has or not.

Mr. Whipple—We should like to have the admissibility of this letter, which was not known to the directors, restricted to the Dittmore case.

Mr. Thompson—There is no objection, so far as I am concerned.

Mr. Withington—You mean the trustees?

Mr. Whipple—I mean the trustees. Correct what I said. Not directors, but trustees.

Mr. Thompson—I agree to that also.

Q. See if you remember this:

"December 23, 1918.

"Mr. William P. McKenzie, Editor, "The Christian Science Publishing Society,

"Falmouth and St. Paul Streets, "Boston, Massachusetts.

[This is on the letter head of The Christian Science Board of Directors.]

"Dear Mr. McKenzie:

"I am instructed by The Christian Science Board of Directors to transmit to you the following request with regard to the editorial work of The Christian Science Publishing Society which is under your direction.

"To enable the Board of Directors to fulfill its duties and responsibilities under the By-Laws of The Mother Church the board desires that you take any important and unusual action in the course of your official work only after you have made sure that it has the approval of the Board of Directors of The Mother Church.

"The directors will appreciate your assurance of cooperation in this respect, and desire me to extend to you their kind personal regards.

"Sincerely yours,

"CHAS. E. JARVIS,

"Corresponding Secretary for The Christian Science Board of Directors."

[The letter of which the foregoing is a copy is marked Exhibit 718. R. J. M.]

Q. Did you, as a matter of fact, follow the request made in that letter



after you got it? A. The time I received it, yes.

Q. Did you at all times, after you received that letter, follow the instruction therein contained? A. Yes.

Q. Did you tell the trustees that you were doing so? A. I told them I had not answered it.

Q. Did you tell the trustees, when the subject of the letter came up for discussion, that you intended to follow the instructions in that letter? Yes or No? A. No, I didn't.

Q. You did not. You let them think that you did not intend to do it, didn't you? What? A. Not at all.

Q. Not at all. Now I will ask you if this refreshes your recollection concerning that transaction. This is under date of Jan. 8, 1919:

"In response to an inquiry, Mr. McKenzie admitted that he had received a letter from the Board of Directors, evidently similar to that received by the business manager. He stated that he did not wish to discuss it, and that he was working the question out and had made no reply. The trustees then talked with Mr. McKenzie and told him of the recent developments in connection with the Deed of Trust, and he was wholly in accord with the position taken by the trustees."

Is that a truthful entry? Will you stand by that? A. No, I do not.

Q. Then you deny the accuracy of that statement, do you? A. I do.

Q. Isn't it a fact, sir, that the trustees, finding out, having reason to think, that you had received such a letter as Mr. Watts had received, took the matter up with you seriously, demanded to know what your position was, and that you gave them the assurance that you were wholly in accord with them? Isn't that the honest truth, as recorded in their record? A. No, it is not.

Q. Can you remember what you did say, sir, at this time? Can you tell us where that is false? That is signed David B. Ogden, Recording Secretary. I understand you to say that Mr. Ogden has made a false entry on those records. A. The entry says I was wholly in accord.

Q. The entry says that after discussion, talking about the recent developments, "he was wholly in accord with the position taken by the trustees."

Now, is that statement true, or is it not true? A. No, it is not correct.

Q. It is not correct. Were you only partly in accord? Is that what you mean? A. I was not in accord with the thing at all. I was not in accord with the spirit that was being manifested at all.

Q. By whom? The spirit manifested by whom? A. By the trustees.

Q. Did you tell them so? A. Many times.

Q. Did you tell them on that occasion that you were not in accord with that spirit? Now, answer that, Mr. McKenzie, with care. Did you tell them that? A. Well, I don't know what I said.

Q. What? A. I don't know what I said.

Q. You don't know what you said, and you don't know whether that entry is true or not, do you, when you come to—

Mr. Bates—He has already answered that.

Mr. Thompson—Wait a minute. Don't interrupt.

Q. You don't know whether that is true or not, do you? A. It doesn't express what I believe I said; it doesn't express my feelings.

Q. Does it express what you said at that time? A. I don't think so.

Q. You don't think so. Well, it expresses exactly what you said about the letter of Sept. 30, doesn't it? A. I only said I gave assent to that.

Q. Yes. And that letter of Sept. 30 stated the position of the trustees, didn't it?

Mr. Bates—He said so.

A. Yes.

Q. Yes. Now, see if you remember this, Jan. 15, 1919:

"Mr. McKenzie came to the meeting and general questions relative to the editorial department were discussed. This was followed by a consideration of the application of the Deed of Trust to the work of the editorial department."

Do you remember that? A. Dimly, yes.

Q. That is the subject that Mr. Jarvis had written about on Sept. 23, isn't it? A. Yes.

Q. Yes.

"on which Mr. McKenzie was in full accord with the position taken by the trustees."

Is that a truthful entry? A. It doesn't seem to me to be.

Q. Well, did you tell them at that time that you were not in accord with the position taken by them? A. I told them what my position was—

Q. Wait a minute. Did you tell these men in this discussion, or during this discussion that is recorded here, that you were not in some respect, or in all respects, or in any respect, in accord with their position? A. Yes, I believe I did.

Q. And in spite of that fact you would have us believe that Mr. Ogden enters that you were in full accord with it, would you? A. Well, I can only say that it does not seem to me to be correct.

Q. That does not seem to you to be correct. Isn't it a fact, Mr. McKenzie, that when conferring with the directors you represented to them that you were in full accord with them; when conferring with these gentlemen you represented to them that you were in full accord with them; isn't that the honest truth about that, sir, up to the time of Jan. 27, when you had to declare yourself and write that letter? Isn't that the truth? A. No.

Q. It comes pretty near it, doesn't it? A. No, Mr. Thompson.

Q. Do you recall this, Mr. McKenzie, on Jan. 22, occurring at a meet-

ing of the trustees as recorded by Mr. Ogden—this was after a joint meeting between the trustees and the directors, as I gather from some previous entries—no, I don't know that that is true:

"After the meeting convened Mr. McKenzie came down and indicated by his appearance and expressions that he was disturbed"—

Do you remember indicating that you were disturbed, by your appearance and expressions, about anything that happened? A. I remember that meeting very well.

Q. Never mind about that, sir. I have not asked you that. Listen to my question. Were you disturbed? A. I was.

Q. Did you show it? A. Apparently.

Q. Was what you were disturbed about the fear that the directors might find out what you had been saying to the trustees, and that the trustees might find out what you had been saying to the directors—was that what disturbed you? A. Not at all.

Q. Not at all. Well, let us see what the record says: "regarding the situation between the directors and trustees, and would not sustain his statement made at a recent meeting that he approved the course that had been taken by the trustees relative to the Deed of Trust." Now, don't you remember at that time saying to these gentlemen that you would have to take back what you had said at a previous meeting, that you couldn't any longer sustain them—isn't that the truth? A. No, that was not the case.

Q. Then do you mean that that record is not right? A. I mean that that record is right.

Q. That record is right, is it, that is, you came down to that meeting of Jan. 22 disturbed, and told them that you would not sustain the statement made by you at a previous meeting, that is, at one of these former ones that I have called to your attention, that you approved of the course that had been taken by the trustees relative to the Deed of Trust? You remember your finally telling them that you would not approve of that course, do you? A. Yes, that their course was leading into litigation.

Q. No matter why. This was the first time that you told them so, wasn't it, on Jan. 22? A. Yes.

Q. Up to that time you had told them that you did approve of their course, hadn't you? A. Not exactly. I had been trying—

Q. You answer my question. I know what you had been trying to do, but you answer my question.

"The trustees had a long conversation with him, and told him of the correspondence and of our attitude in being defenders of the Deed of Trust and not aggressors in a church dissension."

Do you remember that? A. Yes.

Q. And you assent to that, do you, as the truth? A. Yes.

Q. "They also told Mr. McKenzie that unquestionably the time would come very soon when it would be necessary for him to definitely take his stand on the question in connection with his office as editor and that this could not be avoided." Do you remember their saying that to you? A. Yes.

Q. And when you had it put right up to you by the trustees that it was no longer possible to avoid taking a definite stand, what stand did you then take? That is what I want to know. A. A stand with the Church.

Q. A stand with the directors—is that it? A. Yes.

Q. Yes. Well, did you tell them so at that time? Did you tell them so on Jan. 22, that you were going to stand with the directors?

The Master—Tell the trustees?

Mr. Thompson—Tell the trustees.

Q. Did you tell the trustees at this meeting, after they had remonstrated and explained and expounded to you how they were standing up for the Deed of Trust—did you then say to them in substance, or give them fairly to understand, that from that day on you were going to stand against them and for the directors? Yes or No? I don't want any explanation of what you did say, but I want you to answer that directly, and straight. A. I don't remember what the exact statement was, but I wrote the next day—

Q. I don't want that, sir.

The Master—He does not remember what the exact statement was, he says.

Q. You don't remember what you did tell them in reference to— A. Oh, I do, yes.

Q. Well, now, let me put my question to you again.

Mr. Bates—Let him tell you.

A. If I could tell you what I said—

Q. I don't want your present version of what you said. If I wanted it I would call for it, but it is not worth anything at all to me. I want my question answered, which is this: After your explanation in this meeting, your entrance into the meeting, your coming in disturbed, and saying that you could no longer maintain the position that you had maintained of your adherence to them, and then their explaining what their views were as they are recorded here, and how they are maintaining the Deed of Trust, and their saying that you could not avoid any longer taking a position one way or the other—then I want to know this, whether, when the discussion had reached that point, you, in words or in substance—I don't care what the words were—did you in substance give them to understand then and there, not in writing, but in what you said, that you were going to stand by the directors, and couldn't any longer stand by them? Can't you answer that Yes or No? A. I can, but I want to tell you what I said, too.

Q. I don't want to know what you said, but did you give them that idea, in substance? A. In substance, yes.

Q. You did. What did they say to that, when you told them that you were going to stand by the directors and not by the trustees? A. Well, I said—

Q. Not what you said, but what did they say when you said that to them? A. Well, I don't remember the—

Q. You don't remember what they said? A. There were so many things said—

Q. No matter. Why can't you, when you made an important announcement to these gentlemen—

The Master—Well, you are asking what was said.

Mr. Thompson—I will change that.

The Master—If you are going to change it I think you had better do it at two o'clock. It is now a little after one.

[Recess until 2 o'clock p. m.]

[Afternoon Session]

Q. (By Mr. Thompson) You said, I think, Mr. McKenzie, that your present salary was \$9000. How long have you been in receipt of that salary, at that rate? A. Since February of 1918.

Q. And it was raised at that time, was it? A. Yes.

Q. What were you getting before? A. \$7500.

Q. Did you ask for a raise? A. No, not directly.

Q. It was given to you voluntarily by the trustees? A. Yes.

Q. Without your asking for it? A. I don't ask for it.

Q. I think you have said that your— or, we may put it, the unfolding to you of the significance of the trustees' letter of Sept. 30, came as a result of your own reflection unassisted by anybody else? Is that a fair statement? Did you get my question? A. Yes; it is a—

Q. That was what you said, wasn't it? A. Yes.

Q. Now, do you recollect that some little assistance was given to you in that matter by Mr. Strickler in some interviews that he had with you in January here in Boston? A. Yes; he told me of the—

Q. Well, I haven't asked you what he said. As a matter of fact, Mr. Strickler came on here and had one or two interviews with you, didn't he, early in January about your attitude in this matter? That is true, isn't it? A. I consulted him about some matters, yes.

Q. You consulted him about your attitude? A. No.

Q. Well, now, if you will listen to my question, please. A. Yes.

Q. And get it before you answer. If you don't understand it I beg of you to ask me to repeat it, but please, when you do understand it, answer the question that I have put and not something else.

It is true, isn't it, that Mr. Strickler and you— A. Yes, sir.

Q. —had some interviews in Jan-

uary in regard to this controversy between the trustees and directors? A. Yes, that is true.

Q. And it is also true, is it not, that Mr. Strickler took with you a strong position in favor of the directors? Isn't that true? A. Yes, that is true.

Q. Now, isn't it true that he urged you as strongly as he could to take that position? Mr. McKenzie, isn't it a fact that Mr. Strickler urged you to do that? A. No, I think not.

Q. Did Mr. Strickler express at all by way of advice to you when you consulted him about it as to what you had better do? I don't ask what did he say, but did he advise you what to do? A. No; he asked me what my position was.

Q. I don't ask you that. Did he in these interviews advise you or suggest to you what he thought you ought to do? Yes or no. A pretty broad question. A. I will have to say no.

Q. He did not. So that Mr. Strickler gave you no intimation in those conferences as to what he thought you had better do? Is that what you wish to say, sir? A. I think that is correct.

Q. Don't you recall that at one of those interviews matters became so heated that the door had to be closed so as to prevent the noise from getting out that you were having with him? A. Yes, I do.

Q. Wasn't Mr. Strickler at that time expressing to you with great force what he thought you ought to do? A. He was denouncing the trustees.

Q. But expressing to you what he thought you ought to do, wasn't he? A. No.

Q. Wasn't some reference made at this meeting of the directors that you attended in January to the fact that Mr. Strickler had been at you about this matter? A. I don't know.

Q. Not a thing said about that? A. Which meeting is this?

Q. The meeting where you finally said you would stand by the directors, Jan. 25. Strickler was there, wasn't he, as a matter of fact, at the first part of that meeting? A. Yes, Mr. Strickler was there.

Q. Now, isn't it true, Mr. McKenzie, that Mr. Strickler came there and said he was there, among other things, for the purpose of telling the directors what attitude you had been taking as to that board? A. I don't know.

Q. Didn't he say to the directors at that time something about the attitude you had been taking with him in these private interviews? A. I don't know.

Q. Are you willing to say he did not? A. I am willing to say I don't know anything about it.

Q. You don't remember, do you? A. I didn't hear him say anything.

The Master—He couldn't remember unless he heard it.

Mr. Thompson—No, he couldn't remember if he didn't hear it, and I am not sure he could if he had heard it.

Q. Now, I want to call your attention to one or two other records here

concerning your meetings with the trustees. I am sorry to be so slow but I have hard work to get hold of these records. You remember going before the trustees on Feb. 5, 1919, and this occurring:

"Mr. McKenzie came to the meeting and brought the correspondence that he had had with the directors of late."

Do you remember that? A. What is that last word?

Q. "And brought the correspondence that he had had with the directors of late." Recent correspondence, it means, I suppose. A. Yes.

Q. Do you remember you did that? A. I believe so.

Q. Well, you say you believe so. How much of an assurance does that convey to us? A. That is not quite clear to me.

Q. You don't remember quite clearly whether you brought the correspondence or not, is that it? A. I mean I don't quite clearly remember what it all was.

Q. Perhaps you will be refreshed further: "And read a number of these letters to the trustees." Do you remember of reading to the trustees some of the letters that had passed between you and the directors? A. Well, not clearly.

Q. You haven't any memory? Do you remember at all about it? A. I remember about the incident. I don't remember—

Q. I don't ask you that, pardon me. You may have a general memory that some such interview took place but that is of no consequence here. I am talking about particulars and the details. Do you remember bringing to that meeting letters that had passed between you and the directors and reading them to the trustees? That is a definite question and I would like a definite answer. If you don't remember it, say so. A. I will have to say I can't remember.

Q. You can't remember, and that happened as late as Feb. 5, if it happened at all, 1919. "As an indication of the desire he had to assist in reconciling the viewpoint of the two boards." At that point, then, you were telling them you would like to act as a sort of intermediary, weren't you? A. May I ask, sir, which minutes you are reading from?

Q. I am now reading from the minutes of the trustees of the Publishing Society under date of Feb. 5, 1919. A. Yes.

Q. Have you that clearly in mind? A. Yes.

Q. Did you on that occasion read letters that had passed between you and the directors and say to these men, in substance, that you would like to act as an intermediary to settle the trouble? A. Yes, I did.

Q. You did; very well.

"The trustees frankly expressed their criticism of some statements made by Mr. McKenzie."

Do you recollect that fact, sir? A.

I am confused between the two meetings. There is one on Jan. 30. This is Feb. 6?

Q. Now, I again say to you, sir, please—it was not Feb. 6, it was Feb 5. A. Feb. 5.

Q. Don't these details that I have mentioned to you bring back any picture of that meeting at all: Your having the letters with you that you had received, and copies of those you had sent to the directors, your reading them, and saying you would like to act as an intermediary to settle the trouble, and then the criticism by the trustees of your statement? Can't you remember that episode? A. I think so.

Q. And it is true, isn't it? That record is correct, isn't it? A. I believe so.

Q. What were the statements that the trustees criticized on that occasion that you had made? A. If the letter of the 27th was discussed then—

Q. Yes. That is, the statements that they criticized were those contained in your letter to the directors of the 27th, which has been read here in evidence? A. Yes.

Q. What did they say about it? A. I think there was a general objection to the whole position, as that they couldn't understand what was meant by giving back the Publishing Society—that quotation from Mrs. Eddy's writings—about giving it back into the hands of God.

Q. See if I can assist your recollection a little on that. Didn't some of these trustees on that occasion say to you, in substance, that your position as stated in that letter was entirely inconsistent with your previous attitude as stated to them? Isn't that the idea that somehow or other crept into the discussion? A. I think so.

Q. What they said to you was that you had been trying to serve two masters, in substance, didn't they? A. No.

Q. That you had been trying while with them to please them, and with the directors to please them? Isn't that what they said? A. No.

Q. Isn't that the truth, though? A. No.

Q. Although you had assented to a letter on Sept. 30 which you yourself now admit is entirely inconsistent with your letter to the directors of Jan. 27, you say that absolutely you were not influenced at all by any desire to serve two masters? A. I was not.

Q. And that your fluctuation in opinion and conduct were due to a failure to appreciate the situation, is that it? A. No.

Mr. Thompson—Have you got that letter, by the way, Mr. Bates, of Feb. 14, 1916, that this gentleman wrote to the directors? I asked for it this morning. If you haven't I have got a copy of it here which I assume your witness will identify.

Mr. Bates—Is that a letter that he wrote officially?

Mr. Thompson—Yes; it is an official letter to The Christian Science Board of Directors. If you haven't it, perhaps he will identify the copy. I don't think there will be any question about the identification.

Q. I want you to look at this, Mr. McKenzie, and see if you don't recognize it as a copy of a letter you wrote under date of Feb. 14, 1916, from Cambridge, to The Christian Science Board of Directors, a copy furnished to Mr. Dittmore on the occasion of its being received by the board? I observe you are looking at that part I have marked with a blue pencil? A. This is the first draft of the letter of Feb. 15.

Q. Did you send that letter? A. I don't remember of sending it.

Q. Well, can you account for the fact that a copy of it got into the hands of one of the directors as a copy of a document received by the directors? A. I must have sent it.

Q. What? A. I must have sent it, but I don't—

Mr. Thompson—Well, then, I will ask you to look at it, Governor. (Handing letter to Mr. Bates.) I don't remember that that or any similar letter has been introduced into this case. I will offer this on the same understanding, Mr. Whipple.

Mr. Bates—What is the same understanding?

Mr. Whipple—May I ask if this is the same and identical with what has been put in as a copy of a letter of Feb. 15?

Mr. Thompson—I do not so understand it. I do not know. It does not sound to me in all respects like that letter.

Mr. Whipple—May I get a copy of that and follow it as you read, then?

Mr. Thompson—Certainly; I wish you would.

Mr. Whipple—It is on page 318 of the printed record.

[A letter from Mr. McKenzie to the Board of Directors, Feb. 14, 1916, is offered in evidence as Exhibit 718.]

Mr. Whipple—I do not understand that this is offered as against the trustees.

Mr. Bates—May it please Your Honor, Mr. Whipple makes that statement on nearly every letter that is presented. I understand Your Honor's ruling is that these are all to be considered as in in both cases, so far as material. I don't want any misunderstanding in regard to it.

Mr. Thompson—I thought that was it.

The Master—That is my understanding, but Mr. Whipple has the right nevertheless to object to any given document offered, that it cannot be material in his case. I then take it subject to his objection, reserving the right to rule hereafter, if I agree with him, that it has no bearing on his case.

Mr. Bates—Well, if his statement is considered merely as an objection, not something that binds us, that is all right.

The Master—His statement is con-

sidered as an objection. I see no other way in which we can get along. Go on now, Mr. Thompson.

Mr. Thompson (reading)—  
"Cambridge, Mass.  
"Feb. 14, 1916.

"Dear Brethren:

"I venture to address you in regard to a matter which seems to be at this time of primary importance." Your Honor will remember this is one day before these interviews in 1916.

Mr. Whipple—Would Your Honor care to compare it with the paper that has been put in? We deem it of some importance because Mr. Dickey testified, as a means of getting in this draft of the letter of Feb. 15, that it was the one that was actually sent. This witness has testified that what he had was a first draft.

Mr. Thompson—But he has also said that it must have been sent, and we suggested to him that it came from Mr. Dittmore's files, and the only possible way to explain that would be that it was sent and officially passed around.

Mr. Whipple—Well, but this letter you have is not signed by anybody.

Mr. Thompson—It is the usual carbon or copy that is handed around.

Mr. Whipple—Not purporting to carry any signature.

Mr. Thompson—No, it doesn't carry any signature. He has identified it.

Mr. Whipple—I don't know whether Your Honor cares to compare it?

The Master—If anybody thinks it will serve a useful purpose for me to compare it I will ask that the letter be handed up here so that I may follow it.

Mr. Whipple—Your Honor could follow it on page 318 of the printed record.

Mr. Thompson—If it turns out to be the same, why—

Mr. Whipple—It is not; it doesn't begin the same.

Mr. Thompson (reading)—

"Dear Brethren: I venture to address you in regard to a matter which seems to be at this time of primary importance."

The Master—One moment. I am afraid I haven't got anything that at all corresponds to that before me.

Mr. Thompson—I don't believe Your Honor has, either. I think they are entirely different. I don't believe the letters are the same.

Mr. Bates—The first paragraph is different entirely, the second paragraph appears to be very similar. There is no evidence that this letter was ever sent.

Mr. Thompson—Pardon me; he has just testified the contrary of that.

Mr. Bates—He accepted your statement, that he presumed it must have been.

The Master—What date is that?

Mr. Thompson—Feb. 14, the day before.

Mr. Whipple—As I understand the testimony, it was to the effect that it was not a signed communication, but

only a copy of the draft which he had perhaps contemplated sending. But I don't want to interfere with your examination of the witness. That is what I understood him to mean.

Q. You have no doubt, have you, Mr. McKenzie, that this letter of which Mr. Dittmore has a copy in his files was sent by you to somebody, I don't care whom? That is true, isn't it?  
A. I believe it was sent by me.

The Master—Well, it may make a good deal of difference, may it not, to whom it was sent?

Mr. Thompson—Yes, sir.

The Master—On the question whether it is anything we need trouble ourselves with considering?

Mr. Thompson—I think it cannot make the slightest difference on the point to which I offer it, which is his general credibility and his contradictions. It is a letter that he is responsible for on the general subjects under discussion. That is all I am talking about. I am not offering it as substantive testimony that any fact as stated in it is true, but merely that he has not been able on any consecutive occasion to make the same statement about the same fact. He is not a man who is reliable in any respect. That is the reason I am offering it. I don't believe it will serve any purpose to try to compare these two letters.

The Master—Well, if I am requested to do it, and counsel think I ought to do it, I am going to do it. Go ahead.

Mr. Thompson—Well, the first paragraph is as I have stated—the first paragraph is as I have read.

(Mr. Thompson continues reading of the letter, as follows:) "I feel that as a trustee of the Christian Science Publishing Society, my work would be strengthened if I could have more help and counsel from the directors.

"The business known as The Christian Science Publishing Society began with the publishing of The Christian Science Journal by Mrs. Eddy in April, 1883. Ten years later at the World's Fair, a meeting of the National Christian Scientists Association, by which the Journal had been for a time copyrighted, voted to give back the ownership to Mrs. Eddy, and she thereupon appointed a Publishing Committee to manage it for her. In 1897 she added two more members to the original three. The following year she made of the business 'A Gift to The Mother Church' and this gift was accepted by the First Members for the church, Jan. 15, 1898.

"Accompanying the gift, and making it available, there was 'A Grant of Trusteeship' whereby to fulfill her statement, 'the present Pub. Soc. can only act as my Trustees.' Three trustees were appointed to 'hold and manage said property and property rights exclusively for the purpose of carrying on the business, which has heretofore been conducted by the said Christian Science Publishing Society in promot-

ing the interests of Christian Science.' Complete rules for the guidance of this work were incorporated in the Deed of Trust, and in the Manual of The Mother Church.

"In defining the financial situation in regard to the church edifice, the Manual says: 'The Christian Science Board of Directors owns the church edifices, with the land whereon they stand, legally; and the Church members own the aforesaid premises and buildings, beneficially.' I believe the situation could be similar in regard to the import of the Deed of Trust—that the Board of Trustees holds the property 'legally' and The Mother Church owns the business 'beneficially.'

"Therefore every righteous means should be operative to make the business a benefit to The Mother Church.

"It was the First Members who accepted Mrs. Eddy's gift, and those who accepted the trusteeship were all three also First Members and so had access to the councils of the Church. These members were later called Executive Members, and the acceptance of new members into The Mother Church, the dismissing of members, and the discipline of individuals or churches, was in their care. They ceased from office with the appearing of the by-law Article I, Section 6. 'The business of The Mother Church shall be transacted by its Christian Science Board of Directors.' On one occasion when a vacancy was declared on the Board of Trustees, this was done by the First Members in session, according to the provisions of the Deed of Trust. The Manual, Article 25, Section 3, transfers this right to the Board of Directors.

"The directors then, it might be said, have taken place of the First Members, or Executive Members, and exercise the rights which they formerly had. I feel that there is one thing missing to the trustees of The Christian Science Publishing Society, namely, the opportunity for fellowship and counsel which they formerly had, and although the business of the Board of Directors is engrossing, and the concession might be not easy to make, still I am sure that it would be a blessing if there was a regular time appointed by the directors when the trustees could meet with them.

"To show that this is desirable, let me cite a few examples:

"(a) Remembering that the business is intended to affect The Mother Church beneficially, when the expenditure of an unusual amount seems necessary, since this may affect the semi-annual payment for that period, it should be the privilege of the trustees to confer with the directors, and have their authorization for the expenditure before it is finally decided upon.

"(b) The Manual provides for the election by the directors of several officers who are employed by the

trustees. It would work very much for harmony if the trustees could arrive at an agreement with the directors in regard to the salaries to be paid these officers at the time when they are elected, since there may be a difficulty in arranging this after the official has been notified of his appointment.

"(c) In connection with The Monitor, the managers of circulating and advertising departments are in constant communication with advertisers, distribution committees, subscribers, and every letter they write cannot be supervised; but when the field is circularized by either of these departments, if the trustees were meeting week by week with the directors, these form letters could be presented and discussed and have the approval of the Church in so far as that affect the field before they are issued.

"(d) While the Deed of Trust makes specific provision for the issue of the Quarterly and for the preparation of the Bible Lessons, it was the custom to report to Mrs. Eddy every nomination of a new member for the Lesson Committee. I think it would be well for the trustees to be able to consult with the Board of Directors in regard to the standing in the Church of anyone they propose to nominate as a member of the Bible Lesson Committee, so as to be assured of their availability.

"(e) The business affords such varied services to the field that sometimes questions are raised involving the authority of the Church as well as the sphere of the business, which questions could be discussed better in conference than by correspondence of a more formal nature.

"(f) When we have had conferences in the past, they have given results for which all may be grateful.

"I would therefore ask that an hour be arranged when once a week the directors may receive the trustees for a conference."

Q. Now, having heard that read, Mr. McKenzie, it brings back to your mind that those were your ideas at the time, doesn't it? A. Yes.

Q. Did you tell your brother trustees at that time that you had written this letter? A. Yes. I remember now that that was the first draft—

Q. You have answered my question. Did you tell them that you had stated that the directors had inherited the rights of the First Members in reference to vacancies on the Board of Trustees—declaring vacancies? A. Yes, we always could do that.

Q. You did not hear my question. Did you— A. Yes.

Q. Did any of them make any objection to it? A. I do not remember any objection.

Q. Do you mean to say that you told Mr. Eustace that in your judgment the directors had inherited the right of the First Members to declare vacancies on his board and he did not make any objection to it? A. He

agreed to it in the letter of the next day, which was dated the 15th.

Q. What? A. That appears in our letter of the next day.

Q. Mr. Eustace agreed to that, did he, in the letter of the next day? A. Yes.

Q. That is, that the directors had the power to declare vacancies without anybody else? A. Yes.

Q. That was a principal point, or one of the principal points of the Dittmore memorandum, wasn't it? A. I think not.

Q. Well, have you that Dittmore memorandum in your mind now? A. Fairly well.

Q. The gist of it is this, isn't it: After general declarations of the importance of unity, that "the directors have the right of general supervision over the conduct of the trustees"? That is the gist of it, isn't it, as you understand it? A. Yes. They required written consent for various things.

Q. What? A. They asked that they do things with written consent.

Q. I have not asked that, sir. If you can't answer a question, please say so; but if you can, please do it. I don't want anything except an answer to my question, which was this: The gist of that Dittmore memorandum was the assertion of the right of supervision by the directors over the trustees concerning the business of the Publishing Society, wasn't it? Isn't that true? A. Yes.

Q. Yes. And among other reasons mentioned in the memorandum, or in support of the memorandum, was the right claimed by the directors to declare vacancies in the Board of Trustees as the First Members used to do? A. Yes.

Q. And you say that Mr. Eustace agreed to that at that time, do you? A. I do.

Q. Is that what you told Mr. Whipple when he was examining you?

Mr. Dane—He did not ask him that question.

Q. Did you convey that idea to him?

Mr. Thompson—I won't press that, Mr. McKenzie.

Q. Now, you stated that at that meeting—I want you to give your careful attention to this, because it is of consequence; put your mind right on what I am asking—do I understand you to take oath of your own personal knowledge and present memory that at that meeting of Feb. 16, 1916, before the meeting broke up and in the presence of everybody there, trustees and directors, that Dittmore memorandum was torn up? I want you to answer that question yes or no. A. I don't know.

Q. The truth of the matter is, is it not, sir, that you told Mr. Dittmore himself at a meeting which you attended of the directors in January, that after you got back to the trustees' room, Mr. Eustace tore up that memorandum? A. I deny that statement.

Q. Isn't it the truth, sir? A. No.

Q. Wait a minute, at least wait until the question is put. Have you come here prepared to testify in favor of one side or the other? A. No, sir.

The Master—He might fairly have understood that your question was completed, I think, under those circumstances.

Mr. Thompson—I did not suppose he could, sir. My question was not completed, and I will ask you to wait until it is, now.

Q. Did you tell Mr. Dittmore at any time, in January, at the time these discussions were going on in connection with Mr. Strickler, and when you were before the Board of Directors—did you tell him when and where that memorandum was torn up by Mr. Eustace? A. Yes.

Q. Where did you tell Mr. Dittmore that tearing up occurred? A. I said it was in the meeting with the directors.

Q. What did Mr. Dittmore say to you? A. He said that Mr. Eustace had said it was after they went home.

Q. Mr. Eustace had said it to whom? A. Mr. Dittmore told me that Mr. Eustace had said that it was after he had gone home.

Q. What did you say to that? A. I said, "That is not the way I remember it."

Q. Did you tell him you were sure of it? A. I told him I had a clear picture in my mind of the occasion.

Q. Did you say anything more to him on that subject of when that memorandum was torn up? A. No; only just I did not remember it the way he did.

Q. He said that he could not remember it being torn up at that meeting, didn't he? A. That is what he said.

Q. And he said Mr. Eustace had agreed with him, as he understood it? Did you ever talk with Mr. Eustace—

The Master—I did not get his answer. Did he say that Mr. Eustace agreed with him?

Q. Did he say that Mr. Eustace had agreed with him as to where that memorandum was torn up? A. With Mr. Dittmore?

Q. Yes. A. He reported what Mr. Eustace had said, yes.

Q. Now, did you ever state to Mr. Eustace that, as you remembered it, the memorandum was torn right up at the meeting? Please answer that yes or no. A. Yes; I asked Mr. Eustace his memory of it.

Q. I have not asked you that at all. Mr. Thompson—I ask that be stricken from the record.

The Witness—Pardon me.

Q. What you asked him I don't care about. Did you ever, as a matter of fact, tell Mr. Eustace that your memory was that that paper had been torn up at the meeting in the presence of both the trustees and directors? A. Yes.

Q. What did he say? A. Just an indeterminate answer.

Q. What? A. He just made an indeterminate answer.

Mr. Thompson—I ask that be stricken out.

Q. What did he say? Either tell us or say you can't remember. In substance; I won't ask you for his exact words. A. Well, I can't give his exact words.

Q. Have you any recollection at all, as you sit there now, of what Mr. Eustace said when you told him that? A. Something like that, "Not that way."

Q. What? A. Something that it was not that way.

Q. That it was not the way you remembered it? A. Yes.

Q. How many directors were present when you say you told Mr. Dittmore that you remembered, had a vivid picture of that being torn up at the meeting? How many other directors were present when you said that? Mr. Dickey and Mr. Neal, weren't they? A. I think so.

Q. Did either of them say anything about it, whether they agreed with you or not? A. I don't remember any discussion.

Q. Do you remember either of those two men expressing his own view as to whether you were right or wrong as to where that paper was torn up? A. No, I do not.

Q. Isn't it a fact that both of them denied it and said they did not remember it that way? A. I don't remember that.

Q. Are you willing to say they did not? A. No, I won't say they did not.

Q. Have you any memory about it at all? A. Not clear.

Q. Did you ever mention to any other trustee besides Mr. Eustace that you had a picture of that paper being torn up at that meeting? A. No, I did not.

Q. Never did? Did you know that at one time Mr. Dittmore was, while on this committee with Mr. Neal or otherwise as a director—was investigating at the Publishing Society questions of the justice of various discharges of employees by Mr. Watts? Did you know that investigation was going on? A. I believe so.

Q. You did? Did you and Mr. Dittmore ever have any conversation on that subject? I am not asking what was said, but did you ever have any talks on the subject? Yes or no. A. Yes, we did.

Q. Three or four of them? A. I believe so.

Q. You think so. Did Mr. Dittmore ever tell you what he had discovered in regard to those discharges? I am not asking you what he said; but did he go into that subject and explain to you at all what he had discovered in regard to the discharges? Yes or no, please, if you can. A. I will have to say no; I remember nothing clearly.

Q. Mr. Dittmore said to you in substance, did he not, that he thought

some of those discharges were unjustifiable? A. Yes.

Q. Did you express any opinion one way or the other when he said that on the matter? I do not ask you what opinion you expressed, but did you express any? A. Yes.

Q. It was the opinion, wasn't it, that you agreed with him? Isn't that true? A. In some cases I did.

Q. Do you remember the cases in which you found yourself in agreement with him—any of them at all? A. No.

Q. You knew before this controversy became acute that Mr. Eustace and Mr. Dickey were on very friendly terms, didn't you? A. Yes.

Q. And you knew that in fact Mr. Eustace's appointment on the trustees as against Mr. Tennant of London was due to Mr. Dickey, didn't you? A. No.

Q. Isn't that a fact? See if I can't refresh your recollection by a record. Do you remember at that meeting you attended of the Board of Directors on Jan. 24, saying that Mr. Eustace got on the board because you and Mr. Hatten had agreed on Tennant as first choice and Eustace as second, and when these names were presented to the directors Mr. Dickey opposed Mr. Tennant? Do you remember saying that to Mr. Dittmore? A. I said that was Mr. Neal's report.

Q. You said that was Mr. Neal's report? A. Yes.

Q. Did you know anything about the truth of it? A. I had never discussed it until that time.

Q. But you knew that Neal had so reported, didn't you? A. Yes.

The Master—Can that be of importance now, how he got it?

Mr. Thompson—It is of some importance.

The Master—He knew that Neal reported that Dickey had something to do with Eustace's appointment.

Mr. Thompson—I can't state to Your Honor without going into a lot of detail which comes in Mr. Dittmore's examination why it is going to fit in, but it does. I ask Your Honor to accept it—

The Master—I have not made any ruling on it, only it seems to me to be leading us a long way from anything really important in the case.

Mr. Thompson—I have no doubt it would seem so to anybody unless they knew what Mr. Dittmore is going to testify, and how it is going to be connected with the case.

The Master—All right.

Q. Now, you were friendly with Mr. Neal, weren't you, all through these proceedings? A. Yes.

Q. In fact, for years, you have been perhaps more friendly with him than with any other director, haven't you? A. I have always been friendly with him.

Q. You have had some talks with Mr. Neal while these controversies have been going on in regard to them, haven't you? A. I think not.

Q. Never mentioned the subject to him? A. No.

Q. You have seen him constantly, haven't you? A. Occasionally.

Q. And the subject of the relation between the two boards never came up in conversation between you and him? Is that so? A. Practically not.

Q. What? A. Practically not.

Q. The same would be true of Mr. Dickey, would it? A. Yes.

Q. The same is true of the other directors? A. Yes.

Q. You have abstained from all conversation with any of these gentlemen as to the relations between these two boards, have you?

The Master—That is what he said. He said the subject had not come up, as I understand it.

Q. Is it true that you have abstained from all conversation with any and all of the directors on the subject of this controversy, except in the meetings? A. Practically, yes.

Q. Have you had any conversation with any of them in regard to the desirability of adjusting this matter? You said here on one occasion you proposed to act as an intermediary yourself. I didn't know but you might have had some talk on the subject? A. No, Mr. Thompson.

Q. What? A. No.

Q. You haven't said anything and you haven't heard anything said by them with reference to the adjustment of the controversy, have you? A. No is the answer to that.

Q. Do you recollect that report that Mr. Dittmore made in May, 1918, about improving the periodicals? Did you hear that read, a long written report made by Mr. Dittmore—did it ever come to your knowledge that he had made that report? A. It was forwarded to me, a copy of it, by the directors.

Q. Was it helpful to you at all? (The witness smiles.) Oh, don't smile; just tell us yes or no, which is the truth about it. Just answer the question. Does it help you at all? A. Yes.

Q. It did. Did you see any signs of vindictiveness or contentiousness in that report? A. Some.

Q. Some. You thought it bore the earmarks of a contentious and vindictive spirit, did you? A. I wouldn't say that.

The Master—That is going further than anything the witness said.

Mr. Thompson—I was wondering how far he would go. I was hoping he would say it was full of contentiousness. Now, I have one or two more notes to ask him about.

Q. I want to ask you about one other subject. Did you know that the question of the cables from London to The Monitor during the war had been a matter of some talk or criticism among some of the directors? A. I don't think so, Mr. Thompson.

Q. Did you ever hear anything said about that—I mean the cables to The Monitor? A. Latterly I have, but—

Q. You have. A. —but not when I

was a trustee. I don't remember the discussion.

Q. You understood that the criticism was being made to the effect that a great deal more money was being spent on those cables than ought to have been spent, did you? That was the claim. A. I don't remember when that was made.

Q. You remember that it was made at some time? A. Yes, it has recently come out that it was.

Q. And you also remember, do you not, the further criticism was made that the paper was being really run in the interest of the British Foreign Office? Did you ever hear that? A. I don't think so.

Q. Did you ever hear anything like that said? A. No.

Q. Mr. Dixon is an Englishman, isn't he? A. I think he is an Irishman.

Q. Is he? He is in favor of Home Rule, isn't he? That is, he advocates it in his paper. Did you read The Monitor within a few days containing a bitter attack on Home Rule?

Mr. Dane—I pray Your Honor's judgment.

The Master—Oh, I exclude that.

Mr. Thompson—I think that is all.

#### Re-direct Examination

Q. (By Mr. Dane.) Mr. McKenzie, I want to call your attention first to the letter of Feb. 15, 1916, and ask you if you can remember now what directors were present when that letter was presented? A. Mr. Dittmore, Mr. Dickey, and Mr. Neal.

Q. And do you know, Mr. McKenzie, whether or not, at about that time, copies of that letter were provided for each one of the directors? A. I think not.

Q. That is, you have no knowledge about that? A. No.

Mr. Thompson—He has not said that.

Mr. Whipple—He does not say any such thing. He said they were not so provided.

Q. I ask you, do you know whether they were provided with copies of the letter of Feb. 15? A. I think not.

Q. Mr. McKenzie, how certain are you that the copy of the letter of Feb. 15, 1916, that was presented to Mr. Eustace in 1919 was an exact copy of the letter that was presented to the Board of Directors on Feb. 15, 1916? A. To the best of my knowledge, it is a copy.

Q. It is what? A. It is an exact copy.

Q. Have you the draft from which the letter was made which was presented on Feb. 15? A. Yes.

Q. And have you had that in your possession since the draft was made at that date? A. Yes.

Q. May I see it a moment?

[The witness passes a paper to Mr. Dane.]

Q. I notice interlineations on the second page of this letter and that some words have been struck out. Can

you tell me who did that? A. These are done in my hand.

Mr. Whipple—You do not mean to speak of that as a letter? It is a mere draft.

Mr. Dane—It is a draft.

The Witness—A draft. These are in my hand.

Q. And on the first page I notice the words "Boston, Mass.," are written after the address, and some words in the margin and some words stricken out, and I ask you who did that? A. I am of the opinion that the words "Boston, Mass.," were written by Mr. Eustace.

Q. As to the other changes that appear on the first page? A. They are all in my hand.

Q. Now, Mr. McKenzie, what do you say as to whether or not the letter that was presented on Feb. 15, 1916, to the Board of Directors and the letter that was subsequently presented to Mr. Eustace in 1918, was an exact copy of this draft, as corrected in the manner in which you have stated.

Mr. Whipple—I pray Your Honor's judgment.

A. To the best of my knowledge, it is.

Mr. Whipple—He has answered that repeatedly.

The Master—I thought he had answered it before.

Mr. Dane—I thought that there was some question being made that the two letters were the same. I wanted, if possible—

Mr. Whipple—What two letters?

Mr. Dane—The one presented to the board in 1916 and the one that was presented to Mr. Eustace in 1918.

Mr. Whipple—The question I made was on the witness' testimony that he could not be very sure, because apparently nowhere is there preserved a copy of the letter as it was presented at the meeting.

The Master—Presented to Mr. Eustace?

Mr. Whipple—I beg your pardon?

The Master—Presented to Mr. Eustace?

Mr. Whipple—No; presented at the meeting in February, 1916.

The Master—Yes.

Mr. Whipple—Because what he said this morning was that the thing which Mr. Dickey had heard of, which was presented here was a copy of the first draft. He has also referred to a first draft in another connection, but now he says that a letter dated Feb. 14 which was shown to him by Mr. Thompson was the first draft. I don't know which number of the drafts it was that was finally put in.

Mr. Dane—The difficulty is, I think, that the witness has identified this as the final draft from which the letters were made that were presented.

Mr. Whipple—He has testified two or three times that he believes it was. He is not sure.

The Master—He has said so with some qualifications.

Mr. Whipple—Yes, that is right.

The Master—But what he finally says is that that draft which you hold in your hand, that draft or copy, is an exact copy of a document presented to Mr. Eustace in September—have I got the date right?

Mr. Dane—In February of 1918.

The Master—In February of 1918.

The Witness—May I offer the explanation to the Court?

Mr. Whipple—No, not February, 1918, but January, 1918.

The Master—January.

Mr. Dane—January; that is true.

The Master—That letter presented is in evidence, isn't it?

Mr. Dane—Yes, I think—

Mr. Whipple—Oh, I think not.

The Master—You have the copy?

Mr. Dane—The one presented to Mr. Eustace?

Mr. Whipple—Yes.

Mr. Dane—I think it is in evidence in this way, that the witness has testified that the one presented to Mr. Eustace was a copy of the one presented to the Board of Directors on Feb. 15, 1916.

The Master—Oh, no. Have we or not the original document as presented to Mr. Eustace?

Mr. Whipple—No, Your Honor; it was torn up.

Mr. Dane—No.

The Master—That is not here. Everybody agrees to that.

Mr. Whipple—That is right. And Mr. McKenzie, who has the clearest recollection of anybody, says that it was torn up at the meeting together with the Dittmore memorandum.

The Master—Now you seek to show that that is an exact copy?

Mr. Dane—That is all.

The Master—Wherever and whenever it may have been torn up?

Mr. Dane—That is all.

The Master—We have no means of judging by a comparison. We have got to take what the witness says.

Mr. Whipple—But, if Your Honor please, the witness has said that there was only that original; that the directors were not presented with any copy, so that there is nowhere a type-written or multigraphed carbon copy of it; and I rose to my feet to say that I made no dispute about it except that the witness himself was conscientiously unable to say that it was an exact copy. He says according to his best judgment, but he has had nothing to compare it with.

Mr. Dane—Evidently there were no carbons kept, and so it cannot be proved in the usual way. Now, this is the next best way that we can prove that the letters presented were as this letter is in form and in substance. The witness now identifies this as his letter and says—

The Master—He says that that is a draft with corrections. You now ask him how far he can say that it is a copy either of the letter shown to the

directors or of the one shown to Mr. Eustace. Is that it?

Mr. Dane—Yes, Your Honor.

Mr. Whipple—There is no question—The Master—Does it appear when, if ever, he compared with either what you hold in your hand?

Mr. Dane—I think it has not appeared that he has compared them.

The Master—Mere testimony from memory, is it, at this distance of time?

Mr. Dane—I think not.

The Master—How much better is it?

Mr. Dane—Well, I think I can, by one question, perhaps, clear that matter up.

Q. Mr. McKenzie, how did you make up the letter which was presented to the directors on Feb. 15, 1916, with reference to this manuscript which you have handed me? A. This manuscript has underneath this that is pasted on to it the date of Feb. 14, and is the draft of the personal letter which I sent to the directors under date of Feb. 14. When we discussed the matter together as trustees we made some emendations together on this draft, and the heading, with the first sentence, dated Feb. 15, was pasted over the first sentence of the previous draft, and this letter as it now stands is the one that we agreed to from which I made a fair copy, which, as I remember, we signed.

The Master—How about the document shown to Mr. Eustace?

Q. Now, Mr. McKenzie, what relation to this copy which you have here did the one which you showed to Mr. Eustace bear? How did they compare? A. May I ask if you mean what changes—

Q. If any? I am speaking of the one you showed to Mr. Eustace in 1918. A. The first sentence was changed altogether to this statement: "We express our grateful appreciation of the—"

The Master—When did he last see the document presented to Mr. Eustace in 1918?

Q. Mr. McKenzie, when did you last see the document which you presented to Mr. Eustace in 1918 for his signature?

Mr. Whipple—I do not want to interfere, but there has been no testimony of any such document being presented to Mr. Eustace in 1918, none whatever.

Mr. Dane—I think that you are in error about that, Mr. Whipple.

Mr. Whipple—Well, I am very confident that I am not, because I have the correspondence, and had it before me this morning, showing just when it was, and the witness testified it was January, 1919.

Mr. Dane—It was the second time. It was the second time, as I recall it, he took it up with Mr. Eustace—

The Master—I guess that is my mistake in saying 1918 for 1919, isn't it?

Mr. Whipple—It is possible unless I am mistaken.

Mr. Dane—The witness took the matter up twice with Mr. Eustace.

Mr. Whipple—He has testified that he took it up prior to Jan. 1, or prior to the time he had his interviews with the trustees. I examined him at length about it this morning.

The Master—In so far as the matter is of importance whether that is an exact copy or not, I think that the evidence tending to show that it is very slender.

Mr. Dane—I would like to ask just this one question.

Q. Mr. McKenzie, did you give Mr. Eustace a document which was a true copy of the document which you held in your hand? A. Yes.

The Master—When?

Q. And when did you do that? A. The first time was early in September.

Q. Of what year? A. Of 1918; and the second time was about the end of February, 1919.

The Master—Does that mean that he gave him two copies?

The Witness—Yes.

Q. Did you give him two copies? A. Yes. The first was at his request; the second was with a view to sending the attested copy to the directors.

Q. And the second copy you had signed yourself and secured the signature of Mr. Hatten? A. Yes.

Q. And asked for Mr. Eustace's signature? A. Yes.

Mr. Dane—If Your Honor please, I desire to have this marked as an exhibit. I do not want to read it.

Mr. Thompson—I want to see it.

Mr. Whipple—Let me examine it. Well, never mind, unless Your Honor thinks that there is evidence enough to show what that original letter was in the witness' testimony. Your Honor has made a comment upon it which seems to be perfectly justified, that it is very slender.

The Master—The witness says that it is a copy; but then, we have the distance of time and his recollection to consider in reference to a statement like that.

Mr. Whipple—Well, we have, if I may be permitted to suggest it, more than that, because he has evidently forgotten Feb. 14 until it was called to his attention by Mr. Thompson, and now he presents a carbon of that very letter.

The Master—Is the matter of importance sufficient to justify the time we are spending on it?

Mr. Whipple—I suspect not; but of course we never can tell, when we are putting in evidence, what is going to develop to be of real importance, and while from our viewpoint it is not of the slightest importance, if our views of the situation are correct, yet it seems to be that slender thread upon which the defendants are hanging their case, as I understand it, that some sort of agreement had been reached by the trustees, that in some way the trustees had betrayed their trust, some previous board of trustees had acquiesced in a course of conduct

which was inconsistent with the trust, and that therefore they can rely upon that. I mean that doctrine of acquiescence and usage was rather novel when they presented it, and I supposed it was to support that theory, and that is the only reason that we have taken occasion to discuss it at such length because we did not want to leave them a vestige of a point to hang their contention on.

Q. Mr. McKenzie, this particular document which you have produced I understand was the one which you originally made in consultation with the other trustees?

Mr. Whipple—No; pardon me; he has stated just the contrary,—that it was a private letter.

Mr. Dane—Will you kindly let him answer my question?

Mr. Whipple—Not when he has answered exactly the contrary to what you are stating, trying to put words into his mouth. You haven't any business, as you very well know, in putting leading questions, to put words into his mouth, and that is what you are trying to do, trying to get him to say something different from what he has already said.

The Master—We shouldn't pay very much attention to words put into his mouth in that way, should we?

Mr. Thompson—May I see the letter?

Q. Mr. McKenzie, will you state once more when you did prepare the document which you have now produced?

The Master—Now, let us be sure that he understands which of all these documents you are asking him about.

Mr. Dane—Let me take it.

Mr. Thompson—Please hold it back a moment, will you?

Q. State, Mr. McKenzie, when you prepared that document which you have now produced and hold in your hand. A. On Feb. 14 I prepared a letter—

The Master—Oh, no, no—that particular document. When did you prepare that just as it stands now?

The Witness—This is the Feb. 14 document altered on Feb. 15.

Q. Never mind what it is. When was that document prepared? A. Feb. 15.

Q. What year? A. 1916.

Mr. Whipple—Now, if Your Honor please, it seems to me that the witness is not being given a very fair chance. The document was prepared in part on the 14th, in part on the 15th, as he has tried to explain.

The Master—We have got to begin and take one at a time—that document just as it stands now, just as he has presented it. The first question is, when did he prepare it just as we see it?

Mr. Whipple—You mean when he put on the pasters that make it as it is now?

The Master—When that was prepared which we have prepared in the shape in which we now see it. Begin



with that; then you may ask him anything else you want to.

Mr. Dane—He has testified to that—Feb. 15, 1916.

The Witness—Yes.

Q. Now, where has this particular document been since that time, whether it has been in your possession or not? A. Yes, in my possession.

Q. Now, did you or did you not prepare the copy that was presented to the Board of Directors on Feb. 15, 1916, and the copy which was presented to Mr. Eustace in 1918 and in 1919, from this document? A. From that document, yes.

Mr. Whipple—I pray Your Honor's judgment. That is a leading question.

Q. And whether or not those two copies—

Mr. Whipple—Just a moment. I object to the question because it is a leading question. Furthermore, he has answered all that he could answer intelligently and honestly before, and he ought not to be coerced into anything beyond that by your questions.

The Master—Remember that you have no right whatever to put words into his mouth under present circumstances.

Mr. Dane—I am endeavoring, if Your Honor please, not to lead the witness.

The Master—All right. Strike that last question out entirely. Now, begin again.

Q. Now, Mr. McKenzie, with reference to this document which you say was prepared Feb. 15, 1916, how and in what manner and when did you prepare the document that was presented to the Board of Directors on Feb. 16, 1916, and which was—

The Master—Now, stop with that. Take one at a time, so we won't get it confused in the answer.

Q. You have that question. A. Not clearly, if you please. There are the two documents. Which one do you mean?

[The question is read by the stenographer.]

A. At the same time, from that draft.

Q. And how and in what manner and when did you prepare the document that was presented to Mr. Eustace, both in 1918 and in 1919, with reference to this draft? A. I had the stenographer make a copy from that draft.

Q. And this draft has been in your possession all the time? A. Yes.

Mr. Whipple—Before you offer it, I should like to look at it unless His Honor feels upon the evidence as it is now there is not sufficient evidence to receive it as a real copy of a paper which has disappeared. Of course it is not a real copy because he says it was made before that paper was made; but if Your Honor felt that any foundation has been laid for taking it as representative of what that paper was,

I should like first to put some questions to him.

The Master—You will have that privilege, certainly. I think that the witness' testimony, as far as I have been able to follow it, amounts to a statement that it was presented to the board Feb. 15, and what was afterward presented to Mr. Eustace, was a copy of that paper. Am I right?

Mr. Dane—Yes, Your Honor.

The Master—You will have to go a considerable way back and follow his testimony down.

Mr. Whipple—I should think that was a correct résumé of the testimony.

The Master—I think it comes to that as far as I have been able to follow it.

Mr. Whipple—I think that the question would be one merely as to the infirmity of the memory, in view of the fact that the paper which was presented to the directors was destroyed and no copies were kept of it. I wanted to ask, and perhaps I can do it just as well later, a few more questions with regard to how this thing was prepared.

The Master—I think that we will probably have less confusion if we let Mr. Dane finish his redirect.

Mr. Thompson—Before it is offered as to Mr. Dittmore I should like to have a word to say about it. I think I should like to ask a question or two about that paper before it is introduced against me.

The Master—What else have you in redirect?

Mr. Bates—This has not been marked as an exhibit yet.

Q. Mr. McKenzie, something has been asked you about the letter of Feb. 14, 1916—

Mr. Whipple—Let us get this exhibit first, won't you?

Mr. Dane—Pardon me.

[A letter from Mr. McKenzie to the Board of Directors, dated Feb. 15, 1916, is marked Exhibit 719, for identification.]

Mr. Thompson—Is it simply for identification?

Mr. Whipple—I understood that was offered as an exhibit.

Mr. Dane—Certainly; that is an exhibit.

Mr. Thompson—Couldn't that be held up for a moment? Are you only identifying it?

Mr. Dane—No, I offer it as an exhibit.

Mr. Thompson—I object to it as an exhibit at this stage.

The Master—Mark it for identification until after counsel have had a chance to examine it and ask questions about it. Go on, Mr. Dane.

Q. You didn't have a full opportunity to explain. Will you kindly explain how you happened to write the letter of Feb. 14, 1916, which has been shown you? A. Feb. 14, 1916. I wrote that as an individual statement to the Board of Directors.

Q. Did you send it?

Mr. Thompson—He has said that he did once.

A. Yes.

Q. Now, coming to the so-called Dittmore memorandum, Mr. McKenzie, in February of 1916, when the trustees had that meeting with the directors, did you object to anything in the substance in the Dittmore memorandum? A. No.

Mr. Whipple—We object to that.

The Master—Was anything brought out by the cross-examination that makes that proper in redirect?

Mr. Dane—I thought there was, Your Honor.

The Master—Just what?

Mr. Dane—Both counsel examined him, trying to bring out his inconsistency, his inconsistent position, with respect to the substance of the Dittmore memorandum, and the letter which he said he approved Sept. 30, 1918.

Mr. Whipple—The only thing I asked about the Dittmore memorandum was as to what became of it, and Mr. McKenzie testified it was destroyed. Having brought that out, that was all I cared for, and have opened nothing on cross-examination.

Mr. Dane—If Your Honor please, my recollection is that there was considerable cross-examination on the question of the inconsistent position, or alleged inconsistency of the witness.

Mr. Whipple—What has the Dittmore memorandum got to do with that?

Mr. Dane—By Mr. Thompson.

The Master—It doesn't make it proper for you to start all over again about the Dittmore memorandum.

Mr. Thompson—I do not object to that question myself.

Mr. Dane—I didn't inquire in any respect about the Dittmore memorandum. It was brought out in cross-examination.

The Master—By Mr. Thompson?

Mr. Dane—By Mr. Thompson.

The Master—Very well; proceed.

Q. Did you get the question? I will ask the question over again.

Mr. Thompson—He answered it; he said he did not.

Q. You answered it. What was the objection at that time to the Dittmore memorandum, if it was not one of substance?

Mr. Whipple—That I object to, if Your Honor please. That is a conclusion, and this is an attempt to bind the trustees or the Board of Trustees by the conclusions of this gentleman.

The Master—"What was the objection?" Whose objection?

Mr. Dane—Mr. McKenzie's, being a trustee.

The Master—His own objection?

Mr. Dane—His own objection. He has testified that he objected to the Dittmore memorandum.

Mr. Thompson—Pardon me; he just said he did not. In reply to your question he stated he didn't object to anything in it.

Mr. Dane—He said he didn't object

to anything as a matter of substance that was contained in it; I ask him what the objection was.

Mr. Thompson—I didn't hear him add the word substance.

Mr. Dane—Yes, he did.

The Master—If he objected to nothing in the substance of it why should you inquire further about it—about his objection? We do not want to go into his objections as a matter of form, do we?

Mr. Dane—It seemed to me to be the only way to leave the witness' testimony fair to the witness, under the intimations of inconsistency in this particular.

The Master—That will have to speak for itself, won't it?

Mr. Dane—I think, Your Honor, it will require some testimony to put his position fairly before the Court.

The Master—Well, proceed.

Mr. Dane—However, if the Court feels that I ought not to press that I will withdraw it.

Q. Mr. McKenzie, your attention was called to a trustees' meeting, or the record of a trustees' meeting, of Feb. 26, 1919, in which it was stated, in substance, that you made a protest at that meeting on leaving out of the directors' records the letter of Feb. 15, 1916, on the ground that that directors' record was not complete. I will ask you if at that time, that is, at the time of the trustees' meeting, Feb. 26, 1919, you believed that the directors' records contained the Dittmore memorandum?

Mr. Whipple—I pray Your Honor's judgment. I think this is a pretty far-fetched attempt to extricate this gentleman. I object to the question.

The Master—Can his belief signify? If he knew anything about it perhaps it might be important to show it.

Mr. Dane—This is the situation, if Your Honor please—

Mr. Whipple—Pardon me. I wouldn't state the situation when you might inadvertently make suggestions to the witness.

Mr. Dane—Well, the Court asked me a question.

Mr. Whipple—I would answer it, but I wouldn't try to explain the situation.

Mr. Dane—He was asked with regard to a protest that he is supposed to have made which is on the record of the trustees' meeting of Feb. 26.

The Master—I remember all that; we have had that read.

Mr. Dane—That protest was to the effect, as it is claimed, that he denied the correctness of the directors' records.

The Master—Something had been left out.

Mr. Dane—And he was under the impression at that time that the directors' records did contain the Dittmore memorandum, and that, being under that impression, his objection was to the trustees' records, that it should state the entire proceedings, namely, not only the Dittmore mem-

orandum, but the letter of Feb. 15, 1916.

Mr. Whipple—You don't mean the trustees' records.

Mr. Dane—I mean the directors' records.

Mr. Whipple—You have got it all mixed up; and now the protest you have misstated. You have it before you. If you want to state accurately that protest why don't you get the paper in which it is stated, because you haven't got it accurately at all.

Mr. Dane—I think I have stated it.

The Master—It is not easy to carry it in mind for a long time—the contents of one of those records or protests.

Mr. Dane—Will you let me see it?

Mr. Thompson—I will try to find it for you, Mr. Dane; I had it here a minute ago.

Mr. Whipple—Now, it isn't a letter at all, if Your Honor please; it is something I read from the trustees' minutes.

The Master—Quite right.

Mr. Whipple—Which the witness did not realize about, quite, and then he made the answer that what he was protesting against was that the directors' records did not contain more, that is, contain the letter as well as the Dittmore memorandum.

The Master—Now, Mr. Whipple—

Mr. Whipple—In point of fact it doesn't contain the Dittmore memorandum, either.

The Master—Well, let Mr. Dane read to him what he wants to.

Mr. Whipple—Yes, that is right; read it and then see.

Q. In the meeting of Feb. 26, 1919, of the trustees, it is stated:

"In the course of conversation Mr. McKenzie brought up the question of his desire to enter a protest against an action taken by the Board of Directors of The Mother Church three years ago in recording the directors' memorandum which was under consideration and had been rejected. Mr. McKenzie stated that in one of his recent conferences with the Board of Directors they had read to him the minutes of a meeting held in 1916 in which the Board of Directors had included the contents of a memorandum which had been presented to the trustees, and which, as Mr. McKenzie stated, had been rejected by the trustees, and it had been agreed by Mr. Dickey, Mr. Dittmore, and Mr. Neal, as members of the Board of Directors present, and Mr. McKenzie and Mr. Hatten and Mr. Eustace, as members of the Board of Trustees of the Publishing Society, that everything in connection with the memorandum should be in substance wiped out, and that we would all work together as Christian Scientists under the spirit of the Manual and the Deed of Trust."

Now, I desire to ask, Mrs. McKenzie, if at that time you understood that the Dittmore memorandum had been made a part of the minutes of the directors? A. I thought

so, because I heard it read by Mr. Dittmore on Jan. 25.

Q. Do you remember anything being said at that time about a gentlemen's agreement? A. No, I do not.

Q. Your attention has been called to a record of the trustees in which it is stated that you approved of the letter of Sept. 30, 1918. Now, I would like to inquire whether you have stated all that you desire to state with reference to your so-called approval of that letter of Sept. 30, 1918, and if you have not I wish you would explain.

Mr. Thompson—I don't see any occasion for that.

A. I would like to say that on or about Nov. 27 Mr. Dittmore asked me if I had a copy of that letter, and I said, "No," and he said I should have one.

Mr. Thompson—I ask that that be struck out.

The Master—One moment. Stop one moment.

Q. I wanted to give you the opportunity, Mr. McKenzie, to make any explanation that you wanted, as I think you were somewhat cut off on cross-examination, with reference to your so-called approval of that letter of Sept. 30.

The Master—Sept. 30. Now, plainly, as it seems to me, he ought not to begin his answer by telling us about something that happened on Nov. 27th.

Mr. Dane—No, I think he should not.

Q. Explain your approval, if it was an approval.

The Master—It is your approval, or so-called approval, as counsel put it, on Sept. 30, about which you are given an opportunity to explain. Just that and nothing else.

A. Well, I do not remember of giving any approval. I gave general assent to it as a statement of the trustees' position.

Q. How much consideration did you give the letter before you did that?

Mr. Whipple—I pray Your Honor's judgment.

The Master—We have been all over this.

Mr. Whipple—It seems to me that is a pathetic, really pathetic attempt, for a man of the intelligence of the witness, to attempt to extricate him in that way, Mr. Dane.

Mr. Dane—Does Your Honor rule that that is not proper on redirect examination?

The Master—I think, having given him an opportunity to explain, you will have to leave it there.

Q. Your attention was also called, Mr. McKenzie, to the trustees' record under date of Jan. 29, 1919, in which it is stated that "Mr. Watts came to the meeting and reported a conversation he had had this morning with Mr. McKenzie, in which Mr. McKenzie made the statement that hereafter he was going to be the editor, inasmuch as hitherto he had not been because Mr. Eustace had really been the edi-

tor," and so forth. As to that, is there any explanation you wish to make?

Mr. Thompson—I pray Your Honor's judgment. That does not call for it. He was not asked to make it. It is perfectly straightforward testimony, and I really do not see why he should be led along and coached to try to explain away the statements as plain as that statement.

Mr. Dane—If Your Honor please, the method of my brother Thompson's cross-examination was such that he shut this witness off from saying anything except yes or no, and he ought to be given an opportunity as he was promised an opportunity later to make an explanation.

Mr. Thompson—In other words, to withdraw—I don't think that is fair.

The Master—Let us see what he considers the explanation. He may answer.

Q. Mr. McKenzie, I ask you if you care to make an explanation as to the record of that meeting?

The Master—Is there any explanation you desire to make regarding your answer about that meeting? That is my idea of the question that you have a right to ask him.

Mr. Dane—I will adopt Your Honor's suggestion.

A. I did not say that I had considered myself under the influence of Mr. Eustace, but that Mr. Eustace had gradually been taking larger responsibility, and the point had come when practically he was trying to be editor, and there could only be one editor, and that because I was in that office I would have to be the editor.

Q. In connection with the meeting of Oct. 2, 1918, a part of the record of which was read to us, in which it was said that "the trustees consider the statement made by Mr. McKenzie, one of the original publishing committee, appointed by Mrs. Eddy, a former First Member and a member of the Board of Trustees from the time of the institution of the Deed of Trust, for 19 years following, to be of great value for historical purposes," Mr. Thompson asked you if you have been trying to assist the trustees in making out a case, and you started to explain and were not allowed to.

Mr. Thompson—Will you get his answer and see exactly what it was before you ask him to explain it? I asked him a good many questions along there. I think it is of some consequence what it is he is trying to explain. I do not think it ought to be put offhand that way. I think you better look and see what the question was he finally answered.

Mr. Dane—I think my recollection is correct as to this meeting and that he was asked whether he was trying at that time to assist the trustees to make out a case.

The Master—What was his answer?

Mr. Dane—And he started to say what his purpose was in giving the trustees the information, and he was

cut off, and I would like to have him complete that answer if he desires to.

Mr. Thompson—That is not a fair statement of what he said.

The Master—I think that without taking time to go back to the record I will let him answer that.

Q. Will you state, Mr. McKenzie, what your purpose was?

The Master—Anything you desire to add, add it now. A. There was no endeavor to make out a case at all. We were trying to find out what was the right thing and the true relationship between the two boards, and I gave them all the information I had as a matter of history.

Mr. Thompson—I ask that he all struck out. It is not an explanation at all. It does not explain any answer he made, sir. It is not a fair statement to make under the guise of an explanation.

Mr. Dane—I think it completes the answer he would have made if he had been allowed when you were cross-examining him.

Mr. Thompson—He said that several times, and I asked him further questions and he made an admission. Now he is—

The Master—Well, in that case it will so appear from the record. I think I shall let it stand.

Q. Now, coming to this meeting of Jan. 22, 1919, where it is recorded in the trustees' minutes that Mr. McKenzie came down and indicated by his appearance and expressions that he was disturbed regarding the situation between the directors and the trustees, and you testified somewhat as to that meeting. Will you please tell us what you were at that time disturbed about?

Mr. Thompson—Now, does Your Honor think that is fair? There is nothing to explain.

A. The first thing I said—

Mr. Dane—Wait a moment until we get a ruling.

The Master—Wait a minute.

Mr. Dane—The record is that he was disturbed regarding the situation between the directors and the trustees.

Mr. Thompson—He said he was. He assented to it, he said he was.

Mr. Dane—Of course many inferences may be drawn from that record.

The Master—And he told Mr. Thompson, as I recall it, that he was disturbed regarding the situation.

Mr. Dane—Yes; but he was not allowed to explain.

The Master—Why should he say anything more?

Mr. Dane—I think, Your Honor, that he ought to be allowed to rebut any inference that may be drawn in argument from the questions that were asked him in cross-examination, that he was disturbed because he had put himself into an inconsistent position as between the directors and the trustees.

The Master—He was disturbed

about the situation—that is what he has admitted, isn't it?

Mr. Dane—That is what the record shows.

The Master—Isn't that what he himself has admitted?

Mr. Dane—It does not seem to us that that is full enough or fair enough to the witness.

Mr. Thompson—I don't think anything further ought to be allowed on that.

The Master—I am unable to believe that we should gain anything by permitting him to make a further statement about that.

Mr. Dane—Will Your Honor note our exception?

Q. Did you tell the trustees, at the meeting of Jan. 22, 1919, where you stood or what position you were taking?

Mr. Thompson—Does Your Honor think that is a fair question? That is not re-direct examination.

A. Yes.

The Master—I am trying to recall. What happened Jan. 22, 1919?

Mr. Dane—That was a meeting of the trustees at which Mr. McKenzie came down and where it is recorded that he indicated by his appearance and expressions that he was disturbed regarding the situation.

The Master—The same meeting?

Mr. Dane—The same meeting.

The Master—Now, your question is: Did you at that same meeting, what?

Mr. Dane—Tell the trustees what his position was, and where he stood on the matter of the controversy, and what he did say to them at that time.

The Master—Mr. Thompson, as I recall it, inquired of him pretty fully as to what he did say at that meeting.

Mr. Thompson—He is merely paraphrasing it.

Mr. Dane—He did not let him say what he said.

Mr. Thompson—That is one of the times I did.

The Master—If he desires to add to what he said at that meeting, to what he has already told Mr. Thompson, I think you have the right to ask him.

Mr. Dane—I will adopt that question.

Q. Do you care to add anything to what you have testified, Mr. McKenzie, as to what you said at the meeting of Jan. 22, 1919, with the trustees? A. I shall be glad of the privilege.

Q. You may do it. A. The first thing I took up with them was the fact—

The Master—No; regarding changing his position. You limited it to that, didn't you?

Mr. Dane—I did not, if Your Honor please.

The Master—Do you want him to go over everything he said at that time?

Mr. Dane—I think the witness ought to be allowed to state what he said, everything he said, in view of the record that is made.

The Master—Go on. Let him state.

A. (Continued.) I told the trustees that I had heard a great deal of criticism over the field in regard to their stand, and I thought it was dangerous. I used the figure of the prairie fire and said that it would start here and there, and the spark would fly, and then the whole field would be in a conflagration. I said it seemed to me the only remedy was humility, and if it were for me to do I would come down; if the directors wanted a resignation of my position, I would promptly give it. Then Mr. Eustace spoke about the fact that it was—

The Master—No; the question is limited to what you said yourself.

A. (Continued.) To what I said? I said that the important thing was to understand the directors better. I reminded them of two interviews that I had had with Mr. Rathvon, which I had reported to them, in which he had spoken of the intention of the directors to work the thing out through demonstration. I then asked Mr. Eustace if he would accept our letter of Feb. 15 at the present time, and he said, no, that they had got far past that. I then spoke to them of a teaching I had received from Mrs. Eddy herself on the matter of humility, which, as I believed, had saved my life, which I had recited to them before, and recalled it—

Mr. Whipple—Now, if Your Honor please, this is reciting an interview a part of which he gave in his direct examination. Your Honor will remember very well that he was asked several times and finally located the part of this conversation that he is now narrating. Now, they surely cannot exercise the right, because they ask for a part of the conversation and then counsel for the other side asks for the rest of it, then to repeat it and go into it a third time.

Mr. Dane—If Your Honor please, I am quite sure I did not in direct inquire of the witness about this meeting.

Mr. Whipple (to stenographer)—Will you read this particular statement, and I think His Honor will remember it—when he got started the second time. Your Honor will remember the difficulty he had in adjusting himself to the particular conversation.

[The stenographer reads a part of the last answer as follows: "I said that the important thing was to understand the directors better. I reminded them of two interviews that I had had with Mr. Rathvon, which I had reported to them, in which he had spoken of the intention of the directors to work the thing out through demonstration. I then asked Mr. Eustace if he would accept our letter of Feb. 15 at the present time, and he said, no, that they had got far past that."]

Mr. Whipple—There, that is the one. Now, Your Honor will remember that in the direct examination he asked this witness if Mr. Eustace did not say, in regard to that Feb. 15, that he had got far past it. That was objected to, and

then he put it in a form that was less leading or coercive, and it was answered, and it is this very conversation he has testified about.

Mr. Dane—Your Honor, I think, Mr. Whipple is right in thinking I did ask him about something Mr. Eustace had said. I did not inquire of him as to this meeting, and since that time the record of this meeting has been put in evidence in cross-examination, and its expressions—

Mr. Whipple—Well, it is the same interview.

The Master—Wait a minute. Where you differ from Mr. Whipple seems to be in this: you say you did not in direct examination ask him what he said at this meeting. Do I get it correctly?

Mr. Dane—Yes, Your Honor, that is right.

The Master—Now, you are asking him to repeat what he did say at that meeting.

Mr. Dane—Yes, in explanation of the record which refers to him, which has been put in in cross-examination.

The Master—I do not quite think I shall allow him to explain the record. I am allowing him to recite this conversation because in cross-examination he was inquired of as to a part of it, and I thought you might be fairly entitled to have the rest of the conversation on that subject brought out. But I hardly think you ought to go over the whole matter discussed at the meeting.

Mr. Dane—Your Honor has in mind, of course, that this is not the witness' record. He had no part in making up this record and was not a member of the Board of Trustees.

The Master—I certainly have. What we are finding out now is, what he said at that meeting, so far as it is important in the case.

Mr. Dane—I won't press it, then.

The Master—I do not think that everything that was said at the meeting is important. Everything said in connection with certain statements at the meeting about which he was cross-examined may be important. That would be the view I should take of it. I do not think that all he said at the meeting is now to be brought in.

Q. Mr. McKenzie, you have been shown two letters of which you are the author, one of Sept. 21, 1918, and one of Jan. 27, 1919. Do you have those letters in mind? A. Yes.

Q. I will ask you in which of those letters is stated your correct views, as to the subject matter discussed in them.

Mr. Whipple—I pray Your Honor's judgment. And I should not think Mr. Dane would want to humiliate Mr. McKenzie, either, before the world, who are reading this record.

The Master—You will have to let me see those two letters.

Mr. Whipple—You are apparently admitting that they are inconsistent, and you ask him in effect to say which time he told the truth, or which time

he was frank. I should almost ask in justice to the witness you do not put him to that humiliation.

The Master—Where is the other one?

Mr. Dane—Mr. Thompson put that in. Have you got it, Mr. Thompson?

Mr. Thompson—What are you asking for now?

Mr. Dane—Letter of Jan. 27, 1919.

Mr. Thompson—Some of these letters have been taken by the stenographers.

Mr. Whipple—If I may suggest, one of them was written after he had been summoned before the directors.

Mr. Dane—I will withdraw the question for the moment and I will ask him in reference to the letter of Sept. 21, 1918.

Q. Mr. McKenzie, does that now state your true views, as expressed therein?

Mr. Thompson—I pray Your Honor's judgment, as far as I have got anything to say, on that.

Mr. Whipple—I really think that is a worse humiliation than the other, if you are withdrawing the other on that ground.

The Master—No; I think he may answer that.

Mr. Dane—A man, of course, sometimes changes his mind.

Mr. Whipple—Yes, after he has been before an ecclesiastical tribunal.

Q. I ask you now, Mr. McKenzie, whether the letter of Jan. 27, 1919, does accurately set forth your views?

Mr. Whipple—January what?

Mr. Dane—27, 1919.

A. Yes.

Mr. Thompson—Why not ask him if the letter of Sept. 30 states the view which he now regards as untrue?

The Master—You better go on. What is the letter you want?

Mr. Dane—I want to have that letter Mr. Thompson has marked as an exhibit. It is marked as an exhibit for identification.

The Master—Is it marked at all?

Mr. Bates—It has been identified.

Mr. Thompson—It is marked for identification. I do not want to have it go in as an exhibit without asking another question and having the other letter with it.

Mr. Whipple—May that be suspended until after we have finished the examination?

The Master—Yes.

#### Re-Cross-Examination

Q. (By Mr. Thompson)—I want you to look at the part of this letter which is under the top piece pasted on, and see if you do not identify the part that is written underneath the pasted-on part as the first paragraph of the letter which you sent to the directors dated Feb. 14? A. Yes, Mr. Thompson; I said that several times.

Mr. Dane—He testified to that once.

Q. Wait a minute. So that this letter, you say, consists of your letter of Feb. 14, as you had previously sent it

to the directors with certain alterations, some made by pasting and some by writing in. That is true, isn't it? A. Yes.

Q. And the fact that Mr. Dittmore has, from the usual and regular files, the letter of Feb. 14 which you did send, and nobody else has the letter of Feb. 15, does not alter your opinion as to whether the real letter that you sent was the letter of February 14 and this was actually never sent to the directors, does it? Do you see what I mean? A. No.

Q. Does it impress you as at all strange that Mr. Dittmore, and I presume the other directors, should have in their regular files the copy which it was customary to send out, to furnish each director with a copy, if he wanted it, of everything that came in—they have a copy of your letter of Feb. 14, and that nobody should have any copy of your letter of Feb. 15? A. It was not my letter.

Q. Wait a minute. Doesn't it lead you to the supposition that what really happened was that the only letter which was really sent to the directors, that they had, received and filed, was your letter of Feb. 14?

Mr. Bates—I pray Your Honor's judgment; it is not a correct statement of the facts. The letter of Feb. 15 has been put in.

Mr. Thompson—You must not alter the facts now.

Mr. Bates—No, I don't want to alter them.

The Master—Just a minute. I can't listen to two at once.

Mr. Bates—The letter of Feb. 15 was put in—a copy—and it was stated at the time that it came from Mr. Neal's files, it was his copy as a director that had been handed to him. We have not the one of Feb. 14; the one we do have is the letter of Feb. 15, which is the one which is the letter in the case. My brother has probably forgotten that.

Mr. Thompson—Where is the letter of Feb. 15?

Mr. Bates—It was put in among the first exhibits.

Mr. Whipple—Oh, you are mistaken. The unanimous evidence is that it was destroyed.

Mr. Thompson—I do not believe you are right, Governor; I do not remember it that way at all.

Mr. Bates—It is in as Exhibit 324.

Mr. Thompson—Let us look at it and see.

Mr. Whipple—Yes, that is what Mr. Dickey testified to, but that is the original—that is the copy he got from this witness.

Mr. Thompson—That is it; that is the trouble.

Mr. Bates—The other one is in. I have a distinct recollection of it.

Mr. Whipple—Which one is in?

Mr. Bates—The one that came from Mr. Neal. I handed it to Mr. Thompson and I told him where it came from.

Mr. Thompson—I beg your pardon, sir.

The Master—Do you think it is marked as an exhibit?

Mr. Bates—I think it is, sir.

Mr. Thompson—I beg your pardon. I don't remember anything of the sort. Now, we have a confirmation of that right, if Your Honor will take the trouble to look at that letter that was put in of Feb. 15, 1916, marked Exhibit 324. I understand the claim is made that it is this letter as corrected.

The Master—Page what of the record?

Mr. Thompson—Page 318-319. The claim by the witness is that the letter that was sent was this letter with the corrections indicated upon it made by the stenographer. Now, in the second paragraph of this letter, beginning "The business known as The Christian Science Publishing Society," it reads in the printed record, "began with the publishing of The Christian Science Journal by Mrs. Eddy in April, 1883." So far so good. This reads: "Ten years later—"

Mr. Whipple—"This," which is—

Mr. Thompson—The paper that Mr. McKenzie now produces as corrected reads: "Ten years later at the World's Fair, a meeting"—there is one correction not made. If we follow down through I think we will find some others that were not made. It cannot be that this letter as corrected here was typewritten, sent, and reproduced as Exhibit 324.

The Master—Why should we argue further with Mr. McKenzie about the matter?

Mr. Thompson—I don't know. We have been—

Mr. Whipple—Let me take it and look at it, and suspend the question until tomorrow morning.

Mr. Thompson—I think that is easiest from the standpoint of the directors. I know that it is easiest from the standpoint of Mr. Dittmore, so far as he represents what he believes to be the true cause of the directors, which is apparently a wide diversion from what Mr. McKenzie thinks it was, and I suspect it is from the standpoint of the trustees.

The Master—What is this suggestion to which you have given your approval?

Mr. Thompson—Not to introduce it now, but to give Mr. Whipple an opportunity for inspection.

The Master—I think I shall have to allow an opportunity to examine it and cross-examine about it if they desire before it is finally received as an exhibit. We shall ultimately have to get it in as an exhibit, if there are going to be any arguments of any kind on either side founded upon it.

Mr. Whipple—Shall I go forward?

The Master—Go forward with the—

Mr. Whipple—Examination in re-cross?

The Master—Mr. Dane is through?

Mr. Whipple—He announced that he had finished.

## Cross-Examination

Q. (By Mr. Whipple.) I want to direct your attention, Mr. McKenzie, to the record of a meeting of the Board of Trustees that was held on Jan. 29—

The Master—After which Mr. Dane examined him?

Mr. Whipple—And about part which Mr. Thompson also examined him.

The Master—About which Mr. Dane re-examined him?

Mr. Whipple—No, I think Mr. Thompson examined him and then Mr. Dane re-examined him on redirect, and they did not put in the full record, and so I should like to put in the balance of the record. This was put in.

"Mr. Watts came to the meeting and reported a conversation he had had this morning with Mr. McKenzie, in which Mr. McKenzie made the statement that hereafter he was going to be editor," etc.

Now, here is the part that was not read:

"On hearing Mr. Watts' statement, Mr. Ogden asked permission to record in the minutes an emphatic protest and denial of this allegation on Mr. McKenzie's part, for the reason that during the past year and a half, while Mr. McKenzie has been editor, Mr. Eustace has shown him every consideration in protecting him in his office, and scrupulously refraining from ever attempting to dictate to him what detailed action he should take regarding any editorial or article, even though editorials have been brought to the trustees for criticism by other members of the editorial department. On Mr. Rowlands coming to the meeting he also fully acquiesced in this viewpoint."

I am not sure but that point happened after you went out. Do you remember that protest of Mr. Ogden's, and the suggestion— A. I was not there at all.

Q. Oh, yes. A. At least not while that took place.

Q. You don't remember it. Well, that is all right. You were not present at the time. A. No.

Q. But that is a correct statement of the fact, is it not, that Mr. Ogden recorded there, with regard to any attempt to dictate to you as to editorial methods? A. Not quite.

Q. Isn't it? A. No.

Q. Do you remember any editorial matter that you were dictated to by Mr. Eustace, offhand, does anything occur to you? A. By "editorial matter" what do you mean?

Q. Well, I mean just what I say, editorial matter. I can't explain it any better, because the thing I am talking about, namely, the record, uses it. A. If by "editorial matter" is meant articles, yes, there was a good deal of objection about articles at times.

Q. Well, I am talking about real editorial matter. A. Real editorials were—

Q. Things you wrote about. A. Well, they were passed upon by the directors always first, and the question did not come up.

Q. Well, didn't the trustees look at them? A. Yes. I don't remember, prior to that date, of their finding any fault with any of my editorials.

Q. The only objections to your editorials were after this controversy arose, were they not? A. The only time a change was made was after that arose, yes.

Q. Now, Mr. McKenzie, referring to your letter of Sept. 21, 1908, again, Exhibit 713, at the time you wrote that letter you really were very cordial with the trustees in their position, or at least so represented yourself by this letter, didn't you? A. Yes, I had a very warm affection for the trustees.

Q. Well, I was not talking so much about your affections as I was about your brains. That is, you were very cordial, expressed yourself as very cordially in their favor in this letter, —there is no doubt about that, Mr. McKenzie? A. Well, I was certainly—

Q. Do you want to look at the letter to see? A. Well, I was certainly not happy over the situation.

Q. Well, I was not asking about your happiness either. I was asking if you were not, as far as that expression is concerned in that letter, very cordially in their way of thinking? A. Yes.

Q. Yes. That is all right. A. It is a private letter to Mr. Eustace.

Q. Private or otherwise, it expresses, perhaps, your intellect as well as your affection. Now, then, you continued to be right along very cordial with the trustees, and rather sustaining their position for a season—that is so, isn't it?

Mr. Dane—I pray Your Honor's judgment. This is recross-examination.

Mr. Whipple—I will waive it; I will waive it.

Q. Now, who was this man Strickler? Did he have an interview with you? A. I asked his opinion about a certain question.

Q. Well, you mean the controversy—that is the certain question?

The Master—He had an interview with you, did he?

The Witness—I asked him if that letter—

The Master—Did you have an interview with him?

Q. Did he have an interview with you? A. Yes, he did.

Q. Did he come to you, or did you go to see him? A. I went to see him.

Q. Where? A. At the Copley-Plaza.

Q. With no invitation? A. Well, we met in the hall and passed the time of day, and I said I wanted to see him.

Q. Now, he is the one regarding whom it has been testified that he made so loud a discussion in Mr. Bick-

nell's home, the First Reader's home, that Mrs. Bicknell intervened?

Mr. Bates—There is no Mr. Bicknell.

Mr. Whipple—Well, Mr. Bicknell

Young.

Mr. Bates—That's better.

Mr. Whipple—That's a good point, Governor, and it's the first one that you've made!

Mr. Bates—I submit, Your Honor, that Mr. Whipple isn't making any point, either! He is simply wasting time.

Mr. Whipple—Oh, don't "submit."

Mr. Bates—He is not going into any matter that he has a right to go into on re-cross-examination.

The Master—Supposing you begin your question again.

Mr. Whipple—I will try to.

Q. You identify him as the same Mr. Strickler who had been having that loud discussion? A. I do.

Q. Did you find out that he had been having that loud discussion before you had your talk with him? A. No, I don't know.

Mr. Bates—I pray Your Honor's judgment on whether this is any matter that he has a right to go into on re-cross-examination.

The Witness—The fact is—

The Master—Hadh't you been over this with him before?

Mr. Whipple—Not at all. It was all brought out in Mr. Thompson's cross-examination.

Mr. Bates—It is nothing that we ever brought out.

Mr. Strawn—Mr. Dane did it.

Mr. Whipple—Oh, yes; Mr. Dane brought it out.

Q. Now, then, Strickler went with you to this meeting of Jan. 22, the next day, and was present at that meeting with the directors—is that right? A. It was the 17th, I think, that I saw Strickler.

Q. Oh, the 17th of January? A. Yes.

Q. And when you came before the directors for the first time he was with you, or at least he was with the directors? A. No; that was the day after.

Q. Oh, the day after? A. That was the 25th.

Q. But you were before the directors with him?

Mr. Bates—I object.

The Master—I am not clear, Mr. Whipple, that you have a right now to go into this. You have cross-examined. That was followed by cross-examination by Mr. Thompson. Then came Mr. Dane's redirect. Does that open this matter for further cross-examination by you?

Mr. Whipple—In re-cross-examination. It was brought out entirely in the redirect. There was no reference to it in the direct or in the cross, because the facts—

The Master—Wasn't Mr. Thompson the counsel who inquired about that?

Mr. Whipple—I believe so. I think I knew nothing about it until it was brought out—I never knew the way in which this recantation was accom-

plished after he was summoned for the tribunal, or the way—

The Master—Well, hasn't Mr. Thompson exhausted the subject?

Mr. Whipple—Well, I think that—I would not say that he had not, for he not only exhausts, but decorates, every subject that he touches, but there was a further question that I wanted to put.

The Master—That brings me round to the point that I intended to inquire about, and that is this: Does cross-examination by Mr. Thompson after you have concluded, open the way for you to cross-examine further?

Mr. Whipple—I thought so, if it brought out an entirely new subject matter, because Mr. Thompson was cross-examining for the defendant.

Mr. Bates—Never!

Mr. Whipple—He represents Mr. Dittmore as a defendant.

The Master—That seems to be another form of our familiar difficulty. Do you object, Governor Bates?

Mr. Bates—I do, Your Honor. It is nothing that we have gone into, and it is nothing that is relevant to this case. Mr. Whipple was very insistent that we should not be allowed to go into redirect examination a step beyond what the law would allow, and I think that he should be held within the same bounds.

The Master—I certainly mean to hold him with the same strictness with which you were held.

Mr. Thompson—May I say one word on it, sir?

The Master—Yes.

Mr. Thompson—I cross-examined this man in two capacities—and I am led to say this by a remark which Governor Bates used: I cross-examined this witness as counsel for Mr. Dittmore, who is a defendant in this case, and the question was constantly raised as to whether it should go in as against Mr. Whipple's client or not; and it was finally settled that it would; and I also cross-examined in the case of Dittmore v. Dickey. I had to put some questions as counsel for Mr. Dittmore as a defendant in this case for the simple reason that this witness was put on the stand in the first place by these directors and the questions asked seemed to me to be injurious to the case of the directors, at least to Mr. Dittmore as a director in that case. I do not approve of it at all, and it is not the way that I should have tried that case.

The Master—You don't approve?

Mr. Thompson—I do not approve of his testimony in the direct. And that led me to put Mr. Dittmore as a defendant in this case into a position where, as representing him, I had to cross-examine this witness to undo what seemed to me the harm that was done to the directors' case in the direct examination. That is a frank statement of the situation.

The Master—You are getting away from the direct point that I had in mind, and that I am interested in. I

am not sure but Mr. Whipple is right about it. If Mr. Whipple has anything further to ask about this Strickler matter, I shall have to let him ask it, reserving to you the right to inquire further if you desire to do so.

Q. Now, Mr. McKenzie, I don't think you want to testify tomorrow if you can help it—

The Master—No. See if you can get through with this witness today.

Q. I will see if I can't make this brief. Do you mean to be understood, by the answers that you have already made, especially that answer in which you say that the letter of Jan. 27 to the directors represents your true views, that you have recanted something with regard to the views that you had expressed to the trustees? A. I learned more wisdom.

Q. Well, have you recanted? I suppose that those burned at the stake learned more wisdom, but do you mean to say that you have recanted from your expression of your views to the trustees? A. No; I mean what I said to you once—

Q. No; pardon me; do you mean just that? Do you mean that you have recanted from the expression of your views? You may have been wiser at one time than another, or you may not; but do you mean to be understood, and to let the world know, that you have changed your views, and have in effect recanted? A. Changed my views, yes.

Q. And in effect recanted the expression that you had earlier made to the trustees? Is that correct? A. The statements I earlier made to the trustees are not those statements.

Q. As represented in the letter of Sept. 21, 1918—is that correct? A. Yes.

Q. Yes. And you did recant after this interview with Strickler at the Copley-Plaza, which you said was so noisy that you shut the door?

Mr. Bates—I pray Your Honor's judgment.

The Master—If you have fixed the date, that speaks for itself, doesn't it?

Mr. Whipple—Let me finish the question, please.

Q. And the interview with the Board of Directors subsequently, at which Strickler was present—that is right, isn't it?

Mr. Bates—I pray Your Honor's judgment as to whether that is a proper characterization.

A. It did not come up at all.

Mr. Bates—Just a moment, Mr. McKenzie. I ask whether that is a proper characterization, to use the word "recant" under such circumstances?

Mr. Whipple—He has accepted it.

Mr. Bates—He has not accepted it; he has refused to accept it.

Mr. Whipple—Pardon me.

Mr. Bates—It is not a word that is proper to use under such circumstances, and he has used a different word.

Mr. Whipple—Oh, I beg your pardon, he has.

Mr. Bates—I will leave it to the record.

The Master—Well, let us leave it to the record.

Mr. Whipple—That is right.

Mr. Bates—Well, but the word was used in the question.

The Master—The difficulty is that I understood the witness to answer Mr. Whipple's question without objecting to that word.

Mr. Bates—The witness answered it by saying that he changed his mind. That is not the same question.

Mr. Whipple—No; then later he said—

Mr. Bates—And then Mr. Whipple tried to get him to use the word "recant," and he practically refused to do it.

The Master—I think that when you get the record written out you will find that the witness answered that question without complaining of the use of that word.

Mr. Bates—If the witness has answered any question in which the word "recant" was used, then I will withdraw my objection.

The Master—My impression is that you will so find it when you get the record written out. I may be wrong.

Q. Now, Mr. McKenzie, that operation, mental or intellectual, which I have characterized as a recantation, and I understood you to assent to it, took place after you were before this ecclesiastical tribunal, the Board of Directors, didn't it? A. No.

Q. Didn't it? A. No.

Q. Well, the expression of it in your letter to them of Jan. 27 took place after you had been cited before the ecclesiastical tribunal, didn't it? A. On the 22nd I stated my case—

Q. Pardon me. Didn't it? Didn't it? Didn't your expression of it in your letter of Jan. 27, which you told Mr. Dane expressed your true views come after your citation before the tribunal? Didn't it?

Mr. Dane—Just a moment. There is no testimony that this man had been cited before a tribunal.

Mr. Whipple—Oh, well, "cited"—came before it.

The Master—I think that the witness must understand what is meant. Now, answer whether it was before or not.

Q. It was after your appearance—  
A. It was not said—

Q. Oh, I know, Mr. Dane told you that, but it was after your appearance before the ecclesiastical tribunal that you went through this process of mind which I suggested as recantation of your former views, wasn't it? A. There was no ecclesiastical tribunal. I simply—

Q. What is the ecclesiastical tribunal in the Christian Science Church that metes out discipline to its members? A. Well, I simply had a friendly meeting—

Q. No. Pardon me. What is the

tribunal that metes out discipline to its members? Isn't it the Board of Directors? A. The Board of Directors.

Q. And wasn't it the ecclesiastical tribunal before whom you were and to whom you addressed your letter of recantation? Wasn't it?

Mr. Bates—I pray Your Honor's judgment.

The Master—To whom you addressed your letter of January 27th.

Mr. Whipple—Yes, of Jan. 27. It was, wasn't it? A. That letter was in response to a request—

Q. Pardon me. Wasn't that the tribunal before whom you went, and to whom you addressed that letter? A. It was the Board of Directors.

Q. And isn't that an ecclesiastical tribunal charged with powers of discipline? What? A. I think it is.

The Master—I think that he has answered that once by saying that it was, Mr. Whipple.

Q. Now, Mr. McKenzie, you said in your testimony to Mr. Dane that you did not object to the Dittmore memorandum when it was presented in February. A. In substance.

Q. In substance. Will you let me read a sentence from your letter of Sept. 21, 1918, describing that interview, and if, in view of that, you want to leave that answer on the record?—

"Well, when we were invited to this conference I went over with high hopes that we should be able to sit down in fellowship and discuss our true relationship and mutual duties. It was, therefore, somewhat of a surprise when I found that a document had been torn up by one of the three directors, in which an endeavor was made to decide for us what our relationship to the Board of Directors should be. For a moment it seemed almost as if the view was being taken that the trustees were dangerous men whom it was not safe to have at liberty, and handcuffs were provided to which they were expected to submit and make no trouble about it."

What paper did you refer to when in this letter you made that suggestion that handcuffs were to be provided, or were being provided, for the trustees? A. I referred to the rules that were attached.

Q. The Dittmore memorandum? A. And the rules, yes.

Q. The rules in the Dittmore memorandum. And still you say, although you wrote on Sept. 21 last that the Board of Trustees regarded it as a furnishing of handcuffs for the Board of Trustees—you say now, under the lead of counsel for the directors, that you at the time made no objection to it, in substance. Do you want to leave your testimony in that way? A. I did not say that.

Q. You did not say what? A. The substance of the memorandum is based on the Manual and the Deed of Trust, and I agree with that.

Q. Well, where did the handcuffs

come in? A. There are seven or eight rules.

Q. What? A. There are seven or eight rules.

Q. Oh, the rules that accompanied the memorandum, those were the handcuffs, were they? Were they? A. That was an indication of them.

Q. But they were—

The Master—Let him answer.

Mr. Whipple—He said that that was the indication.

The Master—Had you got through with your answer?

The Witness—Yes.

Q. They were a part of the Dittimore memorandum, were they not, those rules? Were they not? A. A corollary.

Q. What do you mean by a corollary? They were rules to guide the action of the trustees, were they not? Weren't they? A. Yes.

Q. And a part of the Dittimore memorandum? A. Not of the—well—

Q. They accompanied the Dittimore memorandum, didn't they? A. That is true, yes.

Q. As the rules that were thereafter to guide the trustees? A. Yes.

Q. And handcuff them? That was what you thought about it before you were induced to make that answer that you didn't object to the Dittimore memorandum?

Mr. Dane—Just a moment. I object to that.

Mr. Whipple—All right, if you object to that, I will withdraw it.

Mr. Dane—I do object, and I object for the reason that the witness has explained the reason why the trustees objected to that Dittimore memorandum.

Mr. Whipple—You need not explain it.

Mr. Dane—And I desire to ask that one question now in redirect examination.

#### Redirect Examination

Q. (By Mr. Dane.) I will ask you, Mr. McKenzie, if it is a fact that the trustees objected to the Dittimore memorandum at that time simply because of the method that was adopted in drawing up the memorandum and asking the trustees to sign it? A. Yes.

Mr. Whipple—I object to that question because it is not merely a leading but a coaching question, and he cannot state what was in the minds of the trustees, with all this difficulty that he has in stating what was in his own mind.

The Master—I think that you could frame your question very much better than that.

Mr. Dane—I will withdraw it, if the Court thinks that it should be withdrawn, and I will ask it in this form:

Q. Won't you state exactly what the reason that you had in your mind was at that meeting for not signing the Dittimore memorandum?

Mr. Whipple—That I object to, if Your Honor please.

The Master—The reasons in his mind? In his mind only?

Mr. Dane—Yes, Your Honor, in his mind. I think that that is a proper question in view of the cross-examination and the re-cross-examination and the claims of inconsistency that have been made—

The Master—That is all a matter of argument. That question I shall certainly have to exclude.

Mr. Thompson—I wish that some way could be found to have that question go in. I do not know whether it is possible to frame it at this late stage in such a way as to save the day for the directors, but, if it is possible, I should like to have it done.

Mr. Whipple—There is no possibility of saving the day!

Mr. Dane—I have asked the witness whether or not the objection that was made to the Dittimore memorandum at that time was as to the substance of the memorandum or as to the method adopted by the directors at that time, and I submit that that is not a leading question, and that I am entitled to an answer to it.

Mr. Whipple—It is an entirely improper question. If you wanted to put a proper question you would ask for the conversation at the time, and that you never thought of asking for, apparently.

The Master—It does not seem to me that that is the way that you put the question before. I think that you have put it differently now, and improved upon it.

Mr. Dane—You may answer.

Mr. Whipple—No; I beg your pardon. Should he not ask for the conversation—not what happened at the time? Then we shall have something to contradict if it is not stated as we understand the truth to be.

The Master—Can't you accept Mr. Whipple's suggestion of interrogation, and relieve us from the difficulty of discussing it, and possibly of the danger of admitting a question that ought not to be admitted?

Q. Mr. McKenzie, can you, then, state the substance of what was said in objection to signing the Dittimore memorandum?

Mr. Whipple—And who said it.

A. I can say what I said to Mr. Dittimore.

Mr. Thompson—In the meeting?

The Witness—Yes.

Mr. Thompson—At the time it was presented in the meeting?

The Witness—No, later.

Mr. Thompson—Oh, that is not what is wanted.

Mr. Dane—I think that that is competent.

Mr. Whipple—No.

The Master—I am going to confine him to the meeting for the present, at least. It is this meeting that we are talking about. Now, if he can state what was said at that meeting to which you refer on that subject, let him do it.

Q. Mr. McKenzie, can you state the substance of what was said at that meeting as to signing the Dittimore

memorandum, or the objections to signing it? A. Yes.

The Master—Before you go any further, what was said as to the objections to signing?

Mr. Dane—Yes.

The Master—Now, confine yourself to that. State what was said, and who said it.

The Witness—I said that I had already signed the Deed of Trust given by Mrs. Eddy, and that if this memorandum was an addition to the Manual and the Deed of Trust, we did not need it, and should not have it; and if it was not additional, we did not need it; and that I preferred to keep myself free to obey the Manual and the Deed of Trust for the future.

Q. Is that substantially all that was said in objection to signing? A. That was my objection.

The Master—That is not the question. Is that substantially all that was said upon the subject?

The Witness—No.

The Master—Or is there something that you wish to add? We want to get the whole of what was said on that subject at that time.

The Witness—Then followed our agreement to go on and work together as Christian Scientists.

The Master—No. I want what was said.

Q. Was anything said, Mr. McKenzie, in objection to signing the Dittimore memorandum beyond what you have already related?

Mr. Thompson—By himself or by anybody else.

A. Just that, that I objected to signing anything in addition to what we had already.

Mr. Thompson—Did anybody else say anything on that subject at that time besides you?

Mr. Whipple—You mean of the trustees?

Mr. Thompson—Yes, the trustees or directors. Are you the only man that objected to it?

The Master—Wait a moment, Mr. Thompson.

The Witness—Pardon me, Mr. Thompson.

The Master—Can you add anything further on your side to objections to signing at that time, by yourself or anyone else? Now, please—

The Witness—The other two trustees likewise declined, and Mr. Eustace gave similar reasons.

Mr. Thompson—No; that is not it. Can you think of any reason that they did give, as a matter of fact, not whether it was similar or not, but can you think of any specific reason that they did give?

Mr. Whipple—I think that that was a fair answer, that they gave similar reasons—I mean so far as we are concerned.

The Witness—He said that he did not want to sign anything in addition to what we had already signed in the Deed of Trust.

Mr. Thompson—Did any of the di-



rectors speak of the objections that you were making to signing it?

The Witness—No.

Mr. Thompson—Answer those objections?

The Master—Please remember, Mr. Thompson, that I am trying to get a complete answer to Mr. Dane's question as it now stands. I want him to get all through stating what was said about those objections by anybody.

The Witness—We talked about it all the afternoon, and took up point after point.

The Master—Confine yourself to the objections to signing the memorandum. That is the only thing we want now, what was said by you or by anybody else.

The Witness—Well, I only remember my own statement as I have given it, and Mr. Eustace's statement being similar.

The Master—Now we seem to have completed the answer. Do you want to go on any further tonight?

Mr. Thompson—Do you remember what any director said in answer to those objections that you made at that meeting right there in your presence?

The Witness—No, I don't remember.

Mr. Thompson—You don't remember? That is all.

Mr. Whipple—I understand that this witness' evidence is closed, and that the only thing outstanding is with reference to the introduction or admission in evidence of a letter or a—

The Master—Those letters which you have.

Mr. Whipple—Or draft that is marked for identification.

The Master—Well, they may dig up something over night.

Mr. Whipple—Well, I was hoping to prevent that. That was why I asked if we had not finished this witness.

The Master—I do not know how I can order them at their peril to think of everything that they want to ask him now or forever after to hold their peace. Do you?

Mr. Whipple—Well, since you ask me, Your Honor, I think you could, by declaring that the witness' evidence has been finished.

Mr. Bates—Why are you so solicitous just now?

Mr. Whipple—Because I am afraid of what you will do with the witness during the night.

Mr. Bates—Don't fear, we will take good care of him.

Mr. Whipple—Well, if that is all that he has for his protection, I am sorry for him!

[Adjourned to 10 o'clock a. m., Tuesday, July 29, 1919.]

July 29, 1919

TWENTY-FOURTH DAY

Room 422, Court House,  
Boston, Massachusetts, July 29, 1919.

The Master—Are you all ready?

Mr. Dane—Yes, Your Honor. We

have nothing further from Mr. McKenzie. There was a paper which was produced and marked for identification yesterday. I offered it as an exhibit. At the request of other counsel it was held up until this morning. I would like to have that marked as an exhibit.

The Master—What is there to be said about that?

Mr. Thompson—The reason why it was held up was because the stenographers had taken it away for copy—

The Master—I remember about it. But what about it this morning?

Mr. Thompson—I have not had a chance to get it back and compare it. If I could only get it back I could compare it and settle the matter in a very few minutes.

The Master—Is it here now?

Mr. Thompson—I did find, by looking at a letter that was in the printed record and which was said to have been put in through Mr. Eustace—I did find certain differences between that and the document offered by Mr. Dane, which indicates that Mr. Eustace's letter is not a correct copy, as indicated by the letter produced by Mr. Dane.

The Master—Let us see where the letter is now. Do you know where it is now? I am informed that all the papers have been returned to counsel.

Mr. Thompson—It has not been returned to me. That was a paper that I put in myself from my own files, a copy of a paper that came from Mr. Dittmore's files. If it has been returned to other counsel it has not been returned to me, and it should have been returned to me.

The Master—Let us get it now before we forget about it.

Mr. Dane—Mr. Whipple has it in his hand.

Mr. Thompson—That is not the paper. That is the paper that you offered.

Mr. Dane—Yes; that is the paper I offered.

Mr. Thompson—The paper I want is that letter of Feb. 14 which I introduced from Mr. Dittmore's private files.

Mr. Dane—Here it is (passing a document to Mr. Thompson).

Mr. Thompson—Oh, that is it. Now we have it. When Mr. Whipple gets through looking at it I will—

The Master—Do I understand that you are waiting for Mr. Whipple to complete his examination?

Mr. Thompson—Yes. He will have done it in just a moment.

Mr. Whipple—Is Your Honor waiting for me?

The Master—Yes.

Mr. Whipple—While that is being looked over, I will ask if it will serve Your Honor's convenience to have a printed copy of the record?

The Master—Is that volume 2?

Mr. Whipple—It is not volume 2.

The Master—What page does it begin with?

Mr. Whipple—It begins at 1, and runs from page 1 up to page 477.

The Master—I have one here that begins with 1 and runs to page 310.

Mr. Whipple—This is page 477; it carries it a little further.

The Master—I have been promised a second volume of this.

Mr. Whipple—Instead of making it a second volume, they have carried it along in one volume, because it did not seem worth while to make the volume so small.

The Master—I think that I have made certain pencil memoranda in this one.

Mr. Whipple—Then I think that it would be an advantage if we had a second volume, and I shall be glad to have the second volume bound up separately in that way, rather than to keep adding to it, because we frequently do make memoranda on the copies that we have. Very well, Your Honor; we will have shortly a second volume made up.

The Master—Could you not begin with page 311?

Mr. Watts—Yes, sir.

The Master—I understood that that was going to be done.

Mr. Whipple—So did I.

The Master—It is of no great importance, except as a matter of convenience.

Mr. Whipple—Mine is also page 310. Then begin the second volume from that.

Mr. Thompson—If Your Honor please, I have now compared, hastily but fairly accurately, the letter of Feb. 15, 1916, produced by Mr. McKenzie and marked for identification "Exhibit 719. For Identification. L. W. R." with Exhibit 324, printed record page 318, introduced in evidence and said to have come from the files of Mr. Neal—said by Mr. Krauthoff to have come from the files of Mr. Neal. The two are not absolutely identical. Some of the changes made in pencil or otherwise indicated in Exhibit 719 produced by Mr. McKenzie do not appear to have been made in the letter introduced in evidence, but substantially the two are alike.

The Master—Does it make any difference for our present purpose whether they are alike or different?

Mr. Thompson—Only as bearing upon the credibility of Mr. McKenzie, that is all.

The Master—Mr. McKenzie has given his testimony in regard to that paper. He said what it was, and what it was a copy of. Now, it is open to you, of course, hereafter to point out that his testimony was wrong, if it was wrong, to a greater or less extent, and to show to what extent.

Mr. Thompson—Yes.

The Master—But why should the paper not go in as an exhibit?

Mr. Thompson—I do not know why it should not now.

The Master—Nobody desires to interrogate any further in regard to it?

Mr. Thompson—No.

The Master—The paper may be marked. What is the number?

Mr. Bates—Exhibit 719 was the mark for identification.

[The paper previously marked Exhibit 719 for identification, L. W. R., addressed to The Christian Science Board of Directors, dated Feb. 15, 1916, is now admitted in evidence as Exhibit 719, L. W. R.]

The Master—What next?

Mr. Bates—Mr. Merritt, will you take the stand?

The Master—Do you want that Exhibit 719 copied into the record?

Mr. Dane—No; we do not think it is necessary.

Mr. Whipple—It hardly seems worth while to put it into the record, if Your Honor please, since we have one or two almost identically like it.

The Master—If there is no objection, it need not be copied into the record.

Edward A. Merritt, Sworn

Q. (By Mr. Bates.) Your full name, please? A. Edward A. Merritt.

Q. And you are one of the directors of the Christian Science Church? A. Yes.

Q. And one of the defendants in this case? A. Yes.

Q. How long have you been a director? A. A little over two years.

Q. And you became a director July 12, 1917? A. July 19, 1917.

Mr. Bates—I offer from the directors' record—

The Master—Something that has not gone in?

Mr. Bates—Yes, Your Honor; the 1917 and 1918 minutes, page 24:

"Thursday, July 19, 1917.

"Because of the importance of pending matters requiring the attention of a full board, it was upon motion of Mr. Stewart, seconded by Mr. Dickey, voted that Mr. Edward A. Merritt of Brookline, Massachusetts, be elected a director of The Mother Church to fill the vacancy on this board caused by the passing away of Mr. McLellan. Carried unanimously.

"Mr. Merritt thereupon entered the meeting and took his seat as a director."

[The record of the meeting of the Board of Directors of July 19, 1917, from which the foregoing extract is read, is Exhibit 720. R. H. J.]

Q. And you have served as a director since that time? A. Yes.

Q. When did you first become interested in Christian Science, Mr. Merritt? A. In the year 1887.

Q. And where were you living at that time? A. In Marquette, Michigan.

Q. And have you been interested in it ever since that time? A. Yes.

Q. What positions, if any, have you held in connection with the movement? A. Why, I have held the position of First Reader in the Church, Second Reader in the Church, Publication Committee for five or six years, a member of the Board of Lectureship, a trustee and a director.

Q. And when did you first become a member of The Mother Church? A. In March, 1894.

Q. And when did you become a practitioner, if at all? A. In 1901.

Q. Have you been a practitioner ever since? A. Let me change that—1894 a practitioner.

Q. And you have been a practitioner since that time? A. Yes.

Q. When did you become a trustee of the Publishing Society? A. Feb. 1, 1917.

Q. And how long did you serve as a trustee? A. Until Aug. 1, 1917.

Mr. Whipple—If you will pardon me, I did not catch the statement as to when he became a trustee.

Mr. Bates—Feb. 1, 1917.

Q. And you continued until what time? A. Aug. 1, 1917.

Q. Have you had any other business in recent years, Mr. Merritt, than that connected with Christian Science? A. Yes.

Q. And what business had you been engaged in? A. I was with the Cleveland Stone Company, of Cleveland, Ohio, for about 30 years.

Q. And, just in brief, tell us what the Cleveland Stone Company is. A. Well, it is a large corporation, producing building stone and grindstones, etc.

Q. And a corporation that has several million dollars' worth of capital? A. Yes.

Q. And does several million dollars' worth of business a year? A. Yes.

Q. And what was your relation to that company? A. I was secretary and treasurer.

Q. And—

Mr. Whipple—When was he secretary and treasurer?

Mr. Bates—I was just about to give you that, Mr. Whipple.

Q. When did you become secretary and treasurer of that company, and how long did you continue as such? A. About the year 1900 I became secretary and treasurer, and continued until July 15, 1917—1915.

Q. And you then retired? A. Yes.

Q. And have you been a director of that company? A. Yes, sir.

Q. And are still a director of it? A. Yes.

Q. And have a large interest in the company? A. I have an interest, yes.

Q. And when you retired in 1915, for what purpose did you retire?

Mr. Whipple—I pray Your Honor's judgment.

Q. Well, whether or not it was to go into other business, or simply to retire and take life more comfortably?

Mr. Whipple—I object to that. We are not concerned with Mr.—

Q. Were you a retired business man after that time—

Mr. Whipple—That I object to.

Q. — until you became a trustee of the Publishing Society? A. No, I didn't have any—

Mr. Whipple—Wait one moment.

The Master—I do not think that that can do us any harm.

Mr. Whipple—No, no harm, but we do not want to inquire into Mr. Merritt's private concerns.

Mr. Bates—Well, I happen to want to. You may answer the question, His Honor says.

Mr. Whipple—We are not concerned with what you want.

The Master—Whether he is in business or has retired from business, I think is a fair inquiry.

The Witness—I retired voluntarily on July 15, 1917, and intended to enter the practice of Christian Science, and I was called to the Lecture Board before I had that opportunity.

Q. Well, who called you to the Lecture Board? A. The Board of Directors.

Q. Did you become a lecturer in Christian Science? A. Yes.

Q. And whereabouts? A. Throughout the United States.

Q. Yes. And how long did you continue as a lecturer? A. I was elected for one year from July 1, 1916.

Q. And why did you leave the Board of Lectureship, or under what circumstances? A. Because I was elected a trustee.

Q. Of the Publishing Society? A. Of the Publishing Society.

Q. Have you at any time been president of The Mother Church? A. Yes, June, 1915, for one year.

Q. I think you referred to having been the Publication Committee at one time. What publication committee was that? A. When the Committee on Publication was started I was appointed as committee for the State of Ohio.

Q. And you served in that capacity how long? A. Five or six years.

Q. Now, while you were trustee, Mr. Merritt, which was from Feb. 1, 1917, to July 12, 1917, did the Board of Trustees— A. I served until Aug. 1 as a trustee.

Q. Until Aug. 1. During that time did the Board of Trustees elect any editor or business manager?

Mr. Whipple—Just a moment. We have had the entire record about the business managers and editors. Why should we ask witnesses about this?

Mr. Bates—We have had a record, and I am now going to show that we have made it a complete record, by showing that there was no election by the trustees during that time.

Mr. Whipple—Well, the records do not show that there was. There was no occasion for it.

Mr. Bates—No, but they do not show that there was not, necessarily.

The Master—I think that he may answer.

The Witness—Please repeat the question.

[The question is read as follows: "During that time did the Board of Trustees elect any editor or business manager?"]

A. No.

Q. Was there any election of an editor or business manager during that time by anybody? A. Yes.

Q. By whom? A. The Board of Directors.

Mr. Whipple—Just a moment. How can he know? He was not a member of the Board of Directors. We have gone into all those matters on the record, and why take time by repeating?

Mr. Bates—I shall not take, Mr. Whipple, but a very few minutes of time if you do not interrupt me. If it is all in I do not see any reason why you should be disturbed about it. You will not be disturbed, or you ought not to be.

Mr. Whipple—It is not disturbing me at all.

The Master—If it is all in, why should we have it again?

Mr. Bates—Your Honor, I do not think that it is all in.

The Master—Very well.

Mr. Whipple—Well, then, we should have the record of it. This gentleman was not a member of the Board of Directors, and he knows nothing about what they did.

Q. Did you receive a notice from the Board of Directors of the election of an editor and business manager at the annual meeting of the board in June or July, 1917? A. Yes, sir.

Mr. Whipple—Now, just a moment. If there is any such notice, it has already been put in.

Mr. Bates—I think it has not been put in. We propose to put it in.

Mr. Whipple—Then produce it and put it in.

Mr. Bates—We are proposing to put it in in due time. First I have a right to ask him if there was such a notice.

Mr. Whipple—If there was such a notice, why not put it in?

Mr. Bates—I asked him if there was such a notice.

Q. Was there such a notice received by the Board of Trustees? A. Yes.

Mr. Bates—Will you produce the notice, Mr. Whipple?

Mr. Whipple—We have no such notice, and there was none sent.

Mr. Bates—Will you allow me to present the copy of it, of June 4, 1917?

Mr. Whipple—That has already been put in.

Mr. Bates—If you can give us the exhibit—

Mr. Whipple—Mr. Krauthoff did this much better; he put this all in.

Mr. Bates—Thank you. I am glad you found an opportunity to pay a compliment to Mr. Krauthoff. It is the first time you have spoken a generous word about him during the whole trial.

Mr. Whipple—I have paid him repeated compliments, as Mr. Krauthoff knows. No one has been more appreciative of his genius than I have been.

The Master—No doubt both of you appreciate that all this takes up time.

Mr. Bates—Yes, Your Honor.

Mr. Whipple—He is the man who first started—

Mr. Bates—And I object to this

statement being injected into my examination.

The Master—If that has been marked already as an exhibit, why put it in?

Mr. Bates—I do not think it has been put in as an exhibit. I could not find that it was an exhibit last night in my examination.

Mr. Whipple—Then you did not look hard enough for it.

Q. Can you identify that as a copy (passing a paper to the witness)? A. Yes, it is a true copy.

Mr. Bates—

“June 4, 1917

“Trustees of The —”

Mr. Whipple—I pray Your Honor's judgment. That is already in. Why should it be read in again?

The Master—I understood—

Mr. Bates—I think, Your Honor—

The Master—It wasn't already in.

Mr. Bates—I do not understand that it is. Mr. Whipple at first stated that there was no such notice.

Mr. Whipple—I said we had none, as we put it in.

Mr. Bates—No, you did not state that until afterward. Now, if your memory is faulty the first time it may be faulty the second time.

Mr. Whipple—My memory was not at fault.

Mr. Bates—Yes, you said you had received no such notice.

Mr. Whipple—Pardon me. I said we had no such notice in our possession.

Mr. Bates—Well, may it please the Court, I will read this, because I do not think it has been put in evidence. If Your Honor thinks it has, I do not wish to read it again.

The Master—I have no means of determining that question except by the mark upon it. If it has been put in, it will have an exhibit mark.

Mr. Bates—There is no mark upon it.

Mr. Whipple—It is quite possible that another copy was used.

The Master—You, having called for the original, now desire to introduce a copy in evidence?

Mr. Bates—Yes, Your Honor.

The Master—Inasmuch as the regular course of proceedings requires that you show it to counsel—

Mr. Bates—I have shown it to Mr. Whipple.

The Master—They have seen it?

Mr. Bates—They have seen it.

The Master—Then the only objection to putting it in is that it has already been put in?

Mr. Whipple—Yes, Your Honor.

The Master—I see no exhibit mark on it, and I shall let it go in.

Mr. Bates—

“June 4, 1917.

“Trustees of The Christian Science Publishing Society,  
“Boston, Massachusetts.

“Dear Friends:

“I am instructed by The Christian Science Board of Directors to inform you that at the annual meeting of

the board, held today for electing officers, in accordance with the provisions of Article XXV, Section 4, of the Manual of The Mother Church, the following-named persons were elected, respectively, editors and manager of The Christian Science Publishing Society for the ensuing year:

“Editor, Journal, Sentinel, and Der Herold, Mr. Archibald McLellan.

“Associate editors, Journal, Sentinel, and Der Herold, Mrs. Annie M. Knott, William D. McCrackan.

“Assistant editor, Der Herold, Theodore Stanger.

“Editor, The Christian Science Monitor, Frederick Dixon.

“Manager, The Christian Science Publishing Society, David B. Ogden.

“With all good wishes,

“Sincerely yours,

“Corresponding Secretary for The Christian Science Board of Directors.”

[The copy of letter of which the foregoing is a copy is marked Exhibit 721. R. J. M.]

The Master—Is it not true that we have had not that notice, but the action of the board?

Mr. Thompson—Yes.

Mr. Bates—I think that we have had the record before.

Mr. Whipple—The notice, if Your Honor please, has been marked as an exhibit, and we will tell you in just a moment what the number is.

Mr. Thompson—That has gone in.

Mr. Bates—If you are able to do that, we have no objection to its being struck out.

Q. What was done with that notice, Mr. Merritt, if you remember, when it was received? A. I think Mr. McKenzie read it and passed it over to the business manager in order to place the names on the pay roll.

Q. And no other action was taken? A. No.

Q. What were the relations of the Board of Trustees to the Board of Directors at the time that you were a trustee?

Mr. Whipple—That I object to.

Q. With regard to any conferences or any discussions between the two boards? A. We had many conferences which—

Mr. Whipple—Just a moment. I object to that.

The Master—Just a minute.

Mr. Whipple—Now, in the first place—

The Master—Just a minute. With regard to any conferences or—

Mr. Bates—Discussion.

The Master—What was the relation— I think you can ask him what the practice was.

Mr. Bates—Strike that out, if you please.

Q. What was the practice, Mr. Merritt, of your board in important matters relating to the Publishing Society so far as conferring with the Board of Directors was concerned?

Mr. Whipple—That I object to, if

Your Honor please. How do we know what were the important matters? One man might think matters were important and another not. The records show this whole thing. Now, those are in. Is the purpose to contradict them or to confirm them? For neither purpose is it proper.

The Master—If I felt certain absolutely that all the records of both boards were in, I might agree with you, but I am not satisfied that that is the case.

Mr. Whipple—Then why should we not have specific testimony instead of a statement of a habit, leaving vague the question as to whether a matter was important or not? Why not have specific testimony?

Mr. Bates—We will follow it with specific testimony.

Mr. Whipple—Namely, the things that there were conferences about. Then Your Honor can determine whether they were important. Now, this is important, if I may offer the suggestion, because, naturally, the trustees as trustees would have conferences with those who represent the beneficiaries as to the administration of their trust. You would expect them to have such conferences. Now we want to know whether the conferences were on those matters, such matters as would interest those who were interested in or represented the beneficiaries. Those would have one significance. If there were conferences on other subjects, it might be an altogether different matter. Therefore, the subject matters they conferred about are the things that are of importance. This attempt to wipe all the significance of the testimony away by saying conferences on important matters amount to nothing.

The Master—Governor Bates stating that he does not propose to leave it on that question alone, but proposes to inquire further with regard to the particular matters, the question may be answered.

Q. Will you answer the question, Mr. Merritt? A. We had conferences on the purchase of a large press—

Q. I asked you what was the practice, first. A. Oh. We had frequent conferences.

Q. With the directors? A. With the directors.

Q. Now, do you recall what were the subject matters of any of those conferences? If so, state them. A. I can recall several of them.

Q. Won't you state them, please? A. One was on the purchase of a large printing press. Another was the publishing of a pamphlet under the caption of "Joy." Another was regarding the increase of the prices of the periodicals. Another was regarding the employment of Mr. Harry Lesan.

Q. In what capacity? A. As advertising manager of the Publishing Society. Another one was regarding the employment of a New York artist, getting his opinion about the makeup of The

Monitor and the front page of the Sentinel. I do not remember any more just now.

Q. Whether or not there were any conferences in regard to the salaries that were paid or to be paid to the appointees of the Board of Directors? A. Not while I was trustee.

Q. And the editors and manager? A. Not while I was trustee.

Q. What was the conference in regard to the pamphlet entitled "Joy," that you speak of? A. Simply the fact that the article had been collated by the trustees and they took it over to the directors, asking for their approval.

Q. What was done at the time of Mr. McLellan's passing on, which I think took place in July, 1917, so far as the election of a successor was concerned?

Mr. Whipple—I beg your pardon. I did not hear that question.

[The question is read.]

The Master—With the understanding that you do not propose to have him say over again what he has already said—

Mr. Bates—Certainly.

The Master—he may answer.

Mr. Bates—We have not had that, I am quite certain.

A. The trustees had a conference with the Board of Directors and it resulted in the appointment by the directors of Mr. McKenzie to the editorship.

Q. What was the practice of the Board of Trustees while you were a member, in regard to the supervision of editorials, if there was any practice in regard to the matter? A. The trustees never had an interview with the editors of the periodicals.

Q. Then, as I understand you, they did not in any way attempt to supervise the editorials? A. No, they did not.

Q. While you were a trustee did you ever hear of any claim or question being raised by the Board of Trustees, or by any member of it, that the Board of Trustees were not bound by the By-Laws of The Mother Church in the discharge of their duties? A. Never.

Q. Did you for a time serve, Mr. Merritt, both as director and as trustee? A. Yes, for about 10 days.

Q. And how did you happen to serve in both capacities during that time? A. Because the passing of Mr. McLellan made a vacancy in the editorship and also on the directors, and because the trustees thought that it would be a matter of wisdom to elect Mr. Ogden to succeed one of the trustees retiring, in case Mr. McKenzie was chosen as editor. That left a vacancy, and the trustees asked me if I would not serve until the first of August, Mr. Ogden having been elected for that date, and later Mr. Rowlands was elected for that date.

Q. Do you remember the date or about the date when The Monitor was changed from an evening to a morning paper? A. The 9th of August.

Q. In what year? A. 1918.

Q. Whether or not there was any conference by the trustees with the board in regard to that matter? A. Yes, there was.

Q. And do you recall the nature of it, or what was said at that conference? A. The trustees convened with the directors, and Mr. Eustace related the proposition that they had contemplated for some time, and the directors also knew that, in a measure—the change of The Monitor from an evening to a morning paper—and they asked the concurrence of the Board of Directors in the proposition, which was readily given to them.

Q. There had been reference, Mr. Merritt, to the raising of the salaries of the directors. Were you on the board at the time that was done? A. Yes.

Q. Was that done after taking legal advice?

Mr. Thompson—Just a moment. If that is offered against me, I do not see how it is material at the present time.

Mr. Whipple—We object to it, if Your Honor please, because—I do not know how seriously we object. The whole criticism on the part of this Board of Directors is that, as we understand it—the burden of it—is the trustees are acting under legal advice in regard to their Deed of Trust, they claiming that we are acting under legal advice in violation of the Manual. Now, it is a curious situation to see directors taking refuge in legal advice as to a violation of the terms of the Manual. That is, they say they took legal advice, and the advice was that they might violate the Manual, or, at least, under it, they took action exactly contrary to the terms of the Manual, and still that is their whole criticism.

The Master—Won't that come in later?

Mr. Whipple—No, if Your Honor please. Well if Your Honor will pardon me in reply, I should think that they would be held to be consistent during the trial, not merely in argument.

The Master—The fact that at one point or another one or the other of these boards took legal advice with respect to contemplated action, has gone in, certainly. Why should it be excluded in this case?

Mr. Whipple—That is a fact, they took advice. If they took advice as to whether they might properly act contrary to the terms of the Manual, I will be perfectly agreed that that might go in.

The Master—Does the question call for anything more than this: Whether they took legal advice before the action?

Mr. Bates—That is all, Your Honor; but Mr. Whipple's statement—

The Master—I see no reason why he should not answer.

Mr. Bates—With Your Honor's permission, I just want to correct Mr.

Whipple's statement when he states our position to be that they have taken legal advice and that we object to that. What we object to is their screening themselves behind legal advice and using that as an excuse for violating the Manual.

Mr. Whipple—What are you doing with regard to these salaries? Aren't you screening yourself behind legal advice?

Mr. Bates—If you will be kind enough to have the courtesy to allow some one to speak besides yourself, you will hear. The second point was, as Mr. Whipple has just stated again, that there is absolutely nothing in the Manual that in any way is contrary to or opposes the action that was taken by the directors in regard to salaries. Those are two misstatements of our position.

The Master—I hardly think we ought to take up time to have statements regarding the respective positions.

Mr. Bates—I agree with you.

The Master—We can get that in later.

Mr. Bates—I agree, Your Honor, and I think Mr. Whipple should not attempt to make these statements, but if he does we certainly ought to have the right to reply to them.

Mr. Thompson—Is this offered against Mr. Dittmore?

Mr. Bates—It is offered in both cases so far as it is applicable.

Mr. Thompson—Very well. Then unless you will consent to have the facts appear that Mr. Dittmore returned the amount of \$10,000, all the excess of salary received by him, I shall object to it as immaterial.

The Master—You can put that in later if you want to. The witness is permitted to answer subject to Mr. Thompson's objection.

[The question is read by the stenographer: "Was that done after taking legal advice?"]

Q. You may answer that question, Mr. Merritt. A. Yes.

Q. And whose advice was it that was sought in that matter?

Mr. Thompson—Wait a minute.

Mr. Whipple—I pray Your Honor's judgment.

Mr. Thompson—I think if the advice was given in writing it ought to be produced.

Mr. Bates—We have no objection to producing it if you want it. I am asking what lawyers advised them that they had a perfect right—

The Master—You haven't got to what the advice was. Under whose advice?

Mr. Bates—No, I am asking whose advice it was.

The Master—You may answer subject to objection.

A. The advice of Messrs. Choate, Hall and Stewart and the advice of Messrs. Bates, Nay, Abbott, and Dane.

Q. Do you recall, Mr. Merritt, what salary you had been receiving as trustee when you went from the Board of

Trustees to the Board of Directors?

A. Why it was at the rate of \$5000 a year, I think. It may have been \$5500, I am not sure about it; \$5000, I think that was it.

Q. Was there at the time of the raise in the salaries of the directors a readjustment of the duties of the directors?

Mr. Thompson—Now, I pray Your Honor's judgment. If it is gone into it will occupy a good deal of time on cross.

Mr. Bates—I am frank to say, Your Honor, that I do not think this issue ought to have been brought in, I do not think it had any bearing on the case; but Mr. Whipple has brought it into the case, and therefore I think we are entitled to show very briefly what the situation was.

The Master—If you are going into it, I don't see why the question is not a proper one.

The Witness—What was the question?

Q. Was there a readjustment of the duties of the directors at the time of the raise in the salaries? A. Yes; readjustment of the duties of the four directors, not of my own work.

Q. And what was that readjustment? A. Mr. Dittmore was clerk of The Mother Church, Mr. Dickey was treasurer, Mr. Stewart was publisher of Mrs. Eddy's works, and Mr. Neal was the manager of the Trustees under the Will.

Q. And were they each receiving salaries in those various capacities up to that time? A. Yes.

Q. And, if you recall, what salaries were they receiving? A. I think Mr. Dittmore and Mr. Neal were receiving \$6000 besides the \$2500 of the directors' salary. I am not sure what Mr. Dickey received but I think it was a little more than that, and Mr. Stewart received the largest salary of all four.

Q. So that the salaries which they had been receiving, together with their directors' salaries, amounted to \$5500 apiece or more? A. Yes.

Q. And did they at the time the salaries on the board were increased give up the salaries which they had been receiving from those other positions? A. Yes.

Mr. Thompson—That is rather leading, isn't it, Governor?

Mr. Bates—Well, merely to save time, I don't suppose there is any dispute about it.

Mr. Thompson—Well, I think there may be some dispute about some of these matters.

Q. How much time was being required of the Board of Directors in order to attend to their duties at this time, Mr. Merritt, as directors? A. Practically all their time.

Q. And whether or not all the directors are giving their entire time to their duties as directors or in connection with the Christian Science movement? A. Yes, they are.

Q. They none of them hold any positions where they receive any remuneration outside of the Christian Science movement? A. No.

Q. Now, there has been something said, or something brought out in Mr. Thompson's examination—I do not know how seriously—but in regard to the Board of Directors refusing the use of the Church to President Wilson upon his return from Europe. Will you state what the facts were in regard to that?

Mr. Thompson—Does Your Honor think that is material?

Q. Whether or not there was any request that came from anybody, and if so from whom, in regard to the use of the Church?

Mr. Thompson—On direct examination of this witness?

A. The only request was, as I understand it, from Mr. Swan, who made a suggestion.

Q. Who is Mr. Swan? A. He is in the court here, I think he is a newspaper man.

Q. Well, did he state that he was acting in authority for anyone?

Mr. Thompson—I pray Your Honor's judgment on that.

A. Not that I know of.

Q. Was it brought to the attention of the board that there was any request from anyone in authority?

The Master—I shall have to ask you to pause a moment. I understand Mr. Thompson has some objection. I don't quite see.

Mr. Thompson—I don't see that the substance of it is material from this witness. In the second place, these questions are extremely leading. If it is important to discuss the matter at all with the witness it is important to do it properly. He is simply putting words right into his mouth. How can it be material to bring this matter out from this witness on direct examination? I cannot follow that myself. It does not bear on the Eustace case, certainly.

Mr. Bates—You have caused, through your questions—

The Master—As nearly as I can appreciate it, the counsel are now trying to have this witness, who was a director at the time, state what took place in the Board of Directors regarding that matter.

Mr. Bates—Exactly.

The Master—We have had some evidence about it. It appears he wants to get all the facts so far as they are within the knowledge of the witness. Why not? I cannot see any reason why not.

Mr. Thompson—If Your Honor feels that way, then I suggest that in getting the facts he follow the usual way and ask the witness, not simply tell him the story and ask him to assent to it.

Mr. Bates—I submit that my questions have been entirely proper and not in any way leading.

Q. Will you state, Mr. Merritt—go

on and state what authority, if any, or what authorities, if any, asked you for the use of the Church, or asked the directors for it? A. No authority besides that request from Mr. Swan, that I know of.

Q. And who presented Mr. Swan's request? A. Mr. Dittmore.

Q. Then, so far as you know, there was never any request from anybody except a suggestion from Mr. Swan that they might offer the use of the Church?

Mr. Thompson — If Your Honor please—

The Master—Governor Bates, my views about leading questions I have stated many times, and in order to save interruption and delay and objection, couldn't the form of the question be—

Mr. Bates—I think, Your Honor, that that was a leading question, but it was after I had endeavored to get all the conversations there was, and I simply wanted to clear it up by that one general question. I think, perhaps, it rests well enough as it is.

Q. Now, Mr. Merritt, coming down to the time of your becoming a member of the Board of Directors—

Mr. Bates—And here Your Honor will recall that there were a large number of joint meetings, or quite a number of joint meetings, between the Board of Directors and the trustees, and a large number of communications passed. I am not going into details—

The Master—For what purpose?

Mr. Bates—I am not going into details in these matters. I am only going to ask questions to bring out one or two special matters; but my reason is because the witness' testimony would be simply cumulative on what is already in.

Q. I wish to come down, Mr. Merritt, in connection with the controversy that led to Mr. Rowlands' dismissal, to the meeting of Feb. 3, and ask you for the conversation that took place at that time, now only so far as it related to the trustees' attitude toward the Manual—Feb. 3 of the present year, which was the first meeting after the so-called understanding had been reached between counsel. Will you state what, if anything, was said at that time in regard to the trustees' attitude as to the Manual?

Mr. Whipple—By whom, please?

Mr. Bates—Well, I will have him tell that when he states it.

A. Mr. Eustace declared that the trustees had always obeyed the Manual and considered that they should always do so, in connection with the Deed of Trust. Mr. Rowlands reiterated that. I do not think Mr. Ogden spoke about it, but he assented thereto.

Q. Do you remember whether or not in that meeting, at that time, Mr. Eustace made any statements in regard to Mr. Dittmore?

Mr. Thompson—What meeting are you speaking of, Governor?

Mr. Bates—Feb. 3.

The Master—A conference, wasn't it?

Mr. Bates—A conference between the two boards.

The Master—Feb. 3, 1919?

Mr. Bates—1919.

Q. With particular reference, Mr. Merritt, to an alleged New York visit? A. Not at the meeting of Feb. 3, that I remember.

Q. Do you remember some statement being made at one meeting in regard to that matter? A. Yes.

Q. Can you tell me which meeting it was? A. I am under the impression it was Feb. 11.

Q. And what was stated, if you recall, by Mr. Eustace at that time? A. Mr. Eustace declared in rather severe language that the action of Mr. Dittmore was not warranted.

Q. Well, have you repeated the language so far as you can recall it? A. Why, he said it was damnable.

Q. And did he state what action he referred to? A. The action of Mr. Dittmore going to New York and consulting with a coterie of men in New York regarding the Publishing House affairs.

Mr. Thompson—You mean what he said?

The Master—I understand he is quoting Mr. Eustace.

Q. Have you quoted that so far as you recall it, Mr. Merritt? A. Yes.

Q. Did anybody make reply to Mr. Eustace's statement in regard to that matter? A. Mr. Dickey said, "Well, Mr. Eustace, that is a matter for the Board of Directors to take care of, and please allow us to do that," or something of that nature.

Q. Now, coming to the joint conference of Feb. 10, do you remember what took place at that conference? A. I should have said Feb. 10, not 11, for this.

Q. Do you remember anything else that took place at that conference? A. Feb. 10, yes. Mr. Dickey said, "Now, inasmuch as we agreed upon the directors taking over the cards for practitioners, nurses, and churches, and that matter was all closed up on the meeting of Feb. 3, and there was a very harmonious feeling, we believe it is proper now to bring before you the two other points that have been under discussion, namely, the final authority on editorial policy"—I have forgotten for the moment the other point—and to this Mr. Rowlands objected as being something that would not be conducive to perpetuate the harmonious relations growing out of the meeting of Feb. 3, inasmuch as the attorneys had advised that we confer weekly. Mr. Dickey replied that we intended to confer, but we should confer upon specific points, and these were very important. Mr. Eustace objected strenuously to our action and would not agree that they should be considered in a definite manner that is, for an immediate conclusion,

but that we should continue our meetings and endeavor to work them out. There were many other subjects brought out at the meeting, but I don't recall just what they were now.

Q. Do you remember whether or not anything was said in regard to the attitude of the field? A. Yes.

Q. What was stated in regard to that? A. I think Mr. Rathvon brought out the point that the field was very much concerned regarding the attitude of the trustees, and were becoming much worked up, because the directors were receiving letters from the entire field of a derogatory nature to the trustees, and that the directors would like to put a stop to it if it was possible to do so.

Q. Was that a true statement made by Mr. Dickey, in regard to receiving these letters from the field and their being wrought up— A. Yes.

Q. —in regard to the matter. Did you at any time go personally to see the trustees to see if they could be induced to adjust this matter in any way? A. I did.

Q. And when did you go? A. Why, I have forgotten, but it is on the records of the trustees' minutes.

Q. The records of the trustees referred to your having come to see them on Feb. 18? A. That was the date.

Q. And was that after Mr. Dickey's suggestion, which is also in evidence, that it was the duty of the directors to go and see if they could not in some way adjust this matter without resort to the courts? A. Yes.

Mr. Whipple—If Your Honor please, I wish Governor Bates would observe Your Honor's suggestion about avoiding recitative on his part.

Q. Did you have a conference on Feb. 18 with the trustees? A. I did.

Q. And what, if anything, was said at that conference?

Mr. Thompson—Feb. 18. You mean what year, Governor?

Mr. Bates—The present year.

A. I went to them for—pardon me—

Q. That was Feb. 18 of the present year? A. Yes. I went to them for the purpose of endeavoring to have the trustees do something.

Mr. Whipple—I pray Your Honor's judgment; he is stating the purpose.

Q. State what you said, Mr. Merritt—

Mr. Whipple—And he is asked for the conversation.

Q. —to the trustees, rather than what your purpose was.

A. I said to them that I had been working constantly upon the question of the controversy, which had assumed a very acute nature, and that it appealed to me, after our meeting of Feb. 3, that all of the allegations which were made against the trustees by the field during that interim from Feb. 3 to Feb. 18, could properly be adjusted if the trustees would make an open statement affirming or denying the allegations which the field was

making, and it would place the matter before the field in an honorable way, and that they could very properly, in my estimation, sign such a statement, and let it run on for six months or a year, and if they found at the end of that time that it was impossible to work with the directors in that manner, they could again take up the question which had been stopped, or would have been stopped, by their statement. Mr. Eustace—no, Mr. Rowlands said that he did not think it wise for them to sign anything of any nature, but they would be willing to consider my proposal. I also took up the question of their attitude towards Judge Smith in that meeting, and told them of my idea of Judge Smith's attitude, and that he was friendly towards every one of them. They received what I said silently, made no response. That was about the net result of the meeting.

Q. What was the situation in the field at this time, Mr. Merritt?

Mr. Whipple—I pray Your Honor's judgment.

The Master—That is a rather broad question, is it not?

Mr. Bates—Well, I had not had time to limit it before the objection came in.

Q. What was the condition in the field in regard to this controversy, Mr. Merritt, at this time?

Mr. Whipple—That I object to.

Q. What was the situation?

The Master—Is it not obvious—it seems so at present to me—that that question would only bring out the witness' opinion upon a subject where any one man could have only partial knowledge?

Mr. Bates—I will ask this question, if Your Honor please, and withdraw that:

Q. Whether or not the board were receiving a large number of letters from the field in regard to this controversy?

Mr. Whipple—That I object to.

Mr. Bates—I am asking for the fact.

Mr. Whipple—The fact is not of any consequence unless you have the letters, and we—

Mr. Bates—If you want the letters we will put them in.

Mr. Whipple—and the letters are not admissible.

Mr. Bates—Well, the fact is admissible.

Mr. Whipple—If you were getting letters from the field it was because through your lecturers and others you had been engaging in propaganda—

The Master—I do not think that that statement is helpful, Mr. Whipple, I must say.

Mr. Whipple—Very well, Your Honor! I object to it.

The Master—His account of the conference brings out that there were statements at the conference as to letters coming in from the field. Now, I think that it is proper to give him an

opportunity to state whether that is true or not, if it is desired.

Q. Well, I will ask you, Mr. Merritt, whether or not the statement that you made in regard to the letters coming in from the field—whether or not your statement in regard to that was a true statement—the one that you made to the trustees, and the one to which you have testified? A. It was.

Q. Now, were you present at the meeting on March 17 when the Rowlands resolution, dismissing him from the trusteeship, was adopted? A. Yes.

Q. Before we take that up, I will ask you, you were also present at the meeting of March 11? A. Yes.

Q. When the trustees handed in their statement, which is already in evidence. And then on March 17 you were present when the Rowlands resolution was adopted. Did you vote for that resolution? A. I did.

Q. Will you give your reasons for voting for that resolution?

Mr. Whipple—I pray Your Honor's judgment.

The Master—I am at the moment unable to see how that is admissible.

Mr. Bates—I should think, Your Honor, that it was one of the fundamental issues in this case as to whether or not Mr. Rowlands was discharged for sufficient reason. Now, the statement of the directors as to the reason why they voted for the resolution would certainly go to disclose what actuated them at the time. There is also, of course, the question of good faith which has been raised, upon which it seems to me it is eminently material.

Mr. Whipple—The trustees attempted to recite their reasons, and I assume all the reasons which occurred to them, with the resolution. These ex post facto and newly discovered reasons are hardly helpful.

Mr. Bates—These, I think, are hardly of that nature, Mr. Whipple. If you will wait and hear them you will perhaps be able to characterize them with more truthfulness.

Mr. Whipple—Perhaps they were not, but they had counsel to assist them in stating the reasons which they gave.

Mr. Bates—That has not appeared.

The Master—Let me see if I am sure just how this question stands. The vote shows, does it not, a number of reasons—

Mr. Bates—Yes, Your Honor.

The Master—for the discharge voted? Is it your purpose to have him go over all those? We may assume that if he voted for that resolution, among his reasons, part of them, are those stated in the resolution, may we not?

Mr. Bates—I assume that they were.

The Master—Well, why should he state those over again?

Mr. Bates—I think, Your Honor, that if he were allowed to answer the question he would not add any reasons except what are in the resolution. On the other hand, I do not understand—

The Master—What advantage should we gain?

Mr. Bates—I do not understand that he is restricted to the reasons which were given in the resolution, nor do I understand that he is bound by the whole of them. It is sufficient that his reasons were sufficient for voting for it. But if Your Honor thinks—

The Master—I am going to assume that if he voted for that resolution he voted for it for the reasons set forth in the resolution, until I hear something to the contrary.

Mr. Bates—I will waive the question.

Q. Mr. Merritt, did you notice any change in the attitude of the Board of Trustees toward the Board of Directors after Mr. Rowlands became a member, and if so what?

Mr. Whipple—That I object to, if Your Honor please.

The Master—Change in attitude? Shall we not get into a good deal of dispute about what is meant by "attitude" there?

Mr. Bates—Well, Your Honor, they object to the general questions, and they object to the specific questions. The specific questions they object to on the ground that they are leading, and they object to the general questions because they are not. Now, I do not think that we shall get very far adrift if the witness answers this question.

Mr. Whipple—We have not objected to any of your questions because they were not leading. There is scarcely one that you have put that was not leading, in spite of your sanctimonious manner of stating your own virtues.

Mr. Bates—My remarks were addressed to the Court, and I think that it would be wise if you addressed yours to the Court.

Mr. Whipple—I have.

The Master—I am in considerable doubt about asking him a question like that—the change in the attitude of the trustees. It may get us into trouble, I think.

Mr. Whipple—May I add the suggestion that he was not a member of the Board of Directors at all until Mr. Rowlands became a member of the Board of Trustees, so that he was not in a position to observe that attitude?

The Master—Have we got everything that passed, everything that happened, everything that was said or done?

Mr. Bates—I do not think we have, Your Honor.

The Master—Well, so far as we can judge of attitude, must it not be judged from things said or done?

Mr. Bates—Well, I should have followed the question by asking him to give specific instances of what he was referring to, but I thought that the general question was proper first as a foundation for the specific question.

The Master—I am going to admit the question subject to objection, on

your statement that you mean to follow it up by specific instances.

Mr. Bates—Will you answer the question, Mr. Merritt? A. I noticed a change after the meeting of Aug. 12, and thereafter.

Q. And what was the change?

Mr. Whipple—Well, I pray Your Honor's judgment. That is not what—

The Master—This brings him to specify, does it not?

Mr. Bates—Yes, Your Honor.

Mr. Whipple—No; I thought it was to characterize.

The Master—Would this meet your purposes, to ask him for what he noticed, what indications of a change in attitude he noticed?

Mr. Bates—That would be perfectly satisfactory to me, Your Honor.

Q. What indications—

The Master—The fact that I suggest the question does not prevent objection to it, of course.

Mr. Whipple—I understand that the whole matter goes in subject to our objection.

The Master—Yes, but there may be a further objection to this particular question, for anything that I know.

Mr. Whipple—No; I think that it is such an improvement on the Governor's that I do not object to it.

The Master—Ask that question.

Mr. Bates—I readily admit that His Honor improves every question that he states.

Mr. Whipple—I did not suppose that you would admit that anyone impinged on your claim of perfection.

Mr. Bates—There is only one party that has put in a claim of perfection in this case, Your Honor, and that is the honorable gentleman who represents the trustees.

Mr. Whipple—That is the tu quoque retort, which is never very effective.

The Master—Let us get the question.

Mr. Bates (to the reporter)—Will you give the question as framed by His Honor?

The Master—I do not think that I framed it fully. I threw out what I thought might be a hint of what I had in mind as a proper question under the circumstances.

[The question suggested by the Court is read by the reporter as follows: "Would this meet your purposes to ask him for what he noticed, what indications of a change in attitude he noticed?"]

Q. What indications of a change in attitude did you notice?

Mr. Thompson—After Aug. 12.

Mr. Whipple—A change of attitude in whom? In Mr. Rowlands?

The Master—That refers back to the former question, where a change in attitude was inquired about. Can you remind us, Governor Bates, what that change in attitude was?

Mr. Bates—He stated that after a certain time in August there was a change in attitude on the part of the trustees.

The Master—That is what I thought.

A. I noticed that Mr. Rowlands'

attitude toward the directors was one of a kind of resentment, which had not appeared previous to the meeting on Aug. 12, and, coupled with that, it seemed to me—

The Master—Mr. Merritt, I am going to ask you if there is a possible chance of coming more directly to the point. What indications of anything of that kind on the part of Mr. Rowlands did you notice?

Mr. Whipple—May this answer, so far as it went, which is not anything specific, be stricken out?

The Master—I think that I shall strike it out, yes.

Mr. Whipple—Yes.

The Witness—Well, up to that time we had had very pleasant relationship. Then from Aug. 12—

Mr. Whipple—Up to what time? We haven't got that time yet.

The Witness—Aug. 12.

Mr. Whipple—Of what year?

The Witness—1918. Then from that time, our meeting of Sept. 4 and Sept. 11, he evidenced a position taken against the directors as though the directors were endeavoring to dominate the trustees—

Mr. Whipple—Now, if Your Honor please, I move that that be stricken out.

The Master—What did he do or say that indicated to you anything of that kind?

The Witness—He declared that he would not concede any authority by the Board of Directors regarding final authority on editorial matters. There were three or four other specific points which I do not recall at the present moment, but it led me to believe—

Mr. Whipple—I move that that be stricken out, if Your Honor please.

Mr. Bates—The last sentence I have no objection to being stricken out.

The Master—You do not want that, do you?

Mr. Bates—No.

The Master—It may be struck out.

Mr. Whipple—And I ask that it be not printed in the record.

The Master—Strike it out. Let it disappear from the record.

Q. Do you remember Mr. Rowlands' manner at the time of the auto incident that was mentioned? A. I do.

Q. Was that in August? A. Aug. 12.

Q. Won't you describe his manner of discussion or statement at that time?

Mr. Whipple—Now, I pray Your Honor's judgment.

The Master—Oh, I think—

Mr. Bates—I think, Your Honor, that that comes in under the part of the resolution which described his assertiveness—his self-assertiveness.

The Master—If there are any facts regarding Mr. Rowlands' manner, I think that the witness is entitled to state them if he desires—facts that he noticed himself.

A. In answer to the chairman's question to the trustees, why did you purchase an automobile? Mr. Row-

lands was spokesman for the trustees, and he became very angry; he raised his hand—

The Master—You are now describing his manner, you understand.

The Witness—He raised his hand above his head, and brought it down upon his knees, declaring that the directors had no right whatever to ask such a question of the trustees. He raised his voice; he sat upon the edge of his chair to get nearer to the table; his face flushed, in evident violent anger, and he said that he considered that in asking such a question of the trustees the directors were treating the trustees like children.

Q. Do you recall his manner at any other meeting, joint meeting of the two boards? A. Yes.

Q. When? A. At the meeting of Sept. 11.

Q. State what you noticed at that time. A. Well, I thought he became angry again. He did not expostulate as he did on the previous occasion, nor make gesticulations, but the subject called forth from him a vehement statement against Mr. Dittmore.

Q. Do you recall what the statement was? A. No, I cannot give the language.

Q. Can you give the substance of it? A. As I recall it, he declared that Mr. Dittmore had no right to go into the publishing house, or get information from employees behind the backs of the trustees—something of that nature.

Q. Was there any other time that his manner seemed to be that of an angry man, or when you noticed particularly his method of discussion? A. There were two other occasions. One was—I think it was Feb. 21—one of the meetings in February.

Q. And what did you notice at that time? A. I noticed that he took exceptions to something, as he said, that one of the directors had required of him, and became angry over it, as I thought.

Q. And what made you think that he was angry over it? A. Well, because he talked in a loud voice and his face flushed and he had the appearance of it.

Q. Do you remember any other instance? A. The other instance I referred to was at the meeting of March 17, when he was dismissed. He said what I interpreted to be a threat, and while he did not have the real appearance of anger in the sense of the manner in which he conducted himself before, he was very much worked up, I thought.

Q. Did you ever have any talk with Mr. Rowlands in regard to his business and the time that would be required of him as trustee? A. Yes.

Q. When did you have that talk? A. Well, it was on the day of his election to the trusteeship, about the 28th of July, 1917. He was elected to become a member on the 1st of Au-



gust of that year, and I asked him if he intended to come to Boston and get rid of his business and be a real trustee. He said that that was his intention. I asked him how long he thought it would take him and whether he would be able to be present at the trustees' meetings during the interim. He said he thought perhaps it would take several months and that he would come and go from his place of business to Boston, and thought he would be able to take care of it in that way.

Q. Did he put any limit on the time as to when he expected to be able to give his time to the trusteeship? A. Only in a general way, by saying several months. I got an idea that it would be about the first of the year before he would be able to give his entire attention to the trustees.

Mr. Whipple—I would like to have that statement stricken from the record.

The Master—You do not want that in—"I got an idea."

Q. Was there any time put by him in the— A. Not specific.

Mr. Bates—I will have this all stricken out, Your Honor, after I have inquired, unless it should stay in.

Q. Was there anything said by him that led you to think that he would be ready to take up his duties as trustee by the first of the year, and give his entire time to it?

Mr. Whipple—We must object to that. He has stated the conversation. It isn't of any consequence what inference he made from it.

Mr. Bates—I asked if there was anything said by him. That is what I am asking for.

Mr. Whipple—He has given the whole conversation.

The Witness—Only as I stated before.

Mr. Bates—Then let the—

The Master—You will let it all go out?

Mr. Bates—His impression may go out.

Q. Did you know of his absence from Boston in connection with his business engagements? A. Yes.

Q. And was it a matter that in any way interfered with his duties, so far as you know? A. I could only conjecture upon that.

Q. Whether or not there were any meetings that were postponed and that was given as the reason for it? A. There was one meeting that I recall. I think it was the Sept. 11 meeting—I am not sure about that, however—where Mr. Eustace sent word to us that because of Mr. Rowlands' absence they could not meet with us for some time.

Mr. Bates—As I stated to Your Honor, I have not asked this witness in particular in regard to many of these joint conferences, simply because his testimony would be cumulative with regard to them. There is just one more question, Your Honor, which has been suggested to me.

Q. Did the Board of Directors have the advice of counsel in regard to their right to remove a trustee under the deed and under the Manual? A. They did.

Mr. Whipple—Just a moment. Will you read the question?

[The last question is read.]

Q. And that was before you took any—

The Master—One moment. That is the end of the question, is it?

Mr. Bates—Yes, sir.

Mr. Whipple—We object to that. I can't see how that helps at all. These directors had the advice of counsel with regard to things that were in contempt of Court. Not only were they punished for it, but their counsel as well. It does not help them at all if they followed their counsel, and it is not a question here of their motives. The question as to what they—

The Master—I will admit the question subject to objection.

Mr. Whipple—Very well.

A. Yes, they did.

The Master—If that is of any importance, shouldn't you get the date?

Q. That was prior to the action of the directors by several weeks, was it not? A. Yes.

Q. You do not recall the date? A. I think it was March 3.

Q. And from whom—I beg your pardon, Mr. Merritt. Do you recall consulting counsel back in December in regard to that matter?

Q. I do not recall specifically.

Mr. Bates—I think the records fix the time, Your Honor, as being in December.

The Master—Very well.

Q. And from whom was advice taken at that time?

Mr. Thompson—At what time?

Mr. Bates—At the time that the advice was taken in regard to the right of the board, which I think the records fix as being in December. We will show that was the time.

Mr. Thompson—My interest is in what has been already testified to, that he took some advice about objecting to Mr. Dittimore.

Mr. Bates—There has been no such testimony.

Mr. Thompson—Oh, yes, testimony went in very heavily on that.

Mr. Bates—There has been no such testimony.

Mr. Thompson—It has all gone in about advice of counsel.

The Master—I am afraid that my recollection of this long record is not sufficient for the moment for me to settle the dispute between counsel—one counsel asserting that a certain fact is in evidence and the other denying it. I think we shall have to find it in the record.

Mr. Thompson—It isn't of much consequence, except—doesn't Your Honor remember that I was cross-examining somebody here, or perhaps Mr. Whipple was, and we had a great deal of talk about Judge Smith—I think Mr. Dickey was the witness—

telling how Governor Bates said that they had better wait and write some letters so as to get the case better prepared, and then I brought out that Judge Smith had been advising them for weeks about Mr. Dittimore and about Mr. Rowlands also.

The Master—You will have to find the place in the record if it is really important enough to justify searching for it. Meanwhile, are you going to follow up your question as to whose advice was taken?

Mr. Bates—That is where I was interrupted.

Q. Whose advice was taken? A. The advice of the directors' present counsel.

Q. And was the advice of Bates, Nay, Abbott and Dane, and the advice of Mr. Krauthoff, and the advice of Judge Smith, all taken separately and independently? A. Yes.

Q. Each gave you a written opinion? A. Each gave a separate written opinion.

The Master—That, I understand, is all your direct examination?

Mr. Bates—That is all, Your Honor.

Mr. Thompson—I think it is about time for a recess, isn't it, sir? It is half-past 11.

The Master—Would you like to take a few minutes at this stage?

Mr. Whipple—I had just as lief go ahead. It doesn't make any difference to me.

The Master—Whenever it is convenient to counsel; rather now than later.

Mr. Whipple—If we take a short recess I wouldn't mind.

The Master—I will limit it, if it is desired.

Mr. Whipple—Five minutes?

The Master—Suppose we go on at 20 minutes of 12. That will give us seven minutes.

[Short recess.]

Cross-Examination  
On Behalf of Trustees

Q. (By Mr. Whipple.) Mr. Merritt, I want to direct your attention to the matter of conferences which you have testified about between the boards of the trustees and directors. You remember you testified about different matters that were brought up? A. Yes, I remember it.

Q. Covering what period did you say those conferences were? A. You mean when I was a trustee?

Q. Yes. A. Well, between the 1st of February, 1917, and Aug. 1, 1917.

Q. Now, the first that you mentioned was the purchase of a large printing press? A. Yes.

Q. When was that? A. As nearly as I can recall it was at the end of March, 1917.

Q. Have you found any record of it either in the directors' or trustees' records? A. No, sir.

Q. But you remember there was a conference? A. Yes.

Q. Who was present? A. The three trustees and the five directors.

Q. Now, won't you narrate the conversation, giving us a statement of who introduced the subject, and what he said, and what was said on the other side by any other people? A. Mr. McKenzie on the part of the trustees introduced the subject of the purchase.

Q. Tell us what he said. A. Well, he said, in substance, that it was evident from the operation of the Publishing Society affairs that we should have a press which would do the work of the Sentinel specifically, and with certain changes with the presses now in use—at that time—the operation could go into satisfactory effect, and that it would necessitate the purchase of a large press. I have forgotten how much it cost, perhaps \$30,000.

Q. Is that all he said? A. In effect.

Q. Didn't he say that they had had some conference with the business manager about it? A. I don't remember that.

Q. But, at all events, it was a pretty large outlay? A. Yes. Mr. McLellan replied to him, as spokesman for the directors, and he said, in substance, that he could say from his understanding of the affairs of the Publishing House that the reasons given were satisfactory and that the directors would concur in the expenditure.

Q. And that was the substance of what took place? A. Yes.

Q. You recognized that that was an expenditure of a pretty large sum of money? A. Yes.

Q. And it might be that it would reduce the income or net profits temporarily? A. Yes.

Q. And possibly it would ultimately increase them? A. That was the idea.

Q. It was a matter under consideration of business judgment, to determine what was best to be done, in its financial aspects? A. Yes.

Q. As affecting the income which would ultimately come to The Mother Church? A. Yes.

Q. Have you ever been a trustee before? A. Of the publishing house?

Q. No, of anything—of estates, or anything like that? A. I think not.

Q. You know, I take it, generally, being a man of affairs, the duties of a trustee in relation to those for whom he holds property in trust? A. In general, I do.

Q. You know that if any action is to be taken by a trustee which is likely to diminish or may diminish his beneficiary's income that it is a matter of importance to the beneficiary, anyway? A. Yes.

Q. You know that if such a trustee should go ahead and make a major expenditure which happened to turn out wrong he might be severely criticized by his beneficiary? A. Yes.

Q. But that if he consults with him in advance, and talks it over with the beneficiary in order to get his views or assent, he is not as liable to criticism? A. No.

Q. So that you know that in a well-regulated trust it is not unusual for the trustees to desire in advance to confer with the beneficiaries and get their views with regard to expenditures which may temporarily reduce the income? A. Yes.

Q. Or which require and involve a business judgment? A. Yes.

Q. That if they do that the beneficiaries or representatives of the beneficiaries are likely to be foreclosed from criticism? A. Yes.

Q. You quite realize that, as a business proposition? That is true, isn't it? A. Yes.

Q. And this was exactly that case presented, wasn't it, or practically that, as you have described it yourself? A. It was practically that.

Q. And you, being charged with the responsibility of determining upon this large expenditure, desired in advance to get the assent and approval to it and of the whole scheme, of those who represented the beneficiaries, did you not? A. I said to the trustees—

Q. No, pardon me. Did you not? A. Yes.

Q. Yes, thank you. Now, the second thing that you mentioned was the publication of a pamphlet called "Joy"? No such pamphlet was ever published, was there? A. I don't know whether it was ever sent out or not.

Q. Why, you were a trustee at the time, weren't you? A. Yes.

Q. And if you remember a conference about it, don't you know whether any such thing was ever sent out? A. I do not.

Q. Or ever printed? A. We had the meeting, however, and whatever happened afterwards I do not recall.

Q. Now, when was the meeting? A. Well, the records will show, I couldn't give you the date.

Q. Your records—you were recording secretary? A. My records, yes.

Mr. Whipple—1917. Just let me take the records, whatever they are, during this period.

Q. Perhaps you will find it in the records, Mr. Merritt. You are familiar of course, with the records, because you were recording secretary some of the time? A. Yes.

Q. Perhaps you can find it. (Handing records to witness.) Here is the record book from February until April. (Handing another book to witness.) A. I think it was in this one.

Q. If you will keep them right here, we shall need to use them. A. (Examining records.) I can't find it.

Q. You don't find the reference to it? A. I only remember, Mr. Whipple, that Mr. Ogden, business manager, came into the meeting and had a collection of articles that he wanted to put into a pamphlet, and, as I remember it, the caption was "Joy." I may be mistaken about the caption, but the incident occurred, and that is to what I referred specifically.

Q. But you have been through the records covering the period while you were trustee and you find no reference to it? A. Yes; only in a cursory way, however.

Q. That is not a matter of consequence, except that I thought that it might help us to fix the date and fix the episode. Well, now, you say it came up in this way: That Mr. Ogden, the business manager, brought in a collection of articles, or a collection of articles, which had been published? A. Yes.

Q. And some one made the suggestion that they be put out as a pamphlet? A. Yes.

Q. Under the heading of "Joy," as you remember it? A. Yes.

Q. As you remember it, although I take it you are not quite certain as to that? A. Not quite certain.

Q. Did the trustees reach a conclusion about it, do you remember? A. Yes; the trustees reached the conclusion that they wished to publish it.

Q. Well, very well. Then there was a meeting between the trustees and the directors, was there? A. Yes.

Q. Where, at the directors' board room? A. At the directors' room.

Q. What was the talk, and who made it? A. Well, I do not remember specifically; it was not a meeting—

Q. Who was the spokesman? A. It was not a meeting specifically upon the pamphlet; that was only introduced incidentally as one of the things which they discussed.

Q. Well, I do not find, either in the directors' meetings or in the trustees' meetings any reference to it being brought up at such a conference? A. Well, it is only my memory about it.

Q. And we do not find any pamphlets or articles issued under that name. Perhaps you are mistaken about the name. Don't you think so? A. I may have been. I remember the incident, that was all.

Q. Well, the directors made no objection to the publication? A. Not at all.

Q. You cannot remember the conversation? A. No; it was a concurrence.

Q. It was a concurrence? A. Yes.

Q. Well, if they both agreed you would really expect there would be such a pamphlet? A. Yes; I thought there would be.

Q. You don't think you ever read it, do you? A. No.

Q. Or have seen it in print? A. I saw the separate articles before they were collated.

Q. Yes; but those were articles which had been in one of the publications? A. Yes.

Q. Well, the undertaking to print and circulate a pamphlet of that sort involved some expense, did it not? A. Yes.

Q. And considerable expense? A. About a cent apiece.

Q. Any income from it? A. Oh, yes.

Q. What? A. In volume, you mean?

Q. No. How much—a substantial income or small, Mr. Merritt? A. Well, it was comparatively small.

Q. It wasn't a financial matter of great magnitude, then? A. They were not put out for the purpose of making money, particularly.

Q. But there was some profit on them? A. Yes.

Q. Or would be if they were purchased? A. Yes.

Q. The question was as to the wisdom of putting out such pamphlets to the field to accentuate the attention of the reading public to them? A. Yes.

Q. That was the thing to be considered. On that you as a trustee wanted the concurrence of the directors? A. Yes.

Q. The third you mentioned was whether there should be an increase in the price of the periodicals? A. Yes.

Q. Well, that was a pretty serious step, wasn't it? A. Very.

Q. On the part of the trustees? A. Yes.

Q. If the field didn't approve and the purchases fell off the Publishing Society might find itself in a very serious condition financially? A. If, yes.

Q. A very grave loss might occur? A. Yes.

Q. Again, here was a matter of business judgment, likely to affect the income which would go to The Mother Church? A. Yes.

Q. Just the sort of matter we mentioned a moment ago, where a prudent trustee, contemplating a matter of that sort, would like in advance to share the responsibility with the beneficiary? A. Exactly.

Q. Instead of going ahead on his own responsibility? A. Yes.

Q. But of course, as you know, in the ordinary case of a trusteeship, no matter how much the trustee consults with his beneficiary, ultimately the responsibility is that of the trustee? A. I thought it was with the directors.

Q. No. I am not talking about this case, you know. I am talking about the case of the ordinary trusteeship. That is, no matter how much he consults with his beneficiary it is the trustee who is finally responsible for what he does? A. Yes.

Q. And is held responsible, as he knows very well, when he is called into the Probate Court to settle his accounts? A. Yes.

Q. You know that? A. Yes.

Q. But of course he likes to get in advance the assent of his beneficiary? A. Yes.

Q. Because that sort of protects him against criticism? A. Yes.

Q. You agree with that, don't you? A. Yes.

Q. As a general proposition? A. Yes.

Q. The next was the employment of a New York artist in the make-up

of the front page of the Sentinel and of The Monitor? A. Yes.

Q. That was not a very important matter one way or another, was it? A. No.

Q. The question as to whether it was good judgment to change what the field had become accustomed to in regard to periodicals? A. They had consulted with this man the year before, or perhaps a little longer before that time, and it was a matter of getting his further judgment upon some change that was to be made.

Q. That is right. And it was thought wise to talk it over with the directors? A. Yes. They concurred with the directors on everything while I was there.

Q. Yes, of course. And they did on this? A. Yes.

Q. Who put this up to the directors—the trustees? A. Yes.

Q. Who put up the question of the purchase of the printing press? A. The trustees.

Q. Who put up the question of increasing the price of the periodicals? A. The trustees.

Q. Then I should think that the directors concurred with the trustees when the trustees made propositions—shouldn't you? A. They surely did.

Q. Yes, that's it. You were reversing it the other way, because I suppose when you became a director your point of view was reversed—you were looking backward instead of forward? A. It was not; it never has been reversed, Mr. Whipple.

Q. It never has been? A. No.

Q. You were fortunate in your position in that you did not get a new angle of view. A. I did not.

Q. I congratulate you. A. Thank you.

Q. Now, you say there were no conferences on the question of salaries? A. There were conferences on the question of the salaries of employees of the publishing house.

Q. I thought you said that there were not any. A. Not on the question of the salaries of appointees, while I was trustee.

Q. I see. Now, the salaries of the employees of the publishing house, if they were large, affected the income? A. Very much.

Q. If they had too many, or too high-priced, as a matter of business judgment, the income would thus be reduced, or might be? A. Yes; but that was not quite the idea, if I may explain?—

Q. I won't venture to ask you to explain now. I am asking you to assent to the proposition which I put. A. Yes.

Q. Because if it were a mere explanation, Mr. Merritt, I would not object for a moment, but so often— A. Well, it won't hurt anything.

Q. —but so often these explanations run off into argument. But, really, you are so candid about these things, that if you want to explain

that, I am going to suggest that you do it, because I think that you have been pretty frank in your statements. A. Well, it was only a matter of having both lists of salaries in the church and in the publishing house conformed.

Q. Coordinated? A. Coordinated.

Q. Yes. I am glad that I asked you to explain, because I think you were very candid, and it was a real explanation, and not something under the guise of one.

Mr. Bates—Why fill up the record with all your comments?

Mr. Whipple—Well, don't get restless, Mr. Bates.

Mr. Bates—I am not restless, but we are paying the bills.

Mr. Whipple—Oh, no, you are not. Well, if you are, you ought to.

Q. Now, you said there was a conference with the directors regarding the situation left by the death of Mr. McLellan? A. Yes.

Q. That was the next thing you mentioned? A. Yes.

Q. Well, of course that was quite a shock? A. It was.

Q. The sudden death of a prominent leading man? A. Yes.

Q. Surely those in authority would confer about it? A. Yes.

Q. You had to fill a place as editor of the journals and also of the leading position in the Board of Directors? A. Yes.

Q. And they wanted you to go on to the Board of Directors? A. Not in a leading position, though.

Q. No, because you were too modest. They knew you would fill it very effectively, but they wanted you to go on to the board? A. Yes.

Q. And you consented? A. Yes.

Q. Now, you say—I think I have covered now the series of things the way you remembered of there being conferences—but now, Mr. Merritt, speaking generally with regard to conferences, whether the ultimate authority of determining questions for the publishing house rested with its trustees or with the directors, coordination, cooperation, friendly conferences on every subject of importance were desirable, were they not? A. They were.

Q. Absolutely essential? A. Yes.

Q. That's right. So the fact that there were conferences, friendly, an attempt to cooperate and coordinate, or coordinate their activities, was a proper thing, no matter where the ultimate decision was to rest, whether with the directors or the trustees? A. You don't want me to explain that, do you?

Q. No; I want that answer. I don't want that—well, I want the answer first, and then we will see about the explanation. It was perfectly proper, wasn't it? A. Yes.

Q. And desirable? A. Very.

Q. No matter who was ultimately to decide? A. No.

Q. What? A. No matter.

Q. No matter who was ultimately

to decide. Therefore the fact that there were friendly conferences is a fact merely showing that the boards, without a question as to who ultimately decided the question, were getting along very well together, and in a way forwarding the best interests of the movement? A. Absolutely.

Q. That shows it? A. Yes.

Q. What did you want to explain? A. I wanted to explain that it seemed to me that the trustees wanted to take the bit in their own teeth.

Q. Well, now, you see that that is a sort of a prejudicial, argumentative statement, and it is such a departure from your entire manner heretofore—A. But it was so evident!

Q.—as to lead me to think that you are affected. A. Well, but it was so evident, Mr. Whipple, that you couldn't get away from it.

Mr. Whipple—Well, I will not ask to have that stricken from the record—

Mr. Bates—I wouldn't; you asked for it!

Mr. Whipple—Oh, no, I did not ask for it, but I could see that Mr. Merritt wanted a little mental relief; he wanted to get something off his mind. Now we will go on with putting questions that bear on the case; and it is always a good idea to let a witness get something off his mind when he feels it very strongly.

Q. Well, the next thing you were asked about was the salaries of the directors. A. Yes.

Q. So you consulted legal counsel to see if you could increase your salaries?

Mr. Thompson—What kind of counsel. Mr. Whipple?

A. Wouldn't you have done so?

Q. Oh, you must not ask me questions. A. Oh, pardon me.

Mr. Whipple—I should, but they say that lawyers are not bound by the Manual.

Q. Now, you consulted legal counsel. Now, you must have had some doubt, then, if you consulted legal counsel about the propriety of your increasing your salaries, didn't you? A. That is a very astute way of putting the question, but—

Q. Oh, no. Just answer it astutely, or some other way. You must have had some doubt? A. I didn't think that it was a matter so much of doubt as to get the true opinion from those, who we thought, would be able to give it to us.

Q. Yes. Was there any question that the services that you were rendering were commensurate with an increased salary? That was not what you asked a lawyer about, was it? A. No.

Q. The board itself could decide as to whether, judging the activities of men in business life, they were receiving as much for what they were doing as they ought to have—you didn't need any lawyer for that, did you? A. No.

Q. You could make up your own

minds whether the services that you were performing for the Church merited as much as \$10,000? A. Yes.

Q. You didn't need any help on that proposition? A. No.

Q. You, as a business man, with all your experience, knew more about that than even your distinguished counsel, didn't you? A. No, I wouldn't say that.

Q. Didn't you? Well, you have more knowledge of what business men get for business work in business enterprises, than some lawyers, anyway? A. Perhaps.

Q. Yes. So it must have been something else that you wanted to ask the lawyers about? A. Yes.

Q. Yes. You bore in mind that the sacred and inspired Manual of Mrs. Eddy, one that had her approval, that never had been changed, that was existing and of binding force when you went to the lawyers, read as follows: "The salary of the members of the Board of Directors shall be at present two thousand five hundred dollars each annually." That is so, isn't it? A. That is so.

Q. Yes, when you went to the lawyer about it. Well, now, that by-law has not been changed, has it? A. No, it never will be, I suppose.

Q. No, it never will be. The by-law approved by your great Leader. A. Yes.

Q. Sacred and inspired. A. Yes. Let me tell you something—

Q. No, no, no; don't tell us anything. We are talking about Mrs. Eddy now. Don't break in with anything that is otherwise than serious. A. Yes.

Q. And that was left by her as a legacy to her church, that by-law among others? A. Yes.

Q. And you went to the lawyer about it? A. Yes.

Q. Now—A. Are you going to leave that question there? I would like to tell you something about it.

Q. Well, I don't doubt that you would, but Mr. Dickey wanted to, too, and I supposed that when his counsel reexamined him they would ask him something, but they did not, and apparently they are not going to give you a chance. But we have got it in. You got two lawyers' advice about it, and you had the Manual right before you. So I think that if you explain it will have to be under the direction of some other interrogator. You would just as lief wait, wouldn't you? A. If you insist.

Q. Well, I guess I will. Well, now, you said you noticed a sort of—you noticed something about the attitude of the board of trustees after Mr. Rowlands came on the board—that is the question that was put to you? A. A year after.

Q. Oh, it was not till a year after. And it was after Mr. Ogden was on the board, too, wasn't it? A. A year after, yes.

Q. Well, I see. The question was

whether you noticed something after Mr. Rowlands came on the board, and there was a sort of implication that Mr. Rowlands had done something. You noticed it about the whole board, didn't you, a year after? A. Yes.

Q. And what you noticed was—the first thing you mentioned was that none of them would concede the final authority of the directors? A. Yes.

Q. Well, now let me ask you—A. That was one thing.

Q.—can you state, from your experience as a director or as a trustee, any actual, real thing that the directors ever asked the trustees to do, or to cooperate in doing, that the trustees didn't do—I mean any real thing—not signing papers, and admitting authority, and things like that, but any real, practical thing—can you name one? A. Why, they exploded all of the pleasant relationships which had preceded the meeting of Aug. 12 between the two boards.

Q. Now, you see, you will agree that that is not a fair answer. That is an inference. We should retort that the directors exploded them, and we would not get anywhere. You understood my question, didn't you—any practical thing as to the administration of this trust that was suggested by the directors that the trustees didn't assent to? A. I don't remember any.

Q. Well, that's it. It would look, then, as if you split on a theory. A. No, I think not.

Q. Well, perhaps not. But there was no practical thing that you requested their doing, or suggested their doing, on which there was any split—any real thing—was there? Well, you have said not, and I won't press it. A. Isn't motive a real thing?

Q. Well, it is not a practical thing like buying a printing press. A. No.

Q. Now, as to the manner, what you said about the manner of Mr. Rowlands, generally speaking you found Mr. Rowlands a pretty mild-mannered gentleman, didn't you? A. Fine!

Q. Rather a genial, friendly man? A. Yes.

Q. Of most agreeable manners and temperament? A. A splendid gentleman.

Q. Yes. A business man of rather high type? A. I did not know him as a business man particularly, but from all I have heard I think he is.

Q. Well, you can judge that, with all your experience—A. I judge that he is.

Q. And wouldn't you say, on your judgment, that he is a business man of a pretty high type? A. Yes.

Q. Well, now, let us see what he did. When Mr. Dickey attempted to reflect on the Board of Trustees because they had bought a Franklin automobile—do you know what it cost? Did you inquire, or didn't they get as far as finding out? A. He didn't give us a chance to get that far.

Q. That's right. But it was not an expensive automobile, was it, an ex-

pensive type? A. I don't know. Ask Mr. Dittmore.

Q. Was he the man that—

Mr. Thompson—The cheapest kind there is!

Mr. Whipple—The cheapest there is.

Q. They bought this automobile so that they might have it for the economy of time, if their time is worth anything, in getting about, both the trustees and the employees—when that criticism was voiced at the directors' meeting Mr. Rowlands' rather mild manner deserted him for the moment, didn't it? A. Yes.

Q. Every evidence of a virtuous indignation? A. Rather an explosion.

Q. An explosion. Didn't he say that it was so contemptibly trivial that it ought not to have been brought up between two boards charged with the responsibilities of these two powerful boards—too trivial? A. I think he used that language among some other.

Q. In substance. And he said that if the directors really objected he would buy one himself? A. He may have. I don't remember his saying that, but there was an explosion going on. I don't remember it.

Q. Well, you heard Mr. Dickey testify to it, that Rowlands said he would buy it himself and pay for it himself if there was any criticism? A. Yes.

Q. Didn't you think that it was pretty cheap business? A. No, because of the question—

Q. All right; all right, if you didn't. How long had it been since you had increased your salaries under the advice of counsel from \$2500 to \$10,000—how long had it been since you had passed that vote? A. Why—

Q. A few months? A. Yes, six or eight months.

Q. And still you didn't think this criticism of their getting the cheapest kind of automobile that they knew about that they could get was pretty poor business? A. But there was no criticism.

Q. Oh, wasn't there any criticism? A. No.

Q. Oh, there wasn't any? A. That was not the question.

Q. Oh, what was the question about the automobile? A. Mr. Dickey asked the trustees the reason for the purchase of the automobile.

Q. I see. Yes. Now if I may interrupt, you had just been advised by distinguished counsel, Judge Smith, and later by Governor Bates, to make inquiries as frequently as possible, hadn't you? A. No, not before that time.

Q. Oh, pardon me. Hadn't you? A. No.

Q. Perhaps not. This was one of your inquiries on your own hook. Had you talked it over before the meeting? A. Not particularly.

Q. Well, had you discussed it somewhat? A. It was only incidental.

Q. Incidental. Mr. Dickey said he wanted to know the reason why they had got it? A. Yes. I cannot give the

exact language of the question, but that was the substance.

Q. Yes. With the exercise of that judgment and sagacity for which your chairman was justly famous, could he not, don't you think, have divined that they had got it to ride in? Well, I will not press that, because that is too elementary. They got it to ride about in, you know, that is what they use automobiles for. But your chairman wanted to know what they got it for. Now, let us see. At the meeting of Sept. 11, you thought he showed some anger because he made a vehement statement against Mr. Dittmore? A. Yes.

Q. Well, that was almost a custom of the Board of Directors, wasn't it? A. No.

Q. Hadn't you heard some of them make vehement statements against Mr. Dittmore? A. Yes.

Q. Yes, that is right. I suppose you regarded it as peculiarly the duty and the function of the directors themselves to make vehement statements about Mr. Dittmore and that the trustees ought not to encroach on their special privilege. Was that your thought about it? A. No, I didn't think that.

Q. By the way, in these discussions with the Board of Directors when they got really excited, one of these poor trustees had to raise his voice pretty loud, didn't he, to make any impression? A. They never were there when the directors got excited.

Q. I see. Well, in these conversations as to what the trustees should do, didn't Mr. Dickey ever raise his voice at all? A. Yes, he raised his voice beyond the normal pitch.

Q. Yes, that is right. And, to make an impression, Mr. Rowlands had to raise his voice beyond the normal pitch? A. Yes.

Q. To be heard. Very naturally, if you are earnest, you raise your voice. I have forgotten those other occasions. You said he took occasion at one time, took exceptions to something one of the directors had required of him, but you could not tell what it was. Do you remember now what it was that Mr. Rowlands took exception to when the directors required something of him? A. It was about the Harvey letter, I think.

Q. Oh, the Harvey letter. What did the directors require of Mr. Rowlands that made his face flush? A. No, they did not require anything of him.

Q. If you will pardon me, that is what you said. I speak subject to correction, but I took it down that he took exceptions to something one of the directors had required of him. You told us you could not remember what it was, but his face was flushed, and he raised his voice. A. Yes, he told the directors that one of the directors had tried to unduly influence him.

Q. Well, was that all? A. That was the substance of it.

Q. That one of the directors had endeavored unduly to influence him. Is that all? A. That was the substance of it.

Q. And his face flushed when he said it? A. Yes, it was a considerable conversation which I am not able to—

Q. Is that all you remember about it? A. That was the point of it.

Q. That is all you can remember of the incident? A. Practically.

Q. Did the trustees have conferences with the editors while you were a trustee? A. They only had conferences with Mr. Dixon, never with Mr. McLellan.

Q. Well, Mr. McLellan was a law unto himself? A. Yes, I believe it was so considered.

Q. But did they have conferences with Mr. Dixon? A. Yes, every week.

Q. Well, now, are you sure about Mr. McLellan, about having conferences with him? A. They were arranging for a meeting with Mr. McLellan.

Q. Well, now, don't embark on the sea of doubt. Let us get your own records about it of March 28 (passing a record book to the witness). Let us see what we find there. That is your own record, isn't it? A. Yes.

Q. What does it say about that? A. It says:

"The request of Mr. McLellan to republish Mr. Edward A. Kimball's article which appeared Aug. 15, 1903, 'Integrity of Christian Science Literature,' was taken up again, and in connection with an article written by Mr. McLellan Sept. 19, 1903, 'Unauthorized Literature,' the opinion of the trustees declared that this article by Mr. McLellan, while it had already been reprinted, should be printed again with Mr. Kimball's article. The trustees requested that both articles be reprinted again conjointly." He was not in conference.

Q. He was not in conference? A. No, not at all.

Q. And you never asked him to come? A. We were arranging for a meeting previous to his sudden passing on.

Q. Do you remember what the subject was that you were going to take up with him? A. We were going to take up the general question concerning the editorial policy with him.

Q. How was this request of Mr. McLellan to republish Kimball's article made? A. I think some one called for it.

Q. Called for what? A. For the article to be republished.

Q. No, but the request of Mr. McLellan. How was that made to the Board of Trustees? A. He sent a note to us.

Q. What was done with the note? A. Why, the business manager took it.

Q. Now, you say Mr. Dixon you conferred with weekly? A. Yes.

Q. Didn't Mr. McKenzie come be-

fore you? A. Not while I was trustee.

Q. Let's see. Under date of March 19 I have a memorandum indicating something about him. A. He was a trustee all the time I was a trustee.

Q. He was not, then, an editor? A. No.

Q. Well, then, he was with you all the time, but not as an editor. Now, let us see. On Aug. 9 you said that there was a change of The Monitor from an evening to a morning edition? A. Yes.

Q. And there was a conference with the board about that. That was Aug. 9, 1917, was it, or 1918? Was that just after you became a director? A. 1918.

Q. In 1918. And you say that that proposition was presented by Mr. Eustace? A. As I remember it.

Q. You said that Eustace related the proposition? A. Yes.

Q. Well, he must have presented some considerations in favor of it. What were they? A. Oh, yes; he went over the history of The Monitor, as I remember it, and presented a considerable argument in favor of the change.

Q. Persuasive argument, was it? A. Giving facts and probabilities after the change was made.

Q. And recommending it? A. Yes, and recommending it.

Q. And the directors concurred? A. Yes.

Q. Aren't you mistaken about Mr. Eustace being there at all? A. Well, I would not say. As I remember our conferences, Mr. Eustace was generally the spokesman, but once or twice Mr. Rowlands was. Now, it may have been Mr. Rowlands.

Q. I merely suggest it as indicating the infirmity of one's memory on matters of that sort and putting on to the lips and into the mouth of a man things that he is thought to have said; but, in point of fact, Mr. Eustace was in California at that time, wasn't he? A. Then it was Mr. Rowlands that made the presentation.

Q. That is right. If it wasn't one, it was the other? A. Yes.

Q. It isn't a matter of much consequence? A. No.

Q. Except as showing the infirmities of human memory. Now, as to the real reason why the directors pitched on to Mr. Rowlands for removal, you have heard read the letter of Mr. Rathvon of your board, dated April 15, and addressed to Judge Hanna, haven't you? A. Yes.

Q. Did you see it before it went? A. No.

Q. But you have heard it since you came into court? A. Yes.

Q. And you notice, in referring to those reasons, and the comments and conjecture throughout the field at your pitching upon Mr. Rowlands, he said that the facts are simple enough: "He was the last man appointed, had large business interests, which required a great part of his time, and not being a teacher had no association of students who would be greatly

embarrassed if their teacher was officially discredited, and that it was hoped that the removal of anyone would open the eyes of the others." You heard that, in substance? A. Yes.

Q. You remember those things being talked over along that line—A. Yes.

Q. —in the board? A. Yes.

Q. But until we got hold of this letter of Mr. Rathvon's, you had not seen anything of that sort expressed, or hadn't heard anything expressed as that being the real reason you pitched on Mr. Rowlands? A. By whom?

Q. By anybody, until you got hold of this letter of Mr. Rathvon's? A. Well, all that—

Q. I mean—if I may interrupt—none of those things was in the reasons for his removal in your "Whereases"? A. Not specific.

Q. By the way, by whom were those "Whereases" drawn up? I mean the "Whereases" in the—A. I did not see them drawn up, Mr. Whipple.

Q. Well, didn't you learn who drew them up? Who produced them to you? A. I think Judge Smith did.

Q. Yes. He produced them to you, didn't he? A. Yes. He was asked by the directors to do so.

Q. To do so. That is it. I am asking that because the Governor said a little while ago that it hadn't been shown that counsel drew them up, and it had not been shown then. Now, you have told us something about this meeting of Sept. 11, haven't you, and Mr. Rowlands' manner and attitude at that time? A. Yes.

Q. Did you hear read the excerpts from the records of the trustees about that meeting? A. What meeting?

Q. The meeting of Sept. 11. A. Did I hear read the excerpts?

Q. Yes; your counsel, Mr. Krauthoff, put it in, and I don't want to reread it into the record. A. When was it read?

Q. Well, it was a good while ago, when Mr. Krauthoff was reading the records.

Mr. Strawn—Page 328 of the printed record.

Q. It was Exhibit 366. A. I heard it.

Q. Now, it begins:

"A general discussion was had upon the questions concerning the Deed of Trust. At 12:15 p. m. the trustees went over for a conference with the Board of Directors. The members of the Board of Directors present at the conference were Adam H. Dickey, James A. Neal, John V. Dittmore, Edward A. Merritt."

Do you remember the record pretty well? If not, it would be fairer to let you take it and run your eye over that record, and state any inaccuracies, if any, that you see in that record, either as to what was said or what was done, or the positions taken by the respective parties. A. (Examining record.) Yes, I remember it, Mr. Whipple.

Q. I didn't quite catch your answer, Mr. Merritt. A. Yes, I remember it.

Q. Well, I asked you whether you would say that that was a fair representation—A. Of their position, yes.

Q. Of their position? A. Yes.

Mr. Whipple—That, if Your Honor please, is already in the case and is Exhibit 366. I thought it best not to ask to have it go into the record again but let it appear that Mr. Merritt has been good enough to read it through, and then makes the response that he did.

Q. It is with reference to the same meeting that, in your own records, certified to by you—that is, a meeting of Sept. 11, 1918—that the only reference in the amended record prepared by Judge Smith is this:

"The trustees of The Christian Science Publishing Society met with The Christian Science Board of Directors for the consideration of the pamphlet 'Purification,' and stated their view of the relations and respective responsibilities of these boards as the same are determined by the Church Manual and the Deed of Trust described in Article XXV, Section 1. The directors were unable to agree to or even acquiesce in the views expressed by the trustees, but deferred making a definite statement of the directors' views until it could be carefully prepared."

That is all you have in your records, as prepared by Judge Smith, is it not? A. Yes.

Q. Well, you have already said that the statement of the views in the records of the trustees is a correct statement, according to your memory, as they were made at the time by the trustees? A. Yes.

Q. It said that the views of the directors—a definite statement of their views—would be postponed "until it could be carefully prepared." Prepared by whom? A. The directors.

Q. Well, the directors, was it, or really Judge Smith? A. Under the authority of the directors.

Q. Well, who prepared it actually when you did get it carefully prepared? A. Why, I presume it was referred to Judge Smith.

Q. And he prepared it, didn't he, and then presented it to the directors? A. Yes; and it was carefully gone over and reprepared.

Q. Yes; but the draft of it, the original draft of it, was committed to Judge Smith, was it not? A. After he had received from the directors the substance which the directors wished to go into the paper.

Q. That is, he sort of polished it up and put on the final finish? Would that be a fair statement of it, Mr. Merritt? A. I guess so.

Mr. Bates—I couldn't hear your question, Mr. Whipple, you made it so low.

[The question is read by the stenographer.]

A. Yes.

Mr. Whipple—That is all, if Your Honor please.

#### Cross-Examination

##### On Behalf of Defendant Dittmore

Q. (By Mr. Thompson) Mr. Merritt, have you in mind now, with any degree of vividness, what was said at that meeting of Sept. 11, that Mr. Whipple has just been asking you about? I do not ask what was said, but does it come back to your mind now as something that you could remember if you had to? A. Yes; I have just read the trustees' full records and it comes back vividly to me.

Q. You knew, did you not, that, at least from some time in 1916, Mr. Dittmore was keeping pretty careful notes of what took place in these meetings? A. Yes; but I didn't know myself of that February, 1916, meeting.

Q. No, I don't believe you quite get the question. I didn't ask you anything about the February meeting. I said that you were aware of the fact that Mr. Dittmore was trying to keep pretty careful notes of what occurred at the directors' meetings, was he not? A. After I entered the board, yes.

Q. After you entered the board. And on this very day, Sept. 11, you remember, don't you, that Mr. Dittmore didn't do much talking himself but was there taking notes of what was said? A. He was always writing.

Q. Well, I don't ask what he was always doing, but what was he doing on that day? A. He was taking notes.

Q. In fact, some comment was made—now please confine your answer right to that particular date—some comment was made, on that very day, afterwards, was there not, by you or somebody, to the effect that he must have a pretty careful account of what the trustees had said at that interview? Don't you remember mentioning that subject to him, merely by the by? A. I do not. I may have, but I do not remember it specifically.

Q. It wouldn't surprise you if you had— A. No.

Q. —expressed some gratification that he had made such a careful record of what the trustees had said on that occasion? A. I talked to him a good deal about his notes.

Q. Well, let us keep right to this thing. You remember being rather gratified to find that he had made a pretty careful set of notes of what these trustees said on that occasion, don't you? A. Well, I don't specifically remember that, as I have said.

Q. Well, you knew that he had been taking down pretty carefully what was said? A. Yes.

Q. Now, I wonder if your memory, as to that meeting, and what really happened there, would be at all refreshed if your attention was called to what Mr. Dittmore did take down on that day. Do you think it would help your memory of some little particulars that you might have forgotten otherwise of what was said by Eustace and yourself or some others? A. It might.

Q. Well, the time occupied was from 12:15 to 3:30, he says. Does that correspond with your recollection? A. Yes.

Q. Do you remember before the trustees came in that Mr. Dittmore had asked the Chair, who was Mr. Dickey, two or three times, why they didn't suspend their other business—the directors—and try to prepare for the interview by talking over the position of the directors and what they were going to state? Do you remember Mr. Dittmore's urging that on the meeting before the trustees came in? A. Well, I will admit that he may have said that.

Q. Well, now, when the trustees first came in do you recollect that Mr. Dickey began to do the talking? A. Yes.

Q. And Mr. Dickey apologized, didn't he, to the trustees, for the attitude that he had taken previously with them, and protested that he had meant no harm and no affront, and that he was sorry for anything in his previous statements that might have led them to take offense? Isn't that the substance of what he said at first? A. I think so.

Q. Had you ever heard Mr. Dickey at any of the previous interviews with the trustees say anything or act in a way, by tone or manner, which would call for an apology? A. Well, he may have been severe in talking about the "Purification" pamphlet.

Q. Didn't he sometimes raise his voice just a trifle in talking matters over with the trustees? A. Oh, yes.

Q. And didn't he sometimes raise his hand, I won't say his fist, and bring it down rather heavily on whatever was in front of him? A. I don't remember the hand.

Q. Well, do you remember anything else that he did in the way of violence or extreme exhibition of emotion, when he was discussing matters with the trustees? A. Nothing more than raise his voice.

Q. Did he get red in the face occasionally? A. Yes.

Q. Sometimes cry, did he, up there? A. No.

Q. Well, then Mr. Rowlands, when he could get in a word, after Mr. Dickey's apology, said that things had come to a time when they ought to be settled, didn't he? A. Yes.

Q. Now, see if you can recollect this: Mr. Rowlands said, "The publishing of the pamphlet is entirely in our hands, as it is, according to the Manual and the Deed of Trust." Do you remember that? A. Yes.

Q. Mr. Rowlands, "We are not called upon to countenance anything like this." A. Yes.

Q. And then Mr. Dickey said, "Well, the pamphlet is not going to do any harm, anyway." Do you remember that? A. I don't believe I remember that specific statement.

Q. See if you cannot refresh your mind a little and think a little about

it. Don't you remember Mr. Dickey, in an effort to placate these gentlemen and avoid trouble, right after his apology, saying, "Well, the pamphlet isn't going to do any harm, anyway"? A. No, I don't remember that.

Q. Would it assist you to remember it if you should see the entry of it here in the notes?

Mr. Bates—That is not his entry.

A. I don't think so.

Q. That wouldn't help you. You have no reason to suppose Mr. Dittmore didn't take it correctly, have you? A. Oh, no; I would admit that it was possible Mr. Dickey said such a thing but I do not remember it.

Q. Do you remember then Mr. Eustace said, "There is a deep significance in Mrs. Eddy's constituting a board with a scholar, a business man and a metaphysician"? Do you remember that? A. Yes.

Q. That comes back to you now, doesn't it? A. Yes.

Q. Then do you remember Mr. Rowlands saying, "Why do you interpret our position? You have never asked the trustees to interpret the directors' position." Do you remember Mr. Rowlands saying that? A. Yes.

Q. Now do you remember his saying, "The absolute management is vested in the trustees, from every standpoint"? A. Yes.

Q. And then his saying, "Interference must stop, and be on the other basis hereafter, of independence"? A. Well, he deprecated the interference of the directors. I don't remember his language.

Q. Do you remember his saying, "You took it upon yourself to criticize the trustees, and your criticism was malicious"? A. No, I don't remember that.

Q. Do you remember Mr. Eustace saying, "The directors have no supervision of the trustees unless they are dishonest or immoral"? A. Yes; that was in reference to dismissing.

Q. And saying, "You cannot deliver an ultimatum except on the basis of dishonesty or immorality"? A. Yes.

Q. Mr. Dittmore was taking it down pretty nearly as it occurred, wasn't he—this conversation? A. Apparently.

The Master—I hardly think you can get Mr. Dittmore's record in properly in this manner.

Mr. Thompson—This is a diary entry, sir, taken down at the time. I am simply not getting the record in. I want to reproduce the exact statement of what took place at that meeting, and I am doing it. He remembers this.

The Master—It is obvious that a witness cannot refresh his recollection by a memorandum made at the time by somebody else.

Mr. Thompson—Excuse me, if Your Honor please; our rule in the state courts is that they allow a man to do it from a newspaper. I have had it done repeatedly. Our rule is that any-

thing that actually refreshes his recollection may be used by the witness.

The Master—I do not see how it can be said in any proper sense that it will refresh his recollection. You have a right to ask him to search his memory and say whether this or that did not occur. I do not object to that.

Mr. Thompson—Well, it is a mere matter of the form of putting the question; if Your Honor prefers I will put it the other way. I have got so used to putting it in the state courts in this way, and it is permitted constantly; I have seen repeatedly men asked to refresh their recollection from a newspaper, and they said it did. It doesn't need to be the men themselves who make the entry, to make it material. That is our rule, at least. If Your Honor thinks I ought not to apply it here, I won't.

Q. Now, see if you can remember this being said—I think this follows Your Honor's idea of putting the question—did Mr. Rowlands say this: "If the directors have anything to do with the publishing house it must be through the trustees"? A. He made some statement in substance of that kind.

Q. And that "We do not recognize the directors as the successors of Mrs. Eddy"? A. I do not remember that.

Q. And that "The directors inherit the right from Mrs. Eddy only so far as the Church is concerned, and not the Publishing Society"? A. I don't remember that part of it.

Q. Now, see if you can remember this. Did Mr. Dittmore say: "This interview today creates a crisis and I consider the situation in the publishing house to be critical"? A. I remember that very well.

Q. Did Mr. Dickey then tear up his notes that he had taken of that meeting? A. I don't remember it.

Q. Well, I wish you would try to think a little. Don't you recollect that incident, that Mr. Dickey tore up his notes? A. No, I do not.

Q. Did you say, "Everything about 'Purification' is all right"? A. I said that I thought we ought to approve the article on "Purification" at that point, and it was done.

Q. Do you remember Mr. Dickey's saying, "Mrs. Eddy would write things, but the significance would not dawn on her until long afterwards"? Do you remember Mr. Dickey saying that? A. I remember there was some such reference but I would not undertake to say what the substance of it was.

Q. Substantially that was said by somebody? A. It was referred to but I cannot say that that was substantially it.

Q. Did Mr. Rowlands say, "You cannot work through the business manager"—speaking to the directors? "You haven't any right to work on us through our business manager"? A. Yes, I think he did.

Q. Did he say they were doing the best they could under the circumstances? A. Did who state that?

Q. Mr. Rowlands. A. I don't remember it.

Q. Did some one remind Mr. Dickey that he had protested against his name being left off one of his articles, in a certain pamphlet? A. Yes; his article was referred to in that way.

Q. Did Mr. Eustace say, in substance, "Your efforts to establish the memorandum of agreement had the purpose of making the trust null and void"? A. Does that refer to the agreement of February, 1916?

Q. Yes. A. Yes.

Q. And did he say, "That agreement would put all the power in the hands of the directors"? A. Well, I couldn't say that he said that specifically.

Q. Now, substantially, what I have asked you brings back a pretty clear account of what was actually said at that meeting of Sept. 11, doesn't it? A. Yes.

Mr. Thompson—It is 1 o'clock, if Your Honor please.

The Master—We will stop till 2 o'clock.

[Recess to 2 p. m.]

#### AFTERNOON SESSION

The Master—I am requested by the officer in charge here to announce that it is the order of the judges that we do not use the elevator or the corridor on that (the west) side of the court room. They want us to use this (the east) entrance, and this (the east) stairs, and not that (the west) one.

Mr. Thompson—Does that apply to counsel as well as to spectators?

The Master—I suppose so—everybody but the judges. Up here I do not claim to rank as a judge.

Mr. Bates—That refers to those private corridors which it has always been considered the judges' special privilege to use, and it does not include the corridors down below, does it?

The Master. This (the west) corridor and this (the west) elevator were what were referred to by the officer who spoke to me.

Mr. Bates—Yes.

The Master—Shall we go on?

Q. Mr. Merritt, sometimes you yourself took notes of what was happening, didn't you, between the trustees and the directors? A. Now, what was happening—

Q. No; sometimes you yourself took notes of what was happening at the conferences, didn't you? A. Yes.

Q. I have here—I don't intend to introduce it, but I wish merely to indicate the extent to which it became necessary to take notes—you recollect, for instance, the meeting of March 3, when Mr. Dittmore was not present, and that you made notes of which these three pages are a copy, did you not? A. Of the trustees?

Q. Yes. A. Yes, I did.

Q. That is a copy which each director had of notes which you had

made of the conference between the directors and the trustees at the conference on March 3, isn't it? A. Yes, I think it is.

Q. And I think that on other occasions also you made notes of these conferences, because you thought that it was important to have an accurate record of what was going on, didn't you? A. Well, after the first meeting Mr. Dittmore asked what was going on, and I concluded that it would be well to keep the salient points, and be able to tell him, and I kept them as secretary of the board, because Mr. Jarvis was not there.

Q. These notes, as they are written here, didn't get into the records of the directors, did they? These were mere rough notes, showing the details of what had happened? A. Why, they were handed to the corresponding secretary, and I don't know whether he put them in his regular minutes or not.

Q. Well, now, do I understand you to say that your practice of taking notes was begun solely on account of Mr. Dittmore? You don't mean that, do you, Mr. Merritt? A. I think that in two or three meetings I took some notes aside from our meetings with the trustees—in a few meetings anyway.

Q. You don't mean to say, do you, that in so far as you took these notes of the interviews between the trustees and the directors, you did it merely to satisfy Mr. Dittmore? A. Well, that was the first impetus about it; and then, of course, together with the fact that I was secretary, and that we ought to have something definite about them, instead of just saying that we had met with the trustees—

Q. That is what I was trying to get at. That is, your real motive was the desire to have something definite that you could point to as reliable? A. Yes; and I was simply reminded by Mr. Dittmore that that would be a good thing.

Q. Yes, I see. That's right. As a matter of fact, there was some discussion in the board later about whether Mr. Dittmore ought to have a copy of these very notes, wasn't there? There had to be a vote taken on it—don't you remember that? A. Yes, there was something about that.

Q. Yes. Mr. Dickey didn't want Mr. Dittmore to have a copy of your notes of March 3, and it had to be voted by a majority vote, did it not? A. I believe that that is so.

Q. Yes. So that it wouldn't be exactly the fact to say that these notes were taken to satisfy Mr. Dittmore, would it? A. No. He simply mentioned it.

Q. Well, the truth is that it was important that some director, whoever it might be, should take down as careful notes as he could of what was being said and done—wasn't that it? A. Yes.

Q. Now, do you recollect, in these notes of March 3, that at the end of



the meeting, at the end of the conference in that day, you brought to the attention of the trustees the five points which were then in dispute, as you understood it, and enumerated them right here on this paper? A. Yes.

Q. And those points were, were they not, first, their refusal to recognize our Leader's authority in her letter transferring the duties of the First Members to the Board of Directors—that was the first point, wasn't it? A. Yes.

Q. If you have any doubt about it I will show you this paper. A. Well, that was one of them, I remember.

Q. Second, the refusal to accept the By-Laws of the Manual as corrected by our Leader in place of the provisions of the Deed of Trust—that was another one? A. Yes.

Q. Third—

The Master—Do I understand that you are now reading off the notes that were taken by the witness himself?

Mr. Thompson—Yes, sir.

The Master—Are you going to put that whole paper in, in full?

Mr. Thompson—If anyone wants it I will. It is not of any significance or consequence to me.

The Master—I wanted to see if you were intending to put it in, in full.

Mr. Thompson—I was intending to put only just this part in, sir.

The Master—Just that part?

Mr. Thompson—I intended to put only this part in. I did not think that there was any need of reading the rest of it, unless somebody cared for it.

Q. Third— A. May I explain that a little?

Q. Let me just get through with these five points first. Third, the refusal to repudiate the standpoint of the attorneys which declared that the trustees must stand by the Deed of Trust in preference to the Manual where the two were involved—that was another? A. Yes.

Q. Fourth, the interpretation of the word "expedient" in Article XXV, Section 3, as not being wholly at one with the interpretation of the Board of Directors according to that section, but must be rendered according to their attorneys' interpretation that "expedient" meant for cause, and the trustees had a right to question the expediency or cause? A. Yes.

Q. That is, they said that "expedient" meant that you must have some cause, and not merely say in your own mind that it was expedient without being able to give a reason for it? A. Yes.

Q. And you said the contrary? A. Yes.

Q. And, last and fifth, the interpretation of the word "suitable" in Article XXV, Section 5, regarding persons in the publishing house as suitable, this word to receive the interpretation by the Board of Trustees—that was another point, wasn't it? A. Yes.

Q. Now, it says here in your note, that you brought these five points to

the attention of the trustees at the end of the meeting? A. Yes.

Q. That is true, isn't it? A. Yes.

Q. And told them that you thought that they were equivocating about these points, and that they ought to make a flat denial in writing? A. Yes.

Q. And that was your opinion, was it not? A. Yes.

Q. And that was the opinion, so far as you know, of the other directors? A. Yes.

Q. Of course Mr. Dittmore was not present at this meeting, so that he did not have any opportunity to declare his opinion? A. No.

Q. And the purpose of this and similar meetings at about that time was to see if some accommodation or agreement could not be reached between the Board of Directors and the Board of Trustees, wasn't it, about this controversy that had been going on so long. A. And to comply with the suggestion of the attorneys that we should try to work it out in weekly meetings.

Q. Yes; and the attorneys, you mean, for both sides? A. Yes.

Q. Now, you knew, didn't you, that Mr. Dickey was himself personally making efforts in the same direction, individually? A. Yes.

Q. And, he had had, you knew, several meetings with the trustees, and had gone over these matters with them, in the hope of reaching some basis for the judgment? A. Yes.

Q. You remember that on one occasion he took to a meeting that you had—he told you about it afterward—he took to a meeting with the trustees the famous Dittmore memorandum—do you remember of hearing about that? A. Yes.

Q. And that it came back again with certain marks on it, which I think you must have seen, haven't you? A. Only as you have presented it here.

Q. Well, you have seen it while you have been sitting here in court, haven't you? A. Yes.

Q. You have had ample opportunity to examine the paper, haven't you? A. Yes.

Q. Now, you heard something from him, when he came back from that meeting, didn't you—you heard him say something about it, didn't you? A. I heard him say something about it, but I couldn't tell you now what he said about it.

Q. I wonder if I could refresh your recollection. Do you recollect when he came back from that meeting with the paper—I don't care whether you saw the paper then or not, but after he came back from that meeting with the paper, do you recollect that he said in substance—I am not trying to quote his exact words, naturally, but he said in substance, didn't he, that he had reached what he thought would be a favorable basis for coming together of these two boards—that was it in substance, wasn't it? A. Can you tell me the date of that?

Mr. Whipple—What was the date of that?

Mr. Thompson—I had that paper out here somewhere a moment ago. Have you that Dittmore memorandum? Let me have that Dittmore memorandum of Feb. 6, the one that was marked up by Mr. Dickey. (Mr. Dane passes a paper to Mr. Thompson.) Thank you. I do not think that that is the one. Well, perhaps it is.

Q. Sometime in February, I think, when he had this meeting and brought back that paper—perhaps I will let you take it (passing a document to the witness)— A. Yes, I think he did; I will admit that he did.

Q. Yes, I thought that that was fair. I will hand you this in case I may ask you some more questions, and you would like to have the paper in your hand so that you can refer to it. And he referred to the notations on that paper as being what he meant by the favorable basis of honorable compromise, didn't he? A. Yes, he did, only in a very cursory manner.

Q. Well, I haven't asked whether it was cursory or not. I don't think that it would need to be more than cursory to make that simple statement. And did he afterward recommend in some meeting of the board that the concessions marked with the word "yes" on the margin there be made by the directors to the trustees as the basis of some adjustment? A. I believe he had an opinion at that time, and expressed it, that that should be done.

Q. That it could be done. That is, you gathered fairly, without stopping to talk about particular words—the general idea you gathered from Mr. Dickey, after he got back from that interview was that he thought that that paper, with the changes noted on it assented to on it on the margin, really ought to be treated as a basis of settlement, didn't you? A. I wouldn't put it that way, Mr. Thompson. He had an objection—

Q. One point they changed after he had left them, which he objected to—you remember that, don't you? A. Yes; but he had a general objection to it also.

Q. Well, did he explain to you how it happened that he had spent a long time with these men, discussing possible changes, had written the changes in, and then had written on the margin "Yes"—did he explain what the significance of that word "Yes" as written by him on the margin was? A. I do not remember specifically, any more than what was brought out the other day in his examination.

Q. Well, several different things were brought out, but wasn't what you understood at that time this, as you have just said, that, speaking generally, Mr. Dickey felt that the result of his labors was to have produced a basis of compromise—isn't that the real truth? A. Yes, but coupled with that was his objection to it.

Q. Objection to what? A. To ac-

cepting the paper wholly as a basis for settlement.

Q. Did he point out the parts of the paper that he didn't still want to accept? A. As I remember the—

Q. Perhaps you, by looking at the paper, can find the place in it that he still thought he didn't want to accept after that interview? It may refresh your recollection if I say that I think there is one place there where I think there is not any "Yes" and that may be the place that he still objected to. A. Well, I think he said to us that after he had considered this, he did not know that the board would agree to this, and he was not in agreement with it, with all of the stipulations as he had marked them "Yes" here. I believe he gave the paper to Mr. Jarvis to, as I remember it, copy off the important points upon which there was an agreement.

Mr. Thompson—Well, now, where is that paper that Mr. Jarvis copied off?

The Witness—I couldn't tell you.

Mr. Thompson—Will you produce it, please, Governor Bates?

Mr. Bates—I do not know of any such.

Q. You have no doubt that such a paper was drawn up by Mr. Jarvis, have you? A. I am only telling you what I think was done with it. I wouldn't swear that it was drawn from this.

Q. But your idea is that he handed that paper with the annotations "Yes" on it to Mr. Jarvis, with the request that Mr. Jarvis should condense it and make a new paper, which would include the points that had been practically agreed upon—isn't that it? A. Yes, I believe the paper is in evidence to which I refer. It was the next paper which was gotten up.

Q. That is the Judge Smith memorandum. I don't believe that that can be the paper, and that is the only other paper that I know about. A. Well, I think that Mr. Jarvis conferred with Judge Smith.

Q. Do you think the Judge Smith memorandum was Mr. Jarvis' work, drawn up as based on that paper? That can hardly be, can it? You think a moment, and think what was in the Smith memorandum. A. I can't think of all the things that went on at that time, they went on so thick and fast.

Q. Well, I won't trouble you any more, except to ask you this, that the result of that interview, as you understood it, was that Mr. Dickey thought that he had settled, not all the points, but some of the points, with these men? A. Yes, he was in agreement on some of the points.

Q. Yes. And those same points that he was in agreement on, were those points that he had marked "Yes" against, weren't they? A. Oh, I couldn't say that.

Q. You couldn't say. Mr. Dickey was very anxious to reach some basis

of settlement with these men, wasn't he? A. Yes.

Q. And you were, too, weren't you? A. Yes.

Q. And so was Mr. Neal, and so was Mr. Rathvon? A. Yes.

Q. Mr. Dittimore was less desirous of making concessions than the other directors, wasn't he? Isn't that true? A. Yes.

Q. Yes. The only difference between Mr. Dittimore and the other directors here was that Mr. Dittimore felt that it was useless to make concessions of any kind to these trustees, and the other members felt that something might be gained by trying to negotiate with them—isn't that it? A. That is a fair interpretation of it.

Q. That is a fair statement. A. Yes.

Q. And among the concessions that were under consideration by Mr. Dickey and the trustees were the concessions marked on that paper there, and, among others, the concession that the directors would lay less emphasis upon the rights of general supervision of the trustees—isn't that a fair statement? A. Yes.

Q. Yes. And Mr. Dittimore felt that it was not for the interest of the—and I am not saying that he said it in any self-righteous way, but as a mere difference of opinion—his opinion was, perhaps, that it was not for the interests of the Christian Science Church to weaken even in the smallest degree the right of supervision which the directors had asserted against the trustees—isn't that a fair statement? A. Yes. He had a very decided—

Q. Yes, you have answered it. Now, you have spoken about some strong language that Mr. Rowlands used, and you also said that Mr. Eustace once used a very strong, naughty word, called "damnable"—do you remember that? A. I didn't call it "naughty."

Q. No, but I thought I might safely, in this audience, call it that way. Possibly I should not elsewhere. Anyway, he used it, didn't he? A. Yes.

Q. You heard it, did you not? A. Yes.

Q. Did you ever hear Mr. Rowlands use such a word as "damnable," either with or without the prefix? A. Never.

Q. Did you ever hear Mr. Eustace, either alone or accompanied with the words that usually accompany it, use the word "damnable"? A. No; he has no such habit.

Q. Occasionally Mr. Dickey would get to the point where you thought he might be going to use it, didn't he? What? A. I never expected it.

Q. You never expected it. Did you think that his restraint was due to Principle? A. I surely did.

Q. Well, Mr. Dickey was a man who, when he had done a wrong to another man, either by conduct or

conversation, was quite ready to apologize for it, wasn't he? A. Always.

Q. And it was one of the common incidents of the meetings of this board that Mr. Dickey would apologize to one or another person whom he thought he had done an injury to, wouldn't he? A. Well, half a dozen times.

Q. Yes. You have heard him apologize at least as many as half a dozen times to Mr. Dittimore, haven't you? A. Yes.

Q. And it wouldn't be stretching it very far to say that it might be a dozen times, would it? A. Well, I didn't keep track of them.

Q. Well, now, do you recollect any of the particular things that he apologized for to Mr. Dittimore? I do not ask you what they were—I will not go back to that—but will you try to bring back to your mind some of the incidents that called for these apologies? A. I think I can only say in a general way that when he felt that he had offended him—

Q. Occasionally Mr. Dickey seemed to feel that there was necessity for using quite strong language to Mr. Dittimore, didn't he? Isn't that fair? A. On one or two occasions, yes.

Q. And possibly, if you came right down to it, you would say four or five occasions, wouldn't you? A. Possibly.

Q. And, although that strong language did not contain the word "damnable," it did contain words which were well suited to excite the temporary resentment of the man to whom they were said, didn't it? A. Yes.

Q. You never heard Mr. Dittimore retaliate and use expressions like "damnable," did you? A. No.

Q. Mr. Dittimore was a man who generally succeeded in controlling himself, wasn't he, in these meetings? A. I can't quite say always.

Q. I haven't said that. There were times when the provocation got so severe that he couldn't. Isn't that the truth? That he couldn't quite control himself? Isn't that right? A. Yes.

Q. But, generally speaking, you would say that Mr. Dittimore succeeded remarkably well in keeping his temper under a good deal of provocation, would you, honestly, Mr. Merritt? A. No, I can't give him that credit.

Q. Didn't he succeed pretty well? A. Pretty well.

Q. Yes. Did you ever get the kind of provocation in those meetings that he got? You never did, did you? A. No, and I did not take it.

Q. You never had any such differences of opinion with anybody there as would tempt anybody to provoke you, did you? A. Several times it was tried.

Q. Nobody ever yielded to the temptation to insult you in the meetings, did they? A. No— Well, once or twice I might say that there was an

attempt of that kind, at least I thought there was.

Mr. Thompson—I would like to have the records of the meeting of Feb. 17.

Q. I want to direct your attention to a meeting that occurred on Feb. 17, 1919, and to some things that happened there as recorded by Mr. Dittmore, and see if they refresh your recollection. In the first place, do you recollect that the minutes of the meeting of Feb. 10 had only a very slight reference to a conference with the trustees, and that Mr. Dittmore said that he thought the notes ought to be a little fuller? A. Yes.

Q. And that after some talk, the chairman agreed that fuller minutes should be made from your notes and such notes as Mr. Dittmore had taken? A. Yes.

Q. Do you recollect Mr. Dickey at that time making quite a speech, of which the text was the importance of "saving the trustees," as he said? A. Yes, there was such an expression used.

Q. Didn't he speak particularly of the great affection that he had for Mr. Eustace and how sorry he would be to hurt Mr. Eustace? Isn't that true? A. Well, I think he did in general of all the trustees, not in particular.

Q. Now, pardon me, Mr. Merritt. If you only— A. No, I do not think it was specific.

Q. See if this will refresh your recollection. Did he say that he thought Mr. Eustace must have 300 students? A. Yes, I think so.

Q. And wasn't it in that connection that he said that it was an important thing not to discredit Mr. Eustace? A. Yes, I think he used that expression.

Q. Didn't he say, as a matter of fact, these very words, that as the result, he, Mr. Dickey, "would make all kinds of concessions rather than run any risk of a lawsuit"? Didn't he use those very words? A. He said something like it. I wouldn't be responsible for the very words in which he put it.

Q. That would be as near as you could find words to express what he said, wouldn't it? A. Well, that would be the substance of it.

Q. The substance of it. Didn't he say that under no circumstances would he raise the issue with these trustees? A. No, I don't remember that.

Q. See if this is it: "That they could retain their position if they would not yield to us, for under no circumstances would you raise the issue in the movement"? Isn't that what he practically said? A. He said something of that nature.

Q. Yes. And as you now— A. On one occasion.

Q. As you now think of it, that seems to you a substantially correct statement of the idea he conveyed, doesn't it, really? A. Well, my belief was about Mr. Dickey's position on that subject—

Q. I haven't asked that. Please, Mr. Merritt, because the moment when

you begin to talk about his general position we get into generalities, just as Mr. Whipple said. A. I want to tell the whole truth.

Q. True; and the whole truth in an English court or an American court means answering each particular question. It does not mean saying whatever comes into your head. Perhaps counsel might have explained that to you before you went on the stand. There isn't any such thing in an English court as saying anything you want and calling it the whole truth. That is not the meaning of the oath. The oath is to answer the question and stop when you get through. A. I will have to say no in answer to that, because I do not quite agree with you.

Q. But it is somewhere nearly what was said? A. There was something of the kind said, yes.

Q. Don't you remember that Mr. Dittmore took the position that no one of these men alone ought to be dismissed; that if there was to be any dismissal it ought to be all three? A. Who took the position?

Q. Mr. Dittmore. A. Yes.

Q. Whereas Mr. Dickey maintained the view very strongly that the best plan was to dismiss them one at a time. Isn't that so? A. Dismiss one.

Q. Dismiss one, but not more than one. That was his idea, wasn't it? A. That was all that was talked about—

Q. Pardon me. My question was, that was Mr. Dickey's proposition and claim? A. Yes.

Q. Do you recollect the answer that you made to Mr. Dittmore's bill? I will read you a passage from page 12 of your answer, and see if you recollect it:

"They further aver that the defendants, Dickey, Neal, Merritt, and Rathvon took the position"— that is your averment—"took the position that, while the trustees had become unsuitable and were not properly managing the trust, and while said defendants were determined to exercise the authority vested in them, properly to protect the interests of said Church, they also were determined, if possible, so to exercise such authority as to save the business of the said Publishing Society from suffering harm, and, if possible, to avoid court proceedings."

That you remember putting in there? A. Yes.

Q. That is the truth, isn't it? A. Yes.

Q. This part of it is true, too, that, "while the trustees had become unsuitable and were not properly managing the trust." You believed that, didn't you? A. From a certain definite standpoint.

Q. Whatever the standpoint—from the standpoint that was meant by this answer. Note the answer, please. I don't care about the standpoint. From some standpoint you had in mind when you wrote that answer and filed

this in Court that was true, wasn't it? A. Yes.

Q. Now, Mr. Dittmore argued that if, as you have admitted here, and always admitted, I suppose, all three of these parties were unsuitable and not properly managing the trust, no two of them would be suitable to elect a third. That was his view, wasn't it? A. No.

Q. Well, now, Mr. Merritt, please think a minute. A. He did not bring that out.

Q. Just a moment. Don't you remember, not once but many times, in various forms of words, Mr. Dittmore saying that either you ought to let them all alone and not remove any of them, or, if they were unsuitable and improper men to hold this trust, you ought to remove all three? A. Yes, he used that expression.

Q. And didn't it occur to you that one of the arguments he had in mind, and expressed in some form of words, was that if the three trustees were all unsuitable and unfit to manage the trust, no two of them ought to be trusted to elect a third one?

Mr. Bates—I pray Your Honor's judgment as to what he has in mind.

Mr. Thompson—I said, didn't he— Mr. Bates—What Mr. Dittmore had in mind he cannot testify to.

Mr. Thompson—You interrupted the question just at the point when you don't want the answer, that is all. I don't think you ought to have interrupted me, honestly.

Mr. Bates—I am leaving it to the Court, not to you.

Mr. Thompson—I protest against that interruption. I do not think it is fair.

The Master—Read the question. [The question is read as follows: "And didn't it occur to you that one of the arguments he had in mind—"]

Mr. Thompson—And expressed— The Master—What have we to do with what he had in mind?

Mr. Thompson—In his mind or expressed.

The Master—Did you get the whole question?

Mr. Thompson—I was interrupted. [The question is again read as follows: "And didn't it occur to you that one of the arguments he had in mind, and expressed in some form of words, was that if the three trustees were all unsuitable and unfit to manage the trust, no two of them ought to be trusted to elect a third one?"]

The Master—The question is now complete?

Mr. Thompson—Yes, sir. The Master—So that it was not an interruption by Governor Bates.

Mr. Thompson—I beg your pardon? The Master—It was not interrupted halfway by Governor Bates.

Mr. Thompson—The answer was interrupted.

The Master—Governor Bates certainly has a right to object to the question before it is answered.

Mr. Thompson—Certainly. I would

like to hear what Your Honor rules on the question.

The Master—The question as it is put, I think, I ought to exclude. It is not clear exactly what you mean by it. "Had in mind and expressed"?

Mr. Thompson—Yes.

The Master—I don't see what you have got to do with anything more than he expressed.

Mr. Thompson—Suppose he had something different in mind than what he expressed. I am trying to get his—

The Master—I don't think you can interrogate this witness about what some other person had in mind but did not express.

Q. Didn't he say in substance—I mean something by that, "in substance"—I don't mean that I am now undertaking to repeat Mr. Dittimore's exact words, or anything like that, but what I mean is this: Didn't he convey fairly enough so that you understood it the idea that he did not think there was any sense in removing—in leaving two trustees to fill a vacancy caused by your removal of a third one? Isn't that the truth? A. I don't remember that argument.

Q. You wouldn't want to say that he did not make the argument, would you? A. No.

Q. Now you come to think of it, Mr. Merritt, looking back on all this, if you really did think that all three of these men, as you have alleged, were unfit to hold their office, a really sensible thing to do would have been, wouldn't it, to remove them all? A. I didn't think so.

Q. I know you didn't think so, but now you come to think of it don't you really think so now? A. No, I don't.

Q. Do you recollect Mr. Dickey made some remark about Mr. Rowlands at one of these very meetings, about the reason which actuated him in picking Mr. Rowlands as the victim? A. Yes.

Q. Do you remember his saying, in substance—I am not going to quote all he said, but just this one thing that he said—that Mr. Rowlands didn't have any students and didn't have much influence in the movement? He said that, didn't he? A. Now, some one around the table said it. I wouldn't impute it to Mr. Dickey, particularly.

Q. Some one said it? A. Yes.

Q. You would not impute that statement to Mr. Dittimore, would you? He isn't the man— A. He is not too uncharitable to say that.

Q. I haven't asked that. Now, Mr. Merritt, that passes a little bit beyond the bounds of what you know is a fair answer, don't you? You knew that was not the question. A. I meant to have conveyed the idea that it is not beyond him to say a thing like that.

Mr. Thompson—I will ask Your Honor to strike that out. I will ask Your Honor to instruct the witness as to the importance of answering my questions. It is a deliberate attempt to prejudice Mr. Dittimore.

The Witness—Oh, no, I beg your pardon.

The Master—I do not so understand it.

Mr. Thompson—I ask that this be struck out.

Q. Now, will you listen to my question, please.

The Master—Read the question.

Mr. Thompson—Strike out the whole thing—question and all.

The Master—But if you strike out the question, the answer will be struck out.

Q. You wouldn't say Mr. Dittimore was the man who was urging the expulsion of Mr. Rowlands, would you? A. No. He—

Q. No. And therefore, if anybody said that it was a good reason to pick Mr. Rowlands because he did not have any students or many friends, the person who said that was not Mr. Dittimore, was it? Yes or no, please, Mr. Merritt.

The Master—You are now asked for your recollection.

Q. Yes or no. A. According to my recollection, no.

Q. Well, can't you remember which of the other directors it was that gave as the reason why it would be a good idea to pick Mr. Rowlands out was because he was a man of the least influence and the fewest friends in the movement, of all the three trustees? Who was it that made that suggestion? A. According to my best recollection Mr. Dickey, Mr. Neal and myself.

Q. Yes, sir. You thought that it was a legitimate reason for removing Mr. Rowlands as his removal would cause the least commotion in the Christian Science movement, did you? A. Yes.

Q. Now, as a matter of fact, at the time when Mr. Rowlands first went on that board, all the directors were glad to get a man of his large business success and experience, weren't they? Isn't that true?

The Master—If I am not mistaken, we have heard some evidence to that effect already.

Mr. Thompson—Some. I want a little more, sir.

Q. That is the truth, isn't it? A. Why, from my standpoint, Mr. Thompson, I didn't know much about Mr. Rowlands' business and—

Q. Then, very well. Wasn't it a matter of talk among the directors that you heard that they were pleased and gratified to get a man of his success and— A. Yes.

Q. And when the suggestion was made in the Board of Directors that Mr. Rowlands be picked out as the man for expulsion for the reason that he had the fewest friends and the least influence—

Mr. Bates—I pray Your Honor's judgment.

Mr. Thompson—Now, is that fair?

The Master—I think so because your statement was not exactly in all respects I think a fair one.

Mr. Thompson—I tried to make it exactly a paraphrase of his testimony.

Mr. Bates—There was no such testimony.

The Master—There is a great deal of danger in trying to paraphrase.

Mr. Thompson—Very well. I will leave out any paraphrasing.

Q. When the question was debated in the board and some of the directors—now you say all excepting Mr. Dittimore—used as the reasons for picking Mr. Rowlands out for discharge the reasons you have just stated they did use, didn't Mr. Dittimore in substance say this, that this quarrel with these men was a quarrel on principle, on general grounds, and that he would not stand for making an attack upon Mr. Rowlands on that ground mentioned just now by you? Didn't he in fact say that in substance? Yes or no, Mr. Merritt. A. Let me say that he said something like it. I can't give you the substance.

Q. Very well. And when Judge Smith brought in that series of charges, among which was contained the charge that this man had been neglecting his duties because of his business interests, didn't Mr. Dittimore in substance again protest, saying that he could not stand for trumping up after the event a charge against Mr. Rowlands which you and he and all the directors knew had no basis in fact at all? Isn't that the honest truth, sir? A. Not from that standpoint, as I understand it.

Q. We will see if you can't find the standpoint. One of the charges formulated by Judge Smith against Mr. Rowlands was, was it not, that he had been neglecting his duties because of his own private interests? A. Yes.

Q. Didn't Mr. Dittimore protest when that charge was read against it being unfair? Yes or no. A. No.

Q. Are you sure, Mr. Merritt? A. I don't remember that he did.

Q. You would not want to be positive on that, would you? A. Pretty near, but I don't remember.

Q. You don't remember. Didn't he at any time—and perhaps you are hesitating on that point "at the time it was read"—we will make that more flexible—didn't Mr. Dittimore at some time, no matter when, make the protest that his quarrel with these trustees was a general quarrel on fundamental principles, and that he would not stand for making the personal charges against Mr. Rowlands of that description in substance. didn't he in substance say that to you, sir? A. Answering your first part of the question, yes.

Q. Yes. A. The latter part I am not sure of.

Q. Did Mr. Dittimore or anybody else at the time that charge was made, that particular charge against Mr. Rowlands, about neglecting the affairs of his office because of his private business—did anyone suggest that if you were going into such matters as

that, questions of fact, that you ought to hear what Mr. Rowlands had to say about it, at least, before you expelled him on that ground? A. No, I don't think so.

Q. Didn't it occur to you, Mr. Merritt, as a business man of long experience and an honorable man, and a man who wants to do the right thing—didn't it occur to you that if you were going to take the serious step of expelling a man like Mr. Rowlands from that Board of Trustees, and discrediting him, and to base it on the charge that he had neglected his duty, that the least you could do was to give him a chance to come in and answer that charge and explain whether he had neglected his duty or not? Didn't that ever occur to you, sir? A. Well, but don't you see, sir, that was the least charge—

Q. Couldn't you answer that question Yes or No, Mr. Merritt? A. No.

Q. I don't want to press you too hard, but really it does seem to me you ought to be able to answer that question.

The Master—Whether anything of the kind occurred to you or not?

A. No.

Q. Didn't anything of that sort occur to you? A. No.

Q. Now, the man who formulated the charges against Mr. Dittmore was also Judge Smith, wasn't it? A. Yes.

Q. And when you saw in those charges statements of facts concerning Mr. Dittmore, didn't the idea flit through your head that before you acted on them and undertook to expel him from that board it would be at least fair to give him a chance to answer those charges? Yes or No, please. A. No.

Q. You have been engaged while you were on that board in cases of discipline of members, have you not? A. Yes.

Q. And you have always made it a practice, have you not, when a humble member, however obscure, of this Church, was called up before your board for discipline which might involve expulsion, you have always made it a practice to give that person a chance to be heard, haven't you? A. Yes.

Q. And yet when a member of the highest governing board in the Church was in question, and a member of the Board of Trustees which published all your literature was in question, it never entered your head to give either one of those two men a chance to defend themselves, did it? Yes or no. A. Yes.

Q. Did you give Mr. Rowlands a chance to defend himself? A. Yes.

Q. Did you tell him before you filed those charges, before they were acted on, what they were? A. In the five or six meetings, yes.

Q. Mr. Merritt, did you give him or send him any copy of that paper before you voted on it? Yes or no. A. No.

Q. Did you tell Mr. Rowlands orally,

by word of mouth, what those eight or ten charges were in detail before you acted on them? A. Oh, no.

Q. And yet you wouldn't have expelled the humblest member of your Church on a charge, or on any charge, without giving them a copy of it, telling them what it was, and saying, "If you have got anything to say, come in and say it"?

The Master—That is argument, which may be very proper in its place, but I don't think this is the place.

Mr. Thompson—Very well; I will withdraw the question, sir.

Q. Now, something has been said here by Governor Bates about a raise in salary made by the directors, in the face of the by-law making the salary \$2500. That actual vote to raise salaries was passed in 1917, was it not? A. Yes.

Q. Do you recollect that at that time Mr. Dittmore wrote a letter to the directors in which he advocated publicity, before that change was made? A. No, I don't remember that specific letter.

Q. By the way, do you remember, do you not, that Mr. Dittmore has returned to The Mother Church, in the form of a check for over \$10,000, all the salary that he has received over and above \$2500? A. Yes.

Mr. Bates—Since this suit began.

Mr. Thompson—Yes; since the suit began, sir.

Q. And you know, do you not, from conversations with Mr. Dittmore, that he has always expressed the view that a bad mistake was made in taking that action without giving the greatest publicity, so that every Christian Scientist might know beforehand what was in contemplation? A. No.

Q. You don't know that? A. No, I don't know that.

Q. Well, we will see. Have you ever looked at the record of your board when this matter first came up? A. No.

Q. It first came up in 1915, didn't it? A. I don't know, I wasn't there.

Q. Well, you have looked, haven't you, to see? A. No.

Q. Well, the opinion of Mr. Choate wasn't given in 1917, was it? A. No.

Q. It was an opinion at least two years old at that time, wasn't it? A. Yes.

Q. Now, will you look at the documents which I now hand you and see if they resemble the original minutes of the directors for the year 1915? See if the "Approved," and so on, and the signature of Archibald McLellan on the left, is the signature of the chairman at that time? A. Yes, I would say so.

Q. There is the original signature of Mr. McLellan, there is the stamp, "Approved, June 23, 1915," signed J. V. Dittmore, secretary, isn't it? A. Yes.

Q. There, in truth, are the original records of The Christian Science Board of Directors concerning something, aren't they? A. Yes.

Q. Do you know why those orig-

inal records do not appear in the book of records that has been produced here? A. Why, Mr. Dittmore was clerk. I never gave it a thought.

Q. Did you ever know, sir, that a large number of the original records of your Church, stamped, signed by Archibald McLellan, chairman, approved, stamped with the approval, were not in the official record book of your Church? Have you ever known the reason of that? A. No.

Q. Did you know that the records thus taken out of that book related to this increase in salary? A. No; knew nothing about it.

Q. Now, do you know that they were taken out under Mr. Dittmore's protest? A. I don't.

Mr. Bates—He says he knows nothing about it, he wasn't there.

Mr. Thompson—I would like the letter, please.

The Master—What is the date of those meetings?

Mr. Thompson—The date of these meetings is June 7, 1915, up to Sept. 8, 1915.

The Master—Was the witness a member of the board at the time?

Mr. Thompson—No, sir.

The Master—You would hardly expect much knowledge on his part regarding such matters, would you?

Mr. Thompson—I have got all I expected sir. I would like now the letter of Mr. Dittmore to the Board of Directors, of Aug. 4, 1915. The Governor has raised the subject against my objection and now I am going into it.

Mr. Bates—That is one of your statements which is not borne out by the facts. That question was raised by Mr. Whipple against my objection, on the ground that it had no bearing in this case.

The Master—Pardon me. It seems to me you are now inquiring of this witness regarding matters which he cannot be expected to know about, and he says he does not know about.

Mr. Thompson—I have stopped inquiring about it, sir; I have asked for the letter; I want to introduce it.

The Master—It is the same subject, isn't it?

Mr. Thompson—Yes. I am not asking this witness for it, I am asking Governor Bates for it.

The Master—With regard to a subject, a matter, which occurred at the time the witness is not in a position to know, and regarding which he says he does not know. I do not see why you should go on and cross-examine this witness about it.

Mr. Thompson—I wasn't; I was asking Governor Bates to produce a certain letter, that is all.

Mr. Bates—Why should you produce it in the cross-examination of this witness?

The Master—How does it come in on the cross-examination of this witness?

Mr. Thompson—It comes in because

it relates to facts in connection with this matter; it shows so on its face.

The Master—Well, that doesn't come in here, in this witness' cross-examination.

Mr. Thompson—It brings it down to the time when he does know. However, if Your Honor thinks that technically I ought to wait till I get somebody who has knowledge of the facts covered by the letter, I will do so. It is a mere matter of the order of proof, that is all.

The Master—It seems to me it is more than that. You cannot cross-examine a man about matters of which he says he didn't know anything.

Mr. Thompson—I was not intending to ask him a single question about the letter. I was only asking to get the letter to put it on record, and make it the basis for further questions about the period that he does know about; but if Your Honor thinks that is not right I won't do it, that is all. I do not personally see any objection to that course.

The Master—If it has anything to do with matters that he does know about—

Mr. Thompson—That is all I meant.

The Master—That is another thing.

Mr. Thompson—That is all I meant, sir.

The Master—But in the connection in which you ask for it it did not appear to have any relation to matters which he knew about, or could know about.

Mr. Thompson—That is the only basis I asked for it on. I think it will make intelligible what he does know. But if Your Honor doubts it I would rather leave it out than to have Your Honor suggest to me later it got in in some inadvertent way which Your Honor did not understand.

The Master—Are you going to produce it, Governor Bates?

Mr. Bates—We don't know anything about the letter; we will try to produce it.

Mr. Thompson—I have notified you in writing to produce all the letters of Mr. Dittmore; you have had the notice three weeks.

Mr. Bates—That may be, but your notice, I am informed, was from 1917 on. This is something back of 1914 or 1915.

The Master—You now specify a particular letter?

Mr. Thompson—Yes, sir.

The Master—Let us see if you have the letter.

Mr. Thompson—Aug. 4, 1915.

Mr. Bates—We have no such letter here, and I don't think we have any; if we have we will find out.

Mr. Thompson—Are you sure you haven't any such letter here? You have an enormous mass of letters.

Mr. Bates—Yes; we have whole loads, brought here in response to your request, day after day, but we haven't anything of 1915 because you haven't asked for it.

Mr. Thompson—Well, will you pro-

duce it later? Let us have that much settled, anyway.

Mr. Bates—We will have the letter here if we have one, subject to His Honor's direction.

The Master—He cannot bring in one he hasn't got.

Mr. Thompson—Very well. Will you now produce Mr. Dittmore's letter of Oct. 15, 1917, to The Christian Science Board of Directors? He was on the board then. It was just before the election of Mr Knapp as treasurer. (Counsel examine papers.) Well, you haven't got it, you don't find the letter?

Mr. Bates—We haven't found it yet.

Mr. Thompson—Very well; I am perfectly willing to go ahead without it. Now, I would like Mr. Dittmore's letter returning the salary. I guess you have got that, haven't you?

Mr. Bates—I submit, Your Honor, that is something since this case began.

Mr. Thompson—Now, you have said the salary has been \$10,000 since. It has not, because Mr. Dittmore has returned every dollar of it, and I am not going to have him go through this case with the imputation that he has taken that money.

Mr. Bates—Well, he did take it—

The Master—He took it once.

Mr. Bates—But until after he had been dismissed from the board he never raised the question about it.

Mr. Thompson—Don't make speeches about it; produce the letter.

Mr. Bates—I am telling the facts.

Mr. Thompson—No, you are not telling the facts. Tell the facts and don't make speeches about it.

The Master—Mr. Thompson, I should have to exclude the letter if you offered it.

Mr. Thompson—Very well.

The Master—If you desire to have it on the record so that you can reserve an exception perhaps we can agree that you may be treated as having offered the letter now.

Mr. Bates—No objection.

The Master—But it is excluded on the ground that it related to transactions subsequent to the bringing of the suit. Is that desired?

Mr. Thompson—I think it would be just as well, although it is not of any great importance to me. I will save my rights.

The Master—If you say that Mr. Dittmore afterward returned it nobody will question your statement, but then it is not a statement that has anything to do with what I have got to decide.

Mr. Thompson—The witness has already testified to that, sir; he did return it.

The Master—Yes; all right.

Mr. Thompson—Your Honor may remember that when Governor Bates began to talk about this salary this morning I objected, I didn't care to have it gone into. It has been gone

into and I prefer to try to leave it right on the record, that is all.

Q. How long before March 17, 1919, was it, roughly, when the directors consulted Judge Smith about the expulsion of Mr. Dittmore? I don't ask you to fix the date exactly, but an approximation to it, as nearly as your memory will serve. A. In February sometime.

Q. And Mr. Eustace had been having several conferences with Mr. Dickey about that time, had he not, concerning the advisability of removing Mr. Dittmore from the board? That is the actual truth, isn't it? A. No.

Q. You knew, didn't you, that Mr. Eustace had asked, suggested to Mr. Dickey, that he get rid of Mr. Dittmore? That has been testified to here.

Mr. Bates—No, it has not.

Mr. Thompson—Oh, yes; Dittmore's was the "hidden hand," pardon me.

The Master—What has been testified to?

Mr. Thompson—That he said, "Why don't you clean up your own board? Why don't you get rid of the hidden hand? You know what the hidden hand is." And it was agreed he meant Dittmore, throughout the record.

Mr. Bates—That is not the same as saying he was asked to dismiss him.

The Master—It is by no means the same as saying the words that you have just used.

Mr. Thompson—I cannot see the slightest difference myself. He said, "Why don't you clean up your own board? Why don't you get rid of the hidden hand?" And it is agreed that he meant Dittmore. I would say it meant, "Why don't you get rid of Dittmore?"

The Master—I don't think that is a fair question to the present witness.

Q. You knew, did you not, that Mr. Eustace had suggested to Mr. Dickey that he, Eustace, would think it a good idea for the board to get rid of Mr. Dittmore, in substance? I cannot pick the words he used. That was the substance of it, wasn't it? A. I don't think I knew that.

Q. Did you ever have any talk with any of these trustees yourself before March 17 about the removal of Mr. Dittmore? I don't care what was said, but was that subject ever mentioned between you and any of the trustees? A. Perhaps by inference, once.

Q. Which one was it? A. I couldn't tell you.

Q. Well, I don't know as I care, but one of them. In conversation with one of them, before March 17, the subject of removing Mr. Dittmore was mentioned, wasn't it, in substance? A. By inference only.

Q. Well, you have already suggested this morning in your testimony that on one of these conferences Mr. Eustace said something against Mr. Dittmore to Mr. Dickey, and Mr. Dickey said that was a matter for the board to decide? A. Yes.

Q. There wasn't any secret made,

was there, Mr. Merritt, to come right down to hard pan, about the desire of at least some of these trustees that Mr. Dittmore should be removed in some way from that board? That was a well known fact, wasn't it? A. Why, among themselves I presume it was.

Q. And also the directors—I won't say knew—but the directors realized that that was what some of the trustees wanted, didn't they? A. From their objections we inferred it.

Q. And in discussing this matter among yourselves—because I understand from Mr. Dickey it was never mentioned to Mr. Dittmore till March 17—in discussing the matter of his expulsion among yourselves and your brother directors, the question was raised, wasn't it, whether or not it would facilitate a harmonious adjustment between the trustees and the directors if Mr. Dittmore were removed quietly and politely, from that board? Isn't that so? A. Yes, there was such a suggestion.

Q. And the consensus of opinion seemed to be among the directors, except himself—of course, you couldn't expect him to agree to his own expulsion—but among the other directors the consensus of opinion was that it would probably tend to help on an adjustment with these trustees if Mr. Dittmore were expelled, wasn't it? A. Well I would rather say it was the hope of the directors that he would conform—

Q. No, pardon me; I don't care what you would rather say. I want that question answered just as it is put. Answer that very question just as it is put, yes or no.

[The question is read by the stenographer.]

Q. Say yes or no to that.

Mr. Bates—I submit, Your Honor, that is a question that in its nature ought not to be answered yes or no; at least, the witness ought not to be restricted to that.

The Master—I think he should answer first yes or no, if he can, and then I think the circumstances require that he should be allowed some explanation, if he desires to make any.

Mr. Thompson—I am perfectly willing, but I would like an answer, yes or no, first.

Q. You understand, Mr. Merritt, you are first to give an answer, yes or no, to this, and then later you may give an explanation. A. Yes.

Q. Now, do you desire to make any explanation of that answer? A. Yes. I would like to say that it was not the desire of the directors that Mr. Dittmore should be expelled, for the purpose of adjusting the affairs of the trustees, but it was rather the desire of the directors that Mr. Dittmore would more nearly conform his methods of doing business on the board with the balance of the board.

Mr. Thompson—Now, does Your Honor think that is an explanation—I do not—to this answer.

Mr. Bates—We submit that it is explanation.

The Master—I am not sure he is through yet.

Q. You have nothing more to say, have you? A. In substance, that was it.

Mr. Thompson—I don't think that is an explanation of his answer.

The Master—I think on the whole that I shall let it stand; it may be regarded in one aspect as an explanation. Your question was a very indefinitely framed one, as it seemed to me. It contained a long parenthesis which tended to confuse, and it asked about a consensus of opinion among the directors. What did that mean—that all five agreed, or four agreed, or who agreed?

Q. You understood what I meant? I will put it. You understood what I meant by consensus of opinion, didn't you? A. I thought you meant all the other directors.

Q. That is what I did mean. You understood my question that you answered yes to, didn't you, perfectly? A. Yes.

Q. In other words, the constant difference of opinion between Mr. Dittmore on the one hand and the other members of the directors on the other hand on this question of whether one member of the board ought to be expelled from the Board of Trustees, or all the members—that was what made the trouble, wasn't it? A. No.

Q. That didn't make any trouble? A. No.

Q. Were there any other differences of opinion in the relations between the two boards except that one between Mr. Dittmore and the other directors? Do you get that question? A. Yes, I think there were.

Q. That is, there were some other matters connected with these two boards and their relations that he differed in opinion with the other directors about, were there? A. I believe there were.

Q. Can you mention one other matter concerning these two boards where his opinion was not the same as your opinion, besides—I am not talking about expelling one or expelling all three, but something besides that, concerning the two boards? A. Well, he had no regard for the opinion of the directors about going into a court of equity.

Q. About going into a court of equity? A. Going into a court of equity.

Q. That is to say, he felt that it was so important to expel all three that he would take his chance in a court of equity, and the other directors didn't think that that was right—is that it? A. The other directors would not go to law.

Q. No. That is, he was willing to go to court to ask the Court to appoint three new trustees after the directors had removed all three? A. Yes.

Q. And the other directors were not willing to do that? A. Yes.

Q. That is another point where you differed. Was that an important point of difference of opinion, or unimportant? A. I thought that it was very important.

Q. Now, give us another matter concerning these two boards where his opinion differed from your opinion. A. On that one point, I don't believe I can recall any others.

Q. Those two points were really the only points, and they were really only one point, weren't they, because if you discharged all three it meant that you had got to go to a court of equity? A. Yes.

Q. So that it was that one point that was really the most serious matter between you, wasn't it? A. In reference to the discharge of the trustees.

Q. And that had a most serious influence, didn't it, upon the decision of the directors in reaching that vote on March 17? A. Which vote?

Q. The vote dismissing him. A. No, sir.

Q. It didn't have any influence at all? A. It didn't with me.

Q. It did not. A. Not with me.

Q. Was it discussed before you passed that vote? A. That point, no.

Q. Was it mentioned in Judge Smith's charges against him? A. I have forgotten.

Q. Now, were there any differences of opinion between you and Mr. Dittmore—I say you, but I mean the rest of the directors, the majority of the directors, and Mr. Dittmore—on any other subject besides these, between these two boards—any other differences of opinion? A. Oh, yes.

Q. Can you mention some of them? A. Yes.

Q. What were they? A. Well, he differed with the board regarding the giving to the world a new material history of Mrs. Eddy.

Q. That is, what did he think ought to be done? A. Well, he thought that they ought to go into the byways and all of the data from everybody that was now living, whether they were friends of Mrs. Eddy or not—this is the impression I got from him—

Q. I don't want your impressions; I want you to express his opinion. A. Well, he expressed that opinion, and so gave me the impression.

Q. Yes. And what did you want? Did you believe in that? A. I did not.

Q. That is, as I get it, if we take away from it the color that you have given to it by your words, he wanted to publish an exhaustive life of Mrs. Eddy, drawn from living sources, before the people who knew about it had died, and you did not think that it ought to be done—that is all there was to it, isn't it? A. No; there was a lot more to it.

Q. He wanted to publish a truthful life of Mrs. Eddy, didn't he? A. Oh, I think he was honest about it, yes.

Q. That was an honest difference of opinion, wasn't it? A. Yes.

Q. Now, what other subject was there that there was an honest difference of opinion about? A. Well, he wanted to go into the publishing house and do things himself, as if he was the whole board, without the consent of the board.

Q. Just mention one thing that he did without the consent of the board, where you think he ought to have had that consent.

The Master—And by "the board" you now mean—

Mr. Thompson—The Board of Directors.

A. He took means, whether he went himself or sent others—

Q. Is this something that you know about yourself of your own personal knowledge? A. Yes, because he brought the information to us.

Q. Yes. A. To get the circulation of The Monitor without the board's asking for it, and without consulting the trustees. He—

Q. Let us stop right there. The point that you thought he was wrong on there was to try to get the true circulation of The Monitor without being asked to do it by the Board of Directors—was that it? A. Yes.

Q. Now, then, let us take another matter where you thought he did wrong.

The Master—Don't you mean about which there was a difference of opinion?

Mr. Thompson—About which there was a difference of opinion.

The Master—I think that your other questions were all in that form.

Mr. Thompson—I will accept Your Honor's suggestion—about which you and he differed in opinion as to matters of policy.

A. About his desire to interfere with the editorial policy of the periodicals without the consent of the Board of Directors.

Q. How did he try to interfere with the editorial policy without the consent of the board? What do you mean by that? What did he actually do? A. I don't know what he actually did. He did a lot of things that I didn't know about.

Q. No matter about that, please, Mr. Merritt; don't say that. I ask that that be stricken out. I am asking merely about your own personal knowledge. You don't know of any other matter or thing that he did along those lines, do you, of your own personal knowledge? A. No.

Q. Now, what other matter of difference was there between you and him, the majority and him, on which they differed in opinion? A. We differed from him on the matter of approving the publication of the pamphlet "Purification."

Q. That is, he wanted to publish it, and you did not want to publish it? A. Finally all the directors but Mr. Dittmore.

Q. What did they want to do—

publish it? A. Finally, in its last form.

Q. And he said he didn't want to have it published—was that it? A. Yes.

Q. You say "finally." There was a time when some of the directors agreed with him, and then they stopped agreeing with him—was that it? A. Until after the many interviews with the Board of Trustees and Mr. Dixon.

Q. And finally all the directors except himself agreed? A. Yes.

Q. But up to that time some of them had agreed with him—is that it? A. Yes.

Q. What other difference of opinion was there between Mr. Dittmore and the majority of the Board of Directors on any subject that you can remember, or have you told them all? A. No, I haven't told them all. I can't think of them.

Q. Are any of the others that you have not told of any great consequence? A. I thought so at the time that they came up.

Q. Now, the only ones that now come to your mind as being worth remembering and worth repeating are those that you have mentioned, aren't they? A. No.

Q. Well, give us another one, then. A. Well, one other fact comes to me, and that is—

Q. I am asking for differences of opinion between him and the majority of the board. A. About allowing one of the editors to go to Chicago to make a Liberty Loan speech.

Q. Who was that? A. Mr. McCrackan.

Q. Did Mr. Dittmore want him to be allowed to go to Chicago and make the Liberty Loan speech? A. Yes.

Q. And the rest of the directors thought that he ought not to be allowed to go? A. Yes.

Q. Was he a man who could make good Liberty Loan speeches? A. Yes.

Q. All right. Mr. Dittmore, then, wanted him to serve his country, and the rest of you didn't want to have him do it.

Mr. Bates—Does Your Honor think that that is a fair statement to put into the record?

The Master—No.

Mr. Thompson—All right. Strike it out.

Q. Now give us another subject on which there was a difference of opinion between him and a majority of the directors. A. Why, he wanted the meeting held in The Mother Church upon the return of President Wilson, and the other directors thought that it would be unwise because the By-Laws provided against it.

Q. Against having the President of the United States received—A. Against having anything but services conducted in The Mother Church.

Q. Can you put your hand on that by-law? A. No.

Q. Are you willing to say that there

is any such by-law? A. It may not be a by-law; it is—

Q. Now, then, you knew that Mr. Swan came from a public reception committee that was organized here in Boston to receive President Wilson? A. I did not.

Q. Didn't Mr. Dittmore plainly so state, when he was advocating that in the meeting? A. No.

Q. Just think a minute. A. He said some one presented that suggestion.

Q. Just a minute. Don't you recall that he told you that the person, whoever it was, that had come to him was a man who had just come from the Reception Committee of President Wilson? You don't mean to say that he didn't say that? A. No, I don't remember that.

Q. Are you willing to say that he didn't say it? A. Yes.

Q. You didn't get that idea. You thought that Mr. Dittmore was coming to you to urge you to give the Church to President Wilson, at the suggestion of an unknown man, without any authority whatever—is that the idea—A. He didn't tell who it was then. He simply said that he had received intelligence that the committee would like to know if the directors would allow The Mother Church to be used for that purpose.

Q. What committee, please? A. The Entertainment Committee, we supposed, of—

Q. For President Wilson? A. For President Wilson.

Q. Yes. Well, now, was there any subject on which the majority and Mr. Dittmore differed in opinion, that you can think of? A. Yes.

Q. Let us have it. A. The Board of Directors had turned down the request by him to publish the article about Bow (New Hampshire) pyramid.

Q. That is, Mr. Dittmore wanted to have an article published in one of your periodicals about a memorial that Mr. Lord was getting up at Bow, New Hampshire, the birthplace of Mrs. Eddy, and you didn't think that it ought to be done—is that it? A. Yes.

The Master—A good deal of all this is on paper, is it not, the correspondence that we have had in the case?

Q. Now, these differences of opinion—

The Master—Am I not right about that, Mr. Thompson?

Mr. Thompson—Oh, I beg Your Honor's pardon.

The Master—All these other matters of controversy have been gone over repeatedly by other witnesses—

Mr. Thompson—I don't think all of them.

The Master—Some of them, and a good deal of it appears in the correspondence.

Mr. Thompson—Some of it has been gone over, sir, but I want to find out now—

The Master—Do you think that all this expenditure of time now on it



with this particular witness is going to do any good, Mr. Thompson?

Mr. Thompson—I think so, sir, or I should not do it.

Q. Now, those differences of opinion—

The Master—I have not seen that he has varied the account that we have had before in any respect.

Mr. Thompson—Very well, sir. I will stop the details. Now, as you suggest.

The Master—I only suggested to you in the interest of saving time.

Mr. Thompson—I should not put these questions unless I thought that they were of some materiality.

Q. These differences of opinion, accumulated, were what were one important element, or motive, rather, in leading to the passing of the vote of dismissal, weren't they, all these things that had taken place? A. Yes.

Q. In fact, if it hadn't been for the accumulation of these differences of opinion on these various subjects that you have mentioned, that vote would not have been passed, would it? A. No, it wouldn't.

Q. Now, you have heard Mr. Eustace testify in regard to Mr. Dittimore's manner with him, that he found him, although vigorous, an honorable opponent. Would you agree to that? A. Oh, yes.

Q. Now, you just told Mr. Whipple that there never was any practical matter where the trustees didn't do what the directors wanted them to do in the administration of this trust; that the difficulty was a difficulty in principle between the directors and the trustees—that is the idea, isn't it? A. Up to the time of this controversy, yes.

Q. Did you hear Mr. Eustace testify that there were 28 different practical, concrete, definite subjects on which Mr. Dittimore was finding fault with the business administration of this Publishing Society? A. I don't remember that particular number.

Q. Didn't you know, Mr. Merritt, that Mr. Dittimore, entirely outside of this theoretical question of the right of superiority and inferiority, entirely outside of all such questions as that, Mr. Dittimore was constantly investigating details of the business management of that Publishing Society with a view to seeing how it could be improved? Didn't you know that, sir? A. I heard constantly that he was.

Q. Yes, sir. And didn't you know that he was constantly—not constantly, because we might differ on that word, as to what it meant—that he was often, sometimes, reporting to the Board of Directors recommendations for improvement, as he thought—I don't care whether it was right or wrong—as he thought, improvement in the business details of the management of the Publishing Society? A. Yes; he often recommended things.

Q. And you had no doubt that Mr.

Dittimore did sincerely believe that if some of these recommendations which he suggested were adopted, money might be saved to The Mother Church—you thought that he believed that, didn't you? A. I thought he believed it.

Q. Yes. Now, it turned out that Mr. Dittimore's difficulty with the Publishing Society was more than a mere abstract question of supervision or control, doesn't it? A. Oh, yes.

Q. Yes. Now, Mr. Eustace was the dominating man in the Publishing Society, wasn't he? He was the prime mover in that, the principal man in it, an influence? A. I would say that perhaps he was, of the three trustees.

Q. Yes. And do you remember Mr. Dittimore's, when you were talking about how you could expel Mr. Rowlands with the least possible trouble—Mr. Dittimore's saying, "If you are going to pick any one man, why don't you have the courage to pick the principal man in it, namely, Mr. Eustace?" Do you remember that? A. Yes.

Q. What? A. Yes.

Q. Now, do you remember that—let me take your diary, page 64, Mr. Dittimore—see if you recollect the time when you finally came round to picking Mr. Rowlands instead of Mr. Eustace—do you remember a meeting of Feb. 25, 1919, where this same old question was discussed of whether you would expel one trustee or all, and Mr. Dickey made a strong plea to take Mr. Rowlands instead of Mr. Eustace, and you approved? A. I agreed with him.

Q. Yes. Let us have your diary, Mr. Dittimore, page 66a. See if you remember this record of Mr. Dickey, at a meeting on March 3: Do you remember, when this same subject was being talked about of expelling one of these trustees, on March 3, and Mr. Dittimore again raised the point that if you wanted to be consistent you ought to expel them all, or else none at all, and Mr. Dickey said, "We would have a surer thing to discipline them in the Church than to go into the courts"—do you remember his saying that, in substance, sir?

Mr. Whipple—What is the date of that?

Mr. Thompson—That is March 3, 1919.

Q. Do you remember his saying that, in substance, sir? I have his exact words here. A. I know that he advocated that very strongly.

Q. And do you remember of replying in these words, Mr. Merritt, "Oh, yes; Church discipline will avoid a lawsuit"? A. Yes, oh, yes; I felt very strongly on it.

Q. You have answered the question. Do you remember Judge Smith's being consulted at one time about the methods of keeping the records of the directors? A. Yes.

Q. Do you remember his reporting that the method that they were adopting was unsafe? A. I think he made

use of that expression. Shall I explain it?

Q. No; I think that that is all that I need now. You will have an opportunity from your own counsel to explain. A. He didn't conclude it that way, though.

Q. No; "unsafe and dangerous" was the language he used, wasn't it?

Mr. Bates—Now, I submit, Your Honor, that the paper should speak for itself.

Mr. Thompson—What speaks for itself?

Mr. Bates—The paper speaks for itself.

Mr. Thompson—What paper?

Mr. Bates—The paper that you have there, I suppose.

Mr. Thompson—I never have seen it. I have called for it a dozen times, and you have not produced it.

Mr. Bates—We have produced everything that you called for so far as we had it, I think.

Mr. Thompson—I called for the report of Judge Smith, and you have not produced it, Governor, that is the trouble.

Mr. Bates—You have not called for it.

Mr. Thompson—You said, or somebody on your side said, that it was not in the court room.

Q. Was that report in writing, the report of Judge Smith? A. Not that I remember of.

Mr. Thompson—Then don't talk to me about the paper speaking for itself.

Mr. Bates—If you had asked that question first it would have cleared up the whole trouble, and we should have been very much farther ahead than we are.

Mr. Thompson—If you had not interrupted we should have been farther ahead than we are now.

Q. Do you remember the majority of the directors developing the idea that it might be a good scheme to see if Mr. Dittimore could not be made editor of the Sentinel? A. That suggestion in some form was brought out at one time.

Q. Yes. That suggestion came as an alternative to dismissing him from the board, didn't it—that it might be an easier thing to do? A. No; it came from the suggestion that they thought he wanted to be editor.

Q. About three or four weeks before he was dismissed, some one in the board made that suggestion, didn't they? A. I can't tell you how long before he was dismissed it was.

Q. Didn't the board send Judge Smith to him to see if he would not like to be editor of the Sentinel? A. No.

Q. Now, finally, I want to ask you about these apologies of Mr. Dickey's. Do you remember his making one apology to Mr. Dittimore for accusing Mr. Dittimore of having made a private communication to Mr. McCrackan about that Chicago address, when it turned out he hadn't? A. Yes.

Q. That was an entire mistake of fact on the part of Mr. Dickey. Mr. Dickey said he had been mistaken about his facts, didn't he; that he had found out he was misinformed; that Mr. Dittmore hadn't done anything he accused him of? A. He made an abject apology. I don't remember—

Q. Abject apology. And another apology he made for his unseemly talk he made to Mr. Dittmore about the article on "Possession." You remember about that? A. Yes.

Q. Using the very word "unseemly," didn't he? A. Yes.

Q. Yes. And another on Oct. 13, when he called Miss Warren in and he said he wanted to make a clean slate before Mr. Rathvon came on the board? A. Yes.

Q. Remember that talk? A. Yes.

Q. Then he made a very abject apology to Mr. Dittmore in general terms for all his abusive language toward him during the course of months, didn't he? A. Yes, he was very repentant.

Q. Yes, very repentant. And then he made another apology to him on another occasion when Mr. Dittmore protested, and Mr. Dittmore—see if you remember this—on another occasion Mr. Dittmore, commenting on certain conversations and talk of Mr. Dickey at a meeting of the Board of Directors, said that he could not sit there as a Christian Scientist and partake, even indirectly, in a case of discipline where such language was being used as Mr. Dickey was using about one of the parties to the case. Do you remember that? Honestly, Mr. Merritt, isn't that so, on your oath? A. No, I don't recall.

Q. Shall I have to give you the name of the case before you recall it? A. Come whisper it to me.

Q. I don't think I will, sir. Do you remember a famous case of discipline which you have been running for a good while? A. Yes. Not for a good while—

Q. Do you remember on one occasion— A. Yes, I think I remember the one you refer to.

Q. You know the one I refer to. I have been told to keep out names. I haven't any desire to give any, unless you do. A. No.

Q. Do you remember there was a complaint by Mr. Dittmore against the language of a certain joke made by Mr. Dickey concerning that case? Yes or no. A. No.

Q. You don't remember it? A. No.

Q. You heard Mr. Dickey testify. He remembered it, didn't he? A. Not upon that.

Q. Well, let us see, Mr. Merritt. Perhaps we can refresh your memory as to that. A. I can refresh your mind about it.

Q. I don't think so, because I wasn't there; I don't know anything about it.

Mr. Bates—You do not seem to want to find out the facts.

Mr. Thompson—The Court will find them out.

The Master—You haven't yet given us the year in which all this is supposed to have occurred.

Q. Wasn't it some vulgar remark in connection with Mr. McCrackan? A. Yes.

Q. And didn't Mr. Dittmore, as a matter of fact, protest against the remark? A. Yes; Mr. Dickey apologized.

Q. Just a minute. And didn't Mr. Dickey apologize and say he was sorry he had made it? A. Yes.

Q. Wasn't it as a matter of fact a very obscene joke? A. Well, according to interpretation.

Q. No; wouldn't you interpret it as a very obscene joke, fairly and honestly, as a man? A. No, I wouldn't, fairly and honestly as a man.

Q. You would think it was a very proper remark, would you?

The Master—He did not say that, nothing that meant that, so far as I could see.

Mr. Thompson—I beg your pardon.

The Master—He did not say that.

Mr. Thompson—No.

The Master—Nor did he say anything that fairly imported that.

Mr. Thompson—I won't press him. I will have the remark when Mr. Dittmore testifies. That is all.

#### Re-Direct Examination

Q. (By Mr. Bates.) Mr. Merritt, Mr. Whipple asked you in regard to taking advice in the matter of salaries, and you asked to explain something in regard to some question and he told you you could not explain then. What was it you wished to explain in regard to salaries?

Mr. Thompson—Now, if Your Honor please—

A. I wanted to explain—

Mr. Thompson—I object to it, that is all.

Q. What was it that you wanted to explain?

Mr. Whipple—Just a moment. Doesn't Your Honor think it ought to be a little more definite than that?

Mr. Bates—We can't tell until we hear it. I don't know what he wishes to explain, but I know he started to explain, and you said, "No, you can do that when your attorney inquires of you."

The Master—I think we can hear what he has to say. If it is not proper we will strike it out.

Mr. Whipple—I do not wish to interfere with anything that is a real explanation, as I told Mr. Merritt, and I must say that I think he shows very little disposition to do anything else when he is given liberty. Perhaps this is purely an explanation.

Mr. Bates—Your remarks may be gracious but they do not appear to be pertinent.

Mr. Whipple—It seems to me that they are both gracious and pertinent.

The Witness— . . .

Q. I think you stated—

Mr. Whipple—Just a moment. I think that is very doubtful if that is an explanation of any answer. It seems to be gratifying a very natural desire to attempt to put in some justification, but it certainly—

The Master—I do not see how that can be an explanation of his answer about the employment of counsel. Do you?

Mr. Bates—I do not know as it is so much an explanation in regard to that matter as it is an explanation—

The Master—That is what you asked.

Mr. Bates— —as to what was in his mind.

The Master—I am afraid that I shall have to strike that out.

The Witness—Pardon me. I thought you asked me about salaries?

Mr. Bates—That—

Mr. Whipple—I think that being stricken out, if Your Honor please, it should be stricken from the record and not printed.

Q. I think Mr. Whipple's question was why you consulted lawyers in regard to that matter.

Mr. Whipple—If you will pause a moment, Governor, I would like to see whether the striking out from the record strikes it out so it shall not be printed.

The Master—I am waiting to see if other counsel have anything to say on that point. My idea would be that I cannot regard it as in any sense the explanation that you are in search of, and it had better disappear from the record.

Mr. Bates—It was not responsive to my question.

Mr. Whipple—Then it may disappear from the record?

The Master—Yes, I think so.

Q. Was the matter of the raise in salary in any way referred to the Finance Committee of the Church? A. It was all referred to the Finance Committee.

Q. And did they take action on it? A. They did.

Q. What was their action?

Mr. Whipple—Just a moment. The pure question that has been impliedly raised by the cross-examination of the witnesses by myself is not with regard to comparison of the services, the value of the services, or things of that sort, but the violation of the Manual. That is all I asked about. These directors come here saying that the Manual must be—

The Master—If you are going to have part of the facts you might as well have the whole of them, I think, with regard to this increase in salaries.

Q. What was their action, Mr. Merritt? A. They wrote us a letter approving the opinion, the legal opinions, the opinions of counsel—

Mr. Whipple—Now, if I may interject, if Your Honor please.

The Master—What was their final action?

Q. What was their final action in

regard to salaries—whether or not they approved of them? A. They approved.

Mr. Whipple—Well, I understand that is in the letter, and here the Committee of Finance, as I understand, are elected by the directors, not by the Church, and the directors are submitting to some subordinate body—

Mr. Bates—I submit, Your Honor, that if Mr. Whipple wants to show that he can show it later. It is like his statement that this was in violation of the By-Laws. It was not in violation of the By-Laws but was in entire accord with them.

The Master—Let us get the facts.

Mr. Whipple—It was absolutely in violation of the By-Laws.

Mr. Bates—I will direct Your Honor's attention—

The Master—I am not going to determine now whether it was a violation or was not. I want to get the facts, and we will hear about the By-Laws later.

Mr. Thompson—I think, if there was approval there, it ought to be shown in writing.

Mr. Bates—The question in regard to the Finance Committee was asked because Mr. Thompson insisted or had implied that it was done in secret.

Mr. Thompson—No.

Mr. Bates—It was done with the approval of the Finance Committee—that is all I expect to show.

Mr. Thompson—Then I ask that it be struck out as to me. Your Honor prevented me from inquiring and told me to wait until I could get a witness as to the date.

The Master—If this witness knows that it was acted on by the Finance Committee, let him state.

Mr. Bates—This was a matter that took place, Your Honor, while this witness was a member of the board. The matter which Your Honor excluded took place two years before.

Mr. Thompson—This finance committee is supposed to be an organized body. Has it any record of votes?

Mr. Bates—That you can determine later.

Mr. Whipple—If Your Honor please, before there is any significance or weight to be attached to any action of the finance committee, ought it not to appear that they had some authority about it, who the so-called finance committee were, what functions they performed with regard to any such question as that?

Mr. Bates—Haven't you read the Manual?

Mr. Whipple—Yes; and it is because I do not believe you have that I am presenting the suggestion.

Mr. Bates—I have read it within 15 minutes.

Mr. Whipple—I have read it and find nothing indicating any authority on the part of the finance committee.

The Master—You will have an opportunity to bring that out later.

Mr. Whipple—Yes.

The Master—And if he wants to ask

him whether this was acted on by the finance committee, I think I shall permit it.

Mr. Whipple—That he has done.

The Master—That he has done. What is the next thing, Governor Bates?

Q. I call attention to the last section of Article I of the By-Laws, and also to Sec. 4 of Art. XXIV.

Mr. Whipple—Will you give me those again?

Mr. Bates—Art. I, the last section and the last sentence, which is the sentence in regard to the salaries of the Board of Directors, and Section 4 of Art. XXIV, in regard to the finance committee and its duties.

Mr. Whipple—The first one I did not get.

Mr. Bates—The last sentence of Art. I.

Mr. Thompson—Sec. 9.

Mr. Whipple—What section?

Mr. Bates—The last section.

The Master—Sec. 9.

Mr. Bates—It is Sec. 9, but it is the last section in the article.

Q. Do you identify that? (Passing a paper to the witness.) A. Yes.

Q. And do you also identify that? (Passing a second paper to the witness.) A. Yes.

Mr. Thompson—Governor—

Mr. Bates—I offer a copy—

Mr. Thompson—my attention has been called to one question that I was intending to put and forgot to put. Perhaps you had rather have me put it now?

Mr. Bates—I have no objection, with Your Honor's permission.

#### Re-Cross-Examination

Q. (By Mr. Thompson.) Mr. Merritt, there is a system of pensions established for the directors by custom, isn't there, in the Christian Science Church? A. Yes.

Q. And the fact is that Mr. Dittmore was dismissed nine weeks before he had served the 10 years which would have entitled him to a pension; isn't that the fact? A. When you figure it up, perhaps that is so.

Mr. Thompson—That is the way it goes. That is all.

#### Redirect Examination.

Mr. Bates—I offer copy of a letter sent by the Board of Directors under date of Sept. 13, 1917, to Messrs. Calvin C. Hill, Charles E. Lord, and Fred M. Lamson, as a committee on finance of The Mother Church.

The Master—Those, I take it, have been submitted to counsel?

Mr. Bates—No, they have not been submitted. Would you like to see these?

[Mr. Bates passes two papers to Mr. Thompson.]

Mr. Thompson—Which one have you offered?

Mr. Bates—I shall offer both of them.

Mr. Whipple—These should be submitted to Your Honor, and I do not see

that either the letter addressed to these gentlemen or their reply refers to the question of salaries. They are on the question of the propriety of the directors in relinquishing their position with The Mother Church. I ask Your Honor to look at them (passing papers to the master), and I want to suggest again that no investigation has been made as to how this committee on finance happened to be, or what authority they may have in the premises, and perhaps Your Honor will think that ought to be determined before you accept communications either to or from them.

The Master—For what purpose are these offered? To fix a date?

Mr. Bates—They are offered for the purpose of showing that the only body in the Church that could possibly pass on the question had passed upon it, and to show the matter of the increase of these salaries which has been questioned as a collateral issue in this case, one which I do not think ought to have been brought into it, but Mr. Whipple brought it in and we have the right to show that the matter was placed before the only authorities under the Manual before whom it could be placed.

Mr. Whipple—But, if Your Honor please, it does not appear that it could be placed before them under the Manual.

Mr. Bates—I should think, Your Honor, that it is a matter that the Board of Directors had the supreme right in themselves, but in order that they might be entirely public in regard to it, and that every possible objection might be overcome, they submitted it to this committee as the only committee to whom it could be submitted under the By-Laws.

Mr. Whipple—On the contrary, it would seem that, desiring to have some sort of thing that they could show, they selected some of their subordinates to write a letter to them and get it back—some of their own appointees. It is just as capable of that construction as any.

Mr. Bates—Your Honor will recall that under the by-law all of the bills have to be approved by this committee; these would be bills the same as any other expenses.

The Master—Of course, I make no ruling now as to the significance of this piece of evidence, nor as to the conclusions which may be drawn from it. The question for me now is simply, Are these for any purpose relevant? I do not see why they may not have relevancy; I think I shall admit them subject to objection.

Mr. Thompson—I would like an objection noted.

Mr. Bates—The letter of Sept. 13, which I have described, I will ask to have marked as an exhibit first.

Mr. Whipple—Sept. 13, 1917?

Mr. Bates—A letter dated Sept. 13, 1917, from the Board of Directors to

Messrs. Calvin C. Hill, Charles E. Lord, and Fred M. Lamson.

The Master—Do you want to read them into the record?

Mr. Bates—Yes, sir.

The Master—Couldn't the stenographers take them and copy them in?

Mr. Bates—Yes, that could be done.

The Master—I didn't know but we might, in the 17 minutes that remain, complete the examination of this witness.

[A letter from the Board of Directors to the committee on finance, Sept. 13, 1917, is marked Exhibit 722.]

Mr. Bates—Exhibit 722 is very short. Shall I read it?

The Master—I thought we wouldn't read them. My suggestion was to let them be now put into the record.

Mr. Bates—Very well. Then I have no objection to that—the letter from the Board of Directors of Sept. 13, 1917, which is marked as Exhibit 722.

[Exhibit 722]

“Sept. 13, 1917.

“Messrs. Calvin C. Hill, Charles E. Lord, and Fred M. Lamson,

“Committee on Finance of The Mother Church,

“Boston, Massachusetts.

“Dear Friends:

“I am instructed by The Christian Science Board of Directors to hand you herewith two legal opinions, one from Mr. Charles F. Choate, Jr., dated July 1, 1915, and the other jointly from ex-Governor John L. Bates and Mr. Leon M. Abbott, dated Sept. 6, 1917, on the question of the propriety of the members of The Christian Science Board of Directors relinquishing their positions in The Mother Church except their offices as directors.

“It is the unanimous opinion of the directors that the time has come for this change to be made and it is their hope to consummate the change in the not far distant future.

“Kindly return these inclosures, and oblige,

Sincerely yours,

“Corresponding Secretary for The Christian Science Board of Directors.  
“CEJ-L”

Mr. Bates—Now, the letter in reply, of the finance committee, approving the proposed action, signed by Charles E. Lord, Calvin C. Hill, and Fred M. Lamson, as committee of finance.

[A letter from the Committee on Finance to the Directors, Sept. 17, 1917, is marked Exhibit 723, and is as follows:]

[Exhibit 723]

“Boston, Mass., September 17, 1917.

“The Christian Science Board of Directors,

“105 Falmouth Street,  
“Boston, Massachusetts.

“Dear Friends:

“In reply to your letter of September 13th, we beg to say that the Committee on Finance has carefully read the opinions of Messrs. Bates, Nay,

Abbott and Dane, and Messrs. Choate, Hall and Stewart, regarding your proposed changes, and this Committee heartily approves of the same.

“Sincerely yours,

“CHARLES E. LORD,

“CALVIN C. HILL,

“FRED M. LAMSON,

“Committee on Finance.

“L;L”

Mr. Bates—Now, I will state to the Court that the first exhibit there states that there is annexed to it a copy of the opinion on the matter given by Mr. Charles F. Choate, and by John L. Bates and Leon M. Abbott. I am going to offer those as a part of the exhibit, but I do not think it is necessary to copy them into the record in full, as they are quite lengthy.

Mr. Thompson—If Your Honor please, I tried to go into that. Charles F. Choate's opinion is dated in 1915. That is the very reason I wanted to get that letter in. Now, I object until further—

Mr. Bates—This is an opinion that was submitted in connection with that letter, to the finance committee; it is a part of that letter. I am simply waiving the printing of it.

Mr. Thompson—No, it isn't any part of that letter. It is referred to in the letter. I think Your Honor having prevented me from going with this very same man, who knows no more about this than he did about my letter from Mr. Dittmore to the directors at that time, having excluded as a matter of discretion my letter, I do not see how Your Honor can let this letter in at this time. There may come a time when it will be admissible. If you do I cannot cross-examine him on it, because, as Your Honor pointed out, he does not know about it. It is not the proper time to introduce matters of this description, it seems to me, while this witness is on the stand, if I am to follow the ruling made by Your Honor against me a little while ago.

Mr. Bates—I assume, Your Honor, we would have been criticized if we had not offered them in connection with that letter, because they are referred to in the letter, and the witness on the stand has identified the letter as one which was sent by the board at this time. The fact that one of these exhibits is dated two years before, does not affect his knowledge in regard to it, because it was a part of this letter.

Mr. Thompson—We did not urge you to put those two letters in; you insisted on putting them in.

Mr. Bates—I know you have objected, but in view of your examination they were pertinent to the case, and I think also the opinions are.

The Master—I would like to have you remind me again of the connection in which I excluded them; it is a little out of my mind.

Mr. Thompson—You did not exclude these documents, sir, but I offered a letter from Mr. Dittmore.

The Master—You said I declined to permit you to put them in.

Mr. Thompson—Yes, sir.

The Master—Or to produce them.

Mr. Thompson—Will Your Honor excuse me? I did not say that. Your Honor misapprehends what I said. I said this: That in the examination of this witness, in cross-examination, I called upon Governor Bates to produce a letter, of which I had a copy, written by Mr. Dittmore to the Board of Directors at this very time, 1915, when Mr. Choate's opinion was given. Your Honor called my attention to the fact that this gentleman did not go on the Board of Directors till two years afterward, and that there could be no possibility of asking him any questions about the letter even if I got it in; and that it was therefore premature to ask Governor Bates to produce the letter, so far back of the personal knowledge of this particular witness.

The Master—Of the witness under examination?

Mr. Thompson—Yes.

The Master—I remember.

Mr. Thompson—Now, while this same witness is on the stand, in reference to the same episode, he is offering a letter from Mr. Choate, of the same date as Mr. Dittmore's, away back in 1915, concerning which this witness cannot possibly have any knowledge; and the only argument in favor of it is that it is referred to in the letter which, under objection both from Mr. Whipple and myself, Your Honor has permitted him to introduce.

The Master—Well, you want the letter, do you not, you want to put it into the case?

Mr. Thompson—Not at the present time, sir, until there is somebody on the stand whom I can examine about it. I do not want an ex parte statement from Mr. Choate.

Mr. Bates—You can examine Mr. Dittmore about it because the letter was addressed to him.

Mr. Thompson—That is just it. It is anticipating my examination of Mr. Dittmore; that is what it really is.

Mr. Bates—I offer the two opinions. They are both set off at length in the records. I think in view of the statement made by Mr. Thompson I will ask to have them go in the same as any other part of the record in this case.

The Master—I do not think my ruling admitting the reference of the matter of salaries to the Finance Committee, and the Finance Committee's action, ought to be considered as offering an opportunity to put in at length those letters, notwithstanding the fact that they were submitted to the Finance Committee at the same time. So I shall allow the matter to stand there—that the matter was referred to the Finance Committee and an opinion of counsel submitted with it, and I will exclude the opinion of counsel then submitted.

Mr. Bates—That is without prejudice, I assume, in case we wish to—

The Master—You can offer it again, perhaps, in some connection.

Mr. Bates—offer it again in some connection.

Q. There was reference by Mr. Whipple to the automobile. Was there any criticism on the part of the Board of Directors of the action of the Board of Trustees in buying the automobile?

Mr. Whipple—If you will pardon me a moment, if there is any conversation which the Governor asks to have narrated I do not object to it, but whether or not there was criticism depends on what was said, and opinions might differ.

The Master—Haven't you exhausted the witness' recollection as to what was said about the automobile?

Mr. Bates—It is quite possible. I simply wanted to bring out the fact that what was asked was a question in regard to it, and why it was bought, not in the way of criticism; and that it was a mere question, asking why it was bought, that caused the hostile attitude of the trustees which was described.

Mr. Whipple—If there is going to be any testifying I should prefer that of Mr. Merritt rather than of counsel.

The Master—Doesn't that appear already in what is said about the interview?

Mr. Bates—I asked the question really to clear up some questions of Mr. Whipple. It is quite possible that it does. If that is Your Honor's recollection I will not press it.

The Master—That would rather be my recollection at present.

Q. Now, you state that Mr. Rowlands told the directors that one of the directors had endeavored unduly to influence him. Did he tell you what director that was?

Mr. Thompson—One moment; how is that material?

Mr. Bates—It was brought out in the examination.

Mr. Thompson—You are bound by a collateral matter, aren't you?

Mr. Bates—Mr. Whipple asked the question, and that was the answer. I want to know whether or not—

The Master—If the witness has not already told us all that was said—

Mr. Bates—He was asked nothing further in regard to it, Your Honor, and we have not asked the question in direct examination.

Mr. Thompson—I should not object to your asking what was said in regard to it, but not what he thinks.

Mr. Bates—I have not asked him what he thought.

Mr. Thompson—Why not put it straight to him?

Mr. Bates—I have asked whether or not he mentioned the director whom he had reference to.

The Master—He may answer.

A. Yes, he did.

Q. What did he say? A. He said, very reluctantly, that it was Mr. Dittimore.

Q. What further did he say, if anything, in regard to Mr. Dittimore's attempt to unduly influence him? A. I cannot remember the conversation. It was in substance that. The point was that he had unduly influenced him when he came here as a trustee.

Q. Well, did he state what it was about? A. Yes, but I cannot remember it.

Q. What were the conferences that you have testified to that the trustees had with Mr. Dixon each week; that is, in regard to what? A. Those conferences always related to questions in his department.

Q. What kind of questions? A. Questions about the employment or discharge of employees and about their salaries.

Q. Did they relate to editorial questions or policy? A. No; questions that he had up with the business manager sometimes.

Q. That is, while you were trustee? A. Yes.

Q. What was Mr. Dittimore's habit or practice in regard to taking notes at the meetings of the directors?

Mr. Thompson—Was that called out by anything—

Mr. Bates—Yes; by the very first part of your examination.

The Master—Anything in addition to what the witness has already stated? He certainly has told us a good deal about that now.

Mr. Bates—Some specific instances. I want to know whether he had a habit, or a practice.

Mr. Thompson—If there is anything in addition to what he has already said, I do not object, but when you open up the whole subject which has already been gone over by you—

Mr. Bates—I was not aware that you had brought out the fact that Mr. Dittimore was in the habit or practice of doing this regularly. If you have, and admit it, I don't wish to ask the question. If you haven't, I wish to ask that question.

Mr. Thompson—Now you have told him just what you want him to answer.

Mr. Bates—Well, you are responsible for it.

The Master—It would seem to be the fact, would it not?

Mr. Thompson—Somebody made notes at all those meetings; Mr. Dittimore made more voluminous notes and more accurate than anybody else; I will admit that.

The Master—Isn't that sufficient?

Mr. Bates—That is not the rule as we understand it. I simply would like to know what Mr. Dittimore's practice was in regard to that matter.

The Master—So far as the witness may have observed Mr. Dittimore's practice in taking notes at the meetings, I think I shall let him state.

A. It was his practice to take notes at every meeting.

Q. Did you ever have any talk with him in regard to that practice?

Mr. Thompson—Now, how is that material on redirect examination?

The Master—Isn't that going a little beyond what the cross-examination opened?

Mr. Bates—No, Your Honor. The witness made this statement in response to a question by Mr. Thompson, and Mr. Thompson didn't allow him to pursue it further. "I talked to him a good deal about his notes." Now I wish the witness to tell me what he said to him about his notes.

Mr. Thompson—It was not in response to anything I asked him. I don't remember his saying it.

Mr. Bates—I have put it in quotation marks. I took that at the time he said it.

Mr. Thompson—I object, and put it on this ground. I am not responsible for voluntary remarks made by the witness, which I ask Your Honor to strike out. They cannot be made the basis for cross-examination. I never asked him a question which called for that statement; never in the world.

Mr. Bates—I offer to show this was an objectionable practice on the part of Mr. Dittimore, and it was objected to by the directors several times.

Mr. Thompson—I pray Your Honor's judgment.

Mr. Bates—I first asked the general question, and Mr. Thompson has objected to it. Now I state what we offer to show.

The Master—The fact having been brought out that Mr. Dittimore took notes of certain meetings, and the further fact that it was his practice to take notes at the meetings I think, if that be the fact that he did that, notwithstanding objection made by the other directors, that that fact may be shown.

Q. Now, will you state what conversation you had with him, if any, in regard to his taking notes.

Mr. Thompson—And when, please.

The Master—This is general practice. Of course the date of the conversation you will have to get some time. A. Well, I can only say that I occasionally objected to his taking voluminous notes out, and taking them to his office and transcribing them.

Q. And was objection raised by anyone else on the board also to that practice?

Mr. Thompson—Does Your Honor think that is proper? I object to that.

The Master—This is all subject to your objection. A. I do not remember.

The Master—Did any other director object, to your knowledge?

The Witness—I do not remember any other.

Q. You say you did that several times; can you state the dates of them? A. No.

Mr. Thompson—Now you are leading him.

Q. You have referred to Mr. Dickey's having apologized for hasty statements. Did Mr. Dittimore ever apol-

ogize to the board for anything he said?

Mr. Thompson—I pray Your Honor's judgment. How is that material?

The Master—I hardly think that is open to you now.

Mr. Bates—Very well, I think, perhaps, Your Honor, we can make it open.

Q. Did Mr. Dittmore ever characterize or use terms in regard to his co-members of the board that were insulting?

Mr. Thompson—I pray Your Honor's judgment. I never went into anything of the sort. It is not open now.

Mr. Bates—Why, Your Honor, the whole Dittmore case is open now by his cross-examination.

Mr. Thompson—Your Honor knows that it is not so. I object to it.

Mr. Bates—I do not understand we are confined now on the Dittmore case to what you opened on cross-examination. We have not gone into some of these matters.

Mr. Thompson—It does not make any difference what you understand.

Mr. Bates—I am going to take the Court's direction and not yours.

The Master—I want to see that I fully get the question presented.

Mr. Bates—The question is this, Your Honor. We were not allowed in our direct examination, under Your Honor's ruling, to go into the examination of the witness in regard to the Dittmore case, but under Your Honor's ruling they are allowed to cross-examine in regard to that case, with the understanding that we would then be allowed to take up the matter of the Dittmore case in any way that we saw fit, if they cross-examined on that subject.

Mr. Thompson—I made no such understanding.

Mr. Bates—Well, I simply want to know whether or not that is not Your Honor's understanding.

Mr. Thompson—I don't think that is a fair statement.

Mr. Bates—In other words, is he to be allowed to go on and bring out in cross-examination at this time just those points which he wishes to present to Your Honor, and we to be cut off from presenting the other points; particularly in view of the fact that he has intimated that he is going to ask for a continuance of the Dittmore case?

Mr. Thompson—You say it does not make any difference; if you are not bound by the rule that it shall be something brought out on cross-examination?

The Master—I do not get all you say, Mr. Thompson.

Mr. Thompson—The Governor says it does not make any difference; he is not bound by the rule of re-direct, that he is confined to what is brought out on cross. His argument is that if I cross-examine the witness at all on

the Dittmore case on points that have a bearing on the Eustace case also, to which I am limited, that opens the door to him on re-direct, on any and all points in the Dittmore case. There has no such ruling ever been made by Your Honor here.

The Master—If you open up a subject in your cross-examination, isn't it fairly open to them to inquire as to circumstances not brought out by you on your cross-examination relating to those same points?

Mr. Thompson—It all depends on how Your Honor defines the word "subject." You have defined it so broadly that if I asked a single question on the Dittmore case, the subject of that case would be open, and they could go into the whole of it.

The Master—Oh, no. I should certainly not go as far as that.

Mr. Thompson—I know it. Then I say I have opened no subject which entitles him now to ask this witness about Mr. Dittmore's—what did you say, insults—as he claims, to the other directors? I don't believe Mr. Merritt will say that Mr. Dittmore ever did insult him. I don't think he has any right to ask him now about this matter. "Insult," anyway, is not a proper word.

The Master—It seems to me that is not too far removed from what you opened up in your cross-examination. You may answer that.

Mr. Thompson—Will Your Honor strike out the word "insult," and let him ask what was said? I don't think he has the right to characterize it.

The Master—Can you modify your question?

Mr. Bates—I would modify it, Your Honor, but I call Your Honor's attention to the fact that this testimony was given in response to Mr. Thompson's question. Mr. Thompson asked him whether Mr. Dittmore ever used any language that was insulting, and the witness said once or twice there was an attempt to insult him.

Mr. Thompson—He didn't say that about Mr. Dittmore at all.

Q. Now, I am going to ask you, Mr. Merritt, who once or twice made an attempt to insult you; whom you referred to? A. Mr. Dittmore.

Q. And what—

Mr. Thompson—I ask that that be struck out.

The Master—No; I shall let it stand subject to your objection.

Q. When were those attempts made? A. The dates?

Q. So near as you can fix it. A. In August, 1918, in our conference regarding the history of Mrs. Eddy.

Mr. Thompson—History of what?

The Witness—The history of Mrs. Eddy. I told him that I thought he was obsessed with the question, and therefore had become unwilling to take a broad vision of the matter, and that I would be very glad to go over the ground with him and help him

if he so desired, and he told me that he would ask for my help when I was sober.

Q. Had you been drinking at the time, Mr. Merritt? A. Not at that time.

Mr. Thompson—"Not at that time," you say? He got the date wrong, I think.

The Master—"Not at that time."

Q. Did he use any other language at that time that you thought was intended to insult you? A. That stood out so boldly, I forgot the rest.

Q. Was there any other occasion when he attempted to insult you?

Mr. Thompson—I don't think you ought to say "attempted to insult."

Mr. Bates—Well, I am using the witness' language.

The Master—That he used language that you considered insulting; wouldn't that be a better way to put it?

The Witness—Yes.

Mr. Bates—Except that the witness used the language "attempted to insult," and I am simply quoting him.

The Master—We don't want to spend too much time fighting about words.

Q. When was that? A. That was in February, 1919.

Q. And what did he say then? A. He told me, as one of the board, that I was a Bolshevik.

Q. What else? A. And that I had gone into executive session with the balance of the board and had framed up something on him regarding the subject in question at that time.

Q. Had you? A. No.

Mr. Bates—Then I won't ask you whether or not you were a Bolshevik. I think, Your Honor, it is 4 o'clock.

Q. Oh, Mr. Merritt, I don't want any mistake in the record. Are you a drinking man? A. No.

Q. You don't drink at all? A. No.

Mr. Thompson—Don't you think you are pressing him a little too hard?

Mr. Bates—No, I don't think so; I think he has a right to make that statement. Shall we adjourn here, Your Honor?

The Master—Do I understand you have not completed?

Mr. Bates—I have not completed, no.

Mr. Whipple—Can't we complete with this witness?

Mr. Bates—I don't think so. I think perhaps we shall expedite matters by conforming to the general rule.

[At this point a discussion is had between the Master and counsel relative to the time when future hearings shall be had after the present week, and this discussion it is agreed shall not be printed, if at all, in The Monitor, before the issue of July 31, 1919.]

[Adjourned to 10 a. m., Wednesday, July 30, 1919.]

REPORT OF CONFERENCE HELD  
July 29, 1919

At the close of the hearing on July 29, 1919, a discussion was had between the master and counsel relative to the time when future hearings shall be had after the present week, and it was agreed that this discussion would not be printed in The Monitor until today's issue, in pursuance of which the following report is furnished:

The Master—May I inquire, if counsel desire to stop here, how long they are going on with these hearings? What is the present intention? What is the present possibility of completing them?

Mr. Bates—So far as counsel for the defendants are concerned, we are entirely at Your Honor's suggestion, but we had hoped to finish these cases, and I think so far as our evidence is concerned that they could be completed quickly. Your Honor will recall that I only took about an hour and a quarter on this witness today and the rest of the time has been spent on cross-examination. That necessitates, of course, my taking a little more time, but we are endeavoring in every way, so far as our examination is concerned, to expedite matters.

The Master—Can you give any idea when you will complete putting in your case?

Mr. Bates—Why, I should think that two days more ought to complete our case, unless the cross-examinations are too lengthy. I think the witnesses will not probably be subjected to such lengthy cross-examinations—the witnesses who follow—as their time on the board and their connection with these matters has been more brief; so that I should think two days would probably finish our evidence as to the Eustace case. Your Honor understands that as to the Dittimore case we have not put in special evidence in regard to that.

The Master—That will be Thursday. Then we will go on through the week?

Mr. Whipple—We desire very much to close up the Eustace case.

The Master—Do you think you can do it?

Mr. Whipple—It may be that in the case of a single witness, who will be short—

The Master—Do you think you can do it this week?

Mr. Whipple—We may not be able to call him this week, but our other evidence we think we can get in this week.

The Master—Go on next week?

Mr. Whipple—I do not think we shall need to go on next week; I think we shall get all our evidence in in a day, if Mr. Bates' prediction that he will take only two days more is well founded.

The Master—What is the suggestion about suspending in the other case?

Mr. Whipple—May I say further, before that question is put, that the evidence will be brief, but the witness

will not be accessible. We would like to put it in at the time when Your Honor assigns the case for argument; it will take only a very short time to put it in, and then we will proceed with the argument.

The Master—I suppose that counsel would naturally desire, wouldn't they, a brief interval to get ready for argument?

Mr. Whipple—We thought that after the evidence was closed, with the exception of this witness, Your Honor would give us time to prepare for argument, and then instead of meeting for the purpose of taking this witness' evidence, we will make a statement as to what it will be, so it will not come as a matter of surprise, and then take it at the time which is assigned for argument.

The Master—If you can all agree to that I don't see why it might not be done.

Mr. Whipple—I would just as lief, if every one wants to assemble to take evidence for about 15 or 20 minutes, and then have a further adjournment for argument, why, we can do it.

The Master—Suppose you have a statement ready of what the evidence will be.

Mr. Whipple—Yes; we shall endeavor to do that.

The Master—Now, Mr. Thompson, about the Dittimore case?

Mr. Thompson—We are not in a position to do justice to our clients in the absence of General Streeter, and after this week we must, at the latest, ask Your Honor—

The Master—Well, we cannot continue the case for any long interval.

Mr. Thompson—Why, Your Honor said that we could go ahead this week and see how nearly through we could get, and then you would take up this question of the Dittimore case. So we are not in a position to open the Dittimore case and start in now.

The Master—When shall you be?

Mr. Thompson—Not until after adjournment.

The Master—What adjournment?

Mr. Thompson—I assume Your Honor does not expect that all the cases will be now taken before we adjourn.

The Master—That was my expectation.

Mr. Thompson—I am absolutely astonished, I didn't have any such understanding; I understood we were to wait until the Eustace evidence was in, the defense, and then were to adjourn, and I think Mr. Whipple will agree with me.

The Master—Adjourn for how long?

Mr. Thompson—Why, until October. That is the way I understood it. Am I not right, Mr. Whipple, in saying that the expectation was that after the Eustace defense was finished, and your rebuttal, we should then take an adjournment over until October? That was what I always supposed.

Mr. Whipple—Well, as far as concerns the Eustace v. Dickey case, I

understood that that was desired, and I gained the idea that that would be done, but I did not understand—

Mr. Bates—The Eustace case?

Mr. Whipple—No. Dittimore and Dickey. Did I say the Eustace case?

Mr. Bates—Yes.

Mr. Whipple—Thank you for the correction. I did not understand that that interfered with the closing up and arguing the Eustace and Dickey case. Would you have any objection to that?

Mr. Thompson—Except—

Mr. Whipple—I am reminded that Mr. Thompson said that when that was done he would decide the extent to which he wanted to be heard in behalf of Mr. Dittimore, his client, in the defense of that case. Of course, he represents Mr. Dittimore as a defendant in our case, as we were obliged to join him on account of the doubt, as between the two claimants for that position, which was the real director. We did not think that we ought to proceed against Mrs. Knott, the de facto director, alone; that we ought to make Mr. Dittimore a party, although we were in some doubt about that. But Mr. Dittimore, I take it, has a right to make his defense, although I should feel very, very sorry if it produced a long postponement of the determination of the issue in the Eustace and Dickey case—

The Master—I understand that.

Mr. Whipple—after which there is a vital necessity for the interest of the movement that it be heard and determined as promptly as possible. If, as has been suggested, it has got to go before the full court, we ought to have it before the full court at the very next sitting of the court. If it goes over until October the case will not be heard until January, and perhaps not, with this bulky record, until the following March; and this whole movement is held in suspense during all that time; and these trustees, who have an eye and purpose single to the interests of the movement, deprecate the possibility of any such thing. If they are not proper trustees they want to know it. They are not hanging on to any office; they are, every one of them, holding the office at a personal sacrifice; they would be perfectly glad to get out if the Court says that they ought to, and retire, in the interest of the movement. Therefore, we cannot consent to any substantial postponement of the issue in the Eustace and Dickey case. The other case we have felt that Mr. Thompson, in the embarrassing position in which he finds himself, so far as we have any right to say anything about it, ought to have every indulgence.

The Master—Now, I want to ask Mr. Thompson whether his desire to have a suspension in Mr. Dittimore's case arises from General Streeter's disability?

Mr. Thompson—It does in part, sir, and a substantial part.

The Master—You desire to have a suspension in the hope that he will be able to return and take part in the case?

Mr. Thompson—Certainly. I think I said to Your Honor at the time that the doctor had said that he ought not to come back until after the vacation, which I had assumed would be the 1st of October. I am in rather an embarrassing position today here. I confronted, when I might I suppose have resisted, and taken advantage of General Streeter's illness.

The Master—Well, you have answered my question; that is all I wanted to ask. Now, of course you are entitled, in view of the unexpected disability of General Streeter, to a certain amount of consideration. Undoubtedly that is so. But you would not ask us, nor would General Streeter ask us, to suspend this case for any great length of time?

Mr. Thompson—I don't believe when this thing happened that we made it clear to Your Honor what arrangements we had made between ourselves. I am surprised that there should be the slightest question about the adjournment of this case until the 1st of October—very much surprised.

The Master—We shall be obliged, shan't we, to consider the possibilities ahead of us, and the necessity of getting the case disposed of, so that it may be submitted to the Court as soon as possible?

Mr. Thompson—As soon as possible. That means, I suppose, as soon as completed. May I make a brief statement of the way I understand this situation?

The Master—I hardly think it is necessary.

Mr. Thompson—Your Honor and I understand it so very differently that I should like at least to give my view.

The Master—I haven't got my understanding settled; I am trying to find out what the understanding is.

Mr. Thompson—Your Honor said we ought not to consider a very long postponement, which I supposed means Oct. 1. I supposed that date was fixed—I honestly supposed—by agreement all around—with the possible exception of Governor Bates not having settled on the exact date. When General Streeter was taken sick—

The Master—Let me ask if there is such an agreement—that we will, after the completion of the evidence in Eustace and Dickey, stop until Oct. 1?

Mr. Thompson—I would like to read the record on it.

The Master—Well, if there is, nobody will deny it, but it will only clear my mind up.

Mr. Bates—There has been absolutely no agreement so far as we are concerned whatsoever. Mr. Thompson has not mentioned this matter to me, in private or by correspondence.

Mr. Thompson—No, I have not; no, sir.

Mr. Bates—The only thing which

has been stated was what was stated in the presence of Your Honor. At that time I stated to Your Honor that we wished to accord to General Streeter every courtesy possible, but that the issues involved in this case were such that we did not think it reasonable to postpone the hearings under the circumstances, that there were counsel who could represent Mr. Dittmore and who were eminently able to do so; that we thought, in view of the issues involved, the hearings should go on. So there has been no agreement. I may say that Your Honor might be a little embarrassed in the decision of the Eustace case, which alleges that Mr. Dittmore may be, or that Mrs. Knott may be, a director; in other words, Your Honor might find it necessary to find out whether or not Mr. Dittmore or Mrs. Knott is a director in deciding the Eustace case. That cannot be done until the Dittmore case is completed. I also call Your Honor's attention to the fact that as long as they have raised the question as to Mrs. Knott's title to sit as a director in this board, and have averred their own right, it complicates the situation in the affairs of this great Church, and tends to tie them up in an unreasonable manner, and on that account a decision should come as quickly as possible. I entirely agree with Mr. Whipple that the matters are of such a nature, involve such a large movement, and are so serious, that they ought to be determined without delay, and we are ready to go ahead with both cases and complete them, as was the understanding at the beginning.

The Master—What I want to get at is this. Is there any agreement, and what, about Oct. 1?

Mr. Thompson—Fortunately what was said was taken down and is now printed. I would like to have at least the time to look at it and see what it says here, because I am quite sure that it says something different from what Governor Bates has said. I said, in announcing the next morning—

The Master—Can you find anything there about Oct. 1, or can anybody else find anything about Oct. 1? I only want to know if there was any agreement expressed about Oct. 1.

Mr. Bates—I know of none.

Mr. Thompson—Give me at least time to look for it. I cannot find it right off; it is printed here somewhere. The word "autumn" is used—kept open until the autumn. May I state what I have said here?

The Master—I will hear all you want to say ultimately, but at present can't we come right to the point that I am inquiring about? What was said about Oct. 1, if anything?

Mr. Thompson—All right.

"Mr. Thompson—We should expect that Mr. Whipple would agree that the Eustace case might be kept open to the extent that Mr. Dittmore's testimony in that case might be put in in

the autumn and not now, if he desired to testify in the Eustace case as distinguished from his own case. In other words, that his testimony when given in his own case might be deemed to be, so far as applicable, and so far as he wishes to make it so, his testimony as a defendant in this case."

Then I say a good deal more, which I won't read, because that is outside of what Your Honor wants.

"Mr. Whipple—I understand that Mr. Thompson's suggestion is that after the defendant directors have introduced the rest of their case in defense, he may then desire to proceed with Mr. Dittmore's defense in that suit, in the trustees' suit. I understand, also, that he may not, and that he does not wish to be called upon at this moment to decide that question.

"Mr. Thompson—That is exactly it.

"Mr. Whipple—I understood Mr. Thompson's position to be that as a result of my conference with him last evening, in which I urged strongly that he assist in facilitating the finishing of the trustees' case if possible, and that seemed to me to be entirely reasonable. I told him that I did not think that we needed to call upon him to decide now, with the other perplexing things that he has to decide, whether and to what extent he would want to offer evidence in defense of the trustees' suit. If he does, he ought to have that privilege, and ought to have it in a reasonably convenient way, and to any arrangement in that respect that Your Honor approves we should assent."

Then Governor Bates said that all he will stand for is a few days' delay. Then the master says:

"The Master—I would ask what would be the objection to going on, now that we are all here, to the point of completing the evidence, so far as you have any to offer, in Eustace v. Dickey, and at that time to see how matters then stand, and to consider then further the question of an adjournment or continuance of the hearing in the light of such information as we might then have?"

Governor Bates said, "That is satisfactory," and then I spoke somewhat about General Streeter.

Mr. Whipple—May I intervene, so that we will know what has been said and what conclusion has been reached, but it need not be published in The Monitor.

Mr. Thompson—Then I called Your Honor's attention to the fact that General Streeter could not return until autumn.

The Master—The autumn is a little indefinite.

Mr. Thompson—It means Oct. 1, to my mind, and that is what it means to Mr. Whipple's mind, because we so said.

The Master—I am unable to say that it meant just that to my mind.

Mr. Bates—Pardon me a moment. I heard Mr. Whipple give the reporter



some instructions as to not putting this into The Monitor. If there is any continuance in the case, it ought to go into The Monitor the same as anything else.

The Master—Do you want this whole colloquy to go in, word for word?

Mr. Bates—Mr. Whipple has asked that it be kept in the record, and I don't want the record in The Monitor to be different from that in the printed volume.

Mr. Thompson—Can't we make a brief, summarized statement at the end?

Mr. Whipple—The trouble is that The Monitor finds it very difficult in getting the complete record out when you sit as late as this. They are disturbed if the hearing goes beyond 4 o'clock.

The Master—Now, let me state the way that it looks to me. We had better go ahead just as we agreed the other day. Mr. Thompson was not bound then, nor do I think that he is bound now, by any agreement as to going on, nor is anybody else bound by an agreement as to the length of time for which we shall adjourn. I find no agreement that we were to stop until Oct. 1, at all events. I do not see how anybody can claim, in view of what has been read, that there has been an understanding that we would adjourn until Oct. 1. That would be throwing away nearly all of August and the whole of September. If there is any way avoiding wasting those two months, we ought to find it.

Mr. Thompson—I will say, sir, that I do not call it waste to have such a vacation after a hard winter's work.

The Master—You all know what will happen if you get to October and try to go on then.

Mr. Thompson—I do not know any reason why we should not go right on then.

The Master—October will seriously disarrange my own arrangements, but I won't at all insist on that—

Mr. Thompson—I did not know that, sir.

The Master—In view of the importance of the matter. I do not ask counsel to give that any consideration.

Mr. Thompson—We ought to give it consideration, sir, and I will.

The Master—But if there is any way of saving some part of September, I think that we ought to do it.

Mr. Thompson—May I say this: The reason of my surprise is this, that we had a long discussion, and at first General Streeter wanted me to urge you—

The Master—I wouldn't put it all in.

Mr. Thompson—It makes a little difference, sir. I agree because Mr. Whipple does, and I thought it was right to go ahead and help finish up this case.

The Master—That is what we are doing.

Mr. Thompson—He will bear me out in saying that he thoroughly un-

derstood that was my position, and he understood it and agreed with me that after his case was finished we were going to adjourn until autumn, and I was going to have a vacation and everybody else was going to have one. Didn't you so understand it?

Mr. Whipple—Yes, I understood it just as I stated in what Mr. Thompson read, that we were going on and finish Eustace v. Dickey.

The Master—We are all agreed on that.

Mr. Whipple—Then Mr. Thompson would decide whether he cared further to interpose a defense in that case in behalf of Mr. Dittmore on the lines outlined. Now, we haven't reached that yet, and I am hoping that Mr. Thompson will let us finish up the case of Eustace v. Dickey.

The Master—You will go right on and do that?

Mr. Whipple—I would like to finish that up. But, on the other hand, I did tell Mr. Thompson that he would have the right to claim to the Court, and that I was in agreement, in accord with him, that if Mr. Dittmore wanted to prosecute that suit, that defense, that he should have a reasonable right to do it, and it is a fact that he mentioned the autumn and that I knew that the doctor had told General Streeter he ought not to go on before the 1st of October. I think if I talked with Mr. Thompson about it I could perhaps persuade him to let us finish up the case of Eustace v. Dickey, if he didn't think it would harm his client.

Mr. Thompson—I would like to talk with Mr. Whipple about it, and I would also like to say the only possible reason for my interrupting and interposing a defense at all here is this: If I do not put Mr. Dittmore on as a witness against Mr. Whipple, Mr. Bates, although he is loud in his claims that I am not a director, will say that I am neglecting the cause of the directors. If Mr. Bates will say to me whether or not he thinks that the evidence up to date makes any prima facie case of an illegal expulsion, it will have some bearing on my mind in deciding my course in this case. Do you think, Governor Bates, that the evidence in this case up to the present makes any prima facie case that Mr. Dittmore was illegally expelled?

The Master—I do not think that there is any call for Governor Bates to answer that now. You may talk about it out of court. Here is the manner in which the case is now left. We will conclude Eustace v. Dickey so far as we can without calling on Mr. Thompson for anything. Then we will see what we will do. Counsel may talk it over meanwhile. My own view is, if there must be a suspension, that the suspension should be as brief as possible.

Mr. Thompson—My partner is going to Montana on the understanding that this case was going to be suspended. My whole office will be broken up if it is not.

The Master—That is undoubtedly a circumstance to be considered in deciding how long we ought to suspend it.

Mr. Thompson—General Streeter has assumed that also.

Mr. Bates—Why should there be these assumptions?

Mr. Thompson—Because they were justified, Governor Bates.

The Master—I should not be at all surprised that when we get to the point I have indicated that we might make some arrangements that will abbreviate matters, but you are not bound by virtue of anything that I have said today. You are left just where you were before.

Mr. Whipple—If Your Honor please, the reporter says it will be practically impossible to get this discussion into The Monitor tomorrow. Why shouldn't it be all stricken out?

The Master—Why can't we leave it out?

Mr. Bates—I want to be frank with Your Honor—this needn't go down. There have been various things which have gone into this record. I do not think we have been guilty of it, but there have been various things gone in in order to show the field situation. I want the field to know who is asking for this postponement if the postponement comes, and I think they are entitled to, in view of the fact that the whole record is given to date, and I am not objecting to it being printed in tomorrow's paper. It can go into the next edition as well, but under the circumstances we want to go ahead and complete this case and Mr. Dittmore has asked for the delay.

Mr. Thompson—Because his counsel is taken sick in open court you want to take advantage of that.

The Master (rapping for order)—I can't hear what counsel say, with so much conversation in the room. You consent, Governor Bates, that this colloquy may be omitted from today's proceedings?

Mr. Bates—Yes, Your Honor.

The Master—So far as The Monitor is concerned. If that can be done, counsel can probably agree upon some abbreviated statement which will not necessitate reprinting every word that we have been saying.

Mr. Bates—Your Honor misunderstood my statement. I made my statement very brief and addressed Your Honor only once in regard to it. I think that statement of the position of the directors in their desire to settle up this matter should go before the people who are reading The Monitor.

The Master—I did not suggest anything to the contrary that it should not.

Mr. Bates—My suggestion was it could go over into the next day's edition.

The Master—That is the suggestion I made.

Mr. Bates—Then I misunderstood you.

The Master—And that counsel would

see if they could agree to some abbreviation of what has been said.

Mr. Thompson—That is all. We do not want all of this colloquy. I would like to have this paper marked for identification before I take it out of the court room.

Mr. Bates—I object.

Mr. Thompson—It was identified by the witness.

Mr. Bates—It wasn't identified by the witness.

Mr. Thompson—Oh, yes, the signature of Mr. McLellan and stamped "approved."

The Master—Those were identified.

Mr. Bates—The signature was, but those papers were two years before this party came on to the board.

The Master—True, those were papers shown to the witness, and he identified the stamps upon them.

Mr. Bates—Identified the signatures.

Mr. Thompson—And the signature.

The Master—And the signature. For that purpose I think Mr. Thompson is entitled to have the papers identified.

Mr. Thompson—That is what I wanted. That is all I want.

Mr. Bates—I do not object to that.

Mr. Thompson—That is all. I do not want to take it out of the court room until it is.

[Original records of the directors, mostly for the month of June, 1915, concerning increase in salary, stamped "approved" and signed by Mr. McLellan as chairman, are marked Exhibit 724 for identification. R. J. M.]

[Adjourned to 10 a. m., Wednesday, July 30, 1919.]

July 30, 1919

## TWENTY-FIFTH DAY

Room 424, Court House,  
Boston, Massachusetts, July 30, 1919.

### Redirect Examination

### Edward A. Merritt Resumed

The Master—Now, let us get through with Mr. Merritt.

Q. (By Mr. Bates.) Mr. Merritt, at the time when the session came to a close yesterday you had just stated the two times when Mr. Dittmore had, as you put it, attempted to insult you in the board meetings. The first time was in connection with his accusing you of not being sober. Will you state what was his manner at that time?

Mr. Thompson—Just a moment. I do not think you should paraphrase and say he accused him. As a matter of fact, he made a joke. He said he would talk with him when he was sober.

Mr. Bates—I expected you to say that, and that was the reason for the question.

Mr. Thompson—I knew you would fix it up.

Q. What was Mr. Dittmore's manner at the time he made that statement? A. Why, he was rather stirred up, and he leaned forward in his chair and looked at me very earnestly and said, as I remember it, "You are drunk; I will talk with you when you are sober—I will take your advice when you are sober," or something of that kind.

Q. Mr. Thompson has just stated that Mr. Dittmore said that as a joke. A. It did not look like it at the time.

Q. It did not sound like it the way it was said? A. It did not sound like it.

Q. Was it said seriously, as you understood? A. Very.

Mr. Thompson—Aren't you leading him?

Q. Will you now state what his attitude was when he accused you of being a Bolshevik at a later meeting? Was that said jokingly, or how?

The Master—I suppose you mean what his manner was.

Q. What was his manner? A. Well, he was very much stirred up at the whole board at that time, and he leaned back in his chair and was rather at bay, I would say—

Mr. Thompson—At what?

The Witness—At bay.

Q. Just what do you mean by that? A. Well, you know the way a lion gets at bay.

Q. Yes. That is, something of a roar and defiance?

Mr. Thompson—Now, just a minute, Governor.

Mr. Bates—I will strike that out.

Q. You may go on and describe it in your own way. A. He raised his voice and was very aggressive, I thought, because he exposed, from what he said afterwards, that he had in his mind that we had acted outside of the board room in framing a motion which was brought in regarding Mr. McCrackan's going to Chicago, and he hurled out this sentence to us that we were all Bolsheviks and that we had been framing up this statement during his absence, and that we could do it if we wanted to and he would not stay at the meeting, so that he left the room.

Q. Was that statement that he made a true statement?

Mr. Thompson—Just a moment.

Mr. Whipple—It is a question of opinion about Bolsheviks.

Q. About framing up something outside of the board room? A. No.

Q. I understood you to say yesterday, in reply to a question from Mr. Thompson, asking if Mr. Dickey had not been mistaken about his facts when he asked Mr. Dittmore if he had not made a private communication to Mr. McCrackan about the Chicago address, that you said Mr. Dickey made an abject apology. Will you state what you meant by the words "an abject apology"?

Mr. Thompson—I pray Your Honor's

judgment. That is not re-direct examination.

Mr. Bates—I have a right to have him put in that statement.

The Master—You may have him state what he said, if you desire.

A. He said in substance, "Now, I want to say to the members of the board that I am very sorry for what has occurred here, and as far as I am concerned I am very sorry for it and very sincere in making this statement, and apologize to Mr. Dittmore for the heated words."

Q. What had been Mr. Dittmore's attitude at that time?

Mr. Thompson—I pray Your Honor's judgment.

Q. Or is that the time to which you referred when he called the members of the board Bolsheviks? A. No.

Q. That was another time? A. Yes.

Q. What was Mr. Dittmore's attitude or statement at that time, if you recall?

Mr. Thompson—I pray Your Honor's judgment. I did not go into that.

The Master—I think I have already objected to attitude as not sufficiently definite.

Q. What was his manner? A. At what time?

Q. At the time when Mr. Dickey made this apology? A. Well, as I remember it, that was the morning after the discussion took place, and everything was quiet.

Q. What discussion? A. The discussion of whether Mr. Dittmore had communicated privately with Mr. McCrackan or not.

Q. And that was a discussion between whom? A. Mr. Dittmore and Mr. Dickey.

Q. As to the manner of Mr. Dittmore in that discussion?

Mr. Thompson—Well, now, pardon me. I did not go into this, nothing about it.

The Master—If any of this should go in, I think this is as much entitled to go in as anything we have heard.

A. Well, he just expressed resentment and anger, became flushed and talked loudly.

Q. Mr. Thompson in his examination referred to an apology made in the presence of Miss Warren, and which Mr. Thompson characterized as an abject apology, and your answer was, "Yes, he was very repentant." Will you state what was said at that time? A. Mr. Dickey asked Miss Warren to come into the room because he—

The Master—No; what was said at that time? Confine it to that.

A. (Continued.) He said, "I want Miss Warren present here this morning, because she heard the discussion which went on yesterday," and in a very gentlemanly and sincere way he apologized—

Mr. Thompson—I object. I ask that be struck out.

The Master—I am asking you, Mr. Merritt, to do the best you can to confine yourself to stating what was said.

The Witness—It is pretty hard to remember all these apologies, and all the circumstances.

The Master—Do the best you can.

The Witness—I do not believe I can tell the conversation.

Q. Well, have you told it so far as you recall it—the substance of it? A. Well, the substance of it was to retract in a very manly way—

Mr. Thompson—I pray Your Honor's judgment and ask it be struck out. It is not competent.

The Master—I think you may strike that out. Now, the substance of what he said. If you can't give his exact words, give the substance of what he said, not describing it in any way, but the substance of what he said. Try to do that, Mr. Merritt.

The Witness—I don't remember.

Mr. Bates—That is all, I think.

#### Re-Cross-Examination

On Behalf of Defendant Dittmore

Q. (By Mr. Thompson.) Mr. Merritt, I don't know that this is very important, but about this statement by Mr. Dittmore that he would talk with you when you were sober. Didn't he suggest to you at that time that there was a mesmeric influence around the board? A. I don't remember that.

Q. Are you willing to say he did not? A. Yes.

Q. Didn't he suggest that you yourself were drunk with mesmerism? A. I beg your pardon?

Q. Didn't he suggest that you yourself were under some mesmeric influence at that time? A. He did not use the word "mesmerism," as I remember it.

Q. Didn't he give you the idea, didn't you understand, that that was what he meant? A. No.

Q. You said you had not been drinking at that time. You meant that, didn't you? A. Yes. Is there anything else you want to bring out about that?

Q. No, I don't think so. Because I think you know perfectly well that Mr. Dittmore, if he used the expression, was not referring to alcoholic liquor at all. You knew that, didn't you? A. Yes, I thought he meant a mental condition.

Q. You knew perfectly well when he said that he had no reference at all to alcoholic beverages, didn't you? A. Yes.

Q. Yet you were willing to let it go on the record that he accused you of having been drunk with alcohol, weren't you? A. No; I don't think I intimated that, did I?

Q. Now, as a matter of fact, about this McCrackan episode, what he meant was this, was it not: that you and Mr. Neal had been going down to the publishing house and making an investigation to see if you could find evidence of immorality on the part of Mr. McCrackan. That was what he meant, wasn't it? A. No, I don't think he used the word at all, "immorality."

Q. Well, that was the idea he conveyed, wasn't it? A. That was not the time about Mr. McCrackan.

Q. Well, just keep this thing in mind a minute. You and Mr. Neal had been on a committee to go down to the publishing house and see if you could find any evidence of Mr. McCrackan's immorality, hadn't you? Yes or no. Wrong-doing, we will call it. We will leave "immorality" out—that seems to be a troublesome word. A. That is better.

Q. That is better? A. Yes, we were, but—

Q. Now, you have answered my question. And Mr. Dittmore repeatedly expressed dissent from the policy, after a man had previously been acquitted on a charge of immorality—I can't help using the ordinary English term, because we all understand it—of trying to get up a new charge against him of that peculiar kind of sin by your going around to the Publishing Society—that was his objection, wasn't it? A. No.

Q. And he thought that the directors were being unfair, didn't he, and said so repeatedly, to Mr. McCrackan, in the way that they were trying to get up a case against him on immorality. Isn't that true? A. No.

Q. Did you think that the directors were acting perfectly fairly toward Mr. McCrackan in going around to the Publishing Society and inquiring to see if somebody down there would not say something improper about him? A. I think they were fair.

Q. You thought that was a fair thing to do, did you? A. Yes. I wouldn't have gone if I had not.

Q. Oh, I have no question about that, Mr. Merritt, but people's ideas of fairness may differ a little. Now, you say there were so many apologies by Mr. Dickey that you can't remember his words on any one of them, can you? You can't remember his words on any of these numerous occasions when he apologized to Mr. Dittmore, can you? A. I remember once or twice.

Q. But not more than that, do you? The Master—I think it has already appeared fully enough.

Mr. Thompson—I think so.

The Master—How far he undertakes to repeat the exact words.

Mr. Thompson—I think so. I think that is all.

Mr. Bates—Your Honor of course has in mind that we have not questioned this witness in regard to the Dittmore case or facts bearing on that, except in so far as Mr. Thompson has brought out matters in cross-examination; understanding that it was Your Honor's desire that we should not do so, we are reserving that until after the Dittmore case is opened.

Mr. Thompson—Now, I think, if Your Honor please, that the time has come—

The Master—One moment. Let me

ask a question. Are we now through with Mr. Merritt?

Mr. Bates—Yes, Your Honor.

The Master—We will excuse you, Mr. Merritt.

Mr. Whipple—If Your Honor please, I had not examined him on re-cross. Your Honor may remember that in reference to some matters last night you said that the trustees' counsel would have a proper chance.

The Master—You must excuse me for omitting to remember that at the proper time.

Mr. Whipple—It is not very surprising in view of the many examinations Mr. Merritt has been subjected to fore and aft.

#### Re-Cross-Examination

On Behalf of Plaintiff Eustace Et Al.

Q. (By Mr. Whipple) I omitted in the cross-examination one thing I had on my notes which I should like to put. That is that Mr. Rowlands, you said, showed some emotion or anger or resentment because, as he said, he ascertained that one of the members of the board had been going to the publishing house, conferring with the subordinates of the trustees, and trying to ascertain the facts from the publishing house behind the backs of the trustees. You remember that statement? A. Yes.

Q. Now, he showed some resentment at that time, did he not? A. Yes.

Q. Didn't you think it was a matter which would naturally cause, if not resentment, regret on the part of the trustees that such methods should be taken in ascertaining facts in connection with the administration of that trust? A. As I understood it, from the way it was done, yes.

Q. You sympathized then with the position which Mr. Rowlands took? A. Well, at least I thought Mr. Dittmore ought not to have inquired without the cooperation of the Board of Directors.

Q. You knew, or you know as a business man, how disorganizing it is in a great business or industry or trust, to have some one from the outside talking with your employees and possibly impairing their loyalty and upsetting the discipline of the place? A. Yes.

Q. And you recognized that that was a matter that anyone charged with the responsibility of the trust would naturally be disturbed at? A. Yes.

Q. And you were not surprised that Mr. Rowlands, a business man, exhibited some feeling about it? A. No.

Q. Now, it was brought out yesterday in examination that at the meeting of March 3 Mr. Dickey said that he was against appealing to the courts because we, that is the directors, would have a surer thing to discipline them, that is, the trustees, in the Church, than to go to the courts. You remember your statement to that effect yesterday? A. Yes. I don't quite remember the words "surer thing"—that assertion.

Q. Well, that is what I took down as the exact words you said; I may be mistaken. A. I may have used the words.

Q. "A surer thing." Now, would you care to change it? I don't care to hold you— A. Well, I wanted to give you a fair impression.

Q. Well, would the use of the words "a surer thing" give a fair impression of what he said? A. I don't think so, as I review it.

Q. Can you remember what he actually did say, what the term was that he used in this discussion, when Mr. Dittmore urged the removal of all the trustees and an appeal to the Court to appoint new ones, and Mr. Dickey advocated disciplining them in the Church as being more likely to be successful, or something, than going to the courts? A. Well, from his expression, he thought as I did, that the Church would be better off if it did not resort to the Court of Equity for appointment.

Q. But proceeded to discipline the trustees by Church discipline? A. Yes.

Q. Exactly. Now, if the trustees came before that ecclesiastical tribunal, as Mr. Krauthoff has called it, the directors would be at once the judges of the cause, the prosecutors or complainants, and would appoint the lawyer or other instrumentality to conduct the prosecution? A. Only in accordance with the Manual of The Mother Church.

Q. Yes; but it is a little dangerous situation when the ecclesiastical tribunal, or the same tribunal, prosecutes and decides?

Mr. Bates—Is this profitable, Your Honor, when this matter was not passed upon and nothing was done under it—as to what might have been?

Mr. Whipple—Why, we have alleged in our bill, if Your Honor please, and gradually the statements are proving all our allegations, that they never intended to apply to the courts, but that they intended by the great power which they exercised as directors of the Church, to force our trustees out of office.

Mr. Bates—The answer is that they didn't do it.

Mr. Whipple—Well, you happen to remember that there was an injunction, although some of your clients forgot it, and we wanted to show the actual fact—that they were intending to do the very thing which we said they were intending to do, because at some time and in another place there has been an assertion indicating they did not intend to do such a thing. That is the materiality.

Mr. Bates—There is no evidence such as you state. There is evidence that the question of disciplining one or more of these men was considered, and there is evidence that nothing was ever done under it. Subsequently they decided to remove them, and they did remove them.

Mr. Whipple—Oh, no, they were go-

ing to discipline them after they removed them.

Mr. Bates—No; there is no evidence of anything of that kind, and no evidence of any discipline under it.

The Master—Now, Mr. Whipple, you have now the evidence of what was said about that matter.

Mr. Whipple—Yes, Your Honor.

The Master—It seems to me that your present line of inquiry is only argument.

Mr. Whipple—I quite agree with that, if Your Honor please. I think on that ground I prefer to wait and address the argument to Your Honor rather than attempt to convince Mr. Merritt, although he is pretty fair.

Q. Now, isn't it a fact that the directors had talked it over and had outlined this plan, that instead of appealing to the courts they would attempt a removal under the powers which they were advised that they had, and that if the trustee who was removed did not submit with reasonable promptness, and if the other trustees did not proceed to elect some one in the place of the one removed who was acceptable, that they would thus become amenable to Church discipline? A. No.

Q. And that they would be thus dealt with? A. No.

Q. Was that discussed? A. We didn't go to that conclusion, Mr. Whipple.

Q. Was that discussed? A. I can truthfully say it was mentioned; I wouldn't say it was discussed.

Q. And it was mentioned on March 3, was it not? A. Well, I can't say about that.

Q. And wasn't it mentioned by Mr. Dickey when he said what you have stated, and which I took down as being that the directors would have "a surer thing" to discipline the trustees in the Church than to go into court? A. I don't think it was said on that occasion.

Q. Very well. Don't you remember Mr. Dickey's mentioning, in one of his letters from Savannah, that he thought it would be better to discipline the trustees than to go to court? A. Yes, I think he did that.

Q. Now, didn't he follow it out when he got back by presenting that suggestion as to discipline? A. It was never pressed as a conclusion, that the board would do this act.

Q. Was it talked of? A. It was talked of.

Q. Yes, that is right. I am sorry to revert again to this delicate matter of these salaries— A. It is not a delicate matter.

Q. —and the justification by referring to the Finance Committee. Have you got your Manual with you? A. Let me have a Manual. (Manual produced.)

Mr. Bates—Is this in redirect, Your Honor?

Mr. Thompson—No, it is re-cross-examination.

Mr. Bates—Is this re-cross-examination?

The Master—Re-cross-examination, I suppose, if it is anything.

Mr. Bates—Well, but is it anything?

Mr. Whipple—This was the very thing regarding which Your Honor said that "you will have an opportunity tomorrow or at least when you examine to point out about it."

Mr. Bates—It is not a matter that I have brought out in redirect examination.

Mr. Whipple—Oh, yes; this Committee on Finance is entirely a matter you brought out, and apparently a matter of your invention.

Mr. Bates—Well, if that came out in the redirect examination—

The Master—I think it did.

Mr. Bates—I have no objection, then, to it.

The Master—I think it did.

Mr. Bates—I thought it came out in the cross.

Q. Now, looking on page 29, first, this will be the beginning point. A. Yes.

Q. The last words of Article I, Section 9, under the heading of "Duties of Church Officers." A. Yes.

Q. You have got that, haven't you? A. Yes.

Q. Now, you understand that paragraph as describing something about the duties of the church directors as being church officers? A. Yes.

Q. And among the other duties, at the end, it says, as we have pointed out: "The salary of the members of the Board of Directors shall be at present \$2500 each, annually." You notice that? A. Yes.

Mr. Whipple (addressing Mr. Dickey)—I am afraid your communications, sir, to your counsel may be audible to the witness, because the counsel is farther off than the witness is.

The Witness—I did not hear anything.

Mr. Dickey—They are not, Mr. Whipple, if you are addressing me.

Mr. Whipple—I am addressing you, sir.

Mr. Dickey—They are not.

Mr. Whipple—They are not what?

Mr. Dickey—They are not audible to the witness.

Mr. Whipple—Well, you don't know whether they are or not.

Mr. Dickey—I do, I beg your pardon.

Mr. Whipple—You are addressing Mr. Abbott, and Mr. Abbott sits farther from you than the witness, and if they are of equally good hearing I do not see why the witness would not hear.

The Witness—I have not heard a thing, sir.

Mr. Whipple—I enjoin upon you to restrain comments which may be heard by the witness.

Mr. Dickey—I have always done so, sir.

Mr. Whipple—Well, I wish you would continue to do so.

Mr. Dickey—I shall.

Q. Now, let me call your attention to the provisions as to the Board of Finance. Who suggested the board's referring this question of increasing their salaries to the Board of Finance? A. Mr. Neal, I think.

Q. Did you speak with any lawyer about it before you did it? A. No, I think not.

Q. Not even Judge Smith? A. It is only possible that we did; we were very free to.

Q. Now, let us get at the duties of the Board of Finance, who they are and what they are. Page 76. That is under the heading, "Guardianship of Church Funds," Article XXIV, Section 4. "Finance Committee." Have you that before you? A. Yes.

Q. (Reading:)

"There shall be a Committee on Finance, which shall consist of three members of this Church in good standing. Its members shall be appointed annually by the Christian Science Board of Directors and with the consent of the Pastor Emeritus."

That is, you decided to submit the question of increasing your salaries to a committee of three which the board themselves appointed? A. Yes. They are trustworthy and honorable.

Q. Oh, of course. A. Oh, yes.

Q. Of course; otherwise you wouldn't appoint them. A. No.

Q. And reliable? A. Reliable, absolutely.

Q. That is right; reliable. The directors appointed them as reliable; you knew they would do what was right? A. Yes.

Q. And you were not surprised when they said \$10,000 is all right? A. No, not for a minute.

Q. But they didn't say anything about \$10,000 being all right, did they? Let me take those letters, please, that were put in last night. Let us just see what these reliable gentlemen that the directors themselves appointed were asked and what they said about it. A. Well, they said so every month afterward.

Q. Oh, yes, of course they did, because they were reliable. A. Yes.

Q. Now, in the letter that you wrote to them, you said, or at least your secretary said:

"I am instructed by The Christian Science Board of Directors to hand you herewith two legal opinions, one from Mr. Charles F. Choate, Jr., dated July 1, 1915, and the other jointly from Ex-Gov. John L. Bates and Mr. Leon M. Abbott, dated Sept. 6, 1917, on the question of the propriety of the members of The Christian Science Board of Directors relinquishing their positions in The Mother Church except their offices as directors. It is the unanimous opinion of the directors that the time has come for this change to be made and it is their hope to consummate the change in the not far distant future.

"Kindly return these inclosures, and oblige,

"Sincerely yours."

That doesn't say anything about increasing the salary, does it? A. It does in those opinions.

Q. Yes, but not in this letter? A. Oh, no; the letter didn't state everything that there was in the opinions.

Q. Certainly not. In other words, it didn't touch upon the salary question as much as it did the directors' surrendering their other positions? A. The salary was only incidental, you see.

Q. Yes, I see. So that their opinion or attention was not accented about this merely incidental matter as much as it was the main matter? A. That is right.

Q. And so perhaps they overlooked it; oh, no, they wouldn't—they were the reliable men. A. Yes.

Q. Now, the letter in answer says: "Dear Friends:

"In reply to your letter of Sept. 13, we beg to say that the Committee on Finance has carefully read the opinions of Messrs. Bates, Nay, Abbott & Dane, and Messrs. Choate, Hall & Stewart, regarding your proposed changes, and this committee heartily approves of the same."

Well, now, you didn't call the attention of these reliable gentlemen—you didn't call attention at all—to this little slip in the Manual that Mrs. Eddy left as a legacy to her Church—this provision? A. Yes, we did.

Q. That the salary should be \$2500? Not in your letter? A. No, not in our letter.

Q. No, not in your letter. A. We had an interview with the committee.

Q. I see. Well, that you haven't testified about, but you found after you interviewed them that they were perfectly reliable still? A. They still are reliable.

Q. And could be expected to do what was expected of them? A. Yes, from the standpoint of Principle.

Q. Yes. But not from the standpoint of the literal interpretation of the Manual? A. Yes; I am convinced of that.

Q. Now, then, may I call your attention to another provision, on page 77: "Provision for the Future." Section 6. You see, this was a provision that was put into the Manual to look out for the future:

"In case of any possible future deviation from duty, the Committee on Finance shall visit the Board of Directors, and, in a Christian spirit and manner, demand that each member thereof comply with the By-Laws of the Church."

You see, that was the duty on the part of this Finance Committee? A. Yes.

Q. "If any director fails to heed this admonition, he may be dismissed from office and the vacancy supplied by the Board." That is, the committee on finance was to see to it that these directors "complied with the By-Laws of the Church?" A. Yes.

Q. And there was that by-law staring them right in the face—"The sal-

ary of the members of the Board of Directors shall be at present two thousand five hundred dollars each annually." A. That is right.

Mr. Whipple—That is all.

#### Re-Cross-Examination

Q. (By Mr. Thompson.) Mr. Merritt, I forgot one question that I would like to put. During these conferences with eminent and accomplished lawyers, did any one of them ever suggest to the Board of Directors that if they wanted to settle the legal question of the relationship between these two boards without any expulsion of anybody, without any scandal, all they had to do was to bring the familiar process known as petition for instruction? Yes or no. A. No.

Mr. Thompson—That is all.

Mr. Bates—Now, if Your Honor please, I think that Mr. Whipple's re-cross-examination has made these opinions entirely competent. He has asked whether or not that last sentence of Section 9 of the by-law was brought to the attention of the Finance Committee, and has claimed that it was not in his question. Mr. Merritt in reply said it was brought in the opinions.

The Master—I did not understand him to make that statement.

Mr. Bates—Well, he said that there were things in the opinions and that you could not state what was brought without seeing the opinions. That was the inference to be drawn from it.

The Master—I did not so understand it.

Mr. Bates—Well, I submit that when Mr. Whipple says it was not brought to their attention, and the opinions show that it was—

The Master—Was not brought to their attention in the letter. I think that is as far as he has gone.

Mr. Bates—Yes, the letter states that the two opinions accompany it.

The Master—They do.

Mr. Bates—And I think that makes them perfectly competent to put in at this time.

Mr. Thompson—So far as we are concerned, the witness himself said that they were mentioned in letters of counsel. I object to it because I was not permitted—

Mr. Bates—I direct Your Honor's attention to the fact that the clause of the by-law which has been stated with such emphasis by brother Whipple as to most of it, but with very little emphasis on the words—

Mr. Whipple—Just a moment.

Mr. Bates—That the whole construction in the whole question in the rights of the directors depend upon that construction, and the opinions are in regard to that matter. Counsel gave an opinion that those words were put in by Mrs. Eddy for a purpose. They occur nowhere else in the by-law in connection with anyone. They left the door open for the fixing of the salaries by the directors at a subsequent time in accordance with

the change in events and the growth of the Church and the growth of their duties. Now, I offer those opinions because of the cross-examination of brother Whipple.

Mr. Thompson—Let me suggest to you, Governor Bates, that if you offer them I shall ask the Court to permit me to bring out from the witness the fact that there was another opinion from General Streeter at the same time, adverse to it, that should go in, too.

Mr. Bates—We do not object to your making any statements you please. You have already published it in the New York Herald and the Boston Herald and various other papers.

Mr. Thompson—That is absolutely without foundation, and you know it.

Mr. Bates—I can prove it as an issue in the case.

Mr. Thompson—You can prove anything which is not material.

The Master—Let us confine ourselves to the case for the present and not go outside. Is that all, Governor Bates?

Mr. Bates—I want to offer these.

Mr. Thompson—I object to them for the present.

The Master—Is that all?

Mr. Bates—Yes, sir.

The Master—Anything from you, Mr. Whipple?

Mr. Whipple—If Your Honor please, I have no objection to these letters except the cost of printing them. If there is any way in which these directors can justify themselves in the position they take with regard to these trustees and in getting this salary, they ought to have the benefit of it before the field. If there is any ingenuity of lawyers that can distort words for them to get this paltry sum, they ought to have the benefit of it; and I would like to see and I would like to have put before the field the casuistry and the arguments by which they justify that in spite of the plain terms of the Manual. But I do want--

Mr. Bates—I understand—

The Master—Wait one minute.

Mr. Whipple—General Streeter's letter, which was from the standpoint of one who knew Mrs. Eddy also, to be put in. I hate to pay for the printing, but I think that if there is any justification for this ecclesiastical tribunal who appeal to the lawyers against the plain statements in the Manual, they ought to have it in.

Mr. Bates—I submit, Your Honor, that Mr. Whipple started by stating that he did not object and then went on and made a speech for the purpose of getting it before the field, and it will take nearly as much space in the newspaper as the opinions will.

Mr. Whipple—I was replying to your speech.

Mr. Bates—It did not call for any reply.

Mr. Whipple—And I replied to it so effectively—

The Master—I have already stated a good many times that I think it would

be better if counsel would refrain from speeches of this kind; but if one side is permitted to make them, fairness requires that the other side be permitted.

Mr. Thompson—May I suggest, Governor Bates, that you are going to have opportunity to put these opinions in with General Streeter's opinion, and that you defer offering these letters for the sake of avoiding any further difficulty at this time and further cross-examination, which will take up a great deal of time and may later become immaterial. I do not want you to keep them out ultimately; I want them all to go in; but now is a very unfortunate time for you to insist on the admissibility of those letters. Nobody is going to be hurt by their not being admitted just at present.

Mr. Bates—I thank you for your suggestion, but Mr. Whipple is the one who raised the question and he is the one who seems to think that there is something in it. Personally, I think it has nothing to do with the case except as a smoke cloud that he is endeavoring to raise in regard to it—a smoke screen.

Mr. Whipple—Nothing except the inconsistency of your clients.

The Master—Are counsel now all through so far as they desire to make statements?

Mr. Bates—I am through, Your Honor.

The Master—If it be true that another opinion went to the Finance Committee at the same time with these, if these are admitted, it is very difficult for me to see why the other should not also go in in connection with these.

Mr. Bates—These opinions were asked for by the board, Your Honor; the other opinion to which reference has been made is an opinion which I understand was volunteered by General Streeter, and it was not asked, but which he came before the board and asked to read. That goes into a discussion.

The Master—Am I to understand that it was submitted to the Finance Committee along with these?

Mr. Bates—Not so far as I know.

Mr. Thompson—I knew that would happen, and that is why I urged that these papers be suspended for a while.

The Master—You made a statement about the other opinion.

Mr. Thompson—Yes.

The Master—And I want to get that, the actual fact.

Mr. Thompson—The actual fact of it is this, sir. Governor Bates has not correctly stated the fact. It was not volunteered by General Streeter. It was sent to the board—

Mr. Bates—The statement—

The Master—Just a minute, Governor Bates.

Mr. Thompson—Mr. McLellan, the chairman of the board, requested the opinion, and it was not sent, however, to the Finance Committee, because

it was opposed to the opinion of Mr. Choate—

The Master—Then it was not submitted to the Finance Committee?

Mr. Thompson—No.

The Master—That is the fact which I am trying to get at.

Mr. Thompson—It was kept back.

Mr. Whipple—The fact that it was not submitted is one more important thing, we think.

The Master—Very likely; but in the present connection we are only concerned with what went to the Finance Committee.

Mr. Thompson—I should say not.

Mr. Whipple—May I ask, if Your Honor please, if we are not really concerned more with what the directors concealed from the Finance Committee, if they did so?

The Master—We may be, but these are offered on the ground that they are part of the communication to which the Finance Committee replied.

Mr. Whipple—But if they put those in as showing their good faith—I mean the directors themselves—as bearing upon that question, may we not put in General Streeter's letter?

The Master—It may be that you will have opportunity to put it in at some time or other, but for present purposes, my immediate purposes, I do not think I am concerned with it.

Mr. Bates—I understand that Your Honor admits these as a part—

The Master—One minute. No, I have not quite got that far. Have we got all through with this witness except—

Mr. Bates—No, there are one or two questions I wanted to ask him.

The Master—One or two.

Mr. Bates—Shall I ask those questions?

The Master—I am inclined to think that I shall adopt Mr. Thompson's suggestion so far as to suspend any ruling on these two opinions at present, leaving the question open for the time being. I think now that they are offered, that I will take the opportunity of looking them over myself, if there is no objection to my doing that, and we will see later. Mr. Thompson holds out a hope that the whole matter may become immaterial. In that case we shall not have to have a decision on the question. Now, I would like to have you finish with this witness.

#### Re-Direct Examination

Q. (By Mr. Bates.) Now, Mr. Merritt—

Mr. Whipple—Governor Bates, would you have any objection to the master reading over at the same time General Streeter's letter?

Mr. Bates—Why, if the circumstances under which General Streeter's letter was presented have been truthfully stated, I would have no objection. I stated that it was volunteered, and it was denied. General Streeter's letter starts off with that statement.

Mr. Thompson—Just a minute.

The Master—I do not think that we had better go into any discussion about General Streeter's letter at this moment. I want the testimony of this witness completed.

Q. Mr. Merritt, you have stated that the finance committee were reliable men, and the report shows that they were Calvin C. Hill, Fred M. Lamson, and Charles E. Lord. Who is Calvin C. Hill? A. He is a Christian Science practitioner here in Boston.

The Master—Is there going to be any question made about their being reliable men in the ordinary sense?

Mr. Bates—I wanted to bring out that they are men of large affairs.

The Master—Can't we assume that that is so,—the fact that they were on the Finance Committee?

Mr. Bates—Well, I offer to show, Your Honor, that Mr. Hill has been connected with Christian Science as a teacher and practitioner, highly thought of for many years, and I offer to show that Mr. Fred M. Lamson is vice-president of the Old Colony Trust Company, and that Charles E. Lord is an insurance man in the City of Boston, of large interests.

The Master—Is there any dispute about those facts he offers to show?

Mr. Whipple—I think not.

The Master—Why can't we have that admitted?

Mr. Whipple—I think we can. They are perfectly respectable gentlemen, all of them.

Q. I would like to know, Mr. Merritt, as to whether or not the salaries that are paid to you are paid by the treasurer of the Church? A. Yes.

Q. And whether or not those salaries, or the bills, the payments, go to the Finance Committee whenever those payments are made the same as other bills?

Mr. Whipple—Just a moment. Does he know that? Is it anything of his own knowledge?

Q. So far as you are concerned?

Mr. Whipple—Pardon me. Does he know anything about it?

Q. Have you any knowledge of the matter? A. Oh, yes.

Q. What is the practice? A. Their instruction from the Board of Directors is that all bills, in accordance with the Manual, go to the Finance Committee for their approval before payment is made.

Q. And does that include all payments made to the directors? A. Yes.

Mr. Bates—That is all.

Re-Cross Examination

Q. (By Mr. Whipple.) That is, you regard your salary as under the Manual a bill against The Mother Church? Is that so? A. The same as all other salaries.

Q. Well, you regard your salary as a bill against The Mother Church in the ordinary acceptance of the term? A. Yes, in the ordinary acceptance.

Q. Yes. Do you make out a bill and present it every month? A. No.

Q. Did you ever make out a bill and

present it and then receipt it when it is paid? A. No.

Q. But the bills in the ordinary commercial sense are bills that are sent in by outsiders made out "The Christian Science Church" or "Board of Directors" to so and so, are they not? A. Yes.

Q. That is a bill, a bill in the ordinary commercial sense, isn't it? A. Yes.

Q. And it is rather a new idea to say that the salary of a church officer is a bill against the church, isn't it? A. You said in the ordinary acceptance of the word.

Q. I say this idea of the salary of a church officer for which he sends in no bill being called a bill against the church, is rather a new idea, isn't it? A. Well, if you hadn't put the words in my mouth "in the ordinary sense of the word," I wouldn't have called it a bill; I would have said it was a regular charge.

Q. It is not a bill in the ordinary sense, is it? A. No.

The Master—We will all agree to that.

Mr. Whipple—I think every one would have to, if Your Honor please.

The Master—I think so. Can't we leave it there?

Mr. Whipple—Then, that construction—

The Master—Now, argue about it later, Mr. Whipple. Is there anything further from this witness?

Mr. Bates—No, Your Honor.

The Master—You are quite sure about that now. We can excuse you, then, Mr. Merritt.

Now, at the request of counsel for two of the parties here, we will take up the question of arrangement of future dates for the continuance of the hearing.

Mr. Thompson—If Your Honor please, last night you asked us to consider and confer, if necessary, about the question of a continuance, and that involved, it appeared, the question of Mr. Dittmore's putting in an independent defense to the Eustace case as distinguished from his prima facie case in the case of Dittmore v. Dickey. We have, Mr. Demond and I, considered that matter with great care, in consultation with our client, and we were able to reach General Streeter on the telephone, and, if he is able to do so, he will be in Boston this afternoon. There may be some doubt about his ability to get here, but I think he will be able to come.

The Master—Does he want to be heard?

Mr. Thompson—No, sir. He may, but not in such a way—

The Master—If he does, I think you had better leave it until he can be here.

Mr. Thompson—He desires us to make this statement now, and on the event—

The Master—I do not want to have that matter opened twice.

Mr. Thompson—On the event of what now occurs I think may depend

whether he may desire to say a word further; but I think that the situation is such that it is desirable that I should make a statement, and then regardless of any possible desire on the part of General Streeter to address the Court later—it won't take very long.

The situation we are in cannot be solved without the instruction of the Court. We have reached that conclusion, and the reason is this. The case of Eustace v. Dickey sets out the dismissal, or attempted dismissal, of Mr. Rowlands on certain definite charges in writing. It appears as an admitted fact in the case, not in dispute at all, that Mr. Dittmore objected to the discharge of Mr. Rowlands, did not vote for it, and took the position that so far as the charges against him personally were concerned, of neglect and of being contentious, he could not, not only sustain them, but he objected to them as being untrue and trumped up. He also took the position that the other charge, namely, holding an erroneous view of the Manual, was true, although it ought not to be made the basis of the removal of only one trustee. The bill is based on the dismissal of Mr. Rowlands on those definite charges, in which Mr. Dittmore took no part. Mr. Dittmore's answer, however, having dealt with those charges and his attitude on them, goes further and sets up certain specific matters against the trustee which were not the basis of any action by the Board of Directors. In spite of Mr. Dittmore's urgency that they should be, they were rejected by the board and never made the basis of any action by the board. His charges are extravagance, waste, improper, and tyrannical dealing with employees, and various matters which would form the basis of an attack by a beneficiary on a trustee in an ordinary court of law, maladministration of the trust.

Now it may be—and Mr. Demond and I have considered it with great care and are still in doubt—it may be that in view of the fact that Mr. Dittmore was unable to persuade his fellow directors to accept and act on those charges either against Mr. Rowlands or against all three trustees, the fact that he now sets them up in his answer does not make them relevant; and it may be that Your Honor will take this view that he is precluded at this time from offering any of the evidence of those charges outside of the charges contained in the paper on which Mr. Rowlands was dismissed. If that is so, if that is Your Honor's view, then we, of course, desire to put in no independent defense in the case of Eustace v. Dickey. If, on the contrary, Your Honor should feel that the ultimate decision of Eustace v. Dickey by the full bench of the Supreme Court might be affected by the proof here by Mr. Dittmore, or attempted proof of the charges that I have referred to, having nothing to

do with the charges on which Mr. Rowlands was dismissed, then we do desire to put in evidence and make a defense in that case. In that event, we cannot do it now. It involves not only Mr. Dittmore's own testimony, but involves the testimony of a large number of witnesses whose statements he has procured, and it would greatly lengthen these hearings.

It had occurred to us, in that event, Mr. Whipple would not really lose by the delay, because the Supreme Court of this State is not going to decide the case of Eustace v. Dickey against Mr. Dittmore without knowing whether Mr. Dittmore is a director, and that cannot be ascertained until the case of Dittmore v. Dickey is brought to a finish, and I think that Governor Bates was right in his suggestion that he made to Your Honor. But I think myself, the best consideration that we can give to it, is that there is considerable doubt as to the admissibility of the evidence which Mr. Dittmore had labored to collect and urged upon his colleagues to present but which failed to satisfy them ought to be made the basis of any action, namely, evidence of inefficiency, extravagance, waste and tyrannical dealing with employees. There are a large number of details which would go into figures and make a new case here which will be almost as voluminous as the case that has already gone in on the theoretical and speculative aspects of this question. I do not know what view Mr. Whipple may take, whether he would object to my testimony or not—I assume he would—but I think an intimation from Your Honor at this time might greatly help Mr. Demond and myself to reach a conclusion which would be just to Mr. Dittmore, whose only interest in this case is to preserve what he thinks is the correct view of the relations of these boards in the interest of this great Christian Science Church of which he is a loyal member, and the interests of that Church are the only interests that he has at heart. Personally, it is of no consequence to him whether he is retained on this Board of Directors or not: his only object is to maintain the view which he has always maintained and which he thinks is essential to the preservation of this Church.

The Master—Does any of the other counsel desire to say anything in view of Mr. Thompson's statement?

Mr. Whipple—If Your Honor please, in regard to any attempts which have been made by the directors to introduce other alleged reasons for the discharge or removal of Mr. Rowlands, Your Honor has ruled uniformly that they should be confined to the reasons which they appended to the notice of the removal, and that they could not now bring forward new reasons which had not occurred to them then. A further application of the rule which has been applied to the directors would seem to me absolutely to prevent the

introduction of any of the charges which are contained in the Dittmore answer. Here is the situation—

The Master—You mean charges contained in the Dittmore answer, and not made in the answer of the other defendants?

Mr. Whipple—They are not only not made in the answer, but are not made in the reasons for dismissal which were given Mr. Rowlands. To state the situation briefly, it is this: The directors were considering the reasons which they would advance for the removal of Mr. Rowlands. Four of them said, "We will prepare and present," and they did prepare and present, "certain reasons." Mr. Dittmore said, "I desire to put this thing on the ground of extravagance and waste, things that a beneficiary had a right to complain of. I insist upon proceeding upon those grounds." The majority of the Board of Directors said in substance, "There is nothing to it; we do not believe they exist; we will not include them in the reasons which we present for removal." They, therefore, are estopped from now alleging those reasons. On the other hand, Mr. Dittmore, who advanced those reasons, was voted down by the board, and the board's action was to discard his reasons; and those were not the reasons for the removal of Mr. Rowlands. Now, if he attempts to introduce them, why is he not estopped by the action of the board? And we have always had in mind that when we came to that we should object to the admissibility of that evidence, and hope for a favorable ruling. It does seem to us that it is an opportune time now to clear the situation and determine whether we have got to go along for days and weeks, and perhaps longer, in determining as to the substantiality of the charges made in the Dittmore answer.

The Master—And not made in the other answer.

Mr. Whipple—And not made in the other answer, and not included in the grounds for removal. We do intend, promptly, upon the advancing of any of those reasons, to object to them, on the grounds that I have now stated. If, therefore, the suggestion that has been made should be adopted, namely, that it might be considered that Mr. Dittmore, at the close of the directors' case, had outlined his offer of proof to substantiate those charges, the legal question would be raised, which could be passed upon in a perfectly clean-cut way, and would very much abbreviate the hearing; and therefore, I desire, at the earliest possible time, to present in a proper manner that question so that it can be determined, and the future of the hearings will be very much affected thereby.

Mr. Thompson—I want to make one suggestion that—

The Master—What further presentation is necessary? Is it not presented now?

Mr. Whipple—Nothing more is necessary, unless, possibly, pro forma, as soon as Mr. Bates has finished with his evidence. Mr. Thompson should address the court and say, by way of his opening for his defense, which I think he has not made, "We propose to show" so and so; and thus, perhaps, the question would be presented a bit more formally, but it would not be in substance any different from the presentation that has been made.

Mr. Thompson—That was my idea. I made one omission, and I want to put it perfectly straight on the record. Mr. Dittmore, in addition to these definite charges made in his answer, and not made in the answer of the other directors, and not in the so-called charges against Rowlands, did always make it a ground of objection to Mr. Rowlands and to the other two trustees that they disagreed with him and with his colleagues on this great question of the relation of the Manual to the Deed of Trust; but that is a matter, so far as it is to be affected by evidence, to be determined on the documentary evidence, and Mr. Dittmore can add nothing to the documentary evidence introduced by Mr. Dane, the letters of Mrs. Eddy, and the different by-laws, and the times when they were adopted. That is documentary evidence. He can add nothing to that. There is only one point on that line that has not, perhaps, been fully covered, and that is what occurred at the meeting of February, 1916, when the famous Dittmore memorandum was drawn up, that has been testified to somewhat. It is possible that Mr. Dittmore does not think that it has been testified to adequately; and if Governor Bates desires to introduce evidence as to what occurred at that interview, the circumstances of the drawing of the memorandum, and what was said by the trustees about it, I offer him (Mr. Dittmore) as a witness to Governor Bates on that point; and I am willing to waive, if he confines himself to that, my right reserved by the original agreement to cross-examine him on the issue in the Dittmore and Dickey case; but with that one exception Mr. Dittmore can add nothing to the fundamental question of the historic relations between these two boards, and between the By-Laws and the Deed of Trust. The point that I make relates only and solely to the other matters which are stated in his answer, and are not stated in the answer of the other directors. And it is as to those matters that Mr. Whipple has made his suggestion in reference to my making a formal offer of proof, which suggestion I am perfectly willing to adopt if Your Honor will indicate what view is to be taken of it when it is presented.

The Master—The situation which you gentlemen present, which does not call for a ruling at the present time, will properly arise when Governor Bates has completed his evidence.



Mr. Thompson—Yes, sir.

The Master—We do not know how much more evidence he is going to present, and he may be able to tell us, through his witnesses, about the meeting to which you refer.

Mr. Thompson—No; we do not know that. The only reason why I urge Your Honor to consider it now is that the plans of General Streeter, of Mr. Dittmore and his family, of Mr. Whipple and Mr. Strawn, and of myself and my partners, all depend upon a prompt settlement of this question of when we are going on with these hearings; and of course that applies to Your Honor's own plans also.

The Master—Well, never mind me.

Mr. Thompson—I think that we ought to mind you, sir.

The Master—I do not ask for any consideration. Do you desire to say anything, Governor Bates?

Mr. Bates—Only a word, Your Honor. I direct Your Honor's attention to page 59 of the bill—

Mr. Thompson—What bill are you reading from?

Mr. Bates—where the resolution of the dismissal of Mr. Rowlands is quoted:

"Whereas it has become evident that Mr. Rowlands has allowed a sense of self-interest to interfere with the interests of Christian Science; that he has become self-assertive, contentious, and disposed to make trouble without regard to consequences; and that he is, for these reasons and the foregoing reasons and other reasons, not suitable for connection with The Christian Science Publishing Society as a trustee thereof."

I wish to direct Your Honor's attention to the significance of the words "and other reasons." If Mr. Thompson wishes to justify the answer that he has put in in this case by offering evidence, our position is that we would like to have him do so. We think that it is his duty to do so, and to sustain his answer, unless Your Honor should think that he is restricted from doing that by reason of that resolution.

Mr. Thompson—You will—

Mr. Bates—So far as the continuance is concerned, we are anxious to close up both of these cases. We want to be as agreeable and courteous as possible, but there are immense interests that are jeopardized more or less by delays, and, considering the vastness of the interests in both cases, I think that vacations for counsel should not be allowed to interfere with the prompt presentation of their evidence and the prompt presentation of their arguments, and the ending of these cases. Apart from that, we would like to conform to any suggestion that would be agreeable to Your Honor, because I recall that Your Honor is sitting in this case far beyond, probably, your expectation, and at the earnest request of all the counsel and all the

parties; and I think that Your Honor's convenience should be a large factor in this matter.

The Master—I do not understand that you would insist, no matter what the ruling might be on the point regarding which Mr. Thompson has spoken, that we go on from day to day without any intermission until both cases are completed?

Mr. Bates—No, Your Honor. I would not object to anything that Your Honor thought reasonable in the way of a brief respite, or several of them, if necessary.

The Master—So far as I am concerned, I am prepared to do it, if that appears to be the thing that we ought to do.

Mr. Bates—Personally I am situated this way, that the Constitutional Convention comes in on Aug. 12, and naturally I should like to attend to my duties there.

The Master—Is it not clear, then, that we cannot do that?

Mr. Bates—Well, I was going to add, Your Honor, that the expectation is that the convention will not take more than four or five days, so that I do not think that that will be a serious interruption, and, if necessary, I would give my time here rather than there.

The Master—There will have to be some interruption, will there not?

Mr. Bates—In all probability there will have to be some.

The Master—On General Streeter's account, you would be willing to allow some intermission?

Mr. Bates—Yes.

The Master—Now, supposing ourselves, for the sake of dealing with this question, at the point when Governor Bates shall have closed this evidence, taking it up now as a matter of convenience rather than then, is there anything more that either counsel desires to say regarding the ruling that I should make with reference to the admissibility for the purposes of this case of those grounds urged by Mr. Dittmore for the removal of the trustees, but not specified in the resolutions, and not relied on in the answer of Dickey and others?

Mr. Whipple—In that connection I may revert again, perhaps, to the uncontradicted testimony that Mr. Dittmore pressed upon the Board of Directors, when they were considering what charges to make, the making or the resting of their action upon charges such as he makes in his answer, and that the majority of the Board of Directors repudiated those charges, and that they have testified without contradiction that the business administration of the trust was fairly well conducted. Your Honor will remember that you asked whether the difference was between being fairly well conducted and highly successful—merely successful or highly successful; and that seemed to be the only dispute. Perhaps, however, I am trespassing upon questions

of possible dispute as to evidence, and we will rest upon what I said before, with the attempted amendment of Your Honor's suggestion that I have indicated.

Mr. Thompson—I want, in view of—

The Master—What have you got to say, Mr. Thompson, about "and other reasons"?

Mr. Thompson—I was just going to say something about that, sir, and I will say, if I may be permitted to go back and take these charges on page 57—they begin on page 57 of the answer of the—

The Master—Those are the resolutions. You can call them the resolutions.

Mr. Thompson—The resolutions. Now, the first of them—

The Master—Now, do we need to go into them all in detail?

Mr. Thompson—In view of what Governor Bates said, I did hope, I had an earnest hope, that on this matter at least, involving the health of General Streeter, no partisan advantage or partisan statement would be made, but Governor Bates has given a turn to it which is susceptible of meaning something that is unpleasant, and therefore I want to say that Mr. Dittmore heartily concurs in the first resolution, beginning,

"Whereas Mr. Lamont Rowlands," and in the second one, beginning

"Whereas Mrs. Eddy has declared"—

The Master—I understand that he concurs in them all, doesn't he?

Mr. Thompson—No, sir; he does not, distinctly not. He begins to differ, and differs very materially, at the last charge of all, which has been featured here with great vigor—

"Whereas it has become evident that Mr. Rowlands has allowed a sense of self-interest to interfere with the interests of Christian Science; that he has become self-assertive, contentious, and disposed to make trouble without regard to consequences; and that he is, for these reasons and the foregoing reasons and other reasons, not suitable for connection with The Christian Science Publishing Society as a trustee thereof."

Mr. Dittmore, at the time when that was said, repudiated it as untrue, false, malicious, and unfounded, and made up afterward to serve a purpose. He repudiates it now, and he never will associate himself with the proof of that charge, or the maintenance of it for one single moment. He does not want any opportunity to prove that charge. As to the words "and other reasons," the expression "and other reasons" there, I do not suppose that that can possibly be stretched to cover charges of extravagance, waste in postage, tyrannical disposition toward employees, especially when Mr. Dittmore had raised those matters before these gentlemen, and they had not sympathized with them, but, on the contrary, had made

it just as hard as they could for him to get definite information about these subjects. I am a little surprised, at this late date, that Governor Bates, having adopted the Dittmore memorandum as the basis of his case, having taken from Mr. Dittmore all the ammunition that he possibly could, and done everything to discredit him personally, should now say that he wants him to go ahead and prove charges against the trustees which his own clients, from the time when the point came to make them have repudiated them. I do not think that the words "and other reasons," at least in the mouth of Governor Bates, or in the mouths of these other directors, can now be used for such a purpose as was intimated a few moments ago by him, to take advantage of General Streeter's absence and force us to go ahead and prove this case.

Mr. Bates—May I just say a word, Your Honor: That it is strange that with such eminent counsel Mr. Dittmore should have filed an answer, and now come into court and say that what he filed in the answer is not admissible, and that he himself does not want to put in his evidence.

Mr. Thompson—I didn't say that, sir.

The Master—He has not said that. Mr. Bates—Practically what he said—that what he has filed is not a defense to the suit.

Mr. Thompson—Absolutely a misstatement, sir. We would like a chance to prove these facts, and have the witnesses, and are willing to take three weeks doing it.

The Master—I do not understand that Mr. Thompson has taken that position.

Mr. Bates—He has taken this position, if I understand him, Your Honor—that he has said he would like to, but they are not admissible.

The Master—No, he hasn't said that, Governor Bates.

Mr. Thompson—Oh, no, I haven't said anything of the sort.

The Master—He has said that he now submits it to the Court to rule, to determine whether or not they will be admissible.

Mr. Bates—I may be wrong, but I am willing to be corrected by Your Honor.

The Master—Well, I don't want to correct, I am sure. I want you to agree that that is so.

Mr. Bates—Well, I understood him distinctly to state that he considered that they were not admissible.

Mr. Thompson—You did not.

Mr. Bates—That is, having said he would submit it to Your Honor, he then endeavored to control Your Honor's judgment by making the admission that he did not think they were admissible.

Mr. Thompson—You didn't hear what I said, excuse me. The other reasons, I was talking about—merely a matter of construction of it.

Mr. Bates—I wish to urge simply

this—that these are not in the nature of charges; that anything that was a ground for the removal of Mr. Rowlands could be introduced into evidence. Mr. Dittmore is not restricted. If he has any evidence he can present it, in my opinion. He certainly should not come in here and attempt to cut himself off from his own associates in any such way as he has done. If these were charges upon which a man had been tried the situation would be different. We believe that it would have been perfectly possible and proper to have removed Mr. Rowlands without setting forth any reasons, under the powers that we have. If that is so, then it is not necessary for us to be bound by the reasons set forth in the resolution. In addition to that, I will call my brother's attention to the fact that several things have come into this case that are not specifically mentioned as reasons, including their methods of bookkeeping, and the report which was made by their accountants, showing that they were prosperous.

The Master—So far as you rely on those I can rule when the time comes. My view is at present to give no significance whatever, for the purpose of Eustace and Dickey, to the words "and other reasons." But are we now all of us entirely clear that Mr. Thompson does not contend that the charges made in Mr. Dittmore's answer, but not in yours, are inadmissible? He does not take that ground. You agree to that now, don't you?

Mr. Bates—Why, I understood him to take that ground.

Mr. Thompson—You misunderstand it, Governor. How many times ought it to be said to you as a gentleman for you to take back that statement, which you know is extremely unfair, if not untrue?

The Master—Mr. Thompson has not waived his rights in regard to those charges.

Mr. Thompson—Of course not.

The Master—If I should rule against him I should expect him to except to the ruling—

Mr. Thompson—Certainly.

The Master—And to reserve the point.

Mr. Thompson—I would go to the Supreme Court on it.

The Master—Now, we ought to have a clear understanding about that. I was in hopes that you would agree that there was a clear understanding on that point.

Mr. Bates—I confess that I have been unable to understand Mr. Thompson's position in this matter. It has been inconsistent, as I have seen it. If I have misstated what he said then it was because I did not hear him correctly. But I still have those words so distinctly in my mind that I am satisfied that if the reporter would read back he would find it was exactly as I stated.

Mr. Thompson—It is exceedingly important there should be no misunder-

standing on the part of anybody except Governor Bates; I give up the effort to make him understand.

The Master—I do not want any misunderstanding on Governor Bates' part; I want to be perfectly clear about this.

Mr. Thompson—Apparently he is unwilling to yield to Your Honor or to me or anybody's else interpretation. Now, let me say as distinctly as it can be put in the English language: Mr. Dittmore maintains that these other grounds are material, and that he has a right to prove them now.

The Master—I so understood it.

Mr. Thompson—He has got the testimony to do it—his own, and that of several other witnesses—and he wants the opportunity. On the other hand, if Your Honor is going to rule when he offers this evidence that it is immaterial for the reasons suggested here, it is better to have the ruling come now for the convenience of everybody concerned, and know where we stand, than it is to wait and summon in a dozen witnesses, some of them from a great distance and at great expense, only to learn then that it is not material. Now, can that be misunderstood by any honest person? I do not think so.

Mr. Krauthoff—If Your Honor please, one moment. I am not desirous of addressing the Court because Governor Bates is handling this phase of the case. I would appreciate it if I may have an opportunity to confer with Governor Bates before anything further is done about this.

Mr. Thompson—Well, let us adjourn, then, for five minutes.

The Master—Well, if you desire an opportunity to confer I think you will have to be granted that opportunity. But, first, I want to be sure that there is now no misunderstanding on the point last stated by Mr. Thompson.

Mr. Bates—I do not object to the last statement made by Mr. Thompson; but Your Honor will recall that Mr. Thompson presented certain letters here which he claimed Mr. Dittmore had received, making charges against the trustees, and which he claimed were presented to the board; and, with much of the tragedian style, he held them up and said, "I offer these; now if you don't summon these witnesses on these points, it is your own fault, and you are to blame."

Mr. Thompson—Certainly, and I say it now.

Mr. Bates—Now, I submit it is his case, and if he wants those witnesses he should summon them.

The Master—I don't think we need go into that now. My question is merely this: Is there now any misunderstanding as to Mr. Thompson's position?

Mr. Bates—I think I understand Mr. Thompson's position perfectly.

The Master—Let me ask, Mr. Whipple, if you think there is any misun-

derstanding now as to the point at which we have arrived?

Mr. Whipple—I think I have a clear understanding of what Mr. Thompson said. I thought I did the first time he said it, and addressed myself to it in my remarks to Your Honor.

The Master—It would be a misfortune if any action should be taken, and hereafter counsel should assert they did not understand just what was being done. Now, it being suggested to me that the counsel for Dickey and others desire an opportunity to confer, I think we shall have to give them a few minutes for that purpose.

Mr. Thompson—It is now the time for that anyway; it is half-past eleven.

The Master—We will pause, then, for ten minutes.

[Short recess]

The Master—Anything further to be said?

Mr. Bates—I think not, Your Honor.

The Master—There is nothing further to be said, no other suggestions from any other counsel? In that case, supposing ourselves for the time being at the point where Governor Bates closes his case, where Mr. Thompson opens, and supposing that Mr. Thompson then states his intention, offers to prove the charges made in Mr. Dittmore's separate answer, but not made in the answer of the other defendants in *Eustace v. Dickey*, and not referred to in the resolutions accompanying the removal of Mr. Eustace, I am decidedly of opinion that they ought not to be investigated at this time, and that they are not material for the purposes of the case, and I should exclude the evidence.

Mr. Thompson—My rights, whatever they are, will be saved?

The Master—Your rights, whatever they are, will be saved.

Mr. Thompson—I understand Your Honor, in using the expression "and not referred to in the resolutions," means not specifically referred to.

The Master—Not specifically referred to.

Mr. Whipple—Your Honor used the word "Eustace" instead of "Rowlands."

The Master—I am very much obliged for these corrections. I am unfortunately liable to misplace names, sometimes. Mr. Rowlands, yes. And we all understand why this ruling has been now made instead of at the regular time, and when the regular time comes it will be necessary only to refer to the action now taken. There is no objection to that on anybody's part, I suppose?

Mr. Bates—No.

Mr. Whipple—No.

The Master—That I think will be all it is necessary to say at present.

Mr. Bates—Unless Your Honor was to pass on the question of the continuance that has been asked for by the other counsel.

Mr. Thompson—I do not understand

that any continuance has been asked for by other counsel as distinguishing one counsel more than another. Let us leave that question until it comes up at the end of the case.

The Master—We are not going to continue anything today, are we? We are going right on this week.

Mr. Bates—I understood Mr. Thompson to raise that question. If he doesn't so do now, it is satisfactory to me.

Mr. Thompson—I do not raise the question. I wish I did not have all the time to protect myself against these remarks.

The Master—Oh, well, Mr. Thompson, this is a matter of considerable complications, and we all have to take a little time to get it fully into our minds.

Mr. Thompson—I want to make this statement definitely, then. Mr. Dittmore is entirely willing to carry out his arrangement made with all parties at the time General Streeter was taken ill, namely, to sit here long enough to finish the defense of Governor Bates, provided it is not after Aug. 6, and that is a whole week added to the time we originally agreed to sit—which was this week. When this matter first came up we said we would sit through this week, and now he is willing to go ahead to Aug. 6; but he has made arrangements so he cannot sit after Aug. 6, and that should be time enough for Governor Bates to finish putting in his evidence in this case.

The Master—I rather think you won't require more time than Aug. 6. It doesn't look so now. Of course, you cannot tell how long these other gentlemen may protract the matter by their cross-examination. But may we not fairly hope that your evidence can be completed by Aug. 6?

Mr. Bates—I think if Brother Thompson and Brother Whipple will eliminate their pleasant speeches, we shall be through inside of two days.

The Master—Let us see. That is better than some of us hoped. But suppose we get through in two days. Can we then settle about our continuance?

Mr. Thompson—Yes, sir.

The Master—Or should you prefer to have it settled now?

Mr. Bates—It is immaterial to me, Your Honor. I did not bring up the matter, except I understood it was before you.

The Master—I think when you get your case completed, what we all want is to go on at the earliest reasonably possible time to conclude the hearing.

Mr. Whipple—I understand that we shall be privileged to put in our rebuttal if we desire, and that the *Eustace* case will be closed.

The Master—Yes, I suppose that follows, doesn't it?

Mr. Bates—I assume so.

Mr. Whipple—We will ask, then, to have a day appointed for argument.

Mr. Thompson—As to that, I think I might suggest to Mr. Whipple that it would be worth his while to con-

sider, as a matter of Massachusetts practice, whether even if his case is closed and argued, Your Honor can make a report in his case without having the facts in *Dittmore v. Dickey*, and whether the Supreme Court could decide either case without having the master's report in both cases. I doubt very much if it could, for the simple reason that Mr. Dittmore cannot be held at all in the *Eustace* case unless he maintains his position as a director, and then he can only maintain it through trial of his own case.

Mr. Whipple—That may be so. We will give that further consideration. At least we can finish the entire evidence in the case, and then we will consider the suggestion that Mr. Thompson has made.

The Master—I do not see that we can very well do anything else now but proceed as rapidly as possible to complete not only your evidence but whatever evidence there may be in rebuttal in *Eustace v. Dickey*. Having reached that point, we will then consider what further is necessary.

Mr. Bates—Shall I proceed, Your Honor?

The Master—If you please.

Mr. Bates—Mr. Rathvon, will you take the stand?

William R. Rathvon, Sworn.

Q. (By Mr. Bates.)—Mr. Rathvon, what is your full name? A. William R. Rathvon.

Q. And you are a director— A. Yes, sir.

Q. —of the Christian Science Church? A. Yes, sir.

Q. Are you a member of The Mother Church? A. Yes, sir; since 1894.

Q. Will you state what has been your experience with the Christian Science movement, Mr. Rathvon? A. I joined The Mother Church in 1894. My card as a Christian Science practitioner appeared in the *Journal* in 1898. In 1903, I went through the primary course in the Massachusetts Metaphysical College. In 1907, I took the normal course in the Massachusetts Metaphysical College. I have been reader in two different churches—the first reader. In 1908, Mrs. Eddy called me to her home to be one of her secretaries, and I was there until 1910, when she passed on, and during that time I was in daily intimate communication with her. In 1911, I was called to become a member of The Christian Science Board of Lectureship and remained there until I was called to Boston in 1918. During the time of my service as a lecturer I made two trips, two lecture tours, to China, Japan, Australia, and also made a tour to South Africa; and I have lectured in the Philippines, New Zealand, the Hawaiian Islands, and later made a trip to Alaska, and also one to Great Britain, Ireland and Scotland. In 1918, while lecturing in Australia, I was offered, by cable, the position of treasurer of The Mother Church, and I sailed at once for Boston, taking

possession of that office on June 1, and I held that until Oct. 1, 1918, when I was elected a member of the Board of Directors.

Mr. Bates—I offer from the directors' records of 1918-1919, a part of a record under date of Friday, Sept. 27, 1918, which reads as follows:

"Upon motion of Mr. Merritt, seconded by Mr. Neal, it was voted that Mr. William R. Rathvon of Boston be elected a member of The Christian Science Board of Directors to succeed Mr. Allison V. Stewart, resigned, effective Oct. 1, 1918. Carried unanimously."

[The record of the Board of Directors of Sept. 27, 1918, from which the foregoing extract is read, is Exhibit 725, R. J. M.]

The Master—Pardon me—to succeed Mr. Stewart, was it?

Mr. Bates—Mr. Stewart. The record shows that there were present Messrs. Dittmore, Dickey, Neal, and Merritt, which was the complete board, Mr. Stewart having resigned.

Q. Referring to the time, Mr. Rathvon, when you were a secretary of Mrs. Eddy's, can you state what her practice was in regard to conferences with any parties with regard to the periodicals? A. She commonly conferred with the editor, Mr. McLellan, who was also president of the Board of Directors.

Q. Did you know of her conferring while you were secretary with the Board of Trustees? A. I did not.

Q. And through whom did she give her directions in regard to publications, if you know? A. Through Mr. McLellan and the Board of Directors.

Q. Do you remember any particular conferences relating to publications that she had with Mr. McLellan or with the Board of Directors? Perhaps I will call your attention more specifically—

Mr. Whipple—Let him answer the question first.

A. I can recall one instance of a number in which the title of The Monitor, The Christian Science Monitor was prominent.

Q. Whom did she consult with about that? A. Mr. McLellan and Mr. Dickey and other members of the household.

Q. Whether or not she consulted with the trustees with regard to that? A. No, sir.

Q. And who finally determined—  
Mr. Whipple—Just a moment. Now, how can he know that?

Q. So far as your knowledge—  
Mr. Whipple—It must be simply as to his knowledge.

The Master—I suppose we should take it as meaning as far as his knowledge goes.

Mr. Whipple—Yes. Well, he says—  
The Witness—If there—

Mr. Whipple—He says consulted members of the household.

The Witness—If there had been any trustees visited the house I would have known it. I did not know who the trustees were.

Q. How long were you secretary?  
A. For a little over two years.

Q. Now, coming down to the time when you became a member of the Board of Directors what was the first meeting you attended, if you recall?

A. The meeting of Oct. 1st.

Q. 1918? A. Yes, sir.

Q. Whether or not you knew anything in regard to the controversy between the trustees and the directors up to that time? A. I did not. My first information about it was on the way to the meeting. I was walking over from my office with one or two of the other directors and I was told that a very critical situation was facing—

Mr. Whipple—I pray Your Honor's judgment. I move that that be stricken out.

The Master—You do not want it at present, at any rate, I think.

Q. You need not give the conversation. A. All right.

Q. None of the trustees were present, I assume, at that time? A. No, sir.

Mr. Whipple—I understand that is stricken out?

The Master—Yes.  
Mr. Bates—I have no objection.

Q. You went on the board on Oct. 1st, practically without any knowledge of the previous situation as to this controversy? A. No knowledge whatever.

Q. Whether or not the letter written by the trustees of Sept. 30, which has been referred to in evidence, was ever shown to you, and if so, when? A. It was shown to me on Oct. 1 at the meeting.

Q. After you became a member of the board, what was the first meeting at which there was a joint conference of the two boards? A. Feb. 3, 1919.

Q. And it was at that meeting, which was the first joint conference held after your election as a member of the Board of Directors, that you presented the letter under date of Feb. 2, presented in this case (Your Honor) as Exhibit 24? A. Yes, sir.

Q. Now, at the meeting of Feb. 10 did you present another letter, Mr. Rathvon? A. I did.

Mr. Thompson—Governor, what was the date of the first meeting you have just been talking about?

Mr. Bates—Feb. 3.

Mr. Bates—We are looking for the original letter. This is a copy of it. If you have no objection, I will put in the copy (passing a paper to Mr. Whipple), so as to save time.

Mr. Whipple—My impression is that this is in evidence.

Mr. Bates—I have not been able to find it in evidence.

Mr. Thompson—This is Feb. 10, isn't it?

Mr. Bates—Feb. 10.

Mr. Whipple—I do not think that it is of any importance one way or the other, but I think it is in evidence. I am quite sure that I have seen it in evidence.

Mr. Thompson—If I may take it a minute, perhaps I can tell whether it has been put in.

[Mr. Whipple passes to Mr. Thompson the paper referred to.]

The Master—Is that the original?  
Mr. Bates—No; this is a copy of the letter of Feb. 10.

The Master—By Mr. Rathvon?

Mr. Bates—Yes, sir.

Mr. Thompson—I do not remember that.

Mr. Bates—No; the letter of Feb. 3 is in, but I think this one is not in.

The Master—I find on page 33 of the record that Mr. Krauthoff asked Mr. Whipple if he had the letter of Rathvon that was read at the meeting of Feb. 10. Is that the one that you are talking about?

Mr. Bates—That is the one.

The Master—And Mr. Whipple thought that it was not pertinent, but the matter appears to have dropped there.

Mr. Bates—I think that it was overlooked at the time.

Mr. Whipple—I still think that it is not pertinent.

Q. I will ask you if you identify that as a copy of the letter to which you referred (passing a paper to the witness)? A. Yes, sir.

Q. Was that letter read at the meeting on Feb. 10? A. Yes, sir.

Q. And was that meeting a joint meeting of the Board of Directors and the Board of Trustees? A. Yes, sir.

Q. And it was read while the trustees were present? A. Read by the chairman.

Mr. Thompson—That does not answer your question, whether it was read while the trustees were present.

Q. It was read while the trustees were present? A. Yes.

Mr. Bates—I offer that as an exhibit.

Mr. Whipple—We do not think that it is material, but we will accept Your Honor's ruling without discussing it.

The Master—Very well. I see no reason why I should exclude it at present.

Mr. Bates (reading)—

"Feb. 10, 1919.

"Board of Trustees and Board of Directors in Joint Session, Mother Church Building,

"Fellow Scientists—In my letter of a week ago addressed jointly to both Boards, I referred to expected repudiations by the Trustees of certain contentions and statements attributed to them and which were wholly incompatible and at variance with the unqualified allegiance to The Mother Church By-Laws, that every loyal Christian Scientist is glad to give.

"At our meeting last Monday, frequent avowals of unreserved and undivided loyalty to the Manual were made by the members of both boards, so I feel no hesitancy in presenting for our joint execution today the brief memorandum now before us, which, I believe, when entered upon the records of both bodies, will avert

threatened upheavals, prevent recurrence of profitless discussion and establish a permanent basis upon which to do better building than ever before.

"The time and opportunity is at hand to translate our loyal words into loyal deeds, and, by thus permanently fixing our agreed relationship, we will be acting in accord with our Leader's words in Miscellaneous Writings, 288, 13.

"Wisdom in human action begins with what is nearest right under the circumstances, and thence achieves the absolute."

"W. R. RATHVON."

[The copy of letter of which the foregoing is a copy is marked Exhibit 726. R. H. J.]

Q. Was there any objection taken to your statements in this letter at that meeting by anybody? A. No, sir.

Q. Were the statements made in the letter true? A. Yes, sir.

Mr. Whipple—I pray Your Honor's judgment.

The Master—You ask him generally whether everything stated in the letter was true?

Mr. Bates—That was the question, Your Honor, having first stated that no one took any objection to any statement made in the letter.

The Master—Well, I will admit it subject to the objection. I do not see that it adds anything.

Q. What did you mean by the statement, Mr. Rathvon. "The time and opportunity is at hand to translate our loyal words into loyal deeds"?

Mr. Whipple—I pray Your Honor's judgment.

The Master—Is the meaning not plain? Does it need explanation?

Mr. Bates—I am not certain that it does, but I want to know what loyal words he referred to.

Mr. Whipple—I pray Your Honor's judgment.

Mr. Bates—I think that that is admissible.

Mr. Whipple—Unless he translated his meaning to the assembly to which he read his letter, I do not think that he needs to translate it now.

The Master—I do not see that it adds anything, "our loyal words." I suppose that there were a great many loyal words on a great many different occasions. What can be added to that?

Q. Was there any statement as to what those words referred to, Mr. Rathvon, at that meeting? A. Yes.

Q. And what was the statement, and who made it? A. May I look at the letter a moment again? (The letter is passed by Mr. Bates to the witness.) A reference was made to the protestations—

Mr. Whipple—If you will pardon me, I pray Your Honor's judgment. He was asked what was said, and who said it, and the answer to that does not begin with the words, "A reference was made." That is one of those loose statements that anyone might make.

The Witness—Well, the chairman, Mr. Dickey, said that, in view of what was presented in the letter, it would be appropriate to present the two items which were offered for the signature of the trustees.

Q. Mr. Rathvon, I was asking you to confine yourself to the question as to what was said indicating what was meant by "our loyal words." A. No, that was apparent.

Q. There was nothing said, so far as you recall, then? A. No, sir, nothing.

Q. Was Mr. Dittmore present at that meeting? A. No, sir.

Q. Of Feb. 10? A. I think not.

Q. He was present at one meeting, was he not? A. I think at the meeting of Feb. 11, if I am not mistaken.

The Master—Do you mean the one meeting on Feb. 10?

Mr. Bates—Well, I understood that it was Feb. 10. Mr. Rathvon's recollection is that it was on Feb. 11.

The Witness—I think so.

Q. Was Mr. Dittmore present at any of the joint conferences that were held after you became a member of the board? By "joint conferences" I mean the conferences between the Board of Directors and the Board of Trustees.

Mr. Thompson—Do I understand the witness to say that Mr. Dittmore was not present at any part of the meeting of Feb. 10?

The Witness—He was present at one meeting, Mr. Thompson. I am not sure whether it was Feb. 10 or Feb. 11.

Mr. Thompson—You are speaking of joint meetings?

The Witness—Yes, sir, conferences between the boards.

Mr. Thompson—Of course he was present at the directors' meeting.

The Witness—Oh, surely.

Mr. Thompson—Yes, because we have a record of it.

Q. Those were held a week apart, were they not, those conferences? A. Yes, sir.

Q. And if one was held Feb. 3, and one Feb. 10, can you tell at which one Mr. Dittmore was present? A. If he was present at either one it was at the one on the 10th.

Q. And whether or not Mr. Dittmore was present at the meeting on Feb. 3 of the directors, prior to the joint meeting? A. Yes, sir.

Q. And what did he do when the trustees came in?

Mr. Thompson—Are you proving Dittmore v. Dickey affirmatively?

Mr. Bates—I want to show who was present.

Mr. Thompson—If you are not, it is of no consequence.

Q. Tell us what he stated, or what he said.

The Master—What he said.

A. Mr. Dittmore said he would not attend these joint conferences, and just before 12 o'clock, the hour for the meeting, he left the directors' meeting, and absented himself until after the trustees had left.

Q. Then did he return to the board room? A. He did.

Q. And, with one exception, was he present at any meetings of those joint conferences that were held? A. No, sir.

Q. Did Mr. Dittmore take any part in the meeting, the joint conference, while he was present? A. No, sir, except to take notes.

Q. Going back to the meeting of Feb. 3, Mr. Rathvon, was there anything said by the trustees in regard to their allegiance to the Manual, and, if so, who said it, and what? A. The words "of each of the trustees" I wrote down at the time on the memorandum, made a memorandum of them—

The Master—Had he not better answer the question directly?

Q. Do you recall what was said?

The Master—If he made a memorandum, no doubt he can use it to refresh his memory.

The Witness—I would like to have the memorandum to refresh my memory.

Q. Have you got the memorandum? A. No; I think it has been put in evidence, or it is an exhibit.

Mr. Bates—I find, Your Honor, that there is a memorandum of March 11, which has been put in evidence. I think that that is the only one that is in the case.

Mr. Thompson—Who made that?

The Master—He says it was not a memorandum made by him on March 10.

Mr. Bates—Feb. 10.

The Master—Feb. 10.

Mr. Whipple—He is now being asked about Feb. 3, and he says that he made a memorandum at that time; that is the question that is being asked, about a memorandum of Feb. 3. If he did not make one it is important to know it, in view of his statement.

Q. Is that a memorandum which you made on Feb. 3 (passing papers to the witness)? A. No sir; that is not it.

Mr. Whipple—That "No" is not intelligible on the record.

The Witness—Sir?

Mr. Whipple—That "No" is not intelligible on the record.

The Master—Perhaps we do not need it. They are trying to identify a paper.

Q. Do you mean—

The Master—Wait one moment. Does this need to go down?

Mr. Whipple—I think so, because the witness has testified that he did make a memorandum, and it is important to know whether he is mistaken in his testimony.

The Master—Well, then, the record will run something like this: "A paper is shown by Governor Bates to the witness, and he is asked, Is this the memorandum? and the answer is, No, sir." We do not need anything more, do we?

Mr. Bates—That is evidently a mistake. That is not the one.

Mr. Whipple—And no memorandum is produced.

The Master—Well, we do not need anything more about it than that, do we?

Mr. Whipple—Well, we know that none has been produced yet.

Mr. Bates—We are looking for it, Mr. Whipple.

Mr. Whipple—And if you do not find it, please say so.

Q. Do you recall, Mr. Rathvon, any statements that were made by the trustees in regard to their loyalty to the Manual, at their meeting of Feb. 3? A. I can give the substance of their statements.

Q. Give us the substance of them. A. Mr. Eustace declared that the purpose of the trustees was to adhere loyally to the Manual. Mr. Ogden substantially asserted the same thing. And Mr. Rowlands' opinions were in line with theirs.

Q. Do you remember any statements that were made in regard to Mrs. Eddy's form of Church government by the trustees? A. No, I do not.

Q. In your letter of Feb. 10, which has just been put in evidence, you wrote as follows:

"I feel no hesitancy in presenting for our joint execution today, the brief memorandum now before us."

What memorandum was referred to? A. The memorandum which was presented to the trustees for their signature, setting forth—

Mr. Whipple—Pardon me. I think we had better have the memorandum itself, if any part is admissible.

Q. Is that the same memorandum that has been referred to here as the Judge Smith memorandum? A. I think so.

Mr. Bates—We are so informed, Your Honor. I am endeavoring not to bring in any cumulative testimony, or testimony that is merely cumulative, in the interest of expediting the trial. The memorandum referred to will be found as Exhibit 26a.

Q. Coming down, Mr. Rathvon, to the meeting of March 17, you moved the adoption of the Rowlands resolution of dismissal? A. Yes, sir.

Q. Was Mr. Dittmore present? A. Yes, sir.

Q. Did he vote? A. He did not.

Q. Did all the rest vote in favor of the removal? A. Yes, sir.

Q. Mr. Neal was absent, I believe? A. He was.

Q. Had you had any conference with Mr. Neal in regard to the matter?

Mr. Thompson—Now, just a moment.

A. Yes.

Mr. Thompson—One moment.

A. We had numerous conferences.

Q. One moment. I am only asking as to the fact.

Mr. Thompson—I am only mentioning it because the same suggestion was made in regard to Mr. Dittmore

that is made in regard to Mr. Rowlands—that Mr. Neal was conferred with, and that a member of the Board of Directors could act over the telephone or otherwise from outside. That I deny as a matter of law; and if it is of any consequence, which I doubt, whether Mr. Neal participated in this action or not, I object to its being shown by conference with him outside and not by his vote of record. I do not know what view Mr. Whipple takes.

The Master—Well, let us wait until they get a little closer to that point with their question.

Q. In the letter of Feb. 18, which is already in evidence, Mr. Rathvon, Exhibit 211, page 291 of the printed record—

The Master—Feb. 18?

Mr. Bates—Yes, Your Honor. That is a letter, Your Honor, that begins, "At our meeting yesterday such an amazing change of thought"—

The Master—Yes, I have it before me.

Mr. Bates—I was going to ask Mr. Rathvon as to what he meant by their "reasonable declaration," but I think it is explained by what precedes it, so I will not put the question; and I think that his letters already in evidence cover everything that I care to present in the Eustace case at this time.

#### Cross-Examination

##### On Behalf of the Trustees

Q. (By Mr. Whipple.) Mr. Rathvon, what was your business before you went into Christian Science? A. I was a refiner and producer of oil.

Q. Where? A. In Colorado.

Q. Well, you mean you actually refined and produced? A. Yes, sir.

Q. Have a company? A. I was manager of a company.

Q. What was the company? A. The Inland Oil and Refining Company.

Q. For how long were you manager? A. About eight years, seven or eight years.

Q. A corporation? A. Yes, sir.

Q. Selling its stock? A. I beg your pardon?

Q. Selling its stock? A. Some of its stock was sold.

Q. Sold to the public? A. I don't know how it was sold.

Q. Did you have anything to do with selling it? A. Never sold a share of oil stock in my life.

Q. Well, was it very much of a producer? A. Well, yes, it was the best producer in that section of the country.

Q. Was it a good section for oil? A. Yes, it was at that time, very good.

Q. Then it was a very large company, I take it? A. Well, no, I wouldn't say so.

Q. A small one? A. Not that, exactly.

Q. About medium? A. That is better.

Q. You were manager? A. Yes, sir.

Q. On a salary? A. Yes, sir.

Q. You resigned, I take it? A. Sir?

Q. Did you resign? A. I did.

Q. To go into Christian Science? A. While I was at Mrs. Eddy's I resigned.

Q. Oh, did you keep the position up to the time that you went with Mrs. Eddy? A. Yes, sir.

Q. You said you went into Christian Science in 1894? A. Yes, and have been ever since.

Q. And you did not go to Mrs. Eddy's until 1908? A. Yes, sir.

Q. Fourteen years? A. Yes, sir.

Q. And during that 14 years were manager of this oil company? A. Also a Christian Science practitioner.

Q. I see. Now, I asked what you did before you went into Christian Science? A. I was—oh, in various businesses.

Q. Well, give us samples, if you cannot remember them all. A. Well, I was in mining, gold and silver mining. I was also in the commission business at one time.

Q. What kind of commission? A. Produce commission.

Q. Where? A. In Denver.

Q. How many different mining companies were you in? A. Only one.

Q. One. What period was that? A. That was—I shall have to figure a little—about 1890, I would say.

Q. What was the company? A. My firm was Taylor & Rathvon.

Q. Did you own the mine—your firm? A. Yes, sir.

Q. What kind of a mine? A. Gold and silver mines—three or four of them.

Q. Three or four different ones, all producing? A. Yes, sir.

Q. And thrifty mines? A. Yes, up to the time—

Q. Fine business, I take it? A. Well, they were till the panic of 1893.

Q. They went out with the panic? A. They did, decidedly.

Q. Stopped producing, did they? A. Silver—the bottom dropped out of silver.

Q. But you had gold mines? A. One.

Q. No bottom out of the gold mines, then? A. It wasn't much of a mine.

Q. Oh, I see. Therefore the bottom dropped out of everything you had that there was much in? A. Absolutely, or probably I might not have become a Christian Scientist at that time.

Q. But the bottom went out? A. Absolutely.

Q. And the ships didn't come home? A. Sir?

Q. And the ships didn't come home laden with silver and gold? A. No. I was very thankful they never did, sir.

Q. Then from that time up to the time you were in the oil business what were you doing? A. I became interested in Christian Science when

the bottom dropped out, as you called it, and then I became identified with the oil business at once.

Q. Well, what business, what company? I didn't speak of the bottom dropping out, you said the bottom dropped out. A. Well, no matter who said it, it dropped.

Q. And then I used the word dropped. A. Well, you said dropped.

Q. Well, we won't dispute. A. Not at all.

Q. As to who originated it. A. Not at all. The fact remains.

Q. The bottom dropped out; it don't make any difference who says so. A. No, not a bit.

Q. Or how you put it. When did you start the oil business after you took up Christian Science? A. Right away.

Q. And what company? A. Right away.

Q. In what company? A. The United Oil Company.

Q. Is that the one you told us about? A. No, sir.

Q. That is another one? A. Yes.

Q. Were you an officer in it? A. I had charge of one department.

Q. What was your department? A. Real estate.

Q. Well, the real estate where the oil either came or was expected to come? A. The oil company owned a great deal of real estate in the town, and they were selling it, and I was put in charge of their real estate interests.

Q. Then you were really in the real estate business and not in the oil business? A. Well, you may put it that way.

Q. Well, wasn't that right? Isn't that putting it right? A. Why, all the business was done in the name of the company and I was on the company's pay roll.

Q. In charge of their real estate? A. Yes, sir.

Q. How long? A. Oh, I suppose about two years.

Q. Two years in charge of the real estate? A. Yes, sir.

Q. And then what? A. Then I went to another oil field.

Q. Whose oil field was that? A. A new one, that had not been appropriated by anyone yet.

Q. You mean it was a prospect? A. It turned out to be a very good one.

Q. Did it? A. Yes.

Q. And were you in on the ground floor? A. Not exactly.

Q. Not exactly. What company was that? A. That was the Inland Oil and Refining Company.

Q. Oh, that was the one you got to be manager of? A. Yes, sir.

Q. But I understood you were manager only eight years, so that takes us back only to 1900. A. Well, make it six years.

Q. That was 1894 up to 1900, that I want to find out about. A. Yes.

Q. What were you doing during that time, in those years? You have given us only two years, while you were han-

dling real estate. A. Now, just wait until I get my dates right.

Q. That is right. A. We want facts.

Q. Good! A. Now, what is it that you want, Mr. Whipple? I will give it to you if I can.

Q. Well, the thing that you are striving for now, I think, is to state what you were doing between 1893, when the bottom dropped out—A. Yes.

Q. —and 1900, when you went into this oil company that you were manager of. I can't give the name because there are so many of them, and you have explained two years of it, in saying that you were taking the real estate end. A. Yes.

Q. Of some oil company. A. Yes, I was there.

Q. Now, what were you doing the other six years? A. Well, I was there longer than two years; I was there until I went up to the other field.

Q. Then you must have been there six or seven years? A. I guess I was.

Q. Now—A. Now, wait till I get it straightened out, Mr. Whipple.

Q. Oh, that is right. Well, I don't believe I can help you. Now, you straighten it out. A. Now, wait.

Q. But if you think that I can help you just call on me. A. I wish I might ask my wife.

Q. All right, ask her. Is your wife here? A. Yes.

Q. Just ask her, she will straighten you out—somebody ought to.

[The witness consults with Mrs. Rathvon.]

A. My good wife tells me that I was in Florence for almost eight years.

Q. And in the real estate business? A. Yes, and practicing Christian Science.

Q. Well, you had charge of the real estate of this oil company? A. Yes, sir; and half my time went to practicing Christian Science.

Q. So when you thought you were there only two years—A. Oh, yes, I was a little off; the time went very rapidly; it went very rapidly, Mr. Whipple.

Q. Why, quite right. The ladies know better about it. A. They do, always.

Q. Now, you said while you were with Mrs. Eddy as her secretary that she gave her directions to Mr. McLellan and the directors. Did you ever see any of the directors except Mr. McLellan at her house during that time? A. Mr. Knapp.

Q. Did you hear any conversations with him? A. Yes.

Q. What? A. Oh, casually.

Q. Well, I want you to tell something that she said to him about the Publishing Society. A. That who said?

Q. Mrs. Eddy. A. Oh, I beg your pardon, I probably did not comprehend your former question. I thought you asked me if I had any conversation with him.

Q. No. A. What did you say?

Q. I asked about Mrs. Eddy giving directions. A. Oh, no; I couldn't say.

Q. Well, that is right. So your testimony is reduced to this: That the only directions with regard to the Publishing Society or conversations that you heard on the part of Mrs. Eddy were with Mr. McLellan? A. Yes.

Q. So that you do not remember any directions that she gave to any other director? A. No.

Q. Or any other conversation? A. No.

Q. That is right. And you remember only one instance of that? A. Oh, no. Mr. McLellan was there weekly, sometimes daily.

Q. Now, tell us a single direction that she gave with regard to the Publishing Society, that you remember, to Mr. McLellan? A. I don't remember any.

Q. You don't remember one? A. No.

Q. Not one? A. No, it wasn't my affair. I took it as a matter of course, that whatever directions Mrs. Eddy gave to Mr. McLellan were proper.

Q. The fact is, you don't remember one of the directions? A. No.

Q. But she never communicated with any of the trustees? A. No, not as far as I know.

Q. Or they with her? A. No.

Q. Let me see. Perhaps I can refresh your recollection on that. A. Remember I said as far as I know, Mr. Whipple.

Q. You won't need Mrs. Rathvon this time; I can help you. A. Maybe I will—I often do.

Q. Well, perhaps she can help you out on this. Is this your letter? (Handing letter to witness.) A. Yes, sir.

Q. That seems to be a communication to the trustees, doesn't it, while you were there? A. Wait, wait, please.

Q. I didn't know but that you could have—A. Now, Mr. Whipple, let me read it through. (Examining letter.)

Q. —seeing whom it was addressed to. A. Yes, that is right, yes.

Q. So you see, through you, you are the very person through whom she communicated, once at least? A. Surely.

Q. To the trustees, while you were there? A. Surely.

Q. You had forgotten it? A. I had.

Mr. Whipple—I will offer this, Your Honor. It is on the letterhead of Rev. Mary Baker Eddy, office of the secretary.

Mr. Bates—Let me see it first, please, Mr. Whipple.

Mr. Whipple—Oh, certainly. (Handing letter to counsel.) Would you be good enough to let me have the copy of a letter to which that is a reply?

Mr. Bates—No objection.

Mr. Whipple—The heading is, "Rev. Mary Baker G. Eddy, Office of Secre-

tary, 384 Beacon Street, Chestnut Hill, Mass." It is dated Jan. 20, 1909.

[Exhibit 727.]

"Jan. 20, 1909.

"The Trustees of  
"The Christian Science Publishing  
Society,

"Clifford P. Smith, Secy.

"Dear Brethren:

"In response to your communication of yesterday presenting your reasons for not copyrighting The Monitor, our Leader directs me to say that she agrees with you perfectly, and that any article of hers of great importance that may be published can be copyrighted in her name.

"Sincerely yours:

"WM. R. RATHVON."

Q. That is your own excellent signature, isn't it? A. Yes, sir; all but the excellent.

[The letter above referred to, Mr. Rathvon to trustees, Jan. 20, 1909, is marked Exhibit 727.]

Mr. Whipple—I offer a copy of the letter to which that was a reply.

Mr. Thompson—We have no objection.

Mr. Whipple (reading)—

"January 15, 1909.

"Rev. Mary Baker Eddy,  
"Brookline, Massachusetts.  
"Beloved Leader:

"Please direct us if it is your wish that The Christian Science Monitor should be copyrighted.

"While the Church Manual, Article 25, Section 6, directs us to copyright 'periodicals which shall at any time be published by The Christian Science Publishing Society,' it has not been applied to The Monitor for the following reasons: (1) Newspapers are usually not copyrighted; (2) copyrighting The Monitor would forbid the republication in other newspapers of its articles and editorials, without special permission; (3) copyrighting The Monitor would cost \$4 per day or \$1252 a year; (4) your contributions to The Monitor may be copyrighted separately if copyright thereof is desired.

"Owing to the fact that newspapers are usually not copyrighted, when a newspaper is copyrighted the publishers of other periodicals are likely to assume that permission to reprint its articles and editorials will not be given; moreover, as all newspaper work is done with haste editors will not ordinarily take the time to ask permission to republish articles and editorials from other papers.

"For these reasons the copyrighting of The Monitor would tend to hinder the accomplishment of its mission.

"Faithfully yours,

"THE TRUSTEES OF  
THE CHRISTIAN SCIENCE PUBLISHING SOCIETY,

"By Secretary."

[The copy of letter of which the foregoing is a copy is marked Exhibit 728. R. J. M.]

Q. Now, Mr. Rathvon, referring to your meeting of Feb. 10, the conference with the trustees—do you remember that? A. Yes.

Q. You have your mind focused on that particular meeting? A. Exactly.

Q. You presented a little memorandum which you wanted the trustees to sign which had really been prepared by Judge Smith? That is right, isn't it? A. Yes.

Q. The letter which you read to them, which was intended to induce them to sign this memorandum, was prepared by yourself? A. The letter was prepared by me.

Q. Yes. But the memorandum that had the real point in it the judge had prepared? A. No poison.

Q. I did not say "poison"; I just said the point. Why are you so sensitive about poison? I did not say "poison." A. I beg your pardon. I thought you said "poison."

Q. No, that had the point.

Mr. Bates—He thought you said "poison."

The Witness—I thought you said "poison."

Q. Oh, no. A. I was a little shocked, Mr. Whipple, at the time. It sounded that way.

Q. Had the point— A. Yes, sir.

Q. Did you tell the trustees that the judge had prepared it? A. No, indeed. They were accusing the judge of doing most everything. It was unnecessary.

Q. I see. And it did not occur to you that you were putting up to them something the judge had prepared, and letting them think that you, in your innocence and benevolence, had prepared it? A. Oh, no, I merely presented it.

Q. It was a diplomatic reservation? A. That is a very nice way of putting it, Mr. Whipple.

Q. Good! I am glad it meets with your approval. It was a diplomatic reservation? A. Yes.

Q. What you did not say wouldn't do any harm? A. Well—

Q. Now, let us see. You said that at that meeting, after you read it, nobody made any objection. Is that true? A. To my letter?

Q. Yes. A. Yes.

Q. Well, they made objection to the memorandum that the judge had prepared? A. Oh, yes, indeed; yes, sir, vigorously.

Q. Plenty of that; but all these generalities that your letter contained were not objectionable? A. No, sir.

Q. Now, after you read that, let us see if this isn't what happened: that Mr. Rowlands said that while he spoke as an individual he felt that if it—that is, Smith's memorandum—expressed the unanimous attitude of the Board of Trustees, it would not be "our sense of demonstration to sign any such agreement, inasmuch as it would not leave the question of editorial policy open for demonstration on the part of the editors, and that this and the other questions in the

proposed agreement were those which it had been agreed to leave open for demonstration on the part of the two boards." That is what he said? A. I cannot say that it was, Mr. Whipple.

Q. You say that it was not? A. I can say that it was not, if you will allow me to look at this memorandum that I made at the time of the meeting, wherein each spoke of matters of more or less interest, I can see if Mr. Rowlands is down for such a remark.

Q. Well, I think it is perfectly proper that you should use any memorandum that will aid your memory.

Mr. Thompson—What is the date of this memorandum?

The Witness—This is Feb. 10.

Q. I beg your pardon? A. Feb. 10.

Q. But of course this is the official record that I am reading from? A. I never saw it.

Q. Well, if your own memorandum is more familiar to you and more satisfactory, will you— A. I will read what I have here as having been said by Mr. Rowlands. It may be disconnected.

"What have we been doing that is not right?"

Another one: "Who spread it? Judge Smith has seemed to be the one to do it."

Another one: "No open rebellion, only a right desire to get recognition."

Another one: "You are always talking 'final authority,' such statements as 'It is our painful duty to declare a vacancy, and so on.' We must have cooperation and recognition."

Another one: "It is a matter of interpretation whether it is necessary for the trustees to be acceptable to the directors."

Another one: "The trustees are not a part of the Church but they are a part of the movement."

Another one: "Do you think a man should go simply because you say so? Expedient could not mean your caprice."

Another one: "We are not under any more condemnation than you are."

I do not think that that coincides with what you said.

Q. All good sentences, however. A. It depends upon your point of view.

The Master—I understood the witness that those were all statements by Mr. Rowlands?

Mr. Whipple—Yes.

The Master—Am I not right?

The Witness—At that meeting, yes, sir.

Q. You do not mean that is all he said? A. That is all I have. I tried to get them all, but they came very fast.

Q. I declare, Mr. Rathvon, they are so much clearer and more lifelike statements of what Mr. Rowlands said, and so much more satisfactory to the trustees than our own records, I will rest on them. A. Would you like to hear the replies that were made to them?



Mr. Whipple—Oh, no. Those do not amount to anything. We have heard those lots of times. I won't trouble you for them. That is all.

Cross-Examination.

Q. (By Mr. Thompson). Have you ever been in court before and testified? A. Yes, once.

Q. Where was it? Out in Colorado? A. Boulder, Colorado, while I was at Mrs. Eddy's.

Q. Where you a party to that case? A. Yes, I was a defendant with some 35 others.

Q. What kind of a case was it? A. It was an oil suit.

Q. Well, have you ever been on the stand in any other case besides that? A. No.

Q. Have you ever had anything to do with litigation besides that, either criminal or civil? A. Never.

Q. Are you sure about that? A. I think so. If I am not, I wish you could refresh my memory about it.

Q. I don't know that I can. You were doing business in several different places in Colorado, weren't you? A. Yes.

Q. You were getting real estate, weren't you, by your companies occasionally? A. What do you mean?

Q. That is, you were the active agent in acquiring real estate for some of the companies? A. No.

Q. Are you sure? Did any real estate ever stand in your name that belonged to the company? A. Oil leases, probably.

Q. Oil leases. Did you ever have any trouble about them? A. No, not that I recall.

Q. Are you pretty sure about that? A. Yes.

Q. No objection ever made by any district attorney, was there, to your conduct, in that regard? A. Not that I know of, sir; never had anything to do with a district attorney.

Q. Do you recall that while you were one of Mrs. Eddy's secretaries you had frequent conversations with her as to the By-Laws of The Mother Church that required her consent to certain action, whatever it might be? A. No.

Q. Are you willing to say that you did not frequently urge Mrs. Eddy to amend the By-Laws, such of them as required her consent, so as to strike out the provision requiring her assent? A. I certainly am.

Q. Didn't you ever urge her to transfer her right to consent to a committee? A. Never.

Q. So that in the future, after she passed on, it might not come forward to trouble the administration of the Church? A. Never.

Q. Don't you remember a conversation you had with a lady on one occasion— A. With whom?

Q. Wait a moment. I won't give the name—with a certain member of your Church, a lady, where you were talking over your experiences while

you were living with Mrs. Eddy and in which you told her that you had tried to get Mrs. Eddy to make what seemed to you a very important change in her by-laws to take effect after she passed on, and Mrs. Eddy declined to do so? A. Never.

Q. It doesn't bring anything back to your mind? A. Not at all, sir.

Q. And even if the lady should come here and testify to it, it would not alter your opinion? A. Not a bit. You did not know Mrs. Eddy or you would know how impossible it would be for anyone to suggest such a thing to her.

Mr. Thompson—Your Honor, I ask that that be stricken out.

The Master—I suppose it will have to be.

Q. Just confine yourself to these questions. A. I will do it. That was for you, Mr. Thompson.

Mr. Thompson—I ask that that be struck out.

The Master—I think we shall get along better, Mr. Rathvon—

The Witness—I will be more careful, sir.

Q. Will you undertake to listen to these questions and if you don't understand them, say so? A. I will do my best, Mr. Thompson.

Q. Without interjecting remarks of your own. A. I will do my best.

Q. Let us see how you do it. Do you remember at a meeting of Oct. 7, 1918, of these directors, that there was a conference with Judge Smith about the method of keeping the records? Yes or no. If you do not, I can refresh your memory, probably. Do you remember anything about it? A. No, I don't, Mr. Thompson, except what I have heard in court here.

Q. Did you ever hear Judge Smith at any of these meetings of the directors say anything about the method of keeping the records? A. I don't remember that I have.

Q. Are you willing to take oath that you never have? A. I am.

Q. And you are willing to take oath that you never heard him say that the method was unsatisfactory? A. I am.

Q. Even though these notes of Mr. Dittmore should record that you were present when he said it? A. Yes, sir.

Q. Do you remember a meeting of Nov. 4, 1918, when you stated that it was your opinion that nonsupport of the directors by the trustees, or by anybody else in the Church, failure to support the directors loyally was a proper ground for discipline? Do you remember ever expressing that opinion? A. Probably I did.

Q. Yes. A. The word "discipline" is a broad one.

Q. I don't care about "probably." Have you, as you sit there, any memory? That is what we are trying to get at? A. No.

Q. Well, don't tell me "probably," because you don't remember anything

about it. A. I was trying to help you out.

Q. I don't want that kind of help. Are you aware, sir, of what testimony is at all?

Mr. Bates—I pray Your Honor's judgment.

The Master—I do not think I will go into that, Mr. Thompson.

Q. Are you aware, sir, what I am calling for is not help but your memory? If you haven't any, it is your duty to say so.

Mr. Bates—I pray Your Honor's judgment.

The Master—The witness may be reminded that the question called for his recollection and nothing else.

Q. Do you realize now, sir, that what you are called upon to do is to give me your recollection and memory, and nothing else, and if you haven't any to say so? A. Yes.

Q. Very well; please live up to it. Have you any recollection of ever having expressed the opinion that a failure on the part of any member of The Mother Church to support the directors loyally was a proper ground for discipline? Yes or no. A. No, I have not.

Q. Do you remember saying on Nov. 26, 1918, at a meeting of the Board of Directors, "I would give them"—meaning the trustees—"a chance if they would acknowledge the directors' authority," or words to that effect? A. Ask me the question again, please.

Q. Do you remember saying this, at a meeting of Nov. 26, 1918— A. No.

Q. Don't you think you would like to hear it before you find out whether or not you said it? A. You repeated that before.

Q. You have it in mind? A. Yes, sir.

Q. And you are willing to swear you never did? A. No. You asked me if I remembered it. I said No.

Q. Do you think it is possible you could have said such a thing? A. Yes, sir.

Q. Did you believe that was a true sentiment? A. Certainly.

Q. The trouble with these trustees, in your mind, was simply that they would not acknowledge the supremacy of the directors? A. No, sir. That was but one of the troubles.

Q. Was there any other trouble with all three of them besides that? A. Yes, sir, a great deal.

Q. A great deal. Serious trouble? A. Very serious.

Q. Why didn't you put it in your charges? A. We have them there.

Q. Where is it? Put your finger on it. A. All right.

Q. Get those charges against Rowlands and put your finger on them. A. I will, sir. (Producing a document.)

"Whereas Mrs. Eddy has declared that 'Law constitutes government and disobedience to the laws of The Mother Church must ultimate in annulling its Tenets and By-Laws'—"

Q. What are you doing now?

Mr. Bates—He is answering your question.

A. I am reading—

Q. I didn't ask you to read. I asked you to put your finger on that paper and point out charges against all three trustees besides the charge of not yielding to the supremacy of the directors. Are you doing it? That is what I asked you. I did not ask you to orate and read that paper.

Mr. Bates—I submit, Your Honor, that the answer of the witness is perfectly proper and that Mr. Thompson's statement to the witness is proper.

Mr. Thompson—Of course you do.

Mr. Bates—I state my objection.

The Master—I would hardly think that the question calls upon Mr. Rathvon to begin reading the charges all through. I think he may specify now, in answer to the question, what other complaints are included in these charges against the trustees besides the one that they would not acknowledge the directors' supremacy.

Mr. Thompson—Yes, against all three trustees.

The Witness—Yes, sir. Well, I was endeavoring to give you that from one of the clauses that preceded the resolution removing Mr. Rowlands.

Q. That doesn't answer it, and I think you knew it perfectly. A. That is not fair, sir.

Q. Now listen to my question, please, and answer it.

The Master—I think you will have to be a little more brief there, Mr. Rathvon. Point out now the other charges that they have been talking about.

The Witness—I would say the second clause in the resolution.

Q. What is the second one? A. I started to read it once and you stopped me.

Q. I want a charge against all three trustees other than the charge of not acknowledging the supremacy of the directors? A. It is embodied in that second paragraph, on page 51 of the resolution—the third paragraph.

Q. The third? A. Yes, the one I started to read. (Reading)—

"Whereas Mrs. Eddy has declared that 'Law constitutes government—'"

The Master—I do not think we want the "Whereas" again. Come to the charge.

Q. Don't you know the difference between the recital and the charge? Can't you give me the charge? I don't ask you to tell me the reason of the charge. I want the charge. A. "and disobedience to the laws of The Mother Church must ultimate in annulling its Tenets and By-Laws."

Q. Is that a charge against all three trustees? A. Yes, sir.

Q. Why didn't you remove them all, then? A. Because it seemed wiser to remove one at a time.

Q. That is to say, sir, your position is that not only were all three of these men guilty of not showing proper regard to the supremacy of the direc-

tors, but that they were guilty of disobedience to the By-Laws in many other respects, and yet you made a charge against only one of them? Is that so? A. Yes.

Q. And the reason you picked out that one was not because he was any more disobedient to the By-Laws or any worse than the others, was it? A. No.

Q. No. You are a member of the trustees of the Benevolent Association, are you not? A. Yes, sir.

Q. Do you recollect advocating and getting through a by-law of that association some months ago to the effect that the directors of The Mother Church might declare vacancies on the trustees of the Benevolent Association board? A. I voted for that.

Q. You had something to do with getting it passed, didn't you? A. I don't recall the circumstances, Mr. Thompson.

Q. Well, perhaps it will refresh your recollection. You have heard it testified to by Mr. Dickey that for 730 days before March 17, 1919, there had been talk about getting rid of Mr. Dittmore from the directors? A. I heard him say that.

Q. That is a fact, too, isn't it? A. I don't know.

Q. You don't know. Well, from a time pretty soon after you went on the board you began to hear that talk, didn't you? A. Yes.

Q. And you got that by-law through the Benevolent Association with a view to operating in the same way against Mr. Dittmore in that association, didn't you? A. I did not.

Q. Are you willing, sir, to swear that the passage of that by-law hadn't anything to do with trying to get Mr. Dittmore out of that association? A. Absolutely.

Q. And have you heard the statement of Governor Bates as to the advice given to your board that you had the power to remove him from that board but you better not exercise it until a more opportune time? Did you hear that? A. Yes.

Mr. Bates—There has been no such statement.

Q. Yes, you have. I would like to suspend until after luncheon.

The Master—We will suspend here until 2 o'clock.

[Recess until 2 p.m.]

#### AFTERNOON SESSION

Mr. Thompson—I have no further questions, if Your Honor please.

Mr. Strawn—You need not wait on Mr. Whipple's account, if the Court please. He will be here in a moment.

Mr. Bates—Just a moment, Your Honor. I mislaid a memorandum here. I understood that we need not wait for Mr. Whipple?

Mr. Strawn—No.

#### Redirect Examination

Q. (By Mr. Bates.)—Mr. Rathvon,

you testified as to certain things that Mr. Rowlands said at the meeting on Feb. 10, and refreshed your memory by glancing at a memorandum. Will you kindly give us the whole conversation of which that was a part, so far as you can recall it?

Mr. Strawn—Has that not been gone over, if Your Honor please?

Mr. Bates—No. I expressly waived any examination in regard to those matters this morning, on the ground that they were cumulative, and now that you have put in one side of the statements, of course, I wish the other. A. To read—

The Master—One moment. Is that a long conversation?

Mr. Bates—No, it is not; it is very brief, Your Honor.

The Master—About which we have had a good deal of evidence already?

Mr. Bates—No, Your Honor. It is nothing that I asked Mr. Rathvon about. You will recall that he gave Mr. Rowlands' statements—

The Master—I quite understand that, but the conference, or the meeting, or whatever it was, at which these expressions by Mr. Rowlands were used, have we not had a good deal of evidence about what took place at that meeting already?

Mr. Bates—We have had no evidence from this witness, except what they asked him for, and they asked him only for one side.

The Master—No, not from this witness.

Mr. Bates—Your Honor will recall that the witness (Mr. Rathvon) said that he would like to explain the answer, and Mr. Whipple said, "No, I don't care for that now; probably Mr. Bates will give you a chance to state it."

Mr. Whipple—I do not think that I said the latter part.

Mr. Thompson—No.

The Master—Your question was not so closely limited as that. You want him to give the whole conversation, as I understand it.

Q. I will ask you to give the conversation of which those statements were a part. A. I would have to give the memorandum of the entire meeting.

Mr. Whipple—If Your Honor please, if counsel saw fit to leave these matters, which were a part of his original case, without making any inquiry, the fact that they were examined about in the cross-examination does not make them open in the redirect.

The Master—I am not quite sure about that. It may be, from anything that I can tell, that the connection in which the statements brought out by you were made in some way qualifies or explains them.

Mr. Whipple—What he asks him now is to give some other statements of other people at the same time, that I did not open up. I expressly did not ask for it.

The Master—I quite agree to that, but, unless you can separate it in some way—I hope that you will do that if you can—

Mr. Bates—It is not long, Your Honor.

Q. I wish you to confine it just to the portions, Mr. Rathvon, concerning which you testified on cross-examination.

The Master—He says that he wants to read the whole memorandum. Now, I would like, if possible, to avoid that.

Q. Just tell us how long that memorandum is. A. It is about three pages long. Mr. Rowlands' remarks were rather in the nature of interjections, and not in response to any question, nor directly connected with any answers in all cases.

Mr. Whipple—That being so, if Your Honor please, is it not perfectly clear that this is not admissible?

The Master—Have you looked it over?

Mr. Bates—Yes, Your Honor.

The Witness—Do you want to see it?

Mr. Bates—I think I am familiar with it.

The Master—I beg your pardon?

Mr. Bates—The witness asked me if I wished to see it, and I told him that I was familiar with it.

The Master—Do you think the connection in which the detached expressions were used sufficiently appears to make the memorandum serve some useful purpose?

Mr. Bates—Oh, I think so.

The Master—Then I think that I shall have to let you go ahead, against Mr. Whipple's objections. You may go on, Mr. Rathvon.

The Witness—Do you want me to read the remarks that Mr. Rowlands made, or what followed them?

Mr. Bates—I want you to read the conversation of which those were a part.

The Witness—Oh!

Mr. Whipple—He said that they were not a part of the conversation, that they were interjected.

Mr. Bates—He said that they were interjected in the conversation, as I understood him.

The Master—That was the way that I understood him.

The Witness—Copies of the proposed agreement were presented to the trustees, and when this agreement was read aloud by Mr. Dickey, Mr. Rowlands said, "I for one won't sign anything. It is not metaphysical." Mr. Rowlands asked, "What have we been doing that is not right?" Mr. Dickey did not answer, but spoke of the widespread knowledge in the field in regard to the situation. Then Mr. Rowlands and Mr. Dickey had quite a discussion on what was and what was not metaphysical. Mr. Rathvon said, "We are going to have our weekly meetings if I have anything to do with it, whether we are flying at each other's throats or not." Mr. Rowlands quoted some statement that he said he had read in a letter, where Mrs.

Eddy said she never made any mistakes. Mr. Dickey said, "Many times she admitted to me that she had made mistakes. She also said she always profited by her mistakes, and that when she changed her mind it was always God who changed her. She also told me many times that this Church must have a responsible head." Mr. Dickey said there was opposition in her home and through her editor, and that there was very great objection to the starting of a newspaper. Mr. Rathvon said, "We must stop looking backward to anything that has gone before, and let us all go forward." Mr. Eustace—you don't care for Eustace?

Q. Certainly; we want his also. He is a party. A. Mr. Eustace said—

The Master—Is it not perfectly clear that he has already read a good deal that cannot by any possibility be necessary to explain Mr. Rowlands' expressions?

Mr. Bates—It is almost impossible to detach it without having the whole of it, it seems to me. I think that we are nearly through it, are we not, Mr. Rathvon?

The Witness—Yes, sir.

The Master—Continue, if you insist.

The Witness—Mr. Dickey asked Mr. Eustace, "If there was a conflict between the Manual and the Deed of Trust, which would you stand by?" Mr. Eustace became heated and refused to admit any conflict between the Manual and the Trust Deed, and therefore would not answer Mr. Dickey's question as to which he would stand by. Mr. Eustace said, "We did not publish the Deed of Trust. We just put it on a plate to avoid mistakes." Mr. Dickey said, "I am one of the most disappointed of men. If I were in your place I would hand in my resignations at once. You are under great condemnation in the field." Mr. Rowlands said, "We are not under any more condemnation than you are." Seeing there was no progress being made, I called the chairman's attention to the time. In a moment he said, "We should not run when the clock strikes. We have been getting along pretty well." Mr. Rowlands said of the final agreement with counsel that "both sides were to stand on the position they had taken." Mr. Dickey told Mr. Eustace that he (Eustace) knew better than what he was saying about the directors also being dependent upon a deed of trust. Mr. Merritt asked, "Was it expedient to let Mr. Allen go?" Mr. Eustace said, "The reason given Mr. Allen was that there was no need for a manager." Mr. Dickey said, "That was no reason." Mr. Eustace said, "We would fight to the end for a reason for our dismissal." Mr. Rathvon said, "We want to give you a chance to make your demonstration." Mr. Rowlands said, "Well, suppose we say that we will give you a chance to make yours?" Mr. Rowlands opened his portfolio and commenced to read a statement in regard to details con-

nected with notice of cards. Mr. Dickey then said, "We will work together and have our meetings, and we won't be separated." The trustees read a letter that they had written Mr. Neal on Feb. 3, together with a reply from him to them, both, of course, being based upon misstatements of fact. Mr. Eustace said, "There is a deliberate purpose to undermine The Monitor by the Committee on Publication." He proceeded to enumerate a long list of points to substantiate his claim. That was all the memorandum I made.

Mr. Bates—I think that that is all.

Mr. Thompson—The Mr. Allen referred to is John K. Allen?

The Witness—I think so, yes, sir.

Mr. Bates—That is all. Mrs. Knott, will you take the stand, please?

Mrs. Annie M. Knott, Sworn

Q. (By Mr. Bates) Your full name, Mrs. Knott? A. Annie M. Knott.

Q. You are one of the defendant directors in this case? A. Yes.

Q. Will you state what has been your relationship to Christian Science, or the Christian Science movement? A. I became interested in the fall of 1884, and in 1885 became a practitioner. I went from Chicago in February, 1885, to Detroit, Michigan, and was engaged in the work there until I was called to Boston to be an associate editor in the Publishing Society in the summer of 1903. I was a Pastor in the Christian Science church, as we were called in the early years, before we had Lesson Sermons. I did that work at Mrs. Eddy's request, as she was my teacher, and I have letters from her addressed to me as Rev. Annie M. Knott. I became a member of The Mother Church in October, 1892. I signed my name at a meeting held on the 5th of October, I think, 1892, reference to which was made in some of these hearings; and the day following this—

Q. Just identify that. What meeting was that, Mrs. Knott? A. It was held on either Oct. 3rd or Oct. 5th—Oct. 3rd, I think, 1892.

Q. But a meeting of whom? A. Of members and the newly appointed officers of The Mother Church, in the form of organization which at present exists. Fifty-nine persons signed their names on that occasion to the roll of membership, and I was one of those.

Q. Those are the original fifty-nine of the reorganized Church in 1892? A. There were First Members who had signed their names in September of that year, and this meeting was a few weeks subsequent to the meeting when the First Members signed their names as members of The Mother Church. On the day immediately following this meeting I was invited by some one present to go to Mrs. Eddy's home, Pleasant View, Concord, New Hampshire, the next day, and, with seven other persons, who were Mrs. Eddy's normal students, as I myself was, Mrs.

Eddy talked to us for about two hours on that day respecting the organization of the Church and the difficulties which she had in convincing even friendly lawyers that this form of organization was possible, and she insisted upon it for some time—

Mr. Whipple—Just a moment, Mrs. Knott, please. I pray Your Honor's judgment.

The Master—It is getting a little away from the question, is it not?

Mr. Bates—It is a little away from my question, but there are only two of these conferences that I wish to bring out, and this is one of them, and I thought it better not to interrupt the witness.

Mr. Whipple—But I cannot see that the conferences are important.

The Master—She had better complete it, if she has not completed the answer to your first question.

Q. We will come back to that, Mrs. Knott, and take it up a little later. Will you go on and state what other experience you have had in the Christian Science movement? A. I was appointed a member of the Lecture Board of The Mother Church of Christian Science during the year 1898, and remained a member of that board until I was called to be an editor in 1903. I was a teacher and practitioner also, during the years that I have mentioned, and was for a number of years First Reader in the First Church of Christ, Scientist, in Detroit, Michigan, where I resided.

Q. How long did you continue as an editor? A. Since June, 1903, until last March, or rather April.

Mr. Bates—I will put in the record.

Q. You were elected a member of the Board of Directors on March 17 last? A. Yes.

Mr. Thompson—Those records have all been put in in this case.

Mr. Bates—I offer from the directors' minutes of 1918-1919, page 308, under date of March 17, 1919, this portion of the record:

"There were present Messrs. Dittmore, Dickey, Merritt, and Rathvon—"

Mr. Thompson—You do not mean that, because Mr. Dittmore is recorded as having left the meeting after the dismissal, or attempted dismissal.

Mr. Bates—This is at the beginning of the meeting. It is recorded later on in the record that shortly thereafter Mr. Dittmore left the board meeting. That is after the adoption of the resolution of dismissal.

"After the trustees retired, it was moved by Mr. Rathvon, seconded by Mr. Merritt, and carried unanimously, Mr. Neal's vote being taken over the telephone, to elect Mrs. Annie M. Knott a member of The Christian Science Board of Directors to fill the vacancy caused by the retirement of Mr. Dittmore."

Q. And have you served as a director since that time? A. Yes.

Q. And have you served as a director since that time? A. Yes.

Q. Now, going back to 1892, at about the time that The Mother Church was reorganized, or, rather, about the time of the organization of what is now known as The Mother Church, will you tell us of that conference which you started to tell us about?

Mr. Whipple—I pray Your Honor's judgment.

The Master—How nearly has she fixed the date?

Mr. Bates—I think she said it was about October.

Q. Did you not—1892? A. It was October, I think the 4th of October was the day on which I was at Mrs. Eddy's home.

Q. Will you now state who was there? A. There were seven other ladies invited for this conference with Mrs. Eddy. I do not remember the names of any except two besides myself, because I was not personally acquainted with them.

Q. Now, state what Mrs. Eddy said in regard to the organization of the Church.

Mr. Whipple—Does Your Honor think that that is material? A. She said that she—

The Master—Wait one moment. What do you propose to show?

Mr. Bates—I think it has a bearing, Your Honor, on the form of the Church government which she adopted at that time, and it has a bearing on this question of the Board of Directors who are exercising the rights and discharging the duties of a Board of Directors of this Church.

Mr. Whipple—Pretty remote, if Your Honor please, and we assume that we are governed by the Manual, and here is something—

Mr. Bates—Well, if you—

Mr. Whipple—That was long before the Manual.

Mr. Bates—Well, if you are governed by the Manual, and admit that this Christian Science Board of Directors is The Christian Science Board of Directors that Mrs. Eddy has provided for under the Manual, then I will not ask the question.

The Master—Well, one might ask there under which Manual.

Mr. Bates—He said "the Manual." I assume that he means the Manual as it has developed from time to time.

Mr. Whipple—The inquiry of His Honor is rather pertinent—which?

Mr. Bates—Well, you were the one that used the term. I use it. In what sense did you use it?

Mr. Whipple—I am not called upon to make any statements, if Your Honor please.

The Master—No, you are not.

Mr. Whipple—I would not hesitate to do it, but I have made it so repeatedly that I despair of making the Governor understand plain English.

Mr. Bates—Well, that is a pretty good way to refuse to answer a question—

Mr. Whipple—Absolutely a good one.

Mr. Bates—Which you do not want to answer, evidently.

Mr. Whipple—Absolutely a good one.

Mr. Bates—Then I ask that this witness may be allowed to state the conversation.

Mr. Whipple—I pray Your Honor's judgment.

The Master—I think I shall have to admit it subject to your objection.

Mr. Whipple—Very well.

The Master—I am not quite satisfied that it is my duty to keep it out.

Q. Now, Mrs. Knott, will you state the conversation? A. Mrs. Eddy said she wanted to have The Mother Church modeled as closely as possible after the early Christian church and after Jesus' teachings, and the Church to be as free as possible from the trammels of material organization. That is the most important thing that I can remember.

Q. Do you remember her talk in regard to the friendly lawyers? A. She said they told her that it was not humanly possible to organize a church in the way that she proposed; that is, The Mother Church being governed by a minority, so to speak, although the provision was made for the branch churches to be governed in the usual way, by the votes of all members. But she said she saw the impossibility of having The Mother Church governed by or controlled by the votes of members, as they would be in all parts of the world, and that she insisted, in meeting with her lawyers, that such a form of organization as she proposed was possible; and at length that one of the lawyers had discovered a statute, in the statutes of Massachusetts, which made this possible, and that they proceeded to work it out from that basis.

Q. Did she refer to the statute specifically or refer to it in connection with the deed in any way? A. She did, and I think read it to us at the time.

Q. And did she, so far as you recall, say anything further in regard to the Board of Directors? A. To what?

Q. To the Board of Directors. A. I do not remember that she did.

Q. Now, coming down to the time when you were editor (I think the records, Your Honor, have all gone in, the directors' records, in regard to the election of Mrs. Knott as editor), I want to ask you whether or not you received a notice of election as editor or associate editor? A. I was called from Detroit by a telegram some time in June, 1903. The telegram was from Mr. William B. Johnson, who was then clerk of the Church, also a director, and the telegram asked me to report at his office as soon as possible after my arrival in Boston. This was a day or two before the annual meeting of The Mother Church. When I went to his office he informed me that I

had been appointed one of the editors of The Christian Science Journal and Sentinel and Der Herold der Christian Science.

Q. Did he inform you as to who had appointed you? A. Yes. He told me that I had been appointed by the Board of Directors on Mrs. Eddy's request.

Q. Now, whether or not in each subsequent year that you held that position you received a notice of your election from the Board of Directors? A. I did.

Q. Or of your reelection? A. Yes.

Q. Do you recognize those papers? (Handing papers to witness.) A. Yes. It is not necessary for me to look them over?

Mr. Bates—No, I think not. I offer Your Honor—

The Master—Will it be necessary to offer all the notices? Counsel have seen them, I suppose?

Mr. Bates—I thought there would be acquiescence in the statement that there are 14 notices of reelection from the Board of Directors to Mrs. Knott, and these are the original notices. If it may be agreed that there are such, why, we won't cumber the record by putting them in. They are all notices from the Board of Directors to the effect that she has been reelected, and they cover each of the years of her service.

The Master—Mr. Whipple apparently would like to see them.

Mr. Bates—I beg your pardon. (Handing notices to counsel.)

Mr. Whipple—You say there are 14 of them?

Mr. Bates—I think 14 or 15. I think you still have some of them over there.

The Master—Is it desired that these be put in evidence and marked?

Mr. Whipple—No, Your Honor, it would seem to be unnecessary. If it is material, the evidence may be accepted on the Governor's statement.

Mr. Bates—These notices begin with the year 1904 and end with the year 1918.

Q. Those were all received by you, Mrs. Knott? A. Yes.

Q. Did you at the time of your first appointment as editor have a conference with Trustee McKenzie in regard to the matter? A. I had a conference with Mr. McKenzie relative to my salary as an editor.

Q. I do not know as the whole conversation is necessary, but I would like that part of it which referred to your appointment, or as to how your appointment came about.

Mr. Whipple—That I must object to. A. I—

Mr. Bates—Wait just a moment.

The Master—Pause a moment. Mr. McKenzie was at that time—

Mr. Bates—He was at that time one of the trustees of the Publishing Society.

The Master—You may answer subject to objection.

Q. You may state, Mrs. Knott. A. The salary which was at that time

paid to the assistant editors, as they were then called, was very small, and when I told Mr. McKenzie that I considered it such and asked why I had been appointed without having submitted this to me, he said, "Well, Mrs. Knott, we have nothing to do with that, you see, that came from the directors through Mrs. Eddy, and I couldn't say anything about that."

Mr. Whipple—I think probably she means from Mrs. Eddy through the directors, rather than from the directors through Mrs. Eddy.

Mr. Bates—I think it is perfectly plain what she meant.

Mr. Whipple—Do you think she meant that Mrs. Eddy was the messenger of the directors?

Mr. Bates—I don't think anyone would put any different construction on it from what you put.

Mr. Whipple—I should hope not.

Mr. Bates—Mr. Whipple seems to think it should be cleared up.

Q. What did you mean by that statement, Mrs. Knott? A. Mr. McKenzie said to me that he as a trustee had nothing to do with my selection or with calling me; that I was simply sent to them to discuss the question of my salary as an editor.

Q. And what did he say in regard to the directors and Mrs. Eddy? A. He said that the directors had brought the matter to their attention that Mrs. Eddy had requested my appointment as an editor.

Q. Now, during the time that you were an editor you had conferences with the trustees? A. Occasionally.

Q. And, in general, in regard to what matters—the nature and kind of matters? A. In relation to having our work done promptly, having the periodicals ready for press in good season, and, on one occasion, I remember they complained that too many changes were made after articles were in type; and on more than one occasion they requested us to have all changes, needed changes in articles, made before they were in type, if possible, or, at least, before they were on the proof pages.

Q. Was there any editorial supervision of your work by the trustees?

Mr. Whipple—Just a moment. That I object to, if Your Honor please. That is purely a conclusion.

Q. Well, whether or not these conferences with the trustees took up matters of your work as editor?

Mr. Whipple—I pray Your Honor's judgment.

A. Not at all.

Mr. Whipple—I pray Your Honor's judgment as to that. She may be asked to state fully what was said on these conferences, and if anything was said about editorials.

The Master—Let us get all she can state with regard to the subjects with which these conferences were concerned.

Q. Have you stated all that you remember, Mrs. Knott? A. I think—I think I have stated all, in substance.

Q. Now, I will ask you the question as to whether or not any conferences with the trustees were in regard to the editorial work? A. Not at all.

Q. And did you have any conferences with regard to editorial work with anybody? A. Well, with Mrs. Eddy.

Q. Well, I don't mean with Mrs. Eddy; that is all right, as an answer. But was there anybody else? Were there any conferences with the Board of Directors? A. Not while Mr. McLellan was living.

Q. Was Mr. McLellan a member of the Board of Directors? A. Yes, but he was also the chief editor.

Q. Well, were the conferences while he was living with him, largely? A. With him?

Q. Yes. A. Oh, yes; daily conferences.

Q. Whether or not after his passing on there were any conferences with anybody? A. Once or twice with the Board of Directors.

Q. Won't you just state in a general way what the duties of your position were as editor? A. I was expected to write an editorial for the Sentinel every week, one for the Journal, once a month, to examine carefully all the contributions which were sent in from the field which were intended for the Journal and Sentinel, also testimonies of healing, and there was a very considerable amount of correspondence with the entire field involved in the editorial work.

Q. While you were editor do you recall any special conference with Mrs. Eddy at which the directors were present? A. Yes.

Q. And will you state when and where? A. I think the date was the 3d of October, 1905. Mr. McLellan came to my house in the morning and said that he had received a telegram from Mrs. Eddy asking us to be at Pleasant View at 2 o'clock that day, and he wished me to get ready and go there, which I did.

Q. And who was there? A. All the members of the Board of Directors as then constituted, and the three editors, including myself.

Q. Do you remember who the Board of Directors were as then constituted? A. Yes. Mr. Stephen Chase, treasurer of the Church, also a director; Mr. William B. Johnson, clerk of the Church and director; Mr. Joseph Armstrong, publisher of Mrs. Eddy's works and a director; Mr. Ira O. Knapp, who was on the Bible Lesson Committee and a director; Mr. McLellan, who was a director and also chief editor of the periodicals named; Mr. John B. Willis, who was one of the associate editors, was present, with Mr. McLellan and myself.

Q. Now who of the parties that you mentioned are living at the present time? A. Only Mr. Willis and myself, I think.

Q. Now will you state what was said at that interview by Mrs. Eddy

in the presence of yourself and the directors? A. She began by asking the directors if they read carefully all the articles published in the Journal and Sentinel. She addressed them individually by name, asking each one if he did so, and they replied that they endeavored to do so. Then she called attention to a passage in a recent issue of the Sentinel, and read this passage over, one sentence, and asked each one individually if he approved it, and they all said they did, until it came to myself, and I said I had stumbled over it several times but had decided to let it go through. Mrs. Eddy expressed a good deal of condemnation of that, and said that she thought that we all ought to have been enough awake to see that it was not a proper statement to send out; and she talked with us all together about two hours on the great need of keeping the teachings of Christian Science pure, and especially the need of keeping them close to the teachings of Christ Jesus. She said that a false estimate of His mission and His teachings would constitute a serious error; that we must study constantly His teachings and His healing work and endeavor to keep our periodicals up to that high standard.

Q. And did she say anything in regard to the directors' duties at that time? A. She said she expected the directors to read the periodicals carefully, and if they discovered anything which did not seem clear along the line she had indicated, that they should at once call the attention of the editors to such mistakes, if any occurred.

Q. Did she say anything in regard to the trustees, so far as you recall, at that conference? A. No, she did not.

Q. And there were no trustees present? A. There were no trustees present.

Mr. Bates—Your witness.

#### Cross-Examination

Q. (By Mr. Whipple.) Mrs. Knott, you stated, I think, that after Mr. McLellan passed on, there were one or two conferences between the Board of Directors and the editors, or some of them. A. Myself, sir.

Q. Yourself? A. Yes.

Q. When were those? A. One was in the spring of 1918, I think. I am not sure as to that date.

Q. The spring of 1918? A. 1918.

Q. Where? A. In the board room of The Mother Church.

Q. Who asked you there? A. I think I was called on the telephone and asked to come over from my office in the publishing house.

Q. It was not through the trustees? A. No.

Q. So far as you know, the trustees knew nothing about it? A. So far as I know.

Q. Who spoke to you when you came to the directors' room, and what did he say? A. The conversation

was quite general. It was about the possible republication of an article by Mrs. Eddy entitled "Life."

Q. And that was all? A. Yes, sir.

Q. Was it republished? A. Yes.

Q. Did you have any further conversation with the directors? A. No.

Q. Did they ask you whether you thought it ought to be published, or what was the conversation? A. No. It was chiefly with respect to a little editing that had been done in the way of punctuation, and so on.

Q. Who edited it? A. And verification of quotations from Scripture and one or two quotations from other writers.

Q. That is, the conference consisted of this: You were asked about some editing which had been done in respect of punctuation. A. And which might be needed.

Q. Had you done it? A. No, I had not up to that time. I suggested some things.

Q. Did they ask that you do it? I am trying to get what this was about. A. Yes.

Q. And whether they made a request of you, or asked information or what it was? A. Yes. They asked what I thought would be the best way, but at that time I think the publication or republication of the article had not been decided upon. I was not asked to decide that.

Q. Then they asked you what you thought about republishing it? Is that it? A. No, sir; no, but—

Q. Won't you tell us what they did ask you, Mrs. Knott, if you please? A. They asked me whether I thought it would be proper to make even slight changes, such as verifying and correcting quotations—I think the one quotation from Mrs. Hemans' poems and—

Q. What did you reply? A. Well, I was the one who offered that suggestion, that I thought that ought to be changed, and their general statements made by them were to the effect that as few changes as possible must be made, none in the substance of it.

Q. Well, what did they ask you? You said they brought you over there and asked you something, and you said you made a suggestion. Now, what did they ask you about? A. How much, or, rather, how little I thought could be done in the way of making this article up to the line of good literary form. It had not been prepared for publication originally.

Q. Then, they sent for you and asked you what you thought would have to be done by way of revising Mrs. Eddy's manuscript to make it proper to publish or make it up to standard. Is that correct? A. Will you kindly repeat the question?

Mr. Whipple—Will you read it.

[The question is read to the witness.]

The Witness—I do not quite get the purport of the question by you.

Mr. Whipple—Will you read it a little louder?

[The question is read to the witness as follows: "Then, they sent for you and asked you what you thought would have to be done by way of revising Mrs. Eddy's manuscript to make it proper to publish or make it up to standard."]

The Witness—That is not a full question. There is—

Q. Yes. I said, "Is that correct?" The stenographer neglected to read that last part the second time. A. They asked me mainly what I thought about having it published without even the slightest change at all.

Q. That is right. That is the first thing they asked you? A. Yes.

Q. What was your reply? A. I submitted several slight changes, not in Mrs. Eddy's words, but in quotations and in the introduction of quotations in the article.

Q. Then your reply was that you thought it would be proper to make certain changes, and suggested what they were? A. Yes.

Q. Is that correct? A. Yes.

Q. What else did they ask you? A. I don't remember anything of importance.

Q. Then, the substance of the interview was this: The directors sent for you by telephone to come to one of their meetings; you came and the directors were there; they asked you what you thought of publishing an article entitled "Life," which had been written by Mrs. Eddy, in which there were certain quotations. Is that right? A. Yes.

Q. Without in any way changing the text. Is that correct? A. Yes.

Q. You replied that you thought there might be some corrections made in the matter of quotations and in punctuation, but nothing else? A. Nothing else, so far as I remember.

Q. That is the substance of the interview? A. Yes.

Q. And then you went away, of course? A. Yes.

Q. Did you afterward make any corrections? A. No.

Q. It was never called to your attention, was it? A. No, I read it in proof more than once, but I made no corrections.

Q. You were asked nothing about it after that? A. No.

Q. It merely came under your observation in proof? A. Yes, sir.

Q. Did you compare it with the original manuscript of Mrs. Eddy? A. Yes.

Q. Were corrections made in punctuation in the text? A. Yes, I think so.

Q. Do you know who made them? A. I believe I was told that Mr. McCrackan had made one or two changes in punctuation.

Q. And did you notice changes in the text? A. No, sir.

Q. But in the quotations? A. No; I think they were left as they had been. That is my recollection.

Q. And the only changes were two corrections in punctuation?

A. Possibly two or three.

Q. Possibly two? A. Yes.

Q. Then, your suggestion about it was not followed up? A. No.

Q. The second interview. You said there were two. When was the other? A. I don't remember.

Q. Do you remember what was said? A. No, I am not so very sure about any other interview at all.

Q. Except that one? A. The morning after Mr. McLellan passed on, during an interview with them I was requested to write a notice of his passing on, a tribute to him, and I did so, and it was signed by myself and Mr. McCrackan.

Q. But that is all? A. So far as I remember.

Mr. Whipple—That is all.

Mr. Thompson—I have no questions.

Mr. Whipple—Just a moment. There is a question that has been suggested.

Q. You referred to something that Mrs. Eddy said in 1892 about having received the advice of a lawyer with reference to some problem that she had had in mind? A. Yes, sir.

Q. Did she say to you that she had prepared, or was about to prepare, the Deed of Trust, which is the Deed of Trust of 1892, in which she constituted them the Board of Directors? A. I have no definite recollection of that.

Q. But it was in 1892, which you now know is the date at which she executed the Deed of Trust conveying the Church to certain parties called directors? A. Yes.

Q. And just about that time, wasn't it? A. Yes.

Q. And that is what she was evidently, you see now, referring to? A. Yes. Would I be permitted to add something to my former statement which she said on that occasion?

Q. I think it would be quite right, Mrs. Knott, if you want to, if there is something that you overlooked and omitted. A. She said that so much would depend in the future upon the faithfulness of the officers and members of The Mother Church and of all branch churches, because there were indications that the medical schools would attempt not only to restrict but to prohibit altogether the practice of Christian Science, and her words were these: She said, "It will rest with The Mother Church and branch churches to keep the light of this healing truth burning and to keep the textbook, 'Science and Health with Key to the Scriptures,' before the whole world until that period of danger shall have passed." She said the time might come in those early years when the practice of Science would be nearly impossible because of those attacks by the medical schools, and that it was of the utmost importance that The Mother Church be on a strong foundation so as to safeguard this discovery of Christian Science. That was all.

Q. Thank you. I now want to direct your mind anew as to the matter of conveying the Deed of Trust and what the lawyer had advised her. Didn't she tell you that it was Mr. Elder, Samuel J. Elder, who had discovered this provision in the Massachusetts law? A. I have forgotten that.

Mr. Whipple—Well, now, may I call Your Honor's attention to the fact that on page 130 of the Church Manual now in use, and in connection with the Deed of Trust to the directors which begins on page 128, there is a reference in the Deed of Trust itself to Section 1, Chapter 39 of the Public Statutes of Massachusetts, and the reference is given right at the bottom of the page. I venture to call that to Your Honor's attention now so that it might be made clear what Mrs. Eddy had in mind and was talking about.

The Master—I had already noticed it, and I had also compared it with Chapter 39 of the Public Statutes. The second section as there printed is not exactly as it stands in the Public Statutes. There is a comma omitted and one word put in which the Statutes do not contain; but I do not know that either matter is of any particular significance.

Mr. Whipple—At the moment, I wanted to call Your Honor's attention to what has been called to mine with reference to this, and it had escaped my observation, although I ought to have assumed that it had not escaped Your Honor's attention.

Q. Perhaps you may remember that it was Mr. Walker, Mr. Streeter's partner, now Judge of the Supreme Court of New Hampshire, who had discovered this statute which she referred to? A. That name sounds more familiar than that of Mr. Elder.

Q. Yes. That is probably the fact, that it was Mr. Justice Walker of the New Hampshire Supreme Court.

The Master—Not Mr. Elder.

Mr. Whipple—Not Mr. Elder. I know Mr. Elder was counsel for Mrs. Eddy for some time, and, being a Massachusetts matter, I rather assumed that he might have discovered it. Your Honor has undoubtedly noticed that it was Judge Walker who took the acknowledgment of Mrs. Eddy.

The Master—Yes.

Mr. Whipple—And was one of the witnesses. Although I thought that this evidence was too remote I am very glad that it was taken because it throws light on the fact that Mrs. Eddy was very carefully considering this Trust Deed which she made to the directors at that time, and made it advisedly.

Mr. Bates—No one would have assumed anything to the contrary except yourself.

Mr. Whipple—Well, my only suspicion about it was because you offered it; but you have offered so much in our favor that I ought to have assumed it would come out in that way.

Mr. Bates—You are welcome to all the help you get. You certainly need it.

Mr. Whipple—It has helped us a lot.

The Master—Is there any redirect? Mr. Whipple—You ought to have some one help you.

Mr. Bates—No, I do not feel the need of it. Our case is our strength.

Mr. Whipple—You will feel the need of it a little later.

Mr. Bates—I am not depending upon the wiles of attorneys. That is all, Mrs. Knott.

Mr. Thompson—Mrs. Knott, may I ask you a question?

Mr. Whipple—There is nothing so wily about attorneys as that advice of yours as to getting around the Manual in the matter of salaries.

Mr. Bates—You have not been willing it should go into the record.

Mr. Whipple—I asked to have it go into the record, sir. I wanted to show your sophistry and casuistry.

Mr. Bates—Every time I offered it you objected.

Mr. Whipple—I never objected. The records will show that you are absolutely wrong, as you usually are.

The Master—Mr. Thompson has something to ask.

#### Cross-Examination

Q. (By Mr. Thompson.) I wanted to be sure I understood you, Mrs. Knott. Judge Walker was the lawyer whom Mrs. Eddy consulted, as you now remember, in the drawing-up of this deed? A. That is my recollection.

The Master—I do not think she has gone quite that far.

Mr. Thompson—I wanted to be sure.

The Master—She said the hearing of Mr. Walker's name suggested—she said that sounded more—

Mr. Thompson—That is exactly why I put the question.

The Master— —more like it.

Mr. Thompson—I wanted to be sure of it.

Q. You understood from Mrs. Eddy that she had consulted some lawyer about drawing this Trust Deed of 1892, didn't you? A. More than one lawyer, I understood her to say.

Q. And that, among them, the man in Concord whom she had consulted was the man who is now known as Judge Walker, whose name is at the end of the deed here; that was the man to whom she went— A. That is my recollection.

Q. —to draw up that deed. That is all.

Mr. Bates—Is Mr. Willis here? (No response.) Is Mr. Cudworth here? (No response.) We have three short witnesses. One of them was summonsed to be here this afternoon and has not appeared, but I assume he will be here; but perhaps not now until tomorrow morning. The other one has been here nearly all day but is not here at present, and I do not know why he is not here; but I would sug-

gest, inasmuch as they will not take much time, and inasmuch as there are certain records that we want put in in the morning by way of closing our case, if it meets with Your Honor's approval we should like to adjourn now and put in those witnesses in the morning.

Mr. Thompson—Couldn't you make an offer of proof? It is quite possible that Mr. Dittmore would accept your statement of what you offer to prove. That would save you calling the witnesses entirely.

The Master—Did I understand you wanted to put in certain records, also?

Mr. Bates—There will be certain records, also.

The Master—Could those be put in this afternoon?

Mr. Bates—We haven't them quite ready. We expected these witnesses to take the rest of the afternoon.

Mr. Thompson—Is Mr. Neal going to testify?

Mr. Bates—I could not state at present.

Mr. Thompson—Mr. Doorly is here.

Mr. Bates—Mr. Doorly is going to testify in your case when you have opened it.

Mr. Thompson—I am only asking now whom you are going to have, that is all. I had no intention of trying to make a point.

Mr. Whipple—I think that Mr. Thompson's suggestion, that the Governor make an offer of what he expects these people to testify to, so that Your Honor can rule upon it if it is objected to, or so that we may admit that the witnesses would so testify, is a good one. It is too bad to waste an hour. If that were done, perhaps we would not have to come tomorrow at all, and nobody wants to come tomorrow unless he has to.

Mr. Thompson—We are doing all that we can to hasten the trial of the case.

The Master—I think that counsel are all entitled to great credit for their efforts in that direction. Now, can you accept any part of that suggestion, Governor Bates?

Mr. Bates—I can make a statement of what Mr. Willis will testify to, but I should prefer to have him on the stand, Your Honor, as he was one of the editors for a long number of years.

Mr. Whipple—Is it not merely cumulative, on a matter about which there is no dispute whatever?

The Master—Suppose, if you have no objection, you let us hear what it is that you offer to prove by Mr. Willis.

Mr. Bates—I should expect to prove by Mr. Willis that he became interested in Christian Science as a critic in 1894 and 1895, and as a student in about 1899; that he became a member of The Mother Church in 1901; was Reader of The Mother Church during Judge Hanna's absence at the time of the Woodbury trial; was associate

editor for 14 years, being appointed about 1902 at the request of Mrs. Eddy. He was elected editor by the Board of Directors, and each year subsequent thereto during his term of service. He had frequent conferences with Mr. McLellan, chairman of the Board of Directors, and also editor-in-chief, regarding the editorial policy of the periodicals. He had no consultations with the trustees regarding editorial policies. He has a distinct recollection of the conference at the home of Mrs. Eddy, when she called together the editors and the directors at Pleasant View, to which conference Mrs. Knott has testified. He would confirm what Mrs. Knott has stated, and further say that she talked—

The Master—Regarding that conference?

Mr. Bates—Regarding that conference. He would further say that she talked with them at length in regard to the periodicals and literature; told them that they were not as alert as they should be. She called their attention to one or two articles which had appeared, which she said were not scientific, one of which had to do with the recognition of health in the flesh. The trustees were not present at the conference. And he would testify that Mrs. Eddy at that time asked the directors if they read the articles before they appeared in the periodicals, and told them that it was part of their duty to do so.

The Master—Now, what do counsel say as to admitting that Mr. Willis—what is his first name?

Mr. Bates—John B., I think—John B. Willis.

The Master—That Mr. John B. Willis, if called to testify, would testify in substance as just stated?

Mr. Whipple—Counsel for the trustees admit that he would.

Mr. Thompson—Counsel for Mr. Dittmore admit that he would.

The Master—Does the counsel for the trustees or the counsel for Mr. Dittmore desire to cross-examine Mr. Willis?

Mr. Thompson—Counsel for Mr. Dittmore does not desire to cross-examine him.

Mr. Whipple—Nor does the counsel for the trustees.

The Master—Then perhaps we have disposed of that. Now, what next?

Mr. Bates—Now, we have summoned Mr. Cudworth, one of the employees of the Publishing Society.

Mr. Thompson—What would he say if you put him on?

Mr. Bates—There is a good deal that he would say.

Mr. Thompson—Well, can't you summarize it?

Mr. Bates—No, I don't think I can.

Mr. Whipple—I thought you said that he would be a very short witness. He cannot say a good deal if he is a short witness.

Mr. Thompson—You are under a

moral obligation to state what he would testify to if you put him on.

The Master—And the other witness, who is he?

Mr. Whipple—I am informed by Mr. Watts, the business manager, that, so far as he knows, the man has never been summoned, and you have never asked him to be here, because if you had we would have had him here without a summons. Now, have you had an interview with him, so that you know what he would testify to?

Mr. Bates—I am informed that Mr. Cudworth is on the way here, having been informed of that fact by one of my associates.

Mr. Whipple—Now, where is the other? You said that there were three witnesses. Can we not dispose of that one?

Mr. Bates—I do not think we can.

Mr. Whipple—Let us try it. When we will admit almost anything that you will say they would say, why can't we dispose of him?

The Master—Did you mention the name of the third one?

Mr. Bates—I did not, Your Honor. I said that there was a third one.

Mr. Whipple—I understood you to say that there were three short witnesses. One we have disposed of; Mr. Cudworth is on his way; and the other one seems to be in limbo.

The Master—You have not as yet stated who the third one was.

Mr. Thompson—Is there any reason why his name should not be mentioned?

The Master—I understood you to say that this third witness has been summoned?

Mr. Bates—No, Your Honor, I find that he has not been summoned, and we are a little in doubt as to whether or not his testimony will add anything to what has already been put in. It is quite possible that it may be eliminated by taking an adjournment to tomorrow morning.

The Master—Is he the one that you referred to as having been in here today, but has gone out?

Mr. Bates—No, sir; that was Mr. Willis, a statement of whose testimony I have just made.

Mr. Thompson—Why is there so much mystery about this? Who is the third one, and what do you expect him to say?

Mr. Bates—There is no mystery about it. We have been going on with this case continuously, and have asked for no delays in any way, shape, or manner, and now it so happens that because we have taken His Honor's advice, and gone on as rapidly as possible, and have not undertaken to offer any cumulative evidence, we have no more witnesses here at the present time.

Mr. Thompson—Nobody is blaming you at all.

Mr. Bates—Now, there are 50 minutes left of the usual day, and I have suggested what I think is under the circumstances only a common and



usual thing, that we adjourn to tomorrow morning, when we will be prepared to close up our case.

The Master—Not until after we have heard that witness who is now on the way, I think, Governor Bates.

Mr. Bates—If Your Honor sees fit to wait for him.

The Master—Oh, yes; I think we had better wait for him.

Mr. Thompson—If you think that he is really on the way.

Mr. Bates—All that I know is the word that comes from the Publishing Society, which is that he is on the way.

Mr. Thompson—May we take a 5-minute recess, while we are waiting for the gentleman who is on the way—who is said to be?

The Master—Oh, yes, certainly.

[Recess of 5 minutes.]

Luther P. Cudworth, Sworn

Q. (By Mr. Bates)—What is your full name, Mr. Cudworth? A. Luther P. Cudworth.

Q. And what is your occupation? A. Purchasing agent.

Q. Purchasing agent for whom? A. The Christian Science Publishing Society.

Q. And how long have you held that position? A. About seven years, at two different periods.

Q. And how long has the last period been? A. About three years.

Q. And when was the other period? A. It was 2½ years previous to that, dating from 1909.

Q. And in connection with your duties as purchasing agent, do you have anything to do with the contracts that are made for paper of the Publishing Society? A. I do.

Mr. Bates—Mr. Whipple, have you the reports that were made to the business manager here, by the purchasing department?

Mr. Whipple—When did you ask for them?

Mr. Bates—I think yesterday.

Mr. Abbott—Yes.

Mr. Bates—Yesterday.

Mr. Whipple. I think that you will find that this witness has them.

Q. Have you the reports, the original reports? A. I have such reports as I could find on the short notice that I had, about 10 minutes before coming down here.

Q. That is, the summons didn't reach you until late? A. About five minutes of three.

Mr. Whipple—Does he mean to imply that he had not had consultations with counsel before and furnished them with these papers?

Q. You have had a conference with me, have you not, Mr. Cudworth? A. I have, Governor.

Q. And that was a number of days ago? A. Some days ago.

Mr. Whipple—But the question was whether he did not furnish you with the papers.

Q. Have you copies of the reports

with you, Mr. Cudworth? A. I have a copy of one report.

Mr. Bates—I understand that you have not brought the originals which we requested you yesterday to have here, Mr. Whipple?

Mr. Whipple—Not here at the moment.

Mr. Bates—Well, any other moment?

The Master—I understood Mr. Whipple to say that they were on the way.

Mr. Whipple—Yes. They are not here for the moment. We think that you had better get your information by the same clandestine methods that have been used with these employees!

Mr. Bates—Thank you for that suggestion.

Mr. Whipple—Apparently you did not need it.

Mr. Bates—I think it is wise that we take pains to find out from Mr. Cudworth something about this in advance, inasmuch as you have not produced the original reports after having been notified yesterday to produce them.

Mr. Whipple—I think it is, if that is the kind of method that you want to pursue, and it is characteristic of what you have been doing.

Mr. Bates—A perfectly proper method.

The Master—The witness says that he has a copy of something there, and if you have called for the original perhaps you can proceed with a copy.

Q. There was testimony by Mr. Watts, Mr. Cudworth, in this case, that Mr. Rowlands had saved the Publishing Society forty or forty-one thousand dollars in a single paper contract. Do you know what contract was referred to? A. I am not sure.

Q. What contract was made in 1913? A. A contract for the paper for 1919.

Q. And did Mr. Rowlands have anything to do with the making of that contract?

Mr. Whipple—Just a moment.

A. He did.

Mr. Whipple—I pray Your Honor's judgment. What did he say when I objected to the question?

Mr. Bates—He said he thought he did.

Mr. Whipple—It seems to be an opinion. I will waive the objection.

Mr. Bates—I did not catch the answer right. I am told that I did not.

Q. What was your answer? A. He did.

Mr. Whipple—Oh, he says he did.

Q. And whom was the contract made with? A. The Canadian Export Paper Company.

Q. Had the Publishing Society ever made any contract with that company before? A. The previous year.

Q. That is, in 1917 for 1918? A. For the supply of 1918.

Q. Yes. Now, did Mr. Rowlands have anything to do with that contract? A. He did.

Q. Have you that contract with you? A. I have not.

Q. And did you make any report to Mr. Watts or to the business manager in regard to the results of the working of that contract? A. Of the 1918 paper supply, do you mean?

Q. Yes, the contract made in 1917. (And I direct Your Honor's attention to the fact that the contract which Mr. Watts stated that Mr. Rowlands had made, and which saved the Publishing Society about \$40,000, was the one made in 1917 for the year 1918.) Did you make the report—

Mr. Whipple—We do not assent to your statement.

The Master—As to the testimony?

Mr. Bates—That is subject to correction. I said that that was what I understand the testimony was.

Mr. Whipple—Well, you are stating it to His Honor, and we do not assent to it.

The Master—Perhaps we can turn right to the testimony. It ought not to be very difficult to find if it was testimony by Mr. Watts. That is in the first volume, I think.

Mr. Whipple—I do not know, if Your Honor please, that it is particularly necessary for this witness to be informed about it, and I do not see any particular reason for making the statement. Why should the question not be asked?

The Master—Well, go on with the question, Mr. Bates.

Mr. Bates—I have an extract from the record, Your Honor, but I cannot place it in the record, although we will have it in a moment.

The Master—Well, suspending, then—

Mr. Strawn—It is page 186, if Your Honor please.

The Master—What was the dispute? Mr. Whipple thought that you had not correctly stated the substance of Mr. Watts' testimony.

Mr. Bates—He thought I had not stated the—

Mr. Whipple—He says that it was in regard to the contract of 1917 for 1918.

The Master—"We were at times quite low on that paper, and when the time came to make a new contract for the coming year," etc. He doesn't mention the year by its number. It is not quite clear what year he refers to, as far as I can find out. That is on page 186, the second column. On page 193, in cross-examination, Mr. Watts said, in regard to that same contract, at the top of the page, first column:

"Q. And when was it made? A. In the latter part of 1917 as I remember it."

Mr. Bates—I had the impression that that was there, Your Honor.

Q. Now, the contract that was made in 1917 was made with what company? A. The Canadian Export Paper Company.

Q. And did you subsequently make a report in regard to that contract to Mr. Watts, as business manager? A. I made several reports.

Q. And have you those reports here? A. I have not.

Q. Have you copies of them? A. I haven't in my own files. Some of those reports were verbal reports, if I may state.

Q. Did you look for them in the files before you came up here today? A. I did.

Q. Were they there? A. They were not.

Q. And do you know what has become of them? A. I assume they are in the regular publishing house files.

Q. Well, is that where you looked for them? A. They were asked for yesterday from me.

Q. And did you turn them over? A. I have turned them over.

Q. To whom? A. To Miss Farr.

Q. And who is Miss Farr? A. The secretary for the trustees.

Q. Did she state what she wanted of them? A. She did not.

Mr. Bates—Your Honor, those are the reports that we have asked for and the witness says he has no copy of them.

The Master—Oh, I thought he said he had a copy.

Mr. Bates—We asked for them yesterday.

The Master—Can you tell us anything more about those reports?

Mr. Whipple—Nothing, except that they are on the way. As soon as they mentioned this man's name, whom we knew to be an employee, we immediately sent for the papers which they had requested to be here.

Mr. Bates—Apparently you sent for them yesterday, for Miss Farr took them from the files yesterday.

Mr. Whipple—Yes; we gave orders to get them out in accordance with your suggestions.

The Master—I suppose we cannot be very strict with the trustees or with either side here in regard to delay in producing a particular paper from out of their very extensive files.

Mr. Bates—But it is apparent that those papers were discovered yesterday and taken out of the files, on the witness' statement.

The Master—Well, that wouldn't hardly prevent their going astray today. I do not understand there is any objection to producing them.

Mr. Whipple—Last night after 4 o'clock there was handed to Mr. Watts a letter addressed to me, which I never saw before, in which they asked the production at this trial of all the original reports made to John R. Watts, manager, in regard to contracts for the purchase of paper, or agreements made in 1917 or 1918, and all correspondence with reference thereto. When Mr. Watts got home he gave orders to have the papers taken out of the files in order to be brought here.

The Master—I shall assume that they will get here without any great delay.

Mr. Bates—Your Honor, I cannot proceed with the examination without having them.

Mr. Whipple—Why not? Didn't your informant give you information, which you have got in your hands?

Mr. Bates—He gave me information but I have no information as to what the report is and I haven't any copy of it, and I haven't seen it.

Mr. Whipple—That is, you are calling, then, for something the nature of which you do not know at all. That is, your client—

Mr. Bates—I do know the nature of it.

Mr. Whipple—Your informant has not told you about it.

Mr. Bates—I do know the nature of it, and I know that you do not wish the nature of it to come out, apparently.

Mr. Whipple—There is not a thing, sir, and you know better.

Mr. Bates—Then if you—

Mr. Whipple—You have no right to make a statement like that.

The Master—Now, Mr. Whipple having told us that the paper called for was on its way and will probably be here before long, I hardly think that can be justified. At any rate, we will wait until the paper gets here before we charge him with trying to suppress it.

Mr. Whipple—Your good manners, Governor, were your chief asset; you don't want to lose them.

Mr. Bates—Thank you very much, sir, but it is the society I have been in.

Mr. Whipple—You ought to improve the society instead of degrading yourself to it.

The Master—Isn't there something else you can ask him while we are waiting?

Mr. Bates—I cannot ask him without those reports, Your Honor, in regard to those matters.

The Master—Well, here comes something.

Mr. Whipple—Here they are, right here. Now, will you name the reports that you want, please—from whom to whom?

Mr. Bates—I ask for any reports that are made in regard to that contract.

Mr. Whipple—Oh, the reports? By this gentleman?

Mr. Bates—By anybody.

Mr. Whipple—Well, I don't know what you want the reports from somebody else for to examine your informant about.

The Master—I think your present question was regarding a report which he made, the witness made, to Mr. Watts.

Mr. Bates—What I asked him to produce was all the reports that he had in regard to that contract.

The Master—Yes; but let us take one thing at a time. Now, you want that report first, don't you, the one the witness made?

Mr. Bates—I think I am entitled to see the whole.

Mr. Whipple—Now, let us get them chronologically. I will begin with

this. I will hand you a paper, consisting of two sheets, and entitled "Report of Purchasing Department for the week ending July 11, 1917." It is signed L. P. Cudworth, and addressed to Mr. Ogden, business manager.

Here is what purports to be a copy of a report of the purchasing department for the week ending July 4, 1917, two sheets.

Report of the purchasing department for the week ending Aug. 3, 1917, Cudworth to Watts, one sheet.

Report for the week ending Aug. 8, 1917, Cudworth to — it doesn't say.

For the week ending Sept. 19, 1917, two sheets.

Report for the month of October, 1917, Cudworth to Watts.

The month of November, 1917, three sheets, Cudworth to the business manager.

Mr. Bates—If you would limit them to the ones which refer to this contract—

Mr. Whipple—You have asked for them all, sir. Now, aren't you content to get them?

Mr. Bates—I limited it to those that refer to the contract.

Mr. Whipple—Pardon me; you read your own notice.

For the month of December, 1918, six sheets, from Cudworth, purchasing agent.

Month of January, 1918.

Here is one for the month of December, 1917, stamped January 12, several sheets.

Month of January, 1918, report of the purchasing department.

The month of February, 1918, several sheets. Please keep them together.

March, 1918, report for the month.

The month of April, 1918.

May, 1918, three sheets.

June, 1918; there are four sheets.

Report for July and August, several sheets, with an article on the upward trend of the prices of food attached.

September and October, 1918.

November, 1918.

Nov. 18, special report, news print contract.

The Master—That would seem to be the one.

Mr. Whipple—I do not know which is the one, if Your Honor please. Here is a memorandum from the purchasing department. I take it that is not a report. It is stamped Sept. 25.

2-24-17, also a memorandum for the business manager. I don't know whether Cudworth had anything to do with that or not.

Here is a memorandum from the committee on public information, Aug. 23, 1918, and a memorandum in connection with that.

A letter dated Sept. 17, 1918, and a memorandum attached, from the Canadian Export Paper Company, Limited, two sheets.

A letter, Nov. 20, 1918, to The Christian Science Publishing Society,

from Steele, general manager, and a memorandum attached.

We have here—I didn't get them in chronological order—a report to Mr. Ogden for the week ending July 25, 1917, and for the week ending July 18, 1917. I hand those to you—two sheets in the first one, and three in the next. If you will put them in their chronological order.

Contract dated Jan. 1, 1917, between The Christian Science Publishing Society and the International Paper Company.

The Master—Is that one of the things called for?

Mr. Whipple—Yes, Your Honor. "Kindly produce all reports in regard to contracts or agreements made in 1917 and all the correspondence in reference thereto."

The Master—Go ahead.

Mr. Whipple—A contract with the Canadian Export Paper Company from Jan. 1, 1918, to Dec. 31, 1918. I hand that over.

We have a lot of correspondence, but I take it that we had better make a list of this while you are employing yourself with what we have handed to you.

Mr. Bates—I think this will last a little while.

Mr. Whipple—Yes, I thought so.

Q. Is that a report made by you to Mr. Watts in regard to the contract in question? (Handing paper to witness.) A. It is. May I qualify that?

Q. Certainly. A. That is a report made in reference to the contract for the present current year, 1919, requirements, relating to the deliveries and conditions through 1918, up to that date. In other words, bearing on both years' contracts.

Q. And where it relates to the conditions, you mean the conditions also as pertaining to the contract of 1917, for 1918? A. Exactly.

Q. There seems to have been some green penciling here. Can you tell me who did that? A. I do not know.

Q. Was that done before it left your office? A. It was not.

Q. And as it left your office it was without the green penciling and without the green figures? A. Yes.

Q. Now, will you state what you figure according to this report to be the net saving—

The Master—Perhaps you will give us the date of that.

Mr. Bates—This is entitled, "Special Report, News Print Contract, Nov. 18, 1918."

Q. Can you state from this report what you figured to be the net saving on that contract?

Mr. Whipple—That I object to, if Your Honor please. We know nothing about what his basis of computation is or whether he ever made any computation.

Mr. Bates—The basis is in the report, Mr. Whipple.

Mr. Whipple—Well, that is all right, but that is the report of a subordinate

to the general manager; it doesn't amount to anything.

Mr. Bates—Well, I suppose it does. At any rate, we are getting at the facts.

Mr. Whipple—Oh, no, you are not—not at all.

Mr. Bates—Well, as far as—

Mr. Whipple—You are doing something else, and something that you are not very proud of.

Mr. Bates—Well, as far as we can with you as an obstacle.

Mr. Whipple—Oh, no; that isn't what you are doing. If you followed me you would get the facts and you would not be in this sort of thing.

Mr. Bates—I ask Your Honor's judgment as to the propriety of the question.

The Master—You offer this to meet Mr. Watts' testimony?

Mr. Bates—Mr. Watts' testimony that there was a saving of \$41,000 on that contract as a result of Mr. Rowlands' work.

The Master—And for that purpose you introduce a report made by the witness to Mr. Watts?

Mr. Bates—Made by the witness to Mr. Watts.

Mr. Whipple—That is not what he asked. He asked what this figuring was on the basis of that report. He does not offer the report.

Mr. Bates—I will offer it before I get there.

Mr. Whipple—Well, you haven't.

Mr. Bates—Well, I will offer it now.

The Master—When he spoke of figuring I took him to be referring to something in the report itself which he has there.

Mr. Bates—I so stated, Your Honor, in the question.

Mr. Whipple—I did not understand that he asked him what the figures were in the report, because that is all the more reason why it should not be admitted, because the report would speak for itself.

The Master—Very well. If it is figuring in the report, hadn't we better have the report just as it is?

Mr. Bates—The trouble is that the figures have been scratched out of the report and green ones put in their place by some one—

Mr. Whipple—Some one who knew more about it than this subordinate, apparently.

The Master—I think that the witness may state what the report is as made without reference to what corrections by anyone else show. That would require, I suppose, putting in the report as he made it. Do you want the whole of it?

Mr. Bates—I thought possibly that we might get along without the whole of it, but I think, under Mr. Whipple's objection, we will have to put the whole of it in.

Mr. Whipple—Will you let me see it first?

Mr. Bates—Delighted (passing report to Mr. Whipple).

Mr. Whipple—I am glad that we delight you.

The Master—I supposed, as it was produced by you, that Governor Bates thought you had seen it already.

Mr. Whipple—I never had, because the request for production was not even presented to me personally, and I knew nothing about it until they started this talk here.

The Master—Very good.

Mr. Whipple—I have no objection to it. If Your Honor says that it is admissible, this man's report to Mr. Watts, it may go in.

Mr. Bates. (Reading:)

"SPECIAL REPORT  
"NEWSPRINT CONTRACT  
"Nov. 18, 1918.

"In reviewing events of the year in connection with our newsprint contract the evidence indicates quite certainly that a contract with another company will be advisable. From Jan. 21, 1918, when we first wired the Canadian Company, "No cars arrived" there has been a continuous flow of correspondence, telegrams, long distance telephones, and three times we have been to Montreal or their mill and have had their superintendent here twice for specific reasons. In going over the correspondence sixty-one letters or telegrams have been noted in reference to difficulties pertaining to:

January—Delayed shipments, wrong color, wrong kind of chucks.

February—Paper frozen and wet, wrong chucks sent again.

March—Box car situation, nine cars behind.

April—Poor samples, wrinkled sheets, poor winding, low production.

May—Paper dust, spotty sheets, excess waste.

June—Uneven finish.

July—Rolls too large, delayed shipments.

August—Delayed shipments, promised shipments.

September—Request to stop mill run for five days granted but ten days taken.

October—Metal tipped cores promised in June, came in October. Wrong roll numbers.

"Many of these difficulties, especially the poor winding, although listed but once were continuous for weeks or reoccurred in later months.

"In October we were notified to look elsewhere for our requirements if our reserve stock was not sufficient. Early in the year 603 tons of stock were purchased from the International Paper Company on account of delayed shipments and in October 300 tons more were bought on the market at an excessive price, as we did not feel confident of the Canadian supply. The list of extra expense incurred is attached, together with saving as estimated when contract was placed and actual saving for paper inside the contract amount of 4500 tons. As the Canadian Company has not presented the new contract I cannot make comparisons,

but even though their price may be slightly under the International Company's, I should recommend placing order with the latter firm. The International Company served us for one and one-half years, ending December, 1918, and their service was always the best. They maintain a splendid Boston office and paper from the Wilder (Vermont) mill can reach us in 24 hours. Quality of stock was usually very good and a comparative few complaints were made. With the Federal Trade Commission fixing a \$3.75¼ price, it is evident that we must face a very considerable increase in our paper cost and, of course, this will be still greater if we accept the Special Quality offer of the International Company. The Canadian Company will bid on standard grade only and the International claim they can offer only the Special Quality stock. If the government continue the present order of allocating the standard newsprint we would have a better opportunity to obtain any unusual requirements such as we have had during the past year.

"If the Special Quality stock is used I believe we can reduce from 24x36—33 lbs.—34 lbs. to 32 lbs.—33 lbs. thus making a saving of 1200 lbs. a day; equal on the new price to nearly \$15,000 a year.

"It is possible that after a three-months' period the International might sell us their standard newsprint at a less amount if we wished to make the change, in which case \$5 to \$7.50 a ton additional would be saved. Respectfully submitted,

(Signed) "L. P. Cudworth."  
"Purchasing Agent."

Annexed thereto and referred to in the report are the following tables:  
ESTIMATED AND ACTUAL SAVINGS  
UNDER CANADIAN CONTRACT

International Paper Co.....	\$67.60	
Freight .....	2.40	\$70.00
Canadian Paper Co. ....	62.00	
Freight .....	3.78	65.78

\$ 4.22

4500 tons @ \$4.22 ..... \$18,990.

Q. I understand, Mr. Cudworth, that was the estimated saving when the contract was made? A. Correct.

Mr. Bates (reading)—

Freight increase since July 1 Grand	
Mere rate excess over Wilder \$2.40	
2250 tons @ \$2.40.....	\$5400.00
Excess waste .....	1607.00
Extra storage—6 months .....	950.00
Traveling expenses .....	300.00
Loss of time pressroom .....	1000.00
603.3 tons excess \$4.22 .....	2545.93
	\$11,802.93

Actual savings ..... \$7,187.07

"Inasmuch as we are using in excess of our contract amount we cannot charge against this account the 400 tons ordered recently from Finch, Pruyn & Co., and the Seaman Paper Company."

FEDERAL TRADE COMMISSION  
PRICES

Increases as follows:	
	Per Ton
April .....	\$1.00
May and June (additional) .....	.26½

Mr. Whipple—I do not quite understand what it is you are reading.

Mr. Bates—This is something that pertains to the contract entered into.

Mr. Whipple—Pertains to what?

Q. Do these figures at the bottom of the page have any reference to the old contract? A. They do not. They are simply comparative figures showing government standard prices as adopted.

Mr. Whipple—I understand that they are savings under the old contract. Will you please read them.

Mr. Bates—I shall be pleased to, if that is your understanding. I will begin back with—

FEDERAL TRADE COMMISSION  
PRICES

Increases as follows:		Per Ton
April .....		\$1.00
May & June (additional) .....		.26½
July .....		.24

	Tons	Savings
April .....	375@ \$1.00	\$375.00
May & June .....	750@ 1.26½	948.75
July to Dec.....	2250@ 1.50½	3386.25

Canadian .....	4500@ \$62.00	\$279,000.
International .....	603@ 67.60	40,762.
Finch, Pruyn & Co. ....	100	
Seaman Paper Co. ....	300@ 90.00	36,000.
*Finch, Pruyn & Co. (Dec.) .....	100@ 98.00	9,800.
		\$365,562.

†Average—\$65.22 per ton.

These figures do not include freight, unloading, hauling, storage and insurance charged. Freight differentials shown below.

\*This order may be canceled.

†This is not the average price paid, as over 80% of the paper was purchased at the \$62 price.

"Cost of paper under present contract delivered to pressroom, not including extra handling for reserve stock, storage and insurance and return of cores."

Paper per ton F. O. B. mill .....	\$62.00
Freight .....	5.40
Unloading .....	.15
Hauling .....	1.30
	\$68.85

Price paid previous to July, 1915—delivered—\$44.80.

FREIGHT RATES

From Grand Mere—	
Jan. to June .....	\$1.89 \$3.78 per ton
June .....	.215 4.30 per ton
July to date .....	.27 5.40 per ton

From Wilder, Vt.—	
Jan. to June .....	\$.12 \$2.40 per ton
June to date .....	.15 3.00 per ton

Differential at present favorable to Wilder \$2.40 per ton.

20 tons per day..... \$48.00  
300 days..... \$14,400.00 a year

ESTIMATES FOR 1919 REQUIREMENTS

1917 used .....	3500 tons
1918 used .....	5000 tons
Increase of 43%	
1919 requirements .....	7150 tons
If reduced to 32 lb. stock 37%	
Increase .....	6860 tons

Standard newsprint at Federal Trade Commission price of \$75.05 a ton—7150 tons..... \$536,607.50

Increase over present price for same amount used 1918 .....

Special Quality stock from Wilder 712,000.00  
Increase over present price for same amount used 1918..... 78,000.00

"It appears that we are facing an

increase cost on ordinary standard newsprint, for at least a three-month period, when adjustments may be made. This will amount to approximately \$65,000.00 annually, and the Special Quality stock can be obtained for an additional amount above this of \$13,000.00."

Each page, I neglected to say, is initialed "L. P. C." at the bottom.

[The report of Nov. 18, 1918, of which the foregoing is a copy, is marked Exhibit 729, R. J. M.]

Q. What is the reference to "delayed shipments" in this report, Mr. Cudworth? What is meant by that? A. It means that orders were not filled promptly, the cars were not shipped as ordered.

Q. And how many times were there difficulties of that nature in that contract, in carrying it out? A. A great number of times.

Q. And did that inconvenience the work of publication? A. No, because we were able to obtain other paper elsewhere, as stated in the report.

Q. You obtained it elsewhere in order to make good for the non-shipments by the Canadian Company? A. Exactly.

Q. And whether or not you had to pay—what did you have to pay under those circumstances for the stock which was to take the place of that that they had not shipped? A. It is stated on page 1 of the report there—\$67.60 a ton in place of—

Mr. Whipple—Does the witness say that this was not stock that would have to be bought anyway?

Mr. Bates—I understand the witness to state that it had to be bought in order—

Mr. Whipple—You were asking him whether it wasn't merely bought at that time, but it would have been necessary to buy it anyway, because the contract did not provide for increased circulation.

Q. Was this stock bought to take the place of stock that you had contracted with the Canadian Company for that had not arrived? A. It was.

Q. And was the cost of paper during all this period going up rapidly as the result of the war times? A. It was.

Q. And was the result that you had to pay a considerably larger price for the amount that you bought to take the place of that which was not delivered by the Canadian Company? A. I am not sure of that question now.

Mr. Bates—Will you read it to him?

Mr. Whipple—Well, I think, if Your Honor please, that the counsel should let the witness testify instead of trying to thrust something in by way of persuasive questions which would be an advantage.

The Master—Repeat the question. I think that is where we are now. The witness did not quite get the question.

[The question is read to the witness.]

Mr. Whipple—Now, I will object to

it as leading, as all questions have been for the last few minutes.

The Master—We want to get at what this report shows as quickly as we can. I am going to let him answer that.

A. Yes.

Q. Now, what is meant by "wrong color"? A. A different color than the samples furnished for the contract.

Q. And what is meant by "wrong kind of chucks"? A. The chuck is a device that holds the paper roll on to the press.

Q. And did that have any bearing, either as an inconvenience or as a loss to the Publishing Society through their getting the wrong kind of chucks? A. It was an inconvenience and loss of time in the press room.

Q. And what is meant by "February—Paper frozen and wet"? A. That indicates that the paper was sent in a car which was defective and allowed the weather to get to the paper.

Q. And did that result in wastage? A. Yes, sir.

Mr. Whipple—Did the Canadian Company furnish the car or the transportation company?

Q. Was the Canadian Company supposed to deliver this in Boston, or where? A. It was purchased F. O. B. mill, but the company obtains the cars and loads them.

Q. And what do you mean by "Box car situation"? A. The war conditions at that time required a very large number of box cars for the government's shipments, and ordinary mercantile businesses were inconvenienced to a great extent on account of that.

Q. And you found difficulty in getting this paper from Canada by reason of that fact? A. Yes.

Q. Where were these mills in Canada? A. At Grand Mere.

Q. Where is that? A. That is about 150 miles northeast of Montreal.

Q. And in March, you say, "Nine cars behind." You mean they were nine cars behind in their delivery at that time? A. Exactly.

Q. And April, you say, "Poor samples, wrinkled sheets, poor winding, low production." Will you just explain what is meant by that? A. The rolls were not properly wound, so that the sheets coming off of the roll into the press was wrinkled, causing bad printing and trouble on the press. The poor winding referred to similar conditions. Low production means that to every roll a less number of Monitors would be printed.

Q. That also resulted in wastage, did it? A. Yes.

Q. May, "Paper dust, spotty sheets, excess waste." Tell us what is meant by that. A. Paper dust is the particles of loose paper due probably to a poor finish so that it sprinkles through the press and causes trouble with the ink and makes the ink muddy. Spotty

sheets are probably due to slime spots, as it is called in a paper mill. Excess waste means that we had so much difficulty with the paper that there was an excessive amount of waste paper.

Q. And these that you have stated here as difficulties were all facts? They were difficulties that you were experiencing? A. They were.

Q. June, "Uneven finish." A. That means that some of the rolls would have a high finish, some a medium, and some a low finish or a rough finish.

Q. And what was the result of that? A. That means inconvenience and delay on the press or poor printing.

Q. And July, "Rolls too large." A. So much paper was put on a roll that it was hard to handle it on to the press. In some cases it could not be used except on one or two decks of the press.

Q. And what was the result of that? A. Inconvenience.

Q. Any loss? A. Loss of time.

Q. I notice in July also, "Delayed shipments," and in August, "Delayed shipments, promised shipments." Can you tell us what those refer to? A. The same situation as occurred in January and February. They were not able to fill the orders promptly, apparently.

Q. Now in September, "Request to stop mill run for five days granted but 10 days were taken." Did the company request the right to stop the mill for five days? A. Yes. As I recall it, a telegram or a long distance telephone request was that we allow them to discontinue making paper for five days, but they discontinued making it for 10 days.

Q. And what was the result of that? A. We were low on paper and it made the situation rather serious to delay even a day.

Q. October, "Metal-tipped cores promised in June came in October." What are metal tipped cores, and whether or not that resulted in any loss or inconvenience. A. Cores are what the paper is wound on, and our original shipments were pulp cores without metal tips on the ends of them. Our pressmen requested the metal-tip cores, which have been found of great advantage in running high-speed presses and make less trouble. The rolls without metal tips frequently slip on the press.

Q. "Wrong roll numbers." A. That is a kind of checking upon the paper as it comes and is used.

Q. You state in this letter that "Early in the year 603 tons of stock were purchased from the International Paper Company on account of delayed shipments." Is that the fact? A. That is the fact.

Q. —"and in October 300 tons more were bought on the market at an excessive price as we did not feel confident of the Canadian supply." Is that correct, also? A. That is correct.

Q. And the prices paid for those are the prices that are indicated in the statement that follows? A. Exactly.

Q. I wish you would state what is meant by this paragraph here:

"If the special quality stock is used I believe we can reduce from 24x36-33 lb.-34 lb. to 32 lb.-33 lb., thus making a saving of 1200 lbs. a day; equal on the new price to nearly \$15,000 a year."

A. The term 24x36 to 32 lb. is used to designate the weight or thickness for a standard newsprint paper. We have always used a slightly heavier weight, designated there as 33-34 pounds, that being that allowance or variation in the manufacture, and the recommendation is that it might be reduced to practically the standard 32 pounds.

Q. And that would result in a saving of nearly \$15,000 a year? A. Exactly.

Q. Over what? A. The same amount of paper, or the same number of papers to be printed. That is figuring on, say, 100,000 papers a day, if put on the 32-pound stock would represent that saving.

Q. Well, \$15,000 a year over what had been saved the year before on that quality of paper? A. For the same number of papers to be printed.

Q. Now, in that table—

Mr. Whipple—That is, the cheaper the quality the more saving it would make? Is that it?

The Witness—The weight doesn't necessarily mean quality—reduction of weight.

Q. How did the quality of the paper compare with the quality of paper that you had been getting from the International Company—the quality supplied by the Canadian Company—how did that compare with that which you had been getting from the International Company? A. As indicated by my report, not at all favorable.

Q. Which was the poorer paper—the Canadian paper? A. The Canadian paper.

Q. Now, this table of estimated and actual saving, it was estimated that there would be a saving by the Canadian contract of \$18,990 when it was entered into? A. Exactly.

Q. Over what the International Paper Company had bid? A. Exactly.

Q. And you figure that the actual saving was how much? A. Seven thousand—it has a green pencil mark on it—it is hard—\$7,187.07.

Q. So that on that contract there was no saving of \$41,000, so far as you know?

Mr. Whipple—I pray Your Honor's judgment.

The Master—I think that the report will have to speak for itself there.

Mr. Whipple—I should prefer to have it.

The Master—I will exclude that. Have you got through interrogating in regard to that report?

Mr. Bates—I think that that is all, Your Honor.

The Master—I think that we had better stop this afternoon, but, before we stop, let me ask, are you going elaborately into all this matter of the paper contracts?

Mr. Bates—No, Your Honor. We simply put in this evidence in rebuttal of the statement of Mr. Watts that this contract that Mr. Rowlands had made for them saved them \$41,000. We simply show that the report that was on their files, made to him by their own employee, showed that the saving was only \$7300, at the best, and that there were these difficulties besides.

The Master—Do I understand that you are through with this witness or are you going on with him in the morning?

Mr. Bates—I am through, Your Honor.

Mr. Whipple—No, there were not "difficulties besides." He deducted for the "difficulties," Governor. You do not seem to read the paper. He made the allowance for these alleged difficulties.

The Master—I did not hear your answer to my question.

Mr. Bates—I beg your pardon.

The Master—Whether you are through with this witness.

Mr. Bates—I am through, yes, Your Honor.

The Master—Then he will have to be here in the morning for cross-examination?

Mr. Whipple—Yes; we shall ask him a few questions.

The Master—You understand that, Mr. Cudworth, do you?

The Witness—At 10 o'clock tomorrow morning, Your Honor?

The Master—At 10 o'clock tomorrow morning. We will stop here.

[Adjourned to 10 o'clock a. m., Thursday, July 31, 1919.]

July 31, 1919

TWENTY-SIXTH DAY

Room 424, Court House,

Boston, Massachusetts, July 31, 1919.

Mr. Thompson — If Your Honor please, my associate, Mr. Coolidge, has discovered a mistake in the numbering of one exhibit, which may be of some little consequence. I do not understand it and I will ask permission to have him explain it to Your Honor, so the correction may be made by the stenographers. It may cause confusion later in going over the case.

The Master—Yes. Wait until we get everybody attending here. A correction of the record comes first, I believe.

Mr. Coolidge—I find on page 578 of the printed record that a letter is marked Exhibit 718, from Mr. McKenzie to the Board of Directors, and that should be 719, because on page 575 a

letter from the Board of Directors to Mr. McKenzie is Exhibit 718.

Mr. Whipple—Is there an exhibit 719 in the record besides that?

Mr. Coolidge—Not on that day, Mr. Whipple; it is the next day.

Mr. Whipple—I understand from a gentleman who has read over the record that there are several occasions where there are duplicate numbers, or, at least, two exhibits have been marked with the same number.

The Master—Among so many exhibits it would seem hardly possible that there should not be some mistakes somewhere. Wouldn't it be well when they are discovered to point them out as soon as possible and have them corrected?

Mr. Whipple—I think that might be well. We are in process of making up a table of the exhibits, and if that is utilized in connection with the testimony it would straighten the numbering out, although I quite agree that it is well enough to call attention to them as we go through.

Mr. Krauthoff—If Your Honor please, at the adjournment of the court on last Wednesday Mr. Whipple and I were engaged in some conversation about membership in branch churches, and at that time I made a statement which I now desire to substitute another statement in lieu of.

The Master—Can you give us the page of the record?

Mr. Krauthoff—It was at the adjournment of the court on last Wednesday.

The Master—That doesn't help us to find it very quickly. What day was Wednesday?

Mr. Krauthoff—I haven't the printed record.

Mr. Whipple—Do I understand the application is to correct a misstatement that was made?

Mr. Krauthoff—I am now desiring to state it accurately, if Your Honor please.

Mr. Whipple—I do not think the statement is testimony, is it? If you want to correct a misstatement so that you won't be misunderstood, I have no objection to its being done, but to make it under the guise of—

The Master—Suppose we see just what Mr. Krauthoff wants to do, perhaps.

Mr. Whipple—That is what I was asking him to explain, and he was somewhat Delphic in his utterance. I couldn't make out what he did want to do.

Mr. Krauthoff—Mr. Whipple asked me a question with respect to a loyal, faithful and consistent believer in and advocate of the principles of Christian Science being a member of a branch church as distinguished from a member of The Mother Church. I have now a letter from the Board of Directors which I desire to substitute in lieu of the statement I then made.

Mr. Whipple—Oh, I think not. I cannot assent to that.

The Master—A letter of the Board of Directors written when?

Mr. Krauthoff—Written on July 31, 1919.

The Master—Written since this matter came up?

Mr. Krauthoff—Since the question was asked me.

The Master—I am afraid that except by consent you could not make that substitution.

Mr. Krauthoff—If Your Honor please, it did not relate to a fact, but related to a general principle as applied to Christian Science generally. At the time I made the statement in regard to it, in response to an inquiry of Mr. Whipple, Mr. Whipple further said that if the Board of Directors had any statement to make upon that subject he would be glad to know it. We now have a statement of the Board of Directors that I am authorized to submit, and I want to submit it in lieu of the statement I then made as to the question of a person being a member of a branch church and not being a member of The Mother Church.

Mr. Whipple—It would seem, if Your Honor please, that the distinguished counsel may have been haled before the ecclesiastical tribunal, with instructions to correct his statement. I do not know whether he has or not. But apparently under the guise of, I thought, a correction of his own statement, although he does not admit that he wants to correct that, he wants to substitute something, a communication from the Board of Directors. I do not see how it can be done.

Mr. Krauthoff—If Your Honor please, in response to Mr. Whipple's intimation, the "distinguished counsel," as he has been good enough to call him, was not haled before any tribunal, ecclesiastical or otherwise. Counsel did this. Having in the course of the trial undertaken to answer a question upon a matter involving a case upon which he had not consulted with his client, he did thereafter what he might have done in the first place—consulted with his client, and he now desires to submit, in correction of that which he then said, the statement I now have in my hand.

The Master—Let us see what was said at the time about a statement by the Board of Directors. Obviously you cannot, except by consent, change the record on that point. You do not deny that you did make that statement at the time?

Mr. Krauthoff—I made that statement at the time.

The Master—Whether you can now add as of that date a statement by the Board of Directors in correction, would be a different thing.

Mr. Krauthoff—I am offering it as my own, if Your Honor please. I offer it as a statement that I have adopted. I assume I have the same rights as a witness would have to clarify or correct any statement that was made in the course of the trial. It is not an admission that is binding

forever and ever, not being based upon any consideration or being an estoppel of any kind.

The Master—Then let us put it in this way: "I now desire to correct a statement made by me on July 23"—I think last Wednesday was. Now mention the matters in which you desire to correct it. I cannot against objection let you put in a statement of the Board of Directors.

Mr. Krauthoff—I want to make this statement, if Your Honor please—

Mr. Whipple—Just a moment; let us see.

The Master—As your own correction of a statement made by you?

Mr. Krauthoff—Then I offer this as my own correction of my statement made on that occasion.

The Master—Very well. Now let us see.

Mr. Whipple—Show us on the record what you want to correct so that we can see whether it is really a correction or whether it is a new statement under the guise of a correction.

Mr. Thompson—Possibly before you offer the document you will show it to me, too, because I am not advised that four of these directors, at least, are competent authorities on what constitutes loyalty to Christian Science.

Mr. Krauthoff—I understand. I am offering it now as my statement. I am perfectly willing to show the document, without any question.

Mr. Whipple—Oh, well, I do not care for it. What are you correcting? Won't you point that out in the record? Here is the close of July 23. Please read what you want to correct. In other words, we want to discover the error before we apply the balm.

Mr. Krauthoff—It was at the close of last Wednesday.

Mr. Whipple—Well, I opened the place right to you there.

[Mr. Krauthoff reads, from page 503 of the printed record, left-hand column, the two following statements by himself and Mr. Whipple.]

Mr. Krauthoff—On page 503, in the left-hand column, Mr. Whipple asked this question:

"Mr. Whipple—Before you leave that subject will you let me ask if you really mean to say that people cannot be loyal Christian Scientists who are not members of The Mother Church, that the members of the branch churches throughout the world are not loyal and conscientious Christian Scientists, or may not be?"

The Master—Now, come right to it, Mr. Krauthoff, if you please. What is the statement?

Mr. Krauthoff—The statement I want to correct is the statement reading:

"There are members of branch churches who are loyal and consistent believers and advocates of the principles of Christian Science as taught by Mary Baker Eddy who are not members of The Mother Church."

And in connection with that—

Mr. Whipple—Pardon me, did you say that?

Mr. Krauthoff—That was the statement I made, yes.

The Master—He read that from page 503, left-hand column; I followed it. Now, briefly, what is the correction in that which you desire to make?

Mr. Krauthoff—May I have the paper that I gave Mr. Thompson a moment ago?

Mr. Thompson—Mr. Whipple has it; Mr. Strawn is examining the paper.

Mr. Whipple—I do not think, if Your Honor please, that it is a correction at all. It is just what I stated that I suspected it to be. It is an attempt, under the guise of a correction, to deliver an oration, or some statement apparently emanating from the Board of Directors. I have no objection to Your Honor looking at what they propose, and see if it is a correction.

The Master—I have already stated that I did not propose as the matter now stands to allow that document to go in.

Mr. Whipple—But what he proposes is to read it as his own.

The Master—I think I shall have to permit him to do this: "I now desire to correct that statement"—the one which he has last read from page 503 of the printed record.

Mr. Whipple—If Your Honor would look at it I think Your Honor would see that it is not a correction; it is simply under the guise of that.

The Master—I am going to let him state the correction he desires to make. I do not want him to read into the record any other document. I want him to state precisely the correction he desires to make in that statement.

Mr. Krauthoff—In lieu of the answer that I then made I desire to answer the question as follows:

"Loyal and faithful believers in Christian Science know that Mrs. Eddy taught that The Mother Church including its activities, is necessary to the growth of the Christian Science movement.

"Now it is obvious that The Mother Church cannot exist without members; so the loyal and faithful believer and advocate of Christian Science cannot be consistent unless he is a member of The Mother Church.

"This statement is subject to the qualification:

"A loyal, faithful and consistent believer and advocate of the principles of Christian Science, as hereinbefore defined, is one who is willing to take all of the human footsteps taught by Mary Baker Eddy as fast as his understanding unfolds. There are people who have not been interested in Christian Science long enough to have become familiar with all of Mrs. Eddy's works, and consequently all of the necessary human footsteps, as taught by her, but who are willing and do take every such footstep as fast as they understand it.

"These comprise many members of

branch churches who are not yet members of The Mother Church, and these answer to the description of loyal, faithful and consistent believers and advocates of the principles of Christian Science as taught by Mary Baker Eddy in her book, 'Science and Health with Key to the Scriptures.'

Mr. Whipple—Now, if Your Honor please, I move that that statement be stricken from the record as being just what I characterize it—not a correction, but an attempt under the guise of a correction to introduce something into the record which Mr. Krauthoff and his clients evidently want to get into the records for some purposes. They ought not to be permitted.

The Master—I think I shall let it stand, subject to your objection. The nature of the correction speaks for itself and we have also had its history.

Mr. Whipple—Now, if Your Honor was up before, if Your Honor please, I asked to present to the Court, or direct the attention of the Court, to some provisions of the Manual with regard to that, and Your Honor said that you did not care to do it as the matter then stood.

The Master—No; I only wanted—all that was an answer to an inquiry made by me, and it was completed for the time being then. The subject about which I inquired is, of course, liable to be brought up again if counsel desire, but I am not sure that this is a proper time for it. I want to see how far the directors have got with the putting in of their case; I do not want to interrupt it any more than I have to.

Mr. Whipple—I should not suggest it except that their own counsel has interrupted it for a similar purpose, and has been permitted to do it; and it is an obvious advantage that if there is one interruption of that case, the correction of it would properly be at the place where the interruption was made, and where the subject is discussed.

The Master—No; I think we shall get into less confusion by going right ahead now and completing the directors' case. Will you begin now from where you left off last night?

Mr. Bates—Mr. Cudworth was on the stand, I think, and I think I stated that I had completed my examination at that time. With Your Honor's permission I will ask just one question, if you do not object.

Luther P. Cudworth, Resumed

Q. (By Mr. Bates.) Mr. Cudworth, in order that there may be no uncertainty, although I think it is already plain, did you obtain proposals for the paper contract in 1917, for the year 1918, from any other parties than the Canadian party? A. I did.

Q. Whom did you obtain them from? A. The International Paper Company.

Q. And the figures which you quote

as of the International Paper Company on the report that was made to Mr. Watts are based on the contract figures or the proposal figures that they made to you? A. Exactly.

Mr. Bates—Thank you.

Cross-Examination  
On Behalf of the Trustees

Q. (By Mr. Whipple.) Mr. Cudworth, when the question came up of your paper supply for the year 1918, or at least was called to the attention of the trustees, you had already made some investigation of market conditions, had you not? A. I had.

Q. You had endeavored to get a contract for a year for furnishing the supplies of the publishing house, had you not? A. I had endeavored to obtain proposals.

Q. With whom had you consulted? A. Do you mean at the publishing house, Mr. Whipple?

Q. No, I mean with whom. A. With what firms?

Q. From whom had you tried to get proposals? A. Among others in New York City, the International Paper Company.

Q. What others? A. Craig & Co., agents for various Canadian mills, the Great Northern Paper Company, and, in Boston, St. Croix Paper Company.

Q. Now, you were aware that proceedings had been taken against the paper companies by the Department of Justice in Washington, were you not, prior to that time? A. I was.

Q. In other words, just at that time the proprietors of newspapers were very much concerned at the advancing price of newsprint? A. And the scarcity of newsprint.

Q. And the scarcity of it. And they claimed that the paper supply was being controlled by a trust? The newspapers were full of it, weren't they? A. Yes.

Q. Complaints were made to the Department of Justice? A. They were.

Q. And the Department of Justice, having investigated, brought some suits for breaking up the trust, or instituted proceedings, as you understood. That is so, isn't it? A. Somewhat later, I think.

Q. Hadn't they in November, 1917? A. I am not positive about that.

Q. Isn't it a fact that as a result of those proceedings the Department of Justice had compelled members of the alleged trust to incorporate in their agreements with their customers an agreement which they had made with the Attorney-General's office? A. They were compelled to present such an agreement.

Q. To present such an agreement. That is— A. To customers and prospective customers.

Q. That is, the agreement which they had entered into with the Department of Justice? A. Correct.

Q. Controlling prices? A. Exactly.

Q. Yes. Now, further than that an

appeal, as you know, had been made to the Federal Trade Commission?

Mr. Bates—Does Your Honor think this the proper way of proving these matters?

The Master—Not that they are being established now for the first time as facts immediately relevant in the case, but I see no reason why the witness' knowledge may not be gone into by cross-examining counsel.

Mr. Bates—Well, can he be examined in regard to contracts that the government was requiring to be made in which he was not a party? Should not the contracts speak for themselves, if there are any such?

The Master—If he knows anything about them, I think that Mr. Whipple may get the extent of his knowledge.

Mr. Whipple—Will you be good enough to repeat the question, please? [The question is read to the witness.]

A. Yes.

Q. That is, an appeal by the newspapers, or those interested in the purchase of newsprint, to have the Federal Trade Commission fix prices. You knew that, didn't you? A. I knew an appeal had been made.

Q. And in December, or at least in November and December, the application to the Federal Trade Commission to fix prices was pending, but had not been determined by the Federal Trade Commission. That is so, isn't it? A. I am not positive as to the date when the price was fixed.

Q. Well, it was not fixed until after you had entered into your contract with the Canadian Export Company, was it? A. I think it was.

Q. You really do? A. I really do.

Q. What was it fixed at? A. At three cents per pound, or \$3 a hundredweight.

Q. Three dollars a hundredweight. That is, the Federal Trade Commission had fixed as a maximum price to be charged \$3 a hundred before the contract with the Publishing Society was entered into with the Canadian Export Company, was it? A. I think that is correct.

Q. Now, what was the amount that you agreed to pay the Canadian Company, per pound or per ton. A. May I state it by the hundredweight? \$3.10 a hundredweight.

Q. In other words, you agreed, knowing what the Federal Trade Commission had decided, to pay 10 cents a hundredweight more to the Canadian Company than the maximum price permitted by the Federal Trade Commission. You do not really mean that, do you Mr. Cudworth? A. I really mean that. But I may qualify that, if you will allow me to.

Q. Well, if you qualify it by changing it, I should think you had better. A. I think I should qualify it.

Q. Well, if you want anything that you think will do you justice in view of that statement, you have permission, as far as I am concerned. A. In justice to the truth.

Q. Yes, that is right. A. Ten cents—

Q. Because it leaves it with a good deal of injustice to the truth. A. Ten cents additional for special color.

Q. For special color. That was it, was it? A. Yes.

Q. So that the price you fixed upon with the Canadian Company was the Federal Trade Commission price of \$3.10 or \$3 plus 10 cents. Is that true, Mr. Cudworth? A. It amounts to that, Mr. Whipple.

Q. It amounts to that. When had the Federal Trade Commission fixed this price of \$3.10? A. When had they?

Q. Yes. A. I am not sure of the exact date.

Q. Do you know that it had been fixed? A. I assume that it was from the fact that the printed contracts presented by both companies in blank had the Federal Trade Commission price printed therein.

Q. Yes. Therefore, when you took the Canadian contract there was exactly the same price offered to you by the International Company. Is that true? A. They all presented the Federal Trade proposition as one proposition.

Q. Yes, that is right. A. They were compelled to do that under the government ruling, as I understand it.

Q. Then what else was there in the proposition? A. And they had the privilege of presenting other propositions.

Q. Well, what did they present aside from that? A. Who?

Q. Either of them, or both of them? A. The Canadian presented the proposition which we accepted.

Q. Which was it? What was it? A. \$3.10 a hundredweight, fixed price.

Q. For a year? A. A fixed price.

Q. A fixed price for a year? A. For a year.

Q. The Federal Trade Commission price was not a fixed price for a year? A. For three months.

Q. Now, what was the Canadian price for the special color, the fixed price for the year? A. \$3.10, as I stated before.

Q. What was the International proposition? A. The figures are on that report.

Q. Well, do you remember them? A. I should like to refresh my memory.

Q. Certainly. Call, Mr. Cudworth, at any time for any papers to refresh your recollection. I hand you a letter from the International Paper Company, dated Dec. 10, with a proposal subjoined (passing paper to the witness). A. \$3.38.

Q. That is for the same specifications as to color that the Canadian offered \$3.10? A. Exactly.

Q. Now, then, if you took a fixed price from either one of these companies, you would not have the advantage of any changes in price by the Federal Trade Commission during the



year. You understood that, didn't you?  
A. The advantages or disadvantages.

Q. So that the matter stood in this way: The International, at or along in December, said that they would furnish what you desired for \$3.38 a hundredweight, special color? Is that right? A. Correct.

Q. And the Canadian Export for \$3.10? A. Correct.

Q. If you accepted either proposition you would have to pay that price for how many tons during the year? You would have to pay, I take it, for whatever you bought during the year? A. Yes. Usually specify the amount contracted for.

Q. And how much was that specified amount? A. Four thousand tons, with an option of 500 tons additional.

Q. If you desired them? A. If so desired.

Q. And, entering into the contracts, you would be bound to pay that price no matter whether the Federal Trade Commission's prices went up or went lower? A. Correct.

Q. But there was 28 cents difference between these two companies? A. Not that much.

Q. I thought you said \$3.10 and \$3.38? A. The freight must be taken into consideration.

Q. Oh, you have to consider the freight. What was the difference, as you figured it out? A. Well, now, if I may have that special report—

Q. Yes, certainly (passing a paper to the witness). A. —that was entered as an exhibit yesterday, I can tell you exactly. The freight being usually figured by the ton, we reduce—or extend the hundredweight price to the ton. The International Paper Company's figure, \$67.60 a ton, plus \$2.40 freight, totaled \$70 per ton; the Canadian Paper Company's price being \$62 a ton, plus freight \$3.78, totaled \$65.78; the difference in favor of the Canadian Company being \$4.22 a ton.

Q. You mean with the freight included? A. Exactly.

Q. Can't you reduce that to the hundredweight, since you started us off on that? A. Well, we could, but all these figures, Mr. Whipple, are on the tons, and if—

Q. Then, why did you start us off with the hundredweight as more convenient? A. Simply because the proposals in contracts are made by the hundredweight, as a rule, not taking into consideration the fact which is a factor—

Q. Then you transfer them to the—  
A. To the ton.

Q. How much is the difference per ton? A. \$4.22.

Q. And about what would that difference be in the hundredweight? A. About 21 cents.

Q. Twenty-one cents, instead of 28? A. Yes.

Q. That is what I wanted to get at—21 cents. You may keep one of those papers; I want to use the other

for examination. Will you state the date of the proposal which you have in your hand? A. Dec. 10, 1917.

Q. And that is the proposal of the— A. International Paper Company.

Q. International Paper Company. Now, prior to receiving that report, that proposal, had you talked with Mr. Rowlands and Mr. Watts with regard to the difficulties in the situation? A. Several times.

Q. When did you talk with them about it? I mean prior to any proposition being made, or about when? I don't expect you to get the exact date. A. Probably about the middle of October.

Q. Yes. Whom did you talk to first? A. Mr. Watts.

Q. What did you say to him? A. I am unable to recollect.

Q. Well, about what? I mean in substance. A. Probably I stated that it was time to make investigations in regard to our paper contract for the coming year.

Q. What did he say? A. I have no recollection.

Q. When did you first call to his attention any difficulties you were having in getting a contract? A. Difficulties in what?

Q. In securing any contract, or securing a proposal? A. We didn't have difficulties in securing a proposal.

Q. Didn't you? A. No.

Q. Didn't you report to him that you had difficulties in securing proposals for the coming year? A. No.

Q. Didn't you have any difficulties at all? A. No, not in securing a proposal.

Q. What were your difficulties? A. In obtaining a proposal which was low price.

Q. Well, could you get any proposals for fixed price? A. We did, as stated—

Q. I am not talking about what you did. I am talking about your conversation with Mr. Watts and Mr. Rowlands when you called them in to help you out. What did you tell them your difficulties were? A. I told them my difficulties were in obtaining a price which I thought was fair.

Q. Well, what price had you succeeded in getting when you first told them of that difficulty? A. I had received a verbal quotation.

Q. From whom? A. From the International representative.

Q. For how much? A. Exactly in accordance with this letter.

Q. What say? A. Exactly in accordance with this letter, confirmed later by them.

Q. When did you receive that? A. Some time in November.

Q. And that was before you had spoken to either of them as to your difficulties? Is that right? A. Naturally.

Q. What? A. Naturally.

Q. That is, you had received the

very proposal, that is, \$3.38 per hundred, from the Canadian before you spoke to either of them.

Mr. Bates—Not the Canadian.

Q. From the International, before you spoke to either of them? Is that correct? A. Well, I was in constant consultation with Mr. Watts during that period.

Q. Well, can't you answer my questions? I am asking whether you received that very proposal before you had spoken to them of any difficulties in placing your contract? A. The difficulty would not arise, Mr. Whipple, until it was presented.

Q. Can you answer my question? A. Not by—

Q. I don't care for your reason. A. Not by yes or no.

Q. Why not? You know whether you had spoken to them about difficulties, do you not? A. Now I ask you just to repeat that question again.

Mr. Whipple—I will ask the stenographer to read it, and I will ask you to observe it.

[The question is read to the witness as follows: "I am asking whether you received that very proposal before you had spoken to them of any difficulties in placing your contract?"]

A. Yes.

Q. What had you said to them, or either of them, prior to receiving this alleged oral proposal? A. I can only say, Mr. Whipple, that I had several conversations.

Q. I ask you what you had said to them, or either of them. Can't you answer? A. I cannot.

Q. Do you mean that you don't know what you said to them? A. I do not know.

Q. You have no memory of what you said to them about the paper situation or any of your difficulties. Is that what you mean? Is that the way you mean to leave it? A. I mean I had general discussions with them.

Q. Well, what had you said to them?

Mr. Bates—Let him finish that answer, please.

A. No doubt to the extent of the difficulties that were generally seen and acknowledged in the newspaper and paper trade world at that time.

Q. Did you tell them, "I am encountering the difficulties which you see in the newspapers and are known in the trade world"? Is that what you said to them? A. In substance, I assume I did.

Q. Well, what were those difficulties that you told them you were having prior to this alleged oral offer? A. The difficulties were the scarcity of newsprint paper; a number of manufacturers refusing to take on additional tonnage or orders; the freight congestion, box car situation, and the upward tendency of prices as noted in the trade papers.

Q. Those were the things you called to their attention, were they? A. Exactly.

Q. Didn't you tell them that you

had been to New York and that you could not get anyone to make any binding contract as to what they would do for a year? A. No.

Q. You did not tell them that? A. No.

Q. Did you try to get any contract before you got this alleged oral proposal? Had you tried to get any proposals? A. This was the first proposal made.

Q. Can't you answer that question, sir? I asked you if you had got any before? A. No, not before the oral proposition.

Q. Had you tried to?

Mr. Bates—Before which one, Mr. Whipple?

Mr. Whipple—The oral one, he said.

Mr. Bates—You mean by "oral" the International proposal?

Mr. Whipple—His alleged International proposal.

The Witness—That was the first one I obtained.

Q. Had you tried to get any before that? A. I had not.

Q. To whom did you report that you had received this oral proposition? A. Mr. Watts.

Q. What did he say? A. I have no recollection.

Q. Can't you remember a thing that he said? A. I cannot.

Q. What did you say to him? A. I told him of my interview with the representative of the International Paper Company.

Q. Tell us what you said to him. You know what your interview was. Please tell us what you said to Mr. Watts. A. In substance, I said that I had had this interview, that he had presented a proposition, and would probably present three propositions; that their company, like others, would present to all customers and prospective customers the Federal Trade Commission contract, but they would also give us a proposal for our special colored paper, which is a grade above the standard news.

Q. That is, you said they probably would present such a proposal? A. Yes.

Q. I thought you said they had made one. A. They did make me one.

Q. Well, I asked you what you said to Mr. Watts about it, and you say that you told Mr. Watts that they probably would make one. Now, what do you mean by that, sir? A. Well, I had the two or three interviews—

Q. Well, I was asking you for the interview—and didn't you know it, sir?—after you had had the alleged oral proposal, what you said to Mr. Watts then, and you have just testified that you told him that they probably would make a proposal. Was that truthful or false? A. My recollection—

Q. Which was it, truthful or false, just what you said you told Mr. Watts? A. It was slightly in error.

Q. Slightly in error? A. Yes, sir.

Q. How in error? A. Because, as my recollection went back, I repeated to you a conversation I had with the

representative before he made actual proposals.

Q. Well, now, will you focus your attention on what I really asked you, sir, and answer truthfully? A. To the best of my memory.

Q. Proceed. A. May I have the question?

Q. The question is what you said to Mr. Watts after you had got this alleged oral proposal. I asked you first what he said to you, and you said you couldn't remember, and I said, "What did you say to him?" and I ask it again. A. As I recall it, to the best of my knowledge and belief, I said, "I think those prices are excessive."

Q. What prices? A. The prices as presented orally.

Q. What were they? A. Three dollars a hundredweight, \$3.15 a hundredweight, and \$3.38 a hundredweight.

Q. For different grades? A. Three different propositions.

Q. I thought that you said that the price was \$3.10. A. That was the Canadian Paper Company.

Q. Yes. I thought you said the price was \$3.38 then? A. I just repeated that.

Q. Yes. Well, I understand you to say that you had a price of \$3 and one of \$3.15— A. Correct.

Q. —and \$3.38? A. Yes.

Q. All those three? A. Yes.

Q. And you said you thought that those were too high? A. I did.

Q. Yes. What did he say? A. I should say that he said, "What is the next step?" or, "Where else can we look?" or, "What had we better do? What would you advise?"

Q. Did you tell him that they would take a contract at those figures at a flat price for the year? A. I certainly did.

Q. Yes. Well— A. Pardon me. "Those figures"—two figures were for a flat price.

Q. Which? A. The \$3.15 and the \$3.38.

Q. Those were a flat price? A. Were a flat price, the \$3 being the Federal Trade Commission price, adjustable every three months.

Q. That is, that was the \$3 price? A. Yes.

Q. Adjustable every three months? A. Yes.

Q. That is, his proposition was that he would give you \$3 adjustable every three months, or \$3.10 for another grade, and \$3.38 for another? A. No.

Q. Not \$3.10, but \$3.15. A. \$3.15, a flat price on a standard grade, and \$3.38 a flat or standard price on a special grade.

Q. Yes. Now, when he said, "What shall we do next?" what did you say? A. I said, "I might go over to New York and interview the International Paper Company at their head offices."

Q. Did you? A. I did.

Q. Well, did you report to Mr. Watts? A. I did.

Q. What did you tell him? A. I reported that I was unable to secure any different prices from what had

been quoted me from the Boston representative.

Q. Yes. Then what did he say? A. He said, "Well, we will take it up with the trustees."

Q. Had you talked with Mr. Rowlands before that? A. I am not positive.

Q. Did you after that? A. I did.

Q. Up to that time you hadn't seen any representative of the Canadian Export Company, had you? A. I had not.

Q. And Mr. Rowlands took it up with them, did he not? A. After our conference with the trustees.

Q. Well, now, tell us what was said before the trustees in the conference with the trustees. A. I reported to them what I had reported to Mr. Watts, and—

Q. Very well. What did they say, or any of them? A. And Mr. Rowlands asked me about if I knew Mr. Steele, the manager of a company which had been formed to sell the product of Canadian mills.

Q. Go on. A. And I said, "No, I have not met him." He said, "Let me get in touch with him." And I believe he then telegraphed him, and we awaited a reply. That was our introduction to the Canadian Export Paper Company.

Q. Well, then what? What was your next interview? A. The next step was—

Q. I am talking about your next interview. A. The next interview, as I recall it, was an interview with Mr. Steele and Mr. Lenahan, who was connected with the Laurentide Mill, one of the mills whose product the Canadian Export Company sold.

Q. When? A. That was in December. Then—

Q. What part? A. The latter part.

Q. Meantime you had gotten your written proposition, had you? A. Yes.

Q. The written proposition that you have in your hand? A. Yes.

Q. From the International? A. From the International.

Q. Yes. Where was the meeting with the representative of the Canadian Export Company? A. In the trustees' room of the publishing house.

Q. Who were present? A. As I recall it, the three trustees, Mr. Watts, the two paper men, and myself.

Q. Was an agreement reached? A. Yes. I think the agreement was reached at that particular interview.

Q. Was there a discussion there as to what should be done in case the Federal Trade Commission price should go lower than the price at which it was then fixed, or should go lower than the price which was fixed in the proposition of the Canadian Export Company? A. I don't recall that particular discussion. A discussion was had about the Federal Trade price.

Q. Well, don't you remember that as a part of the agreement that was finally reached, Mr. Rowlands was assured that in case the Federal Trade

Commission price went below the price fixed in his written contract, there should be an adjustment accordingly? A. I do not.

Q. You weren't informed of that? A. No.

Q. Do you deny that that was told to you by Mr. Rowlands as the reason why he took that contract? A. I remember no such statement.

Q. You knew nothing about it? A. Nothing about it.

Q. Now, then, after that proposition was made, you were requested to make a computation, were you not, of the financial advantage of the Canadian as compared with the International? A. I did make one.

Q. Where is that computation? A. I think that that is contained in the—

The Master—I think that the question is, were you requested to make one?

Mr. Whipple—Well, he said he did make one.

Q. Were you requested? A. I was not requested to, as I recall.

Q. Well, you did make one? A. I did make one.

Q. And submitted it to whom? A. Mr. Watts.

Q. To Mr. Watts. Was that a special report? A. As I recall it, it was contained in my regular monthly report of January, 1918.

Mr. Whipple—Have you (addressing Mr. Watts) that?

[Mr. Watts passes a document to Mr. Whipple.]

Q. Do you say that no one requested you to make a computation of that advantage of the Canadian offer as compared with the— A. I don't recollect a request of such a nature. Under the heading "Paper."

Q. Is this your report for January, the one to which you refer (passing a document to the witness)? A. That is a January report, but that report about the difference in price is not in that report. It must be in another one.

Q. So you were mistaken about that? A. I was mistaken about its being in that particular report.

Q. Didn't you make a special report on it? A. I did.

Q. Did you keep a copy of it? A. I have kept copies of all reports that were made.

Q. Didn't you understand my question, sir? A. I did keep a copy of it.

Q. Have you the copy? A. I have not.

Q. Where is it? A. I do not know. I turned all papers over to the manager's office.

Q. When? A. Within the last few days.

Q. Yes. Did you notice that special report there? A. I noticed a reference—yes—no, I beg your pardon, not a special report.

Q. Well, I asked you if you didn't make a special report, and you said you thought you did. A. Yes.

Q. Or at least you said you did. Did you notice that special report

there when you turned the papers over to the manager's office? A. I did not.

Q. Well, now, do you remember what the result of your computation was, your revised and final computation as to the profit?

Mr. Bates—This appears to have been in writing, Your Honor, and the paper is in the possession of the plaintiffs, and I think that they should produce it.

Mr. Whipple—I am sorry to say that it is not. We have not been able, since your conferences with our employee, to find either the original or the copy.

Mr. Bates—You presented the original here yesterday.

Mr. Whipple—You are mistaken. You are away behind the times. You apparently do not know what you are talking about.

Mr. Bates—I do know what I am talking about.

The Master—There were a number of papers submitted here yesterday, a large number.

Mr. Whipple—Yes, but this is not among the number. This is a special report of the difference in those two proposals at the time that the proposal of the Canadian was accepted—a report that this man made to his superiors on the basis on which they acted, and neither the original nor the copy can be found.

Mr. Bates—And the witness has stated that it was among the papers that he turned over to the manager's office within a few days.

Mr. Whipple—Again you are mistaken, because he testified specifically that it was not among them.

Mr. Bates—I beg your pardon. I will leave it to Your Honor. I understood him to so state.

Mr. Whipple—Well, if you will read back, you will find that you understood exactly the contrary of what the witness testified to.

Mr. Bates—Well, will you ask him that question again?

Mr. Whipple—No, because he has already made his answer.

The Witness—May I assist you, sir?

Mr. Whipple—Well, I don't know about your assistance, sir, because I have been trying to get it—

Mr. Bates—He is offering it now.

The Master—If there is any misapprehension on the point of whether this special report was among the papers, you had better clear that up.

Q. Is there any misapprehension? A. I think there may be.

Mr. Whipple—Now, will you turn back and read his answer? And then if you want to correct an answer which you made, you will be privileged to do it.

The Witness—Thank you.  
[The reporter reads as follows:

"Q. Didn't you make a special report on it? A. I did.

"Q. Did you keep a copy of it? A. I have kept copies of all reports that were made.

"Q. Didn't you understand my question, sir? A. I did keep a copy of it.

"Q. Have you the copy? A. I have not.

"Q. Where is it? A. I do not know. I turned all papers over to the manager's office.

"Q. When? A. Within the last few days.

"Q. Yes. Did you notice that special report there? A. I noticed a reference—yes—no, I beg your pardon, not a special report.

"Q. Well, I asked you if you didn't make a special report, and you said you thought you did. A. Yes.

"Q. Or at least you said you did. Did you notice that special report there when you turned the papers over to the manager's office? A. I did not."

Mr. Whipple—That is it.  
Mr. Bates—But he said he turned over all papers. The presumption—

The Master—Yes, I know it, but, coming to this particular paper, he said that he did not notice it among the papers turned over.

Mr. Bates—I think that it is a fair inference that it was among them if it was turned over, unless he said it was not.

Mr. Whipple—Yes; you want to supply your inference for the sworn testimony here, but we prefer sworn testimony.

The Master—Now, the witness told us that he thinks there may be some misapprehension.

Q. Now, what misapprehension do you think there is about your answer? A. You didn't ask me what the special report contained.

Q. I asked you if you made a special report upon the differences between the Canadian proposal and the International. A. I didn't understand your question to be that.

Q. Well, now, did you make a special report as to that? A. I don't think I did.

Q. Mr. Whipple—Now, will you turn back again for this witness to the moment after I had handed him the January report, which he said contained it, which he had testified contained it, and then found that it did not, and asked him about a special report?

The Master—I certainly understood him to say that he made a special report.

Mr. Whipple—On that subject.  
The Master—The examination from that point was intended to find out where that special report was, to identify it in some way.

Mr. Whipple—That is a special report on the subject that he said, and said wrongly, was in the January—  
The Witness—I still think it is in one of the general reports.

Q. One of the January reports? A. One of the monthly reports.

Q. What did you mean when I

asked you if you didn't make a special report on that subject, and you said you did? A. Well, I made a special report about newsprint several times during the year, and I recall, in reading my February report of 1918, the statement that a special report has already been made.

Q. Let us take your February report; I think you had better not testify without having the reports before you, as to their contents. You know what kind of a report I am talking about, don't you, now—a report comparing the advantages or disadvantages of these two contracts or proposals? A. I do.

Q. Please keep that in mind; don't wander off and tell us a little later that you thought I meant something else. Take your February report and see what you have referred to in that—see whether it is there, and read what you— A. May I read the first sentence here?

Q. Yes. A. "As recently stated in a special report, we have used but little of the Canadian paper since deliveries began in the middle of January."

Q. So you made a special report as to the Canadian paper between the January and February reports? A. It is very evident.

Q. Yes, that is right. A. Yes.

Q. That was what you had in mind when you made a special report of the facts which you did not find contained in your January report? Is that correct? A. Not exactly, Mr. Whipple.

Q. Well, now, will you tell us what the figure was which you reported to Mr. Watts when you made your special report upon the differences? A. As stated before, I think that is contained in one of the monthly reports.

Q. I have heard your statements; now I am asking you another question. A. Yes, I am proceeding to answer.

Q. Now, will you state the figure, in round numbers, that you gave to Mr. Watts as the figure showing the advantage—financial advantage—of the Canadian contract? A. About \$18,000.

Q. Didn't you state \$41,000? A. I did not.

Q. Did you have a talk with Mr. Watts about this last night? A. I did.

Q. What did you tell him about your statement of the advantages as you had figured them, on the subject of their being \$41,000 or not? A. What did I tell him, is your question?

Q. Didn't you understand my question? A. Well, I just wanted to be very sure of it, Mr. Whipple.

Q. All right. You are very sure—that is it. What did you tell him as to the figure which you remembered giving him as the financial advantage of the Canadian proposal? A. I told him the advantage was—

Q. Last night? A. Yes, last night.

Q. He asked you what the figure was, did he not? A. Yes.

Q. Which you gave to him at the time, as showing the financial advantage of the Canadian? A. Yes, and I had a paper in my hand.

Q. No, pardon me. What did you answer? A. I said it must have been like this.

Q. It must have been like this, you said? A. Yes; I had a paper in my hand with the figures on it.

Q. Was there any mention of the sum of \$41,000 last night? A. There was.

Q. What? Who mentioned it? A. Mr. Watts mentioned it.

Q. What did you say when he mentioned that figure? A. I said, "I don't know where you got it, Mr. Watts."

Q. Is that what you said? A. That is what I said.

Q. What did he say then? A. Well, he said, "I must have gotten it from somewhere, I didn't get it out of the air."

Q. Yes. What did you say to that? A. I said, "I don't know where you got it."

Q. And that was truthful? A. That was true.

Q. That is, that you didn't know? A. Absolutely true.

Q. Now, was it of any advantage at that time to have a contract whereby if the Federal Trade Commission price during the year went below the contract price that the purchaser could have advantage of it? A. That would be an advantage.

Q. A very distinct advantage, would it not? A. Of course.

Q. How much? A. Depending on how low the price went.

Q. Well, I mean, judging it as you stood at that time, wasn't it a distinct advantage? In other words, wasn't it anticipated that the Federal Trade Commission price would go largely in excess of the contract prices that were then offered, but that it might go considerably below it? Wasn't that the general feeling, and wasn't it your feeling? A. No; my feeling was that the Federal Trade Commission prices would be higher rather than lower.

Q. That is just what I said, that they would be higher than the contract price. A. I thought you said lower.

Q. No. The general feeling was that they would probably be higher, but that they might be lower than the contract price? A. The general feeling was that they might be higher.

Q. Yes; and there was also a feeling that it was possible that they might be lower? A. Well, that is a contradictory feeling, Mr. Whipple, is it not?

Q. Yes, very likely; a general feeling that the probabilities were that they would be higher, but there was quite a possibility that they would be lower? A. A speculative possibility.

Q. Now, will you refer to the trade commission contract, paragraph 2-A? A. I have it.

Q. It reads as follows, does it not? "From Jan. 1, 1918, until April 1, 1918, for such news print paper in rolls, \$3 per hundred pounds, f. o. b. at the mill in carload lots, and \$3.25 per hundred pounds f. o. b. at the mill in less than carload lots, and for

such news print paper in sheets \$3.50 per hundred pounds f. o. b. at the mill in carload lots, and \$3.75 per hundred pounds f. o. b. at the mill in less than carload lots."

A. The other would be of no consequence, Mr. Whipple, if I may interrupt you.

Q. Yes. There was an indication that prices would vary under the Federal Trade Commission? A. Yes.

Q. But you have said that you anticipated, and most anticipated, that the prices would go higher than the contract that was entered into with the Canadian? A. Yes.

Q. So that that contract you regarded as a very favorable contract? A. I did.

Q. That is, you thought prices were going higher? A. I did.

Q. And distinctly advantageous as compared with the offer which was made by the International? A. I did consider it so.

Q. And you knew that the International would not vary that contract at all so as to protect you in case the Federal Trade Commission price went lower than that fixed in the contract, did you not? A. I had no intimation that they would.

Q. Had you asked them whether they would protect you in case the Federal Trade Commission went off? A. I couldn't answer that, I don't recollect.

Q. Well, you had had no intimation that they would do it? A. I don't recollect that I did ask them.

Mr. Bates—Mr. Whipple, will you let me look at that contract? (Examining document.)

Q. Now, will you let me take that paper which was marked as an exhibit, if you have it, or did I receive it back? A. You had it back, Mr. Whipple.

Q. Referring to Exhibit 729, Special Report, news print contract, Nov. 18, 1918, did anyone ask you to make this special report? A. Mr. Watts asked me to make that.

Q. Did you confer with anyone before you made it? A. I conferred with him when he asked me to make it.

Q. Anyone else? A. I think Mr. Rowlands was in his office at that time or during one of the conversations.

Q. Did you have any conversation with Mr. Rowlands about it? A. I think I told Mr. Rowlands that I had been requested by Mr. Watts to make a report.

Q. What was the particular occasion for it just at this time? A. Because we were getting near the end of our contract year.

Q. And it was with reference to making a new contract, was it not? A. Exactly.

Q. By the way, your new contract was made with the Canadian Export, was it not? A. Yes. For this year, you mean?

Q. I beg pardon? A. After that?

You mean for this year, for the current year?

Q. Yes. A. Yes.

Q. After this report? A. Yes, it was.

Q. You didn't favor it, did you? A. I didn't favor it at the time I made that report but I did favor it when it was entered into.

Q. When did you favor it? A. When the Canadian Export Paper Company presented their final proposition for 1919 requirements, along in December of 1918.

Q. Was that more favorable than the International? A. It was.

Q. Did you make a computation as to how much more favorable? A. I did.

Q. How much was that? A. About \$18,000 to \$20,000, as I recall it.

Q. More favorable? A. Favorable for the Canadian.

Q. Than the International? A. Yes.

Q. I show you here this paper, and ask you if it is not your report for the month of December, 1918. A. That is.

Q. Now, under the heading "Paper," I ask you to observe what is marked there. Will you read it? A. (reading:)

"The International Paper Company's proposal was presented for \$4 cwt., f. o. b. Wilder, Vermont, and, adding the freight differential of \$2.40 a ton to the Canadian company's price, it still leaves a difference in their favor of \$3.60 a ton. Although both companies' contracts provide for adjustment of price after three months, this difference may be reasonably figured for the whole year and will mean a total saving of \$25,200 perhaps for news print."

Q. That is enough, unless you need to read the other to indicate a possible reconciliation between your oral testimony just now and that statement in writing last December.

Mr. Bates—I pray Your Honor's judgment as to whether this is material. I have allowed my brother to go thus far, but this is in regard to a subsequent contract, made for a subsequent year, and has nothing to do with the matter which was testified to.

Mr. Whipple—On the contrary, it is a matter that resulted from Mr. Rowlands' introduction of this matter.

Mr. Bates—Made at a time when prices had changed and everything else.

Mr. Whipple—And in which he participated again.

Mr. Bates—Well, if you are going to reason that all contracts that were ever afterwards made with the Canadian Company were made because Mr. Rowlands had a friend in the company or had made the first contract, why, then possibly it might be admissible.

Mr. Whipple—It looks like it.

The Master—I have understood that the statement controverted by the statement made in the trustees' evidence, and controverted by the directors, related to one contract only,

made in 1917. We looked that up, didn't we, the other day?

Mr. Whipple—Yes, Your Honor, I so understand it.

The Master—Then why should we go beyond that?

Mr. Whipple—Because, if Your Honor please, that being controverted, if the witness is mistaken about one he is more likely to be mistaken about the other.

Mr. Bates—But you have not shown any mistake about either.

Mr. Whipple—But the object of cross-examination is to show that the witness is not reliable in his statements, and here, on the same subject matter, the witness' oral statement is contradicted by his own figures, and that, we hope Your Honor will feel, would shake somewhat your confidence in his accuracy. It seems to me legitimate cross-examination.

The Master—It seems to me we ought to be careful and not take up too much time on this particular point. It will be very easy to spend hours in investigating everything relating to these paper contracts, but when we have got it all done it only comes to this: Is \$7000 or \$18,000, or \$41,000 the best estimate of the amount saved by the contract made by Mr. Rowlands? Am I right?

Mr. Bates—That is right, Your Honor.

Mr. Whipple—I quite agree, if Your Honor please.

The Master—Is it worth while? Won't it be very easy to spend a wholly disproportionate amount of time in the elucidation of that question?

Mr. Whipple—I think it would be very easy, if Your Honor please, but I don't think that I shall do it.

The Master—I think I shall exclude the question about the other contract.

Mr. Whipple—But Your Honor will not exclude what he has already testified to?

The Master—Oh, no; I won't strike anything out.

Mr. Whipple—That is all I desire; that is, testimony that he was inaccurate about the second contract.

Mr. Bates—I submit that that statement is not proper, there has been no such showing.

The Master—In the first place, we should have to consider, shouldn't we, whether we were talking about the contract as it was made, before anything was done under it, or the contract as it ultimately worked out, affected by a whole lot of circumstances that came in subsequently?

Mr. Whipple—Yes, Your Honor; but what I was asking this witness about—let me make it clear—was an estimate which he made, on which his superiors could rely, in 1918, as to the advantages of one particular form of contract. He said that his figuring showed an advantage or estimated advantage of about, I think, \$17,000; his written statement to his superior

gives it as \$25,000. That is in evidence.

Mr. Bates—That is not in evidence.

Mr. Whipple—I think it is.

Mr. Bates—No; that is this subsequent contract.

The Master—Well, the paper is in evidence.

Mr. Whipple—I beg pardon?

The Master—The paper itself is in evidence, is it not?

Mr. Whipple—No, Your Honor; I asked him to read it, and he did read it as his own statement.

The Master—Well, then it is in the record.

Mr. Whipple—It is in the record, and I was merely saying that I did not wish to pursue the question further than that, unless it seemed fair to let this witness reconcile those two contradicting statements, one of them oral and under oath, and the other in writing to his superior. But if the Governor does not want his witness to attempt to reconcile them I am content to leave him just where he is.

Mr. Bates—I am perfectly content.

Mr. Whipple—Well, it takes mighty little to content you.

Mr. Bates—You are the one who was not content, and going on to ask something else which you have now been precluded from doing.

Mr. Whipple—I was trying to be fair to the witness and allow him to make an explanation, but you apparently do not want him to.

Mr. Bates—It is unnecessary.

Mr. Whipple—Perhaps you are right about it.

Mr. Bates—It is unnecessary.

The Master—Please go on now with the examination.

Q. Mr. Cudworth, in putting down the criticisms of the fulfillment of this contract you put down these items: "Delayed shipments, wrong color, wrong kind of chucks." Now, those are things that are not unique in this kind of contract, are they? I mean, those are things that you must expect in the fulfillment of a commercial contract for a large amount of paper in war times? A. Only to a limited extent.

Q. Yes, to a limited extent. You don't say anything here as to the extent to which there were delayed shipments, the wrong color, or the wrong kind of chucks, do you? A. I certainly do.

Q. Where? A. May I read the second paragraph of this report?

Q. Yes.

A. "From Jan. 21, 1918, when we first wired the Canadian Company, 'No cars arrived' there has been a continuous flow of correspondence, telegrams, long distance telephones, and three times we have been to Montreal at their mill and have had their superintendent here twice for specific reasons."

That would be my explanation of the—

Q. That doesn't say how long the delays were. It doesn't say how much

of the paper was imperfect. Let me put it in this way. Didn't you put in a claim against the Canadian Company asking to have an allowance for all these alleged imperfections? A. Only the excessive waste.

Q. Yes. How much was that? A. \$1607.

Q. On a contract of how much? A. Two or three hundred thousand dollars.

Q. That is, at the end of it you put in a claim, and the only claim you ever put in was for \$1600. Is that right? A. Not at the end of it.

Q. Well, what claims did you ever put in against them besides the \$1600? A. None.

Q. Well, then, at the end of that contract for that year the only claim that you have ever put in against the Canadian Company on account of these things that you have narrated was \$1600. That is right, isn't it? A. That was put in before this report was made.

Q. What? A. That claim was put in before this report was made, or about that time.

Q. About the time the report was made? A. It was put in at different months.

The Master—Isn't it easy to answer that question? Is that the only claim put in? Now, that must be capable of a yes or no answer.

The Witness—Yes.

Q. Yes, that is the only one. A. I beg your pardon?

Q. On a three or four hundred thousand dollar contract? A. Yes.

Q. And you got a reply from the Canadian company that it was so trivial as compared with the enormous amount that you had saved under that contract, they would not consider it for a moment, or that in substance, wasn't it? A. Yes.

Q. And you haven't pressed it, have you? A. Have not.

Q. And in that letter they made a computation indicating that you had saved over \$65,000 under that contract, and that it was too preposterous for them to allow a claim of \$1600? Isn't that so? A. I don't recollect such figures.

Q. Well, will you say that that was not in substance what they wrote as their computation of what you had saved under the contract—\$65,000, or approximately that? A. Not to my best knowledge and belief.

Q. What was that figure they indicated you saved?

Mr. Bates—I pray Your Honor's judgment.

The Master—If the witness can recall, I think he better state.

The Witness—I cannot.

Q. You can't do it. Now, as compared with the Federal Trade Commission prices for 1918, what was the saving to this company from that contract of the Canadian Export Company?

Mr. Bates—Which prices do you mean, Mr. Whipple? There were four sets of prices.

Mr. Whipple—There were not—

Mr. Bates—For each quarter.

Mr. Whipple—I mean all of them, of course, because you cannot deal with a year without taking in all the four quarters.

Mr. Bates—I pray Your Honor's judgment. This is a contract for a year, and you cannot make a basis on the changing prices during war times when prices were going up each quarter. The reason for making the contract was so as to get the price for a year.

Mr. Whipple—I am sorry to say that, again, you do not know the facts.

The Master—I think the witness will have to answer it if he can.

Q. Perhaps this will help you, too—some of your figures (passing a paper to the witness). A. I think this is the same.

Q. Yes. All right. Now, will you state, as compared with what you would have to pay if you had paid the federal trade prices, that is, the prices fixed by the Federal Trade Commission during the year, and had depended on those prices, what was the saving to the company? A. \$42,900.

Q. Yes, \$42,900. Thank you. And is this paper which I handed you an accurate computation of it, one that you assent to? A. I should say it was quite accurate.

Q. So, to leave the question once and for all, if, instead of making a contract at a fixed price, which might cause a loss by the federal trade prices being fixed below your contract price, you had depended upon the prices fixed by the Federal Trade Commission, this company, the Publishing Society, would have been, according to your estimate, nearly \$43,000 less well off for the year 1918? A. That statement is correct.

Q. Now, if you will let me take those papers, if you please.

[The witness passes some papers to Mr. Whipple.]

Mr. Whipple—That I have not offered, but if you want to look at it and offer it—

Mr. Bates—I want to see the others, also, please.

Mr. Whipple—That is the exhibit which was put in, and here is the report of the purchasing department for the month of February, which I show you (handing paper to Mr. Bates).

Mr. Bates—I don't care for that.

Mr. Whipple—And here is the only other paper that I have used, which is the proposal of the International Paper Company, dated Dec. 10.

Mr. Bates—Will you let me see it?

[Mr. Whipple passes the document to Mr. Bates.]

#### Redirect Examination

Q. (By Mr. Bates) Mr. Cudworth, is that the contract actually entered into between the Publishing Society and the Canadian Export Company for the year 1918, the one to which refer-

ence has been made (handing paper to the witness)? A. It is.

Q. And can you point out in that contract anywhere an agreement on the part of the Canadian Export Company that they would allow the Publishing Society the advantage of any decreases in price as made by the Federal Trade Commission during the coming year, or during the year, if such occurred?

Mr. Whipple—No such provision is contained in it.

Mr. Bates—Well, you implied it in your question. If you now admit that there is nothing of the kind there, I will withdraw it.

Mr. Whipple—I admit that there is nothing of the kind there, but it is a fact that a collateral agreement to that effect was made.

Mr. Bates—I ask that that be struck out.

Mr. Whipple—Well, you are asking me to admit something.

The Master—I do not suppose that your statement, in the absence of any evidence about the collateral—

Mr. Whipple—We are going to put in the evidence to that effect, if Your Honor please. That statement will amount to nothing without the evidence.

The Master—Very well.

Mr. Whipple—But since he was asking me to admit something—

Mr. Bates—You admit that there is nothing of the kind in the contract. That is all I want. If you have any evidence, you can put it in.

Mr. Whipple—We shall. Just give us a chance.

Q. So that the contract in that respect was actually the same as the contract that was offered you by the International Paper Company which was to run for a year for a fixed rate? A. Exactly.

Q. Did Mr. Rowlands, when he spoke of Mr. Steele, state who he was? A. He stated that he was a friend of his.

Q. Stated that he was a friend of his. Did he refer to how long he had been acquainted with him? A. Not that I recollect.

Q. When the matter was taken up with the Canadian Export Company and this contract, at which you have stated that yourself and Mr. Watts and two representatives of the International Paper Company were present, was the matter of the International proposals—was the fact of the International proposals given to the representatives of the Canadian company? Did they know what the proposal was? A. Not to my knowledge.

Q. You have stated that a claim was made of sixteen hundred and some odd dollars for wastage. Was that claim ever paid?

Mr. Whipple—Was that what?

Q. Was it ever paid or allowed by the company? A. No.

Q. Has there been any disposition of that claim? A. Simply filed.

Q. Simply filed. Has there been any attempt on the part of Mr. Watts to make a collection of it, or anybody else for the Publishing Society? A. Not to my knowledge since it was returned to us.

Q. Nothing further was done, so far as you know? A. Nothing.

Q. Was that claim made in accordance with custom?

Mr. Whipple—I pray Your Honor's judgment.

Q. On paper contracts is it customary to make a claim for wastage? A. Excessive wastage.

Q. Excessive wastage. This was a claim for excessive wastage? A. It was.

Q. You have referred to some reports you made in which an estimate was made of the amount of saving that it was hoped would be realized by entering into that contract, and you stated it was estimated it would be about \$18,900 at that time. Am I correct? A. Yes.

Q. And that was an estimate made before, or about the time when they began to deliver paper under the contract? A. About the time the contract was entered into.

Q. About the time the contract was entered into. You do not know now where that report is in which that estimate was arrived at? A. No.

Q. I want to know if the figures that are in your report that was put in evidence yesterday in which you state or compare the estimated saving with the actual saving were taken from the estimates made at that time? A. Exactly, the same sources.

Q. So that the estimate to which reference has been made was that there would be a saving, hoped there would be a saving of \$18,990 as compared with the International Paper Company's proposal? A. That is correct.

Q. But after making the adjustment you thought ought to be made, the actual saving as you figured was 7—

Mr. Whipple—I pray Your Honor's judgment. Isn't this repetition?

Mr. Bates—I think that is. I will withdraw it.

Mr. Whipple—Better not start it.

Q. You have stated that you turned all papers over to the manager's office. When was that done? A. Within the last two days.

Q. Well, can you fix the time a little more definitely? A. Last evening and the previous evening.

Q. At Mr. Watts' request? A. At the request of the trustees' secretary, and at Mr. Watts' request last evening.

Q. What was the request? A. That I bring all reports, papers, correspondence, and contracts relating to newsprint contracts.

Q. And you did that, did you? A. I did.

Q. And turned them over to whom? A. To Mr. Watts and to the secretary. Q. Now, you have stated that if the paper had been furnished under the

Federal Trade Commission prices for the year 1918, then there would have been a saving of \$42,900. Who made this estimate which was shown you by Mr. Whipple (handing paper to the witness)? A. I made it myself.

Q. And when did you make it? A. Last evening.

Q. At whose request? A. Mr. Watts' request.

Q. Was there ever any such estimate made before by anyone, so far as you know? A. Not to my knowledge.

Q. And how was that estimate made up?

Mr. Whipple—Just what does that mean? I do not know what that means.

The Master—I did not hear all that you said.

Mr. Whipple—How was it made up?

Q. Well, what is the basis of it, Mr. Cudworth?

Mr. Whipple—Well, the computation shows for itself. Put it in. If you dispute the figures, let them be put in.

Mr. Bates—I prefer to ask a few questions, and then I have no objection—

Mr. Whipple—You prefer a lot of things not in accordance with law.

Q. I will ask you how that estimate was arrived at, Mr. Cudworth.

Mr. Whipple—I pray Your Honor's judgment. The paper speaks for itself.

The Master—That seems to open the way to a good deal of testimony by the witness which may not be admissible at this stage. Could you not come more directly to the point, perhaps?

Mr. Bates—I think I can if my brother won't complain of its being leading.

Mr. Whipple—The way to do it is to put the paper right in.

Q. Did the Federal Trade Commission's prices increase during the year 1918? A. They did.

Q. And what was the increase during that year? A. \$12.65 a ton.

Q. So that in making this estimate you have figured a part of the paper, at any rate, at an increase in price of something like twelve dollars and some odd cents per ton over what it was at the beginning of the year? A. My answer was incorrect, if I may have the privilege of correcting it. It increased \$15.05 a ton.

Q. \$15.05 a ton? A. During the year.

Q. And a part of this estimate, then, is made up on the basis of the increased prices which prevailed in the latter part of 1918? A. Exactly.

Q. And how much of the tonnage is affected by that? A. 2500 tons.

Q. And how much of the tonnage is affected by any other increases prior to that time during the year? A. 375 in April, 750 in May and June.

Q. What is the total, then, of the tonnage that is affected by the increased prices that became increased during the year 1918? A. About 3400 tons.

Q. Out of a contract of 4000? A. 4500.

Q. 4500. The contract was for a year at a fixed price? A. It was.

Q. Is that, then, any proper basis for an estimate of savings in regard to that contract for the year 1918?

Mr. Whipple—I pray Your Honor's judgment.

The Master—I think that you have a right to the witness' opinion on that.

Mr. Bates—I think so, under the circumstances. He is the purchasing agent, and he is the one who has figured out these matters.

The Master—I think I shall admit it subject to objection.

Q. Is that a proper basis for figuring the savings under the contract for the year 1918, under the contract as exactly entered into? A. It is not.

Q. Did Mr. Watts or Mr. Rowlands, or anyone else in authority at the publishing house ever object, prior to this coming up in court, to the report that you made which was exhibited here yesterday, so far as you know? A. Never.

Mr. Bates—I think that is all.

#### Re-Cross-Examination

Q. (By Mr. Whipple)—Mr. Cudworth, you say this is not a proper way of computing the saving. As you stood in December, 1917, you had three alternatives presented, did you not: First, to take the chance on the reasonableness of the prices which would be fixed by a public tribunal created by Congress, the Federal Trade Commission. That was one of them, wasn't it? A. Correct.

Q. To take the chances of their fixing what was a reasonable price to be charged every three months. That is right, isn't it? A. Referring to the federal price again, yes.

Q. An impartial, fair tribunal, constituted for the purposes of determining what would be fair prices for paper manufacturers to charge their customers. That is right? A. Yes.

Q. Or you could take a fixed price offered by the International Company at \$3.38 per hundred, with the other fixings of the contract, covering the year—

Mr. Bates—I pray Your Honor's judgment as to whether this is proper on re-cross-examination.

The Master—On the witness' statement regarding the propriety of a certain method of estimating the saving, I think it is.

Q. —and the other, the acceptance of a proposal at \$3.10, instead of \$3.38, with a differential of freight? A. Correct.

Q. Now, as between accepting the second alternative, that is, the \$3.38, the latter proved, or would naturally be, a saving of \$17,000, if the execution of the contract as between the two parties had been practically the same—a saving of \$17,000? A. About that.

Q. And if a man thought it were

better judgment, instead of making a contract for a year, to rely upon what the United States Government, through its Federal Trade Commission, would do, as between that alternative and the contract for \$3.10, the economy would be \$42,900—that is true, isn't it? A. Yes.

Q. And therefore as between the business judgment which might have rested upon the fairness and impartiality of prices fixed by the Federal Trade Commission and the one you did select, the economy would be \$42,900—as between those two instances of the exercise of business judgment. That is true, isn't it? A. That would be correct.

Mr. Whipple—That is all.

Mr. Bates—No questions.

Mr. Whipple—I want to offer this paper, if Your Honor please, which shows the computations which were only referred to—

Mr. Bates—Well, then, we will put in the contract.

Mr. Whipple—All right. Put in anything that you want to that the Court thinks will not be too expensive to print.

The Master—If there is no objection, both papers may go in.

Mr. Bates—I offer the contract.

Mr. Whipple—Do you want to have the contract printed?

Mr. Bates—No, I don't want to have it printed. I want it just for His Honor's inspection.

Mr. Whipple—That is all right.

Mr. Bates—It has slipped out of sight for a moment. We will put it in after the recess, Your Honor.

Mr. Strawn—You have it yourself, Governor, right in front of you. You had it a moment ago. We have not had it since.

Mr. Bates—This is the paper that Mr. Whipple offers.

[The paper presented is marked Exhibit 730. R. H. J., and the following is a copy thereof:]

FEDERAL TRADE COMMISSION  
PRICES

1918

Jan., Feb., March, 1125 tons @ \$60 .....	\$67,500.00
April, 375 tons @ \$70 .....	26,250.00
May, June, 750 tons @ \$72.65..	54,487.50
July, Aug., Sept., Oct., Nov.,	
Dec., 2500 tons @ \$75.05.....	168,862.50

\$317,100.00

Freight: 4500 tons @ \$2.40.....	\$10,800.00
2250 tons @ \$.60 additional....	1,350.00

\$329,250.00

CANADIAN CONTRACT

4500 tons @ \$62.....	\$279,000.00
Plus freight .....	20,850.00

\$299,850.00

Difference .....

\$29,400.00

International Company additional price for special color previous to 1918 was 25c cwt., \$5 ton.

Canadian charged 10c cwt., or \$2 extra per ton.

The extra saving for color on this basis at \$3 x 4500 tons would be

\$13,500.00

\$42,900.00

The Master—Before we separate, haven't you the contract?

Mr. Bates—And this is the contract with the Canadian Export Paper Company.

The Master—Very good. Mark them both.

[The contract between the Canadian Export Paper Company, Limited, a corporation organized under the laws of the Dominion of Canada, and The Christian Science Monitor Publishing Company, dated Jan. 5, 1918, is marked Exhibit 731. R. H. J., but by agreement, it is not copied in the record.]

The Master—Do you want to suspend for a few minutes?

Mr. Bates—I thought that Your Honor would rather do that, because it is a little after the regular time.

The Master—For how long?

Mr. Thompson—It is immaterial to us, Your Honor. This part of the case does not appear to be of any special interest from Mr. Dittmore's standpoint.

The Master—Shall we say ten minutes?

Mr. Whipple—I should think that ten minutes would be enough. Five minutes would suit me better. I do not want to come tomorrow if I can help it.

Mr. Bates—Have you any other papers?

The Master—Five minutes is almost all used up in getting out and getting back again.

Mr. Bates—How is it left, Your Honor—five minutes or ten minutes?

The Master—Suppose you come in as near after the five minutes as you can?

Mr. Bates—All right.

The Master—So we can cut the 10 minutes down a little.

Mr. Bates—All right.

[Recess from 11:46 a. m. to 11:57 a. m.]

The Master—Proceed, gentlemen, when you are ready.

Mr. Bates—That contract not being printed in the record, I think that perhaps Your Honor should take charge of that as an exhibit. It is the only thing, practically, that has been put in that has not gone into the record.

The Master—Are you right about that? Are there not a number of exhibits that have not gone into the record?

Mr. Thompson—Oh, yes, quite a number of them.

Mr. Bates—I do not recall that.

Mr. Thompson—Yes, there are a number of papers that have been marked as exhibits and have not gone into the record.

The Master—I hesitate a little about assuming and being responsible for the custody of these papers.

Mr. Bates—Very well. I do not think that that is essential.

Mr. Whipple—Would you mind our keeping it as a part of our records? It has been marked, has it not?

Mr. Bates—It has been marked.

Mr. Whipple—Very well; we will keep it, and have it here.

The Master—I do not know exactly where to keep them. I have to travel up and down.

Mr. Bates—It is all right. Mr. Whipple will have it here if we need it.

Mr. Neal, will you take the stand, please?

James A. Neal, Sworn

Q. (By Mr. Bates.) Your full name, Mr. Neal? A. James A. Neal.

Q. And you are one of the defendant directors in this case? A. I am.

Q. How long have you been connected with or interested in the Christian Science movement, Mr. Neal? A. I was healed in 1886, and became interested at once.

Q. And now will you state what your experience has been since that time? I refer to your work and positions that you have held, and things of that nature. A. In 1888, the 1st of January, I left my position and went into Christian Science practice. I practiced in the west for about five years, and then came to Boston to work in the publishing house.

Q. You came to Boston to work in the publishing house? A. Yes.

Q. And at whose request did you come to Boston to work in the publishing house? A. The request first came from Mr. Armstrong, who was at that time elected to be the publisher, and I declined to come. Then he—I am not sure whether he wrote or wired me that the call was Mrs. Eddy's, and it was not the call of the committee alone. I wired him that I would be in Boston ready for service in 10 days.

Q. And you came, did you? A. I came.

Q. Now, how long did you stay in the publishing house, and in what capacity, at that time, what was your work? A. I went in there to keep the books and do general office work on the first day of January, 1893, and early in March I wrote Mrs. Eddy asking if I might see her. I went up to Concord to see her, and told her I wanted to go back west to my practice. After some talk about that she indicated that she would rather have me stay in Boston if I felt that I could, and I told her that I would stay, and she then arranged for me to have half time off from the office for practice. I stayed in the office as bookkeeper and general helper about the office for some two or three years, I should think, I am not quite sure about that,—I think perhaps about three years; and then I was released from that to give my full time to practice. Shortly after that—I don't know as it was shortly after—let me see, now, and try to get my dates. I was appointed—I don't know whether it was by Mrs. Eddy or by the committee—I was appointed on the Publication Committee.

Q. Just a moment, Mr. Neal. Did



you ever become a First Member of The Mother Church? A. Yes.

Q. And when? A. 1897 or 1896; it was 1897. My name was listed in the sixth edition, I believe it was, of the Manual.

Q. And you have referred to becoming a member of the Publication Committee? A. Yes. That was in 1897, early in the year.

Mr. Bates—Will you give me the letter of Mrs. Eddy to Mr. Neal, Volume 28, Letters and Miscellany, No. 3525?

[The volume of Letters and Miscellany is produced.]

Q. Referring to Document No. 3525, do you recognize that signature? A. I do.

Q. And whose signature is it? A. Mary Baker Eddy's.

Q. And is the letter also in her handwriting? A. Yes, sir.

Q. And that is a letter that was sent to you? A. Yes, sir.

Mr. Bates—Do counsel care to see this letter? It is merely in regard to the appointment on the Publication Committee.

Mr. Thompson—Let me take a look, will you, please, as a matter of form? (Examining letter.)

Mr. Bates—We offer as an exhibit Document No. 3525, in Volume 28 of Letters and Miscellany, by Mrs. Eddy, a letter dated Pleasant View, Concord, New Hampshire, March 1, 1897.

[Letter, Mrs. Eddy to Mr. Neal, March 1, 1897, is marked Exhibit 732, and is read by Mr. Bates, as follows:]

[Exhibit 732]

"Pleasant View,

"Concord, N. H., Mar. 1, 1897  
"My dear Student,

"Yours did not surprise me for I know your dear heart's willingness to do His will. I was indeed surprised to have to call you to that department of work. But felt the demand to say 'suffer it to be so now.' You may ere long be set free again if you are hindered in your healing by this membership occupying your time. My hope was that it would not require much of your time or attention while you as a smart business young man could be there to see things that others might not see.

"With love,

"Your teacher

"(Sgd) MARY BAKER EDDY."

Q. To what did that letter refer, Mr. Neal? A. That referred to my appointment on the Publication Committee.

Q. And what was the Publication Committee at that time? A. The Publication Committee's duties were the same as the trustees' duties since that time.

Mr. Thompson—What is that? I didn't hear that, Mr. Neal.

The Witness—The trustees were the trustees of the Publishing Society and had the affairs of the Publishing Society to conduct. That was before the society was incorporated.

Q. Let me see if I understand you. The Publication Committee had charge of the publications at that time? A. Yes, all except with Mrs. Eddy's own works.

Q. And were doing a work similar to what was later on done by The Christian Science Publishing Society? A. Yes, sir.

Q. Were you a member of The Christian Science Publishing Society when it was incorporated? A. Yes, sir.

Q. And how long did that corporation continue? A. About from April, 1897, until January, I think, 1898—a little less than a year—nine months.

The Master—What time in 1898?

The Witness—About nine months.

Mr. Thompson—January?

Mr. Bates—January, 1898.

Q. And was that succeeded by the trust as created by Mrs. Eddy under the Trust Deed? A. It was.

Q. Creating The Christian Science Publishing Society? A. Yes.

Q. And are you the Neal who is mentioned in that Trust Deed as one of the trustees? A. I am.

Q. And whether or not you were consulted in regard to that before the deed was executed by Mrs. Eddy? A. I was not.

Q. Did you hold a position as trustee under that deed? A. I did, for about a year—a little less than that, I think.

Q. And while you were a trustee did you have any conferences with Mrs. Eddy? A. I did.

Q. In regard to her purposes? A. I did.

Q. Can you fix the time of any special conference? A. I cannot fix it exactly as to dates. It was sometime, I think in August of 1898, that I had a conference with Mrs. Eddy.

Q. Was there any special incident that you fix that time by? A. Yes. It was her talking about Mr. Hatten as successor—proposed successor to Mr. Edward P. Bates, one of the trustees.

Q. Before we take up that conference let me ask you if you had during a series of years a large number of letters from Mrs. Eddy and many conferences with her? A. Well, I had about—I suppose about a hundred letters from Mrs. Eddy, and I had a great many conferences with her.

Q. Now, coming to this special conference which you say took place in August, 1898, the same year that the Trust Deed was executed— A. Yes.

Q. Will you state what Mrs. Eddy said to you at that time, so far as you can recall it?

Mr. Whipple—I pray Your Honor's judgment.

The Master—This is a private conference with Mrs. Eddy?

Mr. Bates—This is a conference of a trustee with Mrs. Eddy in regard to his duties under the trust.

The Master—With a trustee. No one else present?

Mr. Bates—There was no one else present.

The Master—The course I have followed heretofore has been, I think, to admit the evidence subject to objection.

Mr. Whipple—I think not, where it has been subsequent to the execution of the deed; Your Honor has allowed evidence indicating or claimed to indicate a course of conduct, or something of that sort.

The Master—This differs from Mrs. Knott's conference in October, which we heard about yesterday.

Mr. Whipple—1892, that was.

Mr. Bates—That was a subsequent one.

Mr. Whipple—That had nothing to do with this deed whatever, that was in regard to the directors.

The Master—One moment. That was a subsequent one, was it?

Mr. Bates—That was in 1905—that conference.

The Master—Yes, 1905—subsequent. Mr. Bates—Yes.

The Master—So that there are objections to this admission which do not exist in regard to the other somewhat similar conferences, regarding which I have allowed the witness to testify.

Mr. Whipple—I thought generally you had not allowed them to testify under circumstances like this.

Mr. Bates—I submit, Your Honor, that I think you have admitted all evidence of this kind, with the exception of one which was very remote and took place in recent years, and was not in regard to official duties. This is a conference that took place between Mrs. Eddy and one of her original trustees only a few months after the execution of the deed, and it was in regard to his duties under the deed, when she was consulting him in regard to a successor. We have been accused of trying to change Mrs. Eddy's purpose. We introduce this as part of our evidence, much of which has been introduced, showing a line of conduct, and that it was consistent—not only consistent, but in obedience to—Mrs. Eddy's injunction.

Mr. Whipple—What we have understood to be authoritative as to Mrs. Eddy's purpose is in the deed.

The Master—If you will allow me a minute—

Mr. Whipple—Excuse me.

The Master—How does this compare with the conference regarding which Judge Hanna testified?

Mr. Bates—I think it is very similar.

The Master—About the same situation, isn't it?

Mr. Whipple—I should think so; I should think not dissimilar.

The Master—I admitted that subject to objection, ruling, however, that I would not receive the evidence for the purpose of supplementing or modifying the Trust Deed.

Mr. Whipple—Or in any way controlling it, I think Your Honor said.

The Master—I did not add that, but I don't know why it might not have been added. I think I shall take the same course in regard to this evidence.

Q. You may go on, Mr. Neal, and state what Mrs. Eddy said at that conference. A. She asked me about Mr. Hatten's experience prior to coming into Science, something about his experience after being a Christian Scientist, and I told her what I knew about him, and she said that she was glad that what I had said confirmed her conviction, her own thought. She then said that she was sorry about the change that was to be made in the trusteeship, and then she said, "I am sorry that I had to put the publishing business into a trust rather than giving it directly to my Church to handle, but I have been told by my attorney that that is the only thing that can be done, because of a law in Massachusetts which limits the holding by a church of property with an income in excess of"—a certain amount, I believe it was \$2000. She then said, "Dear, don't think that what I am saying about this is for any lack of confidence in my trustees, in you and dear William McKenzie. It is not that. I am thinking of the future." She then said, "We must have faith in God that He will work this out in His own way at the right time." In substance, that is what I remember of it, and then she came to something else.

Q. Did you retire as a trustee in October of that year? A. Yes.

Mr. Bates—I direct Your Honor's attention at this time to a letter from Mrs. Eddy, which apparently was put into the record before they had begun to mark them as exhibits. It is to be found on page 42 of the printed record. The stenographers need not take this down. It is a letter from Mrs. Eddy to the trustees, in the middle column, near the top, dated Oct. 13, 1898.

Mr. Whipple—Whom was that addressed to, Governor?

Mr. Bates—That was addressed to the Christian Science trustees.

Mr. Whipple—And the date of it?

Mr. Bates—Oct. 13, 1898.

[The letter above referred to is read by Mr. Bates.]

Q. I show you document No. 2865 and ask you in whose handwriting it is? A. Mrs. Eddy.

Q. And does it have her signature, also? A. It has.

Q. And do you recall that letter? A. I do.

Q. Is that a letter that Mrs. Eddy sent you? A. Yes.

Q. And that you received? A. Yes, sir.

Q. I think that is my error, Mr. Neal. I asked you whether or not that letter was sent to you? A. No, it was sent to Mr. Armstrong.

Mr. Thompson—Will you speak a little louder, please?

The Witness—Pardon me?

Mr. Thompson—Will you please speak a little louder? What did you say?

The Witness—I said that letter was sent to Mr. Joseph Armstrong.

Q. It is a letter that you have seen before? A. I have.

Mr. Bates—Do you wish to see this, Mr. Thompson?

Mr. Thompson—Yes.

Mr. Bates—Perhaps you can read it quicker from a copy (passing a paper to Mr. Thompson).

Mr. Thompson—If that is a copy.

Mr. Bates—You can verify it as I read it, if you wish to.

Mr. Thompson—Do you want to look at that, Mr. Whipple (handing the paper to Mr. Whipple)? It is said to be a copy.

Mr. Whipple—That seems to be practically a duplicate of one you have already offered.

Mr. Bates—Well, it is written to another party.

I offer Document No. 2865, Vol. 23 of Miscellany. This letter bears at the top, not apparently in Mrs. Eddy's handwriting, a statement partly stamped and partly in writing, "Written to Joseph Armstrong."

Q. Who was Joseph Armstrong? A. He was the publisher of The Christian Science Publishing Society.

Mr. Bates (reading)—

"Pleasant View,

"Concord, N. H. Oct. 13, 1898.

"My beloved Student

"I feel and discern the need of Mr. Neal giving his whole attention to healing the sick. No man can serve in C. S. two masters and do his duty to both. Mr. Neal consents to this change and he thinks it will not interfere with Mr. Joseph Clark's work for the Pub. So. to have him take his (Neal's) place on the Board of Trustees. Have you any objection?

"I have named Mr. Clark to the Board and called for Mr. Neal's discharge on the grounds that he is needed to devote himself to healing. It is not right that he should lose aught of his spiritual power by so much material thought. Hence my duty and his in the case.

"With love mother

"M B EDDY

"N. B. God is evidently numbering the people

MOTHER"

[Document No. 2865, Vol. 23 of Miscellany, of which the foregoing is a copy, is Exhibit 733. R. J. M.]

Mr. Bates—From the record book entitled Directors' Minutes of Sept. 3, 1892, to Dec. 30, 1903, inclusive, I offer from page 68, under date of Oct. 22, 1898, the following:

"At a meeting of the full board held today it was unanimously voted:

"That Mr. James A. Neal be granted an honorable discharge at his own request from the duties as a member of

the Board of Trustees of The Christian Science Publishing Society.

"WILLIAM B. JOHNSON,  
"Secretary."

[The record of the meeting of the Board of Directors of Oct. 22, 1898, from which the foregoing extract is read, is Exhibit 734. R. J. M.]

Mr. Bates—And from the records of the First Members, the volume being entitled The First Church of Christ, Scientist, Minutes of Meetings of First or Executive Members Board of Directors and Annual Church Meetings Dec. 29, 1894, to June 17, 1902, at page 204, under date of Oct. 22, 1898, I offer the following:

"A special meeting of the First Members was held this day. It was opened without form by the president at 11:45 a. m. Thirty-five members present. On motion the following resolutions were unanimously adopted by a unanimous vote:

"(1.) Resolved, That Mr. James A. Neal be granted honorable discharge from his duties on the Board of Trustees of The Christian Science Publishing Society, and that the thanks of our Leader be recorded for his faithful discharge of his obligations as a member of this board.

"(2.) The First Members having been informed of the appointment of Mr. Thomas W. Hatten and Mr. Joseph Clark as trustees of The Christian Science Publishing Society express their gratitude to the Mother for their appointment and extend to them a very hearty welcome to their privileges and duties."

[The record of the meeting of the First or Executive Members, dated Oct. 22, 1898, from which the foregoing extract is read, is Exhibit 735. R. J. M.]

Q. Did you then go back to your work as a practitioner? A. I did.

Q. And did you again subsequently become a member of the Publishing Society, or one of the trustees of the Publishing Society? A. I think that answer to that last question ought to be modified.

Q. You may correct it. A. I was in practice during the time I was a trustee; but after being relieved as a trustee I had more time for practice and continued rather than going back to it; it was simply a continuation of practice.

Q. It allowed you to devote practically your whole time to your work? A. Gave me my whole time.

Q. Did you subsequently again become a member of the Board of Trustees of the Publishing Society? A. In 1911 I was again elected a member of the trustees.

Q. And how long did you continue a member? A. About 11 months, until I became a director in The Mother Church.

Q. I hand you a letter, Mr. Neal, and ask you if you can identify it? A. Yes, sir.

Q. Is it signed by you? Is that your signature? A. That is my signature.

Q. And were you, while you were

a member of the Board of Trustees in 1911 and 1912, acting as secretary of the board? A. I was.

[Mr. Bates passes paper identified by witness to Mr. Thompson, who examines it and passes it to Mr. Whipple.]

Mr. Whipple—If Your Honor please, I cannot see how that letter is admissible. No trustee for the time being can derogate from his office or affect the Trust Deed in any way by any view nor anything that he does, and this letter could be admissible for nothing else. It is a letter of this very man who is on the witness stand. He cannot state what his views were or what they are with regard—

The Master—Let me see it, please.

[Mr. Whipple passes paper to the Master.]

Mr. Whipple— —with regard to the question which Your Honor has got to determine, which must rest upon an interpretation of the Trust Deed.

Mr. Bates—As an evidence of the course of conduct, one of very many instances, but as controverting the statement that we have changed it in recent months—is ground for its admissibility.

Mr. Whipple—It does not serve in the slightest degree to indicate any such event. All it shows is a conference, taken at its best, or suggested conference between the trustees and the directors, and as we have already pointed out, such conferences were desirable, no matter who had the ultimate control. It has been so stated by Mr. Merritt, and no one has contradicted it.

The Master—That, as I understand it, is merely a proposal by the witness on behalf of the trustees to the directors to have a conference.

Mr. Bates—It is an official communication from the trustees to the board, recognizing the rights of the Board of Directors in the election of the editors, etc.

The Master—I cannot see that it does any more than to propose a conference on the subject.

Mr. Bates—Well, Your Honor, just direct your attention to something that preceded that, and the reasons for the recognition by the board, predecessors in office of these present trustees, as to the relationships existing between them.

The Master—I do not think that it shows much of anything, but I shall admit it, subject to objection. I think that is the best way.

Mr. Thompson—What is the date, Governor?

Mr. Bates—The date is May 27, 1912, and it is on the letterhead of The Christian Science Publishing Society. It reads as follows:

“May 27, 1912.

“The Christian Science Board of Directors,  
“Boston, Mass.  
“Dear Brethren:

“At one of our meetings the managing editor of The Monitor spoke of

the approaching necessity of having an assistant managing editor provided on the ground that he was himself now occupied so continuously. An appointment to such an office would probably come under the care of the directors by whom editors and associate editors are now appointed. We believe that there is for the present, at least, a way of relief, but propose it first to the directors since Mr. Dodds' appointment to office and assignment to duty rests with them. We think he could be relieved of responsibility for the conducting of the advertising department, and the manager of that department could report to the trustees when necessary, as the managing editor now does. This would give the managing editor more time to devote to the news part of The Monitor and to the care of the organization which makes and issues the paper. It is recognized that Mr. Dodds has a genius for newspaper work, and it would seem fair that he should not be hampered by any business problems which others can attend to.

“We shall be glad to confer further with the directors on this subject.

“Faternally yours,

“THE BOARD OF TRUSTEES OF  
THE CHRISTIAN SCIENCE PUBLISHING SOCIETY.

“By JAMES A. NEAL,  
“Secretary.”

[The letter of which the foregoing is a copy is marked Exhibit 736. R. J. M.]

Mr. Bates—I presume that there will be no question but that that letter was sent. It comes from the directors' files.

Mr. Whipple—Doesn't Mr. Neal know himself?

Q. You did send that letter, Mr. Neal? A. Yes, sir.

Q. To The Christian Science Board of Directors? A. Yes, sir.

Q. Whether or not during the time that you were a trustee in 1911 and 1912 there was ever any attempt, so far as you know, on the part of the trustees to control the editorial policies of the periodicals? A. No.

Mr. Whipple—I pray Your Honor's judgment. That is a conclusion.

The Master—That is a different question, isn't it, from those that you have put to witnesses similarly situated before?

Mr. Bates—I had in mind a special question, which I thought Your Honor passed on before. I think that very nearly conforms to it.

The Master—You may be right.

Mr. Bates—Do you object to that, Mr. Whipple?

Mr. Whipple—Yes.

The Master—I will admit it subject to objection. Let us get along.

Q. When were you elected to the Board of Directors? A. 1912. I think it was August, but I am not quite sure.

Mr. Bates—I offer from the records entitled Minutes of the Regular and

Special Meetings of The Christian Science Board of Directors 1912, at page 37, the following:

“July 22, 1912

“Special meeting of The Christian Science Board of Directors, duly called by the clerk at 12 m. Present: Messrs. McLellan, Stewart, Dittmore, and Dickey.

“By unanimous vote of the members present, James A. Neal, C. S. D., was elected a member of The Christian Science Board of Directors to fill the vacancy caused by the passing on of Mr. Stephen A. Chase, C. S. D.

“Meeting adjourned. [Stamped:]

“Approved Jul. 25, 1912.

“J. V. D., Secretary.”

[The record of the meeting of the Board of Directors, July 22, 1912, from which the foregoing extract is read, is Exhibit 737. R. J. M.]

The Master—Let me ask right there if that was the first election of a director after Mrs. Eddy's death?

Mr. Bates—The first election of a director after Mrs. Eddy's death was the one—I beg your pardon, Your Honor is correct. This is the first election after Mrs. Eddy's death of a director.

The Master—And Mr. Chase, if I recollect right, was one of the original four directors. Is that right?

Mr. Dane—That is right.

Mr. Bates—Yes, sir.

Q. Mr. Neal, I am not going to ask you to testify in regard to many of the meetings of the Board of Directors, or the joint meetings of the Board of Directors and the trustees, because your evidence would be cumulative, but I wish to direct your attention to a meeting of May 27, 1918, and I will pass you this memorandum and ask you if that is a memorandum that was made by you (passing papers to the witness)? A. It is.

Q. And what is the date that is stamped on that? A. May 27, 1918.

Q. 1918. And is that a memorandum that you made in regard to the conference at that time? A. It is.

Mr. Bates—Before asking Mr. Neal in regard to that, I wish to call Your Honor's attention to an exhibit that is already in the case. I call Your Honor's attention to what is recorded in the trustees' minutes, under date of May 27, 1918, and which is already in evidence as Exhibit 347. I do not care to have this go into the record again, but I will read just enough so as to call it to Your Honor's attention:

“At 12 o'clock on Monday, May 27, 1918, the Board of Trustees met with The Christian Science Board of Directors as arranged at the request of the trustees, to consider a letter from the directors dated May 21, 1918, referring to 'Sect. E of paragraph 7 of a memorandum considered jointly by the directors and trustees in February, 1916.'”

And I direct Your Honor's attention to the fact that that is the so-called Dittmore memorandum referred to.

"The trustees wished to talk this subject over with the Board of Directors rather than to reply by letter, as they felt there should be a thorough understanding between the two boards relative to their relation to the work of the Christian Science movement.

"The trustees stated that there had never been any record in the trustees' files in regard to the memorandum referred to, and that in considering this memorandum it was the unanimous conclusion that there was nothing in this unrecorded memorandum which was not already in the By-Laws of The Mother Church and in the Deed of Trust, and that it would not be right to attempt to supplement this by recorded interpretation; that the Manual was provided by Mrs. Eddy as being sufficient, and that the provisions contained therein would continue to unfold through further demonstration.

"The trustees assured the directors of their most hearty cooperation and support, and this was reciprocated on the part of the directors. It was finally decided that the memorandum should be destroyed."

In that connection Your Honor will recall that there has been testimony to the effect that that memorandum had been destroyed two years previously. The trustees' records show that it could not have been. And now I ask you—

Mr. Whipple—I pray Your Honor's judgment about all this.

Q. Now I will ask you, Mr. Neal—

The Master—What do you ask me to do, Mr. Whipple?

Mr. Whipple—I ask that that statement be stricken out, that it showed that it was impossible that it had been destroyed, because it may have referred to an entirely different memorandum.

Mr. Bates—I mean that it would be inconsistent with the record which the trustees have made. I do not wish to argue it now.

Mr. Whipple—There is no inconsistency.

The Master—It only amounts to a statement that that is what they claim.

Mr. Bates—These are their records, Your Honor.

The Master—Well, what they show we shall have to determine after argument.

Mr. Bates—Exactly.

Mr. Whipple—I should think that this is an argument.

The Master—Your claim is that it shows what you have stated. That is what it comes to.

Mr. Bates—And I want to direct Your Honor's attention to it—

The Master—Now what are you going to ask him?

Q. I would like for you to give the conversation, so far as you recall it, at that time, or what was said by the trustees, Mr. Neal.

Mr. Whipple—And by whom.

Mr. Bates—And you can refresh your recollection, if you desire to do so,

by the memorandum which you have there.

The Master—Stating what was said, so far as he can recollect the words used, and by whom.

Mr. Bates—Yes, Your Honor. Just keep that in mind, Mr. Neal.

The Master—If he can bear that in mind we may save some time.

A. If I remember correctly, Mr. Eustace did most of the talking at that meeting, and he expressed the view that to have a written agreement existing between the two boards, in addition to the Trust Deed by Mrs. Eddy and the Manual, would be in time used as the correct interpretation of the Deed and the Manual. He believed that both should be interpreted by demonstration.

Mr. Thompson—I don't quite hear, Mr. Neal.

The Witness—He believed that both the Manual and the Trust Deed should be interpreted by demonstration. There is here in this memorandum a point that I do not remember now, but it is my own memorandum. He said that it should be interpreted by demonstration rather than to give by a succession of correspondence the law under which the trustees are to conduct the affairs of the trust. That is not perfectly clear to my memory, that point, but it is in my memorandum. We agreed in that meeting to adhere to the spirit of the memorandum—

The Master—Perhaps he had better complete stating what was said before he goes to anything else.

Q. State what was said. Just give the conversation, Mr. Neal, so far as you can, and state who participated. A. I remember Mr. Eustace's making the statement that to sign this agreement, this memorandum, would be to make a new By-Law, and he thought that that would be an unwise thing to do.

Q. You have stated that. What I want is the further conversation which took place, and what was— A. I will see if I can refresh my memory by this (referring to the memorandum). In this memorandum I do not state the name of the person talking—

Q. No, it is not what you have stated in the memorandum, but it is what you recollect, with your recollection confirmed by the memorandum. A. I am trying to refresh my recollection by this memorandum.

Q. You started to state that it was agreed, and possibly you did not understand the reason why it was objectionable. That is a conclusion. You can state anything that was said, but you must not state your conclusions from what was said. A. I don't seem to recall what was said that brought about that conclusion, or by whom. I do have a distinct recollection that we did agree that we would work according to the spirit.

Mr. Whipple—Just a moment.

The Master—We do not want that.

Q. What was said, if anything, in regard to the spirit of the memorandum? I do not ask you the exact words, but the substance of them.

Mr. Whipple—It would be desirable to say who said it, I take it, too.

The Witness—How is that, Mr. Whipple?

Mr. Whipple—It would be rather desirable to say who said it.

The Witness—Yes, I would like to.

Mr. Whipple—It ought not to be too vague.

The Witness—Pardon?

Mr. Whipple—It ought not to be too vague.

The Witness—My impression is that Mr. Eustace said that "We have no objection to the spirit of this memorandum, but we do object to putting it in writing and making a record of it."

Q. Is there anything else that you recall, Mr. Neal, in regard to that, at this time? A. No; I don't seem to be able to recall any other statement.

Q. Do you recall the meeting back in 1916, when that Dittmore memorandum was originally presented at the joint conference? A. Yes.

Q. Whether or not you recall what became of the memorandum at that time? A. No, I don't.

Q. Did you see any memorandum torn up at that time? A. Never.

Q. Or at any other time, in any joint conference? A. I never did.

Q. You were not present at the meeting when the Rowlands resolution and the Dittmore resolution were adopted? I refer to the resolutions of dismissal on March 17. A. I was not.

Mr. Bates—And I presume you won't object to this question:

Q. You were not present at any of the meetings from Feb. 1 to March 17 of the present year? A. No, sir.

Mr. Thompson—What was that second date, Governor?

Mr. Bates—From Feb. 1 to March 17.

The Witness—I was not. Do you ask where I was?

Q. Yes, where were you during that time? A. I was in Florida part of the time, most of the time.

Q. And when did you return to Boston? A. March 15, I think was the date. Yes, March 15.

Q. And did you have a conference with any of the directors? A. I had a conference with Mr. Dickey and Mr. Rathvon.

Q. And on which day was that? A. On the 15th.

Q. And where was that conference? A. I beg your pardon. It was Mr. Dickey and Mr. Merritt, not Mr. Rathvon.

Q. And where was that conference? A. In Mr. Dickey's apartment.

Q. And why were you not present at the meeting on March 17?

Mr. Thompson—Just a moment. Why was he not present? He was not, and I guess that that is enough, isn't it?

Mr. Bates—No, I don't think so. I

simply wish to show that he was confined to the house by sickness.

Mr. Thompson—No matter what the reason was. That does not make any difference. He was not there, and he did not participate in that meeting officially as a director. He could not have done so if he was not there. That has been held in several cases in this State, that a man cannot act under a public charitable trust—

Mr. Bates—We are not claiming that he did.

Mr. Thompson—Then it is immaterial.

The Master—I think that, as a part of the facts relating to that meeting, it may be desirable to have it.

Q. You may state why you were not present at the meeting of March 17, Mr. Neal. A. I had a bad cold, the grippe, as it is commonly called.

The Master—Of course his bad cold could make no difference if your position is sound.

Mr. Thompson—It would seem as if it ought to make no difference to him, either!

Q. I will ask you this question, Mr. Neal, and you need not answer it until Mr. Thompson has had a chance to object if he wishes to do so: Were you informed of the contemplated action with regard to Mr. Rowlands?

Mr. Thompson—I pray Your Honor's judgment. The same question, I suppose, will be asked about Mr. Dittemore, and so I am going to object the first time that that point raises its head. It does not make any difference whether he was informed or not. If he attended that meeting he acted as a director; if he did not, it does not make any difference. He could not act as a director over the telephone, or by conference in Mr. Dickey's private apartment.

The Master—Do we not want to know just what he did, and under what circumstances he undertook to do it?

Mr. Thompson—It does not seem to me that it is material. It seems to me that it might be prejudicial.

The Master—I cannot see that it is prejudicial, I think that we want all the facts attending that meeting, so far as we can get them.

Mr. Thompson—Very well. It is not very material.

Mr. Bates—Will you read the question, please?

[The question is read as follows: "Q. I will ask you this question, Mr. Neal, and you need not answer it until Mr. Thompson has had a chance to object if he wishes to do so: Were you informed of the contemplated action with regard to Mr. Rowlands?"]

The Master—Admitted, subject to Mr. Thompson's objection.

Mr. Thompson—I might ask to have my objection apply more particularly to Mr. Dittemore, because I presume that it is going to be asked here, the same question, in regard to him.

Mr. Bates—Then you withdraw your objection as to Mr. Rowlands?

Mr. Thompson—I withdraw my objection as to Mr. Rowlands.

The Master—Mr. Rowlands?

Mr. Thompson—Mr. Bates asked in regard to Mr. Rowlands. I thought it was Dittemore, that is all.

The Master—All right. You may answer.

Q. Were you informed as to the contemplated action by the directors in regard to Mr. Rowlands' dismissal? A. I was.

Q. And did you signify to your fellow directors your approval of that action?

Mr. Whipple—That I must object to, if Your Honor please.

The Master—What do you mean by that?

Q. Did you assent to the passage of the resolution dismissing Mr. Rowlands?

Mr. Whipple—I pray Your Honor's judgment.

A. I did.

Mr. Bates—Just a minute.

The Master—Ask him just what he did about it. Ask him a question that does not call on him to draw an inference.

Q. State, Mr. Neal, what you did in regard to that matter.

Mr. Thompson—No, what was said, if you are going into it. Why don't you ask him what was said, and who said it?

Mr. Bates—I think, Your Honor, that the fact—

The Master—State what you did regarding that matter. Now, subject to your objection, gentlemen, I am going to allow him to answer that.

The Witness—I asked these gentlemen if there was no way to have matters adjusted and straightened out before thinking of such an action.

The Master—He has not said whom he asked.

Q. Who were the gentlemen that you refer to? A. Mr. Dickey and Mr. Merritt.

Q. Yes. Go on. A. They seemed to think that they had gone as far as they could in an attempt—

Mr. Thompson—No, no. What did they say, please?

The Witness—Pardon?

Mr. Thompson—What did they say?

The Witness—I don't know that I can—

The Master—In reply to your question that you have just given to us, what did they say, or what was said, and who said it?

The Witness—I don't seem to be able to recall just what was said by either of them.

The Master—Not being able to recall just what was said, you may give the substance of what was said, and who said it.

Mr. Whipple—If he can recall that.

The Master—If you can recall it, of course.

The Witness—Well, in substance, they talked of the—

The Master—Well, "they": Now, who?

The Witness—Well, Mr. Dickey, I will say, told me of several meetings that had been held between the two boards, and of their inability to get to a conclusion, come to any agreement.

Mr. Thompson—Whose inability is he was speaking of?

Mr. Bates—He has said the two boards, and that ought to be sufficiently identified for you.

The Master—Go on. Get through.

The Witness—He told me some of the things that had been said by Mr. Rowlands in the meetings, and by Mr. Eustace, and I presume by Mr. Ogden.

Q. Have you stated all that you remember, Mr. Neal?

The Master—As to the substance of what was said.

A. In substance, the trustees were—

The Master—Please remember now that we are exhausting your recollection as to the substance of what was said at that time. Confine yourself to that. You say you cannot recall the exact words. Now, the substance of what was said, and by whom it was said. Have you now stated all that you can remember?

The Witness—I believe I have. The meeting was a brief one, and I was laboring with the condition of cold that I had contracted on the way from the south.

The Master—But you have given us now the extent of your recollection regarding the subject of what was said?

The Witness—I should think so.

The Master—That, perhaps, will be a good place to stop.

Mr. Bates—Yes, Your Honor.

The Master—We will stop until 2 o'clock.

[Recess until 2 o'clock p. m.]

#### AFTERNOON SESSION

Q. (By Mr. Bates.) Mr. Neal, the conversation that you have been testifying to took place when? A. Saturday evening—I think it was in the evening—of March 15.

Q. And whether or not at that conference there were called to your attention the resolutions that were subsequently adopted in regard to Mr. Rowlands' dismissal and Mr. Dittemore's?

Mr. Whipple—Just a moment now. His Honor asked particularly if he had stated all the conversations that occurred; he said he had, then we adjourned.

Mr. Bates—This is not the conversation.

Mr. Whipple—Is this something you forgot?

Mr. Bates—That is not the conversation.

Mr. Whipple—I should doubt if a

thing like that could be called to his attention without a conversation.

The Master—After the witness has concluded his recollection of the substance of what was said in a conversation may not counsel then remind him and ask him if something was not said about this or that?

Mr. Whipple—Precisely, if that is the ground of it, but it was not put in that way. If this is something that Governor Bates is reminding the witness of, and that he did not remember, he is within his rights.

The Master—We should naturally take it in that way if nothing was said. You may ask him.

The Witness—This was not the conversation about which I have been testifying.

Q. No. Will you just answer the question as to whether or not at that time these resolutions were brought to your attention? A. They were.

Q. And in what way?

The Master—Now he has confused me a little. He says the conversation about which he has been testifying was on Saturday evening, March 15.

Mr. Bates—Yes, Your Honor.

The Master—Then you asked him whether at that conversation anything was said about resolutions.

Mr. Bates—Yes, Your Honor.

The Master—Then he said something about that not being the same conversation.

Mr. Bates—I beg Your Honor's pardon; I did not so understand him.

The Witness—I think that Mr. Whipple confused the former conversation with the one that we were on when we adjourned.

Q. Well, the conversation you were testifying to when we adjourned occurred on Saturday evening? A. Occurred on Saturday evening.

Q. And was that the time when these resolutions were brought to your attention? A. Yes, sir.

The Master—I thought it might be better not to have any confusion there.

Q. What was said in regard to them, if you recall anything? A. Well, I don't seem to be able to recall what was said.

Q. Were they read to you or handed to you? A. Read to me.

Q. And both of the resolutions were read to you? A. Yes.

Mr. Thompson—What do you mean by "both"?

Q. The Dittmore resolution and the Rowlands resolution? A. Yes.

Q. Do you remember anything else that took place at that conference? A. No, I think not.

Q. And whether or not you had any subsequent conference with any of the directors prior to their action on these resolutions? A. Mr. Merritt came to my apartment Sunday and I had a few minutes' talk with him.

Q. And what was the conversation at that time, or the substance of it, so far as you recall? A. The substance of it was that I still made further inquiry about whether or not we

could have a settlement of the differences.

Q. And what else was said? A. My impression is that they couldn't come to an agreement.

Mr. Thompson—Who said that?

Q. Who said that they couldn't come to an agreement? A. Mr. Merritt.

Q. And was there anything else that you remember? A. No; I don't remember the conversation. Mr. Merritt was there a very few minutes.

Q. Did you say anything, Mr. Neal? A. Yes, I did. I tried to see if we could get some point of agreement, where we could get together and work out our problems of differences and opinions.

Q. You had stated that. Now, what else was stated? Was that the end of the conference? A. I don't recall anything definite about what was said.

Q. Did you say what you were going to do or not going to do in regard to the resolution? A. I said that I would stand with the board, and that whatever—

Mr. Thompson—A little louder, please, Mr. Neal.

A. I said that I would stand with the board in whatever was done finally.

Q. Now, was there any further talk at any subsequent conference? A. No, sir; that was the last.

Q. And whether or not you heard from the board in any way on the 17th of March? A. I heard from them by telephone.

Q. Do you recall who telephoned you? A. I think Mr. Merritt did the talking for the board.

Q. And what was said?

Mr. Thompson—Now, if this is offered as any evidence that Mr. Neal officially, as a director, voted to dismiss Mr. Dittmore, I object to it, because no director can act in this manner.

Mr. Bates—We don't claim he did.

Mr. Thompson—What do you offer it for, then?

Mr. Bates—We do not claim that the conversations were important. We do claim that the fact that Mr. Neal assented was important, and that we had the right to put it in. It was you who insisted on the conversations and so we have allowed them to go in.

The Master—Let us now get the circumstances of his assent and we will then be in a very much better position to judge how far, if at all, it may be important. Mr. Thompson has stated his position fully regarding the matter. You need not state it again, I think; we understand it. Go on.

Q. Well, you may state what was said over the telephone.

Mr. Bates—I understand that is Your Honor's ruling?

The Master—Yes.

A. Mr. Merritt said that they were going to adopt the resolution, and wanted to know if I would acquiesce in their action. I said I would.

Q. And what did you reply? A. I said I would.

Q. Was there anything else said over the telephone? A. I am not sure whether it was just then or later, that they asked if I would vote for Mrs. Knott. It was later, I know now.

Q. That is, later in the same day? A. Later in the same day.

Q. And this was over the telephone also? A. This was over the telephone.

Mr. Thompson—I don't need to keep objecting.

The Master—Oh, no; I think not. I understand your objection is maintained to all this.

Mr. Thompson—Yes.

Q. Who was it that telephoned you the second time? A. Mr. Merritt.

Q. Mr. Merritt? A. Mr. Merritt.

Q. And what was said then? A. He asked if I would vote for Mrs.—if I would agree to Mrs. Knott's election, and I said yes. Then he asked if I would vote with them on that, and said, "We will take your vote over the phone," and "What is your vote?" And I said, "Aye." That was the voting for her.

Q. Was Mr. Merritt secretary of the board at that time? A. Let's see. Mr. Merritt would be—in March—yes, sir.

Q. There has been a reference in your testimony to Mr. Joseph Armstrong. Is Mr. Joseph Armstrong now living? A. Armstrong died in 1907.

Q. Was he at the time of his passing on a director of The Mother Church? A. Yes.

Mr. Bates—That is all.

The Master—I understand the directors have concluded.

#### Cross-Examination

#### On Behalf of the Trustees

Q. (By Mr. Whipple.) I am not going to ask you to read all of these. (Referring to a large volume.) A. Thank you.

Q. Just look through one or two of them. Referring, Mr. Neal, to the meeting of May 27, 1918, in relation to which I understand you have some memoranda which you have used in references.

Q. You have those with you still, haven't you? A. I suppose the Governor has.

Q. Well, suppose the Governor hands them to you.

Mr. Bates—This is the memoranda, I think, that you wanted. (Producing document.)

A. That is 1918—is that it?

Q. Yes. Now, I would like to call your attention to the official record of that meeting, Monday, May 27, 1918, in the minutes which are certified to by you as secretary. May I trouble you to read what you wrote in your official notes as to what happened on that day? A. May 27, 1918.

Q. What you wrote on that day on the subject with regard to which you have testified from private memoranda. Would you be good enough to

read it aloud so that His Honor may hear it and it may become a matter of record?

Mr. Thompson—Please read it so that we may hear it over here.

The Master—We have had it before, haven't we?

Mr. Whipple—I doubt it.

Mr. Bates—Is that a record of the directors' meetings?

Mr. Whipple—Yes.

Mr. Bates—I was under the impression it was in.

A. (Reading:)

"A regular meeting of The Christian Science Board of Directors, held at 9:30 a. m. on above date in the directors' room of The Mother Church. There were present Messrs. Stewart, Dittmore, Dickey, Neal, and Merritt."

Q. Now, I do not care for all the meeting, but everything that has to do with this conference, because your memoranda were all confined to what was said at this conference between the directors and the trustees. Don't it begin right there, just one little sentence? A. (Reading:)

"At 12 o'clock noon the board had a meeting with the trustees of The Christian Science Publishing Society at their own request, to discuss the affairs of the Publishing Society and the relations between the Board of Directors and the trustees. At 2:35 p. m. the meeting adjourned."

Q. That is signed by John V. Dittmore, chairman, and James A. Neal, secretary? A. Yes, sir.

Q. Is it not? A. It is.

Q. Now, you will agree with me, will you not, that that official record does not show or indicate or suggest in the slightest degree that any agreement was reached as a result of the discussion, does it? A. It does not.

Q. Or that any understanding was reached? A. It does not.

Q. Or anything of the sort? It doesn't even hint at it? A. No.

Q. That is true, isn't it? A. Yes, sir.

Q. Now, let us take the corresponding record, the official record, of the Board of Trustees, with reference to the same event. I read from a meeting of May 27, 1918, entitled, "Meeting with Directors." This is Exhibit 347:

"At 12 o'clock on Monday, May 27, 1918, the Board of Trustees met with The Christian Science Board of Directors as arranged at the request of the trustees, to consider a letter from the directors dated May 21, 1918, referring to 'Section E of paragraph 7 of a memorandum considered jointly by the directors and trustees in February, 1916.'"

The words "Section E" to "February, 1916," are in quotations, you notice? A. Yes.

Q. (Reading:)

"The trustees wished to talk this subject over with the Board of Directors rather than to reply by letter, as they felt there should be a thorough understanding between the two boards

relative to their relation to the work of the Christian Science movement.

"The trustees stated that there had never been any records in the trustees' files in regard to the memorandum referred to, and that in considering this memorandum it was the unanimous conclusion that there was nothing in this unrecorded memorandum which was not already in the By-Laws of The Mother Church and in the Deed of Trust, and that it would not be right to attempt to supplement this by recorded interpretation; that the Manual was provided by Mrs. Eddy as being sufficient, and that the provisions contained therein would continue to unfold through further demonstration.

"The trustees assured the directors of their most hearty cooperation and support, and this was reciprocated on the part of the directors. It was finally decided that the memorandum should be destroyed."

Now isn't that a substantially correct and accurate statement of the substance of the discussion and the conclusion reached at that meeting? A. I should think not. The destroying of the memorandum I have no recollection of except something that was said at a later meeting by Mr. Eustace to the effect that he destroyed it when he went over to the office—to their own office.

Q. Well, you see it states here, "It was finally decided that the memorandum should be destroyed." It doesn't say it was destroyed there. A. I don't remember anything about the destruction of the memorandum, but it was agreed that we would not make a record—

Q. Now, if you will pardon me. A. All right, sir.

Q. Is there anything else in the statement of this record which I have read to you that does not accord with your memory, so far as it goes? A. May I look at it, Mr. Whipple?

Q. Yes, I would be very glad to have you take it. A. Where did it begin?

Mr. Whipple—It began at the top of the page, and goes to there (indicating). It will perhaps help you to visualize it.

[The witness examines the record.]

A. I think that helps me a good deal in remembering.

Mr. Thompson—I did not quite hear that.

The Witness—I think that helps me to remember some of the conversation.

Q. Isn't that statement substantially in accord with your memory, as far as it attempts to narrate what was said and the conclusions reached, and, if not, I will ask you to point out in what respect it is incorrect. A. In speaking of the memorandum, Mr. Eustace said that to have that signed or made a part of our records would in substance be making a new by-law, and that does not seem to appear here.

Q. Well, you will notice, Mr. Neal, if I may offer the suggestion, that I

did not ask you in regard to anything that it did not contain. I asked you whether, as far as it went or purported to go, it did not record substantially what was said and the conclusions reached. A. I think it does, with the exception of the statement, "It was finally decided that the memorandum should be destroyed."

Q. That you do not remember? A. I do not.

Q. But I do not understand that you would venture to say you had an affirmative memory that that was not said. A. I remember of that coming up at another meeting, and Mr. Eustace speaking about his destroying the memorandum in their office.

Q. But I am now asking whether you have an affirmative memory that that was not agreed or decided upon, namely, that the memorandum should be destroyed? You say you do not remember that it was. Is your memory such that you could say it was not so decided? A. No, I don't believe I could say that.

Q. So that perhaps a fair summary is that this statement is a fair statement of what was said and conclusions reached at that interview, so far as it goes, with the exception of the last paragraph which you have pointed out, and to which your memory inclines to its not being said, at least you don't remember, but admit it may have been said? A. The only thing, Mr. Whipple, that makes me feel that it was not was the reference to it afterward and Mr. Eustace's statement of how he tore it to pieces and brought his hands up with a great jerk and explained how it was done.

Q. But still that was consistent with its having been decided that it should be destroyed? That is not inconsistent with the record that it was decided that it should be destroyed? It would be in effect a report that that had been done which it had been decided to do, and he showed you how he did it. A. I should think that being decided to be done would require the affirmative feeling of all the members.

Q. That is true, and that is what they record, isn't it? A. Yes.

Q. It was finally decided that the memorandum should be destroyed. It might be by one person saying it by acquiescence or by a general understanding. But as to that you merely say that you do not so remember it? A. That is right.

Q. But it may have been so, I take it. Is that correct? A. My best belief is that that is not correct.

Q. Now, before you went on the witness stand had you talked with counsel in relation to a joint meeting between the trustees and the directors in February, 1916? A. Yes, sir.

Q. When? When first did any of the counsel who appear in the case talk with you on that subject, that is, the subject of what occurred at a joint meeting of the trustees and directors in February, 1916, in relation to a

paper which we have called the Dittmore memorandum? A. Why, I should think a few weeks ago. I don't remember.

Q. Who first talked with you about it? A. Governor Bates, I believe.

Q. Where? A. At his office.

Q. Who was present? A. I don't know. I imagine that Mr. Dane may have been present.

Q. Anyone else? A. I don't remember that there was.

Q. And he, in effect, asked you to tell him all that you remembered about it? A. Yes.

Q. Who next spoke to you about it, of counsel? A. I think Governor Bates is the only one I talked with about it.

Q. Has he inquired of you about it again? A. Yes.

Q. When next did he talk with you about that? A. A few days ago.

Q. Well, how many? A. About a week.

Q. About a week ago? A. Yes.

Q. Where? A. In his office.

Q. Did he again ask you to tell your memory about that? A. I think he did, yes, sir.

Q. Did he tell you what memory others had, or anybody else had, with regard to it? A. I think not.

Q. Have you read in the printed report or paper any statement of any other person with regard to that memory—any other persons or person? A. No, except in the newspapers. If there is anything came out in that—I don't know—

Q. That is right. Did you read that? A. I haven't read all of them.

Q. Did you a second time tell the Governor all you remembered about it? A. I presume I did.

Q. Or tell him that you had not been able to remember any more than you had told him the first time? A. I imagine that is about the size of it.

Q. And then when you were put on did you talk with him again, before you went onto the witness stand about that? A. I don't know whether I did or not.

Q. Did you talk with him about it this morning? A. No, sir.

Q. Did you see in the paper yesterday that the Governor was uncertain as to whether he would put on another witness beyond the two that he mentioned,—that is, Mr. Cudworth and Mr. Willis, whose statement was taken by word of the Governor? A. I did not see that.

Q. You did not see that? A. No.

Q. Then you didn't know it was uncertain as to whether the third witness, whom, it developed, happened to be one of the directors, Mr. Neal,—you did not know it was uncertain yesterday that you would be called? A. No, I did not know that.

Q. You were not here yesterday? A. No.

Q. When were you told that you were to be called as a witness today and be put on the witness stand? A. I think I was told last night—yesterday.

Q. By whom? A. Governor Bates.

Q. Did you go to see him? A. No. He came to the Church.

Q. Oh, he came to see you? A. At the Church.

Q. At the Church. Did he again talk with you about your memory of what happened in February of 1916? A. No.

Q. Whether you thought any more about it? A. I think not.

Q. That was not mentioned. Well, when you testified today in reply to his inquiries you told all that you remembered about it, did you not? A. I told all that I could remember at the moment.

Q. You told all that you had told the Governor you remembered, didn't you? A. I suppose I did.

Q. Or didn't you? A. I suppose I did.

Q. You didn't have any diplomatic reservation— A. Not at all.

Q. —in regard to it? A. Not the slightest.

Q. You told the Governor frankly all that you remembered, and then when he put the questions to you you testified under oath as a witness to all you remembered about it? A. I tried to state all that I knew.

Q. Yes. Well, you don't remember any disparity between what you told the Governor in his office on these two occasions and what you said on the witness stand, do you? A. No, sir.

Q. Now, you said that you did not remember that the Dittmore memorandum or the trustees' letter was torn up at the meeting? A. That is right.

Q. I thought you emphasized "at the meeting"? A. Pardon me?

Q. I thought you emphasized "at the meeting." Did you? A. I am afraid I do not understand your question.

Q. I thought you emphasized in your answer the words "at the meeting" when you gave your answer. A. At what meeting?

Q. At the meeting when the directors and the trustees met together to consider the Dittmore memorandum in February, 1916. I understand you to say that you do not remember of that paper having been torn up at that meeting? A. That is right.

Q. You knew subsequently that they were torn up, did you not? A. I knew that Mr. Eustace said he tore up the copy that he had.

Q. When did he tell you that he tore up the copy? A. That was at a meeting of last fall, I should think; some time last fall; I don't remember what date.

Q. That is, Mr. Eustace told you last fall that he had torn up the copy he had of the Dittmore memorandum? A. Yes, sir.

Q. Now, in that statement in the directors' records, the closing sentence of the second paragraph is: "The provisions contained therein—" that is, in the Manual—"would continue to unfold through further demonstra-

tion." That word as used by Christian Scientists has been explained, and I will ask you, a gentleman of experience and of learning in Christian Science, if you will give your explanation of what was meant, or what is meant, by a situation, or a dispute, or a controversy, being left to a solution to be unfolded by demonstration.

Mr. Bates—I pray Your Honor's judgment. This is a record of the trustees, it is a statement made by themselves, and I do not know how Mr. Neal can testify or help us as to what the trustees meant. It is not his record in any sense.

Mr. Whipple—I thought all Christian Scientists knew alike as to what—

Mr. Bates—No, we have not been able to find out what the trustees mean on lots of these matters in their interpretation.

Mr. Whipple—Now, Governor, it does not become you to be funny or attempt to be funny. You never are funny when you attempt to be: you are heavy.

Mr. Bates—Thank you for your suggestion.

Mr. Whipple—And ponderous; and now quit it and get down. You are not really a bright man.

Mr. Bates—No!

Mr. Whipple—It is your dignity that becomes you.

Q. Now, will you please answer my question.

Mr. Bates—I submit, Your Honor—

The Master—I think we will make more progress by passing over a great deal of this without notice than by trying to prevent—

Mr. Bates—If my brother will try to use terminal facilities once in a while, I will withdraw—

Mr. Whipple—Again, that is heavy, it is not witty—it isn't even dignified.

The Master—Are you going to ask him to explain what the—

Mr. Whipple—I was trying to, Your Honor.

The Master—If you are going to ask him what that term means as understood by Christian Scientists, you may do so.

Mr. Whipple—Yes, Your Honor. (To the reporter.) Will you read the question?

The Master—If he can add anything to what we have already heard on the subject.

The Witness—Now will you read the question, please?

[The question is read as follows: "Now, in that statement in the directors' records, the closing sentence of the second paragraph is: 'The provisions contained therein—' that is, in the Manual—'would continue to unfold through further demonstration.' That word as used by Christian Scientists has been explained, and I will ask you, a gentleman of experience and of learning in Christian Science, if you will give your explanation of what was meant, or what is meant, by a situation, or a dispute, or a contro-



versy, being left to a solution to be unfolded by demonstration?"]

A. That is left to being able to get together and to work things out, problems, where there may be differences, harmoniously, by every man being able to speak his thought on the question and coming to a harmonious decision. I should think that is what they mean by that.

Q. Isn't there a little more to it than that? A. Pardon me?

Q. Isn't there a little more to it than that? A. Will you tell me just what you mean—

Q. Isn't it briefly defined as the attempt of two individuals who have disagreed, by conscientious and prayerful thought, communing with their own consciences, by Divine guidance, to reach a conclusion which is similar and no longer divided? A. Yes.

Q. In other words, it does not mean anything substantially different from saying, "We will work together toward the light as fellow Christian Scientists"? A. Surely.

Q. "We will leave it to time and the prayerful thought of each individual on the responsibility of his own conscience to try to agree with the other." That is another way of stating it, isn't it, and stating it fairly? A. That seems a fair statement to me of what—

Q. That is what is meant by "leaving it to be unfolded by demonstration"? A. Yes, sir.

The Master—I understand the witness to agree that your statement is a fair one of what is meant by "demonstration" under such circumstances?

Mr. Whipple—Yes.

The Master—Am I right?

The Witness—You are right.

Mr. Whipple—I have no further questions.

#### Cross-Examination

Q. (By Mr. Thompson.) Mr. Neal, how long have you been acquainted with Mr. Dittmore, properly speaking? A. About 15 years. Is that right?

Q. You have known him well—I don't think he can help you now; he may later. You have known him well, haven't you? A. Yes.

Q. He has been a good friend of yours, hasn't he? A. Very good friends.

Q. You and he have been, in various ways, in quite intimate association, haven't you? A. Yes.

Q. You have valued his friendship, haven't you? A. I have.

Q. You have found him a man whom you could trust in various emergencies and crises in life, haven't you? A. Many times.

Q. You have found him a man in whose judgment you have come to have confidence, haven't you? A. I have.

Q. Weren't you greatly surprised or astonished, Mr. Neal, when you came back from the south, to have Mr.

Merritt and Mr. Dickey come to you with a resolution already prepared intended to dismiss your friend from the Board of Directors and discredit him with the field? Please answer it yes or no. A. No.

Q. Did you look over the terms of that resolution line by line before you said you would assent to it? A. I heard it read.

Q. How many times? A. I am not sure whether I heard it more than once or not.

Q. You did not hear it more than once, did you? It is a document quite lengthy, isn't it? A. Yes.

Q. It contains a great many different charges against Mr. Dittmore, doesn't it? A. It does.

Q. Were you able as you heard that read, to grasp the significance of those separate charges and determine in your mind whether the statement was accurate and true, and to make up your mind whether you assented to each one of those separately or not? A. Not fully.

Q. What? A. Not fully.

Q. No. And that is the only time you ever heard that document read before you gave your assent to its being passed by these directors, isn't it? A. Yes.

Q. Did you make any suggestion when these gentlemen came to you with that paper, asking you to assent to it, that you would like a little more time to reflect carefully before you committed yourself to such a document? Yes or No, please, Mr. Neal; Yes or No. A. I can't answer that.

Q. You cannot. Very well, then; we will pass on it. Take the resolution about Mr. Rowlands. That also was a document.

Mr. Thompson—Let me see that, will you? Have you got that, Mr. Whipple; that resolution about Mr. Rowlands?

Q. That also was a document of some length, wasn't it? A. It was.

Mr. Whipple—It is in our bill; that is the best way.

Mr. Thompson—No matter; let it go; I have got it; I know what it is.

Q. Did you observe the last paragraph in that resolution, wherein it is said Mr. Rowlands had neglected his duties as trustee for his private business, or words to that effect? A. I did.

Q. At that time, when Mr. Merritt and Mr. Dickey were talking to you, or asking your assent to that document, had you made inquiry personally, so that you knew or had a decided opinion whether Mr. Rowlands had or had not neglected his duty? A. I had.

Q. Had you made an investigation on that subject? Please confine yourself right to the question. Had you made any personal investigation? A. I couldn't answer that without qualifying it.

Q. You could not answer? A. No.

Q. Had you ascertained how many meetings of the trustees he had at-

tended, and how many he had not, on the day when Mr. Dickey and Mr. Merritt were talking with you? A. No.

Q. Had you ascertained how many joint meetings of the trustees and directors he had missed, if he had missed any? A. I knew he had missed a good many.

Q. Had you heard it testified here that he had missed just one? A. I beg your pardon?

Q. I wish you would reflect a little more carefully, Mr. Neal. A. I thought you referred to the trustees' meetings themselves.

Q. No, I meant joint meetings. A. No, on joint meetings—no, I don't know that.

Q. Did you hear any talk when Mr. Rowlands was first appointed to that Board of Trustees about his business ability? A. Will you state that again?

Q. When Mr. Rowlands was first appointed in 1917 to that Board of Trustees, do you remember talk being made among the directors as to what an able business man he was? A. I do.

Q. And don't you remember that at that time it was thought a very fortunate episode for the Christian Science Church that a man of his caliber should be elected trustee? A. I thought so.

Q. You thought so. You never had any reason to change that opinion, did you? Yes or no. A. No.

Q. It did not make any difference to you, did it, in assenting to the dismissal of Mr. Rowlands, whether that last charge against him was or was not true? Isn't that the honest fact? It didn't make any difference, did it, on the real basis on which you were going, whether that charge was or was not true? A. The—

Q. Can't you confine yourself—I want a straight answer. A. Let me know what the charge is.

Mr. Thompson—Apparently the witness insists on my giving it.

Q. (reading) "Whereas it has become evident that Mr. Rowlands has allowed his sense of self-interest to interfere with the interest of Christian Science;"—note that word—

"to interfere with the interest of Christian Science; that he has become self-assertive, contentious, and disposed to make trouble without regard to consequences; and that he is, for these reasons and the foregoing reasons and other reasons, not suitable for connection with The Christian Science Publishing Society as a trustee thereof."

Q. That is the charge, and my question is: Did it make any real difference to you in assenting to the vote dismissing him whether that charge was true or false? Yes or no; I want nothing but yes or no. A. Yes.

Q. Yes. Had you investigated to see whether Mr. Rowlands had allowed a sense of self-interest to inter-

fere with his duties in that trust? A. No.

Q. Had anyone told you any particulars in which he had allowed a sense of self-interest to interfere with his duties in that trust? A. May I qualify that?

Q. I don't want any qualification, sir. I want now the straight answer to my question. Had anyone informed you of any particulars in which Mr. Rowlands had allowed a sense of self-interest to interfere with his duties as trustee? Yes or no. A. Yes.

Q. Who was it that told you? A. Mr. Watts.

Q. Anybody else? A. Mr. Ogden.

Q. Mr. Ogden? A. Yes.

Q. Anybody else? A. Not that I know of.

Q. When did they tell you that? A. At different times, speaking of his being away.

Q. And they had told you that he had allowed a sense of self-interest to lead him to neglect his trust, had they? A. They didn't put it in that way.

Q. Well, they told you he had neglected his trust and gone off on his private business? A. They did.

Q. Had anybody else given you such information? A. No.

Q. And that was all the information you had on that subject when you assented to that motion, was it? A. On that particular subject, yes.

Q. On that subject. Now, take these charges against Mr. Dittimore.

"Whereas Mr. Dittimore"—your old friend, Mr. Dittimore—

"Whereas Mr. Dittimore has taken advantage of his position as a member of this board to carry on a campaign for personal influence and control in the affairs of The Mother Church" had you made any investigation to determine that before you assented to that motion? Yes or no, please. A. Will you read that again, please.

"Whereas Mr. Dittimore has taken advantage of his position as a member of this board to carry on a campaign for personal influence and control in the affairs of The Mother Church" my question to you is: Whether before you gave assent to the motion which would remove your friend from that board and discredit him with the whole body of Christian Scientists, you had made any investigation to find out whether that was true or false? Yes or no. A. Yes.

Q. Whom had you investigated with? A. The members of the board.

Q. Anybody else? A. No.

Q. Did you, before you gave your assent to that—did you say to these two men, "Gentlemen, here is my friend. His reputation is in question. At least give me a chance to telephone him to see what he has got to say about that charge." Did you do that? Yes or no, sir. A. I would like to qualify that.

Q. I don't want your qualification. Did you, before you gave your assent to removing Mr. Dittimore, a friend of

15 years' standing, from that board, state to these men who wanted you to do it, "Give me at least an opportunity to speak to my friend and ask him if he has got anything to say about it"? Did you do that? A. No.

Q. Take this next charge, "Whereas Mr. Dittimore has violated Article I, Section 5, of our Church Laws by reporting the discussions of this board," did you know of your own knowledge any particulars in which that was true? Yes or no. A. Of my own knowledge?

Q. Yes. A. No.

Q. Had anyone told you that it was true? A. Yes.

Q. Who was it that told you that? A. Well, I don't know.

Q. You don't know? A. No.

Q. Was it more than one person, or just one person? A. I can't tell you about that.

Q. Well, suppose, then, that it is one person; what it amounts to is this, that sometime some one person said to you that Mr. Dittimore had told that one person something that went on in the board. Is that it? Is that what the one person said? A. I wouldn't say that it was one person, Mr. Thompson.

Q. Well, call it 20 persons; one or more persons said in substance to you, did they, that they had heard Mr. Dittimore report what had gone on in that board. Is that true? A. That is true.

Q. Did you ever go to Mr. Dittimore to get his version of it, to see if he had, in fact, said what they said he had? A. No.

Q. Take the next,

"And he has violated the last sentence of Article XXXIII, Section 2, of our Church By-Laws by giving direction to State Committees on Publication," etc.

Had you any personal knowledge on that subject? A. No personal knowledge.

Q. Had you ever been informed on that subject by anybody? A. Why, that was a matter of—

Q. No matter; no matter; no matter. Had you ever been informed by anybody on that subject? A. Not that I recall.

Q. So that on that subject you neither had personal knowledge nor any evidence from the reports of other people whatever, did you? Yes or no. That is true, isn't it? A. Excuse me—

Q. I want my question answered. The Master—Answer him yes or no first.

The Witness—I will be glad to answer it, but will you state the question, first, again.

Q. This is on the question whether Mr. Dittimore had violated Article XXXIII, Section 2, of the By-Laws, "by giving direction to State Committees on Publication and inducing them to act contrary to bulletin issued by their manager with the approval of

this board." On that question you had neither personal knowledge nor any information from third parties, had you? Yes or no. A. I had information from third parties.

Q. Who were they? Name them. A. Members of the board.

Q. Anybody besides members of the board? If so, name the man or woman. A. I don't recall any.

Q. No. What members of the board? Name them. A. I think Mr. Dickey.

Q. Anybody else on the board except Mr. Dickey tell you that? A. I don't know.

Q. Nobody else did, except Dickey, did they? A. Not that I know of.

Q. You don't think so, do you? A. I don't know.

Q. Have you any idea that anybody besides Dickey told you that? A. If I think a while, perhaps I can state.

Q. What?

The Master—He wants to take time.

Q. Take all the time you want to think, but we want to find out who has been telling these stories. Can you think of anybody else besides Dickey that told you that story? A. I think Mr. Merritt told me that Mr. Dittimore had told him something.

Q. Mr. Merritt said that Mr. Dittimore had told him something? A. Yes.

Q. Well, who else told you, on that board? What other member of that board told you that Mr. Dittimore had been advising state committees on publication to go contrary to the board; who else on the board; what other man on that Board of Directors told you that? A. I don't remember any.

Q. Mr. Dickey you are sure of, and possibly Merritt; is that it? A. Yes.

Q. Now, you knew perfectly well when those two men told you that that they were reporting what they had heard, didn't you? A. Yes, sir.

Q. Did you ask them where they had heard it from? A. I am not sure about that.

Q. Well, you cannot remember, if you did, what they said, can you? A. No.

Q. Did you ever go to Mr. Dittimore in any way and ask him if that charge was true? A. I did not.

Q. No, and he had been your friend of 15 years' standing, had he? Is that so? A. I think so.

Q. Were you playing, sir, in your judgment, when you voted on charges based, so far as you were concerned, either on total ignorance or hearsay; without going near the man whom they most vitally affected to find out their truth or falsity—were you playing the part, in your judgment, of a loyal, honorable friend? Yes or no. I want a straight answer; nothing else; yes or no. Yes or no, sir. A. I can't answer that question.

Q. You can't answer it. Take the next. Did you ever, before you gave assent to that vote, go to Mr. Ditt-

more and suggest to him that if he would modify his attitude on this great question of the relations between these two boards, it would be wiser for him, in substance? A. Yes.

Q. And didn't you tell him, in substance, sir, that the uncompromising attitude that he was maintaining concerning the supremacy of the Board of Directors of The Mother Church was likely to get him into personal trouble, in substance? A. No.

Q. Didn't you ever convey that idea to him, in any way? A. I don't think so.

Q. You thought that was true, didn't you? A. No.

Q. The trouble that the board found with Mr. Dittmore—I won't say yourself, but these gentlemen who were active in getting you to assent to this discharge—the trouble that they had with Mr. Dittmore was, was it not, that they knew as long as he remained on that board their efforts to reach a compromise with Mr. Eustace and his friends would be unsuccessful? Isn't that the honest truth, sir? Yes or no; no evasion. A. No.

Q. No, it is not. Did you ever hear Mr. Dittmore suggest that for a consideration, namely, for peace and quietness and holding his job, he might be willing to shade a little bit on that assertion of the supremacy of the Board of Directors? Did you ever hear him suggest that? A. No.

Q. Did you ever hear Dickey suggest it? A. No.

Q. Did you know that Mr. Dickey had been in constant communication privately with these trustees with a view to seeing whether he could not bring about a compromise? A. No.

Q. You were away, then, weren't you?

Mr. Bates—I pray Your Honor's judgment.

Mr. Thompson—About what?

Mr. Bates—You said, "You were in constant communication," assumed it, and then said, "You were away."

Mr. Thompson—I will show it, overwhelmingly.

Mr. Bates—It is your assumption.

Q. How long were you away from Boston?

The Master—He has given those dates. I think he gave them in direct examination. Feb. 1 to March 15, I think, as I took them down. Am I right?

The Witness—February what?

The Master—Feb. 1 to March 15.

The Witness—Yes; I think I went the last day of January.

Q. You said you had a cold at the time of this meeting on March 17, did you, or the gripe? A. Yes, sir.

Q. Was it suggested that the other directors might hold the meeting March 17 in your house, or apartment? A. No, sir.

Q. How far was it from your house to the Board of Directors' rooms? Across the street, wasn't it? A. Two miles.

Q. Where were you living at that time? A. 1080 Beacon Street.

Q. 1080 Beacon Street. Well, isn't Mr. Dickey's house just across the street from yours? A. Yes.

Q. Nobody suggested having the meeting in his house, did they? A. No.

Q. Two of them could come to you to urge you to vote to expel your old friend, Mr. Dittmore, but they could not come there to join with you in doing it, could they? What? A. I don't know whether they could or not.

Q. Did they tell you, when they showed you the paper charges against these two men, that Judge Smith had formulated these charges? A. No.

Q. Did you know who wrote the charges? A. No.

Q. Did you ever inquire? A. I don't think I did.

Q. Have you heard all the testimony in this case, or only part of it? A. Very little of it, Mr. Thompson.

Q. You have been absent a good deal, haven't you? A. I have.

Q. You have not wanted to testify, have you, in this case? A. Yes, sir.

Q. You wanted to, you were glad to, were anxious to, I suppose. Well, now, do you know, as a fact, that for a long time, several months before this action was taken on March 17, it had been in contemplation by the directors or some of them, to expel Mr. Dittmore? A. I have known that for seven years.

Q. Seven years. And you have had it in contemplation all that time, too, have you? A. No, sir.

Q. Did you ever give a hint to your friend, Mr. Dittmore, that for seven long years certain members of this board had had it in contemplation to get him off of it? Did you ever tell him that? A. No, sir.

Q. Did you think it was the part of friendship to conceal from a man who was attending these meetings in good faith, that two members, at least, were plotting to get rid of him? Did you think that that was a friendly act? A. I never thought anybody was plotting to get rid of him.

Q. We will call it a politer word; planning to get rid of him? A. I don't think that was so.

The Master—I don't think the witness has said that they were planning to get rid of him.

Q. Well, had been contemplating to get rid of him for seven years. A. These men were not on the board.

Q. Some men had been contemplating to get rid of him for seven years? A. Some persons thought it was necessary.

The Master—Do I understand you mean some men not members of the board themselves?

The Witness—No, some members of the board.

Q. Name one of them. A. Mr. McLellan, one of them.

Q. Was Mr. Dickey another? A. Latterly.

Q. Were there any members of the board, that, to your knowledge, had

not planned to get rid of Mr. Dittmore? A. I never knew of any of them planning.

Q. Have you ever planned to get rid of him? A. Never.

Q. You didn't really think he ought to be got rid of, to be frank and honest about it? A. I am going to be perfectly honest, but I would like to tell you what—

Q. Tell me your honest, candid opinion. Did you think it was a fair, decent, and proper thing to dismiss Mr. Dittmore as it was done? Yes or no. A. Yes.

Q. Now, Mr. McLellan was a man who liked to have his own way pretty well, didn't he, on the board? A. He did.

Q. And you have sometimes complained to Mr. Dittmore, haven't you, in the past, that Mr. McLellan was trying to coerce you—use you—in a way that wasn't quite proper—haven't you? A. I don't remember that.

Q. Did you ever use the expression to him that Mr. McLellan was trying to carry you around in his vest pocket? A. Yes, I did.

Q. And didn't you also say to Mr. Dittmore—

The Master—One minute. I didn't get his answer.

Q. You said "Yes"? A. Yes, I so stated.

Q. Didn't you also say to Mr. Dittmore, in substance, that Mr. McLellan would be opposed to any man that he couldn't carry around in his vest pocket? Isn't that the actual fact? A. I don't remember that.

Q. You wouldn't want to say that wasn't true, would you? A. No.

Q. And, come to think of it, you have suggested, not one but many times, to Mr. Dittmore, in Mr. McLellan's day, that however great his virtues might be he had the fault of wanting to dominate the people that he was associated with, haven't you? A. He wanted to dominate.

Q. Yes. And he found he couldn't dominate Mr. Dittmore, didn't he? Yes or no. A. No.

Q. Did he dominate you? A. No, sir.

Q. Then your complaints to Mr. Dittmore that he was trying to do it were not seriously meant, were they? A. Certainly.

Q. They were?

The Master—Why not? He might be trying to and not be able to do it.

Q. But he never succeeded in dominating you? A. I think not.

Q. Did you know of any other person on the board that Mr. McLellan tried to have dismissed because he couldn't dominate him? A. No.

Q. Wasn't Mr. McLellan always after Mr. Dickey because he couldn't dominate him? Now, think a minute. Isn't that true, sir? A. I don't know whether that was the reason or not; he was after him quite often.

Q. So in these famous days of which you are speaking, when Mr.

McLellan was trying to get people dismissed from the board, he was after a good many people, wasn't he? A. Never but one that I remember.

Q. And that one was Mr. Dickey? A. That one was Mr. Dittmore.

Q. I thought you said he was after Mr. Dickey? A. Well, he was after him on other questions, not on dismissing him, not at all.

Q. Now you have found Mr. Dittmore a man with the courage of his convictions, have you, among other things? A. Yes, sir.

Q. Did you ever hear Mr. Dickey apologize to Mr. Dittmore for improper talk to him in these board meetings? A. I heard him apologize to Mr. Dittmore for—

Q. My question is, did you ever hear him apologize for talk? A. I heard him apologize, yes.

Q. How many times? A. To Mr. Dittmore?

Q. Yes. A. Once, that I remember. Q. You don't remember any more times than that, do you? A. Not to Mr. Dittmore.

Q. Did he apologize to anybody else? A. Apologized to the board.

Q. For what? A. One time.

Q. For what? A. For some remark that wasn't very nice.

Q. You mean some little shady jest that he made? A. I think that would be all right.

Q. You would characterize the jest as something not very nice, would you? A. Yes, sir.

Q. A little bit verging on the obscene, wasn't it—a little bit? A. Yes, sir.

The Master—Haven't we heard all that is necessary about those apologies?

Mr. Thompson—No, sir; there is a little more I want.

The Master—The witness doesn't add anything to what other witnesses have told us, and what does not seem to be in dispute.

Mr. Thompson—Very well, if Your Honor doesn't think it is in dispute. Did Your Honor hear the last answer the witness made—that the jest was obscene?

The Master—I don't think we want to spend any more time on that.

Q. I would like to ask one more question on that. That wasn't the first time, was it, that Mr. Dickey had made an obscene jest before that board? A. That is the only time I remember.

Q. The only time you remember? A. Yes, sir.

Q. Are you perfectly sure that was the only time? A. That is the only one that comes to my mind.

Q. Well, I suppose Mr. Dittmore didn't like that very much, did he? Expressed himself a little bit on that, didn't he? A. He expressed himself.

Q. And the fact that Mr. Dittmore had rebuked Mr. Dickey for that obscene jest was one reason why Mr. Dickey got down on him and wanted

to expel him, wasn't it? A. Not that I know of.

Q. You wouldn't want to say it was not, would you? A. I don't believe it was.

Q. Do you remember another occasion on the trip that the directors made to Washington where there was a little bit of trouble between Mr. Dittmore and the other members of the board, on a question of proper conduct in New York City in the evening? Do you remember that? A. On the way to Washington?

Q. This is on the way back from Washington. A. I don't remember any.

Mr. Bates—I pray Your Honor's judgment.

The Master—He don't remember any.

Q. You don't remember anything of the kind? A. No, sir.

Q. Do you remember the time when the board went on to see the Secretary of War? A. Yes.

Q. Do you remember Mr. Dittmore was anxious to stay there longer and see if further results could not be accomplished? A. In Washington?

Q. Yes. A. No, I don't remember that.

Q. Do you remember when you got back in New York Mr. Dittmore thought the board ought to spend the evening considering the matter under consideration, which was the war work of the Christian Science Church? A. I don't remember that.

Q. You don't remember any little episode that occurred at a dinner there at a fashionable restaurant, when Mr. Dittmore wanted to adjourn to the rooms and do the work of the board, and the rest of you wanted to go to the theater? A. I remember we went to the theater, but I don't remember any episode.

Q. Do you remember the show you went to and Mr. Dittmore's objection to it? A. I don't remember the show we went to.

Mr. Bates—Does Your Honor think this is competent?

Mr. Thompson—I am trying to show what the causes of trouble were between Mr. Dittmore and the others.

The Master—You have developed that sufficiently, haven't you?

Mr. Thompson—I think so—I think quite sufficient.

Q. Did you ever hear Judge Smith make any comment on the way the board kept its records? A. Yes.

Q. You have heard him say it was unsatisfactory, haven't you, in substance? A. I don't know that I have.

Q. What did you hear him say about it? A. We have called him in to ask about recording certain things; we called him in to ask him about eliminating something from the record.

Q. Do you remember what he said? A. He said it could be done by unanimous consent.

Q. Don't you remember, Mr. Neal,

Judge Smith's being called in on the general question of how the board's records were kept, and pronouncing it unsatisfactory and dangerous? A. No, I don't recall that.

Q. Are you willing to say that it did not happen? A. No.

Q. A good many things that really took place there were afterwards eliminated, weren't they, by vote of the board? A. Quite a good many.

Q. So that a good deal of action taken by that board does not appear today on its records at all, does it? A. No, sir.

Q. Votes have disappeared from that record, haven't they? A. Yes, sir.

Q. So that a person who really wanted to know what had taken place officially before the Board of Directors would have to seek some other source of information than that record book, wouldn't he? A. On that one subject they would.

Q. On what subject? A. The subject that was eliminated.

Q. On any subject that was eliminated? A. There was only one that I remember.

Q. What was that subject? A. It was the subject of salaries.

Q. Salaries? A. Yes, sir.

Q. And the original votes that were taken on the subject of salaries disappeared from the record? A. They were taken on the salary except in this way, that Mr. McLellan—

Q. Now you are going off into something I don't want.

The Master—Why you asked him about votes that have disappeared; he is certainly entitled to tell about those—what they were.

Mr. Thompson—Strike out the question, so that it may avoid any chance for a long explanation.

Q. Just look at these papers that I call to your attention, marked Exhibit 724 for identification. Those are the original records of that board, aren't they, from June 7, 1915 to Sept. 8, 1915? A. That wouldn't be all of them.

Q. Well, some of them? I haven't asked all of them; I have asked some.

The Master—When you ask him if they are not the original records, don't you imply that they are all?

Mr. Thompson—I do, I see the point. I made a mistake, I will take the question back.

Q. Those are some of the original records of that board, aren't they? A. Yes, sir.

Q. Do you know how those happen not to be in the book? A. Yes, sir.

Q. They were struck out by order of the board, weren't they? A. They were.

Q. They were. And the reason was because it was not thought desirable that anyone should know what action the board took in raising its own salaries? Isn't that true? A. The reason was—

Q. I don't want that. Isn't that

true? Answer my question. Isn't that the truth? A. Yes and no.

Q. Yes and no—yes a little more than no, isn't it? A. I don't think so.

Mr. Bates—I pray Your Honor's judgment.

Q. You don't think so. Now, you have examined them enough, sir. A. All right, sir.

Q. What was substituted in the records for those various meetings of which the original records have just been examined by you? A. Nothing at all, as I remember it.

Q. So that during this period the records of this board are blank, are they? A. No.

Mr. Bates—He hasn't said that.

Q. Take any record of any of the meetings recorded here, in your real book— A. Any what?

Q. Take your real record book that has been produced here for this period. Here is a meeting of June 7, 1915. Is there any record of that meeting on your book at all? A. No; counsel advised against it.

Q. I don't care anything about counsel. Is there any record of that meeting on your book? A. No.

Q. Take the other meetings on here, of which there are at least a dozen perhaps. Is there any record on your book of any of those meetings having occurred at all? A. Oh, yes, the meetings occurred, yes; it shows everything except—

Q. Everything except what? A. The point that was eliminated.

Q. Namely, the point in regard to a raise in salary? Isn't that it? A. It has to do with that.

Q. Raise of salary? A. It has to do with that.

Q. Now, do you mean to say that there is no other subject on which a vote was ever eliminated from your record except the one question of salaries? A. No vote, as I remember it, has ever been eliminated that had been written into the permanent records except—

Q. Ah! But by the permanent records you mean the book, don't you? A. Certainly.

Q. But what is approved by the board is notes written up by the secretary, isn't it? A. Let me get that straight, please.

Q. Strike that out. Was the striking out of these votes the action of the board unanimously? A. Yes, sir.

Q. Was there any protest made against it? A. Yes, sir.

Q. Who made it? A. Mr. McLellan.

Q. Anybody else? A. No.

Q. Just cast your eye over that letter and see if you still say that. (Handing letter to witness.) I wish you would really try to think a little harder about some of these things; read that letter. A. I will do my best. (Examining letter.)

The Master—Do I understand that at these meetings of the board about which you are now asking him, the witness himself was secretary?

Mr. Thompson — I don't know whether he was or not, sir.

The Witness—No, Mr. Dittmore was secretary then.

Q. Have you read that letter? A. Yes, sir.

Q. Now, what do you say in answer to my question now? The fact is that Mr. Dittmore objected, isn't it? A. Just repeat the question.

Q. It is a fact, isn't it, that Mr. Dittmore objected to that action of striking these things out of the record? A. That letter would indicate that he did.

Q. He did, yes. Now, Mr. Neal, I want to ask your attention a moment to one other subject. Have you noticed any change in the attitude of the trustees between the time of the famous Dittmore memorandum, in February, 1916, and the early part of 1918? That is, have you noticed a change in a greater assertion of independence or any other change in attitude of the trustees in this great matter of the relationship between these two boards?

Mr. Whipple—If Your Honor please, I should not like to take the witness' opinion in our case.

Mr. Thompson—I do not offer it against you, Mr. Whipple.

Mr. Whipple—If it is not considered in our case—

Mr. Bates—I understand this is in both cases, if it is in either, for what it is worth.

Mr. Whipple—No, I respectfully submit—

The Master—If it goes in, it goes in subject to Mr. Whipple's objection, and subject also to Mr. Thompson's statement that he does not rely upon it in the—

Mr. Thompson—I suppose I have the right to say whether I offer it against Mr. Whipple or not.

Mr. Bates—May I ask Your Honor what the question was?

The Master—He asked him about whether or not he noticed a change in attitude on the part of the trustees with regard to the relations between the two boards between 1916—and when?

Mr. Thompson—And the first part of 1918; between the day of the Dittmore memorandum, which seems to have been the great starting point of this controversy, when the parties got together and this agreement was drawn up and something happened—then time went on and about the 1st of January, 1918, came. There is February, 1916, to February, 1917—there is about a little over a year in time.

Q. Did you notice any change, whether they were getting more or less independent at that time? A. Mr. Eustace was the only member that was on that time who is now a member.

Q. Well, I still put the question just the same. A. I have seen a change in Mr. Eustace.

Q. In which direction—less asser-

tive of these claims of the trustees, or more? A. More.

Q. During that interval, in October, 1917, a contract was formally made, was it not, between the Trustees under Mrs. Eddy's Will and the trustees of the Publishing Society whereby the Publishing Society obtained the right, for practically 27 years, to the exclusive publication of all Mrs. Eddy's books? A. I haven't the date clearly in thought, but we made a contract, yes.

Q. Along in the autumn of 1917? A. I think that is right.

Q. Now, do you recollect that after that contract was made, the attitude of the trustees became more assertive of their independence? A. I think it has.

Q. Yes. Do you recollect any attitude that Mr. Dittmore took about that time in regard to the danger of making that contract in this very regard, that it might put a weapon into the hands of the trustees whereby they could assert this very independence that they have asserted? Yes or no. A. No, I don't remember.

Q. Then I will ask you to look in this letter and see if that refreshes your recollection (passing a paper to the witness). Perhaps reading a little of it will be sufficient. I do not mean you should read the whole letter, but just enough to see if it refreshes your recollection. A. Yes.

Q. You remember that letter, don't you? A. I do.

Q. Isn't it a fact that Mr. Dittmore took the position with the directors and Mr. Fernald, besides the Trustees under Mrs. Eddy's Will, that it would be a dangerous thing to make that contract and put into the hands of any gentlemen, however honest and upright and well-meaning they might be, the right to control exclusively for 27 years, as against the entire world, every single scrap that Mrs. Eddy ever wrote? A. I don't remember that he did.

Q. Are you willing to say that he did not, sir? A. My impression is that he was in favor of the contract.

Q. Was he in favor? Does that letter stimulate that impression, or the reverse? A. That contradicts it.

Q. That contradicts it.

Mr. Bates—Will you let me see the letter?

Mr. Thompson—Wait a minute, Governor. I am following the rules of evidence, which I am familiar with.

Mr. Bates—You think you are, but you are not.

Mr. Thompson—I have been 30 years trying to learn them.

Mr. Bates—If you show the witness a paper I am entitled to see it.

Mr. Thompson—Yes, you are, later, when I offer it.

Q. The fact of the matter is, your recollection refreshed by that letter is to the effect that Mr. Dittmore did take the very position I have indicated

to you, isn't it? A. No, that does not—

The Master—I understood him to say the contrary.

Mr. Thompson—He said the letter is the contrary of his recollection.

Q. You said that, didn't you?

The Master—I am talking about what he says regarding his own recollection.

The Witness—This is a recent letter, written in 1919.

Q. The letter would convey the impression that Mr. Dittmore thought that the making of that contract was a dangerous thing, wouldn't it?

Mr. Bates—I pray Your Honor's judgment.

Mr. Thompson—Well, I will offer the letter in evidence.

Mr. Bates—I pray Your Honor's judgment as to whether he should give his opinion of what the letter indicates when my friend has the letter here.

Mr. Thompson—I want to offer that letter in evidence now and have it marked as an exhibit in this case. Perhaps you and your associates will look it over and observe that it is addressed to the Trustees under Mrs. Eddy's Will, all of whom were directors.

Mr. Bates—This is not an original.

Mr. Thompson—Well, it is a copy. If you stick on that, I will try to get the original, but I do not believe that you want to object on that ground.

The Master—Why should we have the letter in if the witness says that it does not alter his statement?

Q. You know that letter was received, do you not, by the Trustees under Mrs. Eddy's Will? A. This letter you just showed me?

Q. Yes, A. Yes.

The Master—Suppose he does know it?

Mr. Thompson—Wait a minute. Excuse me.

Q. And those trustees were all directors of The Christian Science Church, weren't they, and one other man? A. Yes, sir.

Q. And this letter refers to the policy of having made that contract with the trustees of The Christian Science Publishing Society, doesn't it? A. Yes.

Q. And points out, with figures and so on, and in other respects, why that was a risky and dangerous contract to make, doesn't it? A. I don't remember the contents of the letter well enough to state them.

Q. Very well. Now, I want to pass away from that for a moment. Have you ever talked with Mr. Dixon since you got back last February about the policy of passing those two votes expelling Mr. Dittmore and Mr. Rowlands? Have you ever had any talk with Mr. Dixon? A. I have talked to Mr. Dixon. I don't know as I have talked to him about the two votes.

Q. I don't know, either, and that is why I am asking you. Don't you know whether you talked about that

subject? A. I don't remember that I have.

Q. Do you remember of ever hearing anybody in the board say this, that Mr. Dixon said, in substance, that if Mr. Dittmore could be got rid of this controversy could be fixed up very quickly, or words to that effect? A. No.

The Master—Somebody saying that in the board?

Mr. Thompson—Some one saying that in the board.

The Master—Some director?

Mr. Thompson—I mean some director.

The Witness—Said that Mr. Dixon said?

Q. Yes; quoting Mr. Dixon as having said that if Mr. Dittmore could be got rid of this matter could be much more easily adjusted. A. I don't remember that.

Q. You don't remember that. Did you ever know that Mr. Eustace ever had advised Mr. Dickey that it would be a good thing to get rid of Mr. Dittmore? A. No, I don't remember that.

Q. You never heard Mr. Dickey say that? A. No.

Q. By the way, there are annual Church meetings, aren't there, of members of The Mother Church? A. Yes.

Q. From which everybody except a member is excluded? That is a fact, isn't it? A. Yes, sir.

Q. That is, the persons who attend that annual meeting are the beneficiaries of the trust, are they not?

Mr. Bates—I pray Your Honor's judgment.

The Master—Well, isn't that a conclusion of law?

Mr. Thompson—I think it is a conclusion of fact, pretty nearly.

The Master—I exclude that.

Mr. Thompson—Very well.

Q. At that annual meeting the treasurer's reports are read, are they not? A. Yes, sir.

Q. Have you ever made any criticism of the way in which the treasurer's office is run? A. I think I have.

The Master—One minute. The way in which the treasurer's office—

Mr. Thompson—Yes, sir. That is one of the direct charges in my bill.

The Master—What treasurer?

Mr. Thompson—In my bill of Dittmore v. Dickey.

The Master—What treasurer?

Mr. Thompson—The treasurer's office of The Mother Church—Mr. Ripley's office.

The Master—Why should we go into that?

Mr. Thompson—Your Honor said that I might cross-examine on Dittmore v. Dickey, that is all. It is one of the issues. If you say I should not, I will not. There is a charge in my bill that the affairs of the treasurer's office are not being properly handled, and they deny it, and here is a director who says himself that he has made criticism. Now, I am asking him

whether Mr. Dittmore did not criticize, that is all.

The Master—I think that it is very remote from anything—

Mr. Thompson—It is very remote in the case of Eustace v. Dickey, but it is directly in point in the case of Dittmore v. Dickey. It has no bearing on the case of Eustace v. Dickey at all.

The Master—Isn't that within the scope of the ruling the other day, of not hearing evidence about certain parts of the bill?

Mr. Thompson—It comes pretty near it. I think that I had better withdraw it.

Q. Did you get, while you were away on your vacation, from which you returned in February, as you say—did you get any letters from any directors about church affairs, how they were getting on? A. No, sir.

Q. Not one?

Mr. Dane—He returned in March, and you said February.

Q. From which you returned in March?

The Master—During the six weeks he was away? I suppose you mean?

Q. You were gone for about two months, were you, on that vacation?

The Master—I think he gave the dates.

Mr. Thompson—Yes.

The Master—They were Feb. 1 and March 15.

Q. It would be about six weeks? A. Six weeks, a little more.

Q. Did you come home because you were asked to come home?

The Master—He tells us now that he received no letters from the directors during that period.

Q. You say that? A. I say that.

Q. Did you come home because you were telegraphed? A. Yes.

Q. Who telegraphed you? A. Mr. Dickey.

Q. Have you that telegram? A. No, I haven't it with me.

Q. Where is it? A. I suppose it is in my office.

Q. Can you get it some time before the next hearing, if there is one? A. Certainly; if it is there I can.

Q. Do you recollect in July, 1917, of proposing to your fellow directors to buy up real estate adjoining the church property? A. What date?

Q. Along in July, 1917. A. I favored purchase of property around there. I don't remember that—

Q. Perhaps I did not make it clear. You favored at that time and suggested to your brother directors individually—of course not as a Church matter—that it would be a very fair private speculation for them to buy up property in the neighborhood of the church? A. No, I was opposed to buying property as a speculation.

Q. But to hold, to keep? A. To, so far as we could, pay for it, or almost—

Q. That, so far as they had money to pay for it, it would be a good investment? A. For the purpose of

cleaning up that part of the town, to own the property.

Q. The reason was because the large expenditures of the Church in that vicinity would cause real estate in that vicinity to appreciate. Was that it? A. No, that was not my motive.

Q. You know that within two or three years the directors have bought from Mrs. Armstrong, the widow of Mr. Armstrong, of whom you testified, a large number of letters of Mrs. Eddy in her possession? A. The—

Q. Couldn't you answer that yes or no? A. I don't think they bought her letters.

Q. Well, did they get from her letters of Mrs. Eddy in her possession? A. Yes, they did.

Q. And how many such letters did they get from her? A. I don't remember; it was a large number.

Q. What was that? A. A large number.

Q. Six or seven hundred? A. Oh, no.

Q. Three or four hundred? A. I should say two hundred.

Q. Two hundred. Well, that doesn't make any difference. Did you see those letters? A. No, sir, I have never read them.

Q. What is that? A. I never read them.

Q. Do you know whether there were among them any letters to Mr. Armstrong? A. I suppose they were all to Mr. Armstrong.

Q. And, among the letters to Mr. Armstrong, were there any relating to yourself? A. The one that was read here today.

Q. Any others? A. Not that I know of.

Q. Are you sure? A. I don't know anything about any others.

Q. Have you talked to Mrs. Armstrong about this matter? A. Never.

Q. Did Mr. McLellan ever tell you about a letter to Mr. Armstrong relating to you from Mrs. Eddy? A. Never.

The Master—It is difficult to see what that has to do with the present case.

Mr. Thompson—It is, sir; but I think it would not be if Your Honor had the letter. However, we shall not get it through this witness.

Q. You were on a committee with Mr. Dittmore, weren't you, for a number of years, to look after the affairs of the Publishing Society? A. We were on a number of years; we were on some time.

Q. And during that time did you and Mr. Dittmore investigate some of the finances of the Publishing Society? A. We did.

Q. And did you investigate the question of the discharge of employees somewhat? A. I think we did.

Q. Yes. And did you investigate other details of the business management of the Publishing Society? A. Yes, sir.

Q. Did Mr. Dittmore make any

reports of those investigations? A. I don't remember.

Q. Did he make a report on the matter of periodicals? A. Yes.

Q. Did he collect an amount of evidence in those discharges of employees of the trustees, in the shape of letters and statements from people? A. I don't know about that.

Q. Did he at any time? A. I don't know.

Q. After you were on the committee? Don't you remember his presenting them at one time to the Board of Directors, reading a number of letters that he had obtained, and stating what they were—the discharges of various people? A. I believe he did.

Q. Yes. And did he also make certain criticisms to the directors of the financial standing and the losses sustained by The Monitor? A. He did.

Q. And present certain figures about circulation, tending to show how money could be saved? A. He did.

Q. And did he not from time to time suggest to his brother directors that among the charges that might well be made against the trustees, there ought to be included these practical matters of maladministration in a business sense of their trust? He said that, didn't he? A. Will you state that again; Mr. Thompson?

Q. I don't blame you for not getting that. Didn't he say, to you, when the question of the discharge of three trustees came up—did not he always urge the discharge of three trustees; that was his idea, that they ought all three to go together? A. I don't know about what he always did, but he did at the end, yes.

Q. And the other directors thought they had better go one at a time? A. That is so.

Q. Now when he was urging the discharge of all three, or any one of the trustees—I don't care whether it was all three or one—didn't he say that it would be a good thing not merely to base the discharge on the ground that they would not subordinate themselves to the directors sufficiently, but also on the charge that they had maladministered their trust, in a money sense, that is, they had not handled the trust right—in substance, I cannot give the exact words, but isn't that the substance of what he said? A. I think so.

Q. And isn't this the fact that the other directors did not agree with him on that? A. No.

Q. Then can you explain to me why it is that in this elaborate statement of charges of Judge Smith against these trustees there is not one word about the mismanagement financially, or the discharge of employees, or any of these tangible, practical matters that Mr. Dittmore had worked up? A. That I don't know.

Q. You cannot explain that. Did you know when you voted for that resolution, expressed in those terms

as it is there, that you were running the risk that if there was a lawsuit about it the directors would not be permitted, or anybody else permitted, to prove the tangible charges that Mr. Dittmore had got on financial irregularity; did you realize that when you voted for that thing?

Mr. Bates—I pray Your Honor's judgment.

The Master—I think I shall have to exclude that.

Mr. Thompson—Very well.

Q. Now you are a member of the trustees of the benevolent association, are you not? A. I am.

Q. Do you remember not long ago a new by-law was adopted by that association to the effect that a vacancy could be declared in that Board of Trustees by the directors of The Christian Science Church?

Mr. Bates—I pray Your Honor's judgment.

The Master—Why should we consider that?

Mr. Thompson—Merely to show that it was a part of a general scheme in advance to drop the ax when the time came. Governor Bates has already gone on record here as saying that they had a perfect right to declare a vacancy on that board, but that they had better wait and have one row at a time.

Mr. Bates—Well, that is a new version, but we get new versions every day.

Mr. Thompson—I guess you will find that is the old, old story, Governor; nothing new about it. That is the way you have been doing business right along here for years. I should like to press the question and get a ruling on it.

The Master—I think I shall exclude it.

Mr. Thompson—Very well.

Q. Were you on a committee with Mr. Merritt to go to the Publishing Society rooms and make inquiries about Mr. McCrackan? A. Yes.

Q. Did you do it? A. Yes.

Q. How many such visits did you make, roughly speaking? A. One.

Q. One. Did you go round among the employees of the society, and ask questions? A. We went to Mr. Watts.

Q. Anybody else? A. And we called in to the room that he assigned for us two other people, I believe.

Q. And they were both women, weren't they? A. No.

Q. Did you see any women that day? A. I saw one.

Q. One. You went there for the purpose of seeing if you could not get some evidence against Mr. McCrackan, didn't you? A. No.

Q. Did you get any? A. Yes.

Q. You had previously as a board of directors exonerated him, hadn't you, by vote, of certain charges made against him? A. We had, I think.

Q. And at the time you went down to the Publishing Society there were not any charges pending against him, were there, by any third person, and

no complaint? A. I don't know about that.

Q. No. You know that there was no written complaint, or any other complaint, by any person, against Mr. McCrackan, at the time you went and made that investigation, don't you?

The Master—I understood him to say he did not know of any such complaint.

Q. Can you remember any such thing? A. No.

Q. Now there are just four places in these records that I want to call to your attention. The first is April 2, of the trustees' records.

Mr. Bates—What year?

Mr. Thompson—The year 1918.

The Master—The trustees' records?

Mr. Thompson—The trustees' records, these are. That must be 1919—that is a mistake.

Q. Do you remember in April having learned from Mr. Dixon of General Streeter's having come into this case as Mr. Dittmore's counsel, chief counsel? A. I learned about his coming into it at some time, but I don't know at what time.

Q. Did you go to Mr. Dixon then, and say that you would like to see if something could not be done to get these two boards together? A. No, Mr. Dixon came to me.

Q. Well, did you say that to him? A. Yes, I guess I did.

Q. Did you see the trustees then? A. No.

Q. Did Mr. Dixon see them, and come back and report to you? A. He did.

Q. Did he report that they declined to negotiate as long as Judge Smith had anything to do with it? A. They declined, but I do not remember that stipulation.

Q. See this:

"It was stipulated that Judge Smith must be eliminated from any conference, because of his failure to observe the agreement of counsel made at their conference Feb. 1, which failure was considered unethical."

Do you remember hearing about that? A. I don't remember that.

The Master—Your question was whether that was reported to him.

Q. Was that reported to you? A. I don't remember that.

Q. Did Mr. Dixon come again to your office along in May; did he go there at your request in May; did you telephone him to come over and see you? A. I don't remember whether I did or not.

Q. Did you tell him that you would like to meet the Board of Trustees privately, on your own behalf, if that could be arranged? A. I did.

Q. And did you meet them? A. No.

Q. Did you meet Mr. Rowlands at that time? A. I did.

Q. And did you try to see if this matter could be compromised? A. I tried to see if there was some point on which we could get together and see if we could make an agreement.

Q. And "getting together" means

both sides yielding something, so as to make a settlement. A. Not necessarily.

Q. Did you go to see Mr. Rowlands to see if he would give up his contention and come around to yours? Is that what you went to see him for? That would be useless, wouldn't it? A. I found it was useless.

Q. So you went there to see if you could not make a compromise, didn't you? A. No, sir.

Q. Now, on May 28 did you have another conference with Mr. Rowlands? A. The first was the 27th?

Q. Yes. A. Yes, we met the next day.

Q. The next day. And did you not then say to him, in substance, that you would try to get the directors to make any reasonable concessions? A. No, sir.

Q. What you said was: "Give up, Mr. Rowlands. Come round to our view." Is that it? A. No, that was not it.

Q. All right. Then do you remember on June 6 having a letter turned over to you, addressed by the Board of Lectureship to the directors, asking for an explanation of the contract between the Trustees under Mrs. Eddy's Will and this Publishing Society? A. I don't remember that letter.

Q. Is this a correct entry from the directors' records:

"Mr. Neal, for the Trustees under the Will of Mary Baker Eddy, to explain all the particulars as to the contract with the Publishing Society for publishing our Leader's works."

Mr. Bates—I pray Your Honor's judgment as to whether or not he can tell whether that is a correct entry of the directors' meeting.

Q. Did that ever occur; were you asked to make that explanation? A. I was.

Q. By the directors?

The Master—By the trustees?

Mr. Thompson—By the directors, this time.

Q. Did you make it? A. I did.

Q. Did you at that very time bring up this letter of Mr. Dittmore's that he had written to the Trustees under Mrs. Eddy's Will? A. No.

Q. Did you refer to it?

The Master—You had better identify that letter a little closer; there have been so many letters.

Mr. Thompson—Have you finished with that letter, Governor?

Mr. Bates—What letter do you refer to?

Mr. Thompson—Mr. Dittmore's letter.

Mr. Bates—This letter?

Mr. Thompson—Yes. Do you object to that going in?

Mr. Bates—I object, Your Honor, on the ground of its—

The Master—Wait one minute. Your question is: The letter heretofore shown you.

Mr. Thompson—The letter heretofore shown, from Mr. Dittmore, of

Jan. 15, 1919, to the Trustees under the Will of Mary Baker Eddy.

The Master—Now, Governor Bates.

Mr. Bates—May I take the letter?

Mr. Thompson—Yes. (Handing letter to Mr. Bates.)

Mr. Bates—This is a letter dated Jan. 15—

The Master—Before you begin, what is the witness' answer to the question, or are you objecting to the question? I just want to see where I am.

Mr. Bates—I understood him to offer the letter, and he asked me if I objected, and I said I did.

The Master—Well, what was the question?

Mr. Thompson—My last question to him was whether at the time he was asked to report to his own board on this subject he mentioned that letter; and he says now he did not.

Q. That is true, isn't it? A. I don't remember mentioning the letter.

Q. I wish you would say definitely whether you mentioned it or not. Cannot you go a little stronger than saying you don't remember? A. No, I cannot.

Mr. Bates—How can he say, if he does not remember?

The Master—If he says he does not remember, I think we shall have to let it rest there. Now, that being his answer, why should we have the letter?

Mr. Thompson—That is not the only reason why the letter is admissible, sir. The letter was offered on a former occasion, when he was being questioned on a different topic. I have now brought it up again, to see whether he did not refer to it on this occasion—this letter.

The Master—What did he say about it on the former occasion?

Mr. Thompson—He said that Mr. Dittmore had written this letter to a body consisting of five directors and one other man, namely, Mr. Fernald.

The Master—I understand.

Mr. Thompson—And that the letter referred to a contract between the trustees of the Publishing Society and the Trustees under Mrs. Eddy's Will.

The Master—And your inquiry was whether Mr. Dittmore raised an objection to that contract?

Mr. Thompson—Yes. And he says he did, and this letter was sent and he remembers it being received. So there is no question about this being a copy, if he raised that objection. I am talking about the materiality of the letter as an original document. Now it is of great importance, if Your Honor please, to what were the real motives operating on these different individuals in their conduct, what was the underlying reason, first, for the continued antagonism to Mr. Dittmore; what was the reason why these gentlemen were so anxious to compromise with the trustees, and why he was not; what action was he contemplating in regard to this contract between the Trustees under the Will and the trus-



tees of the Publishing Society; did he let his co-directors know that he thought that action ought to be taken; was it his position that the making of that contract had given them the enormous power that led them to set themselves up—and so on.

The Master—We have got the fact, haven't we, that Mr. Dittmore asserted those objections to the contract?

Mr. Thompson—I assume that has been testified to, I think that has been testified to.

The Master—I assumed it, and I do not see why we should have the letter in full.

Mr. Thompson—This letter is written Jan. 15, 1919, just before his discharge, and my point is, this letter—and I shall attempt to corroborate it by Mr. Dittmore himself, when I put him on—it is of great importance that I get this letter in for the purpose of his testimony later, through this witness. The fact that he took the position stated in this letter was, we will offer to show later, one of the very important reasons, really, leading to his discharge; and the significance of the letter is difficult to exaggerate—and the significance of the facts to which it calls attention. It is one great underlying difficulty in this whole case, and it has a great, big effect on this case, as throwing light, a flood of light, on the real motives of both these boards, and of Mr. Dittmore, the third party. Now I ask Your Honor to admit the letter, with the right to strike it out if I do not connect it later as I say I am going to. I do not ask to read it now, or print it in extenso in the record, but merely to have it marked as an exhibit, subject to being struck out if I do not connect it in the manner I have indicated.

The Master—You may mark it for identification.

Mr. Thompson—Very well, sir.

The Master—That will do for the present.

[Letter from John V. Dittmore to the Trustees under the Will of Mary Baker Eddy, dated Jan. 15, 1919, is marked Exhibit 738 for identification. W. J. R.]

Q. You attended a meeting, didn't you, on Jan. 30, of the directors, the day before you left for the South? A. Yes, sir.

Q. Do you remember anything Mr. Dickey said at that meeting? A. No.

Q. I wonder if I could refresh your recollection. I show you a page—

The Master—"Do you remember anything that Mr. Dickey said?" Did you indicate to him the subject?

Mr. Thompson—In regard to the controversy between the trustees and the directors.

The Master—Pause a minute. Do you, Mr. Neal, remember anything?

The Witness—I do not.

The Master—Now you want to ask him something from the records there?

Mr. Thompson—I was going to ask him from a document I have here.

Mr. Bates—I understand, Your Honor, that this is a private memorandum kept by Mr. Dittmore, and not a record.

Mr. Thompson—You do not need to cry now. Wait till you are hurt.

The Master—I thought you said the record of the meeting.

Mr. Thompson—No, sir; no, sir.

Q. Mr. Dittmore used to take notes, didn't he, of what went on at these meetings, a good deal? A. Some.

Q. Have you ever had occasion to look at his notes, or hear them read afterwards? A. I think not.

Q. You took notes, didn't you? A. Very little.

Q. Haven't you just now in examination by these gentlemen produced some notes you took? A. Just one.

Q. Just one. Other members occasionally also took notes, too, didn't they? A. Yes.

Q. You never had any reason to doubt that Mr. Dittmore was trying to take down accurately what occurred, did you—honestly? A. Yes.

Q. When was it? A. Well, I don't know when.

Q. No. See if this refreshes your recollection. (Reading:) "Jan. 30—"

Mr. Bates—I pray Your Honor's judgment.

The Master—Now you are purporting to read into the record something from Mr. Dittmore's notes, Mr. Thompson?

Mr. Thompson—I am perfectly willing to let him read it to himself, if he would prefer that.

The Master—I do not see here why we should get Mr. Dittmore's notes into the record in that way.

Q. I won't read them, then. I will ask you privately to read to yourself the first paragraph of those notes, under Jan. 30, and then see if you can remember anything that Mr. Dickey said at that meeting.

The Master—That will run too much risk of getting the notes into the record. You may ask him, Didn't Mr. Dickey say thus and so?

Mr. Thompson—Very well, sir. Your Honor will save my rights under that, because I think I have a right under our state laws to refresh his recollection in that way.

Q. Didn't Mr. Dickey say that in order to settle this matter up he would be willing to crawl in the dust—using those very words? A. I believe he did say something of that kind sometime, I don't know when it was.

Q. Now you have answered. Didn't he say also that asking for their resignations was a grave mistake—in substance? A. I don't remember that.

Q. Are you willing to say he did not? A. No.

The Master—"Asking for their"—meaning, I suppose, the trustees.

Mr. Thompson—The trustees.

Q. Didn't he say that the trustees were saying about the directors' counsel that one was a politician, another was on the wrong side of everything, and another was a crazy man? See if

you do not remember that. A. That's new to me.

Mr. Bates—Does Your Honor think that is competent?

Q. What? Didn't he say that? Are you willing to swear he did not? A. I don't remember it.

Q. I think you would remember that if he had said it, wouldn't you? A. I don't know about that.

Q. Didn't he say that Judge Smith was so full of hate that he was either angry or crying all the time? A. Who said that?

Mr. Thompson—Judge Smith.

The Master—Didn't Mr. Dickey?

Q. Didn't Mr. Dickey say that? A. Not that I ever heard.

Q. Didn't Dickey report the trustees as saying that? A. I don't remember it.

Q. Didn't Mr. Dickey say, "We should quit, and avoid litigation"? A. Quit what?

Q. Quit the controversy? A. I don't remember that.

Q. Are you willing to say he did not say it? A. No, sir.

The Master—All this at the meeting of Jan. 30?

Mr. Thompson—Yes, sir; 1919. That is all.

Mr. Bates—I see it is 4 o'clock, Your Honor. I think we shall have to let this go over until the morning.

The Master—Have you got a good deal you will have to ask him?

Mr. Bates—There is quite a good deal I will have to ask him, in view of Mr. Thompson's questions. I do not think it will take a long time, but it is a longer time than I feel like taking tonight.

The Master—Do you think that possibly if we adjourn until tomorrow you may find some way of condensing it?

Mr. Bates—I think very likely.

Mr. Whipple—I wonder, if Your Honor please, whether Governor Bates could tell us how many witnesses he intends to call tomorrow. It would assist us in arranging our plans and engagements.

Mr. Bates—Why, there possibly may be a witness, and yet I doubt whether there are any further witnesses. There will be some records to put in and then I think we shall substantially be in a position to rest our case.

The Master—Records that will take a good while to put in?

Mr. Bates—I should not think they would take more than an hour.

Mr. Dane suggests that it may possibly take two hours.

The Master—Well, then, we will suspend at this point until tomorrow at 10 o'clock.

[Adjourned to 10 o'clock, Friday, Aug. 1, 1919.]

Aug. 1, 1919

TWENTY-SEVENTH DAY

Room 424, Court House,  
Boston, Massachusetts, Aug. 1, 1919.

The Master—I see that you are all here, gentlemen. You may go on whenever you are ready.

Mr. Thompson—I should like to call again for that telegram which Mr. Neal said he would produce this morning from Mr. Dickey calling him back to that meeting in March.

The Master—Mr. Neal is not here yet.

Mr. Bates—I might say, Your Honor, that the telegram was not a telegram from Mr. Dickey. It was a telegram, I think, from—

Mr. Thompson—Well, all I know is that the witness—

The Master—One minute, Mr. Thompson. Let us hear what Governor Bates has to say.

Mr. Bates—I understand that there was no such telegram.

Mr. Thompson—Very well. Your witness—

Mr. Bates—Well, I think there was a telegram sent, but there was no such telegram as the witness said.

Mr. Thompson—Pardon me a moment. I have stated exactly what your witness testified to, namely, that he received a telegram from Mr. Dickey, and he said he would produce it. Can he produce it, or can't he?

Mr. Bates—He cannot produce it. He was in error.

Mr. Thompson—He was in error. In how many other things was he in error?

The Master—Never mind that now. We know now that he was in error through Governor Bates' statement.

Mr. Thompson—I am not sure that he was. I would like to have him go on the witness stand and say so himself.

The Master—I suppose if it is insisted upon, he will have to do it.

Mr. Bates—We would be very glad to do that, Your Honor, but I had expected to ask Mr. Neal several questions this morning in the way of redirect examination regarding the matters that Mr. Thompson brought out. Mr. Neal telephoned me from Marblehead this morning that he was physically unable to be present. I urged him to make every effort to be here this morning and he has not come, but his wife has come and says that his physical condition is such that he cannot be here. I might say, Your Honor, that he was suffering from a summer complaint, which became worse during the night and is worse this morning, and he has not been able to leave his home.

The Master—Upon that statement, I see no—

Mr. Thompson—Well, then, please let it be noted on the record that I do not concede the statement made by counsel as against the statement made by Mr. Neal, and that I still persist in

my demand for the telegram of Mr. Dickey to Mr. Neal. I believe that such a telegram was sent. That is one of the things that he said that I believe. Now, I should like to have you produce what was going to be put in through his testimony.

The Master—Pause one moment. We have got to suspend on Mr. Neal, apparently.

Mr. Thompson—I beg your pardon? The Master—We are obliged to suspend on Mr. Neal for the time being.

Mr. Thompson—I understood that the Governor had waived his right to examine him in redirect examination.

Mr. Bates—I did not so state. I stated the reason why he was not here.

Mr. Thompson—Do you mean that you desire a continuance for—

Mr. Bates—I have not asked for that yet. That was a matter that I was going to present to the Court in proper order after you got through with your statement.

Mr. Thompson—I think the time has come now. I would like to know whether you intend to have him back in court or not?

Mr. Whipple—May I ask whether any physician has examined Mr. Neal, and if you have any physician's certificate?

Mr. Bates—Not so far as I am aware.

Mr. Whipple—Am I in order, if Your Honor please? I do not know just what we are waiting for.

The Master—Any suggestion that you desire to make I think can properly be made.

Mr. Whipple—I think that it is very desirable to close our case today if it is possible so to do, although there may have to be one or two slight reservations in regard to testimony which could be taken at the time of the argument. But I was wondering whether it would not be feasible immediately upon adjournment today to go to Marblehead and ask him the few questions that I desire to ask by way of re-cross-examination, and I assume, Governor Bates, that you haven't many to put by way of redirect.

Mr. Bates—We have several.

Mr. Whipple—I beg your pardon?

Mr. Bates—We have several questions to put to him.

Mr. Whipple—Well, have you any reason to suppose that he would not be physically able to answer them? Certainly, if no physician has seen him, or any practitioner of Christian Science, I cannot see how you could take the responsibility of saying that he could not answer a few questions.

Mr. Bates—I had assumed, Your Honor, up to Mr. Whipple's speaking, that both he and Mr. Thompson had completed their examination and that we were the ones who were prejudiced by Mr. Neal's not being here, because we were the ones who desire to examine him in re-direct examination. I did not know that Mr. Whipple desired to ask any further questions. I suppose he had completed his examination.

The Master—Oh, I think that Mr. Whipple told us that or suggested that yesterday, as I understood him.

Mr. Whipple—Oh, yes, I desire to put a few questions.

Mr. Bates—I did not hear you. Mr. Whipple had cross-examined him once.

Mr. Thompson—I do not recall saying anything to the effect that I had finished.

Mr. Bates—Why, you certainly had finished, and I was to examine him, and it was 4 o'clock and the Court thought—

Mr. Thompson—I did not see you rise to examine him.

Mr. Bates—His Honor asked me if it wouldn't probably result in expediting matters—

Mr. Thompson—I think that was said.

Mr. Whipple—If you will pardon me, without discussing it, what is the objection to our going to Marblehead for that purpose this afternoon?

Mr. Bates—I know of no objection if you wish to examine him further.

Mr. Whipple—Why not? Couldn't you finish your examination with him, too?

Mr. Bates—I have no doubt that we could, providing he is in condition to withstand an examination at the time.

Mr. Whipple—Yes. Then, the ordinary rule requires a physician's certificate, but I should not press that at all if I were convinced that putting twenty or twenty-five questions would imperil Mr. Neal's health at all; but he naturally would feel an exhaustion from the trying conditions under which his testimony was rendered, and if he could testify in his own home it would not occur to me that there would be any particular danger to his health, and we should be entirely willing to go to Marblehead for the purpose this afternoon, or, if necessary, tomorrow, so that we could all, at adjournment, feel that most everything was cleared up. If we found that it was not possible consistently with his health to take his examination, then I would suggest that the very brief examination to which he would be subjected might take place at the date of the argument and just before we proceed. Because he has testified so much, there can be no particular uncertainty as to what answers he would make to a few questions. I mean there would not be such uncertainty as to affect the argument in any way. I hope that arrangement will appeal to the convenience of all counsel.

Mr. Bates—If Your Honor thinks that Mr. Whipple has the right to further cross-examine Mr. Neal when there has been no further re-direct examination, Mr. Whipple having once cross-examined him and we having asked him nothing since, then possibly his suggestion may be pertinent at this time.

The Master—I understand that you intend to ask him something further.

Mr. Bates—I certainly desired to do so, but that we had not intended to ask

Your Honor to postpone the final settlement of the Eustace case in order for that to be heard, because what we wish to ask him about is in regard to the Dittmore case, which has not yet been opened, but it is in regard to matters that Mr. Thompson brought out; the questions we propose to ask Mr. Neal have no bearing on the Eustace case whatsoever.

The Master—What course do you suggest? I hardly think that we shall need to stand on the absence of a physician's certificate.

Mr. Whipple—I did not intend to. Didn't I make that clear, if Your Honor please? What I said—

The Master—I know you raised the point.

Mr. Whipple—Yes.

The Master—It being stated here by counsel from information gathered from Mrs. Neal that his condition is not such as permitted him to be here today, I think we ought to take that as a state of facts under which to act.

Mr. Whipple—I thought I made that very clear, that while technically we might do it, I should not insist upon it.

The Master—You do not insist upon it.

Mr. Whipple—I mentioned the physician in this respect: that if no physician had been consulted we might fairly assume that he would be well enough to answer the questions in Marblehead. I have not for a moment thought of asking him to come here, even at his inconvenience. I said that, as far as I was concerned, we would all go down there, unless some physician should certify that even that would endanger his health.

The Master—Now, let us hear what Governor Bates desires to suggest we should do under these circumstances.

Mr. Bates—I assume Mr. Whipple made that suggestion in regard to physician's certificate on the supposition that I had or was going to ask for a continuance of the Eustace case. That I am not going to ask for. The questions I wish to ask Mr. Neal in redirect examination relate alone to the Dittmore case. There will be opportunity to do that later.

My contention now is that Mr. Whipple having completed his cross-examination in the Eustace case has no right to further cross-examine the witness or ask us to go to Marblehead so he can have the opportunity to further cross-examine him.

The Master—I suppose his desire to further cross-examine rests on the assumption that there was going to be more—there is going to be redirect examination.

Mr. Bates—No, Your Honor; I have already waived that as to the Eustace case.

The Master—Now, that is clear, is it? Then, Mr. Whipple, redirect being waived, why should you further cross-examine?

Mr. Whipple—For this reason, if Your Honor please, and may I point

out very briefly the things that I wanted?

The Master—Oh, of course.

Mr. Whipple—In the first place, Mr. Neal, under Mr. Thompson's examination, stated that Mr. Ogden and Mr. Watts had told him that Mr. Rowlands had allowed a sense of self-interest to interfere with his duties in that trust. He asked to be permitted to qualify it. He was not permitted to; he had to answer yes or no; and he then said that Mr. Ogden and Mr. Watts had said that. We have reason to believe that all he meant to say was that when he saw Mr. Ogden and Mr. Watts on different occasions, each of them spoke of the fact that Mr. Rowlands was away from the city on his private business and that his interference was that that interfered with the discharge of his duties as trustee, and that he would not say, if permitted to testify, that either Mr. Watts or Mr. Ogden had ever said to him that Mr. Rowlands' absence actually interfered with the discharge of his duties.

The Master—You mean in so many words?

Mr. Whipple—Yes. That is, that being under the constraint to testify yes or no, he without being able to qualify—as he would be permitted to do under re-cross-examination—he made an answer which does not fairly represent his testimony. Now, if it can be agreed that he would so testify—

The Master—Anything else?

Mr. Whipple—If called—

The Master—Anything else? Is that the only point?

Mr. Whipple—Yes, Your Honor. Then, I desire, and perhaps it can be done in his absence, to ask him with regard to this question of the change of salaries. He said that counsel advised against having any vote or record of a meeting in relation to the salaries, or any record of a vote of a meeting, and they deleted from their records all reference to it, under advice of counsel.

I wanted to ask if that advice was given in writing. If so, to ask the production of the letter. I desire to ask him, if such was not in writing, whether counsel gave reasons for such advice as that, and whether or not he himself appreciated the old maxim that "Concealment is a badge of fraud" and that if the transaction was an innocent one and advised by counsel, there could be no possible reason why reference to it should be deleted from the records.

I also had in mind, if Your Honor please, to ask if it wasn't a fact that they had been advised by some of their counsel as a condition of the propriety of such a thing, they should have a meeting, vote upon it, and submit it to the members of The Mother Church to secure their approval.

I also wish, through him, to put in—but that can be done without his presence—the originals of the deleted

records which were yesterday identified, so that we might have before the Court the whole record of this sordid business and any reasons that they themselves gave to each other for such action as appears in that record which for some reason they deleted. That, I think, can be done in the absence of Mr. Neal.

Outside of that, through Mr. Neal—but I could do it as well through some one else—I desire to introduce a letter from Mrs. Eddy to the—

The Master—Pardon me. If you can do it just as well through some one else, wouldn't it be best—

Mr. Whipple—May I finish it up—so as to identify it. It is dated March 19, 1903. I would like to have it produced. It is an original letter in the records of the directors, one that we saw in examining them. We should like to have it produced. Technically, I suppose we have got to have a witness on the stand to identify her handwriting. I should, therefore, have to put it in by agreement, I suppose.

Mr. Bates—If it is any letter in the collection of Mrs. Eddy's letters, we certainly shall waive any identification of the signature.

Mr. Whipple—All right. It is one of the unnumbered letters in the McLellan collection, and is dated March 19, 1903, from Pleasant View, Concord, New Hampshire. Those are the things we had in mind to examine by way of records. They were all brought out by Mr. Thompson in his examination, and we have had no chance to deal with them, and the latter part we had no knowledge of until Mr. Thompson brought out this matter of the change or deletion or destruction or attempted destruction of these records. Mrs. Eddy's letter is not a thing that Mr. Thompson brought out, of course. That is a thing that I overlooked in my cross-examination.

Mr. Bates—I do not know how far Your Honor will go in allowing an attorney to re-cross-examine a witness because one of the other defendants has brought out something in his cross-examination. I understand Mr. Whipple to make his contention that he is entitled to further cross-examine solely because Mr. Thompson has brought out certain things in his cross-examination as to—

The Master—Would that not require, to forbid such further examination by Mr. Whipple—would it not require a greater insistence on strict technicality than we have followed at any point in this case?

Mr. Bates—That might possibly be, if Mr. Neal were here, and it did not produce so much inconvenience, as well as possible question of Mr. Neal's own physical condition. But before Your Honor decides on that, I do wish to make a statement in reference to what Mr. Whipple has stated, and which I am entitled to make because of his use of words characterizing cer-

tain acts which he claims have been shown by the evidence.

In the first place, his statement would lead one to believe that the deleted records applied to the raise of salary by the directors, which has been questioned in this case. Mr. Whipple is in error. They do not pertain to the vote that was taken, which was not taken until two years after these deleted records. The facts were, and we had expected to show them by Mr. Neal this morning, that Mr. McLellan and Mr. Stewart were in 1915 drawing—

Mr. Whipple—I pray Your Honor's judgment as to this statement of facts. Nothing in what I have said is a statement of fact.

Mr. Bates—You have said that concealment is a badge of fraud, and that we have concealed and deleted the records in regard to the raise of salary. The records are complete in regard to the raise of salary. You are attacking the dead, because two of the parties who are parties to this are dead, and of the parties who are now on the board three of them were not on the board at the time of the deletion.

Mr. Whipple—Is there an attack on the dead in trying to get their official records? If there is, that is an attack of their own records.

Mr. Bates—When you claim that that is concealment, and that that is a badge of fraud, it is an attack on the dead.

The Master—I should like to ask a question there. We have not yet admitted those deleted records in any form, have we, as evidence in the case?

Mr. Bates—No, Your Honor, and they have not been offered. Counsel has referred to them several times.

The Master—They are not in.

Mr. Bates—They are not in.

The Master—That is all I want to know now.

Mr. Bates—They are not in.

The Master—Opposing counsel have not seen them, have they?

Mr. Thompson—They have been identified. I have held them in my hand. I do not know whether they have seen them or not. We do not know that they have.

The Master—Now, that being the situation, why should we take up time here with statements and counter-statements as to what they are?

Mr. Bates—I would not have asked to make it, Your Honor, if Mr. Whipple had not made his statement, in which he characterized it as being an act of these directors that was a concealment, and that was a badge of fraud. There was no concealment; there was no action taken at that time. There was a long debate, and they finally voted to obliterate the whole thing from the record.

In regard to the question of counsel, Mr. Choate was at that time counsel, and he told them that it was a perfectly proper thing to do to delete

the whole matter from the record, and it was done with his approval.

Mr. Thompson—Do you want to take back Mr. Neal's testimony given yesterday, that one reason was that they did not want to have it known?

Mr. Bates—I do not think that he testified to that. Mr. Neal did not so testify, as I understood it.

Mr. Thompson—Yes, he did.

Mr. Whipple—Yes, that is right; Mr. Thompson is right; it appears on page 676.

Mr. Bates—I don't think he did testify to it.

Mr. Whipple—You are absolutely wrong in your facts, Governor.

Mr. Bates—I am absolutely right in my facts that these deleted records applied to a discussion which took place two years before there was any vote to raise the salaries; that the actual vote which was passed was two years later, in 1917; and that it is on the records, and never has been deleted. And, moreover—

The Master—Supposing that to be the fact, is not the best way to settle it to submit the deleted records to opposing counsel and see if they agree with the statement—

Mr. Bates—I shall be pleased to have them submit them to me. I haven't them, I never had them in my possession, and Mr. Dittmore, who was clerk of this board, apparently has kept them somewhere, but he never has brought them in here up to this time. Now he brings them in here, four years later—

Mr. Thompson—Now we begin to get some light on why they were so strenuous in their efforts to get his papers away from him, and you can begin to see now why he did not want to give his papers up to them.

Mr. Bates—I see that he is holding on to papers apparently that he had no right to hold on to. I see why you do not put the papers in. We do not object to their going in.

Mr. Thompson—Now, let them go in. Will you have them marked, please?

The Master—One minute. I want to see if counsel cannot agree, as reasonable men, on some way of shortening up this dispute.

Mr. Bates—We have not seen the deleted record. We simply know that it is not what they claim it to be; and it was not deleted until two years later.

The Master—You have not seen it?

Mr. Bates—I have not seen it.

The Master—Mr. Whipple has not seen it?

Mr. Whipple—I have never seen it.

The Master—Now, will there be any harm done if an opportunity is afforded to Governor Bates and to Mr. Whipple to examine that record?

Mr. Thompson—No, sir; there will be a great deal of good done, if Governor Bates will simply call upon me to produce these records that I hold in my hand, subject to the ordinary rule, of course, that, having produced them,

and the other side having inspected them, I shall have the right to introduce them in evidence.

Mr. Bates—I will do it; I will ask you to submit them.

Mr. Thompson—Only on the condition that you let them go in as evidence, that is all.

Mr. Bates—If Your Honor thinks that they are material or relevant, then we have absolutely no objection to their going in evidence; but I am not going to commit His Honor to saying that they shall be introduced if they are not material or relevant.

Mr. Thompson—And I make the same condition with regard to Mr. Whipple. If Mr. Whipple takes them from me it is on condition that I am allowed to put them into this case as evidence, and on no other condition. I have a right to make that condition.

Mr. Whipple—If Your Honor please, all that I said a moment ago was predicated upon the testimony of Mr. Neal himself, which was all that I knew on the subject; and when I said that I thought that we ought to have this whole mass of sordid business laid before the Court, I referred to his statement that the deletion of the records was in part for the purposes of concealment.

Mr. Bates—I submit, Your Honor, that that is not a fair statement of Mr. Neal's testimony.

Mr. Whipple—I desire to ask him if he did not know that concealment was a badge of fraud, upon his own statement that they were deleted. Whatever they were, he himself said that they had to do with the salary. On page 677, in the first column, we find this:

"Q. Take the other meetings on here, of which there are at least a dozen perhaps. Is there any record on your book of any of those meetings having occurred at all? A. Oh, yes, the meetings occurred, yes; it shows everything except—

"Q. Everything except what? A. The point that was eliminated.

"Q. Namely, the point in regard to a raise in salary? Isn't that it? A. It has to do with that.

"Q. Raise of salary? A. It has to do with that."

Mr. Thompson—Of course, it is in evidence that when—

Mr. Whipple—Now, he has stated that. Now, on the bottom of the preceding page, page 676—and I am reading this so that the Governor can discuss the matter more intelligently, at least more accurately, if he remembers the facts:

"Q. Just look at these papers that I call to your attention, marked Exhibit 724 for identification. Those are the original records of that board, aren't they, from June 7, 1915, to Sept. 8, 1915? A. That wouldn't be all of them.

"Q. Well, some of them? I haven't asked all of them; I have asked some.

"The Master—When you ask him if

they are not the original records, don't you imply that they are all?

"Mr. Thompson—I do. I see the point. I made a mistake, I will take the question back.

"Q. Those are some of the original records of that board, aren't they? A. Yes, sir.

"Q. Do you know how those happen not to be in the book? A. Yes, sir.

"Q. They were struck out by order of the board, weren't they? A. They were.

"Q. They were. And the reason was because it was not thought desirable that anyone should know what action the board took in raising its own salaries. Isn't that true? A. The reason was—

"Q. I don't want that. Isn't that true? Answer my question. Isn't that the truth? A. Yes and no."

Mr. Bates—You have not completed it.

Mr. Whipple—You may.

The Master—Go on if there is any more.

Mr. Whipple—Does Your Honor want any more?

Mr. Bates—You had not completed the answer.

Mr. Whipple—I had completed the answer to every question I read.

Mr. Bates—I call Your Honor's attention to Mr. Whipple's statement as it is here, Your Honor. The answer is:

"A. Yes and no—

"Q. Yes and no—yes a little more than no, isn't it?"

Mr. Whipple—That question I did not read.

Mr. Bates—Well, it is put in as a part of it.

Mr. Whipple—It is not; it is a separate question. Have a little accuracy.

Mr. Bates—Well, I submit that it is really a part of it.

Mr. Whipple—No. Get it accurately.

The Master—I think that it is fair to have the whole of it before us.

Mr. Whipple—I will read, and read on, but I insist that these misstatements on the part of the Governor, inaccurate statements, cease.

"A. Yes and no—"

The Master—Why need we dispute about that? We have the record right here before us. Why not read whatever there is?

Mr. Whipple—Yes.

"Q. Yes and no—yes a little more than no, isn't it? A. I don't think so.

"Mr. Bates—I pray Your Honor's judgment.

"Q. You don't think so. Now, you have examined them enough, sir. A. All right, sir.

"Q. What was substituted in the records for those various meetings of which the original records have just been examined by you? A. Nothing at all, as I remember it.

"Q. So that during this period the records of this board are blank, are they? A. No.

"Mr. Bates—He hasn't said that."

Mr. Bates—I am not interested in Mr. Whipple's reading further. I simply wanted him to complete that answer.

The Master—Have we got through with that subject now? I think that you should read all that there is on that immediate subject.

Mr. Whipple—I thought I did, if Your Honor please. Now, he said that, at least in part the reason for the deletion of this record was secrecy and concealment, and I wanted to follow that up and ask him if he did not know that secrecy was a badge of fraud, and to ask him how he could justify the deletion of these records—

The Master—That would only be argument if you did ask him.

Mr. Whipple—No, it would not be argument if I asked him how he could justify it, it seems to me.

The Master—I think it would be.

Mr. Whipple—Very well. Then I should want to put the question.

The Master—You would have that right, of course. Now, what do counsel want to do?

Mr. Bates—I understood that Mr. Whipple's statement was made in answer to Mr. Thompson's question as to whether or not he objected to these deleted records.

Mr. Whipple—No, sir. I made the statement in order to correct the various misstatements of my position which you had just made.

Mr. Bates—I am content to leave it on what you have just read from the record.

Mr. Whipple—Of course. You have got to leave it there!

Mr. Bates—Well, I think that it justifies my statement.

The Master—I suppose that it would be perfectly competent for the master, even though no counsel objected, to exclude the contents of those records when offered, if it did not appear to him to be fairly, sufficiently, relevant for the purposes of the case to justify their admission. I shall reserve that right in any case.

Mr. Thompson—I shrink from suggesting that I differ with Your Honor on that, but how could that be reconciled with the absolute rule of court that any paper called for by counsel and produced on request may be put in evidence by the party producing it for such relevancy as it has? If it has no relevancy, it will not affect the tribunal. It cannot be ruled out, but its admissibility is settled by the call and the production, as I understand it. Perhaps that is the same thing that Your Honor meant when—

The Master—I can hardly think that the Master is deprived of the power to exclude something that does not appear to him sufficiently relevant to justify its admission, even though it is a fact that nobody objects.

Mr. Thompson—There is a great deal of evidence here that probably, when Your Honor comes to consider the matter, you will not think is rele-

vant to anything, and I should think so, too, but would Your Honor exclude it, or simply disregard it? Is there not a difference between those two things?

The Master—The relevancy of these records is pretty remote in any event.

Mr. Thompson—I think that Your Honor will not think so when you come to read them. I think that they have a strong bearing on the Dittemore case.

Mr. Whipple—If Your Honor please, in view of the record as it stands, if the directors do not want to clear it up by the introduction of the deleted part, we have nothing further to say upon that point; and upon Governor Bates' waiving further examination of the witness, we are perfectly willing to waive further inquiry with regard to this matter of the deletion of their records, or attempted destruction, ordered destruction, of their records bearing upon the question of salary, in the way that the testimony now stands. We cannot, however, waive the further examination of the witness with reference to what he stated about Mr. Ogden's and Mr. Watts' references to Mr. Rowlands. But perhaps counsel will agree that if the witness were examined upon that point he would answer as I have indicated, namely, that no such thing was said in terms, but that references were made to the absences of Mr. Rowlands, from which he inferred that such absences interfered with the administration of the trust, and might be a neglect of duty. Will you agree to that?

Mr. Bates—I think that, rather than to have the case continued, we would agree to that.

Mr. Whipple—I am not insisting upon any continuance of the case.

Mr. Bates—Well, rather than to have a delay, then, in the completion of the case.

Mr. Whipple—There would be no delay. I should ask to be allowed to examine Mr. Neal whenever we meet for argument. If you will accept that, we will dispose of Mr. Neal, so that he will not be called, provided that I can then offer Mrs. Eddy's letters to which I have referred; and then, so far as we are concerned, we will regard the examination of Mr. Neal as complete.

Mr. Bates—Of course the question and answer stand, notwithstanding the statement of Mr. Whipple, which we accept, but I do not understand that it controls this statement:

"Q. Well, they told you he had neglected his trust and gone off on his private business? A. They did."

Mr. Whipple—Now, I understand that it would modify that; that they told him that he was away on private business, and that it was his inference that he was neglecting his duty, because absolutely no such thing was ever said as that in terms, and it is exactly that which we want to meet, and we know that Mr. Neal would not

state any such thing if he were permitted to make his explanation.

The Master—Well, is that not covered by Governor Bates' admission?

Mr. Whipple—Well, in one sense he admits it, and in the other he contradicts—

Mr. Bates—I think that I will take Mr. Whipple's last statement of it.

Mr. Whipple—Yes, all right.

Mr. Bates—That they did not in terms state that he had neglected his business, but that he was away on his private business, and from that Mr. Neal inferred that he was neglecting his business.

Mr. Whipple—Very well. That is my statement.

Mr. Bates—Now, I understand that that is what Mr. Watts would say.

Mr. Whipple—No; what Mr. Neal would say.

Mr. Bates—Well, I understand that your statement there is based on what you understand Mr. Watts would say?

Mr. Whipple—No; it is based on what I understand Mr. Neal would say, because Mr. Watts would say that he does not remember of ever making any statement, direct or indirect, or in any form of words, that could be construed as suggesting that Mr. Rowlands' absences interfered with the discharge of his duties.

Mr. Bates—I do not think that it is a matter that needs any further discussion, Your Honor.

Mr. Whipple—Well, what I was stating was not what Mr. Watts would say, but what we understand Mr. Neal would testify to if he were here.

The Master—That is the immediate point.

Mr. Bates—We accept that.

The Master—Do you accept Mr. Whipple's statement of what Mr. Neal would testify to if he were here?

Mr. Bates—We accept that now.

Mr. Whipple—In a way, it is the finishing up of my re-cross-examination. May I ask if that letter has been found? I understand that there is no question about its authenticity.

Mr. Bates—What is the date of it, Mr. Whipple?

Mr. Whipple—March 19, 1903.

The Master—Have you got the letter?

Mr. Whipple—Yes, Your Honor. May I read it?

The Master—Pause a moment.

Mr. Whipple—I will read from the copy and will you follow it, Governor?

Mr. Bates—Wait just a moment.

The Master—You now offer, as I understand, a copy of a letter from Mrs. Eddy to—

Mr. Whipple—Mr. Archibald McLellan.

The Master—Dated—

Mr. Whipple—March 19, 1903.

The Master—I hear no objection made to the admission of the letter.

Mr. Bates—We have no objection, Your Honor.

Mr. Whipple—I offer the original and will ask to have the copy marked,

the original being in the book, in the possession of the directors.

[A copy of a letter, Mrs. Eddy to Mr. McLellan, March 19, 1903, is marked Exhibit 739, and is read by Mr. Whipple, as follows:]

[Exhibit 739]

"Pleasant View,  
Concord, N. H.  
March 19, 1903.

"Mr. Editor,  
"Beloved Student:

"It required no apology. I was delighted to meet you and intended to invite you and Mrs. McLellan to P. V. when we got over the present purchases of land in Boston.

"I reminded the Directors of this intent and my inability to meet you that day and told them to tell you. My son from the far West was waiting at the Eagle Hotel to see me, hence my situation.

"With love  
(Signed) "M. B. EDDY."

Mr. Whipple—"N. B."—and it is the "N. B." to which I direct Your Honor's attention:

"N. B. I regret that your name cannot appear as a member of the C. S. Board of Directors on their deeds. I have twice urged this question but Mr. Elder finds it cannot be legally so.

"Again (Signed) M. B. E."

Mr. Whipple—Your Honor will remember that Mr. McLellan was the fifth director, and that shows the date and the manner and the conditions under which Mr. McLellan became a director and the kind of director that he was, and his successors. Now, may I just point out, so it can be connected in the record, on page 358, in the first column, is a letter from Mrs. Eddy, dated Pleasant View, Concord, N. H., Feb. 5, 1903, addressed to the Board of Directors, and requesting them to act on "my candidate for director, Mr. Archibald McLellan, our editor-in-chief." May I hand that to you unless Your Honor has it right there?

The Master—I will mark it in my copy. What page is it on—358?

Mr. Whipple—Page 358, first column. Then right after it, or, at least at the top of the second column, a by-law is given: "The Christian Science Board of Directors shall consist of five members." That is where the fifth member first started in. That by-law was a by-law passed, as appears at the bottom of the page, by the directors and not by the First Members.

Mr. Thompson—Can you remind me of the date of that again? I have forgotten when that by-law was passed.

Mr. Whipple—Feb. 7, 1903.

Mr. Thompson—Thank you.

Mr. Whipple—I have forgotten at the moment, but we can agree who it was that was elected as Mr. McLellan's successor.

Mr. Thompson—Mr. Merritt, I think.

Mr. Whipple—I think it was Mr. Merritt, and of course that presents

squarely the question as to the kind of director that Mr. Merritt is; I mean, whether he is a trustee under the Deed of Trust, or could be made so, or just what his legal position is in the case.

The Master—It is obvious that we have a good deal to inquire into about the status of these directors for any purpose.

Mr. Whipple—We thought this was a contribution to the subject.

The Master—And that goes back a good ways, but that will come later, I take it.

Mr. Whipple—I take it so, but I take it we have all the material before Your Honor now.

The Master—We should get all the material now.

Mr. Thompson—With one exception, before the case is closed I would like the original records showing the election of Mr. Dittmore by whoever did elect him. I would like to have that record go in. I think it has not yet gone in.

Mr. Bates—We will put it in, if you wish it.

Mr. Thompson—Will you kindly let me have it, because it ought to go in.

Mr. Bates—Well, not now, because you are interfering with my case.

Mr. Thompson—All right; I will interfere a little bit more. Mr. Whipple has settled his dispute with Mr. Bates, and I would like to settle mine about Mr. Neal. Governor Bates states that he wants to cross-examine Mr. Neal at some future time in the case of Dittmore and Dickey. Of course, he will have an opportunity to put him on as a witness in defense in that case; but I do not understand that this is going to be a sort of tertium quid, something outside of both cases. He either closes the examination in Eustace and Dickey now, and we have no further direct examination of Mr. Neal, or else he does not. I would like to ask what he means by saying he wants to subject him to redirect examination in the case of Eustace and Dickey. I do not grasp what he means by that statement.

Mr. Bates—Mr. Thompson has misstated or misunderstood what I said. I said in the case of Mr. Dittmore we should expect to examine Mr. Neal, in matters pertaining to the Dittmore case, after you had opened it.

Mr. Thompson—Oh, I see.

Mr. Bates—But that we did not have anything that we wished to ask him in connection with the Eustace case.

Mr. Thompson—I really did misunderstand you; so that we need not anticipate any further redirect examination of Mr. Neal in the pending case, in Eustace and Dickey. If that is so, then at the proper time I should like to call for the original records showing the election of Mr. Dittmore as a director.

The Master—Why wouldn't this be a good time to put them in? We have got to have them, they are important, we want them.

Mr. Bates—May it please Your

Honor, we have all of them ready to put in together at one time.

Mr. Thompson—Why isn't this a good time?

Mr. Bates—Well, if His Honor wants us to put them in now—

The Master—What others are you going to put in? Let us see what those are.

Mr. Thompson—In Eustace and Dickey—are you going to put them in in Eustace and Dickey?

Mr. Bates—Certainly. There are several records we want to put in. I think if we put them in in the way we have planned it will be more orderly and cause less confusion.

The Master—I remember now you told us yesterday that, being through with Mr. Neal, nothing more would remain, probably, than the reading of certain records.

Mr. Bates—Yes, Your Honor.

The Master—I remember that. Now, in answer to Mr. Thompson's inquiry, you said that the matter which he mentions is covered by the records which you now propose to offer?

Mr. Bates—Yes, Your Honor.

The Master—Won't that be satisfactory?

Mr. Thompson—That is all right, sir. I may remind the Governor once more, so that there will be no mistake about it, that if he desires to examine Mr. Dittmore as his witness in support of the directors' case, the defense in the case of Eustace and Dickey, as to the transaction of February, 1916, we freely offer him as a witness and waive our right, reserved by previous agreement, to cross-examine him in the case of Dittmore and Dickey. If he thinks Mr. Dittmore could assist the directors' case in any of the matters which the directors have seen fit to rely upon as distinguished from what Mr. Dittmore relied upon, we offer him for that purpose also, with the same waiver, understanding that the Governor will confine himself to those matters and will not go into the case of Dittmore and Dickey.

Mr. Bates—If I saw fit to examine Mr. Dittmore I should not examine him under any conditions such as you might see fit to lay down, but under the conditions which the Court may lay down. I think we are sufficiently aware of Mr. Dittmore's attitude from what his counsel has done in the case; and if Mr. Dittmore wants to testify in defense, he being a defendant, I think his counsel should put him on the stand.

Mr. Thompson—That matter has been already covered, and your speech leaves you no better off than you were before you made it.

The Master—Now, Governor Bates, you may put in the records.

Mr. Bates—First, I offer a certified copy of the will of Mrs. Eddy. We offer this particularly under paragraph 3 of the defendants' answer. I will ask that be marked.

Mr. Whipple—Just on what point?

Mr. Bates—If you will read the last part of paragraph 3 you will see.

Mr. Whipple—The last paragraph of Article III, do you say, of your answer?

Mr. Bates—I think so; I will verify it in a moment.

Mr. Whipple—It reads, "The defendants aver that prior to January 25, 1898, the business of The Mother Church," etc.

Mr. Bates—If you will wait a moment I will direct your attention to it.

Mr. Whipple—Very well.

Mr. Bates—"Said defendants further admit that at no time in her lifetime"—

The Master—What is the paragraph?

Mr. Bates—This is the next to the last paragraph in the answer.

The Master—Whose answer?

Mr. Bates—In the defendants' answer.

The Master—The four defendants?

Mr. Bates—Yes. Page 14, at the top.

The Master—You offer the whole will?

Mr. Bates—We do, yes.

The Master—Have we got to have it all reproduced?

Mr. Bates—I do not think it is necessary; I merely offer it as an exhibit; I do not ask to have it written in the record, I do not think it is necessary.

"Said defendants further admit that at no time in her lifetime did Mrs. Eddy give any authority to the Board of Directors over the publications of which she was the sole author; and they aver that by the will of Mrs. Eddy, duly probated, she bequeathed all of said publications to The Mother Church, in trust for the promoting and extending of the religion of Christian Science as taught by her."

In connection with that the question arose as to whether or not the Church could take that gift, and there was an enabling act passed, to which I direct Your Honor's attention, being Chapter 115 of the Acts and Resolves of the Massachusetts Legislature of 1913.

Mr. Whipple—Do you offer that?

Mr. Bates—Yes. I am directing His Honor's attention to it.

Mr. Thompson—It is in evidence, I suppose?

Mr. Whipple—Is it in evidence?

Mr. Bates—Yes.

Mr. Whipple—Because I think that precipitates another situation with regard to what this Christian Science Board of Directors is.

Mr. Bates—Yes. That will be a question for argument later.

Mr. Whipple—No; it is a question of the admissibility of the evidence.

The Master—Well, we are going later to consider that.

Mr. Whipple—Then we will see whether they are a corporation or not, after we get all the things in in regard to it.

The Master—If we are going to consider that question, as it appears now we must, we want all the material for it.

Mr. Whipple—I quite agree, Your Honor; I waive any objection to it.

The Master—This is part of the material, apparently.

Mr. Whipple—I quite agree.

Mr. Bates—Yes, Your Honor.

Mr. Whipple—I doubt it for the moment whether counsel knew just what it states.

Mr. Bates—You needn't doubt, we are perfectly aware of what it states, and it doesn't state what you think it does. You have reference to another matter.

The Master—Well, let us hear about that later. What is the next record?

Mr. Whipple—What part of the will is offered? I think that should be read into the record and then we needn't have the exhibit marked. Isn't that a suggestion that Your Honor approves?

Mr. Thompson—It would be very convenient to have the part relied on where we could get it to look at if we wanted to.

The Master—Why not do that?

Mr. Bates—I will read it, if you like.

Mr. Whipple—And then have the act read into the record—the act you refer to. It will save referring to the act you offer when we are looking over the records for the purposes of review.

The Master—Will that be acceptable?

Mr. Bates—The act is brief. We have no objection to it.

Mr. Whipple—Let us have the will first—the part of the will which is offered. Let that be read first, won't you? I mean, it was offered first.

The Master—Don't you mean the part of the will which is relied on? He offers the will. The whole will, I suppose, is before us, as far as it is necessary to understand any part of it.

Mr. Whipple—Yes, Your Honor.

The Master—But your suggestion was that he should identify the particular part which relates to the subject he mentioned—that of the transfer of the copyrights, was it?

Mr. Bates—It was in regard to Mrs. Eddy's own works.

The Master—The bequest of the copyrights. Now read or refer to the part of the will upon which you now rely.

Mr. Bates—I find, Your Honor, that there is so much of it, and there are so many references, that I think if it is going into the record it better go in as a whole.

Mr. Thompson—I think so, too. That is a pretty important document. It will save a good deal of time in turning over so many papers when we are making the briefs.

Mr. Whipple—You mean to have the whole will printed in the record?

Mr. Bates—Yes.

The Master—It is desired to have the whole will appear in the record? That is the desire of all counsel, is it?

Mr. Whipple—We make no objection to it. We say, of course, our conten-

tion is that it is not material in any legal aspect.

The Master—I think we shall have to have it, undoubtedly.

[A copy of the will of Mrs. Eddy is marked Exhibit 740, and is copied into the record, as follows:]

[Copy of Ex. 740, L. W. R.]

"Be It Known that I, Mary Baker G. Eddy, of Concord, New Hampshire, being of sound and disposing mind and memory, do make, publish and declare this to be my last will and testament in manner and form following, that is to say;

"1. I hereby nominate and appoint Honorable Henry M. Baker, of Bow, New Hampshire, sole executor of this my last will and testament; and, having ample confidence in his ability and integrity, I desire that he shall not be required to furnish sureties on his official bond.

"2. Having already transferred and given to my son, George W. Glover, of Lead City, South Dakota, four certain mortgage deeds bought of the Farmers Loan and Trust Company, of the State of Kansas, and having already given him a house and lot located in Lead City, South Dakota, and monies at various times, I hereby confirm and ratify said transfers and gifts, and, in addition thereto, I give and bequeath to my said son, George W. Glover, the sum of ten thousand dollars.

"3. I give and bequeath to George H. Moore, of Concord, New Hampshire, the sum of one thousand dollars; to each of the five children of my son, George W. Glover, the sum of ten thousand dollars; to Mrs. Mary A. Baker, of Boston, Massachusetts, widow of my late brother, the sum of five thousand dollars; to Frances A. Baker, of Concord, New Hampshire, the sum of one thousand dollars; to Henrietta E. Chanfrau, of Philadelphia, Penn., the sum of one thousand dollars; to Fred N. Ladd, of Concord, New Hampshire, the sum of three thousand dollars; to my adopted son, Benjamin J. Foster, M. D., the sum of five thousand dollars; to Calvin A. Frye, of Concord, New Hampshire, the sum of ten thousand dollars, provided he continues in my service to the date of my decease; to Pauline Mann, of Concord, New Hampshire, the sum of one thousand dollars, provided she continues in my service to the date of my decease; to Joseph G. Mann, of Concord, New Hampshire, three thousand dollars, provided he continues in my service to the date of my decease; to Laura E. Sargent, of Concord, New Hampshire, three thousand dollars, provided she continues in my service to the date of my decease.

"4. I give and bequeath to the Mother Church—First Church of Christ, Scientist, in Boston, Massachusetts, the sum of fifty thousand dollars.

"5. I give and devise to Calvin A. Frye and Joseph G. Mann, above named, provided they shall respec-

tively remain in my service to the date of my decease, the right, during the term of their respective natural lives, to occupy and use my homestead and grounds called 'Pleasant View,' in Concord, New Hampshire, as their residence and home, but the rights hereby conditionally granted to said Frye and Mann shall not be assignable to any other person. Said homestead and grounds connected therewith shall not be leased to, or occupied by, any persons, except as herein provided. No part of said homestead, or lands connected therewith, shall be devoted to any other uses or purposes than those of a home for said Frye and Mann during their respective lives (provided they respectively remain in my service to the date of my decease) and a home for my grandchildren according to the terms of this will and, after the termination of the rights of said Frye and Mann and my grandchildren as herein provided, as a place for the reception, entertainment, and care of Christian Science visitors and their friends, and to such other purposes looking to the general advancement of the Christian Science religion as may be deemed best by the residuary legatee. All the personal property, except my jewelry, in and about said homestead and lands shall be kept and carefully used on said premises.

"In my contract with Edward A. Kimball of Chicago, dated October 9, 1899, provision is made for the creation of a trust fund for the purpose of procuring an annual revenue or income which shall be used for maintaining in a perpetual state of repair my said homestead. A further provision is also made for that purpose in said contract. [The words 'in said contract' inserted before signing. M. B. G. Eddy.] If for any reason, sufficient funds for such purposes shall not be provided from the sources named in said contract, then I direct that my residuary legatee shall provide and expend such sums, from time to time, as may be necessary for the purpose of maintaining said homestead and grounds in a perpetual state of repair and cultivation.

"I hereby give and devise to my grandson, George W. Glover, Jr., the right and privilege of living and having a home at Pleasant View and of being supported therein in a reasonable manner at the expense of my estate while he is obtaining his education preparatory to admission to Dartmouth College, provided he shall select and choose to obtain his education at that institution. I also direct my executor to pay all of said George W. Glover, Jr.'s reasonable expenses while at said college, giving him, in the meantime, the privilege of a home at Pleasant View.

"I also give and devise to my granddaughters the right and privilege of living and having a home at Pleasant View, and of being supported therein

in a reasonable manner at the expense of my estate, while they, or either of them, are obtaining a high school education, provided they, or either of them, desire the advantages of such course.

"6. I give and bequeath to the Christian Science Board of Directors of The Mother Church—The First Church of Christ, Scientist, in Boston, Massachusetts—and their successors in office, the sum of one hundred thousand dollars, but, nevertheless, in trust for the following purposes, namely; said trustees shall hold, invest, and reinvest the principal of said fund and conservatively manage [the word 'manage' stricken out before signing. M. B. G. Eddy.] the same, and shall use the income and such portion of the principal, from time to time, as they may deem best, for the purpose of providing free instruction for indigent, well-educated, worthy Christian Scientists at the Massachusetts Metaphysical College and to aid them thereafter until they can maintain themselves in some department of Christian Science.

"I desire that the instruction for which provision is hereby made shall be at the said college, but my said trustees are hereby authorized to provide said instruction elsewhere, if, in the unanimous judgment of all said trustees for the time being, such course shall seem best. The judgment and discretion of said trustees with reference to the persons to be aided as herein provided and the amount of aid furnished to each of said persons shall be final and conclusive.

"7. I hereby ratify and confirm the following trust agreements and declarations, viz.

"(1) The Deed of Trust dated September 1, 1892, conveying land for church edifice in Boston and on which the building of The First Church of Christ, Scientist, now stands.

"(2) The trust agreement dated January 25, 1898, conveying to Edward P. Bates, James A. Neal, and William P. McKenzie, and their successors, the property conveyed to me by The Christian Science Publishing Society, by bill of sale dated January 21, 1898, the said trust being created for the purpose of more effectually promoting and extending the religion of Christian Science as taught by me.

"(3) The trust agreement dated February 12, 1898, specifying the objects, purposes, terms, and conditions on which The First Church of Christ, Scientist, in Boston, Massachusetts, shall hold the real estate situated at No. 385 Commonwealth Avenue, in Boston, Massachusetts, which was conveyed by me to said Church on said February 12, 1898.

"(4) The trust agreement dated January 31, 1898, whereby certain real estate was conveyed to George H. Moore, Calvin A. Frye, and Ezra M. Buswell, and their successors, and in addition thereto, the sum of one hundred thousand dollars, for the purpose



of a Christian Science church to be erected on said real estate.

"(5) The trust agreement dated May 20, 1898, under which the sum of four thousand dollars was transferred to The First Church of Christ, Scientist, in Boston, for the benefit of the children contributors of the Mother's room in said church.

"(6) The Deed of Trust dated December 21, 1895, transferring five hundred dollars to the trustees of Park Cemetery Association of Tilton, New Hampshire.

"8. I give, bequeath and devise all the rest, residue and remainder of my estate, of every kind and description, to The Mother Church—The First Church of Christ, Scientist, in Boston, Massachusetts, in trust for the following general purposes; I desire that such portion of the income of my residuary estate as may be necessary shall be used for the purpose of keeping in repair the church building and my former house at No. 385 Commonwealth Avenue in said Boston, which has been transferred to said Mother Church, and any building or buildings which may be, by necessity or convenience, substituted therefor; and so far as may be necessary, to maintain my said homestead and grounds ('Pleasant View' in Concord, New Hampshire) in a perpetual state of repair and cultivation for the use and purposes heretofore in this will expressed; and I desire that the balance of said income, and such portion of the principal as may be deemed wise, shall be devoted and used by said residuary legatee for the purpose of more effectually promoting and extending the religion of Christian Science as taught by me.

"Witness my hand and seal this thirteenth day of September, A. D. 1901.

"MARY B. G. EDDY (LS)

"Signed, sealed and declared by the above named Mary Baker G. Eddy as and for her last will and testament, in the presence of us, who, at her request, in her presence, and in the presence of each other, have subscribed our names as witnesses hereto.

"MARY E. TOMLINSON  
"IRVING C. TOMLINSON  
"MYRON J. PRATT  
"ALVIN B. CROSS"

"Be It Known that I, Mary Baker G. Eddy of Concord, New Hampshire, do hereby make, publish and declare a codicil to my last will and testament, originally dated Sept. 13, 1901, a duplicate of said will having been this day re-executed by me upon the discovery of the loss of the original, dated Sept. 13, 1901, as aforesaid, in manner following, namely;

"1. I hereby revoke the bequest in paragraph numbered 5 of my said will, to Joseph G. Mann, of the right to occupy with Calvin A. Frye my homestead premises known as 'Pleasant View,' during the lifetime of said Mann, and I hereby bequeath unto Irving C. Tomlinson, of Concord, New

Hampshire, and to his sister Mary E. Tomlinson the right during the term of their respective lives to occupy and use as a home said premises known as 'Pleasant View,' said occupancy and use by them to be personal to them and not assignable to any other person by them or either of them and shall be exercised with due regard to the rights of other persons named in said will, excepting said Mann, to occupy and enjoy said premises.

"2. I give and bequeath to Laura E. Sargent the sum of Five Thousand Dollars (\$5000), this legacy to be in lieu of the legacy provided for her in paragraph numbered 3 of my said will, and to be unconditional.

"3. I give, devise and bequeath to the Second Church of Christ, Scientist, in New York City, a sum not exceeding One Hundred and Seventy-Five Thousand Dollars (\$175,000) sufficient to pay the indebtedness which may exist at the time of my decease upon the church edifice of said Second Church of Christ, Scientist, and direct that said sum of One Hundred and Seventy-Five Thousand Dollars (\$175,000), or so much thereof as may be necessary for the purpose, shall be applied as soon as may be after my decease to or toward the extinguishment of said indebtedness; if the amount required for this purpose shall not be as much as One Hundred and Seventy-Five Thousand Dollars (\$175,000), then this legacy shall be limited to the amount actually required.

"4. I give and bequeath to Mrs. Pamela J. Leonard, of Brooklyn, New York, the sum of Three Thousand Dollars (\$3000.); to Mrs. Augusta E. Stetson, of New York City, my 'crown of diamonds' breastpin; to Mrs. Laura Lathrop, of New York City, my diamond cross; to Mrs. Rose Kent, of Jamestown, New York, my gold watch and chain; and to Henry M. Baker, of Bow, New Hampshire, my portrait set in diamonds.

"5. Mrs. Mary A. Baker, to whom I have bequeathed Five Thousand Dollars (\$5000), by my will having deceased since the original execution of said will on Sept. 13, 1901, I hereby revoke the legacy therein provided for her."

["Paragraph 6 inserted before signing.

"MARY BAKER G. EDDY.]

"6. The bequest in my will to Calvin A. Frye is hereby increased to twenty thousand dollars, but subject to the same condition as therein provided.

"I hereby ratify and reaffirm my will as originally executed on Sept. 13, 1901, and as again executed this day in all respects except as herein modified.

"In witness whereof I have hereunto set my hand and seal at Concord, New Hampshire, this seventh day of November, A. D., 1903.

"MARY BAKER G. EDDY. (LS)

"Signed, sealed, published and de-

clared by the above named Mary Baker G. Eddy to be a codicil to her last will and testament in presence of us, who at her request, in her presence and in the presence of each other have subscribed our names as witnesses hereto.

"MYRON J. PRATT  
"ALVIN B. CROSS  
"CALVIN C. HILL."

"34 St. Stephen St., Boston

"Be it known that I, Mary Baker G. Eddy, of Concord, New Hampshire, do hereby make, publish, and declare this second codicil to my last will and testament originally dated September 13, 1901, a duplicate of said will having been re-executed by me on November 7, 1903, in manner following, namely:

"I. I hereby direct and require that the executor of my will shall sell, within three months after his appointment, at public auction or, if he sees fit, at private sale, for such price as he may determine upon and to such purchaser as he may see fit, my real estate in said Concord known as 'Pleasant View,' consisting of my homestead and the grounds occupied in connection therewith, and I hereby direct that the proceeds of such sale shall be forthwith paid over to the Directors of the First Church of Christ, Scientist, in Boston, Massachusetts, to be used for such purposes in connection with said Church as said Directors may determine. Nothing contained in my will or codicils thereto shall be considered inconsistent with said Church purchasing said real estate, if the Directors may consider it desirable so to do.

"I hereby revoke the provisions of my will and first codicil providing for the occupancy of said real estate by various persons, the preservation and maintenance thereof at the expense of my estate, and all other provisions of my will and codicil inconsistent with the foregoing direction to my executor to sell said real estate.

"II. I hereby give and bequeath to The First Church of Christ, Scientist, in Boston, Massachusetts, all the contents of my said homestead and of the other buildings at 'Pleasant View,'—except so far as any of the same may be specifically bequeathed in my will and codicils thereto, which specific bequests I do not modify by this provision,—the same to be kept or disposed of as may be determined by the Directors of said Church; but I direct that Calvin A. Frye shall have the privilege of selecting from said articles such keepsakes or mementos, not exceeding in intrinsic value the sum of five hundred dollars, as he may desire, and I give and bequeath the same to him when so selected.

"III. I hereby direct that said Calvin A. Frye shall be provided with a suitable home in my house at No. 385 Commonwealth Avenue, Boston, if he so desires, he to have the exclusive occupancy of two furnished rooms therein, to be designated by my exec-

utor, and to have his board, suitable heat, light, and all other things necessary for his comfortable occupancy of said premises during his natural life, the expense thereof to be provided out of the income from the residue of my estate which I have left to said The First Church of Christ, Scientist, in Boston, Massachusetts.

"IV. I give and bequeath to Lydia B. Hall, of Brockton, Massachusetts, the sum of one thousand dollars.

"V. I give and bequeath to Irving C. Tomlinson, of said Concord, the note which I hold signed by him, it being my intention hereby to release him from said indebtedness.

"In all other respects except as herein specified, I hereby ratify and reaffirm my will and codicil above mentioned.

"In witness whereof I have heretofore set my hand and seal at Concord, New Hampshire, this fourteenth day of May, A. D. 1904.

"MARY BAKER G. EDDY (LS)

"Signed, sealed, published and declared by the above named Mary Baker G. Eddy to be a codicil to her last will and testament, in presence of us, who, at her request, in her presence, and in the presence of each other, have subscribed our names as witnesses hereto.

"JOSIAH E. FERNALD

"MARY E. THOMPSON

"CALVIN C. HILL

"Registry of Probate, Suffolk, ss.

"Boston, June 11th, 1919.

"A true copy of a copy. Attest:

"CLARA L. POWER,

"Assistant Register."

Mr. Bates—Chapter 115, entitled "An Act to Authorize The First Church of Christ, Scientist, in Boston, to take and hold property under the Will of Mary Baker G. Eddy:

"Be it enacted, etc., as follows:

"Section 1. The First Church of Christ, Scientist, in Boston, is hereby authorized to take and hold the real and personal estate devised and bequeathed to it by the will, duly admitted to probate, of its Founder, Mary Baker G. Eddy, late of Concord, New Hampshire, deceased; to be held and administered by its Board of Directors subject to the trusts created by said will.

"Section 2. This act shall take effect upon its passage.

"Approved, Feb. 18, 1913."

The Master—That, as I understand it, was subsequent to the decision in Chase v. Dickey?

Mr. Bates—Yes, Your Honor.

Mr. Thompson—Would you mind, Governor Bates, stating what your claim is as to the kind and amount of property that the Church, so-called, took title to under that statute?

Mr. Bates—I do not care to state it at this time.

Mr. Thompson—And the location of the property—whether here or in New Hampshire.

Mr. Bates—There is a letter which has been referred to two or three times. Have you any objection to its going in (handing letter to counsel)?

Mr. Thompson—Is this in the case of Eustace or in the case of Dittmore?

Mr. Bates—It is in the Eustace case.

Mr. Thompson—Then I don't think I will read it. Mr. Whipple, perhaps, will be interested in it.

Mr. Whipple—We do not think that that is admissible at all. The fact appears that you sent a copy of your letter addressed to Judge Hughes, to the directors—all of them—each of them. That has been testified to. But your impressions with regard to the settlement that had been reached are not material, any more than ours.

Mr. Bates—I am not sure, Your Honor, that that is competent. It is a letter which the counsel sent to The Christian Science Board of Directors on Feb. 6.

The Master—Communications between counsel for the directors to the Board of Directors?

Mr. Bates—Yes, Your Honor.

The Master—On Feb. 6. What year?

Mr. Bates—This present year.

The Master—This present year.

Mr. Bates—Immediately after a meeting which the counsel had held on Feb. 1, and bearing on that meeting, in which we inclose a letter also which is a copy of a letter which we had sent to each of the counsel on the other side.

Mr. Thompson—What is the date of that, Governor Bates?

Mr. Bates—Feb. 6, 1919.

The Master—For what purpose?

Mr. Bates—I do not think it is competent except as bearing on the statements which have been made in reference to the advice that counsel had given to the directors, and it also shows the information from the board.

The Master—One moment. Statement regarding the advice which the directors' own counsel had given them?

Mr. Bates—Yes.

The Master—Statement by whom?

Mr. Bates—Well, it is a letter from the counsel, and of course it speaks for itself. It is a letter—

The Master—No. You say it is relevant upon a statement which has been made.

Mr. Bates—Well, they have read from the records certain records in regard to advice which the counsel had given.

The Master—Read from the directors' records?

Mr. Bates—Yes, Your Honor.

Mr. Thompson—That is, to prepare the case before you bring it. Wasn't that it?

Mr. Bates—That is what the reference was.

The Master—I think I shall have to see exactly the statement you refer to in those records before I can deter-

mine about the admissibility of such a letter.

Mr. Bates—I am not clear, Your Honor, as I stated, that this letter is strictly admissible, because the references which have been made have been rather vague and I do not think there has been a direct reference made to this letter, and if Your Honor thinks that we ought not to put it in—

The Master—You offer it, and here is an objection on which I have got to pass. You tell me yourself that you are not quite clear as to its admissibility.

Mr. Bates—I thought probably counsel would not object to it; but if they do, I think Your Honor should entertain the objection at this time.

The Master—Then you withdraw it, or do you want me to exclude it?

Mr. Bates—I withdraw it.

The Master—The letter is withdrawn.

Mr. Bates—Now, there is a record that was read by counsel on the other side from the directors, which Your Honor will recall, I am certain, because they have referred to it several times, a record which reads as follows—

The Master—Do you remember the date?

Mr. Bates—The date is March 3.

Mr. Thompson—The directors' record?

Mr. Bates—March 3, 1919.

Mr. Thompson—The directors' record?

Mr. Bates—The directors' record.

The Master—Directors' record, March 3.

Mr. Whipple—Pardon me. Are you going to read from the directors' record?

Mr. Thompson—1919, I suppose. Haven't you the real record? Didn't you first have the real record in your hand here?

Mr. Bates—The record which was read and is in evidence is as follows:

"The directors had an interview with Judge Clifford P. Smith, who read to the board two letters from himself to the board, both dated March 1, one recommending that the Board of Trustees of the Publishing Society be composed of three editors and recommending that an early selection be made of the business manager for the Publishing Society; the other conveying an opinion expressed by ex-Governor Bates in conversation with Judge Smith that the board make frequent demands upon the trustees for information."

What I propose to do is to introduce the letter of Judge Smith to the Board of Directors upon which that record is based, and that, I think, there is no question but in that we have the right to do, as it is a record which was put by the plaintiffs and has been several times referred to by them. If you wish me to call Mr. Jarvis and have him testify that this is the only letter that he received in regard to that matter, I will do so.

Mr. Whipple—I do not think that his letters are admissible. I suppose that you could very well call Judge Smith and ask him, if you thought it was technically necessary, to prove that he wrote it and sent it.

Mr. Bates—I think that the clerk is the only one who can testify that that is the only letter referred to and that it is the only letter that he received bearing on that subject, because he is the one who is custodian of the records and is the one who made the record.

Mr. Whipple—Would not Judge Smith know?

Mr. Bates—I do not see how he can testify as to the record as Mr. Jarvis can.

Mr. Whipple—He might as to other things.

Mr. Bates—If you question that, I will ask Mr. Jarvis to take the stand.

The Master—Pause a moment. I suppose there is no doubt that if you call Mr. Jarvis he will say that is the letter referred to in the record.

Mr. Bates—Absolutely no doubt of it.

Mr. Whipple—I assume that is so. I made no technical objection.

The Master—I did not suppose that you did. Now, assuming that, you object to the admissibility of the letter?

Mr. Whipple—Yes, Your Honor. It does not seem to me—

The Master—Has Mr. Thompson anything to say?

Mr. Thompson—Do I understand you to say that one of your points is that only one letter from Judge Smith was read to the board on that day?

Mr. Bates—There were two read and we have them here. There was only one in which there was any reference to any conversation with myself.

Mr. Whipple—That does not make it any more admissible than the other one.

Mr. Bates—They are both admissible, and I offer them both if you wish it; but the only one I desire to offer is the one I have offered. I have no objection to your offering the other. It is a matter of two or three passages and does not bear upon the subject.

Mr. Thompson—If you are going to put in one, I would like to have you put in the other. I object to the first one unless you put in the second one.

Mr. Whipple—I object to both of them, if Your Honor please. I do not think that they will help the record.

The Master—I am unable to see why they are admissible. What point is in controversy about them?

Mr. Bates—This is a record that was put in by the plaintiffs in this case.

The Master—Yes.

Mr. Bates—Mr. Whipple has several times drawn a wrong inference from the statement in regard to what was in that letter of Judge Smith's. I do not put this letter in to in any wise modify or change the record. I only put it in for the purpose of showing

what was referred to and that Mr. Whipple's inferences are entirely unfounded.

The Master—Will you remind me of the erroneous inference you say Mr. Whipple has drawn?

Mr. Bates—He has claimed that we were trying to prepare a case and have the directors get evidence to prepare a case against the trustees and that they were to make these demands in order to prepare a case. The letter shows exactly the contrary. He has put a false construction on the record, and we have the right, he having introduced the record, to show the letter that is specifically referred to in that record.

Mr. Whipple—I have made no such inferences, and it is of no consequence what inferences I make or what the letter is. The thing that is of consequence is as to how the directors took it and how they acted upon that record, and the evidence is plenary in that way to that extent. I have cross-examined the directors about it and I shall comment upon their testimony and their construction—their construction, not mine—what the record which we put in meant namely—Do you remember that Mr. Dickey testified, and apparently with satisfaction, if not with glee—

Mr. Bates—I submit, Your Honor, that he is not responding to your question.

The Master—Oh, yes; I want to get the question in my mind.

Mr. Whipple—He has said that the demands, he understood, were so that they were made with the very purpose that if the trustees did not comply with them, being reasonable demands, it would be ground for their removal. I say that his satisfaction was very distinct when he testified about that. That is what I have commented on, namely, that they made demands hoping or in the expectation that the trustees would not comply with them; and he said, further than that, that although that was done by the advice of counsel, they did not do it as much after they got that advice as they did before, claiming, you see, the originality of that strategy himself; that they were or—

Mr. Bates—It shows that they did not understand the letter as you have inferred from the record.

The Master—One moment, Governor.

Mr. Whipple—I haven't said anything as to what I understood about it.

The Master—If the argument which you indicate to us now is to be drawn, or attempted to be drawn, from the directors' records referred to, does it not strike you that there would be a certain want of fairness in refusing to allow the very letter to which that record refers to be introduced?

Mr. Whipple—No, Your Honor, and for this reason—if Your Honor will permit me to state it. I am drawing no inference from the record. I am

founding the entire claim upon what the directors did and what they testified to before Your Honor under oath.

The Master—True; but—

Mr. Whipple—I am not dealing with the question as to the wisdom of Mr. Bates' advice or Judge Smith's advice.

The Master—And he does not offer the letter, I gather from him, for any such purpose?

Mr. Bates—No, Your Honor.

The Master—We are not going to consider the wisdom.

Mr. Bates—No.

The Master—I do not quite see how we can fairly deal with the directors' testimony about that, based as it is in part upon the record, without having the contents of the letter.

Mr. Whipple—If Your Honor feels that justice to anyone requires that the letter should be read under those circumstances and in view of the argument which I propose to make upon the directors' own statements, I have no objection.

The Master—Pause a moment. Now, that leads me—

Mr. Whipple—I am not going to do anybody an injustice, but I am going to make the arguments.

The Master—Very well. I will admit it subject to your objection.

Mr. Whipple—I waive any objection to it in view of what Your Honor says.

Mr. Thompson—I want the whole record in and both letters. I object—

The Master—I make no ruling about any other letter than the one now offered.

Mr. Whipple—I think that we had better have both of them, because one is just as much a part of the record as the other.

Mr. Thompson—Two letters offered on the same day.

Mr. Bates—I have already stated that I have no objection to your having the other letter if you want it. I do not consider it relevant, but I have no objection to offering it and will if you both desire.

Mr. Whipple—Let me see the other letter.

The Master—Pause a moment. Hand him the other letter if you are going to offer it.

Mr. Bates—I am going to offer it at their request (passing a paper to Mr. Whipple).

Mr. Whipple—I want to look it over. I may agree with you that it is not relevant and that there is nothing in it. If I do, then we won't put it on the record.

Mr. Bates—The letter which I now offer is on the letter paper of the Committee on Publication of The First Church of Christ, Scientist:

[Stamped:] "Copies sent to Directors.

[Stamped:] "Read, Mar. 3, 1919, The C. S. Board of Directors.

[Stamped:] "The Christian Science Board of Directors, 2:20, Mar. 3, 1919.

"Committee on Publication of  
"The First Church of Christ, Scientist,  
"236 Huntington Avenue  
"Boston, Massachusetts  
"March 3, 1919.

"The Christian Science Board of  
Directors,  
"105 Falmouth Street,  
"Boston, Mass.

"Dear Friends:

"Last Thursday when I left your room with Governor Bates, I went to lunch with him partly for the purpose of hearing anything that he might wish to say to me as one counsel to another. He did not, however, say much more to me than he had said to you. The one thing which he spoke of more than any other was that it would be advisable for the directors to try for a time to supervise the Publishing Society and give all necessary orders while holding in abeyance the question of the trustees' general attitude toward our Church Manual. Governor Bates said to me, as he had said to you, that it could be reasonably contended that the discussion between counsel on the 1st of February contemplated that this would be done. Referring to a discussion between him and Judge Hughes, which I did not hear, Governor Bates said that he wondered what Judge Hughes would think about the course of events since then between the directors and the trustees. I explained to Governor Bates that the verbal assurance given by the trustees to the directors on the 3rd of February furnished a special reason for proposing for signature the paper which the trustees refused to sign on the 10th of February, and that their refusal furnished a special reason for the subsequent discussions and letter. This explanation appeared to satisfy Governor Bates, but he spoke in favor of trying now for a time to do as he had advised, and as I have repeated above. He spoke of the last letter from the directors to the trustees as leaving the situation in a favorable position for suspending further discussion of the trustees' general attitude of [an ink line is drawn through 'of' and on the margin is written in ink 'toward'] our Church Manual, and for establishing the directors' control of the publishing business by the exercise of it and the trustees' acquiescence therein.

"Cordially and sincerely yours,  
(Signed) "CLIFFORD P. SMITH."

[The letter of which the foregoing is a copy is marked Exhibit 741. R. J. M.]

Mr. Bates—Are you through with the other letter?

Mr. Whipple—Not quite. (To Mr. Thompson.) Have you seen it?

Mr. Thompson—No, I have not.

The Master—That is a long letter.

Mr. Thompson—I can skim through it in a minute.

The Master—I understand that is another letter from Judge Smith.

Mr. Whipple—On the same day.

The Master—On the same day?

Mr. Bates—It is another letter. What is the date of it?

The Master—March 3?

Mr. Demond—Both dated March 3d.

Mr. Whipple—Mr. Thompson, we are going to ask to have it put in, and the Governor will read it or I will read it.

Mr. Thompson—I would like to have it put in, too.

Mr. Whipple—Will you read it, Governor?

The Master—I want to keep out as far as it is possible these letters of counsel.

Mr. Thompson—From what little I saw of it I thought it was very material on every issue in both cases.

Mr. Whipple—I think that it is important, if Your Honor please, just as the last letter was, on the way that these directors were dealing with the trustees and their agreement that they would let the matters of contention rest and try to work along harmoniously together. We have alleged in the bill that Judge Smith, before the signatures were cold on that paper, was agitating to start something.

Mr. Bates—You have made no such allegation.

Mr. Whipple—Not in those—

Mr. Bates—And you have no right to say it.

Mr. Whipple— —words, but in substance, that is the allegation, that they did not keep the agreement.

The Master—I am afraid that it will be difficult for me to find sufficient basis for any definite conclusion on all that.

Mr. Thompson—I think it is material on ground quite different from those stated by Mr. Whipple. It indicates the attitude of Judge Smith and the kind of advice he was giving and the kind of things he was leading these men into.

Mr. Bates—Everything indicates that these—

The Master—Oh, never mind what it indicates, Governor. Read it.

Mr. Bates—Well, I do not like to have them express what they think it indicates.

The Master—They ought not to, of course.

Mr. Bates—The only theory, I assume, upon which it is admissible is that the records state that there were two letters from Judge Smith on that day, and this is the other letter.

The Master—Two letters and both referred to indiscriminately in what else is said in the record?

Mr. Bates—No, there is only one referred to in the rest of the record.

Mr. Thompson—No; both of them are referred to in the record.

Mr. Bates—I will read the record. (To the reporter.) You do not need to put this in again. (Reads from the directors' record.) The other letter is this:—

Mr. Whipple—Will you please read the heading? That is very material

in view of the By-Law which says that the Committee on Publications shall have nothing to do with the Publishing Society.

Mr. Bates—It has the heading, "Committee on Publication of The First Church of Christ, Scientist, 236 Huntington Avenue, Boston, Massachusetts, 1 March, 1919."—

The Master—Pause a moment. A letter from Judge Smith again?

Mr. Bates—Yes.

The Master—Do you think it is significant that he used that kind of paper in the letter?

Mr. Whipple—May I call Your Honor's attention to a part of Sec. 8 of Art. XXV of the By-Laws?

The Master—Yes, I remember.

Mr. Whipple—It says:

"The Committee on Publication are in no manner connected with these functions."

Now, then, Judge Smith, as that committee, was interfering with these functions, as we claim, not only unwisely, but flagrantly, in violation of the Manual.

Mr. Bates—Another argument, Your Honor! Judge Smith—

Mr. Whipple—And therefore the fact that it was written as the Committee on Publication, as shown by the heading, we deem to be material.

Mr. Bates—It has been testified that Judge Smith was regular counsel—

The Master—We will not argue it any further. It does not seem to me to be a necessary inference from the fact that it was written on that paper that he was writing as the Committee on Publication.

Mr. Whipple—We have not said that it was a necessary inference; we say that it is a ground for an inference.

The Master—I think that I should easily escape from the necessity of any such inference.

Mr. Whipple—Well, the fact that they do not call Judge Smith at all will be another thing on which we can found or ask for—

The Master—You can go on with the letter, Governor Bates.

Mr. Bates—

"1 March, 1919.

"The Christian Science Board of Directors,

"105 Falmouth Street,

"Boston, Mass.

"Dear Friends:

"During the last several days I have tried to reconsider the publishing department of The Mother Church in an original manner. Approaching that subject with my knowledge of its history and present condition, and without constraint by opinions heretofore expressed by me or anyone, I have formed, or again formed, the opinion that the best Board of Trustees for The Christian Science Publishing Society would be a board composed of three editors. This plan occurred to me when I was a member of that board; it occurred to me again something over two years ago when the directors consulted me on some point

pertaining to this subject; and now I regard it as not only the best plan for the publishing department of The Mother Church under normal conditions, but as furnishing a graceful exit for the present trustees at the present time, and as furnishing an expedient reason for their removal if they do not wish to take advantage of it voluntarily.

"It is evident that the three trusteeships do not, under normal conditions, furnish full occupations for three persons of the caliber needed for such duties. It is evident, also, that the trusteeships should be held by persons who will be the equals of the editors and the manager, and who will also be content to let them and the directors perform their respective functions. These several requirements are most likely to be met and the various dangers encountered in the past are most likely to be averted for the future by putting the editors on the Board of Trustees and electing a thoroughly well-qualified manager. This plan would practically insure an adjustment and cooperation between The Christian Science Board of Directors and the Board of Trustees of The Christian Science Publishing Society, between the directors on the one hand and the editors and the manager on the other, and between the several editors and the board of which they would be members. As between that board and the manager of the Publishing Society, this plan would give full employment to a competent business manager, and a board composed of three editors would be as well qualified to be superior in authority to the manager as any board otherwise composed. It is to be remembered that the business of The Christian Science Publishing Society, apart from publishing our Leader's writings and apart from what is now the department of branches and practitioners, consists almost entirely of issuing certain periodicals. For such business a Board of Trustees composed of editors would be peculiarly suitable. Indeed a board otherwise composed is liable to be unequal in qualifications to the editors and the manager, as to whom it would be nominally superior.

"It would be not essential to this plan that the Sentinel should have a separate editor, but such an arrangement would fit in with this plan, and it might be expedient by itself. I believe that it would be expedient.

"For the reasons stated in the first two paragraphs of this letter, I would recommend that the plan therein stated be laid before the present trustees as the best for 'promoting the interests of Christian Science,' to quote from the first numbered paragraph of the Deed of Trust dated Jan. 25, 1898, and Article XXV, Section 1, of our Church Manual. I would recommend, also, that this plan be tactfully proposed to the present trustees as furnishing a special and sufficient reason for their resignations

and for their helping to reorganize the Board of Trustees of the Publishing Society accordingly. . . .

"I would recommend, also, that the directors decide now whether to elect a new manager next June, and that if a new manager is to be elected, then he should be chosen now and put into the publishing house without delay. He will need that much preparation. If a new manager is to be chosen, perhaps that fact should be communicated to both the present manager and the present trustees now.

"Cordially and sincerely yours,  
"CLIFFORD P. SMITH.

"CPS:HM"

Mr. Whipple—You have omitted a part of that letter, haven't you, Governor?

Mr. Bates—I was going to call attention to the fact that there is struck out of the letter, and not a part of it, the following words, which come after the sentence as follows:

"I would recommend, also, that this plan be tactfully proposed to the present trustees as furnishing a special and sufficient reason for their resignation and for their helping to reorganize the Board of Trustees of the Publishing Society accordingly."

The words struck out follow:

"They should be given time to consider it, and it should be accompanied by the statement that the present compensation of the trustees will be reduced after the 1st of April to correspond with the change made by the new Department of Branches and Practitioners."

Mr. Whipple—Compensation.

Mr. Bates—Yes.

Mr. Whipple—"Compensation . . . will be reduced."

Mr. Bates—Yes, "to correspond with the change made by the new Department of Branches and Practitioners."

The Master—That is struck out.

Mr. Bates—That is struck out.

Mr. Whipple—That is not obliterated, and it does not appear that it is struck out.

Mr. Bates—I will call it to Your Honor's attention (placing before the Master the letter referred to).

Mr. Thompson—Does it appear by whom it was struck out?

Mr. Bates—Personally we regard it as unimportant. You may consider it in or out, just as you like.

Mr. Whipple—We would like to have it in, because it is a part of the letter—

Mr. Bates—Well, we have given you that option.

Mr. Whipple— to show how completely it was the purpose of these directors to subvert Mrs. Eddy's trust.

Mr. Thompson—We want it in for an entirely different reason—to show how completely it was the purpose of Judge Smith to mislead his clients.

Mr. Bates—It shows how completely he and all others were trying to work

out some plan which would save disaster to the Church.

[The letter of March 1, 1919, from Clifford P. Smith of The Christian Science Board of Directors, of which the foregoing is a copy, is marked Exhibit 742. R. J. H.]

I offer a certified copy of a deed from Mrs. Eddy to The First Church of Christ, Scientist, in Boston, Massachusetts, the deed being dated Jan. 25, 1898—

Mr. Thompson—Hasn't that gone in?

Mr. Bates— which Your Honor will recall is the date of the Trust Deed, and is the conveyance of the real estate that was made at that time to the Church by Mrs. Eddy.

The Master—What real estate is this?

Mr. Bates—This is the deed of the property that formerly belonged to the Publishing Society when it was a corporation. Your Honor will recall that there was introduced in evidence the deed from that corporation—

The Master—Will you give me the page?

Mr. Bates— to Mrs. Eddy, page 235 of the printed record, Exhibit 115.

The Master—Yes. That is the old Publishing Society.

Mr. Bates—The old Publishing Society.

The Master—Conveying certain real estate to Mrs. Eddy?

Mr. Bates—That is right. Now this—

The Master—And she reconveys it?

Mr. Bates—She reconveys it to The First Church of Christ, Scientist, in Boston, Massachusetts. I will not read the whole deed into the record, but I will call Your Honor's attention to the fact that the grantee is stated to be "The First Church of Christ, Scientist, in Boston, Massachusetts, a corporation duly established under the laws of the Commonwealth of Massachusetts."

[The deed from Mary Baker G. Eddy to The First Church of Christ, Scientist, dated Jan. 25, 1898, is marked Exhibit 743. R. H. J.]

I also offer a copy of a deed, duly certified, from Mrs. Eddy to Ira O. Knapp, William B. Johnson, Joseph Armstrong and Stephen A. Chase, as they are the present trustees known as The Christian Science Board of Directors under said Deed of Trust hereinbefore referred to as dated Sept. 1, 1892. The deed is dated the 21st day of December, 1903, and is recorded with Suffolk Deeds, Book 2943, page 2.

The Master—What are the premises conveyed there?

Mr. Bates—I think that I will have to read into the record a portion of the deed in order to answer Your Honor's question and I was going to read most of it, anyway.

The Master—They are not the same premises that were covered by the deed that you read just before, are they?

Mr. Bates—Yes, Your Honor.

The Master—Different premises?

Mr. Bates—The same premises.

The Master—The same premises.

Mr. Bates—This is a deed that is a reformatory deed of the one which has just been introduced. It reads as follows, the part which I wish to direct Your Honor's attention to:

"Know all men by these presents That whereas I, Mary Baker G. Eddy, of Concord, in the County of Merrimack in the State of New Hampshire, did, on the twenty-fifth day of January one thousand eight hundred and ninety-eight convey two parcels of land with the buildings thereon being lots I and H on a plan made by William H. Whitney, dated December 30, 1886, and recorded with Suffolk Deeds, Book 1756, page 17, the grantee named in said conveyance being 'The First Church of Christ Scientist in Boston, Mass., a corporation duly established under the laws of the Commonwealth of Massachusetts.' And whereas it has now been brought to my attention that said grantee was not a corporation, but said Church is a voluntary association of individuals the title to the Church property being vested in a board of trustees named in the deed of trust by me conveying the land upon which is situated the edifice in which said Church worships, said deed of trust being dated September 1st, 1892, and recorded in Suffolk Registry of Deeds, Book 2081, Page 257, and Whereas said deed of January 25, 1898 conveying said lots I and H was delivered to and accepted by said Board of Trustees and said Trustees have been in the actual possession of the property since the date of said conveyance and are now about to build an additional church edifice upon said two lots and adjoining property held by them. And whereas I now desire to modify the reservation to me contained in said deed of a right of occupation of a portion of said premises, and I further desire to correct the error in the description of the grantee named in the said deed, and to add to the trusts upon which this property is to be held. Now Therefore, I the said Mary Baker G. Eddy, in consideration of one dollar and other good and valuable considerations to me in hand paid by Ira O. Knapp, William B. Johnson, and Joseph Armstrong, all of Boston in the County of Suffolk and Commonwealth of Massachusetts and Stephen A. Chase of Fall River, in the County of Bristol, and said Commonwealth, as they are the present trustees known as The Christian Science Board of Directors under said deed of trust hereinbefore referred to as dated September 1st, 1892, the receipt whereof is hereby acknowledged, do hereby release, remise and forever quitclaim unto the said Trustees their successors in said trust and assigns forever, the parcels of land hereinbefore referred to being lots I and H on said plan, for a more particular description of which reference is hereby

made to said deed by me of January 25, 1898. With reference to the reservation in said deed of January 25, 1898, of which the following is a copy, namely: 'Reserving however the right to have and occupy so much room conveniently and pleasantly located in the publishing house as may be necessary to carry on the publication and sale of the books of which I am or may be the author and other literature connected therewith.' I for myself, my executors, and assigns, do hereby agree with said Ira O. Knapp, William B. Johnson, Joseph Armstrong and Stephen A. Chase as present trustees and as said Christian Science Board of Directors, and with their successors in said trust, that the rights so reserved in said deed of January 25, 1898, . . . "

[The deed from Mary Baker G. Eddy to Ira O. Knapp and others, dated Dec. 21, 1903, from which the foregoing extracts are read, is marked Exhibit 744. R. H. J.]

The Master—May I ask one question there? Are those different parcels of land from those covered by the deed of Sept. 1, 1892, or the same?

Mr. Bates—There were several parcels of land conveyed from time to time. I understand these are separate parcels.

The Master—Different parcels?

Mr. Bates—Yes, sir.

The Master—Not mentioned in the deed of Sept. 1, 1892?

Mr. Bates—No, sir; these are in addition to that.

Mr. Whipple—May I suggest that it states in the deed that they were for an additional church structure, and that the original structure was on the land conveyed by the first deed?

The Master—No doubt that will all be made clear hereafter.

Mr. Bates—Mr. Whipple, I asked you a good while ago, and possibly you may have forgotten it, to produce all the letters which the trustees had from Mrs. Eddy bearing on the affairs of the Publishing Society. Have you got them here?

Mr. Whipple—You did ask, and we have produced all the letters that we have bearing on that subject, I am so informed. I have not examined them. Am I right, Mr. Withington? Will you state what the fact is?

The Master—While he is looking for those —

Mr. Whipple—There is not anything to look for. Will you state what the fact is?

Mr. Withington—We have copies of those letters in a book, which we offer to submit, and which we have here, for the examination of the counsel for the directors, and we will get the originals of any letters which they desire us to produce. That book with typewritten copies of all letters which we have is here in court.

Mr. Whipple—Has it been examined by counsel for the other side?

Mr. Withington—I do not know.

Mr. Whipple—You have offered it to them for examination?

Mr. Withington—Yes, I have.

Mr. Bates—Well, may we see the book? I have not examined it.

Mr. Withington—Yes, it is here.

Mr. Bates—Will you be kind enough to pass it over so that we can be looking at it?

[A book is passed by Mr. Withington to Mr. Bates.]

Mr. Whipple—I understand that you have copies of most of these letters. Governor, whom would you like to have this book handed to? I take it you do not want it yourself because you are busy with other matters. Mr. Buffum will take it.

Mr. Bates—That is all right.

The Master—Before we leave the subject of deeds I am going to take the liberty of stating that this Exhibit C, another deed conveying land for church purposes, of Albert Metcalf—Exhibit C in the bill—I think has been referred to by counsel briefly, but I never have been quite able to understand what that deed is all about. At some time or other I will ask counsel to make it clear to me; you need not do it now.

Mr. Bates—I think, Your Honor, although I have not looked into this matter within a few days, my impression is—and I think I am right—correct me if I am wrong—that the deeds which are annexed to the bill in equity are the deeds of property upon which the Church stands.

The Master—Yes.

Mr. Bates—The old church. The deeds which I have just introduced are the deeds upon which the Publishing Society's house, owned by The Mother Church, now stands.

The Master—Well, now—

Mr. Bates—Mr. Abbott corrects me. He says it is where they originally stood.

The Master—That deed, Exhibit C, begins: "I, Albert Metcalf, the grantor in a certain deed given to Ira O. Knapp and others dated October 23, 1896, and recorded with Suffolk Deeds, Book 2591, page 398—" That is the only reference that I find anywhere to that deed.

Mr. Bates—I might say that the purpose of the introduction of these two deeds was particularly to show Mrs. Eddy's statement that this was a voluntary association.

The Master—Quite so. I understand that; and the deeds which you have put in relate to different land.

Mr. Bates—Exactly.

The Master—From that which is talked about in the deeds we have got here.

Mr. Bates—Yes, Your Honor.

The Master—I understand that; but the connection of Exhibit C with Exhibit B is not at all obvious to me.

Mr. Bates—Now, there has been some question raised—

Mr. Thompson—I have had trouble with that Exhibit C, too. It does not seem to convey anything—that Met-

calf deed; it is not a conveyance at all, is it?

The Master—I don't know what it is. You couldn't tell without referring to the deed to which it refers, which we haven't got anywhere as I recall it, in the case.

Mr. Thompson—We have been hoping that that would be put in, to throw some light on it.

Mr. Bates—There has been a question raised, Your Honor, in regard to certain property which for a time stood in the name of Mr. Abbott, and we were asked to make a statement in regard to it, or at least, we volunteered that we would, and I will ask Mr. Abbott, who was the trustee, to make that statement.

Mr. Whipple—Where in the record was there a request made that Mr. Abbott should make a voluntary statement?

Mr. Bates—I am going to ask him, as associate counsel, to put in the papers to which you refer. You raised the question yourself.

Mr. Whipple—Then I understand that it is not a voluntary statement; it is an offer of evidence.

Mr. Abbott—It is the offer of the deed of all of the property on which the publishing house now stands. The deeds which have just been introduced were deeds to property on which the publishing house formerly stood, but which is now occupied in part by the present Mother Church building. The exhibits which we now offer are a deed, first, from myself to the Board of Directors, as they are The Christian Science Board of Directors, a deed dated May 11, 1904, and recorded in book 2972, page 35, of the Suffolk Registry of Deeds. The next one is from—

Mr. Whipple—Did you give the date?

Mr. Abbott—May 4, 1904.

The Master—Why not pass them over as you offer them, as counsel may very likely want to see them?

Mr. Whipple—Did you give the date it was recorded?

Mr. Abbott—I did not give the recording date.

Mr. Whipple—Won't you, as you go through, give the date when it was recorded?

Mr. Abbott—Mr. Thompson, what is the recording date?

Mr. Thompson—I am just looking for it here. June 6, 1904.

Mr. Abbott—Another piece of property on which the publishing house now stands, given by E. Noyes Whitcomb to Ira O. Knapp, William B. Johnson, Joseph Armstrong, and Stephen A. Chase, as they are The Christian Science Board of Directors, dated May 11, 1904, and recorded on June 6, 1904, in book 2972, page 37.

Mr. Whipple—Would it be proper to suggest in this connection that Mr. McLellan, while he had been elected as a director, at this time—had he not—

Mr. Abbott—What?

Mr. Whipple—Mr. McLellan at this time had been elected as a director?

Mr. Abbott—No, I think not.

Mr. Whipple—In 1904?

Mr. Abbott—Not unless his name appears there. I am very sure he had not.

Mr. Whipple—On the contrary, he was elected in 1903.

Mr. Thompson—Certainly.

Mr. Whipple—It appears by the record, and his name does not appear.

Mr. Abbott—It may be that I left out his name.

Mr. Whipple—Will you look and see?

The Master—We had that this morning, didn't we—the fifth director?

Mr. Whipple—February, 1903; and I want to call attention in this connection, because we are dealing with that, to the fact that although Mr. McLellan was a director, or had been elected as a director by his fellow directors, his name does not appear in either of the deeds that you have offered as a Christian Science director.

Mr. Abbott—His name does not seem to appear in this deed.

The Master—Nor did it appear, as I have got it, in the deed by Mrs. Eddy, on Dec. 21, 1903, put in a short time ago.

Mr. Whipple—No, Your Honor; which would seem to be in accordance with Mrs. Eddy's statement in the letter that we put in this morning, that Mr. McLellan could not appear in the deed, according to Mr. Elder's advice.

Mr. Abbott—Then we offer a certified copy of a petition to the Supreme Judicial Court of Massachusetts, a petition signed by Ira O. Knapp, Joseph Armstrong, William B. Johnson, Archibald McLellan, and Stephen A. Chase, "the members of and constituting The Christian Science Board of Directors, and the said Christian Science Board of Directors, a body corporate, existing by virtue of the laws of this Commonwealth." And then this petition goes on to recite that E. Noyes Whitcomb had made a voluntary declaration of trust, which is attached to the petition, of certain properties which he had purchased at their request. He having passed away, they petition the Court that I should be appointed in his place, and the Supreme Court appointed me in place of E. Noyes Whitcomb.

Mr. Whipple—What is the date of that petition?

Mr. Abbott—That petition is dated the 15th of January, 1906.

Mr. Whipple—Does Whitcomb's declaration of trust appear?

Mr. Abbott—It is attached to the petition.

Mr. Whipple—What is the date of that?

Mr. Abbott—The date of that declaration of trust is April 29, 1905.

Mr. Whipple—Who are the beneficiaries?

Mr. Abbott (Reading:)

"Whereas I, E. Noyes Whitcomb, of Boston in the County of Suffolk, Commonwealth of Massachusetts, at the request of Ira O. Knapp, Joseph Armstrong, William B. Johnson, all of said Boston, and Stephen A. Chase of Fall River, County of Bristol, as they are the present members of The Christian Science Board of Directors, a board originally named in a deed to Ira O. Knapp and others from Mary Baker G. Eddy, dated Sept. 1st, 1892, . . . purchased certain parcels of real estate"—Then he goes on to recite the parcels.

Mr. Whipple—That is, Mr. McLellan is not named as a beneficiary in this?

Mr. Bates—Isn't that obvious? Can't you bring these matters out later when you come to the argument?

Mr. Whipple—I think it is convenient to get them right on the record at this time.

The Master—If it can be done without taking too much time I should like to have it done as we go along, but I do not want to open the way of course to argument now.

Mr. Abbott—He is one of the petitioners in this petition. It goes on to recite that Mr. Whitcomb holds these parcels of real estate which are described here upon certain trusts, to keep them in good repair and collect rents, etc. The sixth clause of said declaration of trust recites that he shall convey the property upon request in writing signed by the Board of Directors, or any three members of them, or to such persons as they may designate.

The Master—What is the relief asked?

Mr. Abbott—The what?

The Master—The relief asked for in the petition.

Mr. Abbott—That I should be appointed in place of Mr. Whitcomb, who had deceased.

The Master—And that was decreed?

Mr. Abbott—That was decreed by the Supreme Court, and the petition was approved, and a hearing waived by the Attorney-General. That is a certified copy of the petition, the declaration of trust, and the decree of the Supreme Court—no, I have the decree here.

Mr. Thompson—May I ask why the Attorney-General was made a party?

Mr. Abbott—I don't know.

Mr. Thompson—Because it was a public charitable trust, wasn't it?

Mr. Abbott—He was a party to it and signified his assent.

The Master—Don't get into argument about it. Can't we all take it for granted that that was the reason?

Mr. Thompson—I assume so; I didn't know that Mr. Bates would.

Mr. Whipple—I think, if Your Honor please, perhaps we had better have these marked now as exhibits, otherwise the stenographers will be going out.

The Master—Very well. Is there any objection?

Mr. Abbott—No.

[Copy of deed, Mr. Abbott to directors, May 11, 1904, marked Exhibit 745, and is copied into the record, as follows:]

[Exhibit 745.]

"Suffolk Registry of Deeds  
"ABBOTT to KNAPP et al. Trs.  
"BOOK 2972 PAGE 35.

"Know all men by these presents That I, Leon M. Abbott, of Boston, in the County of Suffolk and Commonwealth of Massachusetts, in consideration of one dollar and other valuable considerations to me paid, by Ira O. Knapp, William B. Johnson, Joseph Armstrong, all of said Boston, and Stephen A. Chase of Fall River, in the County of Bristol and said Commonwealth the receipt whereof is hereby acknowledged, do hereby remise, release and forever Quitclaim unto the said Ira O. Knapp, William B. Johnson, Joseph Armstrong and Stephen A. Chase, as they are The Christian Science Board of Directors, upon the trusts, but not subject to the conditions mentioned in the deed creating said board, given by Mary Baker G. Eddy to Ira O. Knapp and others, dated September 1, 1892 and recorded with Suffolk Deeds, Book 2081 page 257. A parcel of land with the buildings thereon situated in said Boston being lot twenty five (25) on a plan made by Fuller & Whitney March 17, 1886, recorded with Suffolk Deeds Book 1719 page 84 bounded Easterly on St. Paul Street nineteen and 5/10 (19.5) feet Northerly on lot twenty four (24) on said plan by a line through the middle of the brick partition wall eighty six (86) feet; West-erly on land formerly of Nathan Matthews nineteen and 5/10 (19.5) feet, and southerly on lot twenty six (26) on said plan by a line through the middle of the brick partition wall eighty six (86) feet; containing 1677 square feet. Being the same premises conveyed to me the said Leon M. Abbott by William E. Murdock by deed dated April 30, 1904 and recorded with Suffolk Deeds. In addition to the trusts contained in said deed of September 1, 1892, from Mary Baker G. Eddy this property is conveyed on the further trust that no new tenet or by-law shall be adopted, nor any tenet or by-law amended or annulled by the grantees unless the written consent of said Mary Baker G. Eddy, the author of the Text Book 'Science and Health with Key to the Scriptures' be given therefor, or unless at the written request of Mrs. Eddy the executive members of 'Mary Baker G. Eddy's Church, The Mother Church or the First Church of Christ, Scientist' (formerly called the 'First Members') by a two-thirds vote of all their number decide so to do; and that the same inscription which is on the outside of the present Church edifice shall be placed on any new church erected on said lot. To Have and to Hold the above released premises with all the privileges and appurtenances thereto belonging to the

said grantees and their heirs, successors and assigns to their own use and behoof forever; but upon the trusts fully set forth in said deed from Mary Baker G. Eddy, and with all the powers therein contained, including the power to appoint new trustees by filling vacancies in said Board as in said deed expressed. And I do hereby for myself and my heirs, executors and administrators covenant with the said grantees and their heirs, successors and assigns, that the granted premises are free from all encumbrances made by me, and that I will and my heirs, executors and administrators shall Warrant and Defend the said to the said grantees and their heirs, successors and assigns forever against the lawful claims and demands of all persons claiming by, through or under me but against none other. And for the consideration aforesaid I, Florence T. Abbott do hereby release unto the said grantees and their heirs, successors and assigns, all right of or to both Dower and Homestead in the granted premises and all other rights and interests therein. In witness whereof, we the said Leon M. Abbott and Florence T. Abbott hereunto set our hands and seals this eleventh day of May A. D. 1904. Leon M. Abbott, Florence T. Abbott and each a seal. Commonwealth of Massachusetts, Suffolk, ss. Boston, May 19th, 1904. Then personally appeared the above named Leon M. Abbott and acknowledged the foregoing instrument to be his free act and deed, Before me Robert E. Buffum, Notary Public and his Notarial Seal ——— June 6, 1904 at one o'clock and fifty minutes P. M. Received, Entered and Examined.———

"Attest: THOS. F. TEMPLE, Reg.

"A true copy from the records of deeds for the County of Suffolk. Book 2972, page 35.

"Attest: WM. T. A. FITZGERALD,  
"Register."

[Copy of deed from E. Noyes Whitcomb to directors, dated May 11, 1904, is marked Exhibit 746, and is copied into the record as follows:]

[Exhibit 746.]

"Suffolk Registry of Deeds  
"WHITCOMB to KNAPP et al. Trs.  
"BOOK 2972 PAGE 37.

"KNOW ALL MEN BY THESE PRESENTS that I, E. Noyes Whitcomb of Boston, in the County of Suffolk and Commonwealth of Massachusetts, in consideration of one dollar and other valuable considerations to me paid by Ira O. Knapp, William B. Johnson, Joseph Armstrong all of said Boston, and Stephen A. Chase of Fall River, in the County of Bristol and said Commonwealth, the receipt whereof is hereby acknowledged, do hereby remise, release and forever Quitclaim unto the said Ira O. Knapp, William B. Johnson, Joseph Armstrong and Stephen A. Chase, as they are The Christian Science Board of Directors,

upon the trusts but not subject to the conditions mentioned in the deed creating said Board, given by Mary Baker G. Eddy to Ira O. Knapp and others, dated September 1, 1892 and recorded with Suffolk Deeds, Book 2081 page 257; A certain parcel of land with the buildings thereon situated on the Westerly side of St. Paul Street in said Boston, being Lot twenty six (26) as shown on a plan by Fuller & Whitney, dated March 17, 1886 bounded and described as follows: Easterly by said St. Paul Street twenty and 13-100 (20.13) feet; Southerly by Lots twenty seven (27) twenty eight (28) twenty nine (29), thirty (30) and thirty one (31) on said plan eighty six (86) feet; Westerly by Lots ten (10) and Eleven (11) on said plan twenty and 13-100 (20.13) feet and Northerly by lot twenty five (25) on said plan by a line through the middle of a brick partition wall, eighty six (86) feet; containing 1731 square feet. Being the same premises conveyed to me the said E. Noyes Whitcomb, by deed of Claude H. Fleming dated April 30, 1904, and recorded with Suffolk Deeds. In addition to the trusts contained in said deed of September 1, 1892, from Mary Baker G. Eddy, this property is conveyed on the further trust that no new tenet or by-law shall be adopted, nor any tenet or by-law amended or annulled by the grantees unless the written consent of said Mary Baker G. Eddy, the author of the Text Book, 'Science and Health with Key to the Scriptures' be given therefor, or unless at the written request of Mrs. Eddy executive members of 'Mary Baker G. Eddy's Church The Mother Church or the First Church of Christ, Scientist' (formerly called the 'First Members') by a two thirds vote of all their number decide so to do; and that the same inscription which is on the outside of the present Church edifice shall be placed on any new Church erected on said lot. To Have and to Hold the above released premises with all the privileges and appurtenances thereto belonging to the said grantees and their heirs, successors and assigns to their own use and behoof forever, but upon the trusts fully set forth in said deed from Mary Baker G. Eddy and with all the powers therein contained, including the power to appoint new trustees by filling vacancies in said Board as in said deed expressed. And I do hereby for myself and my heirs, executors and administrators, covenant with the said grantees and their heirs, successors and assigns, that the granted premises are free from all encumbrances made by me and that I will and my heirs, executors and administrators shall warrant and defend the same to the said grantees and their heirs, successors and assigns, forever against the lawful claims and demands of all persons, claiming by, through or under me but against none other. And for the consideration aforesaid I, Mittie A.



Whitcomb, wife of said E. Noyes Whitcomb, do hereby release unto the said grantees and their heirs, successors and assigns all right of or to both Dower and Homestead in the granted premises, and all other rights and interests therein. In witness whereof we the said E. Noyes Whitcomb and Mittie A. Whitcomb hereunto set our hands and seals this Eleventh day of May A. D. 1904. E. Noyes Whitcomb, Mittie A. Whitcomb and each a seal. Commonwealth of Massachusetts. Suffolk, ss. June 6, 1904. Then personally appeared the above named E. Noyes Whitcomb and acknowledged the foregoing instrument to be his free act and deed, Before me Percy E. Walbridge, Notary Public.— June 6, 1904, at one o'clock and fifty minutes P. M. Received, Entered and Examined.

"Attest THOS. F. TEMPLE, Reg.

"A true copy from the records of deeds for the County of Suffolk, Book 2972 Page 37.

"Attest WM. T. A. FITZGERALD,  
"Register."

Mr. Whipple—The next is the petition which was referred to, for the appointment of a trustee under a written instrument. The first paper is the petition, dated Jan. 15, 1906, signed by the five, Knapp, Johnson, Armstrong, Chase and McLellan, The Christian Science Board of Directors. The next paper is the assent, of Mittie A. Whitcomb, widow of E. Noyes Whitcomb, and May Whitcomb and M. Ethel Whitcomb, the only heirs at law; they signed, and the administratrix. The next is the assent of Mr. Abbott to accept the appointment. The next is the assent of the Attorney-General, and the waiver of hearing through Mr. Field, the assistant. The next paper is the trust deed.

Mr. Abbott—The declaration of trust by Mr. Whitcomb.

Mr. Whipple—Yes, that is right—the declaration of trust, signed by Mr. Whitcomb and his wife. Then follows this:

"We, the undersigned, Ira O. Knapp, Joseph Armstrong, William B. Johnson of Boston, in the County of Suffolk and Commonwealth of Massachusetts, and Stephen A. Chase of Fall River, County of Bristol in said Commonwealth, as we are The Christian Science Board of Directors, hereby assent to and approve the foregoing declaration of trust . . .

"In testimony whereof we hereunto set our hands this 29th day of April, 1905."

And it appears that "or a majority thereof" is interlined in the seventh paragraph. It is signed by those four people as assenting to the trust.

Mr. Thompson—But not by Mr. McLellan?

Mr. Whipple—No, Mr. McLellan is not there. Then on April 29, 1905, before Frank E. Bradbury, Justice of

the Peace, Mr. Whitcomb acknowledged the deed.

Mr. Abbott—Mr. Bradbury was in Mr. Elder's office, I think you will remember.

Mr. Whipple—Yes. We may accept that. So that the name of McLellan appears only in the petition. Now perhaps those might all be marked as one exhibit rather than separate exhibits. I think perhaps all these, as they seem to be of some importance, might well be put into the record in their complete form, because we haven't any copies of them.

Mr. Abbott—I have no objection.

[Petition of Ira O. Knapp, et al. for the appointment of a trustee under a written instrument, with accompanying documents, is marked Exhibit 747, and is copied into the record, as follows:]

[Copy of Exhibit 747, L. W. R.]

"Commonwealth of Massachusetts  
"Suffolk, ss. Supreme Judicial Court  
"Petition of

"Ira O. Knapp, et als.

"For the Appointment of a Trustee  
under a Written Instrument

"To the Justices of the Supreme Judicial Court:

"Respectfully represent Ira O. Knapp, Joseph Armstrong, William B. Johnson, of Boston in said County, Archibald McLellan of Brookline in the County of Norfolk, and Stephen A. Chase of Fall River in the County of Bristol, the members of, and constituting The Christian Science Board of Directors, and the said Christian Science Board of Directors, a body corporate, existing by virtue of the laws of this Commonwealth: that E. Noyes Whitcomb, late of Boston in said County of Suffolk, was trustee under a certain instrument in writing dated April 29, 1905, and recorded in the Registry of Deeds for the County of Suffolk, Book 3037, page 161, wherein said Whitcomb did declare that he held certain estates in trust for the benefit of your petitioners, as more fully appears in and by said instrument, a copy of which is annexed hereto; that said Whitcomb died before the objects of said trust were accomplished and that no adequate provision is made in said instrument for supplying the vacancy thus created; that said Whitcomb left a widow, Mittie A. Whitcomb of Boston in said County, and as his only heirs-at-law and next of kin his daughters, May Whitcomb and M. Ethel Whitcomb, of said Boston.

"And your petitioners further represent that Leon M. Abbott of Boston in the County of Suffolk and Commonwealth of Massachusetts is a fit and proper person to be appointed trustee in the place and stead of said Whitcomb; that they have requested him to accept said appointment and he has signified his willingness so to do.

"And your petitioners further repre-

sent that the property held under said trust instrument consists wholly of real estate and that no provision is made in said instrument for the giving of a bond by the trustee and that in their judgment there is no necessity that a bond should be required upon the appointment of a new trustee.

"Wherefore your petitioners pray that said Leon M. Abbott may be appointed trustee as aforesaid, according to the provisions of the law in such cases made and provided, without giving a bond as such trustee.

"And your petitioners further pray that notice may issue from this honorable court to the Attorney-General for the Commonwealth, and to all persons interested under said declaration of trust and in the property covered thereby.

"Dated this 15th day of January, 1906.

"IRA O. KNAPP,

"WILLIAM B. JOHNSON,

"JOSEPH ARMSTRONG,

"STEPHEN A. CHASE,

"ARCHIBALD McLELLAN,

"Christian Science Board of Directors.  
"By William B. Johnson, Secretary.

"The undersigned, Mittie A. Whitcomb, widow of the aforesaid E. Noyes Whitcomb and May Whitcomb and M. Ethel Whitcomb, the only heirs-at-law and next of kin of said Whitcomb, request that the prayer of the above petition be granted.

"MITTIE A. WHITCOMB,

"Administratrix of the Estate of  
E. Noyes Whitcomb.

"MITTIE A. WHITCOMB,

"MAY WHITCOMB,

"M. ETHEL WHITCOMB.

"I, Leon M. Abbott, of Boston in said County and Commonwealth, hereby signify my willingness to accept the appointment above prayed for.

"LEON M. ABBOTT.

"Notice of the above petition is hereby acknowledged and hearing thereon waived.

"DANA MALONE,

"Attorney-General.

"Boston, Mass., Jan. 18, 1906.

"By FRED T. FIELD,

"Assistant Attorney-General.

"Whereas I, E. Noyes Whitcomb, of Boston in the county of Suffolk, commonwealth of Massachusetts, at the request of Ira O. Knapp, Joseph Armstrong, William B. Johnson, all of said Boston, and Stephen A. Chase of Fall River, county of Bristol, as they are the present members of The Christian Science Board of Directors, a board originally named in a deed to Ira O. Knapp and others from Mary Baker G. Eddy dated September first, 1892, recorded Suffolk Deeds, Libro 2081, Folio 257, purchased certain parcels of real estate situated in said Boston, with the buildings thereon, being numbers 1, 2, 3, 4, 5, and 6 on St. Paul Street, Nos. 46 and 48 Norway Street, Nos. 111 and 113 Falmouth

Street, which properties (except Lot 1 on St. Paul Street which is hereafter to be conveyed to me) were conveyed to me by deeds recorded with Suffolk Registry of Deeds, Libro 3016, Folios 49, 50, 51, 52, 54, 55, 56, 383 and Libro 3017 Folio 174.

"Whereas said Board of Directors has paid to me the sum of 58403 17/100 dollars, being the amount paid by me for said properties, with interest thereon to the present time, and I am to account to them for all rents and revenues received less expenses paid by me thereon.

"Now therefore I declare that I hold said parcels of real estate and the property so conveyed to me upon the following trusts:

"1. To keep said property in good tenable condition and in conformity with the requirements of the Board of Health of the city of Boston, and to lease and rent the same to persons of orderly life and conversation and to no others, and not to permit the same, or any part thereof, to be used or occupied for the sale of intoxicating liquors, or any illegal, immoral or offensive purpose, or for any purpose tending to disturb the neighborhood or to interfere with the conduct of religious services in the church edifice situated on Norway, Falmouth and St. Paul Streets, not only that part thereof heretofore used, but that part thereof now in process of erection.

"2. To collect and receive all rents and income from said premises, employing therefor such agents and attorneys as may be reasonably necessary, with power to pay reasonable commissions therefor, and to account for and pay over semi-annually to said Christian Science Board of Directors all sums so received less all sums paid out by me as provided in Section 3 of this declaration of trust.

"3. To pay out of any funds received by me as aforesaid, or which may be from time to time furnished me therefor by said Board of Directors, all taxes or assessments levied upon said property, all interest accruing or becoming due upon any mortgages now outstanding upon the same, or any part thereof, all cost of repairs and maintenance of said property, all commissions paid by me for the collection of rents and all legal or other expenses reasonably necessary or incident to the execution of this trust.

"4. To pay off and discharge all mortgages now outstanding against said property, or any part thereof, so soon as the same may become due, or may be, by agreement with the mortgagees, capable of discharge, out of any funds in my hands, as aforesaid, or which may be from time to time furnished me therefor by said Board of Directors, or otherwise.

"5. To sell and convey said property, or any part thereof, at such price, upon such terms and to such person, persons or corporations as said board, or any three members thereof shall at any time or times in

writing direct, and to forthwith pay over the purchase price received by me to said Board of Directors, and in case any mortgage or other security is received for such purchase price, or any part thereof, to hold the same subject to the terms of this declaration of trust, or transfer the same to said board on request and to pay over to said board all sums so secured, if received by me.

"6. To convey said property, or any part thereof upon request in writing signed by said Board of Directors for the time being, or any three members thereof, to said Board of Directors, or to such person, persons or corporation and upon such trusts, conditions and terms as they shall, in writing, direct.

"7. To permit said Board of Directors, or a majority thereof, at any time to tear down any or all of the buildings standing upon said property and to build thereon, or otherwise improve or use said property as they may desire.

"8. To permit said Board of Directors, or a majority thereof to use any or all of said buildings now standing on said property, or hereafter erected thereon as they may see fit, without rent or payment of any kind therefor, or to take into their own hands at any time the management and control of said property and appoint their own agents and attorneys.

"It is understood, however, that no conveyance shall be required of me and no building shall be destroyed by said directors, or other use be made by them of any of said property while any sum or sums are due to me for payments made by me as above provided, if any, in excess of sums received by me for rents and income, or otherwise.

"And it is further understood that I am not and shall not be under obligation or duty to advance any money for payment of taxes, interest, repairs or expenses in or about said property in excess of sums received by me from rents and income, or otherwise.

"And it is further understood that I shall be responsible only for gross negligence or willful misconduct on my part and that I am to receive no commission or compensation as trustee or for the care and management of said property.

"And I, Mittie A. Whitcomb, wife of the said E. Noyes Whitcomb, in consideration of the foregoing, hereby covenant and agree with the aforesaid Board of Directors, that I will at any time or times join with my husband in an execution of any deed or deeds herein provided to be made by him, in token of my release unto the grantees and their heirs, successors and assigns named in any such deed, of all right of or to dower and homestead in the premises to be granted.

"In witness whereof I, the said E. Noyes Whitcomb, and I, the said Mittie A. Whitcomb have hereunto set our hands and seals this twenty-ninth day

of April, in the year of Our Lord, One thousand nine hundred and five.

"Signed, sealed and delivered in the presence of:

"E. NOYES WHITCOMB (seal)

"MITTIE A. WHITCOMB (seal)

"Witness to both:

"FRANK E. BRADBURY.

"We, the undersigned, Ira O. Knapp, Joseph Armstrong, William B. Johnson of Boston in the County of Suffolk and Commonwealth of Massachusetts and Stephen A. Chase of Fall River, County of Bristol in said Commonwealth, as we are The Christian Science Board of Directors, hereby assent to and approve the foregoing declaration of trust and agree with the said E. Noyes Whitcomb that it contains the trusts, and the only trusts upon which the property therein mentioned is held.

"In testimony whereof we hereto set our hands this twenty-ninth day of April, in the Year of Our Lord One thousand nine hundred and five.

'or a majority thereof' interlined in 7th paragraph.

"IRA O. KNAPP

"JOSEPH ARMSTRONG

"WM. B. JOHNSON

"STEPHEN A. CHASE

"Commonwealth of Massachusetts  
Suffolk, ss. April 29, 1905.

"Then personally appeared before me the above named E. Noyes Whitcomb and acknowledged the foregoing instrument to be his free act and deed. May 1, 1905, 10:47 a. m.

"FRANK E. BRADBURY, J. P.

"Received & entered & examined.

"July 18, 1919.

"A true copy.

"Attest:

"JOHN F. CRONIN,  
"Clerk"

[Seal]

The Master—There seemed to be some problems in conveyancing presented and we shall all want copies for the arguments.

Mr. Whipple—Problems which may affect the tenure of office of some of the parties.

Mr. Abbott—Then I offer the decree of the Supreme Court under date of July 18, 1919:

"Decree

"This cause came on to be heard and upon consideration thereof, it appearing that the said E. Noyes Whitcomb, trustee under a declaration of trust dated April 29th, 1905 and recorded in Suffolk County Registry of Deeds, Book 3037, page 161, has died before the objects of said trust are accomplished, and that no adequate provision is made in said instrument for supplying the vacancy; that the beneficiaries under said trust have requested the appointment of the said Leon M. Abbott as a new trustee, and by a formal vote at a meeting duly called for that purpose, have further requested that he be excused from giving a surety or sureties on his bond; and it further appearing that all per-

sons interested in said trust have been duly notified of the foregoing petition, and have indorsed thereon in writing their assent thereto.

"It is thereupon ordered, adjudged and decreed that the within petition be granted, and the said Leon M. Abbott be, and he hereby is, appointed trustee, as aforesaid, in place of the said E. Noyes Whitcomb, and that upon filing with the clerk of this court his personal bond in the sum of one hundred thousand (100,000) dollars, payable to the beneficiaries of said trust for the performance of said trust, and the faithful observance of the requirements of the trust instrument, under which said trust was created, he shall have the same powers, rights and duties, and the same title to the real estate held under and by virtue of the provisions of said trust, that the said E. Noyes Whitcomb, the prior trustee, had.

"Jan. 29, 1906.

"By the Court,

"JOHN NOBLE, Clerk.

"July 18, 1919.

"A true copy,

"Attest:

"JOHN F. CRONIN,

"Clerk."

[Seal]

[The paper of which the foregoing is a copy is marked Exhibit 748. R. J. M.]

Mr. Whipple—Have you a copy of your bond?

Mr. Abbott—I haven't a copy of that no.

Mr. Whipple—To whom did it run?

Mr. Abbott—It ran, I think, to the directors.

Mr. Whipple—Well, which ones?

Mr. Abbott—I do not know.

Mr. Whipple—Ought we not to have that bond?

Mr. Abbott—I will be very glad to give you a copy of it.

The Master—It is part of the record.

Mr. Whipple—(To the reporter) Will you reserve a number for the bond, please? (To Mr. Abbott) Will you supply a certified copy of the bond? It should be put into the record so that we may know what was considered the Board of Directors for the purpose of the bond, or who constituted the Board of Directors for the bond.

[The bond referred to by Mr. Whipple is as follows:

"KNOW ALL MEN BY THESE PRESENTS that I, LEON M. ABBOTT of Boston in the County of Suffolk and Commonwealth of Massachusetts, am holden and stand firmly bound unto IRA O. KNAPP, JOSEPH ARMSTRONG and WILLIAM B. JOHNSON of said Boston, ARCHIBALD McLELLAN of Brookline in the County of Norfolk, and STEPHEN A. CHASE of Fall River in the County of Bristol, as they are members of and constitute the CHRISTIAN SCIENCE BOARD OF DIRECTORS, in the sum of One Hundred Thousand (100,000)

Dollars, to the payment of which sum to the said Knapp, Armstrong, McLellan and Chase, or their successors, I do hereby bind myself, my heirs, executors and administrators.

"The condition of this obligation is such that

"WHEREAS, E. NOYES WHITCOMB, late of said Boston, deceased, did declare by a certain instrument in writing dated April 29, 1905, and recorded in the Registry of Deeds for the County of Suffolk, book 3037, page 161, that he held certain estates in trust for the benefit of said Christian Science Board of Directors; and

"WHEREAS, said Whitcomb died before the purposes of said trust were accomplished, and the trust instrument made no adequate provision for filling the vacancy thus created; and

"WHEREAS, a petition has been presented to the Supreme Judicial Court of this Commonwealth praying that I, the said Leon M. Abbott, may be appointed trustee as the successor of said E. Noyes Whitcomb; and

"WHEREAS, by a decree of the said Supreme Judicial Court, dated January 29th, 1906, said petition has been granted and said appointment as trustee has been made;

"NOW THEREFORE, if I, as such trustee, shall well and truly perform the duties imposed upon me by said trust instrument and said appointment and well and faithfully observe all the requirements thereof, then this obligation shall be null and void; otherwise it shall be and remain in full force and effect.

"IN WITNESS WHEREOF I hereunto set my hand and seal this twentieth day of January, A. D. 1906.

"LEON M. ABBOTT [Seal]

"A true Copy,

"Attest:

[Seal] "JOHN H. FLYNN

"Asst. Clerk.

"August 1, 1919."

[The paper of which the foregoing is a copy is marked Exhibit 749. R. J. M.]

Mr. Abbott—I now offer a deed running from me to Archibald McLellan, Allison V. Stewart, John V. Dittmore, Adam H. Dickey, and James A. Neal, as they are The Christian Science Board of Directors of Mary Baker Eddy's Church, The Mother Church, or The First Church of Christ, Scientist, in Boston, Massachusetts. This deed is dated June 1, 1914, and it conveys all of the remaining lots on which the publishing house property or building now stands, except those that already have been conveyed by deeds that have been introduced. That deed was not recorded, apparently, until March 23, 1918, although it was executed on June 1, 1914, and acknowledged before Governor Bates.

[The deed from Mr. Abbott to the Board of Directors is as follows:]

"Whereas I, Leon M. Abbott, now of Brookline in the County of Nor-

folk and Commonwealth of Massachusetts, was appointed trustee, by the Supreme Judicial Court for the County of Suffolk, by decree dated Jan. 29, 1906, under and subject to all and the same rights, terms, conditions and trusts mentioned in a certain declaration of trust by E. Noyes Whitcomb, dated April 29, 1905, and recorded with Suffolk Deeds, Book 3037, page 161, and a certain other trust deed from Mittie A. Whitcomb et als. to me, said Leon M. Abbott, dated Jan. 29, 1906, and recorded with said deeds, Book 3103, page 120; and

"Whereas under the sixth clause of said declaration of trust made by said E. Noyes Whitcomb on April 29, 1905, the said trustee is required to convey, upon request in writing from The Christian Science Board of Directors, the property held under said trust, to such persons or corporations, and upon such trusts, conditions and terms as they, the said Christian Science Board of Directors, shall in writing direct; and

"Whereas said Board of Directors has requested me, the said Leon M. Abbott (as appears from the written request, a copy of which is hereto attached) to convey all of the real estate held by me as trustee as aforesaid, to Archibald McLellan, Allison V. Stewart, John V. Dittmore, Adam H. Dickey, and James A. Neal, all of said Brookline, as they are The Christian Science Board of Directors of Mary Baker Eddy's Church, The Mother Church, or The First Church of Christ, Scientist, in Boston, Massachusetts;

"Now therefore, I, the said Leon M. Abbott, Trustee as aforesaid, in consideration thereof, and in further consideration of the sum of one dollar and other good and valuable considerations to me in hand paid by the said Archibald McLellan, Allison V. Stewart, John V. Dittmore, Adam H. Dickey, and James A. Neal, Directors as aforesaid, the receipt whereof is hereby acknowledged, do hereby Release, Release and forever Quitclaim unto the said Archibald McLellan, Allison V. Stewart, John V. Dittmore, Adam H. Dickey, and James A. Neal as they are The Christian Science Board of Directors as aforesaid, and their heirs, successors and assigns forever, the following described parcels of land together with the buildings thereon, situated on St. Paul, Norway and Falmouth Streets in that part of Boston, in the County of Suffolk and said Commonwealth, called the Back Bay.

"FIRST: A certain parcel of land with the buildings thereon situated on St. Paul Street and bounded Easterly by St. Paul Street, Southerly by other land of the grantees, Westerly by land of owners unknown, and Northerly by the second parcel hereinafter described. This parcel consists of Lots numbers nineteen, twenty, twenty-one, twenty-two, twenty-three and twenty-

four on a plan made by Fuller & Whitney, dated March 17, 1886, and recorded with Suffolk Deeds, Book 1719, page 84. The buildings formerly standing on said lots were numbered one, two, three, four, five and six St. Paul Street. For my title to said lots see deed of Mittie A. Whitcomb et als. to Leon M. Abbott, dated Feb. 1, 1906, and recorded with Suffolk Deeds, Book 3103, page 120; see also copy of said decree appointing Leon M. Abbott trustee recorded with said deed. For my title see also deed of Robert E. Buffum to me as trustee, dated Feb. 8, 1906, and recorded with said deeds, Book 3104, page 499.

"SECOND: A parcel of land with the buildings thereon situated at the corner of Norway and St. Paul Streets, and bounded and described as follows: Easterly by St. Paul Street, Southerly by the first parcel hereinbefore described, Westerly by land of owners unknown, and Northerly by Norway Street. This parcel consists of Lots fourteen, fifteen, sixteen, seventeen and eighteen on a plan made by William H. Whitney, dated January 6, 1887, and recorded with Suffolk Deeds, Book 1756, page 600. The buildings formerly on said Lots were numbered forty-six, forty-eight, fifty, fifty-two and fifty-four Norway Street. For my title see said deed of Whitcomb to Abbott, also said decree, also deed of Harry Dutton to Leon M. Abbott, Trustee, dated March 5, 1913, and recorded with said Deeds, Book 3712, page 551.

"THIRD: A certain parcel of land with the buildings thereon situated at the corner of Falmouth and St. Paul Streets and bounded Easterly by St. Paul Street, Southerly by Falmouth Street, Westerly by land of owners unknown, and Northerly by other land of the grantees. This parcel consists of Lots A, B, C and D on plan made by William H. Whitney, dated December 30, 1886, and recorded with Suffolk Deeds, Book 1756, page 17. The buildings formerly on said Lots were numbered one hundred thirteen, one hundred eleven, one hundred nine and one hundred seven Falmouth Street. For my title to said Lots see said deed of Whitcomb and said decree, also deed of Robert E. Buffum to me as Trustee, dated February 1, 1906, and recorded with said Deeds, Book 3104, page 500.

"Intending to convey hereby any and all real estate held by me as trustee aforesaid.

"To have and to hold the granted premises with all the privileges and appurtenances thereto belonging, to the said Archibald McLellan, Allison V. Stewart, John V. Dittimore, Adam H. Dickey, and James A. Neal, as they are directors as aforesaid, and their heirs, successors and assigns, to their own use and behoof forever.

"In witness whereof I, the said Leon M. Abbott, trustee as afore-

said, hereunto set my hand and seal this first day of June one thousand nine hundred and fourteen.

"LEON M. ABBOTT [Seal]

"Trustee.

"Commonwealth of Massachusetts  
"Suffolk, ss. Boston, June 1, 1914.

"Then personally appeared the above-named Leon M. Abbott, trustee as aforesaid, and acknowledged the foregoing instrument to be his free act and deed.

"Before me,

"JOHN L. BATES,  
"Justice of the Peace."

Mr. Abbott—Attached to this deed is a letter from the secretary of The Christian Science Board of Directors, which is on their letterhead, dated May 28, 1914, addressed to me, and which says:

"At the regular meeting of The Christian Science Board of Directors held yesterday, the following resolution was adopted:

"That Mr. Leon M. Abbott be requested to convey to The Christian Science Board of Directors all of the real estate held by him in trust by virtue of his appointment as trustee by the Supreme Judicial Court of Suffolk County, under date of Jan. 29, 1906."

"Very sincerely,  
(sd) "JOHN V. DITTEMORE,  
"Secretary."

That deed is recorded in Book 4078, page 206, Suffolk County Deeds.

[The deed from Leon M. Abbott to the Board of Directors dated June 1, 1914, together with the letter attached thereto from Mr. Dittimore to Mr. Abbott, dated May 28, 1914, of which the foregoing are copies, are marked Exhibit 750. R. J. M.]

Mr. Whipple—Mr. Abbott, may I ask you if you then knew, when you responded to that request, of this letter of Mrs. Eddy in which she stated that Mr. McLellan could not appear in the deeds?

Mr. Abbott—I did not know that.

Mr. Whipple—You did not know that at all?

Mr. Abbott—No.

Mr. Whipple—And of course, you had not considered the question as to whether or not Mr. McLellan did not get some interest in his private capacity, not being under the original trust, and whether now his widow and children, if he had any, might not have some claim. You did not consider it at the time?

Mr. Abbott—No. So far as my recollection serves me, all these papers, with the exception of the final trust deed to the directors, were drawn by Mr. Elder, or in his office.

Mr. Whipple—Yes, and this is the one I am speaking about, where you include Mr. McLellan as one of the grantees in the deed, although you now have in mind the letter of Mrs. Eddy which we introduced from the directors' records this morning that

his name should not appear in the deed. You did not know about it?

Mr. Abbott—I do not think I knew of that letter at the time.

Mr. Bates—I submit that—

Mr. Whipple—Wouldn't you put that upon the record?

Mr. Bates—I submit that your statement is one hardly borne out by the records.

Mr. Whipple—It is not my statement.

Mr. Bates—There is no reference in Mrs. Eddy's letter to any deeds that are to be executed thereafter, that is certain.

Mr. Whipple—The letter of Mrs. Eddy speaks for itself, and you will have the further—

Mr. Bates—And in that connection—

Mr. Whipple—The further job, no doubt, of advising your client as to how he, not having been named in the original Deed of Trust, could receive any title here.

Mr. Bates—Thank you for your suggestion. We long ago considered that matter.

Mr. Whipple—Well, you must have had some sleepless nights, then.

Mr. Bates—I call your attention, however, in connection with this deed, to Mr. Whipple's statement in court when this matter was referred to before, that he was informed that this deed had not been recorded until after the beginning of this suit. Your Honor will see that it was recorded a year before this suit was brought.

Mr. Whipple—Wait a moment. Let me see that. Is it a year before?

Mr. Bates—Yes.

Mr. Whipple—Well, I am glad to see that. March 23, 1918. That was well done.

Mr. Bates—Well, it is like very many of your other suggestions and insinuations. The facts do not correspond with what you state.

Mr. Whipple—For once you are correct, Governor. For the second time during this long trial you have been correct.

Mr. Bates—The results will show that we have been correct many times, but not if we compare them with your statements.

The Master—What else?

Mr. Bates—Mr. Dane has put in the records in regard to the by-laws, and there are a few records I wish him to put in to complete that matter.

Mr. Thompson—You were going to put in the record of the appointment of Mr. Dittimore—Mr. Dittimore's election as a director, and the date, and the person whom he succeeded.

Mr. Bates—Yes; we have not forgotten that.

The Master—The date of the appointment of all the directors was to go in, wasn't it?

Mr. Bates—Yes, Your Honor.

Mr. Thompson—All I am interested in is Mr. Dittimore.

The Master—I should like to have them all.

Mr. Thompson—If Your Honor please, as long as these gentlemen are going to put in records, perhaps they would like to take a short recess in order to look up four more pieces of documentary evidence that I should like to have put in. I should like to have the directors' records showing the election of Mr. Dittmore. I want Mr. Dittmore's letter of Sept. 17, 1918, to the directors. Please make a special note of that—Sept. 17, 1918. I want his memorandum submitted to the directors on Dec. 18, 1918.

Mr. Bates—Will you give me a list of them?.

Mr. Thompson—Yes.

Mr. Bates—I did not get the first.

Mr. Thompson—The first is his letter of Sept. 17, 1918, to the directors. The next is his memorandum of Dec. 18, 1918, to the directors. The third in his letter of Feb. 7, 1919, to the directors; and the fourth and last is his letter of Feb. 11, 1919, to the directors.

The Master—Mr. Dittmore's letter again to the directors?

Mr. Thompson—Yes, sir. Those are the five documents you have that I desire—the records and those four letters. I have asked during the course of this trial for a great many other documents both orally and by written request, but unless they are now here I won't press the requests providing these five requests are complied with.

The Master—Suppose those requests are not complied with. What then?

Mr. Thompson—Then I shall have to put them in by copy. The records can be supplied because the book is here.

The Master—Is Governor Bates expected to put them in as part of his case?

Mr. Thompson—If not, I shall call Mr. Jarvis and put him on for the purpose of showing where these letters are. I do not think there will be any trouble about it. I have copies. If he cannot find them readily, I will read the copies, that is, all except the directors' record, and that I haven't got.

The Master—You have made your call, we will see what happens.

Mr. Thompson—I understood him to say that he would put in the directors' records anyway.

The Master—Is it desired that we take a brief recess?

Mr. Thompson—Yes, sir.

The Master—Very good.

[Short recess.]

Mr. Thompson—We are all ready, if Your Honor please.

The Master—We will go on when counsel are ready.

Mr. Thompson—Now can we have the directors' records showing the election of Mr. Dittmore, May 30, 1909?

Mr. Bates—Are you calling for those letters now?

Mr. Thompson—No; first, just the records of the directors, of May 30, 1909, showing Mr. Dittmore's election.

Mr. Bates—I told you we would put in those records.

Mr. Thompson—I thought that you had got through.

Mr. Bates—No, I have not got through. I thought I told you so.

Mr. Thompson—Well, the letters, then—

The Master—Supposing you let the counsel for the directors proceed in his own way, and you can call later.

Mr. Bates—I was going to have Mr. Dane put in the record that I spoke of, but I think that before he does that I will offer from the records of the directors of the Church the record of Nov. 1, 1919.

Mr. Whipple—Nov. 1, 1919?

Mr. Bates—No, 1918—no, 1917. I beg your pardon.

“Thursday, Nov. 1, 1917.”—

Mr. Whipple—Do you mind my running my eye over it? Or at least explain what the significance of it is.

Mr. Bates—It is the resolution which The Christian Science Board of Directors adopted in raising their salaries, and it is found on page 112 of the directors' minutes of 1917 and 1918. The record is dated Thursday, Nov. 1, 1917.

“At a special meeting of The Christian Science Board of Directors held at 9 a. m. on above date in the directors' room of The Mother Church, there were present Messrs. Stewart, Dittmore, Dickey, Neal, and Merritt.” The next motion is on an entirely irrelevant matter.

“The following resolution was introduced by Director Stewart, seconded by Director Merritt, and unanimously adopted, to wit:

“Whereas, It has been apparent to the members of The Christian Science Board of Directors for a number of years that the time was inevitably approaching when the board members would find it necessary to arrange to devote more time to the work of the board, and

“Whereas, The members of the board who have held other positions in The Mother Church have resigned said positions that they may give the necessary attention to the work devolving upon the board,

“Therefore, be it resolved, That we do now adopt and put into effect the contemplated plan, it having been submitted to the following legal counsel for The Mother Church—Charles F. Choate, Jr., on June 15, 1915, and to Attorneys John L. Bates and Leon M. Abbott on August 8, 1917, and approved by them in their written opinions, dated July 1, 1915, and September 6, 1917, respectively, which correspondence is hereby made a part of this record as follows:—

[Copy]

“June 15, 1915.

“Mr. Charles F. Choate,

“30 State Street,

“Boston, Massachusetts.

“Dear Mr. Choate:—

“The increasing responsibilities of

the members of The Christian Science Board of Directors, due to the rapid growth of Christian Science, are such that it is necessary to consider the question of relieving the members of the board of certain of their present duties in order that more time may be available for the general direction of the movement. In this connection it seems important to consider with your assistance the question of a rearrangement of the salaries of the members of the board on some basis that will be reasonable and equitable.

“For some time after Mrs. Eddy founded this Church the members of her Board of Directors served without financial compensation. On Nov. 16, 1892, Mrs. Eddy gave instructions that the copyright on the revised Christian Science Hymnal should be taken out in the name of The Christian Science Board of Directors, and that this board should have all profit from the sale of the Hymnal, it evidently being her desire to make up to the directors by this indirect method a definite compensation in return for their services. This arrangement continued in force until July 12, 1909. During the first 10 years this plan was in force the profits were very small, amounting to but a few hundred dollars per year for each director. From 1902 to 1907 the profits averaged \$1668 per annum for each director. In 1908, the last year these profits were paid over to the board, they amounted to \$2542 for each member of the board, which, with the salary of \$1000, made their total compensation as directors for that year \$3542.

“In addition to the Hymnal profits, Mrs. Eddy, on June 26, 1895, made a definite provision that the salaries of the members of the Board of Directors should be \$500 per annum each. On Dec. 11, 1902, this by-law was amended, increasing the salaries to \$700 per annum. On July 30, 1903, Mrs. Eddy authorized an increase to \$1000 per annum, this arrangement remaining in force until July 12, 1909.

“At about this last date it appeared to all of the directors that the Church had reached a point where it would be more businesslike and better for all concerned to relinquish this indirect income from the profits of what had become one of our well-established denominational publications. We therefore decided to call the matter to Mrs. Eddy's attention, and on June 30, 1909, sent her the following letters:—”

The Master—Let me ask you, are you going to read all of those letters?

Mr. Bates—They are all in the record, Your Honor.

The Master—Are you going to read Mr. Choate's opinion in full?

Mr. Bates—I shall take Your Honor's direction in regard to it, but that follows.

The Master—Is that the one you showed me the other day?

Mr. Bates—Yes, Your Honor.

The Master—And Messrs. Bates, Nay & Abbott's opinion in full also?

Mr. Bates—Their opinion also is included in the record.

Mr. Thompson—Is General Streeter's opinion included there?

Mr. Bates—General Streeter never gave any official opinion, so far as we are informed.

Mr. Thompson—He gave an opinion as well as Mr. Choate.

Mr. Bates—I am answering His Honor's question.

The Master—I will hear counsel on it, but I will suggest whether it is desirable to put all this bulk of matter into the record.

Mr. Whipple—For myself, if Your Honor please, I am very much interested to see how any lawyer could advise, in view of the strict provision of the Manual, how they could get around it, and being curious with regard to that, I would like to have it read.

The Master—I have read over those opinions, and they are full of citations from reported cases. It is a good deal like a brief.

Mr. Whipple—Yes, Your Honor, but I do not see—

The Master—Must it all go in at length? Is there no escape?

Mr. Whipple—I would like that part to go in where they deal with the provisions of the Manual, and Mrs. Eddy's statement that their salary is to be \$2500. You do not need anything to convince me that if they were an ordinary business corporation, and not a charitable institution, or if they did not make the professions that they do in regard to the Manual, their action might not be criticized; but the point is that where they stand here—

The Master—I do not think that you need to say anything more, Mr. Whipple. I have recorded my protest.

Mr. Whipple—Very well, sir. I will not press the point at all.

The Master—If you want to put them in and Mr. Whipple wants to put them in, you may proceed.

Mr. Bates—I would not want to put them in against Your Honor's protest. I ought to say this, Your Honor, that Mr. Whipple apparently does not object, but wants them. We think it is desirable. In this connection I think I have a right to call Your Honor's attention to the kind of treatment that we are receiving. There is a great headline in this morning's Boston Post, a double line in large letters, "Salary Increase Kept Out Records," and then underneath that, in large letters, "Vote for Boost Eliminated Director Testifies—Non-Committal as to Reasons for Act." Absolutely contrary to the entire evidence!

The Master—I am surprised to learn that you are capable of being disturbed by headlines. Are we not all used to that by this time—that sort of thing?

Mr. Bates—Well, I have had to submit to a good deal of it, but rather more lately than formerly. But, apart

from that, Your Honor, I understand that Mr. Whipple wants these records in. I think that it is a question that ought not ever to have been brought up, but, it having been brought up in such a way, we have a right, it seems to me, to put into the record that which will show that the insinuations in regard to our deleting the records as to these salary increases are absolutely unfounded; that, on the contrary, there are 20 pages or more here in the records, giving the opinions of counsel, and the reasons as to why it was done, and any action that was taken.

Now, if Your Honor thinks that I ought to eliminate the opinions there, with that statement that they are there, I should eliminate them so as to—

The Master—Then Mr. Whipple would want them.

Mr. Whipple—If Your Honor please, I have said, and I repeat, that it is in the interest of the movement, if these directors, the head of this Church, can justify what they have done in any way by lawyers' opinions or otherwise, they ought to have the opportunity. The Governor has said that I want them in. I want them in in this sense—as a friend of this movement I want these directors justified, if they can be, in their position.

The Master—That will open the way, I take it, to the introduction of opinions by other counsel, if there were any, as has been intimated. We shall ultimately come out with an argument one way on the question, and an argument another, on a fairly doubtful proposition, a question at least about which honest people might differ?

Mr. Thompson—That is absolutely so, and, in addition to this—

The Master—And when we get to that point how much wiser or better off shall we be?

Mr. Thompson—There is another opinion, I am advised, by Mr. Choate, which he was asked to withdraw and alter because he advised publicity, and there is an opinion by General Streeter which was against this thing. Now, my impression is just as Your Honor's is, that we shall gain nothing by having these things printed. If anyone wants them introduced as evidence, so that anybody can have the right to refer to them, well and good. I object most strongly to printing those favorable opinions only. If those opinions are printed I think that you should also print General Streeter's opinion and the other opinion which was given by Mr. Choate, in which he said that it was an essential condition to doing this that you should make it public.

The Master—We have to recollect that at present we have no evidence to show that there were any such opinions.

Mr. Thompson—We haven't anything but my statement for the fact that there was an opinion by General

Streeter, but it has been admitted that there was another opinion by Mr. Choate.

The Master—I mentioned it only because of what has been said here, calling the attention of counsel to what this might lead to, and where it will ultimately bring us up.

Mr. Thompson—It will not bring us out anywhere. We would have to summon Mr. Choate and Mr. Streeter.

The Master—Now, it being the desire of two counsel out of three to have these opinions go in, I am not going to take the responsibility of peremptorily excluding them.

Mr. Bates—Well, I have stated that if Your Honor thought that they ought not to go in, I should not insist upon it, and I understand Mr. Whipple to insist upon it.

The Master—Well, you have listened to my suggestions very courteously and kindly, and if, notwithstanding them, you still desire to put them in, go ahead.

Mr. Bates—Well, I stopped right in the middle of the letter which they wrote to the counsel, and, if it is agreeable to Your Honor, I will finish that letter, and then the question of whether or not the counsel's opinion which follow shall be put in—

Mr. Whipple—Oh, no. I think that if any of it is left out it should all be left out, because you get a distorted view of it. I have explained my position, and I do not think that I need to repeat it at all.

The Master—No, you do not. I have stated my view about the matter. Now, unless counsel can agree to leave them out you had better go right ahead and put them in.

Mr. Bates—I will agree to leave out the parts that Your Honor has suggested, but if Mr. Whipple insists that if I do that I should leave it all out, I could not agree to that, because that would be an injustice to the cause of the Church and every one concerned.

Mr. Whipple—I agree to that.

Mr. Bates—If you agree to it, we accept your agreement.

Mr. Whipple—I agree that if the directors were left in their present position it would be one of the most calamitous things that could happen.

Mr. Bates—Because of the insinuations that you have made.

Mr. Thompson—And if you are putting in those records, you never will extricate yourself, unless you let those deleted records go in at the same time.

Mr. Bates—I submit, Your Honor—

The Master—No, they will not go in at the same time. These will go in now, and nothing else. About those deleted records we will take that question up when we get to it. We have not got to it now.

"We submit for your information and also for your approval, if agreeable to you, the inclosed letter regarding the Christian Science Hymnal, which we purpose sending to the trus-

tees of The Christian Science Publishing Society, which letter explains itself.

"The profits from the Hymnal have not amounted to much until within the past few years. For five years preceding 1908 each director received an average of \$1668.00 per year from the Hymnal, and in 1908 each received \$2542.00. This year, and in succeeding years, with an enlarged Hymnal the sum, we have reason to believe, would be much larger.

"In lieu of the amounts heretofore received by the directors we respectfully recommend that the salary of the members of the Board of Directors be made \$2500.00 each annually and that the By-law be amended accordingly.

"By this arrangement the income of the Church will be increased about \$5000.00 over last year, and the income of the directors will be reduced correspondingly."

"The letter referred to as having been sent to the trustees of The Christian Science Publishing Society was as follows:

"At a time when the members of The Christian Science Board of Directors received no compensation for their work, the profits of the Christian Science Hymnal were voted to them pursuant to the desire of the Pastor Emeritus that "the copyright of the Hymnal should remain the property of The Christian Science Board of Directors and of course the revenue to go to them," and those profits have been paid to the individual members of the board since that time.

"The salary since paid to the members of this board has been fixed with these profits in contemplation, and it now appearing to the present members of the board that the enlargement of the Hymnal, which is in process of preparation for publication will greatly increase the sale of the book and thereby increase the profits from same to a degree not contemplated in the original transaction, they now desire to relinquish their right to the profits, and for the purpose of carrying this desire into effect, they hereby direct you to pay over to the Church Treasurer the profits derived from this publication as you pay over the profits of other publications under Mrs. Eddy's trust conveyance of January 25, 1898, and under the Church Manual and By-Laws.

"You will, of course, pay out of the Hymnal account all sums due on that account and all sums due or to become due on account of the preparation of the new Hymnal."

"It may here be mentioned that the annual profits on the Hymnal have grown until they now amount to approximately \$20,000 per year.

"In July 10, 1909, Mrs. Eddy signified her approval of our proposition and wrote us as follows:

"Christian Science Board of Directors,  
"Boston, Mass.

"Beloved Students:

"Your proposal to turn the profits

from the sale of the Christian Science Hymnal, which have heretofore been the property of the directors, over to the Christian Science Publishing Society, meets with my approval, and in lieu thereof I favor a By-law increasing the salary of the Directors from \$1000 to \$2500 per annum.

"Sincerely yours,

(Signed)

"MARY BAKER EDDY."

"And on July 12, 1909, Mrs. Eddy amended the By-Law governing the salary of the directors in the following words:

"The salary of the members of the Board of Directors shall be at present two thousand five hundred dollars each annually." (Last sentence of Section 9, Article 1.)

"The words 'at present' were inserted by Mrs. Eddy on her own initiative and without the knowledge of the board. This By-Law now stands in this form and governs the situation at present."

Mr. Bates—There is a star there in red ink directing attention to a corresponding star in the margin, where the statement appears in red ink: "The words 'at present' were in the by-law before it was amended. James A. Neal, secretary."

[Mr. Bates resumed the reading of the records, as follows:]

"Of course these members of the board who give all of their time to church work and who hold other official positions in the organization have always received compensation for such additional services, which in addition to the \$2500 for their work as directors has given them a total sum sufficient for their living expenses.

"Mr. Dickey receives \$5500 salary as treasurer, making his total remuneration from the church \$8000.

"Mr. Dittmore receives \$5000 as clerk of the Church and \$500 as secretary for the Board of Directors, thus making his total salary from the church also \$8000.

"Mr. McLellan receives a salary from The Christian Science Publishing Society for his services as editor of The Christian Science Journal, the Sentinel and Der Herold.

"Mr. Stewart receives for his services as publisher of Mrs. Eddy's works a commission on sales.

"The amount received by these two last mentioned directors makes their total income from their services considerably more than \$8000 per year.

"Mr. Neal does not give all of his time to official church work and holds no office in the Church except that of director. Therefore his income from the Church is simply the \$2,500 a year which he receives for his services as director.

"The question which we now wish to present to you is this: If the increased duties of the board make it necessary for the members to devote their time exclusively to their work as directors, (First) Can they legally

and properly take reasonable salaries for such services under the provision of the existing by-law; (Second) If so, what amount would be considered a reasonable salary for the services performed. (Third) Could such action be properly and legally taken without making any change in our published By-Laws beyond possibly giving the date of Mrs. Eddy's amendment as a footnote?

"Yours very truly,

"THE CHRISTIAN SCIENCE BOARD  
OF DIRECTORS,

"By

(Signed)

"J. V. DITTEMORE,  
"Secretary."

Mr. Bates—Then follows a copy of Mr. Choate's reply.

"Choate, Hall & Stewart  
"30 State Street

"Boston, Mass., July 1, 1915.

"J. V. Dittmore, Esq.,  
"107 Falmouth Street,  
"Boston, Mass.

"Dear Mr. Dittmore:

"Your letter of the 15th ult. requesting an opinion in regard to an increase in the salaries of the directors under the present By-Laws was duly received and I have delayed my reply in order that I might have an opportunity to consider the matter fully.

"As I understand your letter the situation is that the Board of Directors in order that they may give their time exclusively to the general direction of matters concerning the welfare of the Church are considering the advisability of surrendering the other offices which they hold; viz.: Mr. Dickey as treasurer, Mr. Dittmore as clerk, Mr. McLellan as editor and Mr. Stewart as publisher, and that upon such change being brought about the Directors will receive no compensation except their salaries as directors. You ask my opinion as to whether such an increase can legally be made under the provisions of the existing By-Laws, and if so, what salary would be considered reasonable for the services performed and whether such action would properly be taken without making any change in your published By-Laws.

"I understand also that the directors do not desire to consider any amendment of the existing By-Laws. Moreover the possibility of such amendment seems to be excluded by the provisions of your By-Laws, Article XXII, Section 18, which provides that "The Mother Church shall not make a church By-law nor enter into a business transaction with a Christian Scientist in the employ of Rev. Mary Baker Eddy, without first consulting her on said subject and adhering strictly to her advice thereon," and also by the provisions of Article XXXV, Section 1, providing that "This Manual shall not be revised without the written consent of its author," and by the provisions of Section 3, providing that "No new Tenet or By-Law shall be adopted, nor

any Tenet or By-Law amended or annulled without the written consent of Mary Baker Eddy, the author of our textbook SCIENCE AND HEALTH.'

"In answer to your first question I advise that in my opinion the directors can legally and properly take reasonable salaries for their services under the provisions of the existing By-Laws. While I have not before me the earlier Manuals I assume from your letter that the salaries of the directors have been fixed by by-laws from time to time. Apparently increases in salaries were always made by amendments. It is stated in your letter that 'Mrs. Eddy on June 26, 1895, made a definite provision that the salaries of the members of the Board of Directors should be \$500 per annum each. On Dec. 11, 1902, this by-law was amended increasing the salaries to \$700 per annum. On July 30, 1903, Mrs. Eddy authorized an increase to \$1000 per annum.' In the letter to Mrs. Eddy dated June 30, 1909, the directors recommended 'that the salary of the members of the Board of Directors be made \$2500 each annually and that the by-law be amended accordingly.' In her letter of reply dated July 10, 1909, Mrs. Eddy wrote 'I favor a by-law increasing the salary of the directors from \$1000 to \$2500 per annum.' Your letter further states that 'on July 12, 1909, Mrs. Eddy amended the by-law governing the salary of the directors in the following words: "The salary of the members of the Board of Directors shall be at present two thousand five hundred dollars each annually."' In this form the by-law now appears in the last paragraph of Article I, Section 9.

"In interpreting such a by-law a reasonable construction must necessarily be put upon it and if the words themselves are not entirely clear we must get help from surrounding circumstances. As stated above it appears that previous increases have always been made by amendment but in previous By-Laws the words 'at present' have not been incorporated and it seems to be clear that these words must have been inserted by Mrs. Eddy for a definite purpose. The question really seems to come down to whether we can imply from the use of these words the right to increase salaries at a later date without amending the By-Laws. Taking into consideration the way the matter of salaries was treated by Mrs. Eddy and the fact that they were increased from time to time as the work increased, I should think that we could fairly infer from the words used the intention on Mrs. Eddy's part that reasonable salaries should be paid to the directors from time to time and that the limit of \$2500 was subject to change in the future whenever circumstances should warrant such an increase.

"In answer to your second question I should advise that there should be no objection to salaries of from \$8000 to \$10,000 annually and that such sal-

aries should be considered reasonable for the services performed. In making your own determination as to the amount you will, of course, take into consideration the fact that part of your time would be taken up with your duties as trustees under the residuary clause of Mrs. Eddy's will, for which reasonable fees will be allowed by the Probate Court in New Hampshire. It could not reasonably be expected, however, that you should relinquish the various offices that you now hold to take up this work at salaries which would compensate you at a less amount for your services than you now receive. The figures which I have suggested are based also on a careful examination of the By-Laws which indicate clearly the great amount of work and responsibility that is imposed upon your board involving the entire control of the Church organization.

"I understand your third question does not suggest an actual amendment of the By-Laws but publication in some form so as to show the construction put upon the by-law by the directors. In my opinion there would be no necessity for a change in the By-Laws as published and inasmuch as it is merely a matter of interpretation I do not think it advisable to attach an explanatory footnote to this special by-law. The wording of the by-law is not to be changed or affected in any way and it would be merely a matter of construing the words as at present published.

"I trust that I have fully answered your inquiries. If not will you please let me know? Yours truly,  
(Signed) "CHAS. F. CHOATE, JR."

Mr. Bates—Next is the copy of a letter directed to myself and Mr. Abbott:

"August 8, 1917.

"Hon. John L. Bates,  
"Mr. Leon M. Abbott,  
"933 Tremont Building,  
"Boston, Massachusetts.  
"Gentlemen:—

"For several years it has been apparent to the members of The Christian Science Board of Directors that it was only a question of time until it would be necessary for the directors to give up the various church offices held by them other than their offices as directors, in order to give the necessary time to the actual work of directing the Christian Science movement.

"The By-Laws of The Mother Church impose upon The Christian Science Board of Directors the entire direction of the Christian Science movement throughout the world. The rapid growth of Christian Science as evidenced by its 1748 branch organizations, the wonderful increase in circulation and influence of the Christian Science publications, the increasing membership both of The Mother Church with well over 100,000 members, and the rapid expansion of its

branches all over the world, are indicative of the increased responsibilities resting upon the board which Mrs. Eddy made responsible in the By-Laws of The Mother Church for the entire direction of the Christian Science movement.

"It is now the unanimous opinion of the directors that the time for this change has come and plans are being formulated to effect the change at as early a date as circumstances will permit. In this connection we wish to avail ourselves of your opinion on the matter of the readjustment of salaries on a reasonable and equitable basis, and for that purpose we present the following facts.

"For some time after Mrs. Eddy founded the Christian Science Church the members of her Board of Directors served without financial compensation. On Nov. 16, 1892, Mrs. Eddy gave instructions that the copyright on the revised Christian Science Hymnal should be taken out in the name of The Christian Science Board of Directors and that this board should have all profit from the sale of the Hymnal, it evidently being her desire to make up to the directors by this indirect method a definite compensation in return for their services. This arrangement continued in force until July 12, 1909. During the first 10 years this plan was in force the profits were very small, amounting to but a few hundred dollars per year for each director. From 1902 to 1907 the profits averaged \$1668 per annum for each director. In 1908, the last year these profits were paid over to the board, they amounted to \$2542 for each member of the board, which with the salary of \$1000 made their total compensation as directors for that year \$3542.

"In addition to the Hymnal profits, Mrs. Eddy on June 26, 1895, made a definite provision that the salaries of the members of the Board of Directors should be \$500 per annum each. On December 11, 1902 this by-law was amended, increasing the salaries to \$700 per annum. On July 30, 1903, Mrs. Eddy authorized an increase to \$1000 per annum, this arrangement remaining in force until July 12, 1909.

"At about this last date it appeared to all of the directors that the Church had reached a point where it would be more business-like and better for all concerned to relinquish this indirect income from the profits of what had become one of our well-established denominational publications. We thereupon decided to call the matter to Mrs. Eddy's attention, and on June 30, 1909, sent her the following letter."

Mr. Bates—I find that the quotation is exactly the same as in Mr. Choate's letter and I will not repeat it, if that is agreeable. I will leave that out.

"The letter referred to as having been sent to the trustees of The Christian Science Publishing Society was as follows:"

Mr. Bates—I also find, Your Honor,



that the quotation there is exactly the same as in Mr. Choate's letter, and therefore I will omit that. After the quotations the letter proceeds as follows:

"It may here be mentioned that the annual profits on the Hymnal have grown until they now amount to approximately \$23,000 per year.

"On July 10, 1909, Mrs. Eddy signified her approval of our proposition and wrote us as follows:"

Mr. Bates—The letter is the same as quoted in the letter to Mr. Choate.

"And on July 12, 1909, Mrs. Eddy amended the by-law governing the salary of the directors in the following words:

"The salary of the members of the Board of Directors shall be at present two thousand five hundred dollars each annually." [Last sentence of Sec. 9, Art. I.]

"The words 'at present' were inserted by Mrs. Eddy on her own initiative and without the knowledge of the board. This by-law now stands in this form and governs the situation at present.

"Of course those members of the Board of Directors who have given all of their time to Church work and who have held other official positions in the organization have always received compensation for such additional services, which in addition to the \$2500 for their work as directors has given them a total sum sufficient for their living expenses. For instance, in addition to being a director, Mr. McLellan was editor of the Christian Science periodicals, Mr. Stewart is publisher of Mrs. Eddy's works, Mr. Dittmore is clerk of the Church, and Mr. Dickey is treasurer of the Church. The total salaries have therefore ranged from \$500 to \$11,500 per annum for each director.

"The questions which we therefore wish to present to you are these:

"First—Is there any legal reason why the members of The Christian Science Board of Directors should not readjust their duties and their salaries along the lines herein proposed?

"Second—What amount would in your opinion be a reasonable annual salary for each of the five members of The Christian Science Board of Directors after they have relinquished such other Church offices and salaried employments as they have heretofore held?

"Very truly yours,

"THE CHRISTIAN SCIENCE BOARD OF DIRECTORS

"By  
(Signed) "JAMES A. NEAL,  
"Secretary."

Mr. Bates—Shall I go on and complete this record?

The Master—Just as you say. How long will it take?

Mr. Bates—It is about four pages more; perhaps I had better let it go until 2 o'clock.

[Recess to 2 p. m.]

#### AFTERNOON SESSION

Mr. Bates—I had finished reading the letter of The Christian Science Board of Directors to Mr. Abbott and myself, and next comes in the record a copy of our reply.

"Bates, Nay, Abbott & Dane

"Counselors at Law

"933-939 Tremont Building

"73 Tremont Street

"Boston, Mass., Sept. 6, 1917.

"The Christian Science Board of Directors,

"Boston, Massachusetts.

"Gentlemen:—

"On Aug. 8 you sent us a communication in which you stated in brief that for several years it had been apparent that the gradually increasing duties of The Christian Science Board of Directors would eventually make it necessary for the directors to give up the various other church offices held by them, so as to give their entire time as directors to the direction of the Christian Science movement throughout the world. You further stated that it was now the unanimous opinion of the directors that such a time had arrived, and you wished to avail yourselves of our opinion on the matter of the 'readjustment of salaries on a reasonable and equitable basis.'

"You stated at considerable length the history of the salaries which had been paid to the directors at various times, and concluded by asking these questions: 'First, Is there any legal reason why the members of The Christian Science Board of Directors should not readjust their duties and their salaries along the lines herein proposed? Second, What amount would, in your opinion, be a reasonable annual salary for each of the five members of The Christian Science Board of Directors after they have relinquished such other church offices and salaried employments as they have heretofore held?'

"We have given this matter most careful consideration, and have arrived at the conclusion hereinafter stated.

"Your first question naturally divides itself into the following: First, Is there any legal reason why the members of The Christian Science Board of Directors should not readjust their duties? Second, Is there any legal reason why they should not readjust their salaries?

"First—Is there any legal reason why the members of The Christian Science Board of Directors should not readjust their duties?

"The Church law is contained in the By-Laws of The Mother Church. There is nothing in these By-Laws which requires a director to hold any other official position in the Church, and nothing that prevents a separation of the duties as proposed. These By-Laws place upon the Board of Direc-

tors the entire business management of the Church and the direction of the Christian Science movement throughout the world. The board must see to it that officials do not occupy positions the duties of which they cannot properly attend to, and therefore, they must provide for such a division of duties as from time to time may become necessary. At first it was undoubtedly convenient and desirable that the directors hold the other official positions such as clerk, treasurer, editor, publisher of Mrs. Eddy's works, etc. It has now become not only an inconvenience but an impossibility for them to continue to hold such other offices without detriment to the work of the Church. Therefore, the time has unquestionably come when the directors should resign such other positions as interfere with the discharge of their duties as directors, and we find no legal reason why they should not do so.

"Second—Is there any legal reason why the directors should not readjust their salaries to correspond with the changed conditions?

"Section 9 of Article I of the By-Laws provides among other things, as follows: 'The salary of the members of the Board of Directors shall be at present \$2500 annually.'

"Does this by-law prevent a readjustment of the salaries?

"Do the words 'at present' limit the effect of the By-Law to the time indicated by 'at present,' i. e., to a reasonable time after the adoption of the By-Law, on July 12, 1917? Or, do the words 'at present' simply mean until the By-Law shall have been amended? If they mean the latter, then the words are meaningless and useless, because without them the By-Law could only be binding so long as unamended.

"It is a general legal principle that in construing the meaning of a law or written instrument it shall be construed, if possible, so as to give full effect to all words contained in it. Applying this general principle to the By-Law in question, it would seem that the words must be construed as meaning exactly what they say, namely, that the salaries were fixed by the By-Laws for the time being at \$2500 and that the words 'at present' were inserted by Mrs. Eddy for the double purpose of showing both that she approved such further readjustment of the directors' salaries as might be necessary thereafter, and also to make it possible, when such time arrived, to readjust the salaries without amending the By-Law. She may indeed have had in mind that the By-Laws specifically provided that no amendment could be made to them without her approval, and that she was looking to the time when, as the result of her passing on, it would be impossible for her to give her approval, and yet it might be necessary in order to secure the best results to

readjust the salaries, and she therefore inserted the words 'at present' so as to make this By-Law operative only temporarily and not a barrier to future adjustment.

"In other words, the salary provision of the By-Law was operative only for such time as might reasonably be considered as 'at present,' and with the passing of time and the changing of conditions the By-Law itself became inoperative, null and void.

"It is in principle the same as would be a by-law that fixed the salaries at a definite amount until a specified date. It is clear that such a by-law would not be operative after such date. The by-law in question did not specify a definite date but did specify a period, namely, 'at present,' and now, eight years after, may reasonably be considered a time far beyond the period for which the by-law provided.

"If the By-Laws cannot be amended or annulled (see Art. XXXV, Secs. 1 and 3, also Art. XXII, Sec. 18. See also Trust Deed, Church Manual, page 137) then the extreme necessity of the situation itself requires a broad and practical construction of the by-law. In view of all the present circumstances and conditions, to say that these salaries cannot be increased by vote of the board would be to say that such salaries must, for all time, remain as at present. This would not be reasonable.

"In the case of *Saltman vs. Nesson*, 201 Mass. 534 at 541-2 (1909) it was held that an unreasonable by-law was ineffectual to limit the right of the majority of the members of a religious society. In that case a by-law had been enacted which prescribed a ritual or form of worship, and also provided that no change in the services performed in its worship could be made except by unanimous vote of its members. The Court said:

"We are of opinion that this was unreasonable and inconsistent with the legal right of control of the affairs of the corporation existing in its membership. If it had put a reasonable limitation upon the power to change its form of worship, the by-law might have been binding; but in the form adopted it was utterly subversive of the right of control of a corporation which belongs to its members.' Cases cited.

"This part of the by-law being ineffectual to limit the right of the majority, it was in their power in a proper way to change the form of worship, and this was done by a vote at a regular meeting.'

"It should be noticed that in *Saltman vs. Nesson* the control of its affairs existed in its membership. In the government of The Mother Church the control of its affairs exists in the Board of Directors. In said case of *Saltman vs. Nesson* there was no opportunity for construing the by-law so as to permit the desired change, and the Court did not hesitate to allow the

by-law to be annulled by a vote of the members. In other words, to accomplish a legitimate and reasonable purpose made necessary by circumstances, the by-law was annulled. Even more readily would the Court allow a reasonable and liberal construction of a by-law to accomplish a purpose made necessary by changed conditions.

"The by-laws of a church, like a statute, should have a reasonable construction. 10 Cyc. 352 (9).

"The fact that the Board of Directors might be deemed trustees in a legal sense (see trust instruments, Manual, pp. 128-138) would not change these conclusions. There are instances where trustees have been allowed to exercise discretion beyond the strict letter of the instruments under which they derived their powers. (See Perry on Trusts and Trustees, Sixth Edition, Volume 2, sections 476 and 490.) The latter reference reads as follows: '490. Courts have treated powers as either strict or simply directory. Strict powers are such as are to be executed only under the exact circumstances prescribed in the instrument of trust, and in the exact manner and in favor of the particular class of persons named. Directory powers are monitory only, and may be executed with some degree of latitude; as where an advowson was vested in trustees, to present a fit person within six months of the incumbent's decease, the direction was held to be monitory, and that the power might be executed after that time had elapsed. So, when six trustees were empowered, when reduced to three, to appoint others, and all died but one, this power was held to be simply directory, and that one might fill the vacancies. Where a power was given to sell with all convenient speed, and within five years after the testator's decease, these words were held to be directory only, and that a sale and a good title could be made after that time. And when twenty-five trustees were appointed with a direction that when reduced to fifteen the vacancies should be filled, the court held that the trustees were at liberty to fill the vacancies when reduced to only seventeen, and that they would be compelled to exercise the power when reduced to fifteen. Again, when powers are coupled with an interest in an estate, a substantial compliance with the directions in executing the powers will be sufficient.'

"As a general proposition courts are disinclined to interfere with the by-laws of religious societies, fraternal organizations, or with the interpretation put thereon by the constituted authorities, etc.

"10 Cyc. 361. Note 18. For instance, in the case of *Yeaton v. Grange*, 77 N. H. 332 at 334, Walker, J. said:

"The preponderance of authority is in favor of the doctrine that as to all questions of policy, discipline, internal government and custom, the legal

tribunals must accept as binding the decision of the regularly constituted judicatories of the church, fraternity, association or society.'

"In the case of the *People v. Board of Trade*, 80 Ill. 134 the Board of Trade expelled a member, who, thereupon, brought a petition for writ of mandamus to compel restoration to membership. The court refused to grant the writ and said in part:

"It is true that the body is organized under a statutory charter, and so are churches, masonic bodies and Odd Fellows and temperance lodges; but we presume no one would imagine that a court could take cognizance of a case arising in either of those organizations, to compel them to restore to membership a person suspended or expelled from the privileges of the organization. They being organized by voluntary association and not for the transaction of business but for the purpose of inculcating their precepts and trusts not for pecuniary gain, but for the advancement of morals and for the improvement of their members, they are left to adopt their constitutions, by-laws and regulations for admitting, suspending or expelling their members.'

"... courts never interfere to control the enforcement of the by-laws of merely voluntary associations created for the advancement of religious, moral or social principles, or merely for amusement. In such organizations, they must be left to enforce their rules and regulations by such means as they may adopt for their government.'

"On the other hand, while civil courts accept the decisions of the highest tribunals of churches on questions of faith and adopt an ecclesiastical decision out of which civil rights arise, they have the sole power to adjudicate property rights and a decision of church authorities on a question of property rights alone is not binding on the courts.'

"*Marie M. E. Church of Chicago v. Trinity M. E. Church of Chicago*—253 Ill. 21, p. 28 (1911).

"Construing the by-law in such a way as to permit the change of salary as was contemplated, makes the by-law a reasonable one and consistent with the general plan under which the affairs of the Church are managed by the Board of Directors. If it should be argued against such a liberal construction of this by-law that it would place too great power in the exclusive control of the Board of Directors without any limitation or check on the exercise of this discretion, the reply to such a contention is furnished by the provisions of the by-laws relating to the Finance Committee, Article XXIV, Section 4, page 76. Under this by-law no bill can be paid by the treasurer of the Church until first submitted to said committee for examination. Bills cannot be paid until unanimously approved by said committee. Moreover, the Finance

Committee is required to see to the proper distribution of the funds of which the Board of Directors and treasurer are the custodians. See also same article, Section 6.

"Another check on any unreasonable action by the Board of Directors in this matter is the provision of the by-laws which requires the Board of Directors to report at the annual Church meeting all its expenditures (Article XXIV, Section 3), and the further provision that the Board of Directors shall be individually responsible for the proper distribution of funds, etc. (Article XXIV, Section 4.)

"Our answer to your first question is, therefore, in the affirmative, and that a reasonable construction of the By-Law permits a readjustment of the duties and salaries along the lines proposed.

"What amount would in your opinion be a reasonable annual salary for each of the five members of The Christian Science Board of Directors after they have relinquished such other church offices and salaried employments as they have heretofore held?"

"The board has rightly assumed that whatever salaries are determined upon must be reasonable. This the law would require, although the law does not define what is reasonable. It is not a question of law, but a question of fact, to be determined by consideration of all the facts and conditions bearing upon it. It follows that any opinion we express is opinion only.

"The Board of Directors are intrusted with the supervision, management, welfare and progress of a great church, having over 100,000 members belonging to the original society and with nearly 2000 branch churches. It is for them to determine all questions of discipline and membership. They elect the officers, and have the power and duty of removal. Under their direct or indirect control are properties aggregating millions of dollars in value. They supervise the publication of all the reading matter authorized by the church, and have important duties to discharge in reference to The Christian Science Publishing Society and its daily, weekly, and monthly publications. Many other and peculiar duties devolve upon them under the provisions of the Manual. The successful discharge of such duties requires wisdom, tact, patience, zeal, courageous decision, high character and business talents of no mean order.

"Men competent for such duties command and obtain today in the business world compensation often running into many thousands of dollars.

"In view of these facts, and of the fact that the directors, in order to devote their whole time and strength to these duties, are voluntarily relinquishing the larger opportunities of

private business and the emoluments of other offices in the church that allowed each of them compensation for all their respective services of from \$8500 to \$11,500 per year, we think that a salary of \$10,000 would be reasonable.

"In expressing this opinion, we have taken into consideration the income and resources of the Church, and are of the opinion that the payment of the salaries suggested will not impair its efficiency but rather that the advantage to accrue to it, from the devotion of their entire time to its service as directors, will more than compensate for any increased expense.

"Yours respectfully,

(Signed) "JOHN L. BATES  
"LEON M. ABBOTT.

"Be it further resolved, that in accordance with the above advice the salary of the members of The Christian Science Board of Directors shall be eight thousand five hundred dollars (\$8,500.00) each annually, dating from Nov. 1, 1917, this salary being the same amount now received by four of the five directors for their services as directors plus salaries as treasurer, clerk, publisher and chairman of the Trustees under the Will of Mary Baker Eddy respectively."

[The record of the meeting of the Board of Directors of Nov. 1, 1917, from which the foregoing extracts are read, is Exhibit 751, R. H. J.]

Mr. Whipple—Did they give up their compensation under the will of Mary Baker Eddy, according to the vote? I mean as trustees under that will.

Mr. Bates—I have read the whole of the record that pertains to that matter.

Mr. Whipple—Well, I thought you could intelligently comment upon it, but if you do not desire to, I will.

Mr. Bates—They gave up all salaried positions which they at that time held and which are the positions which are specifically referred to in both their letter and our opinion.

Mr. Whipple—How about since then?

Mr. Bates—I understand they have since that time, and that it was contemplated, if you read the opinion in the letter, that they should have such amount as the Court of New Hampshire offered them or might allow them in the matter of their services as trustees under the will of Mrs. Eddy. That matter is specifically referred to in Mr. Choate's letter.

I call Your Honor's attention to the fact that it is stated that that resolution was unanimously adopted; that all the members of the board, including Mr. Dittmore, were present; and that Mr. Dittmore signed the record as chairman.

Mr. Thompson—You will of course put in Mr. Dittmore's letter at the same time of Oct. 17, 1915?

Mr. Bates—If there is anything you want you will have ample time to put it in. Don't you be disturbed.

Mr. Thompson—I am not disturbed. I should think you would be, though.

Mr. Bates—I am not at all.

Now, I direct Your Honor's attention to, or I offer, a short extract from the meeting of Friday, Dec. 21, 1917, of the Minutes of the Regular and Special Meetings of The Christian Science Board of Directors for the year 1917-1918, pages 181 and 182:

"At a regular meeting of The Christian Science Board of Directors held at 10 a. m. on above date in the directors' room of The Mother Church, there were present Messrs. Stewart, Dittmore, Dickey, Neal and Merritt."

I will leave out the motions which do not affect this matter.

"On motion of Mr. Neal, seconded by Mr. Merritt, it was voted unanimously that beginning Jan. 1, 1918, the salary of the members of The Christian Science Board of Directors shall be \$10,000.00 each annually."

The record is signed by Mr. James A. Neal, secretary, and John V. Dittmore, chairman.

[The record of the meeting of the Board of Directors of Dec. 21, 1917, from which the foregoing extracts are read, is Exhibit 752. R. J. M.]

The Master—This is Dec. 21?

Mr. Bates—1917.

The Master—A month later than the Nov. 21 meeting which you read first?

Mr. Bates—Yes, Your Honor. A vote as to the salaries for the year 1918.

Mr. Whipple—For the salaries of 1918?

Mr. Bates—The first meeting, Your Honor, was Nov. 1, and not Nov. 19.

The Master—Nov. 21?

Mr. Bates—No, Your Honor; Nov. 1.

The Master—I took it Nov. 21.

Mr. Bates—No, Your Honor; it is Nov. 1.

The Master—Thank you.

Mr. Bates—But the last meeting was Dec. 21.

The Master—I see. And, to be sure I do not misapprehend, Governor Bates, the vote of Nov. 1 fixed the salary at \$8500 for a year, the calendar year?

Mr. Bates—It fixed the date, Your Honor, but I want to make sure that I give it to you right.

The Master—There seems to be some little uncertainty there.

Mr. Thompson—I think it was for the remainder of the year.

Mr. Bates—It was voted—

The Master—I would not read it all over again.

Mr. Bates—It is—

"shall be \$8500 each annually dating from Nov. 1, 1917,"

which was the date of the meeting.

The Master—Then comes the vote of Dec. 1, 1917?

Mr. Bates—Yes, Your Honor, which fixed it beginning with the 1st of January following at \$10,000 per year.

Mr. Thompson—That is correct, for the next year, for the year 1918.

The Master—Doesn't that interfere

with the vote that fixed the salary for a year from Nov. 1—

Mr. Thompson—That went from November to January; that was just for the balance of the year, as I understand it.

Mr. Bates—That is as I understand it, also.

The Master—The vote does not make it perfectly clear, but if you both so understand it it is all right.

Mr. Bates—I so understand it.

Mr. Thompson—The amount of the salaries is of no significance. The question really is the publicity, and the circumstances and manner in which it was done.

Mr. Whipple—When did the directors commence getting this income under the will again? The first vote was that they took \$8500 in lieu of their salary or compensation as Trustees under the Will.

Mr. Bates—There is no such vote, Your Honor.

The Master—That was not the exact arrangement, as I gathered.

Mr. Bates—There is no such vote.

Mr. Whipple—Let us see the vote.

The Master—Governor Bates states that that was not the arrangement, as I understand him; that they retained their compensation as trustees under the New Hampshire court.

Mr. Whipple—Let us see. There is the vote?

Mr. Bates—Do you mean the resolution?

Mr. Whipple—The resolution or vote.

Mr. Bates—Well, the vote was in the form of a resolution, which begins here, and then includes the opinion. It begins here.

Mr. Whipple—All right. Let me see if I can understand it.

Mr. Bates—I think that perhaps it would be better for you not to interrupt me now, but to do it later, when your time comes.

Mr. Whipple—You want to have it correct, don't you?

Mr. Bates—Oh, I have it correct now.

The Master—Is there anything further, Governor Bates?

Mr. Whipple—Now, if Your Honor please, may I call attention to that resolution:

"Resolved, That in accordance with the above advice the salary of the members of the Christian Science Board of Directors shall be eight thousand five hundred dollars (\$8500) each annually, dating from Nov. 1, 1917, this salary being the same amount now received by four of the five directors for their services as directors plus salaries as treasurer, clerk, publisher, and chairman of the Trustees under the Will of Mary Baker Eddy respectively."

Now, some one was receiving a salary—

Mr. Thompson—Neal; that is Neal.

Mr. Whipple—Well, when had he got it? It has been recited heretofore that all that he was getting was \$2500

Mr. Bates—If you want me to state what the facts were—

Mr. Whipple—I don't suppose that you know them.

Mr. Bates—I know them sufficiently well—

Mr. Whipple—Except by hearsay.

Mr. Bates—Well, I know them, and I shall be glad to state them to you.

Mr. Whipple—No, I don't care for them; I will not trouble you.

The Master—If there is a short way of getting it accurately without hearing a lot of witnesses, I think that we would all be glad to have that way adopted.

Mr. Whipple—Provided we can get it accurately.

Mr. Thompson—I understand that Mr. Neal got \$5500 as chairman of the Trustees under Mrs. Eddy's Will up to a short time before this, when he was getting \$6000 in another capacity. The other trustees got nothing except their percentage or commission.

The Master—That raises another question. Let us take one thing at a time.

Mr. Whipple—My question was if we could get on to the record when, in addition to this \$8000, then later advanced to \$10,000—

The Master—It was \$8500, was it not?

Mr. Whipple—Was it \$8500? Yes, \$8500, plus the amount that they got two months later, that is \$10,000 a year—when after that they commenced to get this \$4500 or so as Trustees under the Will. Apparently up to this time they had not been taking it. Now, when did they begin to take that in addition? That is the question.

The Master—Is that a question that can be shortly answered and settled just now?

Mr. Bates—I can answer it, I think, very shortly, but I am not certain that my brother will take my statement in regard to it. I understand the situation to have been this, that the directors were devoting practically or substantially all their time to their duties as directors; that, during a course of years, they had assumed these other positions, for which they were being paid salaries; that it was contended by Mr. Neal on the board that these salaries were really being paid to them because they were directors; that he was voted a salary of \$5500, so that his salary would be commensurate with those of the others; that for two years he refused to accept it, urging upon the board that it was their duty to increase the salaries and make them one salary for all of those duties, instead of occupying all of these other positions and receiving the salaries in any other way. That was one of the contentions that were made. Mr. Neal refused the salary for two years. I think that subsequently for a while he received it, because he was giving his entire time to it. So far as the

amounts that were paid the directors are concerned, under the will, they were paid the usual amounts that are paid to trustees under a will, based on the usual computations. I understand that that has been so from the beginning. And if Mr. Whipple has carefully noted the letters—

The Master—And that has so continued to the present time?

Mr. Bates—And it has so continued to the present time.

The Master—Without any change by reason of the votes either of Nov. 1 or Dec. 21?

Mr. Bates—Yes, Your Honor.

Mr. Thompson—Except that Mr. Neal gave up his salary as chairman. Isn't that right?

Mr. Bates—Well, if he received it, he gave it up as chairman.

Mr. Thompson—But he received his commissions as one of the trustees on the commission basis.

Mr. Whipple—Then all of these directors, at the time of the vote, in addition to the sums which it recited in the vote, were receiving in the vicinity of \$4500 apiece from the estate of Mrs. Eddy, and one of them was receiving \$4500 and \$5500 from the estate.

Mr. Bates—That is not so.

Mr. Thompson—No; \$5500 in all.

Mr. Bates—That is not so. I have previously stated, and there is no misunderstanding about it, that what they have received as Trustees under the Will they have continued to receive, and do now.

Mr. Whipple—How much have they received?

Mr. Bates—The amount there is according to the income, as you know, of the trust fund.

Mr. Thompson—Mr. Dickey testified—

Mr. Bates—It has at times been considerably smaller than it is at the present time. Just what it is at the present time I do not know, but my best impression is that they are now receiving about \$3500 as trustees under the New Hampshire court.

Mr. Whipple—Mr. Dickey testified that they were receiving about \$4500.

Mr. Bates—Receiving about \$4500 at the present time.

Mr. Whipple—Very likely. But I do not see that that has diminished the salaries at all. Indeed, instead of diminishing them, as the income has diminished under the will, they were increasing them.

Mr. Bates—We have not contended that they refused to receive, or did not continue to receive, what they were receiving as Trustees under the Will. They did give up salaried positions, as they have stated, and they took this as an offset, and the salaried positions were in some cases more than the amount that they received under the other method.

Mr. Whipple—Yes, and those salaries they had fixed themselves, contrary to the rule with regard to fiduci-

aries known from the beginning of the law.

The Master—Never mind about that. I understand it this way, and let me see if I have got it right: As Trustees under the Will there was only one salaried position?

Mr. Bates—That is right, Your Honor. And Your Honor bears in mind that the directors were not the only Trustees under the Will.

The Master—The Trustees under the Will received commissions on the income?

Mr. Bates—Yes, sir.

The Master—One of them, being chairman, was also getting a salary?

Mr. Bates—Not in addition to the commissions.

Mr. Thompson—Yes. I beg your pardon. That is true. He was getting nearly \$9000 under that will. Neal did.

Mr. Whipple—The man that was getting \$4500—

The Master—Pardon me a moment.

Mr. Whipple—Pardon me, Your Honor.

The Master—In the readjustment that salary was given up?

Mr. Bates—Yes, Your Honor.

The Master—The commissions being left just where they were before?

Mr. Bates—Yes, sir.

The Master—And the commissions continued to go right on, notwithstanding the readjustment vote?

Mr. Bates—Yes, sir.

The Master—That is the only point in dispute now.

Mr. Thompson—And the commissions are 5 per cent on the gross income, divided into six parts?

Mr. Whipple—Now, Your Honor commented on that vote in November. I think that it is very clear that that vote fixed the amount of the salary for the balance of the year.

Mr. Bates—Isn't that a matter for argument hereafter?

Mr. Whipple—No.

The Master—I suppose it is, really.

Mr. Whipple—What are you going to put in now?

Mr. Bates—I am waiting for you to get through talking.

Mr. Whipple—Are you going to put in now, in order that His Honor may know the entire facts and circumstances under which your clients acted, and which guided them, the letter of General Streeter, given in 1915, and read at the same time, and also a subsequent letter of Mr. Choate, which has been referred to by Mr. Thompson, on the question of publicity?

Mr. Bates—We have stated, Your Honor—

The Master—Now, pause one moment. Is there any reference to a letter by General Streeter, or to a subsequent letter by Mr. Choate, in the record?

Mr. Bates—There is not.

Mr. Thompson—I think they kept it out of that record.

The Master—It is not in that record? Nobody disputes that.

Mr. Whipple—But there was in the deleted record—

The Master—No, in the record of this meeting. I will deal with that when we come to it.

Mr. Thompson—I think that they kept it out of that record.

The Master—We will deal with that later.

Mr. Whipple—But it was in the deleted record.

Mr. Thompson—Also there is in the evidence, it has been testified to—

The Master—I am not going over the testimony now. Have we got to have either General Streeter's opinion or the subsequent letter from Mr. Choate as part of the record which you have just introduced?

Mr. Bates—I, Your Honor, do not see how that has any bearing on the case.

The Master—There is no reference in the record to it, you tell me?

Mr. Bates—No reference to it.

The Master—Now, what else do you want to introduce?

Mr. Bates—But I do want to call Your Honor's attention, in view of the statement just made by Mr. Whipple as to the amounts being paid under the will, to the fact that Mr. Choate particularly called attention to the fact—

The Master—Is that part of the same record?

Mr. Bates—Yes. Mr. Choate particularly called attention to that fact. He says:

"In answer to your second question I should advise that there should be no objection to salaries of from \$8000 to \$10,000 annually, and that such salaries should be considered reasonable for the services performed. In making your own determination as to the amount you will, of course, take into consideration the fact that part of your time would be taken up with your duties as trustees under the residuary clause of Mrs. Eddy's will, for which reasonable fees will be allowed by the Probate Court in New Hampshire."

In other words, Mr. Choate's opinion was based on that fact, as he calls to their attention—

The Master—Now, I would not make any statement about that. You have already called attention to it.

Mr. Bates—That is all that I wished to do, Your Honor. Now, I would like to have Mr. Dane put in the record of the By-Laws.

Mr. Thompson—Before we leave this subject, don't you think that we had better dispose of it by dealing with it wholly and adequately? There has never been any complaint that I know of as to the amount of the salaries, as to the adequacy of them, whether they were earned or not. The trouble here is the secrecy and the unwillingness to disclose to the field—

Mr. Bates—I object to this, Your Honor.

The Master—I am a little at a loss to understand what you are on now.

Mr. Bates—I want now Mr. Dane to put into the case the record of the By-Laws—

The Master—Let me first inquire if Governor Bates has anything more to offer on that matter?

Mr. Bates—Not on that matter. I have some by-laws that I wish Mr. Dane to put in.

The Master—Are you all through with putting in the records?

Mr. Bates—No, Your Honor; there are other records that I wish to put in, but they do not bear on this matter.

The Master—Now, we have heard many times Mr. Thompson's request to you to put in something else bearing on this same matter at this same time. I shall not undertake to make any order on it. You can do as you think best.

Mr. Bates—I call Your Honor's attention to the fact that the records that he refers to are not records of this same time, but are records of two years prior to this time.

The Master—All right.

Mr. Bates—And also to the fact that if he wishes to put them in I shall not object to it, but—

The Master—I do not care what your reasons are for it. I am only asking you what you propose to do.

Mr. Bates—We put in only what we deem material. We do not deem those material.

The Master—What are you going to put in next?

Mr. Thompson—The letter that I called for was a letter of Oct. 15, 1917, not a letter of two years previous.

The Master—Well, I do not care about that. Let Governor Bates proceed to put in what he thinks ought to be put in.

Mr. Whipple—I think, Your Honor, that we ought to have some understanding about this. We are now drifting into another of these situations where there is no witness on the stand, and we shall be confronted at the end by the fact that it is not cross-examination.

Mr. Bates—We shall not raise any question of that kind.

Mr. Whipple—You did it once before.

The Master—Don't you think, Mr. Whipple, that this situation is simple enough? Mr. Bates is undertaking to put in directors' records and other records without calling any witness, they being records of the kind which speak for themselves. I do not see how we shall get into any misunderstanding if we let him go through and complete what matters there are of that kind that he has to offer.

Mr. Whipple—Now, I have no objection to it, provided that it is clearly understood that we may put in such records as we please, either what they claim are their records, or the deletions of their records, and call for

further correspondence in regard to them.

The Master—I do not wish now to undertake to define exactly what you may put in and what you may not put in when your turn comes.

Mr. Whipple—No, Your Honor, but I do not want to be at any disadvantage because there is not any witness on the stand.

Mr. Bates—We shall not raise that question.

The Master—I do not see how you can be prejudiced by that fact at all.

Mr. Whipple—We were before, and we had quite a discussion about it.

The Master—What are you going to do now? Call a witness?

Mr. Dane—Yes; I want to identify a record.

The Master—I thought that you were simply going to put in records.

Mr. Dane—That is all.

The Master—Directors' records, like the trustees' records. We have got now to a point where they speak for themselves, don't they?

Mr. Dane—I think so, yes.

The Master—By agreement, each side may put in what it wants.

Mr. Dane—Yes. These are the letters from Letters and Miscellany. If there is an agreement as to that I will not call a witness. If it may be agreed that we may read from these volumes of Letters and Miscellany such letters as we desire, I will not call a witness at this time.

Mr. Whipple—Such as you desire, and such as His Honor rules are admissible.

Mr. Dane—Why certainly.

The Master—Offer your record, and let us see if anything comes up that calls for a witness.

Mr. Dane—I offer from Volume I of Letters and Miscellany, document No. 48, page 133, and I offer only—

Mr. Whipple—From whom to whom?

Mr. Dane—From Mrs. Eddy.

Mr. Whipple—To whom?

Mr. Dane—To the Christian Science Directors of The First Church of Christ, Scientist, dated May 8, 1893; and I offer only the salutation on the letter, the address.

Mr. Thompson—Where is it, please?

[The letter referred to is inspected by Mr. Whipple and Mr. Thompson.]

Mr. Whipple—Well, it does not seem to me that that can have the slightest bearing. Sometimes she addressed them one way and sometimes another, and it cannot be of any significance that there was a slight change, calling them the Board of Directors of The Christian Science Church, or calling The Christian Science Board of Directors. If Your Honor thinks that it can possibly have any bearing I shall not object to it.

Mr. Dane—You do not object?

Mr. Whipple—I shall not if His Honor thinks that it can have any possible bearing.

The Master—You may put it in.

Mr. Dane—This is from Volume I of Letters and Miscellany, document No. 48, page 133, a letter from Mrs. Eddy, dated May 8, 1893, in her own handwriting, addressed "To The C. S. Directors of The First Church of Christ, Scientist, Boston."

Mr. Thompson—How much is there to that letter?

Mr. Dane—There are three pages.

Mr. Thompson—Can you tell us the subject of it?

Mr. Dane—No, I cannot. I only offer it for the part that I put in.

The Master—Let him have the books so that he can see it.

Mr. Dane—Yes, sir (passing the book to Mr. Thompson).

Mr. Thompson—Haven't you even read it so that you know what it is about?

Mr. Dane—Just a minute. I have read it.

The Master—If it is three pages, it will take some time to read it. Can't you go on with something else?

Mr. Dane—No; I want to use the book, Your Honor. The next document is in the book.

Mr. Thompson—I wish you would put that letter in, Mr. Dane. I think that it ought to go into the record.

Mr. Dane—While he is examining it I will offer from Volume 4—

Mr. Whipple—I understood Mr. Thompson to say that he wanted you to put it in.

The Master—Is your examination complete? Have you examined it all that you want to?

Mr. Thompson—Yes, sir. I do not think that he ought to put in a part of a letter. He ought to put in all the letter.

Mr. Dane—I do not offer part of the letter. I offer it for the way Mrs. Eddy addresses the Board of Directors.

The Master—If you offer a part of it, and anybody else desires the rest, I think that we shall have to have the whole of it. You ought to consider that when you offer only parts of letters.

Mr. Dane—Yes, sir. It seems to us that these addresses are of sufficient importance to offer them as showing the way that she addressed the Board of Directors prior to 1908. Mr. Whipple developed this on cross-examination of Miss Warren. He asked her whether she could point out any time prior to 1908 when Mrs. Eddy addressed the directors in any other way than in the designation shown in the deed of Sept. 1, 1892, and this is in direct response to that inquiry.

[Letter from Mrs. Eddy to The Christian Science Board of Directors, dated May 8, 1893, is introduced in evidence as Exhibit 753A, and is read by Mr. Dane as follows:]

"Pleasant View, Concord, N. H.,  
"May 8, 1893.

"To the C. S. Directors of  
"The First Church of Christ, Scientist,  
Boston

"Beloved students,

"I desire you to prepare to lay the foundation for, the church edifice sooner than was expected. I feel that our loving God has bid me say to you, Lay the foundation of the First Church of Christ Scientist next Oct. I hope you will be pleased to commence this work then, even if you have not the full sum of \$40,000 on hand. Let us be obedient and trust Him in all things, at all times. It will encourage the contributors to know you have commenced the work of building.

"Yours in Christ,

"M. B. G. EDDY.

"N. B. Please keep this matter wholly with yourselves until you begin the sacred task for which you have been appointed.

"M. B. G. E."

The Master—Give me the date of it again.

Mr. Dane—The date is May 8, 1893. From the same volume I offer document 51, on page 139, a part of which I read into the record.

Mr. Whipple—I think you had better read it all into the record. I think we shall all be better satisfied. They are letters of Mrs. Eddy. I do not know why any part of them should be suppressed.

The Master—What is the date?

Mr. Dane—The date is Sept. 9, 1893.

[A letter from Mrs. Eddy to The Christian Science Board of Directors, dated Sept. 9, 1893, is introduced in evidence as Exhibit 754, and is read by Mr. Dane as follows:]

"Pleasant View, Concord, N. H.

"September 9, 1893.

"To the Christian Science Directors of  
the First Church of Christ, Scientist.

"My beloved students,—

"I thank you for the tender testimonial you and your church have seen fit to engrave on a tablet of stone. May the God of Israel support, guide and prosper you in this Christian endeavor which means much to the present and future generations; and will perpetuate the testimony to what each one of us has done.

"Yours in Christ

"MARY BAKER G. EDDY."

From Volume 4 of Letters and Miscellany I offer document 404 on page 173 from Mrs. Eddy, reading as follows:

"Pleasant View, Concord, N. H. September 30, 1904 C. S. Board of Directors of the Mother Church"

The Master—Were the others 1903?

Mr. Dane—1893.

The Master—1893. Now, this is what?

Mr. Dane—1904, Sept. 30.

[A letter from Mrs. Eddy to The

Christian Science Board of Directors dated Sept. 30, 1904, is introduced in evidence as Exhibit 755, and is read by Mr. Dane as follows:]

"Pleasant View, Concord, N. H.

"September 30, 1904.

"C. S. Board of Directors of the Mother church Boston Mass.

"Beloved Students:

"You will accept this beautiful book, Bohemia, from me in remembrance of your generosity and kindness.

"Lovingly yours,

"MARY BAKER EDDY."

I offer from Volume 6, Document 613, on page 177. A letter from Mrs. Eddy, dated July 22, 1909.

Mr. Whipple—Don't trouble, if they are in her handwriting.

Mr. Dane—I show it to you and ask you if you think it is desirable to read it all.

Mr. Whipple—There is a provision on the reading of Mrs. Eddy's messages, particularly to her Church, that they shall all be read, if read in part. While this is not a Church meeting, we think it should all be read.

Mr. Thompson—We think it is very important to have it go in in toto.

[A letter from Mrs. Eddy to the Board of Directors of The Mother Church is introduced in evidence as Exhibit 756, and is read by Mr. Dane as follows:]

Mr. Dane—This is in Mrs. Eddy's handwriting.

"Board of Directors of the Mother church,

"Beloved Brethren:

"Please read the enclosed and vote upon it. There is a very great need of putting a stop to Mrs. Stetson's present movements, and in doing it in a manner, if possible, that will not sever her from our church relations, or make her our enemy.

"Lovingly yours

"MARY BAKER EDDY

"July 22, 1909."

I offer from Volume 6 of Letters and Miscellany—

Mr. Thompson—From what?

Mr. Dane—Volume 6, document 633 on page 221, a letter dated Oct. 27, 1910.

[A letter from Mrs. Eddy to the directors is introduced in evidence as Exhibit 757, and is read by Mr. Dane as follows:]

"Brookline, Mass., Oct. 27, 1910.

"Directors of The Mother Church,

"Beloved Brethren:

"Please to permit Mr. Hare to go into the Mother Church to take some measurements unless you have reasons for refusing it that I do not know and you will do me the favor to tell me what those are.

"Hastily, lovingly,

"MARY BAKER EDDY."

Mr. Thompson—Do you know who Mr. Hare was?

Mr. Dane—No, I do not.

The Master—You offer all these for the same purpose as you stated first, do you?

Mr. Dane—Yes, I do. From Volume 8 of Letters and Miscellany I offer document number 900, page 203.

[A letter from Mrs. Eddy to The Christian Science Board of Directors dated Feb. 5, 1906, is introduced in evidence as Exhibit 758, and is read by Mr. Dane as follows:]

"Concord, New Hampshire,

"Feb. 5, 1906.

"Christian Science Board of Directors of The Mother Church:

"Please vote on the adoption of the following amendment of Article XXXVII, Section 6.

"MARY BAKER EDDY.

"Case of Necessity. Section 6. If a suitable male is not obtainable for the committee, a suitable female shall be elected therefor. If at any time the Christian Science Board of Directors shall determine that the manager of the general Publication Committees needs an associate, they shall, with the approval of the Pastor Emeritus, appoint an assistant manager, who shall receive an adequate salary from The Mother Church."

From Volume 9 of Letters and Miscellany document 972, page 87, on the letter-head of Rev. Mary Baker G. Eddy, office of Secretary.

[A letter from Mrs. Eddy to the Board of Directors, dated June 12, 1908, is introduced in evidence as Exhibit 759, and is read by Mr. Dane as follows:]

"Brookline Mass. June 12th 1908.

"Christian Science Board of Directors,

"The First Church of Christ Scientist  
"Beloved Brethren:—

"Please vote on the adoption of the following Church By-law, and if adopted publish in our periodicals and the Church Manual.

"MARY B. G. EDDY."

"Article XXXI

"Circuit Lecturer. Sect. 5. The Mother Church shall appoint triennially a Christian Science Circuit Lecturer. His term of office shall be not less than three years. He shall lecture in the United States, in Canada, in Great Britain and Ireland. A member shall neither resign nor transfer this sacred office."

Mr. Whipple—Is that a typewritten letter?

Mr. Dane—Yes.

Mr. Whipple—If you will state when they are typewritten, and when they are all in Mrs. Eddy's handwriting.

Mr. Dane—I will. This letter is typewritten, and signed by Mrs. Eddy. From the same volume I offer a letter document number 975, page 93, on the letterhead of Rev. Mary Baker G. Eddy, office of secretary, 384 Beacon Street, Chestnut Hill, Mass., June 14, 1908. This is a typewritten letter, signed by Mrs. Eddy.

[A letter from Mrs. Eddy to the Board of Directors dated June 14, 1908, is offered in evidence as Exhibit 760, and is read by Mr. Dane as follows:]

"Christian Science Board of Directors,  
"The First Church of Christ, Scientist,  
"Boston, Massachusetts.

"Beloved Brethren:—

"Please vote on the adoption of the following Church By-law, and if adopted publish in our Periodicals and the Church Manual.

"MARY B. G. EDDY.

"No More Communion. The Mother Church of Christ, Scientist, shall observe no more Communion Seasons."

Mr. Whipple—Isn't that letter already in?

The Master—I think so.

Mr. Dane—I don't recall it. Possibly it is.

Mr. Whipple—I am very sure it is.

Mr. Dane—That is all of that class of evidence. I now offer from Volume 2 of the First Members' records, page 34, that part of a record of a meeting under date of Sept. 25, 1895, which I now read.

Mr. Whipple—Directors?

Mr. Dane—First Members.

Mr. Whipple—First Members. May this be read, if Your Honor please, without our stopping to read it, subject to any comment or objection we desire to make afterward, to save time?

The Master—I hear no objection; go ahead.

[A portion of the record of the meeting of the First Members Sept. 25, 1895, is introduced in evidence as Exhibit 761, and is read by Mr. Dane as follows:]

"Sept. 25, 1895.

"A special meeting of the First Members was held this day in the Church vestry.

"The President being absent Judge Septimus J. Hanna was chosen chairman; and the meeting was opened in the usual manner at five o'clock and seven minutes P. M. sixteen members present.

"The following By-Laws prepared by our Teacher the Rev. Mary Baker Eddy were read and received. They were adopted separately by unanimous votes, all rising.

"4th. A person that is not accepted by our Pastor Emeritus, and The Christian Science Board of Directors, as suitable to publish the Christian Science textbook, shall in no manner be connected therewith, nor with the house whence it is issued.

"This by-law can neither be amended nor annulled except by a unanimous vote of this Church."

I now offer from Volume 7 of Letters and Miscellany document 697, page 65. I will submit this to you, Mr. Whipple. It is partly in Mrs. Eddy's handwriting. In Mrs. Eddy's handwriting the following "Cut this off of copy that is printed Eddy." Then typewritten "To be placed on page 20 of Manual as Article V, Section I."

[A provision to be placed in Article V, Section I, of the Manual is intro-

duced in evidence as Exhibit 762, and is read by Mr. Dane as follows:]

"No person shall become a member of this church, or remain a member thereof, who is proven guilty of malicious mental malpractice to the extent of injuring the health, reputation, or the morals of men. A person that is not accepted by our Pastor Emeritus, and The Christian Science Board of Directors, as suitable to publish her books, shall in no manner be connected therewith, nor with the house whence they are issued.

"This by-law can neither be amended nor annulled except by a unanimous vote of this church."

Mr. Whipple—Is that just the same as the other?

Mr. Dane—That is the same as the one that was adopted by the First Members.

The Master—What is the date of it?

Mr. Dane—On the document are the words, "About 1895."

Mr. Whipple—The paper itself bears no date?

Mr. Dane—The paper itself bears no date.

Mr. Whipple—No stamp when it was received, but the memorandum which you read represents the conjecture of some one?

The Master—No evidence as to the date?

Mr. Dane—No evidence as to the date. I offer now from Volume 2 of First Members' records, page 211, that part of a record of a meeting of Dec. 13, 1898, which I now read:

[A portion of the record of a meeting of First Members Dec. 13, 1898, is offered in evidence as Exhibit 763, and is read by Mr. Dane as follows:]

"A special meeting of the First Members was held this day. The president being absent Mr. Ira O. Knapp was called to the chair. The meeting was then opened with the usual form at 9:30 17 members present.

"On motion the following amendment and by-law were separately adopted by unanimous votes—all rising.

"Amend Sect. 2, Art. XI of Church By-Laws page 28 Manual ninth edition to read as follows:

"A person who is not accepted by the Pastor Emeritus and the Christian Science Board of Directors as suitable to publish her books, shall in no manner be connected therewith, nor with the editing or publishing the Christian Science Journal and Christian Science Weekly, nor with The Christian Science Publishing Society."

Q. I desire to ask you, Miss Warren, whether you are familiar with the handwriting—

The Master—Pause one minute. Have you got through with the records that you are going to offer independently of the witness?

Mr. Dane—I have. I have reached the point where I cannot offer the record which comes next in order without the witness identifying the signature.

The Master—Does it purport to be in Mrs. Eddy's handwriting?

Mr. Dane—It does not; it is not Mrs. Eddy's handwriting.

Mr. Whipple—Whose handwriting is it?

Mr. Dane—Part of it is Mr. Johnson's handwriting and part of it is Mr. Armstrong's handwriting, both of whom are dead.

The Master—I thought that you were reading from Mrs. Eddy's writings collected in these volumes.

Mr. Dane—Yes, that is true; but among the original papers collected in these volumes is this memorandum, which purports to be a telephone message received from Mrs. Eddy with regard to the amendment of the by-law, the record of the adoption of which I have just read, on Dec. 13, 1898, and I offer to prove the handwriting on this memorandum.

Mr. Whipple—Assume the witness so testifies. What then? How is it admissible?

Mr. Dane—Then I would offer the memorandum.

Mr. Whipple—I think I will object to it. It seems to me a pretty slender way of dealing with as serious a matter as that.

The Master—Very, indeed.

Mr. Dane—This memorandum is found in the papers, among Mrs. Eddy's papers—

Mr. Whipple—Is the memorandum signed by anyone?

Mr. Dane—It is signed by no one. It is made by Mr. Johnson and by Mr. Armstrong.

Mr. Whipple—That is, you offer a memorandum which appears to be the composite handwriting of two different people who are now deceased, without the slightest evidence of the circumstances under which it was prepared, why, how, perhaps not when, but just a stray piece of paper which contains handwriting which you identify as that of two men. It seems to me that there is no probative value in any such thing.

The Master—An unsigned memorandum?

Mr. Dane—An unsigned memorandum.

The Master—I could not admit it if it is objected to. I think that must be obvious.

Mr. Dane—It is offered under the theory that it was made in 1898 and found in the papers, original papers of Mrs. Eddy—

The Master—That does not add anything at all.

Mr. Dane—The handwriting can be identified, but that is all. We do not regard it as particularly vital.

The Master—If you identify it it would not change the situation, so far as I can see.

Mr. Dane—It is one memorandum that we found bearing upon this particular by-law, and that is all the evidence there is relating to its being made. It purports to have been re-

ceived over the telephone as a message from Mrs. Eddy to make the amendment which was in fact adopted by the First Members under date of Dec. 13, 1898. Of course the by-law in its amended form appears in the subsequent Manuals that have received Mrs. Eddy's approval or ratification.

Miss Warren, that is all; you need not stay on the stand.

I offer Vol. 42 of Letters and Miscellany, the unbound volume, document No. 5519, a letter written by Mrs. Eddy:

"Pleasant View, Concord, N. H.,  
"May 23, 1906.

"My dear Student:

"I had hope you would be happy in your Western home, and among those you have taught, find love and peace.

"Your question your Society can only answer and not I. You remember, dear one, that our Manual is the guide for all the members of my church and I go by that, so must you also. If your society is made up principally of those who favor such pictures why do you notice those things they approve and follow with them and get dissent from their tastes and purposes. Have you not a society of your own and in it find your own views met? I thought that you had a society of your own. Now, dear one, trust in God, *commit your way to him*. I love the Catholics and the Protestants inasmuch as they love God and I love the M. D's. in just this way. Let us all love one another. God bless you and comfort you.

"Lovingly yours,  
"MARY BAKER EDDY."

[Document No. 5519, Vol. 42 of Letters and Miscellany, of which the foregoing is a copy, is Exhibit 764, R. J. M.]

The Master—Does it appear to whom that is written?

Mr. Dane—There is a notation on the letter.

The Master—Only by a notation?

Mr. Dane—Only by a notation.

The Master—Very well. Leave that out.

Mr. Whipple—In this connection, if Your Honor please, may I call to Your Honor's attention and that of counsel the provision of the Manual, Article XXII, Sect. 8, on page 67, under the heading, "Private Communications":

"A strictly private communication from the Pastor Emeritus to a member of her Church shall not be made public without her written consent." I would like to recommend that to the consideration of counsel who are putting in letters that it is perfectly evident Mrs. Eddy in her lifetime never supposed would be subjected to any such use as this.

Mr. Dane—I do not suppose she ever anticipated that her Church would be subjected to any such proceeding as this.

Mr. Whipple—Very likely not. She supposed that her directors would be-



have as they should, and then it never would have come.

The Master—It does not quite appear just exactly to whom this communication was.

Mr. Whipple—No; but anyone reading it would see that it was a private communication. The communications are either official or private. There is no ground between them. They were not for publication. However, having called your attention to that provision of the Manual, if you desire to proceed and think you are acting within it, I have nothing further to say.

Mr. Bates—May I direct Your Honor's attention to the fact that, a few minutes ago, when we were attempting to put in certain communications merely for the purpose of showing how she addressed the Board of Directors. Mr. Whipple insisted they should be written in full into the record.

Mr. Whipple—We did, because the Manual provides—

Mr. Bates—Although they pertained to private matters.

Mr. Whipple—The Manual requires that her communications shall not be garbled, and that if any part is to be put in the whole should be put in.

The Master—As I follow them, those letters were all of them official and public communications.

Mr. Thompson—Certainly.

Mr. Bates—They related to personal matters.

The Master—That does not come within the by-law which Mr. Whipple read. This letter, it is just possible, may not have been strictly private and personal, although I agree that anyone would say, on reading it over, that it probably was.

Mr. Whipple—There has been no offer of proof that it was not a private communication.

Mr. Dane—There is no evidence as to whom it was written.

Mr. Whipple—I beg your pardon?

Mr. Dane—There is no evidence on the document as to whom it was written.

Mr. Whipple—Well, if you wish to have—

The Master—It seems to me to have very little significance anyway, so why spend time on it?

Mr. Whipple—If it is offered from her letters that are private and personal, why, I can only say that it does not seem to be in accordance with the Manual.

Mr. Dane—I offer now from Vol. 6 of Letters and Miscellany, Document No. 555 on page 49, a letter written by Mrs. Eddy, as follows:

"Beloved Directors;

"All questions—"

The Master—What is the date?

Mr. Dane—The notation on the document is "Probably Nov. 12, 1907."

Mr. Whipple—But it is not the date.

Mr. Dane—But it is not in Mrs. Eddy's handwriting.

Mr. Whipple—It does not appear in whose handwriting it is.

Mr. Dane—No.

The Master—If it is not in her handwriting, why should we have it?

Mr. Dane—The date is not in her handwriting.

The Master—Oh, the date. I beg pardon.

Mr. Dane—The letter is in her handwriting and is signed by her. It is as follows:

"Beloved Directors:

"All questions as to our church by-laws being carried out strictly by the C. S. Board of Directors are to be submitted to this Board and not to the Pastor Emeritus, Mrs. Eddy.

"Mrs. O'Brien has just been here asking my permission for her to study the Normal course with Judge Hanna in Judge Hanna's class, and I have referred her to the C. S. Board of Directors to answer her question once for all.

(Signed) "Lovingly yours,  
"MARY BAKER EDDY."

[Document No. 555, Vol. 6 of Letters and Miscellany, of which the foregoing is a copy, is Exhibit 765. R. J. M.]

Mr. Dane—If Your Honor please, there is just one other exhibit that I wish to put in in this connection and it will require a witness to identify the handwriting, and with Your Honor's permission I will call Mr. Dickey and ask him to identify the handwriting.

Mr. Whipple—Whose handwriting is it?

Mr. Dane—Mrs. Eddy's.

The Master—Perhaps if you show it to the others, the handwriting will not be questioned.

Mr. Dane—Possibly. I show you, Mr. Whipple, the Manual of 1903, with the writing on page 98.

Mr. Whipple—Whose handwriting is it? Mr. Dane—We claim that it is Mrs. Eddy's.

Mr. Whipple—I will assent that Mr. Dickey, if called, will so testify if you say he would. I am not assenting, of course, to the handwriting, because I do not know anything about it.

Mr. Thompson—We will admit that Mr. Dickey will so testify.

The Master—That is a copy of what edition?

Mr. Dane—Copy of the twenty-ninth edition of the Church Manual of The First Church of Christ, Scientist, of Boston, Mass., 1903.

Mr. Whipple—Is that already in evidence?

Mr. Dane—That is in evidence.

Mr. Whipple—That particular copy of the Manual?

Mr. Dane—Not this particular volume.

The Master—One copy we already have in evidence. This one is now offered because it has some handwriting which Mr. Dickey would identify as Mrs. Eddy's handwriting on it?

Mr. Dane—That is true.

The Master—On what page?

Mr. Dane—On page 98. I desire to

read the first section as printed and also the handwriting.

Mr. Whipple—There is no date as to when the handwriting was attached?

Mr. Dane—No.

## "CHURCH MANUAL

### "Article XLII

"For The Mother Church only. Section 1. The Church Manual of The First Church of Christ, Scientist, in Boston, Mass., written by Mary Baker G. Eddy, and copyrighted, is adapted to The Mother Church only."

Thus far I have read the printed words. The following is in Mrs. Eddy's handwriting:

"It stands alone, uniquely adapted to form the budding thought, and hedge it about with divine Love."

Then follow these words in print:

"This Manual shall not be revised without the written consent of its author."

[Page 98 in the twenty-ninth edition, Church Manual, from which the foregoing extracts are read, is marked Exhibit 766. R. J. M.]

Mr. Dane—In that connection, I call Your Honor's attention to the fact that Article XXXV of the eighty-ninth Manual, Section 1, is the same as that which I have just read.

Mr. Thompson—Has that been admitted yet, the eighty-ninth edition?

Mr. Dane—Yes, the eighty-ninth is an exhibit.

The Master—I suppose you have somewhere introduced a record of a vote adopting the suggested amendment to this by-law?

Mr. Dane—I think we did, Your Honor. I think it is in that list of votes that I introduced as amendments to the seventy-third.

The Master—You put the evidence relating to these Manuals, in no doubt very unavoidably, in a very piecemeal fashion, so that it will take some trouble to get it in any chronological order.

Mr. Dane—Yes, it has been done in that way and, as we think, necessarily, on account of the vast amount of material that we have had to work with.

I have collected it and would be glad, with Your Honor's permission, to read into the record the references in the various Manuals that are exhibits, the places where four of the more important By-Laws upon which we rely are to be found. If Your Honor thinks it would be a convenience on the record, I would be glad to do that now. I will take Your Honor's direction about it.

Mr. Thompson—You might furnish a typewritten copy to His Honor and copies to counsel.

Mr. Dane—I will be glad to do that. It will take less time.

Mr. Thompson—It will take a good deal less time and trouble.

Mr. Bates—When Mr. Abbott was putting in the deeds this morning re-

lating to the trust which he has held the bond which he gave was called for. We have obtained a certified copy of it, which I now offer. It is a bond from Leon M. Abbott to The Christian Science Board of Directors, indorsed on the back, "File Jan. 29th, 1906, & approved by Court (Braley, J.) App. Walter F. Frederick, Asst. Clerk." Do you wish to look at it before I read it?

Mr. Thompson—Yes, I would like to look at it before you read it. (The paper is passed to Mr. Thompson, who reads it.) We have no objection to that. Mr. Whipple, do you want to see it?

Mr. Whipple—No.

Mr. Bates—The bond is given by Leon M. Abbott and I will read merely the significant part:

"am holden and stand firmly bound unto Ira O. Knapp, Joseph Armstrong and William B. Johnson of said Boston, Archibald McLellan of Brookline in the county of Suffolk, and Stephen A. Chase of Fall River in the county of Bristol, as they are members of and constitute The Christian Science Board of Directors in the sum of one hundred thousand (100,000) dollars, to the payment of which sum to the said Knapp, Armstrong, McLellan and Chase, or their successors, I do hereby bind myself, my heirs, executors and administrators.

"The condition of this obligation is such—"

Mr. Thompson—The rest of it is not important.

Mr. Bates—I wish to read this paragraph:

"Whereas, E. Noyes Whitcomb, late of said Boston, deceased, did declare by a certain instrument in writing dated April 29, 1905, and recorded in the Registry of Deeds for the County of Suffolk, book 3037, page 161, that he held certain estates in trust for said Christian Science Board of Directors."

I call Your Honor's attention to the fact that while the bond runs to Ira O. Knapp, Joseph Armstrong, and William B. Johnson of said Boston, Archibald McLellan of Brookline, and Stephen A. Chase of Fall River, the five directors, that when it is repeated in the payment clause, apparently through a typographical error, Mr. Johnson's name is omitted.

I also offer a deed, or a certified copy of a deed, from Mrs. Eddy, dated—I have described it as a deed; it is described as an indenture, to which Mrs. Eddy is a party, made the nineteenth day of December, in the year 1906 and recorded in Suffolk Registry of Deeds, Book 3178, Page 551. I will state, Your Honor, that this indenture was apparently made by Mrs. Eddy for the purpose of relieving the trustees or the property of certain trusts which were created under the deed that is in evidence, being the deed of 1892, from her to Ira O. Knapp and others, and printed in the Manual of the Church. It is the deed of the church property,

the original deed being printed in the Manual.

Mr. Thompson—Will you let me see it, please, before you put it in?

Mr. Bates—The indenture says—

Mr. Thompson—Won't you let me see it, please?

Mr. Bates—Certainly (passing to Mr. Thompson the document referred to).

Mr. Thompson—Do you know what lawyer drew that document?

Mr. Bates—I do not. Nor do I know what lawyer drew the bond; but I assume that it was Mr. Elder, as he drew the other papers connected with that matter at that time.

Mr. Thompson—He did not draw Mr. Abbott's bond.

Mr. Whipple—Has this anything to do with the bond?

Mr. Bates—No.

Mr. Whipple—I thought you coupled them together.

Mr. Bates—No, I did not.

Mr. Thompson—You don't mean that Mr. Elder drew your partner's bond?

Mr. Bates—I mean exactly that, that he drew all the papers at that time in connection with that transaction.

Mr. Thompson—All right, only we do not accept that statement, that is all.

Mr. Bates—I do not think that it is material, anyway.

Mr. Whipple—What is this material for?

Mr. Bates—Well, that will be a matter that will be disclosed.

Mr. Whipple—Why all this mystery?

Mr. Bates—There is no mystery about it at all. I offer it as a piece of material evidence.

Mr. Whipple—I think that you ought to state on what ground you think it is material, otherwise it may turn out not to be material.

Mr. Bates—It is material on the very question that you raised this morning, as to whether or not Mrs. Eddy considered that Mr. McLellan was a member of the Board of Directors or one of her trustees, or whether or not a deed could be made to him.

Mr. Whipple—That is, do you claim that he was one of the trustees under the Deed of Trust?

Mr. Bates—I am not called on to argue that question at this time.

Mr. Whipple—Or that he was a church officer? Well, I pray Your Honor's judgment.

The Master—That is a deed that is on record, is it?

Mr. Bates—It is a deed that is on record, and signed by Mrs. Eddy.

The Master—I think that you may read it.

Mr. Bates—"This indenture made this 19th day of December in the year one thousand nine hundred and six, between Mary Baker G. Eddy, of Concord, in the County of Merrimack and the State of New Hampshire, of the first part, and Ira O. Knapp, Joseph Armstrong and William B. Johnson, all of Boston, in the County of Suf-

folk, Stephen A. Chase, of Fall River, in the County of Bristol, and Archibald McLellan, of Brookline, in the County of Norfolk, and all in the Commonwealth of Massachusetts, at present constituting The Christian Science Board of Directors, a body corporate duly existing under the provisions of the thirty-seventh chapter of the Revised Laws of said Commonwealth and especially of the first section thereof, of the second part."

I direct Your Honor's attention to the fact that Section 1 of Chapter 37 of the Revised Laws corresponds with Section 1 of Chapter 39 of the Public Statutes, to which reference is made in the deed, the original deed, and in the Manual. I do not mean by saying that it corresponds to say that there were no changes in that section. It is the same section.

The Master—You mean that in the Revised Laws that section of the Public Statutes became Chapter 37 of the Revised Laws?

Mr. Bates—That is right.

The Master—There were some changes, I think, were there not?

Mr. Bates—There were some changes, but it remained substantially the same.

"Witneseth: That whereas the said party of the first part by her deed dated Sept. 1, 1892 and recorded with Suffolk Deeds, Lib. 2081 Page 257 conveyed to Ira O. Knapp and others, thereby constituted The Christian Science Board of Directors, a certain lot of land containing seventy-eight hundred and twenty-eight (7828) square feet situate at the corner of Falmouth Street and Norway Street (formerly called Caledonia Street) in said Boston, said conveyance being therein stated to be made subject to certain trusts and conditions in said deed set forth providing among other things for the erection upon said lot of a suitable and convenient church edifice—"

Now, I will state that the deed is several pages long, and I do not consider the rest of it important, and I will not read it into the record unless Your Honor desires, with the exception of this clause at the end, the habendum clause:

"To have and to hold the above released premises to the said Ira O. Knapp, Joseph Armstrong, William B. Johnson, Stephen A. Chase and Archibald McLellan, at present constituting The Christian Science Board of Directors as aforesaid, their heirs, successors and assigns, to their own use and behoof forever, but subject to the said trusts except as herein modified."

[The indenture between Mary Baker G. Eddy and Ira O. Knapp and others, dated Dec. 19, 1906, from which the foregoing extracts are read, is marked Exhibit 767. R. H. J.]

The Master—Now, let me ask you, does that deed convey the same premises as the deed of Sept. 1, 1892?

Mr. Bates—It is exactly the same premises, and it is intended to relieve

the premises of that portion of the trust which provided that religious services should always be maintained therein. The new church having been built, the trust is changed in regard to the use of the old church, and that was the purpose, as I understand it, of this so-called indenture.

Mr. Thompson—Does it convey anything different?

Mr. Whipple—Now, if Your Honor please, apparently that was not a deed. That was an agreement. That was an indenture.

Mr. Bates—That is what I said.

The Master—I think Governor Bates stated at the outset that it was an indenture to which Mrs. Eddy was a party. If I have called it a deed, I have been in error.

Mr. Whipple—It was not Your Honor who called it a deed. It was put in, he said, as bearing upon the statement of Mrs. Eddy which he read this morning, that Mr. McLellan's name could not appear in the deeds; and then he went on and showed that this was not a deed, but was an indenture; but it was he who used the term.

Mr. Bates—So far as Mrs. Eddy's signature to this instrument is concerned, and taking into consideration the habendum clause, it is quite evident that she intended to make it—

Mr. Whipple—It is not a deed; it is an agreement, an indenture altering the trust, and it so stated.

Mr. Bates—Well, it speaks for itself. I might also add, if Your Honor please, that this indenture, while stated to be an indenture, is signed only by Mrs. Eddy; that the acknowledgment was taken in the State of New Hampshire, Merrimack County, Dec. 19, 1906.

"Then personally appeared the above named Mary Baker G. Eddy and acknowledged the foregoing instrument to be her free act and deed, before me, Josiah E. Fernald, Notary Public, and his notarial seal." And recorded Dec. 20, 1906, at 3:38 p. m.

Mr. Whipple—Do you claim that a trust can be changed unless all the parties agree to it?

Mr. Bates—That is not the question that I am considering at the present time.

Mr. Whipple—No; that is a question, apparently, that you are side-stepping.

Mr. Bates—No; I am not side-stepping. I refuse to enter into arguments as the case is going along. I assume that the proper time for arguments is when the evidence is closed, and not as we go along.

Mr. Whipple—It is not a question of argument; it is a question of what you claim.

The Master—Have we got in now all of Mrs. Eddy's conveyances?

Mr. Bates—I think we have, so far as I am aware at the present moment. I think we have substantially all that bears on this question, so far as I know.

The Master—I have not noticed anything yet that tells the history of this Exhibit C. Perhaps it is not necessary.

Mr. Bates—There are some records which have been called for, and which we had intended to put in, as I stated to Your Honor this morning, in regard to the elections of the directors. Mr. Krauthoff has those all in mind. I will ask him to put those in.

Mr. Whipple—You have not replied to His Honor's question about Exhibit C.

The Master—I did not require him to. I only suggested to him that I had not seen anything that fully explained in regard to that.

Mr. Bates—I think, Your Honor, that, so far as documentary evidence is concerned, it is all in in regard to that.

Mr. Thompson—The only record that has been called for by me was the directors' record of the election of Mr. Dittimore.

The Master—They are just going to put that in now. That is what they are on.

Mr. Thompson—Yes, but Governor Bates spoke as if I had called for records.

The Master—Suppose that you proceed with those records now.

Mr. Krauthoff—If Your Honor please, we shall offer records of the election of the several members of The Christian Science Board of Directors, and I will offer the record as to each director in the line of his succession. Your Honor will recall that Ira O. Knapp is named as one of the grantees in the deed of Sept. 1, 1892, and in connection with Mr. Knapp we offer the record of the Board of Directors of Nov. 21, 1910:

"Special meeting of The Christian Science Board of Directors, duly called by the clerk at 11 a. m. Messrs. Chase, McLellan, Stewart and Dittimore present.

"Having received written nomination from the Pastor Emeritus, Rev. Mary Baker Eddy, Mr. Adam H. Dickey was unanimously elected a member of The Christian Science Board of Directors to succeed Mr. Ira O. Knapp.

"Meeting adjourned.

"App. Nov. 25—10.

"J. V. D."

[The record of the special meeting of the Board of Directors of Nov. 21, 1910, of which the foregoing is a copy, is Exhibit 768. R. H. J.]

And Your Honor will recall that—

The Master—You put that in, did you not, when you examined Mr. Dickey?

Mr. Krauthoff—I put that in when I examined Mr. Dickey.

The Master—I thought so.

Mr. Krauthoff—I am now putting it in at this time in order that all of the evidence as to the election of directors may be in the record at one place.

The Master—All right. Go ahead.

Mr. Krauthoff—And in connection with Mr. Dickey's testimony we proved

the passing of Mr. Knapp prior to the election of Mr. Dickey.

The next director whom we will take up is Mr. William B. Johnson, who was named in the deed of Sept. 1, 1892.

"March 21, 1895.

"A special meeting of the Board of Directors was held at the directors' room at 5:30 p. m. Ira O. Knapp, William B. Johnson, Joseph Armstrong, Stephen A. Chase, present. William B. Johnson tendered his resignation as a director as follows:

"South Boston, Massachusetts, March 21, 1895.

"To The Christian Science Board of Directors:

"Dear Brethren:

"Owing to the important duties devolving upon me as the clerk of The First Church of Christ, Scientist, our beloved Teacher and Leader, the Rev. Mary Baker Eddy, recommends that I resign my position as a member of your board, that I may be enabled to meet the increasing demands upon me in my official capacity as clerk of the Church. I therefore cheerfully comply with our Teacher's recommendation, and most respectfully tender to you my resignation as a member of your honorable body, The Christian Science Board of Directors.

"Fraternally yours, in truth and love,

"WILLIAM B. JOHNSON."

"The resignation of William B. Johnson was accepted. Edward P. Bates of Boston, Massachusetts, was unanimously elected to fill the vacancy caused by the resignation of William B. Johnson. At this point Edward P. Bates was sent for, and came into the room, he accepted the position as director as follows:

"To The Christian Science Board of Directors:

"Gentlemen and Brethren:

"I hereby accept the position of director in this board.

"Fraternally yours,

"EDWARD P. BATES.

"Boston, March 21, 1895."

Mr. Krauthoff—I read into the record, I believe, that at this meeting, March 21, 1895, Mr. Knapp, Mr. Johnson, Mr. Armstrong and Mr. Chase were all present, that being the meeting at which Mr. Johnson's resignation was accepted and Mr. Bates was elected as his successor. Now, with respect to Mr. Bates.

[An extract from the directors' records, Oct. 1, 1895, is offered in evidence as Exhibit 770, and is read by Mr. Krauthoff, as follows:]

"Oct. 1, 1895.

"Regular annual meeting of the Board of Directors, Tuesday, Oct. 1, at 9 a. m. All members of the board present.

"Edward P. Bates tendered his resignation as a member of this board.

"At 10:50 a. m. took a recess until 5 p. m.

"The board reassembled at 5 o'clock p. m., pursuant to adjournment.

"On motion of Mr. Chase the resignation of Mr. Bates was accepted.

"On motion of Mr. Chase, Septimus J. Hanna was elected to fill the vacancy on the Board of Directors caused by the resignation of Edward P. Bates.

"On motion of Mr. Armstrong, Mr. Hanna was made secretary of this board.

"IRA O. KNAPP, President."

Mr. Krauthoff—The next meeting, on Oct. 5, 1895, recites that all members were present, and the minutes were signed by S. J. Hanna as secretary.

[An extract from the directors' records, Nov. 2, 1895, is marked Exhibit 771, and is read by Mr. Krauthoff, as follows:]

"November 2, 1895.

"At a meeting of The Christian Science Board of Directors held this day Septimus J. Hanna presented his resignation as a member of this board, which was accepted.

"JOSEPH ARMSTRONG, Secretary."

[An extract from the directors' records, Nov. 8, 1895, is offered in evidence as Exhibit 772, and is read by Mr. Krauthoff, as follows:]

"November 8, 1895.

"At a special meeting of the Board of Directors; present, Ira O. Knapp, Stephen A. Chase, Joseph Armstrong, 11:30 a. m.

"On motion of Stephen A. Chase, it was voted that William B. Johnson be elected a member of this board to fill the vacancy caused by the resignation of Septimus J. Hanna.

"South Boston, Mass., Nov. 12, 1895. To The Christian Science Board of Directors of The First Church of Christ, Scientist, in Boston, Mass. Dear Brethren: I have this day received notice of my election to membership of your honorable board. I hereby accept the office to which you have elected me. Fraternally yours, William B. Johnson, 41 G Street."

Mr. Thompson—Now, who are the directors on that date, after Johnson had accepted?

Mr. Krauthoff—Knapp, Chase, Armstrong and Johnson.

[An extract from the directors' records, May 31, 1909, is offered in evidence as Exhibit 774 and is read by Mr. Krauthoff, as follows:]

"May 31, 1909.

"The annual meeting of The Christian Science Board of Directors for electing officers and other business, as provided for in Article XIII, Section 2, of the By-Laws of The Mother Church. Present, Messrs. Knapp, Johnson, Chase, McLellan and Stewart.

"Mr. William B. Johnson tendered his resignation as clerk of The Mother Church and as a member of The Christian Science Board of Directors, and thereupon left the meeting.

"Upon motion duly made and carried, it was unanimously voted that

the resignation of Mr. Johnson as clerk and director be accepted.

"Upon motion duly made and seconded, it was unanimously voted that John V. Dittmore, having been approved by the Pastor Emeritus, Mrs. Eddy, be and hereby is elected a member of The Christian Science Board of Directors to fill the vacancy caused by the resignation of William B. Johnson."

Mr. Krauthoff—The minutes of that meeting are signed by Mr. Dittmore as secretary of the Board of Directors, and the record of June 1, 1909, shows Mr. Dittmore present at a meeting of The Christian Science Board of Directors.

Mr. Thompson—That is, Mr. Dittmore took the place of one of the persons who had previously been the four directors, under the Deed of Trust?

Mr. Whipple—He took the place of Mr. Johnson, who was one of the original members of the board.

Mr. Krauthoff—He is the successor, in the line of official succession, of William B. Johnson, up to that date. The records of the Board of Directors, March 17, 1919, then show the resolution purporting to dismiss Mr. Dittmore as a member of the Board of Directors.

Mr. Whipple—Hasn't that been read?

Mr. Thompson—What is the use of showing that? Why don't you show who Mr. Merritt succeeded?

The Master—I don't think we need that all over again, we have had it so fully brought out already.

Mr. Krauthoff—It then shows the election of Mrs. Knott.

The Master—Yes.

Mr. Krauthoff—I was taking it that way for convenience.

The Master—Yes. Now go back and take the next one.

Mr. Krauthoff—Joseph S. Eastaman was named in the deed of Sept. 1, 1892.

[An extract from the directors' records, March 23, 1893, is offered in evidence as Exhibit 775, and is read by Mr. Krauthoff, as follows:]

"Boston, Mass., March 23, 1893.

"A meeting of The Christian Science Board of Directors was held this day at 281 Columbus Avenue. Opened with prayer in the usual manner at 12:30 m.

"A letter from Joseph S. Eastaman was read; the following is a copy:

"Boston, 22nd March, 1893.

"To the secretary of The Christian Science Board of Directors—I beg this day to resign my position as one of the directors of said board to take effect as soon as the rest of the board deem it proper."

"Voted, That Joseph S. Eastaman's resignation as a member of the 'Christian Science Board of Directors' be accepted, to take effect on its passage.

"Voted, That Joseph Armstrong be elected a member of the 'Christian Science Board of Directors' to fill the vacancy made by the resignation of Joseph S. Eastaman.

"The secretary was instructed to notify Joseph Armstrong of his election."

[An extract from the directors' records, March 23, 1893, is offered in evidence as Exhibit 775-A, and is read by Mr. Krauthoff, as follows:]

"Boston, Mass., March 23, 1893.

"The following notes should have preceded the adjournment and signature:

"Boston, Mass., March 23, 1893, "Christian Science Board of Directors."

"I hereby accept the call to become a member of above-named board.

"Fraternally yours,

"JOSEPH B. ARMSTRONG,

"W. B. J."

Mr. Krauthoff—And then the record recites, after that, Mr. Armstrong's presence as a director. Prior to Jan. 6, 1903, Mr. Joseph Armstrong passed on, and on Jan. 6, 1903, a meeting of the directors was held.

[An extract from the directors' records, Jan. 6, 1903, is offered in evidence as Exhibit 776, and is read by Mr. Krauthoff, as follows.]

"Monday, Jan. 6, 1903.

"A meeting of the directors was held this a. m. Present: Messrs. Knapp, Chase, and Johnson.

"Upon the recommendation of our beloved Leader and Teacher, Rev. Mary Baker Eddy, and by the unanimous consent of The Christian Science Board of Directors, Mr. Allison V. Stewart, C. S. B., was elected a member of The Christian Science Board of Directors of The First Church of Christ, Scientist, in Boston, Mass.

"Mr. Stewart was invited to come to the meeting, and was informed of his election as a member of the board."

[An extract from the directors' records, Sept. 25, 1918 is offered in evidence as Exhibit 777, and is read by Mr. Krauthoff, as follows:]

"Wednesday, September 25, 1918.

"At a special meeting of The Christian Science Board of Directors . . . there were present Messrs. Dittmore, Dickey, Neal and Merritt.

"A letter was read from Director Allison V. Stewart, dated Sept. 19, 1918, was read and ordered spread upon the minutes as follows."

Mr. Krauthoff—This letter was read from Mr. Stewart, dated Sept. 19, 1918, tendering his resignation. The letter is somewhat lengthy and I will not read it unless it is called for.

"On motion of Mr. Merritt, seconded by Mr. Neal, it was voted that the resignation of Mr. Stewart from The Christian Science Board of Directors be accepted formally as presented."

[An extract from the directors' records, Sept. 27, 1918, is offered in evidence as Exhibit 778, and is read by Mr. Krauthoff, as follows:]

"Friday, September 27, 1918.

"At a special meeting of The Christian Science Board of Directors . . .

there were present Messrs. Dittmore, Dickey, Neal and Merritt.

"Upon motion of Mr. Merritt, seconded by Mr. Neal, it was voted that Mr. William R. Rathvon of Boston be elected a member of The Christian Science Board of Directors to succeed Mr. Allison V. Stewart, resigned, effective Oct. 1, 1918. Carried unanimously."

Mr. Krauthoff—Stephen A. Chase, if Your Honor please, was named as a director in the deed of Sept. 1, 1892.

[An extract from the directors' records, June 19, 1902, is offered in evidence as Exhibit 779, and is read by Mr. Krauthoff, as follows:]

"The directors met and transacted business as follows:"

The minutes do not say which of the directors were present.

"Stephen A. Chase tendered his resignation as a member of The Christian Science Board of Directors of The First Church of Christ, Scientist, in Boston, Mass.

"It was moved, seconded, and unanimously voted, that the resignation of Stephen A. Chase as a director be accepted.

"To fill the vacancy made by the resignation of Stephen A. Chase, the three remaining directors by unanimous vote elected as a member of The Christian Science Board of Directors of The First Church of Christ, Scientist, in Boston, Massachusetts, Arthur P. DeCamp, who had been recommended by our beloved Teacher, Rev. Mary Baker Eddy.

"Christian Science Board of Directors:

"Ira O. Knapp, William B. Johnson, Joseph Armstrong, Arthur P. DeCamp.

"On a motion and second, Arthur P. DeCamp was unanimously elected treasurer of The First Church of Christ, Scientist. Mr. DeCamp being present, he accepted the position as treasurer of this Church."

[An extract from the directors' records, Dec 5, 1902, is offered in evidence as Exhibit 780, and is read by Mr. Krauthoff, as follows:]

"December 5, 1902.

"A meeting of the directors was held this day at which all the members were present.

"Mr. Arthur DeCamp, C. S., tendered his resignation as a member of The Christian Science Board of Directors of The First Church of Christ, Scientist, in Boston, Massachusetts.

"By a unanimous vote of the other three directors, Mr. DeCamp's resignation was accepted.

"Mr. DeCamp's letter of resignation on file."

[An extract from the directors' records, Dec. 10, 1902, is offered in evidence as Exhibit 781, and is read by Mr. Krauthoff, as follows:]

"December 10, 1902.

"A meeting of the directors was held this day. Upon the recommendation of our beloved Teacher, Rev. Mary Baker Eddy, and by a unanimous vote, Mr.

Stephen A. Chase, C. S. B., was elected a member of The Christian Science Board of Directors of The First Church of Christ, Scientist, in Boston, Massachusetts, to fill the vacancy caused by Mr. DeCamp's resignation."

Mr. Krauthoff—Prior to July 22, 1912, Mr. Chase passed on. On that day there was a special meeting of The Christian Science Board of Directors, duly called by the clerk, at 12 m. Present, Messrs. McLellan, Stewart, Dittmore and Dickey.

Mr. Thompson—Can you tell me the date when Mr. Chase died?

Mr. Krauthoff—I said prior to July 22, 1912.

Mr. Thompson—Do you know the exact date?

Mr. Krauthoff—I am not able to state the exact date.

Mr. Thompson—All right. I think it may be of some consequence. Mr. Krauthoff, you can give me that date, can't you?

Mr. Krauthoff—I am trying to fix the date.

Mr. Bates—I think we can look it up.

Mr. Thompson—Don't some of your friends there know the date?

Mr. Bates—We will give it to you in a moment.

Mr. Thompson—It is a matter that must have been in their minds for some time. It says here, in a certain by-law—

The Master—Have you got the election of a successor to Mr. Chase?

Mr. Krauthoff—I was about to read that. Mr. Thompson asked a question.

The Master (addressing Mr. Thompson)—I understand they will give you an answer as soon as they can get it.

[An extract from the directors' records, July 22, 1912, is offered in evidence as Exhibit 782, and is read by Mr. Krauthoff, as follows:]

"By unanimous vote of the members present, James A. Neal, C. S. D., was elected a member of The Christian Science Board of Directors to fill the vacancy caused by the passing on of Mr. Stephen A. Chase, C. S. B."

Mr. Thompson—As a matter of fact, Your Honor, the deed of 1892 provides, in paragraph 1, that whenever a vacancy occurs in said board the remaining members shall within 30 days fill the same by election. Now, there is some question whether Mr. Neal was elected within 30 days from the time Mr. Chase died, and that is why I asked that question. I think that fact has been well known for the last 30 days in this court room—the importance of it—and I dare say they have the facts right there if they care to speak of it. Miss Warren knows.

Mr. Krauthoff—With all due deference to Mr. Thompson this is the first intimation that any of us have had of it.

The Master—Go on. I want to get this complete before we adjourn, now.

Mr. Krauthoff—On Feb. 7, 1903, the record has already been introduced in

evidence of the adoption of the by-law reading, "The Christian Science Board of Directors shall consist of five members." Then the record continues:

"Upon the recommendation of our beloved Teacher, Rev. Mary Baker Eddy, the directors, by a unanimous vote, elected Mr. Archibald McLellan, C. S., a member of The Christian Science Board of Directors.

"Mr. McLellan was invited to the directors' room in the church and notified of his election as a member of the board."

Mr. Whipple—Will you remind us of the date?

Mr. Krauthoff—Feb. 7, 1903.

Mr. Whipple—Thank you.

Mr. Krauthoff—Now, the record recites: "A meeting of the full board was held this day at 1 o'clock p. m.," after which this business was transacted. The records of The Christian Science Board of Directors of July 18, 1917, record a resolution of regrets with respect to the memory of Mr. McLellan:

"The following resolution of regret was offered by Mr. Dittmore, seconded by Mr. Dickey, and unanimously adopted, to wit—"

The resolution then proceeds to state the passing of Mr. McLellan and a tribute of respect to him by his associates.

[An extract from the directors' records, July 19, 1917, is offered in evidence as Exhibit 783, and is read by Mr. Krauthoff, as follows:]

"At a special meeting of The Christian Science Board of Directors held at 10 a. m. on the above date in the directors' room of The Mother Church, there were present Messrs. Stewart, Dittmore, Dickey, and Neal.

"Because of the importance of pending matters requiring the attention of a full board, it was upon motion of Mr. Stewart, seconded by Mr. Dickey, voted that Mr. Edward A. Merritt of Brookline, Massachusetts, be elected a director of The Mother Church to fill the vacancy on this board caused by the passing away of Mr. McLellan. Carried unanimously.

"Mr. Merritt thereupon entered the meeting and took his seat as a director."

The Master—That completes the list, does it not?

Mr. Krauthoff—That is the genealogy of the directors.

Mr. Thompson—Now will you give me that date, please?

The Master—If you can get the date of Mr. Chase's death at this moment, suppose you get it.

Mr. Bates—We are informed, Your Honor, subject to correction if error should be found, that Mr. Chase passed on June 6, 1912.

The Master—What next?

Mr. Krauthoff—In connection with the document of Jan. 15, 1898, which has been heretofore offered in evidence from the records of the First Members, being a document entitled, "A Gift to The Mother Church and a

Grant of Trusteeship," we desire to offer the record of that, from the First Members' records of Jan. 15, 1898.

[An extract from the First Members' records, Jan. 15, 1898, is offered in evidence as Exhibit 784, and is read by Mr. Krauthoff, as follows:]

"A letter from our beloved Mother to The First Church of Christ, Scientist, in Boston, Massachusetts, and also a paper entitled 'A Gift to The Mother Church and a Grant of Trusteeship' were read by the clerk; and on motions they were separately received and adopted by unanimous votes, all the members rising."

Then follows the letter of Jan. 15, 1898, and the document, both of which have been heretofore introduced in evidence. The record continues:

"The following is a copy of the letter sent to our Mother."

[This letter, contained in the records of Jan. 18, 1898, is marked Exhibit 784-A, and is read by Mr. Krauthoff, as follows:]

"Reverend Mary Baker Eddy,

"Beloved Mother:—

"Without formality, but with hearts overflowing with gratitude inexpressible, we hereby tender you our deepest thanks for your munificent gift to our beloved church, The First Church of Christ, Scientist, in Boston, Massachusetts, The Mother Church, thanking God meanwhile for His infinitely greater gift to us in you, our Mother in Christ, our divinely appointed Teacher, Leader and Guide, who leadeth us indeed 'beside still waters.'

"IRA O. KNAPP

"WILLIAM B. JOHNSON

"JOSEPH ARMSTRONG

"STEPHEN A. CHASE

per clerk

"SEPTIMUS J. HANNA

"FLAVIA S. KNAPP

"ELDORA O. GRAGG

"MARY F. EASTAMAN

"MARY W. MUNROE

"JULIA S. BARTLETT

"JOSEPH S. EASTAMAN

"WM. P. MCKENZIE

"Boston, Massachusetts, Jan. 15, 1898."

Mr. Krauthoff—The record of that meeting begins:

"A special meeting of the First Members of The Mother Church was held in the Church vestry. The meeting was opened by the president in the usual manner by reading a selection from the Scriptures and from Science and Health, silent prayer and the Lord's Prayer with its spiritual interpretation at 7:45 p. m., 12 members present."

The 12 members who signed that letter.

We also desire to offer the original of the letter in evidence, of which we have a photograph so that—(proffering photographic copy of said letter to the Master).

Mr. Thompson—What is the use of showing it to His Honor before showing it to us.

[Mr. Krauthoff passes the photographic copy to Mr. Thompson.]

Mr. Krauthoff—We offer the original of the letter with the statement that it was found in the papers of Mrs. Eddy at the time of her passing. The letter is in the words set out in the record and bears the signatures set out in the record, with this exception: Mr. Chase signed his name personally in the record, and his name is signed "Stephen A. Chase per Clerk" in the letter. My attention is also called to the fact that, in the record book, Captain Eastaman attached to his signature the letters "C. S. D." and those letters are not attached to his signature to the letter.

Mr. Thompson—Where do you say the original was?

Mr. Krauthoff—The original was in the papers of Mrs. Eddy at the time of her passing.

Mr. Thompson—Was the original of this letter addressed to her?

Mr. Krauthoff—Yes.

Mr. Thompson—I see. I did not quite understand what you said.

Mr. Krauthoff—The photograph I offered may be identified as an exhibit?

The Master—Yes; but it does not seem to add anything to what we had before.

[The photograph referred to by Mr. Krauthoff has heretofore been numbered Exhibit 784A.]

Mr. Bates—I am pleased to state to Your Honor, and I have no doubt Your Honor will welcome the statement, that I think our case is in; but inasmuch as it is necessary to go over to another day for the rebuttal testimony, I desire to leave it open in case that we should discover that there was anything that we had overlooked, but I think there will be nothing further that we shall want to put in evidence.

Mr. Thompson—I shall be perfectly willing to go on for another hour tonight, and I do not think that your case can be properly and fairly closed until you have done what you promised to do several times, to produce the letters that I have asked for.

Mr. Bates—That is a part of your case. I will be very glad to let you have them at any time.

Mr. Thompson—That is not fair, that is not the right thing to do. Your Honor kept me from pressing it, and you, Governor Bates, have repeatedly said that you would produce them.

Mr. Bates—I submit, Your Honor, that I understand it is open to Mr. Thompson to ask for those letters and put them in at any time he desires.

Mr. Thompson—I ask for them now. I have asked for them all day long. I ask for them now.

The Master—Are you going to let him have them?

Mr. Bates—The letter which Mr. Thompson has asked for—

Mr. Thompson—Four letters.

Mr. Bates—Is the letter from Mr. Dittmore of Sept. 17, 1918.

Mr. Thompson—Yes.

Mr. Bates—To the Board of Direc-

tors, which I now hand him and which I desire that he put in the record.

Mr. Thompson—Very well, we will have it go right in.

The Master—One minute. Let us see about the others.

Mr. Bates—He has also called for a memorandum of Dec. 18, 1918.

Mr. Thompson—Yes.

Mr. Bates—And a letter of Feb. 7, 1918?

Mr. Thompson—1919.

Mr. Bates—Feb. 7, 1918, I understood you.

Mr. Thompson—1919, I said twice.

Mr. Bates—And also a letter of Feb. 11, 1919.

Mr. Thompson—Yes.

Mr. Bates—We haven't the memorandum, so far as we can find, I am informed by Miss Warren, of Dec. 18, 1918. We have no letter of Feb. 11, 1919, and we have no letter of Feb. 7, 1918, but I understand what you want is one of Feb. 7, 1919. That is my error. We will see whether or not we have that letter. Miss Warren tells me also that there is no letter of Mr. Dittmore of Feb. 7, 1919.

Mr. Thompson—Then we shall have to ask you whether you will assent to copies?

Mr. Bates—That will depend on what they are.

Mr. Thompson—Then we will have to put this in now.

The Master—Why should you put it in now?

Mr. Thompson—I would like to offer it now and put it in. I am to be treated as if he had a witness on the stand, that was the understanding, sir—that I could have put it in through his secretary, Miss Warren, who was then on the stand. She left it, but I could call her back for cross-examination.

The Master—How long is it?

Mr. Thompson—A very long letter. I do not know that I need to read it; I simply want to get it in evidence, that is all.

Mr. Bates—Well, if it goes in, it will have to go into the record.

Mr. Thompson—I want it in the record. Gracious, I want it in the record.

The Master—The question is whether we have got to stop tonight to have a long letter like that read.

Mr. Thompson—No, I do not think so. Let me have it marked as an exhibit now.

The Master—All right.

Mr. Thompson—Do you want to see it, Mr. Whipple?

Mr. Whipple—I understand it is not offered in our case.

Mr. Thompson—No.

Mr. Bates—Then I must make the statement that, so far as it is material, it is to be considered in both cases under Your Honor's ruling.

Mr. Thompson—Now, Governor—

The Master—Oh, don't go all over that again. The letter is in now.

Mr. Thompson—I am not going to talk about that letter, sir.

Mr. Whipple—It is a communication

between the directors of which we have no copy.

[The letter referred to by Mr. Thompson is as follows:]

"John V. Dittamore, C. S. B.  
"236 Huntington Avenue,  
"Boston, U. S. A.  
"Sept. 17, 1918.

(Stamped): "Read Sept. 18, 1918.  
"The C. S. Board of Directors.  
"The Christian Science Board of Directors,  
"105 Falmouth Street,  
"Boston, Massachusetts.  
"Dear Friends:

"As preliminary to a thorough record and analysis of the relation which Mrs. Eddy sought to establish and thought she had established between The Christian Science Board of Directors and The Christian Science Publishing Society, I wish to submit herewith certain historical facts which constitute invaluable basic evidence on this vital subject. These facts are, of course, being presented because of the astonishing claims of the trustees of The Christian Science Publishing Society to independence from the general direction and supervision of The Christian Science Board of Directors presented by them to the directors on Sept. 11.

"From the time Mrs. Eddy founded The Christian Science Journal in 1882, until 1889, when at the meeting of the National Christian Scientist Association in Cleveland she presented it to that association, she personally directed its course as the official organ and mouthpiece of Christian Science. When the National Association accepted it as Mrs. Eddy's gift to them, it was placed in charge of a 'Publishing Committee' of eight members. This committee (later called 'Publication Committee,' and afterwards 'Publishing Society'), although changes occurred both in its number of members and in its personnel, continued to be responsible to the National Christian Scientist Association for both the Journal and other printed matter setting forth the subject of Christian Science, down to Dec. 7, 1896, when upon Mrs. Eddy's recommendation it was voted to incorporate as The Christian Science Publishing Society. Circumstances both interesting and significant, however, prevented the actual legal incorporation from being accomplished until March 31, 1897. It was at this time Mrs. Eddy's plan that her church, which had been organized by her in its present form in September, 1892, should act as the holding organization and entirely direct its printing and publishing corporation for its own benefit and interest.

"It should be remembered that these were the days when the disloyal students and pretenders were making their most strenuous efforts to annul and destroy Mrs. Eddy's work and to put out impure science and adulterated literature. Mrs. Eddy soon recognized

that there were certain undesirable tendencies and grave dangers in the existing arrangement which might open a way for evil to get the control of the Christian Science literature out of the hands of her Church, so she therefore caused all of the publishing property to be conveyed back to her personally, without liens, claims, or encumbrances.

"She then sent for one of her trusted and experienced helpers and told him that in order to avert the possibility of The Christian Science Journal and the other publishing property from being separated from her Church, she intended to give it directly to The Mother Church without any intervening committee, corporation, or other body. It was then called to Mrs. Eddy's attention that if she should act in this way it would constitute an abandonment of the name, 'Christian Science Publishing Society,' which had already become well known as the channel through which all pure Christian Science literature was issued, and that immediately upon such abandonment, the aggressive, disloyal students would and could legally assume the name and commence to put out their false literature as from The Christian Science Publishing Society. Thus the good name, good will, and prestige of the name would not only be lost, but would become an asset to the dishonest, false workers who were then at the zenith of their efforts. Another important circumstance which prevented her from fulfilling her desire for a direct gift to The Mother Church, was the existence of a law which her attorney advised as being capable of an interpretation which would prevent a church body in Massachusetts from directly owning a business. Whereupon, after due deliberation and further legal advice, Mrs. Eddy evolved a plan by which she felt that nothing could defeat the principal ends she had in view, which were:

"1st. To provide a safe channel for issuing Christian Science literature.

"2d. To provide a profitable activity for furnishing funds toward the larger support of her Church.

"3d. To preserve and permanently protect the name, 'Christian Science Publishing Society.'

"4th. To avoid conflict with a law which would prevent a church from owning a business.

"5th. To make 'a Gift to The Mother Church' of The Christian Science Journal and all other property associated therewith.

"6th. To relieve the already overburdened directors of the details of what was bound to become a great publishing activity, by providing three competent persons to hold and manage the property in trust for her Church, which so far as the central directing responsibility of the entire movement was concerned, she had already been led to have vested in a body corporate, legally, accurately,

and significantly described as The Christian Science Board of Directors.

"In order to safeguard herself and her Church against a repetition of the former tendencies, she placed absolutely in the hands of the directing authority of her Church, the election of all editors and of the business manager of the Publishing Society. She also took every other possible precaution to insure against the tendency which from experience she had found she had to reckon with, and events of today prove that her anxiety on this score was not unwarranted. Among these precautions are:

"That the power to declare vacancies in the Board of Trustees of the Publishing Society 'for any reasons which to the directors may seem expedient,' was placed in the hands of The Christian Science Board of Directors.

"That the trustees shall be always true and loyal Christian Scientists.

"That the directors of The Mother Church should own the building in which the publishing business was carried on.

"That when the Deed of Trust was executed on Jan. 15, 1898, Mrs. Eddy caused it to be read on the same day in a meeting of the First Members of her Church, to whose responsibilities The Christian Science Board of Directors have since succeeded by the definite provisions of a Church by-law; and the provisions of this document were accepted by the said First Members in the name of The Mother Church and so recorded in the minutes of the meeting by the clerk of The Mother Church.

"That the Church, not the trust itself, should fix the salary of the trustees.

"That no person not accepted as suitable by The Christian Science Board of Directors should in any way be connected with The Christian Science Publishing Society.

"And directly, and by inference, in so many other ways that Mrs. Eddy felt secure in the view that she had forever provided against the possibility that human ingenuity could evolve a theory upon which her desire and intention could be made of none effect and her plan abandoned behind any specious argument of legitimacy.

"This letter is only intended to be a hasty outline of the situation and a hint of the historical evidence of Mrs. Eddy's intentions. A thorough consideration of the subject will yield unlimited evidence of the facts and in refutation of the present claim, much of which can be presented in the form of both written and oral utterances of members of the Board of Trustees in complete refutation of what they are now attempting to accomplish.

"To allow the present astounding contentions of the trustees evolved in their present flagrant form almost immediately after they secured control of the publication of Mrs. Eddy's works, to be recognized as legitimate; to fail to grasp the gravity of the

present situation; and to fail to immediately take steps to protect the Cause from such effrontery, will constitute in effect an abandonment of our Church By-Laws, and such faithlessness will inevitably ultimate in the disintegration of that which stands as the accomplishing of our Leader's life labors as Founder of the Christian Science movement.

"Very sincerely,

"JOHN V. DITTEMORE."

The following appears in pencil:

"Preceding portion of this letter loaned to Mr. Krauthoff Nov. 21, 1918, at Mr. Dittimore's request as stated before the board.

"C. E. J."

[The letter of which the foregoing is a copy is marked Exhibit 785. R. J. M.]

Mr. Thompson—Now, about the memorandum that I called for. Do you want me to put Mr. Jarvis on and ask him if he remembers it?

Mr. Bates—You might submit it to me first. Perhaps it is something that I will be able to recognize.

Mr. Thompson—I do not think you will, because you won't dare to. If you can conveniently, I shall be obliged to you. If you will turn to your records I think you will find that a reference is made to that paper being filed (passing a paper to Mr. Bates).

Mr. Bates—Your Honor, this is a typewritten statement torn from some other paper without date, and nothing that we can accept as relevant to the case.

Mr. Thompson—Then, if you want to continue now I should like to settle that case. If you care to continue it I am perfectly willing to. I want to get through if possible.

Mr. Whipple—We desire very much to close the case tonight.

The Master—What is there to do?

Mr. Whipple—And are willing to make any reasonable sacrifice.

Mr. Thompson—If the Governor denies that that memorandum was put in, I want to recall Miss Warren and put her on. I must have that memorandum in.

Mr. Bates—Why don't you call Mr. Dittimore?

Mr. Thompson—I must have that in.

The Master—It is not essential that you should get it in by examining his witness.

Mr. Thompson—I think it is, sir.

The Master—I don't see the necessity.

Mr. Thompson—He has promised me that he would look up his records, and produce it.

The Master—He says he hasn't it.

Mr. Bates—We told you that we have no such memorandum.

Mr. Thompson—Have you looked on your list?

Mr. Bates—Miss Warren has looked.

Mr. Thompson—Have you looked at the records of the directors' meeting of that date?

Mr. Bates—You haven't asked us to look up any directors' records, and of course we haven't had any opportunity to do it.

The Master—As the directors' records are open to you for examination, I do not think you can insist too strongly on it.

Mr. Thompson—Very well, we will prove it otherwise. Now, I should like to ask you, in view of the record about salaries, to put in the letter by Mr. Choate antedating by two days the one you did put in, which was brought to your meeting, talked over and withdrawn at the request of some of the directors, and the one you read substituted for it. Let us have that letter.

Mr. Bates—So far as that is concerned, Your Honor, I have no knowledge of any such letter. If this is Mr. Choate's second letter, it is undoubtedly his final and wisest opinion, the one that is in the record. And as to whether or not there is another we will now endeavor to ascertain, and if Your Honor thinks it is competent we will present it; but this is the first Mr. Thompson has asked us for any such letter.

Mr. Thompson—Have you previously, without my asking, inquired whether there was any such letter?

Mr. Bates—I have not.

Mr. Thompson—Very well. And the letter in which Mr. Choate urged publicity and in which he struck out that paragraph at the request of some of your clients.

Mr. Bates—I have heard nothing of the kind.

Mr. Thompson—Very well. Then I would like Mr. Dittimore's letter of Oct. 15, 1917, also in connection with this salary matter, which His Honor suggested that you produce before when I interrupted. That you must have. It is the one that Mr. Neal read to himself on the stand and identified. You have it somewhere.

Mr. Bates—In regard to the letter that he called for, which is alleged to have come from Mr. Choate, Miss Warren informs me that she is sure that there is no such letter in the files, nor ever has been.

Mr. Thompson—I ask that that be struck out.

Mr. Bates—Now, if you want to produce any such letter—

The Master—I think we will drop the second letter of Mr. Choate. I do not think you can be called on now to produce anything of the kind.

Mr. Thompson—I ask that Miss Warren's statement be struck out.

The Master—Strike it out.

Mr. Thompson—Mr. Dittimore will say that there was one. He knows that.

Mr. Bates—Then, in response to Mr. Thompson's call for the letter, I will state that I am advised there never was any such letter in the files as he states.

The Master—That I think you have already stated.

Mr. Thompson—Your information is incorrect. Now I want Mr. Dittimore's letter of Oct. 15, 1917, about the time this vote to raise the salaries was passed, which I called upon you to produce when you were putting in the votes. You asked me to wait until you got through.

Mr. Bates—I did not ask you.

Mr. Thompson—That was the ruling of the Court.

The Master—Is there any such letter?

Mr. Bates—Miss Warren informs me—or I will state upon my best information and belief, there is no such letter and never has been.

The Master—That is all, isn't it?

Mr. Thompson—Just a moment, sir.

The Master—Why should we delay about this? The statement is that they do not find it, have not got it, and cannot produce it.

Mr. Thompson—I want to put one of them on the stand, sir, to find out.

The Master—You will have opportunity to do that later. I do not think you can claim it now.

Mr. Thompson—Isn't the case winding up?

The Master—Governor Bates' case is, but I do not see how you can call one of his witnesses upon his case.

Mr. Thompson—You repeat, do you, that you never received and never had a letter dated Oct. 15, addressed to The Christian Science Board of Directors, 105 Falmouth Street, Boston, Massachusetts? You say that now, do you?

Mr. Bates—No, I know of no such letter.

Mr. Thompson—Do your associates and your clients tell you that you never had it?

Mr. Bates—I stated to you, on my best information and belief, so far as can be ascertained at this time, I do not know of any such letter. If you had made the call as you properly should have in writing some time ago, we would have had everything here. Of course, in one minute's examination we cannot be absolutely certain of all these records.

Mr. Thompson—The letter I may now remind you—

The Master—I do not think we ought to say anything more about that letter.

Mr. Thompson—All right, sir. Now, General Streeter's letter—opinion. Your clients have admitted that was rendered. I would like to have that go in. I may say to Your Honor that that is the letter, as Governor Bates said, which was not written by General Streeter as paid counsel but as a disinterested friend of this body, which has been published in the newspapers and is known to thousands of people. Your Honor is the only one, apparently, from whose knowledge he desires to keep it. I ask that it be introduced. It has been sent broadcast.

The Master—One minute now. You have made your request. What do you say, Governor Bates?



Mr. Bates—I will state to the Court that the letter to which Mr. Thompson refers is a letter that was presented to the board. It states at the beginning that it is a voluntary suggestion from General Streeter and that it was brought to the board by Mr. McLellan, who at that time was opposed to this change in salaries. I won't say what the reason was because I do not wish that reflection to be made, but it so happened that at that time he was opposing the change which would have made all the salaries alike, and he at that time was receiving a salary of \$12,500.

Mr. Thompson—I can't help it. General Streeter gave this opinion—The Master—Don't argue about it. You have called for it and Governor Bates declines to produce it.

Mr. Bates—No, Your Honor. I don't think we ever had such a letter. There was such a letter printed in the newspapers and I think there was such a letter read at the board meeting in 1915, two years prior to this action.

Mr. Whipple—At the same time Mr. Choate's letter was read.

The Master—We are evidently not going to get it from Governor Bates' side.

Mr. Thompson—I am afraid not.

The Master—That won't preclude you from putting it in later?

Mr. Whipple—If Your Honor please, we would like it in our case. We think that since the respondents have put in two letters, the full information which they have should go in.

Mr. Thompson—Will you show your clerk, Miss Warren, those two copies of the letters that I have called for and ask her if she still says she hasn't got those letters of Feb. 7, 1919, and Feb. 11, 1919.

The Master—I thought we had closed that?

Mr. Bates—His Honor has closed that.

Mr. Thompson—My impression is that you have those, Governor.

Mr. Bates—If you have them, or if you have seen them, you can put Mr. Dittemore on to produce them.

Mr. Thompson—Your purpose is obviously to force me to put Mr. Dittemore on. We will put him on at a time when it will do you more harm than it will now. Do you want these deleted records?

Mr. Bates—No; I said I don't think they are competent.

Mr. Thompson—Very well. I will leave them to Mr. Whipple. Do you want them, Mr. Whipple?

Mr. Whipple—I won't decide that at the moment, Mr. Thompson, because I have not got to our rebuttal.

Mr. Thompson—Very well.

Mr. Whipple—I have a suggestion to make then.

Mr. Thompson—Very well. That is all I can do at the present moment.

The Master—Now, shall we adjourn until Monday, and what will be the order of proceeding then—the first thing to take up on Monday?

Mr. Whipple—If Your Honor please, we have comparatively little evidence by way of rebuttal, and we desire to urge our request for the production of certain papers which have not been produced. In the first place, the letter of General Streeter, which has been referred to, on the subject of the propriety of these directors increasing their salaries; also any letters of Mr. Choate on the same subject that have not already been put in. We should be very glad, if we shall not be trespassing too much upon Your Honor's patience and time, to finish tonight.

The Master—What have you to offer?

Mr. Whipple—Our evidence will be quite short. I propose to call Mr. Watts to correct some of the statements of Mr. Cudworth which we hoped he would be here himself to correct, and in that connection to call Mr. Rowlands. I should not think it would take over 15 or 20 minutes to put in our evidence; it might run into half an hour. If that cannot be done, I should urge very strongly that we meet tomorrow morning for the purpose of closing up the evidence. It will be short, and I should think all of us might like to go away at the end of the week feeling that this case was closed.

Furthermore, my associate and friend, Mr. Strawn, who has remained away from his office in Chicago for a number of weeks at a good deal of personal inconvenience, would like very much to go to Chicago tomorrow, and not be held over just to stay a short time on Monday to attend the hearing then. That, of course, is a matter of personal convenience which all of us will take great pleasure in considering just as far as possible. We are ready to go forward tonight to that end, or to meet tomorrow morning and to occupy what part of the forenoon may be necessary. For the last two days, two nights before this, we have suspended in the belief that it would take only a few minutes in the morning. I rather suspect, aside from other reasons for not wishing to go over until Monday, that we might be very much disappointed in our expectations if we should go over until Monday in finishing on that day.

Mr. Bates—I had assumed, Your Honor, from what Mr. Whipple has stated, and from what Mr. Thompson has stated as to what he wishes to present, that it would not be feasible or practicable to attempt to close the case tonight. It would naturally give us all a little breathing spell if the case went over until Monday morning. I am not going personally to make any request as between Monday morning and tomorrow morning, except the statement that I think it would give us a little relief if we went over until Monday morning, and then it could undoubtedly be completed very rapidly and quickly. I do not expect to introduce any more evidence, but if the case goes over either until tomorrow or until Monday, I wish, of course, to

reserve the right, in case I should discover anything that we had omitted, to put it in. It cannot take much time, and I do not think that there will be anything.

The Master—I think that we have to do what we can to meet the wishes of Mr. Strawn, who is here from Chicago.

Mr. Bates—I think that that should be considered also, Your Honor. I simply thought that it was quite possible, from what Mr. Thompson has said, that this thing might be prolonged beyond the possibility of completing it tomorrow.

Mr. Thompson—You won't find me prolonging things much!

Mr. Bates—I am judging from your record in the past.

Mr. Thompson—If you let your people do the honest and right thing, and produce what you have got there, we will wind this up quickly.

The Master—How would it be to go on until quarter of five, and then adjourn to tomorrow morning?

Mr. Bates—Well, I think, Your Honor, that we should not be required to close our case, and allow them to go on for 15 minutes, which would cut us out of the possibility of not going over, after going on practically 27 or 28 days, with the possibility of having omitted something that we might desire to put in—that is, if it goes over at all, we certainly should have that right. The saving of 15 minutes would not help us much.

The Master—Are you willing to go on tonight, reserving that right to Governor Bates if he thinks of anything else?

Mr. Whipple—Oh, yes, Your Honor.

The Master—I thought that we might get through with those two witnesses whom he wishes to recall by going on for 15 minutes longer.

Mr. Bates—I should be willing to go on for 15 minutes, having that right reserved to me.

Mr. Whipple—I do not think that we would finish with those two witnesses within that time.

The Master—I thought you said you could.

Mr. Whipple—Within 15 or 20 minutes? Perhaps I did. I will try it.

The Master—Try one of them, anyway.

Mr. Whipple—Yes.

### John R. Watts, Recalled

Q. (By Mr. Whipple) Mr. Watts, will you let me ask you first whether you remember of any conversation or conversations with Mr. Neal at any time while you have been business manager and Mr. Rowlands has been a trustee, in which you have spoken to Mr. Neal of the fact that Mr. Rowlands was absent from the city on business? A. No, sir.

Q. I will ask you whether ever, either in direct speech or by inference, or in any manner, you have stated to Mr. Neal that the absences of Mr. Rowlands on his private business at

all interfered with the discharge by him of his duty as trustee? A. Never in my life.

Q. Were you in court when a gentleman by the name of Cudworth, your subordinate and the purchasing agent, testified yesterday in regard to a certain paper contract with the Canadian Export Company, and computations that he had made in connection therewith? A. I was.

Q. And you listened to his testimony? A. I did.

Q. Let me ask you, in the first place, when did you first know that Mr. Cudworth, your subordinate, had been in conference with counsel for the directors, and was to be summoned to testify as a witness? A. Not until the moment that Governor Bates announced it in the court room here.

Q. You had received the night before a notice to produce certain papers, had you? A. Yes, sir.

Q. What time? A. As I was packing my papers there to take them back to the office that letter was handed to me.

Q. It was a letter addressed to myself? A. To you.

Q. But it was handed to you? A. Yes, sir.

Q. Did you then attempt to get the papers that were asked for? A. Yes, sir, that evening.

Q. That evening? A. Yes, sir.

Q. Had you ever ordered any of them to be produced— A. No, sir.

Q. —or taken from the files, until you received that notice? A. No, sir.

Q. Had you yourself had anything to do with regard to getting them out or producing them, other than to give orders? A. No.

Q. And you gave the orders to whom? A. To the secretary in the manager's office, to get the papers in the manager's office out.

Q. Yes. And did that include the purchasing agent's papers? A. No, sir. I handed that letter to the trustees, and they requested the secretary of the Board of Trustees to call the purchasing department and ask for those papers.

Q. Ask for the papers. And that is all that you had to do with it, or the trustees, as far as you know? A. Yes, excepting that I looked through the papers slightly the next morning, but had not finished my examination of them when I came to court.

Q. Had you given any instructions to Mr. Cudworth, among others, with regard to what should be done in case he was requested to give evidence in this trial? A. Yes, sir.

Q. What had you said to him? A. I had said to him, with other heads of the departments, to make any statement that the directors called for in the event they should call for it, and give them any information they wanted, provided the exactly same information was furnished to the Board of Trustees.

Q. Yes. Did you ask to be notified in case—

Mr. Bates—I pray Your Honor's judgment as to whether we should go into these conversations between Mr. Watts and his employee.

Mr. Whipple—Let me finish the question.

The Master—The instructions he gave I think may be admissible, perhaps.

Q. Had you asked to be notified in case information was requested? A. Yes, sir.

Q. Did Mr. Cudworth at any time notify you that information had been requested by Governor Bates, or by the directors, or by anybody else? A. Never.

Q. The first intimation you had that any information was requested was when you had the announcement that they were going to call him? A. Yes, sir.

Q. Now, can you remember from whom it was that you received the information as to the savings or saving that was accomplished by Mr. Rowlands' contract, or the contract which Mr. Rowlands negotiated with the Canadian company? A. Yes, sir.

Q. From whom was it? A. Mr. Cudworth.

Q. And was your statement here in court based on his statement? A. Yes, sir.

Q. Now, have you looked over his computation as to savings accomplished by that contract, both as compared with the contract with the International Company and as compared with what would have been the expense to the publishing house if you had depended upon the prices fixed during the year by the Federal Trade Commission? A. I have.

Q. Did you hear his computation of something like \$7000 profit as between the two contracts, or saving as between the two contracts, and \$42,000 saving as compared with the Federal Trade Commission? A. I did, sir.

Q. Have you looked over his figures? A. I have, sir.

Q. With him? A. Yes, sir.

Q. What have you discovered as to his computation? A. I discovered that his figures were correct, except that he had his decimal point on the Federal Trade figures off one point. In other words, the increases in the Federal Trade Commission in this Exhibit 729 show the increase for the month of April at \$1 per ton. It was 50 cents per hundredweight, or \$10 per ton of 2000 pounds.

Q. That is, his difficulty with his decimal point was that he reckoned it as a dollar when it should have been \$10? A. Yes, sir.

Q. Otherwise his computation was correct? A. No, sir.

Q. Well, tell us. A. The same applies to May, when he says 26½ cents. The increase was 13¼ cents a hundred pounds, or \$2.65 a ton. The same thing applies to June, where he has 24 cents, which was 12 cents a hundredweight, or \$2.40 a ton.

Q. Without going through it all,

he had made a— A. His decimal point all the way through the thing is wrong, and where he comes out \$4710, the amount with the decimal point properly placed would have been \$47,100.

Q. What difference did it make in the computation of savings as compared with both these contracts? A. It makes a difference, according to his calculation here, of just as he stated the other day—about \$42,000. I have the figures if you wish them.

Q. Forty-two thousand— A. Nine hundred dollars.

Q. As between these two? A. Yes.

Q. That is, the Federal Trade Commission and the contract prices? A. Yes, sir.

Q. Now, what did the decimal point difference make there? I don't quite understand it if his computation is correct. A. When you deduct from the—

Q. I beg pardon? A. The decimal as he has it, Mr. Whipple, is in the wrong place all the way through, which makes it \$47,000, if he is correct, instead of \$4700.

Q. Yes? A. Now, then, if you add to the \$47,000 the increased price of \$3 a ton on color, as between the International Company and the other company, making—may I use my figures here a moment?

Q. I wish you would, because really you don't make it quite clear, I think. A. I beg your pardon, sir.

Q. Because, if I understand you aright, you don't indicate that the decimal point made any difference in his result. A. Oh, yes, his—

Q. Well, how much difference does it make in the result? That is all I am asking you about. A. Oh, I beg your pardon. Excuse me.

Q. Tell us what the result was with the decimal point as he used it, and what the result was with the decimal point as it should have been? A. \$42,300.

Q. What is that answer? A. That is the difference between the amount of increases in the Federal Trade Commission during the year, over and above the amount we paid.

Q. Well, now, what did he say it was in his computation yesterday, with the decimal point as he used it? A. Well, in the figures that he had made the night before, he showed that with the decimal point properly placed the difference was \$42,900.

Q. Now, does it make only \$5000 difference? A. No, sir; it makes—oh, between what he figured last night and what this is? I will give it to you in just a moment, sir.

Q. Now will you testify? A. May I testify exclusively from the statement of November, which Mr. Cudworth—

Q. You may do just as you please, but the question is a very simple one. A. I beg your pardon.

Q. Mr. Cudworth gave two figures. He gave the savings resulting from a comparison of the contract which he

entered into with the contract which was proposed with the International? A. Yes, sir.

Q. That was about \$7000, according to the way he figured it, one way, or about \$17,000 another? A. Yes, sir.

Q. Now, then, did he make any mistake in that computation? And if so, how much? A. No, sir, not in that computation.

Q. Well, now, in what computation did he make a mistake? A. On the savings that were made by virtue of our having made a fixed price with the Canadian Company rather than having accepted the alternate proposition that was offered to us to buy the paper on the Federal Trade Commission prices to be fixed during that year.

Q. How much was that mistake, how much did it amount to in figures?

A. Well, the savings under the fixed price, with all deductions, amounted to \$42,755.82.

Q. Well, he testified to that yesterday, didn't he? A. Yes, sir.

Q. And that was correct? A. Well, he testified that the savings were \$42,900, sir.

Q. And you make them how much? A. I make them \$42,755.82, with all deductions for all the expense that he said—

Q. How much were those deductions and expenses? A. I have deducted for—

Q. Just tell us the totals, whatever they are, because I want to find how much his mistake was, and you see you leave that in the air, uncomputed. A. The total savings, Mr. Whipple, according to the November report which he furnished to us and made the mistake of the decimal on, were \$47,100.

Q. Were what? A. \$47,100; to which should be added as a saving the difference in the cost of color as between the International Company and—

Q. Well, I want the figures, that is all I want. A. I am giving them to you. \$13,500, making a total saving of \$60,600, from which I deducted the freight differential of \$6,041.25, and the entire expense that Mr. Cudworth said we had been put to in the wastage and storage and freezing, and so on and so forth, of \$11,802.93, leaving a total absolute saving against any question of any kind of \$42,755.22.

Q. Then how much was his error in computation, in figures? A. \$42,390 was his error.

Q. I beg your pardon? Give it again. A. \$38,045.82.

Q. That was the amount of his error? A. Yes.

Q. In figures? A. Yes.

Q. Now, did you call that to his attention last night? A. I did, sir.

Q. Did you say anything about his coming to court to correct it? A. No, I didn't last night, I beg your pardon, sir.

Q. Well, when did you? A. I saw him in his automobile this morning

in passing, and I asked him to come to the office.

Q. Well, it was this morning? A. This morning, sir.

Q. Instead of last night, that is all? A. All right.

Q. We are trying to get through as fast as we can. So it was this morning instead of last night? A. Yes.

Q. Did you call this mistake in computation to his attention? A. Yes, sir.

Q. The fact that he had made a mistake of this number of thousand dollars? A. I asked him if he hadn't done it.

Q. What did he say? He said at first he had not. Ultimately what did he say? A. Oh, he didn't say he had not. I asked him if he hadn't made a mistake. I called it to his attention and asked him to please look it over carefully and then see his figures. He said, "Yes, I did make a mistake."

Q. And did he admit the amount? A. Yes, sir.

Q. Then you asked him to come down here or gave him an opportunity to come and correct it? A. I said to him I would very much rather he would come and make the correction rather than for me to go on the stand.

Q. What did he say? A. He said he had already testified and he didn't know whether he wanted to come or not.

Q. Then you left the matter in that way? A. Yes.

Q. Now, then, taking this exhibit 729, this sheet which is headed, "Estimated and Actual Savings Under Canadian Contract," here are some green penciled figures there, are there not? A. Yes, sir.

Q. Now, at the bottom here is the figure \$4710. You observe that, do you not? A. Yes, sir.

Q. Opposite the word "savings"? A. Yes, sir.

Q. This is the paper that was brought in and put in evidence by Mr. Bates yesterday, is it not? A. Yes.

Q. As an exhibit, purporting to be a special report? Is that right? A. It was offered by Mr. Bates yesterday.

Q. And it is a part of that so-called special report? A. Yes, sir.

Q. On which he based the statement that the actual savings were only about \$7000? A. Yes, sir.

Q. Now, in that computation what should that figure \$4710 be? A. \$47,100.

Q. \$47,100. Would that change that computation? A. Well, to that extent, yes.

Q. The difference between \$4710 and \$47,100? A. Yes, sir.

Q. In the amount of economy as shown by the comparison of the result of the two contracts? A. Yes, sir.

Q. In other words, the saving wasn't \$7000, but what was it, according to the actual computation? A. \$42,755.82, after all possible deductions.

Q. And there is your \$42,000, or

approximately \$41,000, as you originally testified? A. Yes, sir.

Q. And that is from a comparison of the contract actually entered into, and the proposed contract? A. Yes, sir.

Q. In other words, a mistake of this number of thousand dollars there? A. Yes, sir.

Q. I mean in his computation which appeared in his special report? A. Yes, sir.

Q. Did you call that to his attention and have a conversation with reference to it? A. Yes, sir.

Q. Now, then, the savings as compared with the Federal Trade Commission prices were much larger than that, I take it, on that computation? A. Well, that is under the Federal Trade Commission.

Q. Well, then, how does it compare with the two contracts? I am asking you to compare the two contracts. Was one of them on the basis of the Federal Trade Commission? A. Well, Mr. Whipple, both contracts were offered to us in the alternative, to accept either the Federal Trade Commission or to accept a fixed price, and we accepted the fixed price.

Q. Yes. Now, I want a comparison with the situation if you had accepted the fixed price in the International? A. Oh!

Q. What saving was that? A. That would have been \$18,990.

Q. \$18,990? A. Yes, sir.

Q. That is, the computation was there correct? A. Yes.

Q. Now, did you hear the conversation when this contract with the Canadian Export Company was entered into? A. Yes, sir.

Q. Do you know of any private agreement or assurances being given with regard to that contract?

Mr. Bates—I pray Your Honor's judgment.

Q. Upon which the parties relied? The Master—One minute. Is that in contradiction of Mr. Cudworth?

Mr. Whipple—Yes, Your Honor; and then it shows the advantage of the contract as well.

Mr. Bates—Here is a written contract put in, and he is now seeking to vary it by asking whether or not there was any private understanding.

Mr. Whipple—You may always do that except where there is a suit on the contract. It is an independent agreement.

The Master—If it is in contradiction of anything you put in I think he may ask.

Mr. Bates—Mr. Cudworth could not testify to that; it is nothing he could testify to.

Q. What was the arrangement?

Mr. Bates—What is this in contradiction of?

Mr. Whipple—It is in contradiction of the effect of Cudworth's testimony that the advantages of the contract were such as he stated.

The Master—Do you think we want to go into that private understanding?

Mr. Whipple—It will only take a minute, if Your Honor please. I do think it important, because apparently this is a situation which presents, and the only one which presents, the slightest comfort to these gentlemen.

The Master—Never mind about that.

Mr. Whipple—And while it is on an entirely side issue, and collateral, yet we want to clear it up.

The Master—I don't want to spend too much time on it.

Mr. Whipple—We should have had the answer if it had not been for this interruption.

The Master—Answer.

A. I was present when the arrangement was made. It was not a private agreement. It was a definite understanding between the Publishing Society and the Canadian Export Paper Company, through Mr. Steele, that if at any time the Federal Trade Commission prices would go below the price we were then paying they would protect us on that thing.

Q. That is, the price on the contract? A. And it was simply on that assurance—

Q. Pardon me. The prices named in the contract? A. Yes, sir.

Q. As the fixed prices? A. Yes, sir; and it was on that assurance, and that assurance alone, that I as business manager accepted the contract.

Mr. Bates—I object.

The Master—Now, don't talk, Mr. Watts; answer the question and then stop.

Q. Now, then, I will ask you the question as to whether you would have accepted either of those contracts except upon this assurance that you should not lose if the Federal Trade Commission price went below?

Mr. Bates—I pray Your Honor's judgment—what he would have done.

Q. —went below the figure named as the fixed price in your contract? A. We should not.

Mr. Bates—I object.

The Master—That is a hypothetical question.

Mr. Whipple—That is the whole advantage of this contract and the most important feature of it—that they were guaranteeing against loss; otherwise they would not have accepted a fixed price, because every one believed then that it was quite a possibility that the Federal Trade Commission would fix lower prices.

Mr. Bates—You are the first man I ever heard of that believed anything of the kind at that time.

The Master—I will permit the answer to stand subject to your objection.

Mr. Whipple—That is all. There is nothing further to ask. You may inquire.

The Master—I have already exceeded the time, but if you prefer to end this tonight I will sit.

Mr. Bates—No; it doesn't make any difference to me, Your Honor, either way.

The Master—I have gone by quarter of five.

Mr. Whipple—Have you finished with this witness?

Mr. Bates—Certainly not.

Mr. Whipple—Then go ahead.

The Master—I said it is now considerably after a quarter before five, the hour to which I said I was willing to sit; but if Governor Bates can finish in five minutes, I am willing.

Mr. Bates—I don't think I can, Your Honor. He has taken 25 minutes to bring this testimony out.

The Master—I think, then, we will have to stop. I think we will suspend here until tomorrow morning, Saturday, at 10 o'clock.

[Adjourned to 10 a. m., Saturday, Aug. 2, 1919.]

Aug. 2, 1919

TWENTY-EIGHTH DAY

Room 424, Court House,

Boston, Massachusetts, Aug. 2, 1919,  
10 a. m.

Mr. Whipple—If Your Honor please, we are ready.

The Master—Are you ready to go on, Governor Bates?

Mr. Bates—Yes, Your Honor.

The Master—Before we begin, I would like to inquire how many hours of this Saturday counsel desire to devote to the hearing.

Mr. Whipple—Why, if Your Honor please, I cannot conceive of our taking more than two hours at the outside. My estimate would be much less than that, except that I have been so disappointed in predictions as to when we would finish. We have finished our examination of Mr. Watts, with the possible exception of a question that I may want to put him on redirect. I shall then call Mr. Rowlands for a very brief examination, purely on this subject; and then I shall ask to have General Streeter's letter produced, and the other letter of Mr. Choate, if it is here, and that will finish our rebuttal. I may desire to make a saving suggestion with regard to one or two matters that Mr. Eustace would testify to, and I shall ask, if we desire, to let him do it at the time appointed for argument. I will state what the two possible points—one point I should like to have him cover—

The Master—The object of my inquiry was this. I was going to find out whether the elevators run here after 2 o'clock today. The law library closes, they tell me, at 1 o'clock and I thought it quite possible that there would not be any elevator service Saturday afternoon.

Mr. Thompson—All I have to do, Your Honor, is simply at the proper time to make the offer of proof technically that we spoke about, and then that will be all.

Mr. Whipple—It seems hardly conceivable that we will take after 1

o'clock, but our repeated disappointments in our predictions make us a little shy of making predictions.

The Master—That answers my question. I understand that Mr. Whipple has completed his examination of Mr. Watts.

John R. Watts (Recalled), Resumed

Cross-Examination

Q. (By Mr. Bates) Mr. Watts, you spoke of an oral understanding that you had with the Canadian officials by which you should be protected against any drop in prices if made by the Federal Trade Commission—is that right? A. Yes.

Q. And I understand you to state that that was a very important part of your understanding. A. Yes, sir.

Q. And when did you arrive at that understanding? A. During the month of December.

Q. And of course prior to entering into your contract? A. Yes, sir.

Q. And I also understood you to say yesterday that you never would have entered into the contract except for such an understanding? A. Yes, sir.

Q. And your counsel referred to it as highly important, did he not? A. Yes, sir.

Q. And yet when you came to write that contract you never said a word about it, did you? There is not a word in the contract in regard to it? A. So far as I know, there is nothing in writing about it.

Q. So that, as a business man, you claim that you had an understanding with this company, and yet when you came to reduce your understanding to contract, you left out the most important part of it—that is right, isn't it? A. No.

Q. Didn't you say that you never would have made it except for this understanding? A. Yes, sir.

Q. Then you left out of the contract a condition which if it had not been made you never would have made the contract? A. It never was supposed to go into it.

Q. Well, that is just what I supposed. Why wasn't it supposed to go into the contract? A. Because it was an agreement between Mr. Rowlands—

The Master—I did not get that question. Why what?

Mr. Bates—Why wasn't it supposed to go into that contract?

Mr. Whipple—That is, into the written contract.

A. Because it was an agreement between Mr. Rowlands and Mr. Steele. Mr. Steele explained that he wanted to do business with The Christian Science Monitor—

The Master—I do not think that we want Mr. Steele's statement, sir, do we?

Mr. Bates—No, I don't think we do. Mr. Whipple—That is why it didn't go into the contract. He is explaining why it didn't go in. He is asked the

question why, and Mr. Watts is explaining why, namely, that it was at Mr. Steele's request, and Mr. Steele stated his reasons for it.

The Master—Wait a minute. It was an agreement between Mr. Rowlands and Mr. Steele? Do I get that right?

Mr. Bates—That is what he now says.

Mr. Whipple—Mr. Rowlands representing the trustees.

The Master—He is explaining in answer to Governor Bates' question, I think.

Mr. Whipple—May I ask to have that read? He asked the question why it was not put in. Will you read the question?

[The reporter reads as follows: Then you left out of the contract a condition which if it had not been made you never would have made the contract? A. It never was supposed to go into it. Q. Well that is just what I supposed. Why wasn't it supposed to go into the contract? A. Because it was an agreement between Mr. Rowlands—"]

Mr. Bates—That is it.

Mr. Whipple—He was answering the question why?

The Master—I think so; but hasn't he answered why?

Mr. Whipple—I think that he had not quite finished his answer to that question. I do not like to be insistent, but I am very sure that he will make it perfectly plain why it was not put into the written agreement. Will you proceed with the reading?

[The reporter reads as follows: "Q. Well, that is just what I supposed. Why wasn't it supposed to go into the contract? A. Because it was an agreement between Mr. Rowlands—

"The Master—I did not get that question. Why what?

"Mr. Bates—Why wasn't it supposed to go into that contract?

"Mr. Whipple—That is, into the written contract. A. Because it was an agreement between Mr. Rowlands and Mr. Steele. Mr. Steele explained that he wanted to do business with The Christian Science Monitor—"]

The Master—I stopped him there because I thought I might avoid possible objection and save time. It has not appeared that he heard what Mr. Steele said.

Q. Did you hear the conversation? A. Yes, sir.

Q. Between Mr. Steele and Mr. Rowlands? A. Yes, sir.

Q. When was it?

Mr. Whipple—Why can't he finish the answer as to why it did not go into the written contract?

Mr. Bates—I will locate it first.

The Master—When we find out when it was.

A. I do not know the exact date, sir.

Q. What, sir? A. I do not know the exact date, sir.

Q. Well, when was it in relation to the time that you entered into the contract? A. I think it was in the latter

part of October or early November, and the contract was agreed on then verbally, but the written contract was not finally signed until after the first of January.

Mr. Bates—Will you let me see both of those proposals, and also the exhibit, the report?

Mr. Whipple—I hand you the Canadian Export Paper Company contract and the exhibit.

Mr. Bates—Now I want the International proposal.

Mr. Whipple—The proposal was not put in evidence. Mr. Watts took it. Have you the proposal here?

The Witness—No, sir.

Mr. Whipple—We did not bring the proposal, the International proposal.

The Witness—Oh, I have the International proposal. I did not think you meant that.

Mr. Whipple—Well, that is right, if you have the International proposal.

The Witness—I beg your pardon.

The Master—Well, stick to one thing at a time. He has told when it was. Now, do you want to ask him what was said?

Mr. Bates—Not yet.

Mr. Whipple—I should like now to have him finish the answer which was an explanation as to why this oral arrangement or understanding was not included in the written contract. He started to do it and—

The Master—I think I will see what Governor Bates proposes further to ask him about that.

Mr. Whipple—But I hope that it will not be overlooked.

The Master—If you propose to ask him to state the conversation, I think that now would be the best time to do it.

Mr. Bates—I have no objection to his stating the conversation if Mr. Whipple wishes him to do it.

The Master—Go on and state the conversation now, then.

The Witness—Mr. Steele proposed to Mr. Rowlands—

The Master—Tell what was said.

The Witness—Mr. Steele in substance said that he wanted to do business with The Christian Science Monitor, and he wanted to get that business because of the high standing of The Monitor, and he wanted to do anything he could, and that he had so much admiration and respect for The Monitor that he would protect it against any fall in the price that might take place during the year by virtue of any ruling of the Federal Trade Commission.

Q. And that was said a long time before you entered into the contract?

A. At approximately the same time, I think.

Q. Approximately the same time that you— A. Not the written contract, but we had verbally agreed on the thing before the written contract was made.

Q. And then when you reduced it to writing you were supposed to re-

duce your agreement to writing, were you not? A. Yes.

Q. And your written agreement does not say a word about being protected, does it? A. No, sir.

Q. Was anyone else present but you and Mr. Rowlands at the time of that conversation? A. Mr. Steele was there, I think. Mr. Ogden was there, and I think Mr. Eustace was there, but I am not certain.

Q. Have you any paper setting forth that provision or condition? A. None, so far as I know.

Q. It never was reduced to writing in any way, shape or manner? A. Not that I remember.

Q. You haven't a scrap of paper showing that there was any such understanding? A. No, sir.

Q. Did you look over the contract when it was made? A. Yes, sir.

Q. And it received your approval? A. Yes, sir. I think I signed it.

Q. Did you notice that that provision was not in it? A. Yes.

Q. And did you speak to anybody about it at that time? A. No, sir.

Q. You didn't consider it of enough importance, did you? A. I considered it of the greatest importance.

Q. And yet you left it out of your contract, when you say you thought of it at the time the contract was being made? A. It never was intended to go in.

Q. And you want to leave it there, do you? A. I will leave it just as the facts are.

Q. That the most important provision of your contract was never intended to go into it? A. Just as I have stated.

Mr. Whipple—Not go into the writing, that is what he stated.

Q. Now, in regard to the alleged mistake made by Mr. Cudworth, that report that was made to you last November was examined by you, I assume? A. Only superficially.

Q. Only superficially? A. Yes.

Q. And so, in regard to so important a matter as how you would come out on a contract with this new firm or new corporation, and where there were such charges made in regard to the way in which they had completed the contract as were made in that report, you examined it only superficially? A. I referred it directly to Mr. Rowlands.

Q. Did Mr. Rowlands examine it? A. Yes.

Q. Did he report back to you? A. He said to me that the report was all wrong, and that is as far as he reported.

Q. And did he say in what particulars it was wrong? A. No, sir.

Q. Do you know in whose handwriting those figures are that are in green pencil there (passing a document to the witness)?

The Master—Showing the witness exhibit—

Mr. Bates—I am showing the witness Exhibit 729, which is the report that Mr. Cudworth made on Nov. 18—

The Master—Yes; we know what it is.

Mr. Bates—In regard to the newspaper contract.

The Master—Now the question is, Do you know in whose handwriting the figures in green are?

Mr. Bates—In whose handwriting the figures in green pencil are.

A. Yes, sir.

Q. Whose are they? A. Mr. Rowlands'.

Q. And is there anything else on there excepting the green penciling by Mr. Rowlands, except what was on the report when it was presented to you? A. Yes. Oh, nothing that I know of.

Q. And now, Mr. Rowlands, when he handed the contract back to you, had crossed out everything in regard to the claims that should be made for wastage, for extra storage, for traveling expenses, for loss of time, and for the additional price that had had to be paid because the paper was not delivered on time. A. No, sir.

Q. Hadn't he drawn a line through the whole of it, made a cross through it? A. No, sir.

Q. I ask you that question. A. He had drawn a line.

Q. Hadn't he drawn a line right through the whole of it, crossed it out? A. Yes, sir.

Q. And hadn't he also taken the amount of the alleged saving if the contract had been made under the Federal Trade Commission prices of \$4710, and added that to the alleged savings without making any deductions of \$18,990, and figured out a saving of \$23,700 and something? A. Yes, sir.

Q. And that is all he did do, isn't it? A. Yes, sir. I would like to explain that.

Mr. Bates—Well. I want to call it to Your Honor's attention.

The Master—I understand that that speaks for itself. That is what is shown by the green penciling.

Mr. Bates—Yes, Your Honor. I just wanted to call your attention to it.

The Master—We shall have the paper.

Q. Now, is it not a fact, Mr. Watts—A. May I explain that?

Q. No. Your counsel will give you a chance to explain, as we have been told many times in the examination of our witnesses during the trial.

Mr. Whipple—What was that question? Let me hear that question and answer.

The Master—We have got to the point of showing what that green penciling was.

Mr. Whipple—I am sorry, but my attention was diverted and I did not hear the last question and the last answer. It was by inadvertence. I would like to hear that read.

[The reporter reads as follows: "A. And hadn't he also taken the amount of the alleged saving if the contract had been made under the Federal Trade Commission prices of \$4710, and added that to the alleged

saving without making any deduction of \$18,990, and figured out a saving of \$23,700 and something? A. Yes, sir.

"Q. And that is all he did do, isn't it? A. Yes, sir. I would like to explain that."] ]

Q. Now, Mr. Watts, in order to figure out the saving of \$23,700 that Mr. Rowlands figured out on this paper, he took the estimated savings that were made when the contract was entered into as between the Canadian contract and the International, without allowing any deduction of \$18,990, and to that he also added savings estimated as to the Federal Trade Commission prices if that had been a contract entered into, and by putting the two together he found where there would be a saving of \$23,700?

Mr. Whipple—Now, that I object to, if Your Honor please. Mr. Watts knows nothing about that.

Mr. Bates—I ask him if that is not the fact.

The Master—I understand Mr. Watts to be giving now only what the figures show for themselves on that.

Mr. Whipple—Then, if that is so, why should we not depend upon the figures themselves? He is asked to interpret the figures of another man.

The Master—Strictly speaking, we should, but this explanation may be very convenient, and I think that I will admit it.

Mr. Whipple—Well, the only difficulty—

Q. Is that what those figures show, Mr. Watts? A. They indicate that very statement as being correct.

Q. Well, Mr. Rowlands certainly made a mistake in taking the estimated savings under the Trade Commission price and adding onto it the estimated savings under the International Paper Company price, didn't he? A. Yes, sir; he did. May I explain?

Q. Just a minute. In doing that he also overlooked the very mistake that you say Mr. Cudworth made, didn't he? A. Yes, sir.

Q. And you yourself had overlooked it? A. Yes, sir.

Q. Were you and Mr. Cudworth together a considerable time the night of the day that he testified here? A. We were together the night that he finished his direct examination; I think it was Wednesday night.

Q. A long time? A. Yes. We were together for, I think, two hours.

Q. Going over these figures? A. No, sir, no.

Q. And all the other figures you could get? A. No, not those figures.

Q. Wasn't it entirely relating to his testimony? A. No.

Q. Your conference with him? A. No, none of it was relating to his testimony. I didn't ask him about his testimony.

Q. Wasn't it relating to how he figured it out? A. The most of the time was spent—I didn't spend any time on the figures—the time I spent was in looking for that special report that I

was supposed to have had from Mr. Cudworth. He made all the figures.

Q. Well, weren't you trying to figure out how you had come to testify as to \$41,000? A. I asked him where I had gotten that figure and how he had made it up.

Q. And he told you that he couldn't tell? A. He said he didn't know.

Q. And you were not able to find out, either, were you? A. That night I was not.

Q. No. A. Well, excepting that that night he made out a statement showing—which has been filed here, I think—showing that the net saving was \$42,900.

Q. Now, Mr. Watts, you don't mean any such thing as that, do you? A. Yes.

Q. What you mean is that you had taken your contract price for a year and compared it with the increasing Federal Trade Board prices during the year, that then, by reason of the increase in those prices there may have been a saving of the \$42,000? A. But that was the only fair comparison.

Q. Well, wait a minute; isn't that what you mean? A. Yes.

Q. Now, the mistake that you refer to was a mistake that occurred in connection with his estimate of the Federal Trade Commission prices? A. Yes.

Q. And it didn't affect at all the estimate that he made in connection with the International Paper Company prices? A. Why, yes, it does.

Q. No. Show me where it did, then? A. Why, because—

Q. No, wait a minute. Point it out. Show me where it affected it. A. I can only point it out by explaining to you.

Q. Well, that is what I want you to do. A. Mr. Cudworth was endeavoring to find the savings.

Q. No, I want you to show me. A. I am going to show you.

The Master—Pause a moment.

Mr. Bates—I want to be sure he understands the question.

Q. This is where the mistake was made, was it not? A. Yes.

Q. On the decimal point? A. All the way through.

The Master—How do you suppose that is going into the record— "This is where the mistake was made?"

Mr. Bates—My next question is going to show.

Q. It has relation to the Federal Trade prices? A. Yes, sir.

Q. And it has no relation whatsoever, and those figures were not used, in connection with the estimate as to the International Paper Company, were they? A. No, they had no relation to that.

Q. That is it, exactly. A. But they have a relationship to the report when he was trying to find the savings.

Q. Wait a minute. You had a contract, a proposal, from the International Paper Company? A. Yes, sir.

Q. For the year 1918? A. Yes, sir.

Q. And you had previously dealt

with the International Paper Company? A. Yes, sir.

Q. And you had made yearly contracts with them? A. Yes, sir.

Q. And you had never, with the possible exception of one year, made anything except an annual contract, had you? A. No, sir; so far as I know.

Q. You were figuring with both companies on the basis of an annual contract, were you not—both the Canadian and the International? A. We were trying to get a proposal from both companies.

Q. And you did have a proposal from both companies? A. We did have a proposal from both companies, but we did not—

Q. For a yearly contract? A. Yes, sir.

Q. And the proposal from the International Paper Company, if you had adopted it, would have cost you, without allowing any deductions, \$18,990 more for the year than the proposal of the Canadian Company? A. Yes, sir.

Q. So that the outside of savings that you could have saved by taking the contract of the new company as compared with the old and big company that you had dealt with previously was \$18,990? A. Yes; if we had made any such contract with the International Company.

Q. Yes, that is it, exactly; and you had the proposal before you and could have made it, couldn't you? A. Not as—no—

Q. Why couldn't you have made it? A. Because we refused to make a contract on a flat price at that time, because the paper prices were very high, and the Federal Trade Commission had cut the very same people, the International people, from \$3.50 a hundred, and it was then down to \$3 a hundred, and we were all expecting it to come down further, and we wouldn't have made a contract with the International.

Q. Pardon me, Mr. Watts. Didn't you have a contract with the International for the year—A. Previous.

Q. A proposal for it, I mean? A. Yes.

Q. And it was at prices that would have resulted in a saving to you—or, rather, in a loss to you—of \$18,990, as compared with the Canadian? A. Yes.

Mr. Whipple—You mean on a flat price.

Q. And so far as the contract was concerned that you actually entered into, the International and the Canadian, as compared, their terms were exactly the same in regard to being deliveries for a year, were they not? A. Absolutely.

Q. And the only difference was in prices? A. Yes, sir.

Q. And therefore that statement that I have previously made, that the \$18,990 was the outside of what you saved over that contract as compared with the International, is correct? A. Yes, sir.

Q. Now if you take that eighteen thousand and odd dollars, and subtract from it the amount of losses that were figured out by Mr. Cudworth, it leaves a net saving on the contract of only \$7,167.07, does it not? A. Yes, sir.

Q. And there is no mistake in that figure? A. So far as I know, there is not.

Q. So that on Mr. Cudworth's report, the amount that you actually saved by taking the Canadian contract as compared with the contract that you might have taken from the International was only \$7,167.07? A. Yes, sir.

Q. And Mr. Cudworth's statement in that respect is absolutely true? A. Yes, sir. And may I now offer an explanation?

Mr. Whipple—Don't trouble, Mr. Watts; I will give you every opportunity to explain.

The Witness—Oh, very well.

Mr. Whipple—If there is anything to explain; I think it is pretty clear.

The Master—It seems to me that everything, all the facts, have been brought out two or three times with sufficient clearness.

Mr. Whipple—Yes, Your Honor.

The Master—What remains is a mere matter of argument from the facts.

Mr. Bates—I am through, Your Honor.

Mr. Whipple—Had you finished?

Mr. Bates—Yes.

#### Redirect Examination

Q. (By Mr. Whipple) Referring to these deductions which Mr. Cudworth indicated on the sheet of Exhibit 729 headed "Estimated and actual savings under Canadian contract," the total of which is \$11,802.93, I will ask you whether those were deductions which would ordinarily occur or might be claimed with regard to any contract of that size? A. Yes, considering the railroad conditions at that time, the shortage or famine of shipping facilities, and everything.

Q. Considering the conditions at that time? A. And the influenza panic that struck the mills all over the country—that might have happened to any other contract that we would have made.

Q. Anything to indicate that they wouldn't have happened with reference to the International Company? A. Not at all.

Q. And did you know of these having been presented—these claims—on the basis of Mr. Cudworth's suggestion—having been presented to the Canadian and rejected by them? A. Mr. Cudworth never presented but one, and that was for \$1600.

Q. I see. A. He never offered any claim for any of the others.

Q. And that was rejected? A. Yes, sir.

Q. Now, you said that this mistake between \$4710 savings, by comparison of the flat price Canadian contract

with the Trade Commission prices, also entered into the other computation, but you were not permitted to state how. Do you want to state how? A. Yes, sir.

Q. Please do so. A. Mr. Cudworth was on this page trying to show a comparison of the flat rate contract, if we had made it, with the International, and a comparison with the Federal Trade Commission figures here. Because of his decimal being displaced, he showed that the savings through the Federal Trade Commission report were only \$4700; and, having made a mistake in this figure up here—

Mr. Bates—I pray Your Honor's judgment.

A. (Continued)—of \$11,000, he was unable to subtract to show a profit—a saving. Now, then, if he had had his right figures he would have had a sufficient amount of \$47,000 to have deducted his \$11,000 that he claimed as wastage, etc., and still shown a saving of the difference between the two; but because of the decimal mistake he had no amount there from which he could subtract it.

Q. Now, you said that Mr. Cudworth made a report to you on the basis of which you testified to the \$41,000 savings? A. Yes, sir.

Q. I neglected to ask you when with reference to this report he made it? A. My recollection is it was shortly after he made that report.

Q. And I will ask you whether that report was based upon a comparison of the flat price Canadian contract, and the Trade Commission price? A. I think it was, but I do not know that definitely.

Q. That is your memory about it? A. Yes, sir.

Q. And that was the basis of your testimony, was it? A. Yes.

Q. Now, let me ask you a question which I neglected to ask you, as to whether in order to get at the real savings, the comparison between the flat Canadian price in the Canadian contract, and the Federal Trade Commission prices, is a fair and proper one?

Mr. Bates—I submit, Your Honor, this is the same matter that Mr. Whipple went over yesterday, and I think the question is objectionable for other reasons.

Mr. Whipple—What reasons?

Mr. Bates—Why, that is something for the Court to determine on this evidence.

Mr. Whipple—You asked exactly that same question of Cudworth, and I made that objection, and His Honor admitted it. I have paraphrased exactly your question to Cudworth, and you thought it wasn't unfair.

Mr. Bates—If you have as good a precedent as that I will withdraw my objection.

Mr. Whipple—Yes; I am glad to make you consistent once in a while.

Mr. Bates—I think it is the same

thing that you said yesterday—just the same.

Mr. Whipple—You are mistaken on both of your propositions.

The Master—Suppose you ask him the question; it isn't objected to now.

Mr. Whipple—(To the stenographer.)—Will you read that?

A. I remember the question. It is a fair one, Mr. Whipple.

Q. Is any other comparison a fair one? A. No, sir.

Mr. Bates—I object.

Mr. Whipple—Well, I will waive that.

Q. Why, in your opinion, is that a fair comparison?

Mr. Bates—I object.

The Master—Should we go into the grounds of his opinion? I think counsel ought to remember the remote importance, already spoken of, of all this.

Mr. Whipple—I know it is; but you see the tenacity with which these defendants are hanging upon this last straw.

Mr. Bates—Not at all.

Mr. Whipple—Aren't you hanging to it tenaciously? I thought you were.

Mr. Bates—No, we consider it very unimportant. There is one big issue in this case.

The Master—I think I will exclude the grounds of his opinion there.

Mr. Whipple—All right, Your Honor. That is all we care to ask. You may step aside, Mr. Watts.

Mr. Bates—Now, if Your Honor please, there was a reservation that was made for us last night, to put in anything if we found we had overlooked any matter, and I might say that there are three or four, but I don't think that they will take 15 minutes to put them in. I will put them in now, or when Mr. Whipple is through, if he pleases, but I assume he prefers to have me put them in now.

Mr. Whipple—Take your 15 minutes now, if you please.

Mr. Bates—Will you give me the records of the dissolution of the Church?

Mr. Whipple—But when we were discussing the time to be taken this morning I wonder you didn't speak of it.

Mr. Bates—You think I am very late in speaking of it?

Mr. Whipple—We admit that the old Church was dissolved. Let me see the allegation.

Mr. Bates—If you admit that, that is all I ask.

Mr. Whipple—Yes. Let me see that allegation; refer us to it. I think this is a matter that Mr. Thompson may be interested in, but perhaps we can dispose of it by agreement.

Mr. Thompson—What is the proposition now that we are discussing—whether the old church was dissolved?

Mr. Whipple—Don't we allege it in our bill?

Mr. Bates—No, you do not.

Mr. Thompson—Does anybody deny it?

Mr. Bates—Oh, I don't think there is any question about it.

Mr. Whipple—It is page 12.

Mr. Bates—Our averment is in paragraph 3. Your paragraph 3 on page 11 reads as follows:

"Prior to the date of either of the Trust Deeds hereinbefore referred to, to wit, in or about the year 1879, Mrs. Mary Baker G. Eddy became the Leader in the organization of a church 'designed to commemorate the word and works of our Master, which should reinstate primitive Christianity and its lost element of healing'; and after the charter of said Church, obtained in June, 1879, she became its Pastor. In September, 1892, Mrs. Eddy was instrumental in reorganizing said Church, which was named 'The First Church of Christ, Scientist,' of which Mrs. Eddy became the Pastor and later Pastor Emeritus until the date of her passing on."

Our reply to that was:

"Said defendants aver that said Church so organized in 1879 dissolved prior to Sept. 23, 1892."

I propose to introduce their records to show that. I understand Mr. Whipple is willing, however, to concede it.

The Master—I do not find that last.

Mr. Bates—That is in our answer, the second paragraph, page 12—the first sentence, page 12.

The Master—I have it.

Mr. Bates—I understand Mr. Whipple would be willing to admit that. If he is, then I won't put in the record.

The Master—Admit, now, exactly what?

Mr. Bates—Admit that our averment is correct.

The Master—Which averment?

Mr. Whipple—I admit that the "Church so organized in 1879 dissolved prior to September 23, 1892."

Mr. Bates—That is all we ask for.

Mr. Whipple—But I do not admit that they ever gave up the charter, because the correspondence will show that Mrs. Eddy specifically asked that they should not give it up.

Mr. Bates—I do not think there is any such evidence in the case.

Mr. Whipple—There is not in the case, but if there is any question about it we will put in Mrs. Eddy's letter.

Mr. Bates—Well, if there is any question about it, I would like to read the record of dissolution.

The Master—I do not see what need there is to read any record if it is admitted that the Church dissolved prior to Sept. 23. Perhaps you want to show the exact date of the dissolution. Is that it?

Mr. Bates—No, Your Honor. I do not understand what he means by saying that the Church dissolved but did not give up its charter. It abandoned its charter, and if he means by that that the Church is still kept alive under the charter, I would like to introduce the resolution.

Mr. Whipple—No, they did not keep

alive under the charter, but the charter was kept at Mrs. Eddy's instance so that she could use it if she desired to do so.

Mr. Bates—And never was used.

Mr. Whipple—That is the fact.

Mr. Bates—That is satisfactory to me.

The Master—I suppose that admission is down on the record in proper form.

Mr. Whipple—Is that agreeable to you, Mr. Thompson?

Mr. Thompson—Yes. I don't know whether it is so, but I have no reason to doubt it.

Mr. Bates—We thought, Your Honor, that the record in regard to the retirement of Edward P. Bates as a trustee had been offered in evidence, but we do not find that it was. I read from the directors' records, Vol. I, page 65, as follows:

"Aug. 11, 1898.

"At a meeting of the full Board of Directors held this day at 9:30 a. m., on motion it was unanimously voted: That the trusteeship on the Board of Trustees of the Christian Science Publishing Society held by Mr. Edward P. Bates be and is hereby declared vacant." WILLIAM B. JOHNSON, "Secretary."

[The record of the meeting of the Board of Directors of Aug. 11, 1898, from which the foregoing extract is read, is Exhibit 736. R. J. M.]

Mr. Thompson—What is the date of that, please, Governor?

Mr. Bates—Aug. 11, 1898.

Now I read from the records entitled Minutes of Meetings of First or Executive Members—

Mr. Whipple—Just a moment. May I ask further, is there any question but that that action of the directors was taken either by the direction or with the assent and approval of Mrs. Eddy?

Mr. Bates—I think there is not.

Mr. Whipple—There is no question about that?

Mr. Bates—I have no doubt but that was taken with Mrs. Eddy's approval.

Mr. Whipple—With her approval and by her direction?

Mr. Bates—I am willing to admit that it was taken with her approval, as I understand it.

Mr. Whipple—That is, with her knowledge and approval, and of course not any subsequent approval.

Mr. Bates—No, at the time.

Mr. Whipple—Yes. I think that unless you will admit that it was by her direction, that we shall have to reserve the right to offer proof on that, because our information is that there is a letter in which she did direct it.

Mr. Bates—I am willing to admit that it was done by Mrs. Eddy's direction.

Mr. Whipple—Very well.

Mr. Bates—That is my understanding.

Now I read from the records of the First Members, from the volume entitled "Minutes of Meetings of First



or Executive Members Board of Directors and Annual Church Meeting, Dec. 29, 1894, to June 17, 1902," at page 197, the following:

"Aug. 11, 1898.

"A special meeting of the First Members was held this day. The meeting was opened in the usual form by the president at 10:40 a. m. Seventeen members present.

"On motion it was unanimously voted—by rising: That the trusteeship on the Board of Directors of the Christian Science Publishing Society held by Mr. Edward P. Bates be and is hereby declared vacant."

[The record of the meeting of the Board of Directors of Aug. 11, 1898, from which the foregoing extract is read, is Exhibit 787. R. J. M.]

Mr. Bates—Your Honor has asked two or three times about the deed which was referred to in the so-called Metcalf deed, which is Exhibit—

The Master—If counsel are agreed among themselves that that needs no further elucidation, I will not insist on it on my own account.

Mr. Bates—My suggestion was, as we have a certified copy of it here, we do not think it is essential except so far as it may help to explain to Your Honor the situation and to avoid confusion.

The Master—We have a copy printed; we do not need another copy.

Mr. Bates—I was going to say not have it printed, but I will offer it if there is no objection.

Mr. Thompson—Is this the deed of which there is a copy in the bill?

Mr. Bates—No, it is a deed to which the one in the bill refers.

The Master—No, that is another thing.

Mr. Whipple—That is the one in which Metcalf is the grantor to Ira O. Knapp.

Mr. Thompson—Yes.

Mr. Bates—Perhaps I should say that it is the deed to which the one in the Manual, printed on page 136 of the Manual refers. Probably Your Honor will recall it.

The Master—Yes, I remember.

Mr. Whipple—Well, that is the deed copy of which is attached to the bill.

Mr. Bates—Well, not this one.

Mr. Whipple—Are you sure it is not?

Mr. Bates—The one in the Manual is Exhibit C in the plaintiff's bill.

Mr. Whipple—What is that?

Mr. Bates—But it refers to another deed of Mr. Metcalf's, and that is the other deed to which it refers.

The Master—Are you going to have that in?

Mr. Bates—Mr. Whipple is going to see if he had any objection to it.

The Master—And it will be printed then in the record, will it?

Mr. Bates—No, not to be printed.

Mr. Whipple—Hold on. How did Metcalf get title? Wasn't there a transfer made to Metcalf by the trustees in order that it might be re-transferred and thereby alter the

terms of the trust under which it was conveyed?

Mr. Bates—That is not a matter that we consider of any consequence, and I am not prepared to state. This deed is offered only because it is the deed referred to in your exhibit.

The Master—Now, very probably the deed offered refers to still another deed.

Mr. Bates—Very likely; and probably that to another and still further back in title.

Mr. Whipple—Oh, no, it would not. Your Honor will notice that we allege that that new deed was passed in order to reform—was a conveyance which was made in order to change the terms of the trust.

The Master—I noticed that allegation. How it operated to change the terms of the trust and to what extent it changed them, did not seem to me clear from what we had at that time. Perhaps it is not important.

Mr. Whipple—We did not follow it up because, inasmuch as it was the trust in which the directors alone at that time seemed to be concerned, we did not feel it material. In the present development, as to the question of the title of some of these trustees to their position, it may become more important.

Mr. Bates—I am told that that was bought in the open market by Mr. Metcalf for the purpose of making this conveyance.

Mr. Thompson—Well, is that any land—

Mr. Whipple—Well, then, if that is so, there was a transfer of part of the land to the trustees under one trust and the rest of the land or another part under another trust.

Mr. Bates—We are not—

Mr. Whipple—You have added worse confusion to that which already existed.

Mr. Bates—I have given the facts as they are. We are not troubled by any confusion in regard to them.

Mr. Thompson—Well, I would like to know—

Mr. Bates—His Honor has asked for that deed and I presented it. Now, if you do not want it—

The Master—I hardly think I have gone so far as to ask for it.

Mr. Bates—Your Honor will bear me in mind when I say that I offered it because of your suggestion.

The Master—Yes.

Mr. Bates—And I stated that it wasn't anything that we considered of any importance in the case except as a matter of answering Your Honor's inquiry.

The Master—I agree to that.

Mr. Whipple—Now, if Your Honor please, let this be put in as an exhibit and copied into the record without copying the— No, let it all be copied into the record, because the description may be important in view of what Governor Bates has stated, and we here shall ask to reserve the right to put in the deed which Metcalf got.

Mr. Thompson—I want to ask one question.

Mr. Whipple—Especially if it should transpire that it was secured from Mrs. Eddy or some one in the interest of the Church, and that its purpose merely was the reformation of a trust. It will also be important if part of this property is held by these trustees under the terms of one trust and another part is held under the terms of another trust. It would be quite important, I should think.

Mr. Bates—Well, have you just discovered that?

Mr. Whipple—Although the Governor does not seem to think it makes any difference.

Mr. Bates—We are taking things exactly as we find them; we are not trying to distort in any way, shape or manner.

Mr. Whipple—The trouble is you do not follow it out. According to this, you are not finishing it up.

The Master—According to the pleadings you are in agreement about that Exhibit C, aren't you?

Mr. Whipple—I thought so as I read the pleadings.

The Master—And what you agreed to is that this Exhibit C was a deed of trust supplemental to or supplementary to and in amendment of the original deed, dated March— The bill says March 10 and the answer says March 19, 1903.

Mr. Whipple—Well, that is why we thought that we were right about it; but now the Governor states that that is not so, that he thinks this is the deed of another piece of property, and if it is, if he is correct in his second statement, that is, in his oral statement and not in his answer, the complication is created which I have just pointed out, that a part of this property is held by certain trustees on one trust and part of it is held on another trust, and it is possible that two of the gentlemen who are claiming to hold as directors under the Deed of Trust are not directors at all.

The Master—In the first place, I think that the bill must mean to say March 19 and not March 10.

Mr. Bates—That is, the plaintiffs' bill.

The Master—Page 9 of the bill in equity and answer, Article 2, you will see March 10.

Mr. Whipple—Yes, Your Honor.

The Master—That must be meant for March 19?

Mr. Whipple—You have the larger document?

The Master—I spent some time trying to understand that, and I don't—

Mr. Bates—Your Honor will notice that we have it correct in our answer as March 19, on the opposite page. I think that is correct.

The Master—I think the bill must mean March 19.

Mr. Whipple—Well, if Your Honor will look—

The Master—Reading it that way, if you will pardon me a moment more,

"supplementary to and in amendment of the original deed," by "original deed" is there meant the deed of Sept. 1, 1892?

Mr. Whipple—Yes. Now, may I ask Your Honor to take the Bill in Equity in the smaller form before they had attempted to make this collation of bill and answer—

Mr. Bates—Whom do you mean by "they"?

The Master—The respondents.

Mr. Whipple—The printers at the publishing house.

Mr. Bates—No, not the respondents, but the Publishing Society did that, your clients.

Mr. Whipple—Yes.

The Master—I have it.

Mr. Whipple—Now, you will notice there it says "dated March 19."

The Master—That is right.

Mr. Whipple—And not March 10, and the error was made—

The Master—It is a printer's error.

Mr. Whipple—In reprinting and changing that date from March 19 to March 10.

The Master—Let us all change it right now.

Mr. Whipple—I think that would be a good idea; and the Governor has again scored on the Publishing Society in having made a mistake in printing.

Mr. Bates—If we attempted to follow up their mistakes, we should have—

Mr. Whipple—And you have, and with such meticulous care that you show a glee that is really laughable when you discover such an error in printing as that.

Mr. Bates—I think that the Publishing Society is excusable for the error.

Mr. Whipple—Thank you.

Mr. Bates—In connection with the printing of this record they have done things very well. It is their counsel who never makes an error.

Mr. Thompson—Now, would you be kind enough —

Mr. Whipple—Here you are criticizing the Publishing Society.

Mr. Bates—I was not. You were.

Mr. Whipple—Oh, no, I was not.

Mr. Thompson—Would you be kind enough, Governor Bates, if you are able to do so, to tell me one thing. Does this deed, Exhibit C, and the deed you have just put in, which is referred to in it, convey any property that is already conveyed or included in the deed of Sept. 1, 1892, or is it some separate distinct property?

Mr. Bates—Why, it says it is the same property, or rather Exhibit C says that the property in this other deed is the same as stated in Exhibit C. There is no difference.

Mr. Thompson—That is to say, Mrs. Eddy conveyed by that deed, Exhibit C, and then somebody else conveys the same property in a different trust.

The Master—"Said deed" in Exhibit C, you will notice, is a deed dated Oct. 23, 1896.

Mr. Thompson—What is that, sir, please?

The Master—The word "said deed" in the fourth line of Exhibit C refers to a deed dated Oct. 23, 1896.

Mr. Whipple—And that makes an addition to the trust contained in the deed of Sept. 1, 1892.

Mr. Demond—The question, Governor Bates, is whether the land conveyed in these two Metcalf deeds is wholly or in part the same land as the land conveyed by Mrs. Eddy in her deed of Sept. 1, 1892.

Mr. Bates—Certainly not. I have not understood that to be the same.

Mr. Thompson—That was what we wanted to know.

Mr. Bates—Certainly not. The deed itself is very explicit, and there is no chance for misunderstanding on the part of anyone who will take the trouble to read it.

Mr. Thompson—I thought that you would be able to explain it without reading it.

The Master—Then the question is how it could be supplementary to and in amendment of the deed of Sept. 1, 1892.

Mr. Thompson — That is what troubled me.

The Master—You are both, apparently, agreed that it was, but how can that be?

Mr. Bates—I did not so agree understandingly, Your Honor, I simply stated—

The Master—I refer to the pleadings.

Mr. Thompson—I think that Mr. Dittmore in his answer makes a little caution on that. I do not think that I was led into that error in drawing that, or that whoever did draw the answer was led into that error.

Mr. Whipple—But that apparently leaves the situation as I pointed it out a moment ago, that a part of this land is held under one trust, and part of it is held under the terms of a separate and different trust.

The Master—I do not see how you are ever going to tell what the real situation is until you get all the deeds and compare them carefully and see just what was done.

Mr. Bates—I had not supposed that this was a question of title. As a matter of fact there are a dozen or more lots there, and there are many deeds in connection with those lots.

Mr. Whipple—It is not a question of title at all; it is a question of the terms under which your clients held under the trust.

Mr. Bates—This deed is referred to merely because it is referred to in Exhibit C of the plaintiff's bill, and Your Honor asked what that was, and I say that I do not claim that it has any effect on the issues in this case.

The Master—Exhibit C is referred to not only in the plaintiff's bill, but in your answer thereto.

Mr. Bates—Yes.

The Master—And you there agree

that it was supplementary thereto and in amendment of the deed of Sept. 1, 1892.

Mr. Bates—Well, that is Exhibit C. That is not this deed that we are offering now.

The Master—You agree that Exhibit C was supplementary to and in amendment of the deed of Sept. 1, 1892. Now, the deed itself does not say that Exhibit C was supplementary to or in amendment of the deed of Sept. 1, 1892. It refers to quite a different deed. There is where we get into confusion, and I thought that counsel might desire to have that cleared up. I do not know whether they do or not.

Mr. Whipple—If Your Honor please, I will offer the suggestion that I made a moment ago, that we be permitted to present other deeds at the time of the arguments, because evidently we have not the deeds here which will clear it up.

The Master—Yes.

Mr. Whipple—And it must be of great importance to these directors, certainly to those who are interested in Christian Science, that we know once and for all what the terms of the trust are under which these directors are holding, and, if there is more than one, what the terms of the trusts are, and also to clear up the question of what is the position of a man who is a trustee not under the Deed of Trust but is created into some sort of a position by the votes of the Board of Directors and not by the vote of the First Members of the Church organization.

The Master—Now, whether those questions are raised or not by a complete history of the deeds we never can tell until we get them, and get to the bottom of them.

Mr. Bates—I submit, if Your Honor please, that we have introduced all that we thought had any bearing on the case. We are perfectly willing that Mr. Whipple should introduce any that he wants to introduce, and we are surprised that he has not examined them. We are perfectly willing that he should introduce them at the time of the arguments, provided he will notify us in advance what he intends to introduce.

Mr. Whipple—We will do that, but you are not more surprised that I have not examined them before than I am surprised to find the insecurity of your clients' tenure of office. That is the thing that surprised me.

Mr. Bates—I am not surprised at that. Nor do I find anything in the deed which will bear out your statement.

Mr. Whipple—I like your cheerful confidence under such circumstances.

Mr. Bates—The only question that you raise is one that may possibly affect the title to a lot of land, but it does not affect these directors in the way in which they are constituted under the laws of the Commonwealth of Massachusetts, nor does it affect

their standing as directors of this Church; but that is a question that I assume is to be argued later, and not now.

The Master—Neither side, apparently, has yet got to the bottom of this situation about the land or the deeds.

Mr. Whipple—Or the terms of the trusts.

The Master—Never mind that. I am talking now about the conveyances, the land and the deeds. How far those involve the terms of the trust I do not see how we are going to tell until that matter has been explored to its ultimate fact.

Mr. Bates—Well, I simply say that there is no other deed upon which we rely; but if there are any others to be introduced, why, then we wish to be notified that you are going to offer them.

Mr. Whipple—I understand that this deed which you offer is to be marked as an exhibit. Do you not so understand it, Mr. Thompson?

Mr. Thompson—I think it should be. I think that it should go right in and be marked now.

Mr. Whipple—It should be marked, and it should be transcribed in full in the record.

Mr. Thompson—Transcribed in full.

The Master—Will you give me the date of the deed?

Mr. Whipple—It is dated, if Your Honor please, Oct. 23, 1896. It is acknowledged on March 14, 1899. No, I beg your pardon; it is acknowledged Oct. 23, 1896.

Mr. Thompson—Before it was dated?

Mr. Whipple—That was just when it was dated, Oct. 23, 1896. It was recorded March 14, 1899.

The Master—Very good. Now, that is the deed in which Albert Metcalf is the grantor, and Ira O. Knapp and others are the grantees.

The Master—I see.

Mr. Whipple—And it is also recorded in Book 2591, Page 398, so that it corresponds to Exhibit C attached to the bill.

Mr. Thompson—We had better have that marked now, I think.

Mr. Whipple—Mark that as an exhibit.

[The certified copy of deed referred to is marked Exhibit 788. R. H. J., and the following is a copy thereof:

"Know all men by these presents, That I Albert Metcalf of Newton in the County of Middlesex and Commonwealth of Massachusetts in consideration of one dollar and other valuable considerations made and paid by Ira O. Knapp, William B. Johnson and Joseph Armstrong all of Boston in the County of Suffolk and Stephen A. Chase of Fall River in the County of Bristol and all in said Commonwealth as they are the 'Christian Science Board of Directors' the receipt whereof is hereby acknowledged do hereby grant, bargain, sell and convey unto the said Knapp, Johnson, Armstrong and Chase as aforesaid their succes-

sors and assigns. A parcel of land with the buildings thereon situated in said Boston bounded and described as follows: Beginning at a point on the Southwesterly side of Caledonia Street now Norway Street distant Southeastly four hundred twenty two 34-100 feet (422 34-100 ft) from the easterly boundary line of West Chester Park now Massachusetts Avenue thence running Southeastly along said Norway Street twenty feet (20 ft) to land conveyed by Nathan Matthews to William H. Bradley by deed dated July 1st, 1886 recorded with Suffolk Deeds, Book 1738 page 533; thence turning and running Southwesterly along said land conveyed to said Bradley sixty seven 35-100 feet (67 35-100 ft) to land conveyed by said Matthews to Nathan I. Souther by deed dated January 8th, 1887; thence turning and running Westerly along said land conveyed to Souther twenty two 89-100 feet (22 89-100 ft) to Lot L as shown on a plan made by William H. Whitney dated January 6th, 1887; thence turning and running North-easterly along said Lot L seventy eight 46-100 feet (78 46-100 ft) to the point of beginning; containing 1455 square feet of land and being Lot A shown on said plan and being the same premises conveyed to me by Joseph S. Brown by deed dated October 17, 1896 and recorded with said Suffolk Deeds Book 2393 Page 415 and hereby conveyed with all the rights and subject to the restrictions reservation and agreement referred to in said deed to me also subject to a mortgage of \$5750 00-100 given to George Smith and record with Suffolk Deeds, Book 2184 Page 99. To have and to hold the granted premises with all the privileges and appurtenances thereto belonging to the said Knapp, Johnson, Armstrong and Chase as the 'Christian Science Board of Directors' and their successors and assigns to their own use and behoof forever. And I hereby for myself and my heirs, executors and administrators covenant with the grantees and their successors and assigns that the granted premises are free from all incumbrances made or suffered by me and that I will and my heirs executors and administrators shall warrant and defend the same to the grantees and their successors and assigns forever against the lawful claims and demands of all persons claiming by through or under me but against none other. And for the consideration aforesaid I Mary C. Metcalf wife of the said Albert Metcalf hereby release unto the grantees and their successors and assigns all right of or to both dower and homestead in the granted premises. In Witness Whereof we the said Albert Metcalf and Mary C. Metcalf hereunto set our hands and seals this twenty third day of October in the year one thousand eight hundred and ninety six. Albert Metcalf Mary C. Metcalf and each a seal. Signed and sealed in presence of —.

Commonwealth of Massachusetts. Suffolk, ss. Boston October 23d, 1896. Then personally appeared the above named Albert Metcalf and acknowledged the foregoing instrument to be his free act and deed, before me John H. Appleton, Justice of the Peace. — March 14, 1899 at ten o'clock and fifty five minutes A. M. Received, Entered and Examined. — Attest. THOS. F. TEMPLE, Reg.

A true copy from the records of Deeds for the County of Suffolk. Book 2591 Page 398

Attest. STEPHEN A. JENNINGS, Asst. Register."]

The Master—Now, what else, Governor Bates?

Mr. Bates—Did I understand you, Mr. Whipple, to say that you were going to put Mr. Rowlands on the stand?

The Master—Had you got through with what you said you had forgotten?

Mr. Bates—No, Your Honor. I was going to ask whether Mr. Rowlands was going to be put on the stand.

Mr. Whipple—I wish you would finish up your case. I see no reason for our doing anything before you have done that.

The Master—We are now waiting for you, Governor Bates.

Mr. Bates—Have you any objection to that's going in (passing a paper to Mr. Whipple)?

The Master—I understand, Governor Bates, that we are now waiting for you to complete what you said you had omitted and reserved the right to put in. Am I right?

Mr. Bates—Yes, Your Honor.

Mr. Whipple (to Mr. Rowlands)—This is your signature, is it?

Mr. Rowlands—Yes.

Mr. Whipple—This is Mr. Rowlands' signature that is attached to the paper which you have handed me. If it is important in any aspect—

[Mr. Bates confers with Mr. Whipple.]

If His Honor says that it is material in any aspect—I do not see that it is—or that it adds anything whatever to the facts already established in the case—

Mr. Bates—What I propose to offer is the signed application of Mr. Rowlands for membership in the Church, and the only part that I wish to put in is merely this:

"June 6, 1905.

"I hereby make application for membership, and subscribe to the Tenets and the By-Laws of the Church. I have not studied Christian Science with a teacher, and am not a member of any church."

And the name, Lamont Rowlands. Town or city, Tomah. State, Wisconsin.

The rest of the application, showing the approval, etc., is not of importance.

The Master—I am unable to see what it adds.

Mr. Bates—I do not know that it adds much, Your Honor, but it merely completes the evidence.

Mr. Whipple—It establishes him as a member of the Church.

Mr. Thompson—Are you going to have it marked?

Mr. Bates—No, I do not think it is necessary.

[The portion of the application of Lamont Rowlands, for membership in the Christian Science Church, dated June 6, 1905, of which the foregoing is a copy, is Exhibit 789. R. H. J.]

I will ask Mr. Whipple if Mr. Eustace is here?

Mr. Whipple—If Your Honor please, Mr. Eustace is in California, teaching his class; and I will take this occasion to state that before it was deemed possible that the case would take so long, he had made an appointment and circulated notices among some 500 people, and he felt it necessary to go to meet them, and not to disappoint them; and therefore a moment later I am going to offer a suggestion as to the limit of the evidence that I should like to get from him at the time assigned for the arguments.

The Master—Let us get through with Governor Bates' omissions.

Mr. Krauthoff—If Your Honor please, on page 94 of the printed record, at the opening of the fifth day—

The Master—What is this—a correction of the record?

Mr. Krauthoff—No. I just wanted to supplement what was then done.

The Master—Page 94, I understood you to say?

Mr. Krauthoff—Page 94, at the opening of the day. There was some colloquy between Mr. Whipple and myself with respect to these works of Mary Baker Eddy which have been marked for identification from Exhibit 57—well, there are eight of them in all, beginning with Exhibit 57. I would like to have it understood that these works are in evidence, with our right to call to the attention of the court the portions thereof on which we rely, to be worked out by a paper in writing to be delivered to counsel within the next few days, with the corresponding right on the part of the counsel for the plaintiffs to select any portion on which they rely.

Mr. Whipple—I am sorry to say that we cannot agree to that. If there are any things to which you want to call particular attention, it seems to me that it should have been done before. We cannot see how the books themselves are admissible in evidence or material. If there is anything that you think is material, I would suggest that at the time assigned for arguments you offer those material parts. They will then have been selected by you, and we can then discuss their admissibility.

Mr. Krauthoff—Well, just so long as it is understood, if Your Honor please, so long as there is some understanding about it, that will be satisfactory to me; but it was going to do bet-

ter than that; I was going to serve it on Mr. Whipple in advance of the arguments.

Mr. Whipple—Well, do that; serve it on us in advance; but I do not wish it understood that the books are in evidence, because when you get the parts that you want to put in, His Honor can pass on them.

Mr. Krauthoff—We offer the books in evidence at this time.

Mr. Bates—They have been offered in evidence, and are exhibits in the case.

The Master—No; you have gone no further than to have them marked for identification.

Mr. Krauthoff—As to the Manual, that is in its entirety, but the others are marked only for identification.

The Master—Certain books are in, and others are not.

Mr. Krauthoff—The Church Manual marked No. 57g is in as an exhibit.

The Master—Is that the eighty-ninth edition?

Mr. Krauthoff—That is the eighty-ninth edition.

The Master—That is in evidence.

Mr. Krauthoff—That is in evidence in its entirety.

Mr. Whipple—I so understand it.

Mr. Krauthoff—These other books are marked for identification 57, 57a, b, c, d, e and f—there are seven in all, and we offer them in evidence as the books that Mr. Eustace said he followed in his work as a Christian Scientist, with the understanding that we will give to counsel for the plaintiffs such extracts from them as we rely upon in advance of the arguments, and then at the arguments the Court can determine the admissibility in evidence of the books and extracts. All I wish now is not to have the evidence closed in such a way as to carry with it the idea that we cannot rely upon them in the arguments in the event that they are properly in evidence.

Mr. Whipple—I have already suggested—they are now marked for identification—that if the parts to which counsel desire to refer were ready now, and could be pointed out, we could discuss them. That not being so, I suggest that Mr. Krauthoff follow the course indicated—notify us within a few days what parts he desires to have offered in evidence, and if we see no objection to them there will be no further discussion; if we do object, Your Honor will pass upon our objections at the time of the arguments.

Mr. Krauthoff—And that same understanding, if Your Honor please, I would like to apply to Exhibit 58, the Christian Science Hymnal, and Exhibit 59, the Life of Mary Baker Eddy by Sybil Wilbur, published by The Christian Science Publishing Society.

Mr. Whipple—I will agree to that.

Mr. Krauthoff—And, as facilitating the examination of these two books, I would like to have marked for identification two concordances, one the Concordance to "Science and Health

with Key to the Scriptures," and the other the Concordance to "Miscellaneous Writings" and works other than Science and Health, by Mary Baker Eddy. They add, of course, nothing to the works; they are simply concordances to them.

Mr. Whipple—We agree that they may be marked for identification, but not to be printed in the record!

Mr. Krauthoff—Oh, certainly not.

[The Concordance to "Science and Health with Key to the Scriptures," is marked Exhibit 790 for identification. R. H. J.]

[The Concordance to "Miscellaneous Writings" and works other than Science and Health is marked Exhibit 791 for identification. R. H. J.]

The Master—Everything else that you have mentioned has already been marked for identification. These are the only two that have not been marked?

Mr. Krauthoff—Yes. And may we have this understanding, Mr. Whipple, that if we find any articles in the Sentinel or Journal that we have omitted, we may call your attention to those also in advance of the arguments?

Mr. Whipple—We agree to that. And if we cannot agree on their admissibility, His Honor will pass on their admissibility at the time of the arguments.

Mr. Krauthoff—Certainly; with your right to do the same.

Mr. Whipple—Very good.

Mr. Krauthoff—Now, we have, if Your Honor please, a document in the handwriting of Mr. Eustace that we desire to read in evidence at this time. The document was not discovered by us until yesterday afternoon, and that is the reason why it has not been heretofore mentioned or produced. As we understand it, it is a paper read by Mr. Eustace at the General Association of Teachers at Chicago, Illinois, either in 1903 or 1904.

Mr. Whipple—I suggest that you bring it up at the time of the arguments, when Mr. Eustace will be here, and you will not suffer a prejudice by the fact that you did not bring it up before.

Mr. Krauthoff—It being a statement of a party to the suit, I suppose that it is admissible at any time.

Mr. Whipple—Not all statements of a party to a suit are admissible. It is nothing that is signed by him, although very likely it is in his handwriting.

Mr. Krauthoff—It is entirely in his handwriting.

Mr. Whipple—Bring it up when he comes back.

Mr. Krauthoff—I will take Your Honor's direction. I offer it now.

The Master—You may offer it now, but I decline to admit it at present.

Mr. Krauthoff—Subject to our right to offer it at the time when Mr. Eustace is here in person—

The Master—Very well.

Mr. Whipple—That is agreeable.

And, by the way, will you send a copy of it to us, or let us take the original, so that we can be considering the question of whether we will make any objections to it next fall?

Mr. Krauthoff—We will send you a copy of it as soon as we get a history of it, Mr. Whipple.

Mr. Bates—I think that that is all, Your Honor.

Mr. Whipple—Yes, Your Honor. I have already said that Mr. Eustace is not in the city and have stated the reasons for his absence. If he was here I should call him to permit him to state his version with regard to the meeting or meetings in February, 1916, on the occasion of the presentation of the Dittmore memorandum, and a letter from the trustees to the directors. I should expect him to testify that no agreement, gentlemen's agreement or otherwise, was reached at that time, and that the occasion ended substantially as stated by Mr. McKenzie in the testimony; and that the papers which had been presented were destroyed, although perhaps not at the moment and at the meeting.

My impression is that that is sufficiently covered in the testimony that he has already given. If I find that it is, he will not be recalled for that purpose.

The only other point that we should ask to cover with his testimony later, if we deem it necessary, would be the circumstances of the meeting of May 27, 1913—a conference of the directors. I might desire to call him for the purpose of showing that no agreement or understanding was reached there. Again, I think probably not, because Mr. Neal stated very frankly that the parties were to leave the whole matter to demonstration, and admitted that the trustees' records on the subject were substantially correct. We do not wish to foreclose ourselves from offering that testimony of Mr. Eustace's at the time of the argument if we should deem it necessary or expedient. I understand no objection is made to that arrangement.

Mr. Bates—We do not object, if I understand Mr. Whipple; that is, we do not object to his offering Mr. Eustace upon any matter upon which Mr. Eustace has not already testified.

Mr. Whipple—All right.

Mr. Bates—Provided it is in rebuttal of testimony which we have introduced, of course.

Mr. Whipple—Very good. That is even broader than the suggestion I made.

Mr. Bates—We want to give you full liberty.

Mr. Whipple—Thank you; we very much appreciate your courtesy in that respect. I had thought that we would recall Mr. Rowlands with regard to the paper contract, but in view of what Your Honor has said, and what Governor Bates has said, with regard to its comparative unimportance, and the fact that Mr. Rowlands' testimony would be only cumulative of what Mr.

Watts has testified to, I have decided that it would not be proper to take Your Honor's time to go through that matter again. Therefore, unless Your Honor should desire to hear from him, or suggest that he ought to be called, or unless the other side desire to cross-examine him, we shall not offer him as a witness. If they do not want to cross-examine him, we will announce that our rebuttal is closed, with the exception of a call for Mr. Streeter's letter and the supplementary letter of Mr. Choate, which was referred to by Mr. Thompson in his remarks yesterday.

Mr. Bates—I stated yesterday, Your Honor, that it was my understanding that we never had either of those papers, as a part of our papers. We know nothing of any second letter of Mr. Choate; and so far as the Streeter letter is concerned, that was never ours and we never had it.

Mr. Whipple—Very well. Let us dispose of that in this way—

Mr. Bates—That is Miss Warren's statement.

Mr. Whipple—If we should find in the meantime that Mr. Choate did send or read to the directors another letter than that which is put in, we might desire to offer it at the time of argument. As to the Streeter letter, I should like to ask Mr. Thompson to produce a copy of it in the form in which it was read by General Streeter on the same occasion at which Mr. Choate's letter of 1915 was sent, and I will offer that copy of it, because I understand that it is admitted that such a letter was read at the directors' meeting at the same time that Mr. Choate's letter was read.

Mr. Thompson—It has been published in many thousands of copies and gone all over the world. In fact, it is well known to everybody except Your Honor, together with the other letter that I have called for of Mr. Dittmore's.

Mr. Bates—I think Mr. Thompson's statement is correct that many thousands copies have been published and it has been sent all over the world, since this case started. He neglected to state that fact. It is a letter which it is alleged was read to the Board of Directors, volunteered by General Streeter, two years before the records which were introduced in evidence, and was not read at the time of the records which we have introduced in evidence.

Mr. Whipple—I do not understand that it was volunteered by General Streeter; I understand that it was read at the request of Mr. McLellan, then chairman of the Board of Directors, a de facto or acting officer of the Church.

Mr. Bates—The letter itself says, in substance, that it is volunteered.

Mr. Thompson—If you talk about the letter don't you think you had better have it in?

The Master—What is the date of the letter?

Mr. Thompson—The letter is Sept. 8, 1915. It was written at the time when Mr. Choate was consulted and wrote the letter which they have offered in evidence, and at the time that he had another letter which was withdrawn, and relates to this very matter. I now hand Mr. Whipple the document which he is asking for, namely, a letter from General Streeter to Messrs. Archibald McLellan, Allison V. Stewart, John V. Dittmore, Adam H. Dickey, and James A. Neal, Christian Science Board of Directors, dated Concord, New Hampshire, Sept. 8, 1915. (Handing letter to Mr. Whipple.)

Mr. Whipple—This apparently is a duplicate original.

Mr. Thompson—Yes.

Mr. Whipple—I offer it on the ground that Your Honor might properly, and perhaps ought to, have a knowledge of the entire information which was available to the directors, which the directors had when they took this action with regard to their own salaries. Your Honor will remember that as the evidence now stands that Mr. McLellan and Mr. Dittmore both objected to this raise in salaries in 1915. It has appeared in evidence, without contradiction, that Mr. McLellan was a very forceful and dominating man. Your Honor has not failed to notice that it was very shortly after he passed on that the salary question was then taken up again.

Mr. Bates—I submit, Your Honor, that that also is an incorrect statement. It is incorrect as to Mr. Dittmore, who favored it from the beginning; it is incorrect as to Mr. McLellan, who was living when the salaries were finally raised and participated in the matter.

Mr. Whipple—All I can go by is the evidence here.

Mr. Bates—Well, there is no evidence of it.

Mr. Whipple—The evidence of Mr. Neal, uncontradicted, was that it was opposed by Mr. McLellan, but he said that Mr. McLellan did protest against it, but that Mr. Dittmore did not; and Mr. Thompson then showed him a paper, apparently a written protest by Mr. Dittmore, and then he admitted that he was wrong, and said that Mr. Dittmore did protest against it. Now, am I not right in that?

Mr. Thompson—Might you not, Mr. Whipple, in justice to Mr. Dittmore—

The Master—Suppose we come first to this particular letter or alleged letter by General Streeter, dated Sept. 8, 1915. I want to see where we stand about that.

Mr. Thompson—Will Your Honor permit me, Mr. Bates having made a statement here which—

The Master—Oh, no; I want to find out about this. What are we going to do about that?

Mr. Thompson—Then let me make a sweeping denial of his statement, which is not correct.

The Master—Don't argue the case.

it, and I was stating the grounds and the reasons on which I offer it.

The Master—Have we in the record at present anything referring to that alleged letter, or the time when it

Mr. Whipple—I should like to offer was read to the directors, or any action taken in regard to it?

Mr. Thompson—Yes, sir—all three. It is testified to.

Mr. Whipple—I think so. It accords with my memory.

The Master—Anything different?

Mr. Bates—Why, Mr. Thompson has referred to it in his questions.

The Master—I do not mean that; anything in evidence, in the testimony?—anything that appears.

Mr. Whipple—Why, the answers to his questions.

The Master—What?

Mr. Whipple—The answer to his question.

Mr. Bates—I think nothing further than that they had heard of this letter.

The Master—What?

Mr. Whipple—It was read—heard it read.

Mr. Bates—That might be—1915.

Mr. Whipple—Mr. Neal stated that it was read in 1915, as I remember.

The Master—The answer—what do you mean?

Mr. Whipple—Mr. Neal, in his answers to questions put by Mr. Thompson.

The Master—Oh, in Mr. Neal's evidence?

Mr. Whipple—Yes, Your Honor.

The Master—This letter has been referred to?

Mr. Whipple—I so remember it; that is, I think that he testified that the paper was read by General Streeter.

Mr. Bates—I do not so remember it.

Mr. Whipple—Am I not right in that?

Mr. Thompson—Absolutely; of course he did. That is in the case already.

Mr. Bates—I do not so remember it, but if the record shows it, why I would be glad to be corrected.

The Master—If there is testimony of that kind by Mr. Neal, and if you now offer the letter, and if it is sufficiently clear that that is the letter to which Mr. Neal referred, I suppose the letter may be admissible.

Mr. Bates—I do not think so, Your Honor. This is a letter which it is alleged was read to the Board of Directors, volunteered by General Streeter away back in 1915, as being his opinion.

The Master—Well, very well; that may all be true. But if Mr. Neal has said that such a letter was read to the Board of Directors, considered by them, and the date on which that was done appears, why isn't it proper to receive the letter in evidence?

Mr. Bates—I do not think that would make it relevant to any issue in the Eustace case, Your Honor.

The Master—It must be in that case as relevant as the letters of Mr. Choate and your own firm.

Mr. Bates—No, Your Honor, because those were a part of the record. They were introduced because it had been claimed that we had deleted the records in regard to this matter.

The Master—No; there is testimony stating that beside what appears in the record there were other letters read and considered.

Mr. Bates—Not at that time.

The Master—Perhaps not at the same meeting but at some time.

Mr. Bates—Two years prior.

Mr. Thompson—No.

Mr. Bates—Yes; it was 1915 and these records were 1917.

Mr. Thompson—I don't suppose you intend to mislead the tribunal, but it is impossible to understand what you mean. You have introduced a letter of Mr. Choate, dated almost the same day.

Mr. Bates—I have not; I have only introduced the records of—

The Master—Don't go off on the letter of Mr. Choate, please, at present; stick to the letter of General Streeter.

Mr. Thompson—It is the same time exactly. Governor Bates has repeatedly sent out word that we are talking about different periods. We are not. This subject was discussed by Mr. Choate, Mr. Streeter and Mr. Bates at the same time.

Mr. Bates—It was not.

The Master—Please confine yourselves to one letter, that of General Streeter.

Mr. Thompson—Yes. It was a meeting in 1915.

The Master—What is the evidence that we have about that?

Mr. Thompson—It was written then, received then, and read then. That is the evidence in the case.

The Master—Whose evidence do you now refer to?

Mr. Thompson—Mr. Neal's.

Mr. Bates—Point it out in your record.

The Master—Mr. Neal said it was received at what time?

Mr. Thompson—Mr. Neal said it was received in 1915, at the time Mr. Choate's letter was received.

The Master—In 1915. That is enough for me. He gives a date, does he?

Mr. Thompson—Yes, sir. I don't know that he gives the month—he gives the year.

The Master—Read by the Board of Directors, and considered?

Mr. Thompson—I don't know whether he said considered, I don't know whether he said that; he said it was read.

The Master—If it was read I suppose we can assume that.

Mr. Thompson—I suppose we can assume that.

The Master—Now, it seems to me it will be proper to allow them to refer to that letter.

Mr. Bates—In the first place, Your Honor, I don't recall the record where Mr. Neal made any such statement; but assuming he might have made such a statement, then I should want

to urge upon Your Honor that because they had asked him in cross-examination as to whether or not some paper had been read at some meeting would not necessarily make it competent. I cannot see any issue in the Eustace case upon which it could be competent. In regard to the controversy, possibly in the Dittemore case, when that is opened, Mr. Dittemore may possibly be able to present it, and if he wishes to we should not object. But here is a letter that was written two years before. I think perhaps the confusion arises from the fact that the letters which were read yesterday were not read as letters, but they were read merely as a part of the record. It was a part of the record of 1917, at the time the salaries were increased.

Mr. Thompson—But the date shows.

The Master—The dates all speak for themselves.

Mr. Bates—In addition to that, as I understand it, this paper offered has no signature, it is not an original, it is not authenticated in any way, nobody has identified it.

The Master—I suppose there cannot really be any dispute about the identification if, as you tell me, the letter was afterward published extensively in the papers.

Mr. Bates—I have not seen it and I do not wish to raise a technical point to keep the letter out of the record, if Your Honor would like to have it go in. In fact, if Your Honor thinks it is relevant and ought to go in I do not think I would object any way; but I do want to say that I consider it absolutely irrelevant as to the issues in this case. I think it is put in for the purposes of saving Mr. Dittemore from going on the stand, in my belief.

The Master—I think I shall have to disclaim any desire to have it go into the record.

Mr. Bates—Well, I want to save Your Honor the necessity—

The Master—If, however, it is now offered by Mr. Whipple, I am unable to believe that I am quite justified in excluding it.

Mr. Bates—I will not object to it on the ground that it has not been authenticated, although that would be an absolutely valid objection; but I do wish to object to it on the ground that it is not competent on any issue in this case.

The Master—Well, subject of course to your objection, we will now take it. I don't suppose you want to read it now?

Mr. Whipple—No, Your Honor, I don't care to read any of it. May I offer this suggestion in connection with it? If it should transpire that I am wrong in my recollection in regard to Mr. Neal we should claim the privilege at the date of the argument to call him to testify that it was read, because every one knows that it was at the time.

The Master—I suggest further, in regard to it, that if it be true, as coun-

sel tell me, that it has been once extensively published in the papers, there is no occasion for having it now appear at length again.

Mr. Thompson—None whatever.

The Master—In the papers.

Mr. Whipple—Well, we should—

Mr. Thompson—It might save trouble.

Mr. Whipple—Mr. Choate's letter and Mr. Bates' letter have been advertised; I hate to discriminate against the General.

Mr. Bates—Well, you are not discriminating against him, because—

The Master—He has had his day in the public press.

Mr. Bates—He has had his day. It was published in the New York Herald and the Boston Herald, and, as Mr. Thompson says, all round the world. I take his statement for it.

Mr. Whipple—I seem to remember a circular which the directors got out in response to the circulation of the General's letter, in which they gave copious extracts both from the Choate and the Bates letter, so that I guess honors are easy as far as that is concerned, and we should be discriminating against the General if we did not allow this to be printed.

Mr. Thompson—I think, on second thoughts, it would be.

Mr. Bates—Well, I object to that.

The Master—Of course, I cannot take any great amount of responsibility in excluding from the record anything that counsel or a majority of them desire to have.

Mr. Thompson—I think it ought to be.

The Master—I do not think it ought to be. It is a great waste of good time, paper, and money to print it all over again.

Mr. Thompson—There are some present who—

Mr. Bates—I may say, Your Honor, also, that if Your Honor admits that, we will reserve the right to put in testimony in regard to the circumstances under which it was offered and the whole facts in the case. They have not appeared in any way, shape or manner and we have the right to have them appear if this is going to be a part of this record.

Mr. Whipple—Couldn't you do it now?

Mr. Bates—No, we can't do it now.

Mr. Whipple—Haven't you got your witnesses?

Mr. Bates—Not the witnesses whom we would have to call for that purpose.

Mr. Whipple—If you will tell us whom you would like to call for that purpose, if he is not here now—

Mr. Bates—He isn't here now.

Mr. Whipple—We will agree; but do as I have done: name the witness and what he would testify to and make your reservation in that way, and we will assent to it. I do not want to leave a sort of unfenced and unbounded field.

Mr. Bates—You have unfenced it

and unbounded it by introducing this document about which you have no evidence—

Mr. Whipple—No, no.

Mr. Bates—And you have not been able to point it out, although you have been looking through the records ever since the subject came up this morning.

Mr. Whipple—You have just thought of this suggestion to leave the opportunity open to have the right to put in more evidence. Now tell us what you want to offer and why you can't offer it now. Most of your clients are here.

The Master—Is Mr. Neal's evidence in print?

Mr. Bates—Yes, Your Honor.

The Master—Can't we find it now?

Mr. Bates—And they have not pointed out anything in his statement that justifies their putting this record in.

Mr. Whipple—I have not examined it.

Mr. Bates—Well, Mr. Thompson has been examining it.

Mr. Thompson—I have not looked at it at all. I spoke from memory. You are making your statements in such rapid succession, Governor, of facts that are not so, that I cannot follow you.

Mr. Whipple—Governor Bates, do you personally—

The Master—Governor Bates—

Mr. Whipple—May I interrupt? Have you not been informed by your own clients that it was read, and if so, why stand upon that technicality?

Mr. Bates—Because the circumstances under which it was read are a very important portion of the evidence.

Mr. Whipple—Now, we are perfectly willing that you should state those circumstances, as you are informed of them by your clients, or you can put your clients on to state them; but I would like to have you state on the record so that you would be limited in your offer of proof next fall.

Mr. Bates—What the witnesses would testify to, Your Honor, and they are two members of the board who were members at that time—they would testify to the effect that the question of the raising of the salaries was under consideration; that they sought the advice of Mr. Choate; that Mr. Choate advised them that it was perfectly proper to do so; that two members of the board who at that time were receiving a total compensation of \$12,500 per year or more—

Mr. Whipple—Pardon me. This is all in.

Mr. Bates—No, it is not in.

Mr. Whipple—You wouldn't want to put it in again?

Mr. Bates—You were asking what they would testify to. That those two members opposed it, and one of them was Mr. McLellan.

Mr. Thompson—Who was the other?

Mr. Bates—That Mr. McLellan saw Mr. Choate; the other was Mr. Stewart, but Mr. Stewart afterwards—

The Master—Couldn't you come right to what they said about the Streeter letter?

Mr. Bates—Mr. McLellan sought the advice of General Streeter, his personal friend, and asked him to come to the board meeting and deliver an opinion on that matter. He came there and delivered an opinion opposing that which had been given by Mr. Choate. He delivered the opinion, stating that he volunteered it, and carried it away with him when he went away.

The Master—The opinion being the letter now offered?

Mr. Bates—The opinion being, as I understand, in contradiction to the opinion that Mr. Elder, I would say Mr. Choate, had given.

The Master—The opinion being the letter now in question?

Mr. Bates—Yes, I assume it was. We waive the identification of it on Mr. Thompson's statement.

Mr. Whipple—The only difference in my information is that I do not understand that it came after Mr. Choate's opinion had been delivered.

Mr. Bates—That is a fact.

Mr. Whipple—Was it? Now, we will assent that his clients would testify to what Governor Bates has stated. Now may this be marked?

The Master—I think so, subject to Governor Bates' objection.

Mr. Whipple—I understand that he does not object under those circumstances and that will make it unnecessary to call Mr. Neal in the fall, because we will accept that statement, which is to the effect that it was read to the board at the request of the chairman, Mr. McLellan.

The Master—I take it subject to Governor Bates' objection?

Mr. Bates—I understand so.

The Master—I understand he does not waive his objection.

Mr. Bates—I do not waive the objection.

Mr. Whipple—Very well.

[A letter from Mr. Streeter to the Board of Directors, dated Sept. 8, 1915, is marked Exhibit 792. R. J. M., and is as follows:]

"Concord, N. H., Sept. 8, 1915.

"Messrs. Archibald McLellan,

"Allison V. Stewart,

"John V. Dittmore,

"Adam H. Dickey,

"James A. Neal,

"Christian Science Board of Directors,  
"Boston, Mass.

"Gentlemen:

"I have tried to put in writing, and with your permission will read, what I want to say to you.

"While I have no apology to make for being here, my peculiar position should be frankly stated at the outset, to the end that there may be no possible misunderstanding. This conference is of my own seeking. Of course I am not counsel for the board; and neither do I come here as counsel for any individual member of the board,

or because of personal friendship for any member. I am here on my own sole initiative, not to give unsolicited legal advice, but to utter a word of warning which appears to me as needful as it is unsought. Such action on my part is occasioned solely by my desire that what Mrs. Eddy built up shall not be put in jeopardy by dissensions in this board.

"Let me review briefly the circumstances which led up to the present conference.

"Shortly before the middle of July, Mr. McLellan conferred with me relative to the proposals made in the board to make certain readjustments and specifically to increase the salaries of board members from \$2500, the amount now limited by Section 8 of the By-Laws, to \$8000 or \$10,000 and to do this without changing the By-Law and without notice to or knowledge of the Church members. With Mr. Demond, I examined the questions and prepared an opinion to which I will hereafter refer.

"On July 21, Mr. Choate wrote me, inclosing copies of Mr. Dittemore's official request of June 15 for his opinion, and his reply of July 1.

"I at once replied to Mr. Choate, sending him a copy of my opinion wherein the following questions were specifically considered:

"1. The power of the Board of Directors to amend the By-Laws of The Mother Church.

"2. The power of the directors, apart from the question of personal interest, to alter their compensation otherwise than by amending the By-Laws.

"3. The legal difficulty with respect to the directors increasing their own salary and thereby acting as representatives of the Church upon a matter wherein their personal interests clash with their fiduciary duties.

"4. The question of expediency.

"Since that time I have had various conferences with Mr. Choate and Mr. McLellan respectively, relative to the controversies growing out of the matter as well as subsequent proposals to expunge a part or the whole of the official records relating to salary increase, also as to whether any part of that record could legally be expunged by a majority vote without unanimous consent of all participants, also as to whether the board by a majority vote could lawfully deny the right of a member to have a copy of the record, etc.

"As these controversies in the board steadily became more personal in character, and the board seemed to be fast dividing into two opposing factions, I began to reflect on the dangers to the Church organization which were thereby being developed, and reached the conclusion that (1) the general situation in the board was of far higher importance than the particular questions in controversy or the desires or rights of any individual member, that (2) I ought not, certainly at this

stage, to be in the position of even seeming to act for any individual member of the board in controversies with other members, and of thereby contributing to the growing dissension, and that (3) it was my duty to point out to the board as a whole the dangers incident to such dissension. On my own initiative, on Aug. 31, I accordingly wrote the secretary of the board that 'I would very much like a conference before any controverted matters are further dealt with or action taken.' To this request the secretary replied, under date of September 3d, that the board would be pleased to see me at this time.

"The foregoing is a brief but accurate statement of the reasons for this conference.

"The responsibilities which rest upon you gentlemen, individually and as a board, are so enormous, and the form of your church organization is so unique, that dissension among you is bound to be far more disastrous than discord in the governing body of a corporation or other organization would ordinarily be.

"My reflections on the present situation led me, among other things, to review the original foundation upon which this board was established, and to consider the anomalous form of religious organization by which it was attempted to concentrate in this board of five men not only the exclusive and final control of all the spiritual affairs of the members of the great Mother Church, but also in combination therewith to vest in this board the supreme and final control of vast properties, including trust funds of some \$3,000,000, with the exclusive power of disposing of an annual income now amounting to around \$400,000.

"By this form of organization the five members of the board stand in a position practically without precedent in modern history. No other board in the English-speaking world is vested with such a combination of exclusive and unrevisable power over spiritual and property concerns as this board seems to possess on the face of the creating documents. I use the word 'seems' advisedly, because I am convinced that these powers, although not so intended, are not immutable, but are probably subject to change or modification if occasion therefor arises.

"I will not now furnish extended reasons for this view, but will briefly remind you of certain conditions which you already know but which cannot safely be disregarded.

"In the eyes of the world you five men are Mrs. Eddy's representatives, created by her to conserve after her death what she had built up, to promote and extend her religious doctrines, and to manage the property interests which she left for their support. The form of your church organization, however wise and necessary it may seem to you to be, is naturally

calculated to excite human jealousy. The members of The Mother Church have the entire beneficial interest in the church property and church management, while under the present organization they are deprived of all actual control of either.

"While in form the board is the absolute controller of both, in fact and in law it holds these powers solely in trust to be exercised for the benefit of the members of The Mother Church. In a broad sense the board and its members have no greater interest in the church property, including the trust estate, than the humblest regular member of the Church. You were simply intrusted with their management for a general but entirely definite purpose. So long as the management of these general trusts is wise and discreet and commends itself to the beneficiaries, no questions will probably be raised; but if the confidence of the beneficiaries in your management shall once be seriously impaired, it is but natural to expect an attempt by some dissatisfied beneficiary or beneficiaries to challenge your authority in the courts.

"So far as I know, this is the only church organization in the western world, outside of the Catholic Church, in which the church members have no voice in the management of their temporal or spiritual church concerns; and the foundation of the two organizations does not seem to afford just grounds of analogy.

"The organization of the Mother Church rests upon the powers conferred by general statute, combined with powers created by the Founder. In all church organizations resting on the statute, the ultimate management and control of all the temporal and spiritual concerns of the church is vested solely in the beneficiaries, namely, the church members. In this Church organization, whose legal existence depends on the same statute, the Founder attempted by trust documents, including by-laws, to deprive the Church members of any voice in the management of the spiritual or temporal concerns of the Church and to vest that power exclusively and permanently in a board of five men created by her, with authority to elect their own successors. If the Church members or any considerable number thereof shall be aroused to challenge at law the board's power of exclusive control conferred by the Founder in disregard of the statutes on which the Church is based and which confer exclusive control on the members, this question of power of control by the board conferred by the Founder, or power of control by the Church members conferred by the statutes will immediately be raised. And while the result of such a controversy cannot certainly be predicted, no good lawyer will advise that such a claim would not constitute a distinct menace to the power of control now possessed by this board.



"I do not need to point out the grave consequences, not only to yourselves as members of this board, but to the great cause you represent, that would be likely to ensue if such an attack upon your official powers should be made and the control of the spiritual and temporal affairs of The Mother Church should be vested in the Church members at large by judicial decree. Nor can you fail to recognize that such an attack per se, whether successful or not, would create discussion and troubles which would seriously affect the present Church organization.

"There is another serious question which may become important, namely, how are the existing provisions of the By-Laws affected by Article XXXV, Section 3, which provides as follows:

"No new Tenet or By-Law shall be adopted, nor any Tenet or By-Law amended or annulled, without the written consent of Mary Baker Eddy, the author of our textbook, SCIENCE AND HEALTH."

"I have referred to this question in my opinion of July 20, which I incorporate herewith as a part of this statement. Let me preface it by saying that while Mr. Choate's opinion of July 1 and my opinion of July 20 are not in accord, I have such a high personal regard for Mr. Choate and confidence in his legal ability and fairness, as well as confidence in my own capacity to fairly reconsider and change my own opinion when shown reasons why the same is wrong, that I am certain if Mr. Choate and I had had opportunity to discuss these questions before we had written, we should not have differed widely in our conclusions. Either I should have modified my opinion for reasons advanced by him or he would have made changes in his for reasons urged by me. I regret that we could not have conferred.

"I introduce this opinion here because it clearly states my views on certain fundamental questions connected with the present controversies, and it would be a waste of time to rewrite or restate them for this meeting. The opinion follows:

"Preliminary memo opinion by Mr. Streeter as to questions of law and expediency involved in the proposed readjustment of the salary of The Christian Science Board of Directors."

July 20, 1915.

"The action proposed by the resolution now pending before The Christian Science Board of Directors involves two related but nevertheless distinct branches, viz.,

"(1) That each director shall resign all offices now held by him under or in connection with The Mother Church, except his directorate, upon the ground that the responsibilities of the board have so increased with the growth of the Christian Science movement as to demand that they devote virtually all their time to their duties

as directors and as trustees of Mrs. Eddy's residuary trust.

"(2) That upon the taking of the foregoing action the compensation or salary of the Board of Directors shall be 'readjusted' in conformity with Mr. Choate's opinion of July 1, i. e., increased from the present figure of \$2500 per annum to \$8000 or \$10,000 per annum.

"The proposed resignation by the members of the board of their offices and employments, some of which are and some are not compensated for from the Church funds, raises no question of law, and the only question of fact or expediency which it involves is whether the alleged necessity really exists of each of the five directors devoting his entire time to the Church matters, i. e., whether the work and responsibilities of the board have as yet actually increased to such an extent as to require this drastic step. But the second action proposed, viz., the increase in the board's salary from the Church funds, raises serious questions of law as well as of expediency, regarding which the following is a preliminary statement of my views.

"1. The power of the Board of Directors to amend the By-Laws of The Mother Church:

"Since the present salary of the directors, which it is now proposed to increase from the Church funds, is fixed by the Church By-Laws, the first legal question which naturally suggests itself is as to the power of the board to amend or alter those By-Laws. Being the governing body of the Church, and invested with all its business powers, the members of the Church as such having no voting power, the directors could undoubtedly amend the By-Laws were it not for the provisions thereof to which Mr. Choate calls attention in his opinion, and particularly the provision of Article XXXV, Section 3, that—

"No new Tenet or By-Law shall be adopted, nor any Tenet or By-Law amended or annulled, without the written consent of Mary Baker Eddy, the author of our textbook, SCIENCE AND HEALTH."

"Mr. Choate's opinion apparently assumes that this section, and the other somewhat similar provisions quoted by him, exclude the possibility of any amendment of the By-Laws now that Mrs. Eddy has deceased; and while I am not prepared affirmatively to assent to the correctness of this assumption, the question whether the power of amendment now exists is certainly a grave one. A corporation, whether religious or other, with immutable by-laws that can be revised in no particular, however necessary their revision may become by reason of changed conditions, is nothing short of an anomaly hitherto unknown to the law. In my judgment the courts may well hold, if the question should be submitted, that the section above quoted was intended to require Mrs.

Eddy's consent to amendments only during her lifetime, and that her death has dispensed with the necessity of such consent, at least with respect to amendments of the business provisions of the By-Laws as distinguished from those establishing the essential Tenets of Christian Science.

"In short, I am of the opinion that the question of present power to amend the By-Laws is novel and doubtful, and hence that the proposed action which will certainly raise this question ought to be avoided until a clear and urgent necessity therefor arises.

"2. The power of the directors, apart from the question of personal interest, to alter their compensation otherwise than by amending the By-Laws:

"In his opinion of July 1 Mr. Choate takes the view that while the By-Laws are unamendable, the directors can increase their compensation without amending the By-Laws; and he bases this opinion upon the fact that the words 'at present' are used in the by-law fixing the directors' compensation at \$2500 as last amended by Mrs. Eddy.

"While I entertain the greatest respect for any opinion rendered by Mr. Choate and recognize that his conclusion on this point may be right, its correctness seems open to serious doubt. The use of the words 'at present' unquestionably shows that when Mrs. Eddy last amended this particular by-law, she realized that occasion might some day arise for further readjustment; but it by no means follows that these words were inserted for the purpose of enabling such readjustment to be made without amending the By-Laws, for two reasons:

"1. It is just as probable that she contemplated that any future changes in the directors' compensation should be made in the same way they had previously been, i. e., by amendment of the by-law, as that she contemplated their making by a different method. And it is certainly true as a general proposition that the only appropriate method of making a change with respect to a subject which is dealt with and governed by the by-laws of a corporation or other association, is to amend the by-laws on that subject.

"If a by-law in the precise language of this by-law, fixing the directors' compensation, should be adopted by an ordinary business corporation, the directors, under the construction suggested in the opinion of Mr. Choate, could of their own motion at any time thereafter legally increase their compensation without an amendment of that by-law. I think such action would be illegal.

"2. Since the directors are the sole governing body of the Church, the assumption that Mrs. Eddy, by interpolating the words 'at present,' intended to authorize future adjustments of their salary otherwise than by amendment, seems to involve an assumption that she intended to make

the directors sole judges of the amount of their own compensation both during the remainder of her life and after her decease. Such assumption seems to me inherently improbable, and every legal indtendment would be against it for reasons hereinafter pointed out.

"3. The legal difficulty with respect to the directors increasing their own salary, and thereby acting as representatives of the Church upon a matter wherein their personal interests clash with their fiduciary duty.

"In my opinion, the most serious legal question involved in the proposed action arises from the fact that when the Board of Directors undertake to vote an increase in their own salary, whether by amendment of the By-Laws or by any other method, they will be acting as judges in their own case, and that such action, either by corporate directors, by private agents or trustees, or by anybody else who occupies a representative or fiduciary position, is forbidden by an elementary principle that has long obtained. All such fiduciaries are in law disqualified to act for their principals or beneficiaries in any matter wherein their personal interest may conflict with their fiduciary duty.

"Thus, in *Pearson v. Railroad*, 62 N. H. 537, where the same persons constituted a majority of the boards of directors of the Concord, the Northern and the B. C. & M. railroads, it was held that they were disqualified to vote joint traffic contracts between these companies, because 'no man can serve two masters'; and that contracts so voted by them must conclusively be deemed fraudulent in law, and treated as void at the suit of an objecting stockholder, without regard to their inherent fairness.

"The application of the same principle to an attempt by directors to fix their own salaries is sufficiently shown by the following questions:

"The principle that directors cannot deal for themselves with the corporation necessarily precludes them from voting compensation for themselves either before or after the rendition of the service for which the compensation is voted.' 10 Cyc. 899.

"It would be contrary to established principles to allow the directors or other agents of a corporation to fix their own compensation for services rendered to the company.' 1 Morawetz on Private Corporations, 508.

"The directors cannot fix their own salaries, unless expressly authorized by the charter or by the stockholders to do so.' 3 Clark & Marshall Private Corporations, p. 2059.

"Directors have no authority to act for the corporation in matters in which they themselves are interested. They owe their whole duty to the corporation, and they are not to be permitted to act where duty conflicts with interest. They cannot serve themselves and the corporation at the same time. For the same reason, directors

cannot vote salaries to themselves. Nor can they vote a salary to one of their number as president or secretary or treasurer at a meeting where his presence is necessary to a quorum. And such votes, if passed, are voidable by the corporation, and if money has been paid it may be recovered back.' —*Camden Land Co. v. Lewis*, 101 Me. 78, 97.

"If the private interest of only one of the directors were concerned (for example, if the only question were whether Mr. Dickey were entitled to an increased salary as treasurer), the other directors would not be disqualified to act on that question, and the difficulty might be avoided by the interested director refraining from voting. But where the directors are all concerned alike, as in the action now proposed, the rule disqualifying them to act as judges of their own case cannot be avoided by indirection. Thus in *Mallory v. Mallory Wheeler Co.*, 61 Conn. 131, A, B, and C were salaried officers of a corporation, and were also a majority of its directors. They undertook as directors to renew the contracts with themselves and fix their salaries as such other officers by appointing A the company's agent to contract with B, and C its agent to contract with A, etc. It was held that the contracts thus made were vitiated by their common personal interest, the court saying:

"It is a thoroughly well settled equitable rule that anyone acting in a fiduciary relation shall not be permitted to make use of that relation to benefit his own personal interest. This rule is strict in its requirements and in its operation. It extends to all transactions where the individual's personal interests may be brought into conflict with his vote in the fiduciary capacity, and it works independently of the question whether there was fraud or whether there was good intention. Where the possibility of such a conflict exists there is the danger intended to be guarded against by the absoluteness of the rule."

"Under the settled rule of law of which the foregoing quotations are a few of many examples, it seems clear that a vote passed by The Christian Science Board of Directors increasing their own salary would have no legal validity and would be open to attack at the suit of any member of the Church, for the reason that every Church member is equitably or beneficially interested in the funds from which such salary increases will be taken. The equitable or beneficial interest of such member in the Church funds does not seem to be affected by the fact that under the By-Laws the control and management of the funds are extensively vested in the Board of Directors. Such a suit might be brought, certainly in Suffolk County, and, if the New Hampshire law in a somewhat analogous case should be adopted, in any county in Massachusetts. It also might be brought in

the federal court for the District of Massachusetts.

"If the proposed action of the Board of Directors should be taken by published amendment of the By-Laws and thus presumably brought to the attention of all the Church members, it might acquire in time a sort of practical validity if all the Church members acquiesced in it, from the fact that failure to act within a reasonable time would constitute such laches as thereafter to preclude them from attacking it; but it is manifestly undesirable for the titular heads of a great religious movement to take action regarding their personal salaries which is legally invalid and take the risk of this dubious species of vindication.

"An amendment of this by-law, however objectionable, has the merit of frankness and publicity because the Church members will know. The comparative secrecy of the method proposed renders it still more objectionable. It would invite suspicion and criticism, and leave the directors' action open to attack in the courts for an indefinite period.

"4. The question of expediency.

"Even if the technical legal right of the directors to increase their own salary were clear, as the foregoing considerations show that it is not, the question of the practical expediency of the proposed action would, in my judgment, be a very grave one. To a greater extent than any other religious movement in the western world for nineteen hundred years, Christian Science owes its origin and growth to a single personality, viz., its discoverer and founder, Mary Baker G. Eddy. For this reason it seems to me of the utmost importance that, at any rate during these earlier years following her decease, The Christian Science Board of Directors, which has succeeded to her leadership so far as anybody can succeed thereto, should refrain from any action tending to impair the confidence of Christian Scientists in their leadership or to afford the enemies of Christian Science ground for impugning their motives and good faith. And in my judgment no action better calculated to create suspicion and adverse criticism could well be taken than for the directors to lay themselves open to the charge of using their official powers to advance their own pecuniary interest almost as soon as Mrs. Eddy's guiding hand has been removed.

"FRANK S. STREETER.

"The foregoing preliminary memo. has been prepared for the consideration of The Christian Science Board of Directors at the personal request of Mr. Archibald McLellan, chairman of the board.

"If desired I shall be glad to confer with Mr. Choate, counsel for the board, with reference to the questions of law and expediency here discussed.

"F. S. S.

"Concord, N. H., July 20, 1915.

"The matters considered in the fore-

going opinion are important; but the thing of greatest importance is not whether Mr. Choate's opinion or my own is right, nor whether this or that member of the board has taken the wiser position upon the questions lately in controversy, but whether the members of this board are to be able now and hereafter to compose such differences as may arise between them on these or other questions without personal antagonism, and to act together harmoniously and with mutual tolerance for each other's views. It is the right and duty of each of you to exercise his individual judgment in carrying on Mrs. Eddy's work, but what I particularly seek to impress on you today is that if you carry such exercise of individual judgment to the extent of destroying your ability to work in harmony, thereby dividing the board into permanently opposing factions, the results to yourselves, to your Church organization, and to the cause you represent, will probably be far more disastrous than an unwise decision by the majority upon almost any specific question could produce.

"Let me point out in this connection that such inability to compose differences and act harmoniously is one of the well-recognized grounds upon which courts of equity interfere to remove trustees. When personal antagonism has developed in a board of joint trustees, whether created by will or otherwise, to such an extent as to endanger the interests of the trust by impairing the ability of the several trustees to work together, the courts in many cases have removed the entire board without stopping to inquire who was in fault, and have appointed a new trustee or trustees to discharge the duties which the original board had thus destroyed its ability to perform efficiently.

"With Mr. Fernald, you are the testamentary trustees of Mrs. Eddy's residuary trust, and in that capacity you are subject to the superintending and removing power of the New Hampshire probate and equity courts. As directors of The Mother Church, invested with the administration and control of the Church funds whereof the Church members are the beneficial owners, you are trustees in fact though not in name, and as such you would undoubtedly be subject to the similar equitable powers of the Massachusetts courts at the suit of a beneficiary on a showing of proper cause.

"If the factional tendency which has lately become apparent in the board shall be permitted to develop into a permanent condition of personal antagonism, such situation cannot be concealed from Christian Scientists or from the world, for you occupy too prominent a position, as Mrs. Eddy's representatives and as the hierarchy of her great Church, to quarrel long in secret.

"Three distinct dangers will then threaten. The first—the detrimental effect upon the advancement of Chris-

tian Science through an impairment of public confidence in your leadership—is too obvious to require comment. The second—the danger of a successful attack upon the exclusive powers of temporal and spiritual control attempted to be conferred on you by the founder of the Church—I have already discussed. The third, and perhaps the gravest of all so far as your personal interests are concerned, is the danger that, under the principle just mentioned, you might be removed from your present fiduciary positions at the suit of complaining beneficiaries, and the administration of Mrs. Eddy's trust, and perhaps even the direction of the affairs of The Mother Church itself, committed by the courts to other hands.

"Some of you are thinking, why does Mr. Streeter bring all this here today. I will answer that question directly.

"It is because I am convinced that unless personal controversies between members of this board are restrained, its influence and power will be impaired, and if permitted to develop, will be wrecked.

"This board of five men constitutes the hierarchy of the Christian Science Church. Its responsibilities are wholly different from those of the directorate of a purely business corporation. It is true that you have control of large property interests, but that is incidental. In the eyes of the world you stand as the visible heads of a Christian church, as the direct representative of its Founder, specially appointed by her to stand in her place and to promote and extend her doctrines as taught by her. The Mother Church—her Church—has many thousand members, most of them, but of course not all, her sincere believers and devoted followers, and all recognizing you as the heads of the Church they love.

"The Church members must and will depend on this board so long as it retains their confidence and respect. If and when that shall be lost, the power of this board will be destroyed and the existing organization almost certainly disrupted.

"If the members of this Church, or any group or faction, should become aware of some of the things recently done and said and largely shown by your records, you might reasonably expect an effort made either to change the power of control from the board to the Church members, or to change the personnel of the board itself.

"I desire to express my profound conviction that any personal controversy in this board is highly dangerous. Controversies about salaries especially, if known to the members of The Mother Church would in my judgment, impair, if not wreck, the existing organization and work great injury to the cause of Christian Science.

"Let me suggest for your consideration a fundamental rule of action, for the time being at least, namely—

"That every matter before this

board involving controversy shall be fairly and tolerantly discussed and then disposed of by unanimous agreement. If such a thing cannot be done unanimously, don't do it at all.

"If any member thinks me impertinent or presumptuous in presenting these views, let me remind him that my connection with the fortunes of this Church at highly critical periods, when its Founder, its doctrines and its property were viciously assailed and its fortunes seemed to hang in the balance, may afford some justification for my present desire that this organization shall not be disrupted, but shall be preserved to carry on a great work in accordance with the hopes and intentions of the Founder.

"I submit the foregoing with the hope that it may help and not aggravate a situation which I regard as highly critical in the history of this Church organization.

"Yours truly,

(Signed) "FRANK S. STREETER."

The Master—Now we will come to the alleged second letter of Mr. Choate. What about the alleged second letter from Mr. Choate?

Mr. Whipple—I had suggested that if we ascertain, in the meantime, that one was sent, we desire to reserve the privilege to offer it.

The Master—You haven't it here?

Mr. Whipple—No.

The Master—And you cannot offer it now?

Mr. Whipple—No, Your Honor. And, frankly, I should say that I know nothing about it, except the intimation which appears in the deleted record, which I have never seen, but regarding which the statement has been made publicly that there is a reference to such a letter or interview in the deleted record. Am I right in that?

Mr. Thompson—Yes. I think you are wrong in one respect. You spoke of it as a subsequent letter. My advice is that the letter was written before this letter that is put in.

Mr. Whipple—No, still another letter.

Mr. Thompson—This letter put in was a revision of the first letter, and I do not believe the first letter—it may well be that the first letter is no longer in the files of the directors.

Mr. Whipple—But it was sent to them or read to them?

Mr. Thompson—Yes; but my impression is it was taken away.

Mr. Whipple—We should like to claim the privilege of showing it.

The Master—Very well. Then, apparently, we are all through with this at present.

Mr. Whipple—Yes, Your Honor.

Mr. Bates—I wish, Your Honor, to make a correction of a statement which I made to Mr. Whipple a few moments ago. I was in error when I stated that Mr. McLellan was living at the time the salaries were raised in 1917. He was not. That was my

error. There is one mistake in the record.

Mr. Thompson—Governor, he died in July, 1917, didn't he?

Mr. Bates—That is right. He died in July and the salaries were raised the last of October.

Mr. Whipple—I know, but they consulted counsel in August, as I understand, very shortly after his death.

Mr. Bates—That appears from the record.

Mr. Whipple—Well, the Streeter letter is early in September.

Mr. Thompson—Well, that is 1915.

The Master—No, you are getting mixed up on that. Now, Governor Bates, the correction in the record.

Mr. Bates—In the printed record, on page 249, in the first column, the record regarding Exhibits 138 and 141 is incomplete. In the case of Exhibit 138 there was offered a Church by-law book, page 1, and pages 37-67. There should be included in the record as part of the exhibit pages 1-34.

The Master—I do not quite get where that goes in.

Mr. Bates—It reads: "Records of meetings appearing on page 37 to 67 inclusive of the Fifty-Seventh Edition of the Manual." That should be pages 1-34 and pages 37-67, inclusive.

Mr. Thompson—Don't you think there is another mistake there, Governor? It says "pages 37 to 67 inclusive of the Fifty-Seventh Edition of the Manual." These records of the meetings did not appear in the Manual, did they? It looks to me a little queer. It does not seem just right, does it?

Mr. Bates—It should be the Church By-Law book.

Mr. Whipple—Well, aren't all these corrections unimportant, and can't they be considered at the date of the argument?

Mr. Thompson—It seems to me that they might be.

Mr. Whipple—We can point those all out in such briefs or arguments as we desire.

Mr. Bates—The facts are that they have referred to the Manual in the brackets there, although the previous paragraph refers to the by-laws; but it should be the Church By-Law book, pages 1-34 and pages 37-67.

Now, on the next column, Exhibit 141, "Records of Meetings of the Board of Directors appearing on pages 37 to 59 inclusive." as it reads, "of Volume 2 of the Church By-Laws are offered in evidence as Exhibit 141." There also it should appear pages 1-34 and pages 37-59.

Mr. Thompson—As long as the Governor has spoken of these little errors, I want to say that there may be in this printed record from place to place some trifling mistakes in which counsel ought to be permitted to make corrections at the argument; but that leads me further to say, without prejudice to anybody's case or to any party here, to express a sentiment which I think will be agreed in by all counsel, that we owe a great deal, whatever

may be the faults of the Publishing Society and its mistakes in judgment and theology—we owe a great deal of credit to them for the extraordinary work they have done in printing this record every day and giving it to us. I think that whatever its errors may be it has been a great convenience to have this printed record. I am personally very much obliged to them for doing it.

The Master—Yes; it has undoubtedly been a very great convenience to all of us.

What are we to do now?

Mr. Whipple—I understand that you wish to make your offer of proof.

Mr. Thompson—Oh, yes. Excuse me. Carrying out the arrangement made previously in the case of Eustace v. Dickey, I have identified the charges and allegations made by Mr. Dittmore in his answer which are not made in the answers of the directors and not contained in the charges on which Mr. Rowlands was expelled, and I will now identify them, and I am to be regarded as making an offer of proof in support of them.

Paragraph 5—

The Master—Perhaps you will let me take my copy and follow you.

Mr. Thompson—Yes, sir. I have done it by paragraphs, and I have separated out the distinct issues of fact. None of them occur until we reach Paragraph 5 of the bill. The answer of Mr. Dittmore there raises certain issues of fact. I will only summarize this without going into minute details.

First, whether the trustees have faithfully and solely for the promotion and extension of the religion of Christian Science discharged the duties imposed upon them by the deed.

Second, whether they have energetically and judiciously managed the business of the society.

Third, have they since the dates of their respective appointments become increasingly unfaithful in the sense of their business duties?

Fourth, have they managed the business with waste and extravagance?

Fifth, have they shown a tyrannous disposition—tyrannical, it should be—toward their inferiors?

Sixth, has their predominant motive been a desire to increase their own power and authority, to propagate their personal views, and so on?

Next, has the prosperity of their society under their management been in spite of and not in consequence of such management by reason of waste and extravagance?

Next, have the circulation and influence of the publications increased less than they would have if it had not been for their extravagance?

Next, has their administration of their trust facilitated the influence exerted by the publications?

Has there been friction and disagreement between them?

Have the sums that they paid over as trustees to the directors and Trus-

tees under Mrs. Eddy's Will been less than they ought to have been?

If the income from the business has increased, is it due to an increase of 50 or 100 per cent in the prices of the publications, accompanied by a cheapening in the quality of the material? If there has been such an advance in price and cheapening in quality, has it been to the detriment of the members of The Mother Church?

Has the advance in prices increased the annual income of the society by about \$780,000?

Has the revenue derived from the advance been used by the plaintiffs to make up a deficit caused by waste and extravagance in the management of The Christian Science Monitor?

Now, the next paragraph of the bill on which any such issues arise is Paragraph 7, and there there is only one issue of fact of the kind we are now discussing: Have the publishing trustees in said periods frequently given the directors inaccurate information?

The Master—Where is that?

Mr. Thompson—Paragraph 7 of Mr. Dittmore's answer. I am taking the bill up by paragraphs.

The next paragraph of the bill in which any such issue occurs is Paragraph 10, and there are two issues there: Did the directors, prior to January 3, 1919, criticize the efficiency or success of the management of the Publishing Society affairs? Second, did the directors—

The Master—Where is that criticizing?

Mr. Thompson—Criticize the efficiency or success of the management of the Publishing Society affairs.

The Master—Oh, yes. That is a denial.

Mr. Thompson—Yes. Second, did the directors concede that the business affairs of the Publishing Society were being efficiently and successfully managed? I do not mean concede in court, but concede before the litigation. They have practically conceded it in court, as I understand.

Paragraph 17: Have the directors stated to many Christian Scientists that they planned to control or destroy the Publishing Society and make it "an empty shell"? We deny that. I am not sure that the—

The Master—That is in Paragraph 18, isn't it?

Mr. Thompson—No, sir; Paragraph 17. I think that is covered by the answer of the directors. I think they have denied that. If they have not, Mr. Dittmore offers to show that he at least did not make that threat.

The Master—You are now talking about your answer in Eustace v. Dickey?

Mr. Thompson—Yes.

The Master—There is nothing about "empty shell" in Paragraph 17.

Mr. Thompson—Then I must have made a mistake. I did this work pretty carefully.

The Master—Oh, yes; I beg your pardon.

Mr. Thompson—I did this work with extreme care and I do not believe I have made any mistake.

“The next is in paragraph 20. There are two issues of fact there,—one, Did Mr. Dittmore in 1916, after considerable discussion and correspondence between the directors and trustees, draw up the memorandum set out in this paragraph of his answer? I think it is agreed that he did, so that that is not a real issue of fact for him to prove. But next, Was said memorandum agreed to as correctly stating the relations of all the plaintiffs at a joint meeting of the two boards? I have already offered Mr. Dittmore as a witness to Governor Bates to prove that it was.

And finally, as summarizing, really, and including all the others, paragraph 21, which contains the gist of the matters now under consideration—they are as follows: Have the plaintiffs during a long period prior to the filing of the bill, violated their trust in the following particulars? And I have the particulars here:

1. By misrepresenting the circulation of The Monitor, and thereby selling advertising space.

2. By discharging faithful and experienced employees and replacing them with incompetent personal friends.

3. By permitting the quality of their publications to deteriorate.

4. By incivility, arrogance and abuse towards their employees.

5. By demoralizing their servants and agents by caprice and prejudice in discharging and employing them.

6. By gross extravagance in the management of the business.

7. By losing a large amount of trust funds.

8. By maintaining an unduly expensive London bureau.

9. By squandering large sums of money on cable news from the London bureau.

10. By using their publications as a means for promoting views and tenets inconsistent with the doctrines of the Church.

11. By attempting to coerce into the adoption of said views persons applying for recognition as practitioners and desiring cards in The Christian Science Journal.

12. By destroying all practical correlation of management between the Editorial, News, Distribution, Advertising, and Financial departments of The Monitor, thus causing waste.

These are the questions of fact on which Mr. Dittmore maintains the affirmative and offers to prove them.

They are all propositions which are not contained in the answer of the other directors, and are not contained in the charges on which Mr. Rowlands was dismissed. I understand Your Honor rules that they are all immaterial and irrelevant and inadmissible

for the purposes of the present case; and to that ruling we take an exception.

The Master—I so rule.

Mr. Whipple—Now, if Your Honor please, may we have Your Honor's direction as to a time when we shall argue the Eustace v. Dickey case?

The Master—What are the suggestions?

Mr. Whipple—It would be entirely agreeable to us if the arguments could be presented on Sept. 8. That will give us ample time to make preparation. And I may say that it happens, as we all know, that the American Bar Association meets in Boston earlier that month, that is on Sept. 3, 4 and 5—and it would be convenient for Mr. Strawn, who is to attend the meetings of the Bar Association, to remain afterwards and participate in the arguments. That would be a convenient date for him, and it would also be convenient for the rest of us who speak in behalf of the trustees. Is that agreeable, Governor?

Mr. Bates—Sept. 8?

Mr. Whipple—Yes.

Mr. Bates—I think, Your Honor, that that is agreeable to us if it is agreeable to Your Honor. But before finally committing myself, perhaps I ought to know what is the expectation in regard to going on with the Dittmore case.

Mr. Thompson—If Your Honor please, I have lived up absolutely to the suggestions made by Your Honor and to the arrangements and understandings which grew out of the illness of General Streeter. I have done the best I possibly could—Mr. Demond and I both have—to finish this case up so as to suit the convenience of Mr. Whipple and Governor Bates. Now, so far as their arguing their case on the 8th of September is concerned, we shall interpose no objection to that; in fact, we should like to be present and participate in that argument, because we are still a defendant, and I presume Mr. Whipple will seek relief against Mr. Dittmore.

The Master—Seek what?

Mr. Thompson—Mr. Whipple will seek relief against Mr. Dittmore in this case. He seeks an injunction.

The Master—Oh, I see what you mean, yes.

Mr. Thompson—And therefore, as long as he does, we are bound to defend ourselves. As to the Dittmore case, that is a different matter. General Streeter cannot possibly take the case up before the 1st of October; Mr. Dittmore has made his plans and his family's plans to go off; and we understood at the time when General Streeter was taken ill that that would be a proper arrangement. Your Honor has since intimated that you did not thoroughly understand that, and we have had further conferences with General Streeter and with his physician, and we are informed that he will not be able to attend before that

time. Personally I regret that that is so, but it is so, and I cannot alter the arrangements which General Streeter desires to have made, and Mr. Dittmore and Mr. Demond. I do not think that it can possibly be taken up before that time.

Mr. Bates—As to that, Your Honor, we are anxious to go ahead with this case and finish it as quickly as possible; but as to any arrangements or understandings, I think there were none. Your Honor suggested that October was a bad time for you, I think, that you had made some plans that it would conflict with.

The Master—I also said that they need not make any difference.

Mr. Bates—Yes; Your Honor very kindly said that, but I think that it should be taken into consideration.

The Master—I gather from what Mr. Thompson says that he and General Streeter are unable to go on before Oct. 1.

Mr. Thompson—Yes.

The Master—Now, when after Oct. 1 do you want to go on?

Mr. Thompson—Any time after that that is agreeable to every one.

The Master—I do not want to give up the whole month of October to that case if I can help it. I am frank to say that. But if there is no other time I will do it.

Mr. Thompson—I feel very sorry that this arrangement should interfere with Your Honor's plans, but Your Honor may say—

The Master—Well, when after the 1st of October do you wish to begin?

Mr. Thompson—Any time that is agreeable to Your Honor. I wish Your Honor would set a time, and entirely with reference to Your Honor's own convenience, and we will meet it.

The Master—Do you want to go on before Oct. 1, Governor Bates? What is your position?

Mr. Bates—We are ready to go on now or—

The Master—How long a time are you willing to allow Mr. Thompson and General Streeter, in view of the conditions?

Mr. Bates—Well, I think, considering the fact that the other case is to be argued on the 8th of September, and that— May I confer with my associates, and see how it will suit them?

The Master—Let me ask, before you do that—perhaps it will help on the other matter a little—how long do you think we shall take on the 8th?

Mr. Whipple—I should think that if a day were allotted, that would be sufficient, although that would depend somewhat on the length of time that Mr. Thompson would like to have allotted. I should think that Your Honor's ruling with regard to Mr. Thompson's defense might cut down his argument somewhat.

The Master—If we began on Monday, the 8th of September, do you think that you will be able to finish the arguments that week?

Mr. Whipple—Oh, yes, Your Honor.  
Mr. Thompson—The whole week for arguments, sir?

The Master—That is what I ask.

Mr. Thompson—I shall not want very long on that. We are going to argue that the general views of the directors as to the relations between the two boards are correct, and that the general views of the trustees are wrong. We are not going to argue that Mr. Rowlands had neglected his duties, because we think that he had not, or anything of the kind.

Mr. Whipple—I should think that an allotment of two days would be sufficient. I think that perhaps one day might not prove to be sufficient.

The Master—Now do you want to confer?

Mr. Bates—I should think, Your Honor, that two days would be sufficient, although it might be wise to reserve a third day if necessary; but I think that two days ought to be ample.

The Master—All right. Now confer about going on after that.

[Mr. Bates confers with his associates.]

Mr. Bates—Let me ask, Mr. Thompson, if it would not be possible to set a time, say about the 22d of September, which is pretty near to October. That is a Monday.

Mr. Thompson—No; I am sorry to say that it would not. Do you say that you are ready to go on now? Do you mean that literally, that right off, Monday morning, you are prepared to take up the trial of the case of Dittimore v. Dickey?

Mr. Bates—I mean to say that if you will go on Monday we will.

Mr. Thompson—And keep right on until it is finished. I do not think that you would say that if you thought that we were in a position to do it.

Mr. Bates—I certainly will go on Monday if you will.

Mr. Thompson—You have spoken of having to attend the Constitutional Convention, and you have spoken of various other things. You have got to prepare your argument in Eustace v. Dickey; you have got to read a thousand pages of testimony; and when you tell me in court here that you are willing to go ahead Monday and try out the case of Dittimore and Dickey, I think that you are saying something that is insincere, and that you know it!

Mr. Bates—Thank you, sir. I refuse to reply to you.

Mr. Thompson—I should think you would. You want to put on me the burden of having delayed the trial of that case.

Mr. Bates—I refuse to reply to you, sir!

Mr. Thompson—I should think you would.

The Master—What do you mean by reading a thousand pages of testimony?

Mr. Thompson—Why, if he is going to argue this case on Sept. 8, he has

got to read a thousand pages of testimony, this whole record.

The Master—I think that you will have to discuss this matter of going on, Mr. Thompson, with a little more temperance in regard to the other side.

Mr. Thompson—I will do so, sir, but there is a constant attempt to make it appear that Mr. Dittimore is trying to delay something; and that is not true.

The Master—We are only trying to find out what is the proper time for going on with that case. Now, let us see if we can do that without casting any accusations on one side or the other.

Mr. Thompson—Very well. We would like to do that. We cannot go on before October.

Mr. Bates—I was endeavoring to accommodate Mr. Thompson by suggesting that we go on Sept. 22.

The Master—Your suggestion was to go on Sept. 22, and Mr. Thompson says that he cannot do that.

Mr. Thompson—We cannot do it. General Streeter could not.

Mr. Bates—Then I will leave it to Your Honor to fix any date that you please.

The Master—I should not feel justified, under the circumstances, in ordering him to go on before that time. I do not believe that you really want me to do that.

Mr. Bates—I have not asked you to. I have tried to show a disposition to accommodate him and General Streeter as far as possible.

Mr. Thompson—I do not like the word "accommodate."

The Master—"Agree," then.

Mr. Thompson—Dr. Minot has advised General Streeter deliberately, after two consultations, that the earliest date when he ought seriously to take up any intellectual effort of any kind is the 1st of October, and he has warned him that that is too soon, and now I cannot stand here and shade that.

The Master—Let me make an inquiry here. How long a time shall we require for the hearing in Dittimore v. Dickey? Will that take 28 more hearings?

Mr. Thompson—I do not know, sir. I do not believe that it will take as long as it has taken to put in the evidence in this case.

The Master—Twenty-eight more hearings?

Mr. Thompson—I do not think so. I hope not. Of course all the evidence in this case, documentary evidence that has been put in this case, will be evidence in that case so far as material; and that has taken a great deal of time. What has taken a great deal of time here has been this elaborate putting in of documents. On the other hand, there is a great deal of material to be gone over, and a great many records of these gentlemen that have not been put in in the Eustace case will have to be put in in the

Dittimore case. Mr. Dittimore has an elaborate diary of the day-to-day events that occurred between these gentlemen, and the statements made by these gentlemen, at their meetings, which will all have to be testified to.

The Master—Not all.

Mr. Thompson—Most of them will, sir.

The Master—You must contrive in some way to keep out cumulative evidence.

Mr. Thompson—We will try not to have it cumulative, but Governor Bates apparently disputes everything, even when it is mathematically demonstrated. Therefore cumulative evidence, to some extent, appears to be necessary. However, we will try to keep it down as much as we can. And we are relieved from summoning perhaps a dozen witnesses or more whose names we offered to these gentlemen as against the Publishing Society; but there will be a good deal of testimony. I cannot guarantee that it will be a short hearing. I cannot see how it will be as long as this one, however. You might put it in the middle of October. I do not care much.

The Master—I think the first of October falls on a Wednesday. Governor Bates suggested Sept. 22, and Oct. 1 is only a week and two days beyond that. You agree to go on Oct. 1. I guess you had better call it Oct. 1, had you not?

Mr. Bates—Very well.

Mr. Thompson—I should like to make one inquiry of Your Honor, as to the relation between these two cases. Mr. Dittimore is sued in the Eustace case as a director. I assume that Mr. Whipple will argue—and in this I should quite agree with him—that Mr. Dittimore has already shown a clear case of illegal discharge, and is a director. But that matter cannot be thoroughly settled until Mr. Dittimore's case has been tried. Now, does Your Honor expect to complete a report in Eustace v. Dickey before making one in Dittimore v. Dickey, or before hearing the evidence in that case?

The Master—I will do my best to do so, but —

Mr. Bates—That is, Your Honor thinks that the two cases can be separated?

The Master—If there is any way to separate them I should like very much to separate them.

Mr. Thompson—I hope they can be separated. But as long as Mr. Dittimore is a party in Eustace v. Dickey, how is it possible to separate them? That is, you will have different evidence on the important issue as to whether he is a director or not.

The Master—Are there any suggestions to be made about that?

Mr. Bates—In answering Your Honor's question as to the time, I am informed that, on account of engagements already made, if the matter is to go over until October it would accommodate several of my clients and associate counsel better to have it

begin Monday, the 6th, rather than Wednesday, the 1st.

Mr. Thompson—That is perfectly agreeable.

Mr. Bates—That is, rather than begin in the middle of the week, we will begin Monday of the following week.

The Master—Now, what about postponing the report in Eustace v. Dickey until after the hearing is completed in Dittmore v. Dickey?

Mr. Bates—I am hoping that Your Honor will find a way, as Your Honor suggested you should try to do, to close up the Eustace case without its being delayed; and I had assumed that that was the expectation; because if that case was to be delayed by the Dittmore case, it would present a much more serious complication. In that case there is the injunction, which is seriously interfering, and I think that that case should certainly be disposed of at the earliest possible moment.

The Master—I am afraid I cannot undertake to promise to get the report completed in Eustace v. Dickey between Sept. 8 and Oct. 6, but it may be that I can do it.

Mr. Bates—I do not think that Your Honor should be asked to do it; that is, I do not think that we should have any understanding in regard to it. Of course I realize that that must be left to Your Honor's discretion; I simply say that if it is possible to do it, we would very much like to have it; and we do not wish the settlement or decision of the Eustace case postponed merely because the Dittmore case had not been settled. But when it comes to the question of the possibility of completing the decision within that time, of course we recognize that Your Honor should have all the time that you desire.

Mr. Thompson—My only point is not to make trouble here, but merely to point out what had better be faced, if it is a difficulty, rather than to have people disappointed. I personally do not quite grasp what the situation will be if Mr. Dittmore is sued by the trustees as a director for conduct in that capacity—and they allege that he is one, and he alleges that he is, too—I do not quite see how Your Honor would be safe in finding that he was a director for the purposes of the Eustace v. Dickey case, with any possibility that you might have a different mass of evidence to deal with on that same question in the case of Dittmore v. Dickey. If Governor Bates will assent to the proposition that, for the purposes of Eustace v. Dickey, Mr. Dittmore is a director, that will relieve the difficulty.

Mr. Bates—I certainly shall not assent to any such suggestion as that.

Mr. Thompson—No; I did not suppose that you would.

Mr. Whipple—May I offer a suggestion, Your Honor? With reference to the period of time during which we complain of what the directors were doing, we allege that Mr. Dittmore

was a director, and we ask relief against him not as an individual but in his representative capacity, and, offhand, no reason occurs to me why there should not be a report with reference to the directors as a board, without determining whether Mr. Dittmore or Mrs. Knott was the actual occupant of that position. That is, the report, if it should happen to be in our favor, would be against the Board of Directors, and not against the individuals.

The Master—It seems to me at present that in Eustace v. Dickey it will be necessary to determine whether Mr. Dittmore was a director on the day the bill was filed—

Mr. Whipple—It will be necessary.

The Master—Or whether he was not.

Mr. Whipple—Very well.

The Master—If he was not, if everybody agreed that he was not, if there is no dispute about that fact, you never would have made him a defendant.

Mr. Whipple—Quite correct.

The Master—You could not have got against him the relief which you ask.

Mr. Whipple—Well, it may well be that it must be postponed to the determination of the fact as to whether Mr. Dittmore was then a director or not.

The Master—And if in Eustace v. Dickey I should find and report that Mr. Dittmore was a director on the date of your bill, I am unable to see what good there would be in proceeding in the other case.

Mr. Thompson—That is what struck me. How does the Governor feel about leaving the question of whether Mr. Dittmore was a director or not, to the evidence as now introduced?

Mr. Whipple—After all, is that question not pretty much a question of law?

The Master—I think so.

Mr. Whipple—And would the addition of any facts do anything more than relieve the minds of the parties who want to make the facts appear?

Mr. Thompson—Well, we are entitled to a hearing on that.

Mr. Whipple—Would it affect, really, the legal position as between them? I have not ventured to say that before, because it did not seem to me that our clients were concerned in that; but as Your Honor has made that suggestion, I perhaps may be pardoned if I state that it seems to me that the matter is clearly one of law upon the documents which are already in the case; and of course this question as to whether Mr. Dittmore was entitled to a hearing is just as important in that case as it is in our own case. I should think that if either of them were entitled to a hearing, they did not get it. I do not think that Mr. Rowlands got it. It does not seem to have been a particularly judicial proceeding either way; I mean I am not—

Mr. Bates—Are you now arguing the case?

Mr. Whipple—No; I was trying not to.

Mr. Bates—Well, what are you trying to do?

Mr. Whipple—Well, the statement of the plain fact is so much an argument that I do not wonder that you mistake it—a convincing and persuasive argument!

The Master—I am convinced that it would be useful for counsel to consider the situation at this point in these respects, fully, and not to have any misunderstanding about it.

Mr. Bates—Do I understand Mr. Thompson to make the proposition that he is willing to rest the Dittmore case where it is?

Mr. Thompson—I did not make that proposition. I threw it out as a suggestion for you to consider.

Mr. Bates—Do you make it as a proposition?

Mr. Thompson—No, I do not make it now.

Mr. Bates—I thought he put the question to me as if he really meant it.

Mr. Thompson—You would like to take that seriously, would you?

Mr. Bates—I will take it seriously if you wish to make a proposition.

Mr. Thompson—I wouldn't make it seriously, sir, without talking with General Streeter. I think it is a question whether or not—

Mr. Bates—Possibly after talking with General Streeter you might make a proposition and we might consider it.

Mr. Thompson—We make no propositions; but I might suggest to you whether or not you are willing to leave the question of the legality of the discharge of Mr. Dittmore, that is, whether you had a right to discharge him without hearing, and, if not, whether he got a fair hearing, and whether it was in good faith, and honest and proper, on the evidence already in, without introducing any more. I don't know whether I will make it or not; it will all turn on what General Streeter says about it. Perhaps he may think that we ought to go further into it and show more facts as to the unfairness and impropriety, and also some records on the relations of the finance committee to the Board of Directors, which we have emphasized in our testimony.

The Master—Of course, in Eustace v. Dickey it is alleged by the plaintiffs—their position is—that while they have made Mr. Dittmore a defendant, they are uncertain whether he was a director or whether he was not. On the other hand, your answer is explicit, to the effect that he was not a director at all?

Mr. Bates—Not at the time of the bringing of the bill.

The Master—And therefore is not a defendant at all?

Mr. Bates—Yes, Your Honor.

The Master—That must be a question that I must decide, mustn't it?

Mr. Bates—Yes, Your Honor; but I called attention to that when they first asked for a postponement, some two or three weeks ago. I thought then it would be difficult, possibly, for Your Honor to come to a conclusion in the Eustace case without deciding the question involved in the second one.

Mr. Whipple—I think, if Your Honor please, that we have gone as far as we would be expected to go in proving that Mr. Dittmore was a director and that we ought to have relief against him.

Mr. Thompson—One source of my hesitation is this. General Streeter is fully as much interested in the welfare of the Church itself, from long association with it, as he is in the cause of his own client. He may say that the evidence which we have ought to be put in for the sake of the movement at large if it is relevant in the Dittmore case, and that nothing ought to be abridged at all. I will take it up with him and let you know what he says.

The Master—If I should hold that Mr. Dittmore was not, on the evidence in Eustace and Dickey, lawfully dismissed, but that he was on March 25, 1919, a director, I think we should hardly go on to try the other case for the sake of the movement.

Mr. Thompson—That is what I thought Your Honor would say.

Mr. Whipple—Especially taking the risk of reversing a favorable decision.

Mr. Krauthoff—If Your Honor please, about October. Is Your Honor so situated that you are going to give all of October to the Dittmore case, if the time is necessary, or were you going to reserve some of October for yourself? The reason I ask is because I have a case in the Supreme Court of Missouri that was continued last April, and which will probably be set for the fourth week in October. Of course I will arrange about that case if it will be in the way of this; but if Your Honor was not going to sit the latter part of October in any event, it would be a courtesy to me if I knew it now.

The Master—If counsel are prepared Oct. 6 to go on without delay or adjournment and finish the Dittmore case, should it be necessary, I shall give all of my time to it.

Mr. Krauthoff—Sit from day to day? I will do the same.

The Master—But I anticipate that there will be difficulty in the counsel giving all their time in October on successive days, one after the other, until it is finished. I anticipate when we get to that point they will be trying to beg off, some of them. In October we cannot have this room, we have got to find another place to have the hearings in, the Superior Court will be in full blast at that time.

Mr. Krauthoff—Well, we will know better in September.

Mr. Thompson—I don't think you will have any trouble in getting an

adjournment for a few days in October, if you want it.

Mr. Krauthoff—It will probably take a week.

Mr. Thompson—Well, a week. I assume that when we start the trial of Dittmore and Dickey in October we will be able to get hold of the trustees' records so far as we want them, shan't we?

Mr. Whipple—Oh, yes; we shall make the trustees' records for the purposes of that hearing equally available to both sides.

The Master—I should also like to be equally well assured by counsel that there will be no breakdown as to the arrangements on Sept. 8, 9, and 10 I have got to make arrangements for those days, and if there is any question about those days I should like to know it now.

Mr. Whipple—There is no question as far as we are concerned at the present time.

Mr. Bates—I know of nothing that will interfere with our being ready.

Mr. Thompson—Neither do I. Of course General Streeter may not be able to be here at that time, but we have made that sacrifice.

The Master—You are not going to insist on his being here, are you?

Mr. Thompson—No.

The Master—Now, on Sept. 8, 9, and 10 are you going to argue and finally submit the case or are you going to have briefs?

Mr. Whipple—It is our purpose so to do.

The Master—Or are you going to leave it on the stenographer's record? I suppose he will be here to take down all your arguments.

Mr. Whipple—It is our thought that we may assist Your Honor by drafting requests for findings of fact and requests for such rulings of law as may be necessary, and it was our thought that we should add to our requests for rulings the citations or authorities which Your Honor might desire to consider. As to the requests for findings of fact, we expect to append to each one a statement of the page in the record where the evidence exists upon which we base the request. That will constitute our argument, largely, because we think that if we point out the fact which we think ought to be found, logically and chronologically, that it is not necessary to add very much by way of comment to that.

The Master—That strikes me favorably. I think if you can work it out in that way, concisely, and not make it too complicated, that that would assist matters very much.

Mr. Whipple—We have thought that a citation of the places in the record where the evidence is upon which we rely to establish our different propositions would be the most helpful thing we could do for Your Honor.

Mr. Thompson—Has Your Honor any view as to that question of sub-

mitting the Dittmore case, the question of the illegality of his dismissal, on the evidence already in in this case? Has Your Honor any view of the law relating to this controversy which we would be entitled to know, and which it might be proper for us to know and which might help us to decide that question?

The Master—View of the law? I do not quite get your meaning.

Mr. Thompson—Of course, I am speaking only of the discharge of Mr. Dittmore as a director under the By-Laws, not of course of the discharge of Mr. Dittmore as a trustee under the deed of 1892, which I suppose will depend on wholly different principles. But confining ourselves to the main question here, which is the discharge of Mr. Dittmore as a director under the By-Laws, to which he has submitted as such, of course if the majority of the directors have arbitrary power, without any reason given to themselves or others, then the case would be much simplified; but if they can only dismiss after a visit by the Finance Committee, or, without that, on charges such as they made, they were free of course to make charges, and we assume therefore they thought they ought to have some evidence of them—if they can only dismiss on charges proved, why, it would seem then that it was quite clear that Mr. Dittmore did not get a hearing in the sense of the four authorities which I submitted to Your Honor a few days ago, and which I hope Your Honor has read, at least some of them.

The Master—I won't go any further at present than to say this. The primary question is, isn't it, was Mr. Dittmore lawfully dismissed, under the By-Laws?

Mr. Thompson—Yes.

The Master—If he was, what effect had that, if any, upon his position as trustee under the deed?

Mr. Thompson—Yes.

The Master—That is the order in which the questions occur to me.

Mr. Thompson—Yes.

The Master—The power of dismissal under the by-laws is on its face, perhaps, or perhaps is not—that is one of the questions I have got to hear counsel about—an authority justifying arbitrary dismissal, without a hearing; as if it said, "Each director shall hold his office at the pleasure of the others."

Mr. Thompson—Yes.

The Master—Though even when an office is held at somebody's pleasure—merely that, as I understand it—there is some little doubt then whether notice and hearing are not necessary.

Mr. Thompson—Yes.

The Master—And of course I suppose counsel all agree with me that, as a general principle, arbitrary dismissal under those circumstances is not looked upon with great favor by the courts.



Mr. Thompson—Is not looked upon?  
The Master—Not looked upon. That is about as far as I have got with the law. I haven't said anything that counsel do not agree with me in so far, have I?

Mr. Thompson—I don't think so.

Mr. Bates—Not as I understand Your Honor's statements.

Mr. Thompson—Now, on the question of documentary evidence that we may introduce in Dittmore and Dickey, some of it, not all, would bear upon the historical question of the meaning of Article I, Sec. 5, that they may be dismissed by "A majority vote or the request of Mrs. Eddy," and the relation of that to this section about the Finance Committee and the whole history of discipline in the church, and the comparison between this By-law and many others, relating to discipline, of many other people, in every one of which a hearing was required. Presumably one was supposed to be necessary here, and that would bear upon the construction of the document. Then, of course, if a hearing was required, why, there would hardly be any doubt that we didn't get one.

The Master—What about that by-law—a majority vote and the request of Mrs. Eddy?

Mr. Thompson—I beg pardon?

The Master—What about that by-law—a majority vote and the request of Mrs. Eddy?

Mr. Thompson—Yes; that was the way—

The Master—A majority vote or the request of Mrs. Eddy, shall dismiss.

Mr. Thompson—It used to be a majority vote and the consent of Mrs. Eddy.

The Master—That is something we have got to consider there, I suppose.

Mr. Thompson—I think so. It now reads "A majority vote or the request of Mrs. Eddy."

The Master—It used to be "A majority vote and the consent of Mrs. Eddy."

Mr. Thompson—Now, Your Honor heard the evidence that Mrs. Eddy provided that that particular by-law should never be changed without her expressed consent to that particular change, and no evidence of that has ever been introduced.

The Master—That is a question we have got to discuss, isn't it?

Mr. Bates—Why, certainly, Your Honor; but of course we do not agree with Mr. Thompson's statement as to what the evidence discloses.

The Master—I did not suppose you did.

Mr. Bates—No. We claim that the assent of Mrs. Eddy to that by-law has been shown in evidence, and we shall be able, I think, to point it out to Your Honor satisfactorily.

The Master—Well, that is one of the questions I expect to hear counsel fully about. Now, what do you say about filing briefs at the time of the

arguments? Are you going to file anything of the kind?

Mr. Bates—I had assumed that, probably, it might be helpful to file briefs in which we would have citations to the evidence upon which we relied, and, if it is Your Honor's pleasure, we should be glad to do so.

The Master—I thought you would probably both want to, and I thought it would be a good idea to get it arranged and understood now just what the course of procedure would be in that respect. Mr. Whipple has told us what he proposes to do. You say that you propose to offer something in the shape of a brief?

Mr. Bates—Yes, Your Honor.

The Master—How about you, Mr. Thompson?

Mr. Thompson—Why, our argument in this case will be much simpler, of course, than in Dittmore v. Dickey, where it will be much more difficult. My idea has always been in these masters' hearings to make requests for findings of facts—that I think would be a very important matter—and rulings of law. Under the circumstances, under the rule sent to Your Honor, I do not know what they would be. If I saw fit to write a brief, I should like to be in position to submit it.

The Master—By a brief I don't mean exactly what you do.

Mr. Thompson—I mean on the law and the facts.

The Master—I do not mean long arguments with extracts or quotations from various decisions.

Mr. Thompson—No, I am talking about a brief more on facts than on the law. A brief on the facts amounts to little more than what Mr. Whipple suggested besides rulings of fact with citations of testimony.

The Master—Findings of fact or rulings of law.

Mr. Thompson—Yes; backed up by citations.

The Master—Probably there will have to be those in this case, won't there?

Mr. Thompson—I think so.

The Master—In some form, and the simpler you can make them the better. If you get them long and complicated, one drawn on one plan and the next drawn on another plan and the third one on still a different plan, the work of bringing it down to where it ought to be will be, you see, rather difficult.

Mr. Thompson—May I ask about the law? Mr. Whipple has raised that point. Your Honor does not feel that, under the rule to you as issued finally by the Supreme Court. Your Honor has any authority to pass on the fundamental question of law here as to whether or not Mrs. Eddy, as matter of law, intended to give an arbitrary power to the majority or not, do you? That is, you do not feel that you have jurisdiction to decide the case, but only to find the facts on any theory of law which may seem possible?

The Master—Well, the way I have

looked at that so far—that would be a matter that it would be well for counsel to consider, I think—is this: that I have got to find as a matter of fact whether, on March 25, Mr. Dittmore was a director or not?

Mr. Thompson—Yes.

The Master—And to rule on matters of law so far as the law is involved in that result.

Mr. Thompson—That is, your finding would take the form, "I find that on March so and so Mr. Dittmore was a director."

The Master—Was or was not?

Mr. Thompson—Was or was not a director.

The Master—Yes.

Mr. Thompson—But you would find, so far as that decision depended on questions of law—like, for instance, the construction of written documents, you would not attempt to pass upon that finally; you would find facts fitted to either alternative theory of any decisive question of law, would you? That is, you would not foreclose us on the facts that might sustain some theory of law which Your Honor did not adopt?

The Master—I can deal with that much better when I have the concrete point before me.

Mr. Thompson—Yes.

The Master—I find it hard to take it in the abstract.

Mr. Thompson—I see. Well, here would be a good illustration: If Your Honor decides as matter of law, that the power to discharge a trustee or director was arbitrary and capricious, not controlled by any principle of justice or reason, then it would be unnecessary to pass at all upon an enormous number of questions of fact here. Your Honor would not, however, for that reason—

The Master—Find as a matter of law?

Mr. Thompson—Yes. Suppose that Your Honor ruled on the construction of these documents, assisted by such facts as you thought had a bearing on the construction, that the power of discharge was absolute, capricious, and might be exercised without any regard to justice or reason at the will of the majority; suppose that both the trustees and the directors held their offices at the will of a majority of the directors; suppose you believed that to be the true theory of these By-Laws: Then it would not be of any consequence, would it, whether Mr. Dittmore had or had not received a fair hearing? It wouldn't be of any consequence whether these efforts of Mr. Neal, which he has told about, to pick up facts on hearsay constituted a fair hearing. You would say that it is of no consequence, that no hearing was needed. In other words, the adoption by you of a theory of law such as I have indicated would sweep out of the case a large number of questions of fact.

My point is this, that no adoption by Your Honor of any theory of law,

however decisive, can exempt Your Honor from the necessity of finding whatever facts may be necessary to be found to give applicability to some other and contesting theory of law. The Supreme Court will finally decide which theory of law is to be decisive to determine the case.

The Master—As far as I follow you, I think that I agree with you; but we shall evidently have a good deal to do in settling the report.

Mr. Thompson—Yes.

The Master—I shall have to submit, in the first place, a draft report, to each of you. You will thereupon have to file suggestions and objections. Probably we shall have to have a hearing on these—perhaps more than one hearing.

Mr. Thompson—I am afraid so.

The Master—And it is at that stage that we can most usefully discuss all these matters that you now suggest.

Mr. Thompson—Certainly.

The Master—And it was those steps of the process which I had in mind when I said that I could not undertake to promise that I could get a final report into court between Sept. 10 and Oct. 6.

Mr. Thompson—From what I have seen of the attitude and capacities of the various parties here, I should think it would take fully as long to settle upon the final report as the case has taken so far.

The Master—Twenty-eight hearings?

Mr. Thompson—I am afraid so. I had 16 to 18 hearings to settle a bill of exceptions in a case against the New York Central Railroad, and that was more than was necessary to try the case.

Mr. Whipple—It may be that we shall be spared that because the case of Eustace v. Dickey is now concluded, and it may be that Your Honor will find it necessary to decide either that Mr. Dittmore is or is not a director in that case, and if it is decided in that case, I suppose it is res judicata.

Mr. Thompson—What is that?

Mr. Whipple—I say if His Honor, upon the evidence which is now in in Eustace v. Dickey, should finally decide he either is or is not a director, I should suppose it would be res adjudicata.

Mr. Thompson—I should hate to be precluded from trying Dittmore v. Dickey.

The Master—It won't be res adjudicata until the Supreme Court has passed upon it.

Mr. Whipple—That is quite true, until it is finally decided.

Mr. Thompson—I do not want to consent to that.

Mr. Whipple—Of course, it is conceivable that upon the evidence as it now stands, His Honor will make a finding of fact, and still, upon further evidence, might be convinced that the decision should be reversed.

Mr. Thompson—All I want—

Mr. Whipple—That is an interesting sidelight on the situation.

The Master—These difficulties all look pretty formidable when they are viewed from a point so far away, and I hope that some of them will disappear when we get close to them. I certainly do not mean to have 28 hearings to settle the report, if I can help it.

Mr. Thompson—I hope Your Honor will not be required to.

The Master—And I think I shall be able to prevent it. I don't know.

Mr. Thompson—I do not think we shall ask Your Honor to occupy that amount of time.

The Master—There is only one more point that I want to call to the attention of counsel, to the effect that a brief on all this situation about the deeds would be likely to assist me a good deal, and their bearing on the By-Laws.

Mr. Whipple—We have undertaken to look up those matters to find what deeds there are, especially deeds which bear upon the question of the authority of the directors or trustees under the trust or various trusts which have been created.

The Master—And the relation of the trust deed there—the fact of what the trust deed says about "shall constitute a corporation." That requires a good deal of looking into, I think, at present.

Mr. Whipple—Of course. The Christian Science Board of Directors are recognized and at times apparently have claimed to be a corporation; at another time they claim to be church officers. There are some very interesting questions there as to what they really are.

The Master—The matters have developed into a good deal of confusion there, I think.

Mr. Whipple—And then apparently there is one gentleman who is or may be a church officer, if directors can elect church officers rather than members of the church themselves; but he certainly is not a trustee under the deed.

The Master—The statute does not make the deacons, wardens, and the like of that much of a corporation, after all.

Mr. Whipple—Not very much of one, but still—

The Master—They may be deemed a corporation for one purpose, that is, holding the title. That is all they can do. They cannot convey as a corporation. Later on in the statute it is provided that deacons cannot convey without the consent of the Church or a committee, and the wardens without consent of the vestry, and the Methodist trustees without the consent of the Conference. Now, how much of a corporation does that leave, anyhow? And then by the statute, these officers who are to be deemed a corporation for the sake of holding title merely, must be similar to the deacons of a

Congregational church, the wardens of an Episcopal church, or the trustees of a Methodist church. I happen to know something about the situation about deacons and about wardens; but just where trustees of a Methodist church stand I do not at present know. I suppose somebody will be able to inform me if it should be necessary before we get to that point.

Mr. Whipple—I understand that Governor Bates is the highest authority on that.

The Master—But those deacons and wardens are certainly people who are elected.

Mr. Whipple—Yes, Your Honor.

The Master—By the society to which they belong. Are we going to say that officers who are not elected but are a self-perpetuating body are similar to those mentioned in the statute? And if we said they were not similar, where would that leave us?

Mr. Bates—I think the Supreme Court, in the case of Chase v. Dickey, rather considers that question and has determined that they are.

Mr. Whipple—Are what?

Mr. Bates—Under that section of the statute that they are similar; they are a corporation under that section of the statute.

The Master—If the Supreme Court said so, that they are similar to a corporation, that relieves me of all difficulty.

Mr. Bates—I think it is in regard to that very point.

Mr. Whipple—I was not aware of that.

Mr. Thompson—In that event would—

Mr. Bates—I was reading the case no more recently than this morning, and I am quite certain in regard to that statement.

The Master—You think that that difficulty is all cleared up?

Mr. Bates—Yes, Your Honor; cleared up by the highest tribunal in the State.

Mr. Thompson—If that is the case, what do you think about the effect of a dismissal of a man who is trustee under a deed of 1892? That is what troubles me.

Mr. Whipple—And also who is a member of the corporation?

Mr. Thompson—Yes, a member of the corporation and trustee, holding title to all your property.

Mr. Bates—I don't know now just what you are talking about.

Mr. Thompson—That is a matter that had been talked about here.

The Master—Well, all these cases that we have been referring to will be brought in when we come to consider the arguments.

The Master—Is there anything more we want to say?

Mr. Krauthoff—Your Honor made one statement that interested me. You said, as I understood it, in Dittmore v. Dickey, you would have to determine ultimately the fact whether or not Mr. Dittmore was dismissed

Sept. 3, 1919

TWENTY-NINTH DAY

Room 707, 53 State Street, Boston,  
Massachusetts.

Wednesday, Sept. 3, 1919.

Proceedings at a conference between the Master and the counsel for the respective parties held at the office of the Master, at 10 a. m., relative to the order of procedure at the presentation of the final argument, to be made on Sept. 8, 1919.

The Master—All right, Governor. We have got everybody here now, have we, that we want to have?

Mr. Bates—I think so. Mr. Dane was coming down, but we do not need to wait for him.

The Master—I have got all your various letters, gentlemen. The last communication, I think, was from Governor Bates, or his firm, dated Aug. 30. I did not see very well how I could answer that until I had heard from the other counsel, and I have received nothing from any of them dealing with the matter which Governor Bates brought up. So you understand now why you have not received any answer to your letter, do you, Governor?

Mr. Bates—I assumed, Your Honor, that was the situation.

The Master—Going back a little further, there were some letters suggesting that Senator Works should have leave to file a brief. To that suggestion, made by Mr. Whipple, General Streeter and Mr. Thompson assented, and so informed me, but Messrs. Bates, Nay, and Abbott dissented, and so informed me. Am I right about that?

Mr. Bates—Yes.

The Master—Now, as to that matter of Senator Works filing a brief, I hardly think that I have got authority to allow him to. Here is the case sent to me under Judge Loring's rule, to hear the parties and report the facts. There has been a hearing at which Senator Works did not appear to represent anybody. In fact, he now, as I understand it, desires to file his brief only as an amicus curiæ. I hardly think that, against objection, I have the authority to say that he may file his brief, though I may say I do not see why anybody should object. We all of us want all the light on this case that we can get. What harm can it do? That, however, is not my business, and if anybody does object, my ruling will have to be that I haven't any authority. So much for that matter. I think we may consider that part of it disposed of.

Mr. Whipple—May I say just a word in connection with that?

The Master—Yes.

Mr. Whipple—We do not wish in any way to be understood as advocating anything in regard to Senator Works and his desire to file a brief. It happened on one occasion when I was in Washington, I met the Senator,

and therefore enjoy his personal acquaintance. Later, he wrote a letter embodying his thoughts on this subject to Mr. Krauthoff, and he sent me a copy of it, saying that he did so because of his personal acquaintance, and reminding me of the time that we met in Washington. Later he asked me—I assume on those same grounds—to present his request to the Master, and as I did not respond promptly, he asked if I did not care to do it that he might be permitted to send it, or make the application direct to Your Honor. So we feel about it just as I stated in the letter which I sent to Your Honor, copies of which I sent to the other side, that none of the trustees were afraid of anything that anybody cared to say that was important. We wanted all the light on the subject we could possibly have, and as a matter of courtesy to the Senator we presented his request. We understand that we have your permission, in connection with that ruling, now to present that request to the Court, and that Your Honor will receive the brief, as an amicus curiæ, I take it, if the Court thought it was proper to do so.

The Master—I see no objection to that. Now, as to that point, what is there to be said? You did receive a copy of Governor Bates' letter to me of Aug. 30. Is there anything more on that?

Mr. Whipple—We had understood, as a result of what was said in one of the closing days of the hearing, that both the matters referred to in the communication of Governor Bates were settled, and settled, or one of them at least, in a way just the opposite from the suggestion of the Governor. He says in his letter, "We propose to confine our argument to the issues of fact raised in the case of Eustace et al. v. Dickey et al., and not to argue the question of Mr. Dittmore's status as a director." To our mind, and in accordance with what we thought Your Honor stated, as appears in the record, those two things are exactly contradictory. In other words, you put the question as to whether Mr. Dittmore's status as a director was not an issue in Eustace v. Dickey, and we had all understood—representing the trustees—that it was clearly a fact that the status of Mr. Dittmore was involved in Eustace v. Dickey. You put some direct questions to Governor Bates as to whether he had not denied in his answer that Mr. Dittmore was a director, and thus raised the issue, and if Mr. Dittmore, who was another defendant, had not asserted that he was, and thus raised the issue. I do not know that I need at this time to refer to what was said by Your Honor, and said by all the parties on that subject, but we certainly had understood that we were to argue the question as to whether Mr. Dittmore was a director. We have made our preparations accordingly, and we regard it as of very considerable importance in the

from the board. I suppose in Eustace v. Dickey, then, you should determine whether or not Mr. Rowlands was removed.

Mr. Thompson—What do you mean by that?

Mr. Whipple—I supposed that was what the suit was brought to determine.

Mr. Krauthoff—What I meant to say was whether, as master, you would find each separate incident of the case and stop, or whether you would find the ultimate facts?

The Master—Whether Mr. Eustace was removed? You do not mean that?

Mr. Krauthoff—Mr. Rowlands.

The Master—Mr. Rowlands.

Mr. Krauthoff—Because the ultimate fact would be a conclusion both of fact and law, wouldn't it?

Mr. Thompson—Well—

The Master—I suppose that the validity of Mr. Rowlands' removal must be a matter on which I have got to pass undoubtedly. Isn't that so?

Mr. Whipple—That was the object of my bringing the bill.

The Master—I thought so.

Mr. Krauthoff—Of course, the ultimate fact would be a conclusion both of fact and law. I was only asking to be advised whether the Court would ultimately find the ultimate facts, which would depend both upon questions of fact and of law, or whether the Court would merely find each successive incident, leaving the conclusion of them to be supplied by the Supreme Judicial Court.

Mr. Thompson—That sounds like an elementary law lecture.

Mr. Krauthoff—Perhaps it is elementary.

The Master—The bill alleges and the answer denies. I think, that Mr. Rowlands is a trustee.

Mr. Whipple—We allege that he has not been removed.

The Master—Haven't I got to say whether he is a trustee or not?

Mr. Krauthoff—I was asking how you understood it. I am not presenting my view. I just want to know so as to be ready to argue.

The Master—That is a conclusion of fact, I take it.

Mr. Krauthoff—Very well.

The Master—Depending upon the conclusion in regard to a good many questions of law.

Mr. Krauthoff—That will be passed on by Your Honor, as I supposed.

The Master—I will pass on that.

Mr. Whipple—I should suppose so; otherwise we brought our suit in vain. Do we adjourn now until 10 o'clock on Sept. 8?

The Master—Yes, 10 o'clock on Sept. 8.

[Adjourned to 10 a. m., Monday, Sept. 8, 1919.]

case—that issue—especially in view of the fact that Mr. Dittmore who seemed to be the prime mover in the action against the trustees has had all the grounds on which he tried to take action or advocated action taken out from under his feet, and his charges or so-called charges have all been excluded in this case. Of course, from that situation, argument can be made, as we believe, of a persuasive character, with regard to the action of the other directors. I do not find it necessary more than to refer to the fact that the church directors and The Christian Science Board of Directors are not the same body, a fact which has developed in the evidence, which the plaintiffs did not know when they brought their bill. The Christian Science Board of Directors are trustees under a Trust Deed, and whether Mr. Dittmore can be removed, or has been removed, as a trustee under that Trust Deed, or whether he is still a member of that corporate organization which received the trust of 1892, is important to determine, and is important for our own case. We therefore hope that what Your Honor stated will be adhered to, and that the question will be determined in this suit, for the purposes of this suit, whether Mr. Dittmore was a director, or is still a director or not. If he is not, I must confess I do not see that we get anywhere by the argument. I am afraid we do not. I am afraid you cannot make any report until that question has been determined. If the other suit had not been brought, then clearly that case would have to be decided in *Eustace v. Dickey*. The fact that another suit has been brought to determine it, it seems to me, cannot change that situation at all. That is all I care to say at the moment.

Mr. Thompson—Does Your Honor care to hear from us on the subject?

The Master—Yes.

Mr. Thompson—We have very decided views on what the real situation here is. Perhaps Your Honor would like to have me state them, or intimate briefly what they are.

The Master—Well, anything not already stated by Mr. Whipple. I do not know as there is any use of repetition.

Mr. Thompson—I do not intend to repeat what Mr. Whipple said, because what he has said has a bearing on the situation as it affects his client, and he has not undertaken to, and couldn't well undertake to state what the bearing of this request of Governor Bates may be on the situation of Mr. Dittmore personally.

Now, it has been, from the very outset of this case, an increasingly important question for Mr. Dittmore whether any part of the issues on which his incumbency of that office depends was to be decided in this case. Therefore, at an early stage of the hearing in this case I myself raised that issue, and I kept on raising it in the discussion which occurred on the last day

of the formal introduction of evidence, which may fairly be called a discussion at the close of all the evidence, and at a time when such a discussion was peculiarly appropriate. I took pains to raise the question with great distinctness. Mr. Whipple had previously urged upon our side of the case that we consent to an argument of *Eustace v. Dickey* on Sept. 8. We did not want to do it. Your Honor may remember that we were very reluctant to do it. It was at great personal sacrifice that we agreed to do it. General Streeter had been obliged to leave, and it threw a great burden on Mr. Demond and myself, but we did. We thought it was only fair that we should do it, especially in view of the even greater urgency of Governor Bates that that should be done.

I call your attention to what Governor Bates said on page 743 of this record:

“Mr. Bates—I am hoping that Your Honor will find a way, as Your Honor suggested you would try to do, to close up the *Eustace* case without its being delayed; and I had assumed that that was the expectation; because if that case was to be delayed by the *Dittmore* case, it would present a much more serious complication. In that case there is the injunction (that is in the *Eustace* case) which is seriously interfering, and I think that that case (that means the *Eustace* case) should certainly be disposed of at the earliest possible moment.”

Now, that was said after I had called attention publicly to the difficulty that might arise in determining Mr. Dittmore's status on the evidence in this case, and after the Governor said it, I again called attention to it for the very purpose of clearing the atmosphere so that whatever arrangement was finally made might be made with full knowledge on the part of the Master and other counsel concerned of what the consequences of the agreement then made were to be.

Now, in the light of everything that was then said, Governor Bates urged, and persisted in urging, as did Mr. Whipple, that the *Eustace* case should be argued and disposed of, and Your Honor went so far as to say you would try to get a final report ready; you could not promise to do it, but you would try to do it, before the trial of the *Dittmore* case began on Oct. 8. Now, we have acted on the face of what was then deliberately and with full knowledge said and done by all persons concerned. I have lost more than half my vacation, in hard work, getting up a brief. Mr. Demond has done likewise, and General Streeter, as far as he has been able, has been in conference on this subject. We have acted in good faith, and on the understanding that in spite of the theoretical difficulties pointed out, discussed and waived aside at this meeting reported in Vol. 3, it was the intention of all parties that the status of Mr. Dittmore in respect of the legality

of his discharge—I say no more than that—the legality of his discharge on every ground on which it could be attacked or supported was open for argument, and was intended to be argued and disposed of on Sept. 8. On that basis, we have gone ahead and have prepared ourselves to argue that issue.

Now, I suggested to Governor Bates at this same hearing, not as a proposition, but as a thought to be thrown out, to be considered, that perhaps the entire *Dittmore* case and the issues in that case might by agreement be submitted on this evidence. The Governor asked me if I intended to make it as a proposition, and I said I could not without consulting with General Streeter. We have since done so, and there is still some difference of opinion between counsel for Mr. Dittmore as to the propriety of that.

But that is immaterial to the present situation, as well as all previous statements made, or colloquies between myself or General Streeter and Mr. Krauthoff. There are several of them here, in which this subject of the effect on this case of the status of Mr. Dittmore was referred to in various ways. Everything was merged in this understanding, reached deliberately on that last day, so far as the single question of the legality of Mr. Dittmore's discharge is concerned.

When we received this letter from Governor Bates, I was extremely astonished. I could not imagine how he could wait until a week before those arguments, when everybody had relied on the faith of the agreement made there, and then make a suggestion holding it inconsistent with what had been understood, with the necessary consequences of what he had agreed to, whether he perceived them or not. I cannot doubt that the Governor must have conceived the consequences of his urgency. I was astonished to receive this letter. It certainly could not have occurred to Governor Bates, could not have been in his mind when he was urging that the *Eustace* case be disposed of, that one of the principal issues in this case should not be disposed of. It could not have been in his mind when he asked you to make a report, if you could, before Oct. 8, that your report should not be one which could possibly be confirmed by any judge, because it omitted one of the prime issues in the *Eustace* case, namely, who is the fifth defendant, Mrs. Knott or Mr. Dittmore? I think we all had a right to assume, and we all did assume, that without any agreement expressly to submit the *Dittmore* case on the evidence in *Eustace v. Dickey*, but as a necessary consequence of the agreement, it should be argued and decided; all the issues in the case should be argued and decided, including the question of the legality of Mr. Dittmore's discharge. Consequently, we feel inclined to make the most earnest protest within our power

against the suggestion that at this stage in the case, when we have acted on the theory, acted on the agreement then made, we should be told that it should be ruled, or for any reason should be suggested, that an issue which was fairly presented and which had been fairly tried should not be argued now, but should be postponed to some future time.

I do not make any suggestion that Governor Bates has intended to take advantage of us. Of course he has not; but I do say that the necessary consequence of his proposition is to put in a very disadvantageous position, namely loss of vacation and a lot of useless work, people who have relied in good faith upon the plain and necessary consequences of an agreement entered into by him with the utmost deliberation, with full knowledge and perception of all the consequences of the agreement then made.

Mr. Whipple—May I, before you go forward, call attention to what I referred to, so that we may have before us just what was said?

The Master—I read that all over yesterday afternoon.

Mr. Whipple—I rather assumed you had. I am referring to page 743. I assumed that Your Honor had, so I did not recall that specifically.

Mr. Bates—If Your Honor has that in mind. I understand by what Mr. Thompson has read—I think there is nothing inconsistent in what he has read with my present attitude.

Mr. Thompson—There are your remarks; they are scattered all through there. (Handing record to Mr. Bates.)

Mr. Bates—Well, I referred to what you have read, which is this—

The Master—Do you want all we say taken down and published?

Mr. Bates—Why, I think only Your Honor's finding or decision should be taken down.

The Master—I did not suppose we were going to have stenographers here. However, if you want them, it is all right.

Mr. Bates—I had assumed there might be stenographers for the purpose of taking down Your Honor's statement as to what you thought should be done, but I had assumed that our conference was more or less informal, and it was not necessary to take down everything that was said by attorneys.

Mr. Whipple—I see no reason for its being transcribed, but I see no objection to what is being said being taken down. It is not the purpose of anyone, I assume, to have it go in as a part of the record. It is to be considered as purely informal.

Mr. Bates—Then what I stated was this. Let me preface it by this statement, however. Your Honor will recall that, unfortunately, General Streeter was taken sick, and both Mr. Whipple and myself thought that the Eustace case should not be delayed, but that inasmuch as there were other

counsel, that, at least, should be proceeded with so far as possible, and that then, so far as possible, General Streeter should be accommodated, and his counsel, so far as the Dittmore case was concerned.

Now, at the time this statement was made, we were considering the postponement of the Dittmore case until October, not because we wanted it, because we were anxious to complete it, but because Mr. Thompson insisted (and I think very properly) that General Streeter could not be present under his doctor's advice to take part in the case before October. And therefore, with reluctance, we had conceded and were agreeing that the Dittmore case should be postponed until October, but it did appear that there was an injunction in the Eustace case that was tying up matters badly, and therefore if there was any way by which the Eustace case could be decided, we were anxious that it should be decided, but there is nothing in any statement that I made that in any wise intimated that I was satisfied that the Dittmore case should be decided without the evidence being put in.

Mr. Thompson—That is not the point.

Mr. Bates—I stated in this case (page 743):

"I am hoping that Your Honor will find a way, as Your Honor suggested you should try to do, to close up the Eustace case without its being delayed; and I had assumed that that was the expectation; because if that case was to be delayed by the Dittmore case, it would present a much more serious complication."

Then I go on to refer to the injunction. Now that is what I am still hoping for, but I submit it is not a question of what we want. It is a question of the power of Your Honor to decide under the circumstances the issues in the Dittmore case, if you find it is necessary to do so in order to decide the Eustace case.

Now, if you can find a way to decide the Eustace case without deciding the issues in the Dittmore, that is what I hope will be done, but if Your Honor cannot find a way to decide the issues in the Eustace case without first ascertaining as to the issue in the Dittmore case, then I submit that Your Honor cannot decide either case until after you have heard the evidence in the Dittmore case.

Now, that is not something that we are asking as a matter of our desire. It is a condition that confronts us, and it is a condition that confronts everybody in the same way. This issue, or alleged issue, I think Your Honor may possibly find is not an issue in the Eustace case, and if you do, then you can go on and close up the Eustace case. There is no assertion in the bill of complaint brought by the trustees that makes that an issue. They have brought it against six people, five who were directors

at the time of the removal, and one who is now a director, but who was not a director at that time. They ask for an injunction against the whole six. They got it as against the whole six. Mr. Dittmore went into court at the time that matter was being considered, and his counsel, Mr. Thompson, read a letter from him—

Mr. Thompson—Do you think that should be stated, sir?

Mr. Bates—Well, do you object to my stating it?

Mr. Thompson—I object decidedly to your making any statement.

The Master—Never mind about that. That does not matter.

Mr. Bates—I do not want to make a statement that anybody could object to, but it will be a part of our case to put this in later in connection with the Dittmore case, and I cannot see why we should not refer to it, but if you object to what took place in court that day, I won't refer to it, anything further than to say that the Court thought that the injunction should be continued as against Mr. Dittmore, notwithstanding the fact—I will put it that way; notwithstanding the fact that at that time (and I will say this without any prejudice to Mr. Dittmore's rights) that he stated that he conceded the right of the board, under the By-Laws, and he was not a director—

Mr. Thompson—Oh, no; no such concession was made.

The Master—Why spend time on that? I can't decide that.

Mr. Bates—Then you may consider that out, but it is a fact. I submit this to Your Honor. If Your Honor will look at the Bill in Equity and at the answer, I think you will find the issue as to whether Mr. Dittmore was or was not a director is not raised, and there is a reason for that. He had been a director. There is no question about that, and it is claimed he was one of those who had been issuing propaganda against the trustees' attitude, and he was one of those who were to be restrained on that account, and would be, whether he is now a director or not. The fact that he is out would not make any difference in my opinion. Therefore, I think it is proper for Your Honor to decide this case, the Eustace case, without deciding whether or not he is a director. At any rate, I cannot find it to be an issue raised in the Eustace case.

Moreover, I assume, Your Honor, that the plaintiff could not have raised the issue, and then make us all codefendants in such a way as to have determined that question. The question as to whether or not he had a right to continue as a director is something that would have to be determined by proceedings such as he himself has brought. The fact that he has brought them shows that his counsel thought it had got to be determined in that way.

I cannot understand Mr. Thomp-

son's position, either, when he says the main issue—and, as I think, the only issue in the Dittmore case he would like to submit at the present time, but that he and his associate counsel disagree as to submitting other issues in the Dittmore case. That is the issue, and that is practically the only issue in the Dittmore case, and yet he says here that his associate counsel disagreed.

Mr. Streeter—What do you say is the only issue in the Dittmore case?

Mr. Bates—As to whether or not he was lawfully removed.

Now, that being so, and his own associate counsel agreeing that the main issues, as I understand, of the Dittmore case, ought not to be settled now, why are they not taking the same position that I am taking in this matter? I assume, as I said before, that there may be a chance for Your Honor to settle the Eustace case, on the basis that the Dittmore case is not involved; that the Dittmore issue is not an issue in this case.

The second proposition which I wish to bring to Your Honor's attention particularly in regard to that is this fact that the Court ordered that the two cases be tried together, presumably (for one reason), because the Court recognized that they were involved in such a way that possibly Mr. Dittmore's status would be a question Your Honor would have to decide in the Eustace case. But if so, then the two cases were to be tried together, and determined together. It cannot be possible that we, excluded from putting in evidence in the Dittmore case (as of course there is no question we were excluded from putting in evidence that applied only to the Dittmore case) are now obliged to argue that question on the evidence that has been put in, without the chance to even have that case opened. I assume that would be something that would be impossible. That is the condition that confronts us, also.

I assume Your Honor would feel that you could not possibly under those circumstances make a report, where you had prevented us from putting in the evidence that bore on the question of the legality of Mr. Dittmore's dismissal from the Board of Directors. So that, while I would be glad if the situation were such that Your Honor could hear that issue, I submit we are controlled by the conditions, and the more I saw of those, as I looked it over, the more satisfied I became it was an impossibility to do it; I mean, from the legal standpoint; that it would be open to exception in every way, if it were done that way, and so I thought I ought to notify you and the counsel, in order that the question might be clear, and if I was wrong, I might be straightened out, but I think I am absolutely right. It is not a question I am urging as a privilege or favor to us in any way whatsoever. It is a condition that confronts us, and any other con-

dition would be so irregular that it could not stand.

Mr. Thompson — If Your Honor please—

The Master—Mr. Krauthoff wants to be heard.

Mr. Krauthoff — If Your Honor please, there were one or two further thoughts that I desired to present. Whatever differences may exist among the various counsel that have spoken, I think we all agree on this proposition that whenever the Court is called on to decide whether Mr. Dittmore is a director or not, the Court should be called on to decide it in a form that makes that finding conclusive. And now we have here somewhat of an anomaly on the part of Mr. Dittmore's counsel. We are advised that they expect to argue on Sept. 8, 1919, in the present state of the record, that Mr. Dittmore is a director.

Mr. Thompson—And was illegally discharged.

Mr. Krauthoff—And was illegally discharged; but we are not advised that if that issue is found against them that they will regard that as a final, conclusive determination of that issue, but rather if that issue is found against them, that they still have a lawsuit pending in which they are at liberty to raise it in extenso.

Mr. Thompson—You are now so advised. We now advise you.

Mr. Krauthoff—Certainly no court would tolerate that situation.

Mr. Thompson—You have been advised for nearly 30 days.

Mr. Krauthoff—No court could tolerate that situation, to say, "I will hear you on the 8th of September to argue the points now introduced, and if found against you I will hear you on Oct. 8th."

Mr. Thompson—You are now advised to the contrary. You have been advised for 30 days, exactly to the contrary.

Mr. Krauthoff—I beg your pardon? Let me understand so we will understand as we go along.

Mr. Streeter—Mr. Krauthoff and Mr. Thompson are apparently at cross purposes.

Mr. Thompson—We are not talking about the same thing.

The Master—Let Mr. Krauthoff get through.

Mr. Krauthoff—When we closed the hearing, there was some conversation between Mr. Thompson and Governor Bates as to whether Mr. Dittmore was willing to rest his whole case upon the evidence already introduced in the Eustace case. And Mr. Thompson very properly said he would not answer that question without conference with General Streeter. He tells us this morning that there is still a difference between counsel on that point.

The Master—I do not think we have got much to do with that. Whether there is or not, it does not seem to me significant.

Mr. Krauthoff—Then may I state over again what I said, which Mr. Thompson challenged? Mr. Dittmore does not now say that he is willing to submit finally, on the evidence already introduced, the question whether or not he is a director, but he does say that he expects to argue on the 8th of September, 1919, that on the evidence already introduced he is a director, and if the Court finds that issue against him on the 8th of September, 1919, or thereafter, he expects to go on with his case and litigate the issue, notwithstanding the finding of the Court.

Mr. Thompson—That is not what he says.

Mr. Whipple—Mr. Krauthoff, would I trouble you if I interrupted you and asked whether your clients are ready to submit the Dittmore case today on the evidence as it stands?

Mr. Krauthoff—We have never taken that up with our clients, because the proposition has never been made to us in an authoritative way.

Mr. Whipple—Why should the proposition be made to you, any more than you should make the proposition? Why should you not take it up with your clients, and see whether you will make the proposition?

Mr. Krauthoff—We have not considered it, if Your Honor please.

The Master—Now, go on.

Mr. Krauthoff—The point we desire to make is this. When you do decide that Mr. Dittmore is a director, that you shall decide it once for all, not in the Eustace case, as a proposition that is argued on the 8th of September, and then again in the Dittmore case after all the evidence has gone in. So much for Mr. Dittmore. It is not fair to Mr. Dittmore, and it is not fair to us, to decide this question of the directorship of Mr. Dittmore, as between us, except upon all the evidence that either of us have to offer on that case.

Your Honor will remember that in the course of the trial of the case, when I came to the conclusion of the evidence of Mr. Dickey as to the issues in the Eustace case, I asked for permission then to examine Mr. Dickey on the issues in the Dittmore case, and that permission was denied me, on the ground that when the Dittmore case was tried, that all the evidence that we had to bring out from Mr. Dickey on that question could then be brought out.

So that as between Mr. Dittmore and the remaining directors—the directors as we claim them to be and as he denies them to be—that issue can only be determined at a time and in a place where it is determined once for all, not piecemeal, not provisionally, as between us, not to be taken up again on further and more complete hearings.

Now, Mr. Whipple says he is entitled to have it determined. Well, let us see how far he is entitled to have

it determined. As between Mr. Whipple's clients, the trustees of the Publishing Society, and the six defendants, the legal situation resolves itself into this: that upon the face of the record Mr. Dittmore was removed as a director; that being true, and in favor of Mr. Whipple, that removal is prima facie good; and in the Eustace case Mr. Whipple has the right to a decree against Mrs. Knott as a member of the Board of Directors, and he has a right to dismiss as to Mr. Dittmore if he wants to. If he wants to say further that Mr. Dittmore as an individual was engaged in propaganda, and Mr. Dittmore as an individual was interfering with the work of the trustees, he has the right to test that issue and ask for a decree against him individually; but on the issue tendered in the Eustace case the Court cannot render a decree that Mr. Dittmore is a director or is not a director, in such a way as to preclude that question thereafter arising in a suit between Mr. Dittmore and the other defendants.

Now, that being true, the Court ought not to enter upon that decision at this time, or render any judgment on it nor hear any arguments on it. It is to be settled, when it is settled, once for all.

Now, then, if you produce the situation that the Eustace case cannot be heard or the Eustace case cannot be decided until the Dittmore case is decided, then the result would be a postponement of the Eustace case—something that we are all desirous of avoiding—because, as we see it, the Eustace case can be decided on the proposition whether or not Mr. Rowlands is a trustee without in any way deciding the question of whether, as between Mr. Dittmore and the remaining defendants, Mr. Dittmore is a director. That question arises in the Dittmore case, not in the Eustace case; and a decree can be entered in the Eustace case that protects Mr. Whipple's rights to the utmost, in the event that he may be successful, namely, by enjoining all the defendants from interfering with what Mr. Rowlands does, and setting aside whatever may have been done, all without prejudice to the right as between Mr. Dittmore and the remaining defendants to test out in their own case the question whether Mr. Dittmore is a director or whether he is not. But, as I said a moment ago, to argue on the 8th of September that Mr. Dittmore is a director or is not a director, with the understanding that whichever way you decide it we will all be back on the 6th of October with more evidence and more arguments to the same effect, would be a situation that no court would tolerate for a moment.

Mr. Thompson—I cannot let those statements go by, so far as they purport to be interpreting anything said by me—

The Master—I do not think I need to trouble you gentlemen any further. I am very clear in my mind that in Eustace v. Dickey the issue whether or not Mr. Dittmore was at the time of the filing of the bill a director is an issue raised, an issue raised by the pleadings, and an issue upon which evidence, so far as the parties desired to introduce any for the purposes of that case, has been heard. In the absence of an agreement to the contrary it is clear to me that that issue is an issue of fact upon which I must pass, and upon which therefore I must hear arguments. If the gentleman can agree to anything to the contrary, that is another matter. If you leave it to me to decide, that must be my decision; and if the decision is wrong of course it is open to the parties to correct it by objection and exception in the usual way.

Mr. Bates—I do not know as this is the proper time to do it, and yet I think it is, Your Honor. We should have to take an exception to that ruling, because we were unquestionably several times excluded from putting in the evidence that bore on that question, and we were excluded from it because it was the issue in the other case.

The Master—I think you will find that those were issues more particularly raised by the pleadings in the other case.

Mr. Bates—There is but one question in the other case, and that is as to the legality of his removal.

The Master—Of course that would be an argument open to you, Governor.

Mr. Bates—Then Your Honor will reserve us the exception.

The Master—Pardon me just one moment. (Examining the stenographic record.) It seems to me that that was our understanding on the day of the last hearing. I find on page 743 that I said:

"Of course, in Eustace v. Dickey it is alleged by the plaintiffs—their position is—that while they have made Mr. Dittmore a defendant, they are uncertain whether he was a director or whether he was not. On the other hand, your answer is explicit, to the effect that he was not a director at all?"

Then Governor Bates answers:

"Not at the time of the bringing of the bill."

Then I ask:

"That must be a question that I must decide, mustn't it?"

And Governor Bates said:

"Yes, Your Honor."

That is the way I understood it then, and I am obliged to say that I do not see how I can understand it in any other way now.

Mr. Bates—I do not wish, of course, to prolong the discussion any further than to say that I think that that ruling does and would do a great injustice, by reason of the fact that it is admitted that Your Honor ex-

cluded the evidence that we wanted to introduce on that matter.

Mr. Thompson—We made no such admission.

Mr. Bates—And also by the fact that the Court had ordered these two cases to be heard together.

The Master—Now, if that should be really true, of course you will get all the benefit of it hereafter.

Mr. Bates—Yes; but it seems so plain to me; it seems as though it was putting the whole matter back and into a legal controversy that could be very easily straightened out by the evidence, at least, being heard on that matter before that question is argued.

The Master—In fact, I do not really see how I can avoid deciding that question without some further direction from the Court. I have heard the evidence, the case is set down for argument; I think I have got to hear and decide that issue.

Mr. Bates—May I ask Your Honor what would become of the Dittmore case? Now, assume, for instance, that Your Honor could not decide that question without taking such an attitude in regard to it that it would be somewhat difficult to try the other case out before Your Honor afterward. I want to know if that does not virtually dispose of the Dittmore case without the evidence having been offered in it, pertaining particularly to it?

The Master—I think in the Dittmore case there are a good many grounds against or for the dismissal which are not set up here.

Mr. Bates—I think that is true, Your Honor.

The Master—I think we come down here to a question of law, pretty nearly.

Mr. Bates—I understood Your Honor was going to decide the question whether he was or was not a director, and that of course involves everything in the Dittmore case.

The Master—No, I do not think it does; I don't think so. From what I have got before me in Eustace v. Dickey, was Mr. Dittmore a director or was he not? If I am wrong the Court will straighten me out.

Mr. Bates—Well, I accept Your Honor's ruling, except I want to reserve our rights. Personally I think that we should be as willing to argue the question as anybody.

The Master—It seems to me, Governor, that you agreed with me on the last day.

Mr. Bates—No; I agreed with you in case you could decide the Eustace case without deciding the Dittmore case.

The Master—No; but I asked you whether that wasn't an issue of fact that I have got to decide, and I think you assented then.

Mr. Bates—Well, I certainly never understood that I was assenting to a decision in the Dittmore case without the evidence being put into it.

Mr. Thompson—It is understood under this ruling that we of course—if this is to be decided, as we understood it was to be—of course it naturally carries with it that we have the right to argue the questions at issue, we have a right to argue whether Mr. Dittmore was a director on March 25, the date of the filing of this bill. Naturally, if the question is up for decision, as we believe it is and as Your Honor has ruled it is, Mr. Dittmore has a right to be heard on that subject.

The Master—Governor Bates, as I understand it, now asks me to rule that the question of whether Mr. Dittmore was a director or not be not taken up at this argument and not decided at this time.

Mr. Thompson—Yes, sir.

The Master—That request I am obliged to refuse.

Mr. Thompson—Certainly. There has been some intimation here, or, not here, but we have been advised that there may be a claim made that even if Your Honor should decide as you have decided, and I think as you are justly compelled to decide, that this was an issue to be decided by you, yet Mr. Dittmore would be excluded from any argument on that issue. I want to be perfectly sure that when the time for argument comes Mr. Dittmore has the right to be heard on one of the questions which Your Honor is bound to decide.

The Master—I am going to hear arguments in *Eustace v. Dickey*—it strikes me that I have got to hear all the counsel—

Mr. Thompson—Certainly.

The Master—Who represent the clients in that case. Now, on Sept. 8 where are we going on—in the Fifth Session?

Mr. Whipple—We will arrange that, if Your Honor please; I think it will be in the Fifth Session room.

The Master—If you want to have any more hearings in chambers, so to speak, you are all up in the Tremont Building—

Mr. Whipple—Yes, sir.

The Master—All three of you; and you have got a room up there? Isn't there a directors' room?

Mr. Whipple—We have one, yes, Your Honor.

The Master—Why, if you want to have any more hearings of this sort, couldn't I come up there and save you the trouble?

Mr. Whipple—We should appreciate your kindness in doing it, but we feel as if we are bound to go where you are, but we will arrange.

The Master—This is out of your "beat."

Mr. Whipple—Yes. Very well; we will arrange for any further preliminary or chamber hearings in that way. Would it be out of order for me, as I am interested in this record, to ask Your Honor to ask both the contending parties in the Dittmore case whether they cannot agree that their

case be submitted on the evidence as it stands? Both of them seemed ready to do it when we closed these hearings, and, as near as I can observe, there is a manifest willingness to do it now; but, if I size the situation up, neither one makes the advance.

The Master—You better see if you cannot persuade them.

Mr. Whipple—I thought perhaps Your Honor would be more persuasive than I.

The Master—That is hardly my job.

Mr. Whipple—Why not? (To Mr. Bates.) Are you willing to submit the Dittmore case on the evidence as it stands?

Mr. Bates—We never have discussed that with our clients at all.

Mr. Whipple—Why don't you discuss it?

Mr. Bates—Why, because we were excluded from putting in evidence that pertained to the issue on that case particularly, and Mr. Thompson was allowed in cross-examination—

The Master—You might examine that, Governor Bates, and see whether you were really excluded from putting anything in substantial, in that case.

Mr. Bates—Oh, Your Honor, there was a lot of it.

Mr. Thompson—Oh, no; you will find, Governor, that you are mistaken on that.

Mr. Bates—No, there was a lot of it. We didn't examine any director in regard to it, we never asked a director as to his reasons, or what led up to it; there was no opportunity to put in any part of it.

Mr. Whipple—On the other hand, Mr. Dittmore hasn't testified, either.

Mr. Thompson—No, he has not testified.

Mr. Whipple—He hasn't testified about it at all.

The Master—I think you will find the whole matter resolves itself down to a question of law arising from facts about which you are not much in dispute.

Mr. Whipple—It seems so to us.

Mr. Bates—If Mr. Dittmore's counsel would present that proposition to us we would take it under more serious consideration, and possibly might agree with them, but they have refused to do it.

Mr. Thompson—Oh, no, we have not.

Mr. Streeter—One moment. Suppose, Governor Bates, you go back to your nice office there and sit down with your clients and confer within the next hour or two, and counsel will confer with us. I have hesitated somewhat, but I can see that perhaps it would be better to submit the whole thing; and we will consider it, and get together this afternoon, and see whether you could be persuaded and counsel can persuade me.

Mr. Bates—My engagements are such that I cannot have a conference with my clients to-day, but I expect to have one to-morrow morning. If I hear from you in the meantime so as

to indicate that there will be any advantage in taking that matter up I would be glad to do it.

Mr. Streeter—I see now—I have been sort of an off horse here—from the way things have developed this morning, that there might be an advantage in your considering that question.

Mr. Bates—May I also call Your Honor's attention to the last paragraph of the letter which I sent to you, and state that we have no feeling to express in regard to that other than as stated, but that we mention it here in order that there might not be any misunderstanding. We were a little in doubt. The paragraph reads as follows:

"We assume, also, under the memorandum of Mr. Justice Loring, filed in the *Eustace* case, as to the scope of the rule of reference and by the terms of the rule in both cases, that the Master will only 'find what the facts are on the issue of fact raised by the pleadings,' and not rule upon the legal effect of the facts as found by him, and we are preparing to present our argument accordingly."

Now personally I would be glad to argue the whole case, and would be perfectly willing to, before Your Honor. I simply want an understanding as to just what the limits are in regard to the matter.

The Master—You are both of you, as I understand it, going to submit to me requests for findings of fact and rulings of law. Now, when you do we shall get the concrete question raised in regard to that. We shall have to consider how Mr. Justice Loring's instructions are to be applied. And that is a matter about which, as I look at it, I shall have to hear both of you fully at the arguments.

Mr. Bates—Did I understand Your Honor to say "findings of fact and rulings of law"?

The Master—I suppose that is what you both will ask for.

Mr. Whipple—Yes, Your Honor.

Mr. Thompson—Yes.

The Master—Justice Loring says that I have got to rule the law so far as necessary to find the facts.

Mr. Bates—Yes.

The Master—But that having found the facts I am not expected to make general rulings of law as to their effect.

Now, the difficulty in applying that principle will come when we get down to the exact points and try to apply them; and I shall expect to hear from both of you when we get there. How do you say those instructions are to be applied in this particular case?

Mr. Whipple—Well, if Your Honor please, I think the Governor has made a very fruitful suggestion; one to which I assent, and I hope counsel for Mr. Dittmore will. That is, he says in behalf of his clients that he is willing to submit the whole case and argue all the questions of fact and questions of law. If we agree upon



that, as I agree in behalf of our clients, then we need not trouble ourselves at all with the rule; because that rule is not, or the decisions of the Court which have created the rule are not, for the purpose of preventing a master from dealing with the whole case both upon the facts and upon the law, but it is for the purpose of relieving the Master from any duty in connection with that if he wants to avoid the duty of applying the law to the facts as found by him. This case will be relieved from all ambiguity in that respect if we all adopt Governor Bates' suggestion that we submit and argue all the questions to you—questions of fact, the questions of law that are necessary in order to find the facts, and ultimate questions of law based upon the facts.

Of course the rights of all the parties are protected in case Your Honor should make an error, which none of us think is likely to be the case.

The Master—I do not feel the same confidence.

Mr. Whipple—The persons against whom Your Honor decides will have their confidence very much shaken in the wisdom of the ruling, no doubt. That is an experience that would not be new to Your Honor after many years of judicial service.

Cannot you agree to that, Mr. Thompson, so that we will be free from embarrassment on that subject?

Mr. Thompson—I opposed the limitation of this rule, and went before Judge Loring with a motion that the rule should be in a form which is most often advocated but not often adopted—that the Master should find the facts, rule on the law, and report to the Court. But Judge Loring declined to issue a rule in that form—for which there is a good deal of precedent—and issued it in the form we have here.

Mr. Whipple—And then he said that it covered exactly what you wanted.

Mr. Thompson—He said, except to apply the law to the facts found ultimately and make a finding of fact and decide the case. Now, I am perfectly willing that this rule should be treated as if it were a rule in the form that I wanted to have it originally, as Mr. Whipple said.

The Master—Now, Mr. Thompson, whatever you agree upon, whatever you get all the counsel to agree to—if you are able to get them all to agree to anything—put it in writing so that we may have it in definite form.

Mr. Thompson—Perhaps this might be regarded as an agreement, without having it put in writing. I agree to what Mr. Whipple said.

The Court—No, you always do better in a case like this to put it in writing.

Mr. Whipple—Well, we will have the remarks of the Governor transcribed, and then we will have it understood that we assented to his suggestion.

Mr. Bates—One more query, and that is in regard to the filing of the brief. I do not know, but I assume that our side will be expected to lead in the argument. Mr. Thompson also represents a defendant, possibly he will.

Mr. Thompson—No, I should defer to you entirely, Governor. I think you ought to argue first, we next, and Mr. Whipple next.

Mr. Bates—I assume the defendants have to lead in this argument, and there will be no opportunity for them to reply to what is said by the other counsel. We would like to have our brief, therefore, withheld, until we have heard their arguments, perhaps a matter of two or three days after the arguments, so that we can include in the brief anything which we think may be wise to include as the result of what may be said in argument. I assume perhaps all the counsel would like the same privilege.

The Master—Oh, I do not believe that we shall have anybody excluded from answering an argument which he wants to answer just on account of some order of proceeding. We will avoid that in some way or other.

Mr. Bates—Doesn't Your Honor think it might be an advantage to give us the opportunity to file this brief two or three days after the arguments?

The Master—Why don't you have your brief there, and then if you find anything that you want to answer in the other briefs, when you look at the other briefs, submit a supplemental brief later on?

Mr. Bates—Well, we can do that. I thought perhaps it might be an assistance to all the other counsel to do it the other way.

The Master—Anything you agree on is satisfactory to the master.

Mr. Whipple—It makes no difference to us. We do not intend to make any argument in closing that will be so sophistical that it can be replied to and then prevent any reply being made to it; therefore, we make no objection to any reasonable time given to the plaintiffs to file a supplemental brief if they desire, and to do anything which will assist the master in reaching a right conclusion.

The Master—I understand that it may possibly happen in a jury trial after the end of the argument that a man's mouth is shut although he has got something in his head that he thinks would overcome completely the argument made against him. I do not believe we ever get into such a situation as that before a master.

Mr. Whipple—We do not desire any such, Your Honor.

Mr. Krauthoff—If Your Honor please, before this hearing is at an end I would like to speak to Governor Bates and Mr. Dane and Judge Smith for a moment, if I may.

Mr. Whipple—Before you do that may I offer this suggestion? The privilege was granted to put into the evidence a lot more deeds with the trust or any other deeds given by Mrs. Eddy or to Mrs. Eddy in which trust provisions were created. Your Honor will remember that we each reserved certain privileges in that connection. There are a few deeds which ought to be put in.

The Master—Well, I couldn't admit them, I suppose, now.

Mr. Whipple—Oh, yes, Your Honor; that was all reserved in the record—the right to present them just before the argument. It occurred to me it might be better to do it this morning, if you had the time to give to us, rather than to take up time before argument. Do you want me to refer to them?

The Master—Will you show them, then, to Governor Bates and Mr. Krauthoff?

Mr. Whipple—Certainly. (To Mr. Withington.) Have you the plan?

Mr. Withington—Yes. (Producing plan.)

Mr. Whipple—There is a plan of the property which they acquired, which will be helpful to all of us—we shall have it printed—and a memorandum showing when the different properties were acquired. We want to put in the deeds showing the trusts upon which the different parcels were received. Curiously enough, they are not all the same; and, indeed, the trust deeds vary in their trust provisions a great deal. But of course that all ought to go in. Some of the properties are held by The Christian Science Board of Directors on one trust and some are held on a trust differing in its provisions. Isn't that right, Mr. Withington?

Mr. Withington—Yes.

The Master—Wouldn't you have to do this: Let them take all those papers—it will take them a good while to go over them—and study them out?

Mr. Withington—Most of them have been obtained from Mr. Buffum, who has collected all of these deeds, and this plan was made from a plan which he has in his office, which is also recorded. It is a combination of the two plans. So that in substance all we want to put in is in the possession of the defendants, and I have brought to the attention of Mr. Buffum that if there is anything that is admitted or that they objected to, I think it might be put in subject to their objection or correction, in order that we can have these deeds put in in chronological order with reference to the various parcels; and then, al-

though it would not be necessary to have the deeds copied by the stenographers, they could be printed in one connected portion of the record, so that we would all have those deeds in full before us.

The Master—Will it not be necessary for you to give them an opportunity to examine all those things in connection with the plan?

Mr. Whipple—Certainly, unless they have already done so; but inasmuch as we got the plan and the deeds largely from them we assumed that they knew about them.

Mr. Bates—That reference to Mr. Buffum is to a gentleman in our office, Your Honor.

The Master—Yes.

Mr. Bates—And I presume that Mr. Withington and Mr. Buffum can agree on this.

Mr. Withington—Yes; I think there is no question about it. We have gone over the thing together and we have checked up on the matter of the deeds, and we have agreed as to the only difference in description, as to just the nature of the error.

Mr. Bates—Are you putting in all the deeds?

Mr. Withington—Yes, I should.

Mr. Bates—Everything?

Mr. Withington—The deeds of all of these pieces of property are most of them in. There are about, I should think, seven or eight deeds which are not in.

Mr. Whipple—The purpose of bringing it up this morning was so that we could go ahead with the printing of the deeds, in the chronology of their dates, so as to have them for easy reference. Your Honor will remember that you mentioned the necessity of having some such thing.

The Master—I did. Now, that is what you proposed to print?

Mr. Whipple—Yes, if there is no objection to their being printed.

Mr. Bates—After Mr. Buffum has verified it.

Mr. Whipple—And attached to the record, so that we may have the deeds all printed in chronological order, except that the formal parts of the deeds may well be left out.

Mr. Streeter—Yes.

Mr. Whipple—It is only the description of the property and the trust provisions that we want to have.

Mr. Withington—We can leave out the description of the property because it is agreed as to the description of the property, by reference to this plan, just what it was.

Mr. Whipple—That is also numbered or lettered. In other words, we can give the lot numbers.

Mr. Streeter—Cannot Mr. Withington and Mr. Buffum agree on that and save all this?

Mr. Bates—Yes.

Mr. Whipple—What we want is to be sure that we know what they have a right to agree to. I understand that they may agree upon the deeds to be printed in the chronology of their dates, with the different trust provisions appearing in each deed and a reference being made simply to the number of the lot.

Mr. Bates—Any provision that either party thinks is material.

Mr. Whipple—That is right.

Mr. Bates—For instance, there are the reformatory deeds; I assume you are going to put in the reformatory deeds and the releases?

Mr. Withington—Yes; any instrument referring to any parcel of land is included in the history. For instance, with regard to one parcel of land, the original church, there are two supplementary deeds, or, as you call them, reformatory deeds. We put in everything, everything that is recorded, up to the present time, so that it shows the status of all property held by the directors or which they purport to have the title to.

Mr. Whipple—And the trusts upon which they are held?

Mr. Withington—And the trusts on which they are held.

Mr. Thompson—If Your Honor please, I can see from this discussion that this evidence may have an important bearing on the legal status of Mr. Dittmore in reference to the deed of Sept. 1, 1892, and subsequent deeds. Therefore, although I entirely consent to this arrangement, I should like to have it understood that the filing of our brief may be delayed until we have had an opportunity to go over this matter, which cannot be done until Mr. Buffum and Mr. Withington are through with them, to be sure we have got in all the evidence bearing on this matter which is furnished by this new evidence, which we never have seen before. I never saw it before although I understood there was to be some such evidence.

The Master—If it turns out when you do see it that you need further time probably we can arrange for that.

Mr. Thompson—I don't believe there will be any doubt about it. I understand the order of the argument is, first, Governor Bates, then Mr. Dittmore's counsel, and then Mr. Whipple.

Mr. Whipple—Or the trustees' counsel.

Mr. Krauthoff—Before this hearing is adjourned I want to speak to my associate counsel for a moment.

Mr. Bates—Will Your Honor excuse us just a moment?

The Master—I don't believe you needed my permission for that.

Mr. Bates—I think that is all, Your Honor, so far as we are concerned.

Mr. Whipple—I understand that it is felt that this being an integral part of the record it ought to be taken, transcribed, and published just like the rest. Does Your Honor see any objection to it?

Mr. Thompson—We think so strongly.

Mr. Whipple—The suggestion is made that the field, as it is called, that is very much interested in this whole matter, will or may feel that there has been some sort of a proceeding which is secretive.

The Master—That is a matter for you to settle, not for me. I think you have printed too much already.

Mr. Whipple—If this were to be gauged by the ordinary canons of a lawsuit I should entirely agree, but if any less had been done I do not believe any of the parties in litigation would ever have gotten over the resentment that would have been felt all through this country by Christian Scientists that they had been deprived of a knowledge of things that were going on affecting seriously the religious interests of their denomination, and what has been published has been by the agreement of all the parties.

The Master—I will leave you to agree about this.

Mr. Whipple—All right. Then I suppose it should go into The Monitor.

Mr. Bates—I understood it to be agreed that it was not to be published, and our remarks were made accordingly.

Mr. Thompson—You heard no such agreement from Mr. Dittmore. There was so much talk we didn't have a chance to slip in a word anywhere; but we are believers in the utmost publicity and think that every word ought to be published, especially as we may be misrepresented even more than we have already been if publicity is not given to it.

Mr. Bates—If His Honor thinks it should be published I have no objection. It is immaterial.

The Master—No, I do not think so.

Mr. Whipple—I do not think any responsibility should be imposed on His Honor in the matter at all.

The Master—If I had the power to rule I should rule it should not be published.

Mr. Bates—Well, I think Your Honor ought to have the power; I cannot see any advantage in publishing it.

Mr. Whipple—Well, I think we shall have to leave it to the publishers of The Monitor and let them deal with it as seems best. I have no preference about it, except to do whatever will meet the approval of the most people who are interested in Christian Science.

[Adjourned to 10 a. m., Monday, Sept. 8, 1919.]

[Short recess]

Friday, Sept. 5, 1919

Remarks of Court and counsel in re Eustace v. Dickey et als before Mr. Justice Loring, Supreme Judicial Court, Boston, Massachusetts, September 5, 1919, on informal motion as to request of Mr. John D. Works of California, to present briefs to Judge Dodge, Master.

Mr. Whipple—In this case, if Your Honor please, Your Honor issued the rule to the Master and there was some discussion as to the form of the rule, and Your Honor rendered a written memorandum with regard to it, but very likely your attention was not called to the issues in the case and possibly you haven't even any memory in regard to it.

Mr. Justice Loring—No; I merely dealt with the form of the rule to the Master and what it contained. I thought the motion was made under a misapprehension as to what was open under the ordinary form of rule, that is all. I didn't have occasion to go further.

Mr. Whipple—Then perhaps it would be useful if I took a moment to state the issues in the case.

Mrs. Eddy, the Founder of The Christian Science Church, executed a Deed of Trust conveying property in trust to three trustees known as The Christian Science Publication Society. This was in 1898. Previous to that she had conveyed some Church property to four trustees called the Christian Science Board of Directors. This was in 1892, and she had outlined in that deed the duties of what we will call the Church trustees. Although they were called directors no church at that time was in existence.

The suit is brought by the first-named trustees of the Publishing Society to enjoin the other trustees, or directors, from interfering with their work which they say they are performing under the terms of the Trust Deed from which they received their appointment. The beneficiaries of this trust which created the Publication Society is, or at least one of them is, what is called The Mother Church, the principal Christian Science Church, called The Mother Church, which is located here in Boston. The Christian Science Board of Directors under the earlier trust have assumed the right to act as trustees of The Mother Church and are recognized as representatives of the Church and therefore representatives of the beneficiary under the Publication Society trust. The suit, as I say, is by the trustees of the Publication Society against the Church trustees, to prevent interference in the performance of their functions, and that dispute was referred to Judge Dodge with counsel appearing of record.

Mr. John D. Works, who was a former United States Senator from the State of California, is a prominent Christian Scientist, and is a member of The Mother Church here in Boston.

The membership of that Church extends throughout the United States. He some little time ago, under date of July 25, being much interested in the matter, and following the evidence which was being put in before the Master as it was published in the daily paper, felt convinced apparently that neither side was considering some of the questions which were of vital importance as affecting The Mother Church, the beneficiary under the trust, and he addressed himself in a communication to that effect, to Mr. Edwin A. Krauthoff, who was one of counsel of the defendant directors. I happened to have met Senator Works in Washington, when he was a member of the Judiciary Committee of the United States Congress, and knew of him there as a gentleman of very high standing as a lawyer and high standing as a man. On account of that incidental acquaintance he sent me a copy of the letter which he sent to Mr. Krauthoff, referring in that letter to the fact that we had met in Washington. It may be that Your Honor will care to run your eye over that letter in determining this question. Later I heard, after acknowledging the letter, from Senator Works, to the effect that he would like permission to file a brief as *amici curiæ* representing, if he might, The Mother Church, which is the beneficiary under both trusts—under our trust as well as that of the directors—in order to present some views that he says were not being presented or contended for by either side. Upon receiving that communication I undertook merely to forward the Senator's request to Mr. Dodge, with the assent of the trustees, the plaintiffs, whom I represent in association with other counsel. I sent a copy to Governor Bates asking, or inviting his assent and also to General Streeter and Mr. Thompson, who represent one of the defendants, Mr. Dittemore, whom the other defendants had attempted to eject on the same day within 15 minutes of the time they attempted to oust one of the trustees. General Streeter and Mr. Thompson signified their assent to its being filed. Governor Bates and his associates object to its being filed.

I am not speaking now in advocacy of the views represented by Mr. Works, because I think they do not accord altogether with those that the trustees entertain. I do not think they accord wholly with any of the contentions or views represented by the contestants. I do think, however, they are views of great importance. I think Mr. Dodge may be assisted in the solution of his difficulties by the expression of those views. At all events it seemed to us that if anyone standing as Senator Works does, a member of The Mother Church, desires to express views with regard to the situation as *amici curiæ*, that it should be permitted.

We presented before Judge Dodge, or at least we appeared before Judge

Dodge on other matters and brought up the matter of his receiving Senator Works' briefs which had been sent to me. The Senator had wired me that if I were unwilling to present his application to Judge Dodge he would like to get Judge Dodge's address so he could communicate with him directly. In the meantime I had presented the request to Judge Dodge, and Judge Dodge responds and says that while he sees not the slightest objection to its being offered, he thought, I may properly say, that permission ought to be given to file the brief, he felt he had no authority to receive it, if any of the parties who had appeared before him as a result of the order of the Court objected, and that the application must be made to the Court to have such authority given. Then, purely out of respect to the wishes of Mr. Works and commending him to Your Honor, if Your Honor does not happen to know of him and his reputation as a very distinguished practitioner in California, I present his request that Judge Dodge be authorized to receive the briefs which he has sent here.

Mr. Bates—May it please the Court: I do not agree with my brother's recollection as to what Judge Dodge stated. I did not understand Judge Dodge to state that he thought that permission should be given. What he did state was that upon the objection of either party he would not grant permission. He did not then ask to hear us on the question, or what we had to say. He simply made that statement, and that was his ruling. He made the remark, which is probably the remark that Mr. Whipple refers to, that he did not know why anyone should object, but that is vastly different from saying that it ought to be allowed.

The reason he did not know why anyone should object was because he had not asked anyone as to their reasons. The cases—and from my brother's statement it appears already to Your Honor that there are two of them—are being tried together. They are both brought against the directors of The Mother Church, The First Church of Christ, Scientist, in Boston. Mr. Whipple and his associates represent a trustee of the Publishing Society, who was removed, as we claim, by the action of the directors. He felt aggrieved, and through his attorneys he is seeking to be kept in his position against the action that the directors took, and which we claim was properly taken. He is represented before this Court by former Justice Hughes of New York City, by Mr. Strawn of Chicago, by Mr. Whipple, and by Mr. Withington. It would seem as though his interests were sufficiently guarded and protected.

The other suit is one that is brought by Mr. Dittemore, also against my clients, the directors of the Church. That is also a suit by a party who considers himself aggrieved at the action of the board in removing him;

not as a trustee, as in the other case, but in removing him from the Board of Directors, under a power which they claim to have properly exercised. He is seeking to be reinstated. Naturally both, having grievances against the Board of Directors, find it convenient to join hands, so far as the opposition to the Board of Directors is concerned. Naturally, at Mr. Whipple's suggestion that Senator Works would like to file a brief, they have acceded to that suggestion. The Mother Church, so-called, it has appeared, has over 100,000 members, not limited to the United States, but scattered over the entire world. It is The Mother Church of all the churches of Christian Science. They are known as branch churches. They are organized all over the world. What their total membership is no one can say, but it certainly runs up into more than a million, and how much more we do not know, because it was one of Mrs. Eddy's injunctions that the people should not be numbered, in accordance with the old Scriptural injunction of the Old Testament.

Now, Senator Works is but one member of The Mother Church. There are over, as I said, 100,000 members of that church. Most of them are also members of some branch church. He is a member of the branch church in California, or one of them. There is no reason why he should come in to represent the members of The Mother Church, or The Mother Church itself. Under its fundamental rules and by-laws, that church is represented by its Board of Directors. Those rules were laid down by Mrs. Eddy, and every loyal Christian Scientist in the world recognizes them as binding upon him. If he is going to come in to represent any parties who he claims have an interest, then he should come in, I submit, through a petition to intervene, and should set forth his reasons and the parties whom he represents. As a matter of fact, so far as we know, he represents no one but himself.

It has appeared not only that the Board of Directors are the directors of The Mother Church, its only executive or governing body, and therefore have the duty upon them to represent the church, but it has also appeared that over a thousand of these branch churches throughout the United States and the world have voluntarily, without any suggestion whatsoever from the Board of Directors, sent to the Board of Directors resolutions indorsing their attitude in these cases. They are the ones that represent The Mother Church, not only under the Manual but as indicated by that evidence which is already in in regard to the resolutions which have been adopted voluntarily by these churches all over the United States and the world.

Now, not only is Mr. Whipple's client represented by the parties whom I have stated, but the other aggrieved plaintiff in the other suit, Mr. Ditte-

more, is represented by General Streeter, of Concord, New Hampshire, by Mr. Demond, of New Hampshire, and by Mr. Thompson, of the firm of Matthews, Thompson & Spring, of Boston. They seem to be well represented. The directors are represented by Mr. Krauthoff, of Washington; by Mr. Smith, formerly a judge of Iowa and now a member of this bar, and by my office. In all, there are about 11 or 12 attorneys who are participating in this case. As Your Honor sees, it is a triangular case. A triangle of three together, and there cannot be any doubt as to any angle of the case being presented to the Court.

There is another suggestion which I wish to make as to why this motion should not be granted, and that is that this matter was referred to Judge Dodge, as Master, by Your Honor, to hear the evidence, find the facts, and make a report on them. That evidence has been presented to Judge Dodge. The hearings took, if I recall correctly, over 30 days. The evidence covers something over 800 typewritten pages. The arguments, it has been arranged, are to be heard on Monday next. It would seem as though, it being a question of the determination of the facts, that Judge Dodge and the 12 counsel engaged in this case are quite as competent to bring to his attention all the facts that can be presented on the evidence (and that is what he has to find them on) as someone out in California, no matter how eminent he may be, who was not present at any of the hearings.

Again, it seems to me, Your Honor, and this is perhaps the most weighty reason why I object, my brother, I understand, has the advantage of already having the brief which Senator Works proposes to file, and which I have never seen and know nothing in regard to its contents. But I have already stated that the Board of Directors had received resolutions from over 1000 churches. There are in The Mother Church a large number of attorneys who are interested. A number of them offered their services, and have proposed to intervene in this case on behalf of members of the Church, in support of the directors' position, but we, as representing the directors, have discouraged every one of them. One came on from Chicago with a petition already prepared, and that was discouraged, and he went back, but his petition to intervene was all prepared for submission to this Court. If Your Honor is going to allow anyone because he is a member of The Mother Church to come in and undertake to represent its membership, irrespective of whether he has any official duty to do so or not, then the doors will be opened, I assume, so wide as to lead to great confusion and embarrassment. Certainly, it would be embarrassing to me to in any wise assent to Senator Works filing a brief in this case now, after we have re-

fused to allow a number of good-intentioned lawyers to do the same thing, who made their application earlier, at a time when they might very properly, perhaps, except for the confusion it would lead to, have been allowed to do so. For these reasons, I think the motion should be overruled.

Mr. Whipple. If Your Honor please, in the interest of accuracy merely, I will read exactly what Judge Dodge stated, as it was taken down by the stenographer. He says:

"There has been a hearing at which Senator Works did not appear to represent anybody. In fact, he now, as I understand it, desires to file his brief as an amicus curiæ. I hardly think that against objection I have the authority to say that he may file his brief, although I may say I do not see why anybody should object. We all of us want all the light on this case that we can get. What harm can it do? That, however, is not my business, and if anyone does object, my ruling will have to be that I haven't any authority."

I take it that the many people who had desired to file briefs to assist Governor Bates and his clients merely desire to supplement his efforts. I think that might well be objected to, and I think his clients are very competently represented, and that he can say everything that ought to be said in behalf of his clients. If anyone desired to assist us, we should try to have the assistance come through the expression of their thoughts in our own brief, and I suppose almost all attorneys would do that, but here is a case where a gentleman of distinction in the community and a lawyer of high standing; a member of The Mother Church, which is a beneficiary, takes views different from any of the counsel. It is true his briefs have come, and if Your Honor felt that that would be of any aid, I should be very glad to present them to Your Honor. His original letter was to Mr. Krauthoff, whom he knew as a Christian Scientist, and who is of counsel, of which he only sent me a copy, and the brief which he desires to file. It is not a brief in our favor. In some things he makes the same contention that we do, and in some he makes contentions that we do not. I think that that is true with regard to Governor Bates' case.

Again I say that we are not commissioned to speak in any way in advocacy of the brief. I felt that personally I owed it to a distinguished member of another bar, who could not address the Court here, to present his application. It seems to me courtesy requires it, and the same courtesy, or good judgment, at least, requires us to assent, so as not to be in a position to prevent proper arguments being presented.

As to Senator Works not being present when the evidence was taken, let me say that the evidence was published verbatim every day, or at least

the following day, the evidence of the day before, in The Christian Science Monitor, and it is evident that Senator Works has read that paper just as fast as it came, and that he has read with care and discrimination all the evidence in the case.

Mr. Demond—Your Honor, I appear with Mr. Streeter and Mr. Thompson for Mr. Dittmore. I would like to say just a few words with regard to his position on this application. Mr. Dittmore is, as you might say, one apex of a triangle. Here are three sets of parties, the trustees of the Publishing Society, the directors of the Church, and Mr. Dittmore. It is not a fact, as has been stated here, that Mr. Dittmore and the trustees, Mr. Whipple's clients, have seen fit to join hands. On one phase of the case we have been forced to join hands for a common resistance to the arbitrary action of the Board of Directors which brought about both these suits, but on another phase of the case, the fundamental question of the supremacy, as between these two boards, we are in entire accord with Governor Bates' clients, the majority of the Board of Directors.

Now, there are some very complicated questions in this case, involving the By-Laws of this Mother Church. There is a situation that is probably without precedent in the annals of ecclesiastical history with regard to the form of organization and endowment of this Church, and the way in which the By-Laws were established and the present form of government adopted. It is upon the phase of that fundamental question, as I understand it, that Senator Works desires to be heard. The interests of a great religious movement may be very materially affected by the view which the Master and later the Supreme Court takes of the general scope and effect of these By-Laws; both in relation to these deeds of trust and the government of The Mother Church.

Senator Works is a member of The Mother Church, and an eminent lawyer and publicist. He has not simply sent a resolution indorsing the position of some one of these parties, as Governor Bates states hundreds of churches have done, and the force of those resolutions would be more useful if we knew just what they were and by what method they were brought about. As a result of his study of the evidence in this case, and his views as a lawyer on some problems involved, he desires to be heard, not as indorsing the position of the directors, nor of the trustees, nor of Mr. Dittmore in its entirety, but as presenting a viewpoint which none of these parties will present, and which he believes ought to be presented.

Mr. Dittmore does not, any more than Mr. Bates or Mr. Whipple indorse, except perhaps to a very qualified extent on some of its phases, the position which Senator Works desires to argue, but in a very complicated,

novel, and difficult mass of problems coming up for decision, involving the interests of a religious movement, we agree with what Judge Dodge says, that he cannot see why anybody should object. It is a question of whether light shall be shut out. If the directors are right in their view of the effect of these By-Laws, the rightness of their position will be much better distinguished after all opposing views have been presented, and if they are wrong, why, then, that fact must be demonstrated sooner or later, but why should anyone who desires to argue that they are wrong and who comes in not as an intruder but as a member of a church, having its interests at heart—why should he not be permitted to present his views for what they may be worth?

Mr. Justice Loring—It seems to me to be a pretty complicated piece of litigation and it is quite possible that a member of The Mother Church under all the circumstances ought to have a right to be heard. But unless there is a reason why an individual member of the Church should have a right to be heard, I think that under all the circumstances it would not be wise to have briefs filed as amici curiæ.

If there is a reason for Mr. Works being heard he can make application for a right to intervene and upon proper cause being shown he should be allowed to intervene in the three-cornered fight which is going on. In the absence of any reason for his intervention it does not seem to me wise to throw the doors open to a general discussion by anybody or everybody who feels like discussing it because they have an interest which is adequately represented already. If the interest is not adequately represented that is reason for a petition for intervention. Therefore I will deny this informal motion that the briefs may be filed. But I do it without prejudice to Mr. Works—Senator Works filing a petition of intervention setting forth the reasons why it should be granted. At present I will not receive the briefs.

September 8, 1919

### THIRTIETH DAY

Room 424, Court House, Boston, Massachusetts

Sept. 8, 1919.

The Master—Counsel may proceed when ready.

Mr. Krauthoff — If Your Honor please. at the last hearing, the situation with respect to the works of Mrs. Eddy was left, as I recall it, in this condition: Counsel for the directors were to indicate to the counsel for the trustees portions of those works that the directors might rely upon either in argument or in brief. The task of doing that required considerable application and care, because it was a little difficult to anticipate just what we might need in answer to the argu-

ments that the trustees might advance. We were not able to send counsel for the trustees our selections until Saturday of last week. I feel it is unfortunate, if Your Honor please, to attempt to select quotations from the works of Mrs. Eddy and to pick out particular ones as the ones upon which we rely, and I would like to have this understanding: Instead of at this time being compelled to pick out the ones and argue that they are admissible or have a bearing on the case, to allow the books to be considered as in evidence, with permission to the Court to examine them, and with the understanding that counsel for either side, either in brief or in argument, may quote any portions that they deem pertinent to the issue, and then as and when quoted, and the Court decide the case, the Court would determine their admissibility.

The Court—I hear no objection.

Mr. Whipple—While that is somewhat unusual and, I may say, extraordinary way of offering evidence, we make no objection to it provided it is understood that after we once know what you do rely on, after we once have your quotations, when you make them finally, we may have opportunity to reply to or comment upon them if we are so advised. Otherwise it seems that we ought not to go into the argument without knowing what the evidence is in the case and what you rely upon to prove your case.

Mr. Krauthoff—They will certainly be referred to in our written brief that we may file and counsel will have a perfect opportunity to reply to them.

Mr. Whipple—Then if they are already in your written brief, why shouldn't you now state them?

Mr. Krauthoff—They are not now already in our written brief.

Mr. Whipple—I understood you were to have your written brief and to submit it at this argument. Was not that Your Honor's understanding?

The Master—That was my understanding.

Mr. Krauthoff—We were not limited to the brief that we would file this morning. That was my understanding. We were to have further opportunity to reply to whatever was brought out in argument today.

Mr. Whipple—I understood that you might file a supplementary brief, which was exactly in rebuttal, but I did not understand that this uncertainty as to what your evidence was or what you were going to rely on be prolonged any longer. I certainly did not understand that you were going to listen to our argument and then put in other evidence afterward to meet it, and I cannot consent to that arrangement.

Mr. Krauthoff—Then we offer the citations that we submitted to counsel.

Mr. Whipple—I beg pardon?

Mr. Krauthoff—We offer the citations that we have submitted to counsel.

Mr. Whipple—Well, if you will fix a

limit to your citations by any memorandum or letter or anything else, why, we shall not make any particular objection to your having them. It is this uncertainty, this delay in closing your case, that we object to.

Mr. Krauthoff—We offer the citations that we submitted to counsel on Saturday.

The Master—The right to do that, I think, was reserved to you when we closed the hearing of the evidence.

Mr. Whipple—We do not at all admit the relevancy or materiality of these citations. We have not had a chance to examine them, and very likely we never shall avail ourselves of the opportunity, but they come within the provision with which we closed the case and we assent that they be taken de bene, and that Your Honor pass upon them if Your Honor finds it necessary to read or refer to them.

Mr. Thompson—In view of the fact, if Your Honor please, that no list or any paper of the sort has been submitted to us, I assume that none of this evidence is offered on any issue between these defendants and Mr. Dittmore. We have not the slightest knowledge of what this paper contains and have never seen it.

Mr. Krauthoff—We are not offering them on any issue between Mr. Dittmore and the other defendants.

Mr. Thompson—That is satisfactory.

Mr. Krauthoff—If we had we should have sent them to Mr. Thompson. Now, at the same time, if Your Honor please, a reservation was made with respect to articles that appear in the periodicals published by The Christian Science Publishing Society, and under that reservation we desire to offer at this time the article on "The Mother Church," by William R. Rathvon, appearing in The Christian Science Journal for January, 1911, in the 27th volume of The Christian Science Journal, at pages 653 and following.

I have no desire to take the time of the Court to read this, nor am I asking that it be set out in the record in full at this time. We offer it as one that we desire to refer to in the brief that we may file. It related to the relation of The Mother Church to the branch churches.

Mr. Whipple—Well, we cannot understand how, under any theory of the law or anything else a self-serving declaration of one of these defendants about any issue in this case can be admissible. We think it is too plain to require any argument, that any such article as that is not admissible. We are not unwilling that Your Honor should read it if you feel that you ought to at some time, and rule upon it, and that it be taken now de bene, without further discussion.

[Article in The Christian Science Journal, January, 1911, 27th volume of The Christian Science Journal, page 653, entitled "The Mother Church," is Exhibit 808.]

Mr. Krauthoff—We desire also under the same arrangement to offer the

article entitled "Now and Then," by Mrs. Eddy, as it appears in the fifth volume of the Christian Science Sentinel, at page 620, on May 30, 1903.

[Article entitled "Now and Then," by Mrs. Eddy, in fifth volume of Sentinel, page 620, is Exhibit 809.]

Mr. Krauthoff—There is one paragraph in that article that we think is vital, and I would like to read that into the record.

"A book by Benjamin Wills Newton called 'Thoughts on the Apocalypse,' published in London, England, in 1853, was presented to me in 1903 by Mr. Marcus Holmes. This was the first that I had even heard of it. When scanning its interesting pages, my attention was arrested by the following: 'The church at Jerusalem, like a sun in the center of its system, had other churches, like so many planets, revolving around it. It was strictly a mother and a ruling church.' According to his description, the church of Jerusalem seems to prefigure The Mother Church of Christ, Scientist, in Boston."

We desire to offer a statement by Mrs. Eddy in The Christian Science Journal for April, 1898, Volume 16, page 1.

[Article in The Christian Science Journal, April, 1898, Volume 16, page 1, by Mrs. Eddy, "To Whom It Concerns," is Exhibit 810.]

[Exhibit 810]

"To Whom It Concerns:

"In reply to letters questioning the consistency of Christian Scientists taking pay for their labors, and hoping to relieve the questioner's perplexity, I will say—After four years from my discovery of Christian Science, while taking no remuneration for my labors, and healing all manner of diseases, I was confronted with the fact of no monetary means left wherewith to hire a hall in which to speak, or to establish a Christian Science Home for indigent students (which I yearned to do), or even to meet my own current expenses, and halted from necessity.

"I had cast my all into the treasury of Truth, but where were the means with which to carry on a Cause? To desert the Cause never occurred to me, but nobody then wanted Christian Science, nor gave it a half penny. Though sorely oppressed I was above begging, and knew well the priceless worth of what had been bestowed without money or price. Just then God stretched forth His hand. He it was that bade me do what I did, and it prospered at every step. I wrote 'Science and Health with Key to the Scriptures,' taught students for a tuition of \$300 each, and seldom taught without having charity scholars, sometimes a dozen or upwards in one class. Afterwards, with touching tenderness, those very students sent me the full tuition money. However, I returned this money with love, but it was again mailed to me in letters begging me to accept it, saying, 'Your teachings are

worth much more to me than money can be.'

"It was thus that I earned the means wherewith to start a Christian Science Home for the poor worthy students, to establish a Metaphysical College, to plant our first magazine, to purchase the site for a church edifice, to give my church The Christian Science Journal, and to keep 'the wolves in sheep's clothing,' preying upon my pearls, from clogging the wheels of Christian Science.

"The great Master first sent forth his students, taking no scrip for their journey; next, per contra, he bade them take scrip therefore, saying, 'the laborer is worthy of his hire.' Can we find a better example for our lives than that of our Master? Why did he send forth his students first without, and then with, provision for their expenses? Doubtless to test the effect of both methods on mankind. That he preferred the latter is evident, since we have no hint of his changing this direction, and that his Divine wisdom should temper human affairs is plainly set forth in the Scriptures. Till Christian Scientists give all their time to spiritual things, live without eating, and obtain their money from a fish's mouth, they must earn it, in order to help mankind with it. All systems of religion stand on this basis.

"The law and the Gospel—Christian, civil, and educational means—manufacture, agriculture, tariff, and revenue subsist on demand and supply regulated by a government currency, whereby each is provided for and maintained. What, then, can a man do with truth, and without a cent to sustain it? Either his life must be a miracle that scares folks, or his truth not worth a cent.

"MARY BAKER G. EDDY."

Mr. Whipple—If Your Honor please, we are unable to see how that declaration, which is certainly an important one in a great many aspects, touches even the fringes of this controversy. If Your Honor felt that that was so, it might be disposed of by being excluded.

The Master—I think I will let Mr. Krauthoff put it in as he has reserved the right to refer to any passages which he desires.

Mr. Krauthoff—And in that connection I desire to call attention to the fact that that article—

The Master—No; I think you had better not call attention to anything now, Mr. Krauthoff. Please proceed and put in all you desire to put in under the reservation to which you have referred.

Mr. Krauthoff—That is what I was doing, Your Honor.

The Master—You may argue later. Mr. Krauthoff—I am not arguing now.

The Master—Calling attention seems to me to amount to argument. Now, go on and put in everything that is not in that you desire to put in.

Mr. Krauthoff—I offer the same arti-

cle from the book entitled "The First Church of Christ, Scientist, and Miscellany," on pages 12-14, for the purpose of showing that the article appeared in Miscellany. We now offer an article from the July Christian Science Journal, Volume 16, page 294, in which the editor says:

"In the April, 1898, Journal, the Rev. Mary Baker Eddy, speaking of the financial problem as she experienced it, says—"

And then he quotes from this article, and he continues:

"The donation of the valuable lot of ground to The Mother Church—"

The Master—This is the editor?

Mr. Krauthoff—This is the editor, yes, if Your Honor please. We offer it as a statement.

The Master—I do not recollect any reservation or leave to put in statements by the editor.

Mr. Krauthoff—The reservation was leave to offer any article from the publications of The Christian Science Publishing Society.

Mr. Whipple—Well, let us refer to it; we have the record right here. Can you point that out?

The Master—I do not see why we should consider statements by an editor.

Mr. Krauthoff—Why, they are offered, if Your Honor please—

The Master—Statements by Mrs. Eddy may stand on a different basis.

Mr. Krauthoff—The reason we offer the statements of the editor, if Your Honor please, is upon the theory that they appear in the publications of The Christian Science Publishing Society.

The Master—Well, take it for granted that they did. What then?

Mr. Krauthoff—Hence it is a statement made by the plaintiffs and their predecessors in title as to this being a gift to The Mother Church.

Mr. Whipple—It has never been disputed in this case that it was a gift to The Mother Church.

The Master—I presume that is true.

Mr. Whipple—I find it very difficult to realize and understand the intellectual operations of Mr. Krauthoff on that subject.

The Master—Do you object, Mr. Whipple, to his reading this statement?

Mr. Whipple—Yes. It seems to me it is simply piling up the record. It ought not to be done.

Mr. Krauthoff—Having regard to the form of the objection as taken, I shall not offer it further. I offer also, if Your Honor please, the article which I first offered from Mrs. Eddy. I offer "Miscellany," pages 214, 215, to the end of the paragraph "not worth a cent," entitled "The Laborer and His Hire," to show that the article thus entitled also appeared in "Miscellany." Now, may I have that paper, Mr. Whipple?

[Mr. Whipple hands paper to Mr. Krauthoff.]

Mr. Krauthoff—Now, if Your Honor

please, you will recall that we offered a document which we said was in the writing of Mr. Eustace. We are now advised that it is in his writing, and we desire to offer a witness for the purpose of showing the time and place and circumstances under which the paper was read, unless that be admitted. It was read at the General Association of Teachers, of which Mr. Eustace was a member, held at Chicago in the year 1904, and we offer that as a statement of one of the plaintiffs as to the relation of these directors of The Mother Church to the Christian Science movement.

The Master—I hear no objection.

Mr. Krauthoff (reading)—"Under the general head of 'Unity of Action' I have been assigned the topic—"

The Master—Are you going to read all of it?

Mr. Krauthoff—It is not very long, if Your Honor please, and I think it is of such importance that I am justified in asking Your Honor to hear me read it.

Mr. Whipple—There are four or five pages, aren't there, closely written?

The Master—I suggest that you let the stenographers copy it.

Mr. Krauthoff—It will appear then in full in the record? That will be satisfactory.

The Master—I suppose it has been marked already as an exhibit for identification?

Mr. Krauthoff—I don't recall; at least, it bears no mark. I offer it, Your Honor.

[The paper offered by Mr. Krauthoff is marked Exhibit 811, and reads as follows:]

[Copy of Exhibit 811.]

"Under the general head of 'Unity of Action,' I have been assigned the topic 'Loyalty to and support of the Constituted authorities.'

"This subject touches a resounding chord in the heart of every Christian Scientist. He loves loyalty, and no support does he feel is too great to render for the countless benefits he has received.

"The organization of Church of Christ, Scientist, stands before the world as a spiritual army waging a war of extermination against every form of sin, sickness, death, and materiality. Its weapons of warfare are spiritual, but the same esprit de corps that animates every well disciplined and victorious army on the field of battle, animates every member of this organization, and that is, unbounded and unswerving 'loyalty to and support of the constituted authorities.'

"It is not difficult to picture the fate that would befall an army, when this loyalty and support is lacking. History has already furnished countless examples of the disaster that inevitably attends such a condition of affairs.

"This topic can have only one significance to the Christian Scientist—un-

qualified obedience, and obedience has no why or wherefore; it means and is the elimination of all self; it is unconditional; it is because it loves to be; it gives all time, means, and energy because it is its joy to give; it has no question or hesitation, but is ever ready to do when the word is given; it embraces no criticism but is full of confidence and quiet assurance. Obedience is but the synonym of this subject, and is expressed exactly by the poet Tennyson, in his lines:

'Theirs not to make reply,  
Theirs not to reason why.'

"Then practically what does this 'loyalty to and support of the constituted authorities' mean? Not one in this assembly, and I believe I can say without fear of contradiction, that not a single genuine student of Christian Science in the whole broad earth but is perfectly willing to accept and obey whatever our revered Leader orders, that is, whatever she puts down in black and white, and sends out to the field in such a definite form that it cannot evade it. But does such obedience constitute loyalty and support? Suppose each private in an army insisted on only obeying just exactly what the commanding general communicated directly to him. How long would that army accomplish anything? and how long would it be before the enemy knew all there was to know? Does not the commanding general have his officers through whom he puts his orders into practice? and is it the duty of the private to inquire who issued the order? and on what authority it was issued? and for what purpose? Is it not rather his duty to have such unbounded confidence in 'the constituted authority' that he instantly renders every possible loyalty and support?

"Thus it is with our own army; the Leader of this mighty movement cannot carry on the work without competent assistance, and we have a right to conclude, and do conclude, that the same divine Love and intelligence that guided her in the writing of our textbook 'Science and Health' is guiding, and choosing for her, those best adapted for aiding her, in the planting and care of His vineyard (Science and Health Pref. xi), and in inaugurating whatever is needed for its welfare.

"Does not 'loyalty to and support of the constituted authority' then include 'loyalty to and support of' every Board and committee that is appointed for each and all work?

"First and foremost among these channels through which this work is performed stands the Christian Science Board of Directors. Does anyone think this board could be dispensed with? Of course not. It goes without saying, it is a necessity or it would not be, then it is 'constituted authority,' and must be given our unbounded loyalty and support. When this Board undertakes some work we

may rest assured that work is necessary and must be done and it is our duty to bend every energy to help carry it through. When it is finished is an excellent time to see what a wise thing it was to do, but until then all should be too busy to have time, inclination, or desire to question.

"United loyalty and support of the Christian Science Board of Directors in all its work, accompanies all loyalty to the constituted authorities. Can this loyalty be more practically exhibited at the present moment, than in the supplying at once of the necessary funds to complete the auditorium? This work belongs to the Field, and the Board of Directors should not be burdened with it. True loyalty and support on the part of every Christian Science teacher, would finish the monetary demonstration immediately. If it is our desire to do this it can be done for we are told, 'Thou openest their hand and satisfiest the desire of every living thing.'

"The Christian Science Publishing Society is another indispensable channel of good, and is therefore constituted authority. Should it not then be vigorously supported by a wider distribution of its literature? a largely increased subscription to its periodicals? a careful contribution of articles and demonstrations for its editorial department? and an active and lively interest in furthering its usefulness along every line? Are we awake to the far-reaching labor and value of the Bible Lesson Committee? the one united sermon that it is weekly preaching? A need gloriously supplied. Is not this committee then constituted authority? Can we encourage too earnestly faithful study of the Quarterly? Should not the Quarterly be an adjunct of the Bible and our textbook in the hands of every student and patient? Does not our 'loyalty to and support of the constituted authorities' include this study and its encouragement? It does and we must extend its power and influence; this extension cannot but be impeded, however, if we foster or countenance in any form the use of or the publishing of the compilation of topically arranged texts from the Scriptures, for is not this very method of arranging Scriptural texts but a subtle form of error to detract from the carefully selected Lesson Sermons as designed by the committee? Is not then our loyalty and support rightly expressed in a condemnation of this practice and its insidious attempt to wean away the students' study of the Quarterly?

"What a change has swept over the press of the land in the last few years, and how gladly we have welcomed this change. Have we as gladly attributed it in a large degree to that wisely constituted authority, the Publication Committee? Are we supporting this committee, giving it every opportunity to do its work well and

thoroughly, or are we lukewarm and uninterested, causing it much added labor? Are we supporting it with heart, purse, intelligence, and time, or are we waiting a more convenient season? If such is our thought, can we truthfully say we believe in and practice 'loyalty to and support of the constituted authorities,' and so in-dorse and uphold 'unity of action' as the watchword of our Cause? 'Behold, to obey is better than sacrifice, and to hearken than the fat of rams.'

Mr. Krauthoff—That is all, Your Honor.

Mr. Thompson—There is just one piece of evidence, if Your Honor please, that we are in a little bit of doubt about. In running over the record I cannot find whether the Twenty-Eighth Edition of the Manual was formally and technically admitted in evidence or not. If not, I would like to offer it now and have it marked in evidence. I would like to be sure that the book itself is technically and formally in evidence.

The Master—I think that may be possibly important.

Mr. Whipple—What book is that?

Mr. Thompson—The Twenty-Eighth Edition of the Manual. There is some little doubt as to whether it was actually admitted in evidence. Mr. Dane perhaps has it; he has had it several times; if so, I would like to see it.

The Master—A copy of the Twenty-Eighth Edition?

Mr. Thompson—Yes, sir.

The Master—One was produced.

Mr. Thompson—I want the copy that was produced here and not some other copy; the one that was produced and used at the hearings in this case and during the cross-examination of witnesses.

Mr. Dane—My recollection is, if Your Honor please, that the Twenty-Eighth Edition of the Manual that was produced was not offered or marked as an exhibit. I am informed that that particular edition is in my office, but it may be regarded as in the case.

Mr. Thompson—May I have your personal assurance that that particular copy, and not some other copy, will be the one that will be marked?

Mr. Dane—Yes.

Mr. Thompson—I would like to have it here during our arguments. That is of great importance.

The Master—Could you send for it, Mr. Dane?

Mr. Dane—I will, if Your Honor please, get it.

Mr. Whipple—The additional exhibits should be numbered in sequence above \$07, because certain deeds have been put in by agreement and numbered up to and including \$07.

The Master—The stenographers will take note of that, please. Are we now ready to proceed with arguments?

Mr. Bates—I understand that Mr. Whipple stated at the last hearing that he wanted to put in some deeds.

Mr. Whipple—Well, those are just referred to. Mr. Buffum and Mr. Withington have agreed upon the deeds; they have all been marked in order up to \$07. They have been printed or are in the course of being printed, and will thus become a part of the record.

The Master—Is that satisfactory, Governor Bates?

Mr. Bates—Yes, Your Honor. My attention was diverted, and I did not hear you make the statement.

Closing Argument in Eustace et al v. Dickey et al, on Behalf of Defendants Dickey, Neal, Merritt, Rathvon, and Knott, by the Hon. John L. Bates

May it please Your Honor:

I approach the argument of this case with mingled feelings. I know what seems to me to be the overwhelming character of the evidence justifying the defendants. I assume, and I know from the remarks made by Your Honor from time to time, that you have a large part of that evidence in mind; I do not wish to unduly weary the Court, and yet I feel that although I shall omit to say many things that ought to be said, that I shall nevertheless probably take all the time that I ought to claim for this purpose. I therefore rely upon Your Honor's recollection of the evidence, and state frankly that there will be many things of importance that I shall omit, partly for lack of time, partly because I think the matters or the issues to which they relate are so clear that it is not necessary to refer to them. Part, no doubt, I shall leave out because of oversight. I feel confident that whatever may be my shortcomings in that respect that Your Honor's careful consideration of this case, which has been manifest at all times, will make those omissions not of importance.

On March 17th of the present year the Board of Directors of The Mother Church, The First Church of Christ, Scientist, in Boston, was confronted with two great problems. It is manifest that this Board of Directors has matters of the largest importance within its jurisdiction. It is the governing board of a great religious movement; it is the governing board of a great church with branches all over the world. As such governing board it has under its jurisdiction the business of that Church in all its various departments. Something has appeared in this case of the variety of the duties and of the vast character of the business interests that come under this Board of Directors. In addition to that it has all the questions of Church policy, all questions of discipline, and all questions that relate to the advancement of the Faith and the Cause.

There seemed that to the board, after months of agitation, with clouds constantly increasing and becoming more and more indicative of serious



storm, the question as to whether or not the storm could be averted and as to whether or not the disaster that seemed to impend could be averted; and if so, what was the action necessary?

They were confronted in the first place by a Board of Trustees that had charge of the publication of all the church organs and literature as an associated department, as they claimed, and as we claim, of The Mother Church, and under their supervision. And that board was in open rebellion. No less strong words can characterize their attitude. They had come to the point where they had deliberately stated that the governing board of the Church had no authority over them whatsoever. The controversy had been brewing so long that it had become apparent to the field; the directors knew their duties under the Manual, they knew that the Manual directed that they should without question exercise a supervision over those trustees, and they also believed that the Trust Deed gave them the same right. The only way by which they could solve that problem was to act in accordance with the powers given to them, and remove so far as necessary those who were in rebellion against their authority. And they removed one of the trustees as a step toward harmony, hoping no further step would be necessary, but conscious and determined to pursue further steps should they become necessary.

The other problem that faced it was disunion on its own board, antagonism of a member who had been long connected with it, but one who had ceased to be helpful and who had become an obstructionist, and who made the proper advancement of the cause by the Board of Directors impossible because he had introduced into that board and into its management disunion rather than unity. And therefore they removed at the same time that member who had created and was creating that trouble and that lack of harmony.

It is natural for any man who has been removed from office to feel aggrieved. The ordinary course, the ordinary human experience for that man thus removed is to feel that he has been improperly removed and to exaggerate the action of those who have removed him, and in many cases he appeals to see whether or not there is any other tribunal that will reinstate him in his rights. In this case there was no other Church tribunal. They recognized that this was the highest and the only one. Had there been one, the law is explicit that they would have had to pursue their remedy to the highest tribunal in the ecclesiastical body before they could bring their matter into court. But there was none higher, and so they have come to the courts of this Commonwealth, each of them vowing allegiance, but each of them setting themselves in opposition to principles that

were established by Mrs. Eddy for the government of this Church, and their opposition is inconsistent with their professions of loyalty.

So far as the trustees' case is concerned, this is in the first instance a question of the Trust Deed, but I think we shall be able to satisfy Your Honor that it is also a question of loyalty to the Church Manual. And therefore instead of being, as my brother Whipple has suggested, a case before you of trustees against trustees, or of trustees against directors, it is a case also of trustees against the Manual, or trustees against Mrs. Eddy.

I have already indicated that the determination of these questions is of momentous importance to the cause that is represented by the governing board of the Christian Science Church. When we consider those large business interests and the large spiritual interests, and the immense amount of good that the cause is doing in the world, we are indeed staggered at the thought that it can be in any wise jeopardized by the action of men who are aggrieved and who seek personal vindication at the hands of this Court.

When this matter arose, the cases were brought so near together that the Court ordered that they be tried together, and they were referred to the master to be heard together under such rules and regulations and suggestions as he might make. Mr. Dittmore's case was practically continued from the time of the sickness, greatly to be regretted, of General Streeter. From that time on, his associate counsel having asked that that case should not proceed until his return, and having stated that that could not be before the 1st of October for active participation in the case, the evidence that pertained to that case alone was not offered in chief, because it was understood that Your Honor had excluded it. The evidence that pertained to that case alone was the evidence which pertained, of course, to the question as to whether or not Mr. Dittmore had been properly removed. Your Honor has decided, reserving our rights, that the Eustace case cannot properly be decided without Your Honor considering the question of Mr. Dittmore's rights as one of the issues involved in that case. To such extent, therefore, as the evidence has been put in, and to such extent as Your Honor considers Mr. Dittmore's status as an issue in the Eustace case, that matter is now open for argument.

I may direct attention to the fact, however, that the Dittmore issue does not affect the merits, of course, of the Eustace case in any way, shape or manner. Whether Mr. Dittmore is or is not a director does not affect the question of the trustees. It can only be of importance as determining as to whom or against whom the decree in the case may possibly run. It being an issue, therefore, that is relevant only for that purpose, I shall

take it up and consider it first before entering upon the main issues of the Eustace case.

## The Dittmore Issue

The Dittmore issue may be divided at the start into two issues—Did the directors have the power of removal at the time that they exercised it? and, second, was it properly exercised? Mr. Dittmore was elected a director not by being made a trustee under the deed of 1892, but he was elected a director by the directors on May 31, 1909, and he was elected a director under Article I, Section 5, under a by-law which was the same then as it is now and is the same by-law that gives the power of dismissal. If it was operative to make valid his election, it is operative to make valid his dismissal.

[At this point Mr. Whipple and Mr. Thompson pass documents to the master.]

The Master—May I interrupt you one moment?

Mr. Bates—Certainly.

The Master—These have just been passed up to me—findings and rulings requested by the plaintiffs, and findings and rulings requested by Mr. Dittmore. I take it for granted that you already have these documents?

Mr. Bates—No, we have not seen them.

Mr. Whipple—We have handed them to counsel.

Mr. Bates—Oh, I beg your pardon. They have just been handed to us.

Mr. Whipple—There is one for Governor Bates.

Mr. Thompson—And here is a copy of ours.

The Master—I suppose that in due course I shall have similar documents submitted by you?

Mr. Bates—Yes, Your Honor.

The Master—But take your own time. I only thought it well to mention that I had at just this moment received these.

Mr. Bates—Ours will be handed to Your Honor in a moment.

The Master—At any time that will be satisfactory to you, either now or at the conclusion of your argument, as you prefer.

Mr. Thompson—Here is a duplicate copy of your requests for findings of fact. One is for us. For whom is the other—for Mr. Whipple?

Mr. Bates—No, Mr. Whipple has one.

Mr. Thompson—I shall be glad to have another if you have it. I should like one for General Streeter.

Mr. Bates—All right; here you are (passing a document to Mr. Thompson).

Mr. Whipple—Have you a copy of the requests for rulings of law?

Mr. Bates—They are attached to the—

Mr. Thompson—Attached to the requests for findings of fact? I do not see it.

Mr. Bates—I understand that Mr.

Dittemore—at least there has been the suggestion by his counsel during the trial, and there is also the claim under his bill in equity—makes the claim that he is entitled to a hearing under Article XXIV, Section 4, of the By-Laws. Your Honor will recall that Art. XXIV is headed “Guardianship of Church Funds,” and the entire article is on the question of guardianship of church funds and the finances. It provides in Sect. 4 for a finance committee, whose only duties are in regard to the finances of the church. It goes on in Sect. 6 to say:

“In case of any possible future deviation from duty, the committee on finance shall visit the Board of Directors, and, in a Christian spirit and manner demand that each member thereof comply with the By-Laws of the Church. If any director fails to heed this admonition, he may be dismissed from office, and the vacancy supplied by the board.”

It is manifest—

The Master—Wait a minute. I do not find that.

Mr. Bates—Sect. 6, page 77.

The Master—Oh, Sect. 6.

Mr. Thompson—Sect. 5 should be read with it.

Mr. Bates—At the bottom of page 77.

The Master—I have it.

Mr. Bates—It is manifest from the context that this section is intended only to relate to the question of the proper handling of the Church funds by the directors, and that if the Committee on Finance discover anything that they think is a deviation from duty, then they shall make demand that the By-Laws of the Church be complied with, and, if any director fails to heed the admonition, he may be dismissed from office.

It cannot possibly be true that Mrs. Eddy thought in connection with this by-law, or that anyone would, that a Finance Committee whose duties were solely those relating to the auditing of the accounts and the bills was to have charge of the entire disciplining of a Board of Directors in all of their activities and actions. The construction which Mr. Dittemore's counsel would place upon that paragraph would practically make it the duty of the Committee on Finance to determine every alleged breach of misconduct, whether it related to the funds or not, of the Board of Directors—something that it is absolutely absurd for a Finance Committee to do.

It is to be noted, also, that this Section 6 does not in any wise restrict the Board of Directors in the power which is given them under Article I and Section 5, where it says:

“A majority vote or the request of Mrs. Eddy shall dismiss a member.”

There is nothing to indicate that there must first be a Committee on Finance in any way to consider the question unless it is a matter which the Committee on Finance has brought up, and, if it is a matter which they have discovered, and which they think

is contrary to good management, then they can bring it to the attention of the directors, if it is a matter of the finances, and, if it is not corrected, then it may be cause for dismissal. It is simply adding another cause for dismissal; but so far as Article I, Section —

The Master—What are the other causes?

Mr. Bates—I was going to say that, so far as Article I, Section 5, is concerned, the dismissal may be absolutely arbitrary, without any cause whatsoever, or at least without the stating of any cause whatsoever. It is the most absolute power that can be given in its wording, and it is a power that has been sustained as an absolute and arbitrary power wherever such wording has occurred in all the decisions that I have been able to find of the courts.

The Master—You will no doubt refer me to some of those later on?

Mr. Bates—I will, Your Honor; a little later I shall be glad to do so. While I do not consider that the question of the removal of Mr. Dittemore is one where Your Honor can go into the causes as the law stands and as Section 5 of Article I of the By-Laws stand, any further than to make certain that it was in good faith, I nevertheless desire to call Your Honor's attention to some things which have appeared in the evidence although the evidence has been very incomplete by reason of the postponement of the Dittemore case.

The Master—If I recollect right, the pleadings on that point question the motives of the dismissal and the manner of the dismissal.

Mr. Bates—I understand that the motives go to the question of good faith.

The Master—The motives go to the question of good faith, as you say. How about the question as to the manner of dismissal?

Mr. Bates—I assume that that refers to the question—

The Master—Your claim is that under Article I, Section 5, a dismissal may be in any manner—may be absolutely arbitrary?

Mr. Bates—Yes, Your Honor.

The Master—At any time, with notice or without?

Mr. Bates—Yes, Your Honor; and I will in a moment cite some cases as bearing on that matter. I have already referred to the fact that Mr. Dittemore, one may fairly infer from the evidence, had lost his power of helpfulness to the board by reason of his constant objection to anything that the majority thought was right, and his constant efforts to set up his own opinion as against that of the others.

The Master—And you urge that on the question of motives?

Mr. Bates—Yes, Your Honor.

The Master—In other words, on the question of good faith?

Mr. Bates—Exactly. I think that it appears from the evidence and from

the bill which Mr. Dittemore has filed, that Mr. Dittemore had got himself into a position where he suspected everybody, where nobody was right but himself. He would not work with the board. He could not, apparently, adapt himself to teamwork. The suspicion had become almost an obsession, and his gazing upon his own merits had been so long continued that he was not able to see anything that was right in anybody who objected to his views. Let me illustrate. He, it appears, was constantly and absolutely opposed to the directors endeavoring in any way to adjust the controversy which had arisen between them and the trustees. Here was a controversy that involved possible disaster, if it was not settled. Here was a controversy that Christian men coming together ought to have been able, we will say, to settle—at least, they should have tried and made every effort to settle it before going to law regarding it. And yet Mr. Dittemore's attitude was, We will not do it. It was not the attitude of standing on Principle. He claims that it was. He was standing no more on Principle than the directors were, and no more than the trustees thought they were; but his point was that he having declared what the law should be, he would not in any wise seek to discover whether or not there was a common ground upon which they could come together without either one of them abandoning any principle. He was so absolutely opposed to it that, after the arrangement had been made between counsel for the boards to come together again and see if they could not work out the problem, he refused to attend and only attended as a matter of fact, one meeting after that when the trustees were present. It appears that he would get up and leave the room when the hour came for the trustees to come into conference. And that is only one instance of the many; but it shows the character, the obstinate character, of the man, and his unwillingness to in any wise assist the directors in working out the problem that to them was a most serious problem. In his bill he characterizes their action in removing one of the trustees as being a mere subterfuge. Your Honor will not believe that. There was a chance for an honest difference of opinion as to whether one or three should be removed, and it was a duty of Mr. Dittemore, when he was only one in five, to come round and work with his associates when the four said, We believe this is a better way to proceed. Incidentally I might say that the reason why they believed that was because, if they had dismissed all three, it would have left the trust without anyone to manage it temporarily, it would have necessitated an application to the court for the appointment of a receiver, and then to the court for the appointment of successors. But if they removed

one, as the directors urged upon him, then the other two could fill the vacancy under the By-Laws, and it would not be necessary to appeal to the court for a receiver, and there would be no endangering of the business in the meantime. If the other two did not then change their course of conduct, which the directors hoped they would do, it was possible to go on and remove the others; and it seems to me that, under all the circumstances, that was the sensible thing to do. Mr. Dittmore, in his pleadings and in his letters, says that that was not the sensible thing to do. Four of his directors thought that it was the best way to handle the problem. And I point it out because it shows his unwillingness to yield in any matter to his associates where he differed from them, although it was a question, undoubtedly, as to which was the wiser method, and as to a question of wisdom he might have assumed that the other four directors had at least as much wisdom as he had.

Let me suggest, as illustrating his suspicious nature, or his suspicions of his fellow-directors, something that is always bound to bring trouble on a board. See what he recites in his Bill in Equity. He says that the directors were in fear of Mr. Eustace, and there has been evidence attempted, but not brought out, that the directors were in fear of Mr. Eustace—their own appointee, or rather one whom they had assented to being made a trustee, Mr. Dickey's own student in days gone by—that they were in fear of Mr. Eustace, and that they were also in fear of Mr. Dixon, the man whom they themselves had elected editor of The Christian Science Monitor. And he goes on further to say that they, or some of them, were largely under the influence of Mr. Eustace, and to make these absurd charges—absurd in the light of what Your Honor knows about the history of this matter—absolutely absurd charges; and they come only from a man—could come only from a man—who had dwelt so long on trying to find fault with his associates that he was not able to see anything that they did except through colored glasses and those which tended to create a darkened atmosphere.

I will offer another illustration—his attitude on the question of salaries. It has appeared from the records, and there has been no dispute in regard to it, that he voted for the increase of salaries the same as his co-directors did. Nor did he ever in any way intimate that he thought it was not a proper action. I believe he absolutely thought it was a proper action. But after this trouble had arisen, and after this suit had been brought, in order then, if he can, to in some way question or blacken his co-directors, he raises the question, failing to realize that he himself was one of those who were active in the question. I shall have some-

thing further to say on the salary question hereafter. It is not an issue in this case. I think that it is so remote that it should have very slight bearing on it, but—

The Master—If it has any, I suppose it is on this question of motive.

Mr. Bates—I do not see how it can have a bearing on motive, on the question of relieving Mr. Dittmore, for Mr. Dittmore had never raised that question up to that time. But let me state, though, and perhaps it comes now just as well as at any time—that it appears that back in 1915 it was proposed to increase the salaries, or to readjust them. All the directors were receiving salaries for their aggregate work in Christian Science of \$8500 up to \$12,000. In the case of Mr. McLellan I think it was \$12,500. They were receiving as directors \$2500, but for other duties which were less important they were receiving these other salaries. They proposed, and I think properly, that they should give all their time to their duties as directors, and that the salaries should be made commensurate, and that the other matters should be dropped. Now, that was discussed in 1915, but there was no raise made. In 1917 it was also discussed. Independent advice—

The Master—There was no vote until 1915 on that question?

Mr. Bates—There was no vote.

The Master—I was not quite clear on that.

Mr. Bates—There was no vote at that time. In 1917 the question came up again, and then the question arose as to whether or not they had the right to increase their salaries under the By-Laws, and they took legal advice from Mr. Choate and from our firm, independent advice, and the advice in that instance was that they had the right to do it under the By-Laws.

Now, if Your Honor will just consider for a moment the words "at present," fixing the salaries at \$2500 at present, in that by-law, are words that occur nowhere else in the manual, Your Honor must be satisfied that they were put in that by-law for a purpose, and were not intended to make that sum the permanent salary. At any rate, the counsel whom they consulted told them that they had a perfect right to change their salaries, and to readjust those which they were receiving, and their duties, if they saw fit to do so, and they unanimously voted to do it; and Mr. Dittmore was one of those who voted to do it. The record shows that he was present at the meeting and that it was a unanimous vote, and that the record was kept and signed by him.

Now, his suggestion at this late day that there was anything improper in that comes in bad faith.

Mr. Thompson—He has made no such suggestion, Governor. He has said that your desire for secrecy was

what he objected to, but not the vote.

Mr. Bates—There was no desire for secrecy.

Mr. Thompson—Then where are your records?

Mr. Bates—There was no desire for secrecy. That brings me to another question, and it shows also the character of this member who was dismissed from the board. "Where are your records?" says Mr. Thompson. There has been a studied attempt in this case on the part of Mr. Dittmore's counsel, and presumably therefore with his approval, to make it appear that there was something improper done in the matter of those records. I have had a little experience with records of all kinds of bodies. I know that it is perfectly proper to leave out of the records discussions—not only proper, it is usual and best to do so. They have said that the records were deleted in regard to the salary question. By that you would understand them to mean at the time the salary was changed, not at the time it was discussed in 1915. It certainly would not make much difference at the time when they did not take any action whether they were or not. But in 1917, when they took action, the records were not deleted. They are in full. They cover over twenty or thirty pages of the record, because it includes the opinions of counsel and Mr. Dittmore's vote.

As to the 1915 record, they deleted those records on the advice of Mr. Choate, whose opinion certainly was one which they had the right to follow. There was absolutely nothing wrong in it. He told them that they had a right to take out of that record those matters which related to the salary discussion at that time, if they did it by unanimous consent.

Mr. Thompson—Where is your evidence. No such evidence.

Mr. Bates—It is in the record.

Mr. Thompson—No, it is not—no such evidence.

Mr. Bates—It is in the record. I told you one place where I recall it and I think it is in another place. I was asked to make a statement as to what Mr. Neal would testify, and I made a statement, and I think you will find it in that.

Mr. Thompson—There is one letter of Mr. Choate's that you have not produced and nobody has produced.

Mr. Bates—I submit, Your Honor, that we asked them to produce the letter. That is another case of unjust insinuation and innuendo. They have intimated that there was another letter from Mr. Choate in which he talked of publicity. We asked them to produce it. We told them we never had heard of it.

Mr. Thompson—You seem to have heard of it.

Mr. Bates—We never did except from you. The secretary of the board, and Miss Warren, who has been there for years, said that there never was

any such letter, so far as she knew, and we made that statement in open court. If you knew of any such letter why didn't you put the witness on and produce it?

Mr. Thompson—Because you have got it in your file; that is the only reason.

Mr. Bates—That suggestion, that innuendo, just made by the counsel for Mr. Dittmore, is of the same kind and shows why a man who would indulge in those things could not be kept on the board.

Now, to return to the question of that deletion. It was proper, with the unanimous consent of everybody, which was done—the unanimous consent of Mr. Dittmore, and of everybody. Those records were deleted in 1915, and yet he comes in here now and says it was not proper. All bodies, parliamentary bodies, even the United States Congress, sometimes delete records where it is done by unanimous consent, where the discussion has perhaps become stormy, and where perhaps it is well it should not be recorded. If they had deleted a record as to an action then it would be important. They did not. They simply deleted a record as to a conversation or a discussion, and not one as to any action taken by them. Now I submit that undoubtedly Mr. Thompson makes these innuendoes by reason of the fact that his client has suggested them to him. It is a line, as I say, that indicates a character that would be inharmonious, that you could not get along with on the board.

Mr. Thompson—I make them, Governor, because one of the witnesses testified that Mr. Dittmore protested. Now, that is the reason I make it. It is in the record. Your statements are not borne out.

Mr. Bates—The record says it was done by unanimous consent; the record so states.

Mr. Thompson—The record shows that Mr. Dittmore protested against secrecy, and not against the increase of salaries.

Mr. Bates—As to the secrecy, Your Honor, there is another suggestion. This was the highest governing board in the church. What did they do? They submitted it to the finance committee. Mr. Thompson says that that finance committee was appointed by them, and therefore he intimates that the finance committee was not honest.

Mr. Thompson—Oh, no; I have not.

Mr. Bates—That is what it must be, because the finance committee approved it, and yet its members stand high in the Christian Science Church. They are all well known and highly regarded. Not only that, but they stand high in the business world in Boston, one of them being vice-president of one of our largest financial institutions. And yet he says it was done secretly. It is all on the records, he voted for it, it was submitted to the finance committee, they approved it,

the church treasurer has paid the bills, and yet he says it was secret.

There has been no secrecy about it. It was given every publicity that could possibly be given to it. You cannot tell me any other way under the organization of the church or the By-Laws of the church by which publicity could have been given to it. Does my brother think they ought to have gone out and printed an advertisement in the Boston Herald that they had raised their salaries, or what does he expect? Certainly there was nothing required of them under the By-Laws but what they had complied with, and they had gone further, even, in submitting it to the finance committee, to get their approval of it, and practically submitting it to the treasurer.

The substance of all this is that Mr. Dittmore was alone in step. The whole regiment was out of step, he was the only one that was keeping true. None of the trustees were right. He had a good deal of basis for his contention there, possibly, but still I think that he got a pretty exaggerated view even in regard to the trustees. None of the directors were right, none of the editors were right. The evidence here shows that he attacked Mr. McKenzie and he attacked Mr. Dixon. He was in controversy with the Benevolent Association. He didn't like what was done on the War Welfare Work. He was in controversy with the Trustees under the Will in regard to a contract to which, again, he had been a party, and which he had assented to, but his counsel says he didn't realize what it meant. And so he goes out and attacks it and blames the other directors, or attempts to, because of it. He was also in controversy with the business manager, and he demanded of the directors that, practically without a hearing, they should take Mr. Young, who was the First Reader at the Church, and a man who also stands high in Christian Science circles, and that they should find him guilty of disloyalty because, as he claimed, he was siding with the trustees.

In fact, you can hardly find anybody connected with the Christian Science movement but what Mr. Dittmore was at odds with. He is the one, according to his own statement, who went to New York, and from which the complaint of the trustees arose in regard to what the directors were circulating as to them. He says he didn't do it—that is, by implication, and in his letter—that he didn't do what they claimed he did. But it is not important. The fact is that what was done there which was alleged to be in violation of the best interests of the periodicals, he was responsible for. He would not help. He would not attend the meetings. He at first recognized the validity of the vote that expelled him, or dismissed him, as shown by his pleadings in this court and before Your Honor.

Mr. Thompson—Of course that is not conceded.

Mr. Bates—I assumed that the pleadings were before Your Honor as well as any evidence in the case.

The Master—Yes; but I think you can hardly say that in the pleadings he admits the validity of the vote.

Mr. Bates—The pleadings admit that he is bound by the By-Laws.

The Master—Quite so.

Mr. Bates—And that under that section the board had the power to remove him.

The Master—Yes; but then—

Mr. Bates—But he goes on then and questions as to whether or not they did it properly.

The Master—Then he questions their motives and the manner of removal, and distinctly alleges that those made their action illegal.

Mr. Bates—Now, in regard to the disposition—if I may put it that way—of Mr. Dittmore, which got him into this position where he couldn't work with anybody and made it therefore necessary to get rid of him. I am arguing the case only so far as the evidence that has been put in shows, and Your Honor knows that there are many things which I have not the right to argue on now, which we expect to show and which are set forth in our answer to his Bill in Equity, when the Dittmore case comes before Your Honor. But as to this question of removing him on account of the disposition that he has shown, or his antagonism, his lack of harmony, I call Your Honor's attention to the case (we will have it on our brief, so that Your Honor need not take it) of *People v. New York Hospital*, 29 Appellate Division, New York, 224; 51 New York State 420.

Charges having been preferred by the faculty of a medical college to the board of directors thereof against one of its professors, the directors subsequently, pursuant to a resolution of the faculty requesting it, returned such charges to the faculty without having acted upon them, and thereafter passed a resolution removing the professor from his position.

By subdivision 2 of the twelfth article of the by-laws of the medical school, under the head of "Appointments" it was provided that professors should hold office during the pleasure of the board of directors; and by subdivision 3, entitled "Removals," that "the Chair of any professor may be declared vacant by a three-fourths vote of the board of directors upon at least two weeks' notice, together with a copy of the charges, having been given to said professor of the time of which such action is to be taken, when said professor may have the opportunity of being heard in his own behalf."

Your Honor will bear in mind that charges were preferred there and withdrawn, and that there was an article giving the broad power of removal at the pleasure of the board.

In addition to that, there was the power given of removal upon charges and two weeks' notice. But what the board did was to remove him, not on any charges and not with any notice, but removed him under that power which was given them as under the pleasure of the board. It was held that that was a proper exercise of power.

"The Board of Directors was called upon to exercise a discretionary power of removal, and, under subdivision 3, to exercise their judgment upon charges preferred, the two methods being entirely distinct and independent, and that the professor might lawfully be removed by the board under subdivision 2 by a majority vote of the members thereof."

Now, the Court says:

"The college should not be tied to a particular person who, however able and worthy, happens to be afflicted with temperamental qualities which render association with him disagreeable. There can be no good reason why such a person should be permanently inflicted upon his associates, so long as he does nothing which renders him amenable to charges. . . . The relator, whether right or wrong in the position which he had taken throughout, had become persona non grata with the directors, and these gentlemen thought proper to terminate their relations with him."

The Court holds that those reasons were sufficient. As to the question of notice, I will come to that later. I cite that case more particularly because it seems to me to come right to the point as to removing a man for temperamental reasons.

The Master—But as I understand you, in that case the removal was without charges?

Mr. Bates—Without charges.

The Master—And without notice?

Mr. Bates—And without notice.

The Master—And his tenure of office was at the pleasure of the board?

Mr. Bates—At the pleasure of the board. The by-law, Article I, Section 5, provides that a majority vote or the request of Mrs. Eddy shall dismiss a member. A resolution of dismissal was adopted on March 17, 1919. It was adopted by a majority of the board, and so conformed to the by-law. I submit that that, of course, in itself makes a prima facie case, so far as the issue in the Eustace case is concerned.

Mr. Thompson—You mean the Dittimore case?

Mr. Bates—So far as the issue in the Eustace case is concerned.

The Master—So far as the issue regarding Mr. Dittimore's removal in the Eustace case—

Mr. Bates—Exactly.

The Master—I take it that is what he means.

Mr. Bates—Yes. Now, as to the validity of the by-law—

The Master—Meaning the validity of the provision in Article I, Section 5?

Mr. Bates—Yes, Your Honor. In his

Bill in Equity he admits the validity of the By-Laws in general, and I do not understand that either he or his counsel deny it now. Mr. Thompson says that Mr. Dittimore stands unequivocally on the By-Laws of The Mother Church as the governing authority for both its members and officers. He made that statement during the evidence, on page 254.

The Master—So that, so far as Mr. Dittimore is concerned, it is a question of the construction of the by-law?

Mr. Bates—Yes. Now, I understand that Mr. Dittimore's counsel in asking to have the twenty-eighth edition of the Manual introduced as evidence this morning did that because he wished to make the contention, which was suggested during the evidence, that the changing of the word "and" to the word "or" in that by-law took place between the twenty-eighth and twenty-ninth editions. The twenty-eighth edition of the Manual—which I think has not yet arrived—has the word "and" instead of the word "or," which makes it "A majority vote and the consent of Mrs. Eddy shall dismiss a member." The Manual next preceding the twenty-eighth which is in evidence in this case is the twentieth edition, and that edition had nothing in it in regard to the matter. That is, it contained no provision whatever relating to the dismissal of a member of the Board of Directors.

Now, assuming that the twenty-eighth edition is now in evidence.

Mr. Thompson—Neither did any previous edition, did it, before the twenty-eighth?

Mr. Bates—I am not certain as to that.

Mr. Thompson—I think that is a fact.

Mr. Bates—Mr. Thompson does not dispute, as I understand it, the validity of the by-law unless it was a change which was made without Mrs. Eddy's approval. If it was made with Mrs. Eddy's approval, then I understand that he admits that the by-law, in form at any rate, is right and is binding upon his client.

The Master—Because of the vote of the directors adopting the twenty-eighth edition?

Mr. Bates—Yes, Your Honor.

Now, the first matter to which I wish to call Your Honor's attention in that connection is that the record of the adoption of the twenty-ninth edition of the Manual on page 248, column 1, shows that it was adopted in compliance with a request by Mrs. Eddy over the telephone. The Manual was adopted on July 30, 1903, by the directors, and on Aug. 17, 1903, Mrs. Eddy wrote to the directors as follows (p. 358, column 3):

"I give you direct orders to bring out our Manual and not to delay one other day. I know the Manual is right. God tells me to have it published as it is. You have adopted the By-Laws;

now delay no longer to put it in book form."

And that was this twenty-ninth edition. Mrs. Eddy says she knows it is right. It is to be presumed, therefore, that she had passed, not upon a part of it, but upon every part of it. She says, "God tells me to have it published as it is; you have adopted the By-Laws, delay no longer." We submit, Your Honor, that that is an approval of the twenty-ninth edition by Mrs. Eddy, and is as explicit as it could possibly be. And I do not think that it lies in the mouth of Mr. Dittimore to claim that Mrs. Eddy wrote that without knowledge as to what there was in it, that she would have used that language if she had not been satisfied in regard to every word of that Manual.

Now, every subsequent edition of the Manual contains it in that form, and Your Honor will keep in mind that that was adopted in July, 1903—seven and one-half years before Mrs. Eddy's death. And she was constantly going over the By-Laws and making such corrections as she wished to make, and yet that stayed without any change during the rest of her lifetime and without any suggestion of change. She not only, therefore, approved it in a specific manner in the twenty-ninth edition, where it first appeared, but also approved it in all the subsequent editions.

My brother discovered in one of the Manuals a notation in pencil that somebody had made in going over it to the effect—it is in the twenty-ninth edition—against that by-law, which says, "Amendment adopted March 12, 1903: changes evidently made in proof." Now, it has appeared in evidence that Mrs. Eddy had all the proofs sent to her and made such changes as she pleased in regard to the editions of the Manual, and that then the proofs were sent back. We endeavored to obtain the proofs, and we were called upon to produce them, and we called upon the trustees of the Publishing Society to produce them, and I have no reason to suppose that they did not produce all that they had, and we certainly produced all that we had; but it is manifest that many of the proofs have disappeared. It was years ago, and the proofs were not considered the important things at that time after the corrections had been made, and the Manuals had been printed. So that it is not strange that we do not find the original authority of Mrs. Eddy for this change; but I submit to Your Honor that the authority is just as strong and just as binding from her approval of this edition and of all the subsequent editions, and from her failure to make any change in it when she was making so many changes in regard to the By-Laws. It shows absolutely that this change was a change made with her approval, and one which cannot be

contested as not having had her authority.

I might also call Your Honor's attention to the fact that something over a year before her passing on, in October, 1909—Oct. 12—as shown by the record on page 491, she said:

"I approve the By-Laws of The Mother Church, and require the Christian Science Board of Directors to maintain them and sustain them."

That was six years after this change had been made. The Manual then in existence was the seventy-third edition, which was adopted July 31, 1908. And that seventy-third edition Your Honor will recollect has become the standard or the authority to be referred to in case of discrepancy in any subsequent editions. So that in the authorized edition, the one to which Mrs. Eddy said all reference should be made in case of discrepancy, the seventy-third edition, adopted in 1908, we find the law the same as it is today and as it had been from 1903.

Mrs. Eddy on Aug. 15, 1908, wrote, or rather, she asked the directors to adopt this by-law, which was adopted:

"The Board of Directors, the Committee on Bible Lessons, and the Board of Trustees shall each keep a copy of the seventy-third edition and of subsequent editions of the Church Manual; and if a discrepancy appears in any revised edition, these editions shall be cited as authority."

There is, therefore, ample evidence of Mrs. Eddy's knowledge and approval of the by-law in the form in which it now appears, and in the form in which it first appeared in the twenty-ninth edition of the Manual.

It is to be called to Your Honor's attention also that the form as it is now is the same form that it was in at the time that Mr. Dittmore was elected to the board on May 31, 1909. It had been in existence at that time six years.

Now, I submit to Your Honor that the Board of Directors in taking this action in regard to a co-director, did it with reluctance. It was not an easy thing to do. It would have been easier to get on and go along, perhaps, as they had been doing, but the Cause would have suffered. It was nothing that brought to them any pleasure. They could have had no purpose in view save the good of the Cause in making this removal.

The question of a hearing: I understand Mr. Thompson to urge that this removal was not valid because Mr. Dittmore was not given a hearing. I submit, first, that if a hearing had been given it could have added nothing. Mr. Dittmore was dismissed because of what the board themselves knew, because of what they had seen, what they had witnessed and heard; it was not a case of bringing evidence and sifting it, it was a case where they were their own witnesses, and they had to act on what they themselves knew and they would have stultified themselves to have asked wit-

nesses to support any charges or claims which they were making in regard to his action in the Board of Directors and his lack of harmony with them. So that a hearing could have added nothing. I submit that the board as they have appeared before Your Honor are not men who act in haste or rashly. Mr. Neal, one of the beloved students of Mrs. Eddy, who would resign himself rather than to make trouble for anybody else—a man of that disposition that he would give up everything save Principle to avoid a trouble, although he was not present, he assented. Why? Because he knew how things had been; he knew what had been going on for years. Mr. Rathvon was a new member of the board, had only been there a few months. He had come in without any prejudices. He saw how things were going, he recognized the necessity; he voted for it.

Mr. Dickey, against whom there have been so many shafts aimed in this contest, was a man who was called from his home in the west by the great Leader of the Christian Science Movement and given a place in her household, and continued there almost until the time of her passing, and left only that he might take up the duties of a directorship at her request. I do not think Your Honor can find in his attitude anywhere in this case anything that indicates that he was not one who would go to the greatest extremes to make a settlement—anything except Principle, as shown particularly in the Eustace matter—willing to do anything to prevent disaster to the Cause; a man who was justifying in his life Mrs. Eddy's high opinion of him—rugged when standing for a principle, and persistent in it, but tender as the heart of a woman when matters were concerned which were not matters of Principle as shown by the emotion he showed when referring to the relationship which he had had to his loved Leader.

I do not think that Your Honor believes that these men were men who were acting hastily in the Dittmore case any more than in the Eustace case.

Then there was Mr. Merritt, a man of large business experience, whose honesty on the stand could but have impressed Your Honor; a man who was looking at it more particularly, perhaps, from the business man's point of view, the practical point of view. He knew that the thing could not continue. He was the one who went twice to Mr. Neal to tell him what the situation was when Mr. Neal returned. He was the one who knew that action was necessary, and he also was acting carefully and with the greatest consideration.

As to the question of removal, so far as the legal questions are involved, I assume that there is some relationship to the ecclesiastical law. Let me put it a little differently: The civil courts will not interfere with

that which is done by an ecclesiastical tribunal unless it is shown that there is some property right affected contrary to the laws of the State, or unless possibly it is shown that there was fraud, which is the same as bad faith.

In *Fitzgerald v. Robinson*, 112 Mass., the Court says:

"If the defendant was competent to pass sentence of excommunication we cannot inquire into the grounds and regularity of the proceedings."

If the Board of Directors were competent to dismiss a member, then the civil courts will not inquire into the grounds and regularity of the proceedings.

I have several cases here which I have cited on the brief, and I will not bother to read them all at this time.

Mr. Thompson—You will give us a copy of your brief, then, I suppose?

Mr. Bates—Certainly. Again, in *Ripe v. Floyd*, 6 Ohio, C. C. 80, the Court says:

"In determining the adverse claims of persons asserting a right as trustees to the possession and control of a printing establishment and real property belonging to a religious society, the civil court will, where the controversy grows out of questions of purely ecclesiastical cognizance, accept as conclusive the decision of the highest tribunals within the organization to which it has been carried, on all questions of doctrine, discipline, ecclesiastical law, rule, custom, or church government involved."

[Short recess.]

The Master—You do not want us to wait for Mr. Whipple, do you?

Mr. Strawn—No. Go right ahead.

Mr. Bates—I will read an extract from the opinion in the case of *Connitt v. Reform Protestant Dutch Church*, 54 N. Y., 551, where the Court says:

"Having thus reached the conclusion that this was an ecclesiastical matter, and that the church judicatories had jurisdiction of it, we cannot inquire whether they have proceeded according to the laws and usages of their church, nor whether they have decided the matter correctly. It is the settled law of this country, repeatedly announced by the most learned judges and highest courts, that in such cases the civil courts must take the decision of the ecclesiastical courts as final and binding upon the parties."

In the case of *Landers v. Frank Street Methodist Episcopal Church of Rochester*, 97 N. Y., 119, the Court said:

"The learned trial judge, however, instructed the jury that the obligation imposed by the rules and discipline of the church was a moral obligation only, and not one recognized as a binding legal obligation by the law of the State. In this we think he erred. The rules and regulations prescribed by the discipline of the church are binding upon the assenting

members, and as to them have the force of contracts. That is the plaintiff's position. He joined the conference, received his appointment as minister over the church and society in the usual way, and thus became subject to the regulations for the support of the preacher to which we have referred."

Mr. Thompson—What case was that, Governor? I was out, unfortunately, when you began after the recess.

Mr. Bates—That is the case of Landers v. Frank Street Methodist Episcopal Church of Rochester.

Mr. Thompson—And what is the citation?

Mr. Bates—97 N. Y., 119.

Mr. Thompson—Oh, yes. That makes it a matter of contract.

Mr. Bates—

"It was upon the faith of such submission that he enjoyed the advantage or privilege of membership, and he cannot now maintain a claim in defiance of them, unless they are inconsistent with the general law of the State, or the statute under which the defendant was organized. The first is not pretended, and there is nothing in the statute which prevents members of a voluntary religious association from agreeing among themselves as to the conditions of membership and its liabilities as well as its privileges, so long as they do not interfere with the powers and functions of the corporation declared by statutes."

Again, in the case of Jennings v. Scarborough, 56 N. J. L., 410, it is stated by the Court:

"Courts of law will not interpose to control the proceedings of ecclesiastical bodies in spiritual matters which do not affect the civil rights of individuals, nor will they interfere with the action of the constituted authorities of religious societies in matters purely discretionary."

In Trustees v. Harris, 73 Conn., 216, a bishop of the Methodist Episcopal church decided who were the trustees of a church, where the church had been consolidated from three others. Held—that the decision of the bishop was conclusive as to the trustees in whom the title to the church property was vested.

Again, in the case of State, ex rel. v. Bibb Street Church, 84 Ala., 23:

"The power of the civil courts to restore by mandamus a party who has been wrongfully removed from an ecclesiastical or spiritual office is well established, when the temporal rights, stipends or emoluments are connected with or annexed to such office, which belong to the incumbent. . . . But the courts are powerless to interfere where there are no fixed emoluments, stipends or temporal rights connected with the office; where it is purely ecclesiastical."

". . . if a judicatory of a church has jurisdiction, by its laws, to try a member for an offense involving immorality, its decision is final, and not subject to be reviewed by the civil

courts for alleged errors; that the civil courts will not examine into the question of errors in the proceeding, but give it the same force and effect as if regular in every respect."

The last case is Landis v. Campbell, 79 Mo., 433.

The case of Presbyterian Church v. Cumberland Church, 245 Ill., 74:

"When a person becomes a member of a church he becomes so upon the condition of submission to its ecclesiastical jurisdiction, and, however much he may be dissatisfied with the exercise of that jurisdiction, he has no right to invoke the supervisory power of a civil court so long as none of his civil rights are invaded."

And then from Mack v. Kime, 129 Ga., 1:

"A member when he enters the [religious] organization, voluntarily assumes the duty of obeying the laws of the association. As to all matters purely ecclesiastical he is bound by the decisions of the tribunal fixed by the organization to which he belongs, as an arbiter to determine the disputed questions relating to matters peculiarly within the province of the organization. . . . The constituted tribunal of the religious organization . . . has the authority to determine for itself whether it has jurisdiction in a given case."

The case of Bonacum v. Harrington, 65 Neb., 831, is a case in which the opinion was written by Roscoe Pound, and I understand under the provision of statutes there which allows their Supreme Court to submit questions for opinions to commissioners, and Professor Pound was the commissioner in this case, and there is much in it that is helpful. I will quote only a single sentence. I will not quote that: I will simply state that the case was one where a Catholic priest was dismissed by the bishop in authority without a trial or hearing; and that opinion upholds the dismissal without either trial or hearing.

"When they entered into the membership of the church they knew the extraordinary power which was centered in the General Assembly, and obedience and acquiescence in that power was one of the conditions of membership."

That, I think, is equally applicable to the present case. That is 45 Mo., 201.

Now, there are many decisions to this effect, but I quote this from 13 Wallace, 679, Watson v. Jones:

"In this class of cases we think the rule of action which should govern the civil courts, founded in a broad and sound view of the relations of laws, and supported by a preponderating weight of judicial authority is that, whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been

carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them."

I have several cases to the effect that a dismissal without cause is binding upon the civil courts.

"Even a dismissal without cause is binding upon the civil courts if authorized by the contract of the parties, viewed in the light of the laws and usages of the society."—Gibbs v. Gilead Soc., 38 Conn. 153.

Wherever there is no contractual right the law seems to be plain that a dismissal may be made by an ecclesiastical tribunal, and it is final. The civil court has no jurisdiction if the right to the position be regarded as merely spiritual or ecclesiastical. This certainly is an ecclesiastical office.

Walker v. Wainwright, 16 Barb. 486. James Church v. Huntington, 82 Hun. 125.

Now I understand, Your Honor, that Mr. Thompson has handed to you four citations of Massachusetts cases which he claims tend in the direction of requiring a hearing before the dismissal of any party, notwithstanding the fact that the power as stated may be arbitrary. I wish to take up those four cases somewhat more in detail. The first is the case of

Gray v. Christian Society, 137 Mass. 329.

The person sought to be removed in this case was a member of the Christian Society and not an officer. I submit, Your Honor, that where it applies to a member—where the ruling applies to a member, even more would it apply to an officer. A member may have certain rights, as a member, by reason of his having joined and conformed to the laws and regulations of an organization. He has an equal right with every other member. But an officer has no right except as that is given to him by those who have the power to give it to him. He is a servant, and he has no right to continue in the service, apart from a contract, except as those who employ him may see fit to do so; whereas a member of an institution or a society has a right to continue so long as he obeys the laws of a society.

The case of Gray v. The Christian Society was the case of a member. The by-law under which the removal was attempted to be accomplished provided that "any member who shall either cease to regularly worship with the society, or who shall fail to contribute to the support of its public worship for the term of one year shall have his or her name dropped from the list of members."

No hearing was had under this by-law and no vote of the society was taken as to whether the persons involved should be dropped from the list of members. Under such circumstances the Court held that the members could not be dropped from membership without a hearing and an opportunity to be heard.

I call Your Honor's attention to the vital difference between that case and the one at bar. In the case of Gray v. The Christian Society the by-law provided that a member could only be removed for certain specified reasons, namely, that he shall either cease to regularly worship with the society, or shall fail to contribute to the support of its public worship for the term of one year.

Now, where reasons or causes are assigned in the By-Laws or rules, those must be lived up to. The very fact that a cause is assigned implies that one is accused of breaking it, and where one is accused of breaking a rule he is entitled to a hearing. This Massachusetts case decides nothing further than that, and that is good law everywhere. If causes are specified, then the causes must be set forth and a hearing must be had on them because it is in the nature of an adjudication. The decision in that case is as to whether or not they have been guilty of those things which the by-law says shall be sufficient for their discharge. In this case the question was whether or not they were guilty of ceasing to regularly worship or whether they had failed for a year to support the public worship, and the Court said these are judicial questions to be determined by the society after giving the member notice and an opportunity to be heard.

I submit to Your Honor that that is entirely different from this case. This is a case where the power is arbitrary.

The Master—If I am right, there wasn't any vote to dismiss in that case.

Mr. Bates—No.

The Master—The man tried to vote and the moderator wouldn't let him; isn't that all there is to it?

Mr. Thompson—On the ground that he had done these two things.

The Master—Said he was not a member.

Mr. Thompson—Yes; the moderator said he was not a member.

Mr. Bates—The only point I am making is that the facts in the case, although my brother Thompson has cited it as a case in his favor—the facts in the case do not justify it. I take it he cites it on account of the principle laid down.

Mr. Bates—The principle laid down is a principle with which we have no quarrel and in which we believe.

Mr. Thompson—Is that why you cited 13 causes of dismissal, and then said, therefore it is voted he shall be dismissed—13 different reasons, and then said, therefore for these reasons we vote to dismiss him? That is what you did, and then you say you are not obliged to prove it.

The Master—I only call your attention to the fact that it was not a case of dismissal, that is all.

Mr. Bates—If it is not a case of dismissal it is also not a case in point, but it is a case that was cited by him. The next case cited by him is the case

of Spilman v. The Home Circle. I assume they are the cases he cited because he said they are the cases which he gave to me, and these are the ones which he gave to me. This is the case of

Spilman v. The Home Circle, 157 Mass. 123.

In this case the person sought to be removed was a member of the supreme council of The Home Circle, a beneficial organization. There were three grades of membership in the order, namely, the subordinate council, the grand council, and the supreme council. There was an elaborate code of laws governing the members of the subordinate council and the grand council, and a section of one of those laws provided that any officer or member of the supreme council, or of any grand or subordinate council, or any member at large, may be expelled for certain specified causes. The law then proceeds to define the mode of procedure in the above cases. Spilman, the person sought to be removed, was first a member of a subordinate council, then of a grand council, and finally the supreme guide of The Home Circle, and in the latter capacity was an officer of the supreme council. Here, then, we have a case of the attempted removal of an officer of the organization. Having in mind that the by-laws provided that any officer of the supreme council may be expelled for certain specified causes, the case shows that the supreme leader filed charges against Spilman, as an officer of the supreme council. These charges were referred to a committee to hear the evidence and report the same with their findings and recommendations to the supreme council. This committee recommended Spilman's expulsion, and the supreme council voted to expel him.

Here, again, I call Your Honor's attention to the fact that the by-laws governing the removal of this officer contemplated the determination of certain facts as a condition for the exercise of the power to remove. He is an officer of the supreme council; he could only be expelled for cause, which must be specified. Therefore there was a duty on the part of the organization to determine whether cause existed sufficient for his removal, as specified by the by-laws. This necessitated a determination of this question, and, therefore, common justice required that a notice be given and a hearing be had, whereas in the case at bar at the present time the by-law does not contemplate a removal for cause, but rather an arbitrary removal, as I have before stated.

I call Your Honor's attention also to the fact that even in this case the supreme council did not follow the mode of procedure in removing Spilman that was specified as requisite in the case of the removal of members from subordinate councils, but the supreme council being a body whose will was a law unto itself, and there

having been a hearing and a determination of the questions of fact upon which the removal was predicated, the legal requirement in cases of removal for cause was met, and the Court held that the expulsion was regular and valid.

The third case cited by Mr. Thompson is:

Canadian Society v. Parmenter, 180 Mass. 415.

In that case a number of French Catholics living in North Brookfield, where there was a regularly established Roman Catholic church, formed a voluntary religious society for the purpose of building a house of worship and holding religious services therein under the ministry of a French Catholic priest. The constitution provided for a moderator, clerk, treasurer, auditor, and three trustees. One article of the constitution also provided that any member "acting against the interest of the society may be expelled from it at any meeting by a vote of two-thirds of the present voting members."

The Roman Catholic Bishop at Springfield refused to recognize this organization, and issued an edict that any Catholic who attended the church would be excommunicated. The trustees thereupon closed the doors of the church and ordered that worship should be discontinued. A group of worshippers, however, held a meeting. One article in the call for which was "to see if said association will vote to revise its list of membership." At this meeting its list of members were revised and those who had withdrawn from the congregation as a result of the edict of the Bishop were dropped from the list of members. No notice was given to those members and no hearing was had. The association simply held that their names should be stricken from the list for having left the church and "worked against the interest of the association."

The master found that this action of the association was not effectual to expel the members whose names were dropped solely because the evidence presented to him did not show that they had left the church and worked against the interests of the association.

The Court held, however, that the call for the meeting contained an article which, in general terms, gave notice that the membership of the society might be revised at that meeting; that the appointment of the committee, its report and the action of the meeting upon the reports, were a plain adjudication on the part of the society that the persons whose names were crossed off from the list of members had worked against the interests of the society, and that they were expelled therefore as provided in the by-laws; that the Court had no jurisdiction to determine the wisdom of taking such action by the committee, and would not.

I submit that that case on all its



facts is not at all parallel with the Dittmore case, but so far as it is analogous it supports our theory absolutely.

The fourth case cited by Mr. Thompson is the case of *Richards v. Morrison*, 229 Mass. 458.

It is sometimes known as the Boston Athletic Association case. The by-law in that case, under which the board of governors removed the member provides:

"If any member shall be charged in writing with conduct injurious to the good order, peace, or interest of the association, or if the committee shall become cognizant of such conduct, the committee shall thereupon inform the member charged, in writing; and, if upon inquiry, and after giving the person so charged an opportunity to be heard, the governing committee shall be satisfied of the truth of the charge, and that the same demand such action—"

expulsion may follow. I think it requires no more than the mere recital of this article to show that this case has no application whatever to the Dittmore case. The by-law under which the plaintiff in the *Richards* case was expelled expressly provided for formal charges, a hearing, and an opportunity to be heard. Of course, the Court said, that justice required that the by-laws should be complied with; no expulsion of a member could be made under such circumstances unless the requirements of the by-law were complied with. Therefore the power in that case was a conditional one, and the power in this case at bar is unconditional. In that case the exercise of the power must be predicated upon the existence of certain facts which had to be determined as a result of a hearing and the member would have to be given an opportunity to be heard; whereas no such requirements as this are in the by-law governing the removal of a member of the Christian Science Board of Directors.

In every case cited by Mr. Thompson the power of removal is a conditional one; it must be for reasons, and for reasons that are specified. That implies that somebody has to determine whether or not those reasons exist, or those causes exist. I think there is no case to be found where the arbitrary power is given, where the Court has said that the body had not the right to exercise it without notice and without hearing. There are many cases where it has said that it has. I have failed to find a single case where the power is arbitrary, as in this case, both as regards the directors, and the trustees—for what I am stating here apply to the trustees in this respect—I have failed to find a single case where arbitrary power was given, where the Court has said that a hearing or notice was necessary.

Now, I suppose my brother Thompson will rely somewhat upon the statement in regard to "common justice,"

but I submit that when that term was used in the decision in *Gray v. Christian Society*, that it was used in connection with that case, where common justice did require that members should have the right assured to them by the by-laws before they were removed.

Mr. Thompson—You say common justice does not apply to this case?

Mr. Bates—I say that the words "common justice," as used by Judge Holmes in that case, do not apply to this case—and he so states in his opinion. I will read it in a moment. Common justice requires, as in that case, notice and an opportunity to be heard wherever questions of fact are necessary to be determined, as a prerequisite for the exercise of the power of removal. What the Court says is this:

"The grounds on which a member is to be deprived of his membership are both of them indefinite, involving questions of more or less possible disputes of fact and certain differences of judgment."

That was a question, Your Honor will remember, whether a member had ceased to worship regularly and failed to contribute.

"Not only is the number of times a man has attended or the amount he has contributed, to be settled, but then comes the question whether the facts amount to ceasing regularly to worship with the society, or to a substantial failure to contribute. . . . They are judicial questions, to be determined by the society after giving the member notice and an opportunity to be heard."

Mr. Thompson—Now, the next sentence, as to the necessity of complying with these requirements.

Mr. Bates—If you want to read the next sentence, you can.

Mr. Thompson—I want you to read it.

Mr. Bates—No.

Mr. Thompson—You don't want to be fair, then?

Mr. Bates—I am submitting the case, reading the parts which I consider material.

The Master—You will have an opportunity, Mr. Thompson.

Mr. Bates—You have a right to reply to me; you have no right to interject a part of your argument at this time.

Mr. Thompson—Certainly; you are perfectly right; if you want to garble the opinion I can't stop you.

Mr. Bates—You know very well the Court would not want me to read the whole opinion, only the parts that I consider material.

Mr. Thompson—I think the next line is material.

Mr. Bates—Now, the case of *O'Dowd v. City of Boston*, 149 Mass. 443 is more nearly analogous to this case, because that is a case relating to a statute, and it provides that officers or boards of cities may remove their subordinates for such cause as they may deem sufficient and shall assign in

their order for removal. Now, as to that power, the Court held:

"The language of the statute indicates it did not intend to require charges and a hearing. It is not to be at the discretion of the board for cause shown, which might have implied that there should be a hearing and adjudication, but it is to be for such cause as the board shall deem sufficient, and this does not seem to contemplate formal adjudication. . . . There must be a cause in fact for every removal, so in a removal at pleasure no cause need be given, and none can be judicially known."

In the case of *Attorney-General v. Donahue*, 169 Mass. 18, a statute gave the Mayor power to remove "for such cause as he shall deem expedient." There is no great difference. In the case of Mr. Dittmore they may dismiss him.

The Court held in the case of *Attorney-General v. Donahue* that that gave the Mayor the power to remove without a hearing.

In the case of *Richards v. Morrison*, which Mr. Thompson cited, there were some words which I assume he will quote to Your Honor. It is stated in that case that the courts go no further than to ascertain whether the member has been given a fair chance to present his side of the controversy, so as to satisfy the requirements of natural justice.

I call Your Honor's attention to the fact that that was stated in reference to the by-laws which required certain things to be done in that case, and that those words apply to the set of facts as they appeared in that case, which were entirely contrary to the ones as they appear in this case, to the ones as they appear in the *O'Dowd* case and to the ones that appeared in the *Attorney-General v. Donahue* case. So that those words are not to be considered as having a bearing on a case where the facts are not similar. And it was Chief Justice Rugg's statement to that effect that I had reference to when I said a few moments ago that the Court had stated that the opinion did not apply to a case except where the facts were similar, for in closing that opinion the Court stated:

"This general statement may require modification and amplification according to particular circumstances, but is sufficient for the case at bar."

So that I submit, Your Honor, that on the strength of these various cases, as a matter of law Mr. Dittmore was properly removed without a hearing.

The Master—You have assumed, have you not, in reaching that conclusion, that the by-law, "A majority vote or the request of Mrs. Eddy shall dismiss a member," means a majority of the directors have the power of arbitrary dismissal without notice or hearing?

Mr. Bates—Yes, Your Honor.

The Master—Is that quite clear?

Mr. Bates—I thought it was, under the By-Laws.

The Master—In some of the cases which you have cited the provision is much stronger in that direction than it is here, isn't it?

Mr. Bates—The cases which I have cited are cases where there might be possibly more question, as it seems to me, than there would be in our case. For instance, in the O'Dowd case—

The Master—Why wouldn't it be fair to say "A majority vote after notice and hearing"—

Mr. Bates—Because that is not what the law says.

The Master—Is what is really intended by the by-law?

Mr. Bates—That is not what the law says.

The Master—Well, a good many of these by-laws are elliptical and require something to be supplied. Is it entirely out of the question that anything of that kind could be supplied?

Mr. Bates—I think it is absolutely, Your Honor, and inasmuch as Your Honor has asked the question I have cited two Massachusetts cases which I think are absolutely to the point, but there are others which I will ask Your Honor's attention to. I did not dwell at any length upon the case of Attorney-General v. Donahue. Let me call your attention to that.

The Master—That is 169 Mass.?

Mr. Bates—Yes, but I did not dwell on it.

The Master—I noticed that in particular.

Mr. Bates—I will state the facts there. The statute there gave the Mayor the power to remove "for such cause as he shall deem sufficient." The Court might have said in that case, "Well, there should be some cause alleged or there should be some hearing in the case." That certainly is not a case that in any wise differs from ours so far as the principles are concerned. It was held there that the power was a power to remove without a hearing. If it had said, "The Mayor shall have the right to remove," there can't be any question but what that power would at least have been held as broad as the power to remove for such cause as he deemed sufficient.

The Master—Are you quite satisfied that that is so?

Mr. Bates—I feel absolutely satisfied in regard to it. Under the provision of that statute the order was not to take effect until approved by the City Council. "The statute provided that 'the City Council may, by a two-thirds vote in each branch, voting by yeas and nays, remove any of said officers without the consent of the Mayor.' This gives the City Council the same right as the Mayor to remove without hearings; and whereas the Mayor is required to set forth the reasons for removal in his order, and is forbidden to remove upon partisan grounds, no such requirement or prohibition is imposed upon the City

Council, where both would be more difficult of application. We are of opinion that the City Council was not bound to set forth its reasons in its order, and that evidence that it acted on partisan grounds was inadmissible, and properly was rejected. Of course our decision goes wholly on the construction of the particular statute and not on any general view as to the powers of such bodies when the statutes are silent."

Now, the case of Sims v. Police Commissioner, 193 Mass. 547, which I had not cited, but a case which cites the O'Dowd case and the Donahue case, is to the same effect.

There is the case of Tucker v. Boston, 223 Mass., 478, which holds that a hearing is necessary before a discharge; but it is based upon the particular provisions of the Civil Service statute and upon those only, and those require a public hearing before an officer is discharged.

Now, this is not merely Massachusetts law, it is the law of the United States courts. The decisions in the United States Supreme Court are in accord with the Massachusetts decisions to the effect that no hearings are necessary unless the particular provisions of the statute require a hearing.

Mr. Thompson—These are all administrative officers.

Mr. Bates—Ex parte Hennen, 13 Peters, 230 (1839):

"The law giving the District Courts the power of appointing their own clerks, does not prescribe any form in which this shall be done. The power vested in the Court is a continuing power; and the mere appointment of a successor would, per se, be a removal of the prior incumbent, so far at least as his rights were concerned."

In Reagan v. United States, 182 U. S. 419, it was held that a U. S. Commissioner in the Indian Territory appointed by the United States Court in said territory was removable at pleasure unless causes for removal were prescribed by law.

Fuller, C. J., said at page 425: "The inquiry is therefore whether there were any causes of removal prescribed by law. . . . If there were, then the rule would apply that where causes of removal are specified by constitution or statute, so also where the term of office is for a fixed period, notice and hearing are essential. If they were not, the appointing power could remove at pleasure or for such cause as it deemed sufficient."

In other words, it is not restricted unless there is a statute or a by-law that does restrict it.

"The suggestion that the provision referred to such causes as courts might recognize as just will not do, for 'prescribed by law' is prescribed by legislative act, and removal for cause, where causes are not defined, nor removal for cause provided for, is a matter of discretion and not reviewable."

In Shurtleff v. U. S., 189 U. S. 311, 314:

"Under Section 12 of the Customs Administration Act of June 10, 1890, providing for the appointment of general appraisers and their removal by the President for inefficiency, neglect, or malfeasance in office, the president may also remove such officers without any of the causes specified, under his general power of removal."

In conclusion, so far as this question of law is concerned, I submit that there are stronger reasons for holding that no hearing was required before the removal of Mr. Dittmore, and also the removal of Mr. Rowlands, than there were in the cases I have cited.

The Master—Your position is that the power of removal given is unrestricted by requirements regarding notice and hearing, unless it is expressly so restricted?

Mr. Bates—Yes, Your Honor. I find no decision to the contrary. I find every decision to that effect.

Mr. Thompson—Even when the removing body is the prosecuting body?

Mr. Bates—That is always the case. It is the case in all of these that I have cited. I submit that the wording of the By-Law shows that Mrs. Eddy intended to give to the directors the broadest authority in the matter of the removal, and there can no case be cited where a hearing is required unless as the result of some statute or law there was a provision that removal could only take place where certain facts existed, and where certain by-laws therefore required certain conditions to be complied with.

Now, I submit on all the evidence as to Mr. Dittmore that Your Honor cannot as a matter of law find him still to be a member of that board. The consequences of doing so I do not need to consider, although it is apparent, and that is the reason for so many court decisions that an interference with the governing body of the church by the civil courts, requiring them to keep a man whom it had found that it could not keep in justice to the cause that they represented, could lead only to disaster, and I submit that because of that fact the courts are very slow in any case to interfere with a judgment of an ecclesiastical tribunal, and if they will not interfere with a civil tribunal to require a hearing where the law does not require a hearing, then certainly they will not interfere with an ecclesiastical tribunal to require a hearing, for the reasons are all the stronger why there should be no interference with the decision.

Therefore, so far as the Eustace case is concerned, if Your Honor finds it necessary to decide the Dittmore issues, I trust Your Honor will find that Mr. Dittmore is not now a director of The Mother Church. I might add that the removal—as bearing on the question of good faith—was taken after the advice of counsel, and that according to the testimony General

Streeter had at one time advised the board as to its rights and that it had that right also.

Mr. Thompson—We want to enter a protest against that as not based upon the testimony and as in fact not true.

Mr. Bates—Well, it was not contradicted, and the statement was made.

Mr. Streeter—How is that? I would like to hear that statement.

Mr. Thompson—He is trying to put it on you now, General.

Mr. Bates—I stated that the evidence, uncontradicted, shows that the board had had the advice of two attorneys in regard to its power and right to remove a director, and that one of them was General Streeter—some years ago.

Mr. Thompson—And that he said they need not follow the principles of common justice, but could remove without cause—

Mr. Bates—No, I did not say that.

Mr. Streeter—I was not aware that there was any such testimony in this case. If there is, it was a triumph of mendacity on the part of the man who stated it.

Mr. Bates—Well, it came out, and it came out prominently. I will not rely on General Streeter's recollection at all, Your Honor, if he differs.

The Master—The difference between you seems to me to be, what was General Streeter's opinion as testified to.

Mr. Bates—There is no question but what Mr. Dickey testified under General Streeter's examination—

The Master—Now, you can refer to the record for that.

Mr. Bates—And General Streeter seemed to admit that it was given, but said it was a long time ago, and said, "If you had followed my advice—"

The Master—Have you got a reference to it in your brief?

Mr. Bates—We can give Your Honor the reference. He said, "If you had followed my advice, Mr. Dickey, you would not have been in this trouble." Mr. Dickey said, "If we had followed your advice Mr. Dittmore would not have been here."

Mr. Thompson—Did he say that you could remove a member without the principles of common justice?

Mr. Bates—I am not talking about that; I am talking about the evidence.

Mr. Thompson—Then your statement is—

Mr. Bates—There has nothing been done—

The Master—I think you better refer to the record on this.

Mr. Thompson—There is no evidence of the kind.

Mr. Bates—I will give Your Honor the reference to the record. I perhaps might refer, seeing this matter has come up, to another statement made by General Streeter in the course of the trial, in which he says, "Honest difference of opinion can never be ground for dismissal." That is not right; you can't—

The Master—Can you refer me to

that? I would like to see the connection in which he said it.

Mr. Bates—Well, I was reading it this morning, Your Honor. I do not think the General will deny that he said it.

Mr. Streeter—I have not the slightest recollection of saying it.

Mr. Bates—I will give Your Honor the reference to it. I simply want to say that that is not good law or good, sound common sense—not equal to what the General generally gives us, and for the reason, of course, that you would not keep on the Christian Science Board of Directors a man who differed in opinion from Mrs. Eddy, for instance; you would not keep on the Board of Directors a man who was entertaining views which were antagonistic to all his fellow members; you would not keep him there if he exercised bad judgment, no matter how honest he was. The insane asylums are full of people who are honest in their judgment, but who are not fit to sit on the Board of Directors, no matter how honest they may be in their opinions. You would not keep a man there of another religious faith, because he would have no business there, no matter how honest he possibly might be. But it all goes to illustrate, Your Honor, that the reasons for removing a man may be such as not to question the honesty of his opinion. That is not what is in issue.

I will give Your Honor the reference to both those after the recess.

The Master—Giving them at the same time to the other counsel.

Mr. Bates—Yes, certainly.

Now, coming to the Eustace case. I am going to try to deal with this case under some general headings. First, as to whether or not the directors had the power to remove, first under the deed, second under the By-Laws, and third, whether the power was properly exercised. But before coming directly to either of those propositions—

Mr. Thompson—We have found the Dickey testimony: wouldn't you like to have it go in here? It is on page 496, columns 1 and 2.

Mr. Bates—Will you let me see if it is the place that I referred to?

Mr. Thompson—It is the only place in the record you could refer to:

"Q. Now, let us not play around words—"

The Master—One moment.

Mr. Bates—I prefer to read my own quotations.

Mr. Thompson—All I want to know is whether you will read the whole of it?

Mr. Bates. I shall not read the whole record.

The Master—One moment, now. Will you give me the page again? 492, was it?

Mr. Thompson—Page 496, columns one and two. I want all that your witness said. What I want to protect myself against is having the record partly read and then having argu-

ments based on that. Also Judge Smith's advice at the top, which was the contrary of what you are now contending, namely, that there should be no notice and hearing.

Mr. Bates—I call Your Honor's attention to page 495.

The Master—I do not believe it is necessary to read it all over, is it?

Mr. Bates—No; I am not going to.

The Master—Just give me the reference so that I can mark it.

Mr. Bates—Page 495, column three, where General Streeter asks:

"Q. Were you advised by counsel that you had the power—that under the Manual you had the power to turn out Mr. Dittmore? A. The directors were advised that we did have that power; and you gave that advice to us at one time, General.

"Q. Well, I agree, I agree; and if you had always followed my advice you never would have been here.

"A. Well, if we had followed your advice, then Mr. Dittmore would not have been here."

Now, if that is not very near what I have stated, then my memory is not good.

Mr. Thompson—Read the whole of it.

The Master—Now, there is certainly something you ought to read, Governor Bates. The next question and answer.

Mr. Thompson—It is childish to suppress things that way.

The Master—The Governor had not had time to read it all through.

Mr. Bates—"Pardon me a minute"—

Mr. Thompson—"Didn't you talk with Judge Smith about it?"

Mr. Bates—"Did you understand that you could exercise that power irresponsibly and without review by the courts? A. I did not go into that, General, whether we could do it—"

"Q. Didn't you talk with Judge Smith about it? A. I did not talk about irresponsibility and absolute power."

Mr. Thompson—Go ahead.

Mr. Bates—"Q. Oh, no. Didn't Judge Smith advise you that you could turn him out and there could not be any review of your action. A. His advice did not extend as far as you have indicated."

Mr. Thompson—"Did not extend." Bring out the "not."

Mr. Bates—I object to the interruption. I am reading this perfectly honestly and you are trying in your peculiar way to put a different impression on—the innuendo business.

The Master—Now, you have referred me to the place and I think I can read it for myself. I do not think I need trouble you to read any more.

Mr. Bates—Well, may I ask Your Honor to just look down at the bottom there, as Mr. Thompson suggests, also.

Mr. Thompson—Five or six questions at the bottom.

Mr. Bates—"Q. Now, let us not play around words. Did you confer with counsel? A. Yes.

"Q.—Before exercising the power to turn him out? A. Yes.

"Q. With whom? A. With Judge Smith.

"Q. With whom else? A. Yourself, General, is the only one that has ever been put up to, that I know.

"Q. Now, Mr. Dickey, you know that that advice was given years ago"—

General Streeter does not deny that it was given.

Mr. Thompson—Go ahead.

Mr. Bates—"Q. —as you know, A. Given concerning the same man and for the same reasons that are now"— That is Mr. Dittimore.

"Q. Pardon me a minute. You know that you never got any advice from me that you had the right to exercise that power without review and supervision as to the soundness of it? A. That was the way it was given to me—that all we had to do was to hold a meeting and put him out, and that was the end of it."

Mr. Thompson—Go ahead.

Mr. Bates—Now, that is the evidence.

Mr. Thompson—Go ahead, go ahead; he takes it back to the next question. You do not like to go on, do you?

Mr. Bates—Does Your Honor think that these statements by Mr. Thompson are proper?

The Master—I have already said that I think I can read the whole controversy for myself now you have shown me where it is. I understand your respective claims about it.

Mr. Thompson—The next question would cover it:

"Did you have that from me or from somebody else?"

"A. No, sir, not from you; that was reported to the board."

There is the whole thing exposed; there was not anything to it. The General denied it and the witness took it back. Now, what is the use of making all this dust about it?

Mr. Bates—The General did not deny it; the General expressly states now, and the whole effect of the evidence is that he thought there was the right of removal. I say on the decisions of the courts of this country unanimously there is no right of review in such a case as this.

Mr. Thompson—You can't quote the General for that.

Mr. Bates—No, I know I can't quote the General for that today.

Mr. Thompson—You started out to do it and failed.

Mr. Bates—What I stated, Your Honor, is absolutely confirmed by the record.

I have stated that before taking up the main issues I would take up some of what we call collateral issues. There has been much said in regard to them, and some of them are of high importance in their bearing upon the main issues of the case.

The first question which I wish to consider is that of The Mother Church and its branches. Mr. Whipple in his

opening made the statement that the trust of the Publishing Society was a greater and more important trust than the management of the single church. The pleadings would give the impression to the Court that The Mother Church was merely one among many. But I do not need—

The Master—You mean, the plaintiffs' bill would give that impression?

Mr. Bates—The plaintiffs' bill. But I do not need to dwell over that, because it is apparent and cannot now be questioned that The Mother Church is The Mother Church in the sense that all the rest are its children. It is the vine of which the others are the branches, and its Manual in many provisions operates to govern the whole Christian Science movement and the whole movement is embraced in The Mother Church and its branches. The organization seems to have been absolutely originated in its form by Mrs. Eddy. There may be something like it, but I never have heard of a church organization that was similar to the Christian Science organization.

It shows something of the marvelous mind of that woman, led by inspiration, that she should have developed an organization, a form of organization, that differed from all others. It differed in the way in which The Mother Church was the center of all activities; it differed in the way in which a measure of democratic control was left in the branch churches, while the Church as a whole, The Mother Church, was placed under the rule of a board of directors appointed by her and self-perpetuating.

There has been some question raised as to whether or not the Church was properly organized, indicated by some of the questions, possibly. I do not suppose that there is now any doubt in regard to that, but it is evident, on the whole evidence, and I think will not be disputed, that The Mother Church is a voluntary association, a voluntary religious association, and, as such, is, of course, not under the statutes of the Commonwealth which relate to organizations which have been incorporated. A voluntary organization has no limits save those of general public policy in the matter of the adoption of by-laws or of the creation of offices or of the conduct of its business. There are no statutory requirements that limit it, as there would be if it were a corporate body. There are certain privileges that are granted even to the voluntary religious association under Chapter 36 of the Revised Laws, Section 5, for instance, which provides that,

"A religious society may make by-laws not inconsistent with law,"

a right which undoubtedly it would have had irrespective of the statute, but I find no limitations upon voluntary religious associations. The fact that the Board of Directors is a body corporate under Section 1 of that chapter does not in any wise make the Church a body corporate; and, in

fact, the directors themselves, as Your Honor pointed out in the course of the trial, are a body corporate only for the purposes of the statute—

"for the purpose of taking and holding in succession all gifts, grants, bequests, and devises of real or personal estate, made either to them and their successors, or to their respective churches, if unincorporated, or to the poor of their churches."

In other words, as a body corporate, the directors are limited to the taking and holding of gifts and bequests, etc.

Mr. Whipple—Now, is it your thought, Governor, may I ask, that, otherwise than that, they are trustees, controlled by the ordinary rules as to trustees?

Mr. Bates—No, that is not my complete thought.

Mr. Whipple—Well, no doubt you will develop it. I did not mean to interrupt.

Mr. Bates—I understand and contend that the directors are, first, trustees under the deed of 1892; secondly, that they are a body corporate, as directors, under the statute of The Christian Science Church; and, third, as directors of that Church, and not as a body corporate, they have the duties imposed upon them by the By-Laws of the Church, and as such directors they also have the duties imposed upon them by the deed of 1898.

Mr. Whipple—You spoke of the Church, Governor, and I hope I do not interrupt your thought at all, as being a voluntary religious organization. In 1917, it appears to have been described in the statutes of the Commonwealth as a corporation. Do you deal with that in your argument?

Mr. Bates—I had not thought to deal with that in my argument, because that statute had not been referred to. I have considered that statute. The statute does not make them a corporation. It refers to them as a corporation, making the same mistake (for legislatures sometimes make mistakes) that the lawyers did who drew some of the deeds for Mrs. Eddy. They described it as a corporation, and then, when they discovered their error, they drew for her deeds in which the error was set forth, and in which it was stated that it was a voluntary association. There cannot be a corporation under the laws unless it has a special charter or is chartered under a special act of the Legislature. There has been no special act chartering it, and there has been no chartering of it or incorporation of it under the General Laws. So that although the legislature in giving certain rights to hold property refers to it as a corporate body, it is a mistake of the Legislature, and does not make it a body corporate.

Mr. Whipple—Do you think that that statute was passed by the Legislature without the knowledge of the authorities of the Church—

Mr. Bates—That I could not say.

Mr. Whipple— —who thus described it by accident, or was it a private

measure which the Church authorities asked to have passed? Your Honor knows what I refer to. It is Chapter 132 of the Acts of 1917. It says:

"The First Church of Christ, Scientist, in Boston, Massachusetts, a body corporate, is hereby authorized to receive," etc.

Mr. Bates—I cannot answer your question as to how the mistake was made. I simply know that it is a mistake, and that whether it was made by the Church authorities or by their attorneys or by somebody else, it could not result in making it a corporation, because it is only the act of the Legislature, by granting it a special charter, or by act of the authorities of the State by granting a charter under the General Laws, that a corporation can be created.

The Master—You mean a corporation in the full sense?

Mr. Bates—Yes, Your Honor.

Mr. Whipple—But a religious corporation is created in a different way, otherwise how did your four trustees get to be a corporation?

Mr. Bates—I said under the General Laws, and that, of course, is one of the General Laws, as you know. A corporation has either got to receive a special charter from the State, or have a special act, or else it has got to be formed in accordance with some general laws and its charter issued.

Mr. Whipple—Have the Board of Directors any charter from the Commonwealth as a religious organization?

Mr. Bates—I will qualify that statement. The charter does not have to issue in the case of the trustees or the Board of Directors in this case, or of the wardens and other church officers described in that statute, because they are made bodies corporate only for certain purposes.

Mr. Whipple—Yes, that is right. They get to be corporations sometimes in spite of themselves.

Mr. Bates—No, I do not think so.

Mr. Whipple—Well, it would seem so. That is, if they gather and assemble together for certain purposes, religious purposes, they become a religious corporation, do they not?

Mr. Bates—May it please the court, this is not the time to enter into this controversy with Mr. Whipple.

The Master—No.

Mr. Bates—I stated my position because he courteously asked me to do so. I did not suppose that he was going to continue to interrupt for the purpose of presenting his views, which he will have ample opportunity to do later. I still stand upon the statement that I think that is good law.

The Master—We ought not to interrupt Governor Bates in his argument more than we can help, but I will take the liberty, so long as we have gone so far, of suggesting that, under one section of the Public Statutes which has gone also into the Revised Laws, you might call this a corporation, although it is undoubtedly not a corporation in

the strict sense. I refer to the section which empowers unincorporated religious societies to manage, use and employ gifts and offerings to them, property given to them, and to sue for any rights vested in them; and the section ends up with, "for which purpose they shall be corporations."

Mr. Bates—I recall that section, Your Honor.

The Master—Now, that might save the propriety of the expression in the Act of 1917.

Mr. Bates—It still leaves them voluntary religious corporations.

The Master—It still leaves them, as you say, voluntary religious organizations.

Mr. Whipple—Governor Bates, let me explain that my interruption was because of this fact, that some time I am going to have the close on you in my argument, and it seemed to me only fair that I should ask you to express your views in regard to something that you might overlook.

The Master—I have already intimated, Mr. Whipple, that if you did anything of that kind, I was going to give Governor Bates an opportunity to reply. It is not necessary here to have anybody's mouth closed because of the fact that you have the last word.

Mr. Whipple—But why I interrupted was in order that Governor Bates might allow that matter to engage his attention.

The Master—He might do so, and he must do so, of course, as far as possible.

Mr. Whipple—That is, that does not give him a license to omit a lot of things and then reply to them because I brought them out.

The Master—Quite so.

Mr. Whipple—Anything that he can by diligence and good judgment argue he should argue before closing his argument now.

Mr. Bates—I certainly will try to do so.

Mr. Whipple—I knew that you would if you were only given a chance!

Mr. Bates—I have no doubt that there will be a good deal left out, anyway.

Mr. Whipple—I cannot believe that when I think of the meticulous care with which you have argued so far.

The Master—Shall we stop until two o'clock?

Mr. Bates—Yes, your Honor.

[Recess until two o'clock P. M.]

#### AFTERNOON SESSION

[A copy of the twenty-eighth edition of the Church Manual is marked Exhibit 812.]

Mr. Thompson—Your Honor, I suppose there is no objection to my giving counsel notice that the twenty-eighth edition has now been introduced in evidence and has been marked Exhibit 812—the twenty-eighth edition of the Church Manual.

The Master—There is no objection,

is there? It ought to have been marked before—only an omission, probably, that it was not.

#### Closing Argument by the Hon. John L. Bates. Continued

Mr. Bates—I had already, Your Honor, indicated that the branch churches under Mrs. Eddy's plan were what their name indicates—branches of the central or Mother Church; and while they were allowed, and are allowed, a large measure of democratic rule locally, they nevertheless are bound by the Manual of The Mother Church in many provisions which relate to them. They cannot be formed except as a certain portion of their number are already members of The Mother Church. They can have no readers except those who are members of The Mother Church. Their form of worship is provided for by the Manual of The Mother Church, and the order of service. They are required to maintain reading rooms for certain purposes by that Manual, and the reading matter which may be in those reading rooms is limited by the Manual of The Mother Church. Provisions in regard to their Sunday schools, and in regard to the lectures and the lecturers who go before them, are all provided for by the Church Manual—meaning by that the so-called Manual of The Mother Church. I have pointed out these references merely to indicate that it is the Manual of the Christian Science movement, as well as the Manual of The Mother Church; that in stating it as the Manual of The Mother Church, to put it in other words, it is the same as stating that it is the Manual of the Christian Science Cause.

There has been more or less uncertainty in my mind as to the position of the attorneys for the trustees in regard to the status of the Manual. I do not think, however, that there is any question but what at present they admit that the Manual, which has been put in here as an exhibit, and its predecessors in the editions which have also been put in here, is the law of the Church; that the whole of its contents are sanctioned by the Leader of that Cause; and that therefore they have a binding effect upon all Christian Scientists throughout the world, and that to be a loyal Christian Scientist one must consider that Manual as an inspired work of Mrs. Eddy.

There has been some question in regard to the manner in which the By-Laws were adopted. This Church started as a comparatively small organization, and under a new plan, which Mrs. Eddy was working out. I think it is surprising that the data in regard to its By-Laws and their adoption, and the records of the Church, and of the directors and the First Members, should be so complete as they are. Whether their faith ever looked forward to the time when

Christian Scientists throughout the world would be numbered by so many as they are now, I do not know; but I do know this, that they could not have looked forward to any contemplation of these By-Laws being questioned, or of their adoption being questioned, and therefore the records were not written with any such contest as this in view. And yet they are remarkably complete, and I say "remarkably complete" by comparison with what we all know in regard to other church organizations and associations, whose records as a rule are incomplete, and oftentimes entirely unsatisfactory.

In this case, however, the records are complete in regard to every essential. They have been kept with care. The same Providence that has guided the movement seems to have guided the adoption of those By-Laws and the records are sufficient for all purposes. I might add, however, that there are opinions and decisions of the courts to the effect that it is not necessary to show when by-laws were adopted, or to show that there are records of them. It is sufficient to show that the by-laws are accepted as the by-laws by the association or the corporation; and it may be that there is no record in regard to their adoption, but the fact that they are accepted as such is sufficient to make them valid.

I want to refer Your Honor to the record where the By-Laws or the Manuals have been adopted as a whole. The first Manual that is in evidence, adopted as a whole, is the 20th edition, which was adopted by the Board of Directors on Feb. 20, 1901. (Page 247, column 1.)

The Master—The first one?

Mr. Bates—That is the first one that is in evidence. I am corrected. The one of 1895 is also in.

The Master—That was my recollection.

Mr. Bates—And the one of 1895 was the first Manual that a committee was appointed to draft, and that Manual is also in evidence.

Mr. Thompson—That is the third or fourth edition, isn't it?

Mr. Bates—The fourth or the fifth. The twentieth edition, as I have said, was adopted by the directors Feb. 20, 1901. This was the first Manual that was adopted by the directors, because it was the first after the power of making the By-Laws had been transferred to them by the action of the First Members, and at the request of Mrs. Eddy. That vote was passed on Jan. 10, 1901. The vote of the directors on Feb. 20, 1901, was to the effect that the By-Laws "contained in the twentieth edition of the Church Manual and also the amendments and changes marked therein, which were authorized by the Rev. Mary Baker Eddy be and are hereby adopted."

On Feb. 18 Mrs. Eddy had written to Director Johnson:  
"Beloved Student:

"Call immediately a meeting of the Church Directors and adopt the amendments of By-Laws as arranged by me in our Manual." (Page 248, column 1.)

I call attention to this at this time because it appears that on Feb. 18, or about one month after the powers of the First Members had been transferred to the directors, Mrs. Eddy recognized and assented to the right of the directors to enact by-laws and to adopt a manual for the Church. The twenty-ninth edition was adopted by the directors July 30, 1903 (page 248, column 1). Mrs. Eddy wrote to the directors, on Aug. 17, addressing it to the Christian Science Board of Directors, instructing them to publish the Manual they had adopted, saying, "I know the Manual is right," again recognizing and assenting to the directors' right to enact by-laws for the Church, and approving the twenty-ninth Manual as a whole.

The fifty-seventh edition was adopted by the directors on Oct. 15, 1906. (Page 249, column 1.)

The seventy-third edition was adopted by the directors July 31, 1908. (Page 249, column 1.)

It was Mrs. Eddy's own request, on Aug. 15, 1908, by letter, that made the seventy-third edition the authority for all subsequent editions.

I want to refer just for a moment to the claim of the trustees as made through their counsel in the opening. Mr. Whipple states, on page 9:

"Mrs. Eddy established for the control of her Church, The Mother Church, a Manual or set of By-Laws. . . . The Manual is regarded in the same way by Christian Scientists as all things which she wrote and which she did."

On the same page, however, he characterizes Mrs. Eddy's by-laws as an ephemeral expression of Mrs. Eddy, when contrasted with the work of the lawyers in the trust deed of 1898. In that connection I may say that Mr. Whipple, on at least three occasions, has said that Mrs. Eddy in her wisdom knew that under the law the trust deed was irrevocable, and that anyone who argues that the By-Laws were made by Mrs. Eddy to change that does not understand what her wishes were—impeaches her wisdom and judgment—according to Mr. Whipple. Nevertheless he says, on page 46, that the claim "is that the duties of the trustees in their legal aspect are entirely controlled by the instrument itself," and that it cannot be modified by subsequent statements in the Manual. He goes on to state:

"Of course our contention is that the trustees have acted strictly in accordance with the Manual, because of the reference to or incorporation of the Trust Deed in the Manual."

Again:

"And you, by saying that by subsequent words, Mrs. Eddy, with all her wisdom, did not understand that what she had done was irrevocable, impeach

her wisdom and judgment, and you ought not to do it!"

As has, of course, appeared we are making the claim that Mrs. Eddy, by causing certain by-laws to be adopted, did intend that those by-laws should have an effect upon the management of the Publishing Society. Mr. Whipple, as I understand it, says that for us to consider that they could have had any such effect, or that she thought them to have any such effect, is an imputation on her wisdom.

Can anyone doubt that Mrs. Eddy insisted on the adoption of those By-Laws for the purpose of controlling the trustees? Can anyone doubt that she did it because she thought that she had the right to do it? And if she thought that she had the right to do it, then it is questioning her good faith for anyone to claim that the By-Laws could not have had any effect, and that what she was doing was merely something that was null and of no legal effect.

There has been some question as to whether or not these By-Laws were accepted by the Church. I have already referred to the fact that the By-Laws may be accepted without any vote. In this instance, at first the Executive Members had the power to pass by-laws, and they passed such as Mrs. Eddy suggested. Then that power was transferred to the Board of Directors, and the Board of Directors, the evidence shows, never adopted any by-laws except what were approved by Mrs. Eddy. It was not necessary to have the Church membership adopt the By-Laws, as it has been intimated here. A voluntary association does not have to make its own by-laws; it can accept, if it wishes to do so, the by-laws which Mrs. Eddy makes for it. It can accept those which its Board of Directors make for it. Even a corporation can do that. Many of the by-laws of our national banks are made by the boards of directors, but they bind the stockholders as well as the directors. The approval of these By-Laws was by the boards of the Church that had the authority, and that is all that is necessary. Mrs. Eddy many times referred to them and to their importance. She charged that they be not abandoned. She referred to them as something that was to have an eternal weight. She charged that whether she was with the Church or not, they should never abandon these By-Laws. Moreover, she adopted, or caused to be adopted, a by-law which would prevent their being changed without her consent. I refer to by-law, Article XXV, Section 3. Also in the drawing of the Trust Deeds which are in evidence of the Church property. They are all upon the trust that these By-Laws shall remain as they are, and she having passed on there is no power to change them without bringing a cloud on the title to that property. She intended to make them permanent because she recognized that

under them there had been great and constant growth of this organization, and she believed that, led by God, she was carrying on a work in the world that was destined to be of great benefit to humanity, and she did not propose that anyone who had walked less closely with Divine Principle should have the opportunity of changing this plan which she had constructed.

Now, the question as to whether or not these By-Laws are binding so far as the Trust Deed is concerned, is one I am going to take up at more length a little later in my remarks. But I wish at this time to call attention to what we have termed, or what I might term, possibly, the alternative issue as set forth in our answer. We have stated the fact that the trustees themselves are not trustees — these plaintiffs,—under this Trust Deed, if their contention in regard to the possibility of any change being made in the By-Laws is correct. And that contention is based upon this simple fact: the original Trust Deed gave the power to the First Members and the Board of Directors to remove a trustee. There was no power in it providing for the acceptance of a resignation or the resignation of a trustee unless it is to be found in that section which provides that the First Members and the Board of Directors may declare a vacancy.

Now, the first trustee who resigned, or who was relieved—I will put it that way—did not resign. Apparently they recognized at that time that he had no right to resign. But a vacancy was declared in effect by the action of the First Members and by the action of the Board of Directors. There is a question as to whether or not Mr. Neal's honorable discharge came within the provision of the deed. But certain it is, since Mr. Neal's honorable discharge there has not been, according to the interpretation that the trustees place upon that provision of the deed—there has not been anyone who could declare a vacancy, and if there was no one who could declare a vacancy, there was no one who could accept a resignation. Resignations have been made to the trustees, and they have accepted them; but the law is explicit that where there is a public charity and where there is no provision in the instrument for the resignation of one of the trustees, that the trustee cannot resign except as his resignation is also accepted by a court of record. And there is no resignation that has been made in conformity with that principle of law, which is a principle of law that has no exceptions. Therefore, either Mr. Neal, Mr. McKenzie and Mr. Hatten, never having properly resigned to the court, are trustees, and these trustees at the present time are not trustees, or else you have got to find some power through the By-Laws for the acceptance of their resignation. If it be claimed that Mr. Neal's removal

was in accordance with the Trust Deed, then Mr. Stewart, who succeeded him, would be the trustee at the present time were he living, but Mr. Stewart died in the present year. Several years ago he resigned, his resignation was accepted by the trustees, and there was an appointment made in his place. But if their contention is correct, there is no power in this deed by which a resignation can be accepted; and, therefore, Mr. McKenzie and Mr. Hatten under those circumstances are the surviving trustees and are still trustees, and Mr. Stewart's place is vacant because there has been no attempt to fill it since his death.

Now, we do not claim that should be the finding of the Court, because we claim there are provisions in the By-Laws that Mrs. Eddy had a right to make that do affect this deed in such a way that the resignations which have been made can be construed as legal. But their contention leads to no other conclusion. If their contention is to prevail in this suit, then the former trustees are still trustees and they are not trustees.

I wish to discuss now just for a few moments, as preliminary to greater questions—not to greater questions, but merely because it is raised specially as a separate issue by the pleadings, the question as to Mrs. Eddy's intent in organizing this trust. It has been claimed and is alleged by the plaintiffs that she intended that there should be two activities for the advancement of this great movement. One should be The Mother Church and the other should be the Publishing Society. When Mr. Eustace was asked on the stand what supported that theory of this, he said, "Nothing except the instruments themselves, the Trust Deeds." There has not been a particle of evidence introduced to show that that was Mrs. Eddy's intention, although that is one of the issues raised by their bill. On the contrary, there has been much evidence introduced showing that she intended for this to be the publishing house of the Christian Science Church, of The Mother Church. She calls it such. Even in the deed of Jan. 15, 1898, which is described as a gift to The Mother Church, she speaks of it as being the publishing house of The Mother Church. She throughout the By-Laws speaks of it, and makes laws for it in The Mother Church Manual, as though it was an associated department of The Mother Church. The deed itself contradicts their assertion, because it places—

The Master—You are now speaking of the deed of Jan. 25, or Jan. 15?

Mr. Bates—Jan. 25 now.

The Master—But the trustees do not hold under the deed of Jan. 15, do they?

Mr. Bates—I beg your pardon?

The Master—Do the trustees hold the property under the—

Mr. Bates—No; they do not; they hold under the deed of January 25. And the deed of January 15 was introduced in evidence for the purpose of showing Mrs. Eddy's intent, one of the circumstances at the time.

The Master—She made that deed and subsequently made a different one?

Mr. Bates—Made the one of January 25 after taking the advice of counsel.

The Master—Not putting the first on record but putting the second on record?

Mr. Bates—The first was never put on record by Mrs. Eddy, and it was never put on record by anyone until this suit was pending.

The Master—Not delivering the first but delivering the second?

Mr. Bates—The first was delivered, but at the time Mrs. Eddy gave it the property had not come into her possession; and the other one was given after it did come into her possession.

The Master—So that for the purpose of a conveyance it was a nullity?

Mr. Bates—I do not think that it had any effect as a conveyance, but it did have effect as showing what was in her mind, and the deed drawn on January 25 was drawn as closely as counsel advised her she could to carry out the purpose disclosed by the one of January 15, which was to make a gift to The Mother Church of the publishing house.

I was about to say that the deed of Jan. 25 contradicts the suggestion as to the two activities, because that deed itself, under clause 10, brings the Publishing Society under the governing bodies of the Church. It brings them under the First Members and the Board of Directors, and by bringing them under them and giving them the power to declare vacancies, it put it under the authority of the Church. For, as I shall argue, when you have the power of removal, you have every smaller power that goes with it of supervision and of direction. So that the idea of two activities is contradicted by the deed, by the By-Laws and by Mrs. Eddy in her correspondence with the Board of Directors, and in the By-Laws which she caused to be adopted, all of which place this Publishing Society under the authority of the governing board of The Mother Church.

May I take Your Honor's time just to quote one or two statements of Mrs. Eddy? Perhaps before I pass to that I might direct Your Honor's attention to the fact that Mrs. Eddy in establishing this trust in January, 1898, changed the Publishing Society from a corporation to a trusteeship. There seems to have been a purpose in it, and there is only one purpose that can be suggested for it, and that was that the corporation was a separate and distinct entity, apart from The Mother Church, and she wished to have a Publishing Society that should be as closely as possible allied with

the Church. There is evidence in Judge Hanna's deposition, and in Mr. Neal's testimony, to the effect that it was because of the statutes of Massachusetts in regard to a church holding property from which the income was more than \$2000, that she found it necessary to establish a trusteeship instead of giving the property direct to the Church.

The eighth edition of the Church Manual, which was approved by Mrs. Eddy in February, 1898, as shown by the record on page 554, column 2, contains an article on the Publishing Society and several sections. That was within a month of her writing or signing of the Trust Deed, and shows conclusively that she had in mind the bringing of this trusteeship under the Church authorities.

The Master—What article is that in the eighth edition?

Mr. Bates—Article XI. The record is page 554, column 2.

The Master—That is the first article in any Manual, or in any edition, rather, of the Manual, relating directly to the Publishing Society?

Mr. Bates—Yes, Your Honor. And this was adopted, as I said, within a month of the delivery of the deed.

The Master—And what does the article say?

Mr. Bates—That article contains, if I recall rightly, three or four sections, most of which are in harmony with the deed.

The Master—I had forgotten that—I mean, I do not remember what the article said. I suppose that it was all read at the time.

Mr. Bates—Yes.

The Master—Never mind. You need not stop to look it up. I can find that later.

Mr. Whipple—It is right there, if Your Honor please (passing a book to the master). It is exactly like the Trust Deed except the provision at the very end, and that was changed within a few days, and it was made to conform to the Trust Deed.

The Master—All right.

Mr. Bates—I call Your Honor's attention to the way in which it begins. Section 1:

"The Board of Trustees, constituted by a Deed of Trust . . . shall hold and manage the property," etc.

The important fact is that at that time she considered it a church activity to the extent that she included in the Manual an article pertaining to it, and that article was amended from time to time, and from the very beginning—there were amendments from almost the very beginning—there were amendments that were inconsistent, as my brother would say, with the Trust Deed, because they were not in conformity with it.

Your Honor will also recall, as showing that she intended this to be a board of trustees within the Church, that there had been a by-law which had been in the Manual of the Church

for some time, to the effect that there should be no trusteeship in The Mother Church, and that she caused that to be changed so that there could be no trusteeship except one which was constituted by her; and that change was made in the very month that this trusteeship was established: showing that she had it in mind. In fact it was made in the By-Laws between the date of the first instrument, Jan. 15, which did not operate, and the second instrument, of Jan. 25. If my memory serves me correctly, that by-law was changed on the 18th. So that she was not only preparing for this trusteeship to be a part of the Church and a Church function, by changing it from a corporation to trustees, but she was also, in advance of it, preparing the Manual so that it could be a trusteeship within the Church. As to the present By-Laws of the Church, all of which were By-Laws when the present plaintiffs became trustees of the Publishing Society, and which implied that the Publishing Society was a part of The Mother Church, I refer to Article I, Sections 3 and 7. I will not take the time to read them, but they can be found in the Manual. Also to Article VIII, Sections 14, 15, and 31; Article XXI, Section 3; Article XXII, Sections 3 and 7; Article XXIII, Sections 6, 7, and 12; Article XXV, Sections 1 to 9; Article XXXV, Section 2. It has been put in evidence that the announcement was made at the time of the Jan. 15 gift (which was subsequently changed to the Jan. 25 one) that it was a gift to The Mother Church, and a grant of trusteeship, and the Church took action thanking Mrs. Eddy in regard to it, and there was great gratitude to her for her munificent gift in the interests of the cause.

Now, the trustees themselves have recognized that the Publishing Society is a part of The Mother Church, and is under the jurisdiction of its Board of Directors. Let me just cite a few instances:

Mr. Eustace's memorandum of Nov. 20, 1915—that is one of the famous memorandums in this case and one which he says he prepared as a brief to set forth the argument of the directors as best he might in regard to the question of cards; but in that argument he recognizes that the Publishing Society is a part of The Mother Church, and is under its final jurisdiction.

The trustees' letter of February, 1916, to the directors, which is the letter which was written by Mr. McKenzie, recognizes the same thing.

The trustees claim to have destroyed the so-called Dittmore memorandum on May 27, 1918, for the reason as given by them that there was nothing in this unreported memorandum which was not already in the By-Laws of The Mother Church and in the Deed of Trust, and that memorandum recognized the Publishing

Society as an activity of The Mother Church.

Now, I wish to say a few words in regard to the directors' status. I do not need to repeat what was stated just before the adjournment. Mr. Whipple has said, and said in his opening, that the directors are really trustees under a Deed of Trust, and that we have, therefore, a controversy between two sets of trustees, both of whom hold their office under and by virtue of trust deeds. Mrs. Eddy thus founded the Church and made the defendants the trustees of the Church, the directors having the management of the Church. I think that there can be no question, however, in the light of all the evidence, that these directors are the directors of The Mother Church, and of The First Church of Christ, Scientist, in Boston, and that they are the Christian Science Board of Directors.

The Master—Those two names mean the same thing?

Mr. Bates—They practically mean the same thing.

Mr. Thompson—No.

Mr. Whipple—Well, do they?

Mr. Bates—I think they do, because, as I have said, The Mother Church itself is, by reason of the Manual, the representative of the whole Cause of Christian Science, and controls it.

Mr. Whipple—When the name Christian Science Board of Directors was established in the Trust Deed, was there any church?

Mr. Bates—There was no church, but that was only one incident to it. You could not have everything at once.

Mr. Whipple—Then there could not be directors of the church before the church was organized.

The Master—I wanted to find out whether Governor Bates regarded those things as meaning the same thing.

Mr. Bates—I regard them as meaning the same thing, and, as used by Mrs. Eddy, the terms are interchangeable. And, in reply to Mr. Whipple, when he stated once or twice, or intimated during the time when the evidence was being put in, to the effect that Mrs. Eddy had not recognized them as the directors of the Church, I want to call Your Honor's attention to the evidence that appears on pages 710 and 711 of the record. It is evidence which was put in in answer to Mr. Whipple's suggestion. There were eight letters, all of which were from Mrs. Eddy, and all of which, in one form or another, recognized the directors as being the directors of The Mother Church. For example, on May 8, 1893, she addressed a letter "To the C. S. Directors of The First Church of Christ, Scientist, Boston."

On Sept. 9, 1893, "To the Christian Science Directors of the First Church of Christ, Scientist."

On Sept. 30, 1904. "C. S. Board of



Directors of the Mother Church Boston Mass."

On Feb. 5, 1906, "Christian Science Board of Directors of The Mother Church."

On June 12, 1908, "Christian Science Board of Directors, The First Church of Christ Scientist."

June 14, 1908, "Christian Science Board of Directors, The First Church of Christ, Scientist, Boston, Massachusetts."

On July 22, 1909, "Board of Directors of The Mother Church."

On October 27, 1910, "Directors of The Mother Church."

There are several other—

The Master—She had no uniform practice about addressing them.

Mr. Bates—She had no uniform practice, and most of the letters were addressed to them as the Christian Science Board of Directors, and Mr. Whipple, presumably noticing that fact, thought that there were none of them which recognized them specifically as the directors of The Mother Church. Then these letters were put in, showing that she did so recognize them in many of the letters. There are several others—

The Master—We have no evidence, I think, showing the original constitution and establishment of this board.

Mr. Bates—None except the deed.

The Master—For the purposes of this case, they were established by the deed, you think?

Mr. Bates—The deed established them.

The Master—We find, however, that they had meetings, of which there are records—I do not think the records have been introduced, but they begin the first part of September, 1892—

Mr. Bates—The records were introduced.

The Master—Several days before the Trust Deed of 1892 establishing the Christian Science Board of Directors. Now, I think we have no proof as to what made a board of directors early in September, 1892, have we? Nothing of that kind?

Mr. Bates—The first proof that we have is that which is in the deed which conveyed to them the property for certain specified purposes.

The Master—That is where they begin? You agree to that?

Mr. Bates—Under that deed she declares them to be a body corporate under that provision of the statute.

The Master—I suppose that that must be so. And what is the first instance that you know of in these records of anything about The Mother Church?

Mr. Bates—As being called The Mother Church?

The Master—Yes, the use of that name.

Mr. Bates—We have not put in the evidence in regard to that, and I haven't it in mind at the present mo-

ment, the reason being that the pleadings admit that the Church was known as The Mother Church.

The Master—The earliest that I have been able to find in what I have looked over of the evidence is the vote of 1895, I think, in which it is said that The Mother Church has a Manual. That is my recollection now.

Mr. Bates—I do not know of anything earlier than that, Your Honor.

The Master—It was not The Mother Church, then, from the beginning: that came later?

Mr. Bates—I am not sure. It may have been, but I have no knowledge in regard to it, and, as I said, the reason why we haven't any knowledge in regard to it is because all parties admitted that it was called The Mother Church.

The Master—Yes.

Mr. Bates—But of course we have the records in regard to the formation of the Church, which is now known as The Mother Church.

The Master—Quite so, yes.

Mr. Bates—We claim, of course, that the execution of the deed by Mrs. Eddy of Sept. 1, 1892, was but a step in the direction of the formation of The Mother Church. There is every evidence from inference that the old organization was about to be dissolved, and was dissolved—

The Master—Oh, yes.

Mr. Bates—And—

The Master—Yes; that was Sept. 1, 1892, was it, that deed?

Mr. Bates—Yes, Your Honor.

The Master—Yes. For the moment, I see, I was wrong in putting it later in September.

Mr. Bates—Sept. 1, 1892.

The Master—I suppose I got it confused with the other deed. Yes, Sept. 1, 1892, and that is when the directors' records begin.

Mr. Bates—Yes, Your Honor; and the Church itself, that is the new Church, was organized Sept. 23, 1892. Now, of course, although Mrs. Eddy had conveyed her property to these gentlemen in trust for a special purpose—

The Master—Yes, the organization was Sept. 23. The deed and the records begin Sept. 1. I have it right now, have I?

Mr. Bates—That is right. These were two steps in the organization of the Church that she had conceived to be something that was as nearly as possible like the early Christian church. It is, of course, a fact that they did not become the directors of the Church until the Church itself was organized, but they did become then, and it is very significant that the records of that Church, so loyal were those members to Mrs. Eddy and her wishes, and her desires, and her plans, show that they did not even attempt to adopt these directors; they simply acquiesced in it: and from that time to this, the evidence shows, they have acquiesced in her selection and in her determination for them that the di-

rectors should be as she had constituted them, a self-perpetuating body, and one with the election of which they had nothing to do.

The Master—The powers, however, given them by the deed of Sept. 1, at least given them explicitly by that deed, are by no means so extensive as those which they came to exercise afterward.

Mr. Bates—That is true; that is true. That is, when the Church itself was organized, and recognized these directors as its directors, it gradually began under Mrs. Eddy's request to turn over to them the authority. At first, for instance, a large part of the authority was in the First Members, but gradually the members were given authority, until the entire business that had previously been done by the First Members was transferred to the Board of Directors, and that was in accordance with her request and with her plan.

In connection with the deed of Sept. 1, 1892, I think it is significant that in several instances these words are used, "and their successors in office," referring undoubtedly to the fact that she considered them as directors, officers—"their successors in office." The ordinary words, "successors in trust," were not used in any instance. There are at least three or four instances in the deed where the words "successors in office" are used; and I mention that because there has been some suggestion that the property here might belong to the trustees, and that Mr. Dittmore, for instance, might still be a trustee, although he was not a director. That is impossible, I think, under any tenable theory. They were made trustees under that deed, but they were also constituted as a body corporate under the law, and as the directors under the law, and their successors in office, they were to hold the property; and that the directors of the Church, and everybody concerned, has so considered it is shown conclusively by the fact that all the elections have been by the Board of Directors, and not by the trustees.

Mr. Dittmore himself was elected by the Board of Directors, and he has never been elected to the office of trustee except as by virtue of holding the office of director he becomes a trustee, and when he no longer holds the office of director he loses his office as trustee, because the trustees are to be the directors and no one else.

Mr. Thompson—Would you mind answering one question? That is, when in your judgment did the four grantees under the deed of Sept. 1, 1892, become a corporation on the ground of similarity to deacons and church wardens? At what time?

Mr. Bates—As soon as the Church was organized and accepted them.

Mr. Thompson—That is what I wanted; I wanted to get your view on that point.

Mr. Bates—And that acceptance was acquiescence.

Mr. Thompson—And they became a corporation by virtue of the statute, oppose, wholly?

Mr. Bates—By virtue of the statute.

Mr. Thompson—Yes.

Mr. Bates—I call Your Honor's attention in that connection to the case of Chase v. Dickey, 212 Mass. 555, which recognizes that the church is an unincorporated religious society, that The Christian Science Board of Directors is a corporation under section 1 of Chapter 37 of the Revised Laws.

Mr. Thompson—You say it decides that or just assumes it?

Mr. Bates—I say it recognizes it. The court recites the fact that those allegations of the plaintiffs' bill, in its opinion it deals with the church as a corporation under said act. The conclusion seems irresistible," says the Court, "from these considerations, that the plaintiff as a body corporate under Revised Laws, Chapter 37, Section 1, when objection is made by the Commonwealth, are retained from taking and holding the property described in the bill by reason of Section 9—"

which limited the amount they could demand. Now, it was necessary to the ruling of the Court to find that this is a corporate body, and, it being necessary to its finding to find that, assume it is correct to state that the opinion determines the question, though I do not think there could any doubt about it, any way.

General Streeter, very properly, as I thought, one day during the receipt of the evidence called Your Honor's attention to the fact that the bill recited as brought by the plaintiffs full of recognition of these directors as being the Board of Directors of the Church. Their whole bill is based on that theory. If it was not correct could not have removed the trustees, and there is no reason for their training us if we are not. I think over a dozen places they are described as the directors of the Church, one way or another.

Your Honor asked the question, and answered it, a few moments ago, in regard to the edition of the Church Manual published in 1895, which did recognize the directors; that is, their names were published in that volume, the Manual, as the directors of the Church, and from that time on they were recognized in the list of officers of the Church in all subsequent publications of the Manual.

Mr. Whipple—Were they printed along the names of the officers as supposing any such office?

Mr. Bates—Yes.

Mr. Whipple—Why, are you sure?

Mr. Bates—I am very certain of it.

Mr. Whipple—Well, let us produce the exhibit and see about that.

Mr. Bates—Well, if we have it here will.

Mr. Whipple—Thank you.

Mr. Bates—This is the 1898 edition.

Mr. Whipple—We were speaking of 1895.

Mr. Bates—I thought you said in regard to any of them. The 1898 edition has a list of church officers.

Mr. Whipple—No; I was confining myself to 1895.

Mr. Bates—And the names appear there as the Christian Science Board of Directors. Now, if we have the 1895 I will be glad to verify that.

Mr. Whipple—Yes; but in your By-Laws is there any statement that they were such officers?

Mr. Bates—I didn't say that. I said they appeared in the list of officers in the Manual.

Mr. Whipple—Oh, I see; that is, although the Manual did not provide for any such officers, they appeared in the list.

Mr. Bates—I had previously stated that the loyalty of these members of this Church was such to Mrs. Eddy that they never questioned for a moment her appointment of these people as the directors of the Church. They accepted them and included them in their list of officers, and they did not even think that they had a right, apparently, to go through the form of electing any one whom she had designated and already appointed as a director. Here is the Manual of 1895.

The Master—Now, we have to find out who were the officers in a legal sense, under the statutes of Massachusetts.

Mr. Bates—Yes, Your Honor.

The Master—That is the problem that is before us. Take those early editions of the Manual; if you say that the directors are there called officers, and were recognized as officers, and were officers, the result is, I suppose, that this unincorporated religious society has two kinds of officers: One kind which they elected—the members elected—according to the provisions of the Massachusetts statutes, and another kind which the members had had no voice in electing. Aren't we confronted by that situation?

Mr. Bates—I was looking to see just what the situation was back in 1895. At the present time that is not the situation. The members have no voice in the election of officers. The officers are elected by the directors.

The Master—I mean prior to the vote transferring or purporting to transfer the functions of the First Members to the directors. That, according to my recollection, was in 1901, wasn't it?

Mr. Bates—1901.

The Master—Yes. Well, now, you would therefore have about nine years when the society would have these two kinds of officers to which I have referred. Wouldn't that be so?

Mr. Bates—I hardly think so, Your Honor; but the best evidence I have is this 1895 Manual, which I happen to be holding in my hand, and the By-

Laws, Article I, Church Officers, Section 1: "The officers of the Church shall be elected by the Board of Directors at their annual meeting."

The Master—That is after the vote transferring the First Members' function.

Mr. Bates—No, Your Honor, this is 1895. This is the edition of 1895, and the transfer was not made until 1901. Section 2: "The officers shall consist of a president, clerk, treasurer, and two readers." Section 3: "The President of this Church shall hold his office one year only," etc.

Mr. Whipple—Do you find anywhere a statement there in the By-Laws that there are such officers as directors?

Mr. Bates—That is a recognition of them. "The officers of the Church shall be elected by the Board of Directors at their annual meeting."

Mr. Whipple—No; I don't think that calls them church officers.

Mr. Bates—Let me answer your question perhaps more fully. There is, as I have previously stated, so far as I know, no by-law which authorizes the election of the Board of Directors.

Mr. Whipple—Oh, yes, there was—in 1908.

Mr. Bates—No, that doesn't authorize any election of the Board of Directors.

Mr. Whipple—Pardon me, you will find that stated among the officers, in 1908.

Mr. Bates—I beg your pardon; they are not elective officers, and their election is not authorized in 1908. What the 1908 by-law does is to simply say, among the list of officers, a Board of Directors, but it says nothing in regard to their election. They are not elected and never have been.

Mr. Whipple—In other words, it created that office in 1908, and before it was created there wasn't any such office.

Mr. Bates—I differ from you entirely.

Mr. Whipple—Oh, was there? I thought there couldn't be anything until it was created.

The Master—I find that I am wrong; I ought to have known better, Governor Bates. What is that 1895 edition called—the fourth?

Mr. Bates—This is the one that was marked third edition, and the "third" was scratched out. It is the one that contains Mrs. Eddy's own signature.

The Master—Has it a date?

Mr. Bates—The date is 1895.

The Master—Now, the provisions that those readers and other church officers should be elected to the Board of Directors instead of the First Members—can you fix the date of the adoption of that vote?

Mr. Bates—I don't think that is in evidence, Your Honor.

Mr. Whipple—Yes, if Your Honor please. It appears first in the Manual, under date of Dec. 28, 1895.

The Master—Yes; I think you are right.

Mr. Whipple—When the First Members passed that by-law.

The Master—The fourth edition. But have we got the date of the vote passed by the First Members?

Mr. Whipple—Yes, Your Honor; that is on Dec. 28, 1895.

The Master—Oh, yes; thank you.

Mr. Whipple—That was an adoption of the Manual, and there had been no vote to the effect that the directors should elect the officers of the Church before that.

The Master—I see.

Mr. Whipple—It came with the adoption of the Manual.

The Master—Then my suggestion that there would be for a certain period officers of this society who had been elected in different ways would apply only to the period between 1892 and 1895; it would not apply up to 1901. Does that seem to be right?

Mr. Bates—Assuming that that is the earliest reference. (To Mr. Whipple) Did you give the reference to the record where that appears?

Mr. Strawn—Page 244.

Mr. Bates—Now, Your Honor, I was asked the question as to whether or not in the edition of 1895 the directors' names appeared under Church officers, and I have the Manual of 1895 here. Under the list of Church officers—I call Your Honor's attention to it—there appears first the name of Mrs. Eddy as Pastor Emeritus, and then the names of the directors, and against it "Christian Science Board of Directors."

The Master—Yes.

Mr. Bates—Now, so far as the Manual of 1895 is concerned, that shows that they were recognized as the Church officers, and the article itself of the By-Laws which gives them the power of electing the other officers of the Church is of course also a recognition of them.

Mr. Whipple—Governor, had you considered the fact that the name given there, opposite those names, is a name which is given them by the Deed of Trust, and that that is the name under which they were known as trustees?

Mr. Bates—I think that has no significance.

The Master—Now, we begin, when the society is organized, by having the members of the society choose certain officers. Nobody disputes that. At the first meeting they chose certain officers, didn't they?

Mr. Bates—That is true; the record shows that.

The Master—But when they did that there were already directors, with the choice of whom they had had nothing to do.

Mr. Bates—Yes, Your Honor.

The Master—Now, that goes on until 1895, and then they adopt a by-law saying that hereafter all the Church officers shall be chosen by this Board of Directors, a Board of Directors

which the members of the society had never themselves chosen.

Mr. Bates—Yes.

The Master—Now I think I have got it right.

Mr. Bates—And our contention of course is that it was not necessary for them to choose them, any more than it has been necessary for them since to choose the other officers.

Mr. Thompson—Would you mind if I asked you a question at this stage, because I want to keep with you if I possibly can, and we are drifting apart very rapidly on the legal aspect of this case? Would you care if I put to you here a question, which I shall certainly have to argue unless you take care of it?

Mr. Bates—Certainly not.

Mr. Thompson—My question is this. Of course nothing could be more disastrous, to use your own term, than to set up here a contention which we had reason to believe would be upset by the Supreme Court; that is, we are dealing here after all with a question of law and whatever decision is made will be made on strictly legal proof. Now, I have some difficulty in seeing how the four trustees of a deed setting up a charitable trust, whether designated in addition as directors or otherwise, or by any other form of designation—how their number or their functions, as stated in that deed, could ever be altered afterward by any act of any person concerned. The solution of it that had occurred to me with great force, coming from Mrs. Eddy's letter to Mr. McLellan, on Feb. 5, 1903, was that Mrs. Eddy always recognized that the original trustees, called there in the Christian Science Board of Directors, remained unaltered in number and in functions, and remain so today; and she said to Mr. McLellan in that letter, "I am sorry that you cannot give title or take title to property; Mr. Elder has been asked twice but says it cannot be so." And all subsequent acts of the conveyancers conform to that distinction. But there was no reason why Mrs. Eddy should not confer upon those four individuals, and upon a fifth when later she saw fit to add another to their number, other functions, additional duties, additional rights, and call them also, if she saw fit, the Christian Science Board of Directors. So that you really have here under one name two bodies distinct, wholly distinct, in origin, distinct in functions and distinct in duties, both called the Christian Science Board of Directors. I should think that it would be desirable to recognize the absolutely well-known legal impossibility of altering a charitable trust by any subsequent declarations, whatever you call them; even if it were an angel come from heaven it would not be possible under the laws of Massachusetts to do it. I should think it would be serving this Church better if we recognized the law instead of bucking up against it, and tried to point out what might happen to the Christian Science

Board of Directors under the By-Laws, that is, what we may call the by-law directors as distinguished from the deed directors, whose number and functions could never by one power be altered, under the laws of the Commonwealth.

Mr. Bates—Do you call that a question?

Mr. Thompson—I call it a question. If you don't see fit to adopt it you will be responsible if your clients lose before the full bench of the Supreme Court.

Mr. Bates—I cannot accept your view.

The Master—Well, call it a suggestion. No doubt Governor Bates will deal with it when he comes to it. Now you and I, by questions and suggestions, have delayed his argument about seven minutes.

Mr. Thompson—Very well, sir; I am perfectly willing he should have 20 to answer it in.

The Master—I think we had better now let him go on.

Mr. Bates—I do not accept my brother's view or his contention in regard to that matter. That view would of course tally with his contention that Mr. Dittmore is still a trustee, although he has been removed.

The Master—It is obviously a difficulty which we have got to deal with.

Mr. Bates—It is a difficulty and it is not a difficulty. It is according to whether or not you consider that there has got to be a record of everything that is done, or whether you take into consideration the broad principle that prevails in the law in regard to organizations, that they can do by acquiescence and acceptance the same things that they could do by direct act. Now, Mrs. Eddy constituted this Board of Directors, or endeavored to, and it became a Board of Directors of the Church; when the Church itself was formed it acquiesced in that designation. As a body corporate under the statute it was not limited to four members, and she did not limit her trustees in the Trust Deed to four members; she limited it to those who should be that corporation, or the directors in that corporation, whether they were four or ten. We have an exactly parallel case I think in connection with the Methodist Church, where deeds are made to the trustees, but there is nothing to hinder the number of the trustees being increased, and the property goes to the board. They hold it in their corporate capacity. That is the reason, as I said before, that Mrs. Eddy referred in this deed so many times to their successors in office as directors.

If we once accept the principle that there is no limitation on the number who could be directors of that Church, that the Church itself could have increased the number of its directors, then all we have to know is that Mrs. Eddy, whose will was the desire of the Church, requested that the number

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be increased; and the governing board, which had authority to make the change, made the change and increased the number to five. It does not affect the title. You then have five directors, and it could be increased in the same way to six, the only question being whether or not the Church itself accepts them.

In this case the Church had delegated that question of business to the Board of Directors; what they did was therefore the act of the Church. Therefore when the corporation itself increased the number, when the directors themselves as directors of the Church increased the number, it became valid, and there is nothing in the record to indicate that they have not always been so considered, except the deed which has been referred to, and it does appear in evidence as a hearsay—because the opinion is not here—that Mr. Elder gave advice. I have no doubt he did give the advice that he could not include or they could not include at that time another party in the Trust Deed. He probably took the same view of it that Mr. Thompson is taking. But the opinion is not here and the fact is that there were several conveyances afterward that were made to the five, showing that that theory was entertained only for a short time.

Mr. Thompson—Do you suppose Mr. Elder had ever heard of the Dartmouth College case when he gave that opinion?

Mr. Bates—I presume that he might have. Whether that opinion is here or not—it is not here—I assume that Mr. Thompson wishes to base his argument on it solely in order that his client may retain his position as trustee. But I direct his attention to the fact that there has never been any election as trustee of Mr. Dittmore or of any of the others, and therefore their only title at the present time to claim as trustees is because they have been elected as directors.

Mr. Whipple—Governor Bates, I think perhaps you would like to correct a statement that you made by inadvertence, that several deeds had been made to the five directors since the time when Mr. McLellan was appointed, or whatever was done. The fact is that so long as Mrs. Eddy lived there was never a deed made of any property to the five, and the further fact is that of all the property on which the Church edifice is constructed not one deed was ever made to the five, or to any board in which Mr. McLellan was included—not a single one—although most of those deeds were made after Mr. McLellan was appointed and before Mrs. Eddy's death. Of course you do not want to be left on the record as stating something that is not so. The first deed that was ever made of that sort was one made in your office, long after Mrs. Eddy had passed away.

Mr. Bates—There is no evidence that it was made in our office. The

evidence is that it was made in Mr. Elder's office.

Mr. Thompson—Mr. Abbott said that it was, and that he was the only one that had ever heard of Mrs. Eddy's letter of Feb. 5, 1903.

Mr. Whipple—But you will find it was a fact that not one deed was ever made in Mrs. Eddy's lifetime to McLellan or his name included.

Mr. Bates—I think, if Your Honor please, that my brother intends to state the thing exactly as it is, but Exhibit No. 767 is an indenture made "this nineteenth day of September in the year one thousand nine hundred and six, between Mary Baker G. Eddy, of Concord, in the County of Merrimack and State of New Hampshire, of the first part, and Ira O. Knapp, Joseph Armstrong, and William B. Johnson, all of Boston, in the County of Suffolk, Stephen A. Chase, of Fall River, in the County of Bristol, and Archibald McLellan, of Brookline, in the County of Norfolk, and all in the Commonwealth of Massachusetts, at present constituting the Christian Science Board of Directors, a body corporate duly existing under the provisions of the thirty-seventh chapter of the Revised Laws of said Commonwealth and especially of the first section thereof."

Mr. Whipple—Do you call that a deed, sir?

Mr. Bates—I call it having the same effect as a deed.

Mr. Whipple—Well, do you call it a deed, sir? Why do you quibble?

Mr. Bates—Do you intend to distinguish between a deed—

Mr. Whipple—Absolutely. When I say deed, I mean a deed. And I know what I mean, and I do not state something else or quibble about it.

The Master—What is it? A conveyance of land?

Mr. Bates—It is a paper that is signed by Mrs. Eddy only.

Mr. Thompson—Who drew that paper?

The Master—It does not purport to convey land, does it?

Mr. Bates—I was just going to read it in order that I might not make any—

Mr. Thompson—I think you will fasten it where it belongs if you read it. See who the justice of the peace was. It may have been General Streeter.

Mr. Bates—All right.  
"State of New Hampshire, Merrimack ss. December 19th, 1906. Then personally appeared the above named Mary Baker G. Eddy and acknowledged the foregoing instrument to be her free act and deed, before me, Josiah E. Fernald, Notary Public and his Notarial Seal."

Mr. Thompson—He is a layman.

Mr. Bates—But he happens to be one of your trustees, the same as General Streeter.

Mr. Thompson—I thought you said we were fighting him a moment ago.

I think he is a very good man, a respectable man.

Mr. Bates—

"Witnesseth: That Whereas the said party of the first part by her deed dated September 1, 1892 and recorded with Suffolk Deeds, Lib. 2081, Page 257, conveyed to Ira O. Knapp and others, thereby constituted the Christian Science Board of Directors, a certain lot of land containing seventy eight hundred and twenty eight (7828) square feet situate at," and so forth, "said conveyance being therein stated to be made subject to certain trusts and conditions in said deed set forth providing among other things for the erection upon said lot of a suitable and convenient church edifice and for the maintenance therein of regular preaching, reading or speaking on each Sabbath; which said edifice was duly completed on said lot," and so forth. "And whereas a new church edifice has lately been erected on adjoining land, and it becomes appropriate that public worship should henceforth be maintained in said new edifice in accordance with the doctrines of Christian Science and it is probable that weekly services will cease to be held with regularity in the original edifice; And whereas the said deed contains further provisions, trusts, and conditions; And whereas the said party of the first part while hereby re-affirming all the trusts and agreements in said deed contained except as herein modified, desires also and hereby provides that no event or contingency mentioned in said deed or deemed to occur or arise upon any construction thereof, shall require a reconveyance of said lot of land or of said edifice to her or to her heirs or assigns, and that no breach of any of said trusts or conditions and no omission or neglect on the part of said Directors to comply with any of the trusts or conditions contained in said deed, shall operate by law"—

Your Honor notices that she refers to them as directors and not as trustees—

"or otherwise to re-vest the title, legal or equitable, of said lot or edifice in her or in her heirs or assigns, or to cause or give rise to any forfeiture of any grant made by said deed, and that in no event shall the said title revert to her or her heirs or assigns; and whereas she desires also to remove all other doubts which except for this indenture might arise in regard to the construction of said deed dated Sept. 1, 1892; now, therefore, it is hereby agreed by and between the said party of the first part and the said parties of the second part, that the provisions contained in said deed shall be henceforth construed not as technical conditions, or as involving a possible forfeiture of the grants made by said deed dated Sept. 1, 1892, but only as trusts and agreements to be duly observed so far as consistent with present or future circumstances or as

required for the welfare of The First Church of Christ, Scientist, and among other things that the regular preaching, reading, or speaking in said original edifice on each Sabbath provided for in said deed shall be no longer required. And it is further agreed that said original church edifice and the lot upon which it stands being the lot described in said deed, shall not be sold nor shall said Board of Directors or their successors allow its use for any other purpose or purposes than those of reading, instruction, worship, and service in accordance with the doctrines of genuine Christian Science. And the said party of the first part, in consideration of the premises and of one dollar to her paid by said parties of the second part, the receipt whereof is hereby acknowledged, doth hereby remise, release, and forever quitclaim unto the said parties of the second part and their heirs, successors and assigns, the land described in said deed with the buildings thereon, but subject to the trusts in said deed contained, except as herein modified. To have and to hold the above released premises to the said Ira O. Knapp, Joseph Armstrong, William B. Johnson, Stephen A. Chase and Archibald McLellan, at present constituting the Christian Science Board of Directors as aforesaid, their heirs, successors and assigns."

Mr. Thompson—What is the number of the exhibit?

Mr. Bates—Exhibit 767.

The Master—I am afraid that I am going to have difficulty in seeing how you can transform four trustees under the language of this deed into five, and therefore I will ask you to be a little particular with what you have to say about that. I have followed you, I think, so far. You say that is just the same as if the deed said, "I give it to these four persons as they are the Board of Trustees of The First Church of Christ," and so forth, "and to whom may hereafter constitute said board, whatever their number."

Mr. Bates—That is right. Assume, if Your Honor pleases, that the Church was already in existence and that the Board of Directors was already in existence and that she had then made this Trust Deed to them as the Board of Directors and their successors in office. Would there be any question but that if subsequently the Church changed its number of directors, that the board would still hold title to the property? And does it make any difference that it was in process of formation and that subsequently it became a body corporate? Isn't the conveyance in trust for these directors? That is, would they have had a right to have kept it? Would they have had to return it if the Church had not been organized and the directors made the directors of the church? Did she not have a right to do in contemplation of what she knew was being accom-

plished—did she not have the right to make the conveyance in contemplation of that, and did it not have the same effect as though the Board of Directors had already been in existence and the Church itself? And as a matter of a body corporate, who is to determine the number of that body corporate except the Church? It is the directors who make the body corporate, who exist as a directorate in accordance with the laws of the Church. It is the trustees of the Methodist Episcopal Church who form the body corporate, who are elected in accordance with the discipline of the Church. And so with the other churches.

Now, that being so, the Church is not precluded by reason of a conveyance to four persons described as directors—it is not precluded from changing its by-laws so as to increase its number. That certainly should not be possible.

Now, if the Church does change its by-laws and does increase the number of its directors, does that increased number of directors become the successor in the trust under the Trust Deed?

The Master—I suppose we shall all agree that on Sept. 1st, there being no Church, the deed could not constitute the four persons a body corporate. If they became afterwards a body corporate upon the organization of the Church, that is another thing. I do not suppose Mrs. Eddy or anybody else had the power to constitute these four people a body corporate on Sept. 1st.

Mr. Bates—I would agree with your Honor on that. It was in contemplation of the organization of the Church, which was at that time being formed, that she made this conveyance.

The Master—Now on the formation of the Church, Sept. 23—am I right about the date?

Mr. Bates. Yes.

The Master—Sept. 23, the Church took no action whatever in regard to the directors, did not choose them. In fact, I do not recollect that they said anything about them at the first meeting. What was there then that made them, made these four persons, officers of the Church, and therefore a corporation for certain purposes under the statute to which we have referred?

Mr. Bates—The acquiescence of the Church organization, the holding of their property by this Board of Directors.

The Master—There is no express acquiescence, is there?

Mr. Bates—No.

The Master—Absolutely none. There is no reference to it whatever.

Mr. Bates—But there is everything to indicate that they acquiesced in it from the beginning.

Mr. Thompson—Would that acquiescence make them a corporation?

The Master—That I think is true. I do not see that there is any evidence to the contrary on that. I think we

may assume that they acquiesced. But would acquiescence have that effect?

Mr. Bates—No. The acquiescence made them their directors and when they became their directors, then by virtue of the statute they became the corporation.

The Master—Then did they become such officers as the statute has in mind?

Mr. Bates—Well, as I stated, I think that there is no doubt of that, because their duties are similar to the duties of the church officers that are described in the statute. But in addition to that I think that in the case of Chase v. Dickey—

The Master—I have read the case of Chase v. Dickey, but the question was hardly a controverted one in that case.

Mr. Bates—I agree with that.

The Master—There is another Massachusetts decision, I think, that says that the officers have got to be the same not only in function but in character with those specified in the statute.

Mr. Bates—Well, I would not take exception to that at the present time.

The Master—And must not the "character" have reference to their election?

Mr. Thompson—Absolutely. That is fundamental.

Mr. Bates—I think not, Your Honor, because the officers are not elected by the membership in the case of many of those churches which were mentioned.

Mr. Thompson—Are not the deacons and church wardens? You ought to know about deacons; I know something about wardens.

Mr. Bates—I know trustees are not elected by the church membership.

Mr. Thompson—No, they are not, and they cannot be removed.

The Master—As we are discussing these matters I thought it might perhaps be useful to me to know what was in your mind.

Mr. Bates—I referred to the trustees of the Methodist Episcopal church, of course, when I referred to trustees, who are specially mentioned in the statute, and who have power such as the church laws place upon them.

Mr. Whipple—Governor, I do not want to interrupt your thought, but there was a question that occurred to me in reference to your suggestion as to the successors in office which warranted their having Mr. McLellan. Perhaps you have thought who it was that Mr. McLellan succeeded. Whose successor was he?

Mr. Thompson—Wouldn't the answer be, "Nobody's"?

The Master—I think Governor Bates' answer must be found in his theory, his contention, that the deed is to the Board of Directors of this Church, whatever their number may be.

Mr. Whipple—And the new board

was the successor to the old one, making it five?

The Master—They could increase to five or fifteen or twenty, if they wanted to.

Mr. Whipple—But that does not seem to be what is said in the deed. It seems to be the successors to the persons who are named.

The Master—Successors in office.

Mr. Whipple—Successors in office.

Mr. Bates—Let me say, Your Honor, that that raises the question which has nothing to do with this case except as it may throw a little light on it; that is, the question of the title, of course, is not involved. If the directors or the trustees of a church are a body corporate under that statute, then the conveyance could be made to them as a corporate body without designating anybody, and many conveyances are to my knowledge made that way, to boards, under that statute. Many other attorneys I know see fit to name the individuals who at the time happen to constitute the body corporate. But whether they name the individuals or merely name the corporation, the title is not affected, because if they name the individuals they are described as the body corporate, and therefore those who succeed them in the body corporate are the ones who take the title.

Now, in this case Mrs. Eddy might, if she had waited until the board was actually made a board by the Church, or if the board had been in existence as a Church board at the time, and a corporate body under that statute—she might, instead of naming any one of them, have made the conveyance to the Christian Science Board of Directors, a body corporate under Section 1 of Chapter 37 of the Laws of Massachusetts. She might have done that, and then this question would not have arisen which arises here now.

If she could have done that, she could have also done the other thing. Assuming that there had been a board of four in existence, she could have made the deed to them as a body corporate, naming the four as a body corporate under that statute. But if she had done it in that way, that would not have prevented a subsequent change by the Church authorities of the number of that body corporate, and therefore a vesting of the title in the body corporate, or, rather, it would not have changed its title. The title remains in the body corporate; it doesn't make any difference whether it is four directors or five directors. Whoever they are, under my theory of the law, they are the body corporate, and it is to the body corporate that the conveyance and the title goes.

The Master—I think I grasp your theory; it is an interesting question.

Mr. Bates—And I think that the statute that my brother has referred to—Chapter 132 of 1917—in a way confirms that suggestion:

"All deeds, gifts or grants and all devises and bequests heretofore or

hereafter made to The First Church of Christ, Scientist, in Boston, Massachusetts; The First Church of Christ, Scientist, in Boston; The First Church of Christ, Scientist; The Mother Church; the Christian Science Board of Directors; to persons described as the Christian Science Board of Directors, or to persons described as trustees known as the Christian Science Board of Directors"—

and that applies to these very persons—

"shall be deemed as giving, granting, conveying and devising or bequeathing the property mentioned in such instruments to The First Church of Christ, Scientist, in Boston, Massachusetts, unless the contrary clearly appears from the instrument, and the titles passing respectively by such instruments shall be and the same hereby are vested in The First Church of Christ, Scientist, in Boston, Massachusetts, subject to any limitations governing any trust expressed in any such instrument."

The Master—The case I had in mind was *Weld v. May*, 9 Cushing, 181. In that case Judge Shaw points out that the act of 1754, which is the original statute—it afterward became Chapter 37, Public Statutes—was passed to enable unincorporated societies to control and dispose of property without being incorporated. And he says that "All other similar officers" means officers in churches otherwise than stated—that is, otherwise than in Congregational churches, which is the one he is dealing with—of similar character and of corresponding functions. That is the only thing I have been able to find about it. He says officers not of similar character hold simply as trustees subject to the jurisdiction of the courts of equity.

Mr. Thompson—That is the only case in Massachusetts that discusses it; it is the only case that we have found, and it is on our brief. Of course, it cannot refer to people who are not elected.

Mr. Bates—So far as "similar character" is concerned, I do not suppose that there will be any serious question of that. I think that the duties are of a "similar character," although they are larger.

The Master—No officers of similar character and with corresponding functions.

Mr. Bates—Well, officers of similar character, and the functions are, in a measure, the same. They are a body corporate, of course, only so far as the holding of property is concerned; otherwise they are directors, and not as a body corporate; and, as I stated, I think that this Board of Directors is to be looked upon as having power under the By-Laws of the Church which they do not have as a body corporate; but they have, simply as directors of a church; in other words, many powers which they do not exer-

cise as a body corporate, but they exercise—

The Master—You doubtless appreciate all the difficulties just as much as I do, and no doubt, when I read your brief, I shall be a good deal cleared up about them.

Mr. Bates—In connection with the directors, and before passing from that, I merely direct attention to Mr. Eustace's memorandum again, his brief that he prepared, which is found on page 62, where he says, "The Christian Science Board of Directors is the governing power of the Christian Science organization." And in the same communication he refers to it as "the governing board of the Church and its members." A recognition by him in regard to that fact, and I mention it particularly because he was asked the question as to whether or not he had ever heard the directors termed "the governing board of the Christian Science organization," and he said he had not, and yet he used the words in his own communication, or in his own brief, of November, 1915.

Mr. Thompson—Governor, make a note of 5 Allen, 540, in connection with that last Cushing case. That case ought to be read in connection with the case in 5 Allen, 540.

Mr. Whipple—Are you not going to tell us about it tomorrow?

Mr. Thompson—Yes, I am.

Mr. Whipple—Well, what is the use of having a note taken of it now?

Mr. Bates—Now, I will just consider very briefly the question of the trustees' status. I have already referred to the fact that if their contention is correct, I believe that the law that requires a trustee of a charitable organization, where there is no provision in the instrument for his resignation, to resign to the Court, has not been complied with, and therefore those who sought to be relieved of their duties by resignation have not been relieved, and the present three trustees, therefore, are not trustees, because there were no vacancies to be filled at the time that they were elected. There has been some question here of good faith on the part of directors, and that has enabled or required a large field of evidence, or opened a large field of evidence, and has prolonged—

The Master—Before you leave that, Governor Bates, I suppose that you have on your brief the authority for the proposition that a trustee of a charitable trust cannot resign?

Mr. Bates—Yes, Your Honor; I will cite several of them. I merely wished, in passing, to raise the question as to whether or not the trustees have shown that good faith which should be shown in the allegations which they have made in this bill, and in their general attitude. They have charged that the directors have changed their course of conduct, and intimated that the directors had no

right to in any wise supervise the editorial or the business management, and that they had no control over the editors or business manager. The evidence is so conclusive that they had always done so, that, for the trustees to claim that they had departed, because they have been insisting on it in recent times—departed from the course of conduct of the past—is absolutely without foundation. It is the trustees who have made the change, their own official records show, the notices of the election of editors—they received them without any protest or suggestion that the directors were acting without right. The same in regard to the business manager. Their files of correspondence contain many letters, and letters in which there is never a suggestion that these notices have been improperly received, or that the Board of Directors have taken an action which they had no right to take. Their own written statements are conclusive in regard to this matter. They themselves sent thanks to the board for making their elections possible, in some instances. Their explanations of these letters, as being merely matters of courtesy, in view of the By-Laws are absolutely absurd. Even as recently as the present year, this very year of the controversy, they sent to the Board of Directors and asked that a certain party might no longer be elected by the board as an editor, because, they said, that party only has translator's duties, and he is in no sense an editor, and therefore we think that that is a matter that the Board of Directors might very well not do the electing in. And the Board of Directors sent them back a very courteous note saying that they agreed with their view, and that thereafter that party's name would be omitted, and he would be considered a translator, and the board would not elect him; and that is in the present year: showing the recognition of the authority of the board in the matter of the election of editors. And yet they have set forth and made these claims that are directly contradictory to it. I submit that it is a question of exceedingly—well, it is a question either of good faith or of propriety or of good morals, when they call in the business manager, with this crisis impending, on the very day that they pen the letter to the board that makes the trouble (Sept. 30) and read to him the letter, on that very day, in that very meeting, when they raise his salary from \$7500 to \$10,000, and at that same meeting, when that record takes place, ask him for his approval of their action—I submit that does not look wise, judicious, and is not right! If there was no intent to influence the business manager by that raise, which did not come at the end of his year of employment, but came in the midst of it—if there was no attempt to influence him who was the appointee of the Board of Directors, certainly it was something

that could not help influencing him, and it was something which indicates that the trustees are not here with that sole devotion to duty and to the development of the truth which one would expect from men who are taking the positions, or occupying the positions, that they do.

There was a similar matter shown by their own records, where they stated that Mr. McKenzie, one of their editors, as they claimed, was not in hearty accord with their position, and that he must take his position soon. It was questionable, getting those editors in there at that time, the editors who had been elected under the By-Laws by the directors, and getting their support of this position of the trustees, although it has nothing to do except as showing the attitude of the men who have come in here and question the good faith of others.

Now, a few words in regard to the periodicals and their relation to the trust. When Mrs. Eddy made the trust there was no weekly newspaper that was controlled by the Publishing Society. On Aug. 22, 1898, Mrs. Eddy wrote W. B. Johnson, one of the directors, asking for the adoption of a by-law to the following effect:

"If a weekly newspaper shall at any time be published by The Christian Science Publishing Society it shall be owned by The First Church of Christ, Scientist, in Boston, and shall be copyrighted and conducted according to the by-law relating to The Christian Science Journal."

[Record page 255, column 1.]

The First Members adopted this by-law the same day (Aug. 22, 1898).

On the same day Mrs. Eddy wrote Mr. McKenzie, then a trustee, saying that the weekly newspaper, calling it "The Christian Science Messenger," must be owned by the Church, and saying, "Call on the Treasurer of this Church for the funds to start with. Let the editors of the C. S. Jour. be the editors of the C. S. Messenger and employ such help as is required."

[Record page 255, column 2.]

Thus Mrs. Eddy at this time, the same year as the trust, was providing through the By-Laws, and not through the Trust Deed, for the publication of another newspaper, and was providing for the publishing of it through funds to be provided by the treasurer of the Church, and providing distinctly that it was to be the property of the Church; and yet that is one of the publications that this organization known as the Publishing Society still controls, and which it claims to have the ownership, legally, of.

On July 28, 1908, Mrs. Eddy wrote the "Beloved C. S. Board of Directors":

"So soon as the Pub. House debt is paid I request the C. S. Board Directors to start a daily newspaper called Christian Science Monitor. This must be done without fail."

That was on July 28.

The directors, as I recall the evidence, in reply to that suggested that she confer with the trustees; and on Aug. 8 she wrote the Board of Trustees:

"It is my request that you start a daily newspaper at once, and call it The Christian Science Monitor. Let there be no delay. The Cause demands that it be issued now.

"You may consult with the Board of Directors, I have notified them of my intention."

And thus also, in connection with The Monitor, did she recognize the Board of Directors as being the authority in regard to its starting.

On page 71 of the evidence Mr. Eustace admits that all the periodicals are the organs of The Mother Church. Now, there has been an allegation on the part of the plaintiffs, that it was the purpose of the directors to use their disciplinary powers of Church members for the purpose of injuring the trustees or of forcing their way in the matter of this controversy. Mr. Eustace, on page 54, admitted that he knew of nothing of the kind; and I submit, Your Honor, that there has not been a word of evidence submitted in this case in regard to that matter. The fact that control—

The Master—I suppose, don't you, that when we have determined what the lawful powers of the directors are, and whether or not they have exceeded, or attempted to exceed them, we shall have disposed of all that question, shall we not?

Mr. Bates—Well, it is merely incidental, and I wished only to clear it out of the way, because I did not want to refer to it in connection with the larger questions, except to say this, that there is not a scrap of evidence in the case that the directors, who have had the power, have ever attempted in any way to use it to determine the controversy.

The Master—That is, assuming that they had the power?

Mr. Bates—Assuming that they had the power.

I just want to draw attention for a minute to the suggestion that has been made that Mrs. Eddy's consent in writing is necessary to those By-Laws which required her consent in addition to that of the Board of Directors. There are, I think, something like eight or nine, and possibly more, By-Laws that would become absolutely ineffective if that construction were to be placed upon them. One of them is that there could be no trustees appointed, and these trustees themselves are appointed without her consent, because the by-law says that they must be accepted by her, and the present trustees have not been accepted by her. There could be no more editors, because there is no provision except in regard to the By-Laws for editors, and they would have to be by her consent. They are even publishing her works at the present time under a contract with the trus-



tees of the will, as has appeared, and yet the by-law, Article XXV, Sect. 8, distinctly says that they shall not publish any of her works without her written consent: which they have not got.

I merely mention these as showing to what results their contentions would lead them.

I think that the case of Leeds, Executor, v. Wakefield, 10 Gray, 514, has a bearing on this question. The passing of Mrs. Eddy did not annul the By-Laws, but it does eliminate the necessity for obtaining her written consent. In the case which I mention there was a power given to the executor to sell and dispose of real estate on the decease of the widow, after the children had all become of age.

"and not selling unless the consent of the majority of my said children then living shall be obtained in writing to the said sale."

The consent was not given because the children were dead, and therefore it could not be given, but the Court held that this was a power coupled with a trust, which trust could only be carried into effect by first executing the power, and consequently the consent was not necessary, and the power to sell could be exercised without it.

Then there is a line of cases which hold that where a thing becomes impossible to do, that portion of the by-law is thereby eliminated and not to be considered. And as to that, I submit the case of Saltman v. Nesson, 201 Mass. 534, which was the case of a by-law that the Court found could not be carried out because it required the unanimous consent of all the members, and that being an impossibility, the Court found that that provision of the by-law was not valid, is applicable.

Your Honor will excuse me just a moment?

The Master—Certainly.

[Mr. Bates confers with Mr. Dane.]

Mr. Bates—I will do as Your Honor suggests in regard to stopping at this time.

The Master—What would you rather do?

Mr. Bates—I think that I would prefer to stop here, if it is equally agreeable to Your Honor. I am afraid that I shall have to take a little time further, but I would like to offer the requests for findings of fact and rulings of law (passing a document to the Master), and we will hope to be able to furnish Your Honor with a printed copy of it, possibly tomorrow. We have furnished the other side with a copy of this.

Mr. Thompson—It is all one document, is it not?

Mr. Bates—All one document.

Mr. Thompson—Not separate requests for findings of fact and rulings of law?

Mr. Bates—No.

The Master—May I inquire how long

counsel will require to complete the arguments?

Mr. Thompson—I should not think that we would require anything like as much time as Governor Bates has taken. Our argument will be very limited. He has taken out of our hands most of the argument on the merits of this case in regard to the case of the trustees, and so we shall confine ourselves, I think, to the question of the illegal discharge. Both General Streeter and myself are both very anxious that Mr. Demond should have the privilege of saying a few words on the law after I have opened on the facts. He has certain views of the law, which he is well qualified to present, but I do not think that their presentation will take much time. General Streeter does not feel, inasmuch as he has been disqualified so much of the summer from working on the case, that he would like to say anything now, although he has entirely recovered.

The Master—Without binding yourself to any fixed limit, of course, Mr. Whipple, can you give us any idea about how much time you think you will need?

Mr. Whipple—Well, I had anticipated making a very short argument on our side. We thought that if we submitted the requests for findings and requests for rulings, that would be the way in which we could aid Your Honor most in the solution of the problems. We still adhere to that view; but so much has been said that we may find something in it that we think ought to be replied to.

The Master—And that may perhaps—

Mr. Whipple—Take a couple of hours, say.

The Master—We may hope, for instance, to get through by the end of Wednesday?

Mr. Whipple—I still entertain the hope of getting through by the end of Tuesday, but my hope is shaken, and it is now slight as compared with what it was at 10 o'clock this morning. It is going down, but I still have hopes.

The Master—We have taken up a good deal of Governor Bates' time.

Mr. Whipple—Certainly; I realize that; but I do not think that we have wasted any time, and it ought not to be charged to the Governor. I do not think that we have lost any time in the ultimate result.

It is said, although perhaps we misunderstood it, that Governor Bates referred to Mr. Eustace as a student of Mr. Dickey. Did you do so, Governor?

Mr. Bates—That was a mistake. It was Mr. Watts that I had intended to mention.

Mr. Whipple—We were not sure that that was what you said, although some of us thought so. That should be corrected. Mr. Eustace was never a student of Mr. Dickey's. If anyone

has that high distinction it is the business manager.

The Master—Shall we, then, stop here until 10 o'clock tomorrow?

Mr. Whipple—Yes.

[Adjourned to 10 o'clock a. m., Tuesday, Sept. 9, 1919.]

Sept. 9, 1919

THIRTY-FIRST DAY

Room 424, Court House

Boston, Tuesday, Sept. 9, 1919

Mr. Krauthoff—If Your Honor please, in the record yesterday the stenographer omitted to identify as an exhibit the list of citations from the works of Mrs. Eddy, which I offered in evidence.

The Master—There is no objection to it being identified, I take it.

Mr. Krauthoff—I would also ask that it be set out in the record so as to be convenient of reference.

Mr. Whipple—We agree that it may be identified, but we do not admit that it has the slightest relevancy.

Mr. Krauthoff—We ask that the list as offered in evidence be printed in the record for convenience of reference.

Mr. Whipple—List of what?

Mr. Krauthoff—The list of citations that I have handed to Judge Dodge, which is a duplicate of the list I sent you.

Mr. Whipple—Well, it does not seem to me there is any need of that, because I understand that so far as that list is not referred to by the counsel who argue it is not of any consequence. I think the statement was made yesterday that you would point out in argument those upon which you rely—those citations. I do not think that Governor Bates has referred to any of them yet, but no doubt he will take them up seriatim before he gets through. Then they will appear in the record. Why should they appear if they are not even commented upon or discussed?

Mr. Krauthoff—Well, we offered that list of citations in evidence on yesterday, and we ask that that list, being the citations from the works of Mary Baker Eddy, to which the plaintiffs profess loyalty, be set out in the record for convenience of record, if for no other reason. But above all, certainly in this record the citations from the works of Mary Baker Eddy are entitled to the courtesy of being printed in the record.

The Master—I have not, I think, undertaken to rule so far on what should be printed and what should not, have I?

Mr. Whipple—I think not, but let me say—

The Master—It has all been done by agreement of counsel, if I recollect right.

Mr. Whipple—Let me say in that connection that it is no discourtesy to

Mrs. Eddy or her memory not to have everything from her works which you desire to have printed put in. That is no test of loyalty to Mrs. Eddy—not the slightest. Otherwise, we should have all the books reprinted, if you thought that you wanted to have them. That is a very curious thought in regard to a test of loyalty, and I am sorry to say that it is an example.

Mr. Krauthoff—We ask that this list of citations be printed in the record.

The Master—My view is that this is no more entitled to be printed in the record than the citations made in the briefs. They are only citations. I think that unless counsel can agree about it I am hardly warranted in ruling, against objection, that that list be printed in the record.

Mr. Krauthoff—The point we make about it, if Your Honor please, is that these are not citations from law books; these are citations which are not in evidence unless they are offered in evidence. They are offered in evidence and are a part of the evidence in the case, and are entitled to the same treatment as any other evidence offered in the case.

The Master—I think I shall have to decline to rule against objection, that they are to be printed in the record.

Mr. Krauthoff—Well, the request is made of the trustees of The Christian Science Publishing Society, on behalf of The Mother Church, that these citations from the works of Mary Baker Eddy be published in the official organ of The Mother Church, The Christian Science Monitor.

The Master—The request is made of the trustees.

Mr. Krauthoff—That is a matter of record.

[List of citations from the works of Mary Baker Eddy, offered by Mr. Krauthoff, is admitted in evidence as Exhibit 813.]

The Master—When you are ready, Governor, you may proceed.

### Closing Argument by Mr. Bates, Resumed

May it please the Court:

I had yesterday said substantially all that I think I ought to detain Your Honor to listen to in regard to the Dittemore issue, and also in regard to many collateral issues. This morning I propose to take up the main issues of the Eustace case, and, of course, the fundamental question comes first as to whether or not the directors had the power to remove a trustee under the Trust Deed. That is, whether or not the power of the directors under the Trust Deed was such that they had a right to remove a trustee, irrespective of the reasons of the removal.

I might direct Your Honor's attention to the fact that this clause 10 of the Trust Deed provides:

"Whenever a vacancy shall occur in said trusteeship for any cause, I reserve the right to fill the same by

appointment, if I shall so desire, so long as I may live; but if I do not elect to exercise this right, the remaining trustees shall fill said vacancy."

The part under discussion is the following sentence:

"The First Members together with the directors of said Church shall have the power to declare vacancies in said trusteeship for such reasons as to them may seem expedient."

I assume that there can be no question that the First Members were still in existence as a church body, that then they, together with the directors of the Church, could have made the removal of Mr. Rowlands which was made by the directors; and that there could have been no question in regard to their right to do so. The question arises by reason of the fact that the First Members have passed out of existence as a church body, and, therefore, the question remains as to whether or not the Board of Directors alone can exercise the power when the power was given to the two boards in the first place.

The Master—Would your claim be that if the First Members had been in existence they and the directors might have acted under clause 10 without notice or hearing?

Mr. Bates—Yes, Your Honor. The words are so broad that they come under the decisions which I cited yesterday to the effect that they constitute a case where neither notice nor hearing is necessary. Your Honor will recall the evidence in regard to the First Members at the inauguration of the Church in 1892. Those who first met designated themselves under the rules adopted as First Members, and subsequently there were others that were added to that body. They had certain executive duties in regard to the Church itself. They had the business of the Church, except so far as the Board of Directors had duties relating to the business of the Church. But on Jan. 10, 1901, acting under instructions from Mrs. Eddy, the First Members adopted a new by-law providing that the business of the Church hitherto done by them should thereafter be done by the directors of the Church. They nevertheless continued, apparently, as a body without any official duties; but in 1903, on March 17, the directors passed a by-law which provided that their names should be changed to Executive Members instead of First Members. They continued without any duties under the laws of the Church until 1908, when Mrs. Eddy called the directors' attention to the fact that here was a board that had no duties to discharge, that the work which they had formerly done was now being done by the Board of Directors, and that therefore they should not longer be kept in existence. And she directed that a by-law be passed, which was passed on July 8, 1908, disbanding—the term "disbanding" was used—disbanding the Executive Mem-

bers, which had formerly been called the First Members. And from that time on the First Members, or Executive Members, disappeared, not only from the Manual, but from the Church as a body. They had their existence as the result of the rules adopted at the time of the beginning of the Church. When those rules were annulled they ceased to exist; they existed in other words, under a Church law only, and when that Church law was revoked then the body which it created naturally passed out of existence, not only by reason of the revocation of the law, but also by reason of the way in which it was revoked, in which it was expressly stated that the First Members were disbanded by it.

But what was Mrs. Eddy's intent in putting the power of removal in these two organizations? Clearly she had in view the fact that this trust was for the benefit of the Church, The Mother Church. Clearly she had in view the fact that the First Members and the directors combined as two boards had the entire executive authority or governing power of that Church, so that in effect when she gave the power of removal to these two boards she was giving the power of removal to the governing power of the Church and was giving it unquestionably in order that the governing boards of the Church, and the only boards which could act in the business of the Church, might have the power of removal so as to protect the interests of the Church under that Trust Deed.

The Master—Before we leave clause 10 you might state to me what your idea is as to the manner in which the two boards were required to act in order to declare vacancies. Must their action have been unanimous, both boards? Would a majority of each be sufficient, or would a majority of the combined two be required?

Mr. Bates—I have no question in my mind that where a power without any designation as to how it is to be exercised is given to a board as such, that that power is to be exercised by a majority of the board. That, I think, is the general rule in regard to the action on all matters by boards when authority is conferred upon them. The Court recognizes that they can act by majorities, and unless there is a limitation it requires a majority vote—they are to act by majorities. As bearing on that question—

The Master—So that according to your view, each board would hold a meeting, and if the two boards concurred by a majority then that would be what clause 10 required?

Mr. Bates—I think that is what was intended by the wording.

The Master—By a majority of each. I see.

Mr. Bates—And I think that that interpretation is borne out by the history of this case, for it appears that shortly after this Trust Deed was given a by-law was adopted, under which by-law it was provided that a removal

or a vacancy should only be declared by the unanimous vote of the First Members of the Church. Mr. McKenzie, the trustee, when a vacancy occurred, found that it was impracticable to get the unanimous vote of the First Members of the Church, and that by-law was changed so as to make it possible for a majority, instead of requiring a unanimous vote. That is, it was changed so as to conform to the words in the deed, but it was to meet the difficulty that the by-law had called for the unanimous vote, whereas an interpretation of the deed would only call for a majority vote. That change, if Your Honor will recall, was made in August of that year.

The Master—August of 1901?

Mr. Bates—1898.

The Master—What year?

Mr. Bates—1898, the year that the trust was made.

Now, if this power was given to these two boards because they were at the time the governing boards of the Church, one having certain duties and the other having certain duties, it is evident that if the power had been given to the Church that then the power would have had to be exercised by these two boards. That is, if Mrs. Eddy, instead of saying that the power was given to the First Members together with the Board of Directors, had said, "I give the power to the Church to declare vacancies," it must be recognized that that power to the Church would have had to be exercised through its governing authorities, and if it was exercised through its governing authorities these two boards would have been the ones to have exercised it. They were the only boards who could exercise it. There was no provision by which the membership of the Church could possibly exercise it.

The Master—Might it not be said that the power given to the Church to act was power given to the members of the Church to act?

Mr. Bates—I do not think so, Your Honor, because we have got to bear in mind that Mrs. Eddy had in mind this form of government which she had established for this Church, and this form of organization, and that this form of organization did not contemplate, and there is not a word of evidence anywhere in the case to indicate that the membership of that Church has ever passed on any single matter; the reason being evident—it was a membership to consist not only of those here in Boston but of those in branch churches, in so far as they saw fit to join this Church, all over the world, and it was impracticable for that membership to be got together, or to take votes upon any matters, and Mrs. Eddy at any rate never recognized that they had a right to do it, and there is nothing in the By-Laws or in the form of organization which she provided that gave them any such rights.

The Master—I am not quite sure

that I follow that. At first the First Members were the members of the Church, were they not?

Mr. Bates—They were the members of the Church.

The Master—And they acted just as any ordinary members of a church would for quite a period?

Mr. Bates—That is true, Your Honor. But they were not the only members. Perhaps I did not quite catch Your Honor's question. The First Members acted as a Board of First Members. There were other members of the Church that were members of the Church from the beginning, who were not First Members.

The Master—They were members without a right to vote?

Mr. Bates—They were members without any right to vote in either of the executive boards.

The Master—Therefore, in the ordinary sense you would not call them members of the unincorporated religious society, because they had no right to vote?

Mr. Bates—On the contrary, if I catch Your Honor's suggestion, I think there can be membership in a body without the right to vote.

The Master—Undoubtedly there can be in some, but can there be under the statutes in the case of an unincorporated religious society?

Mr. Bates—Yes, Your Honor. There is nothing in the statute, so far as I know, that prevents it. It is exactly the situation in this Church today. It has been the situation of it for the last 20 years—more than that. It has been the situation of it from the very beginning. It is a church where the membership has not had any right to vote. As to whether or not they have a fundamental right to get together and do as they please is not the question before this Court. But the fact is that they never have, and that their by-laws have never recognized their right to have a voice in the management of the Church directly, and they never have taken any action.

The Master—You cannot quite say that the members never had the right to vote, can you? At the first meeting they voted.

Mr. Bates—They voted as First Members.

Mr. Thompson—Were there any other members present except First Members?

Mr. Bates—Perhaps we ought to say this, that at the first meeting they adopted an organization which made themselves First Members, and from that time on, under the powers which they gave to the First Members, that board, together with the Board of Directors, were the only portions of the Church that had a right to vote. They did not vote because they were members of the Church, but they voted because they were members of boards which were the governing boards of the Church; and I submit that there is not a by-law, and there is not an elec-

tion, where the members as such voted.

Mr. Thompson—Governor, can you tell me this, please, because it is a very interesting point, and I have wanted to know it for a long time: Were there any members present when the Church was organized, and for a long time after that, except First Members? I cannot find any record that there were.

Mr. Bates—I think that the evidence does not disclose that there were any other members at the first meeting, where they established themselves as First Members; but the evidence does disclose that for a short period they elected to membership a long list, and they were elected to membership not as First Members, but they were elected to membership by the First Members, that is, elected to membership in the Church, a list of over 50; and that is the time when Mrs. Knott's name appeared on the list as one of those who were elected to membership in the Church, but not as First Members.

The Master—That action transformed them from mere members of an unincorporated religious society to a board of government of that unincorporated religious society, according to your view?

Mr. Bates—Yes, Your Honor. At the first meeting these people met to organize a voluntary religious association. Having done that, they immediately proceeded to adopt a by-law, which made themselves a governing board, and such as they should add to that membership as First Members.

Mr. Whipple—That is, made all the members then existing officers?

Mr. Bates—Well, so far as the record discloses, that was probably true at that time.

Mr. Whipple—So that the entire Church at that time were officers? A perfect democracy!

Mr. Bates—I would say that that condition lasted only during the time of the organization, and a condition that lasted only for the time of the organization, or at least at the time of the organization, and is a result of the necessities of organization, can hardly be considered as something which showed what was intended so much as the entire subsequent history of the Church does.

Mr. Whipple—I suspect that you are in error about that, Governor. I suspect that there were several meetings, in which there was no one but First Members. Those were the only members. It was quite a while afterward when they took in what you might call, for want of a better term, collateral members, people who did not vote.

Mr. Bates—I think that you will find yourself in error. I am speaking only so far as the record discloses, but according to my recollection that is the fact.

Mr. Whipple—Well, I think that you had better not depend on your recollection, if you wish to make that as

the basis of your argument, because the evidence is right here.

Mr. Bates—I assume that you, in interrupting to contradict me, are not depending wholly on your recollection.

Mr. Whipple—No.

Mr. Bates—Then, if you have any evidence to the contrary, of course it will be possible for you to state what it is when you come to argue your case.

The Master—The object of my question was only to be sure that I understand your view. Of course, you recognize that the situation is a somewhat unusual, peculiar, and novel one.

Mr. Bates—I agree, Your Honor. I have stated that this plan of organization of Mrs. Eddy contemplated something radically new and different from anything that had preceded it or that was in existence at that time.

The Master—And the question that we are dealing with is how far it can be reconciled with the Massachusetts statutes.

Mr. Bates—Yes, Your Honor; and I submit that there is absolutely nothing in the Massachusetts statute which prevents a voluntary association from proceeding in exactly the way that this association proceeded. They have the rights, unless they are limited by statute, and there is no limitation upon them under the statutes of this Commonwealth.

Now, if this was a power that was given to the governing boards of the Church as such, then I submit that, for that reason, it would be a power that would survive in the board which succeeded to all of the governing prerogatives and all of the executive duties of both boards; or, to put it in another way, which continued in the exercise of those which it had at the time and also after 1901, in the exercise of all of those duties which had been conferred on the First Members.

But apart from that general consideration, this was a power that was given to these two boards, not, of course, because Mrs. Eddy wished the particular members of those boards to exercise that power: it was not a power given to the persons: it was a power given to these boards by virtue of their office and by virtue of their duties. And of course it is well settled that where a power is given to a board or to an individual by virtue of an office, that power survives, even though it might have been given concurrently to some other board or officer that had ceased to exist.

It is also true as a general principle of law—and I shall cite only a few cases, because I think that it is so well recognized—that a power coupled with an interest survives if the associate in the power has died, in the case of an individual, or if it has become extinct, in the case of a board.

Now, in this case we have virtually both of those situations. We have a power given to a board by virtue of its

being a board of a church; and we have a power given to it in connection with another board, which has ceased to exist. That power survives in this board because it was given to it as a board of that Church. If it may be said that that first board had become extinct, as it had, then it is the parallel case of a power surviving because of an interest which survives.

These directors, as the governing board of this Church, charged with the protection of all its interests, were the same as the Church itself in the interests which they had in this trust, and their power, therefore, being coupled with an interest, would survive under those circumstances.

Under what may be called the liberality of the modern decisions, when the power is given to persons holding an office, and by reason of the office, the power survives. And this is true where one refuses to accept the office, or where he dies, or where he resigns. Whatever may be the reason why the two do not exercise it, if it was given to them by virtue of the office, then the power continues or survives, although the association may not be there to exercise it.

In *Chandler v. Rider*, 102 Mass., 268, and a long list of cases which I will not put into the record, but which will be cited on the brief—in the case of *Chandler v. Rider*, just cited, the Court says:

“It is now well established under the liberality of modern times, that, in every case where such a power is given to executors as such and *ratione officio*, the surviving executor may sell under the power.”

Again the Court says:

“It is also a power coupled with a trust, and not a mere naked power. Its exercise is necessary . . . to the administration of the will according to the intent of the testator.”

A situation which, as nearly as possible, is analogous to the case at bar.

In *Gould v. Mather*, 104 Mass., 283, the testator named an executrix and executor, and gave them power to sell real estate, “if it shall be found necessary or expedient.” The executor resigned. The executrix sold and conveyed, and the question was as to the power.

“The question is [says the Court] whether the executrix can lawfully execute the power alone, or whether it is a joint power, in the exercise of which both must unite. Is it a power which the testator has seen fit to annex to the office as one of its incidents, or is it a power given to two specified persons in their individual capacity, and on the ground of special and peculiar confidence in their personal judgment. . . . The power of sale . . . may not be . . . indispensable to the final distribution of the estate, but it is manifestly subservient and auxiliary to the execution of the trust, which he has seen fit to connect with the administration of his will. It is a part of the executorship, . . . and evi-

dently considered by the testator as likely to be found convenient to the successful management of the property. . . . Upon these grounds it appears to us that the power is granted *ratione officio* . . . and that it is conferred upon the executors in their official capacity and not as a mere personal trust in them as individuals. . . . The rule seems to be the same also, if one of the executors had refused to accept the trust.”

Then the Court gives citations in regard to that matter.

In the case of *Parker v. Sears*, 117 Mass., 513, there was a power of sale in three trustees, and it was exercised by two survivors, and the exercise of it was upheld, the Court saying that it was conferred upon them as trustees, and not personally. Being conferred upon them by virtue of their office, it survives.

In the case of *Coffin v. Attorney-General*, 231 Mass., 579, a recent case, where the will gave an estate in trust to the wife and daughter to be used for their wants, if necessary, otherwise for such missions and like good objects as they may think best, the daughter died, and the question arose as to whether the widow could appoint the missions. The Court said:

“And the power conferred on his wife and daughter as trustees to designate charities having been coupled with an interest, could be rightfully exercised by the widow after the daughter’s death.”

I wish also to cite *Loring v. Marsh*, 6 Wall., 337, where the Court says:

“But what is more decisive of the question, is that, inasmuch as the trustees are invested with the legal estate in order to enable them to discharge the various trusts declared, it is well settled that the power conferred is a power coupled with a trust, which survives . . . and may be executed by the survivor.”

Again, in *Peter v. Beverly*, 10 Peters, 532, the Supreme Court says:

“the courts have generally applied to the construction of such powers the great and leading principle which applies to the construction of other parts of the will, to ascertain and carry into execution the intention of the testator. When the power is given to executors to be executed in their official capacity of executors, and there are no words in the will warranting the conclusion that the testator intended, for safety or some other object, a joint execution of the power, as the office survives, the power ought also to be construed as surviving. And courts of equity will lend their aid to upholding the power for the purpose of carrying into execution the intention of the testator and preventing the consequences that might result from an extinction of the power.”

I submit in that connection, Your Honor, that in this case every reason that can possibly be ascribed for Mrs. Eddy’s giving this power to the two boards applies to her intention

that it should be exercised by one board in case the other board went out of existence, as in this case. Incidentally, of course, her intention is shown conclusively by the By-Laws which she had adopted subsequently, and which provided that the directors alone shall execute this power. She certainly expressed the intention that somebody should have the power to remove the trustees when expedient; and that somebody was the parties who had charge of the Church affairs. It certainly was not her intention that this power should lapse, or that it should ever be exercised by a court by reason of there being nobody declared with the power in the deed. Rather did she confer it upon those who from the nature of their duties were best capable of judging as to the expediency, viewed from both the ecclesiastical and temporal points of view.

In the case of *Wallace v. Foxwell*, 250 Ill., 616, it is stated:

"The nature of the power is to be determined from a consideration of the purpose and intent of the testator appearing from an examination of the entire will. . . . The powers conferred were powers attaching to the office of trustees, rather than powers conferred in personal confidence in the donees."

So in this case the powers conferred were powers attaching to the office of directors rather than powers in personal confidence in the membership of the directors of the board.

Therefore we claim that upon the extinction of the First Members, the power survived, first, because it was the governing authority of the Church; second, because by reason of an office that had been given to it, it would therefore survive for that reason; and, thirdly, because it was a power coupled with an interest, and therefore survived under the general and almost universal decisions in regard to those matters.

Now, that brings me to the question of the right of removal under the By-Laws. Of course if Your Honor finds that the right of removal exists, as I think you will, under the deed, then it is not necessary to consider the question of the right of removal under the By-Laws, but if Your Honor comes to the consideration of this question, then there can be absolutely no question but what Mrs. Eddy, by the By-Laws which she had adopted, intended that the right of removal should be in the Board of Directors. I refer, of course, to the by-law in the Manual, Article XXV, Section 3, which gives the Board of Directors the right to declare vacancies for such reasons as to the board may seem expedient, quoting the words of the deed, and indicating that she had in mind at that time the words of the deed, in the fact that the powers, or at least that the First Members had become extinct. If the deed is not absolutely conclusive, certainly this by-law is, if Your

Honor finds that the by-law is to have effect. The evidence shows that this by-law was adopted at Mrs. Eddy's suggestion, and its history I will not go into at this time, but it will be stated on our brief. It is to be noted that the by-law is not one of those which require Mrs. Eddy's assent. It is the by-law which gave the power absolutely to the Board of Directors, without requiring any written assent from Mrs. Eddy.

Now that, of course, brings us to another main question in this case, which is the right of Mrs. Eddy to declare by by-laws rules that should control the trustees in the exercise of their trust. There has been much stress laid upon the words in this Trust Deed that it was to be irrevocable, perpetual and irrevocable trust and confidence, but, at the same time, it has, of course, been admitted, I think once specifically by Mr. Whipple, that the deed would be irrevocable without those words in it, and there is no special significance to those words, therefore, as a legal contention.

Any deed of trust becomes irrevocable except so far as there is some reservation in the deed which makes it possible for the donor to make changes in regard to it or its subject matter.

Mr. Thompson—Does that apply to the deed of Sept. 1, 1892?

Mr. Bates—The deed of Sept. 1, 1892, is a deed which Mrs. Eddy herself, through an indenture, changed some of the terms of. I presume you do not question that she had the right to do so. But, however, that is not the deed that is before us at this time. We claim that so far as its irrevocable character is concerned the deed of 1892 clearly shows that it was a deed to directors. I assume you have in mind the point as to the difference between four and five. I do not propose to argue that again at this time. But it clearly contemplated, it clearly states, that it is to the directors by virtue of their office that it is given, and not to four trustees, to be held as trustees, but to be held by whoever may be the body corporate or whoever may be the body corporate constituting the directors of the Church.

Now, coming back to this Trust Deed of 1893. The letter written by the eminent counsel of the trustees, and from which they quoted so liberally in their Bill in Equity, in which they stated their opinion in regard to this Trust Deed, curiously enough omitted any mention of the most important clauses in the deed, clause 3 and clause 8. It is strange that those counsel should not have attached any significance to those two clauses, but certainly they did not deal with them in that letter which has been put in evidence. I think if they had given to them the significance and the consideration which they seem to warrant they would have been under the

necessity of changing some of the views which they expressed in that communication. Section 3:

"Said trustees shall energetically and judiciously manage the business of the Publishing Society on a strictly Christian basis, and upon their own responsibility, and without consulting me about details, subject only to my supervision, if I shall at any time elect to advise or direct them."

The words "subject only to my supervision, if I shall at any time elect to advise or direct them" are words of great significance in the consideration of this case. They are put in there for a purpose. Where a deed is made irrevocable all parts of it are irrevocable, and if the donor reserves the power to make changes that power that she reserves is also irrevocable, and it applies to that power as much as to any other part of the deed. So that this deed virtually says, so far as this Section 3 is concerned, "This deed is irrevocable, but I reserve the right to give direction in regard to the supervision and to advise these trustees in regard to it." Such advice or direction was not reserved in order that it might be flouted. It was reserved and has the legal significance of making such directions absolutely, when they are given, a part of the deed.

Let me call Your Honor's attention, before going to Section 8, to the fact that the only two sections of the deed that really confer any powers whatsoever are Section 3 and Section 8. Those are the two which reserve to Mrs. Eddy the rights which we claim are broad enough to make possible for her to give any instructions that she saw fit, either by way of by-laws or otherwise, in connection with the carrying out of the trust. The first paragraph, for instance, names the trustees and describes the property. The second paragraph says it shall be held for the purpose of carrying on the business hitherto carried on by the society, that is, the old corporation. The paragraph—I said the second paragraph, which is right as the deed runs—but the paragraph numbered 2 provides merely that it shall be done under the unincorporated name of The Christian Science Publishing Society.

The third paragraph gives powers in regard to the conduct of the business.

The fourth paragraph is a matter of bookkeeping, the keeping of accounts, and directions in regard to it; and the turning over of the funds to the treasurer of the Church. Those are directory merely.

The paragraph numbered five requires a business manager to present to the trustees at the end of each month a full and correct statement. It is the first time there has been any suggestion of a business manager. My brother Whipple stated in his opening, if I remember correctly, that the trustees were to carry on the business

through the business manager. He did not find that incompatible with the fact that the trustees would have large duties to perform, because a business manager was provided to take charge directly of the business. And so I suggest to Your Honor that there is nothing incompatible in the idea that the trustees were to carry on this business, but subject to the general supervision and oversight of the Board of Directors.

The sixth is in regard to the employment of help.

The seventh is in regard to the preparation of Bible Lessons—clearly a church function, incidentally associating the trust with the Church, by providing the printed preacher for all the platforms of the Church, throughout its organization.

No. 8 is the significant paragraph, giving to the directors the supervision of the publication of the Quarterly and of all the pamphlets and tracts and other literature pertaining to the business, and with the significant reservation to which I shall refer later.

The ninth provides that no one shall be a member of the trusteeship who is not a loyal, faithful, and consistent believer and advocate of the principles of Christian Science as taught by Mrs. Eddy in her book, "Science and Health with Key to the Scriptures."

The tenth provides for vacancies.

The eleventh, the right to withdraw from the trust—a very significant right, by the way—The Christian Science Journal.

The twelfth is also in regard to The Christian Science Journal and the special reservation which she had made in regard to it.

The thirteenth is the compensation to be paid the trustees, to be determined by the Church.

The fourteenth provides that the delivery of the instrument and its acceptance by the trustees shall be regarded as a full establishment of the trust.

Now, I have gone through those paragraphs merely to direct Your Honor's attention to the fact that paragraphs 3 and 8 are the only paragraphs that relate to what the trustees are to do in regard to managing the business of the Publishing Society. I have spoken of the significant reservation in paragraph 3. The reservation in paragraph 8 is even more significant:

"Said trustees shall have direction and supervision of the publication of said Quarterly, and also of all pamphlets, tracts, and other literature pertaining to said business, using their best judgment as to the means of preparing and issuing the same, so as to promote the best interests of the Cause, reserving the right to make such changes as I may think important."

Your Honor recalls that those last words, the reservation of the right, were inserted in writing after the document had been typewritten, and

were inserted by General Streeter, and unquestionably because it was to carry out the wishes of Mrs. Eddy—probably wishes as expressed by her to him at the time.

Your Honor will bear in mind that under Section 3 there was reserved in this document, as it had been presented to her, "subject only to my supervision, if I shall at any time elect to advise or direct them." That was sufficiently broad to give her the right to supervise and direct unquestionably these publications personally, but it was not sufficient to satisfy her. Perhaps she had noticed those words in this trust, "perpetual and irrevocable." She undoubtedly had, and she as undoubtedly insisted that there should be a provision here that would conform to the plan that Judge Hanna had said she spoke to him about, of controlling this trust through the By-Laws to be adopted by the Church. And she said undoubtedly to General Streeter, "Is the power under Section 3 broad enough?" And we have a right to assume that General Streeter said, "We will make it so certain that there can be no doubt about it." Whether that was the fact or not we do not know and probably he does not recollect, but it is to be inferred from the circumstances. These words were not idly put in there. They were put in to accomplish a purpose, and it was not merely to accomplish the purpose of Section 3. They were put in there to accomplish a greater and a larger purpose. The very wording of it is significant, "such changes as I may think important." The word "important!" These were not to be mere changes of detail, they were not the dotting of an i, they were not the question of a comma or a period, they were not a question of the literature as to its form or kind of binding. These were not matters of detail, these were important matters that she was reserving the right in regard to.

What was the right reserved? It was the right reserved in regard to the power that she was giving the trustees. It was the right to make changes in that power, and that power was this: "Said trustees shall have direction and supervision of the publication of said Quarterly," and of everything else, practically, that was issued by the publishing house. She reserved the right, then, to make such changes, quoting the words of the first part of the paragraph—to make such changes as she thought important. In what? The direction and supervision of the publication of said Quarterly. Can there be any question but what in making that reservation she had in mind the very thing which she began to do as soon as this Trust Deed was signed, namely, making changes in the direction and supervision of it through the By-Laws which she caused the Church to adopt?

I think that Clause 3 is broad

enough to provide for her right to have made these By-Laws, but whether Clause 3 is or not, certainly Clause 8, put in here, with its significant words and read in connection with the first part of the paragraph, makes the power broad enough to cover changes in the direction and supervision of the publication, and of every part of the work of the publishing house.

I say that this is not only not a forced construction, it is the obvious construction of these words. It is as plain as it can possibly be that that reservation is in regard to making changes as to the direction and supervision, and important changes in regard to the direction and supervision, and that is all that the By-Laws do. They make important changes in regard to the direction and supervision of the publications of the Quarterly, the pamphlets, tracts, and the other literature, and pertaining to said business. It includes everything.

I submit that if she reserved that right to make those changes it is not necessary, as has been suggested, that those changes should be made by some instrument; some formal instrument under seal. Mrs. Eddy had a right to make them in any way that clearly showed her intent. She could have done it by oral communication, she could have done it by writing, she could do it by by-laws prepared by her and adopted at her request.

In *Stone v. Forbes*, 189 Mass., 163, it is stated:

"Where a power is given generally, without defining the mode by which it must be exercised, it may be exercised by deed, will, or simple note in writing."

I call Your Honor's attention to the fact that this power related to personal property only, and that the Trust Deed related to personal property only.

That statement is not put as I would prefer to make it. The power relates to anything that is covered by the Trust Deed, but the Trust Deed relates to personal property only, and therefore the power could be exercised in any way that she saw fit.

I am reading from a decision of the Court:

"In the execution of a power, a direct reference to the power is not necessary, nor is it necessary that the intention to execute it should expressly appear upon the face of the instrument, but it must be apparent that the transaction is not fairly or reasonably susceptible of any other interpretation than as indicating an intention to execute the power; and this intention is to be collected from all the circumstances."

I submit that that is exactly this case; that all the circumstances and everything about it indicate that Mrs. Eddy had in mind the exercise of the rights which she had reserved under the deed. She made no excuse for it. She made no attempt to change the deed in any other way, as she un-

questionably would have done—and that is an important consideration in my mind. If she had understood that there was any question of her right to do this under the deed, she had her attorneys, and there is no question but what she would have gone to the court, if necessary, and secured the authority of the court, with the consent of all the parties so far as they could be represented, and the Attorney-General if necessary, to have made such changes in the deed as she thought ought to be made. The fact that she did not do it is absolutely conclusive in regard to her belief that the power which she had reserved to herself was sufficient to enable her to do it.

"An intention to execute a power may be sufficiently shown by a reference to the subject matter of, or to the instrument creating the power, without any direct reference to the power itself."

"All the authorities agree that it is not necessary that the intention to execute the power should appear by express terms or recitals in the instrument. It is sufficient that it shall appear by words, acts, or deeds, demonstrating the intention."

That is a quotation from the opinion in *Gould v. Mather*, 104 Mass., 283, at page 290.

A brief quotation from one or two other cases. The case of *Cueman v. Broadnax*, 37 N. J. Law Reporter, 508.

"It is not questioned that the power must be exercised in precise compliance with the directions of the instrument by which it was created; but where a power is given generally, without defining the mode by which it must be exercised, it may be exercised either by deed or will. Nor is it necessary that the power should be executed by deed—a simple note in writing would be a good exercise of the power."

And the New Jersey court quote not only *Sugden on Powers*, but quote a Massachusetts case on that proposition, being the case of *Heath v. Withington*, 6 Cushing, 497:

"Nor is the execution of the power defective for want of reference to the instrument by which the power was created,"

says the Court. Further:

"The rule is well settled that although in executing the power it is regular to refer to it expressly and usual to recite it, yet it is not necessary to do this if the act shows that the donee had in view the subject matter of the power."

There is certainly no question but that Mrs. Eddy had in view in this case the subject matter of the power when she made these By-Laws.

Now, I say that the obvious construction of Clause 8 is the one which I have put upon it, and I think it cannot be analyzed in any other way than to admit that that is a possible construction, and I believe Your Honor will find it is the obvious con-

struction. But the trustees have placed a different construction on it, and therefore, having placed a different construction on it, then we say that, assuming their good faith, the clause is capable, therefore, apparently, of two interpretations. Well, if a clause in any trust instrument is capable of two interpretations, then it is open under all the rules of the Court to show the intent of the party as to which interpretation of the wording used by the party is correct. And, therefore, we may show in this case the intent of Mrs. Eddy by such things as the precedents and the decisions permit.

Now, what are they? The attendant circumstances, the subject matter, the interpretation placed on it by the parties, the course of conduct, the condition of the law at the time; and other things have been stated by the Court to be matters upon which evidence can be introduced to show the intent.

What are the rules; what are the reasons for these rules of construction that the Court has laid down? It is, may it please Your Honor, in order that injustice may not be done. And that is the whole reason for it. My brother will say, of course, that some of these statements are elementary. They are as elementary as are the rules in regard to honesty. It is the object of the courts to get at the honest intention of the parties by every means that will not introduce confusion. It is the object of the courts in laying down rules of construction to make sure that no wrong shall be done. Now, in these rules of construction we find naturally that the decisions of the Court vary according to the instrument that is under consideration.

For example, the rules of construction, and as to what may be admitted to show the intent of the parties in the case of a contract between one man and another where property rights are involved, and where it may be considered that each is giving a consideration, are much more strict than they are in regard to certain other documents, because there you might be doing an injustice to the man who had relied on his contract, if you allowed evidence to be introduced. Therefore, some of the cases which might seem to cut off this class of evidence are based on the fact that there was a contractual relation which they cannot interfere with, and that the parties were presumed to have reduced their contract to writing.

You cannot take an instrument by its four corners, as has been stated, and see what its meaning is, necessarily, if there is any possibility of placing an honest difference of interpretation on the words that are used in it. But you have got to be very strict in regard to the evidence if it relates to a contract. In the same way, some of the rules are more strict, as the decisions indicate, in regard to mat-

ters which are set forth in a will. But in most instances, if not in all instances, the reason there is because the statutes in regard to wills provide the way in which a man shall make his will, and yet the rules are very broad in regard to wills; but there are more limitations upon them.

The class of an instrument that the courts are the most liberal in regard to is the class of instrument that Your Honor has before you, where a party, being under no obligations to anyone, as in this case Mrs. Eddy was under no obligations to anyone except as she considered her obligations to humanity—under obligations to no one, does not make a contract, gets nothing for what she is giving, but makes a gift in trust. In such a case you are to get at the intent of the donor, if you can possibly get at it; otherwise it is not honest. She is giving something and she has got a right to say how it shall be used and what shall be done with it. And her intent, therefore, becomes of the highest importance in a case of this kind.

Now, as to the law. I have a good deal of law on this question. I am going to run over it hurriedly and shall leave out much of it because I do not consider that there can really be much question in regard to it. In *Chamberlayne's Best on Evidence* it is stated as the general principle:

"Where the intention of a party becomes a material fact, collateral acts and declarations having a bearing on the issue are admissible as evidence."

And in *Tobin vs. Walkinshaw*, Federal Cases, 14070, it is stated that where a party's intention becomes material it may be shown, either directly or from circumstances.

In *Randel vs. Moore*, 153 Ind., 393, it is stated:

"Parole evidence may be admitted to show the position, situation and surroundings of the parties at the time writings alleged to constitute a trust were executed in order that they may be construed with light of the circumstances of the case."

In *Jennings vs. Puffer*, 203 Mass., 534—a recent case—

"Oral evidence is not admissible for the purpose of constructing a new contract or varying the old." And, that there be no misunderstanding, we do not claim any such right in this case. But it is admissible, says the Court,

"to ascertain the meaning of the one actually made by showing the situation of the parties with relation to the bargain in order intelligently to apply the contract to the subject matter with which it deals."

In *Best v. Berry*, 189 Mass., 510, the Court says:

"The language of the will is to be construed with reference to the subject matter and all the surrounding facts which were known to the testatrix: her purpose and intention must be gathered from the language

of the will, taken in connection with such attendant circumstances, and where, as here, there is no ambiguity on the face of the will taken in connection with all the surrounding facts, so that no doubt is raised as to the subject matter of the bequest or the identity of the legatee, extrinsic evidence of the intention of the testatrix is not admissible."

But the implication is, of course, of the broadest kind that where there is an ambiguity, then it is introducible.

Gould v. Chamberlain, 187 Mass., 115, is to the same effect. And I have many pages there of similar statement. But I wish particularly now to call Your Honor's attention to the case of Winchester v. Glazier, 152 Mass., 323, where the Court says:

"It is a general rule for the construction of written instruments, including deeds, contracts, statutes and constitutions, that when the language is open to doubt and parties whose interests are diverse have from the outset adopted and acted upon a particular construction, such construction will be of great weight with the Court and will usually be adopted by it."

I submit, Your Honor, that the parties through 20 years in this case have acted upon the construction we say is the obvious construction of this will; that Mrs. Eddy acted upon that construction. And that therefore it comes within the provision of the statements of the court in Winchester v. Glazier. And it is a case where we believe that construction would be adopted by the Court.

In Perry on Trusts, it is stated:

"A continued use, with the assent of all parties, for a great length of time, must have an influence in the construction of all written instruments, especially if there is any doubt as to their true meaning. If such use was contemporaneous with the foundation, and has continued uninterrupted and uncorrected for a great length of time, where there was opportunity for complaint and correction, the arrangement will not be disturbed."

That, too, parallels this case.

Speed v. St. Louis, 86 Federal, 235:

"There is in the interpretation and construction of written instruments no more marked tendency of the judicial mind than to get at directly what was the real thought and purpose of the maker of the instrument. When the language is ambiguous or vague, or the terms employed create reasonable uncertainties as to what was the actual intent of the grantor, no safer rule can obtain than to place ourselves, as near as may be, in the precise situation of the person at the time of the execution of the instrument, and read and apply every part of it as a whole, and, thus discovering what the real mind of the party was, to follow that to its practical conclusion."

And I submit that if Your Honor will place yourself as near as may be in the precise situation of Mrs. Eddy at the time of the execution of this instrument, that Your Honor can come

to but one conclusion in regard to her intent, and that is that she was exercising the powers reserved to her under this instrument in causing the adoption of those By-Laws.

I will read now from Cyc., vol. 13, page 608:

"When a deed is of doubtful meaning the construction given by the parties, as shown by their conduct or admissions, will be deemed the true one."

The conduct and admissions of the party in this case point to only one conclusion, and that is the conclusion that we are maintaining here.

"When the parties have acted upon a particular construction such construction should be followed, unless it is forbidden by some positive rule of law."

There is nothing that forbids the construction that the directors and the Church and the whole movement and Mrs. Eddy, and the trustees prior to recent times, had placed upon this instrument. There is nothing to prevent its construction. It was perfectly possible for Mrs. Eddy to have said in that instrument, "This trust shall be managed in accordance with the by-laws as adopted from time to time of The Christian Science Church in Boston." Many deeds of trust are given to the bodies of churches in exactly that form, or a similar form. Thousands of deeds of trust, I happen to know, run, for instance, to the trustees of the Methodist Episcopal Church, to be managed by them in addition to the trust stated in the deed in accordance with the rules and discipline of the church as it may be laid down from time to time by the authorities. So that there is nothing in the construction that we say is obvious of this deed which is contrary to the law or to the precedents or to practice.

Again, in Dakin v. Savage, 172 Mass. 23, the Court says:

"In a case of difficulty depending on nice and not very well defined distinctions, where all the parties legally and equitably interested have acted upon a particular construction of a deed or deeds, it is wise to follow that construction unless it is forbidden by some positive rule of law."

In Amory v. Amherst College, 229 Mass. 374, the Court states:

"It is well settled, however, that evidence of the construction put upon deeds by the parties for a long period of time is entitled to weight."

There is a New Hampshire case that is interesting. It is known as the Dublin case, and is to be found in 38 New Hampshire, 459. In that case a bequest was made in 1817 by the minister of the Congregational Church in Dublin, New Hampshire, to the town, in trust for the support of the Christian religion in that society. The Court said:

"Courts will resort to the original and long continued application of a religious charity by the trustees for aid in giving construction to doubtful

terms in the instrument which established the charity. Where the original trustees appointed by the founder of a religious charity"—

that is this case—

"applied the fund to the support of certain religious doctrines and that application has long been continued and acquiesced in, a court of equity will not interfere with the application on the ground that the founder intended to limit the benefit of the charity to the support of different doctrines, unless that intention was plainly expressed by the donor."

This case goes much further than what we are asking Your Honor to consider, for that case went so far as to indicate that even the wishes of the donor, although clearly set forth under the instrument, might be set aside by the long continued acceptance of another situation by all the parties interested.

Mr. Thompson—What case is that, Governor? I would like to get that citation.

Mr. Bates—The Dublin case, 38 N. H., 459, 512.

Mr. Thompson—That allowed the setting aside of the will of the testator?

Mr. Bates—I did not put it exactly that way.

The Master—No, not quite that.

Mr. Bates—Church v. Reorganized Church of Latter Day Saints, 71 Federal, 250. The Court says:

"While it is no doubt true that charitable trusts are highly favored by the law, and that a court of equity will sometimes entertain a bill, after a long period of delay to correct the administration of a charitable trust which is being administered contrary to the plain intent of the founder, yet it is equally true that where the intent of a founder of a charitable trust is not clearly manifest, length of time and acquiescence in a particular mode of administration will always be taken as good evidence of the founder's purpose and the manner in which the trust ought to be administered."

In that case it was a course of conduct of 25 years; in this case we have a course of conduct of about 20 years.

I call Your Honor's attention to the next—a recent case—in 231 Mass., 196, which is the case of Attorney-General v. Armstrong. That is a case that involved the question of the application of the proceeds, amounting to about \$400,000, of what is known as the Bromfield Street Church property on Bromfield Street, and the question arose under the trust deed of a century ago. That case is so recent, and it so well in its principles applies to the case at bar, that I want to quote from it somewhat freely. The Court states in that case in substance that the fundamental rule to ascertain the intent of the language is in the light of contemporary circumstances, the state of the law, public conditions, objects to be accomplished, and all other attendant facts within the knowl-



edge of the parties. In other words, you have the right to show, in order to get at the intent, if it is honestly claimed that there is a difference of opinion in regard to them—in order to find out what that intent was, and that intent will control if it can be found. You have a right to go into the contemporaneous circumstances, the state of the law. And Your Honor will remember it was the state of the law that had something to do with the way this trust was established. The public conditions, the object to be accomplished—a gift to The Mother Church; all other attendant facts within the knowledge of the parties.

The words of this deed were: "For the use of the members of the Methodist Episcopal Church in America." It was a deed of land for the purpose of the construction of a building upon it for the use of the members of the Methodist Episcopal Church in America. The Court said that those words were free from ambiguity, taken alone by themselves, and yet that the determination of it must depend on the rules and discipline of that church. And it found from the rules and discipline of that church, and a study of them, and the course of conduct through the years, that while that gift was in terms for the use of the members of the Methodist Episcopal Church in America, yet as a matter of fact it was for the members of the local society of the Methodist Episcopal Church, and not for the membership as a whole. As to the course of conduct, the master in that case found that that interpretation was the one which had always been placed upon it until recently, and the Court referred to that fact in coming to its decision.

Then, again, the Court said the facts are all in harmony with this construction of the instrument. So I say in this case, the facts are all in harmony with the construction which we place upon it.

The Court also found in that case that the proceeds from a trust deed for the purpose of erecting a church, after the church had been sold, need not be used for the erection of another building, under the circumstances, but that, as the result of a practical interpretation (it says) they could be used for the benefit of the society in such way as the society might determine.

Then there was another question which the Court had to determine in that case, which was what was the meaning of the words requiring "a vacancy to be filled by a member of said church."

The Court called attention to the fact that the word "church" was apparently used in different meanings, and yet it found, although it said somewhat reluctantly, in that case, construing it in the light of the facts which were brought to its attention, that it must construe it as meaning a member of the local society.

And in this case of Attorney-Gen-

eral v. Armstrong, it is to be noted that the words were in no case ambiguous in themselves. On their face, however, they were capable of different interpretations; and the Court found out what the meaning was by ascertaining as to what had been done.

For fear that I may have misstated some of the findings of the Court in that case, I will read a portion of the opinion.

"1. The fundamental rule in the interpretation of a trust instrument is to ascertain the intent of the founders from the language employed read in the light of the contemporary circumstances, state of the law and public conditions, the object to be accomplished and all other attendant facts actually or presumably within the knowledge of the parties. The determination of the beneficiaries of the trust created by this deed depends primarily upon a correct interpretation of the words used."

The Master—What words?

Mr. Bates—"Of the words used." But it was going to correctly interpret them by these things which it referred to just previous to that statement, "a correct interpretation of the words used." In this case it is a correct interpretation of the words of reservation in the 8th clause, "reserving the right to make such changes as I may think important," in view of the context and of all the other conditions which the Court says are admissible.

"The first purpose [of this Trust Deed, the Court says] is the establishment of a house of worship for the use of members of the Methodist Episcopal Church in the United States of America.' Although these words are free from ambiguity, it is manifest as matter of common knowledge as well as from the context in which the words occur that the ascertainment of the persons who may be members of that church must depend upon the 'Rules and Discipline' of the constituted authorities of the ecclesiastical denomination thus described. That matter ordinarily is within their jurisdiction. . . . How such membership may be established, whether by affiliation with separate societies only, or otherwise, and through what instrumentalities a place of worship may be put to the use of such members, whether through societies organized or recognized by the ecclesiastical authority, or otherwise, also are questions dependent for their solution upon the 'Rules and Discipline' of the Church."

And again:

"It being true that membership in the Methodist Episcopal Church in the United States of America, so far as concerns laymen at least, exists only through membership in a local society, the first purpose stated in the trust of the Jackson deed is satisfied by treating as the beneficiaries those who are members of the local society and who as such are members of the one general church."

And that notwithstanding the fact

that the clear meaning of the words, taken without reference to the "Rules and Discipline," would have meant that it was for the Church at large, as a whole for all its membership in the United States of America.

Again the Court says:

"The master narrates a considerable number of other facts, including St. 1809, c. 70, and St. 1828, c. 144. all without exception showing that from the beginning it was the purpose and intent of all persons connected with the trust established by the Jackson deed, that the Methodist Religious Society in Boston was its beneficiary."

In that connection I may say, Your Honor, that the statute of 1917, in regard to the matter of the directors of this Church, comes under this ruling of the Court, so far as the interpretation is concerned in this case.

"His conclusion is in these words: 'There is no question that the society has had the use and benefit of the property from the time of the erection of the building until it was sold and that until its sale it was considered by all officials of the society including the persons who have acted as trustees and the church authorities that the society was entitled to all the benefits arising from the property and that it has been held and managed under the understanding that the society had the sole beneficial interest therein.'"

Then the Court says:

"No one apparently ever has doubted that the beneficiary under the Jackson deed was that society until a considerable time after the controversy arose, of which the present information is a part.

"These findings of fact must be accepted as final, since the evidence is not reported and they are consistent with each other. It is unnecessary to determine how many of them are material and competent. They all are in harmony with the terms of the trust instrument."

And we ask nothing except what is in harmony with the terms of the trust instrument.

"They show that from the beginning until the present controversy all the parties in interest, both trustees and beneficiaries, have by their words and actions put a practical construction upon the meaning of the Trust Deed in this particular in conformity with its correct interpretation."

And again, as showing the reliance of the Court upon the course of conduct, it says:

"That has been the practical interpretation of the trust through all the years"—which exactly applies to the case at bar.

Again, the Court says:

"Practical considerations [and there are practical considerations to be borne in mind in this case of equal importance] point to that as the preferable interpretation."

It would have produced confusion, injustice and injury had the Court

arrived at any other interpretation in that case.

Again, it says:

"The practice of the Methodist Religious Society in Boston as followed for many years was in conformity with this view of its meaning."

And we rely upon the practice of all parties in this case throughout the many years.

So I submit, if Your Honor please, as a late and most important case bearing upon this question, the case of Attorney-General v. Armstrong, 231 Mass.

Mr. Thompson—Don't you want to take a recess now? It is half-past eleven.

Mr. Bates—Mr. Thompson suggests a recess.

The Master—It will be entirely agreeable to me. We will stop for a few minutes.

[Recess of 10 minutes.]

Mr. Bates—I do not think that I need to cite further cases on the question of what is material or proper to show in order to get at the intention of the parties, and I will just briefly indicate the intention of Mrs. Eddy, as I see it, as shown by the facts that are in evidence.

I claim that on the whole evidence there can be no question but what Mrs. Eddy intended, under the reservations in the Trust Deed, to reserve to herself the power to give directions and instructions that should be permanently binding upon the trustees, through the medium of the By-Laws that she might from time to time originate and cause to be adopted. As to that question, and having a bearing on it because of its having been something that was contemporaneous with it, is the evidence of Judge Hanna, one of the foremost of the disciples of Mrs. Eddy and one close in her confidence. From page 538 I read a part of his answer to one of the questions:

"I do not recall that she said anything different from or in addition to what she had before said, other than this: That by-laws must be prepared and published in the Manual of The Mother Church setting forth her wishes and purposes with reference to this trust."

He states that that conversation took place at the time that Mrs. Eddy executed the deed of Jan. 25, 1898. It is quite possible, and entirely probable, that General Streeter may have heard that conversation, and it is certainly very significant that Judge Hanna remembers that conversation, that took place in connection with the change that General Streeter made in this deed. Was it because Mrs. Eddy made that statement that the change was made in the deed which General Streeter made? I think that it may be fairly inferred that it was because of that. Certain it is that she at the time she executed it had in mind, if Judge Hanna is correct—and there has been no attempt to impeach his

testimony—if Judge Hanna was correct, she had in mind that she was to make by-laws, that they were to be prepared and published in the Manual of The Mother Church, setting forth her wishes and purposes with reference to this trust.

That was not the only thing that was done at or about that time that shows conclusively Mrs. Eddy's intent. There is associated with this question of her intent to control by By-Laws her intent to have this as an activity of The Mother Church, and as closely related to it as an activity of The Mother Church as the law at the time would permit. On that question we have the deed, which Your Honor asked about yesterday, which is the deed of Jan. 15, 1898. In answer to Your Honor's question yesterday, I stated that that deed did not in my opinion become operative; the reason that it did not become operative is because Mrs. Eddy herself displaced it with the deed of Jan. 25, and from that time continued to recognize the document of Jan. 25. There can be no question, however, that the document of Jan. 25 was intended to carry out, so far as possible, what is indicated as her intention in the document of Jan. 15. In a certain sense the document of Jan. 25 can be considered as supplementary to the document of Jan. 15. In any event, the document of Jan. 15, as a contemporaneous document, throws light on Mrs. Eddy's intention, which we have the right to ascertain; and it is to be noted that that document of Jan. 15, which her Church accepted as a gift to the Church, and which was designated by her in its title as a gift to The Mother Church and a grant of trusteeship—that that document contemplated that she, to all intents and purposes, was making this as a gift to The Mother Church; and that therefore the document of Jan. 25 was to carry out that intention, so far as she was advised it was possible to do so.

In that deed of Jan. 15 I find these significant words, in regard to the profits from the Publishing Society or the work of the Publishing Society, which she was making a gift of to the Church. The words are:

"Shall, by the treasurer of the trustees for the Publishing House of The Mother Church, be immediately handed over to the treasurer of The Mother Church. The First Church of Christ, Scientist, in Boston, Mass."

Can it for a moment be considered that Mrs. Eddy was intending to make this trusteeship a separate activity, when she describes it as the trustees for the publishing house of The Mother Church? Was it not her intention to make it an activity of The Mother Church? And, if it was, then of course it would naturally come under the By-Laws of The Mother Church also. In connection with the Journal she said:

"I give the above named Church the benefit derived therefrom; but there-

after the copyright and the aforesaid Journal shall become the property of this Church."

In this instrument also she used the words:

"It shall continue a perpetual benefit for The Mother Church, unless that for some reason I shall over my own signature and handwriting withdraw it,"

—referring to The Christian Science Journal.

I say that such light as that instrument throws upon her intent is very significant and indicates her intent to be double, for two purposes; first, that it was to be the publishing house of The Mother Church, and therefore one of its departmental activities, so far as the law permitted; and, secondly, that, being such, it was to be controlled by the laws of the Church.

Let me read again from Judge Hanna:

"She said that she was advised by her counsel that a law of Massachusetts relating to religious organizations or churches, prohibited the conduct by such organizations of anything in the nature of ordinary business, and that it was for this reason largely that she wished the said trust established; also that she and the directors might thereby be relieved of the detail work necessarily connected with the publications of the movement;"

To be relieved of the detail work, but not of the highly important work of supervision, in its larger aspects.

"She desired to make a gift to The Mother Church of The Christian Science Journal and all property connected therewith excepting the copyright. . . . She also repeatedly referred to the necessity for protecting the literature and to this end it must be kept within the jurisdiction of the directors and the First Members of The Mother Church as far as possible. She said that everything must be kept within the jurisdiction of the directors and the First Members as far as was possible under the Massachusetts law. She said that as an aid to protecting the literature in the way she wished, the directors of The Mother Church and First Members must have the power to appoint editors of the Christian Science periodicals, and that she and said directors and First Members must have such power and control over the trustees of the Publishing Society that in case they did not properly and faithfully discharge their duty their offices might be declared vacant."

In the light of that I say there can be no question as to what Mrs. Eddy's intent was. But there is more than that. There is the fact that Mrs. Eddy made this Publishing Society, in control, subject to the supervision, as she thought, of the Church—of the organs of the Church—and it cannot be for a minute supposed that Mrs. Eddy intended to take the organs of the Church away from church control. She believed in unity, and, as has ap-

peared in evidence, the whole foundation of the Christian Science movement is a unified movement.

I submit, Your Honor, that no one could consider the possibility of an independent publishing house, having the sole right to publish the literature and periodicals of the Church, without knowing that it must, in the very essence of things, result in confusion, and result in a drifting apart, and result in a literature which the Church could not indorse, and that the whole and final result would be mischievous in the extreme to the Cause. Such division is absolutely contradictory to all the principles for which Mrs. Eddy stood.

But the great fact—before coming to that let me mention two other matters. One was that just between the deed of the 15th, which would have become operative had she not displaced it by the deed of January 25—in between those two dates Mrs. Eddy herself caused the by-law of the Church which provided there should be no trusteeships in the Church to be changed so that a trusteeship could be constituted in the Church if it was constituted by her. Now, can there be any question with a reasonable man that she did that because she was making this trusteeship, and that she proposed that this trusteeship should be a trusteeship within the Church? Incidentally let me say that it did not in any sense antagonize the laws of the Commonwealth of Massachusetts. There could be a trust, and there are hundreds of them, having the charge of properties producing income in this commonwealth, that churches themselves could not hold directly but that are held by trustees subject to their by-laws. So that this bringing it within the Church as she contemplated by these various acts was in no sense antagonistic to the law. It was in conformity with the law and with what the law permitted. Aye, it was in conformity by analogy with what had been done in the case of the will. The Court held in *Chase v. Dickey* that this large bequest could not be held directly by the Church because the directors as a body corporate under the statute were limited by the other section which limited them to holding property which had an income of \$2000. But there was no objection to its being held for the purposes. Finally that trust was established and all the directors were appointed as members of it. In other words, there was nothing in public policy that would prevent Mrs. Eddy from doing exactly what she did do in order to bring this in as a departmental activity of The Mother Church, The First Church of Christ, Scientist, in Boston.

The deed itself contemplated the power and the control of The Mother Church, because it gave the governing bodies of the Church the right to control through the right to declare vacancies and through the right to de-

termine the salaries. If that clause in regard to the salaries, which says the Church shall determine them, does not mean that they shall be determined through the governing bodies of the Church, as they have been—that is, by the Board of Directors—if it means, as Your Honor suggested, that it would require the vote of the membership of the Church to determine them, then the trustees have never had a dollar of salary above the \$1000 provided for by the deed that they had a lawful right to obtain. They have put the other construction on it, that the governing board, the directors, had the right to determine those salaries under that provision of the deed. Those two provisions together brought it under the control of the Church. Give me the right to declare vacancies in office of the members of any body and to fix their salaries, and you have given me the absolute power to supervise them, because you have given me the power to control them absolutely. Your Honor could control the United States Congress or the Parliament of England if you had that power. If they did not do what you thought they ought to do, then you could remove them and keep on removing them until the membership did do what you thought they ought to do.

That high power carries with it all the lesser powers that are implied by it. The test as to whether or not an executive, whether he be a president or a governor or a mayor, or in any other capacity—the test as to whether or not he is to be held responsible for the subordinates under him, is as to whether he has the right to remove them, and if he does then he is held responsible for them, because it is recognized that in that right he has all of the lesser powers, and through the exercise of that right he can control them and supervise them. So that the deed itself recognizes that right in the governing boards of The Mother Church.

And now that Mrs. Eddy intended to make the By-Laws, orders or changes in conformity with Sect. 8, or directions in conformity with Sect. 3, but more particularly changes in conformity with Sect. 8 in the management, supervision and direction of the business of the publishing house, is absolutely proven as to her intent by the fact that she did it. And do these trustees come in here and say that she did that which she thought she had no right to do? Could they stand for a minute as loyal Christian Scientists and make such an imputation against their great leader? And if she did it, she did it because she thought she had the right to do it; and she thought she had the right to do it because of the reservations of that deed, and her talk at the time the deed was made, in accordance with Judge Hanna's testimony, and the actual giving of the By-Laws subsequent thereto. She thought she had the right. And if

she thought she had the right, she so interpreted the instrument. And if she so interpreted the instrument, it was because there were things in the instrument which she thought gave her that right. And it was her intent to have it; there can't be a possibility of question as to that fact. Even the trustees must admit, or read themselves out of the Church, that Mrs. Eddy intended to control them by By-Laws; that she did make the By-Laws, that she did it in good faith, that she did it because she claimed the right to do it under the reservations of the deed.

Now, that brings me pretty nearly to the final question, and that is as to whether or not this power was properly exercised. First, as to whether or not there was any obligation to give a hearing, I am not going to go over the law again. I think the law is absolutely clear that where a power of removal is given in the words such as are stated in this case, that that power is an absolute power, and that the directors can remove for any reason that they consider expedient, and that the only control upon them is the question of fraud or good faith.

Incidentally, I might remark that a hearing could not have added anything. The issue was clear. The rebellion, if our construction is correct, was absolute, and behind their trenches the trustees were challenging the directors to do anything in the way of supervision of them, to do anything in the way of carrying out what the Manual said the directors should do. They have asked for their resignations. Could there be any further warning in regard to what was proposed than that? Certainly there could not. They had had notice. The discussion had gone on for months. The directors had labored with them ceaselessly to get them to take the view that they considered necessary to make them loyal followers of Mrs. Eddy and respectful of the Manual that she had written. And it had all been in vain. The issue had become clear, and there was nothing that a hearing could have added. The situation was one that required action, and the directors took it. But certainly it was not rashly taken. Certainly it was not taken on the spur of the moment. Certainly it was taken after the longest consideration and the greatest patience that could possibly be expected to be exercised by the board.

That brings us to the question of good faith. Who are the parties accused of not having acted in good faith in this removal? Mrs. Knott is incidentally one of the defendants, but she was not a member of the board at the time. She came in on the day, practically, that the dismissal was made; she came in like a dove of peace to displace the stormy petrel of the directors' board room. And Your Honor can imagine something of the calm that has resulted from the presence

of gracious womanhood on that board of directors in the place of one who had so long antagonized them. But she, of course, is not accused of bad faith in connection with this matter.

Mr. Dickey, the member for many years of Mrs. Eddy's household, enjoying her highest confidence. Mr. Neal, beloved student of the Leader, an original trustee under this instrument, who had never, although he had served on two different occasions as trustee, sought to set up such an interpretation as the trustees were placing upon it. He knew of the history of the trust; he knew of Mrs. Eddy's desire in regard to it.

Mr. Merritt—business man of large affairs, who had become so interested in Christian Science that he had been its student for years and a lecturer on its Board of Lectureship, and he, too, had been intrusted with the position of trustee and had never set up any such contention while he was a trustee as these trustees have set up.

Mr. Rathvon, newly on the board, but a man who had championed the Cause of Christian Science, but who had not only done it in this land but literally throughout the four corners of the globe, and who knew perhaps as well as any man, by reason of his vast travels in connection with the Christian Science movement, the feeling of Christian Scientists in regard to the loyalty that was due from every one of them to the Manual of The Mother Church.

And these men, after all their efforts to adjust this matter in conformity with the Manual—and that was all they were trying to do—after all their efforts to adjust this matter in conformity with Mrs. Eddy's instructions, finally found themselves compelled to take the action that they did take. And then the aggrieved party, and those who had sought to carry out their own ambitions, come into court and say what? "Oh," they say, "there must have been bad faith to have done this thing." Absolutely absurd on the face of the evidence as it has been presented in this case. Why, even the trustees themselves on the stand, and in their letter of defiance of Sept. 30, breathed of respect to the directors. That letter of Sept. 30 is particularly important. It spoke of the respect in which the members of the Board of Trustees held the members of this board, whom they now would have the Court say have acted fraudulently in regard to the removal of Mr. Rowlands.

I do not need to defend these men, most of whom had the approval of Mrs. Eddy, and all of whom have been loyal followers of hers and have never been accused of breaking any of the rules and regulations which she laid down for the government of Christian Scientists.

The reasons for dismissal. There has been a suggestion that the reasons which were put into the Rowlands' resolution were in the nature of

charges. They were not charges, they were not to be heard; they were the opinion, as expressed by the directors at the time they removed him. It is not obligatory to go into them in matters of evidence, although it would have been possible to have gone into them. There was one great cause for dismissal in this case that made all others, important though they might be alone—made all the others small by comparison. This is a question of loyalty against treason, and that is the great question that is before this Court. The dismissal would have been just as legal under the laws and the precedents of the courts if there had been no statement of reasons in the resolution for the dismissal. It was not necessary for the directors to state their reasons. They did state reasons, and some of them are reasons that would compel the respect—all of them would compel the respect of any court.

There has been an innuendo, an intimation, that Mr. Dittmore had a vast amount of evidence collected somewhere, that if he only brought it forth would sink the trustees of the Publishing Society somewhere in the depths of everlasting perdition. And I think it was stated that he had 28 or 38 matters that could be presented to the Court. And there has been an intimation that we, as representing the directors on this great question where loyalty is the one prominent fact, that we in some way were derelict in our duty because we did not summon into court the discharged employees in order to prove that in this case or in that case there had been poor management, or ill-advised judgment and decision. I submit, Your Honor, that Mr. Dittmore is a defendant as much as we are. He had the same rights that we had. Your Honor found that those matters could not be presented and so ruled, and yet there is still the suggestion that we ought to have put them in. We left them out for the same reason that we left out many of the things that are stated as reasons in the resolution. It was because that, important as they might be alone, they are of little importance relative to the great matter in dispute here.

Now, there has been a question as to why Mr. Rowlands was selected, and I think the answer does credit to the wisdom and the heart of the directors. They were all three equally guilty so far as disloyalty was concerned. The removal of all three would have been justified. And there was no intention of stopping, I admit, if as the result of the removal of the one, the other two had not returned to their allegiance and had continued in their disloyalty. But if all had been removed there would have been confusion in the publishing house. It would have been necessary to have applied to the courts for a receiver, and it would have been necessary to have applied to the courts to fill the

vacancies. By removing one at a time you avoided that confusion, and that possibility of disaster to the publishing house and its business, because you would have two left to fill the vacancies. It was also more charitable and in line with the conduct of the directors for months, of trying to make these trustees see their error. It was in the line, I say, of charity to them to remove one at a time and give the others the opportunity to return to their allegiance. And so Mr. Rowlands was removed because, as has been testified, he was the last member upon the board. He had been there for the least time. He had not students, as the others had. And if Your Honor bears in mind the testimony that indicates that the disloyalty of the teacher in a way is of injury to the student, as indicated also by the By-Laws, then Your Honor will see that it was a charitable reason, also, which caused the directors to consider that matter in deciding as to whom they would first remove.

Then, again, Mr. Rowlands was the one who had given the least attention to the business. He had vast interests elsewhere, and he had shown himself equally disloyal, and therefore he was the one who was first dismissed. The resolution sets forth the fact that he had become contentious, and I do not think, in view of all the evidence, that there can be any question but what he was contentious. The other trustees were also contentious, but perhaps he was particularly so. I think that he had shown a contentious disposition, with all due respect to his many good qualities. He has shown a contentious disposition in his attitude in court; and it was not only impossible to confine him to an answer, at one stage, but he insisted on determining the question for himself, even after the Court had made a ruling, and Your Honor had to stop him. I do not think that he did it out of disrespect to the Court, but he did it because of that contentious disposition which is referred to in the resolution of dismissal. Vigorous in his argument, he got vigorous on the witness stand. Witnesses testified to his arguing, pounding his knee, and flushing in the face. Unquestionably those are characteristics of a contentious man. He himself testified that he consulted counsel in Chicago even before the trustees had asked him to do so. This trustee went out 1200 miles away from Boston and consulted his personal counsel to see if he could not help him out in the matter of his contention with the Board of Directors. Certainly that also indicated a contentious disposition. Later he received the authority of the board, and continued to consult, and the matter soon became one of absolute defiance. But apparently the whole of the legal contention started from his first, without the sanction of his fellow members, consulting counsel in

Chicago. But that is of very small importance compared with the great reason, as I have stated. Then, again, it is alleged that he put a different interpretation upon his duties from that which had been placed by his predecessors in office upon those duties. He differed from them, and he differed from The Mother Church interpretation. He differed with the Board of Directors' interpretation, he differed with the interpretation of Mrs. Eddy herself. And such an interpretation could only mean disunion of the Church and of the Publishing Society.

It is not important, possibly, to dwell at any great length upon the matter of that resolution, in so far as those details are concerned, but I must call Your Honor's attention to one, which is the matter of his absence. It is said that his absence did not interfere with his work. Why, the letter of the trustees to the board, of Oct. 11, 1918, says that they can make no reply to the directors until Mr. Rowlands returns, and that they do not know when he will return. And a month later, Nov. 11th, they reply to the directors' letter of more than a month before:

Again, in the letter of Dec. 18, 1918, the trustees say:

"Mr. Rowlands is absent, and we are not advised of the immediate date of his return. Nothing can be done except all members are present."

And so again we have from the trustees' own statements and letters the fact that his absence was interfering with the business. He was absent, as he admits, from 42 per cent of the meetings,—practically away from Boston, as he says, months at a time. He was absent from 192 meetings. Can it be conceived that the business of the board was not important? I submit that if that had been made the cause alone, it would have been sufficient cause for his removal.

He had built his home down in Picayune, Mississippi; and Picayune is a long, long way from Boston (laughter). "Tis a long, long way to Tipperary, but my heart is still there!"

Mr. Whipple—Where?

Mr. Bates—And so it was with Mr. Rowlands a long, long way to Picayune, but his heart is still there, because that was where his business was, and that was where he had built himself a new house and established his home!

What was the business? Oh, they tell us of his corporations! But the great business that he was interested in was that partnership that he had just taken on, that involved the development of over 40,000 acres of timberlands down in Mississippi, the building of railroads, the bringing out of the lumber, its marketing, the building of sawmills, the increasing of their capacity; and all those questions were being considered by Mr. Rowlands; and I do not care how wonderful a business man he is, he had

business enough down in Picayune to keep him busy! His business had so increased down there that whereas formerly his home had been in Chicago, he had to give up his home in Chicago, and incidentally did give up an office in one corporation; he gave it up and went down there to handle this business. The office that he gave up was an office in a corporation that was engaged in a similar business. The business of his partnership involved millions of dollars, he says, and there was the possibility of enormous profit in it; and there is not a word of testimony that he either gave up the business or had any intention of giving it up, but everything is to the contrary; and he admits that it was a matter that would require eight years to carry through.

I submit that a man of those large interests, embarrassed also by the financial difficulties of carrying them on, so that without any contract right he had to go to the Harvester Company and borrow half a million, and then another half-million, and then again had such duties and such business, honorable though they were, as to interfere with the proper discharge of his duties as trustee—I submit that that being so, those matters were perfectly competent and proper to be considered in connection with his removal. Oh, but brother Whipple says that he was a marvelous business man! And we are willing to admit it; but I do not think that the trust obtained the benefit of his full capacity, and it could not under the situation.

Oh, but they said that on one contract for paper he saved the publishing house \$41,000; but Your Honor knows that it results that he did not save it \$41,000; that the contract was a saving, after you had made the allowances for all the disagreeable features that were attendant upon it—the contract permitted a possible saving of only something over \$7000, which was not much over 1 per cent of the amount involved in the contract. But if he had, it would be no excuse for this situation. The Board of Directors of the Christian Science Church, living up to their duties as prescribed by Mrs. Eddy, could not keep John D. Rockefeller, or the best business man in this world, on the Board of Trustees of the Publishing Society, if he was disloyal to the teachings of Mrs. Eddy. So that that attempted defense or excuse has no bearing in this case.

Now I come to the one great cause for the removal, which was the refusal to recognize the Board of Directors had any supervisory powers over the publishing house, or the Publishing Society. I have already referred to the fact that the deed necessarily, by reason of the powers that it gave of removal and fixing salaries, gave the incidental powers of supervision; and I submit that those powers could not have been given except as they were given for the purpose of pro-

tecting the beneficiary of the trust, the Church, and of making sure that the business of its Publishing Society was carried on in such a way as the directors thought was for the best interests of the cause.

The By-Laws also give the absolute power of removal to the directors. In addition to that, they give the explicit powers of supervision. They require the Board of Directors to see that the periodicals are ably edited, that they are kept abreast of the times. They require the Board of Directors to elect the editors, and to elect the managers; and they provide that no one shall be connected with the Publishing Society who is not accepted as suitable by the Board of Directors.

So that not only in the power of removal do they have the powers of supervision, but in the explicit duties laid upon them in regard to the election of the editors and the managers, and seeing that they keep the periodicals ably edited and abreast of the times, and their power to prevent any one being connected with it except he is accepted by the Board of Directors as suitable; and there are express provisions that Mrs. Eddy herself made for the supervision of these periodicals. Not only that, but Mrs. Eddy recognized them as in control, not only by the By-Laws, but by the letters which she wrote, and the conferences which were held. Between the date of the execution of the Trust Deed, January 25, 1898, and the date of Mrs. Eddy's passing on, on December 3, 1910, she frequently and consistently gave instructions to the Board of Directors regarding the business of the Publishing Society and the periodicals, and it will be difficult to find anything in the nature of an instruction that was given to the trustees by Mrs. Eddy direct except the one letter direct in regard to The Monitor, which was sent to them after she had first taken the matter up with the directors.

On June 25, 1902, Mrs. Eddy wrote The Christian Science Board of Directors, giving them instructions regarding the editors of the periodicals, saying:

"In the absence of Mr. McLellan retain Willis and Miss Speakman at the head of our periodicals." (Page 256, column 1.)

I ask you how she could have given that instruction in 1902 to the Board of Directors if she did not consider that their supervisory powers were such as to make it their duty to attend to the matter concerning which she wrote them!

And again she states:

"If McLellan is gone long have an editorial by Mr. Willis, and retain Mr. Willis on the editorial list."

That whole communication is absolutely inconsistent with the trustees' attitude in regard to Mrs. Eddy's intent. It shows absolutely her recognition not only by by-laws but by her

communication to the board, of their power and of their duties.

Mr. Whipple—Governor, will you explain how that is inconsistent with the trustees' contention? Because I say it is not.

Mr. Bates—You say that the trustees were the sole parties, that they would accept instructions from Mrs. Eddy in her lifetime, but that her instructions became null and void upon her passing away, and that as soon as she had gone they had a right to go contrary to them. Now, this is not put in for the purpose of showing an instruction to the trustees; it is put in for the purpose of showing that Mrs. Eddy gave her instructions in regard to this publishing house through the Board of Directors, or she would not have done it—

Mr. Whipple—That is, they were merely her messengers, and they recognized her power?

Mr. Bates—Put it as you like. She would not have done it if she had not recognized that it was their power. And, if you will wait a moment, I will give you another illustration which will show you how much your suggestion that they were mere messengers has of value.

Mr. Whipple—Mrs. Eddy could have sent word by any other messenger. She could have sent word by you, Governor.

Mr. Bates—If you will kindly listen to a few more of these illustrations, then—

Mr. Whipple—I have been doing so for a day and a half already.

Mr. Bates—You have been very patient.

Mr. Whipple—Yes, I have been: I always was.

Mr. Bates—Don't get excited now, for I am nearing the end of my argument.

Mr. Whipple—Well, I will not do anything to prevent your getting to the end of it, and I am not excited.

Mr. Bates—I suspect that you will be glad to have me finish, and I certainly will do so as soon as possible.

Mr. Whipple—I am cordially glad to hear that.

Mr. Bates—Before the date of the above letter, namely, on July 13, 1899, which is only a little more than a year after the Deed of Trust, Mrs. Eddy had proposed the adoption of the by-law making it the duty of the Church to see that the periodicals were ably edited and kept abreast of the times. That is, that was adopted in 1899, July 17. Mrs. Eddy in a letter to the clerk requested the adoption of a by-law fixing the term of office of editors and publisher and providing for their election by the directors, with her consent (page 254, column 1), stating in the letter, "I think you will find this by-law very useful to our Church."

This direction, given by Mrs. Eddy to the directors on June 25, 1902, was an act of recognition on her part of the operative force of the by-law, which she had previously caused to be

adopted, and which concerned the business of the trust. It shows unmistakably that she not only had the power to supervise herself reserved, but that she also had given power to the Board of Directors in the matter of supervision.

On June 27, 1905, Mrs. Eddy wrote, "Board of Directors: Be sure to have this article appear in a conspicuous place in this week's Sentinel. I have special cause for this." (Page 256, column 1.)

You would naturally have said that if she had recognized the Board of Trustees as being in absolute control and authority, as they claim, that she would have sent that letter to the trustees, but she did not do so. The directors caused it to appear, as the evidence shows, in Volume 7, page 708.

On July 28, 1908, Mrs. Eddy wrote the "Beloved C. S. Board of Directors": "So soon as the Pub. House debt is paid I request the C. S. Board Directors to start a daily newspaper called Christian Science Monitor. This must be done without fail."

This certainly indicated that she considered them as having authority over the trustees. In her subsequent letter to the trustees she states that they could take the matter up with the directors, and that she had notified the directors in regard to it.

On June 17, 1901, Mrs. Eddy wrote the "C. S. Board of Directors," that she had sent a notice as to the date of communion services to the editor, but she wanted the directors to be sure and see that it went into "this week's issue of the Sentinel." (Page 257, column 2.)

This is certainly also contrary to the plaintiffs' theory. Here she was, giving explicit instructions in regard to something to appear in the paper.

On Oct. 12, 1903, Mrs. Eddy wrote the "C. S. Board Directors," saying it seemed unnecessary to add another by-law to the Manual merely to guide "the editors of our weekly and monthly Sentinel and Journal."

I submit that, by implication, Mrs. Eddy in sending this to the directors indicated that they had all the authority that was necessary, that therefore it was not necessary to put on another by-law, for they, through their supervising authority, had the authority themselves. She did not send it to the trustees, it is to be noted, but she sent it to the directors.

On Oct. 25, 1903, Mrs. Eddy wrote the "Christian Science Board of Directors," criticizing them for the manner in which one of her letters was published in the Sentinel, and saying, "In your next Sentinel republish my letter and the letter from Elizabeth Earl Jones and the article copied from the Raleigh (N. C.) News & Observer. I write you because our editor seems to be unmindful of such mistakes. . . . You must see that my requests in this letter are strictly obeyed in our next issue of the Sentinel and C. S. Journal."

I presume brother Whipple also thinks that that also was sent to make them messenger boys to the trustees.

Mr. Whipple—Not necessarily—messenger men!

Mr. Bates—To any ordinary mind that certainly would indicate that she considered them the ones in authority.

On May 16, 1905, Mrs. Eddy wrote the "C. S. Board Directors" (page 257), instructing them to see that a death notice appeared in the next Sentinel and Journal—a request that would naturally be made to one having supervision, and which was made to the ones that she considered had the supervision.

On July 17, 1899, Mrs. Eddy wrote "The First Church of Christ, Scientist, Boston," in regard to answering in the periodicals' attacks made on Christian Science. She did not write to the trustees.

During the entire period from January, 25, 1898, to December, 3, 1910, when she passed away, there is no evidence of Mrs. Eddy directing the editorial policy of the periodicals through the trustees of the Publishing Society, and no letter or communication from her to the trustees, regarding editorial policy and the general make-up of the literary matter of the papers, has been produced.

Now, I have read, from Judge Hanna, his testimony that it was her intention to have it come under the control of the Board of Directors. I want also to refer to the conference which Mrs. Knott testified to, which is found on page 645 of the evidence, the last column. This is in regard to a conference that Mrs. Eddy had with the directors, when she was present.

"Q. And will you state when and where? A. I think the date was the 3rd of October, 1905. Mr. McLellan came to my house in the morning and said that he had received a telegram from Mrs. Eddy asking us to be at Pleasant View at two o'clock that day, and he wished me to get ready and go there, which I did.

"Q. And who was there? A. All the members of the Board of Directors as then constituted, and the three editors, including myself."

Then she goes on to state who the members of the Board of Directors and editors were.

"Q. Now, who of the parties that you mentioned are living at the present time? A. Only Mr. Willis and myself, I think."

Then Your Honor will recall Mr. Willis' statement was that he confirmed what Mrs. Knott testified to at this meeting.

"Q. Now, will you state what was said at that interview by Mrs. Eddy in the presence of yourself and the directors? A. She began by asking the directors if they read carefully all the articles published in the Journal and Sentinel. She addressed them individually by name, asking each one if he did so, and they replied that they

endeavored to do so. Then she called attention to a passage in a recent issue of the Sentinel, and read this passage over, one sentence, and asked each one individually if he approved it, and they all said they did until it came to myself, and I said I had stumbled over it several times, but had decided to let it go through. Mrs. Eddy expressed a good deal of condemnation of that, and said that she thought that we all ought to have been enough awake to see that it was not a proper statement to send out; and she talked with us all together about two hours on the great need of keeping the teachings of Christian Science pure, and especially the need of keeping them close to the teachings of Christ Jesus. She said that a false estimate of his mission and his teachings would constitute a serious error; that we must study constantly his teachings and his healing work and endeavor to keep our periodicals up to that high standard.

"Q. And did she say anything in regard to the directors' duties at that time? A. She said she expected the directors to read the periodicals carefully, and if they discovered anything which did not seem clear along the line she had indicated, that they should at once call the attention of the editors to such mistakes, if any occurred.

"Q. Did she say anything in regard to the trustees, so far as you recall, at that conference? A. No, she did not.

"Q. And there were no trustees present? A. There were no trustees present."

In other words, when Mrs. Eddy discovered that a false doctrine, as she conceived, had been published in one of her periodicals, she summoned to her home the editors and the directors of the Church. Not a word in regard to the trustees. She did not put it before them. She knew that the directors had that supervisory power, they elected the editors, and under the Manual they were to see that the periodicals were ably edited. So she summons them, and them only, and tells them what she expects of them. Perhaps my brother now thinks that his suggestion in regard to their being messengers is applicable, also.

Mr. Whipple—Yes—high-class messengers.

Mr. Bates—Such a statement is as inconsistent with Mrs. Eddy's expressions, as distant and as far apart, as the two poles of the earth, but quite consistent with the studied attempts that have been made in this court room by the trustees and their counsel in some way to justify their condition and conduct of disloyalty.

Now I want to come to the question of the history of this controversy. In the first place, I am not going to go through the whole of it, but Mr. McKenzie's letter of Feb. 15, 1916, was a letter from the Board of Trustees, and, in substance, it accorded all that the

Board of Directors claimed. It was not complete, and it was returned, but its statements were entirely inconsistent with that of the Board of Trustees at the present time. Mr. Eustace says that the difficulty was first mentioned in 1916, when a memorandum was presented by the Board of Directors to the Board of Trustees. I am not going to go into that anything further than to bring the matter down to a more recent date. The matter was brought up again in June, 1918, at a conference, and at a conference on Sept. 11, 1918, which resulted in sending the letter of Sept. 30, 1918, by the trustees to the directors.

Beginning with the letter of Sept. 30, then, of 1918, which is the time from which the divergence became radical and serious, the letter itself contradicts the statement of Mr. Eustace that the Dittemore memorandum had been torn up at the meeting in February, 1916. Your Honor will remember with what insistence that was asserted. I do not know as it makes any great difference, from the present outlook of the case, as to the great issues involved, but it is significant that he should have been so assertive of it when in his letter of Sept. 30 he writes, referring to that memorandum, that the memorandum may still be in the directors' file. How it was possible for him to consider that that so-called Dittemore memorandum could still be in the directors' file, and at the same time claim that he himself had torn it up in the presence of the directors a couple of years before, is something that it is impossible for me to reconcile.

The trustees in their letter of the 30th asserted that no one could interpret the Trust Deed for them, that they must do it through their own metaphysical understanding, that interpretation could not be done by somebody else for them. Your Honor has heard their interpretations on the stand. I simply want to say that they are so inconsistent with the meaning of the words, to any mind, as to be absolutely impossible to consider as made seriously. But while they were claiming that they would not allow anybody to interpret the Manual for them, instead of going out and consulting Mrs. Eddy's writings for their interpretation—those writings which she had determined to be the preacher in the Cause—they go to Chicago and consult Mr. Strawn for his advice, and subsequently to Mr. Whipple and to Judge Hughes. Apparently they were willing that some one should interpret the matter for them. They asserted, even as late as that letter, that the Board of Directors elect the editor and associate editors. That is Sept. 30, 1918. Their counsel denies it here. Their counsel says that election by the board was merely something that was suffered by the trustees; it was merely a matter of appointment. But yet in this

very letter in which they set up their defiance, they recognize that the Board of Directors elect the editor, the associate editors and the business manager. But they say the trustees employ these officers and determine their salary, and the trustees hold that the directors have no direct control over the editors or business manager, although they elect them, and can therefore make no business arrangements with them which in any way concern the Publishing Society.

I do not know why they thought that Mrs. Eddy had ever provided that the Board of Directors under those circumstances should ever elect the editors, the associate editors and business manager, if they were not to be allowed to communicate with them in regard to the matters under their jurisdiction.

The provision in regard to its being the duty of the directors to see that these periodicals are ably edited and kept abreast of the times, they assert is merely a disciplinary function, and to be exercised after they have discovered that the harm has been done. They make it practically merely a criticism on the part of the directors, and there was no necessity for a by-law in order to allow the directors to criticize the publications of the trustees. That is the privilege of everybody that is connected with the Christian Science faith, irrespective of the By-Laws. The trustees hold that the directors have nothing to do with the directing of the periodicals, or with conducting the business. They allow some weight to Section 8 of Article XXV, as to the duty of the Publishing Society in the matter of publishing the literature, a section which was clearly put into the By-Laws "to indicate that the Committee on Publication must have nothing to do with such functions," although its name might imply that it did. That is quoted from the by-law—the words to indicate that the Committee on Publication was to have nothing to do with such functions.

I think I am incorrect in stating it is a quotation from the by-law, but, nevertheless, it is the fact that it is fairly to be inferred that the Committee on Publication, by reason of its name, might be reasonably considered to have something to do with the matters of the Publishing Society and its literature, and that article was put in to indicate that they do not.

The letter refers to a controversy which the directors had had with the Publishing Society in the matter of the publication of the article entitled "Life," and admits that the Board of Directors were right in their later contention, but that nevertheless the Board of Directors were in some way or other responsible for the trouble.

I do not wish to go into the merits of this question of the article entitled "Life," or the article entitled "Purification," or any of the other articles which were brought to Your Honor's

attention. It is not a question here whether the directors were right or wrong or the trustees were right or wrong in regard to those articles. They are important as indicating that unless there is one central power to determine those matters it is possible for erroneous doctrines to creep into the Christian Science Church, and it could lead to nothing but confusion; and it shows that those matters are constantly coming up.

They assert "that they are resolved to faithfully live up to the Deed of Trust and the Manual, both in the letter and in the spirit; our one desire has been to do God's will and to be obedient to the teachings of Mrs. Eddy as embodied by her in the Deed of Trust and in the Manual."

These are brave words, and if they had lived up to them there could not be any possibility of trouble; but they did not live up to them, even in that letter. While proclaiming obedience to the Manual, they reserved their right to interpret it in such a way as to make it absolutely useless and void. I do not wonder that General Streeter suggested in the course of the trial that their allegiance to the Manual was merely a lip service.

The directors replied in a letter dated Oct. 8, and asserted that they must continue to exercise supervision of the publishing department of The Mother Church. They referred to its being a gift to The Mother Church. They endeavored to argue the matter, in a way, with the trustees, to show them that they were in error.

Dec. 13, 1918, the directors sent a notice to be published in The Christian Science Journal, stating that the teaching year was to commence Jan. 1. Five days later the trustees, as one of the first acts after their letter of Sept. 30, wrote, saying, "What are your reasons?"—virtually—"What are your reasons? We refuse to publish your notice"—a notice from the governing board of The Christian Science Church—"We refuse to publish it in the official organ of the Church unless you explain to us your reasons and satisfy us that it ought to go in."

What was the notice? It was simply to the effect that the teaching year should begin Jan. 1 instead of Aug. 1; and yet on a mere matter of that kind they rebelled. Does not Your Honor see that that is typical of the troubles that would necessarily follow if their contention as to their independence was to be allowed? Can you conceive of such a condition as that of a great church being obliged to give its reasons as to why it would publish certain notices in its own organ—give its reasons to its publishers? Certainly nothing could tend to make those organs become not church organs but trustee organs, so much as any such construction as that.

I am reminded, Your Honor, that it is 1 o'clock. I had hoped to finish

this morning; I think I can finish very soon this afternoon.

The Master—We will stop, then, until 2 o'clock.

[Recess to 2 p. m.]

#### Afternoon Session

Mr. Bates—May it please the Court, at the time of the recess I had referred to the fact that in the matter of a very simple notice sent by the Church authorities to the Publishing Society with the request that it be published, that these trustees, instead of publishing it in the organs of the Church, asked the directors for their reasons and refused at that time to publish it. And I mentioned it as indicative of the many things which were likely to happen should the contention of the trustees be sustained.

On the same date the Board of Directors sent a letter to the Board of Trustees asking for a conference on important matters. The reply of the trustees, found on page 20 of the record, is absolutely offensive under the circumstances. First, it says Mr. Rowlands is away, they do not know when he will return. Secondly, that the trustees have decided, anyway, unanimously, that in the future if the directors desire to ask the trustees something concerning the Publishing Society, the trustees will set a time for a conference in the board room of the trustees. Third, that if the trustees desired an appointment they would ask for it and meet with the directors in their room. Fourth, that they had unanimously decided that they would hold no conferences unless all the points to be talked over were included in a letter asking for the conference. And fifth, that they would hold no conference whatsoever in regard to the matters in the letter of Sept. 30, unless all the members of both boards were present.

I submit that that letter shows an antagonism and a disposition that could lead only to rupture, and also shows an attempt on the part of the trustees to lay down the rules under which the directors must operate in their communications with the publishing house.

The directors' reply under the circumstances was mild and considerate and conciliatory. Were they the kind of arbitrary men which they have been called in these proceedings, and which they have been called only, as I believe, in order that it might in some way tend to indicate that they had acted improperly, the matter being a matter of assertion and not of proof? But had they been men of that kind they would not have answered as they did. They answered saying, "The directors intend to exercise their supervision over The Christian Science Publishing Society in the most considerate manner, and with all due regard for the trustees, but the directors cannot for a moment concede that their supervision can be regulated or limited as

asserted by the trustees' letter. The board is resolved to fulfill its duties and responsibilities under our Church By-Laws. This the directors expect to do as they have done, and will be able to manifest Divine Guidance. Nothing less than this will maintain the unity and integrity of the Christian Science movement."

And I ask Your Honor to compare the wording and the expression and the attitude of these two boards as disclosed by those two letters.

On the same date the directors sent another letter, in which they asserted that it was the duty of the directors to act finally in regard to the matter of the recognition of churches and of the recognition of those who should be recognized as practitioners and as nurses. And in connection with those matters it makes seven suggestions to the Board of Trustees. Now, those matters did not concern anything that related to the publishing society except so far as the publishing society published the cards. They related to the Church organs, and the relation of those organs to the matters of the cards. But the reply which came under date of Dec. 24 and was signed by all three trustees refused to answer a single one of those suggestions, and instead of that blankly referred the directors to their letter of Sept. 30, and the letters of subsequent date.

So that between Sept. 11 and Dec. 24 the Board of Trustees had absolutely gone contrary to the instructions of the Board of Directors in the matter of issuing the pamphlet "Purification"; they had refused to put a notice in regard to the date of the beginning of the teaching year in the paper; they had requested the board to explain its reasons in regard to it; they had refused to go to meet the board to discuss important matters; they had laid down certain requirements in regard to the place of meeting and requested that all subjects to be discussed should be put in writing, and finally they refused to accede to or even to answer the board's suggestions as specified in the letter of Dec. 20. The Board of Directors was thus cut off, practically, of all opportunity of conference with the trustees and from all supervision of their work.

And then they wrote to the business manager, whom they had elected, and in that letter they said that they hoped he would not take any important or unusual action without their approval.

While pursuing what I claim, and what the record shows to have been an attitude of extreme patience and of kindness, that is very commendable when you consider how much of an offense had been given to them, they again wrote to the trustees on Dec. 28, hoping to find some way in which the arrangement could be arrived at. They referred to their duties and the By-Laws and the Trust Deed, and to the admissions that were made by the



trustees in previous letters. And then they said that it was evident from the trustees' letters that they had taken legal advice, and that the directors had also taken legal advice, and they suggested therefore that they should exchange the opinions which they had received from attorneys, to see if they could not, after reading those opinions, find some common, proper ground upon which to get together.

And the reply that they received was again an offensive reply, from the Board of Trustees, totally out of the character of the letter which the directors had sent to them, which was a proper and kindly one. But the trustees replied under date of Dec. 31 and said that they could not understand the letter and it would take the proverbial Philadelphia lawyer, or, rather, that the proverbial Philadelphia lawyer must have composed it, for they say, "It is purely an enigma to us."

And thus a civil, polite request to exchange the opinions of counsel which had been received was turned down as being a letter which this Board of Trustees could not understand. I will submit if Your Honor reads that letter and finds that it is a letter that those trustees ought not to have been able to have understood, that perhaps then it warrants the suggestion that the trustees make.

But on the other hand, I think Your Honor will find that any man who could not understand that letter as being a civil and polite letter, and perfectly plain in regard to its contents, must be a man who is not capable of carrying on the business of a publishing society.

And still the directors bore with them. On Jan. 3 the directors, having been thus affronted, sent them another letter, and they called attention to their position. They showed that they had for a long time witnessed this growing evidence that the trustees were not suitable for the trust that they were endeavoring to carry on, and they finally suggested that as this could lead only to trouble and disaster to the Church that the trustees should send their resignations to them to be accepted at such time as the Board of Directors might see fit. To this letter there was no reply received.

On Jan. 17 the directors again wrote to the trustees asking for certain information in regard to the blanks and forms and correspondence relating to the cards that were published of the churches and of the practitioners and nurses. No reply was received.

Again on Jan. 22 the directors wrote them another letter, and thinking that possibly the Board of Trustees thought that a courteous request was not necessary to be answered, but that they might pay some attention to an official order passed by the board, they inclosed in the letter orders which the board had adopted in regard to the teaching year, the organization of new

branches, the cards of practitioners and nurses, and so forth. This did not result in any reply, either.

But on Jan. 25 the counsel for the directors and for the trustees came together and had a conference. The letter, a part of which forms a part of the plaintiffs' bill in this case, that was written by the counsel for the trustees to the counsel for the directors, as I have already pointed out, does not deal with Mrs. Eddy's reservations in Section 3 or Section 8 of the Trust Deed, and it barely mentions the matter of Section 10 in the matter of the Board of Directors having the power to declare the vacancy. They did, however, agree in that letter that the Board of Directors did have the right to do certain things which they had claimed in regard to the cards, and they also said that they would put in the notice in regard to the beginning of the teaching year. Inasmuch as the teaching year was to have begun Jan. 1 under the notice which they had refused to publish for weeks, and their assent was now given through their counsel along the latter part of January, it is obvious that the assent came pretty late.

That letter shows that Judge Smith had cited certain instances as illustrative of the troubles which had arisen between the trustees and the board as practical matters. He had cited the controversy of a question in regard to the Nashville church, and the embarrassment which had come to the Board of Directors by reason of the action of the trustees in that matter. Also in the matter of the Seventh Church of New York. And also in the matter of practitioners' cards and the general attitude of the trustees as to the practitioners who had been Roman Catholics, and their apparent disposition to prevent them from having their cards in the official organs of the Church, and that that attitude had been embarrassing to the directors, who were desirous of having the Church live in accord, or at least not in opposition, to any religious faith. He also pointed out that certain of the editorials had been anti-Roman Catholic and that that was contrary to the wishes and to the thought of the directors. And he also pointed out the editorial in regard to "A Mad World," where it was claimed that that editorial, republished by permission of the trustees in certain local papers throughout the country by Christian Scientists, had seemed in conflict with the law, and that that was something that ought not to have happened. Now, I recite these only because they are instances of the troubles which had arisen, and more or less they answer Mr. Whipple's suggestion that all this controversy was merely an academic question.

Now, that letter of the counsel for the trustees was followed by a conference of the counsel on both sides, which was held in Boston; and the

best evidence as to what was arrived at at that conference is the letter that was sent by the attorneys for the directors to the attorneys for the trustees under date of Feb. 6, which is in evidence, and which Mr. Whipple said stated fairly the results of the conference.

Now, there has been some question, or an intimation, that the directors went back on some agreement because they endeavored to come to an understanding with the trustees after that agreement of counsel. I want to call Your Honor's attention to the last paragraph, I think it is, in the letter, which reads as follows—

The Master—The letter of what date?

Mr. Bates—That is the letter of Feb. 6, sent by the counsel for the directors to each of the counsel for the trustees, setting forth the results of the conference of Feb. 1, as they understood it, and to which no reply was ever received objecting to the understanding, but on the contrary Mr. Whipple himself—or it was offered in evidence by Mr. Whipple himself in this case, and at the time he stated that it did represent what had been arrived at by the conference. There was no question over it.

Now, the significant paragraph is this:

"As to matters under discussion not covered by the memoranda, neither side waived its contentions, but it was understood that the two boards would resume their meetings with the hope that agreement regarding all points of difference might soon become possible."

Now, acting under that very clause, with that understanding, the trustees and the directors did get together on the very next business day, for this conference was on Feb. 1, which was a Saturday, and on Monday, Feb. 3, they came together, and had that meeting, which has been described as a meeting of harmony. In that meeting, Your Honor will recollect, Mr. Rathvon, as a comparatively recently elected member of the Board of Directors, assumed that he had the right to give some brotherly and Christian advice, and he did so, urging upon the trustees and directors to take a forward look, and to leave the past alone. But the significant paragraph of that letter was this:

"Moreover, I am confidently expecting that before so very long will be given out such evidences of undivided loyalty to the Manual and The Mother Church that even the most incredulous will be convinced that such disloyal declarations attributed to the trustees were unauthorized and will be repudiated."

There is the distinct statement, in this meeting of Feb. 3, of Mr. Rathvon's hope. Nobody seems to have taken any exceptions to it. It was a hope, practically, as he stated at the later meeting, that the loyal words

might be followed by loyal deeds, and that there would be

"such evidences of undivided loyalty to the Manual and The Mother Church, that even the most incredulous will be convinced that such disloyal declarations attributed to the trustees were unauthorized and will be repudiated."

Now, if you read that in connection with the statement that it was understood—I mean the statement in this letter of Feb. 6, showing the result of the conference—that it was understood that the two boards would resume their meetings, with the hope that an agreement regarding points of difference might soon become possible, then you will see that Mr. Rathvon's suggestion was entirely in accord with it. He was a peacemaker.

On Feb. 10 there was another joint meeting, and Mr. Rathvon, in accordance with the letter which he had read at the previous meeting, presented a memorandum which he thought would settle all these questions that had arisen in the field in regard to the loyalty of the trustees—that if they would sign this paper, that would convince everybody that harmony was restored, and that the trustees were now loyal in their allegiance to the Manual and The Mother Church. He stated that he presented it because of the expressions of loyalty to the Manual, which had been made by the trustees at the previous meeting, and he thought he was putting into this memorandum only what the trustees had orally agreed to. The trustees refused to sign it, and from that time on there was a broadening of the gulf between them. But they still continued to meet together for a while, and there was an honest effort, apparently, to work out these unsettled problems in accordance with the agreement that had been arrived at by the counsel on the first of February.

My brother will say (because he has referred to it in the case several times) that Judge Smith, between those two meetings, sent a letter to the Board of Directors, in which he urged that the trustees should be asked to state in writing their position. That, at any rate, was something that Judge Smith, as a loyal and devoted follower of Mrs. Eddy, and one who was intrusted, and had been for years, with offices of the highest importance in the Church, thought was something that he was doing in the interests of working out a solution of the problem. If there is any question in regard to his believing that he was doing the thing that was entirely consistent with all that had been done in the Board of Directors in the meeting of the counsel, the joint meeting of the counsel, I call Your Honor's attention to the fact that the letter itself suggested, not that his letter should be kept for the directors only, but that a copy of it should be handed to the trustees. Now, that very suggestion, of course, does away with any possibility of his

having been, in that letter, taking any position that was not as he understood it in accord with the agreement.

From that time on there were many conferences, not of the boards as a whole, but Mr. Dickey and Mr. Neal, Mr. Merritt, and I think Mr. Rathvon, endeavored to meet the trustees and see if there could not be some adjustment of this trouble that they thought meant more or less of disaster to the Church unless the breach was healed. I say that they did something that was absolutely commendable. Mr. Dittmore and his counsel think that they should not have tried to do it. I absolutely believe that they did that which a Christian Scientist ought to do. They never suggested—and there has not been a particle of evidence to indicate that they did suggest it for a moment—giving up any of the vital positions, or any of those directions which Mrs. Eddy had left to them, but they did counsel with and in every way endeavor to cause the trustees to see that they were in error, and not to force them to take the final action in regard to their dismissal.

Now, this was not an academic question. It was a question, as I have said, of the highest importance. The business of this great publishing house was in a way at stake, and the business of The Mother Church. We presented the accountant's report on the finances of the Publishing Society, the last one that was issued, covering the year that practically ended at about the time that this suit was brought. Mr. Chase, one of the most noted public accountants in the country, stated in that report to the Publishing Society that the things which they had done in their bookkeeping were preposterous and unreasonable. He used those words not once only, but more than once. Now, what had they done, as he pointed out in that report? They had found, because the income had largely increased for the year as the result of their nearly doubling all of the subscriptions to the Journal and the other periodicals, and making the other increases—they had found that their income had been very largely increased. That income, except so far as it is necessary for the business, belonged to The Mother Church. They charge off, according to Mr. Chase's report, in a single year more than \$200,000 for depreciation of plant; and Mr. Chase says that that is unreasonable, and it is preposterous, and I submit to Your Honor that the effect of it is to reduce the amount to be paid over to The Mother Church by that amount. Some ordinary amount might have been proper, but to charge off an amount that was nearly equal to the value of the whole plant in a single year was not proper, it was preposterous; it was taking money from the Church that it had a right to have, and they testified that they did not consult the directors or

the authorities of the Church in regard to it.

Now, its importance in this case is because it shows to what extent these men could go if the checks upon them that Mrs. Eddy provided are to be taken away, and if the Board of Directors is to have no right to supervise them. The result of it would be not only to prevent the Church getting what it ought to have, but it could only result in extravagance and in a failure to exercise the ordinary rules of prudence and economy. If they can conceal \$200,000 worth of income in that way—and until we cut that report we knew nothing about it—if they can do that this year, then, if they are absolutely independent, they can do it every year. You will say we have a remedy, we can go to court and ask for an accounting. We cannot constantly be going to court and asking for an accounting, and there would be no occasion for us to do it if we did not have the knowledge. Their attitude would be to deprive us of knowledge of the fact. And they, having discovered this way of concealing the profits, could adopt and run almost any expenses that they saw fit, because the large amount received in one year enables them to put aside a large amount for depreciation, and then the next year they can still keep the apparent income about the same, and therefore occasion no question. And so I say there is no one—

The Master—Will you remind me of the date of that Chase report?

Mr. Bates—That Chase report, if I remember rightly, was of the business ending on the 1st of March of the present year.

Mr. Whipple—The report was made while the case was on trial. It was hardly any ground for any action on your part.

Mr. Bates—I am informed by Mr. Krauthoff that it was the 31st of March.

Mr. Whipple—That the report was made?

Mr. Krauthoff—No.

Mr. Bates—No, the year it covered.

Mr. Whipple—Of course not! His Honor asked what the date of the report was.

The Master—Governor Bates told me that it was made March 31st.

Mr. Bates—No, I beg Your Honor's pardon. That was the year that it covered. As to when the report was made, I do not know.

The Master—I thought that you said that it was made March 31st.

Mr. Bates—No, Your Honor. I will have it looked up.

The Master—Well, it was subsequent to the bringing of the bill, then, the making of the report was?

Mr. Bates—The making of the report itself was subsequent to the bringing of the bill. And I mention, as an illustration—

The Master—Possibly "concealment"

would hardly be the right word to use then, if they told you the whole story in the Chase report.

Mr. Bates—The Chase report did not come to us except as we got it through the channels of the court. They never have submitted the report to us.

Mr. Thompson—Yes, but Mr. Dittmore had repeatedly told you for months before the gist of it, and you agreed that it was a fact, and you rejected it.

Mr. Bates—I do not know how you could have told us for months before the gist of the report, when it was not made or published until after the suit was brought.

Mr. Thompson—The facts that it contained were all made known to you, and you rejected them, and it is only throwing dust in the eyes of the people to make these statements here.

Mr. Bates—I submit, Your Honor, that Mr. Thompson's statement is absolutely wrong, so far as I know, and that he has no right to make it.

Mr. Thompson—Oh, of course you submit that.

Mr. Bates—He has no right to make it. It only shows the collusion, which he endeavors to deny, that exists between him and the counsel for the trustees, he claiming to represent Mr. Dittmore as a director.

Mr. Whipple—Governor Bates, in making that charge of collusion you are impertinent. You have no basis for it—

The Master—Let us see what the evidence is.

Mr. Whipple— —and I am almost inclined to say dishonest.

Mr. Bates—Characterize it as you please, the facts justify the statement.

Mr. Thompson—No.

Mr. Bates—We have it all in the record.

Mr. Whipple—Confine yourself to the facts, then, sir.

Mr. Thompson—The facts of the case justify the statement that you have ruined the cause of Christian Science, as well as killed the directors.

The Master—Now, Governor Bates, if you please, will you refer me to the evidence? I do not think that these statements and counter-statements are matters that I can consider.

Mr. Bates—June 26, 1919, was the date of the report, as found on page 198 of the record, and it was for the fiscal year ending March 31, 1919, and Mr. Thompson—

The Master—And your statement to me is that the report was issued after this suit was begun, and that it was brought to your knowledge for the first time during this trial?

Mr. Bates—Yes, Your Honor. And I will state further: Mr. Thompson says that he or Mr. Dittmore notified us of it months before—

Mr. Thompson—I never said any such thing.

Mr. Bates—I understood him to say so. And the date of the report shows that it was June 26, 1919.

Mr. Thompson—I did not say that at

all. I said that the facts constituting extravagance, whether reported by Chase or Dittmore, were within your knowledge long before that meeting.

Mr. Bates—Those facts were not within my knowledge.

Mr. Thompson—The knowledge of your clients, I mean. Nothing was within your knowledge, of course.

Mr. Bates—I do not know what pertinency your suggestions have, anyway.

Mr. Thompson—I should think that you would have found out by this time.

Mr. Bates—Now, I want to call Your Honor's attention to the fact that this construction that is contended for by the trustees would not only leave the beneficiary unprotected in regard to the business of the Publishing Society, in which they are the ones that are, or ought to be, most interested, but it leaves the very faith itself of the Christian Science movement in jeopardy. There have been called to Your Honor's attention various questions which have arisen and have been referred to since this controversy arose—

The publication of the article on Life;

The one on Purification;

The one on Possession;

The one on The Mad World;

The editorials that were claimed to be anti-Roman Catholic;

The question of the cards of the churches;

The cards of practitioners;

The cards of nurses—

all these things, it appears, have come up since this controversy arose. If there is not to be some ultimate authority to determine these questions, if they are to be determined by a collateral organization, that submits to no authority, then we are at the beginning of the parting of the ways, and the Publishing Society goes off in one direction, and it can no longer be considered as the Publishing Society of The Mother Church. The Church organs themselves, therefore, are at stake.

There has been some question or talk here in regard to an "empty shell." It is not of much importance, the term that was used, but the facts are important for Your Honor's consideration, as to what the results would be on these Church organs, whether we wished it or not.

The great mass of Christian Scientists subscribe to these publications because they consider them under the Church Manual, and they consider that there are obligations upon the directors to see that they are ably edited and kept abreast of the times. They consider them to be in fact as well as in name the organs of the Church and under its supervising authority. How long would you yourself, how long would anyone as a member of that Church, consider that he was under any obligations to subscribe for them if the Publishing Society took itself out from under the By-Laws which Mrs. Eddy had made,

and attempted to run them entirely independently? The result is as clear as that darkness follows day. It must be that these organs would gradually become, not Church organs, but independent organs, with no authority. They would lose their subscribers, they would lose their support, and they would ultimately become valueless. There can be no other conclusion.

It is not a question of whether we would wish it or whether we would be greatly sorry over it. It is not a question of the Board of Directors, or their attitude. It is a question of common sense, that no church is going to support organs that have gone out from under its own control and have asserted an independence of that control. And particularly that is true in this case, where the organs are organs that Mrs. Eddy established, and where there is such an allegiance to that Leader as is seldom to be found in any church to any leader.

Christian Science is regarded by Mrs. Eddy and by all Christian Scientists as a true science, and, hence, as a subject requiring exact statements and application. She and they regard any departure from the correct teaching and practice of Christian Science as liable to be very detrimental to the progress or welfare of Christian Science. Christian Science, more than any other religion or religious denomination, depends on printed rather than spoken expression. I refer Your Honor to Article X and Article XIV of the provisions of the Manual. The By-Laws of The Mother Church confer authority on its Board of Directors to determine what teaching and what practice conform to Christian Science, and not on the publishing house. As to that, I refer you to Article VIII, Sections 11 and 14, and to Article XII, Section 2 of the Manual.

Good faith! I urge all these later considerations under that head. These later ones, as to the importance of the issue involved, and its effect, all go to the question of good faith. Mrs. Eddy, writing Oct. 12, 1909 (page 491 of the record) says, "I approve the By-Laws of The Mother Church, and require the Christian Science Board of Directors to maintain them and sustain them."

This injunction is in the By-Laws as well as in Mrs. Eddy's letter. How could these directors face the field of Christian Science and offer any excuse for not having acted under the By-Laws giving them authority in this matter? They certainly could not have acted differently and been loyal Christian Scientists. It was a duty imposed upon them and they were acting in accordance with the duty. Denial of their authority, in view of the deed and of the Manual, was disloyalty. Nothing is more evident in this case than the fact that all Christian Scientists agree that the Manual is binding upon them.

Nor could the directors wait until

greater evils had resulted—and this also is in reply to the suggestion that it is an academic question. Could they sit idly by and see the By-Laws violated and the Publishing Society drifting away from the control of the Church, and excuse themselves by saying, "Oh, well, we will wait until the disaster is upon us"? It was not an academic question. It was a case where they had to determine it as soon as they found that the views of the men who were conducting that society were such as to lead inevitably to disloyalty and to disruption. They are given the right to discharge or to declare vacant for such reasons as they deem expedient. No one can honestly claim that these men were not sincere. They had nothing to gain by the discharge of their duty except the approval of their own consciences. They labored long and hard to make this last event unnecessary. The trustees did nothing but to sit back and reply to them in all their efforts in such a way as not to bring them nearer but to cause them to become further and further apart. It is true that great powers are given to the Board of Directors, and they have been styled in this hearing as an autocratic body. If they are an autocratic body I submit it is because the By-Laws of the Church under which they operate make them that kind of a body. But there is no Christian Scientist except these trustees who ever has taken exception to the form of government that was established by Mrs. Eddy. Mrs. Eddy found that it was necessary to have a strong central governing power. She knew that it was impossible for this movement to be carried on all over the world without giving the authority to some one, and the whole evidence shows that during the years that she was here after the Church was started and the Board of Directors created, she was constantly placing upon them, more and more of authority, to the end that when it came her time to pass on, the authority of the Church might be vested in them and that they might have had the training and the experience and the precedence by which to guide them.

Has anyone ever claimed that they had exercised this power improperly? There have been intimations of it but there has been no showing of it. Did they attempt to discipline people by reason of the great powers vested in them? They certainly never did. What have they done? They have labored with Mr. Rowlands and his co-trustees weeks and weeks, and endeavored to get them to remain as loyal members of the faith; and, in spite of all their efforts, what I call their disloyalty has been set up in opposition to the directors. They did not exercise it in an arbitrary manner. They did not exercise it in an autocratic manner. They exercised it as a duty incumbent upon them, and they exercised it in a Christian way.

I submit, Your Honor, that justice

as well as law requires that these directors be upheld. No one is injured by sustaining them except the ambition of these trustees to be independent and to have full authority over this great business, without anyone to check it up or to supervise it or to look after the Church interests. Certainly Mrs. Eddy is not injured by adopting her interpretation and by doing as she had enjoined. The beneficiaries certainly are not injured, the prime beneficiaries, The Mother Church. It certainly is to its advantage to have its governing board exercise a supervisory control over these trustees. It is necessary for the protection of the property, necessary for the protection of the Church.

Mrs. Eddy left the Journal as she did because she understood the By-Laws were to continue operative. Can you imagine that Mrs. Eddy would have allowed that Christian Science Journal to have remained with the trustees if she had not understood that future trustees were to carry it on in the same way that those trustees were carrying it on? Is there not an estoppel in good faith from any one attempting now to change her suggestions or to change her plan, when she allowed the Journal and these other papers to become associated with this publishing house, on the understanding that it was a departmental activity of the Church and controlled by the By-Laws of the Church?

There is the statement in the By-Laws which makes the Sentinel the property of the Church. I ask Your Honor how you are going to separate the property of the Church, that which it ought to have, from the property of this Publishing Society if it goes off alone by itself? The Court, in the case of the Attorney-General v. Armstrong came to certain conclusions and suggested that practical considerations required the continuance of the interpretation that had been placed upon the trust instrument by those in interest. I suggest that the mixing up of the periodicals that were started subsequently, and that by the By-Laws and by terms are the property of the Church, with the affairs of this publishing house, suggest that practical considerations require that they be continued to be run by the Publishing Society in accordance with the interpretation that had been placed upon the By-Laws throughout all the time practically that had preceded. All the periodicals since have been established on the basis of it.

The Publishing Society itself has no home save as it is given to it by The Mother Church under the By-Laws of the Church. It would not have a roof over its head except as The Mother Church has furnished that magnificent building for it. I submit that that also is an indication, not only of Mrs. Eddy's intent to keep it as a branch or departmental activity of The Mother Church, but it also shows some of the complications which would re-

sult should Your Honor find by any possibility that any other view was to be entertained.

That publishing building was built by contributions from the members of the Church from all over the field, and it was built because they understood under the By-Laws that these periodicals of the Publishing Society, and all its literature, were being published in accordance with the By-Laws of the Manual. Is there any justice, is there any good faith, at this late day, in changing that course of conduct and allowing them to go ahead irrespectively of all these things which have taken place?

I submit, Your Honor, that the original trustees accepted the trust with the knowledge that Mrs. Eddy claimed and exercised the right to amend the Church By-Laws at her discretion. When she did amend the By-Laws by inserting provisions in regard to the publication of the periodicals the trustees of the Publishing Society made no objection and must be understood, therefore, as having accepted these By-Laws as directions or changes by the Donor to be followed by them as trustees in the management of the business provided for in the original Trust Deed.

The Trust Deed itself shows on its face, therefore, that the Donor did not consider the directions given therein as complete or sufficient for the accomplishment of her purpose in creating the trust, and that it was her intention to give additional directions regarding the administration of the trust. The conduct of the parties to the original trust instrument shows that both the Donor and the trustees regarded the promulgation of By-Laws regarding the periodicals and the Publishing Society as the giving of proper directions by the Donor for the execution of the trust. Consequently the words "perpetual and irrevocable trust" cannot now be construed to deprive the Donor of the right to make changes or to make directions to the trustees, nor to give these directions in the way which both the Donor and original trustees considered proper when the By-Laws were promulgated.

There was a parable spoken by the great Master on the hill slopes of Olivet, called the Parable of the Husbandman. It told of the householder who bought a vineyard and hedged it about with a wall, and left it in charge of husbandmen, and then went away into a far country. Then he sent his servants to obtain the fruits and to give instructions to the husbandmen, and the husbandmen assaulted and killed the servants. The Master asked this word of his hearers: "What will the lord of the vineyard do when he returns?" And the answer came from those honest people, "He will destroy these wicked men."

I ask what would be the attitude of all the parties to this deed should Mrs. Eddy come back today, should she come into this room in her physi-

cal presence? The trustees stand to my mind guilty before the Christian Science field because, having it within their power to place an interpretation on the Trust Deed that was entirely consistent with what Mrs. Eddy had stated in the By-Laws, they deliberately put an interpretation on it that was contrary to her interpretation of it. Certainly they were not seeking to uphold her or to follow her, but they were seeking to mark out in the unblazed forests of their own ambitions a trail of their own.

Now, let me not be misunderstood. I am in no way claiming that a man is not bound by the law of the land in regard to the interpretations of instruments; but I am saying that when either one of two interpretations is open to him, one leading him into conflict with his conscience and his religion and his leader that he claims to follow, and the other keeping him in harmony with his conscience and his religion and his leader, and he deliberately chooses the former, that in so doing he becomes recreant to his conscience. He is no longer entitled to be considered faithful to his religious belief or a disciple of his leader.

If this be loyalty, then I ask Your Honor what can be treason? If such action as this be sustaining the Christian Science movement, how, pray, does it differ from those who seek to overthrow it? Lip service is of no avail when the hands are clawing at the heart.

I am not a Christian Scientist and I can speak therefore in regard to what I believe to be its position in the world without the bias that one might possibly be considered to have who was a member of that faith. I have had occasion to watch it in its development for many years. While still ignorant of much, I have learned much. It has done, and is doing, an ever increasing work of helpfulness in the world, and I can pay it no higher compliment than that. I have observed nothing in it that tends to pull men down, but much that tends to build up both the outer and the inner man into a higher stature of manhood. I believe the world is better because of this movement. Mrs. Eddy, its Founder, devoted her life to it. So satisfied was she that it came from God as a revelation for the welfare of men, that she consecrated all her vast fortune to carry it on after her passing. It is growing with tremendous strides and the possibilities of its usefulness in the future are not to be measured by any human standards of which we are aware.

Where will you find the standard by which you can measure the happiness that it creates, or the good cheer that it brings, or the optimism that it has put into life as it has driven out error and fears that tend to the dwarfing of man? You can measure, the harvest of the great plains of the west and reckon them up in pecks and in bushels; you can measure the prod-

ucts of the mines in dollars and cents; you can measure the heights of the mountains by the atmospheric pressure and you can even sound the depths of the sea by plummet and line. But you cannot measure the joy that comes to the human heart through the acceptance of a religious faith like this, even though you had a measure that would girdle the earth and reach the stars.

For the civil courts to overthrow the decision of the highest tribunal of the ecclesiastical body is very rare. It is never done except where there can be no question but what it ought to be done to avert a serious wrong. There is no evidence in this case that such a situation exists. I believe that Mrs. Eddy, the donor of this trust, had a right to control it as she did; and because the directors are following with wise discretion and doing the duty that has been laid upon them, as God gives them to see their duty, I believe that they should be sustained in this matter.

I trust that moral and legal considerations will lead Your Honor to make such findings as will carry out, not the intent of Messrs. Eustace and Ogden and Rowlands, but the intent of Mrs. Eddy, to the end that her plan, unamended, and her church, unfettered, and her faith, untrammelled, may continue its beneficent work among men.

Closing Argument in Eustace et al. v. Dickey et al., on Behalf of Defendant Dittmore, by William G. Thompson, Esq.

If Your Honor please, I have prepared certain requests for rulings of law and for findings of fact in this case, in accordance with what I understood to be Your Honor's desire, and I have also prepared a brief to which reference is made under the particular requests contained in these papers. And I will submit it to Your Honor because I cannot undertake orally to give all the references by page and column that are really necessary if a proposition of fact in this case is to be properly supported. (Handing document to master.)

I will hand a copy later to Mr. Bates.

The Master—Well, I do not know about taking a brief from you before you have given it to the other counsel, Mr. Thompson.

Mr. Thompson—Very well, then, sir, I will take it back.

Mr. Bates—I do not object, Your Honor.

Mr. Thompson—It is of no consequence. In fact, I would rather Your Honor would not take it, because I should not care to have Your Honor follow that brief except to have Your Honor verify the references and verify the facts. I thought it might be a convenience and some assistance to Your Honor to have it.

The Master—Suppose you leave it there on the rail while you are talking.

Mr. Thompson—Very well, sir.

The Master—If I want to look at it, I understand there is no objection from the counsel for the directors?

Mr. Bates—No objection.

Mr. Thompson—These requests I handed a few days ago to the counsel.

The Master—We shall not have any trouble, I think, about that.

Mr. Thompson—Now, both of these cases were submitted by an order of Judge Braley, dated May 17, 1919, accompanied later by a memorandum of Judge Loring's. The order of reference was "To hear the parties, and their evidence, to find the facts, and report the same to the court." And Judge Loring interprets that in this way, and I think it well enough to have this mentioned at the outset and to have it go into the record:

"Under a rule in the ordinary form it is the duty of the master to find what the facts are on the issues of fact raised by the pleadings.

"To perform that duty the master must make rulings of law. Not only has he the authority to make rulings of law for that purpose, but it is his duty to do so. What he cannot do is to 'make general rulings of law as to the effect of these findings,' since 'it was the master's duty to find the facts only and not rule upon their legal effect.'"

And then he proceeded with further remarks which are not necessary here.

It has been agreed, I understand, at the hearing before Your Honor, that Your Honor is to have the same power that you would have if there had been no limitation in the rule. That is, that Your Honor now has the power to do what Judge Loring said under his rule—you would not have the power to do—that is, to make general rulings of law as to the effect of these findings. It is immaterial to Mr. Dittmore whether that power is conferred—

The Master—Where is that agreement?

Mr. Thompson—Well, it was made orally at the hearing before Your Honor, and I bring it up now so that there may be no doubt about it. If it is not made I want to know it now.

Mr. Whipple—That was the agreement. Your Honor will remember that Governor Bates expressed his willingness that that should be done, and I accepted it, and later Mr. Thompson assented to it.

The Master—What will Judge Loring, or what will the court say if I undertake to do something which my instructions say I cannot do?

Mr. Thompson—I think, Your Honor, the answer to that is that it is the duty of counsel who make the agreement to draw up an amendment to the rule and take it before Judge Loring and have it allowed by consent of the parties, and I suggested that a day or two ago but there has not been time found yet to do it. I quite agree that unless and until that is done

there is a technical defect in Your Honor's power to carry out the agreement of the parties.

The Master—If I should undertake to do that on an agreement not in writing, I should have some apprehension as to the attitude of the court. Does that agreement appear in the printed record?

The Master—Have you got a reference to the page?

Mr. Thompson—Mr. Demond will find it. It is very explicit. It came as a suggestion from Governor Bates, to which Mr. Whipple immediately assented, and I after some hesitation.

The Master—Probably I did not quite appreciate the full significance of it at the time.

Mr. Bates—I think Your Honor stated at the time that it should be put in writing, which has not been done.

Mr. Thompson—Can it be done?

Mr. Bates—But I understand that Mr. Whipple made his agreement with the suggestion that all rights would be reserved, and with that understanding there could be no trouble about it.

Mr. Thompson—I do not understand quite what is meant by reserving rights to an agreement.

Mr. Bates—Not rights to the agreement, but rights reserved in regard to the rulings; that is, rights to take exceptions, I assume, in case any one of the counsel assumed His Honor was wrong.

Mr. Thompson—Of course if his Honor makes any wrong ruling of law, that is open to exception just the same as it is in the other form. But I understand the agreement is unqualified; if it is not I think it is of some consequence to know it now.

The Master—What ought to be done now, if counsel desire to carry out that agreement, is to put the agreement in writing.

Mr. Thompson—I heartily agree. I think it should have been done before, but inasmuch as the suggestion did not come from me but did come from Governor Bates, I perhaps wrongly supposed that he would take the initiative in putting the agreement in writing.

The Master—Well, you will have time enough to do it if you want to.

Mr. Thompson—I suppose so.

The Master—It may be that I shall have to say in some cases, "I find thus-and-so, if it is open to me thus to find."

Mr. Thompson—There are cases which I am prepared to cite, if Your Honor cares for them. I should suppose they would be unnecessary now. A recent decision by Judge Pierce in which he deals with that other form of rule to the master—that the master shall have the power and that it shall be his duty to find facts, make rulings of law and report to the court. His rulings on law are merely advisory and are open to objection and exception just the same as if he was an auditor.

The Master—I do not understand that authority is given to me to decide the case.

Mr. Thompson—That is the form in which this rule is put, but it may be amended if necessary.

The Master—I will leave it to you to put the agreement into shape.

Mr. Thompson—Wouldn't Your Honor rather put the burden on Governor Bates? I am only following his suggestion, that is all; I am not making a new one of my own. All I say is that I am prepared to sign such an agreement, and I assume it is made and that the formality of signing is merely what would be treated by honorable men as a mere matter of form to carry out the actual agreement of the parties. With that understanding I proceed.

The Master—You better go back to the record, and perhaps before we get through some of you can give me the reference.

Mr. Demond—It is in the supplementary record.

Mr. Thompson—It occurred in Your Honor's office at the hearing we had there.

Mr. Demond—The discussion is on printed pages 752 and 753.

The Master—My mind was on something else then.

Mr. Demond—Printed pages 752 and 753. It is the separate printed sheets of the hearing or conference at Your Honor's office on Sept. 3.

The Master—Probably I said to myself, "If they are going to make an agreement of that kind, I will wait until I get the agreement in writing."

Mr. Thompson—Very likely, sir. I think we all took it that it had been done, and I brought it up now because it had not been put in writing, and I think it ought to be, and I thought this was the best time to have it put in writing.

The bill in this case opens with the allegation that

"As to whether said Dittmore or said Knott is now the duly appointed trustee under said Deed of Trust (of Sept. 1, 1892), and director of said First Church of Christ, Scientist, the plaintiffs are ignorant and are unable to make further averment."

Well, that, if allowed to stand in that way, would probably have made the bill demurrable, just as if one sued on a promissory note and then said he was unable to say whether the defendant signed it or not. But all that has been taken care of by the respective answers of Mr. Dittmore and the other defendants.

Mr. Dittmore has alleged that he is a proper defendant and was a director on the date of the filing of the bill, and if anybody is liable the injunction should run against him as the fifth director. Mrs. Knott has made a similar allegation, and the other four directors have joined with her.

Now, at this stage Mr. Whipple states that he elects, as I understand it, to proceed against Mr. Dittmore,

that he feels that Mr. Dittmore was the director and not Mrs. Knott on the 25th day of March, 1919. But Mrs. Knott does not seem to ask to have the bill dismissed as against her but associates herself still with the other defendants in alleging and averring that Mr. Dittmore was not a director on that date but that she was. Consequently, after discussion before Your Honor, it has been ruled that the issue whether Mr. Dittmore was a director on March 25, 1919, must necessarily be decided in this case.

And, therefore, those who are permitted to argue it will of course be bound by the decision, and I assume that it follows that Mr. Dittmore and all the defendants as well as the plaintiffs will be bound by the decision in that case.

Before that matter was taken up in Your Honor's office, I had prepared certain requests for rulings of law on it, which need not now be argued, but which I put in the form of propositions in my brief and requests for rulings in these requests. They merely assert Mr. Dittmore's right to argue on the question of whether he was a defendant, a director, in any sense, either a deed director or a by-law director, on March 25, 1919, and they make assertions as to the consequence of the decision here on that issue. I will refer Your Honor without further comment on those propositions to what little is said about them in my brief.

The other question that I desire to argue here is the question whether Mr. Dittmore was or was not legally discharged. It is true that in the answer of Mr. Dittmore, facts are set up similar to those set up in the answer of the other defendants, and tending to show that the action of the trustees was unjustifiable and the action of the directors was unjustifiable also, except their assertion of the right of supervision.

Mr. Dittmore, it ought to be noticed—and this I cannot emphasize too strongly—I should despair of convincing Governor Bates by anything I might say, or even of undermining that wall of sentiment and prejudice with which he seems to be surrounded, but I think there are those who will understand the significance of what I am about to say on a certain topic here.

Here is a controversy phrased before Your Honor and paraded here as a controversy about power. Were the directors superior, had they the supremacy over the trustees? Now, Governor Bates asserts that they had. His clients asserted it. Mr. Dittmore most certainly asserted it. The only difference appears to be, as the case has finally developed, that Mr. Dittmore asserted the power for the purpose of obtaining specific reforms, Governor Bates' clients rejected the specific reforms and still continued to assert the power. It cannot have

escaped Your Honor's attention. It is admitted on all hands by every witness in the case, all three trustees, and all the defendant directors who testified, that Mr. Dittmore's assertion of this power, his framing of his memorandum of February, 1916, which has been made the entire basis of Governor Bates' eloquent, fervid and more or less comprehensive and intelligent remarks on the legal questions involved, his whole motive, was not to assert power for its own sake. Such a motive is the very essence of autocracy, and it is what makes autocracy odious. It never was intended by Mrs. Eddy. She did not set up here this governing board for the purpose of going around all the time saying, "I am a bigger man than you are." She gave them the power to be used for the benefit of her Church.

And Mr. Dittmore first ascertained—I think Mr. Eustace said there were 28 specific, tangible objections that he called attention to and wanted to have them improved. He did not go to the trustees and say, "I am a bigger man than you; I have got the power and you haven't; bow down and sign this paper or else I will do something to you." He said, "Do this, that and the other, and if you do not I shall reluctantly be compelled to assert the power that I believe the directors have, against you."

Now, that is what Mr. Dittmore asserted the power for. That is why he analyzed the By-Laws and drew up this memorandum, which today—today, and all through this case, has been adopted by all these associates of his as the very foundation of their case here, which Governor Bates has eloquently described today.

The difficulty is that Governor Bates' clients, on the occasion when Mr. Dittmore desired them to introduce those particular charges of extravagance which he has dwelt on here with great eloquence today, rejected every one of them, although he says today that they were of importance, and says they are true; and his clients, I am prepared to point out to you in the testimony, have admitted that they believed the truth of them. They were all rejected when they would do any good. For the definite charges which the power was useful for, was substituted a bare, offensive assertion of power. Men would not be human, who, when requested to bow down for no purpose but bowing down, did not take some little offense if they had any red blood in them.

Now, Mr. Bates, in order to prove his case—he having made it impossible for us to introduce our evidence—Your Honor ruled that the reason why we could not show here what these gentlemen had really done—not morally, we make no moral charges, but there were specific matters which we thought, Mr. Dittmore thought, ought to be corrected. He may have been wrong; he may have been right. Your Honor has said that he cannot

show one of them here. And why? Because these men, these directors who parade here their love of Mrs. Eddy and regard for her Church, rejected every one of them on the only occasion when they could ever have been made the foundation of charges against these men. And now with singular inconsistency they come in here and preach the extravagance and Chase's report before Your Honor, as the basis of charges which they have prevented the proof of, or even an examination into, ever coming into a court of justice. Under those circumstances, having been listening to these denunciations of Mr. Dittmore personally, put as strong as counsel dare, I suppose—having listened to the parade of all his material, the constant use of it from the first day to the last in this case by Governor Bates and his associates, the Dittmore memoranda asserted up to the very end by these people, the Chase letter, which they criticized him for, put in evidence by them and used by them to prove their case with—having absorbed every bit of Mr. Dittmore's material, having rendered most of it that was valuable useless in this case by their own acts, they are left at the end of this long trial simply with the allegation of abstract power—"We have the power over you."

Well, on that I think they have done as well as they could. It largely depended on documentary evidence in their possession. No doubt they have introduced all they had. It depended on certain arguments. They have made all that I should have made, and I regret to say three or four I should hardly have dared to make, in support of the abstract power; they have rendered the assertion of it just as offensive as they could by taking out all the real basis for asserting power against anybody unless you have the true autocratic spirit which desires it for its own sake. And now they suggest that I help them at the end of this case to assert autocratic power for its own sake, and that I join them in the charge which they knew to be false, which they have admitted they knew to be false, which Mr. Dittmore said he would not put his signature to against Mr. Rowlands, of personal neglect of duty. And they have the hardihood, with a fervor and display of eloquence and the thrilling tones such as we hear sometimes in political addresses, to come in here and talk about their gentle hearts and their high principles, when they knowingly asked Mr. Dittmore to put his signature to charges against that man which they knew, and he knew at the time, and told them, was perfectly groundless and made in bad faith, and simply to bolster up what? To bolster up the discrimination by taking the most innocent man in the crowd and putting him out because he had no friends, as they said, and it would make the least commotion, as they wrote to Judge Hanna, and leaving in

the men, the prominent man, Mr. Eustace, and the other one who was just as influential as Mr. Rowlands, when there was not any logical, rational, or sober ground for discriminating against them at all, and substituting for charges which a court of justice would take notice of, if they were true, and give effect to, and if they were not would find out they were not true, a charge of not bowing down before an abstract assertion of power, which was true and equally applicable to all three, and in order to justify leaving in the two and putting out the one, make a false charge of neglect of duty.

Mr. Dittmore has said at the outset, on every convenient occasion in this case, and repeats it now, that he does not think it is serving Mrs. Eddy or the religion of Christian Science to behave in that way toward a fellow man, and that underlying every form of religion, Christian Science or anything else, are certain elementary principles of fair dealing customary among gentlemen which, when repudiated, can never be made up for by assertions of religious fervor or religious belief.

Now, if Your Honor please, I propose to argue in this case certain definite propositions, which I shall ask Your Honor to rule, some as matters of law, some as matters of fact.

The first proposition which I desire to advance on behalf of Mr. Dittmore—and every one of these propositions is advanced simply and solely because he thinks the advancing of them is in the interest, in the large interest, of Christian Science, rather than to have transactions covered up, such as has occurred in this case—the first proposition that I advance in Mr. Dittmore's behalf in this case is as follows:

The attempted dismissal of Mr. Dittmore by the vote of March 17, 1919, whether or not in conformity with the provision of the By-Laws applicable on that date—I do not care whether the by-law was the by-law of the twenty-eighth edition or of the eighty-ninth edition—could not legally have any effect upon his tenure of office as a trustee under the deed of Sept. 1, 1892.

Now, why do I advance that? Some one is saying "Technicality!" That is always what people say when they come into a court of justice and find that it slowly dawns on them that they have got to stand or fall by established legal principles. If they desire the assistance of the courts of this State they must take the law as announced by the courts of this State; and an institution founded on written documents ought not to permit the meaning and significance of fundamental charters on which property is held, now amounting to millions of dollars, to be left in dispute, and left in doubt; and the only tribunal that can settle those matters is the Supreme Court of Massachusetts. I am, therefore, arguing a strictly legal

proposition, and it is highly beneficial to this Church, and to all similar organizations, that some definite rulings, binding upon everybody, shall now be established concerning matters that have been in dispute for so many years, and now have reached an acute stage of dispute between these persons. Did it ever occur to some of the members of this Church who have been sitting here in this court room, perhaps, during the trial, that after the dismissal of Mr. Dittemore, and after the attempted dismissal of Mr. Rowlands, thousands of dollars have been checked out of banks in this city on the orders of persons professing to hold official power in this Church, which, if those persons do not have that power, and do not have it, as you call it, technically—as we call it, legally—have been wrongly paid out, and every dollar of it can be recovered again? It is of consequence, Your Honor, and it ought not to be necessary to assert it here, that those matters should be settled on a strictly legal basis, not by appeals of a camp meeting description, but by the strictest kind of logical analysis.

Now, what is the truth of this proposition? In the first place, Mr. Dittemore was a member of the Board of Trustees established by that deed. We have an admission in the record, in Volume III, page 763, by Mr. Krauthoff—we do not need it, but I will quote it—that Mr. Dittemore was “the successor, in the line of official succession, of William B. Johnson, up to that date.” That is, up to the date of May 31, 1909, when he was elected.

Now, in my brief I have shown the successive steps by which the original four came down the line. Mr. Johnson, one of the original four, resigned, was then reelected, and Mr. Dittemore, without Mr. Krauthoff's admission—and I am glad that Mr. Krauthoff admitted that plain fact—is the successor of one of the original grantees in that deed, elected strictly in accordance with the terms of that deed. Mr. Merritt is not. Every person who voted for Mr. Dittemore was either an original grantee or a successor, elected in accordance with the terms of that deed, of an original grantee; and one vote was cast for him by a man (Mr. McLellan) who was not an original grantee in that deed, but who had been added to a fifth position, created in 1903, by a by-law, by Mrs. Eddy, and called a Christian Science director.

Now, that brings me, right off, to the significance of that by-law of Mrs. Eddy, under which she appointed Mr. McLellan, and of her letter to Mr. McLellan at the time that that by-law was passed, increasing the number from four to five, and in regard to its legal effect. She said: I am sorry that you cannot take title to property or give it. I have twice asked Mr. Elder about this, and he says that it cannot legally be so.

Now, what is the consequence of that? The consequence of that was that she had created a new body, also called the Christian Science Board of Directors, with functions other than those mentioned in the deed of Sept. 1, 1892, with the possibility of being a corporation under the statute, if they were similar to deacons and churchwardens—as to that, I think that it is immaterial for the purposes of our case—I simply throw out that suggestion in passing; that if they were such a corporation, the property which they held was none of it property conveyed to the four under the deed of Sept. 1, 1892, and under many subsequent conveyances, all of which recognized the distinction between the four and the five—conveyances which cover practically the entire triangular property there to-day; and these by-law directors hold the receipts from the Publishing Society for various other articles of personal and real property, very likely because of separate functions and separate powers. But the fact that Mr. McLellan voted for Mr. Dittemore does not prevent the vote of the four from being unanimous for him. The four had a right to vote for him as a trustee under the Trust Deed of Sept. 1, 1892. It merely meant that in one vote was combined the election of this man for two wholly different offices, one a trustee under the Trust Deed of Sept. 1, 1892, therein called a director, with such powers as a director under that deed might have; the other, as a director, under these By-Laws, so far as they conferred new and additional functions upon the four directors originally, and upon five after a fifth had been added by the By-Laws. The fact that Mr. McLellan voted for him, in other words, cannot affect the validity of his election as a trustee under the deed of Sept. 1, 1892, or alter in the slightest degree the duties, rights and privileges which he derived in that capacity. He was elected on the very day that the vacancy occurred, so that the provision in the deed,

“Whenever a vacancy occurs in said board, the remaining members shall within 30 days fill the same,” was satisfied in his case.

I have referred, for each of these statements of fact, in my brief to the page and the column, where the testimony, whether documentary or otherwise, is given.

It thus appears that Mr. Krauthoff's sweeping admission is amply justified and required by the documentary evidence in the case.

Now, the next proposition is this:

While a dismissal in conformity with the By-Laws—we are not discussing whether or not the dismissal was in conformity with the By-Laws—would undoubtedly have had the effect—

The Master—Let me ask you a question right there.

Mr. Thompson—Yes, sir.

The Master—I am looking at your answer—

Mr. Thompson—I ought to say, in regard to the answer, that at the time that that answer was filed, we had absolutely no knowledge of this letter of Mrs. Eddy's of March 19, 1903—it was an entire surprise to us when it came out—the letter to Mr. McLellan—and also the circumstances of her establishing the fifth director and appointing him. It was an absolute surprise; although it is not, I think, inconsistent with what I now state in the answer, although I frankly state that had I realized or known that such a letter was in existence—it came from Mr. Whipple's possession, or that of his clients—my answer would have been entirely different, and would have emphasized it affirmatively, instead of remaining entirely silent as to this distinction which now appears to be established and required by the evidence in the case.

Mr. Whipple—To correct any misapprehension, let me say that the letter did not come from our possession, or that of our clients. It was one that was discovered by Mr. Withington in the letters which were brought in here from Mrs. Eddy, and which were in the possession of the directors; and until that letter was discovered we had never known or ascertained or suspected how this fifth director came in, or Mrs. Eddy's view with regard to his not being a real trustee, but merely what she described him as being.

The Master—You doubtless recall, Mr. Thompson, that your answer admits—Mr. Dittemore admits—“that the defendants Dickey, Neal, Merritt and Rathvon are four of the five trustees known as the Christian Science Board of Directors under the deed Exhibit B—”

Mr. Thompson—That is an erroneous admission, of course.

The Master—“and are also trustees under the deed Exhibit C; and that they are also four of the five directors of The First Church of Christ, Scientist, in Boston—”

Mr. Thompson—What page is that that you are reading from, sir?

The Master—The top of page 6.

Mr. Streeter—Mr. Thompson, let me suggest that you amend your answer.

Mr. Thompson—I do not think that it is necessary, General, at the present time.

Mr. Streeter—So far as Merritt is concerned, he is not a trustee under the deed of 1892.

Mr. Thompson—We can ask to be allowed to amend later.

The Master—I do not think that you will have any trouble about amending, but I was for the moment confused with that admission.

Mr. Thompson—It is entirely at variance and inconsistent, I think, with the disclosures that were made in this case, both the legal situation, and, I think, equally important—I will not say “more important” in a court of law—because we are in a court of law—but I think it is equally impor-



tant to know that, at the very time that this was done, Mrs. Eddy took as good advice as there was in the city of Boston—that of Mr. Samuel J. Elder—and followed it, and this distinction was made.

The Master—Of course you have got to remember that that advice is not agreed to as correct by the counsel for the directors.

Mr. Thompson—I should be enormously surprised if it were agreed to as correct by them, sir.

The Master—And we can hardly at present take it as settled law.

Mr. Thompson—If I thought that you could I should not be arguing it, sir. I am going to argue the question of law later. I am now attempting to make the distinction clear, before presenting the authorities in support of it.

The Master—I suppose that that is what you must do.

Mr. Thompson—I should not expect for one moment that Governor Bates would admit a proposition which would have so extraordinary an effect upon this situation as that would, especially in view of the fact that all of this difficulty could easily have been avoided, and the whole scandal that has occurred by this litigation could have been perfectly well prevented, had he, instead of suggesting and advising his clients to make up a case against these three men, and to make up fictitious charges against Mr. Rowlands—if it had simply occurred to him to bring a petition for instruction, in the Supreme Judicial Court, fishing out and presenting these documents—requiring no testimony—and putting them in, and getting a decision of the full bench as a matter of law—

The Master—Do not let us spend any time over that now.

Mr. Thompson—That would have settled this whole thing, without any occasion for these extraordinary secret interviews, and so forth. But he did not see fit to do it.

The Master—We get a view of the contention of the directors in the second paragraph of their answer.

Mr. Thompson—Yes.

The Master—Where they aver, after admitting that they are members of the Board of Directors of the First Church, etc.—where they aver that, by virtue of said office, they are Trustees under the Deed.

Mr. Thompson—Yes. It cannot possibly be maintained, I think I can convince Your Honor, as a matter of law. I do not think that that is a safe view at all. It is not a view that I can imagine any court following legal principles as distinguished from sentiment adopting, and I think that I shall be able to show Your Honor that that is so. The only way out of this situation is to follow the intention of Mrs. Eddy and the advice she got, because it is sound advice. She having executed a deed which now turns out to be a charitable trust, and delivered it, and the people having taken title under it,

she could not possibly, by any act of herself, or any acquiescence of the beneficiaries, or even under an act of the Legislature, change the number of those trustees or their functions; and that has been settled since the Dartmouth College case, and it has been settled by the case of Cary Library v. Bliss, in this Commonwealth, and in a great number of other cases, all of which decide that it is beyond their power to alter the terms in any respect, particularly in regard to the number of trustees. That is what they tried to do in the Dartmouth College case, and in the case of the Cary Library v. Bliss, which was a memorial library out in Lexington, where everybody interested assented, except one, in writing.

The Master—That is, without a reservation of power in the deed.

Mr. Thompson—Without a reservation of the power in the deed. There is no such reservation here, and it cannot be done.

The Master—There, again, you are at issue with the directors.

Mr. Thompson—Yes, I am certainly at issue with them. I do not deny that—very much at issue. I never heard it seriously suggested by counsel in court that it could be done, that a settlor, without reserving the power of alteration, could merely by a change of mind—

The Master—Oh, no; they say that there are reservations of power in this deed.

Mr. Thompson—Very well. That is a matter of construction of the deed, and I say that there is no such reservation in the deed at all, in the deed of Sept. 1, 1892, which is what we are talking about.

Mr. Whipple—They have not claimed any reservation there.

Mr. Thompson—Yes, the Governor has a curious theory that by the use of the word "directors" there, having described four people as trustees, and conveyed to them as trustees, and then having also described them as directors, and conveyed to them and their successors in office, she meant that if she ever increased the number to five, six or seven, they would become joint tenants, just as the four were originally.

The Master—He makes the argument that there are reservations in the deed more strenuously than in regard to the later deed of 1898.

Mr. Thompson—With which we personally in this matter have nothing to do.

The Master—With which you are not concerned, but I understood that he made it.

Mr. Thompson—He made it, and I think on the ground that I stated, that it is a conveyance not to four people, but to four directors, and that by using the word "directors" Mrs. Eddy meant that if she ever increased the number of those directors, ever founded a church and increased the number, the additional directors,

whether or not successors in office under the terms of this deed, which, of course, they could not be, should somehow or other become joint tenants as trustees of the real estate in fee simple. I know of no legal process by which that could be brought about under any known rules of law, and I propose to analyze it further if Your Honor thinks it important.

The Master—Yes; I want to know all about it, and I shall listen to your argument with great attention.

Mr. Thompson—Yes, sir. I have not reached that point in the argument yet, but I will take it up when I get to it.

The Master—Yes.

Mr. Thompson—In the first place, Mrs. Eddy, when she appointed this fifth director, did consult Mr. Samuel J. Elder. There cannot be any doubt about that. She says so in her letter of March 19, 1903, which appears in the record, Vol. III, page 686, in which she says:

"N. B. I regret that your name cannot appear as a member of the C. S. Board of Directors on their deeds. I have twice urged this question but Mr. Elder finds it cannot be legally so."

Now, that would seem pretty clearly to show that Mrs. Eddy recognized the distinction and understood it, and understood it under very competent legal advice. She called these people the C. S. Board of Directors; she says, "Your name cannot appear as a member of the C. S. Board of Directors on that deed."

The Master—It is not quite like the opinion of Mr. Elder at first hand.

Mr. Thompson—Not quite, no, sir. She says she has twice urged it on him, and he must have given attention to it. I confess I should not have thought it would have taken him very long to form and express an opinion on that topic.

We have heard a great deal here about acquiescence in the legal construction of instruments. There is a good deal to be said on that point here. All the parties interested from that time, from Sept. 1, 1892, down to the last conveyance, recognized that distinction between the four deed directors and the five By-Law directors. I will just call Your Honor's attention to some of the documents which corroborate that statement.

Mrs. Eddy's deed, dated Dec. 21, 1903, to Knapp, Johnson, Armstrong and Chase, (Exhibit 744). This deed corrects an error in a prior deed of Jan. 25, 1898, conveying two lots of land to the Church as a "corporation"; describes the Church as "a voluntary association of individuals," and states that the title to the Church property is "vested in a Board of Trustees named in the Deed of Trust" of Sept. 1, 1892.

The Master—What is the date of that—1898?

Mr. Thompson—No; that is 1903—

Dec. 21, 1903, Exhibit 744. It is made to correct an error in a prior deed of Jan. 25, 1898. It is Exhibit 744. It describes the four grantees as "the present trustees known as the Christian Science Board of Directors under said Deed of Trust," of Sept. 1, 1892, identifying beyond question what Mrs. Eddy meant.

Mr. Whipple—Mr. Thompson, should I trouble you if I interrupt?

Mr. Thompson—No, I shall be very glad to have you.

Mr. Whipple—A chart has been made of all the deeds, one that is agreed upon, and if Your Honor cares to have it you could look at the different parcels.

The Master—Is there any objection?

Mr. Bates—No; I have seen it, Your Honor.

Mr. Whipple—You could look at the different parcels as they are spoken of. There is a sufficient description on each parcel to identify it by the deed. Am I not right in that?

Mr. Withington—Yes.

Mr. Whipple—Excuse me for interrupting.

Mr. Thompson—Yes. I have a copy of that from which I was going to call His Honor's attention to the same thing. Perhaps I can find it here. I don't lay my hand on it. As a matter of fact, you will find that beginning down in the right hand corner, where it says, "Original church site," and passing right around the entire property, you will find that every one of the original deeds to all of that were made to the four, and that the distinction was recognized between the four and the five. There is one case where a second deed was made, I think, to the five; but I have enumerated most of those deeds in my brief, and I rather prefer to take it up in the order in which I have it here rather than the order in which Mr. Whipple has it in this document. The deed which Exhibit 744 was intended to correct is Exhibit 743.

Mr. Withington—That is page 693 of the printed record.

Mr. Thompson—Yes. The first reference, to Deed 744, is column 3, page 693; referred to again on page 694, columns 1 and 2.

Mr. Whipple—The exhibits that are being spoken of are the ones fronting on Falmouth Street H and I, the old Publishing Society site, and then at the bottom you will see Exhibit 743, 744, and 792.

The Master—Well, those are right, are they?

Mr. Whipple—Those are right, yes; and they are confirmatory deeds, supplementary deeds, to Dec. 21, 1903.

Mr. Thompson—Jan. 25, 1898.

Mr. Whipple—No; they are the confirmatory and the supplementary ones.

Mr. Thompson—That is right. Perhaps Mr. Withington would be kind enough as I read these deeds to point out to His Honor on that plan what lots they refer to, will he? As I refer

to these deeds would you be kind enough to point out what lots shown on your plan they cover?

The Master—Perhaps I can follow them myself.

Mr. Thompson—Very well. I wrote this brief before I had ever seen this document. I may have left out some of the deeds, I think I have—because some of them were put in later. In that deed the four grantees are described as I have stated, and a new duty is imposed upon them, of building a new church edifice, which it is agreed they have done. The document is referred to in Volume 3, page 695, column 1. Mr. McLellan had been a director since Feb. 7, 1903, but he was not named as a grantee in that deed. In other words, Mrs. Eddy at that time, and Mr. Elder, and whoever drew these deeds, the lawyers involved, recognized the distinction between a deed director who was a trustee and nothing more, and a By-Law director, who may or may not be an officer of the Church. That depends on different considerations.

The next document to which I desire to call Your Honor's attention is Mr. Abbott's deed of May 11, 1904, to Knapp, Johnson, Armstrong and Chase, Exhibit 745, (volume 3, page 696, columns 1 and 2.)

Mr. Whipple—Lot 25.

Mr. Thompson—Lot 25.

Mr. Whipple—Over on St. Paul Street.

The Master—I have it.

Mr. Thompson—It says:

"As they are the Christian Science Board of Directors, upon the trusts but not subject to the conditions mentioned in the deed creating said Board . . . dated Sept. 1, 1892."

Now, you see the fifth director, although in existence under the By-Laws, was not recognized by Mr. Abbott at that time as a director under the deed or holding an office created under that deed, and was not mentioned, and the conveyance was not made to him.

There was a new condition inserted on that trust. There are slight deviations in these trusts under which the original four have come to hold different subsequent parcels of land. The variation there was "the further trust" that "no new tenet or by-law shall be adopted nor any tenet or by-law amended or annulled by the grantees unless the written consent of" Mrs. Eddy . . . "be given therefor," or unless the Executive Members by a two-thirds vote "decide to do so."

Mr. Whipple—May I call Your Honor's attention to that? Although it was said that the Executive Members at that time hadn't any right to amend the By-Laws, here is a deed on that very condition: That the By-Laws existing in the Church should not be changed except by a two-thirds vote of the Executive Members. And that, Your Honor will notice, will appear in every deed. That will save my calling Your Honor's attention to it a little later.

Mr. Thompson—Certainly. And that the same inscription appearing on the present church edifice be placed on any new church edifice erected "on said lot."

Here Mr. Abbott has pushed the distinction in this deed a good deal farther than Mr. Elder did, for he speaks of the four Trustees under the Deed of Sept. 1, 1892, as distinguished from the five By-Law directors, as alone authorized to adopt new tenets or by-laws. We do not need to follow this extreme view in order to establish the distinction between the two bodies called by the same name.

The next deed is Mr. Noyes Whitcomb's deed of May 11, 1904, Exhibit 746. (Volume 3, page 696-697.) That conveyed to Knapp, Johnson, Armstrong and Chase. What lot is that, Mr. Withington?

Mr. Withington—Lot 26, on St. Paul Street.

Mr. Thompson—"As they are the Christian Science Board of Directors," under the deed of Sept. 1, 1892. Now, you see, there had been a fifth director for over a year at the time that deed was made—Mr. McLellan. He is not mentioned in it. The advice of Mr. Elder was still being followed, as was Mrs. Eddy's letter to Mr. McLellan forbidding him, practically, to act as a trustee under that deed, but only permitting him to act as a member of the other board, the By-Law directors, consisting of five people, and having wholly different powers, or larger powers, under the By-Laws.

"And with all the powers therein contained, including the power to appoint new trustees by filling vacancies in said board as in said deed expressed."

There you have got it put right in Noyes Whitcomb's deed, May 11, 1904, conveying this lot of land to Knapp, Johnson, Armstrong and Chase, "as they are the Christian Science Board of Directors," under the deed of Sept. 1, 1892, upon the same "further trust," but also "upon the trusts fully set forth in said deed" of Sept. 1, 1892. And, it goes on to say, "with all the powers therein contained," referring to the deed of Sept. 1, 1892, "including the power to appoint new trustees by filling vacancies in said board as in said deed expressed."

If anything could be clearer than that I cannot see how it could be. In other words, the mere fact that Mrs. Eddy called these four men trustees and then called them directors afterwards, does not alter the fact that they were trustees. You cannot make them any less trustees by calling them another name. They were four in number; they were trustees of a charitable trust. I assert that. That requires proof. That I propose to cite an authority for later, that this trust is a valid charitable trust. I assert it now without argument. Unless that is true of course the whole argument fails, the whole thing is void. But of course it was a valid charitable trust.

The Dartmouth College case and the Cary Library case take right hold of a situation like that, especially when interpreted in the light of her own special reference to it in the case of the fifth man, and at a time when she naturally would refer to it unless she overlooked it, and in the light of what her lawyers, her legal advisers, did for her, right along down the line.

I might say here that there has been a good deal of talk on the part of Governor Bates about consulting lawyers, but I may say that there is a good example for that; that Mrs. Eddy thought it proper, and properly so, of course, when dealing with legal matters to have good legal advice. She had it, I think, until recently. And so, too, all persons connected with this matter felt free to consult lawyers upon matters within the scope of a lawyer's opinion and judge's decisions, and not rely on sentimentality when discussing legal questions, or on the lawyers when discussing religious questions. I think that has been one difficulty with these directors.

Now, the next deed is Whitcomb's declaration of trust of April 29, 1905, Exhibit 748. (Volume 3, page 695, column 3; again referred to on pages 697-698; also, page 699, column 1.) That was certain real estate purchased by him at the request of the directors, reciting that Knapp, Armstrong, Johnson, and Chase, the four beneficiaries, are "the present members of the Christian Science Board of Directors, a board originally named in" the deed of Sept. 1, 1892. He omits McLellan.

Mr. Whipple—Those, if Your Honor please, are listed in three groups. The first parcels in the group are 19, 20, 21, 22, 23, and 24, on St. Paul Street. The next, or second parcel, in Whitcomb's declaration of trust, is 14, 15, 16, 17, and 18. Those are lots that front on Caledonia Street, now Norway Street. The third parcel is lots A, B, C, and D, which front on Falmouth Street. On these lots the respective exhibits of the deed are indorsed.

Mr. Thompson—I want to call attention to the fact that that declaration was assented to by the beneficiaries, and who were they? The four. Four people assented to that declaration. (Volume 3, page 697, column 1.) I will further state that that was drawn in Mr. Elder's office—that document was drawn in Mr. Elder's office.

Mr. Whipple—And all the lots that you have described so far are the lots that lie under the Publishing Society's buildings.

Mr. Thompson—I remember that that is so.

Mr. Whipple—Except H and I, the first ones.

Mr. Thompson—The first, the original deed, Sept. 1, 1892, did not deed land on which the Publishing Society is located.

Mr. Whipple—No; that was the original site of the church.

Mr. Thompson—That document was drawn in Mr. Elder's office.

The Master—That is the Whitcomb declaration of trust?

Mr. Thompson—That is the Whitcomb declaration of trust, and the assent of the beneficiaries thereto.

The Master—April 29, 1905? Is that right?

Mr. Thompson—Yes; April 29, 1905. Now, Mr. McLellan was omitted from that. Mr. McLellan later signed a petition for the appointment of Mr. Abbott as trustee, after Mr. Whitcomb's death. That appears on page 695, column 2, and on page 697, columns 1 and 2. But when he signs that petition he does not expressly claim membership in the body established by the deed of Sept. 1, but only in the body corporate, existing by virtue of the laws of this Commonwealth, which might have been the five directors just as much as the four directors under that deed.

I am not going to spend much time explaining away the circumstance that Mr. McLellan signed that petition, in the light of the definite admission right here in open court—and I thought it was a very fair thing for Mr. Abbott to do—that he never had heard of that letter of Mrs. Eddy's and the distinction never occurred to him. There is no occasion for my elaborately stressing that point. If a man is as honest as that, I think there is no occasion for getting him down and then tramping on him.

Of course, if Mr. McLellan meant by signing that petition, what there is not the slightest evidence that he meant, to claim membership in the Board of Trustees established under the deed of Sept. 1, 1892, all you can say is that he meant what could not possibly be legally so; he had an erroneous view of the law. But the difficulty is, the real truth is, that he did not have any view of the law one way or the other, and neither did his counsel.

Now, the decree is entirely silent on this subject of the identity of the beneficiaries. (Volume 3, pages 698-699.) Mr. McLellan got into the bond of Mr. Abbott, as an obligee of that bond. (Exhibit 749. Volume 3, page 699, columns 1 and 2.) And in Mr. Abbott's deed of the property, of June 1, 1914 (Exhibit 750)—now what lot is that? That is mentioned on your sheet there, isn't it?

The Master—Lot D.

Mr. Thompson—Yes. He includes Mr. McLellan as a grantee and member of the Board of Directors. Well, I think that perhaps he was building a little wiser than he knew there. He didn't know anything about it; he said so, but he can be assisted to this extent. He was required by the terms of the sixth clause of his trust instrument to convey "to such persons or corporations . . . as the said Christian Science Board of Directors shall in writing direct."

Just which directors joined in the vote of May 28, 1914, requesting him to convey, does not appear. (Volume 3, page 700, column 2.) But it may be

presumed that it was the only body that had a right to join in that vote, or pass that vote, namely, the four, and the request they made was ambiguous—"to convey to the Christian Science Board of Directors." Well, at that time there were two different Christian Science Boards of Directors, the trustees and their successors, and the five by-law directors, whom Mrs. Eddy supposed were church officers.

Mr. Abbott may well have been excused for not knowing or caring which board was intended, and conveying to the by-law directors. Of course, one consequence is that the title of the land up there is in rather bad shape, and I presume before we get through a bill for instructions or a bill to quiet title will have to be brought to undo some of these blunders that have been made, but that is not quite so serious as some that Mr. Bates now wants Your Honor to make in this case. Mr. Abbott very frankly said (Vol. 3, p. 700, columns 2 and 3), "that he did not realize that distinction existed and never saw the paper—never saw the letter of Mrs. Eddy or heard of Mr. Elder's advice to her" (p. 700, column 2).

The next deed is the Metcalf deed, to Knapp, Johnson, Armstrong, and Chase, of Oct. 23, 1896. (Exhibit 788, Vol. 3, p. 731, columns 1 to 3.) Now, Mr. Whipple, what lot does that convey?

Mr. Whipple—That is lot K, on Norway Street.

Mr. Thompson—That is the deed which is referred to in Exhibit C, which is annexed to the bill in this case. Your Honor will remember Exhibit C is a curious sort of document. It is not exactly a conveyance, but attempts to declare a trust on a previous conveyance.

Mr. Whipple—That is erroneously described in one deed. So as to identify it, Mr. Withington will state what it is.

Mr. Thompson—That is the one referred to in Exhibit C.

Mr. Withington—The lot is described in the deed, in Exhibit 788, as Lot A; but by reference to the deed by which the property was transferred to Whitcomb it appears that it was Lot K, and Mr. Buffum and I are both in agreement that that Lot A description in the deed Exhibit 788 is an error and should be Lot K.

Mr. Thompson—Does the conveyancer's name appear on the back of that deed? Who did that job?

Mr. Withington—That I am unable to say.

Mr. Whipple—That was in 1896.

Mr. Thompson—October 23, 1896, Exhibit 788, Volume 3, p. 731, columns 1, 2 and 3.

Mr. Whipple—That is, that was a supplementary deed—

Mr. Thompson—Excuse me just a minute. This conveys to the grantees, and their successors and assigns, "as the Christian Science Board of Di-

rectors," and refers to their official capacity under Mrs. Eddy's deed of Sept. 1, 1892.

The Master—You are talking now about Exhibit C?

Mr. Thompson—No, sir; I am talking about the deed to which Exhibit C refers.

The Master—Oh, yes.

Mr. Thompson—There wasn't any fifth director at that time; Mr. McLellan had not been appointed and the by-law had not been passed. Exhibit C itself removes all doubt as to the capacity in which the grantees were intended to receive the land. The deed of Oct. 23, 1896, establishes no new trusts; and the validity of the attempt in Exhibit C to impose new trusts may well be doubted. It is immaterial whether that is valid or not; but it is perfectly plain from the terms of Exhibit C that that deed of 1896 was intended to convey to the four trustees under Mrs. Eddy's will as such.

Mr. Whipple—You mean deed?

Mr. Thompson—I mean the deed of Sept. 1, 1892.

The Master—Well, 1896—that was before the by-law providing for five directors?

Mr. Thompson—Yes. Now, I have not covered in my brief and I have not referred to all these lots of land, and the reason is that at the time I made this memorandum, that document, that plan of Mr. Whipple's had not been completed. I understand that he has the remaining deeds and will undertake to identify them, or Mr. Withington will, or Mr. Buffum, or some one, so that Your Honor will have a complete list of these conveyances of the land. You will see that the conveyances were all to the Christian Science Trustees under the deed of Sept. 1, 1892.

Mr. Whipple—They will be available in print tomorrow, I think.

Mr. Thompson—I think that inasmuch as you have made yourself responsible for putting them in, I will let, when the time comes, Mr. Withington state the rest of them that I have not had a chance to state.

[Adjourned to 10 a. m. Wednesday, Sept. 10, 1919.]

THIRTY-SECOND DAY.

Room 424, Court House, Boston, Massachusetts.

Sept. 10, 1919, 10 a. m.

Closing Argument of William G. Thompson, Esq., in Behalf of the Defendant, John V. Dittmore, Resumed

The Master—Are we ready?

Mr. Thompson—I think so. If Your Honor please—

The Master—It occurs to me to ask, just to be sure that I have all the

pleadings in the case, whether anybody has filed any replication?

Mr. Thompson—I doubt it, sir. Mr. Whipple would know about that. Did you file a replication, Mr. Whipple?

Mr. Whipple—I think that, relying upon the recent statute, we thought that a replication was not necessary.

The Master—It is not necessary after a certain date in Massachusetts, but I was not quite sure when that date was.

Mr. Whipple—Well, I have understood since then that the statute had not gone into effect, so that probably it will be necessary to file a general replication, nunc pro tunc. Did you file one in your case?

Mr. Thompson—I do not think so.

Mr. Whipple—I think that possibly that should be done.

Mr. Thompson—I think also, in view of the disclosure of evidence made in this case of Mrs. Eddy's letter of March 19 to Mr. McLellan and of the nature of the deeds through a considerable course of years, carrying out the distinction there made by her, we shall desire to amend our answer to conform to our present contentions. I do not suppose that we shall have the slightest difficulty in doing so, so far as Mr. Whipple is concerned, and, so far as Governor Bates is concerned, I believe that he will not object. At any rate, before Your Honor's report is made, we shall probably want to put our answer in shape to meet this evidence to which I have referred in some remarks that I have already made.

The Master—You might let me know at some time whether you do or do not file a replication.

Mr. Thompson—Certainly.

The Master—I think that it is always useful, at the beginning of a report, to state on what pleadings the case was heard.

Mr. Thompson—We will do that. We may have filed one already; I am not sure. If it was done it was done by some one in my office, and I will find out about that.

The Master—I hardly think that it is necessary, but still I am not sure about that date.

Mr. Whipple—In that connection may I say that it was called to my attention the other day in another case by one of the justices of the Supreme Judicial Court that the statute which had been passed relieving parties from filing further pleadings beyond the answer in a bill in equity had been suspended in its operation by subsequent operation. While I have not looked that up—

Mr. Thompson—Yes, that is true.

Mr. Whipple—to see, Mr. Thompson confirms the statement that the justice made. So that, perhaps, as a technical formality, a general replication should be filed. That will be the form of the legislation.

The Master—I thought that it would be well to mention it to counsel. They sent me copies of all the other plead-

ings, but naturally would not send a copy of a replication, but it might be well for me to know whether there is one or whether there is not one.

Mr. Whipple—May I also add at this time, if you do not mind, Mr. Thompson—

Mr. Thompson—No.

Mr. Whipple—that it will be quite likely to be necessary for us to amend the bill in particulars to meet this unexpected and entirely unknown situation with regard to the deeds and the Manual and the tenure of office of the director-trustees. The fact, if it should develop that it is a fact, that the tenure of office of the director-trustees—

The Master—Would it be well to fix the time within which that shall be done?

Mr. Whipple—It will be perfectly agreeable to us if you do fix a limit.

The Master—We want to get all the formalities duly complied with so as not to have any trouble later on by reason of the—

Mr. Thompson—I would suggest that this whole thing ought to be done very shortly. In the first place, the rules of the master amended; in the second place, the bill amended; in the third place, Mr. Dittmore's answer, and, if the directors desire to amend their answer, that amendment should be made, and replications filed. Those things appear to be required technically to put this case on a basis where Your Honor can make a report which technically can take effect, and I think that the quicker it is done, the better—perhaps in a week's time.

Mr. Whipple—We will file our amendment within a week from today, that is, on or before Wednesday next.

The Master—On or before Wednesday, Sept. 17, is it?

Mr. Whipple—Yes, Your Honor.

The Master—Shall we have it understood, then, that it is agreed that all the necessary amendments are to be made on or before Wednesday, Sept. 17—amendments and further pleadings, if any?

Mr. Thompson—We would like to see the amended bill.

Mr. Bates—Of course, if Your Honor please, if the plaintiffs desire to amend their bill and submit it to us, there may be no objection to it, but it may necessitate our amending our answer; and therefore we would like to have time enough to amend our answer if they amend their bill.

The Master—I suppose that that is undoubtedly true.

Mr. Thompson—I think, then, that perhaps it would be best to leave it that everybody will do the best he can, realizing that it ought to be done as early as possible, in view of the situation.

The Master—I have found sometimes that it assists to have a date fixed.

Mr. Thompson—It would assist Mr. Whipple, perhaps, as he has to go along with the amendment to his

bill, but it would hardly assist me to be required to file an answer on the same day that he files his amendment to his bill. I suppose that some little time ought to be allowed for me to answer the new bill. I should be willing to do it within two days after he files his amended bill.

Mr. Whipple—Suppose you say two days after we file our amendment?

Mr. Thompson—Well, all right.

Mr. Whipple—So that if we can get our amendment in within less time—

Mr. Thompson—That will be agreeable to me. That will make me stay in Boston, but I am willing to do so.

Mr. Whipple—There are other exigencies which may make it necessary for you to stay.

Mr. Thompson—It looks as if that might be so.

The Master—Then will you continue, Mr. Thompson?

Mr. Thompson—Now may I proceed, sir?

The Master—If you please.

Mr. Thompson—This morning I have received this document in very convenient form, called "Plan of Properties and List of Deeds." It contains several deeds that I have never before seen, to which attention should be called, I think, at this time, in connection with the deeds to which I called Your Honor's attention yesterday, all in support of the proposition that Mrs. Eddy, having realized the legal effect of her conveyance of Sept. 1, 1892, under the advice of Mr. Elder, proceeded uniformly to carry out that advice in actual practice in all the conveyances which she made. Now, as this document is in evidence, it will not be necessary to read the deeds, but I think that it would conduce to clearness if before I pass on to an entirely different part of this case, some one who understands these new deeds and has had a chance to read them should state very briefly what lots on the plan that goes with them they apply to, and to whom the conveyance runs, and any other phraseology which may bear upon the proposition that there are here two boards of directors, wholly distinct, one the trustees under the deed of Sept. 1, 1892, which contains no provision for removal and no reservation of power to make further amendments, as we contend; the other, directors who derive their entire power from the By-Laws, and of course are amenable to the By-Laws in reference to dismissal; the proposition now under consideration being that, whether or not Mr. Dittmore was legitimately dismissed as a by-law director, there was no power in existence to dismiss him as a director under the deed, and he still remains that. Of course, the next proposition will be that he was not legitimately dismissed as a by-law director. But before proceeding along those lines I would like to ask Mr. Withington, who prepared this document with Mr. Bufum, of Mr. Bates's office, or one of them, to call attention now to the deeds that I did not have, and identify

on the plan the lots to which those deeds apply, and call attention to the grantees in those deeds, so that we may see that this entire property shown on the plan is conveyed to the four trustees and directors under the deed of Sept. 1, 1892, and that the five directors, namely, the by-law directors, have no title whatever to it, and no power to carry out any of the purposes mentioned in the deed of Sept. 1, 1892, but other powers and other functions, conferred wholly by the By-Laws.

The Master—I think that you covered yesterday the greater portion of the deeds shown on the plan.

Mr. Thompson—I did.

The Master—There must be only a few with regard to which anything remains open.

Mr. Thompson—That is true, and it is those few to which I desire to have attention called now.

The Master—Suppose that you indicate the deeds which you did not mention yesterday, deeds of lots which you did not mention yesterday, and then ask them to state—

Mr. Thompson—I think that Mr. Withington, who followed this, as I understand it, or Mr. Bufum, who followed my statement, and to whom I had to refer for information as to which lot the particular deed referred to, would be better qualified to point out the remaining lots than I. Will you do it, Mr. Withington?

Mr. Withington—If Your Honor please, I can do that, I think, in a short time, and Mr. Bufum, I think, at the same time, might present the deeds to the stenographer to be marked, the deeds which he has, my own copies having been cut up by the publishing house in making this present plan.

The Master—Well, suppose you proceed as rapidly as you can.

Mr. Withington—If Your Honor will refer to that plan on the first page, you will see that the original church site and Lots H and I of the property upon which the church at present stands, being that triangular lot, and Lot K, are the only ones upon which the deeds have been put in and commented upon. Of the property over on St. Paul Street, where the publishing house is now located, all of the deeds have been put in and commented upon. With regard to Lot 25 on this plan, it appears that the deed is dated June 6. That deed should be—

The Master—Of what year?

Mr. Withington—Of 1904. You find that printed in on Lot 25. That should be May 11, 1904, June 6 being the date of the recording.

The first deed which has not been put in, and which we desire to put in, is a deed dated March 3, 1904, from Mrs. Eddy to Messrs. Knapp, Johnson, Eastaman and Chase, as they are the present trustees known as the Christian Science Board of Directors under the deed of Trust of Sept. 1, 1892, and

it refers again to the original church site. It is a deed that comes in between the original deed of 1892 and the indenture which has already been put in, dated Dec. 19, 1906. That deed it has been agreed should be marked as Exhibit 792, and it conveys all rights to reconveyance, or rights of reversion to Mrs. Eddy, or her heirs, for failure to comply with the conditions of the Trust Deed of Sept. 1, 1892.

Mr. Whipple—Which lot is it?

Mr. Withington—The original church site.

[The deed described, from Mrs. Eddy to Knapp and others, dated March 3, 1904, is Exhibit 792.]

Mr. Thompson—To whom does the conveyance run, Mr. Withington?

Mr. Withington—The conveyance runs to William B. Johnson. Well, it has a recitation. You will find the deed upon page 4 of this index to deeds.

That deed also conveys the same rights of reversion or right of reconveyance for breach of condition to the lots H and I.

Mr. Thompson—Who are the grantees in those deeds?

Mr. Withington—The grantees are—

Mr. Thompson—Or the releasees?

Mr. Withington—Ira O. Knapp, William B. Johnson, Joseph Armstrong, all of Boston, and Stephen A. Chase of Fall River, "as they are the present trustees known as the Christian Science Board of Directors under said Deed of Trust hereinbefore referred to as dated Sept. 1, 1892."

Mr. Whipple—What is the date of the transfer?

Mr. Withington—The date of that transfer is March 3, 1904.

Mr. Bates—Will the stenographers mark that?

Mr. Streeter—Is that printed in here?

Mr. Withington—Yes, page 4.

Mr. Thompson—Now, why not have these documents marked as you speak of them?

Mr. Withington—Have you that deed?

Mr. Dane—Yes, that is being marked.

Mr. Withington—As Exhibit 792.

[Deed, Eddy to Knapp et al., March 3, 1904, is Exhibit 792.]

Mr. Whipple—Pardon me, is there any statement of the trust in that conveyance?

Mr. Withington (reading)—

"Nothing in this deed contained shall ever be construed as a waiver or as permitting a modification in any degree of any of the trusts and conditions as the same are now established and exist under and by virtue of the deeds above described, to wit: being the deed of Sept. 1, 1892, and the deed of Jan. 25, 1898, conveying Lots H and I to The First Church of Christ, Scientist, and the deed of Dec. 21, 1903, attempting to correct an error in that original conveyance of Jan. 25, 1898."

Mr. Thompson—And I observe in the first part of this deed of which you are now speaking, the statement: "Whereas I now desire to reaffirm all the trusts and conditions as the same are now established by the foregoing conveyances."

Mr. Whipple—Well, won't you read into the record the next sentence beyond what you have just read? "I do further declare," etc.

Mr. Withington (reading)—  
"I do further declare that nothing herein contained shall ever be construed as a waiver or as permitting a modification in any degree of the further trusts set forth in deed of Albert Metcalf to Ira O. Knapp and others dated March 19, 1903, and recorded in said Suffolk Registry of Deeds, Book 2886, Page 521, whereby it is provided that no new tenet or by-law shall be adopted nor any tenet or by-law amended or annulled by the grantees, unless the written consent of said Mary Baker G. Eddy, the author of the textbook, 'Science and Health with Key to the Scriptures' be given therefor, or unless at the written request of Mrs. Eddy the Executive Members of The First Church of Christ, Scientist, known and designated as 'Mary Baker G. Eddy's Church, The Mother Church, or The First Church of Christ, Scientist, in Boston, Mass.,' and whereby it is further provided that the same inscription on said 19th day of March, 1903, was on the outside of the church edifice shall be placed on any new church erected on said lot. But all said trusts and conditions as now established by all said deeds shall be performed and carried out as fully and effectually as though this deed had not been executed."

Mr. Krauthoff—If Your Honor please, in connection with what Mr. Withington has just read, I am constrained to believe there is an error in the printing there, because the language of that clause, "or unless at the written request of Mrs. Eddy the Executive Members of The First Church of Christ, Scientist, known and designated as Mary Baker G. Eddy's Church, The Mother Church, or The First Church of Christ, Scientist, in Boston, Mass.," is not complete; there is nothing to finish it out.

Mr. Thompson—I think you are quite right; I think it follows that they shall do it by a two-thirds vote.

Mr. Krauthoff—In the other deeds that clause goes on to say, "by a two-thirds vote of all their number decide so to do."

Mr. Withington—That was omitted in the certified copy which I got from the registry, and I think it is an error in the original deed. Isn't that so in your deed, Mr. Buffum?

Mr. Buffum—I didn't follow that because I didn't know which one you were reading.

Mr. Whipple—Well, that is the quickest way to settle it. Mr. Buffum, you have a certified copy right there,

and can see whether it corresponds with the printed copy. It is evidently another error of the scrivener.

[The deed is examined by Mr. Krauthoff and Mr. Buffum.]

Mr. Krauthoff—I am advised, if Your Honor please, by Mr. Buffum, that the deed is correctly printed.

The Master—Where did you think there was an omission?

Mr. Krauthoff—I thought that after the words, "Boston, Mass.," at the top of column three, page four, should appear the same phraseology that appears in the other deeds.

The Master—Well, just remind me what that is.

Mr. Krauthoff—"By a two-thirds vote of all their number decide so to do."

Mr. Thompson—Does anybody know who Fred N. Ladd was, who took the acknowledgment of that deed? I think that will indicate the law office from which it came.

Mr. Krauthoff—But the original deed is in the court room, if Your Honor please, and it is not in the original deed—the phrase I have just read.

Mr. Whipple—Well, it would appear to be an error or an omission of the person who prepared the deed.

Mr. Krauthoff—I am wrong; I thought it was the original deed. It is a certified copy. So we will have to see if we can locate the original deed.

Mr. Thompson—Perhaps Mr. Withington will be kind enough to proceed, inasmuch as we have now detected another gross error in conveying.

Mr. Withington—The next deed which we desire to put in—

Mr. Whipple—Just a moment. May I ask if the whole thing is not cured, Mr. Krauthoff, by this statement: "But all said trusts and conditions now established by all said deeds shall be performed and carried out as fully and effectually as though this deed had not been executed." That is, the trusts, especially that trust, under which no by-law of the Church could be changed without either Mrs. Eddy's written consent or the consent of a proportionate part of the Executive Members.

The Master—You might put it in this way. The error, the omission, is only in the recitation of the contents of other deeds.

Mr. Thompson—Yes, that is true.

Mr. Whipple—That is it.

The Master—And we have the other deeds.

Mr. Whipple—That is it.

Mr. Thompson—Exactly right.

Mr. Krauthoff—Mr. Whipple asked the question of me, and it is one that I would prefer not to answer.

Mr. Whipple—Well, His Honor has made a suggestion.

Mr. Thompson—It is all taken care of; it doesn't require any further comment.

Mr. Whipple—The significance of the

deed is that the Executive Members are still recognized in the deed and their assent was made a condition of the conveyance, here in 1904. That is why we are putting them in—one reason.

Mr. Krauthoff—To avoid any misunderstanding, if Your Honor please, I am not expressing any opinion on the subject matter of Mr. Whipple's question.

Mr. Thompson—Nobody thinks you are, Mr. Krauthoff, and it really takes up a lot of time.

The Master—I did not so understand you.

Mr. Thompson—Even if you were, it wouldn't be very important.

Mr. Withington—The next deed refers to the property which is designated as Lot J on the plan, being the lot next on Falmouth Street to the original church site. That deed is dated March 17, 1902, and runs from E. Noyes Whitcomb.

The Master—Are you sure about March 17?

Mr. Withington—It appears as March 19, but should be March 17. The date of recording is March 19.

Mr. Buffum—March 17 is correct.

Mr. Withington—March 17 is the correct date.

The Master—Very well.

Mr. Withington—That deed runs to Ira O. Knapp, William B. Johnson, Joseph Armstrong, and Stephen A. Chase, "as they are the 'Christian Science Board of Directors' under a deed and declaration of trust made by Mary Baker G. Eddy, dated Sept. 1, 1892, recorded with Suffolk Deeds, Book 2080, page 257."

There is no trust provision except as is perhaps inferred from the description of the grantees. The conveyance was made to them:

"To have and to hold the above released premises, with the privileges and appurtenances thereto belonging to the said Ira O. Knapp, William B. Johnson, Joseph Armstrong, and Stephen A. Chase, directors as aforesaid, their successors, heirs and assigns, to their use and behoof forever."

Mr. Thompson—That is plainly a conveyance to them on the trusts of the deed of Sept. 1, 1892—nothing more nor less.

Mr. Krauthoff—That deed should be marked Exhibit 793.

The Master—It is so marked, according to this printed record.

Mr. Krauthoff—Well, that is by agreement, but by the stenographer the original deed should be so marked.

[Deed, Whitcomb to Knapp et al., directors, March 17, 1902, is marked Exhibit 793.]

Mr. Withington—With regard to that same property, E. Noyes Whitcomb, on March 31—in the plan that appears as March 14, but that is an error, and should be March 31—1903, recorded in declaration of trust with respect to said property conveyed by "

has just been marked as Exhibit 793. That deed recites that—

"I, E. Noyes Whitcomb, the grantor in a certain deed given to Ira O. Knapp and others, dated March 17, 1902, and recorded," etc., "do hereby declare that the land conveyed by said deed was conveyed to the grantees therein, as they are the Christian Science Board of Directors upon the trusts, but not subject to the conditions mentioned in the deed creating said board given by Mary Baker G. Eddy to Ira O. Knapp and others, dated Sept. 1, 1892. . . . In addition to the trusts contained in said deed of Sept. 1, 1892, from Mary Baker G. Eddy this property is conveyed on the further trusts that no new tenet or by-law shall be adopted nor any tenet or by-law amended or annulled by the grantees unless the written consent of said Mary Baker G. Eddy, the author of the textbook 'Science and Health with Key to the Scriptures,' be given therefor, or unless at the written request of Mrs. Eddy, the Executive Members of 'Mary Baker G. Eddy's Church, the First Church of Christ, Scientist' (formerly called the 'First Members') by a two-thirds vote of all their number, decide so to do. And that the same inscription which is on the outside of the present church edifice shall be placed on any new church erected on said lot."

That should be marked Exhibit 794.

[Declaration of Trust, E. Noyes Whitcomb to Knapp et al., March 31, 1903, is marked Exhibit 794.]

Mr. Withington—The next deed refers to Lots 32 and 33, which appear in the plan as the corner lots on Norway and St. Paul streets, of the present church site. That is a deed of March 18, 1903, from Albert Metcalf to Ira O. Knapp, William B. Johnson, Joseph Armstrong, and Stephen A. Chase, "as they are the Christian Science Board of Directors, upon the trusts, but not subject to the conditions mentioned in the deed creating said board given by Mary Baker G. Eddy to Ira O. Knapp and others, dated Sept. 1st, 1892."

Then, after omitting the description:

"In addition to the trusts contained in said deed of Sept. 1, 1892, from Mary Baker G. Eddy—"

Mr. Buffum—Mr. Withington, may I interrupt you and ask if that is not the same as in the other deed, exactly, beginning "In addition thereto"? I think you will find it is the same.

Mr. Whipple—Well, let it be read; then we can determine. Just read it right in.

Mr. Withington—After I finish this deed I think the others I can agree are the same.

Mr. Buffum—Very good.

Mr. Withington (reading)—

"In addition to the trusts contained in said deed of Sept. 1, 1892, from Mary Baker G. Eddy, this property is conveyed on the further trusts that no new tenet or by-law shall be adopted them, to be amended or by-law amended or deeds that I did not give the grantees unless the

written consent of Mary Baker G. Eddy, the author of the textbook 'Science and Health with Key to the Scriptures' be given therefor, or unless at the written request of Mrs. Eddy, the Executive Members of The First Church of Christ, Scientist (formerly called the 'First Members') by a two-thirds vote of all their number decide so to do. And that the same inscription which is on the outside of the present church edifice shall be placed on any new church erected on this lot. To have and to hold the above released premises, with the privileges and appurtenances thereto belonging to the said grantees and their heirs, successors, and assigns to their own use and behoof forever, but upon the trusts fully set forth in said deed from Mary Baker G. Eddy, and with all the powers therein contained, including the power to appoint new trustees by filling vacancies in said board as in said deed expressed."

That should be marked Exhibit 795. [Deed Metcalf to Knapp et al., March 18, 1903, is marked Exhibit 795.]

Mr. Withington—The next deed refers to the property appearing on the plan as lots 34, 35, 36, and Lot L immediately adjoining Lot 33 on Norway Street.

The deed is dated March 19, 1903, and is from E. Noyes Whitcomb to Ira O. Knapp, William B. Johnson, Joseph Armstrong, and Stephen A. Chase "as they are the Christian Science Board of Directors," and after that I am sure that the wording which was read from the deed of March 7, 1895, just previously, is in exact accord with the wording of this deed.

Mr. Buffum—Mr. Withington, may I interrupt to call attention to the fact that in the deed itself the house numbers are stated rather than the lot numbers. You have stated the lot numbers correctly.

Mr. Withington—I think that perhaps it would be better to state that we have omitted the description in these copies of the deeds, it being agreed between Mr. Buffum and myself that the descriptions referred to the property as marked in this plan.

Mr. Buffum—This is Exhibit 796.

Mr. Withington—That is 796.

[Deed of March 19, 1903, Whitcomb to Knapp et al., is marked Exhibit 796.]

Mr. Withington—The next deed refers to the property as appears on the plan as Lot E on the corner of Falmouth and St. Paul streets, on the present church site. That is a deed of March 20, 1903, from Edward P. Bates to Ira O. Knapp, William B. Johnson, Joseph Armstrong, and Stephen A. Chase, "as they are the Christian Science Board of Directors, upon the Trust," and so forth, and the wording of that deed is precisely the same as the wording in these two previous deeds just marked. That deed should be marked Exhibit 797.

[Deed of March 20, 1903, Bates to Knapp et al., is marked Exhibit 797.]

Mr. Withington—The next deed refers to the property which appears as Lot F immediately next to the Lot E. That was a deed from Marcellus Munroe to Ira O. Knapp, William B. Johnson, Joseph Armstrong and Stephen A. Chase, "as they are the Christian Science Board of Directors, upon the Trust," and so forth. The wording of that deed is the same as in the previous three deeds. That deed should be marked Exhibit 798.

[Deed March 20, 1903, Munroe to Knapp et al., is marked Exhibit 798.]

Mr. Withington—The next is a deed of the property appearing as Lot G on the plan. That is a deed of March 21, 1903, from Joseph Armstrong to Ira O. Knapp, William B. Johnson, Joseph Armstrong and Stephen A. Chase, "as they are the Christian Science Board of Directors, upon the Trust," and so forth. The wording of that deed being precisely the same as the four foregoing deeds. That should be Exhibit 799.

[Deed of March 21, 1903, Armstrong to Knapp et al., is marked Exhibit 799.]

Mr. Withington—The next deed is the deed to the lot appearing as Lot Z on St. Paul Street, being the triangular lot in the present church site facing on St. Paul Street. That is a deed of March 30, 1903, from Gilbert C. Carpenter to Ira O. Knapp, William B. Johnson, Joseph Armstrong and Stephen A. Chase, "as they are the Christian Science Board of Directors, upon the Trust," and so forth, the wording there being the same as in the foregoing deeds. That should be Exhibit 800.

[Deed, dated March 30, 1903, Carpenter to Knapp et al., is marked Exhibit 800.]

Mr. Thompson—I note that these two last deeds were acknowledged, one before Malcolm McLoud, and the other before Percy E. Waldrige. My impression is that they were members of the firm of Kern & McLoud, a firm of conveyancers in Boston which has now been dissolved, which did business here for a good many years some ten years ago.

Mr. Withington—That, if Your Honor please, covers all of the properties upon which the present church stands and upon which the publishing house is located.

If you will refer to the plan you will see that there is certain vacant land between the church and the publishing house and Huntington Avenue; that is, lying between Falmouth Street and Huntington Avenue. There are three deeds in regard to that property which we would like to put in. You will find the first deed upon page 14 of this plan of deeds, beginning with the last paragraph in column three. That deed refers to the property bounded by Falmouth and St. Paul streets and Huntington Avenue.

Mr. Bates—Referring to what you have marked as Exhibit 801.

Mr. Withington—That should be

marked Exhibit 801, and is a deed dated April 15, 1909, running from Robert J. Richardson to Ira O. Knapp, William B. Johnson, Stephen A. Chase, Archibald McLellan and Allison V. Stewart, "as they are the Christian Science Board of Directors of Mary Baker Eddy's Church, The Mother Church, or The First Church of Christ, Scientist, in Boston, Mass."

Mr. Thompson—That makes no reference to the deed of Sept. 1, 1892, either in terms or otherwise. That appears to be a conveyance to the by-law directors.

Mr. Withington—The habendum clause is as follows:

"To have and to hold the granted premises with all the privileges and appurtenances thereto belonging, to the said Ira O. Knapp, William B. Johnson, Stephen A. Chase, Archibald McLellan, and Allison V. Stewart, as they are the Christian Science Board of Directors as aforesaid, and their successors and assigns, to their own use and behoof forever."

Mr. Whipple—Was there any trust declared with regard to that conveyance?

Mr. Withington—There is no trust. That is the only deed in reference to that property. That should be Exhibit 801.

[Deed, dated April 15, 1909, Richardson to Knapp, et al, is marked Exhibit 801.]

Mr. Whipple—I would like to say, if Your Honor please, that I do not find myself quite in accord with the suggestion that Mr. Thompson made that that is to the directors of the Church. I should think it was to the Board of Trustees under that original deed of Sept. 1, 1892, only they have got one trustee in there who was not a trustee. It is merely a difference in the point of view.

Mr. Thompson—That is one way of explaining it. I should say that it was equally possible, and it would fit in equally well with my argument, and I think it was a little more likely, that that was in the first place a conveyancer's error. We have talked here solemnly about the intention of the parties. Presumably the error was due to lack of any intention at all; but if there was any intention, I should suppose it was to convey to this new board created by the By-Laws. It certainly does not refer to the deed, and if it is as Mr. Whipple thinks, as it may be, why, they have added a trustee there which makes confusion worse confounded. I don't know what the result of that may be.

Mr. Whipple—May I suggest that if it is to the Church directors, or what have been called the by-law directors, if there were any, no trust is declared, because they never had received any property on any trust. They were not trustees; they were Church directors. There might be an implication that since they were Church directors, if they ever were that, or are now in the sense of the

law, that they held it in some way on behalf of the Church. I merely want to record my suggestion that I did not quite find myself in agreement with Mr. Thompson's view as first expressed.

Mr. Thompson—All I can say in reply to that is, as Mr. Whipple says, if there is a trust it must be by implication, and we should have to find the terms of it in the Manual.

Mr. Whipple—Well, does that say anything about directors holding any property in trust?

Mr. Thompson—I doubt whether the Manual as finally, after the twenty-eighth edition—I doubt whether the distinction is clearly enough made to justify that argument. But I do not consider it material for the purposes of my case. It is an interesting and very confusing situation, brought about apparently by the loss of this original notion as time ran on and by disregard of certain legal principles on the part of Mrs. Eddy's advisers.

The Master—Have you marked Exhibit 801?

Mr. Thompson—There is a passage in the Manual that does refer to this, which has some bearing on this matter.

Mr. Whipple—Section 2 of Article 34 of the Manual, "Designation of Deeds," may cover that.

The Master—That is marked, is it, 801?

Mr. Whipple—If Your Honor please, I added that Section 2 of Article 34 of the Manual, under the heading "Church-Building," may touch the matter.

Mr. Withington—The next is of another parcel of property designated as park land, appearing on the left-hand side of the plan, and is a deed dated March 20, 1909, from Mary H. Longyear, and runs to Ira O. Knapp, Stephen A. Chase, William B. Johnson, Archibald McLellan, and Allison V. Stewart, "as they are the Christian Science Board of Directors of Mary Baker Eddy's Church, The Mother Church, The First Church of Christ, Scientist, in Boston, Mass." The conveyance is to them, "as they are the Directors aforesaid, their successors and assigns forever."

That deed should be marked Exhibit 802.

[Deed, dated March 20, 1909, Longyear to Knapp, et al, is marked Exhibit 802.]

Mr. Withington—There are certain restrictions raised in that deed which were released by an instrument made June 6, 1911, by Mary H. Longyear, and that should be marked Exhibit 803. It is not set out in this plan of deeds. It did not seem to add anything.

Mr. Thompson—That name should be Mary B.; her name is Mary Beecher Longyear, not Mary H. There is a mistake somewhere.

Mr. Whipple—I think that must be in the copying of the deed, because it appears twice, and we gave certain copies of the deeds to the publisher.

Mr. Bates—It is in our copy of the deed "Mary H." I think you have it right. You say that is the one you have marked as Exhibit 803?

Mr. Withington—It is marked Exhibit 803, but it is not set out in this list of deeds.

Mr. Bates—You have one marked Exhibit 803 besides, haven't you?

Mr. Withington—No. Exhibit 804 is the next one. The exhibit number is given immediately after the recitation as to what the deed is, page 15.

[Release of restrictions by Mary H. Longyear, dated June 6, 1911, is marked Exhibit 803.]

The Master—Haven't you skipped one?

Mr. Withington—No. I gave it before reciting the deed, if Your Honor please, and you see, there being no copying of the deed done, there just appears the exhibit number in between the paragraphs numbered 3 and 4.

The Master—All right.

Mr. Withington—The next paragraph refers to another deed which is set out immediately below.

The next conveyance in regard to the park land is a deed of April 20, 1909, conveying a small strip of property and a brick wall. The deed is from Robert E. Buffum to Ira O. Knapp, Stephen A. Chase, William B. Johnson, Archibald McLellan, and Allison V. Stewart, "as they are the Christian Science Board of Directors of Mary Baker Eddy's Church, or The First Church of Christ, Scientist, in Boston, Massachusetts."

Mr. Thompson—That was acknowledged before Mr. Abbott, wasn't it?

Mr. Withington—That was acknowledged before Leon M. Abbott, on April 20, 1909.

Mr. Thompson—And the Mr. Buffum is the Mr. Buffum here present?

Mr. Withington—I think that is true, probably.

Mr. Thompson—So that that deed emanated, apparently, from the office of Messrs. Bates, Nay and Abbott?

Mr. Withington—That should be marked Exhibit 804.

[Deed, dated April 20, 1909, Buffum to Knapp et al., is marked Exhibit 804.]

Mr. Withington—There are three other deeds which we deem of enough importance to put in, which relate to, first, the Commonwealth Avenue property, which is held on certain trusts; secondly, the deed conveying property given under Mrs. Eddy's will.

The deeds as to the Commonwealth Avenue property are, first, a deed dated Feb. 12, 1898, from Mary Baker G. Eddy to The First Church of Christ, Scientist, in Boston, "a body corporate, trustee."

This conveyance "is also made for the purpose of transferring the title of said described real estate to said Church to hold for the objects and purposes mentioned in a certain declaration of trust to said



Church executed by me of even date herewith. To have and to hold the said remised premises with all the privileges and appurtenances thereunto belonging to the said Church and its successors forever in accordance with the terms of said declaration of trust, and I do hereby covenant with the said Church that I will warrant and defend the said premises," and so forth.

That should be marked Exhibit 805. That seems to have been omitted.

The Master—We can supply it.

Mr. Withington—If you will insert Exhibit 805 on your copy of this plan I think that will supply the deficiency. It is the deed set forth in column one of page 16.

Mr. Whipple—Well, it does not appear on the plan?

Mr. Withington—It is the deed set forth as Exhibit 1 on the list of deeds. That is Exhibit 805.

Mr. Thompson—What land is it—park land?

Mr. Withington—Commonwealth Avenue. No, it does not appear on the plan at all. It is the Commonwealth Avenue property.

Mr. Thompson—What is the declaration of trust that Mrs. Eddy refers to there?

Mr. Withington—That appears in the following deed, which is an attempted correction, which I will comment on just as soon as this is marked.

[Deed, dated Feb. 12, 1898, Mrs. Eddy to First Church of Christ, Scientist, "a body corporate, trustee," is marked Exhibit 805.]

Mr. Buffum—Did you state that that applies to the Reader's residence?

Mr. Withington—Yes, that applies to the Reader's residence, as referred to here in the declaration of trust.

Mr. Whipple—May I at this point call attention to the fact that there is a reference in the evidence to certain trustees of real estate, and when that reference was made the question came up and I asked Mr. Dane whether he thought they were the trustees of the Publication Society. I think his reply was that he did not know or could not reply to it then. Do you remember it, Mr. Dane?

Mr. Dane—I think I replied that they were not the trustees of the real estate referred to in this paper.

Mr. Whipple—It is clear that the trustees there referred to were the trustees named in the deed of Feb. 12, 1898. Am I not right?

Mr. Withington—The by-law which provides for the filling of vacancies on the Board of Trustees of the Church was passed on Feb. 10, 1898. This deed was given on Feb. 12, and the declaration of trust made the same day.

Mr. Dane—Well, it is clear, if Your Honor please, that the Board of Trustees referred to in that by-law was the Board of Trustees of the Publishing Society. That is shown conclusively by the evidence in the case, in the correspondence that occurred between

Mr. McKenzie and Mrs. Eddy, in which both Mr. McKenzie and Mrs. Eddy referred to that by-law, and the expression "Board of Trustees" in the by-law, and Mr. McKenzie was at that time a member of the Board of Trustees of the Publishing Society. And that was in connection with filling a vacancy that had occurred upon that board by the dismissal of Edward P. Bates as one of the trustees. That is my recollection of the testimony.

Mr. Withington—In reply to that, I should like to say that the evidence of Mr. McKenzie's correspondence with Mrs. Eddy shows that when Mrs. Eddy first asked that that provision, which appeared under the heading "Publishing Society" in the Manual, and provided for the approval, the unanimous consent of the First Members for the filling of a vacancy, that no reference was made to this other by-law which was then in the Manual. That provision under the heading "Publishing Society" was immediately changed, and in a subsequent letter of Mr. McKenzie he writes saying that he has found this other provision, and apparently mistaking that provision to mean the trustees of the Publishing Society, but doubted whether they still had the power to act without the action of the First Members. In consequence of that second letter, to remove any doubt, apparently, the provision which was made by the by-law of Feb. 10, 1898, disappeared from the Manual.

Mr. Whipple—Is this covered in your request for rulings?

Mr. Withington—I think so.

The Master—What is the connection between all that and this deed, Exhibit 805? I have not quite followed how you connect that with the exhibit which you put in.

Mr. Withington—If Your Honor please, I will refer to the page in the testimony.

The Master—The last deed that you put in was Exhibit 805, was it not?

Mr. Withington—Exhibit 805, dated Feb. 12, 1898.

The Master—Now, what is there in that deed that brings up all those matters that you have been talking about the last few minutes?

Mr. Withington—It refers in that deed to a declaration of trust made—

The Master—"Executed by me of even date herewith."

Mr. Withington—"Of even date herewith." And in the deed which follows that declaration of trust is set out. The deed that follows is an attempt to correct the deed Exhibit 805.

Mr. Whipple—But His Honor asked, what has that to do with what we have been discussing?

Mr. Withington—With Your Honor's permission, I will refer you to the page in the testimony where that by-law which we have been discussing was set out.

The Master—I remember about the by-law, but how does it come in in connection with this certain Deed of Trust?

Mr. Withington—As to what trustees are referred to in the by-law.

Mr. Whipple—As I introduced the subject, if Your Honor please, may I state that, when that reference came up, we were in doubt as to what trustees were meant, and we did not then have the deed creating these trustees and this trust? Now, finding this deed and this trust, we identify it with the one we were then discussing, which is referred to in the evidence on the page that Mr. Withington will give; and if Your Honor will open to our requests for findings and rulings, we can give you the statement there.

The Master—Oh, it is all in the Requests, is it?

Mr. Whipple—Yes, sir.

The Master—Very good.

Mr. Withington—On page eight, in the paragraph indicated as paragraph six, that is set forth there—

The Master—I see. That is just what I wanted.

Mr. Withington—Does Your Honor care—

Mr. Dane—If Your Honor please, in connection with this question, which seems to be one that is controverted, I would refer you to pages 556 and 557 of the record in support of the statement that I have just made as to our view of what Board of Trustees was referred to by the by-law. On those pages are set forth the correspondence that occurred between Mr. McKenzie and Mrs. Eddy in August of 1898 in connection with filling a vacancy on the Board of Trustees of the Publishing Society.

The Master—I see.

Mr. Whipple—Yes, but it subsequently developed that he was mistaken. Is that not correct? As his own letter showed.

Mr. Thompson—There is just one little bit of confusion that I think ought to be cleared up. This deed that you speak of, Exhibit 805, is dated in 1898. The deed that attempts to clear it up is dated 1905. I do not find here the declaration of trust of even date, namely, of 1898, referred to in the deed of 1905.

Mr. Withington—You will find the trust part of it set forth in the part of the deed appearing in the last half of column three on page 16 of that subsequent deed.

Mr. Thompson—Yes, but the separate paper, which was the declaration, is not here.

Mr. Withington—No, that is not.

Mr. Whipple—They did not put it in, because there was a recital of it in the corrected deed.

Mr. Thompson—That is what I wanted to find out, and I wanted to clear that up as we went along. It was a perfectly good reason.

Mr. Withington—That declaration of trust is, however, available.

Mr. Thompson—I assume that it is. It is of no consequence, however, if you have the gist of it in the next paper.

Mr. Withington—The next deed is

a deed of the same property, or is a declaration by Mrs. Eddy attempting to correct the deed to the same property, and is a deed dated July 7, 1905. It is as follows:

"Know all men by these Presents That Whereas I, Mary Baker G. Eddy, of Concord, in the County of Merrimack and State of New Hampshire, did on the twelfth day of February, one thousand eight hundred and ninety-eight, convey a parcel of land with a dwelling house thereon, being lot 10 on plan by Fuller and Whitney, dated February 10, one thousand eight hundred and eighty-six and recorded with Suffolk Deeds, Book 1713, between pages two and three, the grantee named in said conveyance being the First Church of Christ Scientist in Boston, Massachusetts, a body corporate trustee to be held on certain trusts set forth in a declaration of trust to said Church executed by me on even date therewith, and whereas it has now been brought to my attention that said grantee was a voluntary association of individuals the title to the Church property being vested in a Board of Trustees known as The Christian Science Board of Directors, which said Board is named in a deed of trust by me conveying land upon which is situated the edifice in which said Church worships said deed of trust being dated September 1, 1892, and recorded in Suffolk Registry of Deeds, Book 2081, page 251"—

Mr. Buffum—Page 257.

Mr. Withington—That is incorrectly printed here, then. It is printed page 251—

"and Whereas said Christian Science Board of Directors are clothed with the management and control of the affairs of the said Church, and their duties correspond to those of the officers of other churches referred to in Sec. 1 of Chap. 37 of the Revised Laws of the Commonwealth of Massachusetts and Whereas said deed of February 12 one thousand eight hundred and ninety-eight conveying said lot 10 was delivered to and accepted by said Christian Science Board of Directors, and said Christian Science Board of Directors have been in the actual possession and management of the property since the date of said conveyance and have been actively engaged in the administration of the trusts set forth in the declaration of trust hereinbefore referred to, and Whereas it was my intent in making said deed of February 12, 1898, to convey said lot 10 so that it should be held for the benefit of Mary Baker G. Eddy's Church The Mother Church or the First Church of Christ Scientist in Boston, Mass., and Whereas I now desire to make definite the description of the grantee named in the said deed and to declare afresh and to incorporate herein the trusts referred to in said deed of February 12, one thousand eight hundred and ninety-eight as contained in a certain declaration of trust executed by me on said date.

Now therefore, I, the said Mary Baker G. Eddy, in consideration of one dollar and other good and valuable considerations to me in hand paid by Ira O. Knapp, William B. Johnson and Joseph Armstrong all of Boston in the County of Suffolk and Stephen A. Chase of Fall River, in the County of Bristol, as they are the present Christian Science Board of Directors, the receipt thereof is hereby acknowledged, do hereby release, remise and forever quitclaim unto the said Christian Science Board of Directors, as trustees, their successors in said trust and assigns forever, the parcel of land hereinbefore referred to, being lot 10 on said plan for a more particular description of which reference is hereby made to said deed by me of February 12, 1898."

Then appears the declaration of trust:

"To Have and to Hold the said remised premises to the said Ira O. Knapp, William B. Johnson, Joseph Armstrong, and Stephen A. Chase, as they are the Christian Science Board of Directors, their successors in said trust and assigns forever, upon the following trusts, being the same trusts set forth in my declaration of trust dated February 12, 1898. 1. 'The First Reader' of said Church and each successive First Reader thereof forever shall have the use and enjoyment of said real estate free from all charge therefor, each so long as he or she may occupy and perform the duties of that position, provided however, that he or she shall not rent or lease said real estate, or allow it to be used or occupied for any purpose whatever than that of a home and residence of First Reader of said Church. 2. Said Christian Science Board of Directors shall forever keep said real estate in a good and proper state of repair and shall pay all taxes and other legal charges thereon in consideration of this trust and said conveyance and shall pay to me semi-annually a rental of two thousand (2000) dollars during my lifetime. 3. Hereby reserving to myself the right to make such changes from time to time in the terms and conditions of this trust as I may deem prudent for the promotion of the cause of Christian Science and to revoke this trust if the best interests of this cause shall in my opinion demand such action and to constitute new trusts, said changes, new trusts and said revocation to be made in writing signed by me and directed to said Christian Science Board of Directors and said Board of Directors shall thereupon execute and deliver such legal instruments, if any shall be necessary; to fully effectuate such changes or such revocation, as the case may be. 4. The acceptance of this trust and said deed of conveyance shall be deemed an agreement on the part of said Christian Science Board of Directors to hold said real estate upon the terms and conditions afore-

said and perform all things herein contained by it to be performed. In Witness Whereof I have hereunto set my hand and seal this seventh day of July in the year of our Lord one thousand nine hundred and five."

It was witnessed by Josiah E. Fernald and Calvin A. Frye.

An acknowledgment was taken by Josiah E. Fernald, Notary Public.

On the deed as recorded appears the following:

"We, Ira O. Knapp, William B. Johnson and Joseph Armstrong, of Boston, and Stephen A. Chase of Fall River, accept the foregoing deed upon the trusts and subject to the provisions thereof, and we acknowledge the truth of the recitals thereof including in particular the recitals concerning the delivery to us as trustees of the deed dated February 12th, 1898, and that our holding of the property thereby conveyed was upon the trusts set forth in this deed and was not adverse. Ira O. Knapp, William B. Johnson, Joseph Armstrong, Stephen A. Chase."

Recorded July 15, 1905.

Mr. Thompson—That was one of the dates to which I called special attention in my argument yesterday.

The Master—Yes.

Mr. Withington—That should be marked Exhibit 806.

[The deed of which the foregoing is a copy is marked Exhibit 806.]

Mr. Thompson, if I may correct you—

Mr. Thompson—Certainly.

Mr. Withington—This deed has not been put in evidence, but it was the deed attempting to correct the conveyance to lots H and I.

Mr. Thompson—Oh.

Mr. Withington—Which is very similar.

Mr. Thompson—I stand corrected. This sounded so much like it that I thought that this must be the one, but as you say that there is another one just like it, I now call attention to both of them.

The Master—What was the date of the one to which you called attention yesterday, do you remember?

Mr. Thompson—I will look it right up, sir, now.

Mr. Withington — That was a deed marked Exhibit 744, a deed of Dec. 21, 1903, from Eddy to Knapp.

The Master—Yes. Now, in this deed we have Mrs. Eddy and the four directors named, calling those four directors the Christian Science Board, some two years later, 1905.

Mr. Thompson—Yes, after Mr. McLellan had been two years a director. He has been deliberately omitted. This deed is of the utmost—

The Master—Deliberately? I do not know about that. He was omitted.

Mr. Thompson—I should say deliberately, and emphasize it. I should feel quite warranted in saying it. Your Honor remembers that that by-law, making five directors, had been promulgated by her in 1903.

The Master—Quite so. In drawing the deed the conveyancers may have forgotten about it.

Mr. Thompson—My impression is that they hardly could have forgotten, since it was only two years since she had had Mr. Elder's advice.

The Master—And the four trustees and Mrs. Eddy may have signed what the conveyancers put before them.

Mr. Thompson—After Mrs. Eddy had been advised by Mr. Elder that she could not put Mr. McLellan in the deeds, I should say, my impression is that you can hardly say that, in executing this deed, she forgot that advice so soon after having received it. I should say that it was extremely significant, and that it indicated that the Christian Science Board of Directors that had held title to the property were the four trustees and their successors under the terms of that deed, and not persons whom she attempted—and she never did attempt—to appoint successors to those four trustees by any by-law in the world. The by-law that made the fifth director was not an attempt to create a successor to the four; it could not be. It was an attempt, and a successful attempt, to create those four and one more a distinct body.

Well, is that all, Mr. Withington?

Mr. Withington—No. There is one more deed, which is a deed to the property conveyed under the will of Mrs. Eddy, and is a deed dated March 25, 1913, from Dickey, McLellan, and Fernald, Trustees under the Will, to The First Church of Christ, Scientist, in Boston.

"To Have and to Hold the granted premises, with all the privileges and appurtenances thereto belonging, to said The First Church of Christ Scientist in Boston, and its successors and assigns, in accordance with said Chapter 115 of the Acts of 1913, and as a part of the Trust Fund under the provisions of the will of the said Mary Baker G. Eddy, upon the trust set forth in the residuary clause of said will."

That deed being a deed of the property made after the enabling act, being Chapter 115 of the Acts of 1913, which is already in evidence, immediately following Mrs. Eddy's will, which is also in evidence.

Mr. Whipple—That is, they took no changes of deeding to trustees, either the Christian Science Board of Directors or anyone else, but deeded directly to the Church.

Mr. Withington—There is no exhibit number appearing in this list of deeds, but that should be marked Exhibit 807.

[The deed from Dickey and others to The First Church of Christ, Scientist, in Boston, dated March 25, 1913, from which the foregoing extract is read, is Exhibit 807.]

Mr. Thompson—Now, if nobody desires to call attention to any further portions of these deeds I will resume my argument.

Mr. Krauthoff—If Your Honor please, in regard to these deeds, in opening the case Mr. Whipple asked that Exhibit 2 be reserved for the deed of Sept. 1, 1892, being Exhibit B attached to the bill of complaint, and that Exhibit No. 3 be reserved for the Metcalf deed, being Exhibit 3 attached to the bill of complaint. I noticed that Mr. Withington proceeded on the theory that Exhibits 2 and 3 had already been offered in evidence. They have not been formally offered.

Mr. Withington—I think they have.

Mr. Krauthoff—Well, to avoid any question I merely call your attention to it, so that if you want to offer them—

Mr. Withington—Well, it is so recited. If not, I am sure we will all agree that they should be formally marked.

The Master—If they have not been marked they ought to be marked.

Mr. Krauthoff—I am that particular about it because Mr. Whipple said he wanted the original deeds offered in evidence.

The Master—Have you since offered them?

Mr. Krauthoff—Well, he wanted to offer them, and since then they have been produced, I believe, and Mr. Withington—

Mr. Withington—Then we might have them marked as Exhibits 2 and 3, which are the exhibit numbers which have been reserved for those two deeds.

The Master—Where are they? You better mark them now, before you forget about it.

Mr. Krauthoff—The original deeds are not here, but we may understand that they are offered in evidence.

Mr. Thompson—Well, is that matter satisfactorily cleared up, Mr. Krauthoff? If it is, and nobody else wants to say anything further, I would like to say a few words.

Mr. Whipple—I will accept your implied invitation to comment further upon the evidence, although I should not have ventured unless you did. Undoubtedly Your Honor has noticed it. In connection with the elaborate argument yesterday as to reservations in deeds, in the deed prepared in 1898, or at least in the declaration of trust in 1898, Feb. 12, Mrs. Eddy showed that she knew how to reserve rights, and to change trusts, as shown by the paragraph numbered 3 of that declaration of trust, which she made as of that date, which is repeated in Exhibit 806, the deed of 1905. It appears at the bottom of page 16 of these deeds:

"3. Hereby reserving to myself the right to make such changes from time to time the terms and conditions of this trust as I may deem prudent for the promotion of the Cause of Christian Science and to revoke this trust if the best interests of this Cause shall in my opinion demand such action and to constitute new trusts, said changes, new trusts, and said revocations to be made in writing signed by me and di-

rected to said Christian Science Board of Directors, and said Board of Directors shall thereupon execute and deliver," etc.

That was in a paper drawn almost contemporaneously with the one we are considering, and is as fine a statement, as fine a method and statement of how to reserve the right to modify or revoke a trust, as could well be seen.

Mr. Bates—It was drawn seven years later, if Your Honor please, and by different attorneys.

Mr. Whipple—If you will pardon me, you have not observed that the declaration of trust is the one which was put in in February, 1898, and is repeated in this deed.

Mr. Bates—There is nothing that appears until 1905.

Mr. Whipple—If you will pardon me, you have not read the deed. You will find that they are repeating the declaration of trust of Feb. 12, 1898.

Mr. Bates—Which Mr. Withington said he could not find.

Mr. Whipple—He said it was here, and, that being so, we will offer it. Where is the original declaration of trust? Will you produce it, please? You have it, haven't you, Mr. Buffum?

Mr. Buffum—No, I have not.

The Master—Why isn't this enough: "being the same trusts set forth in my declaration of trust dated Feb. 12, 1898?"

Mr. Whipple—Because Governor Bates cannot seem to see that the paper that he is reading is the one that was really dated in February, 1898. Having read it carelessly, he seems to think that it is a declaration she made in 1905. But if it is clear to Your Honor perhaps it won't need any further elucidation.

The Master—Well, that is true in one sense, but I understood Mr. Withington to say that he had a declaration of Feb. 12, 1898, and did not offer it because it was recited and repeated here.

Mr. Whipple—Mr. Withington says he has seen it in the documents which the directors had, and I would like to have it produced.

The Master—If there is any question about it, better have it produced. I supposed that all parties agreed that that was truly recited.

Mr. Whipple—It was so clear that we did not think there was any need to have it twice in the record.

Mr. Thompson—Well, there have been many documents which have been alleged to have been in the directors' possession, and that have been called for.

Mr. Whipple—Let us have it; because if upon such an important matter such an egregious error or misstatement could be made, let us put it beyond its happening again. Can't you produce it?

Mr. Bates—Mr. Buffum says he hasn't seen it and doesn't know of any such.

Mr. Withington—It is in one of the

bound volumes, in Mrs. Eddy's handwriting, and I am sure Miss Warren can find it in the index.

Mr. Bates—If we can find it we will certainly be very glad to bring it in and see whether or not it confirms your statement.

Mr. Whipple—I make no statement. See whether it confirms the statement in the deed signed by Mrs. Eddy. That is what this paper says—"being upon the same trusts."

Mr. Bates—That might be, and yet not be worded in the same manner in which it is worded in this deed.

The Master—I think I had better assume, until the contrary is shown, that the recitation here is a correct recitation of so much as is necessary of the declaration of trust of 1898.

Mr. Whipple—I think it is so important we might well send for it.

Mr. Bates—I do not know that the deed warrants that, Your Honor. This is a question of the way in which it is expressed, not a question of the effect of the trust.

The Master—No doubt that you will look it up.

Mr. Bates—We will try to find it.

The Master—Before you get through we will have it here.

Mr. Thompson—It seems to me that when a member of the bar like Mr. Withington states that he has seen it in the possession of the other side there ought not to be any talk about it, to look it up, but it ought to be here. I speak with some feeling because I have called for several papers in this case which I have every reason to believe are in their possession, and they have not produced them, and largely because Miss Warren could not find them at a convenient time. I suggest now we take a recess.

Mr. Bates—Let me state, Your Honor, in order that there may be no misunderstanding, that every paper that we have been able to find that has been asked for, we have produced; and Mr. Thompson's assertion that there were other papers that were not produced is absolutely contrary to what the actual facts are.

Mr. Thompson—The most that I can say in reply to that, and remain as courteous as I desire to, is that you probably believe it to be true. That it is true, I absolutely deny. I am morally certain that it is not true. I now ask to have a recess.

The Master—We will take a few minutes' recess.

[Short recess]

### Closing Argument on Behalf of Defendant Dittmore, by William G. Thompson, Esq., Continued.

Mr. Thompson—If Your Honor please, I once or twice referred yesterday to Mrs. Eddy's letter to Mr. McLellan as being a letter of February 7. It is not. It is a letter of March 19, 1903. The reporters have got it right but I made a slip of the

tongue and misdated it about a month and a half. It was a contemporaneous letter.

I was arguing yesterday that Mrs. Eddy saw the point, took legal advice, accepted legal advice, and acted on it consistently from beginning to end. You cannot find a single deed here from Mrs. Eddy in which that distinction was ignored. You can find one or two deeds emanating from—I think the most important one—Mr. Abbott's office, who very frankly says he did not understand the distinction, in which the distinction is ignored. But you cannot find any deed of Mrs. Eddy in which that distinction is not made. And it was made, not merely on legal advice, but on sound legal advice, as I shall endeavor to show before I am through this morning.

It is too clear now, it seems to me, to be doubted, that Mrs. Eddy conveyed to these men on a charitable trust, as trustees; that the designation "directors" was an additional designation, and did not alter their legal relation to the trust and to the beneficiaries as trustees of a charitable trust.

Now, the beneficiaries, if you look at the terms of the deed, were not the Christian Science Church, which had not then been organized, but were the persons who might worship in said Church—an indefinite body, which could never be ascertained and cannot be ascertained today, and whose assent as a body could never be obtained to any change.

The next proposition is that the fact that in the period from Sept. 1, 1892, to Feb. 7, 1903, many new functions and duties were from time to time conferred or imposed upon the four trustees and their successors under the deed of Sept. 1, 1892, by By-Laws; and after Feb. 7, 1903, upon them or their successors and the additional fifth or by-law director and his successors, cannot alter or affect the legal status of the original trustees under the deed of Sept. 1, 1892, or of their successors elected under the terms of that deed.

Now the first item of proof of that is that the trust established by the deed of Sept. 1, 1892, was a charitable trust.

It is not necessary, in view of Chase v. Dickey, and in view of a certain statute that was passed after it, to labor that point much. There was a doubt expressed by the Supreme Court in Chase v. Dickey whether the religion of Christian Science could legally stand upon the same basis as the religion of any other Christian sect, and an inquiry was ordered by the Supreme Court into the elements of that religion for the purpose of determining that point, the Attorney General having taken the position that it was against public policy. No such inquiry was ever held, probably because of the statute which was passed shortly afterwards authorizing the Church to take the bequest under Mrs. Eddy's

will, Chase v. Dickey being concerned with the validity of the provisions of Mrs. Eddy's will.

Now, of course Mrs. Eddy, as far as actual intention goes, intended these people to be trustees, and obviously intended that it should not be a private trust, but a trust for the benefit of other people, for their spiritual and other welfare, having all the elements of a charitable trust, unless there was something contrary to public policy in the religion itself, which turns out not to be the case.

She says in her by-law later adopted: "The Christian Science Board of Directors owns the church edifices with the land whereon they stand, legally; and the church members own the aforesaid premises and buildings beneficially."

That was a slight and pardonable inaccuracy. The members who own the church building beneficially were not the church members who, under the deed of Sept. 1, 1892, were, or might be, the congregation of such church, whether subsequently they became the church members in the true sense of that term or not. But it is near enough to an accurate legal statement to serve for present purposes.

Mr. Whipple—What is that exhibit?

Mr. Thompson—That is one of the by-laws; Article 24, Section 2, of the By-Laws.

Now, in Chase v. Dickey, 212 Mass., 555, it is important to note that the Court was not called upon to consider the question of distinction between the board of four directors, established by the deed of Sept. 1, and the board consisting of the same four people and one additional member, established by the By-Laws. The Court gave no intimation of any view on that subject, and was not called upon to do so. The point was neither presented by the pleadings nor argued by counsel, and passed in the technical phrase sub silentio, and, therefore, the case has no bearing, affords no light upon the existence or non-existence of the distinction for which I am now contending.

But the Court did consider certain bequests in Mrs. Eddy's will, as I have just stated, and those bequests were—the language is as follows:

"for the purpose of keeping in repair the church building—"

and then there is a slight omission which is not essential—

"and any building or buildings which may be by convenience or necessity substituted therefor."

That was one trust. And the other was,

"for the purpose of more effectually promoting and extending the religion of Christian Science as taught by me."

Now, the question in that case was, whether, assuming the directors, whichever board it might be, to be similar to deacons and churchwardens, they could take a bequest of which the income was more than \$2000, and it was held that they could

not. But an inquiry was ordered into the question of the validity of those provisions, whether the religion of Christian Science was, as claimed by the Attorney-General, contrary to public policy. There had been a decision in *Glover v. Baker*, 76 N. H., 393, as a matter of common law, without the aid of any statute, holding that the religion of Christian Science was on the same basis with other religions, and that a bequest for the benefit of that religion and for its promotion was a public charity.

But the purposes of these two bequests in her will are legally indistinguishable from the purposes as stated in the deed of Sept. 1, 1892, which was to erect a church edifice, and to carry on, cause to be carried on, services therein, and to make such rules and regulations as might be necessary for that purpose. There is not any reference to by-laws in the deed of Sept. 1, 1892, but only to such rules and regulations as may be necessary for the narrow purpose therein expressed.

Those purposes were legally indistinguishable from the phraseology of Mrs. Eddy's will. And it having been settled that the trust stated in Mrs. Eddy's will was a charitable trust, it must necessarily follow that the purposes stated in the deed of Sept. 1, being indistinguishable, are also a valid charitable trust. And that is the whole bearing of *Chase v. Dickey* for the purpose of the present case.

It does not decide, or undertake to decide, anything about the distinction between these two boards of directors, or whether either one of them was or was not a corporation by reason of the similarity of the directors to churchwardens and deacons. There was not any occasion for deciding either one of those two propositions.

Now, in view of the legal position which we must now take as established, that the religion of Christian Science is entitled to stand, with reference to the law of charitable trusts, on the same basis with the religion of every other Christian sect, Mr. Elder's advice was unquestionably sound that a deed of property made for the propagation of that religion, either in general or for the building of a particular church, or for the carrying on of particular services in that church, could not be altered or affected by any subsequent acts of the grantor herself, the donor of the property, of the beneficiaries, who were an indefinite number of persons, or the trustees, or of the Legislature itself.

And for that I cite trustees of Dartmouth College v. Woodward, 4 Wheaton, 518; Peabody v. Eastern Methodist Society, 5 Allen, 540, a case of considerable importance in view of what the Governor has told us about his own denomination—which I understand to be that of the Methodist Episcopal Church. Also, Cary Library

v. Bliss, 151 Mass., 364; Crawford v. Nies, 220 Mass. 61, especially the dictum on page 65; Bouldin v. Alexander, 15 Wallace, 131; and a case of no authoritative weight except for the intrinsic strength of its reasoning—Savage v. Fortener, 2 Chester County Reports (Penn.), 271.

I will not offend Your Honor by undertaking to analyze the Dartmouth College case. I simply refer to it in passing. It must be vividly in the mind of Your Honor, as in every other lawyer's, especially those who have had to do with the federal Constitution.

Peabody v. Eastern Methodist Society. It was held in this case that the title to land which had been conveyed to unincorporated trustees of a society of the Methodist Episcopal Church and their successors, in trust, for the use and benefit of the society, did not vest in new trustees who might be elected from time to time, but remained in the grantees named in the deed, or the survivor of them.

There was a similar attempt made there to what is alleged to have been made here, but what we say was not, in fact, made at all—for persons to alter the tenure of office, to elect the trustees in a manner other than that mentioned in the deed itself.

Mr. Justice Hoar, speaking for the Court, said:

"The election of new trustees by the society, in conformity with the usages of their church, created no privity of estate between them and the trustees who took the land by the deed, and could have no effect in law to divest or change the title."

That case was cited with approval in the recent case of *Glazier v. Everett*, 224 Mass. 184, and my opinion is that somebody has referred to that *Glazier* case here.

*Cary Library v. Bliss*, must be equally familiar to Your Honor and to every student of constitutional law. There was a gift of money to a town, the income to be used in buying books for a proposed free public library, on the condition that the town should establish the library, and also provide money for the purchasing of books; and that trustees, consisting of the selectmen, school committee, and the settled ministers of the town, should hold and invest the money, and expend the income, and manage the library, subject to the approval of the town; and that if the library was abandoned or ceased to be kept open for the inhabitants, the gift should be forfeited to the donors. The offer was accepted by the town and the library established, and the trustees assumed the management. A statute was subsequently passed creating the library a corporation, and purporting to authorize it, with the assent of the town, to take the funds, books, and other library property held by the original trustees. One of the donors, the residuary legatee of the original donor, and a majority of the trustees,

together with the town, assented to the transfer, and the corporation voted to take it. The statute was, however, held to be unconstitutional, and it was held that when money is given to trustees by the settlor of the trust, you may incorporate the trustees, but you can't alter, by incorporation or otherwise, any of the functions or the number of the trustees as established by the original Trust Deed. It is impossible to obtain sufficient assent ever to accomplish that. The only way in which a charitable trust can be altered is under the doctrine of *cy pres* by a court of equity under the strict conditions which are required to bring that doctrine into operation—namely, the impossibility of carrying out the terms of the trust in strict accordance with the Trust Deed.

I feel, although it has no special materiality to the case of Mr. Dittmore, that Mrs. Eddy's pronouncement in the deed of Sept. 1, 1892, was legally impossible of fulfillment, namely, that these four people should be a corporation. They certainly could not be a corporation at the date of the deed, because they could not then be similar to deacons and churchwardens, because deacons and churchwardens are always deacons and wardens of an existing church, and there was none in existence. I cannot see how those four people could afterwards become similar to deacons and churchwardens, because they were nominees of an individual grantor and had never had the essential characteristic of similarity, which is an election by the members of the church or religious society, as the case may be.

It seems to me that is fairly plain under the case in 9 Cushing, to which I shall later refer.

In *Bouldin v. Alexander*, it was held that where a person conveys in fee to persons whom he names a lot and church edifice on it for the use of a Baptist church, an unincorporated religious body, the trustees are not removable at the will of the cestui que trusts, and without cause shown.

There is a dictum there of some consequence which tends to support the view which I have just been urging upon Your Honor. I will not read it now because I assume, if Your Honor has any doubt about these matters you will yourself examine these cases.

The only and utmost effect of the subsequent By-Laws conferring new functions and imposing additional duties on the four individuals or their successors who were the Trustees under the Deed, and of the by-law of Feb. 7, 1903, adding a fifth "director," was to create a new and distinct body, who may for convenience be called "By-law Directors," who perhaps became and were "similar officers" to deacons and churchwardens, within the meaning of R. L., chapter 37, section 1 (Public Statutes, chapter 39,

section 1); and as such, if they did become a corporation, held for the church members all property acquired subsequently, and not conveyed to the original board of grantees and their successors elected under the deed.

There are difficulties in reaching the conclusion that the by-law directors ever became a corporation by virtue of any similarity to deacons and churchwardens, which is the only way in which they could become a corporation.

The Master—And for the reason you have already stated—because they were never elected?

Mr. Thompson—They were never elected. There never was a period when the First Members elected the directors. And I do not see, although I should be very glad to reach the conclusion, that the by-law directors did become a corporation—I cannot honestly argue that to Your Honor, because I do not believe it to be so. And I am positively sure that the original deed directors never did and never could become a corporation. They could not become a corporation by the declaration of any individuals, because individuals have no power to create corporations. They could only become one by the existence of a fact—namely, similarity to other people; but unfortunately that fact never existed and never could exist, and cannot today.

But the by-law directors, of course, could be charged, and were charged with important duties, not at all conferred upon the deed directors; and those persons who became members of the Church and agreed in writing or otherwise to be bound by the By-Laws, would be so bound merely as a matter of contract. Whether the By-Laws could ultimately be changed, whether the provision that they should be unchangeable is effective, is another question that need not be considered in this case. It is well enough to mention these questions which have been somewhat discussed, but which really are technically of no consequence in the adjustment of this particular controversy.

I understood Mr. Dane to say—I won't hold him to it unless he really meant it, but I caught this in this opening:

"The trustees under that deed are four in number. There were no provisions in it for an increase in their number"; and "He (a director) does not become a director by virtue of his being a trustee under this deed."

Just what that means I do not know. A part of it appears plainly to be true—that the trustees under the deed were four in number, and it also is true that a by-law director does not become a trustee just because he is a by-law director. It is also true that a trustee under the deed is entitled to the designation "director," although that designation does not carry with it the right to do all the things that the same designation

carries when the powers are derived under by-laws. It only requires a little clear thought to keep that distinction in mind. There is no difficulty in making it and no difficulty in applying it, if those people who are dealing with the property of this Church keep it in mind, have it in mind, and apply to their knowledge the same principles of law, and do not forget or overlook them. I dare say that there is now a good deal of confusion in the title up there to some outlying lots of land, but that also does not affect the question under discussion here.

Now, the trusts declared in that deed were very simple: To build the church edifice, elect a pastor, reader or speaker, maintain public worship in conformity with her doctrines, and to reconvey the property to her whenever they "shall determine that it is inexpedient to maintain preaching, reading, or speaking in said church in accordance with the terms of this deed."

Also, it has been called to my attention by my associate this morning, under clause 3 of the deed:

"They shall maintain public worship in accordance with the doctrines of Christian Science in said church, and for this purpose they are fully empowered to make any and all necessary rules and regulations."

I cannot suppose that the words "rules and regulations" there had any such broad scope as the word "by-law" subsequently acquired, or gave to these original grantees the right to do more than to make rules and regulations for the very limited purpose mentioned in clause 6.

There is evidence put in this morning, in the deed of 1905, where Mrs. Eddy speaks as if the four people had the sole control and management of her church. Well, they did, with another, by virtue of by-laws; but they did not, and I do not suppose that she meant that they did, by virtue of the terms of the original deed of 1892, to which I have just called Your Honor's attention, and which are the only terms that bear upon the power conferred under the deed. It is plain that Mrs. Eddy regretted the necessity of making that distinction. She says that she has twice been to Mr. Elder and he says it cannot legally be done. It is plain also that she loyally accepted his professional advice and tried to follow it. But it may well be that later, when making that declaration, such as she made in this document of 1905, her inclinations and feelings led her to make a statement somewhat broader than the strict construction of Mr. Elder's remarks would permit.

In *Weld v. May*, 9 Cush., 181, there is a distinct intimation, or there is a statement, that deacons and church wardens must always be officers of some regularly constituted religious society, and that they get their power by the election by the members of the

society; and I think that that is the strongest case that there is on the question of similarity, so far as that question has any special bearing on this case.

*Crawford v. Nies*, 224 Mass., 474, is to the same effect, and I will not trouble Your Honor with it. The statements in it are not any stronger than those in *Weld v. May*.

Now, it is a matter of common ecclesiastical law in this State that deacons and church wardens may be removed for cause by the members of the society with which they are connected. *Weld v. May* says so. Although the Court was not called upon to decide that principle, it is stated, and the same intimation occurs in *Currier v. Trustees*, 109 Mass., 165; *Parker v. May*, 5 Cush., 336, and especially pages 349 and 350; and *Grosvenor v. Society*, 118 Mass., 78.

Well, now, of course these people, these grantees under that deed, were not removable by anybody except a court of equity, and no by-law, even if it had been actually intended to confer upon a majority of the original four, or upon a majority of four plus another added, the power to remove one of their number, could have effected that; that would have been beyond the legal power of anyone to do, and it would have been wholly ineffective. You cannot provide later for the removal of trustees in that way. Certainly if the Legislature of this State, or of the State of New Hampshire, could not do that in the case of a college, no private individual could alter the terms of an important document, creating a charitable trust, in such a vital particular as that.

I contend, therefore, on this proposition, and I think that it is established by the authorities, that these four people and their successors, grantees under the deed of 1892, could not possibly be affected, so far as their dismissal or removal is concerned, by any subsequent pronouncements or by-laws, by whomever made, and, further, that it was actually not intended by Mrs. Eddy that they should be so affected.

That is all that I have to say on that proposition.

I now come to the next proposition, which is, that,

The only provisions of the By-Laws authorizing on March 17, 1919, the dismissal of a director was the provision of the so-called twenty-eighth edition of the Church Manual, namely,

"A majority vote and the consent of Mrs. Eddy shall dismiss a member of this board" (see Volume II, page 361, column 1).

And by "director" in this statement I mean by-law director. It can hardly be obscure. It is perfectly obvious that my contention is that no power to remove a deed director exists; and, talking about what by-law applies to the removal of a director,

I refer wholly to those directors who obtained their powers and functions under the By-Laws, and therefore must be subject to dismissal under the By-Laws, their rights and their obligations being derived and imposed from the same source.

Now, it is an admitted fact that in Article VI, Section 1, of the twenty-eighth edition of the Manual, which was in force in the early part of 1903, the provision for dismissing a director which appeared in subsequent editions as Article I, Section 5, read,

"A majority vote and the consent of Mrs. Eddy shall dismiss a member of the board" (Volume II, page 360, column 3; page 361, columns 1 and 2).

At this point I would like again to see that twenty-eighth edition.

[Exhibit 812 is passed by Mr. Dane to Mr. Thompson.]

Thank you. I call attention to the fact that Article VI begins on page 29 (the text does) and runs over on to page 30, and that in the first complete paragraph on page 30, printed as a part of the text, and not on any rider or pasted slip, occur the words to which I have called attention.

"A majority vote and the consent of Mrs. Eddy shall dismiss a member of this board. The salary of each member of this board shall at present be seven hundred dollars per annum."

Now, if you will turn in this book which is now in evidence, and was used as if it were in evidence during the trial—if you will turn to page 24 you will find what appears to have been a piece of proof slip pasted into the 28th edition, apparently in preparation for the 29th edition, and that occurs under Art. I, and is printed "Directors, Sec. 5," and there occurs the provision just as I have read it in Art. VI, Sect. 1.

"A majority vote and the consent of Mrs. Eddy shall dismiss a member." On the margin of that is written,

"Adopted March 12, 1903, Amendment."

The amendment would consist in the first part—

"The Christian Science Board of Directors shall consist of five members. They shall fill a vacancy occurring on the board after the candidate is approved by the Pastor Emeritus. A majority vote and the consent of Mrs. Eddy shall dismiss a member. The salary of each member shall at present be seven hundred dollars per annum. Members shall neither report the discussions of this board, nor those with Mrs. Eddy."

Consolidating other provisions, and calling it Sect. 5, but retaining the words,

"A majority vote and the consent of Mrs. Eddy shall dismiss a member."

And then this follows:

"This by-law can neither be amended nor annulled except by the written consent of Mrs. Eddy, the Pastor Emeritus."

There we have something that I did not realize when I wrote this brief,

because I did not have the book before me at that time. I knew then only of Article VI, Section 1. We have not only Article VI, Section 1, printed in the text, but we have the same phraseology, so far as present purposes of importance are concerned retained in the proposed change—

"A majority vote and the consent of Mrs. Eddy," and we have added to it the provision that,

"This by-law can neither be amended nor annulled except by the written consent of Mrs. Eddy, the Pastor Emeritus";

and then we have the marginal note, which states that it was adopted March 12, 1903.

Now, that phraseology, "A majority vote and the consent of Mrs. Eddy," got the special approval and consent of Mrs. Eddy, and that is of some consequence. Her letter to the directors of Feb. 5, 1903, Exhibit 456, says,

"Also you can now remove a member of your board."

The letter speaks of certain by-laws which she was sending with that letter. Those by-laws were vehemently called for by me and others. A promise was made to produce them if they could be found by Miss Warren, and they were not found, but there is enough in that letter, in the statement, "Also you can now remove a member of your board," taken in connection with the fact that up to the time that by-law was passed there had not been any provision at all, so far as appears in this case, and so far as we believe, for the removal of a director, to show that Mrs. Eddy had in mind this provision of the twenty-eighth edition,

"A majority vote and the consent of Mrs. Eddy shall dismiss a member."

Her language implies that before that time they had not the power to dismiss a member, even with her consent, and that she now proposes to give it to them. Of course there was no such power in the deed of Sept. 1.

Now, the letter with which she sent that by-law was the one that contained a proposed by-law, increasing the number of the directors to five; and Mrs. Eddy says:

"You will have three in unity. That leaves a majority when they are right."

Now, Mr. Dane was urged, and I call attention to the place where he was urged (Vol. II, p. 358, columns 2 and 3) to produce the inclosures that went with that letter, and he agreed to do it if he could. But he did not. I have no doubt he tried. But I have considerable doubt whether the people who might have assisted him tried to produce the inclosures that went with that letter.

Mr. Dane never argued—and I speak of him by name because he is the one who took the lead in putting in these by-laws and the documentary evidence—he never claimed or contended, when putting in that evidence, and it

has not been contended in Governor Bates' argument, that those words, "you can now remove a member," referred to the changed phraseology in the twenty-eighth edition, which was adopted July 30, 1903. Of course they could not have referred to that because they were written long before that edition was adopted and at a time when the words stood here as I have read, just before the twenty-ninth edition was adopted.

Miss Warren's testimony (Vol. II, p. 360, columns 2 and 3; p. 361, columns 1 and 2) negatives any such idea. I will simply refer to that testimony, and say, Your Honor, that she has made it impossible that those words should refer to any by-law except the one—

"A majority vote and the consent of Mrs. Eddy."

I think that I have proved the proposition that Mrs. Eddy approved specially that particular phraseology.

Now, let us see if there was ever any authority in writing from Mrs. Eddy to change that phraseology. I say at the outset that there was undoubtedly general assent given by her to subsequent editions, but that is not sufficient either under the rule that she herself laid down, her written consent, or as a matter of practical reason, when you come to consider the great gaps left in the testimony as to what it was that she gave general assent to, and how minute her knowledge was of what she was assenting to, and whether a general assent can possibly be construed as applying to a small but exceedingly important change in phraseology, the significance of which would not quickly appear to anybody but a trained lawyer. Miss Warren was charged with the duty of investigating the authority for this and all the other changes since the twenty-eighth edition. She so states and has so sworn, and she says that she wrote the marginal note on Article I, Sect. 5, of the so-called twenty-ninth edition (Vol. II, p. 359, column 2), namely,

"Amendment adopted March 12, 1903—changes evidently made in proof"; but under Mr. Whipple's cross-examination she admitted without qualification that that was an error, that the amendment,

"A majority vote or the request of Mrs. Eddy,"

was not adopted by the vote of March 12, 1903, and that she had been absolutely unable to find any authority whatever for that change. That was admitted by her in the most sweeping and unqualified terms, and under circumstances which make it impossible to suggest that the admission was extracted from her by any misunderstanding or coercive process whatever. We may therefore treat it as a fact established, and solidly established, that Miss Warren, the person whom these defendants have selected as the most capable of investigating their records and finding

proof, if there is any, for every change, has been totally unable to find any such proof. Proof sheets were produced here in large quantities, showing Mrs. Eddy's annotations on this and other editions. No proof sheet showing that change was produced. Some talk was made by Governor Bates at the time, when we were waiting anxiously for the proof sheet of that edition, to the effect that the trustees might possibly have it; but the motive on the part of the directors for suppressing it, if anybody suppressed it, existed, and no motive on the part of the trustees for doing likewise existed, even if these gentlemen, as a matter of personal character and capacity for such things stood on a parity. I will say no more than that on that topic, and by saying that I do not mean that Mr. Dittmore has altered his opinion one hair's breadth as to the erroneous theoretical conceptions of these trustees as to their duties or as to the 28 or more particular matters in which they ought, in his judgment, to have reformed. He happens to be a man capable of holding a difference of opinion with his fellow man, without supposing that the fellow man, who is wrong in his theories and careless in his practice, is also a moral pervert or a crook: a capacity for human judgment which is apparently beyond the ken of Mr. Dittmore's fellow directors. That change was not indicated. No evidence of her assent was ever found; and the change was not made in the manner written on the margin of that paper by Miss Warren. Why Miss Warren made that statement, why she wrote those words, what better information she had when she wrote them than she has now, or what worse information, is a matter to be explained. The statement was written; it is untrue; it is admitted to be untrue by the person who wrote it; and she testified broadly that no authority from Mrs. Eddy, or vote of the directors, justifying that change, had been found, or could be found (Vol. II, p. 361, column 2), except Mrs. Eddy's alleged general approval of the twenty-ninth edition, which she asked by telephone to have approved (Vol. II, p. 360 column 1).

Now, what did Mr. Dane say in reply, when he realized, as he has, more acutely than some of the persons connected with this case, what the significance was going to be? He said that Mrs. Eddy's approval of the change must be inferred from her alleged telephone request that the 29th edition should be adopted, and from her alleged general approval of subsequent editions (Vol. II, p. 341, column 1; p. 342, column 1) and from her correction of a part of the 72d and 73d editions (Vol. II, p. 353, column 1), and from her signature on page 98 of a copy of the 29th edition (Vol. III, p. 713, columns 1 and 2); and he said that that was all that he had to say on the topic. Well, when that is all that a lawyer of Mr. Dane's

competence can say on that topic, we have made considerable progress in demonstrating our proposition.

In Mrs. Eddy's letter of Feb. 27, 1903, (Exhibit 459 Vol. II, p. 359, column 1) to the directors she says, referring to the 28th edition which had been sent to her by one of them for the purpose of asking her to approve certain suggested changes, or making certain changes:

"I am not a lawyer, and do not sufficiently comprehend the legal trend of the copy you inclosed to me to suggest any changes therein. Upon one point, however, I feel competent to advise, namely, never abandon the By-Laws."

Possibly these gentlemen who have been talking about adhering to the By-Laws may begin to wish that they had not been quite so strenuous when they accused other people of violating the By-Laws.

Let us see how this is coming out. They sent her that 28th edition; they sent it to her with proposed changes. Mr. Dane was requested to produce those changes which they asked her to consider. He said he would try to do it. He probably did; but he did not do it. We do not know what changes were suggested. We do not know absolutely that this very change was not one of them; but we have some reason to think that it was one of them, and that she did not merely reject it, but she declined to consider it, because she was "not a lawyer."

Now, the significance of that change.

"A majority vote and the consent of Mrs. Eddy," or,

"A majority vote or the request," the full significance, the distinction, between those two things is a distinction that a lawyer would be the one most qualified to appreciate, and that a layman might long puzzle over before realizing the real import of them. She says:

"Each of these many By-Laws [that is, the By-Law 'A majority vote and the consent of Mrs. Eddy,' as well as others] has met and mastered or forestalled some contingency, some imminent peril, and will continue to do so."

Well, no wonder Miss Warren couldn't find the authority for making that change. I do wonder that she did not produce the letter where the change was asked for. But I do not believe Your Honor will have much doubt in reaching the conclusion that in connection with that letter, "I am not a lawyer," which refers to technical changes, changes having a legal significance, that must have been one of them.

Mr. Dane was also asked to produce any vote of the directors adopting this particular change, and he did not do it. He was asked again (Vol. I, p. 255), and then Mr. Bates said, "Wait till that develops." Well, apparently Mr. Bates had had it in mind. It was not a surprise to him at that time.

The surprising thing is that it never did develop in this case. It is surprising because of the extreme solicitude for the By-Laws shown by the gentlemen who have attacked Mr. Dittmore and abused him as much as they dared, who have accused other people of every offense they could, and who now turn out not to be willing to let the full light shine on this case—at least, some of them.

The fair inference is that this change was one of the changes that Mrs. Eddy then declined to consider, and that some one in the interest of a faction of the directors, then contemplating the present or future removal of a minority, and hampered by the necessity for Mrs. Eddy's consent, slipped in this change on one of the proof sheets.

Now, the significance of that would not appear to a layman. It would seem casual, technical, and unimportant. The change would only have been suggested to somebody who wanted at some time in the future, or had in mind some scheme for getting rid of an inconvenient minority. Miss Warren referred to it as a minor change (Vol. 2, p. 361-362); and mentioned, in Vol. 2, pages 359-362, 16 other changes which she also called minor, between the twenty-eighth and twenty-ninth editions, for which no authority whatever, she says, had been shown or could be shown. It was apparent, and she was compelled to admit on her cross-examination, that some of those changes were of major importance, and not minor, and she took back the term minor in regard to many of them—this one included.

Now, let us take the general consent of Mrs. Eddy in the light of those circumstances and see if that can be construed into that written consent which she specially required should exist before any change could be made in this particular by-law, as distinguished from some others to which no such condition was attached.

Mr. Dane states that the practice was to print editions of 1000 copies, and when that number was exhausted to print another edition, with the changes made in the interim. That was an informal transaction, apparently—the printing of those intervening editions—not requiring any special formality. Out of the whole eighty-nine editions, I think only nine ever were voted in terms as editions, to be approved by the directors, or received any general or particular assent by Mrs. Eddy. The others were these intervening editions, published from time to time as convenience might require, and incorporating changes made in the interval. There was also confusion in the numbering of the earlier editions. (Vol. 2, p. 338.) Sometimes there were several editions in one year.

Your Honor pointed out that this presents a rather serious difficulty, because we do not know exactly what



the by-laws were which she referred to in that telephone message. We certainly do not. Was it the twenty-eighth edition, all ready to be turned into the twenty-ninth, with this proof slip pasted on it, "A majority vote and consent of Mrs. Eddy shall dismiss a member"? If it was, the general assent to the twenty-ninth edition was not a general assent to the language, "A majority vote or the request of Mrs. Eddy shall dismiss a member," but was an assent to the by-law, as we contend it was in its less authentic and authoritative form, namely, "a majority vote and the consent of Mrs. Eddy shall dismiss a member."

What importance can be attached, what beyond mere speculation can be done, when you have editions prepared in that way, when you have official editions produced here, most of them containing pasted slips and proofs ready for the preparation of the next, and when you are asked to say that because Mrs. Eddy approved generally over the telephone the twenty-ninth edition, she must have approved the twenty-eighth, not with that slip in it, but with that slip changed by somebody, whose name has disappeared and whose authority does not appear?

Your Honor characterized that situation in many ways. You said it was rather unsatisfactory, you said it is surprising that a book of the importance of the Manual should be left without any more authentication than here appears. I am showing why that is true. I am bringing out the details which must have led Your Honor to make the statement, although many of them may not have then been in Your Honor's mind.

We do know that in the twenty-eighth edition was a provision that the By-Laws should neither be amended nor annulled without the consent—that is, the By-Laws at large—of Mrs. Eddy, over her own signature—not over the telephone; and we have got this particular by-law with that attached to it as a special condition.

But even if we had any evidence whatever as to what particular book or books Mrs. Eddy had before her when giving written assent to some of the subsequent editions, we should still need, in order to make the chain of proof complete, in the language of the master, "the production by the directors of the written instructions by Mrs. Eddy . . . for any given by-law." The italics are ours. (Vol. 2, p. 345.) No such proof can be produced—has been or can be produced. The truth of the matter is that Mrs. Eddy O K'd the particular by-laws in which she was specially interested, which happened to be uppermost in her mind at the time, and trusted the people who had in charge the preparation of the edition not to make other changes—and in this particular instance trusted in vain.

Only nine of these 89 editions were

ever adopted by any vote, and it was pointed out by one of the counsel here, and I think accurately (Vol. 2, p. 347), that there were instances where changes suggested by Mrs. Eddy had not in fact been made in the By-Laws. So you have got it both ways.

Now, let us see what the antecedent probability or improbability is that Mrs. Eddy would suggest such a change. Let us see if it fits in with her general conception of the functions of these directors, the purpose of having a board at all, and their relation to her.

In Article I, Section 2, the provision is retained that the clerk—that is down to the present time, in all subsequent editions, the twenty-ninth edition down to the present one—the clerk, the treasurer, the editors and managers of the Publishing Society, and the manager of the general Committee on Publication, may be elected or new incumbents elected at the annual meeting held for the purpose, "by unanimous vote of the Christian Science Board of Directors and the consent of the Pastor Emeritus, given in her own handwriting."

It is perfectly obvious from this and other by-laws that Mrs. Eddy intended during her lifetime to retain personal control, not only over the transactions of both these boards, but over the personnel. It is highly improbable that Mrs. Eddy, having provided, as she did, that the vacancies on the Board of Directors should only be filled after the candidate is approved by her, should have been willing to consent to a change which would make it possible for the majority without her consent, or even knowledge, to dismiss a man whose approval as a director, to be a director, had been had, and had been required by the By-Laws. It is incredible. It lacks the element of common sense, that Mrs. Eddy should insist that before they could fill the vacancies they must get her approval of the individual, and then wash her hands of it, cared nothing more, and permitted them to expel him the next day without even telling her about it. It is inconsistent with any sensible purposes that can be supposed to exist in regard to this particular by-law. It is inconsistent with the whole trend of all these By-Laws, in reference to all the officials of this Church.

You have, therefore, a strong antecedent improbability against her ever having consented to this change. You have a total absence of any proof that she ever did consent to it—absence of proof made all the more significant because it was diligently sought for by a capable person; and you have evidence in the book itself that after it had begun to be amended in preparation for the twenty-ninth edition, that change was not made, and that it got in, no proof having been shown her; that the explanation stated by the woman who tried to explain it is ad-

mittedly wrong, and that that change got in somehow, by the hand of somebody—not Mrs. Eddy.

You have her general assent to subsequent editions wholly undermined by the fact that if it originated in that way she never would have her attention called to it subsequently for the purpose of correcting an error of a character so technical as that. And you have, last of all, the omission of Mr. Dane and these gentlemen to produce the evidence which, if it exists, would absolutely clear this matter up, namely, what were those by-laws, sent to her, suggesting changes in the 28th edition, as to which she said she was not a lawyer and incapable of appreciating the legal significance? If this was not one of them, as it appears to be by its nature, why don't they show it by producing the evidence? This is all I have to say on that proposition.

The next proposition is that if that was the only authoritative and applicable by-law on March 17, 1919, it was not complied with. That does not need any proof. Mrs. Eddy had passed on then. She could not give her consent. The answer will be that it was intended that after she passed on her consent should not be necessary, and the answer may be based upon the theory of survival of a joint power, such as has been used, and I think properly used, by Governor Bates in reference to the removal of a trustee by the directors alone without the assistance of the First Members. But this was not. A director may be dismissed by a majority and Mrs. Eddy; it was a majority vote and the consent. Mrs. Eddy did not reserve to herself the joint power to initiate a dismissal; she reserved appellate power after the majority had acted. There is not the slightest reason to believe that Mrs. Eddy intended or supposed that after she passed on it was safe to leave the removal of a minority of the Board of Directors to the uncontrolled will of a majority of their fellow members. It does not do much credit to the intelligence of people who come in here and make an argument which implies that Mrs. Eddy had no knowledge of human nature. Is it to be supposed that Mrs. Eddy did not know of the possibility of abuse that might come if she left the power of removing a minority of a deliberative board to the majority? Is it consistent with common sense, first to establish a board instead of one director, the very implication of which is that you want discussion, deliberation, reflection, and that checking of individual opinion which can come only from such checking and discussion, and then open the door to a majority of this very deliberative board to hold always a club over the head of the minority? "We won't discuss, we haven't time to talk, you can either agree with us or get off of this board."

That is what inevitably happens, and

must happen, human nature being what it is, when you confer upon the majority of a deliberative body any such power as that. That is an argument which I shall develop later at more length. It is one very good argument for the supposition that Mrs. Eddy did not intend that after her death the majority should have any power at all to remove a minority of the directors. It was a delicate power, easily susceptible of abuse, certain to be abused, human nature being what it is, in the course of time, and it required her check, her consent, for its sober and proper exercise; and without her consent it was one of the most dangerous and disastrous things that could possibly have been conferred upon the majority of a deliberative body. It made the accusers the judges. It violated, it tended to violate, every principle of natural justice, and it turned a deliberative body into a body of persons cowering under the fear that they might differ with their associates on some matter which Mrs. Eddy intended to have decided by the deliberate, intelligent judgment of five separate men brought to bear upon it. That is all I care to say on that proposition.

I now approach the next proposition, which is as follows—and each of these propositions I formally request as rulings of law or fact, as the case may be. They are all stated in my requests for rulings, with such subordinate propositions, in the nature of reasons for them, as appear to be important.

Assuming for the purposes of argument, that on March 17, 1919, the provision of the By-Laws applicable to the dismissal of a director was "a majority vote or the request of Mrs. Eddy shall dismiss a member," namely, Article I, Section 5, then a visit and admonition by the Finance Committee, under Article XXIV, Section 6, was intended to be a condition precedent to the exercise of the power of dismissal conferred upon the majority of the directors by Article I, Section 5.

I have first tried to show that Mrs. Eddy intended to make a by-law which would prevent injustice from occurring, and would prevent the chance of it after she passed on. I now approach the proposition that if I am wrong in that first, if she did assent to this change, which we say she never did, and if we are to suppose that that was the rule in force on March 17, 1919, then Mrs. Eddy had taken another precaution to prevent injustice and follow the rules of natural justice, to prevent the accusing and trying body from being identical, by having selected an independent body of her Church to exercise the same sort of condition, only in this case precedent, that she selected under the old by-law of the twenty-eighth edition as a condition subsequent; her consent in the one case, and in this case an admonition and visit by the Finance Committee.

The Master—There is the argument

derived from the fact that Mrs. Eddy lived while all the successive editions of the Manual, from the twenty-ninth to the seventy-third, were issued.

Mr. Thompson—Yes. I tried to meet that.

The Master—And without raising any objection to what was stated in the twenty-ninth.

Mr. Thompson—Yes; and I tried to meet it, and I will say one thing more. Apparently during her lifetime, as far as the evidence here goes, there never any occasion arose, it never was called to her attention. This is the first time that the Board of Directors ever sought to remove anybody. The point would very readily pass, if it originally escaped her attention, in the manner that I have indicated. There never afterward, during her life, was anything to bring it to her attention, on the admitted facts in this case. I am glad Your Honor made that suggestion because it enables me to complete and fill in one item of proof that was in my mind but which I did not express.

Now, take this proposition. Suppose, for the purpose of argument, that that is wrong, and that she did somehow or other, in a manner unknown to Miss Warren or to any person who ever looked it up, approve in writing the change, so that the law in force upon the by-law directors on March 17, 1919, was "a majority vote or the request of Mrs. Eddy to dismiss a member."

The Master—I do not understand there is any dispute made that her consent in writing has not been shown.

Mr. Thompson—That has not been shown—that need not be labored.

The Master—Now, the question would be, how far can the want of such consent in writing be supplied by the fact, to which I referred, of her failing to raise any objection later?

Mr. Thompson—Yes. And doesn't it strike Your Honor that the very purpose of Mrs. Eddy in requiring her own assent in writing to validate these By-Laws, indicating her caution in regard to it, is indicated by that letter that I read, where she said, "I am not a lawyer; I cannot consent to this because I do not understand it"? Wasn't she trying in every way to protect herself from having people, perhaps with good motives, perhaps with bad motives, slipping things in of which she did not understand the legal significance, and wasn't it a reasonable precaution to require her written assent?

Now, if I may again approach this proposition. Article XXIV, Section 6, to which I have referred reads:

"Provision for the Future. Section 6. In case of any possible future deviation from duty, the Committee on Finance shall visit the Board of Directors, and in a Christian spirit and manner demand that each member thereof comply with the By-Laws of the Church. If any director fails to keep this admonition, he may be dis-

missed from office and the vacancy supplied by the board."

Now, in dealing with that, my first proposition is that it is not, as contended by Governor Bates, confined to deviations from financial or business duty. First, note the sweeping language of it. The language of it would negative that conception. "Any possible future deviation from duty." That conception gets its force, not from phraseology employed, which looks in the other direction, but from the context, and with that I shall now deal.

He says the very word "Finance"—or, I will assume that he says it; he did not develop it logically, but I will, as applied to a committee, as well as the fact that the first four sections of Article XXIV deal exclusively with questions of business—he says that ought to cut down the words "any possible future deviation from duty"—not from financial duty but from duty. The answer to that is that Section 5 immediately preceding this provision expands the scope of the entire article and prepares the way for and requires the broad construction of Section 6 to which I have just referred.

What is Section 5? It is not headed "Business"; it is not headed "Accounts"; it is not headed "Checks," "Deeds." It is headed "God's Requirement. Section 5."

God requires what? Pay your bills? No.

"God requires wisdom, economy, and brotherly love to characterize all the proceedings of the members of The Mother Church, The First Church of Christ, Scientist."

The putting in of that before this provision which refers to any possible future deviation from duty is highly significant, and means that the word "duty" in Section 6 is to be construed in reference to the broad terms of morality and decency contained in the immediately preceding section.

Here we have "wisdom" and "brotherly love" added to the financial virtue of "economy," and a reference to all the proceedings of the Church members, not merely their financial transactions. And that throws light on what is meant by "any possible future deviation from duty."

Now, let us look at the history of Article XXIV, Section 6. In the earliest edition of the Manual produced at the hearing (Exhibit 394, Vol. 2, p. 339), commonly called the third edition—there was some suggestion. I believe, that it might also be called the fourth edition. That was one of those editions in which there was confusion of numbers. Your Honor called attention to it. It was dated in 1895. Page 337—perhaps hereafter in referring to the record, to save time and prevent a breaking of the sense, it would be a little better if I did not refer to the volume but merely to the page. I happen to have the three-volume edition here; some people have the one-

volume edition. I think all that is important is the page. Perhaps the column might be stated, but I think it is unnecessary to refer to the volume.

In this third edition, dated 1895 (p. 337 of the record), a considerable portion of what is now Article XXIV is found on page 33, not in the so-called "By-Laws," but following a copy of the Deed of Trust, and not divided into sections. What is now Section 6 appears as follows:

"God requires wisdom, economy and brotherly love to characterize all the proceedings of the members of The Mother Church, The First Church of Christ, Scientist, and I am glad to state that the action of its honorable Board of Directors has given good evidence of their obedience to this requirement. In case of any possible future deviation therefrom, it shall be the duty of the First Members of this Church, to call—not the Finance Committee—to call a special meeting for the purpose of duly considering the questions relating thereto, and to require the Committee on Finance to visit the Board of Directors, and, in a Christian spirit and manner, demand each one to comply with the vote of the First Members on this subject."

What subject? "Any possible future deviation therefrom." From what? "Wisdom, economy and brotherly love." "And in a Christian spirit" and so on.

"If any member refuses thus to do, this member shall be dismissed from office and the vacancy supplied by the board."

Then follows a paragraph, the substantial equivalent of what is now Section 3, and then comes the following paragraph:

"This by-law is designed, not so much for this hour as for future years."

There was just as much danger of financial irregularity one hour as another.

"And for the disobedient; even as the Ten Commandments stand for all time, and require all men to act righteously."

Now, you have got in the history of that provision the same light as you have from the retention of Section 5 immediately preceding it. You have got an almost conclusive indication that Mrs. Eddy picked out the Finance Committee for this purpose, not merely to correct errors in business, but because it was the most convenient independent board to deal with deviations of individual duty on the part of individual directors, of whatever character those deviations might be.

This same identification—that is, of all Christian duty, with the provision for the visit of the Finance Committee and the elimination of the narrow construction now contended for in this case, is found in Article XVIII,

Section 7, of the twentieth edition, Exhibit 131, as well as in Article XVIII, Section 6, of the twenty-eighth edition. The omission of the express identification of the duty with the large general Christian duty occurs for the first time in the twenty-ninth edition, and the omission was obviously merely for the purpose of brevity and condensation, and cannot render the sense any less clear than it was before, when the duty referred to was expressly identified as the large duty now appearing in Section 5, of general adherence to the By-Laws.

Now let us see if that construction is further confirmed by the general purpose of these By-Laws, by the general conception of Mrs. Eddy of what was right and what was wrong, what was expedient and what was inexpedient, because any construction contended for here, however plausible in the language, cannot be maintained if it is inconsistent with the general context and the facts underlying that context as disclosed here, nor can any construction, if possible, be rejected as improbable if it is consistent with those general considerations. It is, after all, those things, granted the original doubt and ambiguity something to construe—it is, after all, those considerations which must determine the construction adopted.

While this broad construction leaves the actual dismissal of a director to the majority under Article I, Section 5, it effectually prevents the injustice certain to result when the power of a majority over a minority is unlimited and uncontrolled. And if you do not adopt it, then you are saved from plain injustice only by the consideration that although Mrs. Eddy was willing to risk making the judging body the prosecuting body, she still intended that the principles of natural justice should govern their actions, and that no man should be removed from that board without cause. I mention that now so that Your Honor will have in mind what this whole argument is leading up to, not because I want at this moment to discuss that in detail.

Does Your Honor want to adjourn now?

Mr. Whipple—Mr. Thompson, would you mind suspending now, because we want to put in a little more evidence.

The Master—I am prepared to go on for a little while after 1 o'clock if it is desired.

Mr. Thompson—Just as anyone wants. I am perfectly willing to do it.

Mr. Whipple—I understand, if Your Honor please, that the Declaration of Trust regarding which we had some discussion has now been found, and I think, to prevent any possible misunderstanding—

Mr. Thompson—I want that paper put into this case.

Mr. Whipple—We better put it in. And with it there is, in the possession of the directors, an actual letter from Mrs. Eddy in which she sends the

Declaration of Trust and asks that the Church, asks that the directors accept it by legal vote. That is document 182, Volume 2, of Mrs. Eddy's letters. Have you both those here?

Mr. Bates—Yes, Your Honor. We offer the document—or, you prefer to offer it, I presume (handing volume to Mr. Whipple).

Mr. Whipple—Yes. I would like to have the original marked, but I will refer to the important parts:

"Whereas I, Mary Baker G. Eddy, of Concord, New Hampshire, have conveyed, remised, released and quit-claimed by my deed of even date herewith to The First Church of Christ, Scientist, in Boston, Mass., certain real estate situated at No. 385 Commonwealth Avenue in Boston Mass." etc.

Then it states:

"It is hereby stipulated and agreed as follows, to wit:

1.—

then it says "The First Reader of said Church," and the stipulation or provision is exactly that in the subsequent deed which was read. Then it provides in terms, just the same as in the deed of 1905, that the Church should keep the real estate in good and proper repair, and so forth. Then there seems to be an insertion in typewriting of the provision that there should be paid to Mrs. Eddy a semi-annual rental. Then there comes a third provision, which I think is in exact accordance with that in the deed of 1905. To be sure I will read it again so that you can follow it.

Mr. Bates—We have verified it. You are quite correct.

Mr. Whipple—Yes, that is in the terms of the reservation to make changes from time to time in the conditions of the trust, in the exact terms as they were in the stated deed.

Mr. Streeter—Mr. Whipple, is this printed accurately in the compilation on page 10?

Mr. Thompson—No; that is the trouble. It is not printed accurately.

Mr. Streeter—Is that printed accurately in accordance with the original?

Mr. Bates—It is on page 16. It is printed accurately there.

Mr. Whipple—It is admitted that it is printed accurately as it was read this morning. It is on page 16. Now, may this be marked Exhibit 806-a, so as to put it in the proper relation?

[Declaration of Trust dated Feb. 12, 1898, Mrs. Eddy to The First Church of Christ, Scientist, is marked Exhibit 806-a.]

Mr. Whipple—Now, where is the letter?

Mr. Bates—It is right in the book there; the mark indicates. It is at the bottom of the right-hand page.

Mr. Whipple (to Mr. Withington)—Will you read it, and then have this copied, and an exhibit number given, b?

Mr. Withington—The letter appears in Volume 2 of Mrs. Eddy's letters, as found by the Board of Directors, and

is document No. 182 on page 173. The letter is as follows:

"Pleasant View,  
Concord, N. H., Feb. 12, 1898.

"My beloved Student

"You must have the Mother Church i. e. The First Church of Christ Scientist Boston accept the Trust by a legal vote at a corporate meeting.

"With love mother

"MARY BAKER EDDY."

[Letter of Feb. 12, 1898, Mrs. Eddy to "My beloved Student" is marked Exhibit 806-b.]

The Master—Are you going to put that book in as an exhibit?

Mr. Whipple—That is a copy, but I think perhaps it would be well enough if they will make an exhibit from the dictation.

Mr. Bates—It has been read into the record, and that is sufficient.

The Master—Isn't that enough?

Mr. Bates—I think so.

The Master—I should think so.

Mr. Whipple—And that may be 806-b, so as to associate it with 806-a.

The Master—Is that all we want to put in? Now, Mr. Thompson, it will be just as you prefer. I can stay here a while longer and you can go on a while longer, or we can stop here and you can begin again tomorrow morning.

Mr. Thompson—My impression is that the other gentlemen would rather stop at this time, and I would therefore suggest that we adjourn till tomorrow morning.

The Master—That is agreed to. Now, if that arrangement is made, it would seem a little doubtful if we can finish tomorrow.

Mr. Thompson—I am afraid it is a little doubtful.

Mr. Whipple—How much time will you take?

The Master—So that we shall have to reserve Friday, I think—a part of it, but probably there is not much doubt that we can finish on Friday, is there?

Mr. Thompson—I should hope not.

The Master—We will now adjourn until tomorrow at ten o'clock.

[Adjourned at 1:00 p. m., to 10:00 a. m., Thursday, Sept. 11, 1919.]

Sept. 11, 1919

THIRTY-THIRD DAY

Room 424, Court House, Boston,

Sept. 11, 1919

Mr. Whipple—May it please Your Honor, with Mr. Thompson's permission I would like to offer a suggestion in regard to the production of certain authorities or cases which have been promised us, and if Governor Bates will give me his attention, at his convenience, I should like to make known to him the request.

Mr. Bates—Excuse me.

Mr. Whipple—In Governor Bates' ar-

gument he laid down the proposition that the trustees of a charitable trust could not resign or create a vacancy by resignation. I asked him at the time if he would cite the authorities for such a position as that. He said there were authorities but he would not stop at the moment to recite them or read them.

The Master—Didn't he tell us they were in his brief?

Mr. Whipple—He did say that, and he said he would refer to them later, if I remember. He did not refer to them later, and although he read many pages of opinions which state elementary principles of law, he did not refer to those cases. That evening we telephoned to his office to ask that we be given some of those cases upon the authority of which that proposition was considered to rest, and we were told that they were so busy in conference that they could not give them to us at the time. I think I am right in that statement, Mr. Withington? I understand that not even yet has their brief been filed, but that it is in course of preparation, using as a basis the requests for findings and rulings which we filed on the first day of the arguments. Now, it is not possible for us to reply to that legal proposition unless we have this citation of authorities, and I utterly fail to see why there should be this secrecy with regard to the cases which are considered to support that proposition. Is it fear that upon analysis the cases won't do it? Why shouldn't we have a statement of them now? Why withhold them? Because they cannot hope to mislead this Court as to what the law of this Commonwealth is.

Mr. Bates—May it please the Court, I had not supposed that there was any real question in regard to the fact that in the case of a public charity created by an instrument, if the instrument itself does not provide for resignation, there can be no resignation except through the consent of a court of record having jurisdiction. We have several citations on that matter, and I will be very glad to furnish brother Whipple with them. I did not know, although I have no doubt he may have telephoned the office as he says, that he had telephoned for them. This is the first time it has come to my attention. All of my memoranda in that respect are at the office, but I will be able to furnish you with those citations by 2 o'clock. I would have furnished them to you before had I known that you were anxious about them.

Mr. Whipple—I asked you for them while you were arguing, and you passed over them in that way that I have indicated. Now, I may be called upon to commence my argument before 2 o'clock. It seems strange, with all the force you have here, that you could not get sooner than 2 o'clock the production of these cases which you say settle this very elementary principle of law—a principle which, I must

confess, I never heard of, outside of municipal corporations. We cannot find any authority for that proposition, which you think is so simple, although we are entirely familiar with these elementary principles which you took many—I was going to say—hours, to read from opinions, which appear to be very erudite, but which are very simple and elementary to lawyers.

Mr. Bates—Thank you very much; and the most fundamentally elementary one of them is the one which you say you know nothing about, but which we will furnish you the law on sometime between now and 2 o'clock.

The Master—Sometime between now and 2 o'clock?

Mr. Bates—Yes, sir.

The Master—You will send over and get them, Governor Bates?

Mr. Bates—Yes, sir.

The Master—That will be the best way, I think.

Mr. Bates—Yes. They are mixed up. I am not just sure where the citations are, but I think I can put my hand on them.

Mr. Whipple—Aren't they on your brief?

Mr. Bates—I had them in the argument, but probably you noticed, as I went along, my memoranda were handed to the reporters, and I lost sight of them.

Mr. Whipple—How about your brief?

Mr. Bates—And as those memoranda are mixed up, it will not be perfectly easy to find them.

Mr. Whipple—How about your brief?

Mr. Bates—That we will let you have as soon as possible. But our requests for findings indicate the line of the brief absolutely; our argument indicates the authorities.

Mr. Whipple—It may indicate them, but it does not cite them.

Mr. Bates—You certainly are not in the dark.

Mr. Whipple—I am very much in the dark as to those authorities.

Mr. Bates—I had to begin my argument before I had seen any of your papers, your brief, or heard your argument; you certainly have an advantage and you ought not to complain.

The Master—On the point to which Mr. Whipple refers, you did not indicate the authorities specifically in your argument—you did not cite the particular cases.

Mr. Bates—I will see that Your Honor has them.

The Master—And I do not find them in the requests for findings and rulings. They may be there, but I have not seen them.

Mr. Bates—I will see that Your Honor has them.

Mr. Thompson—I do not like to interfere in this discussion, but it has occurred to me while the gentlemen were talking that it is possible what Governor Bates has in mind are the well-known cases which hold that in a private trust where an accounting is necessary, the trustee cannot have his resignation accepted until his accounts

have been filed and allowed. If that is what he has in mind, perhaps Mr. Whipple would not be so anxious to know it.

Mr. Bates—That is not what I have in mind, Your Honor. I have in mind the case of a public charity, where, of course, the beneficiary can only be represented by the state through the attorney-general, and where he must come into court and assent, and the court gives its consent, before there can be any resignation accepted.

Mr. Whipple—Cases of municipal corporations and other such corporations.

Mr. Bates—No, a public charity is what I am talking about.

Mr. Whipple—Well, we shall undoubtedly in time get these mysterious authorities. Perhaps if you are so familiar with them you could name one of the cases, give us the name, and we could be looking it up. If it is such a familiar principle of law, the case deciding it ought to be at your tongue's end, and not lost in the shuffle of your notes.

#### Closing Argument on Behalf of Defendant Dittmore, by William G. Thompson, Esq., Continued

Mr. Thompson—If Your Honor please, before proceeding with the development of the argument which I was endeavoring to address to you yesterday, about the application of Article XXIV, Section 6, to proceedings under Article I, Section 5, I should like to go back a moment and read into the record two cases which are not on the brief, which I propose to submit to Your Honor, and which appear to me to be valuable on the point that the settlor of a charitable trust or any other trust, private or public, cannot after the settlement has been fully executed alter or remove it in any respect.

The first of the cases is the case of *Sewell v. Roberts*, 115 Mass. 262.

That was a private trust, but I see no ground for distinction so far as this principle is concerned, between private and public trusts. I will content myself with reading the head note and a portion of the remarks of the judge who spoke for the Court, into the record.

The Master—Let us see if I cannot put those on your brief at the appropriate place, or on your request for rulings.

Mr. Thompson—Yes.

Mr. Strawn—It is cited on our brief, if Your Honor please.

Mr. Thompson—Perhaps after I have read them I can indicate which of the requests for rulings of law they belong to. The first head note is as follows:

"A voluntary settlement fully executed cannot be revoked or altered by a second settlement of the same property, in the absence of any provision in the deed of settlement reserving such power to the settler."

Mr. Justice Morton, speaking for the Court, on page 272 said:

"There is much apparent conflict in the numerous decisions upon this subject, but the rule is well settled upon the weight of the authorities that where the conveyance is fully executed and the trust perfectly created, the settlement cannot be revoked or altered by a second settlement of the same property, in the absence of any provisions giving the settler the power to do so. The decisions in this State are uniform to this effect."

Another is *Thorpe v. Lund*, 227 Mass., 474. The first paragraph of the head note is as follows:

"A voluntary deed of trust, signed and sealed by the settlor and delivered to the trustee therein named together with certain bonds and stocks to be held in accordance with its terms, which contain no condition as to its taking effect and no power of revocation, although not acknowledged or recorded, cannot be revoked or modified by the settlor, and a second deed of trust executed by the settlor attempting to change the terms of the first deed is of no effect."

Mr. Chief Justice Rugg, speaking for the Court said, at page 476:

"Although the trust was voluntarily established, it could not be revoked or modified by the settlor in the absence of reservation to that effect."

There is one other case, *Stone v. Hackett*, 12 Gray, 227.

There the settler—sometimes the word used in these cases is "settler" and sometimes "settlor," I think the old English term is "settlor"—the settler transferred certain shares upon trusts that the dividends were to be paid to him during his lifetime, and at his death the stock to go to certain charitable societies, reserving the power of revoking or modifying the trust. He did not execute the power of revocation or modification of the trusts, and the Court upheld the settlement against the widow claiming a distributive share. Mr. Justice Bigelow, speaking for the Court, said:

"The principle is now well established and uniformly acted on by courts of chancery, that a voluntary gift or conveyance of property in trust, when fully completed and executed, will be regarded as valid, and its provisions will be enforced and carried into effect against all persons except creditors or bona fide purchasers without notice. It is certainly true that a court of equity will lend no assistance toward perfecting a voluntary contract or agreement for the creation of a trust, nor regard it as binding as long as it remains executory. But it is equally true that if such an agreement or contract be executed by a conveyance of property in trust, so that nothing remains to be done by the grantor or donor to complete the transfer of title, the relation of trustee and cestui que trust is deemed to be established, and the equitable rights and interests arising out of

the conveyance, though made without consideration, will be enforced in chancery."

There are many other cases to that effect. We have not taken pains to get a complete list of them because we felt that the principle was thoroughly established, but it won't do any harm to have those three cases in the brief. I think those three cases should be cited under the seventh, eighth and ninth requests for rulings of law, beginning on page 2 of the memorandum of requests.

Then, also, by way of going back for a moment, before proceeding with the present line of thought, I want for a moment to analyze the term "acquiescence," which I intended to do and overlooked in the course of my argument. It has made a great deal of talk in this case on all sides. It seems to me very important that the real nature of acquiescence, of real acquiescence, which is legally important, should be distinguished from that counterfeit which often is invoked where the reality does not exist.

I take it acquiescence means a state of mind; it means a conscious acceptance, or a conscious purpose, the conscious acceptance of certain ideas, and the acceptance of them as shown by the conduct, by abstinence from certain lines of conduct and by taking other lines of conduct.

Now, that is rather an abstract way of stating it, but we have a perfect illustration in this case of real acquiescence and of its counterfeit. When Mrs. Eddy, with full knowledge that it was illegal to permit the fifth trustee to take or receive title to real estate or to be one of the trustees under the deed of Sept. 1, 1892, when she proceeded to act on that view which had been suggested to her by Mr. Elder, her action by numerous subsequent conveyances, in all of which she recognized the distinction, without saying in some cases that she recognized it and in other cases saying that she did, may be treated as legal acquiescence, because it is conduct which is consistent with the view, and which is taken with knowledge that the view exists.

Now, contrast that with the supposed acquiescence of Mrs. Eddy in the new by-law contained in the twenty-ninth and subsequent editions, where the words "by a majority vote or request of Mrs. Eddy" were substituted for the words "a majority vote and the consent of Mrs. Eddy." If it should appear, as I think it has been shown here, that Mrs. Eddy was not aware that the change had been made, then the fact that she generally indorsed subsequent editions of the By-Laws could not be taken as the slightest evidence of acquiescence in any legal sense of the term, in any significant or operative sense of the term. You cannot acquiesce in something of which you are ignorant, which you do not realize the existence of.

Now, there is a third illustration that has popped up in this case, which is significant. We have heard a great deal of acquiescence by members of the Church, and by First Members and by the Board of Directors, in their various interpretations of various deeds. Now, if the persons whose acquiescence is relied upon here to fix a construction upon any written instrument or instruments were not, when doing or abstaining from doing the acts which are relied upon to show acquiescence in the belief—did not have, while doing or not doing those things, the belief that they were interpreting the document, but supposed that they had a right to alter the document, and were not conscious of any attempt to find out what Mrs. Eddy's original meaning was and carry that out, but they had a right and she had a right to alter at her pleasure her original meaning as expressed in some original document, then the fact that no objection was made to alterations or to changes or to lines of conduct has not the slightest tendency to show acquiescence in an interpretation of an original document—the interpretation of an intention supposed to exist at a past time, and not a change after it had once been expressed in the document.

That is perhaps too elementary to take Your Honor's time with, and yet it had occurred to me in listening to Governor Bates that the two ideas of acquiescence, the real acquiescence and its counterfeit, were used interchangeably here, and that unless the distinction was observed fallacious results might be reached.

I also want to go back for one other purpose. I said in my introduction that Mr. Bates in his argument, and the directors, or some of them, in their testimony, had agreed that Mr. Dittmore's charges, specific charges against the trustees, not charges exactly, but desires for reform in various particulars, were true and important. I did not at that time, speaking by way of introduction, read any testimony or cite any testimony. It seems to me that, although I intend to take the matter up later, I ought before going further to call Your Honor's attention to two or three very significant places in the testimony and get them into the record at this point.

The first that I desire to read—they are very brief and won't take long—is from Mr. Merritt's testimony on page 617 of the record. I was asking Mr. Merritt about Mr. Dittmore's specific attempts at reform in the publishing house, and whether he had brought those matters to the attention of his brother directors, and the testimony was as follows:

"Q. And didn't you know that he was constantly—not constantly, because we might differ on the word as to what it meant—that he was often, sometimes, reporting to the Board of Directors recommendations for improvement, as he thought—I don't

care whether it was right or wrong—as he thought, improvement in the business details of the management of the Publishing Society? A. Yes; he often recommended things.

"Q. And you had no doubt that Mr. Dittmore did sincerely believe that if some of these recommendations which he suggested were adopted, money might be saved to The Mother Church—you thought that he believed that, didn't you? A. I thought he believed it.

"Q. Yes. Now, it turned out that Mr. Dittmore's difficulty with the Publishing Society was more than a mere abstract question of supervision or control, didn't it? A. Oh, yes." And then:

"Q. Now, you have heard Mr. Eustace testify in regard to Mr. Dittmore's manner with him, that he found him, although vigorous, an honorable opponent. Would you agree to that? A. Oh, yes."

And the following from Mr. Neal's testimony, pages 678 and 679. One of Mr. Dittmore's specific difficulties was with the treasurer's office and not with the trustees at all, and I asked Mr. Neal:

"Q. Have you ever made any criticism of the way in which the treasurer's office is run? A. I think I have."

And then:

"Q. You were on a committee with Mr. Dittmore, weren't you, for a number of years, to look after the affairs of the Publishing Society? A. We were on a number of years; we were on some time.

"Q. And during that time did you and Mr. Dittmore investigate some of the finances of the Publishing Society? A. We did.

"Q. And did you investigate the question of the discharge of employees somewhat? A. I think we did.

"Q. Yes. And did you investigate other details of the business management of the Publishing Society? A. Yes, sir."

I skip a question.

"Q. Did Mr. Dittmore make any reports of those investigations? A. I don't remember.

"Q. Did he make a report on the matter of periodicals? A. Yes.

"Q. Did he collect an amount of evidence in those discharges of employees of the trustees, in the shape of letters and statements from people? A. I don't know about that.

"Q. Did he at any time? A. I don't know.

"Q. After you were on the committee? Don't you remember his presenting them at one time to the Board of Directors, reading a number of letters that he had obtained, and stating what they were—the discharges of various people? A. I believe he did.

"Q. Yes. And did he also make certain criticisms to the directors of the financial standing and the losses sustained by The Monitor? A. He did.

"Q. And present certain figures

about circulation, tending to show how money could be saved? A. He did.

"Q. . . . Didn't he say to you, when the question of the discharge of three trustees came up—did not he always urge the discharge of three trustees; that was his idea, that they ought all three to go together? A. I don't know about what he always did, but he did at the end, yes.

"Q. And the other directors thought they had better go one at a time? A. That is so.

"Q. Now, when he was urging the discharge of all three, or any one of the trustees—I don't care whether it was all three or one—didn't he say that it would be a good thing not merely to base the discharge on the ground that they would not subordinate themselves to the directors sufficiently, but also on the charge that they had maladministered their trust, in a money sense, that is, they had not handled the trust right—in substance; I cannot give the exact words, but isn't that the substance of what he said? A. I think so."

Now, I call Your Honor's special attention to what follows:

"Q. And isn't this the fact that the other directors did not agree with him on that? A. No.

"Q. Then can you explain to me why it is that in this elaborate statement of charges of Judge Smith against these trustees there is not one word about the mismanagement financially, or the discharge of employees, or any of these tangible, practical matters that Mr. Dittmore had worked up? A. That I don't know."

That, I think, for present purposes, and until we get into a more elaborate discussion of the real motives of these directors and their conduct toward Mr. Dittmore and toward Mr. Rowlands and toward everybody else with whom they were brought in contact, will be sufficient to give at least prima facie proof or weight to the statement that I made in my introduction.

Now I pass back to the argument that I was making about Article XXIV, Section 6, and about the proper construction that should be put upon it—namely, that Mrs. Eddy intended the action of that Finance Committee should be a condition precedent to a trial and discharge of an individual director by the majority.

I may say in dealing with an earlier proposition that the by-law which applied was the by-law of the twenty-eighth edition. I meant not to say that Mrs. Eddy intended that the directors should not give a trial and hearing, but rather that they should, and that she should act as a reviewing or appellate authority to be sure that prejudice and unfairness had not crept into the proceedings, as they might well be expected to where the accusing and trying body were the same. I did not mean to indicate that under that by-law a trial and hearing were dis-

pensed with merely because the decision could be revoked if Mrs. Eddy did not consent.

Now, the construction of Article XXIV, Section 6, for which I contend is required by common sense, natural justice and the letter and spirit of the tenets and By-Laws as a whole and of particular provisions in the same connection in *pari materia* for, first, while this particular construction for which Mr. Dittmore contends leaves the actual dismissal of a director to the majority, under Art. I, Sect. 5, it effectually prevents injustice, which was certain to result if the power of the majority over the minority were left entirely uncontrolled. It does not need to be stressed, it seems to me, that where you give this very delicate power to a majority of a deliberative body to dismissions of its members, you at least have the danger of injustice, and that that danger is greater or less in accordance with the natural tendencies and instincts and experience and judgment and common sense of the persons composing the board. Is it possible that a person who has common sense, as Mrs. Eddy had, should not have realized that fact, and is it possible that she should not have seen that if she did not put some check upon the proceedings of a majority under that provision, she would destroy the very purpose of having the Board of Directors at all—namely, that every man should express his opinion honestly and fearlessly and candidly and sincerely, without the ulterior thought that if his opinion happened to differ from that of a majority he might be ejected and thus lose all future chance for doing any service to the Church?

It is a pretty common trait of human nature that if men have to get on together they will establish some *modus vivendi*, they will find a way to do it. If they do not have to get on, if the majority realize that there is always an easy way out of a continued difference of opinion or conflict of judgment, that easy way becomes more and more attractive to them. That is so plain and so clear that it is hardly conceivable that Mrs. Eddy should not have realized it. And that is the reason why she made deviation from duty and not difference of opinion the test, and it is why she put into the hands of this disinterested board this power and duty to visit and admonish before the power of discharge on the part of the directors could exist. She did not give to the Finance Committee the power to discharge—that is not the point; she put a visit and admonition by them, which they need not perform unless they thought the occasion warranted it, a condition precedent to any trial and any action and discharge by the discharging body, under Article I, Section 5.

Now, the tenets and By-Laws are full of provisions inculcating principles wholly inconsistent with unfairness, injustice, or hard feeling between Christian Scientists, or between Chris-

tian Scientists and their fellow men. They are so full of such provisions, general in form, and also particular, as to make it overwhelmingly clear that Mrs. Eddy in this strikingly important situation could not have overlooked those principles and the necessity for those principles, which she laid down in the case of the humblest member of her church.

Now, take first, the general provisions of the By-Laws and tenets in regard to fair dealing, justness, and squareness, in dealing with your fellowmen. Start with the tenets. What are they beyond a statement of the simplest elements of Christianity? That is all. It is Christianity boiled down to its lowest terms. Now, it hardly needs in the twentieth century here in this court, an elaborate argument to show that one of the fundamental principles of Christianity is that fair dealing and honesty and squareness and lack of prejudice should characterize the relations of men with one another.

In Article I, Section 1, she inculcates the need of a "mental atmosphere" promoting "health and holiness." She constantly refers to the Bible, as well as to Science and Health, as containing the standard of morals binding upon Christian Scientists.

Article VIII, Section 1, contains a striking statement.

Article VIII, Section 26, enforces that; and similar pronouncements are found in Article XI, Section 3; Article XXIV, Section 5, itself, which enjoins "Wisdom, economy, and brotherly love."

Now, there is your general foundation indicating the general attitude of mind of Mrs. Eddy toward all questions of fair dealing between Christian Scientists.

Let us see now the particular provisions which have a more striking connection to the point now in issue. They are the provisions of Article I, Section 9; Article XI, Sections 1, 5, 6, 7, and 10; Article XII, Sections 1 and 2; Article XXII, Section 7; and Article XXXV, Section 3.

With Your Honor's permission I will review briefly those articles, because together they make an impregnable wall against the suggestion and the argument made here that Mrs. Eddy intended to confer arbitrary and uncontrolled power upon a majority of the directors.

I have no doubt that Mr. Bates, with his intimacy with the directors and with the denomination—one of his partners a member of the Church—may have a closer knowledge of Christian Science than I can pretend to have. But I confess to some surprise that he stood here arguing that Mrs. Eddy stood for arbitrary power against all the tendencies of the age, against all the tendencies of human nature which have been struggling for generations to get rid of it; and that he

should be the spokesman of Mrs. Eddy on that proposition seems to me at least to raise a doubt whether he was speaking her real views.

Article I, Section 9, after emphasizing the importance of law in church government, and of a strict compliance with the tenets and By-Laws on the part of all the church officers, deals in the concluding paragraph with a failure on the part of the Christian Science Board of Directors as a body—not individually, but as a body—to fulfill its duty under the By-Laws, and provides that on complaint—note the word "complaint," sir—of any member of the Church, or of Mrs. Eddy herself, to the clerk, against the Board of Directors, there shall be—what? There shall be a finding—a very significant word, if Your Honor please—a word indicating familiarity with the orderly processes by which law and fact are determined in Anglo-Saxon communities. There shall be a finding whether the complaint is—what? Valid. And if valid, the directors shall resign, "or perform their functions faithfully"; and failing this, Mrs. Eddy "shall appoint five suitable members of this Church to fill the vacancy."

Now, here you have an elaborate provision in the By-Laws dealing with dereliction of duty on the part of the directors as a whole, and when that is charged—and it may be by any member of the Church or by Mrs. Eddy herself—there shall be a complaint to the clerk—that is, a notice, statement of the particular charges—there shall be a finding, and the finding shall determine whether the charges are valid. It is going a long way to contend that Mrs. Eddy, who was so careful to adopt all the formalities and even the technical expressions of the law in dealing with deviation from duty on the part of all the directors, should have been willing to abandon them all entirely and prefer arbitrary and uncontrolled power when dealing with the dereliction of duty on the part of the individual directors.

The Master—That is Art. I, Sect. 9?

Mr. Thompson—Art. I, Sect. 9.

Mr. Streeter—The last paragraph on page 29, of this edition of the Manual.

Mr. Thompson—It is an exceedingly important provision if one is trying to reach the truth here not by the literal interpretation of particular provisions torn from their context, but by that solid method which consists in analyzing all the provisions bearing upon the point and reaching the conclusion as to the real prevailing intent of the person who is responsible for the instrument.

The Master—What I was looking for is the exact wording about the finding.

Mr. Thompson—Yes, you will find it there.

The Master—"And the complaint be found valid"; you read it "if valid," I think.

Mr. Thompson—I was not attempting to quote it directly. I said, "There shall be a finding if the complaint is

valid"; the quotation is on the word "valid."

The Master—And a finding.

Mr. Thompson—The finding is to determine whether the complaint is valid, and for no other purpose.

The Master—Who is going to make the finding?

Mr. Thompson—I am coming to that in a moment, sir. I was not going to leave the analysis without discussing that point. "She shall appoint five other members." This shows that in Mrs. Eddy's deliberate judgment the only valid ground for dismissing all the directors was a failure to comply with the tenets and By-Laws; and that in such case justice required a formal "complaint"; that such complaint should be presented to the disinterested official, namely, the clerk; and that he should find it "valid," even if she herself were the complainant, or else that the Committee on Business, established by Article XXIV, Section 6, should act as judges.

There is a doubt as to the tribunal which was to act as the judge, whether the clerk or the Committee on Business, but it is clear that one or the other in her mind was to act as the judge. It is possible to interpret this that the clerk of the church should act like the clerk of the court, merely as the administrative officer, and receive the complaint, and keep it properly open to the inspection of all parties, that the decision should be made—the judicial tribunal should be the Committee on Business.

The Master—The Committee on—

Mr. Thompson—Business, established by Article XXIV, Section 6. Would Your Honor look at that before I proceed?

Mr. Streeter—Page 29.

The Master—It is not called "Committee on Business" there, is it?

Mr. Thompson—I think so. Article XXIV, Section 6.

Mr. Streeter—Page 77 of the Manual.

Mr. Thompson—If there is any doubt about these matters—

The Master—Committee on Finance, isn't it?

Mr. Thompson—No. Article XXIV, Section 6. I will read it to you.

The Master—I have Article XXIV, Section 6, before me, and that talks about "Committee on Finance."

Mr. Thompson—Yes. I have the wrong citation here.

The Master—Committee on Business is Section 9.

Mr. Thompson—Section 9. I have given you the wrong section, that is all.

Mr. Streeter—This is Section 6 under Article XXIV. It is at the bottom of page 77.

The Master—That talks about the Committee on Finance.

Mr. Thompson—Yes. Section 9 is the one. My reference is wrong; it was a stenographer's error. Section 9:

"The Christian Science Board of Directors shall elect annually a Com-

mittee on Business which shall consist of not less than three loyal members of The Mother Church, who shall transact promptly and efficiently such business as Mrs. Eddy, the directors or the Committee on Publication shall commit to it," and so on.

I mention it because it is possible that she intended that committee to be the judicial tribunal. It is equally possible that she intended the clerk. The significant point is that she did not intend the Board of Directors as a whole to be the judges when they were complained against by herself or a member.

The Master—That hardly seems possible, does it?

Mr. Thompson—It does not, really. And that she did intend that somebody, either the clerk or the Committee on Business, should act as the judge; and that is all that is necessary for my present point. Whom she intended is immaterial for my present purposes, provided it is granted that she did not intend them to act as judges in their own cause when they were complained of, and did intend that somebody else, whoever that might be, should act. And, further—and I cannot emphasize it too strongly—that she intended these formalities to occur, even when she herself was the complaining party.

Just think of it, if Your Honor please. Mrs. Eddy herself submitting her own complaint, not to her own judgment but to the determination of a third party, and putting herself, with a humility of which no symptoms have been shown by the majority of the directors in this case, on a par in this regard, when justice was at stake, with the humblest member of her own church.

The Master—I must confess that I find considerable difficulty in supposing that she intended that the clerk was to find the complaint valid or invalid.

Mr. Thompson—I should have a good deal of trouble with that if we were dealing with the question of tribunals at large. But we are dealing with a person not familiar with such details as that, but having large conceptions of square dealing; and it might well be in the case of a woman dealing with questions of this kind that she would not recognize that a clerk, a single individual, might not be an adequate tribunal to determine the validity of charges against the Board of Directors. The significant thing is that she thought there should be charges and that somebody should find them valid, and that even if she herself made them, that same course should be pursued.

The Master—That seems to be an instance, of which there are several others, on a critical point of fact, that when you get to the disputed point the few simple words required to clear up the meaning and make it perfectly definite are not found.

Mr. Thompson—If we could only

find a few simple words, sir, we need not argue three hours, but 15 minutes would do. It is because we can't find those decisive words anywhere here—

The Master—We have their omission.

Mr. Thompson—We have to reason about it on the basis of general probability drawn from other portions of the By-Laws dealing with the same class of subjects. The problem being presented, this is the only way to solve it. Does Your Honor think of any other?

The Master—I can't say I do at present.

Mr. Thompson—Well, I think it is established, and I do not see any doubt on these points—again I repeat—that when dealing with deviation from duty which meant violation of any by-law, or any Christian duty established by the tenets whatever, on the part of the entire Board of Directors—not individual members thereof, because the penalty was to be the appointment of five new ones, which shows clearly that she referred to the whole board as distinguished from the Finance Committee provision, which dealt with individuals—when dealing with that situation she required a complaint—that is not left in doubt—she required a finding that the complaint was valid, and she made those requirements even when she herself was the complainant. Whom she intended to designate as the judge is left in doubt, but it does not seem to me that that doubt affects in the slightest degree the argument which I am now making to Your Honor—namely, that Mrs. Eddy recognized that requirement of natural justice, that when individuals or entire boards are accused of something warranting dismissal, they should have a trial. That is all.

The Master—Well, the omission to say who is to make the finding is such a serious omission that it goes far to require a conclusion that the provision is hardly operative, doesn't it, for any purpose?

Mr. Thompson—Well, no. With great respect I take issue with Your Honor there. It does not require a conclusion that the provision is entirely operative for any purpose. It may require a conclusion that the provision is inoperative for the purpose of accomplishing what Mrs. Eddy intended to be accomplished,—namely, a trial; but it is just as strong as ever for the proposition that she intended that there should be a trial.

Now, whether her intention could be carried out or not is another matter. Technically and logically, and rationally, the only proposition necessary for present purposes is that in this matter she intended to provide for a trial. Whether she succeeded is wholly immaterial, because we are not now dealing with a complaint made against the whole Board of Directors; we are dealing with a complaint made



against one director, and if I can show that in an analogous case she intended to have a trial and a hearing, then it is an argument that she intended the same thing in this case, and we shall find that in this case the difficulty in getting that hearing, which occurs from the omission of important phraseology here, does not exist. The difficulty Your Honor points out does not exist in Article I, Section 5. The spirit is the same, the purpose is the same, the recognition of fairness is the same, and the recognition that these people do not hold their offices at the will of the majority. That is all I have cited it for.

I had in mind when I put this in here that that difficulty existed, and I called Your Honor's attention to it frankly before Your Honor said a word that there was a doubt as to who the tribunal was intended to be. I did it so as to be enabled to say, with some force, as I thought, that that doubt could not affect the only point for which I need that provision in the present case. We are trying to find out what was Mrs. Eddy's intention.

The Master—Not quite that, are we? Mrs. Eddy's intention is no doubt valuable for certain purposes, but what we are trying to find out is the legal effect of the By-Laws as they stand.

Mr. Thompson—Yes. Put it this way—

The Master—Now, Mrs. Eddy, as we have been so often reminded, never undertook to promulgate any of these By-Laws on her own sole authority; she always went through the form of having them adopted. No doubt when she wanted a by-law adopted, it was adopted; but she intended that their legal effect should be derived from their adoption,—

Mr. Thompson—Yes.

The Master—by the proper authorities of the society. And what we have to pass upon now is the legal effect as so adopted.

Mr. Thompson—Yes. That does not trouble me. We are dealing here with a written document. Somebody had an intention in composing that document. It may have been Mrs. Eddy's sole intention that we are trying to find out, or it may have been the joint intention of Mrs. Eddy and the adopting body, whatever weight may be given to the formal adoption that always occurred, generally occurred, when she asked for it. But the problem remains the same. The legal test, the legal problem, is always put, in dealing with a written document, "Let us find the intention of whosever intention is material, as determined by what is within the four corners of the document."

Now, if it will assist the argument at all, I may substitute the word "X" for Mrs. Eddy, and the argument will be just as strong. It does not strengthen or diminish the argument at all to use Mrs. Eddy's name. Somebody wrote this document; several persons may have been responsible.

What was the intention which those persons, when their work was turned in completed, meant to express?

Mr. Bates says that what they intended in Article I, Section 5, to express was that every director held his office at the will of his fellow directors, and that the power of removal was arbitrary. He tries to prove it by referring to the language of Article I, Section 5, and to other provisions in the By-Laws. That is just the way I try to prove the contrary. And I say that X, when he or she intended to provide for the removal of the entire Board of Directors, intended to have a trial and a hearing; and I argue that X must have had the same intention when he or she was providing for the removal of a single director.

Now, I say that for the purpose of removal, what appears is the difficulty arising from two facts.

First, that Mrs. Eddy was obscure, or whoever wrote this document was obscure, in the means and the methods for carrying out her intention, or his intention, or their intention. The obscurity may arise from the fact that Mrs. Eddy's intent may have been supplemented or diminished by the more or less formal action of other persons who participated in the final draft of this document. They may all be merged in one—the persons who drew this document may be treated as one individual. Then we have the same problem as before, to be determined by the four corners of that document, assisted by whatever outside relevant evidence there may be. What was the intention of that person, that conglomerate person, if you please, who was responsible for this document? I cannot put my own view of it any more clearly than that. Does anything further occur to Your Honor on that point?

The Master—No.

Mr. Thompson—I wish that Your Honor would ask me all the questions that do occur to you, because I am extremely anxious that my own view, right or wrong, should be made clear. I have wound up, of course, by inquiring whether it is conceivable that when providing for the discipline of individual members of the board in Article XXIV, Section 6, she intended the conditions of an impartial tribunal and an impartial finding and the chance to reform—and, by the way, I have not spoken of that, but the Finance Committee is given here, the directors as a whole are given, a chance to reform before they are removed by Mrs. Eddy. If they do not perform their functions faithfully after the complaint has been found valid, then they are to be removed.

The Master—There, again, we are left without instruction as to who is to determine whether they have been faithful to—

Mr. Thompson—We are; we are. If the person who drafted these By-Laws—and I prefer to think that Mrs. Eddy

personally is responsible, for a by-law like this, which is so elaborate, and has come down to us—its whole history has been shown, and it seems to me to convey a good deal of her idea and personality, but it does not make any difference—it seems to me that, whoever drew these By-Laws was not a lawyer, and did not have a comprehensive view of the organization of judicial tribunals, which makes a good deal of trouble for the Joint Judiciary Committee here in Massachusetts—that raises a problem, and that is all—it gives us something interesting to discuss; but if this had been drafted by a trained parliamentary draftsman, we should not have any doubt at all, none of these doubts would exist; and I must confess that it seems to me that the interrogatory put by Your Honor is merely another way of stating the problem rather than an objection to the particular solution of it which I am advancing. While it was going to give them a chance to reform—

The Master—Clearly they are all problems upon which honest people may well differ.

Mr. Thompson—Some of them are, yes; these problems of construction all are; but there are certain problems here which, in my judgment, are not problems upon which honest people ought to differ. Those problems, however, are plainly questions where there is an opportunity for argument pro and con. I did not detect in Governor Bates' argument any great appreciation of that proposition just put forward by Your Honor. It appeared to me that he thought that there was hardly any problem here at all. Now, anyway, they were to be given a chance to reform before the last penalty was to be visited upon them, when they erred as a body, and the error was a deviation from duty which consisted in a violation of the By-Laws or tenets. I think that that tends incidentally to throw light upon what she meant as to the discipline of the individual members for any possible deviation from duty.

Now, let us take Art. XI, Sect. 1. It is said there that when any member of the Church is accused of having the name without the life of a Christian Scientist, a complaint shall be made—I am not quoting—this is summarized—a complaint shall be made to the Board of Directors, and there shall be a formal trial had. Now, will Your Honor verify that and see whether I have not given the substance of that correctly, because the more of these provisions we find in the By-Laws requiring formal charges, complaints, and hearings, the more probable it becomes that in the most important situation of all, or the second most important situation of all, namely, when an individual director was to be removed, there should also be a trial and hearing, just as when, in the most important situation, the whole board was to be removed, there plainly

should be one. I am going to start now from the humblest member of the Church to the whole board, or I will start the other way, starting with the board and going down the line; and in every case I think I can show Your Honor that Mrs. Eddy provided for a trial and hearing, sometimes using those very words.

I assert that Art. XI, Sect. 1, expressly requires a complaint to and formal trial by the directors of any member of the Church accused of having the name without the life of a Christian Scientist. That is a fair construction of that article.

The Master—I hardly think that that will be disputed.

Mr. Thompson—And I assert that Sect. 5 of that Art. XI, which gives the directors general power of disciplining church members, expressly requires "complaints" and an "examination"—I quote the two words "complaints" and "examination"—of them by the board. I doubt if that can be successfully disputed.

And I further assert that Section 6 requires notice to the accused member, and a finding of "guilty," by the board, and I quote the word "guilty."

I call attention to Section 7, which again emphasizes the necessity of a "complaint," and I quote the word "complaint."

And I call attention to Section 10, which contains this expression,—

"and if upon complaint by another member the Board of Directors finds that the offense has been committed," etc.,

as showing Mrs. Eddy's appreciation of the necessity of a trial and hearing when charges of any sort or description calling for discipline were made against members of her Church.

And I call attention to Article XII now, which deals with charges of disloyalty of teachers, and requires the Board of Directors to "decide if his loyalty has been proved"—"proved" is the word I emphasize—and to "admonish"—and I quote the word "admonish"—a member found guilty. It is the same word that is used in reference to the Finance Committee.

Article XXII, Section 7, again, provides that Mrs. Eddy is not to be consulted on cases of discipline, "or on the cases of those on trial for dismissal from the Church."

"On trial" are the two words to which I desire to call attention, indicating that she recognized the necessity for a trial in any case of discipline—certainly in a case where the penalty might be dismissal from membership in the Church.

Now I ask, in the face of these provisions, dealing first with the Board of Directors as a whole, plainly requiring charges made, and a complaint, and a notice, and a hearing, and then the provisions dealing with the discipline of individual members and teachers, every one of which contains in terms the requirement of a trial

and a hearing and notice, whether it remains in the slightest degree probable that, under Article I, Section 5, which for present purposes we are assuming was the one which was in force here, she intended to dispense with every single one of the requirements of natural justice which she had so clearly recognized in every one of these cases? Does Your Honor feel that it makes any difference to the validity of that argument that in some of the provisions, that in some of her attempts to give natural justice, the machinery which she provided was obscure? The attempt remains, the recognition of the necessity for it remains. Whether the machinery is defective or not is not of the slightest interest in this matter, provided we find that there is sufficient machinery to give a fair hearing under Article I, Section 5.

That is all that I have to say on that subject, but I will ask Your Honor to remember, when I come to deal with a later proposition, these parallel provisions of the By-Laws, indicating Mrs. Eddy's appreciation of the necessity for fair dealing in cases of discipline.

The next proposition is very short, and requires no proof—

Neither the Finance Committee nor any member thereof took any action in reference to the attempted dismissal of Mr. Dittmore.

It is not claimed that they did. The argument is that they did not have to, that the provision did not apply; but I understand that it is admitted that if the provision did apply, it was not complied with.

We have, then, the major premises and the minor premises of the syllogism, and the conclusion would be that the Board of Directors, in attempting to dismiss Mr. Dittmore, acted entirely without jurisdiction, as the conditions expressly provided by Mrs. Eddy for taking jurisdiction had not arisen.

The next proposition, and one considerably more important than any that has preceded it, is this: If we continue to assume, first, that the by-law applicable was not the by-law of the twenty-eighth edition, which required Mrs. Eddy's affirmative consent, and which, therefore, could never be complied with after she had passed on; and if we further assume that the provision relating to the Finance Committee had no application, in other words, that the argument that I last made to Your Honor is unsound—then I advance this proposition, upon which I should be content, with its supplementary minor premises, to rest this case:

On the same assumption, if such action by the Finance Committee was not as a matter of construction of the by-laws a condition precedent to the exercise of the power of dismissal of a fellow member, then as matter of law that power could be exercised by the majority of the board only in ac-

cordance with the principles of natural justice—namely, on relevant charges, reasonable notice thereof, a fair hearing, and by a decision reached in good faith and not arbitrary, capricious, or irrational.

In other words, it comes to this: If Mrs. Eddy did not succeed by the particular methods which she sought to employ in obtaining natural justice for the individual members upon her board; if she did not succeed in doing it by the by-law of the twenty-eighth edition, because of its repeal; if she did not succeed in doing it by the provision for the Finance Committee, because it is too obscurely expressed,—then I say that her desire to do it remains as manifest as before, and that that desire will be taken hold of by the law, and effect given to it, by the provisions and principles of the common law of Massachusetts.

First, it is the settled law of this Commonwealth, and of other jurisdictions, that where the By-Laws, Articles of Association or other written statements of the terms of association of persons in an ecclesiastical body, club, or other voluntary society, confers the power of dismissal, whether upon the whole body of members or upon any lesser body of their number called managers or directors, committee, or what not, and are silent as to the formalities that shall attend the exercise of the power, or the manner in which it shall be exercised, the power must be exercised in accordance with the principles of natural justice, which imply at least notice of charges, a reasonable opportunity to be heard on those charges, and a decision on the part of the expelling body which is either capricious, arbitrary, irrational, or in bad faith.

To put that in another way—I put it in the form of a presumption there, as to the manner of exercising the power of expulsion—it can be expressed in another way equally truly—wherever the tenure of office of the directors or managing body, not the mere administrative servants, but the managing officials of any voluntary organization, club, church or what not, is not clearly expressed to be at the arbitrary will of a majority of the board, or of some third person, the presumption of law is that it is not at the arbitrary will of anybody, but is a tenure limited, perhaps, by some express provision to a term of years, but within that term, during good behavior, and not to be terminated for bad behavior until the bad behavior is proved. Either way that presumption can be expressed, it is equally true, and it means exactly the same thing.

Now, I have cited on my brief a considerable number of cases for that proposition, and I do not think that it is necessary for me to spend time here to analyze them all. I earnestly request Your Honor, however, when dealing with a proposition so fundamental as this, to give attention to all

of the cases that I have cited on this brief. I will, however—

The Master—Some of them were discussed by Governor Bates in his argument.

Mr. Thompson—Some of them were, and others were not. Four of them—there are a great many more now on the brief—four of them were given to Your Honor, with Governor Bates' consent, and were given to him and to Mr. Whipple, during the early part of this case, and they must have been in Your Honor's mind during a considerable portion of the hearings.

I will first take up a few of the cases where the By-Laws or written articles, whatever they were, either particularly or in loose language express the word "cause," expelled or dismissed for some cause, for mal-administration, for disloyalty or what not. My proposition is that in this case Mrs. Eddy intended that these men should not be dismissed except for some cause rendering them rationally unfit for their office, and that that cause should be established; and I say that if she cannot be shown to have provided one essential requisite of natural justice, namely, that the expelling body and the accusing body should be different, it is all the more reason for holding the expelling body rigidly to the principles of natural justice, to the giving of fair notice and a fair hearing, in view of the suspicion that may attach to any such body that it starts with a prejudice against the accused person. The cases I will enumerate for the purposes of the record:

Murdock, Appellant, 7 Pick, 303;  
Murdock v. Trustees, 12 Pick, 243;  
Gray v. Christian Society, 137 Mass. 329;

Smyth v. Phillips Academy, 154 Mass. 551;

Spillman v. Home Circle, 157 Mass. 128;

Canadian Religious Soc. v. Parmenter, 180 Mass. 415;

Carter v. Papineau, 222 Mass. 464;  
Richards v. Morrison, 229 Mass. 458.

And then the following English cases, which are cited in the Gray case, and upon which that decision was based, some of which—and I will call Your Honor's special attention to them—deal with cases where the power of expulsion was conferred broadly, and no intimation was given in the writing conferring it, that it should be for cause, in other words, cases on all fours with this case. The fact that those English cases are cited in the Gray case gives them an added weight, although they have sufficient weight in their own intrinsic authority. The English cases are as follows:

Innes v. Wiley, 1 Car. & K. 257;  
Queen v. Saddlers Co., 10 H. L. Cas. 404;

Dean v. Bennett, L. R. 6 Ch. App. 489;

Fisher v. Keane, L. R. 11 Ch. Div. 353;

Dawkins v. Antrobus, L. R. 17 Ch. Div. 615;

Lambert v. Addison, 46 L. T. (n. s.) 20.

Then, some further American cases: State v. Adams, 44 Mo. 570, 585-586; People v. Independent Etc. Union, 164 App. Div. (N. Y.) 267, 270;

Welch v. Passaic Hospital, 59 N. J. L. 142;

Harris v. Aiken, 76 Kan. 516, 520;

Fort v. Baptist Church, 55 S. W. 402, 409 (Tex. Civ. App.).

In the Murdock case there was a statute of 1823, which provided for an appeal to the court from a decree of the Visitors of the Andover Theological Seminary, and there was a provision in the charter, or in the statute, defining the causes in very general terms for which a professor could be removed. Therefore the case is not strictly a decision in point, because there is no language expressly requiring a cause, any cause at all, in this case, but there are some dicta, general expressions in the case, which have a bearing upon the existence of such a presumption as that for which I am contending here.

In the first place, the court held that the notice must contain charges fully and plainly, substantially and perfectly described to the professor to be removed. That was not in the charter of the institution, about giving notice. The court read that in as a requirement impliedly coming into existence from the necessity for a hearing at all. Your Honor will see that they require charges to be stated almost as accurately and with almost the same particularity that they would be required in a criminal indictment. Then they deal with some of the charges, one of them being a general charge of jealousy and want of confidence, and said, even under the broad language of the charter of statute or articles of association, whatever they may be called, of the seminary, they were too vague to be sufficient cause for removal; they could not be sustained even by the general language which referred to the causes for which expulsion could be had.

That bears upon the proposition that charges must be relevant in the first place. They must be such as would induce a rational man, using his reason, to say that if they existed they rendered the incumbent unfit to hold the particular office from which it was desired to expel him. Mr. Chief Justice Parker, speaking for the court, said, referring for the necessity for an accurate description of the charges, and for definite charges:

"This enters so essentially into the justice of the case, and into the character of a fair trial, that it ought never to be dispensed with. Without it, the party charged does not know what to defend against."

Then that same case, Professor Murdock's case, came up again later before Chief Justice Shaw, and he made some statements which, although his decision was not exactly in point, because the charter of the seminary

contained the necessity for charges, has a bearing here. He says, page 263:

"It is not to be insisted on, that in exercising the powers vested in a new jurisdiction, where no forms are prescribed, any precise course as to forms must be followed; but these rules indicate the course which must in substance be pursued by every tribunal sitting judicially upon the rights of others. If the trustees at the time considered themselves as acting judicially, we think they virtually disregarded these salutary rules. . . . We should hold such a proceeding in a court of common law to be contrary to the principles of natural justice and the law of the land; and the proceedings before ecclesiastical tribunals should not be less regardful of those fundamental rules than courts of the common law."

Does Your Honor feel much doubt that if Chief Justice Shaw had been confronted with this by-law, "a majority vote shall dismiss a member," and with all the other by-laws in pari materia, indicating the opinion of the writer or author of these By-Laws, that there was such a thing as natural justice—at least indicating that—and it meant that a person ought to be told what he was charged with—does Your Honor think he would have much hesitation in reading into that by-law, or interpreting it in this way, "a majority vote shall dismiss a member for cause"?

The presumption is that in order to prove the existence of arbitrary power to dismiss, you have got to have it expressly stated; the by-law should have read, "A majority vote shall dismiss a member without cause." Then, and only then, could the contention made by Governor Bates in this case be sustained. The courts say that where it is left in doubt the requirement of natural justice is so strong that they would suppose that the author meant that it should be with cause and not without. That comes from the general prejudice against arbitrary and autocratic power exercised toward the officials intrusted with high responsibility, a deliberative body, having in hand the destinies of an organization, especially a religious or ecclesiastical organization.

Now, in Gray vs. Christian Society, Your Honor does not need to have me state the facts, but Your Honor has correctly stated that it contained some language by Mr. Justice Holmes which does assist us in determining whether such a presumption as this exists or not. He says:

"The necessity of complying with these requirements of common justice has been so uniformly asserted that only a few cases need be cited in addition to those last referred to."

And this is what I call attention to: "To show how unwilling courts have been to admit that charters, by-laws, or rules could be intended to

deprive a man of his membership without a hearing."

That strikes me as an assertion that where language is not clear that they were so intended, the courts are unwilling to admit it, which is another way of saying that there is a presumption against it, as a matter of construction of the language used.

Mr. Streeter—Mr. Thompson, doesn't Judge Holmes specifically say in that opinion that the proceeding for expulsion is a judicial proceeding?

Mr. Thompson—Yes.

Mr. Streeter—Doesn't he use that precise term?

The Master—Yes.

Mr. Thompson—He does, but the difficulty is that you are dealing there, as Governor Bates correctly pointed out, with language which, although very vaguely, does in terms speak of a cause. If you are using the case for rhetorical purposes, as Governor Bates did most of his cases, you could quote it for anything, but if you want to be accurate you cannot quote that case as going any farther than this: that there is a presumption where the charter is silent on the question of whether removal shall or shall not be for cause, that it must have been intended to be for cause and not at the arbitrary will or caprice of the members; and I argue that that presumption is doubly strong when the person to be expelled is a member of a deliberative body, and when, if you give the uncontrolled power to discharge without disclosing or giving any reason, you have simply said that the government of this Church in effect is vested in three people and not in five, because any three can always expel the two who differ with them and get two who agree with them.

The consequences of the construction contended for here on the other side are very serious. It destroys the possibility of any frank and honest consideration of the multitude of important deliberative questions that were bound to come before this board, which Mrs. Eddy knew would come before it, and which actually have come before it.

The Master—In the by-law reading as it stands, dismissal may be by a majority vote of the directors—

Mr. Thompson—Yes.

The Master—Or the request of Mrs. Eddy.

Mr. Thompson—Yes.

The Master—How much in the nature of charges and hearings would have had to precede Mrs. Eddy's request?

Mr. Thompson—I was coming to that. I had devoted a separate section of this brief to that very question; I knew that was bound to arise. It may be argued—in other words, the argument that would suggest itself to Your Honor, is this. Mrs. Eddy had only to request it without giving any reasons; she could be perfectly arbitrary and capricious. Therefore, if her request stood on the same basis as the majority vote, it follows that the ma-

ajority could be equally so. That is putting it in the strongest possible way for the directors. The answer to that—I am perfectly willing to make it now as at any other time—

The Master—No; take your time about it.

Mr. Thompson—Well, I would rather make it now, sir.

The Master—I can see, of course, that power might well have been intrusted to Mrs. Eddy which would not have been intrusted to the directors.

Mr. Thompson—That was one of the arguments I was going to make. Right at the outset you are met with this. That implies that Mrs. Eddy supposed that any five men would be vested with the same discernment and intuitive powers of discovering the right which she had, which is not to be supposed, and which is plainly not the case. And, in the second place, it supposed that Mrs. Eddy herself would make the request without trial and hearing, which is negated entirely by the express provision that when she was dealing with the entire board she submitted her own complaints to some outside tribunal, and would not even decide the truth of her own complaint on her own investigation.

Now, that is much farther than we need to go. I should say that the reasonable interpretation of that was this. Mrs. Eddy could trust herself not to act unjustly, she would not request the dismissal of a man whom she had previously approved, as she did Mr. Dittmore here, on caprice or anger or any one of the ordinary human motives that appear to have been so prominent, toward the end, at least, in the dealings of these men with one another. She would want to know the truth and she would try to find it out. Her whole spirit and expression here indicate the solicitude she had, not to take action except on the truth.

Now, if she would do that herself, she could have given a hearing herself. You might turn the argument right round the other way. She expected the directors to be just as fair, honest and careful, in the ascertainment of the truth as she herself would have been before making any such request. I do not think that that presents, when analyzed, any serious difficulty with the situation. It did not seem to me that it did. On the face of it, if you take it without reflection, it appears to have a certain plausibility, but it does not appear to me to be a consideration of any great weight in meeting the presumption which I am trying to show exists.

In this Supreme Council case, the Spillman case, dealing with the Supreme Council, Mr. Justice Allen said, after saying that the Supreme Council was a body whose will was a law unto itself, said—

"—that it might adopt such mode of trial as it pleased, subject only to the implied limitation that it must be fair."

In the Canadian case there was a general provision for a cause that must exist, a cause rendering a person unfit to be a member, and Mr. Justice Barker said:

"In the absence of any special provision of statute law, the courts in such cases are not appellate tribunals, and if the society acted regularly, giving due notice and opportunity to be heard, it is immaterial that another tribunal," and so on.

Those cases, together with *Richards v. Morrison*, where there was elaborate provision for charges and a hearing, are simply valuable in this case, especially the Gray case, as indicating the readiness with which the courts seize the slightest indication that the instrument intended not to confer arbitrary power, and the reluctance with which they reach any conclusion that it did intend to confer arbitrary power, or would reach such a conclusion; and the rigidity with which they regard the essential elements of justice, namely, notice, hearing, a fair and not a prejudiced decision, and charges that have some relation to the result reached.

Mr. Justice Rugg, in *Richards v. Morrison*, states, in the latest and most authoritative form, all the requirements of natural justice in detail.

In *Innes v. Wiley*, which was an English case, referred to in the Gray case, the Caledonian Society was the society in question, and the rules of that society contained no express provision as to the expulsion of members or as to any grounds therefor, but provided generally that the committee should have power to transact all business connected with the society, and the committee undertook to expel a man without making any charges against him or stating any reasons.

So you have got a case right in point. I can afford to be as fair as possible in dealing with these Massachusetts cases when I find that the English cases, upon which they are based, supply the slight—what appeared to be the serious difficulty, and on further consideration appears to be the very slight difficulty, of the absence of any provision whatever in the statutes, rules or by-laws, asserting that the discharge need be for any cause at all.

In other words, unless the by-law says in so many words that the discharge may be without cause, it will always be held that they meant it shall be with cause; and if the cause is not specified the courts hold that what is meant is any relevant cause. You cannot discharge a man from the Caledonian Society for having yellow hair, even if he is a Scotchman, but you can discharge him for being immoral or any one of a million other causes a rational man would say was a cause for discharge.

Now, *Queen v. Saddlers Company*. There the provision was that he could be discharged for reasonable cause. Well, that is all we assert here—for reasonable cause. There it was ex-

pressed; here it is implied. The Court took the ground that the requirement of natural justice must be complied with.

In *Dean v. Bennett* a Baptist Church was in question, an English case, and the instrument was silent as to the grounds on which removal could be ordered. They held as long as the instrument was silent the Court would take care of it. Unless the parties showed expressly that they intended to be unfair and act arbitrarily, the Court said they did not. The Court said it would be read into that—of course it must be read into that—that the discharge must only be for cause.

In some of my other English cases there is a general statement of cause; in some there is not; in some there is a very particular statement. It does not make any difference whether the instrument says the discharge must be for cause for a lot of enumerated particular reasons, or is silent. Unless it says distinctly that the parties want to be unfair and unjust, and want to confer autocratic power, then they will be held not to.

I call Your Honor's attention to this proposition that Governor Bates states here, that even if this article did intend to confer arbitrary power, and make each man hold his office at the bare will and caprice of the majority, still the dismissal had got to be in good faith; and if every other reason in this case failed that would be ample.

The Master—It is pretty hard, in that event, to show bad faith.

Mr. Thompson—It would be hard but it would not be impossible here, sir.

The Master—If the dismissal was on no other ground than "we do not like him," it would have been sufficient under those circumstances, wouldn't it?

Mr. Thompson—Not according to Governor Bates. He has admitted here, not once but many times in my hearing, that even if the power of dismissal was arbitrary it has got to be exercised in good faith. I suppose he attached some meaning to the language he used when he made that assumption. I do not know but it is violent, but I think I am entitled to make it.

The Master—Suppose in good faith the majority do not like the man they dismiss.

Mr. Thompson—I doubt very much whether even there they have got the arbitrary power, but that is an academic question here. Suppose this, Your Honor. Instead of supposing they do not like him, suppose they would have had the right to discharge him because they did not like him, but suppose that is not what they did. Suppose they make against him and against another man charges which they know to be false, or are ashamed to put down in writing the real reasons for their discharge. That in my judgment is bad faith, even if they have got the arbitrary power,

and that is exactly what happened here in both these cases. It is because it happened in both these cases, it is because of that fundamental unfairness here, that the charges which Mr. Dittmore thought ought to be made against these trustees for the good of that Church, cutting down the London Bureau, putting *The Monitor* on a less extravagant basis, establishing a better system for the tenure of office of their employees, and all down through the list, have sunk in his mind, and in my mind, and I believe in the mind of every rational man, into absolute insignificance, compared with the great and astounding situation which is presented by the grounds of these men in discharging both him and Mr. Rowlands.

My next proposition I have argued already, but I will state it so that it may get into the record in accurate form. The Christian Science Board of Directors established by the By-Laws—and I am dealing only with the by-law directors, and not with the deed directors—is a body to which the principle of natural justice laid down in the authorities above cited as applicable to the expulsion of members applies. And I may add that if it were true that the trustees under Mrs. Eddy's deed of Sept. 1, 1892, were subject to the same by-law, which they are not, the principles of natural justice would apply to the dismissal of one of them, too.

Of course, if they are similar officers to deacons and church wardens, which I doubt, but which they contend they are, these principles of natural justice apply. It never was heard of in this Commonwealth that the members of a church, Episcopal or what not, could discharge a warden or a deacon at their own caprice, without giving reasons and giving them a chance to be heard. Your Honor has only to look at the dicta in *Weld v. May*, to which Your Honor has referred, to find that, and also at *Parker v. May*, 5 Cushing, 336, 349-350.

If you are going to take the position that these people are similar to deacons and church wardens you have got to take the burden with the benefit. The burden of it is that if you are going to discharge them you have got to give them a fair hearing. If you do not have to give them a fair hearing when they are not similar to deacons and church wardens, and you lose the benefit of that decision, and it is up to you to decide whether the price is too big for you to pay.

But that is not the ground on which I put it—that these men are similar to deacons and church wardens. It is on far deeper grounds than that. It is on the grounds that I have already urged to Your Honor, that courts of justice are not going to read into an ambiguous or silent instrument a provision that it was intended to confer the power, and destroy the purpose of the tribunal which it created, and to

create and bring into existence the possibility of wrong, injustice and meanness. That is as true whether the people that are concerned are similar to deacons as it is whether they are similar to Caledonians or Highlanders.

I think if Your Honor does not mind I would like to take a recess.

The Master—We will stop here a minute.

[Short recess]

Mr. Whipple—If Your Honor please, I do not want to appear to be obnoxiously insistent, but I have not received that choice assortment of authorities that the Governor said he thought he could get between now and 2 o'clock, and I am afraid I shall be left very little time to examine them. Perhaps he is assuming they are so simple and elementary I do not need much time to look them over, but let me assure you that I do.

Mr. Bates—If Your Honor please, I have sent over to the office and found a portion of my notes. The principle is based upon the premise that there is nothing in the deed which provides for the acceptance of resignations. And we say that that is what would be the case if their contention in regard to this deed is to be accepted.

Mr. Whipple—If you will pardon me, Governor, I did not ask for an expounding of the cases. I asked for their names, and I do not think that you ought to interrupt—I did not ask Mr. Thompson's permission to interrupt his argument to have you expound.

Mr. Bates—Do you object to my reading from them?

Mr. Whipple—Yes, I do. If you did not want to do it while you argued, why do it now?

The Master—Suppose for the present you simply give Mr. Whipple the list so that he may be looking it over.

Mr. Whipple—Yes.

The Master—If you need an opportunity to say more about them, we will see about that later.

Mr. Whipple—You say that this is only a part of them. If you discover the others I would like to have the names of them when you get them.

Mr. Bates—I refer to:

Perry on Trusts, 6th edition, Section 274.

Twenty-eighth American and English Encyclopedia Law (2nd edition), page 976.

There are many cases cited to the effect that the rule is as I have stated it—

Mr. Whipple—Just a moment. That is 23 American and English Encyclopedia Law, page 976?

Mr. Bates—Yes. Many cases cited give the rule as I have stated it.

Thirty-nine Cyc., 258.

Diefendorf v. Speaker, 10 N. Y., 246 250.

Falkner v. Dooly (Utah), 75 Pac. 856.

New South Building and Loan Association v. Gann, 101 Ga., 678.

Drane v. Gunter, 19 Ala., 731.  
 Bagett v. Keating, 31 Ark., 400.  
 Henderson v. Sherman, 47 Mich., 267.  
 Boyle v. Boyle, 3 Allen, 158.  
 Cruger v. Halliday, 11 Paige, 314.  
 Breedlove v. Stump, 11 Tenn., 257.  
 Thatcher v. Candee, 33 How. Practice, 145.  
 Green v. Blackwell, 31 N. J. Eq., 37.  
 And there may be one or two more.

Mr. Whipple—Well, you see, Governor, that I could hardly be expected to read all those during the lunch hour. I am glad that you have given me such ample time! Did you say 3 Allen, or 13? That was the only case in which our own courts seem to have passed upon this remarkable principle, so elementary!

Mr. Bates—May I say, Your Honor, that this is not a "remarkable principle"?

Mr. Thompson—Well, Governor, it may be remarkable or not, but, really, I would like to speak on some more definite and relevant principle before I get through.

Mr. Bates—I will not interrupt your argument. Go on.

The Master—We will go on now, and hear about that later.

Mr. Thompson—I am not much interested in this proposition.

There is one statement in Mrs. Eddy's letter announcing the appointment of a fifth director. She says: "You will have three in unity. That leaves a majority when they are right."

That implies that the question whether the majority is right or not is a question that interested her, and it looks very much as if she expected that the question of right or wrong, that it, of cause or no cause, would be discussed and deliberated upon. In other words, it bears out the entire current of her thought as shown in her letters, in these by-laws, and in every other document for which she is responsible.

And there is an analogy in the case at common law of ordinary corporations for the removal of directors—I mean within the term of office for which they are elected—at the end of the term they come up for reelection, and no cause need be assigned. It is a matter of common law, and I have cited a few cases on this brief, which I will not trouble Your Honor with now, that while administrative officers, servants and employees of corporations may be discharged, of course, without cause, the discharge of a director must be for cause, and with notice and hearing of the charges, if within the term for which he is elected. Statutes often make provision for that, but in so doing they are really only declaring the common law on the subject.

Now, let us consider the cases that are cited by Governor Bates as in conflict with this view. He cites:

O'Dowd v. Boston, 149 Mass. 443;  
 Attorney-General v. Donohue, 169 Mass. 18;

Sims v. Police Commr., 193 Mass. 547;

In re Hennen, 13 Pet. 230;

Reagan v. U. S. 182 U. S. 419.

All those are cases of administrative officers except the Court case there, where the question was whether the judge of a court could discharge a lower official, clerk or what not; and they are political cases, they are cases having to do with government, and they are cases which traditionally, for the purposes of efficient handling of governmental affairs, have been held to permit the discharge of minor officials at will. They have not anything to do with cases such as Gray v. Christian Society and the other cases that I have cited bearing upon clubs, churches, and organizations of that sort, and still less have they to do with the discharge of officers of high rank, having judicial functions, in other respects, like the directors of this church.

Your Honor will notice from the citations that I have already made from the By-Laws, that both by implication and expressly this board of directors is created a judicial body for disciplinary purposes, and if we apply the analogies of judicial officers we may search in vain throughout the whole Anglo-Saxon jurisprudence and political organization for any provision giving anybody the right to discharge a judge except for cause. In fact that instinctive feeling, that tradition, was one of the great underlying grounds of objection to the proposition once made by an eminent but somewhat enthusiastic man when dealing with court matters, for the recall of judges and the recall of judicial decisions. It is instinctively recognized that people sufficiently important to be trusted to discipline the members of an organization which though unnumbered is supposed to contain millions of adherents, and the Church itself thousands of members, ought not themselves to be subject to removal at the arbitrary will and caprice of a majority of their number.

I say, therefore, in concluding this part of the argument, that every pronouncement of Mrs. Eddy, the general spirit of her life, the general principles on which she acted, the particular applications of those general principles which she expressed in numerous provisions of the By-Laws, the injustice that would come from the contrary construction, the opportunity for abuse that would occur, and the general analogies of the law, both with reference to the directors of private corporations and to public officers, where the distinction must plainly be drawn between administrative and judicial functions, all go to show that there is such a presumption as the one I have alleged exists, that we do not need to rely upon it here, because it was Mrs. Eddy's actual intention that there should be a hearing, and that if we did need to rely upon it, this is a typical case to

which it would apply, namely, that where a provision of articles, By-Laws or what not, gave the power to somebody to expel somebody else, particularly when that somebody is a member of the same body to which that somebody else belongs, unless it is expressed in clear and unambiguous language that that power is to be arbitrary, it will be presumed conclusively not to be arbitrary, but to be only for cause. And if that is the case, then when cause is to be shown, the authorities are overwhelming that it must be shown in accordance with the principles of natural fairness, namely, on proper notice, fair hearing, unprejudiced minds as far as possible, and at least an attempt to find the truth of the particular charges made; and not to make those charges an excuse for action based upon reasons unexpressed and of which the persons entertaining them are ashamed.

Now, there is one other very powerful reason for this construction for which I have been contending in this case. I have reserved it to the last because it seems to me an admission of a most powerful character. It seems to me an unconscious declaration which would never have been made, perhaps, if the forethought had been equal to the afterthought here, in view of the determination, as I shall show, of these directors to do something for which there was no just cause. But it was made. It was made because it was believed to be the true idea and the true construction of this by-law, and it stands as a declaration by the majority of the governing board of this Church, assisted by eminent counsel employed for the purpose, after months of deliberation, namely, the resolution itself under which this discharge was made. I call Your Honor's particular attention to that resolution. It begins by enumerating reasons, with the word "whereas," and when it gets to the operative part, what does it say? It says, "Therefore be it voted that Mr. Dittmore shall be discharged." "Therefore"—what does that mean? Because of these reasons. That is what it means. There is an absolute recognition by counsel for this Church, himself a Christian Scientist, versed in the history and meaning of every one of these By-Laws, referred to as authority from beginning to end by these people, as to Mrs. Eddy's intention—there is his declaration that, in order to dismiss a member of the Board of Directors—and I may incidentally say a member of the Board of Trustees—there has got to be a "Therefore" there. It has got to be for reasons.

Now, how can they take it back now? How can they take it back after they have admitted it? Under the exigencies of this case, it will be said. What was the way that they tried to take it back? By the feeble statement, which I should have supposed Governor Bates would hesitate to make,

we didn't have to do right; we didn't have to make charges; we could have been arbitrary; we were arbitrary; but we thought that we would go through the form of making charges; we did not really need to do it at all.

Does that explain it? Does that do away with the probative force of those charges, prepared on this evidence six weeks before, against Mr. Dittmore and Mr. Rowlands? Obviously, the subject of most careful consideration between counsel and client, framed with the utmost care, and the word "Therefore" put in because they knew that unless it was for reasons, there was no power to discharge at all.

I would like to know how, in the face of these provisions of the By-Laws to which I have referred, every one of them known to them better than they were known to me, every one of them familiar to these people as the alphabet, these people who, if anyone, can interpret Mrs. Eddy's wishes, ought to know what they were, and her meaning, whose interpretation might be questioned when affected by self-interest, and when affected by the benefit which might be gained in subsequent proceedings from changing it, but who when called upon to act enumerated 13 distinct and separate charges against Mr. Dittmore, and I do not know how many against Mr. Rowlands—I have not counted them—and said, Therefore, be it resolved that this man is hereby dismissed from this board—I would like to know why, in the face of all these things, they can now say it was not necessary to have charges? If it was not necessary to have charges, why did they make them? They will have difficulty in explaining that so that it will appeal to a rational man, accustomed to judge human motives. It may be covered by rhetoric, it may be explained in a manner satisfactory to unthinking persons, accustomed to take words without considering their meaning, but that can never be explained satisfactorily to a person accustomed to weigh and judge human motives calmly and rationally and candidly.

First, let us see what these charges are. I have enumerated them all in my brief, and summarized them. They are all distinct and separate.

(1) His general violation of Art. I, Sect. 6; and then they go on to specify under that general violation several particulars. Judge Smith was bringing to bear his knowledge of common law pleading here. The unconscious weight of this, the significance of this admission, is overwhelming, if you really consider it—the first specification under general charge. You would think that he was dealing with a burglar who was demanding specifications before he would go to trial, and depending on technicality to get out.

(2) Doing as a single member what could properly be done only by the board. And they say that they should take judicial notice of that. One of the feeble attempts that they make to

show that, whether he got a hearing or not, he did not need one, because they knew it all beforehand. Did they? Had they been following him around every day for two years to find out what he had been doing? How could they take knowledge—of their inner consciousness?—to arrive at the truth of that proposition?

(3) Doing things contrary to the board's action.

How did they know? Was it intuitive knowledge? Was it revealed to them by some supernatural process? The courts say that such things should be proved; a hearing ought to be had; you ought to hear what he has to say about it.

(4) Refusing to be bound by the majority's action.

How did they know that? Did his refusal to be bound occur in their presence, or did it occur outside of their presence? If the latter, how do they know that it occurred at all? Do these men claim supernatural powers of ascertaining the truth?

(5) Trying to coerce the board into accepting his opinions and will.

I concede that there is some shadow of reason for saying that if that were true, they might know it, without summoning witnesses. It is the first one of these charges that there is any shadow of excuse for saying that they could find out without inquiry and without a fair opportunity to be heard, such as the Anglo-Saxon people have demanded for 1500 years; and this is the first body, a religious tribunal, that has dared to come in and say that they will wreck a man's reputation, charge him with 13 different things, and will not even give him a chance to be heard, or even tell him that they are going to do it!

(6) Carrying on a "campaign (and I quote now) for personal influence and control."

How does that sound to Your Honor, —carrying on a "campaign for personal influence and control"? Who told them that? Where did they find that out?

(7) Violating Article I, Section 5, by reporting the discussions of the board.

How did they know that? Did they ask him? No.

(8) Violating Article XXXIII, Section 2, by giving unauthorized directions to state committees on publication.

How under the sun did they know that that was true? And yet it is "because" these things were true, they say, "Therefore, be it resolved that he be dismissed from this board."

(9) Producing discord between the board and the publishing trustees, and hindering a settlement of their controversies.

Now we are getting somewhere near the explanation of what really happened here.

(10) Writing improper letters to the board.

Well, they might take judicial notice

of that, because they received the letters; but Your Honor has read them. I shall have something to say about those improper letters later. Improper letters! A man pleading for months for the elements of fair dealing, standing provocative language, which Mr. Merritt himself said was well qualified to arouse the resentment of a self-respecting man! And they say that his letters were improper. Just think of that, Your Honor,—"rude and offensive behavior," when Dickey apologized to him so many times for the same thing that there is not one of them that can remember the exact number, and Mr. Merritt said that Mr. Dittmore succeeded remarkably in preserving his self-control under language naturally provocative to a self-respecting man, and they go and charge him with "rude and offensive behavior toward other members!"

(12) Ceasing to maintain—and how sanctimonious this sounds—"an attitude of unity, cooperation, equality, and Christian fellowship" toward the other members.

That sounds convincing, does it not?

(13) Disregarding the remonstrances of the other members.

Well, he did disregard some of their remonstrances, and, if he had not, he would not have been worthy to hold the position to which he was appointed by Mrs. Eddy herself.

They paraded here the proposition that because Mr. Dickey was appointed by Mrs. Eddy, and because Mr. Neal was appointed by Mrs. Eddy, a certain presumption of innocence must attach to every act and word of theirs. I claim the same for Mr. Dittmore,—no more and no less. The argument is a stalemate: set one presumption against the other, and then find out the truth, because no such presumption will help us here.

Now, let us see how that vote was passed. "Therefore," it says, "because of" 13 different things that he has done, it is voted to dismiss him. That vote was deliberately prepared six weeks in advance, at least, by Judge Smith, acting as counsel for these people in the preparation of it (Merritt, Vol. III, p. 613, column 2; Dickey, Vol. III, p. 517, column 2). An admission explicit and unqualified that that is the truth!

The same thing in regard to Rowlands.

Second, how can you get away from that word "therefore"? It means that reasons are needed, and that these, and no others, are the reasons.

Now, then, to confess that you cannot dismiss a man without reasons is at once to bring yourself under the law, which holds that you must then give him a chance to be heard on the question whether those reasons in truth exist, if you are acting in good faith.

I now approach the next proposition. Certain essential requirements of natural justice were violated by his fellow

directors in the attempted dismissal of Mr. Dittmore of March 17, 1919, namely, he was dismissed on charges of which he had no reasonable prior notice, on which he had no fair opportunity to be heard, and the action of the majority was arbitrary, capricious, and taken for ulterior motives, and in bad faith, or, if it was sincere, it was irrational, falling right within the condemnation set out in so many words by Chief Justice Rugg in the case of Richards v. Morrison, 229 Mass. 458.

Now, first, it is established beyond any doubt, and was not denied by any witness, that he was kept in entire ignorance of these charges, as well as of the fact that any such action was in contemplation, or "under consideration," which Mr. Dickey said he would prefer to the phrase "in contemplation," until the charges were read to him a few minutes before the vote was passed (Dickey, Vol. III, p. 517, column 2; Merritt, Vol. III, p. 613, column 1; Neal, Vol. III, p. 675, column 2). He did not get his notice; he did not even get warned that the blow was going to fall. Some people, if they thought that they had arbitrary power and were going to exercise it, would have at least said to him, "See here: if you don't resign we shall have to hold a meeting and expel you." They waited until they had read the resolution to him. Then it says,

"The individual directors then talked to Mr. Dittmore, urging him to resign."

Why? "For his own sake." The clearest instance of an attempted terrorization of a man that ever appeared in a court! They have written it down in black and white in their own records. That is why they did not tell him beforehand. They wanted the blow to be sudden, overwhelming. They did not like what they were doing. They hoped to get out of it. They wanted him to help them out of it. They wanted to scare him into resigning. It is that part of it, on the issue of notice, that is worse than any recorded case, a greater violation, a more deliberate, serious and sinister violation of the requirement of natural justice, that reasonable notice shall be given, than you can find in any recorded case that Mr. Demond and I have been able to find in the books—I mean on the facts.

Next, it is equally well established, and not denied by any witness, that Mr. Dittmore was given no opportunity to be heard on any of these 13 charges. The record states (Exhibit 228, Vol. I, pp. 297-298, column 2) that immediately after the passage of the resolution dismissing Mr. Rowlands, the proposed vote or "resolution" regarding Mr. Dittmore "was read." Immediately following the "resolution" this occurs:

"And before the adoption—" think of these men, dealing with a member of the board who served for 10 years, lacking six weeks, who would have been entitled in six weeks, if he had wanted it, which he didn't, to a

pension, under their own rules, after 10 years' faithful service—think of it!—immediately following the resolution,

"And before the adoption of the foregoing resolution the individual directors appealed to Mr. Dittmore—" what? For the sake of the Church? No!—

"that for his own sake he should tender his resignation as a member of this board. On his declining to do so, it was moved by Mr. Merritt, seconded by Mr. Rathvon, that the resolution be carried. Carried. Shortly thereafter Mr. Dittmore left the board meeting."

That is all there is to it.

Does Your Honor think that he got treated fairly there? Does Your Honor believe that these men believed themselves that those charges were true, that they relied upon them, and were satisfied to rely upon the truth of those charges, and therefore to hold to that word "Therefore" which they use? Does their action not show that they did not rely upon those charges except as an instrument of terror, and not as a declaration of truth? It is not for me here to call attention to the similar action in Mr. Rowlands' case, although it is of record in this case, that when they proposed it, within ten minutes of his own discharge, this director whom they now denounce, as his last official act, stood up in that board and denounced the making or the turning of a controversy on Principle, the turning of controversies on business matters, the turning of a controversy on economy, into the false charge of neglect of duty, and the word "Therefore" occurs there too. Every man of them knew that the word "Therefore" indicated what was not true, that it was not "Therefore," that it was not because they thought Rowlands guilty of the things with which he was charged, of neglect of duty, any more than it was because they thought that this man was guilty of a single one of those 13 charges that they had elaborately, with the aid of a man who has not dared to testify in this case, formulated against him—the only man on their board who, in addition to being a loyal follower of Mrs. Eddy, had the instincts of a gentleman!

I next come to the proposition that the action of the majority in passing that vote under those circumstances was arbitrary, capricious, and, if it was sincere—and I hate to make the assumption even momentarily, and even for the purposes of argument, but I do—irrational. I won't spend any time talking about its being arbitrary. If I had to argue that I might as well not argue the case at all. There are some things so plain here that no words can do anything but obscure them.

I won't spend any time in arguing that it was capricious. The Oxford Dictionary says, "changing apparently

without regard to any laws, arbitrary." That is enough on that.

If it was sincere it was irrational. Why? If they sincerely thought they were discharging him because he was guilty of those 13 charges, then it was quite irrational to assume the charges to be true without trying to find out whether they were true or not. Such a thing occasionally occurs in a jury room, and when it occurs is the basis for setting aside the verdict on the ground that it was irrational and had no relation to the evidence produced. That is the way we deal with it in courts of justice.

Mr. Neal and Mr. Dickey and Mr. Merritt all disclosed that element of irrationality, if they were sincere, which I cannot assume. Vol. 3, pages 674 and 675, disclose Mr. Neal's attitude. Mr. Dickey discloses his own conception of what is rational on pages 513, 514, 516, and 517. Mr. Merritt brings himself into the same class at pages 613 and 617. Nobody needs to have that testimony repeated now.

The trouble with arguing that proposition is that it is based on the assumption that these men were sincere, an assumption contradicted by almost every line of their cross-examination. I have got to argue it because it has been contended here that they were sincere, and I want to show merely for a moment that if they were it does not help them a bit. They have got the dilemma that, if sincere, they were irrational, so lacking in brains that they were unfit to sit on any tribunal. If they get out of it by saying that they have brains, then they are not sincere. They can take their choice of the horns of that dilemma.

The next proposition is that the evidence supports and requires the further and more serious finding that the action of the majority directors in voting to dismiss Mr. Dittmore on March 17, 1919, was taken in bad faith, and for ulterior motives quite other than the motives implied by the preamble.

First, these majority directors did not themselves believe in the truth of any one of these charges, except part of the ninth, which accused Mr. Dittmore of so conducting himself as to hinder the efforts of this board to arrive at a mutual understanding with the trustees. That they believed in firmly, but not one line of the rest of it. The reason why they believed in it has become perfectly apparent in all the testimony in this case.

Let us take the other charges, the other twelve. Let us see what the antecedent probability is that these charges of misconduct, rudeness, offensive behavior, general egotistical desire to put himself ahead of other people are true—the very enumeration of these charges indicates the type of person from whom they emanate, the type of person who cannot differ from a person without suspecting his



motives—but just see what the probability is that that could be true. Every single man, with the exception of Mr. Dickey, and he half-heartedly, who testified in this case, every single trustee and all the directors, and Mr. McKenzie, gave Mr. Dittmore a character for courtesy, fairness, and square dealing that is not possessed on the evidence by another witness or another person in this case.

See what Mr. Eustace testified. Mr. Dittmore was a man, his language is, "anxious to live up to his own conception of duty as a director." Is that the type of man whom you would expect to be guilty of these practices? He said he was an "honorable opponent." That was his language. He said he was never discourteous, profane, or abusive—an example that I would recommend to at least one of his associates; that he conducted himself as a Christian gentleman ought to do.

Is this a man who can properly be described as a trouble-maker, as a stormy petrel? By the way, if my brother Bates would take the trouble to consult his Britannica, he will find that it is not "stormy petrel," but it is "storm petrel," and the characteristic of the bird is that it can ride out the storm. I will not pursue the ornithological metaphor further, or refer to a smaller bird known by a diminutive name and characterized by his capacity to annoy and to display pettiness and rage.

He further describes him as a man that kept his agreements—an example that I would also recommend to some persons holding high office in this institution. He said that he was characterized by always wanting accurate and detailed knowledge before he acted.

Is that the kind of man whom you would think unfit to handle the business and spiritual affairs of this enormous and important organization?

He said he was a "progressive and consecrated student of the Bible," under Mrs. Eddy's writings. That is the man with whom he had been contending for two years, that is the man who had made 28 different charges against the trustees; but it turns out that he could point out the errors of another man, if he thought they existed, in a way that would still leave that other man thinking, "There is nothing personal in this; this man is doing his duty; I must not get angry with him personally; he is an honorable, courteous man; I can have a difference of opinion with him without stabbing him in the back."

What did Mr. Rowlands say about him? That he had heard Mr. Eustace's estimate of Mr. Dittmore. I will say to the credit of Mr. Eustace that, although he made those admissions, some of them he did not perhaps like to make at the time, but he was man enough to say at the same time, "I do not yield my differences of opinion with him; I am just as different in

opinion from him as ever, but I am bound to say that." They may attack Mr. Eustace on many grounds here, but they will hardly attack him on the ground of cowardice.

Mr. Rowlands said that Mr. Dittmore was never guilty of double-dealing or hypocrisy. That is his language—never guilty of double-dealing or hypocrisy. Mr. Rowlands ought to know. He certainly was not a friendly judge during these months and years of controversy, when Mr. Dittmore was coming into that place with adverse criticism. He says he was not guilty of double-dealing or hypocrisy. The man has been painted so that there is no mistaking the picture. He was always a gentleman, and he was a man with whom he, Mr. Rowlands, could get along. It seems that there were some who could not get along with him, but the people that he was criticizing before this row occurred found, in spite of his criticism, that they could get along with him.

That is the sort of man that Mrs. Eddy wanted on the Board of Directors, a man with the courage to say what he thought, and of the judgment and character to say it in a way so that his opponents could get along with him.

Mr. Watts testified that Mr. Dittmore was personally courteous, and that is a good deal, coming from Mr. Watts. He might have been expected to show a good deal of resentment, in view of the fact that Mr. Dittmore felt it his duty to ascertain whether injustice had been done in the discharge of a large number of women and other people by Mr. Watts, and had obtained written statements from them, some of which Mr. Watts read while he was testifying and identifying the signatures. Doesn't that evidence strike you as somewhat powerful, sir?

Mr. Dickey—what did he say? It won't make much difference what he said. But what he did say was (vol. 3, p. 518, column 3) that he agreed with Mr. Dittmore as to the extravagance of the trustees, and on the fundamental issue of the predominance of the directors, and on the question of the practitioners' cards, and on the unity of the Church, and on various other questions. He agreed with his stormy petrel. Did he? Was that the reason he fired him? These admissions of Mr. Dickey are extremely significant and indicate that when his inclination was one way, and his inclination and his conscience came in conflict, there is a balancing, and sometimes the truth gets a chance to come out.

Doesn't Your Honor think that Mr. Dickey, who refused to be bound by a question, who would not observe the rule of making his answers responsive—doesn't Your Honor suppose that if he could have made a charge of personal immorality, a charge that would stick against this man, under conditions where he would be protected

from an action of slander, as he would, and knew he would here, that he would have done it?

Mr. Merritt testified (vol. 3, p. 610, column 2) that the only difference between Mr. Dittmore and the other directors was on the question whether it was worth while to negotiate with the trustees, and to weaken the general power of supervision of the directors, for the purpose of compromise. How does that sound? Are people so set in their views that they won't even give weight to the sworn testimony of those whom they favor? He testified that Mr. Dickey made many apologies to Mr. Dittmore for using language well suited, using his words, to excite Mr. Dittmore's temporary resentment (column 3); that Mr. Dittmore did not retaliate with violent language; that Mr. Dittmore succeeded "pretty well"—and those are Mr. Merritt's words, not mine—in controlling himself, that Mr. Dittmore was honest in his opinion about the publication of the life of Mrs. Eddy (page 615, column 3; page 616, column 1); that Mr. Dittmore was an "honorable opponent"—and those are his own words—(p. 617, column 1); that some of Mr. Dickey's language to Mr. Dittmore was "unseemly"—and that is his expression (p. 618, column 1), and some vulgar (p. 718, column 2.)

Does good faith loom up, Your Honor? Do honesty, sincerity, kindness, charity, and all these Christian virtues, seem glistening here in the action of these directors?

Mr. Neal testified (vol. 3, p. 673, column 1; page 676, column 1) that Mr. Dittmore had been his intimate and valued friend for 15 years; that Mr. Dittmore was a man who could be trusted—who could be trusted. It seems, then, that Mrs. Eddy was right when she trusted him. That he was a man in whose judgment he had confidence.

What does all this point to? Why was this man, whom the trustees and his fellow directors describe in these terms, selected for dismissal, without knowledge, without notice, without a hearing and under threats?

He testified that Dittmore had rebuked Mr. Dickey for a joke which Mr. Neal himself described as obscene. I am not going to stress that point, sir; but in view of the fact that not merely Your Honor, but I understand a considerable number of other persons, are interested in what is said here, I will suggest to some of them, and especially to some of our English friends, that although they have a right to be proud of the enormous success of this movement, of the good that it has done in the world, there is an impalpable and impassable barrier to the further spread, beyond a certain limit, into certain classes of persons in the community, of these views, valuable and true though they may be; and that that barrier consists in the instincts which the man of our race has against the man who, when called

upon to discipline a fellow member in a case of that kind, makes an obscene joke, and that they will never consent to submit their spiritual interests to persons who, whatever they profess with lip service—whatever their professed adherence to certain tenets, in their conduct, in their tastes, in their breeding, if Your Honor please, show that they are not persons with whom women and men of sound instincts are in the habit of associating.

Mr. McKenzie testified (Vol. 3, p. 580, column 3) that he had known Mr. Dittmore six or seven years, and that Mr. Dittmore was devoted to the cause of Christian Science; that his telegram to Mr. Dittmore of Dec. 2, 1916 (Vol. 3, p. 573-574) acknowledging Mr. Dittmore's great kindness, was true; so was the same acknowledgment in his letter of April 26, 1916 (p. 574, column 1); that Mr. Dittmore's general attitude was one of "wisdom, kindness, and safety." These are his words, not mine.

Does it appear more and more as we go on that this was the director who should have been expelled without notice and hearing?

He testified that his, Mr. McKenzie's, indorsement of Mr. Dittmore in his letter of May 17, 1918, was true; and that Mr. Dittmore's report of May, 1918, about improving the periodicals was "helpful" to him, Mr. McKenzie, in the performance of his duties. (P. 582, column 3.)

The man that is helpful, the man that is kind, the man that is safe, the man that is slow to wrath, reluctant to resent on reasonable cause, who does not use violent or abusive language, who tries to do his duty in such a way as not to antagonize personally his fellow Christian Scientists—is he the one whom it was suitable and reasonable to discharge? Is he the man whom Mrs. Eddy would like to have had discharged had she been present? Can they answer that question honestly without a sense of shame?

Look at his votes, if Your Honor please. They are spread before you. Look at his remarks, frequently recorded by a hostile hand, in the records of this organization. Look at his letters, large numbers of which have been introduced here in evidence. It is unnecessary for me to read them. I point to every one of those letters in support of the estimate of this man made by these hostile witnesses. They are letters of a man fearless, courageous, insistent on what he believed to be the truth, but interested in the truth, not in his own personal aggrandizement.

Did any one of these men ever go to Mr. Dittmore, did his friend of 15 years' standing ever take the trouble, when being solicited that night when he had returned to Boston from Florida upon Mr. Merritt's or Mr. Dickey's telegram—did he ever take the trouble even to telephone his friend, whose

wisdom, whose kindness, whose helpfulness, he had acknowledged, and say, "There is something preparing for you"? The only man that ever did it was the man whom he had often criticized, as a representative of his board, Mr. Rowlands. It is in evidence in this case that Mr. Rowlands, while objecting to his criticisms, while differing with him in his opinion, was man enough, a year before this happened, if Your Honor please, to go to him as a friend and say, "They are plotting against you, there is a scheme on foot to expel you from that board."

Nothing more damaging to the character, the purposes and the motives of these men has happened in this case. No more violent contrast has been shown by the testimony than the contrast between the intimate friend of 15 years' standing, the recipient of his kindness and not his criticism, who played the traitor, stabbed him in the back, and the man who had been criticized by him, who had no reason for special friendliness, who was man enough to warn him of the scheme.

Why didn't they tell him, if Your Honor please? Is it because they were ashamed of what they were going to do? Take the charge of violating these By-Laws by giving unauthorized directions to State Committees on Publication. I asked a few questions about that. Mr. Neal first testified that he had neither personal knowledge nor any information about its truth, (Vol. 3, p. 674, column 2). Later, perceiving what he had said, he wanted to qualify it by saying that he thought Mr. Dickey had told him something of that kind, and that Mr. Merritt had told him that Mr. Dittmore had told him something. But that was all. He testified in so many words that although he knew his opinion was based wholly on hearsay, he never sought the slightest confirmation of it from Dittmore or anybody else.

Does Your Honor forget this question:

"Q. Were you playing, sir, in your judgment, when you voted on charges based, so far as you were concerned, either on total ignorance or hearsay, without going near the man whom they most vitally affected to find out their truth or falsity—were you playing the part, in your judgment, of a loyal, honorable friend?"

You would think he could have answered that, wouldn't you? Ought there to have been difficulty in his answering that? I said:

"Yes or no. I want a straight answer, nothing else; yes or no."

Where was the trouble? The trouble was the vestige of conscience that still remained, the consciousness of actuality which still controlled him to a certain extent, and what did he say? He paused, and he said, "I cannot answer that question."

Does Your Honor want any more? Why couldn't he answer it? The rea-

son was that he knew that the only truthful answer was "No"; and that if he said "Yes" he would be so condemned, first, of lying, and, second, if Your Honor did not believe he was lying, of absolute ignorance and folly, that in either event, whichever way he answered that question, he would show his total unfitness to act on that board in any capacity whatever. That is why he said, "I cannot answer that question."

What did Mr. Merritt say? He testified that one of Mr. Dickey's numerous apologies to Mr. Dittmore was for making a false charge against him of certain dealings with Mr. McCrackan. It seems this was not the first time they had made false charges. Mr. Dickey made another one, and admitted it was false—found out the truth afterwards. It appears that Mr. Dickey was capable of making a charge (vol. 3, p. 617, column 3; p. 618, column 1), and then looking for his evidence afterwards. Most men, certainly those occupying judicial positions, are in the habit of hearing the evidence, and then making up their minds, not making up their minds and then hearing the evidence afterwards.

But here is an instance, admitted on the record, where Mr. Dickey made a false charge, found out afterwards it was false, and apologized.

Mr. Merritt said it did enter his head to give Mr. Dittmore and Mr. Rowlands notice and a hearing (p. 613, column 1). He didn't explain why he didn't do it. I said, "Why didn't you give Mr. Rowlands a hearing on the charge of neglect of duty?" Did he say, "Because under the By-Laws we thought no hearing was necessary"? It is a singular fact that not one of these directors could be educated up by astute counsel to come in here and testify to that, although they were given dozens of opportunities to say it in cross-examination. The tradition and the knowledge of years was too strong to be changed for the purposes of this case, by Judge Smith, or anybody else.

He said, "Why, only because that was the least charge." The least charge was, was it, that he neglected his duty? And because it was so little, the charge was so small, he did not think it worth while to give him a hearing. What does Your Honor think of that? (P. 613, column 1.)

He said that the difference of opinion between Mr. Dittmore and the majority about the proper method of dealing with the trustees was "very important"—those were his own words—"and the most serious matter between them." Those are his own words. But, he says, in spite of that, it had no influence on me, Merritt, in voting to dismiss Dittmore; and he could not even remember whether that was mentioned in the charges or not (p. 615, column 3). That was in fact charge No. 9.

He said the most serious thing against him was his difference of

opinion as to the method of dealing with the trustees. That was the most serious matter, very important, but did not influence Merritt a bit, and he couldn't even remember whether it was put in the charges or not. Does this look like a fair deal?

Finally, lurid light is thrown upon the possibilities of unjust conduct lurking in Merritt by the following two answers given by him to questions put by Governor Bates on his direct examination regarding Mr. Rowlands. (Vol. 3, p. 601, column 1.)

"Q. Did you know of his absence from Boston in connection with his business engagements? A. Yes.

"Q. And was it a matter that in any way interfered with his duties, so far as you know?"

Now, listen to this:

"A. I could only conjecture upon that."

He could fire him out, sir, but he could only conjecture whether the ground on which he fired him was true or false. Does that strike Your Honor as a fair, honorable way of dealing? I cite Mr. Rowlands here because the same characteristics and qualities and motives that led to this unjust action towards Mr. Dittmore were exhibited in his case. Merritt was willing to fix that stigma of neglect of duty, and that is a pretty serious thing for a business man, with the interests of Mr. Rowlands. A business man's character is somewhat affected by its getting around that he has been discharged from an important office of trust because he neglects his duty. His bankers, his associates, his friends, his business connections, take notice of it. Mr. Merritt has been described here as a similar man, of large business interests. He knew that. He cannot plead ignorance. He was perfectly willing to put upon Mr. Rowlands a charge which would affect him all his life, damage and injure him in his business, on conjecture.

Mr. Merritt said on cross-examination:

"Q. Well, can't you remember which of the other directors it was that gave as the reason why it would be a good idea to pick Mr. Rowlands out was because he was a man of the least influence and the fewest friends in the movement, of all the three trustees? Who was it that made that suggestion? A. According to my best recollection Mr. Dickey, Mr. Neal, and myself."

We don't get Mr. Dittmore in there, if Your Honor please.

"Q. Yes, sir. You thought that it was a legitimate reason for removing Mr. Rowlands that his removal would cause the least commotion in the Christian Science movement, did you? A. Yes."

Are these men fit to be trusted with the spiritual affairs of 3,000,000 people, fit to interpret the Bible, fit to interpret the Sermon on the Mount, fit to interpret Mrs. Eddy's writings?

I cannot make the pretensions to religious fervor that my brother Bates

has made here, but I have some little conception of the elements of Christianity. I have the misfortune to belong to a church that does not make that sort of fervid appeal. I mean the Anglican Church, but I really cannot quite follow the description of such conduct as this as the highest form of Christian demonstration.

That is the same reason for expelling Rowlands that both Mr. Dickey and Mr. Rathvon gave in their letters to Judge Hanna, Exhibits 703 and 704. Mr. Dickey testified that the difference of opinion between Mr. Dittmore and the majority about the proper method of dealing with the trustees was "merely one of many reasons" (Vol. 3, p. 514, column 3) for dismissing Mr. Dittmore; and he said that he recognizes the necessity for charges, notice, and a hearing, in every other case of discipline, but not in this.

Mr. Merritt could not even say that. He said the reason they did not give it to Mr. Rowlands was not because they thought there was no need of it, but because the charge was a small one—a charge of neglect of duty.

Mr. Rathvon was asked why it was they expelled only one trustee. What was his explanation? That when all the trustees were equally guilty, charges were made against only one. (Vol. 3, p. 642, column 2.) He had not at his tongue's end the ready explanation that the Governor has made here so many times to Your Honor. You would think if it had been true he at least would have remembered it—"that it would have led them into court and got them into trouble," and all that sort of thing. He says, "I do not know." Does that strike Your Honor as sincere?

Now, they say his letters are self-assertive, controversial and acrimonious, and contain untrue statements. Well, they are all here. I have enumerated them by exhibit numbers. And Mr. Dickey produced every one he could think of, and Mr. Krauthoff sat right beside him with a bunch of them in his hand and passed them right out, and just as soon as Mr. Dickey found one that was worthy of attention he mentioned it. He had every opportunity, and certain exhibits in that way got into the case—a large number of letters. I will simply ask Your Honor to read those letters, and I will stake Mr. Dittmore's character for fair-mindedness and decent instincts on what is stated in those letters. And it is so plain—it is so plain, as to make it perfectly apparent that they did not believe that charge when they made it.

Now, Mr. Neal said that when he got back from Florida they came to him—Mr. Merritt and Mr. Dickey—and said they had to discharge Mr. Dittmore—had got to do it. And Mr. Neal said, "Isn't there some way we can fix this up?" You see he had some little compunctions. Those 15 years of kindness, safety, comfort, fair

dealing, generous actions toward him, were moving a little bit in his mind. He could not quite get over them. He said, "Can't we fix this up in some way?" They said, "No, we can't do it; he has got to be discharged."

Well, that alone—that alone—is enough to destroy this proceeding as a judicial proceeding. It has been held in *Thompson v. Society*, 7 Pickering, 159, and in *Murdock v. Academy*, 12 Pickering, 243, 263, that if before a hearing the members of a tribunal that are going to give one have made up their minds, the hearing, no matter what happens at it, is void, absolutely of no effect—pre-judgment.

Now, what was the real motive of these people? It was not to benefit the Christian Science Church or the Christian Science cause, but it was by stifling an honest minority to placate the trustees, as they thought. They made a singular misjudgment of human nature. They misjudged Mr. Rowlands, they misjudged his associates, when they thought they could be terrorized, and they could not; and they misjudged Mr. Dittmore worst of all. And if they really did think that was the way to avoid trouble and avoid litigation, to indulge in such practices as that, their misconception of human psychology can be compared only with that of the Germans, when they were undertaking precisely similar practices with a precisely similar method—terrorizing people. Didn't they know, didn't it ever occur to these men, that if, as they have admitted in their pleadings here and in their testimony repeatedly, all three of these men were equally guilty—the word "guilty" meaning unsuited for their positions—that no two of them could be trusted to elect a suitable third one? The idea that you get rid of one and then you get those two that were left, equally unsuited, to elect a more suitable man! That is too silly to waste our time on. They knew it was not so.

What they had in mind was that if they discharged Mr. Rowlands and these men lay down under it, they would be admitting the power which they claimed—disconnected with any possible ground of using that power, disconnected with any one of the 28 reforms which ought to be made by the use of that power. They would have the autocratic right which they wanted, apparently, and they thought that Mr. Eustace and Mr. Ogden would lie down under that treatment and eat out of their hands. And they thought that Mr. Eustace and Mr. Ogden would be very much pleased and would be assisted by this process of combined rigor and kindness—strike the blow and then smooth it over—if they could get rid of Mr. Dittmore, whom the majority trustees knew to be honest, and for that reason disliked by them, and whom they supposed was equally disliked for the same reason by these trustees.

Now, who was the better judge of

human nature, Mr. Dittmore or these four directors? Who has precipitated the trouble here—Mr. Dittmore or these four men? How did this suit happen? How did it happen that these men are bringing suit against these directors? Was it because of Mr. Dittmore's conduct; was it because of the conduct of these four men?

Mr. Dittmore is said once in a board meeting to have used a very strong expression—for him—not strong for Dickey, but strong for Dittmore—about the conduct of Mr. Dickey or his character. He is said to have described his methods on one occasion as chairman of the meeting as "Prussian." Well, I rather think Your Honor will be inclined to believe that the description is not far from accurate, in view of all that has taken place in this case—far more accurate than most epithets are.

And thus to facilitate a compromise based on a sacrifice of principle; and also, on the part of all, and especially Dickey and Merritt, to rid themselves of an associate whose traits of character and knowledge of their character and conduct, were such as to make his mere presence among them a constant, a silent and a most painful rebuke, they did this thing. The majority directors knew that the trustees, or at least the dominating trustee, Mr. Eustace, desired Mr. Dittmore's dismissal. There is no reason why Mr. Eustace should not want it. It does not follow that he wanted it done this way, though. The two things have a considerable difference—between wanting a thing done and wanting to do it unjustly. That is a difference that has not been appreciated all the time in this case. It is an admitted fact by Governor Bates, admitted of record, that when Mr. Eustace spoke about the "hidden hand," he meant Mr. Dittmore, and said, "Why don't you remove the hidden hand?" They knew that (Vol. 3, p. 522).

Mr. Merritt testified (Vol. 3, p. 615, c. 1) that the directors inferred that the trustees desired Dittmore's removal, that it was suggested at board meetings, not in the presence of Mr. Dittmore, that his removal would facilitate a settlement, if accomplished quietly and politely, and that that was the "consensus of opinion" of the majority directors. We have had a great deal of talk about that phrase "consensus of opinion." Your Honor thought that Mr. Merritt might not understand it, but he frankly came out and voluntarily declared that he understood it exactly, and it expressed exactly what he meant. (Column 2.)

That was the consensus of opinion of the majority directors, and he says, "If it had not been for the accumulation of these differences of opinion on these various subjects . . . that vote would not have been passed." That is a little contradictory of his statement that it did not make the slightest difference to him what the differences were (p. 617, c. 1). There you have got it both

from Dickey and Merritt. They knew the trustees wanted it, and they thought it would please them to have it done and would facilitate a settlement if it only could be effected quietly and politely. It was talked over in board meetings that his removal would facilitate a settlement with the trustees, if his removal was done quietly and politely,—that was the consensus of opinion among the four directors. That is the testimony in this case.

Mr. Rowlands admitted (Vol. 1, p. 181, c. 2), that he had criticized Mr. Dittmore's attitude. His meaning was obviously that he had done so to the directors. But he was sufficiently loyal to his friendship with Mr. Dittmore to warn him about a year before his dismissal that his fellow directors, and especially Mr. Dickey, were likely "to take some steps against him unless he changed or altered his position in some respects." (Vol. 1, p. 166, c. 3).

His testimony was as follows, p. 167:

"Q. So the fact is that as long as a year ago you were in a position to advise Mr. Dittmore, and did in fact advise him, as a friend, however you may have differed with him in opinion, that his fellow directors, under the lead of Mr. Dickey, were getting ready without his knowledge a scheme to eject him from that board? That is the honest, solid truth, isn't it, Mr. Rowlands?"

"A. I cannot answer that question the way you put it. Mr. Dickey didn't say anything to me about it."

The question was then repeated and I insisted on an answer, and what did he say?

"I should say in substance yes." Well, fair dealing, common justice, a scheme to dismiss him a year before! The majority directors were extremely anxious to compromise with the trustees, and were prepared to sacrifice the predominance of their own board, if necessary, to that end. It is just as plain as a pikestaff here! They did not care about this. They said they did. They said, "We agree with you, Mr. Dittmore; your memorandum is the right thing." They have used it all through this case, but they did not really mean it. It happened that Mr. Dittmore, though he may have been mistaken—I do not think he was—happened to be sincere, and these gentlemen, while professing the same views with him, when it suited their convenience, were perfectly ready to sacrifice every one of those views, if necessary, to effect a compromise. They did not believe it, and he did. That is all there is to it.

Mr. Dickey had many interviews with the trustees and he testified about the Dittmore memorandum and the word "Yes" written on the margin, and about the Smith memorandum and the striking out of certain clauses in it. It was a proposed document to express the terms of settlement; one

clause in it asserting the supervisory powers of the directors over the trustees. The very essence of this whole controversy. It was struck out, and he wobbled and twisted and wanted Your Honor to believe that when he struck it out he did not mean to strike it out, it was not intended to show that he was willing to give it up. Your Honor knows it was, and when it came to Mr. Merritt's testimony he admitted frankly that that was what they were prepared to do. The trouble was that Mr. Dittmore thought they meant what they said, and he found out too late that they did not mean what they said and he had to take his medicine for believing and acting sincerely and trying to maintain this supervisory power, the unity of the Church, as they call it here.

Who is the friend of unity here? I want to call Your Honor's attention to Exhibit 680, that Dittmore memorandum scratched all up by Dickey with the word "Yes" on the margin (Vol. 3, pp. 509-511); Judge Smith's revision (Exhibit 681, Vol. 3, p. 511, c. 3); and especially pages 511-512, which contain the clause asserting the power of the directors and their supremacy over the trustees. Out it went, when it would help Mr. Dickey's compromise.

Does Your Honor believe that Mr. Dickey did not mean that? Does Your Honor take any stock in the testimony which he gave you about what he meant by writing "Yes," after a conference which was had for the express purpose of finding what terms would be given and what terms would be refused by both sides?

Mr. Rowlands testified, that the trustees had many conferences with Mr. Dickey; that Mr. Dickey came to see the trustees, and Mr. Neal came to see him privately.

Well, I want to call Your Honor's attention to one thing. After they had voted to discharge Mr. Rowlands on the charge of neglect of duty, Mr. Neal seeks repeated interviews with him, goes to see him and tries to compromise with him. The man they had already voted to discharge! Does that indicate self-respect? Does it indicate belief in the charge? It is not Mr. Rowlands, as you might expect, coming to him and saying, "Please forgive me; I admit I have neglected my duty." No. Mr. Rowlands stands off in a dignified way; and Mr. Neal first asks Mr. Dixon to go and fix up an interview, and then he goes himself and sees him in these midnight conferences. The very man he had voted to discharge for neglect of duty! Who is the dignified, sincere man in the transaction? (Volume 1, pages 168-170, 174-176, 177, 173).

Mr. Merritt testified (Volume 3, page 609, column 3) that he knew that Mr. Dickey's indorsement "Yes" was intended to indicate concessions. He was more honest than Mr. Dickey was.

Of course, it was intended to indicate that. What else? (page 610, column 1).

One of those concessions was the very heart of this controversy—the supremacy of the directors over the trustees. Does it make any impression to say that? Are people so wedded by prejudice and superstition to a false view of the facts that they cannot get the true view of the situation?

Here is the chairman, here is the man that talks about unity, offering to give it all up in secret and discharging the man who really, sincerely stood for it.

Mr. Merritt admits it, and the facts show it beyond a doubt. Mr. Merritt says that he, Dickey, and Rathvon were very anxious to settle, were ready to make concessions, were ready to lay less emphasis on the right of supervision. Mr. Dittmore was opposed to that; that Dickey talked about "saving the trustees" (page 611, column 1)—those are his words—and said that it was important not to discredit Eustace. Are these high-minded motives of Principle? Don't I remember that Mrs. Eddy said that in the dealings of Christian Scientists personal considerations ought not to enter in? I may be ignorant, I may be incapable of grasping this religion, but I cannot forget that.

Mr. Merritt said that he, Dickey, "Would make all kinds of concessions," that under no circumstances would he raise the issue; and they all three said that Rowlands didn't have any students or much influence (p. 612); that Dittmore would not stand for that reason; that Eustace was, in fact, the dominating trustee, and that Dickey made a strong plea to save Eustace (p. 617, c. 2).

If we were settling this thing by the By-Laws and not only by the law, we would ask—who was determining the future and destiny of Christian Science on personal grounds and who was determining it on Principle?

Mr. Neal testified that the other directors did not disagree with Dittmore's specific charges as against the trustees, but could not explain why, if that was so, they were not put into the charges against Mr. Rowlands at that time (vol. 3, p. 679).

Mr. Neal said he asked Mr. Dixon if he would not help him to see if something could not be done to compromise, and that he went to see Mr. Rowlands for that purpose, and that Mr. Dickey said he would crawl in the dust—those are the words, "crawl in the dust"—to settle this controversy (p. 681, c. 2). If you do not believe it, you can read it. It is right there in the record. It does not depend on my assertions. There it stands, and there it will stand until this Board of Directors is renovated and purified so as to be competent to handle the material affairs, let alone the spiritual affairs of 3,000,000 people or three people.

Mr. Rathvon testified that there was

very serious trouble with the trustees besides their refusal to acknowledge the supremacy of the directors. There you get it. But he cannot explain here why these other matters were not put in the charges, and why all three were not charged at once (vol. 3, p. 641, 642).

Now, the majority directors knew perfectly well also—and I assert this without hesitation, because it is overwhelmingly established by the evidence—that these trustees, right or wrong—and here the Governor is right, and I am glad to acknowledge it in the few places where I can find it—absolutely would not yield on this general question of the alleged supremacy of the directors, or on any of the particular applications thereof then in controversy, and that Mr. Dittmore was equally unyielding on these points. Those two propositions, those four men knew.

Mr. Eustace states the points in controversy and Mr. Dittmore's attitude on them (vol. 1, pp. 123-124), and the irreducible minimum of the trustees' terms of compromise, and states that those terms were always well known and adhered to, but that in spite of that fact suggestions of compromise kept coming from the individual directors (p. 136, c. 2).

It was a well-known fact that these trustees did not agree with the construction of those by-laws which asserted the supremacy of the directors, and would not agree to make the specific reforms suggested by Mr. Dittmore, agreed to by his colleagues, for which alone he thought the power was worth asserting at all.

Now, what did they do? They ran to them secretly, man after man, privately, to talk about a compromise. And Mr. Dittmore, they say, was very rude, because when he found his colleagues getting ready to make a false charge against Mr. Rowlands to buttress up an unjustifiable discrimination, and getting ready to compromise the very thing that he had stood for, and supposed they stood for, for three years, he would not attend the meetings at which these schemes were being talked over. Could he do less and retain his self-respect?

Mr. Streeter—One of his letters Mr. Thompson, tells them exactly why he would not.

Mr. Thompson—One of his letters. It is shown in a dozen ways. There is a letter there that explains why he could not participate in that part of the meetings. He went to the meetings, but when they began to talk about this scheme of expelling Rowlands and compromising with the trustees, saving Eustace, and what not—personal considerations—Mr. Dittmore simply got away, wouldn't have anything to do with it. And as it has turned out, it was the best thing he ever did in his life—to keep out of that kind of business. This is what it has led to.

I am reminded it is 1 o'clock.

The Master—We will stop until 2 o'clock.

#### AFTERNOON SESSION

The Master—Shall we proceed?

Mr. Thompson—Now, these majority directors knew not only that the trustees would not yield—I think that that is pretty conclusively shown—but they knew that neither would Mr. Dittmore yield. They had tried him on with this charge against Mr. Rowlands; they had tried him on in a good many other ways; and, if I may be pardoned for referring again to a very disagreeable topic, they found out that he had what is commonly called moral courage. I would like to ask Your Honor how many individuals you have known, men whom you have respected and liked, and who would not themselves be guilty of any impropriety in speech, who would have the moral courage to rebuke it in another person. That takes a good deal of moral courage. It is not an easy thing to rebuke an associate on such grounds as that. But all those things in their experience had indicated to them that Mr. Dittmore was a man of the courage of his convictions. That phrase "courage of his convictions" had been translated into tangible reality in their dealings with this man, and they knew that they need not expect any compromise on Principle, either from the trustees or from Mr. Dittmore. They were perfectly well aware of that fact.

You have, then, the directors knowing that the trustees would like to have him discharged, mistaking the motives and character of the trustees in having that desire and making that request, and knowing that Mr. Dittmore would not join them in their tergiversations or roundabout methods of professing on the one hand loyalty to Principle and the supremacy of the directors, and, on the other hand, going round and bargaining it away for a sufficient consideration—not of money, but for the purpose of fixing up matters and retaining their own offices and their own power, which they valued more than anything else.

Now, it is a pretty good test of a man's real character, the purpose for which he values power—it is perfectly consistent to like power for its own sake and to have force of character—it is perfectly consistent to have an intense longing for power and have strength of character; but the longing for power for its own sake, the longing for possession of power, the exquisite delight that some persons have in the consciousness that they can wreak their will on their fellow men—that is invariably a characteristic of an uncultivated, crude personality. However strong, however forceful, it is crude, it is childlike—in nations it is a childlike state of civilization, and in individuals it is a state of crudity; it is exactly the same state of mind that the Germans were in; it is the state of mind that these majority directors

were in—that, and the desire not to lose their position; and rather than lose their position, and lose the chance for the exercise of power over the Church members, and the exercise of the other vast elements of power that they had, aside from this claim of power over the trustees themselves.

Mr. Streeter—And, Mr. Thompson, over the finances of the Church.

Mr. Thompson—Yes, and over the finances of the Church. The offices which these men had were offices of enormous power. The episode of the trustees, although it has figured very largely recently, is a minor matter compared with the possibilities which lay within their reach if they saw fit to exercise that power to its full extent and without conscience. It requires absolutely the utmost self-control, sense of justice and fairness, to make a man worthy of being entrusted with that degree of power. It was the most delicate position that could be imagined, a situation fraught with the greatest possibilities of danger, to give any five men, whatever, such power as these five men had over the destinies and fortunes of thousands and perhaps millions of people throughout the world, and over millions of dollars of property. It was an experiment of the most dangerous character, and could be successful only if the men who had that power kept constantly in mind the principles of the Founder of their religion, and did not permit these worldly instincts to overpower them.

Now, again, at the very time that these men, or within two weeks of the time when these men dismissed Mr. Dittmore on these 13 charges, they were seriously considering the expedient of making him the editor of the Sentinel (Merritt, vol. III, p. 617, col. 3): How could that be, if he was a man capable of doing the 13 certain things that they say he was? Is it possible that he was a man fit to be editor of one of the Church organs? Does that show that they sincerely believed these 13 charges, or does it show that they were making them to terrorize him and to get rid of him? Anything to get rid of Mr. Dittmore! They hadn't the slightest belief in the truth of the charges, and it did not make any difference to them whether they were true as they made them or not, although they recognized the necessity of making these charges, and recognized the necessity of having some evidence of their truth.

Now, they did another thing. Within three weeks of the time when they passed this vote, Judge Smith, it seems, was going to Mr. Dittmore's room for frequent conferences, introducing himself as a friend, and in a friendly manner, to discuss, ostensibly, to talk over, these difficulties and Church matters, and he was reporting to Mr. Dickey. So much is admitted by Mr. Dickey (vol. III, p. 517, col. 2 and 3). That much is admitted. When I put it to Mr. Dickey, Isn't it the plain

truth, Mr. Dickey, that you, in the lack of any real grounds against this man, were sending your emissary and trying to catch him in his talk and pick up grounds against him? he said, Oh, no, that isn't so. What else does it mean? It appears that Judge Smith did not tell Mr. Dittmore that he was reporting this talk to Mr. Dickey, and it appears that he was in fact reporting it, and it appears that he was making an unusual number of calls on Mr. Dittmore, ostensibly friendly, to engage him in conversation about these matters. Is that fair dealing? The fact of the matter is, not to mince words, that they were playing spy on him, they were simply trying the ordinary game which in unregenerate circles is known by a very nasty name, but I suppose that here it was in their opinion justified. All through—all through—these men who are in charge of a religion which is the greatest protest against the sacrifice of Principle to expediency—all through what does the evidence force us to conclude? That they have, most conspicuously of all men, illustrated a maxim of those whom they would be the quickest to condemn, namely, the Jesuitical maxim that "The end justifies the means." If I had done it, if Mr. Whipple had done it, if some unregenerate person had sent a spy, what language would have been sufficient to condemn it in the mouths of these men? But if they do it, it must be excused. It is a Christian Science director that is doing this thing.

Now, Mr. Dittmore had discovered in the course of some years of intercourse with these gentlemen, and especially during the last few months—he had discovered certain things about them. He knew that Mr. Dickey and Mr. Merritt and Mr. Neal, especially Mr. Dickey, were professing to agree with him that it was absolutely essential to maintain the supremacy of the directors. He also knew that Mr. Dickey was attempting seriously to compromise that vital principle. When a man who professes one thing and practices another is found out by another person, what is likely to be his mental attitude toward the person that finds him out, and that knows what he is really doing? He is concealing it from the thousands of sincere, faithful, trusting persons who believe in him, who support him, or who contribute their money. He does not want it known to them. But it is known to his fellow-director; it is known to his own conscience; and it rankles; and there is no cause of animosity so bitter as the consciousness that you are brought in daily association with a man who is personally honest and knows that you are dishonest. If there is one thing that you want to do then it is to get rid of that man, the quicker the better, by any means possible. Mr. Dickey well knew that Mr. Dittmore knew what he was really doing, and he knew one or two other things. He

knew that he was put there as chairman of that great board, intrusted by these By-Laws with cases of discipline; he knew that members, readers, others, important and unimportant people in this Church, were in considerable numbers every year coming before him as their judge—as their judge, Your Honor!—as the judge of their morals. He knew it. Mr. Dittmore knew it. They sat together performing that function of judging of the morals of their fellow-men and visiting penalties on their fellow-men, and women too, when they thought that their morals were not right, when they thought that they had violated the principles of Christian Science or had done wrong. And he knew—he knew—that Mr. Dittmore knew that while exercising that function, which ought to stir in a man every particle of generosity, decency, refinement, and every other decent quality that a man can have—he knew that he had been caught while exercising that function in a most delicate case in turning it into a subject of ridicule and obscenity. Would he like to associate with a man who knew about that? Would that not rankle? What happens when the honest, honorable, upright, pure-minded man deals with a man of that character? What happens? Do they like each other? Do they get together? Not at all. Not at all! They separate. They want to get apart; and if the dishonest man can reach him he will reach him every time. That is what happened here. We are beginning to get at the true motives that actuated this thing, and we have got to look at the simple characteristics of human nature to find out what it is. They are just the same in Christian Scientists as in Episcopalians or anybody else. Their motives are supposed to be controlled by Christian Science. That is what Christian Science is for, is to get them under control and eliminate them, but they start just the same. They are men and women just as we are, subject to the same temptations and the same characteristics and motives, unless their religion eliminates them. Has it eliminated them in Mr. Dickey?

They say and they thought that they were saying something that would hurt Mr. Dittmore here—I asked Mr. Dickey, How long had you been considering this conduct, this scheme against Mr. Dittmore? or, rather, How early in the year 1919 did you consult Judge Smith about framing these charges? He heard the question, he knew what the answer was; he willfully misunderstood it. He said, 750 days. My question was, How early in the year 1919 had you done it? Finally he said, In February. And Mr. Neal also tried to get the idea into our heads that somehow or other, years before, somebody had wanted to discharge Mr. Dittmore from this

Board of Directors. It all went up in smoke, and left only the stain. It turned out that Mr. McLellan was the dominant factor; that Mr. Neal, the very man who ran that in here and tried to discredit Mr. Dittmore on the ground of Mr. McLellan's opposition, had complained to Mr. Dittmore that Mr. McLellan was trying to carry him around in his vest pocket. He said, Oh, no, he couldn't do it; I was too heavy! But he was trying to do it. Well, there was probably—I must not make any suggestion about Mr. McLellan, because he is no longer with us—but the chances are that in that day, Mr. McLellan being a man of dominant character, as Mr. Neal says, a man who wanted his own way and insisted on it, might have clashed with Mr. Dittmore, a man who had the courage of his convictions; but nobody ever did anything about it. But these men say that they had revived the plan, and that they had it under consideration for a long time without ever mentioning it to Mr. Dittmore. He said—Mr. Neal did—that "latterly"—that is the word—Mr. Dickey and "some members besides myself" had revived Mr. McLellan's plan. The only other members were Mr. Merritt and Mr. Rathvon, and they must be the ones (vol. 3, p. 675, column 3). And Mr. Rowlands shows that that is true, because he says that the year before he had found out about this scheme and had warned Mr. Dittmore about it. Then Merritt tries to strengthen the case. It is funny the way they try to strengthen this case. They say that they have got arbitrary power, and do not need to do anything to strengthen the evidence on that, but, nevertheless, they keep trying to strengthen it. On logical and reasonable grounds, he says, that there was a dispute with him, as to whether it was a proper thing to put up a memorial to Mrs. Eddy at Bow, where she was born; that one prominent member of the Church wanted to advance the money to put up a suitable memorial, and Mr. Dittmore thought that it ought to be done, and the rest of them did not agree. They have the hardihood to put that forward as a reason for removing him. You know that it is not a true reason. You know that it has nothing to do with the removal of Mr. Dittmore. And he said another thing, about publishing a history of Mrs. Eddy's life—a perfectly simple question to discuss among men. No reasonable men would think of flying at each others' throats because one said it was a good thing, and another said no, and a third said, Don't publish any at all; and one said, I wish you would put up a handsome building at Bow, and another said, A rustic building will do. Are you going to murder a man because he differs in opinion with you on such a matter as that? It is a perfectly reasonable and natural thing that men should have a difference of opinion about such matters. No one ever took such a violent

course as dismissing a man or assailing a man's character because he gives an opinion about such matters as that; and yet those are the reasons which Mr. Merritt advances as the reasons for discharging Mr. Dittmore. The more of them they advance, the more hollow they are, or the more certain it is that not one of these reasons had any basis in fact, not one of them; nor did they believe that any of these reasons had any basis in fact.

Mr. Merritt tries to strengthen the case by enumerating a number of other differences of opinion not referred to in the 13 charges, and finally by trying to convey the impression that Mr. Dittmore had insulted him by accusing him of being "drunk." in the ordinary sense of the term. Well, I thought when that came out the first time that at last we had something against Mr. Dittmore,—he had accused Mr. Merritt of being "drunk." That was a very serious thing, and I began to think, I do not know what I shall do to get Mr. Dittmore out of that. Then within three minutes, on cross-examination, he said, with great reluctance, "I did not mean that he meant that I was drunk with alcohol, or in the ordinary sense. I merely meant that he referred to a mental condition, a condition of mind, which indicated for the moment an unwillingness or an incapacity to listen to rational argument." What a paltry attempt to prejudice your mind! What an impression to give, to say that he charged Mr. Merritt with being "drunk" in the simple English sense, knowing all the time that no such charge was made; and yet that was the impression that he wanted to leave on Your Honor's mind.

Now, in the gradual development of this controversy between themselves and Mr. Dittmore, about the method of dealing with these three trustees and Mr. Rowlands, the majority directors, by disregarding Mr. Dittmore's advice and warnings, and by following the doctrine that "The end justifies the means," had finally reached the position where they were willing to disregard and reject these specific charges of breach of trust presented by Mr. Dittmore, which they believed to be true, and thus to shift the controversy from a practical and rational ground to the realm of abstractions, and to expose themselves to the charge of desiring power for its own sake, which charge has been made by Mr. Whipple on reasonable grounds all through this case, and I suspect that we shall hear from him again on that topic. If it is made, it is because of their own conduct. They have brought it on themselves: they deserve it. It is hardly to be believed that the experience of this suit could have been necessary to render them conscious of the weakness of that position. The moral obliquity of it, which is the important point for present pur-

poses, is the refusal to act upon charges which they believed to be true. Mr. Dittmore knew it, they knew it, and they knew that he knew it.

The next false step which they took tended still further to create bitterness in their hearts against Mr. Dittmore, namely, the discrimination between Mr. Rowlands and the other trustees, who from their own standpoint they knew to be even more guilty than he, and above all else, the grounds upon which this discrimination was made, namely, that he was guilty of neglect of duty, and that he had not any friends. They did not put that into the charge, that he had not any friends. Why not? They put it into the testimony. Were they ashamed to put it into the charge? Those grounds were thoroughly mean and base, to say that a man has neglected his duty when you know that he has not, to say that you will ruin his reputation because he is weak, you think, and has no friends—you cannot paint a worse picture of baseness and meanness in the dealing of one man with another, especially when one has the power to do wrong. Their willingness to act on such motives rendered still more striking the distinction between their sense of decency and Mr. Dittmore's, and necessarily tended to increase their antagonism to Mr. Dittmore caused by their guilty consciences.

Led on by the requirements of the first and second false steps that they had taken, they took a third, far worse than the others, namely, the deliberate fabrication of a false charge against Mr. Rowlands' personal character. For this they admit here that Mr. Dittmore rebuked them; and you do not like the man that rebukes you for that sort of thing. That increased their hostility to Mr. Dittmore.

Next, they were all aware, and especially Mr. Dickey and Mr. Neal, of the inconsistency and double-dealing of which they had been guilty in maintaining to the field and in public, and professing to believe in, the doctrine of the supremacy of the directors, while at the same time individually offering to surrender that doctrine in private conversations with the trustees concerning a compromise. Their alleged excuse that they desired to save a lawsuit might, under other circumstances, be believed, but cannot be believed in the light of their entire conduct. Their real motives were of a less creditable character. But even had this been their motive, the best that could have been said of it would be that it was an act of pure cowardice. Here again the contrast between themselves and Dittmore in point of manliness and integrity was further sharpened, with a natural increase of bitterness toward Mr. Dittmore by them.

In addition to these causes, growing particularly out of the controversy with the trustees, there were other causes of personal antagonism of

longer standing, among which the salary episode deserves mention. It appears that in 1915 a discussion arose as to an increase of the salaries of the directors from \$2500 to \$10,000, accompanied by the surrender on their part of some of their other duties for which they were receiving additional compensation. There was nothing improper in the proposal itself; but there was an impropriety in concealing it from the members of The Mother Church, and in striking out all references to it from their records, partly for the purpose, as Mr. Neal testified (Vol. III, p. 676, column 3; p. 676, columns 1 and 2) of preventing the plan from being known. "Yes and no!" "Yes and no" was his answer. I said, wasn't that done for the purpose of concealing it from the members of this Church? "Yes and no." We will take the "Yes." It appears that Mr. Dittemore, while favoring the plan, opposed the attempt at secrecy, and the deletion of the discussion from the records. The increase was voted two years later, in 1917; and it appears that Mr. Dittemore has returned to the Church all the salary that he has received under that vote in excess of \$2,500 a year (Merritt, Vol. III, p. 613, column 2), because of the impossible position in which he conceived himself to be put by the continued attitude of concealment and suppression of facts concerning the matter on the part of the majority directors. That tended still further to increase the bitterness. This episode would naturally tend to excite antagonism against him on the part of men trying to retain pecuniary benefits under circumstances which they were ashamed of, or for some other reason unwilling to disclose.

Your Honor will remember General Streeter's letter on that very point, which warned them, and which he volunteered at the time. I did not hear Governor Bates comment on it much.

Then there was another little episode about another letter from Mr. Choate, which they disputed at the time, but which there was ground to believe existed; and there was the plain admission by Mr. Neal on cross-examination that Mr. Dittemore did object to their secrecy, and wished to have it published in one of their papers—I forget which one it was, but probably The Monitor.

The Master—Now, the fact that he objected is the only circumstance about that which is of any consequence in this case.

Mr. Thompson—Yes, that is true.

The Master—Why, then, should Governor Bates be expected to discuss the correspondence about it?

Mr. Thompson—I did not ask him to discuss the correspondence about it. I only asked his witness if it was not true that Mr. Dittemore objected to this secrecy, and he said that it was, and that was all that I cared for. The fact that they did something which Mr. Dittemore said they ought to disclose, and they did not want to disclose it,

thereby making the imputation that they were trying to conceal something that they ought not to try to conceal, would arouse further antagonism between the two bodies. That is all that I care for about it.

Now, Mr. Dickey had special reasons beyond these other five for feeling the presence of Dittemore to be intolerable. I have mentioned one of them; I will not mention it again; and I have mentioned his attempts at tyranny over Mr. Dittemore as chairman, which are shown by the records there, where he refused him access to records, and tried to suppress testimony from him, documentary evidence, and tried to rebuke him while he was acting as chairman, and apologized so many times to him that Mr. Merritt cannot remember how many it was.

It is idle for Mr. Dickey to say that there wasn't anything to apologize for. Nobody forced him to make the apology. He made it. People do not generally, when accused of making indecent jokes, apologize for them unless they think there is something to apologize for.

Mr. Merritt has another reason for being exasperated against Mr. Dittemore. That relates to Mrs. Longyear's attempt to make gifts to The Mother Church, in connection with the Benevolent Association and with the historical building. The evidence on that is not as clear as I could wish, but enough appears to show that Mrs. Longyear was anxious to make a gift to the Church of money for a historical building. Mr. Dittemore was anxious that the gift should be accepted. For some reason or other Mr. Merritt did not wish it accepted, and he was delegated to prepare a certain letter to Mrs. Longyear, which was read, and strongly objected to by Mr. Dittemore, and withdrawn, and Mr. Dittemore was refused a copy of it.

What the real reason for Mr. Merritt's antagonism to Mrs. Longyear is, who appears to be a woman of remarkably generous character and high mind and admirable disposition, so far as this Church is concerned—why he should have been antagonistic to her, does not clearly appear in the testimony; but it does appear that he was, and he was willing to compose a letter, which ought not to have been sent to the lady under those conditions, and that Mr. Dittemore had objected to it and had defended Mrs. Longyear in the directors' meeting, and had urged the acceptance of her gift.

Mr. Jarvis testified on that subject (vol. 1, pp. 278-279). The directors' records throw a good deal of light on it. I asked whether Mr. Jarvis did not remember Mr. Merritt saying that he suspected that Mrs. Longyear was trying really not to benefit the Church, but to erect a memorial to the Longyear family, and, with some hesitation, he denied it. I observed, however, that he did hesitate when he denied it, and I think the inference would be

justified that that was really what he said. The gift had been accepted by the directors on Nov. 6, 1917, in a letter to Mrs. Longyear, Exhibit 244 (vol. 2, p. 313), and then they tried to qualify it (Exhibit 675, Vol. 2, p. 450), and reconsidered it. (Vol. 1, p. 277.)

Mr. Jarvis gave testimony from which the fair inference is, on the same page, column 3, that the records in reference to these debates had been altered, so as not to show what had really been said. The testimony about the Benevolent Society is found on pages 285, 286, and 288.

The Master—Whether they have been altered or not I suppose does not concern us unless it appears that Mr. Dittemore protested against the alteration.

Mr. Thompson—No, it does not concern us; but I think it would be a fair inference that Mr. Dittemore would make a protest, in consideration of the fact that he had opposed throughout the action which they desired to take, and which they had at one time taken, and then were seeking to withdraw. I think it is not likely that Mr. Dittemore would be willing to have appear on the records a statement which falsely represented really the attitude of the directors in regard to this matter.

The Master—It does not appear that Mr. Dittemore knew anything about any alteration of the records on that topic.

Mr. Thompson—It has not appeared yet, no, sir.

The Master—Therefore I think we can lay that aside.

Mr. Thompson—We can lay aside the alteration of the record, but I do not think Your Honor can lay aside the episode as indicating an additional reason why Mr. Merritt should not feel unpleasantly toward Mr. Dittemore. So I say, on their own admission, that duty required them to give him a hearing. Their lawyer told them so. Some of them have admitted it, one of them, at least, in court. They cannot give any reason why they did not. Their counsel alleges that they were not obliged to, and that is all there is to it. An analysis of Mrs. Eddy's writing, the cases of the law, the antecedent, all show that a hearing should have been given and was intended by her to have been given.

Not only no hearing was given, no notice, but every requirement of natural justice was disregarded if they believed the charges, and, on top of all that, they didn't believe the charges. The charges were made in bad faith, for ulterior purposes, out of personal antagonism partly, and partly because they thought if they got rid of Mr. Dittemore they could carry through a settlement with the trustees on a sacrifice of principle, without being found out. That is all there is to it.

Now, they have been found out. The plan failed. They have attempted to come in here and defend on the ground



that Your Honor has heard, by attacking Mr. Dittmore, by using during this trial the excessively offensive word collusion, as referring to Mr. Whipple and myself; and if anyone doubts the extent of the collusion, I don't think they can have a high degree of intelligence after what I have said. What they mean by collusion is that the same unfairness that Mr. Dittmore protested against when practiced against Mr. Rowlands, has been practiced against him. Identity of wrong, they think means collusion. We think Your Honor will call it by a different name.

Then, having utterly failed to subject this testimony to any form of logical analysis, having ignored the parts that bore against them, not having attempted to explain the statements that I have called attention to of their own witnesses, not having attempted to meet the gross improbability that their story can be true, arising from their own tributes to Mr. Dittmore as well as from the tributes of these three trustees, they attempt to come in here and cite Scripture, and cite the Bible, and give us an illustration of words and eloquence and rhetoric to cover up this mean and contemptible transaction.

I cannot undertake to follow Governor Bates into that line of considerations. I have no doubt it will be exceedingly powerful with many members of this Church, but it is not the suitable method of dealing with a legal controversy before a magistrate, and I shall not follow him; but I will call attention in closing to certain words which he ought to respect, and which his clients profess to respect, and which they have continually insinuated, I will say—the first time I have used that word, though it has been used against me repeatedly—insinuated that Mr. Dittmore and the trustees were neglecting, namely, the words of Mrs. Eddy herself:

"Falseness is on the wings of the winds, but Truth will soar above it. Truth is speaking louder, clearer, and more imperatively than ever. Error is walking to and fro in the earth, trying to be heard above Truth, but its voice dies out in the distance. Whosoever proclaims Truth loudest, becomes the mark for error's shafts. The archers aim at Truth's mouthpiece; but a heart loyal to God is patient and strong. Justice waits, and is used to waiting; and right wins the everlasting victory."

[Applause]

Closing Argument on Behalf of Defendant Dittmore, by Fred C. Demond, Esq.

Mr. Demond—May it please Your Honor, let me allay every one's apprehensions at the outset by saying that I do not rise to make another long and elaborate argument. The case of Mr. Dittmore, as well as the case of the majority directors and

Mrs. Knott, has already been fully, eloquently, and ably presented, but my associates have been insistent that I should try to supplement Mr. Thompson's almost exhaustive argument by way of a little additional emphasis, and suggestion, perhaps, on a few of the more fundamental phases of the case. And so I shall attempt that task, with much the same feelings that an everyday artist might feel if asked to attempt to add a few touches to the work of a master.

There are some underlying points in these cases that are common to both cases, the Eustace case and the Dittmore case, and let me ask the indulgence of a few words first on the question of how far Mrs. Eddy's intentions can and should control the outcome of this litigation, and the positions of the parties to it, and a word incidentally, in that connection, about this subject of loyalty, concerning which we have heard much.

Because these suits involve the legal effect and construction of certain deeds of trust and By-Laws of which Mrs. Eddy was the author, and because she was the great Founder and Leader of Christian Science, her name has figured very prominently in this litigation, and the question of her intention on this point and that point has been much discussed, and the air has been full of assertions of loyalty and of intimations of disloyalty. It may be true, and I hope it is true, that every party to this litigation has tried to be a loyal follower of Mrs. Eddy according to his lights, and that his success or failure has been according to the brightness or the dimness of those lights. But however that may be, there are a few facts that cannot be escaped, that every fair-minded Christian Scientist who seeks to take a fair view of the positions of the different parties to this cause should keep in mind, because even though they may be unpalatable to some, they cannot be escaped and might as well be faced.

This is not an inquisition of heresy. This is a trial before a civil court of the Commonwealth of Massachusetts, whose judges and magistrates are sworn to administer the law of the land. That law tests the writings of Mrs. Eddy when they come before it on questions of property and civil rights by the same rules and the same standards that it tests the writings of the humblest heretic.

Mrs. Eddy herself knew this. She knew that she was subject, and that her works when she dealt with worldly affairs, were subject to the human law. She was not unmindful of the injunction of the great Master to render unto God the things that are God's and to render unto Cæsar the things that are Cæsar's.

Now, in interpreting these deeds that bear Mrs. Eddy's signature, and these By-Laws of which she was the author, it is important to remember that, while she was a great spiritual

leader, she was not a lawyer trained in the intricacies of the civil law, nor had she the training of an expert business administrator. She found it necessary, realized the necessity, in drafting these deeds of trust, to employ expert legal assistance. And so, when her deeds of trust are drawn, when it appears that those deeds are drawn in the technical language which skilled lawyers use, that they were not her personal work, but the work of men trained in the use of legal language, they are to be construed with that fact in mind.

But when we find, as Your Honor has noted, that in the purely business or administrative as distinguished from the religious provisions of these By-Laws she did not, apparently, take advantage of the advice of one who was trained in the drafting of corporation by-laws and similar documents, the construction must be upon that theory, and inconsistencies that may appear to the trained legal mind, the failure to close a gap here or to make the meaning plain there, is not as significant as it might be in the Trust Deeds of 1892 or 1898, and her intention must be sought from the broader species of evidence that throw light on the probabilities.

Now, it is not disloyal for any Christian Scientist, a party to this litigation, to face these simple facts. Mrs. Eddy never, so far as I have heard, claimed infallibility in respect to purely worldly, legal and business matters. If it appears that a mistake has been made in any legal instrument by her signed, or that her intention cannot be carried out consistently with the laws of the land in some particular, it is doing no service to the cause of the Church she founded, it is simply the most futile folly, to refuse to accept and face that situation.

Governor Bates argued at length and quoted many authorities to the proposition that on ecclesiastical matters, not involving civil or property rights, the decisions of ecclesiastical tribunals are accepted as final by the civil courts. That rule is thoroughly recognized in its proper sphere, but it has no application to these cases. The reasons for the rule are simple and obvious. Courts sit to administer civil and property rights, involving practical consequences. It is not their business, and they are not particularly fitted to determine questions of ecclesiastical doctrine. And hence, as a matter of course, when a question of ecclesiastical doctrine incidentally comes up in a suit involving civil rights, they accept the decision of a real ecclesiastical tribunal, which is the highest authority in the particular denomination on that subject, unless they are compelled to reexamine its correctness because the charge is made that to follow that determination would constitute, in a particular case, a diversion of trust property from the particular denominational

uses to which it was committed by the Deed of Trust.

Again, if with regard to matters other than pure questions of doctrine, wholly internal to the affairs of the particular association or society, the members of that association or society have elected a tribunal of their own for its determination, the court will ordinarily refuse to relieve them from the consequences of their own agreement.

But there is an exception to both these rules, where property interests are involved, and this case falls within the exception. So far as these directors are trustees under the Deed of Trust of 1892 and the other deeds, the title to a vast amount of trust property is in question. In their capacity as the governing officers of The Mother Church the control of a large amount of property is in question; and, to get down to a subject which is smaller but more direct, there is a very substantial salary annexed to this office as director.

I noted that one of the cases from which Governor Bates read to you, the case in the 84th Alabama, as he quoted from that case, held simply that the court would not interfere with the determination of an ecclesiastical tribunal as to the incumbent of a church office where no property rights or fixed stipend was attached to the office. There is a fixed stipend of \$2500, or \$10,000 attached to this office.

Again, there is here no decision of any ecclesiastical tribunal in any sense which the law can recognize. It is a mere case of a board of church directors or trustees acting upon a certain view of their own powers. In the case of

*Bear v. Heasley*, 98 Mich. 279,

—a case, by the way, not cited in our brief—the court says:

"The proposition that the judgment of church judicatories as to their own powers or jurisdiction, or the lawfulness of their methods, is conclusive, is not sustained by reason or the weight of authority."

The action of this tribunal was not an action by a court set up within this denomination by its by-laws, to sit and hear on appeal rulings as to ecclesiastical doctrine or ecclesiastical law of lower ecclesiastical bodies, to act upon notice and hearing, and the consideration of evidence and pronounce a judgment; it was the decision of a bare majority of five church officers to throw one of their own members out of the church board. It lacked every essential of a judicial or quasi judicial decision of any kind of a question. There was no adjudication of anything except as their throwing one of their members out of the church door implied an opinion on their part that they had a right to throw him. And if there was any adjudication of anything it was a decision that the power could be exercised only for cause, because they proceeded to state at great length a large number of al-

leged causes, which was totally unnecessary if they possessed the arbitrary power they now claim.

The next fundamental question common to both these cases is the legal status of this Mother Church and of the By-Laws contained in its Manual. It seems to me that there is nothing very mysterious about this subject. Take, first, The Mother Church. It certainly is not in the ordinary sense of the term a corporation, and hence is not subject to the statutes of Massachusetts relative to incorporated churches or religious societies. It has never been formally incorporated. The First Members, who organized some 20 days after the Trust Deed of 1892, made no attempt to form a corporation. Some of the deeds that have been put in evidence—for example, the two deeds correcting certain deeds which Mrs. Eddy made in the first instance to the Church itself, describing it as a corporation — the confirmatory deeds made to correct that mistake, contain a plain admission that it was not a corporation but a mere voluntary association of individuals. And the statute of 1917, Chapter 132, in adding the descriptive phrase, "a body corporate" after the name of The Mother Church, did not make it a corporation. It was not an act of incorporation, but as Governor Bates has stated, a mere recognition at most; and, as Your Honor has indicated, it is a recognition of nothing but the fact that for certain very limited purposes as to the holding of property, it might constitute a corporation under a certain general statute of Massachusetts which confers a very slight measure of corporate power for property holding purposes on unincorporated religious societies.

As an unincorporated association, for everything except the very limited purpose just indicated, The Mother Church stands in law exactly like any unincorporated association or society, ecclesiastical or lay. The rights of its members stand on the basis of the right of private contract. An unincorporated association is simply a body formed by agreement of the individuals who compose it, and their rights with respect to its affairs depend upon the terms of their agreement regarding it.

And this basic fact also shows what the true legal standing of the By-Laws is. They are not by-laws in the sense that the by-laws of an ordinary business corporation are by-laws—namely, subsidiary laws authorized by statute, resting upon a delegated power of legislation; their authority stands on the right of private contract and nothing else. It is needless to cite authorities on this point.

All the cases—the quotations of various authorities which Governor Bates read in his argument—all show that the reason why a court in a matter involving the affairs of an unincorporated association gives effect to its by-laws adopted in accordance

with its constitution or articles of association, or whatever its governing law may be called, is simply that the members have seen fit to agree to those rules and regulations as the rules and regulations by which their affairs shall be governed. The Court simply enforces their agreement.

Now, if that fundamental proposition is sound, it follows that, however unusual and unique the method in which these By-Laws have grown up, however contrary to the method by which corporations and religious societies usually adopt and formulate their governing rules, nevertheless the By-Laws of this Church, unless in some particular they are in conflict with some rule of the civil law, are valid and binding and secure with respect, at least, to what has been done under them in the past, and is being done under them at present, as distinguished from their binding force for all the future. That is a question which this case does not present.

Whether it is possible for the members of a society, by the most express agreement, to bind not only themselves but all future members by a code of regulations that are irrevocable and unamendable, to thus fasten upon themselves and their successors for all time an undemocratic, hierarchical system of church government—I do not know whether that can be done or not, and it is absolutely immaterial in these cases whether it can be done or not. If the members of this great Church should ever see fit to raise that question, then, and not until then, can that question be determined.

The point I wish to make is that the By-Laws, resting on the basis of private contract, have the approval of the members of this Church, as the result of almost 20 years of unbroken acquiescence in the system of church government that they established.

If Your Honor will turn to the application forms at the end of the Manual, I think in all its editions, you will find that the members of this Church, as from year to year they have joined its ranks, have expressly agreed that they hereby subscribe to its By-Laws. Then the unbroken acquiescence is super-added to the original agreement.

For these reasons I am unable to concur in the view suggested by the counsel for the trustees of the Publishing Society, that there is something illegal about these By-Laws from their inception, some cloud upon the rightfulness of the acts of the church officers under them, because the form of church government is undemocratic, was not adopted by formal votes of the members at large, and could not have been legally enforced upon them had they been unwilling to accept it.

The Master—You will admit, I suppose, that a by-law may be void as contrary to the laws of the State or public policy?

Mr. Demond—Certainly, Your Honor.

The Master—Suppose a member subscribes to such by-law. Is he bound by it?

Mr. Demond—Not if it is contrary to the laws of the state.

The Master—On my assumption, supposing it to be contrary to the laws of the state or to public policy, is a member who subscribes to it bound?

Mr. Demond—If it is contrary to a law of the state enacted simply for the protection of the members of such organizations, as a safeguard to their rights, his assent to it would probably operate as a waiver of that right; but if it were contrary to the law in the sense of being contrary to the public policy of the state, or to some rule governing the devolution or rights of property, of course his assent would be absolutely powerless to cure the defect. It would be void for all purposes.

The Master—Even as binding the subscribing member?

Mr. Demond—I should think so. Your Honor.

Now, the next and last question common to both cases which I wish to touch upon, is the Christian Science Board of Directors. What is it?

Mr. Whipple—Before you leave the other subject, would it interrupt your thought if I asked you, what would be the effect of the assent of a member to a by-law which was entirely invalid under the law of another state?

Mr. Demond—I think that is the same question which His Honor just asked.

Mr. Whipple—I thought you differentiated on the ground of its being contrary to law.

Mr. Demond—I intended simply to distinguish between the two different senses which might attach to the word "invalid," or "contrary to law."

Mr. Whipple—Very likely you have answered it, then, in reply to His Honor.

Mr. Demond—For example, we have a statute in New Hampshire to the effect that the free sale of stock of a corporation shall not be curtailed or restricted by by-law. But our court has, nevertheless, held in the case of *Borrowe v. Blue Mountain Forest Association*—71 N. H., I think—that while a by-law which absolutely prohibits the sale of stock without first giving the other members of the corporation a chance to purchase it, is invalid as a by-law, where they all agree to it, it is binding on them as a matter of contract. But as to the other kinds of invalidity, as to a by-law which purports to amend an unamendable deed of trust, or to authorize something which on the ground of public policy the law states is bad—I assume such a by-law would have no effect.

Mr. Whipple—But what about assent to a by-law in the case that you men-

tioned, where nobody has ever passed it who had authority to? That is not in violation of any law or any violation of public policy. It merely is not a by-law.

Mr. Demond—Acquiescence in that case, or consent, seems to me to be simply ratification of the act of an unauthorized agent. If a by-law which attempts to confer certain powers upon certain officers, for example, is passed by somebody claiming to have authority on behalf of a particular association to pass it, and the members of the association who would have authority to pass it choose to accept it, to recognize it and allow it to be acted upon, the original lack of authority to force that by-law upon them would be cured for the same reason that my consent to let a man represent me in the doing of certain acts which I never authorized him to perform would cure his original lack of authority.

Mr. Whipple—Well, how about those who have assented, as you say, to one form of by-laws—what about an attempt to amend them which is entirely invalid? Are they also bound by the by-laws which they did not sign or assent to, which were afterward forced upon them, as you say. I do not want to quiz you unduly, but it is a very interesting point.

Mr. Demond—Well, I am not quite clear that I exactly get the point of that question; it is rather general. It is very much easier for me to make myself clear on a specific question than on one which is very general, Mr. Whipple.

Mr. Whipple—Well, suppose that certain people sign by-laws which were passed prior to 1901, and passed by parties who had a right to pass them, and then afterward some one, as you say, thrust by-laws upon the same organization who had not any legal right whatever. Now, are the people who signed the first set of by-laws bound by the illegal set of by-laws which were passed afterward?

Mr. Thompson—With no new signature?

Mr. Whipple—With no new signature. And if not, let me point out where you land: you have a body, a part of whom are bound by the by-laws, and a part not, by your own theory, in the same body.

Mr. Demond—That would be true, Mr. Whipple, if there were a complete change in the method of adopting the by-laws. The members who signed and assented when one system of adopting and amending by-laws was in force, presumably would not be bound in the first instance, because they never would have assented to the transfer of the authority to an entirely different legislative body. The only way they could become bound to that change would be by acquiescence. If after that change was made the new body, which they had never formally consented should enact By-Laws, should proceed to make amendments,

and those members instead of asserting any rights of objection should continue to remain in the association, and without a suggestion of any irregularity permit the new system to operate and the new By-Laws to be adopted for ten or a dozen or fifteen years, I take it that it would be too late for them to deny the authority of the agent in whose assertion of authority they had so long acquiesced.

Mr. Whipple—But they would not be bound by the contract that they had made?

Mr. Demond—Their assent to the new contract, evidenced in the new code of By-Laws, is inferred from their conduct instead of from their original signed application.

Now, as to the status of the Board of Directors, that is not simply a question of what Mrs. Eddy intended, but of the legal effect of what was done. It is not a question whether these directors were formally chosen as church officers by the First Members and declared by so many words in the body of the By-Laws to be such, it is not a question of mere terminology; it is a question to be determined by examining the way in which this board grew up, in the light of the laws of Massachusetts.

The Board of Directors originated with the Deed of Trust of 1892. That Deed of Trust was a grant to four individual trustees, upon a charitable trust explicitly declared, with an express provision as to the manner in which vacancies among the trustees should be filled—namely, by the trustees themselves. The name by which it was stated in that deed the grantees should be known, "The Christian Science Board of Directors," was simply a label. It was not then the name of church officers, for this Mother Church did not then exist. The deed, therefore, did not create the grantees a corporation at the time of its execution and delivery, as Governor Bates has admitted.

It seems to me that the directors did not subsequently become a corporation, entirely apart from the question of the manner of their selection, whether officers not elected by the members could be similar to deacons or church wardens. I do not think they ever became a corporation as trustees under the deed for the simple reason that the grant was not made to them and their successors, or to the Church, in the sense of the statute.

The purpose of the church wardens or other similar officers' statute was to provide for perpetual succession. There was no occasion for passing the statute to enable church wardens and other officers of a church as individuals to receive grants of property for the individual benefit of themselves and transmit it to their heirs. There was no occasion for the enactment of the statute in order to enable individual trustees to receive the title to property in trust for unincorporated

churches, and to transmit it by formal deed to their successors in trust, or have the succession preserved by going to a court of equity to appoint new trustees as the vacancies occurred. The purpose of the statute was to do away with the formalities and machinery necessary to perpetuate that kind of trusts by enabling the governing boards of churches similar to certain indicated officers, in their capacity as such officers, to hold in perpetuity the title to land given for the benefit of their respective churches.

Now, this Deed of Trust of 1892, notwithstanding the words "successors in office," manifestly was not made to an existing body of men as church officers, to hold to them and their successors in office as such officers. And that is the only kind of a trust that that statute was enacted to operate upon. This deed was made to four individual trustees to hold to them and their successors in office as trustees under that particular deed, because the deed itself provides within itself the method of succession.

"Whenever a vacancy occurs in said board, the remaining members shall within 30 days fill the same by election."

Now, just look at that situation. Suppose that this Church had been organized at the time it was, 20 days after the date of that deed, and it had seen fit to choose a body of governing officers, calling them the Christian Science Board of Directors, or Trustees, or what not, but provided for their choice in a different manner or in a different number than this deed provides for. What would have been the result? The trustees so chosen by the Church never could have succeeded to the title to this trust property, because the succession would have been a succession different from the one which the deed itself calls for. Mrs. Eddy could give property in trust to church officers to hold to them and their successors as church officers if she wished to accept the method of succession which the Church might adopt, whether she liked it or not, and provide in the deed that whatever that method of succession, whoever became the successors as church officers of her grantees should take the property. But when she declared in that deed that for all time those four individual trustees should fill vacancies occurring in their number, and the successors so chosen by them should in like manner fill vacancies occurring in their number, whether that was consistent with the method of succession which the Church might adopt for its officers or not, she thereby absolutely made it impossible for that deed and that statute of Massachusetts to connect and work together.

Now, when the church was organized, 20 days after the date of the deed, the First Members proceeded, if not at the outset very shortly after-

ward, to recognize this Board of Trustees known as the Christian Science Board of Directors as an existing body, and from time to time by-laws were adopted—

The Master—What is the first instance of such recognition, so far as you have discovered?

Mr. Demond—Well, Your Honor, I have not in making these hurried notes taken the time to locate it. What I refer to, as I was about to explain, is the adoption from time to time of these By-Laws, commencing at rather an early date—of By-Laws which refer to the Christian Science Board of Directors, providing that they shall be empowered to do this and to do that. Many of these powers were additional to those given by the terms of the Deed of Trust.

And finally, after the First Members had abdicated their functions, an attempt was made by by-law to add a fifth director. What was the effect of all this? We think that one effect was to make the four original trustees under the deed, and later on the fifth director, whom the Church undertook to add, Church officers for the reason that the various functions which the By-Laws undertook to confer upon the board were in their nature Church functions rather than matters which simply related to the title of property. Whether a man is a Church officer is not simply a question of terminology, not simply a question of whether a particular regulation or by-law can be found in the Church discipline book expressly stating that such and such positions are church offices, and specifying among those the position in question.

A church officer is an agent of . . . association. If functions of the association that can only be performed by agents are committed to certain persons, whether it is a board of trustees under a deed or the Governor of the Commonwealth, and they see fit to accept that grant of agency power and to exercise it, why, there is no difficulty about deeming them officers or agents of the church, even if they are not termed such in so many words, to the extent of the functions conferred upon them by the Church Rules.

Now, if that proposition is so, we have a further complication in that the deed of 1892 was not amendable. It was a perpetual grant upon a charitable trust, and it contained no power of revocation or modification. The provisions of that deed are the measure of the title to the real estate described in it, and the conditions under which the title of real estate is held cannot be altered at the will of the donor without a reserved power to that effect. That proposition has been so elementary since Dartmouth College v. Woodward that there is no occasion for discussing authorities regarding it.

What is the legal result? I think it is not that the By-Laws conferring

additional power upon a board of directors are all void from their inception, as has been suggested, or may be suggested, for that would deny the contract right of the Church members to accept, by express consent, or consent implied by acquiescence, the directors as their agents for the discharge of the duties so imposed. I think the effect is simply that there are in legal effect two boards of directors instead of one. The title to the real estate described in the deed of 1892 and the supplementary deeds given on the same trusts, is in the original four and their successors provided in those deeds, and when they perform acts under those deeds as trustees, the acts may have a double aspect, because they may also be acts authorized by the By-Laws of the Church. When they perform acts which are provided for only by the deeds of trust, they are acting as trustees under the deeds, and the concurrence of a fifth man with the four trustees does not vitiate their action unless there was a divided vote and his vote was necessary to a decision. When they perform acts which are authorized only by the By-Laws, they are acting solely as Church officers under the By-Laws.

That is our theory of the result of this peculiar situation. It is not disloyalty to Mrs. Eddy to suggest it. If anyone thinks that Mr. Dittmore ought not to raise this question, let him or her remember that it was already raised by the trustees of the Publishing Society, and let him also reflect upon the possible effects and consequences of this solution, and of the attempted forcible unification of the tribunal created by the deeds of trust and that described by the By-Laws, as the directors contend for. Under this theory of two boards, the trust deed directors and by-law church officers, the title to this magnificent edifice in Boston rests secure and unalterable upon the terms of Mrs. Eddy's original trust, and not even a deviation by the governing board of this Church itself from Mrs. Eddy's doctrines could prevail against that trust. The impartial judges of the court of Massachusetts would in case of necessity see that their property continued to be held and used, if not by the original trustees, then by trustees that would do it in furtherance of the identical doctrines laid down in Mrs. Eddy's works. But if this Board of Directors, self-perpetuating, acting under by-laws which purport to be unamendable and unalterable, asserting arbitrary power and claiming, as I understand Governor Bates to say, to be the sole authorized interpreters of Mrs. Eddy's doctrines—if all that is so, and their duties under that Trust Deed legally could be and were merged in their position as church officers, I think the members of this Church had better stop and reflect as

to whether the future might not hold grave dangers.

A few words as to the Eustace case: The issues in that case are a little broader, I think, than Governor Bates stated them. They are not simply as to the legality of Mr. Rowlands' removal, but as to the relations of the two boards in general; the extent of the supervising authority of the directors, for the bill prays not only that Mr. Rowlands may be reinstated, but that an injunction issue, restraining the defendant directors—"from taking any further action intended directly or indirectly to impede or interfere with the plaintiff Rowlands, or either of the other plaintiffs, in the discharge of his or their respective duties as trustees."

Now, there is no doubt that, however broad discretion Mrs. Eddy may have intended to confer upon the trustees of the Publishing Society when she executed the deed of 1898, she subsequently adopted the theory that she could subject these trustees to church by-laws, and she acted upon that theory. The question on this general subject of supervision, apart from the question of removal, is simply whether her intention in that respect can legally be given effect. Mr. Dittmore hopes that it can be. That is one of the points of this complicated litigation in which his sympathies are with Governor Bates. He was the author and originator of the Dittmore memorandum. He has always stood, and stands today, so far as they can legally operate and be given effect, upon Mrs. Eddy's By-laws. He stands today, subject to the same qualification, upon the Dittmore memorandum. If Mrs. Eddy's By-Laws and the Dittmore memorandum can legally be given effect to their full extent, as a loyal follower of Mrs. Eddy he wants it done; but if his counsel think that they cannot be in any particular respect, he does not ask his counsel to fight for a position that they deem untenable.

Now I can add nothing to the able and exhaustive argument made by Governor Bates upon the question of whether, by reason of anything contained in the Trust Deed of 1898, it can be amended. In some respects he took positions which I do not personally believe can be substantiated. I hope I am wrong. He made a magnificent attempt to substantiate, apart from the power of removal, the supervisory authority of the directors over the trustees. Not because of any preference for the individuals on the Board of Directors over the individuals on the Board of Trustees, for it is not a question of personality one way or the other, but simply in the interest of the ultimate unity of this Church, Mr. Dittmore has always hoped, and hopes today, that that position can be maintained. Governor Bates has pointed out everything that can be pointed out in the way of possible ways to maintain the Board of Trustees

nothing more about it. It is a question whether certain stipulations as to reserved right of supervision, and of making changes, in the deed of 1898, in the places where they appear, can fairly, reasonably be construed as a reservation of the power to amend the Deed of Trust. If they can, then the long course of conduct amounts to a practical construction which strongly supports that view. But as I understand the law, if, as a matter of fair construction, it is plain that those were not intended as a reservation of the power to amend the deed, but merely of a possible power of supervision during Mrs. Eddy's lifetime, then the deed was not amendable. But I absolutely and thoroughly agree with Governor Bates on the other proposition, and that is the only proposition that is really necessary to maintain Mr. Dittmore's original position in the trustees' controversy, that the power of removal given to the First Members and the Board of Directors in the Trust Deed of 1898 is still in force. Governor Bates has not reviewed at length, but has cited many of the large number of cases which support the settled rule, that a power of appointment, or a power of removal, or any other kind of a power given to two or more people, or bodies, survives the extinction by death or otherwise of one or more of those joint grantees, and survives in the one or more that remain, if the power was given not as a matter of personal trust, but ex officio, or was coupled with an interest. This power was clearly given to the First Members and directors as the then governing bodies of The Mother Church, by the express vote of the First Members, and with the acquiescence of the general members who then existed and have since joined. The First Members ceased to function, and finally were eliminated as an official body, leaving the Board of Directors surviving as the sole holders under the existing form of government of all the business functions of The Mother Church. Under this rule of the survival of a joint power we agree with Governor Bates that the power, therefore, exists today in the Board of Directors, though I think it is probably as Church officers rather than under the Deed of Trust. The language of the deed was "the First Members together with the directors of said Church."

As to whether, in view of the language of that power of removal, which differs widely and materially from the language of the power of removal in Article I, Section 5, as to members of the Board of Directors itself—whether under that language the power to remove a member of the trustees of the Publishing Society can be exercised only for cause, or is arbitrary, and whether it does or does not require the unanimous consent of the trustees as distinguished from a mere majority, are questions discussed in the

briefs of the majority directors, and of Mr. Whipple, and in which Mr. Dittmore is not interested. Mr. Dittmore, in the interest of the ultimate unity of this Church, does not wish to see the trustees of the Publishing Society wholly divorced from the government of the Church, but he has no interest, disposition or desire to argue that they can exercise that power arbitrarily and without cause, or that they can exercise it when only a bare majority deem its exercise proper or expedient, because he has no interest or desire to attempt to bolster up and support the action of a majority of the members of the board in singling out and removing Mr. Lamont Rowlands as a man who had few friends and no students, and whose removal would not cause much commotion.

As to the Dittmore case, Mr. Dittmore hesitated somewhat at first whether to challenge the arbitrary action of the majority of his associates in showing him the door. He decided to challenge it, not because he seeks personal power and the emoluments of the office, but because he sincerely believes, as his counsel sincerely believe, whether rightly or wrongly, that there is a crisis in the affairs of this Church in which he can be of very much more use to Mrs. Eddy's cause by resisting assertions of arbitrary and irresponsible power, asserting what he believes to be his legal rights, and staying in, than he can by acquiescing in what he understands was a grossly illegal usurpation of his rights, and thereby helping in the building up of an absolutely arbitrary autocracy in the government of this great denomination. As a director under the Deed of Trust, the successor of one of the original four, he could not be removed, for the simple reason that no power of removal was contained in those deeds, and he can therefore be removed only by a court of equity, for just cause averred and established. As a Church officer or director under the By-Laws, he does not question the power of his associates to remove him if just cause existed and the power were exercised in a proper manner, provided the by-law purporting to give the power ever received the approval of Mrs. Eddy.

He had no reason to believe until the facts developed unexpectedly during this trial, that the by-law in question did not receive such approval. Mr. Thompson has discussed at length the reasons why we believe it did not receive such approval, and I merely want to add one other, namely: On page 30 of the Church Manual, Section 3, Article II, you will find the provision for the removal of readers. It is as follows:

"If a Reader in The Mother Church be found at any time inadequate or unworthy, he or she shall be removed from office by a majority vote of the Board of Directors and the consent of the Pastor Emeritus, and the vacancy supplied."

Why should Mrs. Eddy be willing that a bare majority of this Board of Directors, without her consent, should have the power to dismiss and discharge one of their own number, personally selected by her—for she made her approval a condition precedent to the appointment of a director—remove one of their own number, who was at the very head of the government of this Church, but should withhold from them the power to dismiss a mere reader unless she consented to such dismissal?

Why, Your Honor, she did not even reserve, in this part of the By-Laws at least, unless there is such a provision somewhere else, the right to approve the readers. The preceding section is:

"The directors shall select intelligible readers who are exemplary Christians," etc.

Mr. Thompson has also fully covered the matter of the necessity of complaint and admonition by the Finance Committee. Our interpretation of that provision of the By-Laws, as he has shown, is supported by the history of the by-law from the outset, and it supplies what would otherwise be a serious gap in these By-Laws, namely, an indicting body.

It is a general principle of the Anglo-American system of procedure for the safeguarding of private rights, that, as a general rule, the same body shall not make a complaint and pass upon its truth. If the Finance Committee by-law was enacted for the purpose of making visit and admonition by the Finance Committee a condition precedent to action by the Board of Directors, the requirement of natural justice that the complaining and trying body should be separated is complied with.

Now, if by any chance it should be held, as I am confident it will not, that the power of removal, given by Article I, Section 5, is an arbitrary power, then the probability that Mrs. Eddy never intelligently consented to the changing of the language from "and consent" to "or request," and the probability that she intended action by the Finance Committee should in all cases precede dismissal by a majority vote—those probabilities are enormously enhanced. For, even if Mrs. Eddy were willing that, with the important check of her consent, and the cooperation of the Finance Committee, a member of this board should be dismissed without cause assigned and hearing given, it seems utterly inconceivable that she could ever have contemplated vesting that power, absolutely unchecked, in such a board as this.

Assuming, however, for the purpose of argument, that Mrs. Eddy's consent was not necessary, and that visit and admonition by the Finance Committee are not necessary, the fundamental question as to whether the power of removal can be exercised arbitrarily or only for cause is a question of what

was intended to be the tenure of the directors' office.

There are just three kinds of tenures of corporate or other officers: Tenure at the mere will or pleasure of the body, tenure for a fixed term, and tenure during good behavior. If an officer holds his office merely at the will and pleasure of his superior or employer or of the corporation or association of which he is an officer, why, then of course he can be discharged without cause, because that is implied in the very idea of a holding at will and pleasure. But if he holds either for a fixed term or during good behavior he can of course be discharged only for cause, and cause implies a judicial ascertainment of the cause, notice and hearing. That distinction which makes, as a general rule, the right of notice and hearing depend upon the tenure of office, runs through all the cases.

Now, what was the tenure of office? The By-Laws contain no express provision. There is no fixed term. The intention must be either that a director should hold during good behavior or that he should hold at the mere pleasure of his associates. Which was the intent, is a question of interpretation, to be determined as well as we can in the light of the context and of the surrounding circumstances, and, above all, the nature of the office itself. The language of the by-law, its extraordinary lack of explicitness, the failure to state whether cause should be necessary or not be necessary, is of no significance, for the effect of that can be argued just as well one way as the other. If Mrs. Eddy had been a trained lawyer and had foreseen and had in mind this question, or foreseen the necessity of covering it at this point, she could just as well have stated in express terms that the right of dismissal could be exercised at pleasure as she could have stated in express terms that it should be exercised only for cause. So the fact that she did not specify gets us nowhere.

The Master—Unless there is a presumption in favor of cause.

Mr. Demond—Precisely, Your Honor. We say there is a presumption in the case of officers of this kind in favor of the right of removal only for cause. I am coming to that in just a moment and then I shall be through.

It is perfectly clear that in the power of removal as to the Publishing Society trustees she intended to give a somewhat broader discretion than that which the law gives with reference to removing for cause an officer or person with a fixed term of office, because she said, "such reasons as to them may seem expedient."

The Master—That language is not quite accurate, as you no doubt notice. You do not describe a reason, strictly speaking, as expedient or non-expedient. We have got to do a little translating there.

Mr. Demond—Yes.

The Master—"For such reasons as may seem to them to render the re-

moval expedient." I suppose that is what it really means, isn't it?

Mr. Demond—Yes. It can well be argued on the analogy of certain cases, that that meant that there should be an absolutely arbitrary power. On the other hand, it can well and forcibly be argued that the very statement that the reasons must be such as seem expedient to them means that there must be some reasons, and not a total lack of reasons. And if there must be some reasons, why, it can be further argued that they must be rational reasons and must be ascertained in a judicial manner.

But, at any rate, it was intended to give a rather broad discretion as to the reasons, if there were any real reasons, to the First Members or directors with regard to the removal of trustees. That language, that power of removal, was earlier than the original granting of the power of removal of a member of the Board of Directors itself. The fact that Mrs. Eddy did not employ any similar language, instead of indicating that she meant to empower them to act arbitrarily on their mere notions of expediency, would appear to indicate that she did not intend to give as broad a discretion as she gave in the case of trustees of the Publishing Society.

Mr. Whipple—Mr. Demond, may I ask, if both these bodies were by the Trust Deed endowed with judicial functions to determine when there were reasons; can judicial functions of that sort be delegated by one of the bodies to the other?

Mr. Demond—No.

Mr. Whipple—If she reposed confidence in these two bodies to exercise a judicial discretion in determining about removal, can that power to judge, in which she imposed confidence, be delegated from one body to the other?

Mr. Demond—No, it could not be delegated. It is a question of survival when the one body is abolished.

Mr. Whipple—Well, does it survive when one judicial body goes out of existence, assuming that it does, and the power has been intrusted by the donor to both of them, acting jointly? She has not intrusted one of them. She has not intrusted the directors in any sense by her own consent. She has kept her hold during her lifetime right on them.

Mr. Demond—A power involving the exercise of discretion or judgment of course cannot be delegated so long as the person to whom it is given is in a position to exercise it himself.

Mr. Whipple—Can it be inherited by anybody else?

Mr. Demond—I think so, Mr. Whipple.

Mr. Whipple—If it can't be delegated, how can it be inherited?

Mr. Demond—I think so, Mr. Whipple—

Mr. Whipple—If a man can will his property he ought to be able to sell it.

Mr. Demond—I think so for this rea-

son: that it is not a question of delegation here, but of survival, and whether it survives depends on whether it was a matter of personal confidence. It seems to me that it could not have been a matter of personal confidence with respect to the First Members, because they were necessarily an indeterminate, fluctuating body. Mrs. Eddy was not, under the designation of First Members, giving the power to certain specific individuals that she personally had in mind, and in whose individual judgment she trusted; she was giving it to a body whose membership must change by death, resignation, removal, and the addition of new members, which is inconsistent with the idea of a personal confidence as distinguished from vesting the power in an official body in the interest of the trust beneficiary represented by that body.

Mr. Whipple—Were not the directors subject to the same vicissitudes? None of them were immortal.

The Master—The only difference is that they do not change quite so fast, I suppose.

Mr. Whipple—Not so many of them.

Mr. Demond—They might. That is one of the reasons for construing this as a power vested in these bodies in an official capacity, and not as a matter of personal confidence which would die when one of the bodies died.

We say that the evidence upon the question of interpretation overwhelmingly preponderates in favor of a power to remove only for cause, and that the legal presumption is to that effect. And some of the reasons why we take that position are these:

In the first place, the very genius of our institutions is opposed to the idea of arbitrary power, and it is arbitrary power that is in question here. Governor Bates in his argument, according to my notes, describes his conception of the removing power of these majority directors as absolutely arbitrary, the most arbitrary power that can be given.

In the next place, this Church, these By-Laws, are not an importation from some clime or country where arbitrary power is customarily conferred. They did not come down to us from medieval Italy. Mrs. Eddy is a daughter of New Hampshire, born and raised in the free atmosphere of the granite hills, among a people to whom absolute and arbitrary power or exercise of power has been intolerable from the beginning of their provincial history. She did not adopt this peculiar form of government for this Church because she was fond of vesting arbitrary power in people, but because of a certain plain reason of what she deemed business expediency. Governor Bates says that that reason was obvious, but he did not refer to the evidence.

On page 644 of the record, Mrs. Knott, describing a conversation with Mrs. Eddy, stated a portion of that conversation as follows:

"She said they told her that it was not humanly possible to organize a church in the way that she proposed; that is, The Mother Church being governed by a minority so to speak, although the provision was made for the branch churches to be governed in the usual way by the votes of all members. But she said she saw the impossibility of having The Mother Church governed by or controlled by votes of members, as they would be in all parts of the world."

That is the reason, and the only reason, why she undertook to limit the power of the members in the first instance to a few of the members, and later on to vest it in the Board of Directors altogether;—not because she loved arbitrary power and wanted to confer arbitrary power to the limit, but because she deemed it impracticable, with the members of this church scattered all over the face of Christendom, to leave them to exercise the church functions in the usual democratic manner.

Arbitrary power in this connection is simply a power to strangle freedom of thought. There is no conceivable reason why Mrs. Eddy or anybody else should have dreamed of giving a majority of this board the unique and extraordinary power to purge itself without notice, hearing or cause, at its arbitrary whim or discretion, except for the single reason of eliminating dissenting minorities.

Now, this Church, this religion, has been built up around the principle of freedom of thought.

Why, from its very inception down to within a few years, when the position of this Church became so well established that it no longer had any necessity of fighting for existence, it had to fight for the principle of freedom to act upon its own religious beliefs. Did any one know it better than Mrs. Eddy? Was Mrs. Eddy, with this idea of freedom of thought and of personal opinion ingrained in her, fighting for it during the best part of her life—was she consciously participating in extinguishing that vital element of growth in the governing body which wields all the functions of her Church? Think of that question a little. A believer in arbitrary power! Why, Mrs. Eddy says, in the little introduction to this Manual, on the unnumbered page just preceding the table of contents, regarding the rules and By-Laws in the Manual:

"They were not arbitrary opinions nor dictatorial demands, such as one person might impose on another."

But if that by-law is an opinion that a majority of the Board of Directors can simply say, "Get out," if they see fit, whenever two of the five disagree with the other three, it comes pretty near being an "arbitrary opinion."

Mrs. Eddy said something else which perhaps has not been referred to in this connection. She said, in Section 9, of Article I, "Law consti-

tutes government." That principle is the antithesis of the principle of autocracy. If law constitutes government, then she meant that the government administered by the governing board of her Church should be a government of law and not a government of men. But if the three can say to the two, "Get out," without first, in a judicial manner, finding cause established why they should get out, the government of this Church is a government of men, and men who have the power to elect the successors of those that they have told to get out, and whose successors will probably be mighty careful to so conduct themselves that they won't receive a similar order of dismissal.

And the effect upon this Church is something that the members of this denomination, that have its interests at heart, had better give a little serious thought to.

Now, Mr. Thompson has gone through the various provisions in other parts of this Manual which more specifically indicate that Mrs. Eddy intended fair dealing should be exercised in connection with matters of discipline. He has also covered fully the argument from the effects and consequences of the two constructions. It is obvious and argues itself.

There is just one other thing that I want to mention, and it is important. Governor Bates says an officer is a servant. He used that phrase in his argument. Well, now, in the case of a servant the presumption is that he can be discharged at will unless the contract otherwise provides. But in the name of common sense, if these directors were servants, who was the master? The members of this Church, for all practical purposes, are members in name only under this form of government, and, as I explained some time ago, that form of government would seem to be valid as long as the members acquiesced in it, whether it is binding on them for all future time or not. As matters stand now, they have no voting power. The directors exercise all the power of the Church. They appoint themselves, select their own successors. Who is their superior? Why, they are the masters, if their contention should prevail even to the extent of 50 per cent, of everybody in this denomination in regard to the affairs of the denomination. There is nobody but a court of equity that can exert upon their actions the slightest check.

Now, what is the analogy? In deciding what the presumption is as to whether the tenure of office was to be at mere whim and pleasure or during good behavior, are we to compare these directors with a common servant of a private employer, with an ordinary subordinate administrative officer, like a member of the much lamented Boston police force, or are we to compare them with the directors or trustees that exercise all the administrative or other powers of an in-

corporated charitable trust, or with the directors of a business corporation, or, if you want an analogy in the line of public office—Governor Bates seems to prefer public offices—with those great boards which stand at the head of our system of government, with no superior? You can draw that analogy and it will be useful.

As to the trustees of incorporated eleemosynary institutions, one case cited in our brief is *Welch v. Passaic Hospital*, 59 New Jersey Law, 142. That was a writ of mandamus to reinstate a governor of an incorporated hospital. The statute authorizing such corporations expressly empowered the board of governors to alter and amend by-laws and provide for filling vacancies and removing members of their own board. The constitution of the particular hospital contained no provision on that particular subject, except the provision that when any governor should die, resign or refuse or neglect to act, the board should fill the vacancy after such vacancy had been ascertained and recorded in the book of minutes. The board passed a resolution expelling the relator for non-attendance at hospital meetings, without notice of hearing. A peremptory writ of mandamus was issued. The Court rather forcibly construed the provision in the constitution of the particular hospital as contemplating an ascertainment in a judicial manner of the neglect to act in the office, and then went on to say:

"But if the constitution and by-laws were silent upon this subject and did not provide for an inquiry and determination, still those elements of judicial action would be absolutely necessary. He must have had notice and must have been given an opportunity to be heard upon charges or complaints presented against him. His continued right of membership could not be forfeited, ipso facto, by his failure to attend a meeting or meetings of the board. Upon this subject of this neglect of duty there was no legal investigation and adjudication by the board of governors of this association, and the relator is entitled to be restored to the membership of the board from which he has been irregularly and illegally removed."

Now, there is an earlier case with regard to a similar body in Connecticut.

The Master—Also on your brief, I take it.

Mr. Demond—No, it is not cited on my brief, Your Honor.

*Fuller v. Plainfield School*, 6 Conn. 532. The defendants were incorporated trustees of an academy, and the proceeding was a mandamus to reinstate the plaintiff as a member of the board, a majority of his associates having passed a vote expelling him without notice. The charter authorized the trustees to fill vacancies occasioned by death or removal. But the Court rather forcibly construed the word removal as meaning removal from the town

and not removal from office, and then said:

"Moreover, the trustees are vested with power to displace, at pleasure, any officer appointed by them, but no power is given them of removing each other; and such a power would be as unfit as it would be novel."

The Court further expressed a grave doubt if any implied power of removing the trustees existed in the corporation, but held if such power did exist it could be exercised only for cause, on specific charges, and judicial notice and hearing.

Now, the cases cited in our brief and the treatment of the subject in an elementary work, such as *Cyc.*, for example, show that it is elementary that the directors of a business corporation cannot be removed from office except for cause, on due notice and hearing, unless the charter or governing law expressly provides otherwise, although in a case of mere subordinate administrative officers, the opposite rule would prevail. And as to public officers, who has ever suggested that either house of Congress or either house of the Legislature, or a city government invested with the power to pass upon elections and qualifications of its own members, could proceed to throw a dissenting minority out of the window without cause, notice or hearing?

Now, that is all I care to say, Your Honor, about the fundamental law points in this case. The question of bad faith, in which I thoroughly agree with Mr. Thompson's remarks has been so fully covered by him that no further comment upon it is necessary. I will not weary Your Honor further except to call Your Honor's attention to the language of a western judge in a case cited at the very end of our brief:

"A church society is a voluntary organization formed for the advancement of the spiritual welfare of its members by counsel, admonition and example, and to promote, as far as possible, with the means at hand, the welfare of the race. There must be freedom of individual thoughts, and in respectful language, expression for such thoughts."

The question in the *Dittemore* case is whether, from this time on, freedom of thought, and in courteous language expression of such thought, is to continue to prevail in the governing board of this great Church, or whether the man that undertakes to exercise this right of freedom of thought is going to be given his walking orders, and a more subservient successor put in his place.

The Master—I took it for granted you preferred to go on, Mr. Demond, although it is after 4 o'clock.

Mr. Demond—I did not realize it, Your Honor.

The Master—I have always waited for the speaker to suggest 4 o'clock, and you did not do it.

Mr. Demond—I am sorry, Your

Honor; I did not realize how much time I was taking.

The Master—I thought you would rather, when you got started, finish up. Mr. Demond—Certainly.

The Master—I think we are all indebted to you for a very concise and forcible statement.

Mr. Demond—Thank you.

[Adjourned at 4:30 p. m. to 10 o'clock a. m., Friday, Sept. 12, 1919.]

Sept. 12, 1919

THIRTY-FOURTH DAY

Room 424, Court House, Boston, Mass.  
Friday, Sept. 12, 1919.

Closing Argument in *Eustace et al. v. Dickey et al.* on Behalf of the Plaintiff Trustees by Sherman L. Whipple, Esq.

May it please Your Honor: I should like before beginning my remarks, to offer the suggestion that at some time, as soon as may be after the arguments, Your Honor will take a view of the publishing house and its activities in order that you may thus, without the necessity of description and argument, know something of the extensive responsibilities and activities that are there conducted. Of course, if I cared to take the time, and had the ability of halo painting of my distinguished opponent, I could indulge in eulogies of my clients, which would be pleasing to them and to their friends, and to the business manager, but I should very much prefer and think it would be better to let what they have done speak for itself, as you could see it in that great institution where they administer this important and sacred trust of their great Leader, which in itself shows the wonderful business efficiency with which they have conducted this business.

I assume no one would make any objection to that, and I, from my personal experience and observation, think that it would be very helpful to Your Honor, and it would relieve me of spending time which I want very much for something else in connection with what I have to say.

The Master—If all parties desire that I should take a view of the publishing house, go through it and inspect it, I suppose I shall have to do so; but in my judgment that would add nothing really important to my powers of dealing with the issues presented here. It has sufficiently appeared, it seems to me, already, that this is a very large publishing concern, having many departments and issuing literature of a great many different classes. I am rather unable to see what the personal view of the house itself and the printing presses and the different offices could add to all that.

Mr. Whipple—It enables you to



visualize so as to describe, if you saw fit, the real importance and magnitude of this work.

The Master—Extremely important and very extensive, varied and large—that is about all I could say about it.

Mr. Whipple—You could judge something of the efficiency with which its activities are conducted—a wonderful system.

The Master—I am afraid I should be a very poor judge as to the efficiency.

Mr. Whipple—If Your Honor can take notice of the way in which they have dealt with the reports of this case, that in itself would show something.

The Master—Counsel can confer about that, and we will see after we get the arguments through.

Mr. Whipple—Very well.

Mr. Thompson—We have no objection at all.

Mr. Bates—We haven't any objection, Your Honor.

Mr. Streeter—We would be very glad to have you do it, Judge.

Mr. Whipple—Well, if Your Honor does it, I shall let what you there see be the test of the character and achievement of my clients, and they will need no other halo.

The plaintiffs bring this suit in their capacity as trustees under a trust of which Mrs. Eddy was the Donor. They claim to be such trustees. The defendants have apparently admitted that Mr. Rowlands was such a trustee by attempting to remove him as such. But during the trial they have raised the fundamental question which challenges the tenure of office of these gentlemen. They say that under the law they are not trustees under the trust, and they have cited a large list of cases—slowly and reluctantly, and only under the persuasive request of Your Honor—to fortify them in position. Apparently they took a very well-known digest—Cyc—and discovered a lot of cases enumerated under that, and copied them, and have furnished them to us. Well, I have not had an opportunity personally to inspect them all, but I am informed by my associates, who are even more competent than I to consider them, that none of those cases are applicable to such a case as we here have to deal with.

In the first place, if I am correctly informed, they all have to do with private trusts, where the trustees have been appointed by the Court, and do not have to do with charitable trusts. And only two of them have the facts similar to those in our own case, and that is where the remaining trustees of a body have the right of appointment to fill a vacancy. That, of course, is a very material point.

Referring to the bill, the provision that we have to deal with is the tenth:

"Whenever a vacancy shall occur in said trusteeship for any cause, I reserve the right to fill the same by appointment, if I shall so desire, so long

as I may live; but if I do not elect to exercise this right, the remaining trustees shall fill said vacancy."

That is the procedure in reference to each one of these trustees. When there has been a resignation, the resignation is properly addressed to the appointing power. It was addressed to Mrs. Eddy in her lifetime, and she appointed the successors; since then it has been addressed to the remaining trustees, and they have appointed.

Now, in no case of these many cited is there any such circumstance. They all have to do, with the exception of two cases, and this point was not involved there, with trustees appointed by the Court, whose successors had to be appointed by the Court; and, of course, in such cases the resignations had to be made to the Court and accepted by the Court before the trustees could be relieved from their duty to account. Therefore, there is nothing in the point. It is without merit. It appears to be one of those stray thoughts that the defendants have grasped like the proverbial straw and thrown in in this ill-considered way, without apparently a single thought as to how it affects themselves. And in every one of them, with a single exception, there is a similar trust—there is a trust from Mrs. Eddy and appointment as trustees. Every one of them but Mr. Dickey is the successor of some person who has resigned. Did he resign to the court and the court accept his resignation? Johnson was one of the original men. He resigned. His successor, Bates, resigned; his successor, Hanna, resigned; his successor, Johnson again, resigned; and Mr. Dittmore was appointed. Eastaman resigned; Mr. Armstrong, his successor, died; his successor, Mr. Stewart, resigned, and Mr. Rathvon succeeded him. Chase resigned; his successor, De Camp, resigned; Mr. Chase again appointed, died, and Mr. Neal was his successor.

Now, if in order to have a trustee in the case of a charitable trust resign it has got to be presented to and accepted by the Court, what is the tenure of these gentlemen under this startling principle, or fundamental principle, which was so reluctantly produced here and which amounts to so little?

I think Governor Bates and his associates, clients, may be reassured that there is nothing in the boomerang, I think. Apparently they are secure in the tenure of their offices as far as that is concerned, and of their recently increased remuneration.

The object of this suit, if Your Honor please, is, in form, to prevent the attempted removal by the defendants of one of the trustees. But the suit has a wider object than that, as Mr. Demond has pointed out. It seeks once for all to have settled by the courts these disputes which have arisen as to the relative responsibilities and duties of these two boards of trustees in the administration of

two great trusts, two trusts which are in the minds of all Christian Scientists sacred trusts, and which, curiously enough, are directed to exactly and precisely the same purpose, and that is the spread of the religion of Christian Science.

Rather than to have these controversies existing and their irritating effects felt, it seemed better that this Court, than which there is none of greater authority, should decide what were the relative duties and responsibilities of the respective boards, and give a guide that will lead them in the future and prevent these disagreements and disputes, animosities and bickerings, which are not only unpleasant to consider and to contemplate, but which, unless dealt with wisely and firmly, may threaten the great purposes and the great objects which Mrs. Eddy had in mind in founding both these trusts.

This particular case involves two principal questions. There are subordinate questions to be determined as to the application of principles, but the two principal questions are:

First, whether the defendants alone, or as they have functions with anyone else, have power to remove the plaintiffs, or any of them, as trustees; and,

Second, whether, if the defendants have such power, they have in this case exercised it properly, for real cause, with sound judgment, and in the interests of the trust—in the interests of the trust—Mrs. Eddy's trust—or whether they have acted capriciously, arbitrarily, and without real cause.

Incidentally, the case involves a question of procedure, that is, whether if the trustee-directors have power to remove, such procedure was had as was likely to do justice, or as the law requires. That is to my mind in this case an incidental although an important question. It has been very fully and ably discussed in the learned arguments which have been made both by Governor Bates and Mr. Thompson. It was a curious situation where the representative of the gentleman most bitterly opposed to the trustees in the beginning of the controversy has now made an argument which is really in behalf of the trustees, because it is in behalf of his client, which in learning and ability it would be hard to excel in any cases that I have heard argued. It leaves nothing to be added by us, as far as the discussion of procedure is concerned—whether there should have been a hearing, whether they acted capriciously and arbitrarily and without real cause, and not really in the interests of the trust, but for personal aggrandizement, from personal pride of opinion, from motives which were not worthy of men who occupied the dignified and important positions which they hold. I say that I should but reiterate the arguments which have been made, and I ought not to take Your Honor's time to say what has been said so well in a way that I

am sure would be less impressive and less persuasive.

The record in the case is voluminous, but I venture to say, may I not? that the facts are neither complicated nor to any great extent in dispute. That seems rather remarkable, in view of the length of the arguments which have been made, but, nevertheless, I think it is so. Those arguments, both of which have been able and comprehensive, have gone, it seems to me, far beyond the actual and vital issues in our case, at least; they have been largely drawn out by the situation in the Dittmore case, which has been covered by both the counsel with such ability. That view which I take, therefore, I hope Your Honor will feel gives promise that I shall not myself take as much time as the other counsel have found it necessary to use—time which, however, they have used wisely and effectively—time which I do not mean to suggest has been in the slightest degree wasted or unnecessary. That very fact, that there has been that thorough discussion, will make it necessary for me to say fewer words, or make it possible for me to say fewer words, and still do my full duty to these plaintiffs. Your Honor has yourself, I think, dropped the word during the trial that the issue will be determined upon facts which are very little, if any, in dispute; and I think Your Honor will feel, although you have not so stated, that the rules of law which are applicable to the case are simple, well established, and many of them quite elementary. I shall therefore not feel called upon to make any extensive discussion of the law, or to do more than call to Your Honor's attention the cases which we have deemed pertinent and to the point, which are cited in our Requests for Findings and Rulings.

In the discussion of this (the Eustace) case, the fundamental fact is, of course, the Trust Deed itself. The circumstances under which it was made, the meaning of the references therein contained, construed in relation to the facts which then existed, are important. The objects and the purposes for which Mrs. Eddy created the trusts are questions which are fundamental and vital. The duties which the trustees are called upon to perform, and how they have discharged these duties, how nearly they have come to the performance of the duties as laid down by Mrs. Eddy in the trust which they undertook to execute, are important and vital questions—the question of their stewardship to the great Donor of this great trust.

The objects and purposes of the trust are what? They are plainly stated in the trust instrument itself. One of the objects of the trust is to undertake to carry on an existing business of a publishing house which had been engaged in publishing The Christian Science Journal, and perhaps another journal, at any rate, other literature, with a view to making profits,

because it provides that the profits of the business shall be paid over—to whom? To a Church, which is described in the deed as The First Church of Christ, Scientist, in Boston, Massachusetts. That is the beneficiary of that branch of the trust, which is the first branch, what you may call the financial end of the trust is a Church which we shall find as we go on was then established, then existing, then a church body, with members and officers and rules of worship, holding church services. That was the beneficiary; its members, the members of the Church. But the other body of the trust, and vastly, as we believe, the more important one, as estimated by Mrs. Eddy herself, was to advance the cause of Christian Science, to promote and extend the Christian Science religion, by the preparation of printing and dissemination as widely as possible throughout the world of literature having to do with the religion of Christian Science—in short, an undertaking, by the circulation of Christian Science literature, to promote the interests of a great religious faith. And there comes to my mind something that Governor Bates has said which is significant in that connection, that this Church more than any other that he had ever known, had made its success, had extended its faith and doctrine, through printed literature. And it was that great trust, to extend the faith through printed literature, that Mrs. Eddy gave to the trustees that she selected to serve under this instrument of Jan. 25, 1898.

The beneficiary of this branch of the trust was not The Mother Church alone. It has been testified to by Mr. Dickey and by others that the beneficiaries of this trust were wider than a single church. It was the movement, the Christian Science movement, throughout the world, that was the beneficiary of the trust in this aspect, clearly distinguished from the other branch of the trust, which was financial, monetary, profit-making, of which The Mother Church was the beneficiary. Better, perhaps, even than the words of Mr. Dickey or any others in the description of this trust are the classic terms in which the Chief Justice of this court, in his opinion in Chase v. Dickey (212 Mass. 555, at 561-562) described not this trust, but one almost precisely like it, a

“gift for spreading the tenets of faith taught by the testatrix (Mrs. Eddy) over an area more extensive than could possibly be gathered in one congregation. It includes the most catholic missionary effort both as to territory, peoples, and times. It is the founding of a trust of comprehensive scope for the upbuilding of the sect which the testatrix made the object of her bounty.”

The importance of this trust is thus shown, the responsibilities of this trust, reposed upon the gentlemen who have succeeded the original trustees, and sit here with their business manager, no less efficient, are thus under-

stood and comprehended. I repeat again, a sacred trust as Christian Scientists believe, divinely inspired, from Mrs. Eddy herself bearing her own signature of splendid creation!

It has been said that Mrs. Eddy described this great bounty as a gift to The Mother Church. It is doubtful upon the evidence whether she did not refer to the real estate which she subsequently gave to the Church, although I do not myself believe that she meant that narrow construction. She did mean it as a gift to The Mother Church, and to the great Church movement throughout the world. That does not mean, however, that it was given to The Mother Church to control. If my father gives to another my patrimony, in trust, to hold and manage for me, is the gift to the trustee, or is the gift to me? Of course the gift is to me. And in that sense this was a gift to The Mother Church, because all the thousands and hundreds of thousands and millions of dollars which came from the able administration of this trust by the trustees, were poured into the treasury of The Mother Church. Of course it was a gift to The Mother Church. But that claim bears no significance upon the question as to whether officers of The Mother Church, whether real or pretended, should control the trust. It was given in trust for The Mother Church and the trustees are those who should control.

Thus the relation of trustee and beneficiary was created. We do not need to pause or to argue to Your Honor, or explain, what that relation is, or what it means. I should not think of doing it—even to comment upon it—except for the strange misapprehension—strange, as it seems to me, at least—that has grown up with regard to the very thing, or, at least, is evidenced in what distinguished counsel for the defendants, or some of them, have said. What are the duties of a trustee in relation to a beneficiary? What must be the course of conduct? A trustee has no interest in the management, financial interest; he cannot have any. It is all for his beneficiary. What, then, does a wise trustee do? He attempts to satisfy his beneficiary by his administration of his trust. If the beneficiaries are of age, and competent, and have judgment, the wise trustee seeks their advice, confers with them, asks suggestions as to what he may do, or what is wise to be done, in connection with the administration of the trust. A mistake may cost thousands of dollars or more to the trust itself, and the trustee saves himself from responsibility if he confers with the beneficiaries, asks their advice. If he is going to do any major thing with regard to the trust, no trustee who is a wise one would fail to confer with the beneficiaries and get the benefit of their wisdom and judgment and approval. But that is far from subserv-

ency; that is far from taking orders as to the trust, far from the kind of supervision which has been demanded here, a supervision which means recreancy to the trust. That kind of supervision; that kind of aid, those suggestions, these trustees, as we will show, have always welcomed. They have sought them; they have conferred to get them; they have done their best to get every help and aid in carrying out these duties, and in the administration of the trust, as benefits a trustee, and as is the duty of a trustee.

It is only when practical abdication of the trust was demanded that they said that their duty to the Donor was higher than the demand of any body. The duty of performance which they undertook and to which they agreed when they became trustees was higher than any duty of obedience to the construction of these gentlemen or some other people. It is important in this case because later I shall deal with the question as to the significance of what has been done, which has been claimed and acclaimed here by counsel as indicating that all trustees heretofore have been subservient, and that these gentlemen are the only ones that ever were not. It will be seen that there is no foundation whatever for that claim.

I have spoken, I speak of it incidentally here, in my eagerness to make clearly understood that situation, that fundamental fact growing out of the relation of trustee and beneficiary, because a failure to appreciate it has to such an extent led, as it seems to us, at least, our opponents into certain errors.

What are the duties of the trustees? Those are defined in the instrument. They are commensurate with the objects and the purposes which are to be achieved; and to enable the trustees to accomplish the purposes and objects of the trust as therein declared the Trust Deed gives specific, but very broad, powers. First, they are empowered to "hold and manage said property and property rights exclusively for the purpose of carrying on the business, which has been heretofore conducted by the said Christian Science Publishing Society, in promoting the interests of Christian Science."

Nothing could be broader than that. The Donor needed to add nothing after that: to hold and manage the property and property rights in promoting the interest of Christian Science.

Secondly, they are enjoined to "energetically and judiciously manage the business of the Publishing Society on a strictly Christian basis, and upon their own responsibility."

Now, that sentence was not needed at all to give them further power. It would have been inferred that they would do this on their own responsibility; and there is significance, I submit, Your Honor, to be attached to the

fact that in the injunction to handle the business energetically and judiciously, they should do it not only on a strictly Christian basis but on their own responsibility. How could she have meant that they were to handle this business on the responsibility of some other board, in view of that plain language? And how could it be otherwise than on the responsibility of some other board, if some other board was to direct and supervise them, and overrule their judgments? They would have no opportunity for the exercise of their own judgment unless it accorded with that of another board.

And so here, in the simple language of this woman, who knew so well how to use simple language and make it effective, you find the barrier to the claims of these defendants of supervision and control of these trustees, because they are enjoined to act upon their own responsibility. You cannot hold trustees responsible if somebody else can direct or supervise them.

Then they are empowered to "employ all the help necessary to the proper conduct of said business." Of course that is an implied power, from the broader one that is given above, and adds nothing to it.

Then they are given a power which, it has seemed to me at least, is really outside that of managing the property and property rights of the publishing house, although I may be utterly mistaken in my view of it, not knowing what the history of that publishing house had been. The trustees are authorized to employ persons "to prepare Bible Lessons or Lesson Sermons to be read in the Christian Science churches," and employ such people as they may need for the purpose. As I understand that, all the things which are to be read in the Christian Science churches as lessons by the readers throughout the world are to be prepared upon the responsibility of these gentlemen, and they are authorized to employ such people as they may need for the purpose. That would seem to be something not strictly within the publishing business, but it shows a trust and confidence of the Donor in these trustees, which is of significance.

Then, specifically, they are given the direction and supervision of the publication of the Quarterly, and all pamphlets, tracts, and other literature pertaining to the business which they are to conduct. How can they have the direction and supervision of the Quarterly and all pamphlets if they in turn are to be directed and supervised by somebody else? Again, Mrs. Eddy's simple words are a blank wall against the progress of these pretensions to power.

And then there is a provision which is unusual in any trust deeds that I remember. The trustees are informed that by their acceptance of the office they agree "to honestly and faithfully do and perform all things to be done and performed by them within the terms, objects and purposes of this

instrument." And it is that solemn pledge which these gentlemen have made by the acceptance of these positions that they are asked by these director-trustees to repudiate; and because they would not they are accused by distinguished counsel, pausing for a moment in the eulogy of his own clients, to say that they are guilty of treason and disloyalty. Disloyalty to whom? Disloyal to the unjust ambitions of these men for greater power, but loyal to the commands of their Leader, commands written in words apparently dictated by her and signed by her own signature. Not commands claimed to be signed by her, and her signature lost somewhere in the shuffle. Think of it! We shall come to that in another part of this case. These directors, who claim commands from Mrs. Eddy, who cannot produce her signature, when she has said no changes should be made without her signature!

Further than that, the consideration of the deed is stated to be that the trustees agree to faithfully perform the conditions specified, and the object of the conveyance is declared specifically to be "for the purpose of more effectually promoting and extending the religion of Christian Science as taught by" Mrs. Eddy.

And then, in the only words in this deed which are italicized for emphasis, the trust is made perpetual and irrevocable. Then in that instrument which speaks as of the day when Mrs. Eddy passed from the sight of men, her will, she confirmed in the most explicit language this very trust, unamended, unaffected; this Trust Deed, in its terms known to her, she confirmed in her will, which speaks as of the last day when she could speak. And after the trust was made, when some one suggested that she should do something interfering with the administration of the trust by these trustees, what was her reply, that came through her secretary? "I cannot deal with these matters; follow the trust." And through the years since that utterance there has echoed in the ears of the faithful trustees that injunction from their Leader, "Follow the trust," and the trust is the deed of January, 1898.

The Trust Deed is complete in its terms. Every one agrees that it cannot be amended. Mrs. Eddy purposely made it so that it should not and could not be amended. She was satisfied with it, as a guide for those to whom she had left these great duties and responsibilities.

But it is true that in it, as a safeguard, one of the many with which she hedged about authority which she delegated to others, there is the power of removal. The provision is this, Section 10:

"The First Members together with the directors of said Church shall have the power to declare vacancies in said trusteeship for such reasons as to them may seem expedient."

Now, what is meant by the term First Members, and what is meant by the term directors of said Church, in January of 1898? We have got to project ourselves back to that time to know what Mrs. Eddy meant, although every Christian Scientist knows, because those have become familiar terms. Indeed, the First Members, the term which I shall first consider, is defined or at least is described as "the First Members of The First Church of Christ, Scientist, in Boston, Mass." Then the term "the directors of said Church" must refer to the same Church, that is, The First Church of Christ, Scientist, in Boston, Massachusetts, because that is the only one that is mentioned in the deed.

Let us pause a moment, because we are aided in this inquiry the most by getting the facts clearly in our minds, logically and chronologically, to consider who the First Members were, how they came into being, and what their powers were. The record shows, if Your Honor please, that the First Members, to the number of 11 or 12, are persons who met on Sept. 23, 1892, and organized a religious organization which they named The First Church of Christ, Scientist, in Boston. How did the name First Members arise? They created that name. They called themselves First Members, themselves, and they added other members as First Members. They admitted others into participation with them. One would think that that meant simply the first people in chronology who joined the Church, but it is not so. They created the First Members as having administrative powers. They were to be officers of the Church. And I submit, Your Honor, that their office was that practically of directors of the Church, administrative directors, having all the powers and functions of management in Church affairs—not with regard to the building. We will deal with that in a moment. Not encroaching on powers which had been given to others, but with the full powers which they thus created by their agreement with each other, by the adoption of By-Laws. That is, they did adopt By-Laws; they joined in a statement of their religious beliefs and tenets. They created offices; and the offices were a president, treasurer, clerk, and they elected members of their own number to occupy those offices.

From that date until long after Jan. 25, 1898, the First Members transacted the business of The Mother Church, or The First Church of Christ, Scientist, as its executive officers. They were what you may call the democracy government of the Church. They added other members who were not a part of the governing body; they were the governing body of the Church.

The Master—Can the member who has no power to vote be regarded as a member in the sense of the statutes

of an unincorporated religious association?

Mr. Whipple—No, Your Honor. I think that they were people who were given the compliment of being members, but without a real membership within the statute, or one that we need to consider. I think that is so.

The Master—If that be so, must not the First Members have been the members of the Church in the statutory sense?

Mr. Whipple—I should say so. But they were also the governing body.

The Master—To the same extent that the members of any other unincorporated religious association are the governing body of that association?

Mr. Whipple—No. If I may amend it, Your Honor, I should agree entirely with what Your Honor says, with this exception—that many others delegate certain of those powers to some one like deacons or wardens, or directors, or some similar officer, and these people did not; they kept the power themselves. So that they differ in that respect from the ordinary organization. They had no officials or officers corresponding to deacons or wardens, or having such duties.

The Master—Well, they chose at the first meeting certain what they called officers.

Mr. Whipple—Yes.

The Master—The president was one. Wasn't he a president in the ordinary sense?

Mr. Whipple—I should say so.

The Master—And a treasurer—

Mr. Whipple—But they defined their duties and they were not the duties of management. The treasurer had the duties of receiving the money and expending it, and the clerk kept the records. But there were no executive officers. I mean, that is my thought. I do not mean to speak very dogmatically about these matters that are so misty, and, as Your Honor has used the adjective once, a little shadowy, but it would so seem to me. And, therefore, they differed from the ordinary church organization in that they did not delegate the powers of the management of the church affairs, as distinguished from the people who owned the church property.

The Master—The rules they adopted provided for an annual meeting for choice of officers.

Mr. Whipple—Yes.

The Master—That appears to have been changed before the Revised Manual of 1897, but just when it was changed I have not found anything in the evidence to show.

Mr. Whipple—Well, now, may I suggest that there was a by-law, and the only by-law that they passed making any recognition of a body known as the Christian Science Board of Directors, adopted in 1895, Dec. 28, when they attempted to delegate the Board of Directors to elect officers of the

Church at their annual meeting. A curious thing! One wonders whether they could delegate the power to elect officers. But that very thing recognized the fact that the directors themselves were not officers, because they were delegated, they had the power delegated to elect officers—a president, a treasurer, and a secretary. In other words, the most that can be said is that this Church assembly decided to allow somebody else to elect officers for them. But they defined the officers and then defined the offices. They had the right to create what officers they would have, and what offices, and they did so—a president, a treasurer, and a secretary. And that is all. They did not elect any directors.

But in 1895—and that is the only thing that they did with regard to giving any authority whatever to the Christian Science Board of Directors—that year they gave them, or attempted to delegate the power to elect officers to this Christian Science Board of Directors.

We respectfully ask Your Honor to rule that it was beyond their power to delegate the power of election to some one else, although it is not material, perhaps, or very material, to any issue in this case whether they could allow their president and treasurer and secretary to be elected by outsiders or not. It may be. But we ask that finding.

Now, that is all that had been done up to the time that this deed was made in January, 1898. The affairs of this Church had been managed by its officers; the Church First Members had made their By-Laws, had adopted their religious tenets, they amended their By-Laws by a democratic form of government. They did not delegate anything to anyone, or to any body of their own numbers, until 1895, and then they delegated merely the selection of these three officers to the Christian Science Board of Directors. And the Christian Science Board of Directors is not anywhere else mentioned in the By-Laws, or, as far as I know, in the records up to that date.

Therefore, it is perfectly clear that when Mrs. Eddy gave a power of removal to the First Members that she meant this body, that is, the Church members of the Church which she had founded, who were then functioning, who were then the ruling power in the Church, who had delegated no powers and were competent, of course, to deal with this situation by proper forms.

Now, Jan. 10, and up to this time, the First Members had gone on managing the affairs of the Church in this way, with no delegation of authority and no selection of any officers to whom they gave any powers or delegated any powers until, as I have said, Jan. 10, 1901. And then they passed this vote:

"The business of The Mother Church hitherto transacted by the First Mem-

bers shall be done by its Christian Science Board of Directors." I shall discuss a little later the directors and what their power and authority was.

Now what is meant by that—"the business of The Mother Church"? One would think that it was the administrative business, the business which they could have delegated to directors if they had elected directors. They did not elect directors, but they simply delegated the power of administering the business of The Mother Church hitherto transacted by the First Members. But the Christian Science Board of Directors, under the authority of this, assumed from that time on to enact and amend the By-Laws of The Mother Church. A strange transaction! Not officers of the Church, entirely outside of the Church, and they assumed to make its By-Laws and to amend its By-Laws. Was that intended? Let us look at the full vote which appears on page 242.

The Master—Page 242 is the record of the special meeting of Jan. 10, 1901.

Mr. Whipple—Page 242, yes; that is the one I am referring to. See what it says at the end of that:

"The First Members of this Church shall continue to convene annually at the Communion Season, but they shall not be present at the business meetings. This by-law can neither be amended or annulled without the unanimous consent of the whole Church or the written consent of Mrs. Eddy, pastor emeritus." Does that look as though the members of the Church could no longer amend By-Laws, as if they had given over the power of amending By-Laws? It says that By-Law cannot be amended without the unanimous consent of the whole Church, and that meant of its First Members. They were still left the right, unanimously, acting unanimously, to change this by-law.

Now, that is not all. It is a fact that thereafter—I shall come to that in a moment in another connection, although I might as well refer to it now—it is a fact that in every deed thereafter, as long as Mrs. Eddy lived, there was this provision—that appears in these deeds that Your Honor examined yesterday morning:

"No by-law shall be adopted, amended, or annulled by the grantees unless the written consent of said Mary Baker G. Eddy, or unless at the written request of Mrs. Eddy the Executive (or First Members) by a two-thirds vote of all their number decide so to do."

Does that look as if Mrs. Eddy understood that the Executive or First Members could not vote, had lost their power of amending By-Laws? They were very much alive. Their activities were held in suspense by what might be called a vis major from the outside, because some one else was intervening and performing their functions; but they were considered

by Mrs. Eddy as very much alive, and with the power under certain circumstances to amend, to revoke, this by-law which was intended to be practically irrevocable. And most of the property on which the Church stands is held under that very trust, because it is in all the deeds subsequent to 1901. So that the First Members today are involved in the title to most of the land on which that Church stands, or, at least, on a trust saying that that by-law shall not be repealed except with their assent at the request of Mrs. Eddy by vote of two-thirds.

And that is not all—that is not all. If Your Honor will look at Article XXXIV, Section 2 of the Manual, the eighty-ninth edition—

The Master—Of the present Manual?

Mr. Whipple—Of the present Manual. It says:

"All deeds of further purchases of land for The First Church of Christ, Scientist, in Boston, Mass., shall have named in them all the trusts mentioned in the deeds given by Albert Metcalf and E. Noyes Whitcomb in March, 1903; but this rule shall not apply to land purchased for any purpose other than the erection of a church edifice."

Now, what was the Metcalf deed? That is Exhibit C attached at the end.

The Master—Yes, I recollect.

Mr. Whipple—That says:

"This property is conveyed on the further trusts that no new Tenet or By-Law shall be adopted, nor any Tenet or By-Law amended or annulled by the grantees unless the written consent of said Mary Baker G. Eddy, the author of the textbook 'Science and Health with Key to the Scriptures,' be given therefor, or unless at the written request of Mrs. Eddy the Executive Members of The First Church of Christ, Scientist (formerly called the 'First Members'), by a two-thirds vote of all their number, decide so to do."

That is why it was in every deed, and she put it into the Church Manual that all the property that was received for the Church—and that means received by these trustees—should be upon the condition and trust that the tenets and By-Laws should not be amended except by written consent of Mrs. Eddy, or the consent of the First Members.

What has happened to those titles now that the First Members do not function is an interesting question, but not necessary, perhaps, for us to go into very fully. But it suggests that Mrs. Eddy, who was not a lawyer, was not perhaps as wisely advised in regard to some of these things as she might have been.

But for other purposes we want to point out that up to the very last, and in the present Church Manual, the First Members are recognized as having the power to change a by-law. Now, how can it be said that they had parted with the power to change a

by-law by a vote, that the business of The Mother Church should be handed over to its Christian Science Board of Directors? It was not the business of The Mother Church to make by-laws and change by-laws and affect the government of the Church at all in any legal sense. That is not what it meant. And it was not what Mrs. Eddy meant by it, as shown by all her subsequent deeds in which these First Members were kept alive, and today have a function under the Manual which is stated to be in force today, and a trust with every particle of their Church property held in the trust in reference to which the First Members function.

Now, on March 17, 1903, the Board of Directors enacted an amendment to the By-Laws, changing the title of "First Members" to "Executive Members." The First Members were not called together, they were not consulted anything about it. Their title was changed, although the governing body of the Church, without any knowledge on their part, apparently—I do not know what the history is, as to whether the by-law had any indorsement of Mrs. Eddy on it or not, and perhaps it is not of much importance because they could not complain very much if they were given a more graceful name, to be known as "Executive Members"—a more impressive name than "the First Members"; but that is what they undertook to do.

The Master—Don't they refer there to a letter from Mrs. Eddy to McLellan, dated March 19, 1903?

Mr. Whipple—Changing the name?

The Master—In reference to the by-law adopted March 17th.

Mr. Whipple—And that is the one as to the change in the name. I am sorry to say I can't answer Your Honor that, because I have not followed the—

The Master—I am not sure.

Mr. Whipple—I have not before me the reference to it. But Mr. Withington—or, I should say, Mr. Strawn and Mr. Withington, who seem to know everything about these By-Laws, can probably tell you. Mr. Withington thinks no letter of that sort has been put in. But what we have done is to follow the genesis and development of By-Laws which affect the Publishing Society. We have not undertaken this other task quite as thoroughly. The results that appear from the work that has been done by my associates ought to stimulate a little activity on the responsible parties in regard to some of these other By-Laws, or claimed By-Laws.

The Master—I noticed that as to the by-law voting for the directors, in a great many cases they take pains to show explicit authorities from Mrs. Eddy.

Mr. Whipple—Yes, Your Honor, the law required it.

The Master—With reference to the adoption of the by-law providing that

the First Members were hereafter to be known as Executive Members, March 17, 1903—that is the one you have just been talking about, isn't it?

Mr. Whipple—Yes.

The Master—I had a query, "Where is Mrs. Eddy's authority for this?"

Mr. Whipple—We say there is not any.

The Master—I had not been able myself to find any in the record.

Mr. Whipple—I should correct my statement—it was too dogmatic. I will say we have not been able to find any. We do not venture to say that there is not somewhere in the evidence something of that sort. Your Honor will remember that this evidence was not put in very chronologically.

The Master—No, it was not. It took some trouble to reduce it to chronological order.

Mr. Whipple—They seemed to lay their hands on things as if by inspiration or in some other way, and put in what was closest to their hands, and therefore we have no chronological order of the development of these exhibits. I am not reflecting, Governor Bates, on the method of your putting them in. I know—and let me explain, lest I be considered as reflecting—I know that Mr. Dane explained that he was very unexpectedly confronted with a situation that he had not supposed would arise, and that he was embarrassed by it. I am merely commenting upon the fact, not by way of criticism.

The Master—Oh, I think it would have been very difficult for anyone to put in the evidence in better order chronologically; it would have taken a great deal of work and study, at any rate.

Mr. Whipple—I have no doubt of that, but still I think it would have saved a good deal of work and study since. However, I am not speaking by way of criticism.

The Master—And I have already said that, for the purpose of dealing with the legal rights of the parties, I do not suppose that Mrs. Eddy's specific authority for these votes of the directors is particularly important.

Mr. Whipple—I should not suppose that it could be so. I should suppose—well, I will not state it.

The Master—There are purposes, no doubt, for which it would be important, but not for these purposes.

Mr. Whipple—I will state a little later a comment which I have to make on that.

The Master—And, if I may be pardoned one more observation, I find I have a memorandum here about March 19, 1903, a letter from Mrs. Eddy to Mr. McLellan—

Mr. Thompson—We know what that is.

The Master—You do? What is it?

Mr. Thompson—That is the letter which she wrote to him, saying that

she had appointed him a fifth director, and saying:

"You will have three in unity. That leaves a majority when they are right."

And she also says, I am sorry you cannot take title by having your name in the Christian Science Board of Directors' deeds.

The Master—Yes; but is there not in that some reference to all the doings of the directors on March 17?

Mr. Thompson—I do not remember that there is.

Mr. Withington—It appears on page 686, and it is Exhibit 739.

Mr. Whipple—The middle column.

Mr. Thompson—I do not see that there is anything else in it.

Mr. Whipple—May we leave it, if Your Honor please, that if anyone discovers anything of that sort, they may properly call Your Honor's attention to it?

The Master—Oh, certainly.

Mr. Whipple—And that if no one does it, we shall assume that there was no such letter.

The Master—Certainly; I think that that will be the best way.

Mr. Whipple—Because my associates have made quite a careful summary.

The Master—Might it not be said that in writing that letter of March 19, 1903, Mrs. Eddy must have had under her eye the directors' doings of two days previously—March 17?

Mr. Whipple—This is March 17, 1903?

The Master—1903. The meeting was March 17, 1903.

Mr. Whipple—Oh, yes, about the executive members.

The Master—Yes.

Mr. Whipple—Well, that is entirely disassociated from Mr. McLellan's becoming a quasi trustee.

The Master—Oh, that is another matter, of course.

Mr. Whipple—Yes. We have not thought that that was of very great importance, as I stated a few moments ago, although I must confess that as the case has gone on we have found a great many things were of some consequence that at one time we thought were of none.

Now, with this situation as to the executive members—

[Mr. Withington confers with Mr. Whipple.]

Mr. Withington offers the suggestion, which is pertinent, that in her deeds thereafter she refers to the members as executive members, and speaks of them as formerly First Members. So that she knew about them; there is no question about them. But you see Mrs. Eddy was extremely particular that when her consent was required it was to be in writing—her written consent. These directors speak of the great trust that she had in the directors, but I notice that there was not very much in the Manual that these directors were permitted to do

in her lifetime that did not require her written consent. There are 17 places in the Manual, practically every important activity, where they had to have her consent, and she showed her confidence in them by taking no chances on their saying that they had her assent by telephone or in some other way: she said "written assent." And one might ask, as we went along, why, in her lifetime, when she was right here to look at them, she would not let them make a move in any activity of any importance without her written consent, and that she gave into their hands, intended to give into their hands, this absolutely unlimited and unchecked and unexamined power to do as they pleased? My learned brother said that they were gaining experience all the time, but the directors that have been appointed since she passed away were not gaining any experience on it. According to their theory, she intended, while she did not trust them quite as implicitly in her lifetime, not enough to let them go without her written consent to everything—she intended to give them the most absolute and autocratic power of any ecclesiastical body that I ever heard of outside of one—the uncontrolled handling of millions of dollars, with nobody with the slightest authority to look at their accounts, even to see how they did it.

Now, in July, 1908, the directors, who had assumed to pass by-laws, but who were not even officers of this organization, never had been elected as officers, whose names did not appear even in a list of officers in any Manual, who were not mentioned as officers in the Manual until Sept. 4, 1908—on July 6, 1908, passed a vote in which they attempted to disband the Executive Members as a body (page 253).

Now, they were not abolished; they did not go out of existence; they never consented to it; they were the governing body of this Church; they never had passed any vote whatever to part with their powers; and an outside body of trustees, as we shall show they were, trustees under a Trust Deed to build and maintain the Church, disbanded them.

The Master—In what sense do you take the word "disbanded"? Does it mean that they must not hold any more meetings?

Mr. Whipple—I may be pardoned if I—I will not say it. It was, in effect, that it did not have much sense, if Your Honor please.

The Master—That what?

Mr. Whipple—It did not have much sense. I could not take it in any particular sense, but I do not know whether they meant to abolish, or just what they meant. To disband them might mean, or it was described as being useless to have them meet together any more. They had been meeting and having annual meetings, but there was nothing for them to do.

and that therefore they should be disbanded for the purposes of having annual meetings.

The Master—That vote has been spoken of, I think, at times as abolishing First Members.

Mr. Whipple—Yes, Your Honor, and very incorrectly spoken of as abolishing the First Members. How could they abolish the membership of a church, and the governing body of the Church, under its By-Laws and under its Manual—people who created the Church, the people who created the By-Laws and the Manual—how could they abolish them? That is one of the startling—

The Master—Possibly if we took the word "disbanded" as meaning, You are no longer a body which shall meet, you are now mere members of the Church, and nothing else, that might do.

Mr. Whipple—Yes, but they had certain privileges under the By-Laws and certain functions still to perform, because, up to Mrs. Eddy's passing on and long after, they functioned in connection with these deeds, the trusts on which that church edifice stands—certainly up to the time of her passing on—and still they are referred to in that—they are not abolished, I think—

The Master—It has always seemed to me that those two votes, the vote of Jan. 10, 1901, transferring the business of The Mother Church, if "business" is to be taken as meaning the power to elect officers and pass by-laws, and the vote of July 6, 1908, purporting to disband the First Members, stand on somewhat doubtful foundation, as being inconsistent with the legal right of control existing in the members of an unincorporated religious association, as a vote or by-law was held inconsistent with that right of control in one of the Massachusetts cases, *Saltman v. Nesson*, I think (201 Mass., 534).

Mr. Whipple—Yes, Your Honor; we have recited that on our requests, and did not intend to comment on it at length, because it is so plain that it means just what Your Honor has indicated, or least it seems so plain to us.

The Master—Then we should have to consider where we are left, what is the situation, if those votes are really, when questioned, ineffectual.

Mr. Whipple—Well, certainly the First Members are not abolished, anyway. That is one result that certainly follows.

Mr. Dane—In this connection, if Your Honor please, may I call the Court's attention to page 253 of the record, inasmuch as so much has been said about the lack of Mrs. Eddy's authority in connection with these two votes? There it appears that Mrs. Eddy specifically recognized in writing the change in the name from First Members to Executive Members, and also specifically authorized the disbanding of the Executive Members, and, if that word has no meaning, it

is a word that was used by Mrs. Eddy over her signature.

The Master—I will make a note of that, Mr. Dane—page 253.

Mr. Dane—Page 253, in the letters from Mrs. Eddy to the Board of Directors.

Mr. Whipple—That appears in our requests, if Your Honor please, at the top of page 35. It gives that reference, and gives the exhibit.

It appears that Mrs. Eddy commissioned Mr. Dickey to do it, and I suppose that she assumed that he would do it according to the forms of law. And here is another case where her supposition was not correct, and her trust in an agent was betrayed, or not fulfilled. It was not done according to law at all. It could have been done by observing the proper forms of law. It is another case where, if the intentions of Mrs. Eddy were defeated, and were not carried out, it was because of the failure of those to whom she intrusted the task.

Mr. Dickey—She read the letter.

Mr. Whipple—The failure was complete.

The Master—You would not contend, Mr. Dane, that even Mrs. Eddy's direction, or express consent, could get over that difficulty that existed?

Mr. Dane—I was simply calling Your Honor's attention to the fact that Mrs. Eddy knew all about the change from First Members to Executive Members, and that Mrs. Eddy understood not only that the change had been made in the name, but she understood, also, that that vote in July disbanded the First Members, then called Executive Members.

The Master—That leaves us in just as much doubt as to what "disbanding" really meant in a legal sense.

Mr. Whipple—And in the sense in which she intended it, also, I may say, if I may say that further. But anyone knows—it does not take a lawyer to know—that her purposes could have been carried out at that time in a perfectly legal and proper way if the people to whom she had commissioned it had attended to that great duty.

The Master—It strikes me as a word that a lawyer would hardly be likely to use.

Mr. Whipple—No lawyer, apparently, was consulted about it, and the thing was not put in proper form at all. Mr. Dickey thought that he could do it all right by taking a pen, apparently, and scratching something out, and it would appear that Mrs. Eddy assumed so too.

Mr. Dane—Now, I do not like to interrupt, but that statement I cannot let go unchallenged, because the phraseology of the by-law—

Mr. Whipple—Then suppose I withdraw it? I do not like to issue challenges, because I have not very much time.

The Master—I would like you to allow Mr. Dane to complete what he was about to say.

Mr. Whipple—Very well.

Mr. Dane—the phraseology of the by-law disbanding the Executive Members was one proposed by Mrs. Eddy in a letter which she wrote on July 3, 1908, appearing on pages 253 and 254 of the record. There the by-law which she desired to have adopted is set out over her signature.

Mr. Whipple—But you have no doubt, Mr. Dane, that she wanted it done in the proper way, and in conformity with the rules of law, have you?

Mr. Dane—None whatever.

Mr. Whipple—And you have no doubt that if the people whom she had asked to have it done by had been competent to attend to it, or had attended to it properly, they could have done it?

Mr. Dane—I have no doubt that they were competent, and that they did it.

The Master—Well, now, there we have the issue squarely made, and I think that we will leave it there.

Mr. Whipple—Just where in the limbo the First Members are left I am not prepared to say, and perhaps it is not of much consequence as long as they are still in the limbo somewhere. The provision, if Your Honor please, is that the First Members are to be the effective, initiating power to remove, with the directors of said Church.

Well, now, in 1898, who were the directors of said Church? There weren't any directors, legally speaking, known by that name, in The First Church of Christ, Scientist. They do not appear, as we have seen, among the list of officers. They had a president and a treasurer and a clerk; they had no Board of Directors. There were no Church directors, there didn't pretend to be any directors of said Church, in the legal sense. But—and this brings us to the Trust Deed of Sept. 1—there was a body of four trustees under a Deed of Trust of Sept. 1, 1892, who held the legal title to the Church property, to whom Mrs. Eddy had given certain powers in connection with the building of that church and the conducting of religious exercises there. That is, they were what you may call trustees of the church building, and trustees of the Church, in a sense. Powers of management had been given to them under that Deed of Trust, which were similar to those of a director—not exactly that of a director, but similar to that. There is no other body of trustees that Mrs. Eddy could have referred to in the deed than that. Those are the only ones that existed. She meant those people, those four trustees, undoubtedly. It is shown further, because after she had appointed these trustees she called them the Christian Science Board of Directors.

But there wasn't any Church in existence, as has so frequently been pointed out, when she named them that, and they were never made directors of that Church until 1908, even if they were then. I do not know whether

they were in 1908 or not. I do not know whether outsiders can come into a church, people who have no office under the By-Laws, and amend the By-Laws so as to make themselves directors or not. It is a startling proposition. They could just as well in a sense, go into any church in Boston and say, "We have called a meeting and amended your by-laws, made a Board of Directors, and elected ourselves as those directors, and we will run the business from now on." The only difference was that they were trustees of the church building and had the inception of such powers. That is the legal situation which existed at the time—the legal situation in regard to it.

But they are the people who are meant, I should assume Your Honor would find, interpreting it in that way. There is no other Christian Science Board of Directors. Therefore it becomes important to consider the trusts of the deed of Sept. 1, 1892, and find out what the powers were, who the directors were and what their powers were, and some other things about them.

Perhaps we had better suspend for five minutes as I am taking up a new subject. I should like to make it no more than five minutes because I would like to finish today, if Your Honor please, if I can.

The Master—We will call it six minutes, and be here at 10 minutes before 12.

Mr. Whipple—I will be very glad to do so.

(Short Recess)

Mr. Whipple—If Your Honor please, earlier in my remarks I referred to that provision of the Trust Deed which gives powers in connection with the Bible-Lessons, etc. I should like to add a couple of references in respect of that which I omitted. The first is on page 133, and is a letter from Mrs. Eddy to Mr. McKenzie, dated March 12, 1901, some time after the date of the Trust Deed:

"Dear Brother McKenzie:

"In reply to your letters of recent date, Mother requests me to say, at the time she sent in the name of Mr. Willis for a member of Bible Lesson Committee she did not remember that said committee was elected by trustees."

On page 335, Exhibit 389:

"Pleasant View,  
"Concord, New Hampshire,  
"August 23, 1901.

"Dear Student:

"The Bible Lesson Committee is not included in the last By-law. This committee belongs to the Publishing Society.

"With love,  
"M. B. EDDY."

What are the powers and what is the situation of the Christian Science Board of Directors named in the Trust Deed creating them, which is dated

Sept. 1, 1892? Their powers are just what they are described to be in the deed. The deed is similar to that of 1898, and their powers—the director-trustees, I will call them, if I may, to distinguish them—are limited and defined in Mrs. Eddy's deed to them, just exactly as the powers of the Publishing Society trustees are defined and limited in the deed to them. The deeds, as I have said before, are not substantially different. The purposes of the trusts are the same. They are both important. It is childish to discuss which is the more important. People might differ, but they are both important, and the object of them both is the same; and the people given authority under them should work harmoniously together for a correct result, without stopping to decide which is the biggest trust and who is the most important person.

In 1898 these director-trustees had been authorized to build a church, and had built it, an edifice on a lot of land which had been conveyed to them. They had the power to elect, and had elected a pastor, a reader or a speaker to fill the pulpit of the Church. It was their duty under the deed to maintain public worship in accordance with the doctrines of Christian Science in said Church, and no one has any reason to suppose that they were not doing it strictly in accordance with the deed. For this purpose, namely, maintaining public worship, they were empowered by the deed to make necessary rules and regulations, that is, for the public worship. That gave them authority or a semblance of authority to pass certain rules and regulations dealing with the conduct of services in the church edifice and the maintaining of public worship. They were enjoined in the deed to "maintain regular preaching, reading, or speaking in said Church on each Sabbath," and there was a penalty that if they did not attend to this duty for, I think, a period of a year—

The Master—Before you get to that, they were not to allow the building or any part to be used for any other purpose than the ordinary and usual uses of a church. That is paragraph 4.

Mr. Whipple—Yes, Your Honor.

The Master—Has there been some evidence that that was afterward changed or modified in some way?

Mr. Whipple—I don't think it could be and I don't think it ever was.

The Master—When they came to enlarge the church? Was there any difference made there?

Mr. Whipple—No. The old part was still a part of the church edifice. There was a controversy about letting the President speak there.

The Master—Yes. There was one controversy that was referred to about permitting its use for a meeting at which President Wilson, I think—was it—was to speak.

Mr. Krauthoff—That is a different edifice. You see, the edifice in which it

is claimed President Wilson was to speak is the new church, The Mother Church extension.

The Master—They are two distinct buildings, are they?

Mr. Krauthoff—They are two distinct buildings, erected at different periods, but connected by intercommunicating doors.

Mr. Whipple—They are both parts of the church edifice, aren't they?

Mr. Krauthoff—Now, yes; but one was built in 1894 and the other was built in 1905. There are intercommunicating doors cut in between, but they are two separate and distinct buildings.

The Master—Does Clause 4 of the deed of 1892 apply in your opinion to the new building or not?

Mr. Krauthoff—Not by reason of the deed of Sept. 1, 1892, no; but then there is a further provision afterward.

The Master—Well, you have answered my question.

Mr. Krauthoff—You asked a further question a moment ago. The deed of Sept. 1, 1892, was afterward modified by Mrs. Eddy so as not to require continuous service to be held in it.

Mr. Thompson—You don't mean the that, do you?

Mr. Krauthoff—I mean we are not required to hold continuous services.

Mr. Thompson—You don't mean the deed of 1892 was modified by anybody?

Mr. Krauthoff—By Mrs. Eddy, it was so modified, as not to require church services to be held continuously.

Mr. Whipple—What you mean is that she released certain restrictions, as she had a right to do.

The Master—Yes; I thought that is what you meant to refer to.

Mr. Krauthoff—Well, I suppose the release of restrictions would modify the deed.

Mr. Thompson—No, never—carrying out the deed.

Mr. Whipple—The trustees were forbidden to permit any preaching or other religious services not consonant with the doctrines of Christian Science.

Now, if they were trustees under this deed, that was the limit of their powers. I am speaking generally. I do not mean to have covered and interpreted every power or intentment to be inferred. These four men, or this body, in acting with the First Members, were authorized under the Deed of Trust of the Publication Society to remove the trustees for cause. I may deal with that now, if Your Honor please. My reference to it will be brief. It says, "Shall have the power to declare vacancies in said trusteeship"—if that does mean the power of removal, and it has been generally so construed—"for such reasons as to them may seem expedient."

That is, they must have reasons. They must have reasons which are expedient in the promotion of the interests of the trust. This whole power



is so that it may be exercised for the benefit of this trust. They could not do it, of course, for whimsical, arbitrary, or capricious reasons. If they must have reasons, they must have real reasons; not personal aggrandizement, not revenge—nothing of that sort; they must have real, good reasons. I am speaking of it here because I am not going to comment very much on that, because Mr. Thompson has covered it so well and thoroughly and exhaustively.

Now, this trust was modified, I think it was modified, and a supplementary deed was made in the Metcalf deed, which I have already referred to, if Your Honor please. It is Exhibit C attached to the bill, and I won't refer to that again.

Now, what was the status of these gentlemen when this deed was made? Mrs. Eddy, when she appointed them in her deed to have a removing power, could not be supposed to have introduced it in reference to what they were going to do, or some powers that they might possibly get from some other source, or in other capacities. She appointed them endowed with the powers that they then had under their deed. And what powers did they have? What were they? They were not directors of The Mother Church in the sense of being officers of the Church body. I do not need to say anything further about that, because we discussed it at length earlier. They were never elected as such; there was not any such office at the time at all.

Your Honor had that in mind, and I will stop a moment to read, if I may, or revive the recollection of all of us, to very pertinent inquiries which you put on page 242, when Mr. Dane was introducing in evidence the business of The Mother Church:

"The Master—And if I recollect right, you have not yet shown any action by the First Members constituting a Board of Directors?

"Mr. Dane—I think not.

"The Master—So that we are left in some doubt as to what that vote means when it refers to its Board of Directors.

"Mr. Dane—That is, of course, involved in a recognition of the Manual.

"The Master—Where does the Manual come in? I don't quite see that yet. By its Board of Directors—that is, the Church's Board of Directors?

"Mr. Dane—Yes, Your Honor.

"The Master—How did the Church get a Board of Directors? We haven't yet any action of the First Members constituting one?

"Mr. Dane—No. I think that may be correct. It will develop, however, and I would prefer to develop it gradually, rather than state my position at this time."

I watched the case with great care and interest in the protection of my clients, and I did not see it develop. It was left in just that way that Your Honor described in the middle of the next column on the same page:

"The Master—We will let Mr. Dane put in all the facts and then we will see what follows from it. It seems all rather shadowy at present."

The Master—That left him to dispel the shadows later. Perhaps they have been dispelled.

Mr. Whipple—I thought of that contingency, but it seemed to me, that if anything it was a bit murkier. But that was early in the case, and we now have the theory which came out of them as reluctantly as those authorities that were given over yesterday.

Now, these gentlemen received the property named as a corporation. But are they a corporation, or have they ever been? They are not unless they come within the statutes. Otherwise they are merely trustees with no statutory powers at all.

I am going to refer just briefly to that matter, although Your Honor has covered it pretty well in Your Honor's socratic method of interrogation of counsel, and by reference to the case, which, of course, controls.

If they are a corporation they must be so under chapter 39, section 1 of the Public Statutes. Those were the statutes that represented the law at the time:

"The deacons, church wardens, or other similar offices of churches or religious societies, and the trustees of the Methodist Episcopal churches, appointed according to the discipline and usages thereof, shall, if citizens of this Commonwealth, be deemed bodies corporate for the purpose of taking and holding in succession by grants," and so forth.

Well, now, were these people similar officers of a religious society—similar to deacons and church wardens in other churches? We are confronted with the fact, as Your Honor has pointed out, that when this deed was made there was no church in existence or no religious society to which they could apply at all. There was no society in existence. It could not have been a corporation then. The ingenious theory is suggested that somehow when they did become connected with a religious society they metamorphosed into a corporation. But that is an operation that is beyond my knowledge of legal metamorphosis. It is another one of the staggering situations. They were not similar officers of any church at all.

They are met by this: When the Church was organized they did not become its officers. As we pointed out, the Church did not create any such office as deacon, church wardens—possibly a president—certainly not as deacons, church wardens or directors. They did create officers, and those were left out. They did not come under the statute at all, of course.

In *Weld v. May*, 9 Cushing, 181—if Your Honor will refer to that—the Court says, p. 191, that the phrase in the statute "or other similar officers,"

"means officers in churches otherwise constituted, of similar character and with corresponding functions with those of deacons in congregational churches, and church wardens of episcopal churches. . . . Other officers, not of a character similar to that of deacons, must hold simply as trustees."

And that is the pronouncement that applies to these gentlemen.

Further on in the opinion is this significant statement:

"When a deacon is chosen, he is chosen according to known regulations and usage. And, therefore, whether he is duly chosen or legally removed, must always be a matter of fact, to be tried upon evidence as other matters of fact are tried. When legally chosen, the law vests in him the powers necessary to accomplish its purpose, that of taking and holding property for a known aggregate body not incorporated."

What does that mean? It means that the officers of any other church similar, or claimed to be similar to deacons and wardens, must be officers that are chosen as deacons are chosen. Chosen. These trustees were not chosen, these directors were not chosen; they never were chosen at all by any church body. They were appointed as trustees by Mrs. Eddy, and as trustees they remained under the deed. They were not chosen.

The Master—And recognized as such by the members of the Church?

Mr. Whipple—Yes. Now then, having considered the people who had the right to remove, who asked the removal?

Well, the First Members did not participate at all. They are claimed to have gone out of existence. Whether they are out of existence or not, as I have suggested before, they appear to have been either neglected or prevented from functioning by a stronger power.

Now, the power being given to two parties, the attempt has been made to exercise it by one, and by one alone. And of course that cannot be done. The attempt was a futility, it amounted to nothing. It was not the exercise of the power which Mrs. Eddy gave.

It is perfectly clear under the authorities that when a power is given under circumstances like this to two bodies, and one of them does not function, or even if it has gone out of existence, the other cannot act.

Now, I understand the defendants to dispute that as a legal proposition. They say that, first—I understand they say that it is a power coupled with an interest and that, therefore, the survivor of the two bodies can exercise the power. And they cite as an authority, the principal authority, *Coffin v. Attorney-General*, 231 Mass., 579, and that refers to *Parker v. Sears*, 117 Mass., 513, 521. Those cases are not authority for any such proposition. This involves the discussion

of what is meant by a power coupled with an interest. The cases do not seem to agree upon just exactly what that means, the term means, although the cases using different terms always seem to have the same thing in mind. Some cases speak of it as a power coupled with a trust, and some speak of it as a power coupled with an office; but no statement has been made, as I remember, by the Governor in his learned argument, as to just what those terms mean. Perhaps I am not right, because the law of the cases does not seem to distinguish this very clearly. They talk glibly about it but they do not always seem to state just what it is.

But, as I understand it, it is this: a power coupled with an office, the office being something which, or the power under it being something to accomplish a particular result. I have not stated it very well—I am conscious of that.

Let us take this for illustration: Parker v. Sears contains a good statement of it. There a woman had made an ante-nuptial agreement and had given her real estate to three trustees by name, one of them being her future husband, and their assigns, with a power to said trustees to sell at any time whenever they so deemed it expedient, the sale, if made in her lifetime, to be with her consent. It was further provided that in case of death, resignation or removal of either of the trustees during the lifetime of the settlor, a new trustee should be appointed by her to fill such vacancy, and in case of such vacancy after the settlor's death, such new trustee should be appointed by the surviving trustees, subject to the approval of the judge of probate; and in either case all such conveyances should be made as should vest the estate in the new trustees jointly with the others, and thereupon the new trustee should have and exercise all the powers and perform all the duties belonging to and imposed upon the original trustees. One of the trustees died, and the other two, with the consent of the settlor, conveyed the land. Held, that a good title passed and that the grantee could maintain a bill in equity for specific performance.

The Master—And that if no intention on the settlor's part appeared in the instrument, it would leave the power suspended until the vacancy had been filled.

Mr. Whipple—Yes, Your Honor. And I had thought this was the particular statement: it was given to the trustees as an incident of the trust and the means of its administration according to the purposes of the settlor. Now, that is what it means—coupled with an interest. It does not mean a personal interest.

To illustrate further, these trustees under a general deed are entitled to fill a vacancy. For what purpose? To discharge the purpose of that trust.

She wanted three trustees, and she has only two. Now, they have there a power to appoint a third, which is coupled with an interest in the legal sense, which is coupled with a trust to assist these other two in discharging that trust.

Now, what is the other thing? The other thing is a bare, naked power. Now, the power of the removal of the trustee is not a power in the promotion of the trust. It is merely corrective power, and that is a bare power, not coupled with any trust, not coupled with any interest in the legal sense.

That, I understand to be, in a general way, and in a crude statement, the distinction. I have to speak of it illustratively because I do not get the legal terms to define it accurately as I stand on my feet.

Now, we have a different proposition. It is not a question of one body of four persons and the survival of one of the four. Here is a power given, a naked power, to two separate and distinct bodies having no relation to each other, practically, who are supposed to act conjunctively, and for reasons which appear expedient to them. The settlor trusted neither one of them alone. The settlor was anxious that one of these trustees should not be removed as an action of any one of these bodies. She wanted the action and the judgment of both bodies acting conjunctively. Two separate bodies. It is not like three trustees acting together and one of them dying. Here are two separate bodies, and the moment that one of those bodies goes out of existence the other one cannot act. The purpose of the settlor is then defeated, because that body is no longer left to exercise its sound judgment and discretion in the task of first magnitude and first importance, to remove a trustee under a great trust. That, of course, is, if I am correct in the statements I have made, absolutely decisive and final in this case.

An authority that this is a correct statement, a correct distinction, appears in the case of Shelton v. Homer, which is cited on our requests for rulings (p. 37), to be found in 5 Metcalf. The facts are a bit complicated and I won't take the time to speak of them at length. Briefly, it was a case where one of two executors who had qualified, resigned; the other sold him a piece of real estate which both of them, acting together, had a right to sell. Then the executor who was left brought a bill to enforce the trade as against his former executor; but the Court said that he could not do it. It says that if he had renounced this power originally and there had been only one single executor, a different case would have been presented, but having qualified, and both of them having authority, it could be handled by only one of them. Because it was not necessary to the ex-

ecution of that trust. That is the distinction. It was not necessary. He was not obliged to sell under the trust. That was the distinction.

On page 466:

"In relation to the authority itself, conferred by the will, we consider it a mere naked power, not coupled with a trust. The mansion house estate is not specifically devised, and the authority given to the executors to sell is discretionary; such a power as the Court could not compel them to execute for any purposes required by the will. It is a power not assignable, being specially reposed in the executors by the testator; nor could it have been executed by a majority of the executors, if there had been more than two."

That is, it was not necessary for the execution of that trust. That emphasizes the distinction that I pointed out a moment ago. Here it is not anything that is necessary for the execution of the trust.

Sells v. Delgade, 186 Mass., 25, states the general rule of law to be that,

"where a power is created and given in the will or deed by words that clearly indicate that the donor of the power placed special confidence in the donee so that an element of personal choice or selection is passed, that the exercise of such power must be confined to an exercise by the person or persons thus selected and ordinarily is not transmissible."

Now, how do the defendants attempt to meet this situation, which they must have seen from the outset? And I would suggest that they have applied a great deal of ingenuity to it. A real lawyer must have worked it out. They say, first, that the power of the First Members and the Board of Directors to remove meant that the Church could remove, these two bodies being bodies of the Church, and that it was just the same as if Mrs. Eddy had given the power of removal to a church, and that the Church, having two bodies representing it, could act through two or one, just as they saw fit, and that if they changed the form of the government (as they put it), whoever happened to be governing at the time could do it. But of course if the Church was meant, Mrs. Eddy would have said so; and she did not say so. And in the second place, these two bodies are not two bodies of officials of the same church; they are two absolutely distinct bodies. The trustees are trustees under the deed appointing them, and mere trustees; they are not even a corporation; they are not, or were not, when Mrs. Eddy made them the officials of the Church which she created, or first officers of the Church. The First Members were. And here you have two bodies functioning entirely differently, one a body of trustees controlling the affairs of the Church itself and having certain powers as to meetings, and the other a

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governing body of the Church organization which worshiped in the church building. So that what I may call the doctrine of inheritance of powers by one body when the other disappears does not apply.

Assuming now for the purposes of the argument that the directors of the said Church mentioned in the Trust Deed may act alone, as we have to assume that, to continue the argument, then the defendants encounter this difficulty; Governor Bates' opening statement was that the directors of the Church—and they were elected directors of the Church in 1908—with great regret, and other emotions, removed Mr. Rowlands; that is, he says that the Church directors, if we may call them that, and by-law directors, removed Mr. Rowlands. If he had not said so, it would be perfectly clear that that was the body that was acting because Mr. Merritt was acting as a member of it, and it is perfectly clear on the argument already submitted that Mr. Merritt is not a trustee under the deed; that is to say, I say "perfectly clear": I thought it had been pretty clearly demonstrated. Well, now, the Trust Deed gives no authority to the by-law directors of the Church to make this removal at all. They were not in existence at the time when this deed was made. They could not function, because they were not directors of the Church in the sense of being directors of the Church congregation of a voluntary society. They never had been elected as such. Therefore the wrong body functioned; the wrong body proceeded, the body that had no authority under the Trust Deed, and were not mentioned in the Trust Deed: an error which came on account of the confusion of names; and the whole error seems to have arisen from that, more or less.

But let us pass on further—

Mr. Bates—Mr. Whipple, I have not interrupted you at all, but seeing that you are waiting, will you pardon me for calling your attention to the words of the deed—

Mr. Whipple—I am not waiting, Governor: I am as busy as I can be thinking of what I am going to say next (laughter); but you will not interrupt me at all.

Mr. Bates—I merely want to call your attention to the words of the deed; that is all. It says, "the directors of the Church—"

Mr. Whipple—I know it.

Mr. Bates—it does not say "Trustees under the Deed."

Mr. Whipple—I know it. That is just it. But there were not any directors of the Church. That is just the point of it. (Laughter.)

Mr. Bates—Those are the ones—

Mr. Whipple—And, if you insist upon that interpretation, it is a pure futility. But evidently what Mrs. Eddy meant was the Trustees under the Deed, and I have conceded a good

deal when I have said that to you. There were not any Church directors as such: it was the people under the deed. That would lead to what I said I should refer to again—a more extensive consideration of the effect of this by-law, or these by-laws, in which there is an attempted delegation by the Church, by the First Members, of the fundamental powers of membership, namely, to make their by-laws. That is fundamental. And, as Your Honor has already referred to it, I do not need to speak with regard to the case of Saltman v. Nesson, 201 Mass., 534, in which that point was decided by our Supreme Court. If you should delegate the fundamental powers of a church society, there is not anything left. They cannot delegate their birthright: that is a thing they cannot do; and, as Your Honor well pointed out, it is a perfect impossibility.

The Master—Are there any other cases on that?

Mr. Whipple—We have cited one or two. Does that Nies case refer to that, Mr. Withington?

Mr. Withington—No.

Mr. Whipple—They will be found in our requests.

The Master—All right.

Mr. Whipple—Now, the trustee-directors as a body are the same as those who claim to be by-law-directors, except that they are one fewer in number. So it may well be claimed, "Very well, suppose we did meet as by-law-directors, and did not have authority to remove, and mistook the function, or mistook our identity or powers, nevertheless, as trustee-directors, Trustees under the Deed, where you admit we do have authority, we function." But where does that bring them? Only two of the trustees voted on the question out of four. Those were Mr. Dickey and Mr. Rathvon. Mr. Dittmore was present, and he did not vote. Mr. Dittmore was there, but he did not vote on it. He protested. Mr. Merritt was there, but, unfortunately, Mr. Merritt is what I may describe, perhaps, as "the fifth wheel of the coach." (Laughter.) He is not one of the trustees. It is unfortunate that one of the best gentlemen, most distinguished, in the crowd, and most efficient, should function in that way, and especially the one that Governor Bates, in his encomium in regard to the trustee-directors, described in this manner, "Mr. Merritt, the gentleman of great business experience—Your Honor will undoubtedly believe on seeing him that he was honest." (Laughter.)

Mr. Bates—Do you doubt it?

Mr. Whipple—Not a bit! But why did you emphasize that? I thought that you were going to say that he, at least, was honest. (Laughter.)

Mr. Bates—it seems to amuse you.

Mr. Whipple—I know you did not intend it, Governor, but it seemed like a joke on your other clients, that you should pick him out as being honest.

I agree with you, and I do not slur your other clients the way that you did by implication! (Laughter.) You put in his halo the star of truth! (Laughter.) I wish that I had that wonderful gift of language to make those descriptions! (Laughter.) Pardon me, Your Honor. I am afraid that you will cut me down on my time if I am not talking to the point.

So that if they claim that they functioned as trustees under the deed, then only two out of the four voted, and they did not have a majority. So that was futile.

Mr. Neal I had forgotten. He was at home. A bit informal, this calling up on the telephone, and saying, "You agree to this," as a meeting, and exercising a solemn and important function, such as this! If it were a real meeting of trustees you could hardly say that he voted. But the law is, we think, and we submit to Your Honor the question whether, this being a special power conferred upon the trustees known as the Christian Science Board of Directors, such power can be exercised only by unanimous vote by all the members on whom the power is conferred. It is not a question of a majority at all. We have cited Morville v. Fowle, 144 Mass., 109, 113; and Boston v. Doyle, 184 Mass., 373, 385; and we ought to add a case which I referred to earlier this morning, that is, Shelton v. Homer, 5 Met., 462, to exactly that proposition, in what I read this morning,—that is, I think I read this:

"It is a power not assignable, being specially reposed in the executors by the testator; (there were two or three executors) nor could it have been executed by a majority of the executors, if there had been more than two."

The Master—That is 5 Met., I think?

Mr. Whipple—Yes, Your Honor. So there is another difficulty with this, another hurdle that these gentlemen must take, if that legal proposition is correct, that they have got to act unanimously, and I am sure that the general proposition is in this Commonwealth just as stated there, that where trustees are given a special power, and especially one that is important and as solemn a power as this, it cannot be exercised in any such casual way as this. In some form that is binding, and by something which is definite, all those people have to act, they being trustees.

I pass to the—

The Master—Before you leave that, about Mr. Neal's vote, have you any cases on your brief?

Mr. Thompson—No, sir; I have none on my brief.

Mr. Whipple—I can only say—

The Master—Can you cite any, Governor Bates?

Mr. Bates—No, Your Honor.

The Master—It rests, then, on an issue by assertion, one side asserting that Mr. Neal's vote was an unlawfully given vote, and the other side denying it.

Mr. Whipple—Your Honor has described the situation very graphically and very accurately. I will add to it that we go by the records which were kept, and these records show that Mr. Neal was not present.

The Master—Nobody claims that he was. He was not there, but voted over the telephone. Was that vote good, or was his vote a nullity? He was not in the meeting; he was not present.

Mr. Thompson—The point is not material for our case.

Mr. Whipple—If it were a corporation, he certainly could not act in that way; but whether the proceedings of a trusteeship are more informal I am not prepared to assert. It is a matter we have thought of not so much importance, because Mr. Dittmore did not vote, and they were not unanimous, and we had rather relied on that proposition, that unanimous action was necessary. We regard the other as important; and may we have the privilege of submitting authorities later if we find any?

The Master—If there are any cases on that question—

Mr. Bates—I think that there is a case to the effect that an acknowledgment taken over the telephone is sufficient.

The Master—That a what?

Mr. Bates—That an acknowledgment of a deed taken over the telephone is sufficient.

Mr. Thompson—Not in this State; not in Massachusetts.

The Master—You can hardly do that in Massachusetts.

Mr. Bates—I said that I thought that there was a case somewhere to that effect.

The Master—I had a case once in which the question was brought up as to whether an assignment of a patent could be lawfully acknowledged, the assignor being in his house at one end of a town in New York, and the acknowledging officer at the other calling up the assignor, holding the instrument in his hand, and asking him if that was his free act and deed, he replying over the telephone that it was.

Mr. Whipple—Mr. Withington informs me that it is clear law, and there are cases that a director of a corporation cannot vote or be recorded over the telephone. I understand the reason for that is that when a man in a representative situation is called upon to vote, and they meet together, it is for discussion. He is not to vote in a cut and dried and prescribed way. The purpose is to consider the matter, and therefore they require them to be present and at least have the semblance or the opportunity of discussion on the vote. Now, that would seem to apply to such an important matter as this matter of the trusteeship. That is all I can contribute now, if Your Honor please, and, being fully aware of the

leanness of the contribution, I will try and do something better later.

Mr. Demond—It is my recollection of the testimony, if Your Honor please, that there was no vote purported to be taken over the telephone by Mr. Neal on either of these dismissals, but only on the election of Mrs. Knott, later on the same day; that there was simply an informal conversation over the telephone, it appeared, or came out in the testimony, as to whether Mr. Neal assented.

The Master—That would be a vote, wouldn't it, so far as you could take it over the telephone?

Mr. Demond—On page 298 of the record, if Your Honor please, the report of the directors' record shows the roll call on Mr. Rowlands' dismissal as follows:

"Mr. Dittmore, not voting.

"Mr. Dickey, aye.

"Mr. Merritt, aye.

"Mr. Rathvon, aye.

"Resolution was declared adopted."

Nothing appears regarding Mr. Neal.

The Master—They don't put him down, no.

Mr. Whipple—They said they asked him either before or afterward whether he was willing—something of that sort—on the 15th of March, over the telephone. It doesn't appear at all that he was called on the telephone at this meeting and his vote taken, but on account of what he has said before they assumed that he would vote with them if he was there, or that—I have forgotten which the evidence is—they talked with him afterward and he seemed to approve it.

The Master—You may be right, but that is not my recollection of the evidence. I haven't read it for some time, but I am under the impression at present that they asked him whether he agreed.

Mr. Whipple—Yes, they did, but not on the day they held the meeting.

The Master—No, on that day.

Mr. Whipple—Oh!

The Master—During the meeting. I may be wrong, but that is my recollection now.

Mr. Whipple—Well, may we examine that a little later?

The Master—Certainly.

Mr. Thompson—I think the testimony is that they asked him whether he agreed to the dismissal of Mr. Dittmore and they pressed him on the telephone on that, and he said he did. I don't think there is any evidence that he agreed over the telephone to the dismissal of Mr. Rowlands. That is my impression.

The Master—Well, we will look it up.

Mr. Streeter—Your Honor, you told about the lawyer at one end of a town in New York taking the acknowledgment of a man at the other, but you didn't say what the result was.

The Master—The question was never finally decided, but I ruled that

the acknowledgment was not good. I don't know what the Patent Office ruled about it.

Mr. Whipple—That was final.

The Master—Perhaps they were never called upon to rule; it came up only incidentally.

Mr. Whipple—The Trust Deed and the Manual, the modification of the Trust Deed, or the effect of the Manual on the Trust Deed, is the next subject. The Manual in its form provides that the Christian Science Board of Directors alone may remove a trustee. A little later I shall consider the genesis of that by-law and the extent to which Mrs. Eddy's written approval can be shown; but that would be merely for the purpose of showing the situation to the field, so that they might know what the situation was with regard to their Manual, in which they are so deeply interested.

As affecting the legal proposition, of course it is of no consequence and it is so recognized by the distinguished counsel for the defendants, in a perfectly frank and manly and lawyer-like statement which appears of record. I read from Mr. Dane's statement in his opening:

"There is, Your Honor will see, in the defendants' claim or position, and there will be disclosed in the evidence introduced on behalf of the defendants, no claim whatever that this Manual must govern as against the provisions of the deed."

Mr. Bates—No one has ever made any contrary contention.

Mr. Whipple—Page 225. Then why all this talk to the contrary?

Mr. Bates—Because the Manual comes in as a part of the deed under the changes which were reserved.

Mr. Whipple—We will consider that in a moment.

Mr. Bates—I merely wanted you to know it.

Mr. Whipple—You have said that these men were disloyal and treasonable because, having a deed like that, they obeyed it instead of the Manual. That is what you said.

Mr. Bates—I have said nothing of the kind. It shows you have failed—

Mr. Whipple—And, as a lawyer, your partner has stated that they could not accept the Manual as controverting the deed. If you have not said it I am glad of it. It was not always easy to know just what you did say—you did not speak precisely.

Mr. Bates—I have not said a great many things that you have said I said; but I have not intended to interrupt you and I do not propose to.

Mr. Whipple—You have been most courteous.

Mr. Bates—I never made the statement that you last stated I made.

Mr. Whipple—Well, I am glad you did not. I thought you had. A lot of people have made it in loose talk. But it is well enough to have that appear, that we are agreed upon that very sound proposition. And let me say that I concede your claim for cour-

tesy. You are a master of it, and you have been courteous in not interrupting, and such suggestions as you have made have been in a perfectly courteous way.

Now, then, he goes on and says:

"There is no conflict whatever between the provisions of the deed and the Manual. The two must be read together, and the By-Laws must be read into the deed where they manifestly purport to control the trustees and to guide the execution of the trust powers."

That is, you have got to read into the deed that one body rather than two should have the power of removal. That is what they say, and they say that is not an alteration of the deed at all. You read into the deed.

Well, now, as I said, that is genius—where you can read into a deed, which is irrevocable and cannot be changed at all, and complete, something that is not there at all, but is in some other instrument.

Now, let us see how they get at that. How do they support it? And this is really the bite of the case. It is really the only, if I may say it, lawyer-like attempt to defend the proposition that these counsel have got to defend—this ingenious attempt to extend the provisions of this deed and modify them, through these small reservations—and that is what we are coming to there. That is why the importance of this deed, in which a real reservation was made, being recognized by the counsel yesterday or day before as really knocking the foundations out of their whole argument, came with such reluctance. The reluctance in producing it, the difficulty that we had in getting it, showed, by the very effort, unwillingness or reluctance, the slowness—I would rather say slowness in producing it—that there was a distinct appreciation of what it meant. But the reservations which they refer to are these. Paragraph 3 in the deed is the first one. Let me read it all, so that we can get its connection:

"Said trustees shall energetically and judiciously manage the business of the Publishing Society on a strictly Christian basis, and upon their own responsibility, and without consulting me about details, subject only to my supervision, if I shall at any time elect to advise or direct them."

If I shall at any time elect to advise or direct them. Now, what does that mean? Does it mean that she revoked all this statement that they were to hold and manage the property, and that the deed should be perpetual and irrevocable? Why, of course not.

"Said trustees shall energetically and judiciously manage the business . . . upon their own responsibility, and without consulting me as to details, subject only to my supervision, if I shall at any time elect to advise or direct them."

There was no intention to reserve a power to modify the trust. It is a

perfectly evident and plain construction that it means, on the face of it, nothing more than a reservation of a personal right to advise or direct in the practical affairs of the trust, from day to day, or week to week, as she might want to give that direction. It was a right of personal supervision. And no one, except one who was driven to the limit of expedients to find an excuse to which they could attach something to give it a larger meaning, could give it any other possible construction.

It would be an astounding legal proposition if a woman then acting intelligently, under the advice of distinguished counsel and competent counsel, her personal counsel, in whom she reposed the greatest confidence at the time, General Streeter, who made the deed, or prepared the deed, should incorporate there a reservation which would make a deed, declared to be irrevocable, subject to modification. Of course, it is entirely improbable that there would be any such thing. She had not commissioned to some one like Mr. Dickey, who does not pretend to be a lawyer, but only an intelligent and sagacious and rather clever business man, any such duty as this. She had given it to a lawyer, and a lawyer who knew how to make reservations.

The second reservation is in Paragraph 3. It reads:

"Reserving the right to make such changes as I may think important."

Changes in what? They say that it is emphatic because it was inserted in the handwriting of General Streeter. Your Honor remembers how that is attached there. Is it likely, again, that General Streeter, having prepared this deed to represent Mrs. Eddy's ideas, should, while he was going over it with her, paragraph by paragraph, jot in something—"by the way; yes, that is right"—reserve the right to change the whole thing? Of course, it meant no such thing. It is perfectly evident. Let us read it all:

"Said trustees shall have direction and supervision of the publication of said Quarterly, and also of all pamphlets, tracts, and other literature pertaining to said business, using their best judgment as to the means of preparing and issuing the same, so as to promote the best interests of the Cause, reserving the right to make such changes as I may think important."

Changes in what? Why, changes in the Quarterly, the pamphlets, the tracts and other literature—things that she was doing every day, and day by day—the very thing that she did. She kept her eye closely upon all those publications, and made and suggested changes, and reserved the right to do it. And in reading it over it occurred to her that instead of giving to the trustees unrestricted power to direct and supervise the publica-

tion of the Quarterly, the pamphlets, the tracts and other literature, she should reserve the right to make such changes as she should think important. Of course, it refers to what is stated in that particular paragraph, and nothing else.

It appears that the counsel with whom she was consulting at the time, whom I have referred to as lawyers of unusual ability, really knew how to make a reservation in a deed if they were called on to do it, because in a deed on Feb. 12, 1898, in the same year as the deed from which I have just been reading, the Trust Deed—and Mr. Strawn figures it, and it is right, I think, as 18 days afterward—practically at the same time, she made a real reservation. You will remember yesterday or the day before that when it was called to Governor Bates' attention, the Governor says, "Oh, no, that is something in a deed in 1905, drawn by somebody else." Of course he hadn't quite caught on to what was really being said; that the 1905 deed was a deed in which this was merely repeated, and that the paper itself was drawn, not by different counsel at another time, which would help the Governor's argument tremendously if it were so, but by the same counsel, and practically the same time, which does just as much damage to his argument the other way as it would have aided him if the facts were the other way.

Mr. Bates—Is there any evidence as to the counsel, Mr. Whipple?

Mr. Whipple—The internal evidence is that they are the same because here is Judge Walker; and, again, Governor, you had not followed it up. She was up at Concord, and this firm of Streeter & Walker were her counsel.

Mr. Bates—I asked you if there was any evidence of the counsel in the case.

Mr. Whipple—Yes, internal evidence; yes, sir. Now, let me read, perhaps, for the record, what Mrs. Eddy said under the direction of counsel; within 18 days of the time this was made, when she wanted to make a reservation:

"3. Hereby reserving to myself the right to make such changes from time to time in the terms and conditions of this Trust as I may deem prudent for the promotion of the cause of Christian Science and to revoke this Trust if the best interests of this Cause shall in my opinion demand such action and to constitute new trusts, said changes, new trusts and said revocation to be made in writing signed by me and directed to said Christian Science Board of Directors, and said Board of Directors shall thereupon execute and deliver such legal instruments, if any shall be necessary to fully effectuate such changes or such revocation, as the case may be."

A model!

Mr. Bates—Pardon me, Mr. Whipple, but since I asked you the question, I would like to have it answered—as to what the internal evidence is that it was the same counsel.

Mr. Whipple—On the deed of Feb. 12, 1898, Exhibit 805, which this Declaration of Trust attended—

Mr. Bates—But is not a part of nor connected with.

Mr. Whipple—Oh, yes—incorporated in it—you will find that it was acknowledged on the 12th day of February, 1898, before R. E. Walker, and it was witnessed by Clara M. S. Shannon and R. E. Walker. It was acknowledged in the State of New Hampshire, in Merrimack County, on that very day.

Mr. Bates—But it is the declaration—

Mr. Whipple—Now, where is the Declaration of Trust itself? Let me take that, will you? Haven't you got that original? Let me get the original.

Mr. Buffum—I will bring it at 2 o'clock.

Mr. Bates—We will have that at 2 o'clock; I understand it is not here. The Master—We will stop here until 2 o'clock.

[Recess to 2 p. m.]

#### Afternoon Session

Mr. Streeter—If Your Honor please, in reference to the suggestions that were made this morning to you during the recess, that under the existing conditions it would be better to cancel the assignment of the Dittmore case for October 6, and for the reasons that were suggested by me and suggested by Your Honor, with which Governor Bates is in accord, I understand that so far as we are all concerned we agree to it.

Mr. Bates—We say we agree, Your Honor, with the understanding that Your Honor will set the time for hearing that case at such time as you may see fit, and that you will set it either before or after that time should you find it desirable to hear the evidence in that case before you finally file your opinion in this case.

The Master—When you are ready, Mr. Whipple.

Mr. Whipple—May it please the Court: We say that it is entirely improbable, if not inconceivable, that Mrs. Eddy, acting under the advice of counsel and with full knowledge of a way in which a reservation so important as this should be made, would have failed to make a reservation in definite terms if she had intended any such thing as claimed by the defendants.

Now, a question was raised just before the intermission in regard to the paper regarding which I have just been speaking—the Declaration of Trust. I had pointed out that the deed to which this Declaration of Trust was a supplement, dated Feb. 12, was witnessed and acknowledged before Judge Walker—now Judge

Walker—General Streeter's partner at that time. The Governor raised the question as to the paper itself, Exhibit 806A.

Mr. Streeter—Let me look at that.

Mr. Whipple (handing paper to Mr. Streeter)—Is that your office paper?

Mr. Streeter—Yes.

Mr. Bates—Is this evidence that was in the case, Mr. Whipple?

Mr. Whipple—No.

Mr. Bates—Well, I ask you to give us the evidence which was in the case, not evidence which you are putting in now.

Mr. Whipple—I think you are withholding your technical rights. There is no doubt about that. But I am sure you have no desire to suppress the truth.

Mr. Bates—Why, yes. When you ask a man whether it is his office paper, when it is evident that the same paper might be in a thousand offices, I assume that is a little extraordinary.

Mr. Streeter—I withdraw anything that I may have said. I do not want to be called a liar here by you.

Mr. Bates—Well, you will probably admit, General—

Mr. Whipple—When I asked you if you wanted to suppress the truth, Governor, you said, yes. You don't mean that.

Mr. Bates—I did not understand your question, Mr. Whipple.

Mr. Whipple—I thought you could not have.

Mr. Bates—We have been here for the purpose of eliciting and bringing out the truth all the time.

Mr. Whipple—I know it.

The Master—The deed was acknowledged before Judge Walker. Now, isn't that enough?

Mr. Whipple—The deed to which this referred was acknowledged before Judge Walker. It is incorporated in the deed by reference. The deed itself reads this way:

"It is also for the purpose of transferring the title to such described real estate to hold for the objects and purposes mentioned in a certain Declaration of Trust to said Church executed by me of even date herewith."

No one makes any question but Exhibit 806A is that Declaration of Trust. The deed itself was acknowledged before Judge Walker. The Declaration of Trust bears no handwriting except the word "twelfth" in the witness clause. That was not acknowledged. (Handing document to Mr. Bates.)

If Mrs. Eddy had desired to make a reservation with such a form as that probably before her, she could easily have stated that in their administration of this trust the trustees should always regard themselves as subordinate to, and receive their directions from, the Christian Science Board of Directors; that they should advise and supervise them. And she could have provided to bring about that result, that the directors should appoint the trustees and fill vacancies

where one was needed. But she did not do any such thing. She appointed the other trustees to fill the vacancies. She gave no power whatever to the directors except the power of removal. And she made this trust perpetual and irrevocable, and emphasized it, as I am emphasizing it by the repetition in my remarks. She might, if she had not wanted to express it directly, have appointed the members of the Christian Science Board of Directors as the trustees of the Publishing Society, and then they would have had full control. They were at that time getting only \$700 a year, or something like that, and all their time was not occupied. But she definitely desired it to be separate from the jurisdiction of the directors. She desired it to be operated independently of them, another body of trustees, striving for the same great end and devoting their attention and energies to it. And it is a significant fact that although there were several vacancies in Mrs. Eddy's lifetime, she never appointed a member of the Board of Directors as a trustee.

The defendants say this: Our theory in regard to Mrs. Eddy's intention in these reservations is backed up by her own construction and the acquiescence of everybody in that construction, as shown by the acts of the parties, and here is the real argument that they make. Their theory of acquiescence is not that acquiescence changes the terms of the deed, but acquiescence showing a contemporaneous interpretation of the significance of the reservations. And that is a lawyer-like proposition which does credit to Mr. Dane, and his clear statement of it in his opening. That is what they say is shown by the acquiescence of the parties. As I say, it is a lawyer-like and candid proposition, it sounded extremely plausible as the opening was made, and if it were not for the fact that the facts and the record fall so far short of it, it would be worthy of very careful consideration. It is worthy of careful and respectful consideration, but the facts do not prove it.

Let us examine that. They maintain that this acquiescence is shown especially in three things: First, the putting into the Manual the provision for the election of editors and business manager by the directors, and the uniform acquiescence or the uniform course of conduct showing an acquiescence in that interpretation thereafter; second, they say that the joint meetings of the two boards for conferences showed that there was an understanding and acquiescence in the fact that there was a domination of the Board of Trustees by the trustee-directors; and third, they rely upon the Dittmore memorandum and its history, and especially Mr. Dickey's testimony, that when the discussion arose in February of two or three years ago—February of 1916—while the Dittmore memorandum was not

absolutely signed, yet it was acquiesced in as a gentleman's agreement, and that all the conduct of the parties thereafter showed a subordination of the trustees to the Board of Directors, an admission of their right to supervise.

There are also provisions of the deed and of the Manual regarding the Publication Society, that they claim indicate Mrs. Eddy's purpose and desire to subordinate the trustees to the directors. I won't stop to enumerate those now, although I shall discuss them in a minute.

Now, let us take the history of this election of editors and business manager, to see whether it justifies any such interpretation as they put upon it, showing an acquiescence by the trustees in a domination in that respect by the directors.

If Your Honor will refer to our requests, on pages 24 and 26, we there deal with the facts bearing upon this situation as to the editors. It is an undisputed fact that from 1902 until the commencement of the present controversy, the directors each year held an election of officers at which, among others, editors and a business manager for the Publishing Society were named. There is no contradiction about that. That was Mrs. Eddy's right. She reserved enough of a right so that she could name, or suggest, the editors and business manager. Until Mrs. Eddy's passing in December, 1910, every such nominee of the Board of Directors was approved by her in her own handwriting. Does that establish any domination by the Board of Directors over the Board of Trustees? That is the direction that these trustees received. That shows their subordination to the Donor of their trust, and their willingness to accept and perform—not their willingness; their eagerness, to accept and perform any slightest wish that she might indicate. But does that show a history or record of domination by these directors? They had not the slightest power of domination; they were dominated, as this board was dominated, by Mrs. Eddy herself, and it was their pleasure and desire, as it was this board's, to meet Mrs. Eddy's wishes, and to receive the benefit of her wisdom.

The Trustees of the Publishing Society employed as editors and as manager such persons as were elected by the Board of Directors in every case where such nominees had received the approval in writing of Mrs. Eddy; and they all had.

Now, how much authority was given to this Board of Directors? Section 4, Article XXV:

"Incumbents who have served one year or more can be reelected, or new officers elected, by a unanimous vote—"

notice it—

"unanimous vote of the Christian Science Board of Directors, and the con-

sent of the Pastor Emeritus given in her own handwriting."

That does not show any great trust and confidence in the Board of Directors, or any great domination. It was Mrs. Eddy's domination, with her consent.

And again she said, not leaving it to some of them to say later, "Oh, we so understood you," but requiring that her written consent should be given.

From May 15, 1902, until December, 1910, the only changes in the editors and Manager of the Publishing Society were as follows: In 1903 Annie M. Knott succeeded Mary E. Speakman as assistant editor, and Louise F. Kollmorgen was elected assistant editor of the Christian Science Herald. In 1908, Theodore Stanger succeeded Miss Louise F. Kollmorgen as assistant editor of the Herald, and David B. Ogden succeeded Joseph Armstrong as manager of the Publishing Society. And all these changes were made by the direction of Mrs. Eddy. The question never arose of domination. And that we have heard reiterated from the beginning of this case as showing a course of conduct. It was a course of conduct, of subordination to Mrs. Eddy's wish.

Since December, 1910, only the following new editors and manager of those nominated by the Board of Directors have been employed by the trustees: Frederick Dixon, as editor of The Monitor, in 1914; William D. McCrackan, as associate editor in 1916; John R. Watts, business manager, in 1918; William P. McKenzie, editor, in 1918. Notices of these elections of editors and the manager were sent to the Board of Trustees by the Board of Directors only in 1914, 1917, and 1918. In 1915 and 1916 they did not even take the pains to send notices. Before that they had seldom sent notices of their action. It was thus shown to be, and recognized as a purely perfunctory matter. The election was nothing more than an indication of their approval, given at a joint conference, of people who were employed by the trustees. And they say that shows subordination. Those four people! But of these, Frederick Dixon had already received the approval of Mrs. Eddy before her death. Mr. McCrackan, Mr. Watts, and Mr. McKenzie, were employed by the trustees after conferences with the Board of Directors, the appointments having been made by consent, and the parties being agreeable to both boards.

Where is the domination when two boards interested in the same subject get together and confer, and no dispute arises? No question of domination. And still, to support the falling fortunes of the case, counsel seek to translate that action into a course of acquiescence in the superiority of the Board of Directors.

What this means is this, and nothing more: realizing, as Mrs. Eddy did, the necessity of cooperation between these two boards to accomplish the

great results for which they were both appointed, she had provisions made which compelled cooperation. That is all. These conferences on these subjects represented nothing more than the desire of trustees to do what the beneficiary wanted done. They were of conferences which were entirely consistent with a desire on the part of the trustees to do those things which would be mutually agreeable, that the result of their joint judgment together working in union and in cooperation, should be of benefit to the movement. They did not want to put themselves in a position of electing anybody to these responsible offices that the beneficiaries of the trust would not approve of. They wanted to do their duty in a way to meet the approval of all; and they did it wisely and did it well. Domination was never intended by the donor; it was never so understood by the parties. Supposed acquiescence in domination is an ingenious theory of law. The difficulty is that it lacks the facts to support it.

Let us take now the conferences and the cooperation between the trustees and the directors. There were not many conferences up to the time of Mrs. Eddy's passing. The necessity for them, so far as affects the editorial policies, was done away with by the fact that Mr. McLellan, an editor, who was a forceful, powerful man, was officiating as one of the directors, and apparently was most influential among them. He had no real position as one of the trustees under the trust, but he apparently dominated the whole board, as it is claimed Mr. Dickey has been attempting to do since then. I do not say that he is doing it. There is some evidence that points that way, and the claim has been made very vigorously that such is the fact. And there was not very much to confer about either during that period of time, for this reason: They might confer as much as they pleased, but when they got ready to act it was Mrs. Eddy's direction that they followed. Sometimes it went to the trustees directly, and sometimes it came through the Board of Directors. I spoke of them, it seems to have been thought, flippantly, as messengers. I did not mean to speak of them flippantly. They were messengers, but they ought to have been proud to be the messengers of Mrs. Eddy's messages. I did not refer to them in that way as in any respect minimizing their dignity or their standing. It was a confidence reposed in them that Mrs. Eddy gave her messages to the other board through them, although no doubt it was very largely accidental. But it did not place them in any dominating position. It gave them the personal pride of being nearer to the great Leader than these men, just for the moment: that is all. But that is why there were not conferences. They

began shortly after her passing, however, and continued even up to the time that this suit was brought. And what do we find? Was there any assertion of authority in these conferences? Does the record disclose that there were disagreements in which the trustees submitted to the will or the domination of these trustee-directors in any way? Not a bit of it! They were the conferences of gentlemen charged with great responsibilities, attempting together to confer with regard to them, that the best might result—that is all: the conferences that one would expect on the part of trustees who were wise in the administration of their trust, with the men who, for the time being, represented the beneficiary, whose every interest was affected financially by any move that they might make. Is that any sign of submission, that a trustee charged with these important duties should consult with the beneficiaries, and try to make his action such as the beneficiaries would approve of? It is the strangest sort of submission that I ever heard of! Would a man who was appointed trustee for me, if he consulted with me and asked my views about investments and what would be satisfactory to me and how I thought a trust in which I was interested was handled—would such conferences, even if he sought them, and sought my advice, indicate that he was subordinating himself to me, and that I was the trustee, and he was not. Lying behind it all, the power of ultimate decision is with the trustee, and the ultimate responsibility is that of the trustee. And here again there is the attempt to exaggerate this plain, every-day occurrence of conferences between trustee and beneficiary into an admission of superiority and a submission to the will of these directors. Again this theory, ingenious as it is, lacks the support of facts.

Then, third, we have the Dittmore memorandum; and again they fall for want of proof. This is one of the few instances in the record where there is a disagreement and dispute as to what facts occurred. I dislike to discuss it, but it must be done. Almost everything that we have discussed is practically undisputed, as Your Honor has indicated; but here Mr. Dickey resolutely went on to the stand and stated that at this meeting in February of 1916, when the Dittmore memorandum was presented at a meeting of the trustees, these trustees admitted that that represented their feeling and attitude; that it was read paragraph by paragraph, and that they declined to sign it merely because it was said that it might be considered as creating a new by-law, but that it should control their action as a gentlemen's agreement; and in that statement he is absolutely unsupported by any other person who was present, or by any circumstance in the case; he is contradicted by those persons who were present who

testified; and the people whom he might have called to support him he did not dare to call to the stand. Now, in the first place, Mr. Dittmore makes that statement in his answer, that there was such an agreement reached; and still they did not put Mr. Dittmore on the stand to testify with regard to it. But how about these defendants? They never mentioned it in their answer; they never set it up in their answer; they stole the Dittmore livery, and it was apparently suggested to them as a thing that they could hang their hat on, or Mr. Dickey thought he could when he read it in the Dittmore answer; but he does not call Mr. Dittmore to support it. Mr. McKenzie was there. What does Mr. McKenzie state about it? Or, let me say first, this was an important agreement, if an agreement was reached. Is it mentioned anywhere in the records of the directors, which were so carefully kept? Not one word mentioned! Think of it! This important agreement, regulating the future relations of these two great boards, and not one word put into the record in regard to it! They forgot, I suppose, to put it in their records, the way they forgot to put it in their answer. Mr. McKenzie was called by them, and when he was confronted by his letter, what did he say about it? He said, No agreement whatever was reached; that this memorandum was presented and was discussed; that he was against it; that they would not submit to it; and finally they said—I am not quoting exactly—yes, I will quote exactly (exhibit 713, record page 567):

"At that moment, when mesmerism seemed to have reached an acute point, I believe it was you who laughed and said, 'Come, now, let us tear up these papers and work along together as Christian Scientists.' Everybody felt relieved and the documents were torn up and thrown into the waste basket."

Thus passeth this great agreement upon which they rest this claim of admitted subordination and control,—it passed into the waste basket! And here was an attempt on the part of one man to resurrect it from the waste basket and make it a living document.

Who else was present? Mr. Eustace was present, and you heard his statement in regard to it; and Mr. Thomas W. Hatten was present. Why was he not called? Your Honor knows why he was not called. We had a letter marked for identification, like McKenzie's letter, in which, honestly, and before he was prejudiced, he had written out his memory of that transaction; and, although Hatten was here from day to day, maybe he is here now, they never called him to the witness stand at all.

Mr. Bates—Why did you not call him?

Mr. Whipple—I did not need to call him.

Mr. Bates—We did not, either.

Mr. Whipple—No, you didn't! If you

think one man, contradicted by every circumstance and by every witness who did testify, does not need any support, then of course you would not call him! You did call one man that you wanted to support him, or thought would support him, and that was Neal, and you questioned him, and all that you asked him was, was the paper torn up? and he said, Not as I remember, at that time. Did he testify that there was any gentlemen's agreement reached? No. And, for fear you may have overlooked something, I asked him in cross-examination if he had told you in your office everything that he told here on the stand, and he said he had. He did not support your clients, and you think that he did not need Hatten to help him in that statement if Hatten could! Contradicted by three men on the stand, contradicted by the circumstances of the case and the lack of records, he stands absolutely convicted of misstatement! I am not saying that it is willful; I do not venture to say that; I do not need to say it; but I say that it is unfortunate that the head, or a man who proclaims himself the head, of a great movement like this, in addition to the other disclosures that have been made, should find so little support among those who would be glad to support him if they could, for his testimony rendered on the witness stand under oath! Further than that, he is convicted by the very letter which accompanied this. He says that the memorandum went with the letter of Feb. 24; and that closing paragraph says this:

"It is not our intention to shirk our duties as we understand them. Under the circumstances which have developed, we do not feel called upon to take any further responsibility in this matter until our full board is present."

That letter says that they would not do anything "until our full board is present"; and he comes in here and says that they did something, by agreement—contradicted by every person, and by every circumstance, and by that letter!

And so the Dittmore memorandum, upon which counsel honestly relied when he made his opening, believing that it would show that it represented an agreement between these two boards which in effect was an abdication by the Board of Trustees of the control of their trust, given to them by Mrs. Eddy—a flat and dreadful failure—dreadful in the aspects which I have been forced to point out!

Further than that, as bearing upon this, after this memorandum (the original of which had been destroyed on March 16, or sometime in March) he took—

Mr. Bates—Mr. Whipple, may I interrupt you a minute?

Mr. Whipple—Let me finish this sentence, Governor. He went over to the trustees' office with this paper,



endeavoring to get them to assent to it. Is that consistent with an assent that they had given before?

Now, Governor, if you will not make your interruption too long—

Mr. Bates—I will not take but a moment. You said that Mr. Dickey's statements are entirely unsupported. The trustees' own record, under date of May 27, 1918, on page 325 of the record, shows absolutely what he stated in regard to that matter; that is, there was nothing in the memorandum except what was already in the By-Laws; and they agreed to that.

Mr. Whipple—No, sir; he stated more than that; he said that thereafter they worked in accordance with that memorandum under a gentlemen's agreement that was then made. That is the statement that I am dealing with, and have dealt with.

The claim of acquiescence in this interpretation of these reservations thus falls absolutely flat, and with it go the vitals of their case, because they have staked their all on that, importing by this course of acquiescence, as they call it, into the Trust Deed an interpretation of the reservations that no one but a prejudiced attorney, seeking for some ground on which to make his defense, would ever think of; and so goes the case, even upon their own theory of reservations!

But they add nevertheless, if Your Honor please, that there is a general purpose or intent on the part of Mrs. Eddy to have these trustees subordinated, which is to be seen in the provisions of the deed itself. The power to remove, they say, covers every other power, and imports her expectation that they would direct and supervise.

The power to remove a director or a trustee is in the Court, but does the Court direct and supervise the administration of the trust, unless it is called upon to give directions? Of course not. It is a plausible argument, as these arguments supporting this theory come up, due, I suspect, to the genius who sits at your right hand, whose abilities we all admire; but it is only plausible. There is nothing signifying that the power to remove gives the power to direct, not at all. The power to remove gives the power to remove, if the people do not do their duty. That is all it gives. It does not instruct them how to perform their duty, or direct them about it, but if they do not perform their duty then they are removed. That is all it gives.

But, you say, the power to fix the salaries is a power to control, and the Governor said if you would give him the power to remove and fix salaries of all the political people in the country he would be the dictator. He would if he used it corruptly, if he used it meanly, and if he did not use it with a high degree of civic sense and honesty. That is, if he saw a man that he wanted to get rid of for private

or spiteful reasons, by cutting down his salary he could do it. And I was pained and amazed that a member of the judiciary, even of a western State, in a letter disclosed here, had made that sort of suggestion, to notify the trustees that they might think that they would have to cut down their salaries. To his credit, he drew a pen through it, or somebody did. It was to his discredit that he ever put it in.

There isn't anything indicating a power to supervise or to dominate. Honestly used, it gives to them the privilege of paying to the workman a sum worthy of his hire, and that is all it gives. I admit, used corruptly and revengefully and cheaply and sordidly, it is what you say. But Mrs. Eddy did not think that she appointed that kind of people to that important office.

Therefore, that theory falling, with the others, the Governor makes an appeal to Your Honor, and says, "What will happen to this movement if these directors cannot control, if they cannot subordinate to themselves these departmental activities of this great movement which they control?" Well, just the thing will happen that Mrs. Eddy, with a wisdom greater than that of the distinguished attorney, knew would happen and intended would happen. The relations will continue between these boards as they have been for years, cooperating together to accomplish the great results which it is their duty together to cooperate to gain. The position or relation of a trustee and beneficiary will continue. These people, charged with a duty of making money for the Church, in everything that they do will cooperate, will cooperate fully with these directors; and if they do not do their duty under this deed as Mrs. Eddy described and laid it out the Court will remove them. They are bound to work under the deed, which was wiser than these trustee-directors, the deed of Mrs. Eddy; and if they fail to any substantial degree in the performance of their duties under that, if Your Honor please, they will be removed, upon proper application. The courts will not permit them to remain in a position where the administration of their trust is not promoting but is defeating the purposes for which the trust was created.

So the Governor's clients may well cheer up. Not all is lost, if they do not make themselves the autocratic ecclesiastical tribunal that they have set out to be. And perhaps there will be some safety to the movement in some things that this board is doing, or trying to do, that the field do not quite yet know about or realize—a check on some of the departmental activities which are involving them in ways that might well make them hesitate a bit.

If Your Honor please, I want to refer to the Manual and consider for a moment the question as to the way in which these trustees have performed

their duties—whether they have performed their duties or not. We have collected, on pages 13 and 14 of our requests for findings and rulings, all the articles of the Manual that have to do with the publishing house. Article I, Section 3, refers to the term of office of editors and manager of the Publishing Society, as one year. I will pass that and discuss it in connection with Article XXV.

Article I, Section 7, requires the directors to provide suitable buildings for the Publishing Society. That reminds me of the claim of the defendants that somehow authority and control are given to the directors over the trustees by reason of that provision. They say, "You wouldn't have a place to live in if it wasn't that under the Manual we are to give it to you." Well, what would that amount to? They would get a place to live in, and pay the rent, and the profits to The Mother Church would be just so much diminished. That is all it would amount to. It indicates nothing except the wisdom to furnish them with their rent and furnish them a place, so that the profits of The Mother Church will be so much greater than they otherwise would.

Article VIII, Section 14, provides that it shall be the duty and privilege of every member of the Church, who can afford it, to subscribe for the periodicals, and that it shall be the duty of the directors to see that these periodicals are ably edited and kept abreast of the times. Now, they say, "Why should we be charged with the duty of keeping the periodicals abreast of the times unless we were to be the dominating party?" Why, that doesn't show any such thing at all. If these trustees do not keep the periodicals ably edited, and keep them abreast of the times, what then? Why, they would be discharged and be removed, that is all, and people would be put in who would do it. That does not mean that these gentlemen who are charged with that responsibility have a right to come down and boss the editors, and direct them, and say what shall be put in. All that means is that if these trustees are not doing their duty—and it is their duty to see that these periodicals are ably edited and kept abreast of the times—they must quit, and the court would turn them out. They ought to.

Now, let us ask, has there ever been the slightest complaint in all these years that the periodicals have not been ably edited and kept abreast of the times? Have these trustees been disobedient to Mrs. Eddy's injunction that they should keep them abreast of the times? Those periodicals and those papers are things for Christian Scientists to be proud of. They have been applauded, by these directors, anyway, and they have approved them; and if there was anything to complain of regarding them, why haven't they said so? Why haven't they made it a ground for removal?

If they could prove it, these trustees would have to be removed. Mrs. Eddy added nothing there to what was in the deed itself, because the deed required the representatives for the time being of The Mother Church, the beneficiaries, to interest themselves in questions which had to do with the administration of this trust, and make suggestions.

Article XXV, Section 1, provides that the trustees constituted by the deed dated Jan. 25, 1898, shall hold and manage the property therein conveyed and conduct the business of the society on a strictly Christian basis for the promotion of the interests of Christian Science. Have these trustees done so? Who says they have not? These directors do not say so. In this list of a dozen or more charges that they have made against Mr. Rowlands they never mention that they have failed in their duty in this respect. They admit, practically, that this business as a business venture has been successful. Your Honor interrogated them as to whether they did not admit it had been highly successful. There was a little hesitation, and I don't remember just how it came out, whether the Governor admitted it had been highly successful or not, but they admit that it has been successfully administered. And they admit, and every one is pleased, that this religion, which depends especially upon the circulation of writings with regard to it, has extended year by year, by leaps and bounds, in influence and extent throughout the world. Have these trustees done their duty in that respect? Have they obeyed the Manual in that respect? If they have not, why wasn't a failure to do it made as a charge against them? They could be removed at once by the Court if they failed in that duty which they promised Mrs. Eddy to perform.

Article XXV, Section 2, provides that the net profits of the business shall be paid over semi-annually to the treasurer of The Mother Church, who shall hold this money subject to the order of the Christian Science Board of Directors. We have nothing to do with that part of it. Is there any complaint made that the net profits of the business have not been paid over semi-annually? There was a belated cry here in the argument, based upon Harvey Chase's report, in which he used some language pleasing to these directors, which indicates something on which you could base an argument. But when Mr. Watts, the business manager, took the stand, he said it was absolutely nothing but a question of bookkeeping, and that the bookkeeping methods by his bookkeeping department were right, and Chase & Co. were wrong. Did we see Harvey Chase or any of his experts appear on the stand after that? Your Honor, perhaps, has seen him flitting in here and flitting out and consulting with these directors before, but when he was met with that statement, that it did not involve in

the slightest degree the proper administration of the finances of the trust, but was merely a question of bookkeeping, about which experts disagreed, Harvey Chase flitted, like the rest of their defense, and you never heard of him again.

That isn't any charge. If there was any such charge as that against Mr. Rowlands or anybody else, why didn't they make it? Never thought of it. Grasping, at the last moment, at something to justify these charges, or some kind of a charge, like sending out after they had drawn their indictment, to find out how much time Mr. Rowlands was spending in his business. Never thought of it until casting about to see what they could find.

Article XXV, Section 3, provides that the Christian Science Board of Directors shall have power to declare vacancies in the trusteeship for such reasons as to the board may seem expedient. Reasons, as I have said before, and I am talking about reasons. I have discussed that section and I do not care to comment further on it. But let me say here, with regard to that change from the First Members and the Christian Science Board of Directors, to the Christian Science Board of Directors alone, there is nowhere in this case, and apparently nowhere in existence, any amendment of that by-law as it was originally drawn, in accordance with the Trust Deed which bears the written authority of Mrs. Eddy. Just think of it! These men come in here and attempt to justify their action under the authority of Mrs. Eddy in these two cases; and for the changes in the By-Laws upon which they rest, which ought at least to have Mrs. Eddy's approval, under her own by-law and injunction, they cannot produce that approval. Do they in that office think so little of Mrs. Eddy's signature, is it left so to clerks or subordinates, that those important directions by that great Leader cannot be produced, if they exist? If that is a fact, it is a shame on their administration, and the fact that they cannot produce it is the strongest evidence that it does not exist.

Furthermore, that amendment itself was never approved in any change in the By-Laws themselves specifically, even by the Board of Directors. Just think of it! At least the directors had passed the amendments themselves, but in this case they did not even do that, and therefore it stands for its approval before the field without any vote of the Board of Directors recorded and without any written consent of their Leader.

Although her By-Laws said that the other By-Laws should not be changed except by her written consent. And isn't it a shame before the field of Christian Science that these responsible directors, who ought to have those precious papers, if anyone, come in here, in due course, and confess that they cannot produce them? Can

any other conclusion be drawn than that they never existed? And they fall back, in the face and eyes of the injunction of their Leader, that they should not be changed without her written consent, upon her approval, because probably she saw it some time in the Manual. Far from a written consent!

The next, Section 4, providing that the term of office for the editors and the manager of the Publishing Society is one year, and that incumbents who have served one year or more can be reelected or new officers elected by the unanimous vote of the Christian Science Board of Directors and the consent of the Pastor Emeritus, given in her own handwriting. Although that consent of the Pastor Emeritus can no longer be given, what have the trustees done? In connection with the few editors as to which changes have been made, they have gone to the office of this Board of Directors and consulted with them to reach an agreement.

Was that what Mrs. Eddy wanted? Unity and cooperation. The selection has been the result of a mutual and friendly cooperation. Have they ever refused to employ an editor who has been suggested by the directors, or have they ever employed one whom the directors did not approve of? Their record is clean in obedience to this Manual and its provisions as affecting them. There is not one violation either of its spirit or its letter, and no one charge of practical maladministration. That has been pointed out by Mr. Thompson. And Mr. Dittmore wanted to make charges of that sort. We were ready to meet them. They could not have been sustained. His fellow directors knew that, and they, I think, were wiser than Mr. Dittmore. They did not attempt—they did not attempt to sustain them.

Article XXV, Section 5. A person who is not accepted by the Pastor Emeritus and the Christian Science Board of Directors as suitable, shall in no manner be connected with the publishing of her books, or in editing or publishing the Christian Science Journal, Sentinel, Herald, nor with the Christian Science Publishing Society.

Has anyone connected with the publishing house ever been objected to by Mrs. Eddy and not discharged? Has anyone ever been employed who was claimed not to be suitable? Have these directors ever objected to one single person who has been connected with the Publishing Society—except the trustees, and after they got into this mesmeric state, as I think Mr. McKenzie calls it? Not one. Six hundred or seven hundred employees occupying responsible positions. Did these trustees obey Mrs. Eddy's Manual and direction in that respect? Never have they had a man connected with the publishing of her books, or in editing any of her papers, not accepted by the Pastor Emeritus and

the directors as suitable. What do these gentlemen want? We obey the Manual, we employ people acceptable. Not a single criticism of their acts in that connection.

Section 6 provides for copyrighting periodicals published by the society according to the provisions of the Deed of Trust. Have they failed in that? If they have—subject of removal. That is what can be done if they do not obey the Manual in these respects.

Section 7, prohibiting any objectionable pictures from being exhibited in the rooms where the Christian Science textbooks are published or sold and that no idle gossip, no slander, no mischief-making, and no evil speaking shall be allowed.

Have the trustees kept that article of the Manual? Has anyone heard any complaint of them on that score? My brother Thompson says, sotto voce, "Has Mr. Dickey kept it?" These trustees have not been complained of for not keeping it. Again they have kept it. They have done their duty as laid out by Mrs. Eddy, and there is no complaint on the subject.

They call that disloyalty and treason. High-sounding words in a pompous and resonant voice, but how empty when you analyze the facts! Loyal Christian Scientists, men who have performed their duty as it was laid down by their Leader, and not an injunction of hers laid upon them in respect to the practical administration of the trust has not been obeyed; not an act that is not beyond criticism.

Such deed provides that only the Publishing Society of The Mother Church selects, approves and publishes the books and literature it sends forth. That is a directory provision. It states that the Committee on Publication are in no wise connected with these functions.

It would appear that Mr. Smith, Judge Smith, had been pretty actively attempting to connect himself with these functions. And how do they excuse him? "Oh," they say, "he does that in his capacity as our counsel," as if he could change his title and thus affect the legality or illegality of the thing which he was doing. How are you going to tell when he was acting as counsel and doing the thing which violates the proprieties or whether he is acting as a Committee on Publication and doing the thing which he is forbidden to do there?

Section 9 of Article XXV is directory merely in regard to the removal of cards from the periodicals without the request of the advertiser, and that has been complied with by these trustees.

I have reviewed every provision in the Manual in regard to these gentlemen, and those provisions they have obeyed. They have split upon the purely academic question of the confession of faith, perhaps you might call it—as has been said by distin-

guished counsel, the bowing of the head. I should call it recreancy to their sacred trust. And they will do that at the command of no man or set of men, no hierarchy or set of men claiming to be hierarchs. They will defend the sacred trust of Mrs. Eddy to the last.

Governor Bates, a man of large experience, when called into the case to see if he could not take some action to carry out this plan that the directors had of getting rid of the trustees, said, in substance, that they had not got any case, or they hadn't it prepared. He looked around, as a lawyer would: "What have you got to complain of against these fellows; what have they failed to do with regard to their trust; in what provision of the Trust Deed have they failed?" And apparently nobody could point it out, and therefore he recommended that, having no cause, perhaps they could get up one. I do not mean in any offensive sense. He said: "Write letters to them often asking for information, make demands on them, try to boss them a little here and there, and perhaps you can get a reaction, and then remove them." I use that.

And Mr. Dickey—I have never thought of him as naïve and innocent, whatever we thought of his qualities—was the most naïve in his statement as to just what it was. He said the idea and the thought was to ask them to do things, to write letters to them, and if they failed to do them, then there would be a good cause of action for the removal.

And, really, think of the dignity of this great board, sitting down at their council table together with counsel, and saying, "How can we bring about something that will be a cause for removal?" A splendid exemplification of the conduct of men high in the councils of a church, actually conspiring to get some cause of removal against men who stood in the way of their ambition, consulting counsel to see what they could get up, what they could do to lay some trap—because it was really that, Your Honor—into which these trustees might fall, ask them to do something which they might refuse to do, which would be even a technical violation of the Manual, and thus catching them and then removing them! Think of it.

And then what was the result of it all? Judge Smith had to be called on finally to draft this curious set of accusations. The principal accusation was that they had employed costly or high-priced lawyers, wastefully employed them. And they had lawyers by the half-dozen themselves. And because these gentlemen had sought legal counsel of one of the most distinguished lawyers of the United States, at the head of the bar, a man respected and honored throughout the land, for legal advice as to what to do with a legal instrument, and what their duties were, Judge Smith puts it

as a ground of impeachment, seriously, that they had employed wastefully high-priced lawyers to advise them as to what their duties were.

The paucity of reasons after the most diligent search could not be better illustrated than that. As if they had not the right to be advised as to what their real duties were under this Deed of Trust.

Well, what shall we say of the conduct of men who have brought out as reasons for the attempted removal of one of the most prominent men in the Church circles, such as those are described to be, seriously, as reasons for his removal, touching his character as a business man, as has been pointed out, and then when they get into court, instead of trying to prove any one of the six or seven or a dozen charges, glibly say, "We have offered no proof because we do not feel bound to." Smirch a man and then, when called on to make good, say, "We do not need to prove it!"

As I feel about it, I do not want to characterize that action. The consciences of the men who have done it ought to be their own accusers. Afraid to make good! Courageous to make accusations; afraid to make good! What a record before the field of Christian Science. Blacken the character and then come into court and say, "We need give no reasons, no charges, no accusations; we are arbitrary; we have arbitrary power." Why, then, did you blacken them, or attempt to do it? They cannot support the charges they made, and they have utterly failed to support any charges.

I will say nothing further, if Your Honor please, in respect of the question of the good faith of their proceedings. Nothing further need be said than that, supported by their lawyers, around their secret conference, they prepared charges and sent them out to the world; and then when called upon, in a court of justice, to make them good, they scuttle away in the darkness and say, "We do not need to make good; all we have to do is to accuse."

If Your Honor please, these trustees, in the practical administration of their trust, stand before you, having performed. With their great Leader they have kept the faith, appreciating to the full extent the great responsibilities of their trust; they have labored early and they have labored late, and they have labored faithfully in the cause of Christian Science. They knew what they did when they took the stand against influences and purposes involving personal aggrandizement that were afloat and on foot, that are known of by some—indeed, known of by many—that they stood in the pathway of that ambition. They said to these men, "Anything that you want by way of suggestion or cooperation you will have from us in promoting

the great purposes of the trusts in which we are together interested; anything that you ask short of the abdication of a trust which is sacred to us, and with which we have said and promised we would honestly and faithfully comply." But that was not enough, that was not enough. They have said, "We will remove these obstacles." And what do they do? They were attempting to break down and destroy a trust coequal in importance with their own, of their own great Leader—Mrs. Eddy. I cannot believe they were conscious of it, but it seems impossible to realize that they could see their conduct in any other light or attitude. They are trying to destroy this trust. They have employed lawyers—I hope not wastefully—to devise a way—I hope not paying them wastefully; I think it is a wasteful expenditure—to find a way in which they can so construe this great trust, with all its duties and responsibilities, as to subordinate it to their will.

We respectfully submit, if Your Honor please, that upon the evidence in the case they have made a dismal failure. They cannot do it. These gentlemen will be left, one and all, to obey the injunction of their Leader: "Follow the Trust." They have been loyal to her and her commands, and they will continue to follow the Trust Deed.

Mr. Krauthoff—If Your Honor please, the plaintiffs (defendants) desire to submit a few observations with respect to the points that Mr. Whipple has brought out in his—

Mr. Whipple—If Your Honor please, I am forced to object to these being submitted orally. Counsel has been here in the room, could have argued if he thought that Governor Bates had not covered the subjects or taken enough time. Now I make no objection to these observations being submitted in the brief, which they still have under preparation, using ours as the basis of it, and which they have not yet submitted.

The Master—Perhaps I have not fully got the purport of Mr. Krauthoff's request. I do not know that he has finished what he wanted to say.

Mr. Whipple—No; I understand that he wants about an hour to finish it.

The Master—I did not hear him say anything about an hour.

Mr. Krauthoff—I said that the plaintiffs desired to submit a few observations with respect to these points that Mr. Whipple had brought out in his argument, and that he had not heretofore brought out, either in his pleadings or in his evidence.

Mr. Whipple—You are not the plaintiffs, Mr. Krauthoff.

Mr. Krauthoff—I mean the defendants.

Mr. Whipple—You are for the defendants.

Mr. Krauthoff—And which we are advised of for the first time in the brief

which was delivered to us during the time when Governor Bates was making his argument, and which were brought out in the argument that Mr. Whipple has now made.

The Master—You realize, of course, that Mr. Whipple is entitled to the last word in the case?

Mr. Krauthoff—He is entitled to that.

The Master—And if you should be allowed at this time to say anything further, he must have an opportunity to answer you.

Mr. Krauthoff—That is entirely agreeable.

The Master—I have seen nothing myself in what Mr. Whipple has urged which I think was not fully open to you, or to your side, at the proper time.

Mr. Krauthoff—If Your Honor will bear with me for a few minutes, I think that I can point it out to you.

The Master—Mention the first subject on which you wish to be heard.

Mr. Krauthoff—I want to point out, if Your Honor please, his attack upon the existence of the directors of The Mother Church, in view of the—

The Master—That is not quite definite enough; but what is the particular point to which you wish to reply?

Mr. Krauthoff—I wish to reply to his point that there were no directors of The Mother Church on the 25th day of January, 1898, in the light of the allegation in the petition that the defendants are directors, in the light of the evidence that was admitted continuously to the effect that there were directors of The Mother Church, and in the light of the fact that the Deed of Trust itself refers to directors of The Mother Church.

The Master—I do not see why Governor Bates did not cover that whole ground. I think he did.

Mr. Krauthoff—I desire, also, if Your Honor please, to devote some attention to the question of whether the directors were a corporation, with a view of showing (1) that it is not an issue in the case; (2) that the question of whether the directors of the Christian Science Church are bodies that are similar to deacons and churchwardens is to be determined by the usages and customs of the Christian Science denomination, and not by other denominations—

The Master—That matter, I think Governor Bates went over fully. If you have any additional authorities, I give you leave to submit them, of course.

Mr. Krauthoff—I desire to call attention to the question of the gift of the property to The Mother Church, as evidenced by the instruments that have been offered in evidence in this case, and to present the view that, as between the trustees of the Publishing Society and the Christian Science Church, The Mother Church, the property is the property of The Mother Church; that the trustees are but a title-holder for the Church as

such; and that being so, the Donor and the beneficiary, by subsequent agreements between the Donor and the beneficiary, as evidenced by the By-Laws, may modify the Deed of Trust, without regard to any reserved power in the instrument itself; calling attention in that connection, to the fact that the income is given to The Mother Church in perpetuity; that the gift of the income is equivalent to a gift of the thing itself; and that, in the hands of the Church, it may be a public charity, but that, as between the plaintiffs and the defendants, it is the property of The Mother Church.

The Master—I am sorry that I cannot regard that as anything which you can possibly be said to be surprised by in the arguments made by the other side.

Mr. Krauthoff—I did not know that we were limited to being surprised.

I desire to point out, if Your Honor please, that the terms, objects and purposes of the deed of Jan. 25, 1898, include the promotion and extension of the religion of Christian Science, that being the principal object; that the Manual of The Mother Church is an integral element of that religion; and that no one can promote and extend the religion of Christian Science without adhering to and being obedient to the Church Manual.

The Master—Oh, no; that is not open now.

Mr. Krauthoff—We desire to point out, if Your Honor please, the fact that the Deed of Trust of the 25th of January, 1898, itself refers to the existence of a director, of a Manual, and of a treasurer.

The Master—Well, we have all of us noticed that and commented on it time and time again during the progress of this case.

Mr. Krauthoff—If Your Honor please, I desire to refer to the fact that Mrs. Eddy has left the Manual as the exponent of Christian Science, as one of the exponents of Christian Science, and an integral portion of the religion thereof; that she has stated in her own works that the Church is the mouthpiece of Christian Science; that the only inconsistencies that have been pointed out in this argument between the Manual and the Deed of Trust is the question of the election of editors; and that upon that the plaintiffs have taken the position that the Board of Directors do not have the power to elect editors, thus being recreant to the Manual.

The Master—I cannot reopen that for argument now.

Mr. Krauthoff—As to the First Members, I desire to remind the Court that Mrs. Eddy, in her letters, referred to them as no longer existing, and to there being no longer any reason for their existence, and treating them as non-existent; that the By-Laws of The Mother Church were accepted by everybody connected with the Church,

and that the plaintiffs are strangers to the Church, and have no right to question the By-Laws of the Church; that it is not correct that the consent of the Pastor Emeritus is required to be given in her own handwriting, because that being a power coupled with an interest, the Board of Directors now have the right and power to do it without the consent of the Pastor Emeritus.

The Master—Both sides have been fully heard on all that, Mr. Krauthoff.

Mr. Krauthoff—I desire to call attention, if Your Honor please, to the contention that Mrs. Eddy's supervision ceased with her passing, with a view to pointing out that her supervision was the result of Principle, and that that Principle continues to operate notwithstanding her physical passing, and that whatever in her lifetime she elected to do continues after her death; and that in the work of the Christian Science movement Mrs. Eddy pointed out that too many centers may be equivalent to no center; that it was intended to have one central controlling authority, and that no other system of government can be applied to the Christian Science movement.

The Master—Whether there was a central controlling authority or not, for the purposes of this case, has got to be determined by the laws of Massachusetts.

Mr. Krauthoff—And may I be heard a moment on that?

The Master—No, sir; I do not care to hear anything further upon that at present.

Mr. Krauthoff—And in respect to one remark that Mr. Whipple made, the blackening of Mr. Rowlands' character: we have no desire to be understood as having in any way blackened Mr. Rowlands' character. He took the position with reference to the Church Manual which the Board of Directors thought was detrimental to the religion of Christian Science. Whether that position is true, or correct, the Court, of course, will have to pass upon. That is the issue which we have tendered, coupled with the statement of his absence from Boston.

I appreciate Your Honor's courtesy in permitting me to state what it was that I desired to speak to you about.

The Master—In indicating to me the subjects which you desired to be heard further on, Mr. Krauthoff, you have taken the opportunity, to a considerable extent, to state your views. That gives Mr. Whipple the right to reply, if he desires.

Mr. Whipple—I do not, if Your Honor please. I think that everything that Mr. Krauthoff has mentioned has been covered, and fully covered—I would not venture to say that it was better covered—by the statement of the counsel who preceded him, because Mr. Krauthoff's statement was very concise.

The Master—Then we may consider the arguments closed, with this res-

ervation, that there are certain briefs, or supplemental briefs, to be presented. And within what time?

Mr. Whipple—We have never seen the defendants' brief. We did not prepare a brief, as we stated to Your Honor. We thought that it would be helpful to have Requests.

The Master—You rest on the Requests for Rulings and Findings?

Mr. Whipple—Yes, Your Honor, the Requests for Rulings and the Requests for Findings, in which we have indicated our views, without what would usually be called argument. That we gave to the defendants. We intended to give it to them at the time that Governor Bates began his argument. It was a few minutes later, but it was in their possession for a couple of days before the argument was closed. We have not seen your brief yet, Governor. What is your thought about when you would like to file it?

Mr. Bates—May it please the Court, the brief of Mr. Whipple, which is a request for rulings, and also a brief, was handed to us, as he says, on the first day of the argument, but of course I had no opportunity to examine it before the argument. The brief of Mr. Dittmore was handed to us yesterday afternoon, at the close of the hearing. A large part of the argument by the counsel who represent Mr. Dittmore, and also by the counsel who represent the trustees, has been based on issues which are not set up in their pleadings; in other words, they have added to the issues of their pleadings very largely. But with the understanding, as I have understood, that they were intending to amend their pleadings so as to make those issues before Your Honor. I have stated that probably we would not object to those amendments when they were shown to us, and assuming that we would be given proper time to file an answer to those amendments. In view of the fact, however, that so much of their arguments has been on these issues which are still undefined, so far as their pleadings are concerned, we would like to file our brief after having seen their amendments. I assume that they themselves may want to file a supplemental brief in connection with it.

The Master—Suppose you indicate to me as a specimen one of those issues?

Mr. Bates—All the issues, as I understand, relating to the legality of the organization of this Church and the present status of the Board of Directors are now in issue, whereas under their original pleadings they are all admitted, and we admitted them. They are set forth, and we admitted them, and therefore we were not under any obligation to prove them.

Mr. Whipple—If you will pardon me, Governor, we said "for the time being" and we supposed that the directors were directors for the time being.

Mr. Bates—Yes. Now, do I understand that you claim—

Mr. Whipple—Now, the only thing that we change is this, that we very much fear that they were not directors for the time being, even, that is, Church directors.

The Master—Yes; I understand that you wish to amend your pleadings, and wish a certain number of days in which to do it.

Mr. Bates—Now, we want to expedite this matter as far as possible, and I will say that we do not wish to cite any authorities except such as are cited in the argument, but if there are any others we will advise the counsel as quickly as possible.

As to the points which they now raise, however, which were not covered by our brief, not being in their original bill, or not being issues under their original bill—as to those we wish to file a brief when we have found out what their amendment is, but I think that we can have it so far advanced that it can be filed at practically the same time that their amendment is filed.

The Master—Do not the pleadings fully raise the issue whether the directors had the power or not to pass a vote to expel the trustees?

Mr. Bates—Well, they raise the question as to whether or not the directors had the power, but they do not raise the question as to whether or not these are the directors, and they do not raise the question that Mr. Whipple now raises, as to whether or not they have ever been the directors of this Church. If they do, then there is no necessity for his amending his bill. I have understood all the counsel, and Your Honor, to agree that, in order to present these issues, they should amend their bill, and that they should have a week in which to do it. They asked for it: I did not.

The Master—I hardly think that I have ever said, or agreed, that the bill needed amendment.

Mr. Bates—If I misunderstood you in that, Your Honor, I withdraw that suggestion. It was talked over before Your Honor.

The Master—Yes. I understood that the plaintiffs indicated to us that perhaps they might want to amend; but whether they really want to or not they have not, so far as I have heard, yet told us.

Mr. Thompson—Why, the situation is very simple and very usual. Here is a case involving an amount of documentary evidence unknown to us at least, and I assume that some of it was unknown to the trustees, because it was in the possession of the directors before we started, and important issues are set out in the pleadings that have not been altered a hair's breadth. Two subordinate issues have become manifest, to the great surprise of the parties, by evidence produced by Governor Bates' clients. One is the validity of the present by-law, Article I, Section 5, whether it should be in its present form, or as it was in the twenty-eighth edition; the other is

about the relation of the trustees under the deed, that is, the deed directors, to the so-called by-law directors. Now, I thought that perhaps if I had known before this started just what the evidence was going to show, I should have altered the emphasis in one part of the answer, and set up that distinction between those two classes of directors. There is nothing new about it.

The Master—Without going into any great amount of talk about it, are you prepared to say now whether you do or do not want to amend your pleadings? Mr. Krauthoff and Governor Bates naturally want to know and are entitled to know that.

Mr. Thompson—I think that it would be safer and more prudent, on those two matters, but they are not matters requiring the expenditure of any great amount of time on a brief; they were developed by the evidence, and it was manifest at the time that they were to be a subject of argument.

The Master—That may or may not be, but we have got to begin at the beginning, and the question is whether you want to amend.

Mr. Thompson—Yes, I would like to amend.

The Master—And we might refer back a little further, to the matter of the replication: I do not know whether you have settled it: I do not know whether any replication ever has been filed, or whether it needs to be.

Mr. Whipple—We, if Your Honor please, wish to file a replication.

The Master—You do. I do not know whether you have filed one or not?

Mr. Thompson—No, I do not think so. We shall wish to do so.

Mr. Whipple—We shall probably amend slightly, but we will submit the amendment by Monday next, possibly tomorrow, but tomorrow is a rather short day.

The Master—You expect to amend; Mr. Thompson expects to amend.

Mr. Thompson—Yes.

The Master—And you will submit those amendments by Monday?

Mr. Thompson—No, sir, for I do not want to amend twice. I do not want to amend until I see what Mr. Whipple sets up, because I have got to answer that. If he will let me see what he is going to put into his amended bill, I will answer that, plus this other paper, and do it all in one document.

The Master—And then Governor Bates and Mr. Krauthoff will want a day or two, probably.

Mr. Bates—I think that we can file our amended answer, which will be necessitated, probably, by their amended bill—I think that we can file that, with our brief, within 24 hours of the time when we know what their amended bill is to be.

The Master—Then you ought to get those filed very early next week.

Mr. Whipple—Yes, Your Honor.

The Master—Perhaps you will both

make an extra carbon of what you file and let me have it.

Mr. Bates—Certainly.

The Master—I may be absent a few days next week, but if you send it down to my office it will be taken care of there.

Mr. Thompson—Then there was the question of agreement to the motion to alter the rule to the Master. I have heard nothing said about that. Governor Bates was to draw it, I understood.

The Master—Oh, yes.

Mr. Bates—We are agreeable to that, Your Honor, and we will draw it if Mr. Thompson desires. He is the one who has urged it, but if he desires we will draw it. We would try to have it submitted by the time Your Honor gets back, at any rate.

The Master—Do you think that is necessary?

Mr. Bates—I am not at all sure that it is.

The Master—Of course, it makes an extra complication, perhaps, in the papers. Do you really think it is going to do us any real good? I am not anxious to have any more power of decision here than the rule gives me as it stands.

Mr. Thompson—I think it would be in the interests of everybody concerned to have the other form of rule adopted. I thought so at the outset and urged it upon the Court, and I still think so. I think that it is extremely desirable that every limitation should be removed and Your Honor should have the broadest power that a court of equity is familiar with in deciding this case. I still believe that it is very much in the interest of everybody. It is one of the few things that I think is equally beneficial to all concerned.

The Master—I have partly foreseen that under the existing rule I might be in doubt a good deal as to what it was open to me to find and what not, and that I might have to resort to the alternative which I spoke of: If it is open to me, I find thus and so.

Mr. Thompson—Certainly. I think, Your Honor, unquestionably, unless that rule is changed, you cannot that I can see—perhaps it is possible but I do not see how it can be done—draw a report without a great number of alternative findings. "If this is the theory of the law, then I find the facts so and so," and so on; whereas if you have the simpler and more sweeping form you can drive straight at the heart of this problem, eliminating all immaterialities, and decide this case.

The Master—Oh, no, no; that I cannot do.

Mr. Thompson—Yes, sir, you can, under the rule as I suggested; your rulings of law will be open to revision but your findings of fact will not.

The Master—I am still only making a master's report—

Mr. Thompson—Oh, certainly, I understand that.

The Master—which may or may not be confirmed by the Court, when it gets before the Court.

Mr. Streeter—Why can't we get this all disposed of if the Governor will make the draft of the agreement and submit it to Mr. Thompson and Mr. Whipple on Monday, and have it all signed and disposed of?

Mr. Thompson—I think it is a great deal better to do that tomorrow. It can be done in half an hour—it can be done in 15 minutes. It is a document that requires no elaboration at all. Anybody familiar with equity practice can draw it in 10 minutes. I could dictate it to the stenographer as I stand here.

Mr. Whipple—Governor, why not intrust it to Mr. Thompson.

Mr. Bates—I have no objection.

Mr. Whipple—Then at 10 o'clock tomorrow we ought to be able to have the draft so we can sign it.

Mr. Bates—It is Mr. Thompson who is anxious to have it; I think he should draw it.

Mr. Whipple—I think so.

Mr. Thompson—Let us get it straight on the record. You suggested it originally. I thought it was one of the few good suggestions you made, and I heartily concurred in it, and still do.

Mr. Bates—I never suggested changing the rule. I suggested I was perfectly willing His Honor should make such rulings as he desired. Since then you have been trying to pin it on to me.

Mr. Whipple—I think it is possible, not inconceivable, at least, but very unlikely, that we might want to add further suggestions after we see the Governor's brief. They are working on it so hard that we are led to believe there may be something in it that we want to reply to.

Mr. Bates—We have no objection to your making any reply that you please, as far as we are concerned.

Mr. Whipple—Thank you, Governor.

The Master—It is understood that both sides then have a right to reply to suggestions in the other's brief, in writing.

Mr. Whipple—Well, ours is in—our brief is in. I have no objection, as I have stated before, to any fair comment upon our brief. If there is anything in it that can be criticized as a result of legal ingenuity, why, I have no objection to its being done.

Mr. Thompson—We have filed a brief, and I should like to know whether there is any reply going to be filed to it, and, if so, what the time limit is. The Governor has had it at least one day, and I have received no brief at all from him, nothing but these requests for rulings. Now, is he to be allowed to reply to our brief? If so, when is the time to expire?

Mr. Whipple—He said next Tuesday.

The Master—Can you agree on a limit?

Mr. Bates—I think I stated the situation; I supposed that everybody understood it. I understood it was agreeable to Your Honor that within 24 hours of the time that they will let us know what their amended pleadings are, we will not only file our amended answer but we will also file our brief to cover their amended pleadings and all.

The Master—In both cases?

Mr. Bates—Certainly.

The Master—Well, if that is fully understood, you cannot expect anything better than that.

Mr. Thompson—That applies to our case as well as Mr. Whipple's.

Mr. Bates—Yes.

The Master—What did we say about a date? Didn't we fix a date about something?

Mr. Thompson—We did. We were trying to fix a date for the filing of these pleadings. We didn't succeed very well. I think we have done it more effectually now than we did then.

The Master—Yes. One further word, perhaps, about the exhibits in the case. I think the best way will be for each side to retain its own exhibits in its own custody. Such of them as are not in the record, and I may desire to look at hereafter, I will apply to the parties for them. Will that be satisfactory?

Mr. Bates—Entirely.

The Master—Then each will be sure that its own exhibits are safe. Nothing remains, then, I suppose, except to adjourn for the present. Before we do so perhaps I may be permitted to

say that I have enjoyed these hearings, lengthy as they have been, and I have enjoyed listening to each and every one of the counsel who have addressed me in connection with them.

Mr. Bates—I will say, Your Honor, while I do not assume and would not assume to speak for any of the other counsel, I know nevertheless that I am speaking for once in agreement with them when I say that we have all greatly appreciated the courtesy and patience with which Your Honor has listened to this long case.

Mr. Whipple—The Governor always states those things very gracefully, and we cannot do more than to express our accordance with his graceful expression of appreciation.

Mr. Thompson—In which we join also.

[ADJOURNED]

# Hearing on Bill in Equity Resumed

BOSTON, Massachusetts—Hearing of the suits of the Board of Trustees of The Christian Science Publishing Society v. the Christian Science Board of Directors and J. V. Dittmore, and of J. V. Dittmore v. the Christian Science Board of Directors, were resumed yesterday on two motions filed in court by the defendants other than J. V. Dittmore.

February 20, 1920

## COMMONWEALTH OF MASSACHUSETTS

### Supreme Judicial Court

Suffolk, ss. No. 30654. In Equity

Herbert W. Eustace et al. v. Adam H. Dickey et al., Defendants.

Suffolk, ss. No. 30788. In Equity

John V. Dittmore, Plaintiff, v. Adam H. Dickey et al., Defendants. Before Mr. Justice Crosby.

Mr. Bates—This is not exactly an *ex parte* matter, because I find the parties are here to oppose it, but we did give notice that we should ask Your Honor today to place on the next motion list for hearing, motions in two cases—motions which we filed last Saturday.

I understand now, however, that the parties on the other side wish to be heard in regard to the matter of placing them on the list, and that being so I assume Your Honor would rather have it go to the end of the list rather than to hear it now.

The Court—I think if there is to be a hearing on it that it would have to go to the end of the list.

Mr. Thompson—I am interested, as is Mr. Demond here, on behalf of one of the parties. I am now on trial in the third session in a land damage case. Judge Fessenden expects to adjourn at 2 o'clock, and I suggest, in view of the peculiar character of the motions and in view of my engagement in the Superior Court, trial being suspended while I appear here, there may be a reason why Your Honor should not take it up now. I think it is a very long matter, and it would accommodate the parties waiting in the third session—waiting for me to come in there—

Mr. Whipple—I judge, if Your Honor please, from the response to the calling of the list and Your Honor's statement that, as I understand it, there was a case on trial which was likely to take the day, that by going to the end of the list the matter would not be reached today. If so, I am entirely content with that. But I also had to request the courtesy of Judge Morton

to suspend the case in which I was engaged this morning, and if this case had to come up later in the day it would be embarrassing to attend to it. I think for adequate consideration of the matter, it would take quite a little time to consider it. Ordinarily, though, any motion to set a case down for hearing would not take a great while, but there are peculiar circumstances in regard to these motions, being so far as I have knowledge of the practice, entirely without precedent and being motions of some importance as affecting the procedure before the Master, I should think it ought not even to be set down for hearing which would involve a good deal of time, hearing which without adequate discussion and presentation of what is involved, and I am content as far as I am concerned that it should go to the end of the list.

The Court—What is the purpose of the motion?

Mr. Bates—The purpose of the motion is to obtain instructions to the Master. These two cases were referred to the Master. When the second case was referred the rule required that it should be heard with the first case. The Master has not complied with that rule on account of various circumstances which arose, and we have asked him to complete the evidence in the second case before bringing in his report in the first case.

The Court—He hasn't yet filed his report?

Mr. Bates—He has not yet filed his report, and we wish to prevent that report being filed. That is, we wish the rule of this Court carried out. He has stated that he could not or would not do that unless he had instructions from the Court. It is a matter which from the view that my brothers take, would require a considerable going into the merits of these motions. It seems as though it ought to be put down without question in the next motion list. If then what my brothers say is correct and we have no right to bring these motions, of course it will develop. We ought to have opportunity to bring them, and we wish that opportunity and to be heard before the final report of the Master is filed.

The Court—Does what you ask for involve consideration of the evidence for the purpose of determining whether or not the Master should hear certain other evidence?

Mr. Bates—I may state in brief the situation. It is this: The first case, Eustace v. Dickey—they are the same defendants in both cases—was brought in this court—

Mr. Whipple—Not quite the same, because Dittmore is a defendant in our case and plaintiff in the other.

Mr. Bates—They are practically the same parties that are defendants. I will put it this way: The defendants in the first case are with one exception defendants in the second case. The Court was urged to make a rule that the two cases should be heard together because the allegations in the first bill to the effect that Mr. Dittmore, who is the plaintiff in the second case, was not a director or was a director. That is, the plaintiff's bill alleges that they do not know whether he was or was not a director. He had been removed by his co-directors, and it was urged upon the Court that the Master might therefore have to decide that issue, or decide it as a question of fact, whether or not Mr. Dittmore was or was not a director at the time of the bringing of this first bill, in the first case; but that it was an issue which was involved in the second case brought by this director, Mr. Dittmore, and that therefore it was to be determined in the first case and could not be determined, it was urged upon the Court, by the pleadings as they stood in the original case. The two cases were therefore referred to the Master, with the instruction that he should hear them together. One of the counsel for Mr. Dittmore became sick during the course of the proceedings and that resulted in a situation whereby the Master went ahead and heard the evidence relating to what was called the Eustace case, concerning Mr. Eustace's removal only, but having done that, after the evidence was closed he then ruled that it was in issue in that case, although he had not heard the evidence in the Dittmore case, and he proceeded to attempt to pass upon the removal of Mr. Dittmore, being a matter involved in the second case. It is a case where we have not had our day in court on that question. Therefore we are asking the Court by these motions to instruct the Master in accordance with the rule of this Court to hear both cases before he brings in his report in either. Now as I say it is a matter that does involve large questions, as Mr. Whipple has indicated, but it is a matter upon which we are certainly entitled to be heard in this court, and we should be heard as speedily as possible. I cannot see why it should not be put down for the next motion day. But I understand the Supreme Court is to be in consultation on Tuesday, so it would probably mean that it would be on the Friday list. At that time these ques-



tions could be very properly met, but it must be apparent that there must be a hearing in this case. It would be necessary to go into the merits of these motions before the questions raised by my brother could be determined. We are simply asking this morning, not for the granting of the motions, but that they may be set down for hearing on the next motion list.

The Court—It is apparent to me that these motions involve matter which cannot be disposed of in a few moments. I can readily see how such a matter—the argument of it—would require some time, and it certainly cannot be heard before the other cases on the list are disposed of. I do not see anything else to do except to postpone it until next Friday, and if it is heard then it may be heard on the question as to whether it should be set down for hearing, and if that involved a decision of the matter on the merits, I do not see if it should be found that the motions ought to be allowed, I do not see why it should not be allowed without any further hearing having been gone into on the merits as to whether it should be set down for hearing.

Mr. Whipple—The points are different, if Your Honor please. I will say in a moment what we claim. This very motion was made to the Master and has been decided by the Master adversely. I hold in my hands a report which is practically in final form which covers some 66 printed pages in our case—that is the Eustace case. The hearings have been absolutely completed without any remonstrance and with the desire of all parties in that case. The draft report was submitted—it was argued and the draft report was submitted and we have spent days and days on that draft report and we have now got it in final shape. Then counsel on the other side said, we want the other case finished up before this report goes in. The other case is not of the slightest importance to our case except that it determines in our case (and it is determined in our case) which of two particular defendants the relief that we ask for will run against. Now there are three or four printed pages in the Master's report in which he deals with this very thing and states his reasons among others that he finds there is no surprise as alleged in the defendant's motion. They allege here in this motion as a reason why this shall be held up, that they are surprised. They alleged it before the Master and the Master finds and will report to this Court in the course of the procedure, that there was no surprise on their part. That whole thing was elaborately gone into.

The Court—The cases under the rule were to be heard together?

Mr. Whipple—No. There is no order whatever in our case with regard to the other case.

The Court—They have been heard together?

Mr. Whipple—There is an order in the other case that the evidence should be heard in our case and applied to the other case as far as it went and evidence has been taken which applies to the other case also as well as to our own case, but the evidence in the other case has never been opened, which has never been argued, which has never been completed, I say evidence offered in that particular case was ruled out in our case, ruled out without objection. There is no order of consolidation. The issues are entirely different. It was thought that the evidence taken in one case might be applicable to the other and therefore would not be duplicated—there would be no necessity of duplication. But there is no reason why the issues should be determined together. Of course in this hurried statement we cannot review the patient work of this Master over these months. He has determined this issue. All we suggest is that it is in the nature of a motion to recommit. But Your Honor will be able to deal with it very much better when you have before you the Master's report stating how he has dealt with the situation and why he has dealt with it in the way he has. If there is error it is within the power of Your Honor or of this Court to correct it by recommitting.

The Court—What is the objection to setting it down for a hearing?

Mr. Whipple—Because it will involve on our part meeting the affidavits. They have filed affidavits incorporating the Master's report, therefore we will have to go into a discussion of what happened before the Master without the Master's report before us; that is the only reason.

The Court—You have the Master's report?

Mr. Whipple—Yes, Your Honor, we have the Master's report and we want Your Honor to have it.

The Court—I don't see how I can decide anything without it.

Mr. Whipple—Then set this case down for a hearing immediately after the Master's report has been filed. It will be filed within another week.

The Court—They want the hearing before the Master's report is filed.

Mr. Whipple—How can Your Honor determine questions involved in the Master's report without knowing what the Master's report is? If Your Honor will postpone this hearing we can have a full discussion.

The Court—The hearing will have to be postponed anyway so far as any discussion on the merits of the question and going into it in detail is concerned, so I think the whole matter better go over until the next sitting, which is Friday.

Mr. Whipple—Of course, if Your Honor did feel then an urgent situation was presented where the rights of the defendants were imperiled you

could take such action as you saw fit. We don't like technically to have the case set down at that time. We would like to discuss the matter first, whether it should be set down, because there are more differences which we cannot explain in the short time given us.

The Court—I should seek to avoid having two hearings on this question involving substantially the same thing. That seems to me a useless thing, and to have a hearing as to whether the case should be set down and hear long arguments and take into consideration everything that could be said on the question of the allowance of the motion and then if it is allowed having the same arguments gone over again. It seems to me that is not a desirable thing to do.

Mr. Whipple—I quite agree. If it were denied there would be no duplication of effort. Of course I know now that after the Master's report is in, with the pertinacity that they have exhibited so far, they will move to have the Master's report recommitted. If we could have a hearing which would anticipate any such motion as that we might be in a better situation.

The Court—I suppose it is open to them to do that any time.

Mr. Whipple—Yes, but if that is coming, adopting Your Honor's suggestion that we do not want duplication of the hearing, we better have all the hearings grouped—I think Your Honor would feel we ought to have them grouped as far as possible and make as much progress as we could by getting them all together so they can be dealt with at that one time.

Mr. Thompson—I have only to add that Mr. Whipple's statement of the situation is entirely accurate, while the statements made by Governor Bates in many respects are inaccurate. There is a good deal of distinction whether they shall be set down, and what shall be done with it if it is set down, and in my judgment the proper way to deal with this matter is to hear it now or next Friday and determine one question, and that is, whether or not it ought not to wait until after the Master's report is filed, because this in its essence is nothing more than a motion to recommit the Master's report and it is unprecedented in my experience that a motion is now made to recommit a report which has not yet been filed and in which the five-day period for filing objections has just begun to run and in advance of the time when the Court may give it any proper consideration. The reason of these motions is simply to prevent publication to the public at large of an unfavorable report against these directors, the result of months of the most careful consideration I have ever seen given to any case that has been issued to any master appointed by this Court. I do not think it ought to be allowed. I think a Master of the eminence of Judge Dodge ought at least

to be allowed to file his report before this Court says whether it can be re-committed. I suggest that Your Honor keep your mind open to the distinction between these two questions, whether it may properly hear the motion which is in its essence to revise the matter decided by the Master and this motion has been decided by him, before at least the actual formal report has been filed in the regular procedure of this Court.

The Court—Of course you understand what the claim made by the other side is.

Mr. Thompson—I understand it perfectly well, sir.

The Court—As I understand it, on the five minutes' consideration of all I know about this case, it is that these cases ought to be heard together.

Mr. Thompson—I understand it.

The Court—That certain evidence in one of the cases not being fully heard, certain evidence applicable to it which ought or might affect the findings of the Master if that evidence was heard.

Mr. Thompson—I understand it perfectly.

The Court—And for that reason the other side claims that they desire to have this evidence taken before the report is filed because the Master might find differently.

Mr. Thompson—I perfectly grasp it all. I have heard it argued with an elaboration extraordinary in detail before the Master, and the Master has found the facts alleged by Governor Bates did not exist. The Master has given a degree of consideration to this very suggestion that would require Your Honor two or three days—it took the Master a week—to give. It has been debated and debated and debated. It is as much a part of his findings as any other finding of fact or ruling of law he has made. It is an attempt with regard to this particular finding to get the Court to reverse the Master without hearing what he has to say about it. It is nothing more or less than a motion to recommit. We have no time now to show the statements made by the defendants are inaccurate; there is no time to penetrate the fallacy on which they are based. We simply ask Your Honor not to reverse the Master—especially a Master of the experience of Judge Dodge—without giving the parties in whose favor he has found a chance to show what the result of his matured deliberations are; that is all. It is put in this plausible way to mislead Your Honor as to the Master's report. When the facts are disclosed Your Honor will quickly penetrate that piece of sophistry and see what the motion really is, which is simply this: These people took their chances; they requested the Master to do what he has done. It was the defendant that asked him to do it; Mr. Dittmore is the one who suffered by it, because he never has had a chance to present his case. They presented theirs and lost and now come in and ask Your Honor to put them back where they were be-

fore they made the deliberate choice. It is somewhat irritating to hear these ingenious remarks—the way in which this is put. I think Your Honor will have confidence in Judge Dodge if not in counsel for Mr. Dittmore and others here, to hear what he has to say.

The Court—I think I can look at it dispassionately because I have not been in the case as long as you have.

Mr. Bates—I think the position of counsel representing these other plaintiffs is somewhat extraordinary. If the situation is such as they claim it is, they certainly ought not to object to its being brought out in a hearing before Your Honor. They certainly could not be prejudiced by such a hearing. They are objecting to its being heard. We have a right to a hearing on these motions. They are supported by affidavits. We have a right to a speedy hearing as speedy as can be, considering the other work of the Court, because we do wish, as Your Honor correctly interpreted, to prevent this report being filed before Your Honor has had a chance to consider this question. It is not in any sense a motion to recommit. It is in a sense an appeal from the procedure of the Master which we say is contrary to the rule of this Court. We are here asking that this rule be sustained; the rule has not been accurately stated; the rule provided that the second case should be heard with the first case. The rule is a matter of record. But it is apparent also that in order to get into the facts of the case and decide these preliminary questions, it will be absolutely necessary to have the motions on the merits heard, and the suggestion of Your Honor that it can be heard next Friday with the understanding that it may involve the question on the merits, at one hearing—that only one hearing shall be given and the whole matter heard, is entirely satisfactory to us. But I wouldn't like to have it set down on one question, being marked for next Friday, which would involve it going over into the next week for a hearing on the real question, whether in view of the fact that the Master has now very nearly settled his report—it is because of that fact and his denial of our request about this settlement that we are here. We have a right to come here and ask whether we are right or wrong. If we are wrong we accept Your Honor's decision. But I think we can satisfy Your Honor that there has been a miscarriage of justice in this matter, or would be if this report was allowed to go in practically deciding an issue which is an issue in the other case upon which, by reason of the fact that they were ordered to be heard together, evidence has not been heard, and the only reason why the trouble arose was originally by reason of the sickness of counsel on the other side and in an attempt to accommodate him—we never had a sus-

picion that that case would be decided until after the evidence had been presented in the other case and that evidence has not been presented—we shall I think satisfy Your Honor that that evidence has yet to be heard. We are here not at the suggestion of Judge Dodge, but it is a fact he said he should not reopen that matter unless so decided by the Court. We are here to get that direction.

The Court—I understand there is no objection to this whole matter going over to next Friday.

Mr. Whipple—Will Your Honor indulge me a moment, to make a correction of the statement of our position here. We do not object to its being set down for hearing, or to its being heard. We are perfectly willing, but Governor Bates has correctly stated what the real issue is. He says, "we are here on an appeal from the Master's decision." Where is the Master's decision? Is it proper to hear an appeal from what is said to be the Master's decision before the Master's decision is before the Court? That is the real question. Therefore what we say is, that Your Honor, we think, can hear it better when the Master's decision and the reasons for it are before the Court. You will then have full power if he has committed any injustice to correct it. But what they want is to have Your Honor hear it upon one-sided affidavits as to what happened before the Master, instead of having the Master's report before Your Honor.

I thank you for Your Honor's indulgence in permitting me to correct the statement of our position, because I would rather state it myself than to have Governor Bates do it for me.

February 27, 1920

COMMONWEALTH OF  
MASSACHUSETTS  
SUPREME JUDICIAL COURT  
Suffolk, ss. IN EQUITY  
No.  
EUSTACE ET AL V. DICKEY ET AL  
BEFORE MR. JUSTICE CROSBY  
Boston, February 27, 1920.  
Appearances: Whipple, Sears & Ogden,  
Lothrop Withington, Esq., for  
the plaintiffs.  
Bates, Nay, Abbott & Dane,  
William G. Thompson, Esq., for  
the defendants.

MR. WITHINGTON: If your Honor please, Mr. Whipple is engaged in a case before Judge Morton which has been trying about two weeks. He said in as much as Judge Morton had previously extended the courtesy to him, permitting him to come up here last Friday, he would make the same request to-day if the case was reached. I thought it would be some little time before the case was reached to-day as there was quite a heavy docket ahead of us, and I would like an opportunity to communicate with Mr. Whipple, so

he could communicate with Judge Morton. I understand Mr. Thompson—Mr. Demond is here representing Mr. Thompson—is engaged before Judge Fessenden in the trial of a jury case which he will also attempt to have suspended by making a request of Judge Fessenden, so that he can be present at this motion.

MR. DEMOND: I appear as New Hampshire counsel with Mr. Thompson for the defendant Dittmore. We are anxious to be heard. Mr. Thompson is before Judge Fessenden in this jury case which has been running ten days or more. We expected these other matters would take the forenoon. Mr. Thompson will be undoubtedly released from that case for the rest of the day at one o'clock and will try his best to get out this forenoon if your Honor thinks he should. It is, I understand Judge Fessenden's practice to adjourn Fridays at one o'clock. If we could have a few minutes to communicate with Mr. Thompson perhaps he could get out now.

THE COURT: That is a matter for you gentlemen to decide for yourselves, of course. You ought to have an opportunity to confer with Mr. Whipple and Mr. Thompson, if you desire.

MR. WITHINGTON: It is simply this, if your Honor said you would hear this immediately, why of course we would ask them to make their request for suspension; but if your Honor said you would hear it at two o'clock, or not before two o'clock, then of course we shouldn't like to ask them to suspend these jury trials, which in both cases have been running for two weeks—about.

THE COURT: I will take it up at two o'clock with the understanding that it is to be finished this afternoon.

MR. WITHINGTON: That is the difficulty. It is rather an exhaustive matter—

THE COURT: It ought not to be on a motion of this kind. I stated to counsel the other day that my engagements are such with the Full Court that I begin a four weeks' sitting with the Full Court on Monday morning, so this is the only day and the last day I have to preside in this session, and I have no opportunity to finish it unless it is finished to-day.

MR. WITHINGTON: My only suggestion in regard to the two o'clock matter was that if Mr. Demond and I both get to our respective counsel and get them to request suspension of their cases, in the meantime one of the other cases which precede us might be ready or you should go on with some other business and they were held up for a matter of two hours, it would be economy of time not to start before two o'clock.

THE COURT: If you were to begin the hearings now will you agree to finish it to-day, on both sides?

MR. WITHINGTON: The report of the Master covers some sixty-eight

pages and a great deal of that report is involved in this motion.

THE COURT: My query is, whether it makes any difference whether you begin now or at two o'clock, if you do not intend to finish to-day?

MR. WITHINGTON: We had discussed this question for several days before Judge Dodge. I hesitate to say we could finish it to-day; that is my difficulty, your Honor.

THE COURT: Apparently counsel believe this case will take longer to argue a motion here than it would to argue the case before the Full Court. I do not understand that position. That is the reason why I said it ought not to take any such great length of time.

MR. WITHINGTON: It is not the motion so much—it is not the matter so much of questions of law that are involved, as it is the examination of facts that are found and the relation of those facts to the results. It requires an examination and a careful examination of the whole report. Now as I said, this same motion took several days before Judge Dodge, and I cannot say that I think—

THE COURT: Are counsel willing to agree that all matters shall remain in *statu quo* until this case is heard next week?

MR. WITHINGTON: What do you mean, your Honor?

THE COURT: So that the situation of the parties will be no different then than now?

MR. WITHINGTON: I do not understand just what you mean.

THE COURT: I am sorry. I don't know how I can make it any plainer.

MR. WITHINGTON: If your Honor—

THE COURT: I make that suggestion in view of some things that were said to me at the last hearing about it.

MR. WITHINGTON: If your Honor means that in the meantime we agree that the Master should not file his report, then I certainly should say that we would prefer immediately to apply to the respective courts before whom counsel are trying and have this heard and disposed of, because we do not want to be foreclosed on a question which we think could be heard and disposed of at this time.

THE COURT: I cannot say anything more than I have said before. I am willing to spend all the time I have got. I cannot sit here Monday because I have to sit with the Full Court. I am willing to accommodate counsel, in view of the suggestion as to the urgency of the thing, and let all matters on this list go over until next week except the habeas corpus case here—I don't know but that has gone over already,—it is continued. So I am willing to postpone all other matters on this list and take this case up just as soon as counsel can be gotten here, provided it is finished to-day.

MR. WITHINGTON: It has been suggested that if you put it down for

two o'clock this afternoon we might agree to divide up the time that your Honor would permit for the consideration of this matter between the respective counsel. If Governor Bates could agree to that I think we might agree it would go on at two o'clock; otherwise I should prefer to get in touch with Mr. Whipple and have him make his request of Judge Morton.

THE COURT: Of course Mr. Whipple would have to make his arrangements with Judge Morton, although hearings in this court, I think, are entitled to precedence over matters in the Superior Court.

MR. WITHINGTON: I understand that is so, unless you were actually engaged in the trial of a case that was started before the matter was reached in the Supreme Court. I am sure Judge Morton would agree—

THE COURT: Was the trial in this case in the Superior Court going on before to-day?

MR. WITHINGTON: Yes; it has been going on for over two weeks in the District Court and has been going on for two weeks in the Superior Court.

THE COURT: I continued this motion to to-day last Friday at the suggestion of counsel, so I supposed they would be ready to take it up.

MR. WITHINGTON: They are, if you will allow us to get to them and get them to make their requests. I do not take the responsibility of deciding for Judge Morton, but last Friday when this case was heard he extended to Mr. Whipple that courtesy—

THE COURT: Of course if the case is heard I expect to hear it on the merits of the matter. I think it would be a waste of time to engage in an extended hearing on this motion on the preliminary question as to whether it should be set down for hearing, in view of the statements of counsel that it involves going in at considerable length to what would have to be gone over on a hearing on the merits. In other words it doesn't seem to me there is any need of two hearings when the preliminary hearing practically involves the same argument that would be made and the same investigation that would have to be made on a hearing on the merits.

MR. WITHINGTON: I assumed when I stated to your Honor that I didn't know whether we could finish in a day—I assumed that would be your Honor's decision.

THE COURT: In fact I so stated to counsel at the last meeting we had.

MR. WITHINGTON: That is so, I think.

THE COURT: Will counsel agree that if the matter is taken up at two o'clock that it may be disposed of by a proper division of time, if the Court should sit until six o'clock?

MR. BATES: I think we could readily assent to that suggestion. I see no reason why it should take all that time

THE COURT: I should hope not.

MR. WITHINGTON: That same confidence has been expressed so many times and it so often does take longer I am glad of the encouragement any way. I think we can agree to go on at two o'clock and we can make an equitable division of the time. If that is agreeable I will have Mr. Whipple make his request of Judge Morton.

THE COURT: We will, then, with that understanding, take the matter up at two o'clock.

#### AFTERNOON SESSION

The Court came in at two o'clock.

MR. WHIPPLE. May it please your Honor, I think it proper to say that when I presented to Judge Morton of the United States District Court the request that that case, in which I was engaged in trial, be suspended in order that this hearing might go on this afternoon, Judge Morton said that in view of the courtesies that he had had at the hands of this court on many occasions, he was very glad to comply with that request.

THE COURT: I think I ought to say that when your associate said you had a hearing before Judge Morton I assumed it was before Judge Morton of the Superior Court. I found, on looking at the transcript of what was said this morning, afterwards, that it was Judge Morton of the District Court.

MR. WHIPPLE: I thought that court, being a court of independent jurisdiction, that it was fitting that I should make known the courtesy and graciousness with which Judge Morton acceded to the request that was made by counsel.

THE COURT: Excuse me for interrupting you, Mr. Whipple. But before you begin it seems to me that it might be well to have some arrangement made as to the division of time for counsel.

MR. WHIPPLE: Before considering that, I am on my feet merely to ask leave to file a counter affidavit. In as much as there is attached thereto, or it refers to the final draft of Judge Dodge's report as master, I do not wish to file it now, I want merely to hand it to the clerk and then have it delivered to your Honor. We desire that the paper should not be used by the press or be published in any way in advance of the paper's being filed in the Court, but we deem it necessary that it should be made known to your Honor and we have taken this method of filing it and having it handed to your Honor for use merely in connection with this motion.

MR. THOMPSON: I may say, if your Honor please, that we also have just filed counter affidavits in which Judge Dodge's report—the final report—is referred to in these words: "A printed copy of the master's final report is hereby referred to and made a part hereof." We have not actually annexed the report itself, but we reserve the liberty of referring to it from the printed copy which we have received,

in so far as it may be advisable so to do.

MR. WHIPPLE: In the same way we have not attached the report but merely desire it before your Honor for the purposes of this hearing because it seemed the affidavit could not be complete without it.

THE COURT: I understand it is not to be filed at present?

MR. WHIPPLE: It is subject to your Honor's direction. It is merely to remain in the possession of your Honor. If it is filed, it will nevertheless remain in the possession of your Honor, because we do not feel that there should be any anticipation by way of publication of the master's report before it would naturally come before this court.

THE COURT: Any objection to that use being made of it, Mr. Bates?

MR. BATES: This involves a question which has arisen as to the appropriate meeting of this motion in that way. Your Honor will recall that our motion asks that no report be filed by the master in either case until both cases have been heard. We claim that it would be prejudicial to our rights to have it done. It seems to us though this in effect circumvents what it was anticipated might be accomplished by the motion and that it is intended to get before the court the very matters which we thought ought to be withheld by the master until after he had heard, as we claim, the evidence on the issues. I ought to add this, however, that in so far as this report contains a statement of the master's position in regard to this question of procedure before him, that it seems to me fair that that part of the report should be before your Honor in justice to the master, and I assume that your Honor would like to have it. But that the rest of the report should be submitted in this way, it seems to me is very questionable. I may add that I have just been handed the affidavit from Mr. Whipple. I haven't had time to examine it because it was handed me since I came into the court room. If it contains statements as to what will be, as he thinks, in the master's report when it is finally filed, I think that they are objectionable and should be eliminated. I am not certain that his affidavit contains this, but I am certain that the affidavit filed by Mr. Thompson, and which we did not see until two hours ago or thereabouts, does contain many statements as to what the master has found. I think those should be eliminated from the affidavit before the affidavit is received for the same reason that the report itself, except so far as it concerns this question of procedure, should be eliminated.

THE COURT: So far as the submission of the report, or a copy of it, to me is concerned—respecting that it does not in any way affect the master's duty to file his report. This is not his report. This is merely a copy of a paper which it is said he pro-

poses to file, and so long as the paper remains in my possession, I do not see how anybody is prejudiced by it.

MR. BATES: Perhaps I do not make myself entirely clear. We do not object to your Honor having the report in that way. What we do object to is an attempt to base the arguments on objections to that report which do not have relation to this matter of procedure. That attempt to base the arguments on other portions of the report would result in making public through the press—through the paper published by these plaintiffs themselves all that was talked about here in connection with this matter. It seems to me that they should be limited to the questions in regard to the procedure before the master and not be allowed to go into questions of the master's findings on questions of fact in these two cases.

THE COURT: I don't think we have anything to do with the master's findings because he hasn't made any. He may make before he finally hands to the clerk his report, a very different draft than what appears here now. I do not think I can treat what is contained in this paper as the master's report until it has been completed and filed.

MR. WHIPPLE: We do not submit it as such; we submit it as a copy of a paper which has been sent to us as and for his final report.

MR. BATES: May I point out to your Honor, that the matter in the alleged draft report that has been submitted by Brother Whipple which deals specially with this question of procedure is maragraph numbered 55, and numbered 78 and 81—I think it is 81—I will verify that.

MR. WHIPPLE: So far as we are concerned, if your Honor please, we think it is improbable that we should desire to refer to other parts of the report than those that have to do with the master's findings upon and dealing with this very question which is now submitted to your Honor. We do not wish, however, to conclude ourselves with regard to it, because we do not think that we can be invited here into a controversy or discussion of what has happened before the master with your Honor prevented from knowing what did happen before the master, as the master himself states it. We cannot be invited here to discuss an appeal from the master's decision without an intelligent understanding and presentation of what that decision is. We do not anticipate any trouble from the citations of the final draft of the report which has been sent us. I think we shall not find it necessary to do it unless the course of argument taken by the Governor shall lead into that labyrinth.

THE COURT: In view of that statement I do not think that it is necessary to go into it at this time and the arguments may proceed after you gentlemen have decided about a divi-

sion of the time. Mr. Thompson, you are going to argue, I suppose?

MR. THOMPSON: In as much as my client is perhaps one of the most interested parties, it would be appropriate for me to address a few words to your Honor.

THE COURT: I stated this morning I would be willing to sit until six o'clock if it was thought necessary to do so in order to have the case ended to-day. Now it is immaterial how that time is divided but I would like to have it understood now so there will not be any misunderstanding about it later. I may suggest that the proponents of this motion might take until four o'clock if they desired and the other side could have the remainder of the time.

MR. WHIPPLE: We do not want to be too nice about a division of the time, but I would like to call your Honor's attention to the fact that when your Honor was speaking to the other side, we are the plaintiff in our case, and Mr. Thompson's client is a defendant as Governor Bates' clients are defendants; that we haven't anything whatever to do with the Dittmore case, so called, except that it is attached to our case very loosely by an order of the Court that it should be heard with our case so that the testimony taken in our case would not be repeated when that case was heard, and by the further fact that in determining the relief to which we might be entitled under the master's report, Judge Dodge found it necessary to determine whether that relief should run against the four gentlemen who are named as defendants, four directors we will call them with Mrs. Knott as a fifth, or that the fifth was Mr. Dittmore. It is a mere incident in our case. What we are struggling for is not to have our case held up for the purpose of having the other case heard and disposed of. The hearings in our case have been absolutely completed. It has been argued and we have spent days on the master's report, and for the purpose of our case the master has made a finding as to which one is the proper defendant; therefore we desire and regard it as important for the interests of the Christian Science movement that there should be no delay in having the relations between the Board of Trustees and the Directors fixed and determined by the master's report and the orders and decrees of this court based thereon. There is nothing involved except as to when we shall get the orders, for relief, if we should be so fortunate as to get them. Nothing is left except the determination whether these orders should be served on Governor Bates' clients and Mrs. Knott, or whether they should be served on Governor Bates' clients and Mr. Dittmore as directors.

THE COURT: What I am trying to find out is about the time.

MR. WHIPPLE: I thought that

would help your Honor if you knew what the posture was.

THE COURT: It doesn't help me in any respect. I know nothing about this case. Do you think that Mr. Thompson and yourself should have more time, each, or should have as much time as the other side?

MR. THOMPSON: If your Honor will give me a moment on that?

THE COURT: I would be glad to hear anybody who will express an opinion on it.

MR. THOMPSON: I want to express an opinion that my client is actually interested in this motion—in both these motions, which affect him directly in a way in which Mr. Whipple's clients are not interested. I think I ought to have as much time for reply as Governor Bates has for making the attack. How much time your Honor will give Mr. Whipple is immaterial to me. I do not want to be classed with Mr. Whipple or Governor Bates and given time in a lump. I am as separate from one of these parties as I am from the other.

MR. WHIPPLE: If your Honor will apportion between the defendants the time that they ought to take, we will take what is left, if any. We should like to have a reasonable time for the presentation of our reasons as to why our case, which has been completed, should not be held up any longer, that is all.

MR. BATES: I have but one word at this time. While nominally representing different parties, they both represent clients who felt they had a grievance against our clients, and by reason of the grievances they have become as closely allied as the Central Powers, and they virtually are arguing on one side of the case. I cannot see why they should have twice as much time as we have under those circumstances.

MR. THOMPSON: I can only say I do not think that statement ought to have been made, and when your Honor gets through your Honor will feel so. I can only add that the statement is absolutely without foundation except to this extent, that it happens that my client and Mr. Whipple's clients might well be regarded as being on the same trolley car, subject to the same accident and in suing the people that injured them they had to use the same method. Otherwise they are as wide apart as the poles and always will be. As to the difference in the matter of time, I am interested in two cases and Mr. Whipple in one only. I certainly want time enough to show to your Honor why the findings which we have obtained in Mr. Whipple's case should not be disturbed and why the trial of my own case against these directors should not be used as a means of depriving us of the substantial victory which we have won on a fair hearing on the issues presented in Mr. Whipple's case, which covers about 75% of the issues raised in his own case.

THE COURT: I think I will allow

you three counsel an hour apiece, and each fifteen minutes for reply.

MR. THOMPSON: That is satisfactory to us.

MR. BATES: Could we have the close—the closing fifteen minutes?

THE COURT: Yes.

MR. BATES: We are here, your Honor to endeavor to state briefly the situation to the end that no injustice may be done. We are not here to attack any one. We are here solely to ask that we have a chance to be heard before there are any findings made against us.

The motion which we have filed has been filed in two cases, one designated as the case of Eustace et al. v. Dittmore et al, and the other designated as Dittmore v. Dickey et al. In order that you may have sufficient information to clearly see how this question has arisen, I am going to make a few preliminary remarks that I trust will help clear the situation, and I will do it before reading the motion.

The Christian Science Church is a religious denomination. It was founded by Mary Baker Eddy and its form of government and organization is peculiar to itself but is one that was formed by her and all her followers consider themselves as loyally bound to maintain it. It has been a movement that has had a large and rapid growth. She provided for the First Church of Christ Scientist as it is called,—it is also called The Mother Church and is located in the city of Boston. That is the Mother of all the branch churches which are located throughout the world, there being over 1800 of them and the numbers running into very high figures. The Church in Boston, known as The Mother Church, has among its members not only those who live in this vicinity, but also members all over the world. It is the privilege, and more than the privilege in a way, of the members of the branch churches to also become members of The Mother Church. The directors of the Mother Church are a body that has charge of the business of that Church and its relations to the rest of the movement. During Mrs. Eddy's lifetime by-laws were laid down for the government of that Church and its branches; she originated them and they are regarded as inspired, by her followers, and they do not even attempt, since her passing on, to make any change in them. Under these by-laws the directors are given large and important duties to discharge. In general, when we refer to the directors in this case, we are referring to the people who are occupying the office of directors and known as the Christian Science Board of Directors. There are no other directors in the movement than these of The Mother Church at the head of the movement.

The Christian Science Publishing Society exists under a trust deed that was made by Mrs. Eddy in 1898. Under that trust deed three trustees were constituted and appointed and

their successors or their alleged successors are the plaintiffs in the first suit of Eustace et al v. Dickey et al. Under the deed of trust which I have referred to, in 1898, there were certain duties laid upon the trustees, but there were also provisions which gave to the body known as the First Members together with the Directors of the Christian Science Church, the right to declare vacancies in the trusteeship. The First Members, it is claimed, passed out of existence as a body many years ago, with Mrs. Eddy's sanction and approval, and the by-laws relating to them were dropped with her approval from the Church Manual which contains the by-laws. The directors claim that the power which is given to declare vacancies in the Board of Trustees survived to them as the survivors of the Board and that therefore they had a right under the trust deed itself to declare vacancies in the Board of Trustees. In addition to that there were by-laws that had been approved by Mrs. Eddy that also concerned this Christian Science Publishing Society. Those by-laws provided in part that the editors of all the Church papers which were published by this Publishing Society or by these trustees known as the Publishing Society—that the editors should be elected by the directors. The Church by-laws further provided that the business management should be elected by the directors of the Church. They charged the directors with a supervision of the literary periodicals published by the Publishing Society. It also gave to the directors the power to remove one of the trustees or more of the Publishing Society, giving them the same power that the directors claimed was also given them by the deed of trust in that respect.

Some months ago, a matter of two or three years, the successors of those who had originally been trustees, began to question the right of supervision of the Board of Directors over them. They claimed that under the trust deed they were an independent board—Independent of the Board of Directors, and that therefore the Board of Directors had no control over them or the church organs that they published; that notwithstanding the fact that these church organs contained official lists of those who were qualified as practitioners and contained official lists of the churches and were the only official lists of the movement.

The directors having regard to their duties as they conceived them, not only under the deed but also under the by-laws, claimed that it was necessary for the purity of the faith and of the doctrines that were published in these papers that they should continue, as they claimed they had always been, under their supervision and that it was necessary for the welfare of the Church and of the movement, as well, that under the by-laws there was no course open to them but to in-

sist upon that supervision. This led to a breach between the Publishing Society or the trustees and the directors. There were many attempts to see if this matter could not be adjusted without waiving in any way the principles involved. It became impossible and finally the directors of the Church removed one of the trustees, Mr. Rowlands, in the hope that it might cause the other trustees to recognize what they claimed were the obligations of the trustees to the Church and result in their continuing as trustees under the same course of conduct as their predecessors had. The removal of Mr. Rowlands was contested. This removal took place on the 17th of last March. It was contested by the trustees and they soon after brought this first suit of Eustace et al v. Dickey et al, in which they sought to prevent the directors from further interfering with them on the ground that they were independent under the trust deed and also sought to have them enjoined from interfering with Mr. Rowlands' activities as a trustee. The case is called Eustace v. Dickey and not Rowlands v. Dickey solely by reason of the fact that Mr. Eustace was the one who was first named as a trustee in bringing the suit. But Mr. Rowlands was the one who was removed.

The Board of Directors had consisted for many years of five members. Among them was Mr. Dittmore. There had been more or less friction between him and his associate over a long period of time. It came to a crisis at the same time that the crisis developed in regard to the trustees and on the same day, March 17, 1918, when the directors thought it their duty to remove Mr. Rowlands as trustee, they also removed their associate Mr. Dittmore as a director and elected Mrs. Knott in his place. The power under which they acted was, of course a different by-law from the one under which they acted in the matter of the removal of Mr. Rowlands. Mr. Dittmore was removed from the Board of Directors; Mr. Rowlands was removed from the trusteeship. Mr. Dittmore waited until April 29 when he filed his bill, asking that he might be restored to his office, or that the act of the directors in removing him might be declared without effect. That is why we have these two cases against the same defendant directors, practically. When the suit was brought by the trustees to determine their rights, they asserted that Mr. Dittmore had been a director up to March 17, that they understood there had been an attempt to remove him; that they did not know whether that attempt was sufficient or not, but they further alleged that Mrs. Knott had been elected in his place and they asked for an injunction against six defendants and not against five. They also further stated during the course of the case that they were disinterested in the question whether or not Mrs.

Knott or Mr. Dittmore was actually a director, stating that all they desired was to enjoin the directors as a Board and not to enjoin individuals personally.

Shortly after the Eustace case was brought, it was referred to a master, Judge Dodge, to hear the evidence. That was on May 9, 1919. On May 17 there came up before the court the question of the reference to the master of the case of Dittmore v. Dickey et al. It was agreed by all counsel that it might be referred to the same master. Then the question came up as to whether or not the two cases should be heard together, and the court made a rule referring the case to a master, but also made this additional order, in Dittmore v. Dickey et al, "Order of Court. And now it is ordered that the above entitled case be heard with Eustace et al v. Dickey et al." That order was given on May 17, 1919, and the hearing of the cases was to begin before the master, it being understood that the first case chronologically should be considered first, but that any evidence introduced in that case that had a bearing on the other should be considered as introduced for the purpose of both cases and that then the first case was finished the other case should be taken up and proceeded with. I should say when the evidence in the first case was finished then the evidence should be heard in the second case. I shall show to your Honor from the affidavits we have filed, that the reason why that case was urged to be heard with the Eustace case was because of the insistence largely of my brother Thompson, that it was inconceivable that the question as to Mr. Dittmore's status as a director could be determined in the first case without hearing the second case, because the second case brought by Mr. Dittmore was brought having as its main issue the question as to whether or not Mr. Dittmore had been properly removed, and Mr. Thompson suggested that question might be and probably was involved in the first case only so far as deciding as against whom relief might run should the court decide that the trustees were entitled to relief.

In accordance with this understanding the cases proceeded to be heard by Judge Dodge and were being heard last July when General Streeter, one of counsel for Mr. Dittmore, was taken sick and his associate counsel urged that the Dittmore case itself would have to be heard at a time when General Streeter could be expected to be back and that it was likely to be some time further on, but that in the meantime, as also suggested by Mr. Whipple, the Eustace case might be proceeded with and the evidence that related to that case only put in so far as possible. We shall show by these affidavits that everybody understood—by everybody, I mean counsel for all the different parties in these two cases

and the master himself, that this issue in the Eustace case and the main issue in each case was, whether or not Mr. Rowlands had been properly removed and whether or not the directors had the right to do it, and that the issue in the Dittimore case was whether or not Mr. Dittimore had been properly removed and whether or not the directors had a right to do it as they did, and that the Dittimore case was brought for the very purpose of determining that questions and that they were ordered heard together in order that there might be no conflict later on in regard to the matter, and in order that the master who heard them might have the evidence before him in the Dittimore case so as to make his finding in both cases corresponding to that issue, if it was an issue in the Eustace case.

That understanding we shall show your Honor continued until August 2, in everybody's mind. On August 2, the evidence in the Eustace case was closed. There had been no opening in the Dittimore case, and no opening in that case was proposed at present because of General Streeter's sickness, and when counsel for the directors had asked the court for instructions in regard to the order of procedure, it had been insisted that they had no right to put in evidence relating to the Dittimore case until after it had been opened by Mr. Dittimore's counsel and therefore it was not offered. There was no exception taken to those suggestions or rulings by reason of the fact that it was still understood that there was to be no decision in either case until after the evidence had been offered in both cases. This we think will also clearly appear from the affidavits which we have filed.

MR. THOMPSON: We have just discovered, your Honor, that this second affidavit was delivered at my office at twelve o'clock to-day. It is well known I was trying another case. I have never seen it and never knew until now that more than one had been filed. It was well understood by counsel I was engaged in trying a case and was not in my office during court hours.

MR. BATES: I assumed your office was the place to leave it, as you were not trying a case during the luncheon hour.

MR. THOMPSON: The lunch hour to me, on account of this, was ten minutes. Mr. Demond was ready to receive any papers on my behalf; they might have been given to him.

MR. BATES: We assumed that Mr. Thompson had this paper. We find he hasn't. The paper was filed in his office immediately after Mr. Demond had brought us in a copy of his affidavit, therefore with as much rapidity as possible we filed the affidavit. It was designed to meet some suggestions in his affidavit. We left it at his office and supposed that he had it until now.

THE COURT: I understand a copy has just been handed him.

MR. THOMPSON: Yes, your Honor.

MR. BATES: There was considerable discussion after the close of the evidence on August 2, as to just what was involved in the matter of Mr. Dittimore's status in the Eustace case. It was at that time that Mr. Whipple suggested he didn't see that that issue had to be decided in his case any way, that he was perfectly content to have the injunction, if he succeeded in obtaining relief, against the directors as such and he didn't ask to have that question determined. The master intimated at that time that the evidence being closed he thought he would have to find that issue. Mr. Whipple stated "perhaps we will have to postpone the decision of the Eustace case until after you have heard the Dittimore case." The result of it all was that the master asked us to consider the question and counsel did take it under consideration. It was decided that the Dittimore case should go on on October 6, which was the latest time at which it was thought that General Streeter could be there. It was decided that the arguments could be made in the Eustace case on September 8th.

THE COURT: Was it understood that the evidence in one case could be used in the other case?

MR. BATES: Yes, your Honor.

MR. WHIPPLE: That is not our understanding, if your Honor please. There is a finding on it. It was understood that the evidence put in in our case so far as applicable in the other, might be put in. Judge Dodge makes a finding on that point.

MR. BATES: It was understood by all parties that so far as Mr. Dittimore's status was concerned evidence on that was to be presented in the Dittimore case; that so far as it was an issue in the Eustace case, if it was one, it would be determined by the finding in the Dittimore case. That was the object of bringing the Dittimore case; that was the object of the rule; and there has been no other object in it, and I think the affidavits will bear out my statement. I might say, your Honor, that the second affidavit which has just been referred to as filed quotes from the statements of counsel and of the master during the hearing and they are statements which I think are conclusive in regard to the understanding of all parties in regard to the matter.

We did consider it, as the court had suggested, and as a result of our consideration on August 30, eleven days before the day set for the argument in the Eustace case, we sent word to the master that we could not agree that the Dittimore status was an issue in the case of Eustace, or that if it was it could possibly be decided by him until after he heard the Dittimore case and therefore we should not prepare to argue on that question unless we were further advised by him. As a result of that he gave counsel a chance to be heard on September 3, and at that hearing on September 3 against

the protest of counsel for the defendants other than Dittimore, he finally ruled for the first time that it was an issue in the Eustace case, and that it was a matter to be heard before him—to be argued before him in the Eustace case.

We took an exception to that rule and we saved our rights by reason of the fact that it was deciding an issue that was the issue involved in the other case that had been referred to him to be heard under the rule with the Eustace case. It hadn't been so heard and therefore could not be decided; and that furthermore it was not a proper issue in the first case any way, that the question as between the co-defendants could not be so determined as matter of law. We took an exception and saved our rights. When it came to the question of argument we saved them specifically, and saved them specifically again in our requests for findings and finally when the master filed his draft report with us and we were having the hearings, the first thing we did was to take up that question and ask him to take out of his findings—those findings which we claimed could not be made until after the Dittimore case had been heard. After we had found that that was not going to succeed, near the close of the hearings of the draft report, we then made the motions which have been referred to and which he denied and which caused us to come to this court for relief.

From the time we took our exception to the ruling and protested against it as unfair and contrary to the rules of the court as we understand them, up to the present time, we have in every way possible sought to have the Dittimore case heard before there should be any decision on the Dittimore issue in either case.

Now I would like to read to your Honor one of the motions. The same motion is filed in each case. I will read the motion in the case of Eustace et al. v. Dickey, et al.

HERBERT W. EUSTACE ET AL. V.  
ADAM H. DICKEY ET AL.

No. 30,654

#### DEFENDANTS' MOTION

Filed with like motion in Dittimore v. Dickey et al, No. 30,788.

Now comes the defendants Dickey, Neal, Merritt, Rathvon and Knott in the above entitled case of Eustace et al v. Dickey et al, and respectively represent:

1. That on May 9, 1919, the said case entitled Eustace et al v. Dickey et al was referred to Hon. Frederic Dodge, as Master, "to hear the parties and their evidence, to find the facts and report the same to the court", and on May 17, 1919, the case entitled Dittimore v. Dickey et al, No. 30,788, was also referred to said Master under an order of this court that the same

"be heard with Eustace et al v. Dickey et al", being said case No. 30,654.

That thereafter the Master heard all of the evidence in Eustace et al v. Dickey et al, but only a part of the evidence in Dittmore v. Dickey et al. That after the evidence was closed in Eustace et al v. Dickey et al and before the case of Dittmore v. Dickey et al had been opened and before the plaintiff therein had testified or called any witnesses in his own behalf and before any testimony in chief had been introduced therein by these defendants the Master ruled against the objection and subject to the exception of these defendants that the issue, whether or not John V. Dittmore, the plaintiff in Dittmore v. Dickey et al and one of the defendants in Eustace et al v. Dickey et al, was a member of the Christian Science Board of Directors when the bill in Eustace et al v. Dickey et al was filed, viz., on March 25, 1919, was an issue of fact upon which he must pass in Eustace et al v. Dickey et al.

That the bill in Dittmore v. Dickey et al was brought to determine the validity of the dismissal on March 17, 1919 of the said Dittmore as a member of the said Board by the other members thereof and said issue whether or not he was a member of said Board on March 25, 1919 when the bill in Eustace et al v. Dickey et al was filed, is one of the chief issues raised by the pleadings in said case of Dittmore v. Dickey et al, the evidence bearing upon which has been heard only in part as above set forth. That these defendants have material evidence bearing upon said issue which they desire to introduce before said issue is determined, but which as yet they have had no opportunity to do for the reason that they understood and had reasonable ground to understand that such evidence could be presented in the trial of Dittmore v. Dickey et al and would be received before any determination of the facts relating to said issue was made by the Master.

That the Master has prepared and submitted to counsel a draft report in Eustace et al v. Dickey et al only, in which he has made findings of fact and rulings of law as to said issue adverse to these defendants without having heard all of the evidence relating thereto as above set forth.

That after the submission of said draft report containing said findings and rulings, these defendants requested and moved that the Master suspend the settling of his said draft report pending the hearing of all the evidence bearing upon said issue and requested and moved if he held it necessary and proper to determine said issue in Eustace et al v. Dickey et al then to make no report in either case until both cases should be fully heard as required by the aforesaid orders of reference made by this court.

That these defendants further re-

quested the Master to reopen the case of Eustace et al v. Dickey et al if he considered it necessary and proper to decide said issue in said case for the purpose of receiving evidence on behalf of these defendants bearing upon said issue which evidence was not offered by these defendants because they were led to believe and had reasonable ground to believe that the same could be offered in the hearing of Dittmore v. Dickey et al and before any determination of said issue.

All of which requests and motions made on the part of these defendants the Master refused and now refuses to grant unless so ordered by this Court.

2. That these defendants understood and had reasonable ground to understand that no decision on the facts relating to said issue would be made by the Master without hearing all of the evidence relating thereto and that no decision on the facts relating to said issue properly could be made by the Master until after the case of Dittmore v. Dickey et al was fully heard, and relying upon said understanding a large part of the material evidence bearing on said issue was not offered by these defendants during the trial of Eustace et al v. Dickey et al. That notwithstanding the foregoing the Master has made findings of fact on said issue in his said draft report adverse to these defendants in respect to which these defendants have been surprised and prejudiced. That although requested so to do, the Master has declined to re-open said case to hear further testimony on the ground of surprise on the part of these defendants unless so ordered by this Court.

That the findings and rulings relating to said issue contained in said draft report are based upon a part only of the material evidence, and are findings and rulings upon an issue raised by the pleadings in the case of Dittmore v. Dickey et al which case has not yet been heard fully by the Master, and unless the Master be directed to hear both cases in full in accordance with the aforesaid orders of reference before filing a report in either case, these defendants will be deprived of a fair and full hearing upon said issue.

WHEREFORE, without waiving the objection and exception heretofore reserved by these defendants to the Master's ruling that the issue whether or not the said Dittmore was a director when the bill in Eustace et al v. Dickey et al was filed is an issue of fact which the Master must decide in Eustace et al v. Dickey et al, these defendants move the Honorable Court to direct the Master to hear all of the evidence relating to said issue as raised by the pleadings in both of said cases before filing any report in either of them.

By their solicitors,  
(Signed) Bates, Nay, Abbott & Dane  
Clifford P. Smith  
Edwin A. Krauthoff.

The COURT. Isn't the question whether Dittmore was a director at the time the bill was filed—doesn't the answer to that depend on whether his associates had power to remove him or not?

Mr. BATES. Yes, your Honor.

The COURT. I didn't mean to interrupt your argument.

Mr. BATES. Since the affidavit was handed to us by the counsel for Mr. Dittmore, late this forenoon, we have filed in the court this affidavit—the same affidavit in each case.

(Mr. Bates proceeds to read the affidavit above referred to, as follows:)

#### *Affidavit*

"In support of motion of defendants Dickey, Neal, Merritt, Rathvon and Knott heretofore filed in the above entitled case pending in said court, I, John L. Bates, of counsel for said defendants, upon oath depose and say—"

Mr. BATES. I should have said, your Honor, that the motion was also sworn to, verified by affidavit.

"That I was personally present at each and every hearing held before the Master in the trial of said case and was also personally present at a hearing on May 17, 1919, in this court before Mr. Justice Braley in the case of Dittmore v. Dickey et al, No. 30,788, the bill in which was filed April 29, 1919; that at said hearing William G. Thompson, Esq., one of the counsel of record for the plaintiff Dittmore (one of the defendants in Eustace et al v. Dickey et al, No. 30,654) moved this court that an order be made that said last mentioned case and the case of Dittmore v. Dickey et al be tried together, saying in part in support of said motion—"

Mr. BATES. If I may, your Honor, I would like to make perhaps one or two comments as I go on, which will save going over this again. I am now quoting from Mr. Thompson:

"The question whether we are or are not a Director is distinctly raised in that bill. (in Eustace vs. Dickey et al) in all its details, and in no other details than those stated in the present bill (Dittmore v. Dickey et al) against Mr. Bates' clients. In the present bill the same allegations are made; the same ground is threshed over in somewhat more detail, but the whole point is whether Mr. Dittmore was or was not regularly under the By-laws and under the common law as it applied to such a situation, and under the construction of that By-law in connection with other By-laws whether he was discharged correctly. It would be a singular thing for Judge Dodge to be obliged to hear that first, while hearing Mr. Whipple's case, and then to have the whole thing opened up again to hear our case. That would be a remarkable situation. As to the other suggestion, that it will make for delay in the hearings, it is inconceivable that the Master would undertake



to decide the Eustace case before he heard the evidence in this case. Whatever the order of these two cases is, he is going to decide them at the same time, because it takes hardly any judgment to see that he might, if he decided the Eustace case on the first issue before we put in all the additional evidence we have, reach a different conclusion that he would reach after hearing our evidence. He is, therefore, going to reserve his decision in the Eustace case until he has heard all the evidence in both cases on that point."

"And again at the same hearing the same counsel said:

"I cannot see any reason for not trying these two cases together. . . . Analyzing the matter, I see no logical reason why the ordinary rule in a matter of this kind, the time saving, economic rule is not a just rule and should not apply. I see no distinction between this and other cases. I think it has been an almost unprecedented thing in cases of this kind whether the same particular issue and most of the same general issues are alike, that they should be required to be tried separately."

The COURT. Whose statement are you reading now?

Mr. BATES. I am reading Mr. Thompson's statement when he was urging the court to order his case, the Dittimore case, to be heard with the Eustace case, and upon that argument the order was issued.

"That after the said argument made in this court by said counsel and after arguments by counsel for the other parties in said case of Dittimore v. Dickey et al this court on the said seventeenth day of May ordered said last mentioned case to be heard with Eustace et al v. Dickey et al, that said hearings in said two cases commenced before the Master on June 3, 1919, and the evidence in Eustace et al v. Dickey et al was closed on August 2, 1919; that at all times prior to the close of the evidence on said last mentioned date all parties treated the issue whether or not defendant Dittimore was a Director at the time the bill was filed in Eustace et al v. Dickey et al as an issue which could be decided only after the said case of Dittimore v. Dickey et al had been fully heard, as is shown by the following statements of counsel and the Master made from time to time between the commencement of the hearings before the Master and the close of the evidence in the case of Eustace et al v. Dickey et al."

Mr. BATES. Then follow statements of counsel for the plaintiffs in Eustace et al v. Dickey et al. These were statements by Mr. Whipple:

Statements of counsel for Plaintiffs in Eustace et al v. Dickey et al.

On June 3, 1919, the first day of the hearings before the Master, counsel for the plaintiffs in Eustace et al v.

Dickey et al stated, referring to the parties made defendant in said last mentioned case:

"The suit was brought in the manner described because just prior to the filing of the bill the four remaining directors attempted to oust Mr. Dittimore from his office as a Director, attempted to remove him, and attempted to elect Annie M. Knott as his successor, as one of the Directors. I do not mean to suggest by that form of speech that they either failed to oust Mr. Dittimore or to elect his successor, but merely to indicate that there is a claim on the part of Mr. Dittimore that he was not properly ousted, that he is still one of the directors of The First Church of Christ, Scientist, and that Mrs. Knott was not duly elected, of course, as his successor.

That leads me to say that a second suit has been referred to your Honor in which that very controversy is raised as the principal and perhaps the only issue. That is a suit by Mr. Dittimore against four of the other defendants in this suit who were his associate trustees and perhaps still are, and Mrs. Knott is also named as a defendant."

On July 7, 1919, just before the close of the Plaintiffs' evidence in Eustace et al v. Dickey et al, at which time counsel for defendants in said last mentioned case was urging that the case of Dittimore v. Dickey et al be opened before proceeding with the defense in either case before the Master, counsel for plaintiffs in Eustace et al v. Dickey et al stated:"

Mr. BATES. Your Honor will notice there that we were urging that the counsel for Mr. Dittimore should open that case, in order that we might examine the witnesses more fully and put on witnesses and examine them in chief on the Dittimore issues at that time. Now Mr. Whipple states:

"Whatever evidence is offered in our case it is applicable in the Dittimore suit I understand will be taken; but I do not understand that there is any evidence in that suit that will be taken in ours, or that there is any issue there involved which interests us, and if we could escape attendance upon what seems to be a long trial, if we are entitled to, we desire to insist upon it."

On July 23, 1919, while the evidence was still being introduced before the Master, the same counsel stated:

"We are not involved, of course, in this controversy with Mr. Dittimore, and the most that Mr. Dickey has testified to seems to concern that controversy rather than the narrower issue that is involved with the Trustees."

On August 2, 1919, on the day and after the evidence in Eustace et al v. Dickey et al was closed, the same counsel stated:

"May I offer a suggestion, your Honor? With reference to the period of time during which we complain of

what the Directors were doing, we allege that Mr. Dittimore was a Director, and we ask relief against him not as an individual but in his representative capacity and, offhand, no reason occurs to me why there should not be a report with reference to the Directors as a Board, without determining whether Mr. Dittimore or Mrs. Knott was the actual occupant of that position. That is, the report, if it should happen to be in our favor, would be against the Board of Directors and not against the individuals."

Mr. BATES. That was Mr. Whipple's statement, when there was a discussion with regard to issues in the Eustace case, after the evidence had all been closed. The Master then stated that it seemed to him at present—he didn't make a ruling, he made a suggestion—

"The Master then stated that it seemed to him *at present* that it would be necessary to determine whether Mr. Dittimore was a Director on the day the bill was filed in Eustace et al v. Dickey et al. Whereupon counsel for the said plaintiffs stated:

"Well, it may well be that it must be postponed to the determination of the fact as to whether Mr. Dittimore was then a Director or not. . . ."

Mr. BATES. In other words, your Honor, it was the same as saying to Judge Dodge, the same as we had said, "If your Honor finds that you have got to find that question of the fact of Mr. Dittimore's status in order to determine the Eustace case, then of course it must be postponed until after you have heard the Dittimore case. That was Mr. Whipple's own statement, after the hearing was closed, and no one dissented from that statement, or, as the affidavit says:

"To which statement no one objected. The same counsel (Mr. Whipple) then added:

"After all, is that question not pretty much a question of law."

And the Master replied; 'I think so.' The Master then stated:

"I am convinced that it would be useful for counsel to consider the situation at this point in these respects, fully, and not to have any misunderstanding about it."

Whereupon Mr. Bates stated:

"Do I understand Mr. Thompson to make the proposition that he is willing to rest the Dittimore case where it is?"

Mr. Thompson replied:

"I do not make that proposition. I threw it out as a suggestion for you to consider."

Mr. Bates then asked:

"Do you make it as a proposition?"

Mr. Thompson replied:

"No, I do not make it now."

This colloquy occurred after all the evidence before the Master had been introduced."

Mr. BATES. That shows Mr. Whipple's view, Mr. Thompson's view, and my own view as to the situation at that time. Now as to the statement

made by counsel for Defendant Dittmore, as showing the same understanding:

"On July 7, 1919, at the close of the plaintiffs' evidence in Eustace et al v. Dickey et al, when counsel for defendants other than Dittmore were urging that the case of Dittmore v. Dickey et al be opened before the evidence of the defendants was put in in either case, counsel for Dittmore stated: (Mr. Streeter)

"This was all gone over at the hearings in some other room or where we were the first morning—all fully arranged and discussed, and it was decided that Eustace v. Dickey should go on first. We even discussed about the opening. The defendants were to put in their evidence in Eustace v. Dickey and then we should open in the Dittmore case and proceed to the end, and so far as any testimony in Eustace v. Dickey was put in either by the plaintiff or the defendant that was competent in the Dittmore case it should be available."

On the same day counsel for defendant Dittmore (Mr. Thompson) stated; in speaking of the order of proceeding:

"The fact that we have cross-examined them (witnesses called by plaintiffs in Eustace v. Dickey) gives no right to you to require us to make an opening, or give the Master a ground to require us to do so. That is a direct violation of the agreement. Nor does it give you any right, while putting in your defense to Mr. Whipple's case, to anticipate your defense to our case which we have yet to put in through Mr. Dittmore, and which we do not have to put in until we complete your defense in Eustace v. Dickey. You are asking for an opportunity to anticipate a plaintiff's case that has not yet been put in, the reason given being that we in effect are anticipating our direct case by cross-examining your witnesses. That is perfectly proper for us to do, but it would be grossly unfair for you to go ahead and meet a case that has not been put in by an interested party, namely, Mr. Dittmore."

Mr. BATES. Now your Honor can read between the lines, that the controversy was over the question whether or not we should examine our witnesses in chief in the Dittmore case at that time, and it was suggested that it was contrary to the agreement that had been made and the understanding, and that we must wait until after they had opened. Therefore we were not putting in our evidence. We were not taking any exception to that ruling because it was then understood by everybody that Dittmore was to be heard after the close of the evidence in the Eustace case.

The COURT. Was the evidence closed in the Eustace case?

Mr. BATES. The evidence was closed in the Eustace case on August 2.

The COURT. After the evidence

was closed was the case argued before the Master?

Mr. BATES. The case was argued before the Master on September 10; but in that argument, that is, after he had made this ruling of September 3, in which he finally ruled that that was an issue in that case—a ruling to which we excepted, on the ground that we had had no day in court on that matter—in arguing the case we stated that we argued it, in effect, without waiving our exception or our protest at the method of procedure.

The COURT. Suppose the Master had proceeded to hear the Dittmore case without proceeding to file his report, or prepare his report, and at the conclusion of the evidence in the Dittmore case the defendants had felt that there was something which they were entitled to reply to, would they have been able or entitled to introduce any evidence in reply in the Eustace case, under those circumstances?

Mr. BATES. No, your Honor; but it was understood that the question of Mr. Dittmore's status was the issue that was being tried out, or to be tried out, in the Dittmore case, and that therefore his finding in the Dittmore case must necessarily precede his finding in the Eustace case if he was going to consider that as an issue in the Eustace case.

The COURT. Well, I understand that your claim is that in determining the Eustace case he should have heard the evidence in the Dittmore case.

Mr. BATES. No; our claim is this, your Honor; that he should have gone ahead under the rule and heard the evidence in the Dittmore case before filing his report on either; and the evidence in regard to Mr. Dittmore's status, in whichever case he was to make his finding, was to be determined by the evidence to be introduced in the Dittmore case, plus such evidence as had already been introduced in the Eustace case.

The COURT. I am not quite sure that I understand what you say now. If the hearing in the Eustace case was to be suspended until the evidence was taken in the Dittmore case, then wasn't the Master entitled, on your theory, to take into consideration what he heard in the Dittmore case in deciding the Eustace case?

Mr. BATES. If he decided that that was an issue in the Eustace case. Up to August 2 nobody considered that that was an issue that could be decided in the Eustace case.

The COURT. Then if it was competent for him to take into consideration in the decision of what I may call the first case, the Eustace case, what he heard in the Dittmore case, then why wasn't the defendant entitled to reply to that evidence?

Mr. BATES. Oh, the defendant was.

The COURT. But I thought the evidence was closed in the first case.

Mr. BATES. Well, the evidence was closed in the first case on the Eustace

issues, which were supposed to be the only issues involved in that case.

The COURT. Well, wasn't that the issue in that case? The issue in the Eustace case was whether Rowlands, if that is his name, was properly removed?

Mr. BATES. Yes, your Honor.

The COURT. The issue in Dittmore's case was whether he was properly removed?

Mr. BATES. Exactly; and that was the understanding, that the evidence in regard to those two should be presented in the two separate cases; but the Master has gone to work and attempted to decide both issues in the first case, without having heard the Dittmore case.

The COURT. I don't want to interrupt you too much.

Mr. BATES. I am glad to have you, your Honor.

The COURT. But I want to ask you a little about the situation there. Is there anything on the record, outside of the remarks of counsel, which I am not referring to, as indicating what the reference was to the Master, except as it appears here on these two dates which are set out? In the first place, the original reference, in the case of Eustace v. Dickey, on the 9th of May, and, afterwards, what appears to have been done on the 17th of May, when the Dittmore case was also referred to the Master.

Mr. BATES. I think there is nothing else, your Honor.

The COURT. Nothing else?

Mr. BATES. Nothing else. There was Judge Loring's memorandum interpreting the rule in regard to the question as to whether the Master was to rule on questions of law. There was a memorandum of Judge Loring's filed in that case and that is on the record, but that does not have anything to do with reference to the two cases being tried together or heard together.

The COURT. Well, then, the substance of the rule of reference is that these two cases were to be heard, that the Dittmore case is to be heard with the Eustace case, whatever that means.

Mr. BATES. We assumed that, naturally, as the meaning that would be applied to it, and that meaning is justified by the quotations from the arguments which I have read and by the issues as shown by the pleadings in the two cases.

Mr. WHIPPLE. Mr. Justice Braley's interpretation of it appears in our affidavit,—his own interpretation of it as he gave at the time.

Mr. BATES. I have what Judge Braley said here if you wish to put it in, Mr. Whipple.

Mr. WHIPPLE. Oh, no. I am going to speak in a moment. Your time, I think, is nearly finished, and I will present it then?

The COURT. Your time is up, Mr. Bates, but I have interrupted you so

many times that I think I ought to allow you a little more time.

Mr. BATES. I do not wish to trespass.

The COURT. If you desire it.

Mr. BATES. —on the time assigned to others; but I would like to call your attention to some facts stated in this affidavit, which I will not read but which I assume your Honor will have before you before you decide the motion.

I will state, in brief, that in this affidavit there are contained the statements, several statements by Mr. Thompson that occurred during the course of the trial in which the same views were expressed. There are also statements which I made,—one, for instance, on July 29, where, in connection with some colloquy that arose on a question of adjourning over to accommodate Gen'l Streeter in the Dittemore case, I made this statement:

"I may say that your Honor might be a little embarrassed in the decision of the Eustace case"—Mr. Whipple was urging that case should be decided as speedily as possible—

—"which alleges that Mr. Dittemore may be, or that Mrs. Knott may be, a Director; in other words, your Honor might find it necessary to find out whether or not Mr. Dittemore or Mrs. Knott is a Director in deciding the Eustace case. That cannot be done until the Dittemore case is completed." And there was no objection taken to that statement, nobody demurred to it; in fact, Mr. Thompson, as you will see by this affidavit, quoted it the next day and said that I was right in that contention,—that he could not decide this issue in this case until he heard the Dittemore case, under the rule.

Then there are several quotations from the Master, showing that his mind had considered the situation similar to us up to the time of practically the closing of the evidence in the Eustace case; and that is that we were to reserve our evidence on the Dittemore issue until the Dittemore case was opened. Now, without having time to read those quotations,—and I regard them as highly important and there can be no question about the effect of them,—I am just going to come now to what the Master said when we were on the question of the settling of his report, on January 10 of the present year:

"On January 10, 1920, at a hearing before the Master on the Master's Draft Report, counsel for defendants other than Dittemore called the Master's attention to the fact that all parties at all times until the close of the evidence regarding the question of Mr. Dittemore's status as a Director as a question to be determined upon the evidence in *Dittemore v. Dickey*, and stated in substance that he was trying to satisfy the Master that up to the time that the evidence was closed nobody supposed that the question of Mr. Dittemore's status was to be determined by the Master until after the

Dittemore case had been heard. As to which the Master then said:

"Well, I don't suppose that that will be disputed. I didn't dispute it." And then I replied:

"Well, then, I am glad your Honor does not, because I think that that justifies our position."

In other words, his Honor admitted, on January 10, 1920, in the hearing on the settling of the Master's report, that we were right in our contention that nobody up to the time of the closing of the evidence in the Eustace case supposed that he was going to attempt to decide Dittemore's status in that case or that he could possibly do it until after he heard the Dittemore case.

Mr. WHIPPLE. Pardon me, Governor. Are you sure of that quotation?

Mr. BATES. I am absolutely sure of the quotation. If you have any question about it I can point it out to you in the record at this moment.

Mr. WHIPPLE. We shall point it out as soon as we get a chance.

Mr. BATES. Just one moment more, your Honor, and I will stop.

We had a right to assume, I think your Honor will find, that no decision on the facts was to be made as to the Dittemore status until after the Dittemore case had been heard. These things gave us that right, briefly. The rule itself gave it to us; it gave us reasonable ground to expect that this case was to be heard with the other case so that that issue might be determined in that way. The reasons urged by the counsel for the granting of that rule gave us the right to expect it. The pleadings themselves show it. Mr. Thompson brought his separate suit because he understood that question could not be determined in that suit. If he could have determined that question in the original suit there would have been no occasion for him to have brought the second one. That very fact itself gave us some right to consider that. In addition to that, the procedure up to the time of the closing of the evidence, as shown by these citations which your Honor will have before you, also gave us the right to consider it. Mr. Whipple stated that it was his understanding; Mr. Thompson stated that it was his understanding; and we stated that it was our understanding; and the Master, on January 10, long after these matters, states that that was his understanding up to the time of August second, when the case was closed, and his ruling was not made until September 3. But I am going in the few minutes that I may have in reply to call your Honor's attention to some things which the Master himself has stated in his findings, and I am going to say that if your Honor will read between the lines of what the Master himself has found as the reasons for his procedure, you will find a justification for our whole contention. In the Master's paragraph 78 itself it can be considered as having

been stated, as strongly as possible, as showing why the Master ruled in the way in which he did,—and I say on that contention it shows that we have not had the hearing, it shows the evidence was not complete; it shows that the case had not even been opened formally and the evidence had not been put in, and under those circumstances, with what the judge himself has admitted in that paragraph No. 78, we are entitled to a day in court on that matter. But that I shall bring out more particularly after counsel has closed.

ARGUMENT BY  
SHERMAN L. WHIPPLE, ESQ.

Mr. WHIPPLE. If your Honor please, to illustrate the misconceptions of the situation under which the Governor has labored during the weary weeks that have been spent before Judge Dodge since, on December 20, he gave us our draft report, in which he has reiterated practically all that has been said almost ad infinitum, let me call attention to the last statement, which is what I may call the closing shot, with regard to what Judge Dodge said, or is quoted as having said as lately as January 20. I asked the Governor if he was certain with regard to it. Now let me read all that he said on page 4,765 of the record:

"Mr. BATES. I am not. I am reading it exactly as we have it in the abstract, which shows that there are omissions and just where they occur.

"The MASTER. I think you are spending rather an unnecessary lot of time on what happened prior to the day that we closed the evidence.

"Mr. BATES. I want to satisfy your Honor that up to the time when the evidence was allowed to be put in, nobody supposed that the question of Mr. Dittemore's status was to be determined by your Honor until after the Dittemore case had been heard.

"The MASTER. Well, I do not suppose that will be disputed. I did not dispute it.

"Mr. BATES. Well, then, I am glad your Honor does not, because I think that that justifies our position."

The Governor read so far—

Mr. BATES. It is not taken from the affidavit but from the original.

Mr. WHIPPLE. Then, do you want your statements of evidence taken when they are neither complete—

Mr. BATES. I suggest that you read the next sentence.

Mr. WHIPPLE. Well, that is all right, I am going to read it, because that is the pith of the whole matter:

"The MASTER. We learned as we went on."

Mr. BATES. Exactly.

Mr. WHIPPLE. That was not the Master's final opinion; that was an opinion which the Master had ventured under different circumstances and was not disputing that he had said it.

In order that we may see just how

this case lies,—and there is only one case before your Honor; the Dittmore case is not before your Honor on any motion that we are concerned in—let us review for a moment the facts.

Our bill, the Eustace bill, as I will call it, was brought in March of last year, filed on March 25, and in it the Trustees of the Christian Science Publishing Society sought to prevent the putting into effect of the attempted removal of Mr. Rowlands, one of the Trustees. On April 29, more than a month later, Mr. Dittmore, one of the Directors, filed a bill which had the same purpose, practically, that is, to test the question of whether the Directors had the right to remove him. Our case was referred to a Master, Judge Dodge, on May 9. The Dittmore bill had just been filed and was not in shape so that it could go to the Master. It was a case in which counsel for the Trustees were not represented and with which they had nothing whatever to do. Mr. Dittmore was a defendant in their own case, it having been held that we were uncertain whether Mrs. Knott, who had been selected by the remaining Directors as his successor, was really the Director or whether Mr. Dittmore was; and that is all the connection that the Trustees of the Publishing Society had with that suit. On May 17, Mr. Dittmore came into court and asked that his case might be heard with that of the Trustees. It came up before Mr. Justice Braley, and considerations were cogently put to the effect of the saving of time that there would be if the evidence which must necessarily be taken in our own case could also be applied to the Dittmore case. I was not personally present, I happened to be in New York at the time, and the Trustees were not represented except so far as I requested Mr. Proctor of our office to be present. What happened before Judge Braley was this: Governor Bates said (p. 12 of record):

"On the other hand, I will state this, that Mr. Whipple, who is in New York, did telephone that he wished to be heard on this question. Mr. Proctor, representing his office is here. I recognize his clients are not parties to the second suit, therefore their position is entirely different from ours and it may be that they have a reason which they wish to present to your Honor why this should not be done."

I understand that Governor Bates was arguing that the cases should not be heard together.

Mr. BATES. You are mistaken.

Mr. WHIPPLE. Is that so?

Mr. BATES. I did not make any argument. I said that we were neutral on the question.

Mr. WHIPPLE. Oh, neutral?

Mr. BATES. Yes.

Mr. WHIPPLE. Very well. Then, if I misquoted you, I withdraw it. I understood you opposed it. Mr.

Thompson was in favor of it, and if you were neutral, I cannot see that anybody was against it. (Reading):

"The COURT. I will hear you, Mr. Proctor.

"Mr. PROCTOR. We notified Mr. Whipple by telephone yesterday that the matter had come up and was to be heard again this morning. His first impulse was to ask for a hearing if your Honor could grant it. Last evening he telephoned again and said he would like me to come over to court simply to express his wishes without any extended argument on the matter. He believes, and has been in consultation with his associates in New York, and they have come to the conclusion they would prefer to have our case tried separately because there is an issue involved in their case with which we have nothing to do. We should prefer to have our case heard separately from theirs, although Mr. Whipple says he would be glad to take whatever order the court prefers to make.

"The COURT. You must remember, Mr. Proctor,"—and this is the important part of it—

—"that the Master has the direction and control of the hearing and I have no doubt will so control it that there will not be the slightest prejudice arising about the course you anticipate might possibly occur.

"Mr. PROCTOR. We prefer to go ahead with our case first.

"The COURT. You have a right to go ahead with your case and put it in, then the plaintiff in the other case can go ahead with his case."

Now, the matter being left in that way, when we appeared before Judge Dodge as indicated there, the plaintiffs in the Eustace case, which was first referred, went ahead with their case. It was stipulated and understood that the evidence that was put into that case which might have a bearing upon the Dittmore case should be taken and so considered as we went along. There was no opening in the Dittmore case. We put in all our evidence, and a great deal of it was declared, as it went in, to be applicable in the Dittmore case. Not one bit of evidence from beginning to end was put in as applicable to the Dittmore case alone, except in one or two instances where it was specifically taken by agreement under circumstances that are to be disclosed by the affidavits or in the report which I shall refer to in a moment. The case was concluded on August 2 of last year. The evidence was then concluded. The question then came up, as we shall point out in our affidavit, as to how to deal with this simple issue as to whether or not, in case there should be a report in our favor, the remedy should run against Dittmore or Mrs. Knott. The court then expressed, as will appear in the affidavit, the opinion, almost in the words that your Honor stated it, sensing the vitals of the case as your Honor did

a moment ago, that the question as to whether Dittmore was a Director or not was involved in this case and he had got to make a finding. The reply was that if he could find some way to decide it in this case without any further hearing, he hoped it would be done. I shall quote the exact words of Governor Bates in a moment.

Now, the fact is that the Master, on looking it over, decided, as matter of law and fact upon the uncontradicted evidence before him that had been put in applicable to the Dittmore case, without hearing Dittmore himself, but hearing every one of the Directors, but not so much as matter of fact as matter of law, that Dittmore was still a Director. Upon the uncontradicted facts, just as your Honor put it—your Honor struck the meat of the case when you asked whether the question was not as to whether they had authority to discharge Dittmore.

And he found, upon evidence which is uncontradicted, and which cannot be contradicted, and ruled, that Dittmore was a director, and that Mrs. Knott was not, on the 17th of March, when this attempt was made against the trustees. What was the use, then, of going any further? What Judge Dodge says is this: It is true that there is another issue on this case—he says it in substance—because it may be that Mr. Dittmore, by his subsequent conduct, acquiesced in their action, and that, therefore, at some later date, he was not a director. That is an issue which still remains open. Now, we will report the matter as it stands. If I am right in my decision that upon the uncontradicted evidence Dittmore is a director, why, then, what is the use?—you can go on with your case after that if you want to, but if the court says that I am wrong, then the case of Eustace v. Dickey will come back to me to be heard again; and why should we go forward with any further hearing in this case upon other issues,—that is, if they had the power to put Dittmore out, they did it properly, they did it with or without notice, they had the power and could do it, and did do it,—until the court has first determined this preliminary question, which may save us this long and tedious trial as to the merits of Dittmore's case. That is what he decided; that is what he ruled in effect, and apparently I was acquiesced in at the end of the evidence. We had put in our evidence the defendants had put in their evidence, we had put in our reply, and not one bit of evidence was put in in the Dittmore case, but the evidence which was put in in our case, which involved the Dittmore issue, was absolutely concluded without a question with regard to Dittmore, without question being raised, and the suggestion that it was understood that the Dittmore question was not raised is refuted by the finding upon the facts of the Master himself. It stands upon the bald assertion of the aff

davit, which is contradicted by the evidence, and is contradicted by the finding of the Master himself.

Then they put in their motion before Judge Dodge that they were surprised, that they had not anticipated just what this result was going to be; and on that issue the Master found, as a matter of fact, against them. He says that he cannot believe, when he reviews all the circumstances of the case, that they were surprised. And now, therefore, they come before your Honor under those circumstances, making an appeal from the decision of the Master, without bringing before you the Master's opinion and judgment and decision from which they appeal, and they object if we try to lay before your Honor the Master's decision, and the reasons which he gives in his report for the decision, of the very case which is now presented to your Honor, and as to which your Honor, singularly, has struck right at the point of the case in the brief remark that you made, or rather the question that you put, just exactly as Judge Dodge did.

Judge Dodge has decided, therefore, with regard to the Dittmore case, or ruled, that for the purposes of our case, upon the uncontradicted evidence, Dittmore is a director, and it is against him that it should run. He does not conclude, he does not say for a moment that if that is not conclusive they may not go on with their case, because there is another issue there, but he says that, upon the uncontradicted facts, facts upon which they do not ask to put in any more evidence upon the case, they left it, as they were satisfied to leave it, upon that; and that is why we want the Master's report before your Honor; we want you to look at the ruling, we want you to look at the reasons which impelled him to make the ruling and the finding which he did. We want you to consider, or know, the decision which Judge Dodge made, before you consider the question of an appeal, whether an appeal from it should be successful.

Now, the procedure here, I think your Honor will agree, is entirely novel. Here is a Master, one of the most eminent gentlemen in the Commonwealth, and most learned in the law, who has gone through a series of painstaking hearings, and has reached a conclusion, where the case has been put in and has been argued almost without the slightest protest, although there was a protest with regard to the arguments that I will refer to later; he is ready to file his report; the ordinary procedure would be to let his report come in before the court, and then either ask to have the exceptions which were taken sustained, or to have it recommitted for something on the face of it which is obvious error. But that is not done. The novel procedure, a procedure that I never yet heard of being adopted before, is adopted of coming

to the court before the Master files his report, in which he can set forth, or does set forth, all that he has to say on the subject, and ask your Honor, upon affidavits made up largely of remarks of counsel made from time to time through the weary days of this long hearing, when different aspects of the case were presented, that you will make an order that this Master shall adopt an entirely different course of procedure from that which he has adopted, contrary to the instructions which were given by Judge Braley in what I read at the outset of my remarks, to the effect that the Master should have that procedure within his control. Of course it is all to be corrected by the court, if errors are made here, when it comes properly before the court. Ordinarily, I think, if counsel desired to do this sort of thing, they would have asked the Master to report to the court the facts, and the decision upon this issue, instead of coming here and employing affidavits, which, if they are not incorrect in certain particulars, by no means state the whole case; and that procedure, the procedure in case a man has not put in all the evidence that he thinks he ought to, and in case of a surprise, the procedure of asking to have the case referred again to the Master, is laid down in *Atlas Shoe Company v. Bloom*, 209 Mass., 563, a decision in which no doubt your Honor participated. That was on a motion to recommit, and the Justice who wrote the opinion says that that is the course of procedure which is the proper one to adopt.

Now, may I call your Honor's attention to the facts, which I shall try to recite briefly by way of calling attention to the affidavit which we have filed, and to those paragraphs in the Master's final report as submitted to us, which we adopt as a form of the statement of fact, which we make our own? We say:

"(1) That on May 9, 1919 an order was made in the above entitled case referring the same to Frederic Dodge, Esq., as Master, 'to hear the parties and their evidence, to find the facts and report the same to the Court'.

(2) That on May 17, 1919 an order was entered in the case of John V. Dittmore vs. Dickey, et als, No. 30,788, referring said case to Frederic Dodge, Esq., as Master, 'to hear the parties and their evidence, to find the facts and report the same to the Court'.

(3) That on the same date, to wit, May 17, 1919, upon representation of counsel for John V. Dittmore that much of the evidence which would be presented in the case of Eustace, et ali. vs. Dickey, et als, No. 30,654, would be admissible and competent in and have a direct bearing on the case of Dittmore vs. Dickey, et als, No. 30,788, the Court entered a further and separate order as follows:

'And now it is ordered that the above entitled case be heard with Eustace, et ali. vs. Dickey, et als.'

(4) That no order has ever been made, nor have the plaintiffs nor their counsel ever consented expressly or impliedly that the case of Eustace, et ali. vs. Dickey, et als, No. 30,654, be heard with or the report of said case be withheld until the completion of the evidence in the case of Dittmore v. Dickey, et als. On the contrary, at the hearing on May 17th before Braley, J. counsel for the plaintiffs asserted that they preferred to go ahead with their case first and have it heard separately from the case of Dittmore vs. Dickey, et als. as there were issues involved in the latter case which had nothing to do with the case of Eustace, et ali. vs. Dickey, et als. Whereupon Mr. Justice Braley, in connection with the order in the case of Dittmore vs. Dickey, et als., set forth in Paragraph 3 of this affidavit, stated that the

'Master has the direction and control of the hearing and I have no doubt will so control it that there will not be the slightest prejudice arising about the course which you anticipate might possibly occur.'

That was that we should be delayed on account of Eustace v. Dickey; that was what we were afraid of, that our case would be postponed to await that decision, which was something that we did not wish to have done.

"Mr. PROCTOR. We prefer to go ahead with our case first.

The COURT. You have a right to go ahead with your case and put it in. Then the plaintiff in the other case can go ahead with his case.'

(5) That pursuant to the order of reference in the above entitled case by direction of the Master, in which the defendants acquiesced, the plaintiffs opened their case and put in their evidence; then the defendants other than Dittmore did the same, after which the plaintiffs put in evidence in rebuttal. By agreement of all parties evidence in the case of Eustace, et ali. vs. Dickey, et als. was to be evidence in the case of Dittmore vs. Dickey, et als. except as expressly limited to one case only.

(6) On August 2, 1919 the evidence in the case of Eustace, et ali. vs. Dickey, et als. was closed by all parties after hearings occupying twenty-seven days, and September 8, 1919 was fixed by agreement as the date for hearing arguments in that case, leaving further evidence in Dittmore vs. Dickey, et als., No. 30,788, to be heard and the case to be determined later.

(7) After September 8th had been fixed for the arguments in the case of Eustace, et ali. vs. Dickey, et als, at the hearing of August 2, 1919 counsel for the plaintiffs urged that a report in the case of Eustace, et ali. vs. Dickey, et als. be made before proceeding further with Dittmore vs. Dickey, et als., and in this request counsel for the defendants other than

Dittemore joined "if the Master could find a way to close up the Eustace case without its being delayed."

That is a quotation from Governor Bates's own statement at that time; and this request, that is, that our own case, the Rowlands case, the Eustace case, should be heard as promptly as possible, he joined in, in those terms,—"if the Master could find a way to close up the Eustace case without its being delayed."

"(8) At the hearing on August 2nd, the Master announced his opinion that the question whether or not Dittemore was a director when the bill in Eustace, et al. vs. Dickey, et als. was filed, was an issue of fact raised by the pleadings in the case of Eustace, et al. vs. Dickey, et als., which he must decide upon the final arguments of that case."

That was August 2nd.

"All of counsel, including counsel for the defendants other than Dittemore, were then understood by the Master to assent thereto and the hearing closed without any objection or exception.

(9) During the hearing on August 2nd it was suggested by counsel for Dittemore that for the purpose of the case of Eustace, et al. vs. Dickey, et als., the defendant Dittemore might be treated as a director in view of the plaintiffs' concession that they sought relief against the defendants Dittemore and Knott only in a representative capacity. This suggestion the defendants other than Dittemore declined to accept."

That was a way of attempting to get out of the difficulty, because it was quite immaterial to us as to which one of the parties was the one against whom our remedy should operate, and we asked that they agree that it should operate against Dittemore simply for the purposes of the case.

"(10) On August 30th [your Honor will notice, 28 days later] counsel for the defendants other than Dittemore notified the Master that they proposed to confine their arguments to the issues of fact raised in the case of Eustace, et al. vs. Dickey, et als., and not to argue the question of Mr. Dittemore's status as a director."

Of course when they sent that notice they knew that they were expected to; they knew that they agreed to; they knew that it was understood that they should; and, having looked the situation over, within a day or two before the arguments were to begin, they decided that they did not, for some reason, want to.

"At a hearing on September 3, 1919"—

Judge Dodge granted a hearing immediately to deal with this change of position, right-about-face on the part of these defendants,—

"the Master ruled that the issue referred to was an issue of fact upon which he must hear arguments and

pass in the case of Eustace, et al. vs. Dickey, et als."

He had said so before. Here he made a formal ruling against objection.

"To this ruling the defendants other than Dittemore then, for the first time, excepted.

(11) The case of Eustace, et al. vs. Dickey, et als was then argued, beginning September 8, 1919, upon all issues including the issue of Mr. Dittemore's status as a director at the time of the filing of the Plaintiffs' Bill in the case of Eustace, et al. vs. Dickey, et als.

(12) On December 20, 1919 the Master submitted to counsel his draft report."

After arguments, and nothing had been said except that after this change of mind on the part of counsel of these defendants they had taken an exception to the Master's passing upon the question as to whether Dittemore was a director or not, their exception was saved, their rights are saved; if the Master was wrong and they were right, the Master's mistake will be corrected in the proper way, upon the presentation of their exceptions before this court, when the Master's report is filed. Their rights are fully protected with regard to it if error was made.

"(13) On February 2nd, 1920, after many hearings upon suggestions of alterations in the Master's report, the defendants other than Dittemore filed a motion in the case of Eustace, et al. vs. Dickey, et als. that the case be reopened for the purpose of taking further testimony bearing upon the issue whether the defendant Dittemore was a director at the time of the bringing of this Bill."

All the evidence had been put in, and all that they wanted to put in, as far as that is concerned, all that was pertinent and material to this particular case. They had argued it; the Master had found against them; and then they wanted to reopen the case and put in more evidence. That is not a surprising situation. It is one that frequently occurs.

"The defendants other than Dittemore at the same time presented to the Master a motion entitled Dittemore vs. Dickey, et als. requesting him to fix a date for a hearing in that case and, pending the hearings therein, to suspend the settling and filing of the report in the case of Eustace, et al. vs. Dickey, et als."

He wanted just what we tried to avoid, to hold up the case of Eustace v. Dickey until they could go on postponing and postponing, and go on and hear the Dittemore case, and put in evidence there; and this is the first time that they had ever made any such request. Your Honor will observe that they made no such request at the end of the evidence on August 2nd of last year; they made no such request on August 30th, when they wrote their note, stating their change

of position in regard to it; they made no such request at the argument of the case; they did not make any such request in December, when the Master's report was filed, with its decision unfavorable to themselves; and never until they had spent days and days arguing this matter in every detail before Judge Dodge, at the very end of it, did they take the measure of stating that they were subjected to surprise, that they had not really understood that the issues of Dittemore's directorship, for the purposes of that case, were involved; had the Master heard them patiently, heard all that they had to present, went over this whole record, everything not only that the witnesses had said but what counsel had said, with the most careful scrutiny, day after day; and then the Master decided that they had not been taken by surprise.

(14) "In the first motion, the defendants other than Dittemore alleged that material evidence bearing upon said issue was and now is in the possession of these defendants, but was not offered by these defendants in the hearings before the Master upon the understanding of these defendants that the facts bearing upon said issue could not and would not be determined by the Master until the case of Dittemore vs. Dickey, et als. was heard by the Master; and also that the Master's findings were based upon a part only of the material evidence, all of which these defendants desired to but did not introduce either because the same was not permitted by the Master or because they were led to believe that such evidence could be presented in the trial of the Dittemore case and would be received before any conclusion of the facts was reached by the Master, and also that these defendants have been taken by surprise.

(15) This motion was denied by the Master because at no time after August 2, 1919, and before the submission of the draft report on December 20th, was there any notice from said defendants that they desired the case reopened for the purpose stated in the motion, and because as the Master finds, he was unable to believe that said defendants can properly be said to have been taken by surprise as alleged in their motion or to believe that the reopening of the case would be fair to the other parties therein."

Mr. WHIPPLE. That is quoted from his finding upon their motion.

"The Master further gives as reasons for his denial of this motion the statements made in Paragraph 78 of his Final Report, in which paragraph the Master relates at length the manner in which the question of Mr. Dittemore's status as a director was dealt with by him and by counsel during the proceedings before him as Master. Among other things the Master states that:

"There was no claim at any time prior to the submission of the draft report that all evidence bearing upon the construction and meaning of Mrs. Eddy's Deed of September 1, 1892, as well as all evidence bearing upon the construction of Article 1, Section 5 of the By-laws relating to the dismissal of a director had not been introduced in the present case, No. 30,654.

The facts above found in Paragraphs 56-76 of the Report (those dealing with the status of Mr. Dittmore) are all either undisputed or found from the testimony of the above-named defendants themselves; it being the Master's purpose to include therein no findings upon questions whose decision might be affected by further evidence in the case No. 30,788."

Mr. WHIPPLE. That is justification, if your Honor please, of the statement, together with other things that your Honor will see in the report, that Judge Dodge found and ruled upon the undisputed and uncontradicted evidence before him, on the status of Dittmore, not considering any question upon which evidence—no matter what evidence was put in—could affect it. He ruled on this theory: If he had made a mistake it would be corrected by this court when the report came in, if he didn't make a mistake it ended the Dittmore case for the purpose of the Eustace case. They might still contest with Dittmore the question as to whether Dittmore had not yielded—there is another issue there—as to whether Dittmore had not accepted his dismissal, acquiesced in it. But that was not an issue in this case, because the question was, in our case, whether the directors had power to remove him on the 17th of March, at the time when Rowlands was removed, and as to that the Master finds that they had not that power.

(16) That the Master denied the second motion in so far as said motion related to the suspending and the settling and filing of the report in the case of Eustace et al vs. Dickey et als. for the same reasons.

(17) That on February 21, 1920, the Master finally settled the draft of his report and gave notice thereof to respective counsel, and that the Master further gave notice that the five days for bringing any written objections to said report was to run from said February 21, 1920; and that it is the intention of the Master at the expiration of the five days allotted, or as soon thereafter as possible, to file said Final Report, together with the written objections thereto.

(18) That the present motion in the above entitled case made by the defendants other than Dittmore is in substance the same as the motion presented before the Master on February 2nd, 1920.

(19) That these defendants seek to have this motion heard and de-

termined by this Honorable Court without having before it the Master's report showing his findings of facts, the method in which he has dealt with the issues involved, and the manner in which this case and the case of Dittmore vs. Dickey et als. have been presented to the Master and dealt with by him, and more particularly the reasons for his denial of this motion or substantially the same motion when presented to him.

(20) That these defendants, contrary to the allegations set forth in the affidavit filed in support of this motion, neither understood nor had reasonable ground to understand, that the evidence which they now claim they are in possession of could be presented in the trial of the case of Dittmore vs. Dickey et als. before any determination would be made by the Master as to whether or not Dittmore was a member of the Board of Directors on March 25, 1919, when the bill in the above entitled case was filed; nor have these defendants or their counsel been taken by surprise as alleged in their motion; all of which appears from the findings of the Master as set forth in his Final Report as submitted to counsel on February 21, 1920."

Mr. WHIPPLE. Then the next paragraph is the paragraph in which we refer to the report, and annex it. I shall find it necessary to refer to that only in the specific paragraphs that have been mentioned by Governor Bates, except that I want to call attention to what appears on page 1. Has your Honor that before you—page 1? This is the way he refers, in an introductory way, to Dittmore v. Dickey:

"In Dittmore v. Dickey et al, another suit pending in this Court (No. 30,788, Equity), one of the defendants in the present case brings his bill, filed April 29, 1919, against the five other defendants therein, and, the Court has ordered, on May 17, 1919, that said case also be referred to me as Master and heard with the present case,—No. 30,654. Much of the evidence at the hearings was offered in both cases. This is dealt with in the present report, in its relation to the issues raised by the pleadings in No. 30,654. It is understood that further evidence remains to be heard in the case No. 30,788, should the parties so desire, upon such of the issues raised therein as may remain open after the determination of those raised in the present case."

It is one of those ordinary cases where a Master thinks that he has struck upon a matter which is final, and which all parties consider final, in settling the case, and says, "Why go on for tedious days in hearing evidence without submitting to the court the question as to whether what we have already heard may not be conclusive?" If he makes an error in that, when his report is filed of course that error would be corrected.

The next reference is page 46, Paragraph 55:

"If the vote to remove Rowlands was ineffective for that purpose, as above found, and if the plaintiffs are entitled to the relief sought by their Bill against the Board of Directors as constituted on March 25, 1919, when the Bill was filed, it is necessary to determine whether the defendant Dittmore or the defendant Mrs. Knott was a member of the Board on that date, and therefore a defendant for the purposes of the Bill."

The COURT. What page are you reading from?

Mr. WHIPPLE. I am reading from Page 46, at the bottom; Paragraph 55. I had read what is at the bottom of the page and the finishing of the paragraph at the top.

The COURT. I was looking at page 55.

Mr. WHIPPLE. Oh, yes, your Honor. Then, passing over two or three paragraphs that have to do with the allegations of the bill, the Master finds:

"Against the objection of all the defendants except Dittmore, and subject to their exception, I ruled that the issue whether or not he was a director when the Bill was filed was an issue of fact upon which the Master is to pass in the present case.

Upon that issue I find as below stated in Paragraphs 56-76. The findings therein stated are made upon evidence introduced by the parties other than Dittmore. Except in cross-examination of their witnesses, no evidence was introduced by him, and he has not testified as a witness in the case."

The next, if your Honor will be good enough to refer to it, is page 60, Paragraph No. 78. May I say that these findings were made, then appended to the report, after the most careful, scrupulous and conscientious examination of the entire record by the Master, aided by what I may call unparalleled diligence on the part of counsel on all sides. I do not believe that a single scrap of the evidence that was put in, or a part of the record, escaped detection by counsel on the one side or the other. The result of their efforts was submitted to Judge Dodge in the many days, fifteen or twenty, that have been spent upon the draft report.

"78. With regard to the objection and exception mentioned in Paragraph 55 above the Master states as follows:"

That is his ruling that the Dittmore status was in issue before him. That is what they took exception to. They did not take any exception then to the fact that they had not been heard with regard to it; they took exception to the Judge's ruling that it was an issue before him.

"(1) On August 2, 1919, the evidence, in hearing which 27 days had been occupied, was closed by all the

parties, and September 8, 1919, was fixed by agreement as the date for final arguments in this case, leaving No. 30,788 to be determined later.

(2) While neither side had then rested its evidence in No. 30,788 nor made any opening statement therein, and while Dittmore had neither testified himself nor called any witnesses on his own behalf, much of the documentary and other evidence which had been received related to both cases as already stated, and the defendants Dickey, Merritt, Rathvon and Neal had been cross-examined at length on Dittmore's behalf, concerning his attempted dismissal, the reasons therefor, and the circumstances leading up to it. Other witnesses, both for the defendants and for the plaintiffs, were cross-examined in like manner regarding said matters.

(3) The plaintiffs, under rulings by the Master to which no objection was made, opened in the present case and put in their evidence; then the defendants other than Dittmore did the same, after which the plaintiffs put in evidence in rebuttal. By agreement, evidence in one case was to be evidence in the other, except as expressly limited to one case only, and the fact that a witness was examined in the present case was not to prevent his being called again in No. 30,788.

In the direct examination of the defendant Dickey, the Master ruled that the defendants other than Dittmore could not introduce evidence with sole reference to the case No. 30,788. On his re-direct examination, it was agreed by counsel for Dittmore that when called in the case No. 30,788, there would be no limitation upon the scope of the witnesses' examination.

The rule limiting re-direct examination to subjects opened by the witnesses' testimony on cross-examination was repeatedly referred to, with the Master's assent and approval, as applicable to the examination of the above witnesses; but no specific ruling was made excluding testimony by any of them upon that ground. Counsel for defendants other than Dittmore were permitted to examine in re-direct on all subjects opened in cross-examination.

In the course of the hearing certain pieces of evidence offered were received for the purpose of the case No. 30,788 only. None of them was made the foundation of any finding set forth in the present Report. Certain other pieces of evidence were received, as to which there was controversy whether they were material solely in No. 30,788 and wholly immaterial in the present case. As to these, the controversy was left for the Master to determine, and he was to use them in the present case so far as they were material therein.

There was no claim at any time prior to the submission of the draft Report that all evidence bearing upon

the construction and meaning of Mrs. Eddy's Deed of September 1, 1892, as well as all evidence bearing upon the construction and meaning of Art. 1, Sec. 5 of the By-laws relating to the dismissal of a Director, had not been introduced in the present case No. 30,654."

Now, your Honor will need to refer to Mrs. Eddy's Deed of September 1, 1892, which is given in another part of the Report, and the meaning of Article 1, Section 5, of the By-laws, relating to a director. But what this says is that all the evidence that was offered upon that question as to the construction or the meaning of Mrs. Eddy's Deed as to the removal of a director, or the By-laws of The Church under which the power to remove a director was claimed—all evidence that either party offered upon that issue, which was the sole issue for the purposes of this case, or at least was treated as such, was admitted, and there was nothing excluded—nothing excluded upon the point as to which the Master ruled and found.

The COURT. Well, was there any other evidence which had any bearing upon that question except the construction of the Deed and the construction of the Article in question?

Mr. WHIPPLE. I am rather inclined to think there may have been although it does not occur to me off-hand. I won't venture to say that there was not, nor will I say that there was. I think there were certain inferences that may have been used. Now, if I may call your Honor's attention especially to this:

"(4) The facts above found in Paragraph 56-76 of the report are all either undisputed or found from the testimony of the above-named defendants themselves."

That is the point. All the facts he has found in the Dittmore case for the purposes of this, are upon the uncontradicted, undisputed evidence, or found upon the testimony of the defendants—these gentlemen who are now objecting that they have not been adequately heard.

—it being the Master's purpose to include therein no findings upon controverted questions whose decision might be affected by further evidence in the case No. 30,788."

That is, he has disregarded all the evidence in favor of Dittmore, that might come up in the further case.

"(5) After September 8 had been fixed as above for the arguments in this case, and before the close of the hearing on August 2, 1919, counsel for plaintiffs urged that a report in the present case be made before proceeding further with No. 30,788, and in this request counsel for the defendants other than Dittmore joined, 'if the Master could find the way to close up the Eustace case without its being delayed.'"

That is, they joined in a request to do the very thing that they are now objecting to.

"(6) During a colloquy with counsel which then followed, the Master announced his opinion that the question whether or not Dittmore was a director when the bill in this case was filed was an issue of fact raised by the pleadings in this case which he must decide upon the final arguments therein."

That is on August 2, when the evidence closed.

"This statement was made more than once during the same colloquy, but without making a distinct ruling to the effect; and all counsel, including counsel for the defendants other than Dittmore, were then understood by the Master to assent thereto."

That is Judge Dodge's finding. He says, to be sure, he did not make a formal ruling, but he gave his opinion more than once that he had got to decide that question as matter of fact, and understood that they assented thereto; and now they are quoting as against that things that Mr. Thompson said when he was arguing to get the case referred to the same Master, views that he then expressed; views that I expressed at a time when it seemed to be hopeless that a way could be found by which this litigation could be determined; views which the counsel know that the Master immediately repudiated and said he did not accept;—placing views of counsel and their remarks in argument on a proposition, one way and another, against the solemn and deliberate and conscientious finding of a Master like Judge Dodge, and ask you to accept those rather than the findings of the Master! (Reading):

"The hearing on August 2 closed without objection made or exception reserved thereto."

That is to the Master's repeated statement that the Dittmore status for the purposes of the case was an issue which he must determine and as to which there was this running comment. No exception was taken at that time—far from it. Judge Dodge was given to understand by every counsel present that they assented to that proposition. (Reading):

"During the same colloquy it had been suggested on Dittmore's behalf that he be treated as a Director for the purposes of the present case, which suggestion the other defendants declined to accept. On the plaintiffs' behalf it had been conceded that they sought relief against the defendants Dittmore and Knott only in a representative capacity.

8. The Master was first informed of any dissent from his opinion announced on August 2 as above, by a letter from counsel for the defendants other than Dittmore, dated August 30, 1919, stating that they proposed to confine their argument "to the issues of fact raised in this case, and not to argue the question of Mr. Dittmore's status as a Director"; also that they



thought the other arguments should be similarly limited."

That is after they had agreed as the Master understood it and apparently everyone else that it was an issue and should be heard. (Reading):

"In consequence of the letter, counsel were further heard on September 3, 1919, at which hearing it was urged by counsel for the plaintiffs and for Dittmore that in view of what had passed on August 8, they had made their preparations for argument upon the understanding that the question whether Dittmore was or not a Director when this Bill was filed was an issue of fact to be argued and determined in the present case. Counsel for the other defendants then urged that the issue referred to is not raised in this case,—that the evidence regarding it had not been fully heard and could not be fully heard until all the evidence in No. 30,788 had been put in. They also stated that they had never understood that they were assenting to a decision in the Dittmore case without the evidence being put into it."

At this hearing on September 3, 1919, the Master ruled, in view of the above representations by counsel, that the issue referred to was an issue of fact upon which he must hear arguments and pass in this case. To said ruling, then for the first time expressly made, the defendants other than Dittmore then for the first time excepted.

The present case was thereafter argued in accordance with said ruling, by counsel for all parties, beginning September 8, 1919.

Counsel for defendants other than Dittmore, in beginning their arguments on that day, stated that—"the evidence that pertained to that case alone (i. e., No. 30,788) was not offered in chief, because it was understood that your Honor had excluded it. The evidence that pertained to that case alone was the evidence which pertained, of course, to the question as to whether or not Mr. Dittmore had been properly removed. Your Honor has decided, reserving our rights, that the Eustace case cannot properly be decided without your Honor considering the question of Mr. Dittmore's rights as one of the issues involved in that case. To such extent, therefore, as the evidence has been put in, and to such extent as your Honor considers Mr. Dittmore's status as an issue in the Eustace case, that matter is now open for argument."

Then it states requests which were made for findings and rulings in connection with their oral argument, under the heading of "Status of Mr. Dittmore as a Director." (Reading):

"And in their brief, also submitted after the oral arguments, the same counsel stated that their points and authorities under the heading "Mr. Dittmore's status as a Director on March 25, 1919', the date of the filing

of this Bill, were submitted—'without waiving the defendants' exceptions to the Master's ruling.' \* \* \*

The case was submitted upon the arguments and briefs, without further protest or objection relating to the said ruling until after submission of the Master's draft report."

Now, if your Honor will refer to page 68, paragraph 81, that is where the Master dealt with these very motions. (Reading):

"Two motions in writing, presented to me on behalf of the defendants other than Dittmore on February 2 and 3, 1920, before final settlement of the draft of my Report, are filed with said Report and may be considered as appended thereto.

The first of said motions asks that the present case be reopened—'for the purpose of taking further testimony bearing upon the issue whether or not the defendant Dittmore was a Director at the time of the bringing of this Bill.'

This motion was denied, in view of the statements above made in paragraph 78, and also because at no time after August 2, 1919, and before the submission of my draft Report on December 20, 1919, was there any notice from said defendants that they desired the case reopened for the purpose stated in the motion.

In view of the above, I am unable to believe that said defendants can properly be said to have been taken by surprise as alleged in their motion, or to believe that the reopening of the case at this stage would be fair to the other parties therein.

The second motion asks the Master to fix a date for a hearing in the case No. 30,788, and pending the hearings therein to suspend the settling and filing of the report in the present case, if the question referred to in the first motion is to be passed upon in the present case.

In so far as this motion refers to the present case it is covered by what has been said regarding the first motion. In so far as it refers to No. 30,788 it was not regarded as proper for consideration in this connection and it was denied.

Also on February 2, 1920, still another motion was presented by the same defendants entitled in both cases 30,654 and 30,788. It is also filed herewith and to be considered as appended hereto. This motion I declined to consider, for reasons already stated in this paragraph, and because entitled in both cases."

We say, therefore, upon the affidavits and upon what your Honor must find to be the facts, that the defendants' rights were fully protected. If any error has been made it will come before this Court on the Master's report. If error has been made exceptions can be sustained or the report can be re-committed. There is no ground, as we say, for this unusual and extraordinary procedure; there is

no reason why the case should not take its ordinary course.

I have not had time, if your Honor please, to review the second and supplementary affidavit, but I am informed by my associate, who has had time to attend to it—I have never seen it myself—that it fails to state fully and adequately all the facts. We have had no time, of course, to meet it by counter-affidavit because we did not have it until shortly before this hearing was to go on. Therefore, when we attempt to correct or elucidate some of those statements we shall beg permission in doing it merely to read from the record. Mr. Withington will do that, with your Honor's permission, in the part of the fifteen minutes which are given for reply.

The COURT. I think perhaps we had better take a few minutes' recess.

(Short recess.)

Mr. WHIPPLE. May it please your Honor, I have been asked by some gentlemen of the press who are in attendance upon this hearing—which involves a subject of considerable popular interest not only to Christian Scientists but to other people—as to whether there is any impropriety in publishing what has been said here in open court. I have said to them that if they comply with our wish and, in my view, the proprieties, they should publish no part of the copy of the paper which has been sent to counsel by Judge Dodge as and for his report, but that the things which have been read or quoted from, the paragraphs as to which Governor Bates himself stated there was no objection on his part that they should be used, or anything that was said in open court, was perfectly proper for publication. I am not sure whether Governor Bates entirely agrees with me, and therefore I wanted to state what I had said so that the damage which might otherwise occur if I am wrong in that statement could be corrected by the Court seasonably.

The COURT. I do not think that I care to express any opinion on the subject. Now, Mr. Thompson.

ARGUMENT BY WILLIAM G. THOMPSON, ESQ.

Mr. THOMPSON. If your Honor please, Mr. Whipple's searching analysis of the situation from the standpoint of his clients has made it unnecessary for me to go into the details of this matter as fully as I should have done and felt obliged to do if it had not been for his presentation; but there is another point of view in which our client, Mr. Dittmore, is more interested than the plaintiffs, and which has not been wholly developed—naturally not—by Mr. Whipple's remarks, and it remains for me to develop that point of view.

In the first place, I think it is desirable in a matter of this kind, where suggestions have been made of unfairness and injustice, to look at the matter for a moment from the stand-

point of the antecedent probability. As I understood Governor Bates' remarks, they amounted to this: that Judge Dodge, who has conducted judicial proceedings for some thirty years in Massachusetts, has not only in his conduct of this case but in the procedure adopted by him, violated a clear understanding of all parties, run counter to what had been definitely agreed to beforehand, but also that he has violated elementary principles of justice, the most elementary principle of justice that exists, namely, that there should be a hearing to all parties before there is a decision against them.

I pause a moment to ask your Honor to consider the probability that such a statement can be true. It almost refutes itself, without the consideration of the facts which will prove it to be wholly unfounded so far as it relates to facts, and wholly sophistical so far as it is sustained by an attempt at reason.

Now, what do both these motions ask for? There is a motion in both these cases. There is a motion in *Eustace v. Dickey*, there is a motion in the case of *Dittemore v. Dickey*, in which Mr. Demond and I alone appear. The prayer is identical in both those cases. It is that the report which is now about to be filed, after this enormous labor both of hearing and of settling the report, should be withheld from the files of the court; and, secondly, that further evidence should be taken in the case of *Eustace v. Dickey* and further evidence taken in the case of *Dittemore v. Dickey*. I call your Honor's especial attention to the prayer that further evidence should be taken, that the case of *Eustace v. Dickey* should be re-opened at the close of the evidence and the case of *Dittemore v. Dickey* should proceed now for the taking of evidence.

On August 2 the Master stated, as the Master says, and as I do not think it will be disputed by anybody, not once but several times, that in his judgment the question of whether Mr. Dittemore was or was not a Director on March 25, 1919, when the bill in this case was filed, was an issue of fact which he must decide.

And he says that to that all counsel were then understood to agree. There was no protest or objection made to it. A reference to the pleadings, the amended pleadings, in *Eustace v. Dickey*, bears out the Master's statement, and shows why it never occurred to any counsel, however zealous to protect the interests of their clients, that there could be any dispute on that proposition; for although in the original bill the plaintiffs asserted that they did not know which was a director on the date of the filing of their bill, Mr. Dittemore or Mrs. Knott, in the answer of Mr. Dittemore, in the answer of Mrs. Knott, and in the answer of the other defendants, a direct issue of fact on that subject was made. The Master himself comments on that fact in his reference to this motion

made before him, which is identical with the motion now made before your Honor. It was on the pleadings unquestionably an issue not only between the plaintiffs and all the defendants, but between Mr. Dittemore and the other defendants also. That issue was raised. It was raised more sharply than it could be raised in a case simply between plaintiffs and defendants; it was raised not only between the plaintiffs and all the defendants, but it was raised between the defendants themselves. It was unescapable. The parties went ahead on that basis, on the basis of that understanding, and took what would otherwise would have been a summer vacation to prepare elaborate briefs on the facts, and arguments upon the facts, and requests for rulings of law, based upon the scope of the arguments, requesting the Judge to rule that the entire question, all the evidence that bore on that question, was open to argument in that case. It was not until the vacation was gone, it was not until a few days before the time set by agreement for the arguments had arrived, that any notice whatever was given that that proposition which had theretofore been agreed to by all parties as a question of law, namely, whether that was an issue of fact in the *Eustace* case, was denied, and then it was denied in a letter by Governor Bates, dated August 30, addressed to the Master; whereupon the parties were immediately called before the Master, Governor Bates's attention was called not merely to the statements of counsel to which he had referred in his affidavit, but the full and complete statement of the colloquies between the counsel as they took place on August 2nd, and not to this garbled and misleading account which appears in his affidavit, in which I am quoted and in which Mr. Whipple is quoted, but to all that which was said, including the statement of himself, urging the Master to proceed with the decision of *Eustace v. Dickey*, because he was being injured by an injunction which he wished to have dissolved; and the Master then called his attention to those facts. Nevertheless, Governor Bates took an exception to that ruling on that day, notwithstanding his previous agreement, notwithstanding the acquiescence and acceptance of it by counsel, notwithstanding the weeks of labor that counsel had expended to get ready for an argument on that and other points of this case—he took an exception. That alone would be enough to discredit this motion, the excepting to a statement which had been accepted by him, and on which his associates and his opponents had acted for over a month. Nevertheless, we do not question that. He has taken his exception formally and technically, and it will be submitted to the Supreme Court when the Master's report is filed. But—and this

is the point to which I desire to direct your Honor's special attention—after he knew, on August 2nd, and before the arguments, when it was reiterated by the Master, on September 3rd, that he was going to adhere to his ruling of August 2nd, did he then, if your Honor please, say to the Master and counsel, "But, your Honor, if that is your matured conclusion, I have not had a chance to present all the evidence in my possession on that issue?" Did he say that, if your Honor please? Never! He speculated on the evidence as it stood and waited until December 20 to find out whether he could not get a favorable decision in the *Dittemore* issue on the evidence then in; and it was not until he found out what use the Master was to make of the evidence already in that case on that issue that for the first time he began to talk about having more evidence on the *Dittemore* issue. If anybody has a right to complain, if your Honor please, in this case, it would be Mr. Dittemore himself. He submitted deliberately, at the request of counsel for the plaintiffs and counsel for his opponents, the other defendants, to have the merits, the entire vital question as it affected him, decided, without ever having had a chance to testify, without calling a single witness in his behalf. *He* might have possibly complained had he been a man willing to go back on an agreement when he found that it was turning out to his disadvantage. *He* is the man who took the chances, if your Honor please. *He* is the man who was not heard. *He* is the man who had no chance to present his testimony. He is *not* the man complaining here today. The people complaining here today are the persons who got him into this situation, who urged that that case be decided before *Dittemore* could testify, who were willing to take their chances on the evidence which they thought would lead to a reverse decision from the one made, and who now, when they find that an impartial magistrate does not view testimony, does not view conduct, does not view evidence, as *they* view it, turn round and talk about having been surprised, having been wronged, and suggest by almost direct suggestion, and certainly by necessary implication, that Judge Dodge is capable of perpetrating the type of injustice which *they* perpetrated, if your Honor please, when they expelled Mr. Dittemore, confessedly and admittedly, without a hearing, without notice, without any opportunity to be heard.

I now wish to ask your Honor's attention for a moment to what the grounds were upon which Judge Dodge was able to act without hearing Mr. Dittemore, without hearing any evidence on his behalf.

Mr. Dittemore alleged that on March 17, 1919, without previous notice or knowledge of any sort—and the Mas-

ter so finds, and it was not disputed, but admitted—a vote was passed expelling him from membership in the Christian Science Board of Directors. It was also conceded that his membership in that organization depended not merely on the by-laws of this church, but fundamentally on an original document establishing a public charitable trust, namely, a deed executed by Mrs. Eddy on September 1, 1892, in which property was conveyed to four trustees, in trust, to build a church on the land conveyed and maintain services therein for the congregation that might worship in said church. On that deed and on the subsequent by-laws a dual office was created, both called the Christian Science Board of Directors.

Now, Judge Dodge made his finding, and was able to make his ruling, which disposes of all this case, without more, on two grounds,—first, in so far as Mr. Dittmore was a member of the Christian Science Board of Directors established by that deed of September 1, 1892, since that deed contained no provision for the expulsion of one member by the other members, there could be no expulsion by any Christian Science Board of Directors purporting to act under subsequently enacted by-laws of the church. The only expulsion could be by a court of equity, acting as usual under its powers, to deal with a trustee of a charitable trust. That was a ruling of law based on a written document, interpreted in the light of all the surrounding circumstances, not susceptible, however, of any ambiguity, not open to any construction, not capable of being altered by any oral testimony whatever. That would have been sufficient alone, without hearing any evidence, without the cross-examination of these directors, to settle that one point,—purely a question of law. It has never been pretended, if your Honor please, and Judge Dodge so finds as a fact, that until December 20, when these gentlemen found how their conduct was going to be viewed, did they even suggest that any paper, writing, fact, circumstance or anything else existed capable of altering the construction of that document of September 1, 1892; and none does exist. If it had existed, if your Honor please, does your Honor think for a moment that when these gentlemen discovered, as they did on August 2nd, and again on September 3rd, that Judge Dodge was going to decide that issue—if they had had a paper, a document or a scrap of evidence which would have altered this construction, does your Honor think that they would not have told him *then*, instead of waiting until December 20th, when he had decided the case? Second, he found that the validity of the dismissal, so far as Mr. Dittmore's powers were derived from the by-laws, depended upon the construction of a single by-law, Article I, Section 5,—“A majority vote or the request of Mrs. Eddy shall dismiss a member.”

And, construing that document, and applying the law of Massachusetts and of England to it, he said, That does not mean that each member of the Board of Directors holds his office at the arbitrary will and pleasure of his fellow-directors. This office of Board of Directors is a semi-judicial office; the directors have large judicial functions, of discipline, of expulsion of members, of hearings, which are provided for all sorts of offenses by minor officials of that church. It is incredible that Mrs. Eddy could have meant that when a member of the board was dismissed, he could be dismissed without notice, without hearing, and without even an opportunity to present evidence in his own behalf. On that ground alone I rule, since it is an admitted fact, that there was no notice, there was no hearing, there was no opportunity to be heard, that the act of expulsion, the vote of March 17, 1919, was absolutely null and void. There your Honor has it,—two written documents, unaffected by other circumstances or by any oral testimony, construed by the Judge in the light of all the evidence that was produced, and over eight hundred printed exhibits were introduced in that case—just think of it, if your Honor please!—the hardihood of saying now that they had an 801 or 802, if they had only thought to produce that—the construction of that deed and that by-law might have been fundamentally altered, and Judge Dodge might have been led to find that, after all, the trustee of a charitable trust, containing no provision for expulsion, could nevertheless be expelled by his fellow-trustees, without resort to a court of equity, and that a member of that board, holding office under by-laws, could be expelled without notice, without hearing, and on charges, written charges, 13, every one of which Judge Dodge found was not sufficiently definite and precise to warrant anything but an arbitrary removal, even if true.

Now, that is the situation in regard to Dittmore. Had this case of Dittmore v. Dickey been tried, were it necessary to try it, on outside facts, possibly these defendants would not be so anxious to hurry up with the hearings in Dittmore v. Dickey. I do not think that they want to have any hearings in Dittmore v. Dickey if your Honor denies the first part of that motion, which is to keep this report off the files. My impression is that if your Honor should say to them now, “Gentlemen, the Master's report will not be interfered with by me; that will be filed at the Master's pleasure; but after it is filed, or before it is filed, if you desire to take up the hearings in Dittmore v. Dickey, you may do so”, you would not find a very enthusiastic appreciation of such a ruling as that. What is wanted, if your Honor please, is to interfere by a pretence of unfairness and injustice, sweeping into the charge not merely an eminent magistrate like Judge Dodge, but obscure

counsel like myself, covering us over with allegations of having gone back on our statements by garbled and misleading accounts of statements made by us here originally and later as this matter developed before Judge Dodge, before the precision of the issues had been ascertained by him, being two issues of law—what is wanted is, if possible, to delay the fatal day when the careful work of this magistrate, covering sixty or seventy printed pages, the impartial and just findings, shall be published to the world, and the whole story of this wretched transaction shall be so clearly told that even the wayfaring man can be under no mistake as to where justice or injustice lies here.

Now, I do not think that it is necessary, beyond that, to call attention to any more detail. You are asked to reopen this case, to hear evidence. Why? Judge Dodge says, No evidence is necessary; the construction of two written documents and the admissions of the four men who did the act are sufficient for me. They cannot be altered by any further testimony in Dittmore v. Dickey.

There is, however, in Dittmore v. Dickey, a set of issues not in the slightest degree involved in this case of Eustace v. Dickey. What are they? It is alleged in that case that after this vote dismissing him without notice and hearing from membership in that board they sought to seize or take possession illegally of his private papers, to eject him from his room as director in the headquarters there at the church, 256 Huntington Avenue, and to do him other wrong; and a stipulation was entered into to avoid an injunction, preventing them from doing those things until that part of the case was heard. That has never been heard by Judge Dodge, and that remains to be heard.

Further, affirmative relief is sought in Dittmore v. Dickey. None is sought in the answer here in Eustace v. Dickey. The effect of this decision in Eustace v. Dickey on the issues in Dittmore v. Dickey is simply this, to relieve the Master, if his report is confirmed, from hearing a great mass of evidence which it might be necessary to hear in case no notice was necessary, in case the various questions of fact had to be gone into, to shorten up Dittmore v. Dickey enormously on all the issues concerning Dittmore's dismissal, to present only one question of fact, namely, whether after March 25th, the date of Mr. Whipple's bill, Mr. Dittmore, by a certain statement made in open court here before Judge Braley waived and abandoned his right to affirmative relief, and, if not, to get into shape and give to him an injunction and a final decree, which shall protect him in his rights as a director.

Now, if you send this case of Eustace v. Dickey back, reopen it, as has been said, you destroy the brevity which the Master has been able to in-

introduce into this by deciding it as a matter of law; you compel him to hear a vast mass of testimony which when the full bench gets the case they may say is wholly immaterial, because, although true, it is wholly unnecessary, because he never got a notice and hearing, and that is admitted, and because under the deed he could not be expelled anyway; you open the flood-gates in *Dittemore v. Dickey* to testimony which we have not been anxious to introduce farther than was necessary, but which is of a character which would not be as pleasant to these defendants even as the report of Judge Dodge.

Now, I will ask your Honor for a moment to listen to certain parts of the affidavit which I have been required to file here, and then I shall cease. I first speak of the allegations of the amended bill and answers, and I show clearly how the issue whether Mr. Dittemore was a director was presented both between the plaintiffs and Dittemore, and between the plaintiffs and the other defendants, and between Dittemore and the other defendants. I then point out the overlapping bill, how the bill in *Dittemore v. Dickey* overlaps the bill in *Eustace v. Dickey*, what part of it is not yet heard, what the Judge means by saying that the remaining issues in *Dittemore v. Dickey* were to be tried later. I then call attention to the submission of the copy of the Master's draft report on December 20, 1919, and to the fact that later, during the hearing of suggestions for changes, which usually are made in writing, but in this case it extended over weeks of oral hearings, with stenographers present, two motions were made in each of the cases identical with the motions before your Honor. I then call attention to the rulings of the Master and the findings—Mr. Whipple has read them—on those motions, to the claim of surprise, and to the emphasis placed by the Master on the fact, to which he returns, and to which I must return again and again, regardless of whether his ruling was right as matter of law, that the question whether Dittemore was a director on March 25th was presented for decision in the *Eustace* case—regardless of that, they were informed of it, on their own admission, as early as September 3rd—on the Master's findings a month earlier—and at no time until after they found out what his view was going to be did they ever hint or suggest that they had any further evidence which they would like to present on this issue if the Master was going to decide it; and that is what these motions are asked for, is further evidence.

They led us into an argument on the case without any hint that there was any further evidence. They took away our summer vacation from us. They got Mr. Dittemore, who had everything at stake here, to agree to

submit his case without even opening his mouth in court. They had the whole thing to themselves. And now, having lost, they say it is Mr. Dittemore who has committed the injustice; that somehow or other the injustice has been committed by Mr. Dittemore, and not against him—a marvellous triumph of bald and unsupported assertion. I call attention to what the Master says on that point in this affidavit. He says:

"There was no claim at any time prior to the submission of the draft report that all evidence bearing upon the construction and meaning of Mrs. Eddy's Deed of September 1, 1892, as well as all evidence bearing upon the construction and meaning of Article 1, Section 5, of the By-Laws relating to the dismissal of a director, had not been introduced in the present case, No. 30,654."

He finds that the claim of surprise made by the gentleman who files the affidavit, accusing counsel of breach of good faith and suggesting that the Master had rushed on to do them an injustice, is not true; to use plain English, is false. And, in the face of that, counsel is willing to present arguments here and file papers imputing at least unfairness, and I was led to believe, as I heard those passages for the first time from the affidavit quoted from me, imputing almost dishonesty to brother members of the bar. So desperate is their attempt to overcome the impartial treatment, the fair and just treatment—over just—that they received from this magistrate whom they now attack! Then he finds:

"At no time after August 2, 1919, and before the submission of my draft report on December 20, 1919, was there any notice from said defendants that they desired the case reopened for the purpose stated in the motion." And that he is—

"—unable to believe that said defendants can properly be said to have been taken by surprise as alleged in their motion, or to believe that the reopening of the case at this stage would be fair to the other parties therein."

Does your Honor think, and I ask it in all seriousness, that your Honor sitting here, although the case has been presented with considerable detail this afternoon, yet it is only a few hours, while Judge Dodge had months and months, thousands of pages of testimony, 800 exhibits, and considered it for months—he knew the case from A to Z, he knew if these gentlemen had been surprised—does your Honor feel like reversing him on that this afternoon? And they have said, if your Honor please, in the second paragraph of their affidavit—think of it:

"These defendants understood and had reasonable ground to understand that no decision on the facts relating

to said issue would be made by the Master without hearing all of the evidence relating thereto and that no decision on the facts relating to said issue properly could be made by the Master until after the case of *Dittemore v. Dickey et al* was fully heard, and relying upon said understanding—"

They understood that, when, on August 2 they were told, as the Master says repeatedly, that such an understanding could not be maintained, that he intended to decide that issue, and on September 3 they took an exception to it. They still understood it—did they? —that he was not going to decide that issue in this case. What does such a statement mean? They wanted to speculate on their exception, but they didn't want to try the issue out as a matter of fact. That is all there is to it. On the facts they were weak. They held back the question of fact until the very end, and relied upon this belated exception to a ruling of the Master made, as he thought, in accordance with their express agreement. Now, I go on:

"In the body of his report, the Master finds that this defendant was the legitimate successor of one of the original trustees under Mrs. Eddy's Trust Deed of September 1, 1892, chosen in accordance with the terms thereof, and that said Deed created a valid public charitable trust. It was admitted that said Deed contains no provision for the removal of a Trustee."

That is one of the admitted facts. All you have got to do is to read it. Nobody could deny it and therefore everybody admitted it.

"He also rules that the terms of said Deed could not be altered by any subsequent declarations or conduct of the grantor or other persons, whether in the form of By-Laws of said Church or otherwise, and he accordingly rules, as matter of law, that the proceedings of March 17, 1919, purporting to dismiss this defendant were ineffective and inoperative so far as his position as trustee under said Deed was concerned. (Paragraphs 58 and 60). Further with reference to the attempted dismissal of this defendant as a member of the Board of Directors deriving authority from the By-laws and not from said Deed, the Master rules that the By-law under which said dismissal was attempted, to wit, Article 1, Section 5, 'a majority vote or the request of Mrs. Eddy shall dismiss a member,' contemplated a tenure of office during good behaviour and not at the arbitrary will and pleasure of a majority of the Board (Paragraph 63), and that it also contemplated reasonable notice of relevant charges, an opportunity to be heard thereon, and a decision thereon in good faith, and not arbitrary, capricious or irrational. (Paragraphs 61-63). It was an admitted fact that no notice whatever

was given to this defendant of the proposed action against him, and that no opportunity was given him to be heard or to adduce evidence in his own defense. (Paragraphs 56 and 64). He further finds that the charges upon which said vote of attempted dismissal was based (Paragraph 66) were not sufficiently definite so that they could be 'intelligently met' and that 'they were inadequate grounds for any but a purely arbitrary dismissal (Paragraph 65); and that 'an element of personal hostility and dislike entertained toward Dittmore by other members of the Board, resulting from the frequent differences between him and them above referred to in Paragraph 66, must be regarded as having entered into their action in preparing and adopting the resolution for his dismissal.' (Paragraph 66)."

And they claim now injustice because they were not heard:

"And also that the office of trustee and director carried a substantial salary. It is upon these—"

Mr. BATES. Does your Honor think that—

Mr. THOMPSON. Don't interrupt me now, Governor; don't do it now.

Mr. BATES. I have a right: I pray his Honor's judgment as to whether or not you are going outside—as to whether or not you are going outside of the proper course of argument.

Mr. THOMPSON. I am not.

Mr. BATES. You are arguing on the findings of this report.

The COURT. Just a moment. Are the reasons for his findings material, Mr. Thompson?

Mr. THOMPSON. Yes, sir; entirely; because Governor Bates says they are susceptible of being altered by oral testimony, which he wants to put in. I am showing your Honor that they are based on a construction of these instruments and on elementary principles of common law.

The COURT. Well, I don't think that they are material on this question. If the case depends upon oral testimony, and he was bound to hear testimony which he did not hear, then he could not properly decide the case until he had heard all the testimony which was properly before him.

Mr. THOMPSON. Certainly.

The COURT. And I do not understand that you rest your position on this ground that you are arguing now. You say that he decided it; in fact, he said that he decided it, as a question of law; I assume on the construction of the Deed and the Article, and on the undisputed testimony of the defendant.

Mr. THOMPSON. Yes.

The COURT. So it doesn't seem to me that the question about—

Mr. THOMPSON. Well, I won't press my own view, although I feel it strongly; the position is so strong that there is no occasion for my attempting to press your Honor with arguments on that topic. I am going right ahead.

The COURT. Do you think that that would be conclusive if the other side was permitted to put in other oral evidence?

Mr. THOMPSON. I beg pardon?

The COURT. Don't you think, if other evidence was competent and he was obliged to hear it, that it might not be controlled by this evidence?

Mr. THOMPSON. By what evidence? I didn't quite get it.

The COURT. The evidence which you are reading now.

Mr. THOMPSON. No. This evidence that I am reading now is that they did not give him any hearing. It is an admitted fact. I am reading the admissions. However, if your Honor does not—

The COURT. So far as that is concerned, he has already made the general statement that he considered the question settled as a question of law and upon the admission of parties.

Mr. THOMPSON. Yes. I won't press it any more, I don't care. It is not of sufficient importance for my purpose. I feel quite sure, that I might, if your Honor had the time to listen to me, convince your Honor that this, too, was relevant here; but I am not going to take the time now. I will read on, Paragraph 7:

"This defendant consented in good faith to submit to the decision of the Master the validity of his attempted dismissal upon the evidence in the case at the close of the evidence on August 2, 1919, without testifying himself or offering testimony of any witnesses in his own behalf, except the testimony elicited on cross-examination from the defendants Dickey, Neal, Merritt and Rathvon, who were the only defendants concerned in said attempted dismissal, and upon the documentary evidence introduced by said defendants, relating to the history of said By-law and the organization of said Church and the circumstances surrounding the execution of said Deed of September 1, 1892. This defendant understood as did the Master and the plaintiffs, that the other defendants had assented to the proposition that the issue whether this defendant was or was not a trustee and director on March 25, 1919—"

By "trustee" I mean, not a trustee of the Publishing Society, but under the original Deed of September 1, 1892, which is quite different from Mr. Whipple's Deed. There may be a possible misunderstanding there and I don't want to leave any room for doubt on that. The original deed designates some four persons as trustees and says they shall be called the Christian Science Board of Directors. Then on the basis of the few duties created by that Deed there were afterwards built up by a long succession of By-laws covering a series of years, other duties not mentioned in the Deed, not inconsistent with it, but entirely separate from it; and the same people, with one other added several

years afterwards, were also called The Christian Science Board of Directors, performing the functions under those By-laws. And so we have got an ambiguous term. You have a term starting with a deed, and afterwards added to by the By-laws. I mention that. That would come out as I was going to read, but it is necessary to make it clear as we go on.

"This defendant understood, as did the Master and the plaintiffs, that the other defendants had assented to the proposition that the issue whether this defendant was or was not a trustee and director on March 25, 1919, was an issue presented for decision in the present case, and prepared his argument, as well as many requests for rulings of law and findings of fact, on that hypothesis. He contends that the exception taken by the other defendants on September 3, 1919, to said ruling was without value because inconsistent with their assent given a month earlier to the proposition that that was an issue which the Master must decide in this case; and he further submits that the omission of the other defendants even to suggest that they had further evidence upon that issue until after they had ascertained from the presentation of the Master's draft report on December 20 what the Master's findings and rulings of fact would be on that issue removes all basis of equity and fairness from the request contained in their present motion."

That is what the present situation is. Now, to just review this thing a moment. We rest our case, without a hearing, on the documentary evidence, on the principles of common law laid down in cases your Honor is perfectly familiar with, the Boston Athletic Club case and others. The Master finds, we understood—and he finds our understanding was correct—that they assented to that; that it was an understanding between us. There had been many previous discussions. The matter had been discussed from every aspect. Many inconsistent statements had been made from first to last. As the Master says, confine attention to what was said on August 2; we do not need to go back over the long weeks of prior discussion. That is what was said and what was done. It was done at the request of Governor Bates and the request of Mr. Whipple and we took our chances. They took theirs. The whole case, Dittmore's whole case, is decided without any findings of fact at all—simply on the construction of those two documents.

In so far as this report contains any statements in regard to motives which led to their breach of the law, under the legal construction of those documents, the Master says it was based on their own admissions on cross-examination and on their own case. He is most careful to exclude anything except their own plain admissions made in the case—all the four men who did the act. He tied that

matter up so tight that nobody could mistake what he has done. He has been scrupulously careful to protect them. He might have been perhaps more careful—I won't say that—but I might have asked for more care to protect Mr. Dittmore. I am the one that took the chance, not these men.

Now I say what these people are in effect doing is asking your Honor to reverse a finding of Judge Dodge, based on two identical motions before him, and decided by him on a minute knowledge, which it would take weeks for any other human being to get—on charges which antecedently are so improbable that they ought to be rejected without any evidence, and which the evidence and documents in the case show to be overwhelmingly disproved, which get their apparent color simply from garbled statements from preliminary talk between counsel. I could read your Honor a dozen statements wholly inconsistent with what has been read here.

I contend that this is in effect a motion to anticipate the filing of the Master's report, to recommit the report before it is filed. I ask your Honor to rule as a matter of law—and I have prepared a written request to that effect—that this motion cannot, as a matter of law, be decided until the Master's report is filed; and I ask your Honor as a matter of discretion to overrule the motion in *Eustace v. Dickey*, and to overrule that part of the motion in *Dittmore v. Dickey* which asks that the report in *Eustace v. Dickey* be withheld. If your Honor wants to grant the other part, that we go ahead with hearings in *Dittmore v. Dickey* after this report is filed, that is a different matter. I do not think you will find any great desire on the part of Governor Bates, who will have to spend most of his time for the next six weeks getting up a brief or preparing himself to meet what has already happened, to spend time putting in testimony in a case, all of which will turn out to be entirely immaterial, and a waste of time, if the Supreme Court sustains Judge Dodge on the questions of law on which he has decided this *Dittmore* issue.

*Argument by Mr. Whipple in Reply.*

Mr. WHIPPLE. If your Honor please, on account of the lateness of the hour, so far as we are concerned we should prefer, instead of attempting now to cite additional or supplementary facts from the record, to present your Honor with a copy of the record in which we will indicate the things that we think ought to be heard in addition to what the Governor has put into his affidavit.

The COURT. Well, is that all ready to submit to me now?

Mr. WHIPPLE. No, your Honor.

The COURT. I want to get it tonight, because tomorrow is Saturday, and it is the only day I will have to work on this case—Saturday and Sunday, I should say.

Mr. WHIPPLE. We will get it to you to night, or we can get it to you in the morning, if your Honor please.

The COURT. Well, I should want it early in the morning, by half-past nine or so.

Mr. WHIPPLE. We can prepare it and hand it to your Honor. But, in connection with the discussion that has just taken place, and as bearing upon the question of any surprise, we would like to call attention to the fact that at one time there was talk between counsel of submitting the whole *Dittmore* case, not merely the *Dittmore* issue in the *Eustace* case, but the whole *Dittmore* case, upon the evidence just as it stood.

Governor Bates challenged Mr. Thompson, Mr. *Dittmore's* counsel, to do it, as showing that they were satisfied and confident of their whole case upon the evidence as it then stood. Now, this appears,—the first reference to it is on page 743 of the printed record. When we were discussing it the Master said:

"I am convinced that it would be useful for counsel to consider the situation at this point in these respects, fully, and not to have any misunderstanding about it.

"Mr. BATES. Do I understand Mr. Thompson to make the proposition that he is willing to rest the *Dittmore* case where it is?

"Mr. THOMPSON. I did not make that proposition. I threw it out as a suggestion for you to consider.

"Mr. BATES. Do you make it as a proposition?

"Mr. THOMPSON. No, I do not make it now.

"Mr. BATES. I thought he put the question to me as if he really meant it.

"Mr. THOMPSON. You would like to take that seriously, would you?

"Mr. BATES. I will take it seriously if you wish to make a proposition."

There was at that time no suggestion of any more evidence that they wanted to put in. It was at that time, if they were speaking in good faith, and no one could question that, that they were ready, if Mr. Thompson would assent to it, to submit their case, not merely the *Dittmore* issue in the *Eustace* case, but the whole *Dittmore* case, upon the evidence as it then stood. That was practically at the close of the evidence. That was on August 2nd, after all the evidence was in. There was no question about submitting the *Dittmore* issue in the *Eustace* case; the only question they were discussing was as to whether they would not dismiss the *Dittmore* case entirely without any more evidence, and Governor Bates wanted to do it and Mr. Thompson was apparently afraid to—at least he would not do it.

Then, again, this matter came up, on page 751 of the printed record. This was on September 3. Mr. Bates said:

"May I ask your Honor what would

become of the *Dittmore* case? Now, assume, for instance, that your Honor could not decide that question without taking such an attitude in regard to it that it would be somewhat difficult to try the other case out before your Honor afterwards. I want to know if that does not virtually dispose of the *Dittmore* case without the evidence having been offered in it, pertaining particularly to it?

"The MASTER. I think in the *Dittmore* case there are a good many grounds against or for the dismissal which are not set up here.

"Mr. BATES. I think that is true, your Honor.

"The MASTER. I think we come down here to a question of law pretty nearly.

"Mr. BATES. I understood your Honor was going to decide the question whether he was or was not a Director, and that of course involves everything in the *Dittmore* case.

"The MASTER. No, I do not think it does; I don't think so. From what I have got before me in *Eustace v. Dickey*, Was Mr. *Dittmore* a Director or was he not? If I am wrong the court will straighten me out.

"Mr. BATES. Well, I accept your Honor's ruling, except I want to reserve our rights. Personally I think that we should be as willing to argue the question as anybody."

The whole *Dittmore* question—he was willing to argue it on the evidence as it was already in. Then, on page 752, near the bottom of the page, I ventured this:

"Yes. Very well; we will arrange for any further preliminary or chamber hearings in that way. Would it be out of order for me, as I am interested in this record, to ask your Honor to ask both the contending parties in the *Dittmore* case whether they cannot agree that their case be submitted on the evidence as it stands? Both of them seemed ready to do it when we closed these hearings, and, as near as I can observe, there is a manifest willingness to do it now; but, if I size the situation up, neither one makes the advance.

"The MASTER. You better see if you cannot persuade them.

"Mr. WHIPPLE. I thought perhaps your Honor would be more persuasive than I.

"The MASTER. That is hardly my job."

Then I said:

"Why not? (To Mr. Bates.) Are you willing to submit the *Dittmore* case on the evidence as it stands?

"Mr. BATES. We never have discussed that with our clients at all.

"Mr. WHIPPLE. Why don't you discuss it?

"Mr. BATES. Why, because we were excluded from putting in evidence that pertained to the issue on that case particularly, and Mr. Thompson was allowed in cross-examination—

"The MASTER. You might examine that. Governor Bates, and see

whether you were really excluded from putting anything in substantial, in that case.

"Mr. BATES. Oh, your Honor, there was a lot of it.

"Mr. THOMPSON. Oh, no, you will find, Governor, that you are mistaken on that.

"Mr. BATES. No, there was a lot of it. We did not examine any Director in regard to it, we never asked a Director as to his reasons, or what led up to it; there was no opportunity to put in any part of it.

"Mr. WHIPPLE. On the other hand, Mr. Dittmore hasn't testified, either.

"Mr. THOMPSON. No, he has not testified.

"Mr. WHIPPLE. He hasn't testified about it at all.

"The MASTER. I think you will find the whole matter resolves itself down to a question of law arising from facts about which you are not much in dispute.

"Mr. WHIPPLE. It seems so to us.

"Mr. BATES. If Mr. Dittmore's counsel would present that proposition to us we would take it under more serious consideration, and possibly might agree with them, but they have refused to do it."

That does not show any great surprise, or opportunity for surprise to arise later because they had not put in the evidence that they had expected to when they were challenging Dittmore, or Dittmore's counsel, to leave the whole case on the evidence just as it stood.

#### MR. THOMPSON IN REPLY

Mr. THOMPSON. I want to call your Honor's attention to one matter that has been called to my attention. The Master expressly finds that the defendants were permitted to examine on redirect on all matters gone into on cross; and he further finds that, on cross-examination, the four directors were fully, he says, fully, exhaustively, examined on everything connected with the discharge of Mr. Dittmore; and the result is a finding that Mr. Bates was given the fullest liberty on redirect examination to inquire of his own clients as to every possible fact and circumstance relating to the action of dismissing Mr. Dittmore. He had every chance, and the Master so finds it, and he exercised it, as a matter of fact.

#### MR. BATES IN REPLY.

Mr. BATES. May it please your Honor, I was going to read what Mr. Whipple has read and I thank him for reading it. He did not give the date when that colloquy took place. That was on September 3, a month after the evidence had been enclosed and at this hearing when we were insisting that we had never consented to anything of the kind; and the Master practically, in that colloquy as it has been read, admits that at that time he did not understand that we were assenting to anything of the sort, for, when Mr. Whipple suggests that the Master

should try to get us to agree to it, the Master indicates that he better see if he could not persuade us; that is, the Master asked Mr. Whipple: "You better see if you cannot persuade them." Was he trying to persuade us to do something he understood we had agreed to?

Mr. WHIPPLE. That was to submit the whole Dittmore case.

Mr. BATES. This was September 3.

Mr. WHIPPLE. That was to submit the whole Dittmore case.

Mr. BATES. Yes; and the only Dittmore case that we were talking about was the question of the legality of his removal; that was the question to be submitted.

Now, before Mr. Thompson had thrown out the suggestion at one time before the Master—

Mr. THOMPSON. That was not the question submitted.

Mr. BATES— had thrown out the suggestion before the Master that he would submit the whole case if we would, and I immediately asked him what he meant by it, for I did not think he intended it, and he would not repeat it and he would not make it and I did not. I never said I would accept the proposition. If it had come I might have given it careful consideration, no doubt, as I was bound to; but I stated it distinctly here that we have never discussed such a thing with our clients or that it was necessary, and the reason why we had not discussed it with them was, as I said at that time:

"— because we were excluded from putting in evidence that pertained to the issue on that case particularly, and Mr. Thompson was allowed in cross-examination—"

Then the Master interrupted:

"The MASTER. You might examine that, Governor Bates, and see whether you were really excluded from putting anything in substantial, in that case." And my reply was:

"Oh, your Honor, there was a lot of it. \* \* \* We didn't examine any director in regard to it, we never asked a director as to his reasons, or what led up to it; there was no opportunity to put in any part of it."

That was on September 3, a month after the opportunity for putting in the evidence had ceased, and it was on that very day when this ruling was first made as a ruling.

We have been accused of changing our position. We were consistent from the beginning. They have not quoted us in a single statement where we did not insist that if the Dittmore issue, if the Dittmore status was to be decided, that then it could only be decided after the Dittmore evidence had been presented in the Dittmore case. We stuck to that from the very beginning. It is not sufficient for Mr. Whipple to suggest that we have a remedy under our exception. That is on a question of law as to whether or not that is an issue in the Dittmore case. But the law does not

contemplate that a man shall be found guilty before he has had a hearing in court.

Mr. THOMPSON. That is what we thought.

Mr. BATES. It does not contemplate that a question shall be decided against him and that then he has his remedy on some other collateral question or where he has reserved his rights on a question of law. We are here because we have not had the hearing. If we had the hearing we would not be here. We are not here to prevent the publication of a report on anything that has been heard. We are here to prevent the publication of a report on a matter which has not been heard; and if after we have had the hearing the facts are found against us, we shall not hesitate to publish the report. We would want to have it published. But we do not want a report published of a finding upon which, on the Master's own statement, the case had not been opened and the evidence had not been finished, as found in his report as it has been read here.

It has been asserted that we consented to this arrangement. The Master said he understood we did on August second. We have shown by our affidavit that on August second he stated what his opinion might be, not his ruling, and asked us to consider it, and it was as a result of that consideration that we sent the letter of August 30—not a day or two before the argument as counsel have stated but 11 days before the arguments—and stated to his Honor that we did not consider that that question could be heard in that case.

And then he gave us the hearing of September 3, and on that day we called to his attention the fact that the evidence was not in, that nobody had expected to be heard on it; and yet he ruled that he thought it was a matter of law anyway and therefore he guessed that he would not grant our request. The suggestion that it was a matter of law solely came from the Master and from Mr. Whipple several times during the hearings. It is in the affidavit. Now, if the Master had decided this as a question of law, although we think that it was not open to him in this case, nevertheless we should not be here, because on those questions we would have a right to be heard before your Honor and your Honor's associates in the full bench of this court. It is because that he has not stuck to that position, it is because he has found on questions of fact on which the evidence was not in, that we are here, and that is where he has transgressed the fundamental rule, the elementary rule to which Mr. Thompson has referred.

Mr. Thompson said that we did not protest; that we waited to see what his report was; that we never claimed there was evidence which we were going to introduce. The very quotation Mr. Whipple read shows that

we claimed there was evidence that we wanted to introduce. We claimed it time and time again. We claimed it every time we had the opportunity. The Master shows it, even, in paragraph No. 78 here. He says that when we began our argument we stated:

"the evidence that pertained to that case alone (the Dittemore case) was not offered in chief, because it was understood that your Honor had excluded it. The evidence that pertained to that case alone was the evidence which pertained, of course, to the question as to whether or not Mr. Dittemore had been properly removed. Your Honor has decided, reserving our rights, that the Eustace case cannot properly be decided without your Honor considering the question of Mr. Dittemore's rights as one of the issues involved in that case. To such extent, therefore, as the evidence has been put in, and to such extent as your Honor considers Mr. Dittemore's status as an issue in the Eustace case, that matter is now open for argument."

Then he says that in our requests for findings and rulings, which were filed at practically the same time, we said this:

"— under the heading 'Status of Mr. Dittemore as a Director'—

'without waiving, but specifically relying upon, the defendants' exception heretofore taken and allowed to the ruling of the Master that the issue whether or not Mr. Dittemore was at the time of the filing of the bill in this case a Director is an issue of fact upon which the Master must pass.'

There was another protest!! He says:

"And in their brief, also submitted after the oral arguments, the same counsel stated that their points and authorities under the heading 'Mr. Dittemore's Status as a Director on March 25, 1919', the date of the filing of this Bill, were submitted—

—'without waiving the defendants' exceptions to the Master's ruling that the status of Mr. Dittemore was an issue of fact to be determined in this case, and specifically relying upon our objection to a decision of this issue in advance of a presentation of all the evidence.'"

So that the Master finds that we did exactly the thing as often as we had the opportunity and as emphatically as possible that Mr. Thompson says we did not do.

My brother speaks of sophistry and he sort of accuses me of quoting him, as though it was an imputation of dishonesty to him to show that his statements as made throughout the trial of this case are inconsistent with his present attitude and his present argument. We did not make the statements. If they are inconsistent, it is for him to meet them in some other way than by accusing us of quoting him. We have quoted him literally and truthfully.

He says that if we should succeed in getting this case opened up and having it heard, it would open the flood-gates of unpleasant evidence that he proposes to put in against our clients. We are not afraid of his flood-gates of unpleasant evidence. We are not seeking to stifle a hearing. We are here because we want the hearing, and we want all the evidence in the case, and we do not want any judgment against us on a partial hearing or without the evidence on the facts upon which the Master has found. He says we did not want to try the issue out. We have wanted to try the issue out from the beginning; at all times we have been ready and anxious to try it out.

He says that we agreed. We never did agree. There was never any assent to the suggestion that the Master should find on the issues of fact in this case without first hearing the evidence in the Dittemore case. And if your Honor will read whatever may be relied upon by them, you will find that there was a qualification. The Master quotes me as urging him to close up the Eustace case if he could find a way to do it. I had reference to the fact that he had stated it was a question of law. We did not object to his finding on that. But I also have reference to the statement made by Mr. Whipple, on that day or the day previous, when he had said that he was perfectly satisfied as counsel for the plaintiffs to have his Honor find in this case without deciding on that issue. All he asked for, if there was relief for him, was relief as against the Directors as a body and not as against individuals. There were ways in which he could do it. "If you can find a way", I said to him, "we would like to have you hurry it"; but I also added: "If it cannot be done without finding on the facts as to Dittemore's status, then of course it cannot be done until your Honor has heard the Dittemore case."

The matter which the Master referred to, which he said he thought at the time was my assent, was this: I said:

"Yes, your Honor; but I called attention to that when they first asked for a postponement, some two or three weeks ago. I thought then it would be difficult, possibly, for your Honor to come to a conclusion in the Eustace case without deciding the question involved in the second one."

Only two days before I had stated to him—it is quoted in the affidavit—that it would be impossible for him to do this thing without first hearing the Dittemore case. But I had a right to assume that that was in his mind also, as well as the remarks of other counsel.

Now, I admit to your Honor that we are not here asking for anything but a hearing. That is all that we are asking for. We say that if we made a mistake, and misunderstood the Master, his own statement on Jan-

uary 10th shows that we were justified in it; that the statements of all the other counsel justify us in it. If there was a misunderstanding on our part there was a misunderstanding on the part of all of them.

But what has happened? He is deciding questions of fact, as your Honor will see, without having all the evidence. He practically admits that all the evidence was not in. He cannot assume that those facts were not to be controverted; he cannot assume that we were not going to put in a lot of evidence when we insisted that we wanted to do it; he cannot assume that that evidence would not have changed his mind. The Master does not claim in his report that we made admissions, or that the defendants did. He says that he finds certain facts on their testimony. He says that he finds a fact in regard to Mr. Dittemore's letters, the letters that were put in by Mr. Dittemore's counsel in cross-examination, but without any opportunity ever given to us to put in a large host of letters upon which we rely as one thing in this case. Not one of them was ever offered.

And so I suggest to your Honor that, as you look at that report, you will see that, on his own statement, there were questions of fact which he is deciding upon which he had not heard the evidence.

But, if we did have a misunderstanding, it was a justifiable misunderstanding; and all we are asking for is a chance to be heard. If after we are heard the Master comes to this conclusion, well and good. We are not even asking to change the tribunal, we are so confident of our evidence. Although the tribunal might seem to be prejudiced, we are not asking for that even. We come here and say that we want Judge Dodge to hear this evidence, and he says that he cannot hear it unless he is so directed by the court. I do not think that the suggestion that it would be unfair to the other parties is a weighty suggestion in such a connection. It cannot be unfair to them. Nothing can be so unfair as to decide an issue without hearing the evidence. It may make for a little delay in brother Whipple's case. So far as Mr. Dittemore is concerned, it cannot hurt him. If he is right, he should not be afraid to have the evidence heard; if he is wrong, this evidence ought to be heard so as to show that he is wrong. It is elementary that we are entitled to a hearing; it is as elementary as the fundamental principles of human justice; it goes back to the Magna Charta, to the days of King John—

Mr. THOMPSON. King George?

Mr. BATES. I said King John.

Mr. THOMPSON. Oh, I thought you said King George.

Mr. BATES. I supposed that you knew that it was in the days of King John.



Mr. THOMPSON. I thought you did, too. I just wanted to be sure of it.

Mr. BATES. Well, you said that it was elementary, and I agree that it is absolutely elementary. We are not to have a case decided against us without first having a hearing. It was the great Defender of the Constitution who gave us the definition which we seek to have exemplified here today,—“Due process of law is a law which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial.” That is all that we are asking for.

Mr. THOMPSON. That was all that we were asking for, if your Honor please.

The COURT. Well, I think that we will declare the hearing closed. I would like the affidavit of the defendants, and Mr. Thompson's affidavit, and the requests for rulings. I think that those comprise everything that I desire to have.

Mr. BATES. I would like, your Honor, to have the time for the filing of the Master's report, which expires on the first of March, extended. I have a motion here to extend the time to the middle of March, March 15th, so that he may not feel compelled to file that report before possibly your Honor has an opportunity to give a decision in this matter. I ask that that motion to extend the time to March 15th be granted.

Mr. THOMPSON. I would like to inquire whether the Master has made any such request?

Mr. BATES. I do not understand that he has.

Mr. THOMPSON. I understand that his report is completed, and that he is entirely ready and willing to file his report and that he does not desire any further extension. I am quite willing to accommodate him, but I have yet to learn why the defendants are so solicitous for the welfare of the Master.

Mr. BATES. It is not a question of the welfare of the Master.

Mr. THOMPSON. Whose welfare is it, then?

Mr. BATES. It is to the end that the report, which we claim ought not to be published until after there has been a further hearing, that question now being pending in this court, may not be filed, as it would be required to be under the rule, until after his Honor has rendered his decision.

The COURT. Well, I will take the motion, although I think that there is some question about the allowance of a motion of that kind, unless the Master presents it, or desires it.

Mr. BATES. I present it, your Honor, because of the peculiar situation in this case.

The COURT. Yes, I understand.

Mr. BATES. And I may also add that the time for the filing of objections expires tomorrow. There might be a presumption, Monday being the first of March, that the Master would want some time to examine those objections before filing them; but I am not filing the motion on his account; I am filing it because of the peculiar situation in this case; and then it is left to him to say whether or not he thinks the report should be filed before your Honor decides this matter.

Mr. THOMPSON. I ask your Honor not to overlook the requests for rulings of law that I have made—

The COURT. That is what I just asked the clerk to give me. Now, Mr. Whipple, what was it that you desired to present to me?

Mr. WHIPPLE. We think that the statements in the second affidavit, the supplementary affidavit, are not complete, and that they give an erroneous impression. They are statements of quotations from the record, but, like the one which I instanced when I began my remarks, by leaving out part of them, they give a wrong view. We want to call attention to more than Governor Bates has given in his quotations, and what we thought we would do would be to make a little memorandum—I think that perhaps it may be ready now—in which, instead of filing a formal affidavit, we will give you the citations of the pages in the record from which Governor Bates has quoted, with marks on the margin of something more that we think ought to be added to make the citations represent what was really said, and the thought of the parties. Now, this is the record, and there will be, perhaps, three or four places at which we would like to have you look. Ordinarily we should have a stenographer copy them, and then hand them to your Honor in that form, but, because of the lack of time, we thought that we would prefer to hand this [the printed volume of the stenographic report of the hearings before the Master] to you.

The COURT. Well, if you have a mark in the place there I will take it.

Mr. WHIPPLE. Yes. There are three places there which we have marked in the record. We will give you the pages if you like.

The COURT. You have them marked there?

Mr. WHIPPLE. Yes.

The COURT. That will be sufficient.  
[Adjourned.]

Publisher's Note—The above is a verbatim report, with no corrections made by us in the stenographic court report supplied to us.

## MOTIONS DENIED

BOSTON, Massachusetts—The Supreme Judicial Court of the Commonwealth of Massachusetts, Mr. Justice Crosby sitting, entered decrees in court yesterday, attested copies of which read as follows:

### COMMONWEALTH OF MASSACHUSETTS.

#### SUPREME JUDICIAL COURT. SUFFOLK SS.

No. 30654 Eq.

HERBERT W. EUSTACE, et al.

vs.

ADAM H. DICKEY, et al.

#### INTERLOCUTORY DECREE DENYING MOTION TO EXTEND TIME FOR FILING MASTER'S REPORT

This case came on to be heard at this sitting upon the defendants' motion to extend the time for the filing of the Master's Report until March 15th, 1920, and was argued by counsel, and thereupon, upon consideration thereof, it is ordered, adjudged and decreed that said motion be and the same is hereby denied.

By the Court.

No. 30654 Eq.

HERBERT W. EUSTACE, et al.

vs.

ADAM H. DICKEY, et al.

#### INTERLOCUTORY DECREE DENYING MOTION FILED FEBRUARY 14, 1920.

This case came on to be heard at this sitting upon the defendants' motion filed February 14, 1920, and was argued by counsel, and thereupon, upon consideration thereof, it is ordered, adjudged and decreed that said motion be and the same is hereby denied.

By the Court.

No. 30788

JOHN V. DITTEMORE

v.

ADAM H. DICKEY, et al.

No. 30,788.

#### INTERLOCUTORY DECREE DENYING MOTION FILED FEBRUARY 14, 1920.

This case came on to be heard at this sitting upon the defendants' motion filed February 14, 1920, and was argued by counsel, and thereupon, upon consideration thereof, it is ordered, adjudged and decreed that said motion be and the same is hereby denied.

By the Court.

March 1, 1920.

# Report of the Master, Judge Frederic Dodge

BOSTON, Massachusetts—The following is the report of the Master, Judge Frederic Dodge, filed in Court March 6, 1920:

COMMONWEALTH OF  
MASSACHUSETTS.

SUPREME JUDICIAL COURT.  
SUFFOLK, SS. IN EQUITY.

No. 30,654.

HERBERT W. EUSTACE ET AL.  
v.

ADAM H. DICKEY ET AL.

## MASTER'S REPORT.

Under the order of Court entered May 9, 1919, a copy whereof is annexed, I have heard the parties in the above case, and their evidence, and the arguments of their counsel; and now, after due consideration thereof, make the following Report to the Court of the facts found by me, and of such rulings of law as have been considered necessary for the purpose of finding said facts.

An order relating to the above order of reference, by Loring, J., also dated May 9, 1919, may be referred to in connection herewith.

The pleadings before me for the purposes of this Report are as follows: The plaintiffs' Bill, filed March 25, 1919, and amendments thereof allowed September 17, 1919, after the close of the hearings. The Answer thereto, filed by the defendants Dickey, Neal, Merritt, Rathvon and Knott April 4, 1919, and amendments thereof allowed September 23, 1919. The Answer to said Bill filed by the defendant Dittmore April 9, 1919, and amendments thereof allowed September 17, 1919. To said Answers the plaintiffs have filed a replication.

In *Dittmore v. Dickey et al.*, another suit pending in this Court (No. 30,788 Equity), one of the defendants in the present case brings his bill, filed April 29, 1919, against the five other defendants therein, and the Court has ordered, on May 17, 1919, that said case also be referred to me as Master and heard with the present case,—No. 30,654. Much of the evidence at the hearings was offered in both cases. This is dealt with in the present Report, in its relation to the issues raised by the pleadings in No. 30,654. It is understood that further

evidence remains to be heard in the case No. 30,788, should the parties so desire, upon such of the issues raised therein as may remain open after the determination of those raised in the present case.

My findings of fact and rulings of law in No. 30,654, *Eustace et al. v. Dickey et al.*, are set forth in the paragraphs following, which have been numbered for convenience in reference. All exhibits therein mentioned may be referred to in connection with this report, and regarded as incorporated therein by reference.

1. The three plaintiffs Eustace, Ogden and Rowlands were on March 17, 1919, the duly appointed and acting trustees under the deed of trust dated January 25, 1898, whereof Exhibit A, annexed to the Bill, is a copy. On said day, and when their bill was filed, each was a member of "The First Church of Christ, Scientist, in Boston, Mass." referred to in par. 4 of said deed,—which is the religious organization founded by Mrs. Eddy, the grantor in said deed, and also referred to in par. 2 of the plaintiff's Bill. Eustace had been trustee as above since December 2, 1912; Ogden and Rowlands since August 1, 1917.

An averment in par. 1 of the Answer filed by all the defendants except Dittmore, that the plaintiffs never became trustees under said deed if certain contentions by them are upheld, is considered in par. 49 below.

2. On said March 17, 1919, the five defendants Dickey, Neal, Merritt, Rathvon and Dittmore, being each a member of said Church, were also the members of a board called in its By-Laws "The Christian Science Board of Directors", the "Board of Directors" or "the Directors".

The By-Laws here referred to are those contained in the 89th edition of the "Church Manual" of said church, a copy whereof is annexed to and made part of the Answer filed by the above named defendants, see par. 6 thereof. Said By-Laws were accepted by all the members of said church, who, in becoming members, had subscribed either to them or to the By-Laws contained in some previous edition of said "Manual". The By-Laws contained in said 89th edition provided that the officers of said church were to consist, among others, of "a Board of Directors" (Art. I, Sec. 1), and that said Board was to consist of 5 members (Art. I, Sec. 5). The above defendants

had served respectively as members of said Board, said Dittmore since June 1, 1909,—said Dickey since Nov. 21, 1910,—said Neal since July 22, 1912,—said Merritt since July 19, 1917,—said Rathvon since Sept. 27, 1918.

The original constitution of said Board of Directors, its subsequent history, its original functions and powers, also those afterwards from time to time assigned to it by By-Laws adopted by or for said church, and published from time to time in successive editions of said "Manual" will appear from the further findings stated below.

No person has, since Sept. 23, 1892, served as a member of said Board without being at the same time a member of said church.

3. The Board was originally constituted not by any vote or By-Law of the church, but by Mrs. Eddy herself in an earlier deed of trust dated Sept. 1, 1892, before the church was organized. Exhibit B, also annexed to the Bill, is a copy thereof.

This deed granted land to four trustees for purposes specified, and directed that they should be known as the "Christian Science Board of Directors". Its provisions are hereinafter referred to more in detail.

The four trustees named in it or their successors, acting under the above name, exercised the functions and powers assigned to them by said deed from its date until Feb. 7, 1903. They meanwhile also exercised other functions and powers assigned to them, not by the deed but by church By-Laws as hereinafter stated.

In the church's By-Laws as published in the successive editions of the Manual during this period, the four trustees were referred to by the above name given them in the deed; but there was no By-Law purporting to fix the number of members.

Such a By-Law was first adopted on Feb. 7, 1903. It directed that the Board of Directors should consist thereafter of five members. Thereupon the four trustees chose a fifth member, and subsequent editions of the Manual have ever since referred to the Board of Directors as a Board of five members. As such, and under the same name, it has ever since exercised the functions and powers assigned by the deed to the original four trustees, as if their successor in the trust thereby created, and also others, assigned to the Board of Directors, by church By-Laws only, whether adopted and published before or after Feb. 7, 1903.

The various persons who have from time to time acted, as herein stated, as the "Christian Science Board of Directors", have always been recognized as such; and no other persons have at any time undertaken so to act. Their only records were kept under the above designation, being the name directed in the deed of Sept. 1, 1892, or the designation "Board of Directors of The First Church of Christ, Scientist".

All the above will also appear more in detail from findings hereinafter made. There has resulted an ambiguity in the use of the above name of the Board, important to be kept in mind. By that name was originally designated only the Board of four trustees constituted by the deed of 1892. As often afterward used in the church By-Laws or Manual, it designates a Board exercising also functions and powers not derived from the deed at all, but from church By-Laws purporting to confer them; and since Feb. 7, 1903, a Board containing one more member than the deed directs.

4. On said March 17, 1919, at a meeting of said Board attended by the defendants Dickey, Merritt, Rathvon and Dittmore, the resolution set forth in par. 13 of the plaintiffs' Bill, purporting to remove the plaintiff Rowlands from his trusteeship under Mrs. Eddy's deed of Jan. 25, 1898, and to declare his said trusteeship vacant, was adopted by the unanimous votes of the defendants Dickey, Merritt and Rathvon. The defendant Neal was not present at the meeting, but signified his assent to the vote by telephone. The defendant Dittmore, though present, declined to vote either for or against the resolution. A "Notice of Dismissal", reciting the resolution, was delivered to the plaintiff Rowlands on the same day. This has been marked "Exhibit 27".

Whether or not the removal of Rowlands from said trusteeship was lawfully effected by this vote is the principal question in dispute between the plaintiffs and all the defendants except Dittmore, who declines, in par. 1 of his answer as amended Sept. 17, 1919, either to aver or admit said removal to have been legally effectual, and submits the question to the Court.

5. In adopting the above resolution, those who voted for it purported, as the resolution itself recites, to be acting as—

"The Christian Science Board of Directors, the Board of Directors of The First Church of Christ, Scientist, in Boston, and the governing board of the Christian Science denomination."

And to be exercising—

"the rights and powers vested in this church and in this Board by the law of Massachusetts, by the Deed of Trust dated January 25, 1898, . . . by the By-Laws of this church, and by the usage of the Christian Science denomination."

Whether or not power to remove a trustee under the deed of trust referred to, was at the time vested in

said Board of 5 Directors, and what power, if any, is first to be considered; next, if the Board had such power, whether the adoption of said resolution was a lawful exercise thereof.

The first inquiry involves examination of the provisions of said deed, also of the deed of 1892 and the subsequent organization and doings of said church in their effect upon those provisions. The findings more particularly important for this purpose are below stated in pars. 6-37, inclusive.

6. The only express provision made in said trust deed of Jan. 25, 1898, for removal of a trustee under it, is a clause contained in the following paragraph thereof numbered 10,—  
"Whenever a vacancy shall occur in said trusteeship for any cause, I (Mrs. Eddy) reserve the right to fill the same by appointment, if I shall so desire, so long as I may live; but if I do not elect to exercise this right, the remaining trustees shall fill said vacancy. The First Members together with the directors of said Church shall have the power to declare vacancies in said trusteeship for such reasons as to them may seem expedient."

The language here used is not so explicit to that effect as it might have been made; but I assume, in the absence of contention to the contrary, that by the power to declare a vacancy here given is meant power to remove a trustee.

No action whatever regarding the attempted removal here in question has ever been taken by any First Members of said church. Because of changes in its form of government prescribed by By-Laws adopted or amended after the above trust deed of 1898 had been executed by Mrs. Eddy, and after the administration of the trust thereby created had gone on for several years in accordance with its provisions, if it can be said that the church had any First Members in 1919, they had long before that year ceased to take any part as such in its government or business. As from the further findings below will more fully appear, while the church's By-Laws, as they stood in January, 1898, provided for First Members and assigned to them various important functions, all such provisions and all mention of First Members had disappeared from the By-Laws and the editions of the "Manual" containing them, for many years before 1919.

Unless the result of these changes had been to substitute for the power given by the above quoted par. 10 of said deed to the two bodies therein named, in concurrence, power to the Board of Directors alone, independently of any other body, the directors' vote to remove Rowlands was without effect, whatever the rightful number of members of their Board may have been at the time, or whoever the rightful members may have been for the purpose of said par. 10.

7. As appears without dispute from the pleadings, Mrs. Eddy, grantor in both the deeds of trust above referred to, became in 1879 the leader in the organization of a church as set forth in par. 3 of the Bill,—she became pastor of said church in 1879 and instrumental in reorganizing it in September, 1892, under the name of "The First Church of Christ, Scientist",—she was also pastor emeritus of said reorganized church, until her death, on December 3, 1910. Said reorganized church is the church heretofore referred to and with which this case is concerned.

It may be assumed that in executing her first deed of Sept. 1, 1892, she was contemplating the organization afterward effected on the 23d of that month, although in said deed she makes no direct reference either to such proposed organization, or to any church organization.

8. As has been stated, it was by virtue of provisions made by Mrs. Eddy herself in her trust deed executed Sept. 1, 1892, above referred to in pars. 3 and 7 hereof, that a body called the "Christian Science Board of Directors" was first constituted. In par. 1 of that deed she directed (see Ex. B, annexed to the Bill), that the four trustees named as grantees of the land conveyed "and their legitimate successors in office forever" should be known by that name, and should "constitute a perpetual body or corporation under and in accordance with Sec. 1, Chap. 39 of the Public Statutes of Massachusetts" (now Chap. 37, Sec. 1, Mass. Revised Laws). It is clear, however, that she was without power to make them a corporation, and that the terms of the statute could have no application to them unless they were or became "officers of" a church or religious society "similar to" the deacons or church wardens mentioned in the statute. In such case they might, not by virtue of the deed but by virtue of the statute, "be deemed" a body corporate "for the purpose of taking and holding in succession" property given "to them and their successors" or to their church or to the poor of their church; but not for any other corporate purpose. It would seem that they could not convey lands so held by them without the consent of their church or a committee thereof appointed for that purpose. Pub. Stats. Ch. 39, Sec. 4; Rev. Laws, Ch. 37, Sec. 6. At the date of the deed they were not, so far as appears, officers of any church or religious society; they were only trustees selected by Mrs. Eddy. The church whereof they or their successors later acted as officers, viz., Mrs. Eddy's reorganized "First Church of Christ, Scientist", above referred to in par. 7 hereof, did not come into existence until the 23d day of the same September, 1892. Whether or not the trustees under the deed ever became entitled to be deemed a body corporate for the statutory purposes.

must depend upon the facts herein found regarding the subsequent organization of that church and the duties and powers assigned to said trustees (or directors) in its affairs.

9. Eleven persons, present at a meeting that day held in Boston, organized "The First Church of Christ, Scientist, in Boston, Mass." on September 23, 1892. Among them were the four persons whom Mrs. Eddy had made trustees in her deed of September 1, 1892.

The meeting first voted that all the persons present and one other, not present, "are First Members of The First Church of Christ, Scientist", in Boston, Mass.

It next elected a President, a Clerk, and a Treasurer of said church, naming it in each case as above.

It next elected 20 other persons proposed for membership First Members of said church, naming it as above, and directed the Clerk to notify each of their election.

It next adopted "Tenets" to be signed by those uniting with said church, naming it again as above.

It next adopted six "Rules for the government of this church". Rule 1 fixed the time for the annual meeting for the choice of officers, listening to reports, and the transaction of any other church business properly before it. Rule 2 fixed the time for quarterly meetings. Rule 3 provided regulations as to applications for membership and for voting thereupon by the First Members at the quarterly meetings,—candidates to be elected by a majority vote. Rule 4 directed the names of members so elected to be read from the pulpit on the following Sunday. Rule 5 provided as to observance of the communion. Rule 6 prohibited members of the church from membership in other churches not of the same denomination.

The meeting then adjourned subject to a call from the Clerk.

The First Members next met again in Boston on October 5, 1892. 27 were present at the meeting. The minutes of the meeting on September 23, 1892, were read and approved. An additional Rule 7 was then adopted, requiring applicants for membership to be believers in the doctrines of Christian Science according to Mrs. Eddy's book "Science and Health"; and prescribing certain other requirements to be fulfilled by such applicants.

Adjournment followed, after which the First Members then present, 35 in number, subscribed to the "Tenets" adopted at the former meeting. The First Members then, at Mrs. Eddy's suggestion (it does not appear that she was present), invited those present in the meeting to unite with the church, whereupon 59 other persons subscribed to the "Tenets". The records of the above proceedings are Exhibits 107 and 108.

Although no express rule or By-Law to that effect appears to have been

ever adopted, I understand it to be undisputed that the right to vote was at all times confined to First Members, i. e., either those who actually took part in the organization as above, or persons afterward elected First Members by them. No right to vote was acquired by admission to unite with the church as a "member" only.

The First Members are hereinafter frequently referred to by me as "voting members"—a term nowhere used in the By-Laws. Their records were designated as records of the First Members.

10. Nowhere in the record of the above proceedings is there any reference to Mrs. Eddy's deed of Sept. 1, 1892, or to the four trustees thereunder, or to any "officers" of the church other than the President, Clerk and Treasurer elected as above stated.

Nowhere in Mrs. Eddy's deed of Sept. 1, 1892, is there any provision that the four trustees therein named were to be officers of any church, however or whenever organized or under whatever name. Land, it is true, is given them for the sole purpose of the erection by them of a church edifice thereon, in which, when built, they are to maintain Christian Science public worship, preaching and services, and to permit such public worship, preaching and services only; but no nearer approach is found in the deed to a provision that the building was to be used by an organized church whereof the trustees were to be officers, than the direction in par. 6 of the deed that the "congregation" worshipping in said church shall be styled "The First Church of Christ, Scientist", which may be regarded as the name intended for and later adopted by the church organized Sept. 23, 1892, by the proceedings set forth in par. 9 hereof.

The church so organized under that name has continued its existence and the maintenance of its public worship, preaching and services ever since Sept. 23, 1892. But it could not have used the church edifice provided for by the trust deed of Sept. 1, 1892, before the completion thereof, which is understood to have been in 1894 or 1895. Neither the deed itself nor the organization proceedings afford any indication that the trustees under the deed were to be officers of the church during this period.

The grant of land in the deed is to the trustees named "and their legitimate successors in office forever",—the granted land is to be held by them "and their successors in office"; but in the absence of any statement or recital as to the office intended, I am unable to regard this language as sufficient to signify anything more than their successors in the trust according to par. 1 of the deed.

The deed directs that they be known as the "Christian Science Board of Directors" and later refers to them as the Board, or Board of Directors, terms usually descriptive of officers of some society or corporation; but,

standing by themselves without further explanation as these terms do, they may well be regarded as implying no more than the powers given by par. 3 of the deed, to regulate the use of the completed church edifice,—powers quite capable of being exercised by persons not church officers in the statutory sense.

It was not until 1908, as will appear, that any By-Law of the church expressly included a Board of Directors among the church officers provided for, and the By-Law to that effect then adopted, was adopted not by the church's voting members, but by the then Board of Directors alone, as stated below in pars. 21 and 22 hereof.

11. No functions whatever, as has been seen, were assigned to the trustees previously named in the deed of Sept. 1, 1892, in the organization proceedings taken Sept. 23 and Oct. 5, 1892. One of them (Johnson) was elected Clerk of the church, but his trusteeship (or directorship) does not appear by the record to have been mentioned or referred to.

The functions assigned in the deed itself to the trustees appointed, if supposed to assume the existence of an organized church, have little correspondence with the functions which deacons or church wardens are generally understood to exercise. General control and supervision of the church's property and financial affairs is not given them, the completed church edifice only is put under their authority. The church's funds, whether before or after it occupied said edifice, would presumably be in the custody of its elected Treasurer. And the deed gives them power, after completion of the edifice, to elect a preacher, reader, etc., to fill the pulpit,—a power understood to belong by common usage neither to deacons nor to church wardens as such, but to the members of their churches as a body, unless specially delegated by such members.

There was no testimony before me expressly directed to showing what are the functions of deacons or church wardens. These have been treated herein as matters of general knowledge.

12. "The First Church of Christ, Scientist, in Boston, Mass.", organized as stated above in par. 9 hereof, proceeded to hold its meetings and transact its business according to the rules whose substance has been there stated,—Mrs. Eddy being its pastor emeritus, as stated in par. 7. It has never become incorporated under any of the provisions of the Massachusetts statutes. It has been from the first, and now is, an unincorporated religious association.

The above Rules appear to have sufficed for its government until the close of 1895; or, if there were changes or additions meanwhile, their substance and the dates of their adoption have not been shown.

At a special meeting of the First Members on May 4, 1895, held at the church vestry in Boston but interrupted for the purposes of a visit paid by them to Mrs. Eddy at Concord, N. H., they voted, in accordance with her recommendation, that "The Mother Church shall have a Church Manual", and elected an Executive Committee, named by Mrs. Eddy, charged with the special duty of "seeing that the Rules and By-Laws of (the church) as contained in the Church Manual, are carried out by each member that attends this church in their letter and spirit"; and also with the duty of preparing the Church Manual.

No mention of any "Church Manual" earlier in date than the above appears from the evidence, nor any earlier instance of the use of the name "The Mother Church", to designate the organization, instead of the name it originally adopted. Such use appears to have since become more and more frequent, both among its members and in its successive Manuals, although the latter have always contained the statement, found in Art. XXIII, Sec. 2, of the 89th Edition, referred to in par. 2 above,—that the legal title of said church is "The First Church of Christ, Scientist"; omitting the addition "in Boston, Mass." used in the organization proceedings and also in Mrs. Eddy's later trust deed of Jan. 25, 1898. There appears to have been a steady and considerable increase in the number of "branch churches", which may be supposed one reason for a more frequent use of the more distinctive name. The total number of churches and societies since created and existing when the Bill was filed is agreed to be more than 1800. See par. 6 of the Bill and par. 6 of the Answers.

13. At a special meeting of the First Members on Dec. 28, 1895, certain Rules and By-Laws, read by the Clerk to constitute a Church Manual (presumably the work of the Executive Committee appointed on May 4, 1895), were accepted and adopted. The vote also provided that all Rules and By-Laws inconsistent therewith be repealed, and the Clerk was authorized to expunge and obliterate them from the church records.

The Rules and By-Laws thus adopted differed in important respects from those adopted when the church was organized, as stated in par. 9 above, and contained many additional provisions. They were published, together with other matter not referred to in the above vote adopting the Rules and By-Laws read, as the First Edition of the Manual, under the date 1895. A copy, marked Exhibit 394, was introduced in evidence, and may be referred to in connection with this Report. The words "By Mary Baker Eddy", on the title page, are in Mrs. Eddy's handwriting.

As part of the matter other than Rules and By-Laws therein included,

appeared a list of "church officers", under which heading, after Mrs. Eddy's name as "Pastor Emeritus", came, under the title "Christian Science Board of Directors", the names of the four trustees then acting under her deed of Sept. 1, 1892; and next the names of the then President, First and Second Readers, Clerk of Church and Treasurer. No vote however appears, by the First Members, adopting this as a list of the officers of the church. If the offices of First and Second Reader had been created before Dec. 28, 1895, when they were first created and how first filled, is not distinctly shown.

What purports to be a copy of the matter on the fourth page of Ex. 394 under the heading "church officers" was copied into the book of records of meetings of First Members after the record of their meeting of Dec. 28, 1895.

Most important among the changes introduced by these Rules and By-Laws adopted Dec. 28, 1895, is the provision contained in Art. I, Sec. 1, of the By-Laws, that the officers of the church should be elected, not by the First Members, as the original Rules had required, but "by the Board of Directors at their annual meeting". Art. I, Sec. 2 declared that the officers of the church should "consist of a President, Clerk, Treasurer and two Readers",—no mention being there made of "Directors" as included in the list of "officers". At no time have the members of the Board of Directors been elected by vote of the church members, whether First Members or not.

14. The provision for election of the church officers by the Board of Directors, thus first introduced into the By-Laws in 1895, has ever since appeared as a By-Law of the church in all editions of the Manual, and all church officers have ever since been so elected.

In the First and in all subsequent editions of the Manual there has been printed in full Mrs. Eddy's trust deed of Sept. 1, 1892, with a foot note to par. 1 thereof purporting to quote Sec. 1 of Chap. 39 of the Massachusetts Public Statutes; and there has also been in the 7th and following editions a foot note to the first mention of the Board of Directors in the By-Laws reading "See under Deed of Trust for incorporation of the Christian Science Board of Directors".

Since par. 1 of said Deed of Trust directs that "whenever a vacancy occurs in said Board (of Directors) the remaining members shall within 30 days fill the same by election",—it follows that by their vote adopting the Manual, on Dec. 28, 1895, the voting members of the church, including those by whom it had been organized, transferred the choice of their own officers, so far as such a transfer was within their power, to a self-perpetuating body, supposed to be a corporation, as above stated in par. 8, composed and always to be composed of members never chosen by them or any

members of the church, and constituted by a deed executed before the church had been organized.

The intention on Sept. 23, 1892, appears from the findings stated in par. 9 above, to have been to organize the church in accordance with the Massachusetts Statutes. Whether a By-Law having the above effect could have any validity consistently with those Statutes may well be doubted. Its validity however has never been questioned; it has been acquiesced in as valid and submitted to ever since its adoption by the entire membership of the church.

15. Although they had parted with their power to elect officers in 1895, as above stated, the First Members kept and exercised their power to transact all other business of their church until January 10, 1901, *i. e.*, until nearly three years after Mrs. Eddy had executed her trust deed of Jan. 25, 1898.

Before its execution on that date successive editions of the "Manual" were published, being those up to and including the 7th, or "revised", edition, published in 1897. In these were set forth the By-Laws as from time to time since 1895 changed or added to by the First Members' votes; but no express vote adopting any one of these editions as a whole appears.

The 7th or "revised" edition, Exhibit 705, was the edition in common use when the trust deed of Jan. 25, 1898, was executed. In view of the references made in that deed to the "First Members" of the church, some of the By-Laws relating to them, published in that edition, may here be noticed, as indicating their composition and functions as then established.

Art. II, Sec. 1, of the "revised" Manual provides that regular meetings of the First Members be held semi-annually, instead of annually, as the original Rules had directed.

Art. IV, Sec. 1, provides that the First Members shall vote on admitting candidates and attend to the transaction of any church business that may properly come before the meeting.

Art. IV, Sec. 2, directs that if the First Members become less than 40 in number, enough to regain that number be chosen by a majority of all the First Members, those so chosen to have the same power to act for the church as the incumbents. Of this Rule there was to be no repeal or amendment except by unanimous vote of the First Members.

Art. IV, Sec. 3, provides that seven First Members shall be a quorum for transacting the church business.

They were not, however, to choose church officers; these, as had been voted in 1895, were to be elected by the Directors. Art. V of the 7th edition, which so directs in Sec. 2, contains in Sec. 1 the same enumeration of the church "officers" as was contained in Art. I, Sec. 2, of the Manual of 1895; see par. 13 above.

16. As the above findings show, when Mrs. Eddy made her trust deed of Jan. 25, 1898, the church for whose benefit she established the trust thereby created, then in the sixth year of its existence, still retained and exercised the power belonging to its voting members of making or changing its By-Laws;—although they had, two years before, surrendered the election of their church officers to the four trustees under her previous deed of Sept. 1, 1892, who owned and controlled the church edifice in which they worshipped. The function then surrendered they still retained power to resume.

To the voting members of the church, not to said four trustees under the deed of 1892, there was given, in par. 4 of the deed of 1898, the disposition of the net income from the trust established, subject to "the rules and By-laws contained in the Manual of said church",—i. e., those contained in the Manual adopted Dec. 28, 1895 (par. 13 above), as amended by said voting members after that date and before Jan. 25, 1898.

To those voting members, and not to said four trustees under the deed of 1892, there was given in par. 13 of the deed of 1898 the power of determining from time to time the salaries of the three trustees under the latter deed. As used in said par. 13, I think "the said church" means said voting members and cannot properly be otherwise understood.

To the same voting members "together with the directors of said church" par. 10 of the deed of 1898 gave the power to declare vacancies in said trusteeship,—which is the particular provision in question in this case. There are no provisions as to the manner in which this power is to be exercised. In the absence of such provisions I hold the meaning to be that the First Members, who might be more but were not to be less in number than 40, and of whom 7 were to constitute a quorum (par. 14 above), might act by majority vote at any meeting attended by a quorum. It is said by the plaintiffs that unanimity on the part of the four trustee-directors under the deed of 1892 was required, the power given being special and given to four persons named or their successors. But the deed of 1892 itself shows that Mrs. Eddy regarded said four trustee-directors as a corporation (whether rightly or wrongly), and therefore as capable of acting by a majority. The powers given them in par. 3 of the same deed of 1892 to "elect" a pastor, etc., and make rules and regulations for the maintenance of Christian Science worship in the church edifice seem also rather to contemplate action by a majority; but I am unable to believe it intended that a majority of less than their whole number was to act.

17. Within a few weeks after the trust deed of Jan. 25, 1898, had been executed, the 8th edition of the Manual

was published,—Exhibit 707. Although no vote of adoption by the First Members is expressly shown, a letter written by Mrs. Eddy in February, 1898, Exhibit 706, signifies her approval, and its due adoption is assumed. Mrs. Eddy called attention in the letter to certain changes made in the By-Laws contained in the preceding edition, among which were new By-Laws, never before adopted, purporting to relate expressly to the "Christian Science Publishing Society", i. e., the trust just established by her deed.

These appear in Art. XI of said 8th edition, Sec. 1 whereof, after referring to said deed, directed the Board of Trustees thereby constituted to—"hold and manage the property therein conveyed, and conduct the business of the Christian Science Publishing Society on a strictly Christian basis for the promotion of the interests of Christian Science".

This is a repetition of some, but not all, of the provisions contained in par. 3 of the deed itself.

The same Sec. 1 also directed the net profits of the business to be paid semi-annually to the Church Treasurer, to be held by him subject to the First Members' order, and disposed of by them,—in the words used for the same purpose in par. 4 of the deed itself.

Sec. 1 further provided, as par. 10 of the deed had provided, that—"the First Members, together with the Directors of said church, shall have the power to declare vacancies in said trusteeship for such reasons as to them may seem expedient", following this with provisions the same in substance as those which precede it in par. 10 of the deed, reserving to Mrs. Eddy the right to fill vacancies and directing them to be filled by the remaining trustees if she did not elect to exercise her right.

A further provision in Sec. 1 required the candidate proposed to be elected by unanimous vote of all the First Members. The trust deed contains no such requirement, and this was soon stricken out of the By-Laws, by vote of the First Members on August 25 of the same year. With regard to a vacancy meanwhile occurring in the Board of Trustees and the manner in which the same was dealt with, the record of the meeting of said Board Aug. 19, 1898 (Ex. 264),—the following letters,—Exhibits 707½, 708-712,—and the record of the First Members' meeting on Aug. 25, 1898 (Ex. 124), may be referred to.

Secs. 2 and 3 of the same Art. XI contained directions not given in the trust deed regarding the conduct of the business and the election of editors and publishers of the Christian Science Journal, which need not here be quoted.

None of the provisions regarding the Publishing Society thus introduced into the Manual purported to deal with the matter of fixing the trustees'

salaries, which, so far as they were concerned, was still left to "the church", as par. 13 of the trust deed directs.

The above By-Laws contained in Art. XI of the 8th Edition have appeared either as above or with the later changes below stated, in all subsequent editions of the Manual. They appeared substantially as above in the 10th Edition, Exhibit 130, adopted by the First Members March 10, 1899,—the next edition after the first whose adoption by their vote expressly appears. The 10th Edition was also the last edition shown to have been adopted as a whole by vote of the First Members, although in the subsequent editions up to and including the 19th, no copy whereof is in evidence, no rule or By-Law appears which had not been adopted by their vote. There were By-Laws in all these editions regarding the Publishing Society, to the same effect as those above mentioned.

18. Further, and much more radical, changes in the church's form of government were made after Mrs. Eddy had established the Publishing Society trust by her deed of Jan. 25, 1898, and after the First Members had adopted the 8th edition of the Manual. These are next to be stated.

On January 10, 1901, the First Members adopted, at a special meeting, a By-Law providing that—

"The business of the Mother church hitherto transacted by the First Members, shall be done by its 'Christian Science Board of Directors.'

Also that—

"The salary of each member of this board shall at present be raised to \$700 per annum. The First Members of this church shall continue to convene annually at the Communion season, but they shall not be present at the business meetings. This By-Law can neither be amended nor annulled without the unanimous consent of the whole church, or the written consent of Mrs. Eddy, pastor emeritus."

Whether or not the making of By-Laws for the church's government was, properly speaking, "business" of the church, whose transaction its voting members could thus transfer to a different body, wholly independent of their control, may well be doubted. There are provisions in deeds executed by Mrs. Eddy after the above By-Law had been adopted, inconsistent with the view that it was intended at the time to have any such effect. These are further noticed in par. 19, below.

But that the By-Law was acted upon as if it had effected the above result, is clear. Every By-Law or amendment adopted since Jan. 10, 1901, has been adopted by the Board of Directors alone to whom Mrs. Eddy transmitted all such amendments proposed by her; none have since that date been submitted to or voted on by the First Members.

To this there has been no objection from any source, so far as appears.

There has been acceptance of and acquiescence in all the By-Laws or amendments adopted as above by the Board of Directors alone on the part of the entire church membership.

With regard to them my ruling is that none of them are By-Laws made under the authority of the Massachusetts Statutes. (Pub. Stats., ch. 38, sec. 5; Rev. Laws, ch. 36, sec. 5.) Their authority must be regarded as derived solely from the mutual consent of the church members to be bound by them.

Every edition of the Manual later than Jan. 10, 1901, has been adopted (when there has been special adoption by vote) by the Board of Directors alone. The editions so adopted were the following:—

The 20th, adopted Feb. 20, 1901,—Exhibit 131.

The 29th, adopted July 30, 1903,—Exhibit 133.

The 30th, adopted Sept. 21, 1903,—Exhibit 135.

The 57th, adopted Oct. 15, 1906,—Exhibit 137.

The 73d, adopted July 31, 1908,—Exhibit 140.

The 73d was the last edition to be adopted in its entirety, by any vote. A vote of the Board of Directors on August 28, 1908, entitled "Seventy-Third Edition the Authority", provided that the Board of Directors, the Committee on Bible Lessons and the Board of Trustees should each keep a copy of the 73d and of subsequent editions, and that "if a discrepancy appears in any revised editions" those should be cited as authority. This By-Law appears in the present, or 89th edition, as Art. XXXV, Sec. 2. A copy of that edition is Exhibit 57G.

The 89th edition is the 73d with all amendments or additions adopted by the Board of Directors during Mrs. Eddy's lifetime. Since her death, no further amendments or additions have been made.

19. It will be convenient to state at this point that although the First Members continued to meet annually until 1908, they never, after Jan. 10, 1901, undertook the transaction of any business as members of the church; not even the election of new members or First Members.

Since Jan. 10, 1901, there have been no elections, whether of officers or members, nor, as stated above, has any amendment, new By-Law, or new edition of the "Manual" been adopted, except by vote of the Board of Directors alone.

A By-Law adopted by that Board on March 17, 1903, provided that the First Members should thereafter be known as "Executive Members". Successive Manuals thereafter so described them, and contained provisions for their annual meeting, until, on July 6, 1908, the Board of Directors adopted still another By-Law, repealing all existing provisions regarding "Executive Members" and providing that—  
"there being no further necessity for

their organization, they shall be and hereby are disbanded".

Thereupon they held no more meetings, and in the Rules and By-Laws appearing in all subsequent editions of the Manual there has been no mention of them.

So far, therefore, as such a result could be accomplished by such means, there was accomplished by the above votes of the First Members on Dec. 28, 1895 (par. 13 above), and on Jan. 10, 1901 (par. 18 above), and by the above votes of the Board of Directors on March 17, 1903, and July 6, 1908,—the final dismissal from all participation in the government of the church or control of its membership, of the church's organizing members and all whom they had, since its organization, associated with themselves as its voting members.

There has been no objection or protest as to this result, so far as appears. It has been acquiesced in by the church membership.

Yet there have been conveyances since Jan. 10, 1901, to the trustees (or directors) under Mrs. Eddy's deed of 1892, of land for the church's use upon the express condition that there should be no adoption of new By-Laws or tenets except by a two-thirds vote of all First (or Executive) Members, or by Mrs. Eddy's written consent. In one such conveyance Mrs. Eddy herself was the grantor: Exhibit 792, dated March 3, 1904. Others, made during her life by other grantors are as follows: In March, 1903, Exhibits 794-800 inclusive. In May, 1904, Exhibits 745 and 746. See below par. 71.

20. As already stated in par. 3 above, powers and functions not assigned by Mrs. Eddy's deed of 1892 to the trustees therein called directors, were exercised by them, after the church had been organized, under the authority of By-Laws only, from time to time adopted.

The By-Law which transferred to them in 1895 the election of church officers has been referred to in par. 13 above; and the By-Laws relating to the Publishing Society, adopted in February, 1898, in par. 17 above.

Other powers and functions conferred upon said directors by By-Laws only, and not by said deed, and so conferred upon them by the First Members before Jan. 10, 1901, appear from the By-Laws published in the 10th edition of the Manual, Exhibit 130, adopted by the First Members March 10, 1899. Among the powers and functions so conferred the following may be here mentioned:—

The directors were to countersign recommendations for church membership.

To report annually the amount of the church's funds on hand, and of its debts and of the last year's expenditure.

To perform certain duties regarding the church's financial affairs and the management of its funds, in connection with its Treasurer and subject to

inspection by the Committee on Finance.

To remove from office any Reader found inadequate or unworthy and fill his place pending another election.

To advise on church matters outside a meeting,—a power also given only to the First Reader.

To elect members of the Boards of Education and of Lectureship annually, subject to Mrs. Eddy's approval.

To require a member of the Board of Lectureship to lecture according to the needs of his precinct.

To elect four missionaries annually and call church meetings, after consulting Mrs. Eddy, for the assignment of each to his work.

21. The Board of Directors, in adopting the 20th edition of the Manual on Feb. 20, 1901 (par. 18 above), had voted to adopt—

"The By-Laws of the First Church of Christ, Scientist, contained in the 20th edition of the Church Manual and also the amendments and changes made therein which were authorized by Rev. Mary Baker Eddy."

Among the amendments and changes thus adopted were the following amendments and changes in those By-Laws relating to the Publishing Society trust, which had appeared in the 8th and subsequent editions of the Manual, as above stated in par. 17.

For the direction, in Art. XI, Sec. 1, of the 8th edition, that the church Treasurer hold the money paid over to him subject to the order of the First Members, as Mrs. Eddy had directed in par. 4 of her trust deed,—there was substituted a direction that he hold such money

"Subject to the order of the Christian Science Board of Directors, which is authorized to order its disposition only in accordance with the By-Laws contained in this Manual."

For the provision in the same Sec. 1 that the First Members, together with the Directors, should have power to declare vacancies in the trusteeship,—as Mrs. Eddy had provided in par. 10 of her trust deed,—there was substituted the provision that

"The Christian Science Board of Directors shall have the power to declare vacancies in said trusteeship, for such reasons as to the Board may seem expedient."

The above substituted provisions have ever since formed part of the Rules and By-Laws published in all editions of the Manual following the 20th, in which they first appeared.

Although the First Members were at this time still to meet annually and did so meet until 1908, as stated in par. 19 above, they gave no orders regarding funds coming to the Treasurer from the Publishing Society trustees after the Directors' assumption in 1901 of the transaction of all the church business, as above stated in par. 18. Its disposition has been ever since left wholly to the Directors, as also above stated, notwithstanding

Mrs. Eddy's provisions in par. 4 of her trust deed.

Still other By-Laws relating to the Publishing Society have been from time to time adopted by the directors since Feb. 20, 1901, and have appeared in editions of the Manual following the 20th. All of them are found in the 89th Edition.

None of them however have purported to deal with the power to fix the salaries of the Publishing Society trustees. This has been left, so far as By-Laws are concerned, to "the church," just as par. 13 of the deed of 1898 gives it. In practice, such salaries, when changed, have been fixed by the Board of Directors, ever since it took over the entire church government in 1901, as stated in par. 18 above. But as has been stated in par. 16, "the church", in par. 13 of the deed, meant at the time the church's voting members, nor can I regard anything since done as effective to change that meaning.

22. The fact that only since Feb. 7, 1903, had the Board of Directors consisted of 5 members, has been found in par. 3 above. Before that date it had consisted of 4 members only, ever since its original constitution by Mrs. Eddy's trust deed of Sept. 1, 1892,—each vacancy as it occurred being filled by the remaining 3 members, in accordance with par. 1 of said deed. No Rule or By-Law, however, whether adopted by the First Members or by the Board itself, had yet assumed to fix the number of its members.

On Feb. 7, 1903, the Board adopted a By-Law as follows:—

"The Christian Science Board of Directors shall consist of five members", which first appeared in the 28th edition of the Manual (Exhibit 812), and has been retained in each subsequent edition.

But it was not until Sept. 4, 1908, that any By-Law, however adopted, expressly included "a Board of Directors" among the required church officers. A By-Law to that effect, then adopted by vote of the Board, made its first appearance in the Manual in the 73d edition thereof, and has been retained in all later editions.

23. Having adopted the By-Law quoted in par. 22, on Feb. 7, 1903, the Board of Directors, then composed of four members, all either trustees originally named in Mrs. Eddy's deed of Sept. 1, 1892, or filling the places of trustees so named, according to the provisions of par. 1, thereof, proceeded, on the same day, to elect Archibald McLellan as the fifth director.

From Feb. 7, 1903, until his death in 1917, McLellan took part as a member of the Board with the four members who had so elected him, or their successors, in all the doings of the Board. On July 19, 1917, the then remaining four members of the Board of five, elected the defendant Merritt to fill

the vacancy caused by his death; who thereafter participated in like manner as a director in all the doings of the Board, and was one of the three defendants who, as above found in par. 4, hereof, voted to adopt the resolution purporting to dismiss the plaintiff Rowlands, on March 17, 1919.

24. The doings of the Board since Feb. 7, 1903, wherein a fifth director has participated as above, have included five elections to fill vacancies occasioned by the death or resignation of an original member, or of a member serving in succession to an original member, as follows:

Upon the resignation in 1909 of William B. Johnson, an original member who had, however, previously resigned in March and been re-elected in November, 1895,—two successive members having meanwhile filled his position—the defendant Dittmore was elected to fill his place on May 31, 1909.

Upon the death in 1910 of Ira O. Knapp, one of the original members, the defendant Dickey was elected to fill his place on Nov. 21, 1910.

Upon the death in 1912 of Stephen A. Chase, an original member who had previously resigned in June and been re-elected in December, 1902, upon the resignation of the member by whom his position on the Board had been meanwhile filled, the defendant Neal was elected to fill his place July 22, 1912.

Upon the death in 1908 of Joseph Armstrong, serving in succession to Joseph S. Eastaman, an original member, Allison V. Stewart was elected director in his place on Jan. 6, 1908. Upon Stewart's resignation in 1918, the defendant Rathvon was elected director in his place, to take effect on Oct. 1, 1918.

Every one of the four directors, therefore, who was serving on March 17, 1919, in succession to an original member of the Board, has been elected by a Board consisting at the time of three members so serving in succession to an original member, and of one member (McLellan in 1908, 1909, 1910, and 1912; Merritt in 1918), who could not be so described.

That McLellan's or Merritt's participation in them made said elections ineffective for the purpose of filling the respective vacancies according to par. 1, of Mrs. Eddy's deed of 1892, is not claimed. The vote was unanimous in each case. As to Messrs. Dittmore and Dickey, it could hardly have been otherwise, each of them having been selected or recommended by Mrs. Eddy herself. Messrs. Neal and Rathvon were elected after her death.

25. But the plaintiffs do contend that the only Board having any power to act under par. 10 of Mrs. Eddy's deed of 1898, was a Board composed only of the four trustees named in her former deed of 1892, or their respective successors elected according to par. 1, thereof. Merritt's participation in the vote to remove Rowlands

is claimed to have made that vote ineffective, as action by the Board empowered by the deed of 1898 to act in such cases.

Since Merritt, as has been found in par. 22 above, had not been elected in succession to any originally named Director, he was a Director within the meaning of par. 10 of Mrs. Eddy's deed of 1898, only in case it can be said that the change voted by the Directors on Feb. 7, 1903 (par. 22 above), long after both of Mrs. Eddy's above deeds had been executed, lawfully effected a substitution, for the purposes of both said deeds, of a Board of five in place of that Board of four trustees, which, established by the earlier deed in 1892, was acting thereunder at the date of the later deed in 1898, and had continued so to act thereafter until Feb. 7, 1903.

Unless Merritt was on March 17, 1919, one of the "directors of said Church" authorized to act under par. 10 of the deed of 1898, there was no lawful adoption of the resolution to remove Rowlands; because no majority of the Directors so authorized to act voted to adopt it. See par. 4 above. The only votes to adopt it were those of Dickey and Rathvon. There being no question that Neal was absent from the meeting, my ruling must be that he could not vote by telephone, and is not to be regarded as having voted at all.

26. If the church's Board of Directors was a corporation on Feb. 7, 1903, because composed of church officers "similar" to those mentioned in Pub. Stats. ch. 39, sec. 1 (see par. 8 above), an increase in the number of such officers, properly made by the church, might well increase the number of members of the corporation; which could, of course, for all purposes within the statute, act by majority vote as a unit, whatever the number of its members.

But even if action under par. 10 of Mrs. Eddy's deed of 1898 would be action for a corporate purpose contemplated by the statute, my ruling must be that said Board of Directors have at no time constituted a corporation.

The functions of said Board, whether as originally defined in Mrs. Eddy's deed of 1892, as to which see par. 11, above; or as subsequently increased by the various By-Laws later adopted from time to time, either by the First Members or by the Board itself, I cannot regard as sufficiently similar to those usually belonging to the church officers mentioned in the statute to bring the members of said Board within its provisions.

Further, the facts that at no time have said members held their positions on the Board by virtue of any election by the church's voting members, that they have always been irremovable by any action that such members can take, differentiates them in character from officers like those



whom the statute mentions, still more widely. The latter neither hold their positions without limit of time, nor do they fill all vacancies occurring in their own number.

It is true that this Court has, in *Chase v. Dickey*, 212 Mass. 555 (1912), spoken of them as a corporation. That they were one, however, seems to have been assumed by all parties then before the Court and not to have been decided by the Court upon a contested issue.

If, as I have ruled, the Board was never a corporation, since the deed of 1892 authorizes no increase in the number of trustees (or directors) under it, Merritt's right to act as one of the trustee-directors referred to in par. 10 of the deed of 1898 must depend upon the question whether such an increase was lawfully effected by By-Laws of the church adopted after 1898; as to which see below, par. 39.

27. Whether or not the Directors' vote to remove Rowlands would have been an effective vote so far as the action therein of their Board alone was concerned, the plaintiffs contend that the said Board alone had no authority to act in the matter of "declaring vacancies" in the Publishing Society trusteeship.

The only authority to declare such vacancies given by the deed of 1898 establishing said trusteeship, is that given in par. 10 of said deed, quoted in par. 6 above, to the First Members together with the directors. As has been stated in pars. 17 and 21 above, the church By-Laws as they stood from 1898 to 1901, purported to give the same authority to the same two bodies, by provisions the same as those made in said deed.

It was in the adoption of the 20th edition of the Manual on Feb. 20, 1901 (see par. 18 above), that the Directors first undertook that substitution of themselves as the sole body having such authority, which all subsequent editions of the Manual have purported to sanction.

The plaintiffs deny that such substitution was lawfully effected, for the purposes of Mrs. Eddy's deed of 1898, by the By-Laws last referred to, notwithstanding the fact that their validity has so long remained unchallenged.

28. With one possible exception, not here important, but considered below in another connection (see pars. 53-9), I consider it proved that all the church By-Laws or amendments thereof, whether adopted by the First Members before Jan. 10, 1901, or by the Directors alone after that date, were adopted with Mrs. Eddy's approval.

All were adopted during her lifetime, and were in nearly every case, if not in all cases, suggested or proposed for adoption by her. Their language appears, generally speaking, to have originated with her, and at any rate to have been always approved by her

before adoption. If strict specific proof of her approval beforehand is not made in the case of each and every one, she is shown to have exercised such general personal supervision regarding all, as warrants the conclusion that all had her approval.

While the fact that a given By-Law or amendment had been thus proposed and approved by her was always entirely sufficient, whether with First Members or Directors, to secure its immediate enactment without inquiry or demur, it is nevertheless true that Mrs. Eddy never undertook to establish any By-Law or amendment as binding upon her followers by virtue solely of her personal authority. Her manifest intent and uniform practice was, that everything of the kind should take the form of a rule prescribed by the church, acting through a body understood at the time to possess its power to legislate for its members.

For the purposes of this case therefore, no By-Law or amendment is established as in any sense valid, merely by the fact that it had Mrs. Eddy's approval. Whether or not church By-Laws or amendments afterwards enacted as herein stated by the First Members or the Directors, could under the laws of the State, operate to change the provisions of Mrs. Eddy's deed of 1898 as they purported to do,—is the question to be determined.

29. In her deed of 1898, Mrs. Eddy had declared her conveyance of the described property to the trustees named, to be made "upon the following perpetual and irrevocable trust and confidence". The words quoted are underlined in the deed itself, Exhibit 1, a photograph whereof, produced at the hearing, may be referred to.

That a public charitable trust for the purposes thereafter specified in the deed was thereby created is undisputed.

The purpose first specified is that "of more effectually promoting and extending the religion of Christian Science as taught by me". Next is mentioned, in par. 1, "the purpose of carrying on the business which has been heretofore conducted by the said Christian Science Publishing Society in promoting the interests of Christian Science". The deed had earlier recited that the Publishing Society here mentioned was a corporation, by whom the same property had recently been conveyed to her. More specific purposes are later indicated in par. 7, which enjoins upon the trustees the preparation and publication of "Bible Lessons or Lesson Sermons to be read in Christian Science Churches; and in par. 8, wherein the direction and supervision of the Christian Science Quarterly and other literature pertaining to said business is committed to the trustees "so as to promote the best interests of the Cause". The above are all the purposes which the deed can be said to specify.

So far as any particular beneficiary of the trust is indicated in the deed, it is the Church itself, above referred to in pars. 1 and 7 hereof; whose Treasurer is to take the net profits of the trustees' business for disposition by its voting members, according to the provisions already above quoted from par. 4 of the deed in par. 16 hereof. Indirectly to be benefited were all persons, wherever found, for whose advantage the promotion and extension of Christian Science was desired.

The terms of a trust of the above character, thus established and declared irrevocable, cannot thereafter be varied without the consent of every party interested, expressly manifested by an instrument sufficient for the purpose, in the absence of a power to vary them otherwise, reserved in the instrument whereby they were established.

This proposition is considered undeniably true. It hardly appears to be disputed by any party to the case. It would seem to apply with especial force to those terms which regulate succession in the trust.

But it is contended on the defendants' behalf that the deed of Jan. 25, 1898, does reserve a sufficient power of amendment to Mrs. Eddy, the grantor, and that the By-Laws or amendments relied on constitute an exercise by her of such reserved power.

30. The following provisions in Mrs. Eddy's trust deed of 1898, are relied on as reserving to her the power of changing thereafter the terms of the trust thereby established.

In par. 3 she directs the trustees to manage the business "on a strictly Christian basis and upon their own responsibility, and without consulting me about details, subject only to my supervision, if I shall at any time elect to advise or direct them."

In par. 8 after giving the trustees direction and supervision of the publication of the Quarterly, etc., as above stated in par. 28 hereof, the provision follows:—

"reserving the right to make such changes as I may think important."

And the defendants request findings that the later adoption by the Directors of four By-Laws specified, viz: those now appearing in the 89th edition of the Manual (see par. 2 above) as Art. VIII, Sec. 14, Art. XXV, Secs. 3, 4 and 5, constituted in each case an exercise of the rights reserved to Mrs. Eddy by the above provisions in her deed. Of these By-Laws, Art. XXV, Sec. 3, is the one purporting to vest the power of declaring vacancies in the trusteeship in the Directors alone, and the only one having direct relation to the removal of trustees.

That par. 3 of the deed contains no express reservation of power to lodge the authority to remove a trustee elsewhere than as provided by par. 10, is clear. Nor can I regard the language there used as reasonably capable of a

construction implying such a reservation. The power reserved seems to me only a power to control the trustees in their management of the business, to be exercised, at her option, by Mrs. Eddy herself, and necessarily to cease at her death.

In par. 8 of the deed I think the "changes" which Mrs. Eddy reserves the right to make are clearly shown by the language used to be only such changes as she may think important in the trustees' direction and supervision of the publications mentioned. That changes in the terms of the trust or in the personnel of the trusteeship may reasonably be understood as included, I am unable to believe.

The reasons above stated are considered sufficient of themselves to require refusal of the rulings requested, without regard to the further difficulty to be encountered in regarding the subsequent adoption of church By-Laws not expressly referring to the trust deed or any of its provisions and not expressly purporting to change them, though done by Mrs. Eddy's direction, as an exercise by her of reserved power to change its terms.

31. According to the defendants, Mrs. Eddy's intention and purpose in creating the trust established by her deed of Jan. 25, 1893, was to make "a gift to the Church," of the personal property therein described, and was also that the business therein described should be carried on by the trustees subject to the final authority of the constituted authorities of said church. Findings to that effect are requested. Specially relied on are certain facts and transactions which I find to have been as follows:—

(1) Ten days before executing said deed, viz., on Jan. 15, 1893, Mrs. Eddy signed and sealed the document Exhibit 464, headed "A Gift to the Mother Church, and a Grant of Trusteeship". A photograph of the original, produced at the hearing, may be referred to in connection herewith. This, with an accompanying letter, Exhibit 463, addressed to the Church and bearing the same date, was read at a special meeting of the First Members on the same day, which meeting received and adopted them by unanimous vote, and by its direction a letter, Ex. 784a, was sent to Mrs. Eddy. Exhibit 464 purported to constitute the three persons afterwards named in the deed of Jan. 25, 1893, a Board of Trustees and "entrust" to them, beside real estate (to which as will appear they never acquired title), personal property which was in fact later conveyed to them by said deed of Jan. 25. The provisions of Exhibit 464 were much the same in effect as those of said deed; but it contained no provisions whatever for declaring vacancies in the trusteeship.

(2) On Jan. 15, 1893, Mrs. Eddy did not own either the real estate or the personal property described in Exhibit 464. The delivery of that document to the First Members therefore effected no conveyance of

either. Exhibit 464 was later delivered to the trustees named, together with the deed of Jan. 25, 1893, which did transfer said personal property to them. Exhibit 464 was never recorded, and was for all practical purposes superseded by the deed of Jan. 25.

(3) On Jan. 18, 1893, a By-Law standing in the then latest or "revised" edition of the Manual, Exhibit 705 (see par. 15 above), as Art. V, Sec. 4, and providing that

"No Board of Trustees shall ever be formed by, or between, the members of this Church, or shall exist in the Mother Church",

was amended at Mrs. Eddy's request by the First Members by adding the provision

"Except the trusteeship be constituted by the Pastor Emeritus."

The inconsistency of the above unamended By-Law with the proposed "Grant of Trusteeship", accepted by the church on Jan. 15, 1893, appears not to have suggested itself to Mrs. Eddy or her advisers, until after such acceptance had been voted.

(4) On Jan. 21, 1893, the Christian Science Publishing Society, a Massachusetts corporation, until then the owner both of the real estate and the personal property referred to in Exhibit 464, the same having been used in its business, conveyed both to Mrs. Eddy by an instrument marked Exhibit 115. The personal property conveyed was that afterward conveyed by her to the trustees under her deed of Jan. 25, 1893.

(5) On Jan. 22, 1893, Mrs. Eddy wrote and sent to Septimus J. Hanna and Mrs. Hanna, at the time the editors of the Christian Science Journal, a letter marked Exhibit 466. A photograph of the original, produced at the hearing, may be referred to in connection herewith. Two previous letters to Judge Hanna, Exhibits 467 and 468, may also be referred to.

(6) On Jan. 25, 1893, on which day she executed the trust deed here in question, Mrs. Eddy also conveyed to the First Church of Christ, Scientist, in Boston, Mass., the real estate conveyed to her on Jan. 21, 1893, as stated in (4) above, by a deed marked Exhibit 743, containing a reservation of the right to use rooms in the Publishing House thereon, for publication and sale of her books.

(7) On Jan. 26, 1893, the three trustees named in Mrs. Eddy's trust deed of Jan. 25, 1893, held their first meeting at said Publishing House. The first place in their records, that day begun, is occupied by copies (not in all respects exact) of Exhibits 463 and 464; see (1) above. Next are recited the acceptance of "this Gift and Grant" by "the church through its First Members", and the presentation to the trustees of both Mrs. Eddy's above deeds dated Jan. 25, 1893; viz: that conveying real estate to the church (Exhibit 743), and that conveying personal property to the trustees,—being the deed of trust

here in question. Next are recorded the trustees' acceptance of "all and singular the terms, conditions and specifications" contained in said deed of trust, and their entry upon their duties by choosing a Chairman, Treasurer and Secretary. See Exhibit 255. On the deed of trust itself are their signatures, under the date Jan. 25, 1893, and the words "we accept the foregoing trust".

It is urged that an intention on Mrs. Eddy's part

"to place and to keep the Publishing Society under the authority, control and supervision of the constituted authorities of (the church) as they might exist from time to time, and to make fully available and effective her gift of the business of the Publishing Society to said 'church'"—is manifested by her procurement of the amendment to the By-Laws, stated in (3) above,—by her taking over all the old Publishing Society's property,—see above (4),—and by her subsequent transfers of its real estate to the church and of its personal property to the trustees under her deed here in question,—and by her provisions therein for declaring vacancies in the trusteeship and fixing the trustees' salaries. Findings to the above effect are requested.

I am unable to draw such a conclusion from the facts found, and must instead find as follows:—

The only gift to the church was of real estate conveyed to it by Exhibit 743,—see (6) above.

No intention or purpose to make a gift to the church of the personal property conveyed to the trustees, or of the business to be carried on by them, appears from the above facts found or from the trust deed of 1893 itself. All that is secured to the church is distinctly specified in that deed, and does not constitute a "gift" of the property or of the business, in the legal or in any usual sense.

The provisions in par. 3 of the trust deed that the trustees should manage the business upon their own responsibility and subject only to Mrs. Eddy's supervision, prevent me from finding an intention or purpose on her part, then existing, to subject them to supervision by any other "constituted authority" of the church.

Nor, from the power of removal given by par. 10 of the trust deed, can I find such an intention or purpose, then existing. For the exercise of this power the concurrence of the church's voting members and the four trustee-directors under the earlier deed of 1892 was required. The few words whereby the power might have been given to the church's "constituted authorities as they might exist from time to time" were nowhere used. That any changes in the church's form of government were contemplated in January, 1893, does not appear, still less that such changes were then contemplated as were later made in 1901, 1903 and 1908 (see pars. 18, 19 and 22

above), whereby the church's voting members were to surrender all their power and the board of five Directors to assume sole and absolute control in all church matters.

32. Testimony given by Septimus J. Hanna, in his deposition taken in California in June, 1919, and on file in the case, tends to show that in private conversations wherein he took part, all of them before or at the time of the execution of her trust deed on Jan. 25, 1898, Mrs. Eddy explained her reasons for establishing such a trust, and her purpose and expectations regarding it.

Among the statements so made by her, according to his testimony, were statements that she "wished especially . . . to protect the literature of the movement in its purity" and guard against attempts to "adulterate" it; that to this end it must be kept within the jurisdiction of the directors and the First Members of the Church, so far as possible under Massachusetts law, which as she was advised did not permit religious organizations to conduct anything in the nature of ordinary business; that as an aid to the desired protection of the literature, the directors and First Members must have power to appoint Editors of the Christian Science publications and she herself, and said directors and First Members must have such power and control over the trustees that their offices might be declared vacant if they did not discharge their duty properly and faithfully; also that By-Laws must be prepared and published in the Manual of the Mother church setting forth her wishes and purposes with reference to this trust.

I denied a motion by the plaintiffs to strike out the portion of the witness' testimony just referred to, ruling however that it was neither material nor competent for the purpose of adding to or modifying the deed of trust.

The defendants request a ruling that the deposition is admissible "to throw light on the true meaning of the language of the third and eighth paragraphs of the trust deed of Jan. 25, 1898." The language referred to seems to me too clear and explicit to permit doubt as to its true meaning. But regarding the deposition (or so much thereof as was not excluded without dispute at the hearing) as admissible, I find nothing in it requiring findings other than those above stated regarding Mrs. Eddy's intention and purpose as manifested in said deed. So far as the testimony relates to the appointment of Editors for the Christian Science periodicals, that subject is further considered below.

It may here be stated, that the above deponent, usually called Judge Hanna, who has been above referred to in par. 31 (5), was Editor in chief of the Christian Science Journal from 1892 to 1902, and of the Christian Science Sentinel from 1899 to 1902. Becoming a First Member in 1895, he was Pastor

or First Reader of the Church before 1902, since which year he has served on the Board of Lectureship. That he stood high in Mrs. Eddy's confidence, from 1892 until her death in 1910, and is possessed of wide knowledge relating to Christian Science affairs, is not disputed.

33. The defendants contend that a course of conduct in the administration of the plaintiffs' trust has been shown, and acquiescence therein by all parties interested, such as indicates Mrs. Eddy's intention and purpose in establishing said trust to have been as claimed by them (see pars. 31, 32 above), and such as also estops the plaintiffs from denying the power of the present Board of Directors to act alone in declaring vacancies under par. 10 of the trust deed.

The By-Laws purporting to relate to the Publishing Society trust and its business, adopted from time to time after January, 1898, are relied on in support of this contention. It is claimed that all parties concerned, the trustees included, have at all times before the present controversy accepted and followed them without objection.

As already stated in par. 17 hereof, By-Laws of the kind referred to were first adopted in February, 1898, and first published in the 8th edition of the Manual. Others were adopted at various later times and appeared in later editions. The substance of some of these is next to be stated. Like all the other By-Laws herein considered, they were adopted with Mrs. Eddy's approval.

(1) A By-Law first appearing in the 8th Edition, Exhibit 707, as Art. XI, Sec. 2, directed that a person not accepted by Mrs. Eddy and the Directors as suitable to publish her books, should in no manner be connected therewith, nor with the Publishing Society. There had been a By-Law in the original Manual (1895) to much the same effect, but applying to the former Publishing Society, and only to Mrs. Eddy's text-book.

On December 13, 1898, the First Members amended this, as it appeared in the 8th Edition, by making its prohibition extend also to the Christian Science "Journal" and "Weekly"—(afterwards called "Sentinel").

This By-Law appears, in substance, as Art. XXV, Sec. 5, of the 89th Edition,—still another periodical, whose publication had meanwhile begun, being there included with the "Journal" and "Sentinel".

(2) A By-Law adopted by the First Members July 17, 1899, made it "the privilege and duty of every member who can afford it to subscribe for the periodicals that are the organs of this Church" and provided that "it shall be the duty of this Church to see that these periodicals are ably edited and kept abreast of the times".

In adopting the 29th edition of the Manual, Exhibit 133, on July 30, 1903, the Directors substituted the words

"the Directors" for "this Church" in the last sentence. See Art. X, Sec. 2 of that edition. Thus changed, the By-Law has ever since appeared. It forms Art. VIII, Sec. 14, in the 89th edition.

(3) Art. XI, Sec. 3, of the 8th edition, as adopted by the First Members, had forbidden the election or removal of editors or publisher of the Christian Science Journal, without Mrs. Eddy's consent, should she choose to decide; but had not further undertaken to regulate such elections.

The Directors on Oct. 4, 1901, adopted a new By-Law fixing the terms of office for the Clerk, Treasurer and Readers of the Church,—the editors and publisher of the Publishing Society,—and the manager of the general Publication Committees in Boston, at 3 years each. Elections or re-elections of all the above were to be by unanimous vote of the Directors (then 4 in number) and Mrs. Eddy's consent given in her own handwriting.

This the Directors amended May 15, 1902, so as to make all the above terms of office 1 year each. So amended they included it in the 29th edition as Art. XXIX, Sec. 4, and it now forms Art. XXV, Sec. 4, of the 89th edition.

(4) The Directors on July 31, 1908 (then 5 in number), in adopting the 73d edition of the Manual (Exhibit 140), included a new By-Law, now Art. XXII, Sec. 3, of the 89th edition, making it the duty of the officers of the Church, of the editors of three Christian Science periodicals specified, of the members of the Committees on Publication, of the Publishing Society trustees and of the Board of Education to "comply promptly with any written order", signed by Mrs. Eddy, "which applies to their official functions". Disobedience was to be sufficient cause for removal; the vacancy to be filled by majority vote of the (5) Directors, subject to Mrs. Eddy's approval.

So far as this By-Law would permit the filling of a vacancy in the Board of Trustees otherwise than according to par. 1 of the deed under which they were acting, its validity may well be doubted. But no occasion for action under it appears to have arisen before Mrs. Eddy's death, in December of the next year but one after its adoption, rendered it inoperative by making compliance with its terms impossible.

34. I find generally, as to all By-Laws purporting to relate to the Publishing Society trustees or their business, whether those specially noticed in par. 33 or others, and whether adopted by the First Members from 1898 to 1901 or by the directors alone after 1901,—that, at least until the controversy resulting in the present litigation became acute, they were complied with in practice so far as occasion required.

Because, like all other By-Laws at any time published in the Manual, these were understood to have Mrs. Eddy's sanction, all members of the

church, the Publishing Society trustees included, acquiesced in their provisions and followed them as above.

It is to be noticed, however, as to many of them, that no occasion for inquiry regarding their validity arose; and in particular that the Directors never made any attempt, before that here in question, to remove a Publishing Society trustee from office. That there was acquiescence without objection in their adoption of the the By-Law purporting to authorize such removal by their action alone, first published in the 20th edition of the Manual (Exhibit 131, see pars. 18 and 21 above), is all that can be said. It was not followed because no attempt to act under it was made.

I find also more specifically, with regard to the observance of By-Laws relating to the Publishing Society trustees, as follows:—

(1) The periodicals published by said trustees and referred to in the By-Laws mentioned above in par. 33 (1) and (2), with others whose publication was later begun, are the "organs of the Church" intended by the By-Law now Art. VIII, Sec. 14, of the 89th edition. They now include, besides the Christian Science Journal, the "Christian Science Sentinel", first published in September, 1898,—"*Der Herold der Christian Science*", first published in 1903,—"*The Christian Science Monitor*" first published in 1908,—"*Le Heraut de Christian Science*" first published in 1918.

(2) Said trustees have constantly solicited and received subscriptions for said periodicals on the strength of said By-Law, whose terms were from 1899 to 1903 those adopted by the First Members, and since 1903 those adopted by the directors; see par. 33 (2) above.

(3) Since the amendment by the Directors, on May 15, 1902, of the By-Law relating to elections and terms of office of the editors and publisher of the Publishing Society, (see par. 33 (3) above), the editors of said periodicals and the business manager of the Publishing Society have been annually elected by the Directors, approved by Mrs. Eddy, as the By-Law requires, while she lived, and thereupon employed by the Publishing Society trustees, who have fixed and paid their salaries. Since her death, compliance with the requirements of the By-Law as they stand being no longer possible, the same officials have been annually elected or re-elected by the Directors and employed by the trustees, who have fixed and paid their salaries. One editor, approved by Mrs. Eddy before her death, was thus elected and employed for the first time in 1914. An associate editor, in 1916, a business manager in 1917, and another editor in 1917 have also been elected by the Directors, upon conference and agreement between them and said trustees. In July, 1917, one of the plaintiffs, then business manager, tendered his resignation to the Directors,

who accepted the same and elected his successor, as above stated.

35. I find nothing in the above course of conduct or acquiescence therein since Jan. 25, 1898, to require or warrant findings other than those already made as to Mrs. Eddy's intention or purpose in her deed of that date.

I am unable to find, as requested, that she intended all branches of Christian Science activity instituted by her to be carried on under the unified supervision of the constituted authorities of the church to which the deed refers.

No such intent or purpose on her part seems to me very clearly manifested at any time. It is to be gathered, if at all, only from By-Laws approved by her at a later period, after the trust established by the deed had been for some years in operation, and as the various branches of Christian Science activity developed in number and importance; and it appears to have been an intent or purpose later formed rather than one existing when the deed was made.

So far as anything in the subsequent By-Laws or their history tends to show the formation of such an intent or purpose, it indicates that Mrs. Eddy's plan regarding the form and structure of the church's government was by no means the same after 1901 as it had been in January, 1898.

The trust deed of 1898 seems to me to contemplate a church whose voting members were to elect the new members and make its By-Laws; and a Publishing Society in close alliance with, but not under the rule of, the church or its officers. The provisions of the deed do not seem to me to contemplate, or to suit, a church absolutely ruled in the above and in all other matters, by an independent Board,—or a Publishing Society also under the rule of such Board.

Changes in the terms of the trust which Mrs. Eddy omitted to make were necessary in order to bring them into harmony with the plan of church government adopted and followed after 1901, or to give them the effect contended for by the defendants. As they stand, I cannot consider them capable of a construction such as would give them that effect.

36. Next to be considered is the effect upon the power to remove a trustee given by par. 10 of the trust deed of 1898, of the subsequent surrender by the First Members of all their power in church matters, and their still later disappearance as a body recognized for any purpose by the church's By-Laws, as above stated in pars. 18 and 19 hereof.

Rulings requested by the defendants are to the effect that the intent and purpose of the clause in question was to create a power coupled with an interest in the donees thereof, *i. e.*, the First Members and the Directors,—"*by virtue of their office as such*"; that the

"office" of First Members was thereafter duly "abolished"; and that the power of removal was then vested in the Board of Directors alone.

The First Members cannot, in my opinion, properly be regarded as "officers" of the church, or otherwise than as its voting members in whom the right to elect its officers resided; notwithstanding their surrender thereof, as above stated in par. 13. Nor can the trustee-directors under the deed of 1892 properly be regarded as "officers" in the sense here material, never having been elected as such. The deed of 1898 is not to be considered as having vested the power to remove a trustee under it in either body as "officers". The intention manifested was to make such trustees removable by the church's voting members, but to require also the concurrence of the trustee-directors under the deed of 1892.

That the First Members have since become incapable of exercising the power of removal given them, is the result of their own acts, or of their acquiescence in acts of the Board of Directors, since the deed was made. Incapacity thus caused I cannot regard as equivalent in result to the death of one of two donees of a power. My ruling must be that it has rendered any exercise of the power to remove a trustee impossible, either according to the terms in which the deed of 1898 gives it or according to the intent manifested. Such exercise of the power having become thus impossible, removal of a trustee would require resort to a court.

37. General acquiescence by the present Publishing Society trustees and by their predecessors in the trust, in all By-Laws at any time published in the Manual, has of course included acquiescence in those By-Laws which related to their trust or its business, and in the course of conduct established by compliance therewith as above.

It has thus been with such acquiescence that the Directors, instead of the First Members as par. 4 of the trust deed directs, have, since 1901, ordered the disposition of the net profits of the trust business paid over to the church Treasurer, and have also, instead of "the Church", as par. 13 of the deed directs, assumed the determination of the trustees' salaries,—as stated in par. 21 above.

Whether or not such acquiescence can be said to estop the plaintiffs from denying power in the Directors to act without the First Members under par. 10 of the trust deed on March 17, 1919, is the question next considered.

It has appeared that there had been no previous attempt by the Directors, whether as a Board of 4 or of 5 members, so to act under this particular provision of the deed; and no acquiescence therefore in any such exercise of the particular power thereby given.

As to the Directors' exercise of other powers, given by the deed not to them

but to the First Members, the rightfulness of such exercise depended entirely upon the question how far the deed's express terms could be controlled by By-Laws later adopted as herein above stated. This was in each instance a question of law, upon which it is believed that admissions by trustees under the deed for the time being would not bind their successors in the trust, or even the same trustees upon later occasions. I rule that the plaintiffs are not thus prevented from asserting the absence of power in the Directors, acting alone, to declare Rowlands' trusteeship vacant on March 17, 1919.

38. I find, therefore, as to the first of the questions above indicated in par. 5 hereof, that on March 17, 1919, no power was vested either in the then Board of 5 Directors or in those of their number then serving in succession to the original 4 trustee-directors under Mrs. Eddy's deed of 1892, to remove a trustee under her deed of 1898; and that the vote of March 17, 1919, purporting to remove the plaintiff Rowlands, was for that reason without effect.

But if this finding is wrong, and it ought to have been found that such power was then vested in said Board of 5 Directors or in some members thereof as above, the next question above indicated in said par. 5 is presented, viz., whether such power was lawfully exercised in adopting the resolution purporting to effect Rowlands' removal.

39. Merritt's participation in the vote of March 17, 1919, and the fact that less than a majority of the other members voted for adoption of the resolution, as stated in par. 25 above, require the question last stated to be answered in the negative if the ruling is right (par. 26 above), that the Board of Directors have never been a corporation.

That a Board of 5 trustees has taken the place of the originally constituted Board of four trustees, authorized as "directors" by par. 10 of the deed of 1898, to act in removing a trustee thereunder, I am unable to find; in view of the other findings hereinbefore made regarding the By-Laws adopted on or after Jan. 10, 1901, and their effect. I find that no such result has been accomplished by the By-Law adopted Feb. 7, 1903, as stated in par. 22 above. The effect of that By-Law was, at most, to authorize the exercise of such functions as have been or might be assigned to the Board of Directors by By-Laws of the church only, by the Board of 5 members instead of the Board of 4 members. It did not authorize the Board of 5 members to act in the place of the Board of 4 trustee-directors under the deed of Sept. 1, 1892, or to take any action affecting their title to the real estate held by them as trustees, or their management thereof.

40. If the findings stated or referred to in pars. 38 and 39 are wrong,

and if it ought to have been found that the resolution of March 17, 1919, was adopted by a proper majority of a Board then authorized to adopt it,—further objections by the plaintiffs to said adoption as a lawful exercise of the Board's power will remain to be considered.

These may be stated as follows:

No notice to Rowlands, or opportunity given him for a hearing on the question of his removal had preceded the vote.

The reasons assigned in the resolution were insufficient in law to justify his removal—they were not the real reasons for the Board's action,—and its members were not acting in good faith.

41. That no notice or hearing preceded the vote to remove is undisputed. The resolution, previously prepared by counsel, was moved for the first time at the Directors' meeting on March 17, 1919, and immediately voted on before proceeding to other business. If par. 10 of the deed of 1898 did not permit the declaration of vacancies in the trusteeship without notice and hearing, the vote adopting the resolution was ineffective for that reason.

If par. 10 of said deed had gone no further than to locate the power to declare vacancies, it might have been regarded as implicitly requiring notice and hearing before any exercise of the power; such being the course of proceedings generally observed in the exercise of similar powers, as the course best adapted to guard against abuse and secure fairness and justice in their exercise.

But the declaration of vacancies authorized by said par. 10 might be made "for such reasons as . . . may seem expedient" to the two bodies whose concurring action was required. However wanting in strict accuracy, this language may fairly be taken as making vacancies declarable, not only upon grounds judicially determined sufficient by the two grantees of the power, after the notice and hearing necessary for such determination, but also upon grounds of mere expediency; in the consideration whereof previous notice and hearing might be inappropriate. Granted, as the power originally was, to the two bodies named in par. 10 and requiring their concurrence, it might have been considered sufficiently guarded against possible arbitrary abuse. "Expedient", as used in par. 10, I of course take to mean expedient for the proper administration of the trust.

I rule therefore that the vote is not to be held ineffective merely for want of previous notice and hearing. As will appear, there is little reason to believe that notice and hearing could have been of any practical benefit either to the Board or to Rowlands, so far as its vote on the resolution is concerned.

42. Various reasons for their action are assigned by the Board in the preamble to its resolution of removal. The statements there made are denied by the plaintiffs to be well founded or justified in fact.

On the Board's behalf it is said that they were empowered to remove without giving reasons, and therefore that no insufficiency in reasons given can affect the validity of their action. If this is true, Rowlands' removal was effected by their vote, their power being as supposed in pars. 38 and 40.

But even if there could have been an effective exercise of the power I am now assuming the Board to possess, without any reason given, or none beyond the fact that removal seemed expedient to the Board;—since in this case specified reasons previously prepared by counsel were voluntarily assigned, I consider their merits properly subject to examination; to the extent at least of inquiring whether or not they are clearly inadequate to justify the removal voted, or show the vote to have been influenced by improper motives instead of sound judgment in good faith, as the plaintiffs allege.

43. Among the reasons for Rowlands' removal recited in the Board's resolution, there is only one which purports to charge him with any specific failure in the proper performance of his duties as trustee. It is declared that he "evidently has other interests which prevent him from giving sufficient time and attention to the business of the Christian Science Publishing Society."

That he had large business interests of his own which would require much of his time and his frequent absence from Boston was understood when he became trustee in August, 1917, not only by the other two trustees who appointed him, but by all the Directors as well, who nevertheless approved his appointment.

During his service, his absences from Boston had in fact been frequent and often long continued. Out of 407 trustees' meetings held, he had been absent from 192.

But there had been no previous complaint from any source that he was not giving enough time and attention to the business of the Publishing Society; and I am unable to find on the evidence before me that such had been the fact. So far from suffering any disadvantage by reason of his connection with it, my finding must be that the business referred to had been materially assisted by his service as one of the trustees, and that advantages of considerable importance had been secured to it through his business experience and ability. I am unable to regard the charge made as one actually believed to be true, by the Directors who made it, after due inquiry into the facts, or as one which they would have considered sufficient

for his removal had they not desired to remove him for other reasons.

Although it is admitted in the pleadings that a certain measure of success has been attained in the management of the Publishing Society's business, there are denials by the defendants that the plaintiffs have properly managed it, and in the Answer filed by Dittmore specific charges of mismanagement are made. But it is to be noticed that actual mismanagement of the business was not assigned as a ground for Rowlands' removal, nor has such mismanagement been relied on by the defendants who voted for it as a justification of their vote.

44. Every other reason assigned by the Board as above may be regarded as a criticism, from the Directors' point of view, of the part taken by Rowlands, in common with his two co-trustees, in a controversy between the Publishing Society trustees and the Board of Directors regarding the extent to which the former board was subject to control and supervision by the latter. The controversy arose some years after Mrs. Eddy's death.

The questions involved seem to have been discussed between the two boards for the first time in February, 1916, at which time the plaintiff Eustace was the only present plaintiff serving as a Publishing Society trustee, and Messrs. Dittmore, Dickey and Neal the only present Directors who were serving as such.

Between the boards as now constituted the controversy may be said to have begun during conferences in June and September, 1918. Conferences and correspondence in which it was continued became more frequent after the latter month, until they resulted in the Directors' resolution of March 17, 1919.

The opposing views maintained by the two Boards respectively appear from the communications in writing exchanged between them as indicated in par. 45 below.

45. Following a conference on Sept. 11, 1918, regarding which Exhibit 366 may be referred to, there was a letter from the trustees to the Directors dated Sept. 30, 1918 (Exhibit 4a), and a reply by the Directors dated Oct. 8, 1918 (Exhibit 5). Letters thereafter exchanged were,

From the trustees, Oct. 11, 1918, (Ex. 6); Nov. 11, 1918, (Ex. 7).

From the Directors Dec. 13, 1918, (Ex. 8 and 8a).

From the trustees, Dec. 18, 1918 (Ex. 9, Ex. 11).

From the Directors, Dec. 18, 1918 (Ex. 10); Dec. 20, 1918, (Ex. 12, Ex. 13).

From the trustees, Dec. 24, 1918, (Ex. 14).

From the Directors, Dec. 26, 1918, (Ex. 15); Dec. 28, 1918, (Ex. 16).

From the trustees, Dec. 31, 1918, (Ex. 17).

From the Directors, Jan. 3, 1919, (Ex. 18); Jan. 17, 1919, (Ex. 19); Jan. 22, 1919, (Ex. 20, Ex. 21).

Each board had consulted counsel as to its rights before the end of 1918. In their letter of Jan. 3, 1919, the Directors requested the trustees' resignations, and their cooperation in installing others in their places. There was a conference between counsel for both sides on Jan. 25, 1919; after which counsel for the trustees sent the Directors' counsel a letter dated Jan. 27, 1919, part whereof appears in par. 11 of the plaintiffs' Bill, the whole letter being Exhibit 22.

At a further conference between counsel, on Feb. 1, 1919, it was agreed that with regard to matters of two classes specified, about which there had been previous dispute, "the responsibility rests with the Board of Directors"; whose directions were thereafter to be followed. Neither side waived its other contentions, but both consented to resume their meetings with the hope that agreement on all points of difference might soon become possible. Memoranda to the above effect were exchanged. See Exhibit 23, a letter dated Feb. 6, 1919, from counsel for the Directors to counsel for the trustees.

There was accordingly a further conference between the two Boards on Feb. 3, 1919. Of the Directors, neither Dittmore nor Neal were present. Between Dickey, Rathvon and Merritt and the three trustees it was agreed to meet and talk out between themselves any future difference arising, and that inquirers should be told that difference was now absolutely a thing of the past, and the Boards were now in full harmony and co-operation.

But at the next conference between the Boards, on Feb. 10, 1919, all the Directors except Neal being present, and all the trustees, the Directors presented an agreement for the trustees' signature, wherein they were made to declare their understanding with the Directors to be, that the latter Board had final authority in regard to the editorial policy of the official organs of the church, and in regard to all matters affecting the church's policy or the cause of Christian Science. The agreement presented had been prepared by one of the Directors' counsel. The discussion which followed its presentation resulted only in leaving open the question of its signature by the trustees, and in agreement upon a date for further conference,—at which, however, no change in the situation was effected.

A letter from the Directors to the trustees dated Feb. 24, 1919, enclosed the above agreement proposed on Feb. 10, again invited the trustees to sign it, and strongly suggested that they ought otherwise to resign. Copies of the letter and proposed agreement are Exhibits 26 and 26a. They appear in full in par. 10 of the Answer filed by the defendants other than Dittmore.

At conferences between the Boards on March 10 and 11, there were discussions regarding a memorandum on the subject of their proper relations,

which had been drawn up by Dittmore, and considered by both Boards in February, 1916. It has been spoken of in the case as the "Dittmore Memorandum" and in par. 20 of the Answer filed by him it appears in full. I do not find however that it has ever been definitely accepted or agreed to by both Boards, as he there avers.

At the above conferences on March 10 and 11, 1919, there were attempts to agree on modifications of this memorandum, which would make it such an agreement as both Boards could accept. But the Directors insisted upon a statement that their Board had supervision over the Publishing Society's work; while the trustees refused to concede, and positively denied, that the Directors had the final authority claimed.

There were also, after Feb. 24, 1919, interviews with the trustees or some of them, sought by Dickey, Neal, or Merritt, acting individually, wherein the attempt was made to find some method of adjusting or compromising the controversy. These interviews were without result, and the Directors' vote on March 17, 1919, followed. On March 18, 1919, the Directors sent to Eustace and Ogden a written demand that they fill the position vacated by Rowlands' removal, by appointing a trustee acceptable to the Directors; this is Exhibit 28.

46. Declarations by the Board that Rowlands is "not suitable" or "no longer accepted by this Board as suitable" for connection with the Publishing Society as trustee thereof, appear among the recited reasons for removing him, and also as part of the resolution itself. The connection in which they occur show these declarations also to be based upon Rowlands' part in the above controversy.

Assuming that they refer to Art. XXV, Sec. 5, of the 89th Edition of the Manual, forbidding the connection with the Publishing Society of any person not accepted by Mrs. Eddy and the Board of Directors as "suitable", it has already appeared that there was no such By-Law when the trust was established. Its first appearance was as Art. XI, Sec. 2, of the 8th Edition, as to whose adoption, see pars. 17 and 33 (1) above. The deed of 1898 contained no such prohibition, it required only (in par. 9) that every trustee be a loyal, faithful and consistent believer and advocate of the principles of Christian Science as taught by Mrs. Eddy.

It follows from findings and rulings already made that this subsequent By-Law added nothing to the provisions of the deed itself. But even if this conclusion is wrong, I am unable to regard the By-Law as effective after Mrs. Eddy's death, so as to exclude from the trusteeship any person whom the Board of Directors alone might decline to accept as "suitable".

In no event can I consider the trustees' employment of counsel adequate or proper ground for removal. It was important for the proper administration of the trust, both to the plaintiffs and to their successors, that the questions in controversy as above be settled according to law, and therefore that the plaintiffs have the best legal advice obtainable as to their rights. It was no less proper for them to consult counsel than for the Directors to do so.

The charge in the preamble to the resolution that Rowlands, either alone or with others, had threatened the Directors with litigation, had no other basis than the employment of counsel and the subsequent letters to or conferences with the Directors or their counsel, as stated above in par. 45.

47. Rowlands is not charged in the resolution with any refusal to comply with a specific request or order made by the Directors. Except in the particulars already considered, the only effect of the charges recited is, that he has asserted views opposed to those held by the Directors, in justification of the trustees' non-compliance with the demand for an express admission of the Directors' alleged supremacy.

But I am unable to hold either that the final authority claimed by the Directors is so clearly established by the deed itself and the provisions of the Manual that no reasonable denial of it was possible,—or that the Directors' determination that they had such final authority was conclusive upon the trustees.

Whatever the right conclusion may be upon the question whether such final authority belonged to the Directors or not, it was by no means a question regarding which no honest difference of opinion was possible. Neither in the deed nor in the Manual is such authority given the Directors by any direct and express provision. In support of their claim to such authority the Directors' reliance has been upon general statements of Christian Science doctrine, or upon provisions in the Manual whose bearing upon the precise question is at best uncertain.

The Board of Directors is claimed to be the authorized interpreter of the church's laws, and thus an ecclesiastical tribunal whose decisions, as between church members, the civil courts will not review. But if there are purposes for which its declaration of the church's law may properly be regarded as final, I am unable to believe that such purposes include determination of the extent of the Board's own authority under par. 10 of the deed of 1898. Except so far as par. 9 of said deed may so result, the tenure of office of a trustee appointed under the deed has not been made dependent upon the law of the church; and no determination by any church authority has been made that Rowlands fails to fulfill the requirements of par. 9.

I am thus unable to find any of the reasons assigned by the Directors voting for the resolution, sufficient to require or justify Rowlands' removal.

48. So far as the assigned reasons accuse Rowlands of failure to devote time enough to the Publishing Society's business, or were made to appear as reasons requiring his removal only, and not equally the removal of his co-trustees, it may be said that they were not reasons assigned in good faith. But that the Directors who adopted the resolution honestly believed themselves to be exercising a power belonging to them, and for sufficient reasons, whether those assigned or not, I find no reason to doubt.

In adopting the resolution, the defendants Dickey, Neal, Merritt, and Rathvon, but not the defendant Dittmore, were acting in pursuance of a plan, as alleged in par. 16 of the Bill, to bring about the retirement of all the plaintiffs from their trusteeships and to install in their places trustees who would admit the Directors' final authority and manage the trust in subjection thereto. This result was to be obtained by making the anticipated refusal by the plaintiffs Eustace and Ogden, to appoint a successor to Rowlands, and a successor accepted by the Directors, ground for their removal also.

A motion by the defendant Dittmore, at a Board meeting on Feb. 25, 1919, to remove all three plaintiffs at once, for having "followed for many months a course of action exceedingly detrimental to the cause of Christian Science", the removal to be followed by such legal steps as the Board should be advised were necessary to confirm the proper appointment of their successors,—had been rejected by the votes of the defendants Dickey, Merritt and Rathvon.

Rowlands' selection for removal was determined upon by them and by the defendant Neal, because he had been the last appointed of the three trustees, because he had no pupils in Christian Science, as had his co-trustees, and because he had not so many friends who might be disturbed by his removal as they had. The defendants who voted to remove him may fairly be said to have been induced thereto, rather by their purpose to carry the above plan of action into effect, than by any of the reasons they recited in their resolution. The existence of such a plan and purpose on their part was admitted in argument.

49. The successive vacancies in the Publishing Society trusteeship since Jan. 25, 1898, and the successive appointments by Mrs. Eddy or by the remaining trustees to fill such vacancies have been as averred by the defendants other than Dittmore in par. 1 of their Answer. Exhibits 786 and 787 may be referred to in regard to the succession of Bates by Hatten. As by said Answer appears, the immediate predecessors of the plaintiffs in

said trust were, the defendant Neal, who resigned Dec. 2, 1912, and was succeeded by the plaintiff Eustace;—William P. McKenzie, who resigned Aug. 1, 1917, and was succeeded by the plaintiff Ogden;—and the defendant Merritt, who also resigned Aug. 1, 1917, and was succeeded by the plaintiff Rowlands. All three vacancies, having occurred since Mrs. Eddy's death, were filled by the remaining trustees at the times of their occurrence, according to par. 10 of her deed of 1898.

Neither of said three resignations was tendered to or accepted by any Court. Said Neal, said McKenzie and said Merritt are each of them now living. There is no express provision in said deed for resignation by any trustee thereunder.

On behalf of the defendants other than Dittmore it is said that if said deed be held to have created a public charitable trust, complete within itself, and incapable of subsequent change, modification or amendment,—no vacancies were created by the resignations of Neal, McKenzie or Merritt as above to which the plaintiffs could lawfully be appointed, because never tendered to or accepted by any court; and that the plaintiffs therefore never became trustees under said deed. Rulings to the above effect are requested.

The vacancies contemplated by par. 10 of the deed are vacancies occurring "for any cause" and may be regarded as including as well vacancies by resignation as by removal or death. That resignation by a trustee of a public charitable trust can create no vacancy capable of being lawfully filled, until after acceptance by a court,—the deed establishing the trust being regarded as above supposed,—does not seem to me sufficiently established by the authorities relied on. No court was concerned in the appointment either of the plaintiffs or of any of their predecessors, as trustees under the deed; nor, since under it the remaining trustees are to fill all vacancies, was resort to any court required for the purpose of such acceptance of a resignation as would create a vacancy to be so filled. No question is suggested as to the liability of the plaintiffs' predecessors or of any former trustee to account; their accounts may therefore be presumed to have been duly settled semi-annually under par. 4 of the deed, to the satisfaction of all concerned. The conclusion asserted in the above requests does not seem to me a conclusion required if the deed be regarded as they assume, and said requests are therefore declined.

50. The very great increase since 1898, in the church membership and in the membership of branch churches having led not only to a corresponding increase in the circulation of the periodicals mentioned by Mrs. Eddy in her deed of 1898, but to the subsequent issue of other periodicals as above stated in par. 34 (1) having a no less

wide circulation,—it has resulted that the publishing business carried on under said deed has attained great magnitude and importance, and has yielded a very large annual revenue to the church. So much, at least, appears from the averments and admissions in par. 5 of the plaintiffs' amended Bill, and par. 5 of the defendants' Answers.

Under a contract made in October, 1917, between the defendants and others as trustees under the residuary clause of Mrs. Eddy's will, Exhibit 740, and the plaintiffs as trustees under her deed of 1898,—the latter became the publishers of all her works on Christian Science. These books had previously been issued by other publishers, under arrangements with Mrs. Eddy herself, to whom the copyrights belonged. Their publication forms no part of the business contemplated by her deed of 1898. The agreed royalties therefrom accruing are paid over by the plaintiffs not according to said deed, but to the trustees under said will as required by the contract.

51. A By-Law adopted by the Board of 5 Directors on July 15, 1903, and now Art. I, Sec. 7, of the 89th Edition of the Manual, makes it the Directors' duty to provide a suitable building for the publication of the Christian Science literature published by the Publishing Society. For the purposes of its business the trustees have ever since 1898 occupied as its main plant, premises the title whereof was in the church, or in the trustees under Mrs. Eddy's deed of Sept. 1, 1892, for church purposes,—see Exhibits 745, 746; or as vested by Exhibits 747-750 below referred to. See pars. 71-73 below. They originally occupied in 1898 the real estate conveyed by Mrs. Eddy to the church as above stated in par. 31 (6). As the requirements of their business have increased, other premises similarly held in trust have from time to time been devoted to the purposes of said business in addition to those originally occupied therefor; buildings adapted to those purposes being erected thereon by the Directors for the time being, out of the church's funds.

It is undisputed that the establishment under said trustees' management has now become a very extensive publishing concern, including many different departments, completely equipped for the production and issue of books, periodicals, a daily newspaper, and printed matter of many other kinds, by a numerous and varied force of employees, working under an organization developed for the above purposes by the plaintiffs or their predecessors, since the establishment of their trust in 1898.

52. Close alliance and complete accord between the Board of Directors, controlling the church as it has since 1901, and the Publishing Society trustees, are obviously necessary to the success either of the church or of said trustees in that part of the work

of promoting and extending Mrs. Eddy's doctrines for which each body was established and now exists.

Without the Publishing Society's activities, the church would want adequate means of ready access to the widely dispersed believers in its teachings beyond its immediate congregation or membership, or to the general public among which it seeks to spread its teachings. Without the church's support and alliance, the literature issued by the Publishing Society would lose that character which recommends it to the great body of its readers.

But that the necessary co-operation between the above two directing bodies is impossible unless the Publishing Society trustees are subjected to the supervision and final authority of the Directors, does not so plainly appear as to require the conclusion that Mrs. Eddy must have intended such subjection when she established the trust. Had she then intended it, there would have been provisions in the deed of 1898, establishing it in express and unmistakable terms; it is hardly supposable that, instead of such provisions, the deed should have made the trustees subject only to her supervision, as it does in par. 3. Neither in the terms of the deed, nor in the subsequent By-Laws, do I find anything which makes it unreasonable to suppose that she apprehended no such danger of dissension between two Boards, both composed of firm, loyal and consistent believers in her doctrines, as would require the express subordination of one to the other, in order to secure the necessary co-operation between them.

53. It was the intent of the defendants who adopted the resolution for Rowlands' removal so to use their influence and power as Directors as to induce the plaintiffs either to resign or comply with their demands; but I do not find an intent on their part, as alleged in par. 17 of the Bill, to use for that purpose the powers of church discipline belonging to them according to the By-Laws.

54. As the result of the foregoing findings, I find that Rowlands' removal was not lawfully effected by the above resolution adopted on March 17, 1919; and that he is still a trustee under Mrs. Eddy's deed of Jan. 25, 1898, notwithstanding said resolution.

55. If the vote to remove Rowlands was ineffective for that purpose, as above found, and if the plaintiffs are entitled to the relief sought by their Bill against the Board of Directors as constituted on March 25, 1919, when the Bill was filed, it is necessary to determine whether the defendant Dittmore or the defendant Mrs. Knott was a member of the Board on that date, and therefore a defendant for the purposes of the Bill.

The Bill alleges, in par. 2, the recent removal or attempted removal of Dittmore from the Board by its other

members, their election of Mrs. Knott to fill the vacancy, and that Mrs. Knott to have been caused by the removal, and the plaintiffs resulting inability to aver further as Board members. It was in fact a member of the Board when the suit was brought.

Dittmore's amended Answer avers in substance (par. 2) that he has ceased to be a member of the Board either as trustee under Mrs. Eddy's deed of Sept. 1, 1892, or according to the later By-Laws of the church. It avers, in substance, that a resolution purporting to remove him, voted by the defendants Dickey, Merritt and Rathvon, with Neal's consent, on March 17, 1919, was ineffective for the purpose; and that Mrs. Knott, elected in his place by them on the same day, has since acted without right as a member of the Board.

In No. 30,788 Equity, above referred to at the beginning of this Report, Dittmore asks this Court to declare him still a member of the Board and to enjoin the other Directors and Mrs. Knott from any interference with his rights as a member.

By par. 2 of their amended answer in this case the defendants other than Dittmore assert in substance that by reason of their above vote to remove him he ceased to be a Director on March 17, 1919, for any purpose, and that Mrs. Knott succeeded him by valid election on the same day.

Against the objection of all the defendants except Dittmore, and subject to their exception, I ruled that the issue whether or not he was a Director when the Bill was filed was an issue of fact upon which the Master is to pass in the present case.

Upon that issue I find as below stated in pars. 56-76. The findings therein stated are made upon evidence introduced by the parties other than Dittmore. Except in cross-examination of their witnesses, no evidence was introduced by him, and he has not testified as a witness in the case.

56. On March 17, 1919, immediately after voting to remove Rowlands, as above stated in par. 4, and at the same meeting, a resolution to the effect that Dittmore be removed and dismissed from the Board of Directors, previously prepared by counsel at the instance of the other members, was read; and, after an appeal by them to him "that for his own sake he should tender his resignation" had been declined, the resolution was moved by Merritt, seconded by Rathvon, and carried by their votes and that of Dickey. Neal, not present, signified his approval by telephone, as he had done with regard to the resolution for Rowlands' removal. Dittmore then left the meeting. Later, at the same meeting, upon Rathvon's motion seconded by Merritt, it was unanimously voted by them and Dickey to elect Mrs. Knott to fill the vacancy caused by Dittmore's "retirement"; Neal's vote being taken over the telephone.



Dittemore had been informed and was told before the resolution was read that an attempt to dismiss him would be opposed by his fellow-members. The above resolution to remove and visitation appears in full in the minutes of the meeting, Exhibit 228, and also in the Answer filed May 15, 1903, to his Bill in No. 30,788 Equity, above referred to in par. 55. It began with a recital of reasons for the removal, which are further considered below. It did not recite any power by whose exercise his removal was to be effected. The first inquiry is as to the power at the time vested in a majority of the Board, to remove or dismiss one of its own members. The defendants other than Dittemore rely upon Art. 1, Sec. 5, of the present By-Laws.

58. Mrs. Eddy's trust deed of Sept. 1, 1892, whereby the Board was first constituted, contains no provision whatever for the removal or dismissal of a trustee under it. Its provisions in par. 1, for filling vacancies by the remaining members, have been referred to above in par. 14 hereof.

No By-Law purporting to authorize the dismissal of a member of the Board of Directors was ever adopted by the First Members. Nor did said Board, after its assumption in 1901 of the First Members' power to make or change the By-Laws (see par. 18 above), undertake to make any such By-Law until, in February, 1903, it voted the increase of its membership from 4 to 5. The trust under the deed of 1892 had then been in operation more than ten years.

As has been stated above in par. 22, the By-Law making that change was adopted on Feb. 7, 1903, and first appeared in the 28th Edition of the Manual, Exhibit 812. It is found in Art. VI, Sec. 1, of that edition, and is there followed by provisions that the Board of 5 members shall fill a vacancy on the Board after the candidate is approved by Mrs. Eddy, and that—

"A majority vote and the consent of Mrs. Eddy shall dismiss a member."

In the next, or 29th, edition of the Manual, Exhibit 133, the By-Laws were somewhat differently arranged and some changes therein appear whose adoption by the Board is shown only by its adoption of the 29th edition as a whole, on July 30, 1903. The clause last above quoted appears therein as part of Art. I, Sec. 5, but altered by the substitution of "or the request" for "and the consent", so as to make it read—

"A majority vote or the request of Mrs. Eddy shall dismiss a member."

Thus worded, the clause has appeared in all later editions, and is found in Art. I, Sec. 5, of the 89th.

The power to dismiss with Mrs. Eddy's consent given in the 28th edition would be gone when she could no longer consent, and with respect to dismissal the situation would then

be as it had been from 1892 to 1903. But the independent power given in the 29th edition would remain vested in the Board, though there could no longer be any request by Mrs. Eddy.

59. There is no direct proof that the above substitution of "or" for "and" was ever authorized or approved by Mrs. Eddy herself. That she herself proposed the By-Law as it stood in the 28th edition, and gave reasons for its adoption, appears from her letter to the Board dated Feb. 5, 1903, Exhibit 456.

None of the changes made in the 28th edition and first appearing in the 29th are shown to have been specifically authorized or approved by Mrs. Eddy or specifically adopted by the Board. Her request by telephone for the adoption of the 29th edition as a whole and its adoption by the Board in compliance with said request on July 30, 1903, appear, but nothing further. What the particular book, or copy for a book, then before her or the Board was, there is nothing to show; still less is it directly shown how the above clause was worded as it stood therein. There was evidence tending to show that the above change was made "in proof", but none tending to show when it was made or by whose authority. Of no edition of the Manual has there ever been a standard copy, duly authenticated.

Mrs. Eddy's approval is in the same By-Law required for the filling of any vacancy on the Board, and other By-Laws, now Art. I, Sec. 3, and Art. II, Sec. 3, are also relied on as making it appear highly improbable that she ever knowingly approved a provision which left the Board free to expel one of its own members, independently of her.

But it is undisputed that, before Mrs. Eddy's death seven years later, 44 successive editions of the Manual appeared, in each of which the clause in question was printed just as it stood in the 29th edition and now stands in the 89th. Express approval by her of several of said subsequent editions is shown, in some there were corrections or changes made by her express order, and that it was her general purpose and practice to scrutinize the contents of all with care cannot be doubted. In view of all this the above change cannot be found to have been made without her knowledge and to have ever since escaped her notice. I must regard the clause as it stands, as no less supported by her authority than any other provision in the By-Laws.

60. Whether in fact authorized by Mrs. Eddy or not, however, my ruling must be that the above By-Law could add nothing to the terms of the trust deed of Sept. 1, 1892, and therefore has not empowered a majority of the four trustees thereunder to dismiss one of their number. That it has still less empowered a majority of the Board of 5 members as constituted under it to dismiss one of the 4 trustees under

said deed follows from the ruling above stated in par. 39.

61. The vote purporting to dismiss Dittemore could at most operate to dismiss him from the Board of 5 members, authorized, as above held in said par. 39, to exercise such functions other than those belonging to the trustees under the deed of Sept. 1, 1892, as had been assigned to the Board of Directors by church By-Laws only and not by that deed.

It was ineffective even for that purpose if, as contended on Dittemore's behalf, it was not a lawful exercise of such power as the terms of the By-Law were capable of vesting in the Board.

The power is said to have been unlawfully exercised in that—

No visit or admonition by the Finance Committee according to Art. XXIV, Sec. 6, of the present Manual had preceded the vote;—(which I find to have been the fact.)

There had been no reasonable notice, nor hearing upon relevant charges.

The defendants who adopted the resolution did not act in good faith, but arbitrarily, capriciously and irrationally.

62. As to Art. XXIV, Sec. 6, of the present Manual, while its history and the positions it has occupied in successive Editions of the Manual lead me to believe it intended to provide for the removal of a Director as well as of any other member of the church, and upon grounds not limited to financial irregularity,—I am not satisfied that the procedure it directs is made the only procedure by which the dismissal of a Director could ever be effected, under such authority for dismissal as can be found in the above By-Law of 1903. I cannot therefore hold the vote to dismiss Dittemore ineffective merely for want of previous action by the Finance Committee.

63. But the By-Law regarding action by the Finance Committee is only one of several By-Laws contemplating removal or dismissal of an officer or church member, in all of which notice and hearing of some kind are provided for, and in some the finding of a body other than that required to take final action. Art. I, Sec. 9; Art. XI, Secs. 1, 5-7 and 10; Art. XII, Secs. 1, 2, and Art. XXII, Sec. 7, are referred to.

In view of them and of the high position in the church occupied by a Director since 1901, which is such that his intended tenure of office under the By-Laws may reasonably be supposed to be during good behaviour,—no fixed or definite period of time being prescribed,—it may be presumed, though Art. 1, Sec. 5, is silent as to the manner of dismissal, that neither dismissal without notice and hearing nor dismissal without reasonable cause were intended. If the intent was otherwise, it should have been distinctly expressed. No member of the Board can fairly be supposed to have accepted his position upon the understanding that he was subject to in-

stant arbitrary dismissal, whenever a majority of his associates might think it expedient.

64. That no notice was given Dittmore of the motion to dismiss him, nor any opportunity to be heard thereon, appears from the findings stated above in par. 56. The only opportunity offered him after first hearing the charges against him read, was an opportunity to resign. If any of the recited charges were such as permits it to be said that no notice or hearing could have made any practical difference, this is not true as to all, nor as to those most important. On behalf of the majority of the Board it is said that Dittmore asked no opportunity to defend himself and made no protest against the proposed vote; and this I find to have been the fact. But the absence of previous notice, the circumstances as stated in par. 56 above, and the terms of what was read to him contained no suggestion that anything but immediate action was intended, and it does not seem to me that he can reasonably be held to have lost all right to object, by his failure then to ask delay and further inquiry, or to protest on the spot. He attended none of the four subsequent Directors' meetings prior to the filing of this Bill, but I am unable to find any assent on his part to the dismissal, or acquiescence therein, prior to said filing.

65. The reasons recited in the vote consisted of charges relating either to Dittmore's conduct outside the Board meetings, or to his conduct during such meetings, or to his position regarding the Board's controversy with the Publishing Society trustees herein before considered.

The complaints of his conduct outside the Board were in substance that he had—

Done or tried to do alone what could be done only by the Board as such.

Acted contrary to what the Board had done or refused to do.

Taken advantage of his position to carry on a campaign for personal influence and control in church affairs.

Reported discussions of the Board, in violation of Art. I, Sec. 5, of the By-Laws.

Given directions to State Committees on Publication and induced them to act contrary to bulletins issued by the manager with the Board's approval.

For the purposes of a fair hearing, none of these charges were sufficiently definite as to time, place or circumstances. Just what was complained of could not be known from them. Until made more specific they could not be intelligently met. If believed to be true by the members of the Board who adopted the resolution, their belief was not founded upon first hand knowledge, but upon report only. They were inadequate grounds for any but a purely arbitrary dismissal.

66. The complaints of Dittmore's conduct within the Board were, in substance, that he had—

Tried to force the other members to accept his opinions and submit to his will.

Written numerous letters to the Board not calculated to assist it in its work, because self-assertive, controversial, acrimonious and containing unfair and untrue statements about its other members and its proceedings.

Been guilty of frequent rude, offensive and threatening behavior at the meetings toward the other members.

Habitually adopted toward them an attitude the opposite of an attitude of unity, co-operation and Christian fellowship, thereby rendering difficult the performance of the Board's functions.

Persisted in most of the conduct complained of against repeated remonstrance by his associates.

If it may be said that what had passed within the Board was necessarily present to the minds of all its members, so that charges like the above were sufficiently specific for their purpose, I find with regard to them that upon many questions before the Board Dittmore had differed from all his associates,—that he had been persistent and uncompromising in urging his views against theirs, both in discussion at the meetings and in letters to them,—and that his letters had been frequent and voluminous, abounding in assertion and criticism of a kind not at all deficient either in positiveness or in vigor. But I find nothing in his letters in evidence which can fairly be regarded as going beyond what was reasonably permissible in such a correspondence. Nor, as to his attitude or behavior at meetings, can I find that he has more for which to reproach himself than have his colleagues. Manifestations of feeling on both sides, might under the circumstances have been expected. Unless dismissal for the mere sake of getting rid of an habitual and troublesome dissenter was within the majority's power, I find that the above grounds also were inadequate.

67. The complaints as to Dittmore's position in the controversy with the Publishing Society trustees were, in substance, that he had—

So conducted himself as to produce discord and trouble between the trustees and the Board, and to hinder the Board's efforts to arrive at a mutual understanding which would secure the rights it asserted without litigation or detriment to any of the interests of Christian Science.

To these charges, also, what has been stated above in par. 66 applies. Dittmore desired, as did the majority of the Board, to accomplish the removal of the Publishing Society trustees in case they persisted in refusal to admit the Board's supremacy. But he had also urged their removal upon specific charges, asserted by him, that

they had failed in the proper management of the business of their trust; and he had constantly opposed any compromise with them such as the majority of the Board were endeavoring to arrange. He had also opposed their selection of Rowlands for dismissal,—a selection made by them for the reasons stated above in par. 48. His entire sincerity in maintaining the above positions regarding said controversy is not denied. I can regard neither the fact that he did maintain them, nor anything said or done by him in so maintaining them, as adequate ground for dismissing him, unless the majority's power to dismiss could lawfully have been used by it for the sole purpose of stifling any opposition in the Board to their wishes.

68. An element of personal hostility and dislike, entertained toward Dittmore by other members of the Board, resulting from the frequent differences between him and them above referred to in par. 66, must be regarded as having entered into their action in preparing and adopting the resolution for his dismissal. It was partly at least because of this, that his dismissal had long been in contemplation by Dickey, Merritt and Neal, from a time antedating Rathvon's accession to the Board in September, 1918. Their consultation with counsel who drafted the resolution was early in February, 1919. That they were preparing for such action was never disclosed by them to Dittmore before they read the resolution to him on March 17, 1919.

I do not find, however, that their preparation and adoption of the resolution was induced solely by feelings against him of the above character. I find that the controlling motive which induced its adoption by the defendants who voted for it, was the desire on their part to remove the obstacle presented by Dittmore's presence on the Board to their attempts to arrange a compromise with the trustees; though they acted the more readily under said controlling motive by reason of their willingness to disassociate themselves from a colleague with whom they could not agree and whom they did not like. Except to the above extent, I am unable to find that their action was not in good faith.

69. All the members of the Board of Directors received, as their predecessors on the Board had done, salaries which were fixed from time to time by vote of the Board, and which were substantial in amount during the period covered by the events here in question.

70. I find that not only was the vote purporting to dismiss Dittmore ineffectual for the purpose of removing him from his trusteeship under Mrs. Eddy's deed of Sept. 1, 1892; but that it was also ineffectual for the purpose of dismissing him as a member of the Board of five directors, au-

thorized since 1903, by the By-Laws and the acquiescence therein of the church membership, to perform functions other than those belonging to the trustees under said deed. It follows that no vacancy was created by said vote, and that Mrs. Knott did not lawfully become either a trustee under said deed or a member of said Board of Directors in Dittmore's place.

71. A printed compilation of all conveyances of real estate to or in trust for the church made since Sept. 1, 1892, was used at the hearing and may be referred to. Each conveyance included was marked as an exhibit. What appears in them of significance for the purposes of the case may be stated in substance as follows. The location of the respective premises appears from a plan included with said compilation.

Those conveyances wherein Mrs. Eddy herself was grantor are first considered.

(1) Exhibit 743, Jan. 25, 1898, is her conveyance of the old Publishing Society's real estate, above referred to in par. 31 (6). The grantee is the church, described as a corporation. No specific trusts are imposed, but there is a reservation of rooms in the building for Mrs. Eddy's use.

In Ex. 744, Dec. 21, 1903, after reciting that the above description of the church was erroneous, and her desire to correct it, modify the reservation and add to the trusts whereon the premises are held, Mrs. Eddy releases them to the then 4 Directors by name, other than McLellan, "as they are the present trustees, known as the Christian Science Board of Directors" under her deed of Sept. 1, 1892, agreeing with the grantees upon a modification of the reservation and imposing the further trust as to new tenets or By-Laws &c. above referred to in par. 19. McLellan is not named as one of the trustees, although he had been one of the Board of 5 Directors since Feb. 7, 1903, as above stated in par. 23.

In Ex. 792, March 3, 1904, Mrs. Eddy releases all rights to reconveyance or reversion for noncompliance with conditions as to the premises conveyed by her Sept. 1, 1892, and also those conveyed by Ex. 743 above. The release is to the same 4 Directors "as they are the present trustees &c.," as in Ex. 744 above. Again there is no mention of McLellan, although he had been one of the Board of 5 Directors for more than a year.

(2) Ex. 805, Feb. 12, 1898, is a conveyance of still other premises by Mrs. Eddy to the church, again describing it as a body corporate.

In Ex. 806, July 7, 1905, after reciting that it has been brought to her attention that the church is a voluntary association, the title to whose property is vested, under her deed of Sept. 1, 1892, in a Board of Trustees known as the Christian Science Board of Directors; and after referring to Chap. 37, Sec. 1, Mass. Rev. Laws,—Mrs. Eddy releases the property de-

scribed in Ex. 805 to the then 4 Directors by name, other than McLellan, as they are the Board referred to, upon trusts which she specifies and declares to be the same as in Ex. 805. McLellan, whom she does not mention, had at the time been one of the Board of 5 Directors for more than two years.

(3) Ex. 792, March 3, 1904, in its relation to Mrs. Eddy's original deed of Sept. 1, 1892, and the church site thereby conveyed has been sufficiently described above in (1).

Ex. 767, Dec. 19, 1906, also relates to the premises conveyed by Mrs. Eddy's deed of Sept. 1, 1892. It is an indenture between her and all five of the then Directors, mentioned by name and described as "at present constituting the Christian Science Board of Directors, a body corporate duly existing under" Mass. Rev. Laws, ch. 37, sec. 1. The premises conveyed Sept. 1, 1892, are released to them subject to the trusts expressed in said original deed, with modifications required by the fact that a more recent church edifice had come into use. No earlier reference in a conveyance by Mrs. Eddy to a Board of 5 Directors is found. This appears to be the only one of the above conveyances by her, in all respects clearly consistent with the idea that the Board of Directors was a corporation. But that the Board of 5 Directors was a corporation can hardly have been her view on March 19, 1903, just after McLellan's election. In a letter to him of that date, Ex. 739, she regrets that legal advice given her prevents his name from appearing "as a member of the Board on their deeds."

72. The conveyances in said compilation by grantors other than Mrs. Eddy, made before her death, are next considered.

(1) Ex. 788, Oct. 23, 1896, is a conveyance by Metcalf to the then 4 Directors, as they are the "Christian Science Board of Directors"; no trusts being otherwise expressed.

In Ex. 3, March 19, 1903, a copy whereof is Ex. C, annexed to the Bill, Metcalf confirms Ex. 788 and releases the same premises to the same grantees in the same terms, upon the trusts but not subject to the conditions mentioned in Mrs. Eddy's deed of Sept. 1, 1892, creating said Board, and upon the further trust as to new tenets or By-Laws &c. found in other conveyances as stated above in par. 19.

(2) Ex. 793, March 17, 1902, is a release by Whitcomb to the then 4 Directors, as they are the Christian Science Board of Directors under Mrs. Eddy's deed of Sept. 1, 1892; no trusts being otherwise expressed.

In Ex. 794, Mch. 31, 1903, Whitcomb declares Ex. 793 to have been upon the trusts but not subject to the conditions in said deed of Sept. 1, 1892, creating said Board. Subject thereto, and to further trusts as to the adoption of new tenets or By-Laws,

&c. (see par. 19 above), Ex. 793 is confirmed and the premises released to the grantees as above. McLellan, not named, had at the time been one of the Board of 5 Directors since Feb. 7 of the same year.

(3) Exhibits 795-800 inclusive, bearing date on various days in March, 1903; Ex. 746, May 11, 1904, and Ex. 745, June 6, 1904, may conveniently be considered together.

In them various grantors release various premises, in each case to the 4 Directors other than McLellan, "as they are the Christian Science Board of Directors, upon the trusts but not upon the conditions mentioned in the deed creating said Board . . . dated September 1, 1892"; and upon the further trust as to new tenets or By-Laws, &c., referred to above in par. 19.

Each provides that the grantees are to hold with all the powers contained in said deed of Sept. 1, 1892, "including the power to appoint new trustees by filling vacancies in said board as in said deed expressed".

In none of them is McLellan named, though he had been at the date of each for some time one of the Board of 5 Directors established by the By-Law of Feb. 7, 1903.

(4) Ex. 747, April 29, 1905, is a declaration of trust by Whitcomb, reciting that he has purchased certain premises at the request of the then 4 Directors other than McLellan, "as they are the present members of the Christian Science Board of Directors, a board originally named" in Mrs. Eddy's deed of Sept. 1, 1892, and is to hold said premises upon certain specified trusts, among them to convey at the Board's request upon receiving full payment of what may be due him. The 4 Directors named assent and approve, "as we are the Christian Science Board of Directors".

On Jan. 15, 1906, all the Directors, including McLellan, petitioned this Court for the appointment of a new trustee in Whitcomb's place, he having died before the objects of the trust were accomplished. They recited that they were the members of and constituting "the Christian Science Board of Directors", and named the said Board also as a petitioner, calling it a body corporate existing by virtue of the laws of the Commonwealth. There was a decree granting the prayer of the petition on July 29, 1906. Exhibits 748-749.

(5) Ex. 801, April 15, 1909,—Ex. 802, March 20, 1909,—Ex. 804, April 20, 1909, and Ex. 803, June 6, 1911, may also be conveniently considered together. Each of the first three is a release of premises described to the then 5 Directors by name, including McLellan, as they are the Christian Science Board of Directors; no trusts being otherwise specified. Restrictions in Ex. 802 were released by the grantor to the same 5 grantees in Ex. 803.

73. The compilation above referred to in par. 71 includes two other conveyances made since Mrs. Eddy's death on Dec. 3, 1910.

Ex. 807, March 25, 1913, is a conveyance to the church, in accordance with Chap. 115 of the Mass. Acts of 1913, by the trustees under Mrs. Eddy's will, of property covered by the residuary clause of said will, upon the trust therein expressed.

Ex. 750, June 1, 1914, is a conveyance by the trustee appointed as above stated in par. 72 (4), of the property held by him, to the then 5 Directors by name as they are the Christian Science Board of Directors; no trusts being otherwise expressed.

The grantor in Ex. 750 admitted that at the time of its delivery he did not know of Mrs. Eddy's letter to McLellan, Ex. 739. He stated that Exhibits 747-9 were drawn by Mr. Elder or in his office.

74. Since Mrs. Eddy's deed of Sept. 1, 1892, established the Board of Directors, there have been eight vacancies by resignation therefrom in all, each resignation being accepted by the remaining members, and the vacancy thereupon filled by them, without reference for any purpose to a court. The persons so elected to fill such vacancies have, while serving as members of the Board, acted without objection from any source both as trustees under said deed, or the subsequent deeds conveying other property to or in trust for the church, and also as Directors according to the By-Laws. Except in the case of Stewart's resignation and Rathvon's election to succeed him, in 1918, as stated above in par. 24, all such elections were with Mrs. Eddy's approval.

In the above manner Armstrong succeeded Eastaman March 22, 1893; Bates succeeded Johnson March 21, 1895; Hanna succeeded Bates Oct. 1, 1895; Johnson succeeded Hanna Nov. 3, 1895; DeCamp succeeded Chase June 19, 1902; Chase succeeded DeCamp Dec. 10, 1902; Dittmore succeeded Johnson May 31, 1909; and Rathvon succeeded Stewart Sept. 27, 1918.

75. On behalf of the defendants other than Dittmore it is said that if Mrs. Eddy's deed of Sept. 1, 1892, created a public charity and the trustees under it hold the property as trustees under the deed alone, and not as directors of the church or as a body corporate,—Dittmore has never been a trustee under the deed because (1) the resignation of his predecessor Johnson (see pars. 24, 74, above) was never tendered to or accepted by any court, and therefore created no vacancy which Dittmore could be appointed to fill; (2) Johnson's resignation was never tendered as trustee under said deed, nor was Dittmore elected as such trustee to succeed him. Rulings to the above effect are requested.

As to (1), if, under the assumptions made, Dittmore is not a trustee for

the reasons assigned, neither is Rathvon or Neal. Both fill the places of original trustees who resigned but whose resignations were never tendered to or accepted by a court. The same is true as to Stewart's resignation, who was Rathvon's immediate predecessor; and as to DeCamp's resignation, whose place was filled by Neal's immediate predecessor Chase. Neal succeeded him upon his death, as above stated in par. 24; and see also par. 74. But acceptance by a court is believed to be no more a necessary prerequisite to the filling of a vacancy created by resignation under the deed of Sept. 1, 1892, than under the deed of Jan. 25, 1898; see par. 49 above. The power to fill vacancies given in par. 1 of the former deed is general enough in its terms to cover all vacancies however caused. Expressly given as it is in some of the later conveyances by other grantors,—as in Exhibits 795-800, 745 and 746 (par. 72 (3) above),—the same power is regarded as impliedly given in all Mrs. Eddy's conveyances mentioned in par. 71 above; as well as in all others which describe the grantees by reference to her deed of Sept. 1, 1892. In nearly all wherein the grantees are each named, Armstrong is named among them, a trustee who became such upon Eastaman's resignation. There is no question here presented as to the exoneration of any resigned trustee from liability.

As to (2), Johnson's resignation, like all the others, is considered as having been a resignation for all purposes connected with his position, and Dittmore's election as having substituted him in Johnson's place both as trustee under the deeds of real estate, and as a member of the Board of 5 Directors existing for the purposes of the By-Laws. The only record of his election is Exhibit 774.

I am therefore unable to make the rulings requested as above.

76. I find that Dittmore was a member of the Board of Directors and also a trustee under Mrs. Eddy's deed of Sept. 1, 1892, when this Bill was filed, notwithstanding the above vote of March 17, 1919; and therefore properly a defendant for the purposes of this case. I find that Mrs. Knott is not properly a defendant for said purposes.

77. Except as herein above stated, I decline to find or to rule as requested by the respective parties.

A draft copy of my Report herein having been submitted to counsel on December 20, 1919, and certain changes or additions having been made therein upon consideration of their respective suggestions, and the same with said changes and additions having been embodied in the foregoing 77 paragraphs,—the following additional findings or statements are made, also upon consideration of suggestions by counsel; the same, together with said foregoing

paragraphs, to be finally settled as the draft of my Report.

78. With regard to the objection and exception mentioned in paragraph 55 above the Master states as follows:—

(1) On August 2, 1919, the evidence, in hearing which 27 days had been occupied, was closed by all the parties, and September 8, 1919, was fixed by agreement as the date for final arguments in this case, leaving No. 30,788 to be determined later.

(2) While neither side had then rested its evidence in No. 30,788 nor made any opening statement therein, and while Dittmore had neither testified himself nor called any witnesses on his own behalf, much of the documentary and other evidence which had been received related to both cases as already stated, and the defendants Dickey, Merritt, Rathvon and Neal had been cross-examined at length on Dittmore's behalf, concerning his attempted dismissal, the reasons therefor, and the circumstances leading up to it. Other witnesses, both for the defendants and for the plaintiffs, were cross-examined in like manner regarding said matters.

(3) The plaintiffs, under rulings by the Master to which no objection was made, opened in the present case and put in their evidence; then the defendants other than Dittmore did the same, after which the plaintiffs put in evidence in rebuttal. By agreement, evidence in one case was to be evidence in the other, except as expressly limited to one case only, and the fact that a witness was examined in the present case was not to prevent his being called again in No. 30,788.

In the direct examination of the defendant Dickey, the Master ruled that the defendants other than Dittmore could not introduce evidence with sole reference to the case No. 30,788. On his redirect examination, it was agreed by counsel for Dittmore that when called in the case No. 30,788, there would be no limitation upon the scope of the witnesses' examination.

The rule limiting redirect examination to subjects opened by the witnesses' testimony on cross-examination was repeatedly referred to, with the Master's assent and approval, as applicable to the examination of the above witnesses; but no specific ruling was made excluding testimony by any of them upon that ground. Counsel for defendants other than Dittmore were permitted to examine in re-direct on all subjects opened in cross-examination.

In the course of the hearing certain pieces of evidence offered were received for the purpose of the case No. 30,788 only. None of them was made the foundation of any finding set forth in the present Report. Certain other pieces of evidence were received, as to which there was controversy

whether they were material solely in No. 30,788 and wholly immaterial in the present case. As to these, the controversy was left for the Master to determine, and he was to use them in the present case so far as they were material therein.

There was no claim at any time prior to the submission of the draft Report that all evidence bearing upon the construction and meaning of Mrs. Eddy's deed of September 1, 1892, as well as all evidence bearing upon the construction and meaning of Art. I, Sec. 5 of the By-Laws relating to the dismissal of a Director, had not been introduced in the present case, No. 30,654.

(4) The facts above found in paragraphs 56-76 of the Report are all either undisputed or found from the testimony of the above-named defendants themselves; it being the Master's purpose to include therein no findings upon controverted questions whose decision might be affected by further evidence in the case No. 30,788.

(5) After September 8 had been fixed as above for the arguments in this case, and before the close of the hearing on August 2, 1919, counsel for plaintiffs urged that a report in the present case be made before proceeding further with No. 30,788, and in this request counsel for the defendants other than Dittimore joined, "if the Master could find a way to close up the Eustace case without its being delayed".

(6) During a colloquy with counsel which then followed, the Master announced his opinion that the question whether or not Dittimore was a Director when the Bill in this case was filed was an issue of fact raised by the pleadings in this case which he must decide upon the final arguments therein. This statement was made more than once during the same colloquy, but without making a distinct ruling to that effect, and all counsel, including counsel for the defendants other than Dittimore, were then understood by the Master to assent thereto. The hearing on August 2 closed without objection made or exception reserved thereto.

(7) During the same colloquy it had been suggested on Dittimore's behalf that he be treated as a Director for the purposes of the present case, which suggestion the other defendants declined to accept. On the plaintiffs' behalf it had been conceded that they sought relief against the defendants Dittimore and Knott only in a representative capacity.

(8) The Master was first informed of any dissent from his opinion announced on August 2 as above, by a letter from counsel for the defendants other than Dittimore, dated August 30, 1919, stating that they proposed to confine their argument "to the issues of fact raised in this case, and not to argue the question of Mr. Dittimore's status as a Director"; also that they

thought the other arguments should be similarly limited.

(9) In consequence of the letter, counsel were further heard on September 3, 1919, at which hearing it was urged by counsel for the plaintiffs and for Dittimore that in view of what had passed on August 8, they had made their preparations for argument upon the understanding that the question whether Dittimore was or not a Director when this Bill was filed was an issue of fact to be argued and determined in the present case. Counsel for the other defendants then urged that the issue referred to is not raised in this case,—that the evidence regarding it had not been fully heard and could not be fully heard until all the evidence in No. 30,788 had been put in. They also stated that they had never understood that they were "assenting to a decision in the Dittimore case without the evidence being put into it".

(10) At this hearing on September 3, 1919, the Master ruled, in view of the above representations by counsel, that the issue referred to was an issue of fact upon which he must hear arguments and pass in this case. To said ruling, then for the first time expressly made, the defendants other than Dittimore then for the first time excepted.

(11) The present case was thereafter argued in accordance with said ruling, by counsel for all the parties, beginning September 8, 1919.

Counsel for defendants other than Dittimore, in beginning their arguments on that day, stated that—"the evidence that pertained to that case alone (*i. e.*, No. 30,788) was not offered in chief, because it was understood that your Honor had excluded it. The evidence that pertained to that case alone was the evidence which pertained, of course, to the question as to whether or not Mr. Dittimore had been properly removed. Your Honor has decided, reserving our rights, that the Eustace case cannot properly be decided without your Honor considering the question of Mr. Dittimore's rights as one of the issues involved in that case. To such extent, therefore, as the evidence has been put in, and to such extent as your Honor considers Mr. Dittimore's status as an issue in the Eustace case, that matter is now open for argument."

In their requests for findings and rulings, submitted after the oral arguments, the same counsel requested findings and rulings under the heading "Status of Mr. Dittimore as a Director"—

"without waiving, but specifically relying upon, the defendants' exception heretofore taken and allowed to the ruling or the Master that the issue whether or not Mr. Dittimore was at the time of the filing of the bill in this case a Director is an issue of fact upon which the Master must pass."

And in their brief, also submitted after the oral arguments, the same

counsel stated that their points and authorities under the heading "Mr. Dittimore's status as a Director on March 25, 1919", the date of the filing of this Bill, were submitted—

"without waiving the defendants' exceptions to the Master's ruling that the status of Mr. Dittimore was an issue of fact to be determined in this case, and specifically relying upon our objection to a decision of this issue in advance of a presentation of all the evidence."

The case was submitted upon the arguments and briefs, without further protest or objection relating to the said ruling until after submission of the Master's draft Report.

79. The defendants other than Dittimore request the elimination from the Report of 25 specified rulings of law, as beyond the scope of the rule of reference.

The rulings specified are found in paragraphs 8, 10, 14, 16, 18, 25, 26, 30, 31, 33, 35, 36, 37, 38, 39, 41, 46, 47, 49, and 54 above; also in paragraphs 55, 58, 60, 63, 65, 66, 67, 70, 71, 75 and 76. They include very nearly every ruling of law made in the Report.

These and all rulings of law in the Report are believed by the Master to be rulings required for the purpose of finding the facts as directed by the rule of reference. They were made because believed to be so required, subject of course to the approval of the Court, and intended, in any event, as advisory only.

The questions of law ruled upon were, in one form or another, argued by counsel for all the parties, including said defendants other than Dittimore. Written requests for rulings of law were submitted, without objection, on behalf of all the parties, including said defendants.

There were suggestions made between counsel, at various times during the arguments, as to a proposed agreement between them regarding the scope of the Report in dealing with questions of law. The Master took no notice of such suggestions except to state that, until such an agreement was made in writing, he proposed to follow the rule of reference according to his understanding thereof.

After the oral arguments had been concluded, the Master was informed, by a letter received at or about the same time with the written briefs and requests submitted, that a motion to amend the rule of reference by adding thereto the following clause:—

"and also to make and report a ruling of law upon the legal effect of the facts found by him, such ruling to be advisory merely and subject to review by the Court in the same manner as any other ruling of law that the Master may make",

had been assented to by all the parties in writing and presented to the Court. The preparation of his Report proceeded without regard to said motion.

By a letter dated November 6, 1919, from counsel for the defendants other than Dittmore, the Report being then partially completed, the Master was informed that

"at the suggestion of the Court, the motion has been withdrawn by counsel and the original rule stands unmodified."

At no time before submitting his draft Report was there any suggestion to the Master that the non-allowance of said motion in any way affected the manner wherein the case had been submitted to him, or that any argument or request made regarding it was conditioned upon any alteration of the rule of reference or otherwise.

The request that said rulings of law be eliminated from the Report was therefore denied.

80. Adam H. Dickey, one of the defendants called as a witness by them, testified that at one time he was connected with the Sunday School work of First Church of Christ, Scientist, in Kansas City, Missouri; that the Sunday School work is considered of the greatest importance to the Christian Science movement; that the holding of Sunday Schools is provided for in the Church Manual; that he is familiar with the literature of the Christian Science movement as it appears from time to time in the publications of the Christian Science Publishing Society; that from time to time articles appear in said periodicals bearing upon the teaching in the Sunday Schools. He was then asked the following question:—

"Q. Do you regard it expedient to have as a trustee of the Christian Science Publishing Society in charge of its periodicals a trustee publishing articles on a Sunday School provided for by the Church Manual who is not in every way loyal to the Church Manual?"

Mr. Whipple. That I object to.

The Master. I think we shall have to leave that out.

Mr. Krauthoff. If your Honor please, may I be heard for a moment on that? Mr. Dickey is charged at the bar of this Court with having acted arbitrarily and capriciously and not in good faith in the removal of Mr. Rowlands. He has a right to show his own state of mind and the reasons which actuated him in reaching the conclusion that he did.

The Master. Anything further?

Mr. Whipple. The only thing we have charged in the matter of bad faith is as stated in our bill, and this does not meet any charge of that sort or description.

Mr. Krauthoff. Oh, yes.

Mr. Whipple. All we say is with regard to their removal that they have put up frivolous and baseless charges against Mr. Rowlands—utterly baseless; that the real reason they attempt to oust him is because he will not submit his trust, which came from

Mrs. Eddy, to the dictation of these directors. That is all; That is what they are really trying to do, and that they are getting up charges which they really do not believe in and for which there is no foundation, as an ostensible excuse.

The Master. I do not recall anything in the pleadings that raises a question about the Sunday schools or the literature of the church regarding Sunday schools.

Mr. Krauthoff. If your Honor please, the case involves the literature of the Church in its entirety, the claim of the plaintiffs being that they have the right to publish the literature of the Church in its entirety, without any control on the part of The Mother Church of its own literature. We are offering to prove that an essential part of this literature is articles written on Sunday schools, which in and of themselves are created and provided for by the Church Manual, which, in the very nature of things, cannot be accurately treated from the standpoint of Christian Science without adhering to the Manual; and that this man, this defendant, does not regard it as expedient to keep in office as a trustee to publish literature on the subject of Sunday schools, a man who is not loyal to this Manual. Now, that is the whole case so far as the plaintiffs are concerned. He claims the right to write articles on our Sunday schools, and sell them in our churches without our having anything to say about it

The Master. I think we must begin by confining ourselves to those specifications of want of good faith which are brought up by the pleadings. I shall exclude this at present.

Mr. Krauthoff. And we shall note our exception."

Said witness also testified that he had been active in Christian Science work in the local church at Kansas City, Missouri, and that in such work he came in contact with the work of the Board of Lectureship of The Mother Church; that the Manual provides that each branch church shall have a lecture each year, and in compliance therewith the churches employ the lecturers, who are appointed by the Christian Science Board of Directors of The Mother Church in Boston; that no lectures are given in Christian Science churches other than those given by members of the Board of Lectureship of The Mother Church; that Christian Scientists do not attend lectures on Christian Science by any others than those who are members of the Board of Lectureship of The Mother Church; that some of said lectures are published from time to time by The Christian Science Publishing Society, and when so published are sold by said Society to Christian Scientists and members of The Mother Church at large, and to the reading rooms of branch churches. Said wit-

ness was then asked the following question:—

"Q. Do you regard it as expedient to have in charge of the publication of lectures delivered by members of The Mother Church a person who is not obedient to the Church Manual?"

Mr. Whipple. That I object to, if your Honor please.

A. No.

Mr. Krauthoff. The answer may be stricken from the record.

Mr. Krauthoff. The point we make about that, if your Honor please, is this, The Christian Science Publishing Society claims the right to publish lectures on Christian Science and to sell them to branch churches of The Mother Church, without The Mother Church having anything to say about what shall be contained in those lectures. Mr. Rowlands has been removed from office by vote of Mr. Dickey, and Mr. Dickey is charged with bad faith in the casting of that vote. We now offer to prove by Mr. Dickey, as one of the elements of his good faith, that he regards it as an expedient reason within the meaning of the Deed of Trust to remove from office any trustee of the Christian Science Publishing Society who claims the right which I have described.

The Master. Mr. Dickey, as I understand the matter, voted for Mr. Rowlands' removal on certain specified grounds.

Mr. Krauthoff. Yes.

The Master. Is this one of the certain specified grounds?

Mr. Krauthoff. The question of the right of the Board of Directors to give directions to the trustees of The Christian Science Publishing Society is one of the certain specified grounds. The claim in the bill is that we asked them, that is, the directors asked the trustees, to sign a memorandum giving the directors full control of the periodicals.

The Master. I do not find it among the specified grounds; perhaps you can point it out.

Mr. Krauthoff. The lectures, of course, were not mentioned in terms, but the specified grounds are very comprehensive. May I have the bill just a minute?

The Master. I think you had better come at once to the proof of good faith in regard to the specified grounds. I am very anxious to avoid going into any field that will take us beyond the issues in the case.

Mr. Krauthoff. As I understand it, if your Honor please, that is one of the controversies in this case, whether the Publishing Society can publish lectures and sell them to the Christian Science churches, and in the reading rooms of the Christian Science churches, without those churches having anything to do with the publication of them. In addition to that, if your Honor please, there is another issue tendered by this

bill, and that is that The Mother Church be enjoined from establishing any publishing house of its own and publishing any literature of any kind. That is one of the prayers of the bill; and we have upon that the right to show the importance, not only of the literature as to lectures, but the literature as to everything. It goes to the very heart and the kernel of the controversy—the right of The Mother Church to control its literature, consisting, among other things, of published lectures.

The Master. I think I shall have to exclude it, on the same ground that I excluded the other.

Mr. Krauthoff. We note an exception to that.

The Master. Certainly."

Said witness also testified that in the work that he did at Kansas City, Missouri, he became acquainted with the nature of the reading rooms conducted by branch churches, and that he has since become more familiar with the work of the reading rooms done generally; that all the literature that is published by the Christian Science Publishing Society is sold in these reading rooms, together with the Bible and the works of Mary Baker Eddy; that the reading rooms are conducted by the branch churches under the supervision of a librarian appointed or elected by the church; that The Mother Church conducts several of such reading rooms of its own; that nothing except the literature above mentioned is sold in these reading rooms; that the literature sold in the reading rooms includes the periodicals published by the Christian Science Publishing Society and the Christian Science Monitor; that this literature is also sold in the church buildings on Wednesdays, following the testimonial meetings; that the branch churches, through their reading rooms, purchase said literature from the Publishing Society; that said reading rooms are conducted as activities of the branch churches and of The Mother Church. He was then asked the following question:—

"Q. Do you regard it as expedient to have a trustee of the Christian Science Publishing Society, a trustee selling literature to the reading rooms of your churches and claiming the sole right to do it, who is not in every particular loyal to the Church Manual of The Mother Church?

Mr. Whipple. That, if your Honor please, is evidently objectionable on the same ground.

The Master. I will make the same ruling on that.

Mr. Krauthoff. And we will take the same exception."

With regard to the evidence excluded as appears by the foregoing agreed statement, the Master states that said evidence, if admitted, would not have altered or changed any finding contained in his Report.

81. Two motions in writing, presented to me on behalf of the de-

fendants other than Dittmore on February 2 and 3, 1920, before final settlement of the draft of my Report, are filed with said Report and may be considered as appended thereto.

The first of said motions asks that the present case be reopened—"for the purpose of taking further testimony bearing upon the issue whether or not the defendant Dittmore was a Director at the time of the bringing of this Bill."

This motion was denied, in view of the statements above made in paragraph 78, and also because at no time after August 2, 1919, and before the submission of my draft Report on December 20, 1919, was there any notice from said defendants that they desired the case reopened for the purpose stated in the motion.

In view of the above, I am unable to believe that said defendants can properly be said to have been taken by surprise as alleged in their motion, or to believe that the reopening of the case at this stage would be fair to the other parties therein.

The second motion asks the Master to fix a date for a hearing in the case No. 30,788, and pending the hearings therein to suspend the settling and filing of the report in the present case, if the question referred to in the first motion is to be passed upon in the present case.

In so far as this motion refers to the present case it is covered by what has been said regarding the first motion. In so far as it refers to No. 30,788 it was not regarded as proper for consideration in this connection and it was denied.

Also on February 2, 1920, still another motion was presented by the same defendants entitled in both the cases 30,654 and 30,788. It is also filed herewith and to be considered as appended hereto. This motion I declined to consider, for reasons already stated in this paragraph, and because entitled in both cases.

82. I was requested by the defendants other than Dittmore, after said draft copy of my Report had been submitted, to insert in par. 34, pp. 32, 33 above, a statement that a letter from Mrs. Eddy to the Directors, Ex. 459, and a notice published in the Christian Science Sentinel over her signature, Ex. 693, might be referred to in connection with the findings there made. This request being objected to on behalf of the plaintiffs, it was declined; the exhibits not adding anything material, in my opinion, to the findings elsewhere made in the Report.

The above was finally settled as the draft of my Report, and notice thereof given to the parties or counsel on February 21, 1920. Thereafter written objections thereto, which are filed herewith and to be considered as appended to this Report were brought in as follows:—

On behalf of the defendant Dittmore, on February 26, 1920.

On behalf of the five other defendants, on February 27, 1920.

Sunday, February 22, and Monday, February 23, were legal holidays in Massachusetts.

No objections were brought in on behalf of the plaintiffs.

No changes are made in the above draft of the Report as finally settled, by reason of any of the objections brought in as above stated.

On this sixth day of March, 1920, I make the foregoing my final Report and file the same in Court.

FREDERIC DODGE,  
Master.

Publisher's Note—The above is a verbatim copy of the printed report furnished by the Master.

The following correspondence is published by request.

THE EDITOR.

March 4, 1920.

Board of Trustees of The Christian Science Publishing Society, 107 Falmouth Street, Boston, Massachusetts.

Dear Friends:

The Christian Science Board of Directors instructs me to request you to publish in the Monitor, Sentinel, and Journal the letter to the members of The Mother Church of which a copy is enclosed herewith.

The Directors request that the same be published in the Monitor when the Master's report is published, and published in the Sentinel and Journal as soon as possible thereafter.

Sincerely yours,

(Signed) Charles E. Jarvis.

Corresponding Secretary for The Christian Science Board of Directors.

March — 1920.

To the Members of The Mother Church, The First Church of Christ, Scientist.

Dear Co-workers:

In the suit brought by the Trustees of The Christian Science Publishing Society against the Directors of The Mother Church, the Master has now filed a report of his findings and conclusions. Much of the report is unfavorable, but it is not a final decision; it is subject to review by the Supreme Judicial Court of Massachusetts, first by a single justice thereof, and later by the full court of five justices. At least some months are likely to elapse before their final decision can be obtained.

Among the Master's findings favorable to the Church are the following: he has found that all the By-Laws in the 89th or final edition of the Manual were approved by Mary Baker Eddy; that they were adopted for The Mother Church by its Board of Directors; and that they always have been accepted as the by-laws of The Mother Church by its entire membership. These find-

ings recognize Mrs. Eddy's authorship of our Church Manual; they also affirm all that is legally essential to the stability of The Mother Church as a permanent organization. Mrs. Eddy's work as the Discoverer, Founder, and Leader of Christian Science only needs the clear understanding and active cooperation of Christian Scientists.

The discernment, steadfastness, and unity of Christian Scientists have been tested before. So once more we may be assured by these words of our beloved Leader: "Built on the rock, our church will stand the storms of ages" (Miscellaneous Writings, page 140).

Faithfully yours,  
Adam H. Dickey  
James A. Neal  
Edward A. Merritt  
William R. Rathvon  
Annie M. Knott

The Christian Science Board of Directors.

March 6, 1920.

Christian Science Board of Directors,  
The First Church of Christ, Scientist,  
Falmouth and St. Paul Streets, Boston, Massachusetts.

Dear Friends:

Your letter to the Board of Trustees, requesting the publication in the Moni-

tor, Sentinel, and Journal of a letter to the members of The Mother Church in the form which you send us, has been given careful consideration.

When it became clear that the difference of opinion between the Directors and the Trustees as to their relative responsibilities in connection with the administration of the trust created by our Leader, would have to be submitted to the decision of the Court, the Trustees adopted the rule that the Monitor should report only the actual proceedings in court, without comment, and that the other publications should contain no report. This rule was adopted because the Trustees felt strongly that the organs of the Church provided by our Leader,—not as the personal organs of the Board of Directors or any of its members, or of the Board of Trustees or any of its members, but solely for promoting and extending Christian Science throughout the world,—should not be involved in controversies which might arise among the members of either board as to the scope of their respective duties.

This rule was approved by the Court very early in the proceedings, and since then has been strictly adhered to with the assent and acquiescence of all the parties.

While the communication which you request to be published is clearly not within the rule, containing, as it does, comments on the Master's Report, we have decided, in view of the nature of your request, to make it an exception, and accordingly have requested the editors to publish your letters and our reply.

In this connection, however, and to prevent any misunderstanding, may we say that the Master's findings which you quote as favorable to the Church, were made not only without contention to the contrary, but with the Trustees' cordial approval.

May we add also that the Trustees, having felt constrained by the attempted removal of one of their members from his office to submit the whole question at issue to the Court, decided to await its decision, and until such decision to make no comment or statement of their position. Accordingly, adhering to this rule, we shall offer no comment upon the Master's report until the same has been accepted and confirmed by the Court.

Very sincerely yours,  
(Signed) David B. Ogden,  
Secretary.



# Extension of Time for Exceptions

BOSTON, Massachusetts — After hearing arguments yesterday on the request of counsel for the directors of The First Church of Christ, Scientist, of Boston, for extension of the time for filing exceptions to the Master's report in the Christian Science Equity Case, filed on March 6, Justice DeCourcy ruled that the exceptions shall be filed by Thursday morning, March 25, at 10 o'clock.

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

Suffolk, ss.

IN EQUITY.

EUSTACE ET AL V. DICKEY ET A.

BEFORE MR. JUSTICE DeCOURCY

Boston, March 19, 1920.

MR. BUFFUM: May it please the Court, in this case, Eustace v. Dickey, I have the very ordinary and somewhat usual request to make and that is, that the time for filing exceptions which was to expire to-morrow, or the 21st, —exceptions to the master's report which was filed on March 6,—be extended up to and including March 29th. The reasons why I make that request are, in substance, these: I understand, by the way, that Mr. Withington and Mr. Thompson, whom I notified, are here in court.

MR. THOMPSON: Yes. We both oppose the motion. I also desire to protest against the short notice I was given. I was notified only yesterday. In order to deal with this motion adequately, it is necessary to look through the printed record. It is extremely important—

THE COURT: All this motion asks for is an extension of time for filing exceptions. I assume objections have been duly filed?

MR. THOMPSON: They have been duly filed and have been in print and numbered for days, and it wouldn't take five minutes to write out a statement of them. There is no reason for the motion at all. If the motion is to be made it is serious and I desire to be heard. I will not go into the reasons why at the present time. I can only say to your Honor it is a serious question concerning my client and it is important that this motion should not be granted if we can prevent it, and my understanding is that Mr. Whipple feels likewise. The notice I received, after I informed this gentleman I desired to argue it, is too short. I was only given a copy of it yesterday. I have been extremely busy since that time and in order that your

Honor may deal with it properly it is necessary that I go through the record and pick out a number of statements, if I can find them in the enormous printed record, where statements have been made by Governor Bates to the effect that he would do everything to expedite this case and nothing to delay it, and other statements which have a direct bearing upon why exceptions should be filed.

THE COURT: All I am concerned about is, that the allowance of this motion is opposed.

MR. THOMPSON: It is opposed, and I protest I have had no opportunity to go into the matter. The rule of court has been violated in giving me this short notice and I object to being compelled to argue the matter at all at this time.

THE COURT: When the matter was suggested to me in chambers yesterday—ordinarily a matter like the extension of time for filing exceptions would be granted almost as a matter of course, but I suggested in as much as this case was one where a good many things were not agreed to, it was better for him to give notice to counsel, so it was at my suggestion that counsel were notified.

MR. THOMPSON: I thank your Honor for that.

THE COURT: Mr. Whipple, are you opposed to the granting of the allowance of this motion?

MR. WHIPPLE: Yes, your Honor.

THE COURT: I will not take it up now if it is opposed. If you desire to be heard on it and counsel can agree, I will put it at the end of today's list. I do not think I ought to take up a contested matter that does not come in its order.

MR. BUFFUM: May I make a suggestion. I will do it as briefly as possible. Ordinarily I would not make this request, but one of my partners who took an active part in the trial of the case, Mr. Dane, has been ill and has not been to the office since March 9th. That is about three days after the report was filed. Governor Bates who has been familiar with and has had particular charge of the matter from the beginning was of necessity called to Washington.

THE COURT: May I suggest you are discussing why this motion should be allowed. I have just said if it is going to be contested I will hear counsel, but I do not think I ought to hear it now. This is the time for hearing uncontested matters. When it comes time for hearing the case properly on the list, I am entirely content, if counsel desire to add it to to-day's list, to put it at the end of the list and give you a hearing. But it is perfectly

apparent that it is going to take considerable time and I do not think I should take it up now.

MR. BUFFUM: I thought counsel might not object if I made that brief statement.

THE COURT: Do counsel desire to have the matter heard to-day?

MR. THOMPSON: I again say I think I am entitled to a sufficient notice.

THE COURT: If it is not going on to-day I must somewhat modify the order if the exceptions are to be filed ----- When were they to be filed?

MR. BUFFUM: To-morrow.

THE COURT: Then if there is not going to be a hearing I must protect the party to some extent with reference to the time of filing the exceptions.

MR. THOMPSON: If your Honor does reach that conclusion, I suppose I am compelled to go on this afternoon.

THE COURT: It would be equivalent to not giving them a hearing at all if I postponed the motion until after the time for filing the exceptions had expired. If you care to be heard after the regular list I will hear you.

[After hearing on the regular list the following remarks were addressed to the Court]

MR. WHIPPLE: May it please your Honor: With regard to the matter that was before your Honor this morning, an application for extension of time for filing exceptions in the Christian Science suit. I think we can dispose of it by agreement, although I hope that there will not be pressure for so much time for extension, as was asked.

There are serious and important considerations which Mr. Thompson had in mind and to which he referred as to why every possible expedition should be had in reaching a final conclusion in this case, and certainly a final conclusion so far as the master's report is concerned, to be dealt with by a single justice. We will not trouble your Honor with stating what they are further than to suggest that pernicious propaganda is being circulated which is extremely harmful to the interests of this great Church organization. Rumors are rife based upon unsubstantial foundations which are really doing a great deal of harm. We are looking forward eagerly to the time when something authoritative can be done or said by the court and afterwards said by trustees and directors, to prevent the harm that is being done. But on the other hand the suggestions which have been made by Mr. Buffum and which he stated

more fully in our conference as to the situation in their office—the absence of Governor Bates, the illness of Mr. Dane, who has had a great deal to do with this litigation—imposes a duty upon Mr. Buffum, a decision upon points where the responsibility is great and he does not wish to take it alone and I have felt that it ought not to be pressed upon him. We certainly want to do everything to meet the convenience of that office in every way it is possible, so that after conference with Mr. Thompson we have persuaded ourselves that we want to meet their request without troubling your Honor with it. But I still hope that a shorter time can be made satisfactory than what they had named.

THE COURT: What do you ask for in the motion?

MR. WHIPPLE: They asked until the very last of March. That would not give any opportunity for hearing on the master's report during the present month and we would like to have that hearing—

THE COURT: Why can't you have it in by next Tuesday?

MR. BUFFUM: In reference to that: At the time we made the request for one week, we made what we thought under the circumstances was a modest request in view of the absence of Mr. Bates and the fact that he will not be back until Monday. I do not want to assure the Court that we would be prepared to file them on Tuesday unless we are required to do so. On the other hand we have no desire to delay. If we find we can prepare the exceptions and file them we shall be glad to do it as soon as it is possible. On the other hand we do not like to keep bothering this Court—

THE COURT: What is there to do except to say that the party excepts for the reasons set out to so and so?

MR. BUFFUM: We have 118 objections all of which were filed in good faith. We want before we file these to weigh them to see whether or not there are any of these objections that ought not properly to be made the basis of exception to the end that perhaps the burden of the Court will be lighter when we actually bring them up for action. We want to go over them and weigh them to see whether any of these objections should not be made the basis of exception, and as I say, there are 118 of these to be considered.

THE COURT: It would seem to me that ought to be done in five days. In other words, the real work is in eliminating objections to which you do not intend to file exceptions. It would seem with the familiarity of counsel with this case and the com-

paratively narrow legal issues involved here, that ought to be done in five days. When is Governor Bates expected back?

MR. BUFFUM: Governor Bates is expected back Sunday night. I cannot give absolute assurance of that, but we confidently hope he will be here Monday morning.

THE COURT: Don't you think if I make it Wednesday—that the exceptions be filed on or before Wednesday morning of next week, that will be ample?

MR. ABBOTT: I call your Honor's attention to the fact that on Tuesday the intervening petition comes up. Very likely Mr. Bates and Mr. Dane will have to spend a good part of that day in court.

THE COURT: I will grant the motion with a strong intimation that the parties ought not to take all that intervening time for this purpose; that is all I can say now.

MR. ABBOTT: I don't think we will require it.

MR. THOMPSON: I would like to say a word. If it had not been for a remark just made by Mr. Buffum, I should have remained silent and acquiesced in the statement by Mr. Whipple which was the result of a conference between Mr. Whipple, Mr. Buffum and myself after we were here this morning. But I understood distinctly from Mr. Buffum in that conference that the difficulty in filing the exceptions, and that was the occasion of the request for time to file the exceptions, was not reading over the objections to see which of them should be excepted to, because that can be done afterwards, but he stated they had in mind the matter of a motion to recommit, and the question was whether it was advisable to file the exceptions before that motion was made or not. I was content to remain silent if that had been stated, but it has not been stated, but has been put on a different ground—that it was to decide in advance what exceptions were to be filed. I think I ought to say, although I agree with Mr. Whipple wholly in a desire to get ahead, and as to the personal absence and illness of counsel, a situation has developed that I am in grave doubt whether I should be accommodating counsel in assenting to this motion, in omitting to insist as far as I am able that there is nothing which ought to prevent these exceptions being filed by next Tuesday. I feel in duty to my client I ought to say I do not think myself that there is any question of strategy that can possibly be raised. I don't know of anything that can be said excepting that one of these questions is usually dependent on the

other. I want to have it appear when the motion to intervene is argued on Tuesday next what exceptions the Governor counts on. It may be important to have the court know in dealing with the matter of intervention. I am assured by Mr. Buffum that there is no coordination between him and counsel making the motion to intervene and I expect his statement is true and accept it, but I am still obliged to observe that it would be of advantage to the intervening counsel not to have the exceptions filed until after that motion was heard by your Honor, and therefore urge your Honor to set Tuesday as the date for filing the exceptions.

THE COURT: I shall allow time enough. They shall be filed by the latest on Thursday morning so that if it is desired to put this case on the list Friday it can be done. In other words there will be no delay if counsel desire to have any action taken by the court it could not be taken before Friday next any way and these exceptions can be filed and matters properly completed in sufficient time to put the case down on Friday. I am not going to make any order about it, but there will be no court time lost by reason of making this motion seven days rather than five. To make it perfectly clear they must be filed on or before Thursday morning of next week. That will give the parties time enough to get matters in shape by Friday if you want to put it on Friday's list.

MR. THOMPSON: May it be as a matter of course on Friday's list—

THE COURT: I am not going to put it on Friday's list. I say it will dispose of this; so far as keeping the case on the list for is concerned if counsel desire it they can set the case down for that day.

MR. THOMPSON: Without any further notice except this notice to counsel on Thursday?

THE COURT: Yes.

MR. THOMPSON: If I notify counsel Thursday afternoon I am at liberty to do so?

THE COURT: I am not making any order about putting it on the list for Friday. I say you must file your exceptions by Thursday morning, so that if counsel desire they can be heard on Friday. I shall be here all day Thursday.

MR. BUFFUM: Lest there be any misunderstanding, I am very sure Mr. Bates could not be prepared on Friday to argue these exceptions.

Publisher's Note—The above is a verbatim report, with no corrections made by us in the stenographic court report supplied to us.

# Hearing on Motion to Intervene

BOSTON, Massachusetts—Arguments on the motion of Emilie B. Hulin to intervene in the equity case of Eustace et al v Dickey et al. were heard and concluded before Judge De Courcy yesterday.

## COMMONWEALTH OF MASSACHUSETTS

### SUPREME JUDICIAL COURT

Suffolk, ss. In Equity  
EUSTACE ET AL. V. DICKEY ET AL.  
BEFORE MR. JUSTICE DeCOURCY  
March 23, 1920.

### HEARING ON MOTION TO INTER- VENE.

#### Appearances:

Charles F. Choate, Jr., Esq.,  
Dawson, Merrill & Dawson, of New  
York City.  
Sherman L. Whipple, Esq.,  
Lothrop Withington Esq.,  
William G. Thompson, Esq.,  
General Frank S. Streeter, Esq.,  
Fred S. Demond, Esq.,  
John L. Bates, Esq., of Bates, Nay,  
Abbott & Dane.  
Edwin L. Krautoff, Esq., of Wash-  
ington, D. C.

MR. KRAUTOFF: If your Honor please, in the pending case I desire to have the record show my withdrawal as counsel for the defendant—as one of counsel for the defendant.

THE COURT: I suppose you have filed your withdrawal with the clerk?

MR. KRAUTOFF: I am not a member of the bar of this State; I am recognized by courtesy. I did not know it was customary to file a withdrawal.

THE COURT: Simply file your withdrawal with the clerk and it will be a matter of record.

MR. KRAUTOFF: In that case, I have been engaged in it now for something over a year, and the Court has extended to me as a non-resident attorney the courtesy of being recognized and there may be some things arise during the course of the arguments that I may desire to bring to your Honor's attention. May I ask the privilege of being recognized as a friend of the court in that particular?

THE COURT: I think I should hesitate about having any discussion on this particular motion except by counsel. Perhaps I better settle that question now and determine who is to appear for and against this motion.

MR. KRAUTOFF: I am not quite through, your Honor. I also am a member of the Mother Church in my own right, and the petitioner being a member of The Mother Church, I assumed it would be proper for a

member of The Mother Church to be heard.

THE COURT: It is hardly customary where adequate counsel appear, for individuals to appear also, especially where the matter involves a comparatively narrow issue, as it is here.

MR. KRAUTOFF: That depends upon the circumstances, I assume. If those circumstances arise I shall renew my application when they appear.

THE COURT: Mr. Choate, do you appear on behalf of the motion?

MR. CHOATE: May I introduce Mr. Miles M. Dawson, of New York, and ask permission for him to represent the petitioners, with me.

THE COURT: Is there an oral argument to be made by more than yourself for the motion?

MR. CHOATE: I shall make a short opening. Mr. Dawson will make the principal argument.

THE COURT: On behalf of the same client?

MR. CHOATE: On behalf of the intervenors.

THE COURT: Any other counsel who appear in support of the motion? Who appears in remonstrance besides Mr. Whipple—I assume you appear on behalf of the trustees?

MR. WHIPPLE: For the trustees. Mr. Withington appears with me as counsel for the plaintiff trustees.

THE COURT: Does anybody else appear in opposition to the motion?

MR. THOMPSON: I do and General Streeter and Mr. Demond.

THE COURT: As representing who?  
MR. THOMPSON: Mr. Dittmore, one of the defendants.

THE COURT: Then all three counsel are appearing for the same person?

MR. THOMPSON: I think Mr. Demond and I are the only ones who care to address your Honor on the subject.

THE COURT: I do not mean to cut out General Streeter.

MR. THOMPSON: I shouldn't want to, either, if he desired to be heard. Perhaps he recognizes that two of us are sufficient and we have agreed that that is so.

THE COURT: Two parties from Vermont. Any others?

MR. BATES: My associates and I appear for the defendants in the original suit other than Mr. Dittmore who is represented by Mr. Thompson. We probably shall not ask to be heard, it depends somewhat on the course that is pursued.

THE COURT: Let me ask a further question. How long do you desire for presenting your side of the case, Mr. Choate—you and your associate?

MR. CHOATE: We have the papers to read.

THE COURT: I think I will save

you the trouble. I have read the petition for leave to intervene and also the report of the master, so that as far as that goes you may assume that the Court is familiar with them.

MR. CHOATE: Will your Honor allow us an hour?

THE COURT: I think that is a moderate length of time. The other side will be content with how much?

MR. WHIPPLE: I should think we would not take an excessive amount of time for our presentation. Has your Honor also read the bill and answer?

THE COURT: Yes, but not so recently. The others of course I have. I examined the bill with reference to the terms of the deed of trust which is the material part of this controversy—the main question before me.

MR. WHIPPLE: It seemed to me most of the time would be taken in order to have your Honor, if your Honor had not read the papers, become familiar with a somewhat long record, but if your Honor has already done that I think that would shorten very much the time which would be taken.

THE COURT: With counsel dividing the time between them, how much time do you think would be required for the opposition to the motion?

MR. WHIPPLE: I cannot speak for Mr. Thompson, because I simply had opportunity to read his very instructive and thorough brief, and I think he better speak for himself.

THE COURT: What do you say for yourself?

MR. WHIPPLE: I say I do not think I should exceed an hour, if I am permitted to take as much.

MR. THOMPSON: It seems to me we shall need to take no more time than is necessary for a fair presentation of this matter. I should like to have as much time as Mr. Choate has.

THE COURT: It seems to me those in support of the motion ought to have as much time as the opposition. I should suggest between Mr. Whipple and yourself you could take an hour and a half so as to leave reasonable time for reply.

MR. THOMPSON: My impression is that if Mr. Choate and his associate both address your Honor they will take more than an hour.

THE COURT: Let us start in with the expectation of finishing the arguments by one o'clock. If there is any occasion for adding somewhat to that, very well. I speak of it now because I realize the temptation in a case fought as closely as this has been, to bring in matters not involved in the present motion.

MR. THOMPSON: Matters may be

suggested that are not anticipated. If so, it would be unfortunate if we were so limited to time as to prevent—

THE COURT: We will start with the very strong hint that we ought to be through by one o'clock with the arguments.

MR. KRAUTOFF: In view of the statement by Governor Bates that he may not desire to be heard, I desire in my own name to file a formal opposition to the pending intervention and at the proper time to ask the Court to be heard in support of the opposition as presented.

THE COURT: You are speaking now for yourself as a member?

MR. KRAUTOFF: Yes.

THE COURT: How much time do you think you want on that?

MR. KRAUTOFF: About 15 minutes.

THE COURT: I am inclined to allow it, although it is somewhat irregular where there are counsel appearing on behalf of these members, as I assume the plaintiff appears. I should hardly want to allow each and every member to address the Court; I do not think it would help the Court to do so.

MR. WHIPPLE: May I offer a suggestion. I am not sure it has been made clear that Mr. Krautoff desires to present a contention opposite to that of this lady who appears purporting to represent all the members of the Mother Church. She invites others to come in and prosecute, and it is a question whether the members who do not want to prosecute haven't an equal right to be heard.

MR. KRAUTOFF: I am opposing the granting of the petition.

THE COURT: When I have heard counsel representing the petition if there is anything further that is to be said you may address the Court. I think perhaps Mr. Krautoff better retain that rather than to file it now, until we discuss the question as to whether he is to appear. I do not know whether that means he is to appear on separate grounds of intervention or not. I think we better suspend filing it until it is time for his discussion to be made.

MR. CHOATE: May it please your Honor. We ask leave to file an amended petition to intervene; copies have been handed to counsel on the other side, and which differs only from the original petition—

MOTION BY EMILIE B. HULIN TO AMEND THE INTERVENING PETITION ATTACHED TO HER MOTION FOR LEAVE TO INTERVENE HERETOFORE FILED.

Emilie B. Hulin says that whereas at the time of filing her motion for leave to intervene the Master's Report had not been filed in this cause and therefore the petitioner in said petition asserted her apprehension that certain findings and rulings might be made, such apprehension being based upon the Master's draft report not yet filed,

now since the filing of said Master's Report the petitioner moves to amend the intervening petition attached to her motion for leave to intervene by substituting therefor the annexed intervening petition.

INTERVENING PETITION OF EMILIE B. HULIN OF BOROUGH OF BROOKLYN, CITY AND STATE OF NEW YORK.

The petitioner, Emilie B. Hulin, intervening in the above entitled proceedings in behalf of herself and all other members of The First Church of Christ, Scientist, of Boston, known as The Mother Church, in good standing, and all members of Christian Science Churches and Associations and all other Christian Scientists, alleges that the petitioner is a Christian Scientist and a member of The First Church of Christ, Scientist, of Boston, in good standing; the petitioner studied Christian Science with Mrs. Mary Baker G. Eddy, its founder, in the year 1888 and, upon completion of such course in said year became and has since continued to be a Christian Science practitioner; in 1891 she became and has since continued to be a duly authorized teacher of Christian Science; in 1892 she became a member of The First Church of Christ, Scientist, of Boston, hereinafter called The Mother Church, and as a First Member thereof; she has ever since remained a good and loyal member of such Church and is at this time in good standing as such; she has never resigned as a First Member or forfeited her rights as such First Member or been deprived of such membership; as a Christian Science practitioner and teacher she has practiced in the City of Brooklyn and the City of New York and she now resides at 73 Herkimer Street, Borough of Brooklyn, City of New York; besides her membership as aforesaid in The Mother Church she was one of the founders and is now a member in good standing of The First Church of Christ, Scientist, of Brooklyn.

Your petitioner further represents to the Court and says that she and all others similarly situated for whom this intervening petition is presented to the Court, compose and constitute such The First Church of Christ, Scientist, of Boston, hereinafter called The Mother Church, and that such Church is a beneficiary under the Deed of Trust, under which the plaintiffs in this proceeding became trustees of such Trust, and is the sole beneficiary to which the net income of such Trust is, by the terms of said Deed of Trust, payable.

Your petitioner further represents to the Court and says that she and all others similarly situated, for whom this intervening petition is presented, are persons engaged in promoting and extending the religion of Christian Science as taught by its Founder, Mrs. Mary Baker G. Eddy, who made said Deed of Trust for the express purpose

of more effectually promoting and extending the same and all members of The Mother Church and all loyal Christian Scientists throughout the world are, because of this purpose expressed in the Deed of Trust, in effect beneficiaries thereof, by reason of being interested in promoting and extending such religion.

Your petitioner further represents to the Court and says that she is informed and verily believes that the interests, as such beneficiaries, of herself and all who are similarly situated, for whom this intervening petition is presented, are threatened with serious and irreparable injury in that, notwithstanding that your petitioner and others who are similarly situated have not been parties in these proceedings and have not been heard by the Master and except through this intervening petition, will not have been heard by the Court, the position of your petitioner and all similarly situated, who compose and constitute The Mother Church, the sole financial beneficiary under the said Deed of Trust, and are otherwise also chief beneficiaries thereunder, may be adjudged by the Court to be other and less favorable and valuable to her and to them than was by such Deed of Trust provided; that by reason of the powers given by the said Deed of Trust of January 25, 1898 to the First Members together with the directors, the interests of your petitioner and the others similarly situated are not according to the Master's rulings sufficiently represented by the defendants in these proceedings; and that this threatened prejudice to such interests of your petitioner and all who are similarly situated, includes, among all the prejudices so threatened, the following specific things, to wit:

First, that in said Master's Report it has been ruled that the action of the First Members of The Mother Church, taken in 1901, to devolve upon the Board of Directors the sole power to transact the business of such Church was ineffectual as an investiture of such Board with power to act alone, under the Deed of Trust, in the matter of the removal of a trustee;

Second, that in said Master's Report it has been ruled that, notwithstanding, that such action, although thus ineffectual, or the acquiescence of such First Members in acts of the Board of Directors, since the Trust Deed was made, has caused such First Members to become incapable of exercising the power of removal given them and that this has rendered any exercise of the power to remove a trustee impossible under the terms of the Deed of Trust and that, such exercise of the power having become thus impossible, removal of a trustee would require resort to a Court;

Third, that the terms of the Deed of Trust plainly provided that the purpose of the Trust was to promote and extend the religion of Christian Science as taught by its Founder and

further provided that in order to continue in such trusteeship a trustee must be a loyal, faithful and consistent believer and advocate of the principles of Christian Science, as taught by its Founder in her book "Science and Health with Key to the Scriptures" by which provisions the maker of the Deed of Trust plainly intended that, among the reasons for declaring a vacancy which to the First Members and the directors might seem to be expedient, might be that the publications put forth by such trustees or advocated or attempted to be put forth by any one or more of them were not, in the opinion of the First Members and the directors such as to promote and extend the religion of Christian Science as taught by its Founder, the maker of the Deed of Trust, nor such as could be put forth or advocated or attempted to be put forth by a loyal, faithful and consistent believer and advocate of the principles of Christian Science as taught by its Founder and that in case the Court shall rule this power of removal is lost, substantial and valuable powers and rights of the petitioner and others similarly situated may be prejudiced or lost, to the irreparable injury of your petitioner and all members of such Church.

Fourth, that although there are now surviving and in good standing, as your petitioner is informed and believes, First Members of The Mother Church to the number of more than fifty and the By-Law of such Church providing for maintaining such First Members as the only voting members, also provided that such By-Law could be repealed or amended only by the unanimous vote of the First Members and there has been no such amendment or repeal, the Master has ruled that the action in 1901, devolving power to conduct all business of the Church upon the Board of Directors was not effective to vest such board with the powers, under the Deed of Trust, of First Members to remove a trustee, so as to empower such directors, acting alone, to remove such trustee and has also ruled that the Board of Directors, notwithstanding, had power to, and actually did in 1908 disband the First Members, as such, and deprive them of their functions and powers by repealing the By-Law, and has also ruled that such directors are not officers of The Mother Church; and by such rulings if confirmed the petitioner and all members of The Mother Church will suffer serious and irreparable injury, in that thus not only will The Mother Church be deprived of power, through its First Members, together with the directors, to remove a trustee but it will be left without any polity or form of organization and without members authorized by its By-Laws to create such or to provide for the conduct of its business.

Fifth, that in consequence of these and other rulings, if confirmed and if binding upon your petitioner and all

similarly situated (and whether the same would be binding upon her and them, in case they were not parties in this proceeding, would, your petitioner is advised, require for its determination that a new proceeding be commenced before the Court,) the sole power to determine whether or not a trustee should be removed because not a loyal, faithful and consistent believer and advocate of the principles of Christian Science as taught by its Founder in her book "Science and Health with Key to the Scriptures", or because his administration of the trust fails to carry out the maker's purpose of more effectually promoting and extending the religion of Christian Science as taught by its Founder, the maker of the Deed of Trust, would rest with the Court to the exclusion of the First Members and the directors in whom the Deed of Trust vested power to remove for these or any other reasons which to them may seem expedient, so that such wholly ecclesiastical questions, necessarily involved in the express purposes of this trust and in the express qualifications of a trustee thereunder, would come to this secular tribunal for its determination to the utter exclusion of The Mother Church and all Church authorities, thus imposing upon this Court sole and exclusive jurisdiction of ecclesiastical doctrines, rules and polity.

Sixth, that, unless the intervening petition of your petitioner be heard and adjudicated, further and other suits and proceedings will require to be instituted in order that the rights and duties of your petitioner and of all persons similarly situated, and of the First Members, may be adjudicated and determined and the instruction thereon of the Court be obtained and needless multiplicity of suits be avoided.

Your petitioner further represents to the Court and says that members of The Mother Church and of branch Churches and associations and Christian Scientists generally throughout the world are deeply sensible of the foregoing and other perils to their interests as such members and to the cause of Christian Science, involved in such possible rulings affecting them and their interests, in the proceedings before the Court, in which, unless this intervening petition be heard and determined, they will not have appeared by counsel and will not have been heard; that Christian Science Churches of the State of New York by their chosen delegates assembled at Albany in that State on February 7th, 1920 upon a call to consider the conditions resolved as follows:

"That the representatives present at this meeting elect an Executive Committee of five members of The Mother Church, The First Church of Christ, Scientist, of Boston, to take such legal, equitable, or other action as they may deem necessary to protect the rights and interests of the members of The Mother Church, and such Committee be and is authorized to

engage counsel or incur such other expense as they may deem necessary, and to perform such other duties as are required of it by this body."

and that other like conferences of representatives elected by Christian Science Churches and associations within each of several States have been held with similar result, and petitioners' counsel have been retained by such executive committee of the conference of New York Churches and associations to present this intervening petition on behalf of your petitioner and of all others similarly situated, to protect such interests before the Court in these proceedings.

Your petitioner further represents to the Court and says that the confidence of members of The Mother Church and of these branch Churches and associations and of Christian Scientists generally throughout the world, in the soundness, reliability and fidelity to principles of Christian Science as taught by its Founder of the publications sent forth by the Trustees under the Trust is already greatly impaired, is rapidly waning, and is in danger of being wholly destroyed and that thousands of such members and Christian Scientists generally have, as your petitioner is informed and believes, cancelled their subscriptions for such publications, and many such cancellations are made daily, with disastrous consequences to the said Trust and great and irreparable financial injury to the interests of your petitioner and all similarly situated, as composing and constituting The Mother Church, sole financial beneficiary of such trust.

Your petitioner further represents to the Court and says that the plaintiffs in these proceedings are not loyal, faithful and consistent believers and advocates of the principles of Christian Science as taught by the maker of the Deed of Trust in her book, "Science and Health with Key to the Scriptures," and are thereby disqualified to continue in such trusteeship and if the Court shall rule that they may not be removed by the Directors or by the First Members and the directors, they should be removed by the Court in these proceedings, because of such disqualification.

Your petitioner further represents to the Court and says that the plaintiffs in these proceedings, acting as trustees under such Deed of Trust, have not administered and are not administering the trust in a manner to promote and extend the religion of Christian Science as taught by its Founder, in that they have authorized, countenanced and permitted the publication of matter which brought discredit upon Christian Science and was calculated and suited to mislead readers of such publications as to the true principles of Christian Science as taught by its Founder, and for this reason, if the Court rule that they may not be removed by the directors or by

the First Members and the directors, they should be removed by the Court in these proceedings.

Your petitioner further represents to the Court and says that the plaintiffs in these proceedings, acting as trustees under the Deed of Trust, have been guilty of misfeasance and malfeasance in the administration of such trust, in the following particulars, among others:

In that, contrary to the express terms of the Deed of Trust, they have failed to keep in a responsible and reliable Bank or Trust Company all surplus funds over and above the sum necessary to defray the running expenses of the business but have kept a large sum, to wit, \$200,000, in a box in a safety vault;

In that they have incurred liabilities by borrowing money in a large amount, to wit, \$200,000, beyond their ability to liquidate promptly from the current income of the business, and that such borrowing was not for a laudable or lawful purpose;

In that they have been guilty of waste and extravagance, in the following particulars among others: They purchased with the moneys of the Trust a motor-car at an expense of \$3000 and an annual expense and upkeep of at least \$3000 a year, for the use of themselves and their visitors; they have rented (a thing wholly unprecedented in the Christian Science Publishing Society) quarters in San Francisco for the display and sale of their publications and have incurred large expense to maintain the same; they have expended in these proceedings, and have incurred obligations in connection therewith, a large sum in the aggregate, to wit, more than \$50,000 in attempting to protect an individual trustee, Plaintiff Rowlands, from removal from office; and in many other and various ways; and, for these reasons, if the Court rule that they may not be removed by the directors or by The First Members together with the directors, they should be removed by the Court in these proceedings.

Your petitioner further represents to the Court and says that the trustees have failed to account and pay over, as required by the Deed of Trust, once in every six months, to the treasurer of "The First Church of Christ, Scientist, in Boston, Mass.," the entire net profits of the business conducted by them under the trust, meaning the balance remaining at the end of each six months after paying the usual and legitimate expenses incurred in conducting the business; and, for this reason, if the Court rule that they may not be removed by the directors or by the First Members together with the directors, they should be removed by the Court in these proceedings.

WHEREFORE the petitioner prays

1. That this Court may construe the provisions of said Deed of Trust especially in regard to the power of this Church through its Directors or through its First Members together

with its directors to remove a trustee for such reasons as to them may seem expedient and as to whether or not the expression "Directors of this Church" in the Deed of Trust means or does not mean the Christian Science Board of Directors heretofore, always and at all times recognized to be the Directors of The Mother Church.

2. That the Court after full hearing and the introduction of further evidence as may be required may determine the allegations of fact set forth in this intervening petition and if the Court shall decide that the power to remove the trustees is not lodged in the Directors or the First Members together with the directors, the Court will remove said trustees and appoint suitable persons as trustees in their places.

3. That the plaintiffs as trustees may be required to account in these proceedings as to their transactions and expenditures as trustees.

4. That the petitioner may have such further and other relief as to the Court may seem proper.

By her Solicitors,

(Signed)

Choate, Hall & Stewart,  
Boston.

(Signed)

Dawson, Merrill & Dawson,  
New York.

THE COURT: This is to be substituted for the one already filed?

MR. CHOATE: It differs only from the original petition in that it alleges the master's report has been filed. The original petition was filed just before the master's report was filed.

THE COURT: Any objection to the allowance of this substituted motion?

MR. WHIPPLE: We have had no time to read it, but we accept Mr. Choate's statement that it merely now refers to the findings of the report as a fact rather than as a possibility, so we do not object, subject, of course, to the right later, if we see anything that was unexpected, to comment upon it and call it to the attention of the Court.

MR. THOMPSON: I am in the same position as Mr. Whipple. I have not read the amended motion. If there are no other differences than those spoken of, we do not object, if there are other differences by any chance we might desire to comment upon them.

THE COURT: I shall assume then it will take the place of the substituted petition. These affidavits that have been allowed, are they to be taken as applicable to the new motion?

MR. WHIPPLE: We think so.

MR. CHOATE: I do not know to what you refer, Sir. I haven't seen it.

THE COURT: I think counsel ought to see it. It is an affidavit as to the truth of the motion.

MR. CHOATE: May Mr. Nash and Mr. Dawson have opportunity to examine it while I am addressing your Honor?

MR. WHIPPLE: Would his Honor like a printed copy of the bill?

THE COURT: Yes, if you have it. I was just looking for it.

MR. WHIPPLE: There is also a bill and answer printed together on opposite pages.

THE COURT: That also I assume includes a copy of the trust deed.

MR. WHIPPLE: Yes, your Honor as an exhibit. It will give the bill and answer on parallel pages and the deed of trust at the end.

THE COURT: Perhaps I am taking your personal copy. I see there is some memoranda on it.

MR. WITHINGTON: No, I have another one.

MR. CHOATE: May it please the Court, although your Honor has read the pleadings and the master's report quite recently, you will pardon me if I say just a word as to the origin of this controversy and the broad ground over which it has now spread, which gives occasion for this application to intervene. The controversy originally arose over the removal of one of the members of the Board of Trustees of the Publishing Society, acting under the deed of 1898, and a petition was brought by that trustee and his associates against the directors of The Church to have them enjoined from interfering with him in the exercise of his duties as such trustee. The issue thus joined led to an inquiry going back to the very foundations of the First Church of Christ, Scientist, the origin of the powers of the directors and the origin of the powers of the trustees, and the inquiry broadened and ramified to such an extent that it led into a search by the master and the presentation of evidence by the opposing parties upon all those things which go to make up the foundation, the polity, the faith, the tenets and beliefs of Christian Science. That inquiry led so far afield in order to find the ultimate authority under which the the directors acted, that the master in his inquiry and in his acceptance of evidence received a vast number of documents, I think something over seven or eight hundred exhibits were shown to him, and heard a vast amount of testimony to enable him to report from the beginning the different steps by which the Church had been built up and the authority of the Board of Directors established, and also to show to the Court the basis upon which the plaintiffs, as trustees, under the deed of 1898 stood. So that what at first seemed to be a comparatively narrow issue and to turn simply, possibly, upon the meaning of a phrase in the deed of trust of 1898, which established the trust under which the plaintiffs have been acting, broadened out into the controversy which has involved the standing and authority not only of the trustees and the directors but of the organization and existence of the Church, its by-laws, its manual and everything that

pertains to it and everything that Christian Scientists hold sacred.

Now in that inquiry it developed that in the early days of the Church, in 1892, at which point the master started in building up the history of the existence and development of the office of the directors, there was a body known as First Members, who by an earlier instrument upon which the Church organization was founded and the by-laws established by its founder, possessed certain authority and certain functions. All those were clearly pointed out in the master's report and your Honor remembers what they were. He asserted what the origin of their authority was and what had become of it, and the reason of the action of the directors in removing the trustee under the deed of 1898 was based upon a clause in the trust deed which authorized the first members with the cooperation of the directors to declare vacancies in the trust, and it developed upon his inquiry, that while the First Members had continued an active body until 1903 that then their powers were passed on or attempted to be passed on to the Board of Directors, and in 1908 they ceased to be active at all.

THE COURT: 1901, I think, was the date the by-laws were adopted.

MR. CHOATE: Now the petitioner in this case is a First Member. One of the original First Members. She is also a member of the First Church—the Mother Church here in Boston, as well as the First Church of Christ Scientist in Brooklyn, New York of which she is one of the organizers and founders. Her petition is to intervene on her own behalf and as representing a class, that is, not only the First Members, of which she is one and of which there are still approximately fifty surviving, but also as a member of The Mother Church in good standing. I want to state that position once more, that your Honor may have clearly in mind our position, and why the petition is brought.

THE COURT: Does she come into court as a First Member?

MR. CHOATE: Yes. She says she represents the members of the First Church of Christ Scientist of the Mother Church, that is the church here in Boston, and a particular class of members thereof known as the First Members, and she asserts the right to represent both classes or a class including either, there being no real divergence of interest between the two classes; in her capacity as a First Member she asserts no right which may give rise to any contest or opposition between First Members and members generally. First members and members generally are mutually and solely interested in upholding the legal validity and authority of the Church Manual against the danger of an adverse decision in court. We shall hand to your Honor a brief memorandum of authorities sustaining that proposition.

Now the filing of the master's report, a long, careful and truly wonderful piece of legal work, has developed a situation that no one, no member of the Church dreamed could exist, and has presented a situation which seems to the First Members of the Church to be fraught with the greatest danger to their whole institution and everything their believe in and deem sacred. The reasons why they so feel I will ask your Honor now to note. When we filed our original petition we could only allege apprehension. Now we have the master's report, which is before the Court, and his rulings and his findings and the effect of his rulings and findings upon the persons occupying the position of this petitioner, and these First Members as well as members of the Church. The fact immediately becomes obvious that they are now represented by nobody; that there is nobody to speak for them; that is perfectly apparent. They had always supposed, indeed I think both parties to the litigation had supposed that the directors of the church represented the Church and could speak for the Church and could protect the interests of all its members, First Members and other members, and could speak authoritatively in behalf of all the beneficiaries of this charitable trust. It now appears from the master's report that they cannot. It is found that they have no standing as directors; that they cannot speak for the beneficiaries; that they do not represent them.

Now just a word—just a word in review of this situation that I may get my point clear before your Honor's mind, because it needs a bare outline of this litigation to see how persons like this petitioner are left as a result of the master's report. Now I speak in a very brief summary of the findings in his report, that you may have a picture of it before you.

Long prior to 1892 there was a Christian Science Church at Boston of which the Founder of Christian Science, Mrs. Eddy, had been pastor. Prominent among the members of her Church were four men to whom on September 1, 1892 she granted land for the Church edifice by Deed of Trust providing that "Said grantees shall be known as 'The Christian Science Board of Directors' and shall constitute a perpetual body or corporation under and in accordance with Section , Chapter 39 of Massachusetts. Whenever a vacancy occurs in said Board the remaining members shall within 30 days fill the same by election; but no one shall be eligible to that office who is not in the opinion of the remaining members of the Board a firm and consistent believer in the doctrines of Christian Science as taught in the book entitled 'Science and Health' by Mary Baker G. Eddy beginning with the 71st edition thereof." The conveyance was to them as Trustees "and to their legitimate successors in office forever." "And to

their legitimate successors in office forever." I emphasize that because I shall point out to you that the starting point which the master has adopted was not the origin of this Church. That evidence is at hand and should have been exhibited to him, which is undoubtedly trustworthy, that these gentlemen had been made directors by the members of the Church before the deed was granted and that their authority to act as directors of the Church rests not upon the deed, as the master found, but upon a prior voluntary organization which had selected them to represent the Church, which places upon this deed an entirely different interpretation from that given to it by the master.

THE COURT: Wasn't that organization subsequent to the deed?

MR. CHOATE: Before, Sir. We have evidence to show they were selected before the deed was made.

THE COURT: You mean the finding of the master as to the organization of the Church on September 23, if I remember the date, was not really the original date?

MR. CHOATE: Somewhat prior to the action of the First Members they selected these four directors. This fact, that these directors were selected to act as directors of the Church organization escaped the parties. It is in existence and can be presented and it seems to us would have placed a very different color upon the deed and its interpretation and upon all the reasoning that he has based upon it.

Now I read further in the outline, because it is based upon the date of September 23, 1892 in his report.

On September 23, 1892 a few members of the Christian Science Church met and organized a voluntary association, choosing a President, Treasurer and Clerk and electing to membership 20 other members. These members, 32 in number, together with others whom they subsequently elected were the body known as "First Members". They alone exercised the power of electing officers and transacting the other business of the Church.

Your Honor will remember the master found the execution of the deed of January 25, 1898

Your Honor will remember the Master found the execution of the Deed of January 25, 1898, which established the petitioners under this trust.

Now, the result of the rulings of the Master, if they are adopted by the court will have many serious consequences. Of course the Master finds that this is unquestionably a public charity, and that the beneficiaries of it are all those who are members of the Christian Science Church, or all those who may become such, or all those who are of that faith. The first financial consequence is this: That the very foundations of the Christian Science faith, the rules of The Church Manual, which is regarded by Chris-

tian Scientists, like the published writings of Mrs. Eddy, as divine inspiration, in large measure the Master finds to be void and of no effect, and holds that The Christian Science Board of Directors has no power or authority legally to represent the Church, except to the limited extent under which by the Trust Deed of 1892 four of them, as successors of the original trustees hold the land upon which the Church edifice is built. And the result of these rulings, if they shall be adopted by the court, is to leave the net income of the Publishing Society, together with the income of The Mother Church from other sources, and the accumulated funds of The Mother Church, subject to nobody's disposition; because under his ruling the Board of Directors has no legal standing to represent the Church, the First Members have lost their rights, and the members of the Church generally.

The COURT. Doesn't he find that, the treasurer of the Publishing Society turning this money over to the Directors, the only change is that the disposition of that fund by the Board should no longer be subject to the direction of the First Members as originally contemplated, but by reason of their own voluntary action has been transferred to the Board to use for the same purpose?

Mr. CHOATE. Your Honor asks if that is the Master's finding?

The COURT. Yes.

Mr. CHOATE. I understand so. But you see the result of that is that, the original First Members having abdicated from the authority that they had and attempted to vest that power in the Directors, and the Directors being found by the Master not to be properly qualified, and not to have the power which the First Members had—

The COURT. Well you say "not qualified;" but that means only as to the fifth member, doesn't it?

Mr. CHOATE. No, sir.

Mr. WHIPPLE. Mr. Choate, that isn't the Master's finding.

Mr. CHOATE. But there are certainly findings which show that these gentlemen who are named as defendants are not properly qualified.

The COURT. Pardon me if I interrupt you, because I want to follow your argument as you go along. I assumed that as to two of them, the original Deed providing for four trustees, the subsequent additional one was without warrant, in the Deed at least, and that therefore Merritt, if I remember rightly, who did not succeed to any of the original four trustees, was not a legal trustee; but as to the other two, first named, I suppose there is no question that they did stand as validly appointed trustees.

Mr. CHOATE. Your Honor sees that that results in those two, who are only two of the five recognized by all the members of the Church, as being the head of the Church, and they have only the powers given them by the Deed by

which they were created or appointed, as the Master finds, and not the powers given them by the Manual under which it was supposed by the Church that they were acting.

Now, while those who believe in this faith have regarded the By-laws and the Manual as the foundation of their faith, and as inspired by Mrs. Eddy, it is now declared by the Master as a legal proposition that those have no force or effect as such, and no force or effect to control or direct the action or conduct of either directors or trustees, either plaintiffs or defendants, in this original suit, in modification of or qualification of the language of the mere legal instruments upon which he bases it.

The situation as it is presented now is that neither The First Church, which is a voluntary religious association, is represented by anybody here to speak for it, nor are the First Members represented by anybody, nor are the members of the Church represented by anybody to speak for them. If the powers and duties and functions of the First Members are involved, as the Master has found they were, here we find these two parties scrambling to determine what those powers are; and the very people who possess those powers, or who have possessed them, and may resume them, are going to have that question of their rights adjudicated without being able to lift their voices in protection of them. The parties whom they supposed to represent them and protect those rights, and assert them if they were needed, are found to be without that power.

Now, in these respects, in brief, we find that the interest of these First Members, and members of the Church, and the Church, are in danger and are unprotected. The Master's report dealt with the Church Manual technically, just as though he were passing on the votes of a municipal corporation which was authorizing an issue of bonds, instead of considering it as the foundation of a religion which grows, which must at its inception be vague and perhaps difficult to formulate, but which has been a thing of steady growth, and now is found to be a well-rounded organization with hundreds of thousands of followers and believers; and this whole edifice which has grown up is here shown in danger of being crushed down, because the very things in which all these people believe are being swept aside as though they meant nothing at all, and the whole foundation of the Church thrust back as if it stood merely on two legal documents.

Now, here is what the Master rules, which is going to affect the position of every Christian Scientist. He ruled that The Christian Science Board of Directors is not a corporation. Well, of course in Chase v. Dickey the court assumed it was, and everybody else assumed it was, all the parties to the case. The Legislature has recognized it as a corporation by granting special

powers to it as a corporation. The Master ruled they were not.

He ruled that its members were not officers similar to the deacons, church wardens or other similar officers of churches or religious societies appointed according to the discipline and usage thereof. But he heard no evidence on the subject. He assumed as a matter of general knowledge what the duties of deacons and church wardens were, and then assumed that the duties of these directors were not similar, and therefore that they were not and could not be a corporation under Revised Laws, Chapter 37, Section 1.

Upon these points the petitioner wishes to submit evidence as to the history of the office of directors before the Trust Deed of 1892 as to the similarity of their offices to that of deacons or church wardens and as to the usage of the Church prior to 1892, because evidence was not submitted to the Master upon that point.

Second, Whether the Christian Science Board of Directors, the Master says, ever became entitled to be deemed a body corporate must depend upon the facts regarding the subsequent organization of The First Church of Christ, Scientist, that is, subsequent to the Trust Deed of 1892.

This petitioner asks leave to show the facts regarding the prior organization of the Church and Mrs. Eddy's express intentions which have caused the entire membership to give allegiance to the By-laws held by the Master to have no force or validity. In other words, as I said a moment ago, we want to show that this Church had an organization and a Board of Directors, an office which these defendants now fill, but an office prior to the Deed of 1892, and that the meaning to be placed upon that Deed is descriptive only, that it was not a Deed which created that office, but gave the land which was the subject of the grant to men whose office already existed by the action of the organization.

The COURT. What do you understand then was meant by the provision in that deed as to First Members and directors? Do you contend that there is evidence that they did exist as First Members and directors before this Deed was made—

Mr. CHOATE. Yes, sir.

The COURT. —In 1892?

Mr. CHOATE. Your Honor is looking at the Deed of 1898, are you not?

The COURT. Well, I didn't mean to; perhaps I did. Yes, it was 1898. But when the Deed of 1892 was made, and previous to the date of the organization—as the Master finds—the first organization of the First Church?

Mr. CHOATE. Yes, sir. He finds that was September 23, 1892. There is most convincing evidence that the Church existed and had an organization and directors before that date, and before September 1, 1892—most convincing evidence—and I think it would change the whole complexion of



the Master's report were that evidence presented to him.

Now, the Master ruled that neither the Trust Deed nor the organization proceedings indicate that the "Directors" were to be officers of the Church.

The petitioner wishes to show that the events leading up to the organization proceedings indicate conclusively that the directors and their "successors in office forever" were intended by Mrs. Eddy and the organizers to be officers of the Church.

The Master rules that The Board of Directors had no authority to adopt the Church By-law expressly including them among the Church officers. The First Members could not give such authority.

The petitioner wishes to produce evidence of the First Members regarding the passing of their powers to the Board of Directors.

The Master rules that none of the Church By-laws or amendments since 1901 are authorized by law; their authority must be regarded as derived solely from the mutual consent of the Church members to be bound by them.

He rules that no By-law is valid merely because it had Mrs. Eddy's approval, the sanction of the First Members, and the acquiescence of the entire Church membership.

He rules that the terms of Mrs. Eddy's Trust Deed of 1898 (establishing the Publishing Society) cannot be affected by By-laws approved by her, sanctioned by the First Members and followed religiously by all the members except the trustees of the Publishing Society.

There are other rulings which your Honor will note in my brief; I don't want to take too much time on them.

Of course there may be a question whether the Attorney-general is a proper party to represent these beneficiaries. It is agreed on all hands that this is a public charity; and that these people in whose behalf I now speak, this petitioner in whose behalf I now speak, and who asks permission to intervene for herself and all those of her class, are the beneficiaries of this trust fund, the ones primarily interested. This local quarrel between those who for the time being happen to be filling an office in an organization that may last for centuries does not interest them; but the entire wiping out of their privileges, their rights, doing away with the foundation of that thing which is as dear to them as any other's religion is to him is a thing that is of tremendous interest to them. They want to see, if they can, this structure preserved, and they want to speak in its behalf.

Your Honor may ask me the question "Why should not the Attorney-general represent them?" Perhaps he may; but immediately, now, there are these questions which are presented, which seem to us to make a person in the position of this petitioner a proper party. She is a First Member. There

are others, to the number of approximately fifty, living, who have the same rights, the same powers. Whether they are in abeyance or not, whether they ever could be left in abeyance, whether they could ever abdicate from their position, and turn them over, is a question which concerns them and the Church primarily. If they should not have turned them over then they should resume them. But they surely have a right to speak, not only to justify their turning them over, or, if they were not justified in turning them over, to speak as still possessing those rights and as exercising functions which are vital to the preservation of this organization.

If this motion is decided adversely to this intervention there is no one to speak for these people, there is no one to represent their rights. This quarrel between these two Boards of officers will go on to an end, determining only whether Mr. Rowlands has a right to retain his seat as a trustee, and Mr. Dittmore a right to retain his seat as a director. That is all the results there will be. But incidentally there will be adjudicated everything from the beginning of this Church which affects every single member of it, and which may take away for all time the right of every First Member as those existed when Mrs. Eddy founded it and as she intended that they should continue.

Now, on the question whether the Attorney-general or the petitioner should have the right to represent these people we submit authorities in our brief. I have outlined the case and will ask your Honor, if you will permit me, to leave the principal argument to Mr. Dawson, my associate.

ARGUMENT OF MILES M. DAWSON.  
ESQ.

May it please the Court, so clear a statement has been made to your Honor by counsel that it will be possible for me, I think, to present what further needs to be presented in a much more rapid manner than I should have anticipated.

Your Honor will find upon the bill itself a statement that the defendants are there sued as they "are trustees under a Deed of Trust dated September 1, 1892, in which said Mary Baker G. Eddy was Donor, and a Deed of Trust, supplementary to and in amendment of the original deed, dated March 19, 1903," and as they are also directors of the First Church of Christ, Scientist, in Boston, Massachusetts.

This affords the conclusion, up to the time that it became apparent that the Church was threatened with a finding in this very action, in this very proceeding, that these were not the directors of this Church, that the Church itself was before this court. Obviously with that finding made, if made, the Church itself is not before this Court, except as we are bringing

it before the Court by this intervention.

The purposes of the trust as named in the Trust Deed are also found by the Master on pages 24 and 25 of his report: one being "of more effectually promoting and extending the religion of Christian Science as taught by me"; the other being "of carrying on the business which has been heretofore conducted by the said Christian Science Publishing Society in promoting the interests of Christian Science"; and more specific purposes in regard to the Bible Lessons, or Lesson Sermons, which were committed to the Trustees so as to promote the best interest of the cause. And the Master says: "The above are all the purposes which the deed can be said to specify." These are Church purposes.

The beneficiaries of this deed are also named in the Deed of Trust, and found by the Master on page 25:

"So far as any particular beneficiary of the trust is indicated in the deed, it is the Church itself, above referred to in pars. 1 and 7 hereof; whose Treasurer is to take the net profits of the trustees' business for disposition by its voting members, according to the provisions already above quoted from par. 4 of the deed in par. 16 hereof. Indirectly to be benefited were all persons, wherever found, for whose advantage the promotion and extension of Christian Science was desired."

Had this Church been represented in the hearing by a Board of Directors found, to be such, clearly and unmistakably, by this Master, vested with all the powers under the laws of Massachusetts held by such a Board, and existing here, as has always heretofore been supposed, as a corporation under your laws, the Church would then have been before the Court, and the findings and rulings of the Master, if adopted by the Court, would have bound the Church.

But your Honor will find that on pages 11 and 22 of the Master's report it is held that this Board of Directors was at no time elected as officers of this Church. We will present to your Honor an affidavit showing conclusively that there is evidence that this Church was organized prior to September 1, 1892, and that the Board of Directors had been elected by the then members of this Church,—evidence which was not produced before this Master.

On page 22 of the Master's report you find his ruling or finding that the functions of this Board were not like those of officers of a Church such as named in the Massachusetts statutes, and therefore that it is not a corporation under those statutes. And on page 34 you will find a further finding that the Board of Directors—which he is all the way through, adopting the language used at the hearing by counsel for the plaintiffs, designating "trustee directors"—were not a Board of Directors of this Church.

Your Honor will find by examining

the deed that the Master's holding, on page 25, that this Church is beneficiary and the chief beneficiary, is a correct holding; that aside from the interests of the Church in promoting the cause of Christian Science, there is a provision that all the proceeds of this trust shall be paid over to the treasurer of the First Church of Christ, Scientist, in Boston, Massachusetts, with a discretion of how those proceeds are to be arrived at, and with a strict limitation concerning the authority of the trustees appointed under the deed of 1898 in dealing with this property and the funds, and closing:

"Said treasurer shall hold the money so paid over to him subject to the order of 'The First Members' of said Church, who are authorized to order its disposition only in accordance with the rules and by-laws contained in the Manual of said Church."

Your Honor will also find, as the Master himself has found, that there is a provision in section 10 of that deed as follows:

"The First Members together with the directors of said Church shall have the power to declare vacancies in said trusteeship for such reasons as to them may seem expedient."

Broader language in the granting of a discretion could scarcely be used.

Your Honor will also find in paragraph 13 of that deed as follows:

"Said trustees shall each receive annually one thousand dollars for their services in that capacity, payable semi-annually in payments of five hundred dollars, or such salary as the said Church may determine from time to time."

By consulting pages 12 and 20 of the Master's report it will be found that he has ruled that the "Church" means its voting members; and on pages 7 and 34 that the First Members are the only voting members.

Under these circumstances this Church can be before this Court, being deprived of its voting members, as will be shown later in my argument has been found by the Master, and being deprived of its Board of Directors, only by its membership.

The history of this Church, as set forth in part by the Master's report, and as will be further set forth in an affidavit of William Lyman Johnson,—

Mr. THOMPSON. Have you a copy of that affidavit?

Mr. DAWSON. —which I now hand up to your Honor—I have one copy, I may have two.

[Papers are handed to the Court and to Mr. Thompson by Mr. Dawson.]  
—may be briefly set forth as follows.

Mr. WHIPPLE. Have you another copy of it? Of course it would help those who are interested if they had

copies of affidavits upon which you are relying.

Mr. DAWSON. I haven't another copy. I am sorry.

Mr. WHIPPLE. We never have seen it, of course, and have had no notice that an affidavit would be filed.

The COURT. I will follow counsel's copy.

Mr. WHIPPLE. I think it is more important that your Honor should have a copy than that counsel should.

Mr. DAWSON. Well, perhaps if your Honor will follow my statement, as soon as I have finished the statement my copy will be available. I do not know that I shall need to refer to it, and if I should I can perhaps reclaim the copy.

The history of the Church, your Honor, is briefly as follows, as can be shown by evidence not adduced but which can be adduced: that prior to 1889, and from 1879 to 1889, the Christian Science Church in this city had undergone many vicissitudes; that in consequence of conditions which had arisen in causing certain property to be deeded to trustees for the building of a church through an intermediary, Mr. Knapp, Mrs. Eddy in 1889 made the condition that the Board of Directors of the Church should be persons whom she named in that deed, and that the Church should turn over its management to that Board of Directors, with them having power to fill vacancies thereafter caused. In that deed she appointed certain trustees, reserving no power of removal. Upon the evidence which we can introduce it will be shown that the consequences were not favorable or satisfactory.

Mr. STREETER. Mr. Dawson, may I ask what is the date of the deed you have just this moment referred to?

Mr. DAWSON. It is 1889. As I have passed the papers out of my possession I may not be able to name the exact date, but I have a copy of the deed here. It was in December, as I recall it, 1889.

The Church did do the things asked for, and that condition was complied with—these persons becoming its directors. From that time on to 1892 the Church worked under that polity. In 1892, with Mrs. Eddy's approval and co-operation, a movement was set on foot to reorganize the Church by creating a new corporation, and persons were selected and agreed to become the charter members of that corporation.

On or about the 16th of August, 1892, these twelve persons signed the necessary papers for chartering a new Church, to be known as the First Church of Christ, Scientist, in Boston. The following morning one of them asked that her name be erased, she being the wife of one of the trustees under the deed at that time. In consequence the papers were signed again that day, new papers of the same type and character, by twelve persons, one taking the place of this lady. On the

22d day of August a call was sent out for these twelve persons, who became the organizers of this Church, to meet in this city on the 29th at noon. They so met.

In the meantime, for two reasons, Mrs. Eddy and these twelve persons had decided not to incorporate this Church by taking out a charter. Those two reasons are as follows: First, because the attorneys employed by Mrs. Eddy had discovered section one of chapter 39 of the Statutes of Massachusetts, under which a voluntary unincorporated association could have its Church officers corresponding to wardens, etc., made a corporation, and under which, indeed, such became a corporation, for certain purposes. Mrs. Eddy accordingly expressed, in a letter which we can produce in evidence, her intention, thus being advised, to give this property to the Church, it having meanwhile been transferred back to her through the man who had transferred it to the trustees originally—first to him and then to her.

The other reason why they did not take out a charter—which we will be ready to prove to the Court, or the Master if it is reopened for that purpose—is because the authority of the state of Massachusetts on the question of name of a new corporation refused to permit the name "The First Church of Christ, Scientist" to be employed, assigning as its reasons that the existing corporation, in which this was intended to be merged by a process virtually of reorganization, the Church of Christ, Scientist, was too near it, and consequently there might be confusion between the two corporations; and also because there was a church of another denomination known as the First Church of Christ, also a Massachusetts corporation.

Consequently, having been convinced that an unincorporated association could be created that would be quite as good, and that it was only necessary that the Church officers become a corporation, as they would under the law of the state, for certain purposes, they organized their Church on the 29th day of August, selecting these four of their number who had already been agreed upon as their directors; and that Board of Directors held a meeting on that day.

We also have evidence that it was entirely known to the twelve persons then meeting that this deed of trust was to be made,—the deed of trust of 1892,—and what it was to contain; that the instrument itself had been sent to Boston for criticism and for consideration; that it was brought before these parties at this time, and Boston counsel,—and in point of fact certain suggestions for emendation were then made; that it was taken back to Concord, and signed on the first of September.

We will be prepared to prove to your Honor, or to the Master if the case is reopened, that the immediate result of this organization was good, and that

this Church had a large growth. We do not know that it will be necessary to introduce evidence, in view of the notoriety of these facts, that the progress of this Church from that time forward has been continuous; that it has grown to be one of the large and successful institutions of this city and of the country; that under the polity then provided for it, instead of the confusion which had existed previously in it under the old polity, there has grown up a dignity of Church Service, a unity of Christian Scientists throughout the world, growing esteem on the part of the public for the Church and its membership; that great church edifices have been constructed throughout the country, gifts of those grateful members, and that when this suit was brought this denomination was in the following happy position: in possession of a church polity entirely satisfactory to its membership throughout the world, as set forth in its Manual, being the last human document to which its founder and revered leader had given her attention; with a board of directors supreme, as intended by their leader; with no one person assuming to be the head of this denomination, with individuals subordinate; with a board of trustees sagely managing their publications; with editors elected from the very beginning of the church under its new organization by the board of directors; it seems to us that not sufficient attention has been given to the matter of the practical interpretation of this Deed by all parties when that thing took place, from the beginning; with publications supervised by the directors, from the beginning, and with accounting regularly to the directors; also with power to remove a trustee vested by the by-laws in the directors, under an amendment of later date, and by the Deed of Trust in this church through its First Members, together with the directors; and in no case, as your Honor will readily see, therefore, in the church, thus assuring against what is known in Christian Science as the adulteration of its literature an expression which had its origin with Mrs. Eddy, who during her lifetime saw the cause which she had attempted to build up seriously injured by that very thing; in addition, your Honor, as the fifth item of its very happy condition, with the literature of the church not only universally esteemed by its own members, but having conquered, and still further conquering from day to day, the esteem of the entire reading public.

Now, under those conditions, your Honor, this suit was brought. As has already been stated by counsel, it seemed an entirely innocent contest, so far as the membership of the church at large was concerned, and so far as the First Members, who were the earliest members of this church, were concerned, between their board of directors and their board of trustees ap-

pointed by these two deeds, and their board of directors assisting also by their election, as to the personality of one man, as to whether the narrow question having been presented, as the members of the church were advised, on advice of counsel, as to whether the terms of the Deed of Trust, giving power to remove to the First Members, together with the directors of said church, had or had not been varied by subsequent acts of the donor of the trust, and subsequent acquiescence by all the beneficiaries of the trust, into a power vested in the board of directors alone, as stated in the by-laws, and, second, as to whether, if the power did rest with the board of directors, it had been properly exercised under the Deed of Trust and the act therefore was effectual; and, third, as to a construction of the Deed of Trust regarding what degree of supervision, if any, over the conduct of the trustees was retained, or transferred, if "retained" is not the proper word, to the church and its authority.

Now, those are all the questions which appear here to be before this court.

In addition, they considered that the church, composed of its members, was itself before the court under the pleadings, represented by its board of directors.

Now, I find in an affidavit that has just been presented on behalf of the plaintiffs a good many statements about how they think this intervention came about. I had no advices that such an affidavit was coming, but, in addition to the statements contained in the intervention papers themselves, it seemed to me in New York that the affidavits of one or more members of the committee appointed by the conference of New York churches as to how this litigation came about ought to be presented to this court, and consequently such affidavits, sworn to by the chairman of that committee and by the treasurer of that committee, are here presented. I have two copies of Mr. Jackson's affidavit which I can provide; I have but one copy of Mr. Lewis's; and I may have to reclaim one of each of those copies in order to refer to it,—I am not retaining a copy at all myself.

Mr. THOMPSON. Are you basing any argument on the contents of these affidavits? If so, I would suggest that it is customary to furnish counsel with the evidence intended to be relied upon before the hearing begins.

Mr. DAWSON. The Boston counsel, who are accustomed to the practices of the court here, will have to respond to that suggestion. I have no knowledge of the custom, and I am introducing the affidavits in the course of my argument, supposing that that is an entirely proper course. To the affidavit which was presented to us, and to which these may be, although they were not so devised or intended originally, in effect answers, may be inserted, with the permission of the

court, after we convene today, and, so far as I know, no copy has been served upon counsel. In the affidavit on behalf of the plaintiffs certain accusations are made against the chairman of this committee, concerning his alleged relationship in connection with the board of directors. It so happens that in his affidavit that we have presented here is a direct statement that he has not been in communication with the board of directors, directly or indirectly, since September 5th of last year, when he was called before them by reason of his being about to be discharged from the army, where he was a chaplain. He was called before them at that time, as I understand it, for the purpose of making a statement to them concerning his activities as chaplain in the army.

The COURT. You are now referring to which affidavit, Mr. Dawson?

Mr. DAWSON. I am referring now to the affidavit of Mr. Jackson, the chairman of the committee.

The facts concerning the New York situation may be briefly stated as follows: In common with all the Christian Science churches of the world, they were much disturbed over the litigation here, which was being followed by a very large proportion indeed of Christian Scientists day after day, by reason of the proceedings being published in full in The Christian Science Monitor; they were undoubtedly very much disturbed at the attitude taken by the plaintiffs that their directors were not their directors, but were merely trustee directors. They were exceedingly disturbed everywhere at the contention of the plaintiffs that the by-laws were not valid and effectual, the by-laws constituting the Manual.

The COURT. That is to say, not effective to modify the construction of the deed.

Mr. DAWSON. And also were not effective at all after 1901 as by-laws under the laws of this state, so directly held by the Master, as it turned out. They were naturally exceedingly disturbed at these conditions. They were naturally exceedingly disturbed to find in the course of the proceedings the contention coming forward that not only was the board of directors unable to remove, but that if the board of directors were held to be unable to remove, it must also be held that the First Members were entirely out of existence, and that they could not remove, together with the board as named in the deed. But, no doubt in the confidence that the Master would not so hold in regard to those questions in general, whatever he might hold concerning whether the terms of the deed could be modified or not, and believing that they were represented in court by persons with entire authority to represent them, they took no measures for their protection. Your Honor will remember, I am sure, that shortly

after the draft report was handed down—or I think “handed down” is not the right expression—but had come to counsel for criticism, by some means, not only unknown to those churches and to their counsel, some report of its contents, or possible contents—possibly only guessed at—appeared in the public press. Immediately especially in view of the contentions brought forward during the proceedings, those churches took fright. Even then it was several weeks before any action was taken, but not only in New York but throughout the country there were conferences among persons who were interested in these churches and connected with them, of an informal character. By order, as it is shown in Mr. Jackson's affidavit, and in Mr. Lewis's affidavit also, of the board of trustees of the First Church of Christ, Scientist, of New York, the largest and I think the oldest church there, a mass meeting was called of the members of all the Christian Science churches of Greater New York. This mass meeting was held, resulting in discussion extending over several hours, attended by an extremely large number of people, and, as a result of it, a resolution was adopted calling upon all the churches—the resolution is set forth in Mr. Jackson's affidavit in full—calling upon all the churches of the state of New York to appoint delegates to a conference to be held at Albany on February 10th for the purpose of considering what should be done in this matter, if anything. After the delegates to this conference, or at least many of them, had been elected, as amplified in the affidavit of Mr. Lewis, he came to me to ask me if I would accept a retainer as counsel. At that time, your Honor, I may state for the information of the court, I had not read the bill—I had read the Deed of 1898—I had not read the bill, or either of the answers; I had not read any part of the evidence, or paid any further attention to it than one reading the general press would do. I told him that if requested to do so by a committee of the churches, and proper terms were agreed upon, and especially if the committee thought, when appointed, that they would be willing to be guided by the counsel of the attorneys whom they selected, I should be glad to accept such retainer. He then suggested that I ought, if possible, as he was confident that the offer would be made to me, to acquaint myself in advance, even if only a few days in advance, with what had already been done. I may say to your Honor that that interview took place in Boston, where I was on business for another client having nothing whatever to do with this matter. Mr. Lewis, having found out at my office in New York that I had come here, followed me to Boston. I know personally three of the counsel—I did know then personally three of the counsel engaged in this

litigation,—Judge Hughes and Mr. Whipple, with both of whom I have at different times been somewhat associated in public matters, and Judge Smith. I had met Governor Bates once when he was Governor. I did not know then, and I do not know now, even by sight, any member of this board of directors, or any member of this board of trustees. I went to Judge Smith and told him that I had been approached about being retained, and might be retained in a few days, and asked him if he saw any objection to providing me with the evidence and the bill, and, if he had an extra copy of the draft report, whether I might have a copy, in order that I might know, if possible, whether there was any reason why these churches should intervene; and I was so provided with them. Mr. Lewis went from here—he does not so state in his affidavit, but I state it for him—directly to Albany, the interview having taken place first in this city on the 8th of February—he went direct to Albany, and attended the conference there. A committee was there appointed with himself as treasurer and Mr. Jackson as chairman. The committee did call upon me, did retain me, and only after they had retained me and I had completed the examination of the bill and the answer and also the draft report, was I able to advise them.

My advice was, under the conditions which have already been set forth before your Honor, and the further conditions which will be set forth, that I could not see how the Supreme Court of Massachusetts would be willing to conclude the First Members of the Church and its membership at large, without having them before the court and that in my judgment it was its duty.

At that conversation, which you will find in the affidavits of both gentlemen, the question as to in whose name this intervention should be brought was brought up. Three or four names of persons who were First Members of this Church were there discussed, and the suggestion was made to me that a selection be made from any one of the three or four persons, none of whom had then been consulted. From the statement made by members of this committee concerning these persons, I personally selected Mrs. Hulin, whom I did not know, and after conferring with her she became the intervener of record in these proceedings.

Now, there is an implication in the latter part of the affidavit filed by counsel for the plaintiffs, and made by Mr. Ogden, which I think it absolutely essential that I should refer to at this time. That is the implication that this intervention is brought by counsel, and by the intervener, as a second method, virtually, of presenting the case of the principal defendants in this action, thus attempting to give them double representation

here. Such implication, your Honor, could have but one significance. I cannot believe that Mr. Whipple, if he drew this document, intended it should have that, but I cannot pass it by without referring to it.

It is in effect that the counsel now before you are here, not to represent their clients, but to represent somebody else; that they are here, in other words, not to consider as their sole duty the interests of their clients, but the interests of some individuals who now occupy an office held by this Master to be trustee-director, and really held by him not to be an office at all, and who are supposed by this Church to occupy an office as a board of directors of this Church.

Against that implication I can only say, first of all, that no more serious charge, if it were a charge, could possibly be brought against counsel. That counsel are pettifoggers, that counsel are unscrupulous even, in trying to serve their clients, is a very serious charge; but that counsel accept retainers, and come into court for the purpose of betraying their clients and really representing somebody else, goes to the very foundation of the principles of the ethics of our profession. As regards the Boston counsel, whom, after strenuous efforts to do so, I succeeded in obtaining to represent my clients here, having been given full authority by those clients to make that employment, I leave your Honor to judge. You are too familiar with their reputation to have any doubt on that matter. As regards myself I assume your Honor is not familiar, and I only ask you, at least, not to believe a statement of that sort, as a mere implication.

Now, what position did I find these people in when I came to examine this draft report, in case it was made the report of this Master and later adopted by this court? First, their Manual completely overthrown; none of the By-Laws since January 10, 1901, all of which had the approval of the revered Leader of their Church, as well as having been adopted in a manner that they supposed to be entirely valid—none of those By-laws good, under your statute, as held on page 16; and the Trust Deed not in harmony since that date, as held on page 34.

Second, instead of having a Board of Directors supreme in management, and under which the great success of this Church has been achieved, no Board of Directors; such Board not its officers, and such Board not a corporation, under the laws of the State of Massachusetts.

Third, the Trustees solely in control of the publications, held not subject to supervision, on page 29; held that there was no such intent that they should be subject to supervision in the Deed, on page 33; and definitely held not to be under the rule of the Church, on page 34.

Fourth, the power to remove wholly

lost. I hope your Honor will bear with me just a moment to refer to that power of removal "for reasons that to them may seem expedient;" and I will ask merely that your Honor think a moment whether you would have the power of supervision over some person if you had a right to discharge him.

The COURT. I assume that that question so far as it is a conclusion of law is open to the parties on the exceptions to the report.

Mr. DAWSON. Yes; quite so, your Honor. But it has been held that this power was not in the directors, on page 36; and that its exercise by the First Members together with the directors was now impossible, on page 34.

Last, it had been held that the First Members only were voting members, on pages 7 and 34; and that so far as that could be accomplished by such means—that is the language, or some language similar to it—that they were finally dismissed, on page 17; and that that was acquiesced in by all the members, also on page 17; and that therefore they are rendered incapable of performing their duties under this Deed, and of course all the more incapable of performing their duties under the By-laws.

Now, to this plight of a church without a polity they had been reduced, in case the Master's report was adhered to by him, filed here, and adopted by this court, by a bill which was merely brought to declare the removal of Mr. Rowlands void, and which only alleged that the Board alone could not remove him; and, also, that the action, in case they could remove, was not in good faith, and then only asked to have this Deed construed as to whether or not the trustees were subject to the Board.

The COURT. The finding does not go quite so far as to say that the removal was not in good faith, does it?

Mr. DAWSON. I rather thought that was true myself, your Honor, but I could not be certain.

The COURT. I think all the Master undertakes to say is that the reasons set forth, and the evidence in support of those reasons, did not constitute a justification for the removal; that except so far as that was the fact he did not find any lack of good faith on the part of the directors.

Mr. DAWSON. I so construed it, and I had not stated that he found so; I merely said that the bill was on that basis. It first asked the court to find that the Board of Directors could not alone remove, and, second, that in case they could the court should find that they had not acted in good faith, and consequently Mr. Rowlands was not removed.

Your Honor, this brings me to a consideration of certain matters which I think are exceedingly important to bear in mind, and which I will run over very briefly. In view of the affi-

davits presented implying that the purpose in bringing this intervention is not a proper one—

The COURT. I don't think you need to spend much time on that suggestion, to which you have already addressed yourself. I assume of course all counsel represent the clients for whom they appear.

Mr. DAWSON. I think, however, your Honor might perhaps be willing to bear with me while I present a few of the purposes of this intervention on behalf of my client. First of all, this intervention is impersonal. If the quarrel had been kept entirely within the bounds of a difference between the persons who are now members of the Board of Directors and one or more persons who are now trustees, we should not have been here; and we are not here primarily now, unless it be rendered necessary by the course of the litigation and the decisions of the court as to a party, to take any part in a personal controversy. If it were held that the Board of Directors are our Board of Directors, outside of desiring to be admitted for the purpose of furnishing evidence which the court ought to wish to have, and to which I have referred, we should be entirely content to give the benefit of our services as *amicus curiae*, instead of representing another interest.

We are for the Board of Directors, but as an institution, with powers that they were given in the By-laws, believing that these By-laws are valid to interpret a change of trust; but we are not for or against the men who now compose that Board. We are for a board of five members, with broad powers, with the power to vote by a majority, a Board that is a corporation, a Board that has power to purge the Church, and the Board itself, of unworthy persons; a Board which has power to elect editors, to control the advertising, which has power to remove the trustees for reasons that seem to them expedient; which has power to disburse the funds and to fix the salaries and enact By-laws. We are for that institution because the By-laws, the Manual of this Church, so provide.

But if the court hold that the Trust Deed is not changed by those By-laws, and that the removal of a trustee must be made by the First Members together with these directors, and that salaries must be fixed by these Members, (because this Master has held that "Church" as used in that Deed means the voting members, and that the voting members are the First Members, and them only,) and that the income must be disbursed by their orders, and that By-laws must be enacted by them—then we are for the First Members, for their power to remove, not being transferred, is not lost, but remains theirs; that they may fix salaries and may ratify what has been done by this Board of Directors in the past in fixing them; that they may disburse the income and

may ratify what has been done by this Board of Directors in the past in disbursing that income; that they may pass By-laws and validate the By-laws which already have been adopted; and if the court holds that the power to remove has been entirely lost, then, in that case only, are these members desirous of coming before this court for anything that has to do with individuals. In that case only, if it is held by this court that the power to remove has been entirely lost, as it was provided under that Deed of Trust, then, because this court is the only place to which these members can go to have the matter tried out as to whether these trustees are worthy to occupy their positions, then this intervention becomes one as regards individuals.

The COURT. May I ask right there, is there anything in the determination of this controversy to preclude the parties from bringing separate proceedings for just that purpose of removal?

Mr. DAWSON. We assume there is not; and I think Mr. Choate in his argument stated to the court that we assume there is not. The reason why we think it ought to be brought in this proceeding is because this proceeding is here, because there isn't any good reason why, as far as we can see, the whole thing could not be dealt with, as long as it must be dealt with by this court, in the one proceeding. We quite appreciate that, if an action of that kind is brought, or if the intervention is granted, and we reach the point where that particular thing must be done, the attorney-general becomes perhaps a necessary party—up to that point possibly only a party who may at any time take part.

Now, we call the attention of your Honor to things which are well known, and which we have not presented in affidavit, though we could have done so, concerning the very alarming, dangerous and difficult conditions now confronting this Church, that call, if possible, for this whole thing being dealt with here and in this proceeding. The wholesale cancellations by Christian Scientists throughout the country and throughout the world of their subscriptions; the general loss of confidence in the publications which are being published by the trustees; the general loss of confidence in the trustees and in the publications brought out by them; the wholesale resignations of the staff, which have become known—that they are held by the Master not to be subject to the supervision of this Church in any way, or to its removal; the wide-spread suspicions of the unsoundness of these publications; the feeling that the condition is irremediable as it stands so long as these men continue; and we are prepared to present evidence on that point, on all these points, as covered by our intervention, if that becomes necessary.

Now, we do not feel that that would become necessary. I think it is frank to say to your Honor, as we are now advised, if this court should, instead, hold that this Church had its Board of Directors and its polity, and that the right to remove as provided in the Deed or in the By-laws, either one, is good and still stands; because then we would feel that we could do our own housecleaning, if housecleaning needed to be done.

The COURT. I assume again that that question was raised by exceptions to the Master's report, as to whether they could not be removed by First Members acting with the directors, was it not?

Mr. DAWSON. That I am not sure of. You must remember, your Honor, that we have not had an opportunity to except to this report, and the Board of Directors has been so clear that it had the power and the duty under the Manual that I should regard it as by no means certain that that exception has been taken—although I suppose it has. But if this means of cleaning our own household is not available, then we think that the Court ought—as it is the same Court to whom the proceeding must come—to proceed without delay to the further consideration of this further question, as to the worthiness of these men to occupy their position,—being the only tribunal in that case to which we can go for the consideration of those questions.

We are sorry to have to come to the tribunal unless there is a contest in the process of housecleaning under the power which we suppose we have, because we quite appreciate the embarrassment to the Court to be compelled to consider all sort of questions of heresy and orthodoxy and the various things that make up a religion. But if that is the only tribunal, we then on behalf of this disturbed membership throughout the world wish to come before it and to produce the evidence.

The COURT. I assume that the result of the granting of this motion would be, of course, to reopen the entire case before the Master.

Mr. DAWSON. We so assume.

I should add one thing, I think, before taking my seat, concerning the personal part of it. Our intervention is only in the case of *Eustace v. Dickey, et al*; we have not intervened in the Dittmore proceeding. This is in part because the Master has held that the determination of the issue in the Dittmore proceeding is a necessary part of his determination in *Eustace v. Dickey*. In that also the members of this Church do not wish at this time to take a position in regard to persons, as represented by counsel here.

We are intensely interested in, and shall wish to be heard upon, the proposition that this Board of Directors has no power to remove a director, which has been held by the Master. We shall wish to be heard upon the

proposition that this Board of Directors does not exist, and that there are merely "trustee directors" who have not such power of removal, and that therefore that matter of purging the Board of Directors of an unworthy member must also always come to this Court.

Thank you, your Honor.

Mr. THOMPSON. Will your Honor take a moment's recess at this time,—does your Honor think of doing it?

The COURT. Yes, if counsel desire we will take a short recess.

[Short Recess.]

The COURT. Who goes forward?

Mr. WHIPPLE. If your Honor please, we have just held a conversation for a moment as to the order of precedence in presenting our views, and I have suggested that inasmuch as the petitioner here, as I understand it, seeks to come in as a defendant, and not as a party plaintiff, those who are defendants should first be heard as to their position, and that as representing the plaintiffs we should have the right to close. I therefore suggest, if it is agreeable, that if Governor Bates desires to say anything on the subject, certainly if he speaks in advocacy of the motion, he, as representing the principal defendants, should address your Honor before we are required to do so, and that—

The COURT. Well, I assumed there was nobody to speak on behalf of the plaintiffs here. If there is, now is the time to hear them, of course.

Mr. WHIPPLE. Yes, sir; I supposed that that was so; and then that the other defendants, to whose party, if I may so say, the petitioner seeks to join herself, should be heard next. And I understand that that is agreeable to the parties. I take it that the grounds upon which Mr. Dittmore's counsel would oppose would be, perhaps, much more limited than the grounds which the plaintiffs would present; if those were first presented we should not need to repeat them, so far as they affect our case. If that is agreeable to the Court.

The COURT. Does Governor Bates desire to be heard in support of the motion?

Mr. BATES. Not in support of the motion, your Honor. My clients desire to take a neutral position in this matter. They recognize that this is something within the discretion of the Court to grant or not as it sees fit.

There have been one or two statements made with which we do not agree, and there are likely to be more. We do not intend to take any action, either for or against, but we may make some statement that will tend to set out correctly the facts before your Honor, if the occasion requires it. I should prefer to do that after I have heard what may be said by the opposition. Inasmuch as we take a neutral attitude we merely wish to preserve our rights.

The COURT. Then you do not appear either for or against the petition?

Mr. BATES. We do not.

The COURT. And I do not suppose you care to be heard unless something arises in the course of the proceedings to which you would be called upon to address yourself.

Mr. BATES. No. There is one thing that has arisen already that we wish to state to your Honor, and there may be others. That will not take me a minute, and I do not wish to address your Honor two or three times in regard to what has been stated about this newly discovered evidence.

The COURT. Mr. Krauthoff, do you desire to appear, or to add anything to what has been said on behalf of the petitioner here?

Mr. KRAUTHOFF. I am opposing the petition of intervention.

The COURT. Then I will hear you now. I think that if you come in as an individual, now is the time to be heard, rather than later, after those who have been counsel on that side have been heard.

Mr. KRAUTHOFF. If your Honor please, I oppose the petition for intervention in my capacity as a member of The Mother Church, and I do so because I regard the filing of the petition of intervention as a violation of the Manual of The Mother Church, which vests in the board of directors of that church the duty of transacting the business of that church, and which carries with it the duty of conducting the litigation of the church; and, as a member of The Mother Church I am asking that this court enforce that provision of the Church Manual, but I am constrained to speak more than I was when I first spoke to you by reason of the manifold inaccuracies that have characterized the statements of the counsel that have preceded me. It is not strange in a case of so much importance, and involving so much detail, that counsel lately engaged in it should have failed to comprehend the true import of the case. Nobody has said that the Manual of The Mother Church is not valid; nobody has said that the by-laws of The Mother Church are not valid; nobody has said that The Mother Church does not have a board of directors; nothing of the kind has been ruled by anybody, or is claimed by anybody, and the government of The Mother Church stands unimpaired.

The only question that arises is the relation of The Mother Church, organized by Mrs. Eddy in 1892, to a deed of trust made by Mrs. Eddy in 1898.

Now, as to the organization of The Mother Church, Mrs. Eddy, in the preface to the Church Manual which is in evidence in this case—and the intervenor coming into this case takes it as he finds it—states in her own words that on September 23, 1892, twelve of her students met—that is in the preface to the Manual—and organized The Mother Church. She therefore

fixes the date herself as September 23, 1892, 23 days after she made a deed. It is intimated here that Mr. Johnson has discovered something in the diary of his father which changes the language and the import of that which Mrs. Eddy stated; and, if that be true, it is open to the defendants in this case, the directors, to make that the basis of a motion to recommit to the Master for the purpose of introducing new evidence. But, as a member of The Mother Church, there comes to me an interesting revelation as to Mrs. Eddy's purpose in making a deed on the 1st of September and organizing a church on the 23rd of September, and that is, that the directors of that church should owe their origin to a deed, be responsible to the control of a court of equity as directors in a deed,—that they are directors of a church because they are directors in a deed; and, that being true, she made the deed first. Now, if that is going to be altered by somebody, if her intention is going to be changed, if that is going to be presented to the court as a legal theory, I want it presented by the Christian Science Board of Directors themselves, and not by an individual member of the Mother Church. The Master ruled that the four individuals named in the Deed of September 23, 1892 became directors of the church by reason of the conduct and acquiescence of the parties. Nobody has filed any exceptions to that finding; nobody has objected to it; everybody has acquiesced in it; they have been accepted by everybody as such.

In 1898 Mrs. Eddy executed a deed known as the Christian Science Publishing Society Deed. She wrote in it a clause reading:

"The First Members together with the directors of said Church shall have the power to declare vacancies in said trusteeship for such reasons as to them may seem expedient."

All the storm center of this case is in that one sentence, those words which I have just read. We now have, to start with, the First Members; and what has become of them? When this church was first organized, in 1892, eleven people were present at the meeting. They passed a resolution that they, together with one not present, should be the First Members of the church. As the First Members of the church they became the governing body of the church as to many of its functions. They were limited in number. Mrs. Eddy never thought it wise that a church having a membership around the world should be governed by the multitude and so she tried to keep the government of the church within a limited circle. Those First Members existed as such until 1901, when, at the request of Mary Baker Eddy they said by a by-law which has been upheld as valid because of the acquiescence of the membership of the church in it, that the power to transact the business of The

Mother Church—or rather it reads this way:

"The business of The Mother Church heretofore transacted by its First Members shall be transacted by its Christian Science Board of Directors."

That was in 1901, and from 1901 until this petition was filed nobody has ever stood up and said, "As a First Member of The Mother Church I claim to have something to say about its affairs." I am not a First Member; I am just a member; and when Mr. Choate says that there is no divergence of interest between the claims of a First Member and the claims of a member, he does not state the situation accurately. As to that, we are adversaries. [To Mr. Choate:] You are not a First Member, and I have a right to make that point as one who claims to be a member.

Now, in 1903, again, at Mrs. Eddy's request, the name of "First Members" was changed to "Executive Members;" and in 1908, at Mrs. Eddy's request, a by-law was passed, concerning which she said, "I have thought it best not to have any First Members." That by-law was passed at her request.

Now, if your Honor please, in the light of that, having regard to the standing of Mary Baker Eddy with relation to this religion, nobody can come into a court of justice and say that he is a First Member, and at the same time claim to be loyal to Mary Baker Eddy.

So that by the by-law passed in 1908 the office of First Member, together with its relationship to this church, was abolished. When Mr. Dawson says, "We stand for the Manual as it is," he states himself out of court as a First Member, because in the Manual it states that there is no such thing as a First Member. Being resurrected for one purpose, they may be resurrected for innumerable purposes; and instead of Mrs. Eddy's intention being effected, the business of the church being carried on by a board of directors, we have a body of First Members who spring up and assume to themselves the same importance in their newly discovered position as the trustees did when they were told by the lawyer that the Deed of Trust meant something different from what it had theretofore been construed to mean.

Now, the controversy in this case, if your Honor please, between the plaintiffs and the defendants, does not relate to whether the First Members exist or not. The Master has found that they do not exist. The plaintiffs have not excepted to that finding in the report. The plaintiffs have officially excepted to nothing. The directors never excepted to that finding in the report, as, indeed, they could not, because they removed Rowlands by their own vote, and the directors cannot resurrect the First Members without nullifying a vote that they themselves passed. Everybody has assumed, the plaintiffs and the defend-

ants admit, that the First Members do not exist; and if the counsel believe that they do exist, it is their business to bring an independent lawsuit, and to raise that issue in their own way, and not come into a pending lawsuit and attempt to represent generally members of the church who believe that there is no such thing as a First Member.

Now, what is the controversy about this power of removal? The directors contended before the Master, and will contend before the Supreme Judicial Court of the Commonwealth of Massachusetts, that they had a power, coupled with an interest, not by virtue of an amendment of the Manual, but by virtue of a principle of law—that they had a power, coupled with an interest—the extinction of the First Members caused the power to survive in the directors—the Master ruled that because the extinction of the First Members was the result of their own act, coupled with the act of the directors, made possible by the act of the directors, that principle did not apply; in other words, because the First Members transferred to the directors the power to transact the business of The Mother Church, and because the directors thereafter in the exercise of that power, abolished the First Members, the principle of survivorship does not apply,—very much the same as saying that if there were two donees of a power—

The COURT. Pardon me. I do not think that you need to discuss that now.

Mr. KRAUTHOFF. I am not intending to discuss it; I am only just stating it.

Now, if your Honor please, how can an intervenor be heard on that question one way or the other? They are not a party to the suit. The decree does not bind them in any way whatever. They can not come in and allege that the power does exist in them as First Members without throwing the suit out of court. Because the plaintiffs say that they were not removable by the directors, and everybody admits that they were not, they cannot come into court and say that they have ceased to be First Members, because when they have come into court and ceased to be First Members, they have deprived themselves of the right to appear in court; so that in no event, can the issue of whether or not Mrs. Hulin is a First Member be brought into this case, because, as I said a few moments ago, it results in a judgment for the plaintiff if she is, and, if she is not, if she claims that she is not, it results in a dismissal of her petition. She cannot come into this court and say, "I stand with the directors, I am seeking to uphold the government of this church, and at the same time raise an issue which destroys the Church Manual." This is the first attack made on the Manual by anybody claiming to be a member

of The Mother Church in this case,—this intervening petition, in which Mrs. Hulin says that she is a First Member. The trustees say, "Acting under the Deed of Trust, we are not bound by the Church Manual." This is the first time in the history of the world that a member of The First Church of Christ, Scientist, has appeared in court claiming that a provision in this Manual was not valid, and claiming the right to assert a cause of action because of the invalidity of this Manual; and that is the reason why I stand here and oppose it.

Now, the intervenor has come into this case and seeks to intervene. An intervenor, in coming in and seeking to intervene, takes the record as he finds it; he takes the issues as he finds them; he cannot make a new lawsuit for the parties; he cannot change the case. If he wishes to bring a new lawsuit he can do it. But coming in with a petition to intervene in this case, he is met with the fact that the church was organized in 1892; that from the time when it started Mrs. Eddy was careful to see that the government of it was kept within a limited circle. It was not a government by what she has called in her writings the domination of minds many. The First Members were limited in number from 1892 to 1901, and they conducted the business of The Mother Church; and, having conducted the business of The Mother Church from 1892 to 1901, she thought it wise, on January 10, 1901, to vest the absolute power to run every detail of the Mother Church in the hands of the five directors; and if your Honor will study the Manual of The Mother Church, if you will study the form of organization of the Christian Science Church, you will find that there is the most absolute power as to the conduct of the affairs of the organization vested at any time or any place in five members. There is not a single thing that a member of the church can do that they cannot legally do, and the privilege of a member is to pay his dues and support the organization by his life and his character as a Christian Scientist, and the work that he does by the healing power of Truth and Love. That being true, the principle applies that applies to the conduct of affairs of any organization, whether it be a church or a corporation or an association. It must speak to the court through its representative body, its Christian Science Board of Directors; and that body cannot stand neutral. Why? Christian Science speaks to the world in an undivided voice. It presents one truth—not the controversy that has brought this crowd to this court room this morning—and that one truth is brought to the world through the statement of its Christian Science Board of Directors, not through the varying contentions of numerous and diverse counsel, many of whom are not members of the Christian Science

Church at all. So that no evidence being here that this lady has asked the Christian Science Board of Directors to do anything, no evidence that they have refused to do anything, no evidence that what they refused to do has been done through improper motives, she is simply like a stockholder in a corporation, that cannot appeal to a court of equity, because she must first seek relief within the organization itself. That is her relation as a part of this organization.

Now, as a beneficiary of a public charity—this Deed of Trust has been held by the Master to deal with a public charity—that is agreed to by everybody—as a beneficiary of a public charity, the statutes of Massachusetts fix the responsible suitor. The Attorney General of the State is the man to proceed to enforce the charity. And why? So that the court will have before it a responsible suitor, one who has the power to speak for everybody, and not the power to speak only for himself. If your Honor please, the wisdom of Mrs. Eddy in providing that this business should be conducted by the Christian Science Board of Directors has never been more fully demonstrated than by what has happened in this particular case. Loyal Christian Scientists have concluded that they were competent to run the affairs of The Mother Church; they have retained eminent counsel; and they have come in here and stated a lot of facts about this report, not a single one of which has been presented accurately, and all of which will be printed in full and sent out to hundreds of thousands of people, with the effect that everybody will say, "Well, what has become of the work of Mary Baker Eddy?" when, after all, if your Honor please, the only question that comes before this court is this: When Mrs. Eddy made the Deed of Trust in 1898, and referred to "First Members," and those First Members were abolished in 1908, did the power survive, or did it not survive? Purely a legal proposition arising upon facts which are uncontroverted, which nobody can change, and which, if the power does not survive, a court of equity has ample power to remove the trustees for any reason for which the directors could remove them. That being true, if the directors remove them, can the good faith of their action be impugned? That is a question of fact, upon which nobody can change the evidence that was introduced during twenty-eight days of trial, representing months of toil, reported by the Master, and the court can find, as your Honor has stated, what his conclusions were about those reasons.

Now, if the court please, the whole thing is like a tempest in a teapot. The whole case, like all cases of this kind, turns as you might say, upon its apex. The plaintiffs brought a bill, they printed it, and circulated it throughout the world, containing a lot of allegations that have absolutely

nothing to do with this lawsuit. The defendants undertook to defend all the allegations, in order that the members of the church might be properly advised. The Master undertook to mention a lot of those questions, none of which have anything to do with the case. Take this question as to whether the church is a corporation or not: the church is not a corporation, except as to enforcing its legal rights. The question as to whether the board of directors is a corporation or not. It is only a body corporate for the purpose of holding title to real estate. It does not impair the validity of the church for a single moment to have the court rule that the board of directors is not a corporation.

As to whether we have four directors or five cannot be settled in this case on a petition for intervention. That can only be settled on a bill to which the Attorney-general must be a party, in which this thing should be fully protected. My interest in the matter, if your Honor please, is that we should proceed decently and in order, and if we are going to have this housecleaning of which our friend speaks that it shall be done upon pleadings which are legally sufficient to accomplish the issue that is presented to the court.

One other thing and I am through. In a suit which involved only the question of the validity of the power of removal, these interveners have sought to interject a removal of these trustees under the powers of a court of equity. Again, I say, when it comes to deciding whether or not they should be removed under the powers of equity, that question is a question which the Christian Science Board of Directors must decide, which it must enforce by a suit brought in its own name; and every member of The Mother Church cannot rush into court and say "I want him removed," or "I don't want him removed," and present the situation which we have here today, where hundreds of people have left their daily work to come here to see what is being done, when it is a thing which really should be done through its Christian Science Board of Directors.

This petition I also object to as multifarious. Mrs. Hulin cannot bring a petition as a First Member, and claim she is a First Member and claim she is entitled to participation here in the management of affairs, of which I am a member, and claim she is not abolished as a First Member, and then at the same time undertake to stand before the court in a representative capacity and represent my status as a member. For that reason I hope your Honor will see your way clear to deny this petition that is filed, this intervening petition. If Mrs. Hulin has any rights which she wants to set up as a First Member, she may proceed to do it by her own suit, in her own way. And if the members of this Church have any rights in the premises that need protection, they stand not only



upon the Board of Directors as an institution, but they turn to the Board of Directors, because of the people that are the Board of Directors, and because they have trust and confidence that the Board of Directors of The Mother Church may transact its business. It is not necessary for a committee in New York to advertise to the world that they represent the entire Christian Science movement, when under the Church Manual the duty of representing that movement is cast upon The Christian Science Board of Directors, to whom we turn in loving trust and confidence that, when properly advised, they will discharge their duty.

ARGUMENT BY WILLIAM G.  
THOMPSON, Esq.

Mr. THOMPSON. If your Honor please, I desire to say at once that no statement could have been made more accurate, more consistent with the principles of Christian Science as Mr. Dittemore understands them, more consistent with the principles of law and equity procedure, as I understand them, than the statement just made by Brother Krauthoff; and I further suggest that there may be some significance in the fact that he, who among all the counsel for the Board of Directors is a member of the Church, who has the widest knowledge and has made the deepest investigation into the history of the Church, and who furnished his information to his colleagues, in the entire trial of this case, on this day is compelled to withdraw his appearance. When asseverations are made here about the attitude of the directors, and the independence of the directors, and of these interveners from the directors, possibly some persons will be inclined to inquire what is the reason why counsel, who has the knowledge and ability just displayed, has had to withdraw his appearance in the case.

He has made it unnecessary for me to go into a good many of the reasons, which I should otherwise have gone into in opposing this petition. Before taking up such reasons as I still desire to address to your Honor, I will supplement Mr. Krauthoff's remarks by referring to the affidavit filed by Mr. Dittemore, and to one letter of Mrs. Eddy's, which is set out in full, and which is a very short one, in that affidavit.

The COURT. I have read them both. Mr. THOMPSON. Has your Honor read that affidavit?

The COURT. Yes.

Mr. THOMPSON. I should like to call attention to her letter of July 1, 1908, addressed to the Board of Directors, ordering them to abolish the First Members, and complaining that it had not been done before.

Now, further, Mr. Choate in opening this case stated that the only change that had been made from the petition on which we prepared our

argument, and which I prepared to meet, was a change consisting in the substitution of a statement that rulings had been made, for the statement that rulings might be made. I think perhaps he overlooked the fact that one other change of great importance had been made in this petition. In the original petition, a motion to the original petition is prefixed, reading as follows:

"Emilie B. Hulin of Borough of Brooklyn, City and State of New York, moves that she may be permitted in behalf of herself and all other members of The First Church of Christ, Scientist of Boston, known as The Mother Church, in good standing, and all members of Christian Science churches and associations and all other Christian Scientists, to intervene and file the annexed petition to intervene"—

plainly limiting herself to her capacity as a member, absolutely disclaiming any desire to intervene as a First Member. That has been struck out of the amended motion, on the first page of the new motion, and the capacity in which she desires to intervene is not stated. And although the changes in the body of the petition, of the annexed petition, are as Mr. Choate states; it is now left in doubt on the face of the proposed petition what capacity she is acting in. That matter was not left in doubt on the face of the original petition. I suppose that was overlooked. But we came here prepared to oppose a petition to intervene as a member, and we are met by a petition to intervene as a First Member.

The COURT. Does she state that here?

Mr. THOMPSON. I beg pardon?

The COURT. Does she undertake now to appear as a First Member?

Mr. THOMPSON. I don't think she does, sir. In the first petition, the annexed petition, the drift of it was that she sought to intervene as a member. That is the same drift in the second petition. But the first petition was made absolutely definite by the assertion in the motion which it accompanied. That definite assertion is struck out so as to leave it somewhat in doubt, although with the balance of construction favoring that position. The petition itself describes her in her capacity as a member, not as a First Member. At any rate, if her purpose was to intervene as a First Member it is nowhere explicitly stated in either petition, and the opposite is expressly stated in the motion which we came here to meet.

I do not think, therefore, that these gentlemen have a right to address your Honor on the theory that their client is seeking to intervene as a First Member. They nowhere state it, and they have stated the contrary in the motion which they first filed.

If your Honor please, one more

preliminary statement. This petitioner does not seek conditional intervention. She seeks absolutely unconditional intervention. She seeks an intervention, as stated by both her counsel, and particularly by the gentleman who last spoke, which will enable her to get this case recommitment to the Master and reopened on all questions of fact already tried before him; and it is obvious that the principal purpose of this intervention is to retry the same facts—not so much to reargue some law, they can do that now—but to retry before a Master some facts. I say "some facts," because when we come to analyze this petition it is not clear what facts they desire to retry, but a retrial of facts is what they apparently most desire.

If they sought conditional intervention, if all they asked your Honor to grant them was the right to come in here now accepting the case in its present status, and accepting the Master's report, and joining with the defendant directors in the argument of their exceptions, or with Mr. Dittemore in the argument of his exceptions, no objection would be made by Mr. Dittemore whatever. Whether that is the position of the plaintiffs I do not know. I apprehend that it is not. But it is Mr. Dittemore's position; and the only reason that he is opposing this intervention is because he is well aware, and it can be demonstrated to a certainty, that all the facts, except one, that they seek to retry were open on the pleadings in the original case—all of them that are material or could by any possibility be material to the decision of the questions presented by that case, or by his part of that case, have been decided; and the only new fact is a fact that has occurred since the filing of the bill and since the Master's report was filed, namely, the opening of a branch office in San Francisco by these plaintiffs for the purpose of selling their publications.

Now, an affidavit by Mr. Johnson has been referred to. Some pretence has been made of producing here newly discovered evidence. Mr. Johnson, if your Honor please, was summoned as a witness, put on the stand and examined, by the defendant directors in this case. The facts stated in that affidavit were taken from the directors' records, which themselves through long days remained upon the table in front of the Master, were opened and constantly referred to by counsel, for such purposes as they thought advisable; and finally, even in spite of that, if Mr. Dittemore felt that even in spite of that anything that could possibly affect the status of these directors as the governing body the supervising body of that Church had been omitted, anything that by any remote possibility could undo any part of the work performed by Judge Dodge, with a degree of thoroughness, skill, and mental power never in my experience equalled by any Master in

this Commonwealth, he would withdraw all opposition.

But what does that affidavit of Mr. Johnson show? It shows that although an attempt was made to organize a church in 1889, a corporation, and later it was given up, the organization referred to by the Master, by Deed of Trust, was deliberately preferred by Mrs. Eddy, as stated, as Brother Krauthoff shows, in the preamble to this very Manual to which they all refer. It was the true starting point; it was the correct starting point. If these defendants, or any of them, or the plaintiffs, or the Master, who had the records before him, could have found the slightest excuse for the assertion that the Church was organized before September 23, 1892, they would have done it. It was because everybody knew that that statement of Mrs. Eddy's in the preamble to the Manual was a true statement, could not and ought not to be contradicted, that they did not try to base any argument on the abortive, the confessedly abortive attempt, never carried out, to form a church in 1889. The Deed of September 1, 1892, stands, as the Master found it to stand, as an original document, to be construed by what is within the four corners of it, plain and distinct, not ambiguous in any respect. The formation of this church three weeks later is equally plain. It was the starting point, and the correct starting point, of all the investigations subsequently made. And the attempt to reopen this case, send it back to the Master, for the purpose of introducing a piece of evidence which, when introduced, could not by any possibility alter his legal conclusions or his findings of fact, cannot be accounted for, if your Honor please, on the basis of apprehension that the directors have not done their duty, or that Mr. Dittmore has not, in defending the interests of The Mother Church; and that Mrs. Hulin and her friends can now perform a duty which has been neglected by all the parties in the case up to the present time, although a million words of testimony have been taken, nearly a month of continuous sittings before the Master, including arguments, and eight hundred printed exhibits have been introduced in this case.

No case was ever tried with the minute thoroughness with which this case has been tried, largely due, if I may say so, to the extraordinary painstaking efforts, minute knowledge and great ability of Brother Krauthoff. And now they come in here and say that they, this New York committee, have got hold of evidence, which everybody in the case knew about, which lay right on the Master's desk for weeks, these Church records, and the case ought to be reopened for trial on the facts.

It is that sort of thing that Mr. Dittmore opposes. Why does he oppose it? Perhaps your Honor will say, "What difference does it make

to Mr. Dittmore whether one defendant or a thousand defendants come into this case?" The difference it makes, if your Honor please, is this. These defendants, at the same moment practically, within five minutes of the time when they voted to expel Mr. Rowlands from membership in the Board of Trustees, voted to expel Mr. Dittmore from membership in the Board of Directors, because he was unwilling to join them in making a charge which the Master has found—and your Honor has confused that finding with the finding about Mr. Dittmore—which the Master has found they knew when they made it was a false charge, and I make that assertion without fear of contradiction. He refused to find bad faith, in terms, in the removal of Mr. Dittmore, but he did find that they did not believe their charge that Mr. Rowlands had neglected his business and preferred his private affairs to his duties as a member of the Board.

Now, Mr. Dittmore went to trial on two cases—this case and the other one which was sent to trial with it; and an arrangement was made, with his consent, and the Master finds it was consented to by all parties, although later objected to by the other defendants, that—

The COURT. Let me interrupt you right there. The specific finding I had in mind was the one on page 42. Having assigned the reasons, or stated the reasons, the Master concludes:

"I am thus unable to find any of the reasons assigned by the directors voting for the resolution, sufficient to require or justify Rowlands' removal."

Mr. THOMPSON. That is another finding, but the statement I make is correct. He also, in dealing specifically with the charge that Mr. Rowlands had neglected the affairs of this trust because he desired to spend his time on his private business, found that it was not a charge in which they believed. That was the trouble with the action in removing Mr. Rowlands, and no honest man would have joined these men in making such a charge as that.

Now, Mr. Dittmore later brought a bill to get reinstatement. That bill was sent to the same Master, as your Honor well knows, to be tried with this bill. The Master ruled that the question who was the correct defendant, either Mr. Dittmore or Mrs. Knott, was one that he had got to decide in this case, owing to the attitude of the plaintiffs in demanding an injunction against both of them. Mr. Dittmore consented that he should decide that question in this case, and that that decision should bind him. He did it without testifying himself. He did it at the solicitation of Governor Bates and Mr. Whipple both, because it was a great time-saving device, which would expedite the decision of both these cases, and he took

his chances. He obtained his decision, that his own dismissal was absolutely illegal and void, and that he was a member of that Board, largely as a ruling on a matter of law.

Now, the Master has said that the other case is left in abeyance until this case is decided. He cannot get affirmative relief, probably, in this case; he has got to go back later and get it in that case. It has saved a great deal of time—that arrangement made at that time by Mr. Dittmore. He made material concessions when he took that chance.

Now, if this case is reopened what is to become of the agreement, what is to become of the relation between those two cases? Mr. Dittmore's status as a director may be postponed indefinitely. It may never be possible to take up the case of Dittmore v. Dickey until months more have gone by, with the reopening and taking of evidence in this case. That is the reason Mr. Dittmore opposes it. He believes it is not only for his interests—and he has no private interest in this case—but it is for the interest of this Church that it should as soon as possible be known who constitute the Board of Directors of this Church. I do not think it ought to require elaborate argument to persuade even a wayfaring man that that is a desirable thing, that it should be known.

Now if this motion, which looks only for delay, which only postpones the decision of that question and can have no other effect, is granted, he has lost the benefit that he gained of expediting this case, for which he sacrificed his own rights to testify and to introduce any evidence in his own behalf; and he is remitted to the position of standing by indefinitely, as a by-stander, while questions of fact are retried that have once been fully tried.

Now, what are the allegations of fact in this petition? That is the important point. I pass over the technical difficulty that a petition to intervene as a defendant should be accompanied by an answer to the bill, that the intervener should state his position as a party to the bill, and what attitude he takes on the allegations of the bill. No such thing appears here. Or that it should be sworn to. No such thing appears here. I ask, what are the allegations of fact?

The prayers are clear. The first prayer of this petition is in the broadest terms: "That this Court may construe the provisions of said Deed of Trust, especially in regard to the" issues which are raised in these proceedings. That is what the Court has done, what the Master has done, and what the Court expects to do, and so on. In other words, it asks for rulings over the whole field covered by the pleadings and the Master's report—new rulings.

"2. That the Court after full hear-

ing and the introduction of further evidence as may be required may determine the allegations of fact set forth in this intervening petition and if the Court shall decide that the power to remove the trustees is not lodged in the Directors or the First Members together with the directors, the Court will remove said trustees" itself.

And finally the petitioner prays for an accounting.

Now, what are those allegations of fact? First, a great many allegations about Mrs. Hulin's membership in the Church here—First Membership; her great interest in Christian Science. Nobody denies it or disputes it; they are immaterial.

Second, great injury threatened by prospective, now made actual, rulings by the Master.

Now, what is that injury that is threatened? Why, I gather, although it is very confused, that what it comes down to is this: The administrative authority in this Church, so far as it relates to the removal of a trustee of the Publishing Society, was originally lodged in two bodies—the First Members and the Directors. The First Members by voluntary action, at the request of Mrs. Eddy, and with the cooperation of the Directors, as far as possible disbanded and went out of official existence.

Now, the petition says that if it shall be held that Judge Dodge has ruled correctly as a matter of law that the abrogation of the function is not equivalent to a decease of one of two donors of a joint power, then no one will have the power to remove a trustee except a court of equity. What of it? This is probably the result. We think it is; it may be. That is no reason for asking to reargue it before the Master. It might be a reason for their arguing it now before the Court, or before the full bench. We do not object to that. But what reason is that for going back and re-trying the facts?

Third, it alleges the result of this New York meeting. We do not dispute that such a resolution was passed, it was passed without any question; it is immaterial. A great many subscriptions are being cancelled. That is a very lamentable fact, very likely true, but what bearing has it upon any questions of law or fact, either, that are raised by the pleadings and answers?

The petition also alleges that the plaintiffs are not loyal Christian Scientists, and that they are publishing unsound doctrine, and that they do not believe in Science and Health. All that is raised by the pleadings in the original bill. We think it is very likely so, but it has been all tried once, and so far as it can be tried it has been dealt with by Judge Dodge.

Your Honor is perfectly aware that no Court in this commonwealth can ever try any question of doctrine.

There is a singular naivete about the position of these plaintiffs here. They admit that the question is a purely ecclesiastical question and that the Court cannot try it. But they say: "In view of the fact that by the action of the First Members themselves it has become impossible for the Church tribunals to try it, we ask the Court to make a special exception in this case and assume jurisdiction that it has not got by common law."

Now, Mr. Dittmore might like to have your Honor, or some other judge in this court, try this question; it might be a desirable thing; but he does not have the hardihood to come in here and ask you to assume a jurisdiction which no court in the United States or England has ever assumed, except the ecclesiastical courts in England.

Then the petition says that the plaintiffs have borrowed \$200,000 which they ought not to have borrowed, and that they have put \$200,000 in a safe when they ought to have put it in a bank.

The COURT. I want to say to you now that so far as that portion of the petition dealing with affirmative charges as a basis for removal of the trustees is concerned, that is a proper matter for entirely new proceedings.

Mr. THOMPSON. Why, of course I want to say that every one of those things was referred to before the Master. That came out in testimony; and also that they had spent \$50,000 to protect Mr. Rowlands, and that they had not paid over the net proceeds. The Master deals with that.

The only other allegation is about opening the San Francisco headquarters. That, as I have already said, occurred after these proceedings and after the Master's report was filed.

Now, I understood counsel here to suggest that the petition had no personal aspect. Well, I should like to know if it has not, when it asks for the removal of these trustees and asks for an accounting.

I have enumerated in my brief, or Mr. Demond and I have, twelve independent reasons, and supported them by citations of authorities, why such a discretion ought not to be exercised.

I do not need to argue that this is a matter of discretion and not of right. Of course there is only one kind of intervention of right, and that is where a fund is in court and a party has an independent claim on the fund. There he is an indispensable party in the first place, and if he is not made a party the bill is made demurrable for that reason. That is the only exception; outside of that the allowance of a petition to intervene is wholly discretionary. I understand that that proposition is conceded here, and therefore it is not necessary to argue it as a matter of law.

Mr. CHOATE. It is not conceded.

Mr. THOMPSON. It is not conceded;

it is alleged here that it is a matter of right that these people should intervene. A matter of right! Then my authority I will stand on.

There is only one situation where a man has a right to intervene, and that is where if he had not he would have been an indispensable party in the sense that no decree could have been made without him, a court of equity could not have heard the case without him; in which case he is allowed against the opposition of the parties to come in.

That is not this case. Mrs. Hulin does not claim any interest in any fund; the treasurer is the one who receives the fund. She does not ask that the treasurer be made a party, or say that he is unfit to claim an accounting from these people. She has no interest in the office; she does not say she is a director or trustee and ought to hold office. She simply alleges that she is afraid that in litigation between other parties decisions will be made on questions of law or fact which will have an indirect bearing upon her interest—mostly of a theological or ecclesiastical character. In other words, she deeply regrets the outcome of a suit between other parties, and she now contends through brother Choate that that makes her an indispensable party and gives her a right to intervene.

I had supposed that it was the ordinary case of an appeal to the Court's discretion, and we have here ten or twelve particular reasons why that discretion should not be exercised in favor of these people. The most striking of those reasons is the laches of this petitioner.

In our affidavit we have shown that we received a letter from her within two days after the vote dismissing us and dismissing Mr. Rowlands, in which she expressed confidence in the attitude of Mr. Dittmore and in his purposes and character, and disclosed entire knowledge of what had occurred. We have also alleged that every proceeding, verbatim, in court or before the Master, was published in the Christian Science Monitor, and that that circulated among all Christian Scientists, and was taken in the reading rooms of the churches, including the church to which she belongs.

I understand that another affidavit has been filed by the plaintiff showing that Mrs. Hulin was a personal subscriber to it until March 17, 1920. There can be no doubt, therefore, that both she and the persons for whom she purports to act, whether First Members or ordinary members, had a degree of knowledge of the issues in this case, the pleadings, the progress of the case, the contentions of the parties made from day to day, the comments of the Master, such as very few persons have ever had before in such large numbers in any case that ever went on in the courts of Massachusetts. I did not suppose that that was seriously denied.

Now it is alleged here that the issues have broadened. Mr. Choate began with that allegation. The issues have narrowed; they are narrower today than they were in the pleadings in that case. If Mr. Choate had been in this case from the start, instead of obtaining his knowledge by reading the pleadings,—I admit that he can do it perhaps better than anybody else, get it quicker, and that what it will take other men a year to get he may get in a day,—but even he cannot absorb all the facts and contentions of the parties in the short time that has been allowed in this case.

Now I venture to contest that assertion. The issues have not been broadened here, they all appear on the pleadings; they appeared within a very few hearings after the first hearing. The opening of counsel, the arguments of counsel at the end of the case in September, on September 8, 1919, contain references to every one of the contentions which the Master decided, and to others besides that he has not decided.

That was all known; those arguments were printed in full. Mrs. Hulin and her friends lay by, did nothing, did not ask to intervene, did not suggest that the directors to whom the business of the Mother Church has been committed were not properly representing them; made no application to the directors or their counsel to make or not make any particular contention; made no application to the treasurer to appear in the case and try to get an accounting of the profits. Absolutely silent!

Now how can it be said that they are surprised? They have not used the word "surprised," but that is the idea; and unless that idea is there there is nothing in their argument. What surprise has there been to Mrs. Hulin and her friends at the development or the limitation of this controversy as it has gone on? None whatever.

I am bound to accept statements of counsel made in good faith that there is no collusion between them and the directors in this case. But the coincidence does seem striking, and would in the absence of that assertion of counsel be absolutely overwhelming.

This motion is not made for the purpose of reopening a case which has been exhaustively tried, or rearguing questions of law which have been already exhaustively argued, but for the purpose of obtaining further delay and postponing the day when these directors will be brought to account as to why it was that they expelled the one member of their Board who took the honest and straightforward, and a theologically correct, position in their dealings with the trustees.

My position and the position of Mr. Whipple are not the same, and in fact they will be found entirely divergent when the proper time comes in this case. But when false charges are made against his client and false

charges are made against mine, and they are both expelled on the same day, the evidence is naturally the same evidence in that particular.

I have not many further contentions to trouble your Honor with. I say that it would have been improper for the plaintiffs to join these parties originally as parties defendant and a demurrer would have lain if the trustees here had joined these First Members, or members, as parties defendant to this bill. The directors could have demurred, and their demurrer should have been sustained, because they are the ones who represent the members of the Church. It does not help them at all now to come in later, and they cannot stand any better than they could if they had originally been parties, and not half so well, because they are guilty of the grossest type of laches.

None of these defendants would have had the right at any time to require the plaintiffs to make the members of the Church parties. I have cited the authority for that proposition. How could they have done it? On what basis could the defendant directors, or Mr. Dittemore, have required that these members of the Church should have been made parties to this controversy? None would have occurred to anybody at the time; there is not any averment here. It is said that they are not sufficiently represented. But why? Why are not the directors sufficiently representing Mrs. Hulin as a First Member or as a member? Why not?

It is not alleged that there is any collusion between Mr. Bates' clients and Mr. Whipple's clients. It is not alleged that Mr. Bates' clients have omitted flagrantly to make any contention which they should have made. Absolute silence on any particulars! No allegation whatever of any incapacity, any desire not to make the fullest possible disclosure and to discuss in the most thorough way imaginable every one of the questions of fact and law, and a great many besides those which are referred to in that petition. It is brought without the consent of the plaintiffs and it is brought without the consent of this defendant.

There is a general and almost un-failing rule of equity that strangers shall not be allowed to intervene in law suits, even at the beginning, much less after the evidence has been published and the Master's report filed, against the consent of the plaintiffs and against the consent of one of the defendants.

Now, what reason do they show for making an exception to that rule? None whatever that I have heard. Their argument is on a par with their argument addressed to your Honor to take jurisdiction which you have not got, because the consequences of not doing it are going to be in the opinion of these people so injurious to the members of the Church. A court

cannot make special rules for parties; it cannot depart from settled principles, just to please people who do not like the course of an existing litigation. And that is all this comes down to.

There is not any averment in this petition. There is an attempt to make it by the Johnson affidavit, but there is no averment in this petition that any one of these possible or actual rulings of the Master of law, from which they say they apprehend injury, was based upon any erroneous findings of fact—except the Johnson affidavit that there was a Church organized before September 23, 1892,—and I have dealt with that in the early part of my remarks. Otherwise there is no allegation tending to show that any of these rulings of law which the Master has made were based upon any erroneous findings of fact.

They allege that the First Members surrendered, right in this petition, in 1901, their functions. Right in this petition it is alleged they were disbanded in 1908. And I have shown your Honor why: at the order of Mrs. Eddy. Now, how in the face of that are they not estopped from seeking to revive and resuscitate themselves at the present date,—Mrs. Hulin among them, who is bound by the same estoppel, and comes forward here and seek suddenly to be resuscitated for the purpose of intervening? Well, they cannot intervene until they are resuscitated. They cannot be resuscitated for the purpose of intervening, and they cannot intervene for the purpose of being resuscitated. That is what they are trying to do, reasoning in a circle. They say: "We are now seeking to intervene as First Members for the purpose of being re-established."

As a cross-bill there is no allegation of any application to the Board of Directors, and I know of no reason why the ordinary analogy of a business corporation should not apply. Whether they are First Members, preferred stockholders, or ordinary stockholders of a corporation, people cannot bring a bill in behalf of the corporation without showing application to the directors and refusal. I do not need to argue that in the presence of counsel who themselves have had so large a part in stating the law, and before your Honor who has had so large a part in deciding it. I refer to the New York, New Haven & Hartford as the most recent case of all. I do not know why the analogy should not apply.

They do not say that they have asked the attorney-general to come in; and it is absolutely settled by the case of *Burbank v. Burbank*, which I have referred to in my brief, that he is the proper person. In that case a certain town had received a legacy of money; a compromise was made of the will, and suit was brought,—ten voters of the town brought a petition

or leave to intervene, to be heard on the question of the propriety of the compromise, and their petition was denied—dismissed. The Court there said: Not only are they not proper parties, they have no right to be here at all. The attorney-general absolutely represents them, and they are bound by what he does for them.

If the attorney-general were here these people would be bound; not being here they are not bound. But that does not give them the right to come in themselves in the teeth of the provision, either as a defensive proceeding or as a cross-bill,—it does not make the slightest difference.

I observe a slight tendency in the argument of counsel here to shade off that rule and say that it applied only when affirmative relief was sought. Nothing of the sort. The rule that the attorney is the sole representative of the beneficiaries of a charitable trust applies just as much when intervention is sought as a purely defensive proceeding as when it is sought for the purpose of affording affirmative relief. I won't go into the details of it, because I have it all stated in my brief. I ask your Honor to look at it here.

Now, all that can be granted here to the very utmost is a right of conditional intervention. And that we do not object to. If your Honor should say to Mrs. Hulín, "You have no legal right to become a party here, but if you desire to present a brief, if you desire to take the Master's report as it is, in its present state, and argue these law points, you may do so," we do not object, we would be glad to have them argued. But when they seek to reopen the case on the facts, and do not allege any facts that can possibly alter the result, or any evidence that can possibly alter it, I think the discretion should be exercised against them, and I think that the case should not be delayed and the injustice to Mr. Dittmore should not be done that would inevitably result by holding up this case another six months or a year in order that a futile attempt might be made before the Master to review evidence already fully introduced and try to introduce other evidence which would undoubtedly be excluded as immaterial or which if it were admitted could not possibly change the result.

There is not enough basis here, formality has not been observed enough in detail in stating the evidence relied upon, to lay any basis at all for the exercise of discretion in favor of these parties.

I have left out all the details of the adjudicated cases deliberately, because it would take a long time to read them and I am going to furnish a copy of the brief to the other side.

[The following is a copy of the affidavit presented by Mr. Thompson in behalf of John V. Dittmore:

MR. THOMPSON: The affidavit of John V. Dittmore, is as follows:

#### AFFIDAVIT OF THE RESPONDENT JOHN V. DITTMORE ON APPLICATION OF EMILIE B. HULIN TO INTERVENE.

My name is John V. Dittmore. I am one of the defendants in the above entitled case. I am also the plaintiff in another bill in equity filed in this Court on April 29, 1919, against the five other defendants in the present case, commonly referred to as the case of Dittmore v. Dickey, No. 30788.

I have read the motion of Emilie B. Hulín filed March 1, 1920, for leave to file an intervening petition in this case, and I have also read the proposed petition accompanying said motion, and am familiar with the contents of both documents.

Under two orders of this Court made in May, 1919, both of said cases were referred to the Honorable Frederic Dodge as Master, "to hear the parties and their evidence, to find the fact, and report the same to the Court." Hearings before the Master began on June 3, 1919, and the closing arguments before the Master ended on September 12, 1919. The taking of evidence before the Master occupied twenty-seven days. The printed record of the hearings before the Master up to and including the final arguments contains 878 pages. About eight hundred exhibits were received in evidence before the Master.

The Master's draft report was submitted to counsel on December 20, 1919, and thereafter, between January 10 and February 19, 1920, both inclusive, at least thirteen hearings were held before the Master for the making and consideration of suggestions for changes in said report. The Master's final report was filed in this Court on March 6, 1920. Some of the facts above stated are contained in the Master's report, to which I refer generally for all statements of fact therein contained material to the present motion.

The bill in the present case, as appears from the allegations and prayers thereof, was brought to obtain a declaration that a certain resolution passed on March 17, 1919, by the defendants Dickey, Merritt, and Rathvon, with the consent of the defendant Neal, declaring vacant the office of trustee of the Christian Science Publishing Society held by the plaintiff Rowlands under a certain deed of trust executed by Mary Baker G. Eddy on January 25, 1898, was nugatory and of no legal effect; and to restrain not only said defendants, but also this defendant or the defendant Knott, whichever should appear to have been on March 25, 1919, the date of the filing of the bill, a member with said other defendants of the Board of five persons known as the Christian Science Board of Directors, from interfering with the plaintiff Rowlands and with the other plaintiffs in their offices as the three Trustees under said deed; and from interfering in any way with the business of said Christian Science Pub-

lishing Society conducted by said three Trustees under said deed.

The purpose of the bill in Dittmore v. Dickey, as appears from the allegations and prayers thereof, was to obtain a declaration that another resolution passed on the same day, and substantially at the same time, purporting to dismiss and expel this defendant from his office as a member of said Christian Science Board of Directors, was void and of no legal effect; that the defendant Knott had not been legally appointed a member of said Christian Science Board of Directors in place of this defendant, and was not entitled to hold said office; and to enjoin the defendants Dickey, Neal, Merritt, Rathvon and Knott from interfering with this defendant in the exercise of his functions and rights as a member of said Board, or from seizing or attempting to obtain possession of his books and papers contained in rooms in the building 236 Huntington Avenue occupied by him as such Director, and from preventing this defendant from attending and participating in the meetings of said Board.

In the case of Eustace v. Dickey a temporary injunction was issued, which is still in force; and in the case of Dittmore v. Dickey a stipulation was, with the approval of the Court, entered in lieu of a temporary injunction. Said stipulation is still in force.

As stated by the Master in his report (pp. 1-2), "Much of the evidence at the hearings was offered in both cases," and it was

"understood that further evidence remains to be heard in the case No. 30788 should the parties so desire upon such of the issues raised therein as may remain open after the determination of those raised in the present case."

Also the Master ruled "that the issue whether or not" this defendant

"was a Director when the bill was filed was an issue of fact upon which the Master is to pass in the present case"—Eustace v. Dickey (p. 47).

The Master having found that the term "Christian Science Board of Directors" was an ambiguous term denoting five persons deriving their powers from different sources, to wit, four of them from a deed executed by Mrs. Eddy on September 1, 1892, establishing a charitable trust, and all five from certain by-laws of the Mother Church adopted from time to time thereafter, concluded that this defendant

"was a member of the Board of Directors and also a trustee under Mrs. Eddy's deed of September 1, 1892, when this bill was filed, notwithstanding the above vote of March 17, 1919; and therefore properly a defendant for the purposes of this case";

and found that "Mrs. Knott is not

properly a defendant for said purposes", (p. 59).

On February 2 and 3, 1920, the defendants other than this defendant presented to the Master motions asking that this case be reopened.

"for the purpose of taking further testimony bearing upon the issue whether or not the defendant Dittmore was a Director at the time of the bringing of this bill."

This motion was denied by the Master on the ground stated by him. (p. 68), that he was

"unable to believe that said defendants can properly be said to have been taken by surprise, as alleged in their motion, or to believe that the reopening of the case at this stage would be fair to the other parties therein".

On February 27, 1920, a similar motion to compel the Master to reopen the case of Eustace v. Dickey for the purpose of taking further evidence on said issue, and another motion to compel the Master to proceed with the hearings in Dittmore v. Dickey, were made and argued at length before this Court, and were denied.

If the Master's report in this case is confirmed, the trial of Dittmore v. Dickey will be materially shortened.

This defendant has not yet testified in either case as a witness in his own behalf or otherwise, and, as stated by the Master, (p. 47).

"Except in cross-examination of their witnesses (referring to the witnesses of the other defendants and of the plaintiffs) no evidence was introduced by him."

This defendant, in consenting to said ruling of the Master that the question whether he was a Director on March 25, 1919, when the bill in Eustace v. Dickey was filed, was an issue of fact upon which the Master must pass in that case, and in not objecting to said ruling and in arguing the case by his counsel on the basis of said ruling, and upon the facts either admitted in open court by the other defendants, or by their counsel, or nor disputed, or brought out on the cross-examination of said other defendants, accepted the statements of the other defendants and of the plaintiffs made through their respective counsel before the Master that great injury would be done to said Church by any unnecessary delay in the settlement of the issues presented in Eustace v. Dickey, and also believed and still believes that the expediting of the determination of the case of Dittmore v. Dickey, resulting from said ruling, made, as this defendant and the Master understood, with the assent of all parties (p. 61), would also be to the advantage of said Church and of all the parties in both litigations.

I am informed and believe, and therefore allege, that the petitioner, Mrs. Emilie B. Hulin, has been familiar with both said cases from the time the same were begun. Among other rea-

sons for this belief are the following: The bills and answers in both cases were printed shortly after the same were filed, and were distributed in large quantities among Christian Scientists throughout the world. Newspapers published in all the large cities of this country, and especially in the city of New York, contained more or less accurate summaries of the bills and answers at the time the same were filed, and have also contained from time to time accounts of the proceedings before the Master, and of several motions and proceedings before the Court. In addition to these elements of publicity, verbatim accounts of all the testimony and proceedings before the Master and in open court from the beginning of the case to the present time have been published in a daily newspaper known as the Christian Science Monitor, which has a large circulation among Christian Scientists throughout the world, and is found in the Reading Rooms of Christian Science Churches, including the First Church of Christ, Scientist, of Brooklyn, of which Mrs. Hulin is and long has been a member. Moreover, I have long personally known Mrs. Hulin, and on or about March 20, 1919, I received through the mail a letter from her in the form following, to wit:

"Mr. John V. Dittmore,  
Boston, Mass.  
My dear Mr. Dittmore:

The notice of your 'retirement' from the Board of Directors came to me—with a great shock—as well as keen disappointment and regret. I may not know all that has occasioned this action, but it seems to me that we cannot do without your help—in this present crisis, as your clear grasp of the situation is most valuable to our Cause.

For a time I could not think clearly, but I still know the Omnipotence of Good, and that He whose right it is will reign. Your work is not yet finished! I cannot adequately express to you my appreciation of your loyal faithful work.

Once when I was going through deep waters on this field our Leader said to me, 'You have enemies, but your work will stand, and it will prosper, and I have said it!' I pass this prophesy on to you, and await further developments, and Truth's way of deliverance.

With my sincere assurance of faith and confidence in your work for our Cause and its continuance, I am,

Most sincerely yours,  
Emilie B. Hulin."

The word "retirement" quoted in said letter was the word employed by the defendants other than this defendant in an item which they caused to be printed in said Christian Science Monitor to describe the attempted expulsion of this defendant by said vote of March 17, 1919, from membership in said Christian Science

Board of Directors. Said vote, and all the proceedings and documents relating thereto, including the history of Art. I, Sec. 5, of the by-laws, under which authority to pass said vote was claimed, and all the proceedings and documents relating to the vote declaring vacant the office of said Rowlands, were introduced in evidence before the Master, and became matters of common knowledge and notoriety among all Christian Scientists throughout the world. As stated by the Master, (p. 61),

"There was no claim at any time prior to the submission of the draft report that all evidence bearing upon the construction and meaning of Mrs. Eddy's deed of September 1, 1892, as well as all evidence bearing upon the construction and meaning of Art. I, Sec. 5, of the by-laws, relating to the dismissal of a Director, had not been introduced in the present case, No. 30654."

It was also a fact that all evidence supposed to bear in any way upon the construction of said deed of January 25, 1898, and of the action of all parties interested thereunder, and all evidence relating to the by-laws having any bearing on the subject, was introduced before the Master, and by publication in the Monitor and otherwise became well known among all Christian Scientists.

Upon receiving notice of the filing of Mrs. Hulin's said motion, I caused to be written by my counsel a letter to Mrs. Hulin's attorneys in the form following, to wit:

"March 3, 1920.

Mrs. Hulin Petitioner.  
Messrs. Choate, Hall & Stewart,  
30 State Street,  
Boston, Mass.  
Gentlemen:

I have Mr. Nash's letter of March 2d informing me that you have presented the matter of the motion for leave to file the intervening petition of Emilie B. Hulin in the Eustace v. Dickey case, and that at your request the Court put the matter on the list for Friday morning, March 5th, and requested you to notify me.

I regret that you did not give me notice of this application to the Court, or inquire whether I could attend. It is almost certain that on Friday morning I shall be still engaged with Mr. Stewart in the trial of the land damage case in the third session. I cannot argue the Hulin matter on Friday. General Streeter is in Washington, and will not return in time to attend to the matter, even were he in a position to take up such questions; and Mr. Demond cannot come down from Concord on that day. I shall, therefore, be obliged to ask the Court to put the matter over until the following Tuesday.

If Mrs. Hulin's petition were filed as a separate bill in equity, and not as an attempt to intervene in the case of

Eustace v. Dickey, or if, being an intervening petition, Mrs. Hulin would agree to accept the Master's report without seeking to reopen the case before the Master or before the Court on the facts, there would be no objection from us. In fact, I may go further and say that Mr. Dittimore would heartily welcome any attempt on the part of the members of the Church, made in good faith, and not in the interest of the present dominant majority of the Directors, not only to solve without useless delay the legal questions that have arisen in the course of the present litigation, but, what is more important, to re-establish the Church government on a basis consistent not merely with the letter, but also with the real spirit which animated the Founder of the Christian Science Church.

The difficulty with your proceeding arises from the danger of delay that accompanies any attempt of a third person to intervene at this late stage of the case, with an application for a further hearing on the facts, which have already been so exhaustively gone into before Judge Dodge. If it is desired to raise questions of fact, which, by reason of the action of the Directors themselves, could not be raised in the Eustace case, the proper way to do it, in our opinion, would be to bring an independent proceeding; and to be effective and consistent, such a proceeding should join both the Directors and the Trustees as defendants,

Very truly yours,

(Signed) William G. Thompson."

To said letter no reply has been received.

I admit that Mrs. Hulin has been a member of the Mother Church since 1892, and was a First Member thereof, so-called, and is and has been a Christian Science practitioner, and was a Founder and is now a member in good standing of the First Church of Christ, Scientist, of Brooklyn.

The so-called "First Members" of said Church, referred to in said petition, were, at the request of Mrs. Eddy, and as the Master finds, and as Mrs. Hulin's petition alleges, and with their own acquiescence and consent, abolished as an independent body having any separate organization or functions in connection with said Church, by their own votes of December 28, 1895, and January 10, 1901, and by votes of the Christian Science Board of Directors of March 17, 1903, and July 6, 1908, and were dismissed from all participation in the government of the Church or control of its membership (p. 17). On July 1, 1908, Mrs. Eddy wrote to the Christian Science Board of Directors a letter as follows:

"Box G, Brookline, Mass.  
July 1, 1908.

Christian Science Board of Directors,  
Beloved,—

I have read your copy of the revised Manual and find it must be corrected throughout.

My orders to Mr. Dickey were to go over the Manual and to erase the name of Executive Members from the Manual. I told him this because said members no longer exist, and the Manual should be corrected thus. I cannot do all this work myself and I beg that you the Christian Science Board do it, and have it done correctly.

Lovingly yours

(Signed) Mary B. G. Eddy.

I have thought it best to have no Executive Members. Will you at once vote on this question and have it valid and made known?

(Signed) Eddy."

The only question of fact presented by Mrs. Hulin's petition which was not in some manner presented to the Master is the allegation that the plaintiffs have rented quarters in San Francisco for the display and sale of their publications, and have incurred large expense to maintain the same, which fact, if true, is a fact occurring since the conclusion of the hearings before the Master, and is immaterial to the decision of the question whether said Rowlands was on March 17, 1919, lawfully removed from his office as trustee, and whether this defendant was on that date lawfully removed from his office as director.

In reference to one of the possible rulings of law from which the petitioner says she apprehends prejudice, I state that the Master has correctly found as a fact that no express rule or by-law was ever adopted constituting the First Members the only voting members, (Report Par. 9, p. 7); but that their right to be the only voting members was the result of custom and long acquiescence. No party at the hearings before the Master claimed that any such by-law as that referred to by the petitioner existed, and the petitioner refers to no evidence from which the date of existence of such a by-law can be inferred.

(Signed) John V. Dittimore.

THE COURT. Mr. Whipple?

MR. WHIPPLE. May it please your Honor, I feel that I might well leave the case upon the statements and arguments which have been made by counsel who have been the opponents of the plaintiffs from the beginning. Mr. Krauthoff, as your Honor knows, has been counsel for the defendants from the very first and it has been stated that he participated in the trial, the long trial, which we have had of these issues, as the only member of the staff of counsel representing these particular defendants who was himself a Christian Scientist and spoke with the authority of a Christian Scientist. I have in mind that Mr. Abbott also appeared of counsel, but was not active during the trial. But no one can say that Mr. Krauthoff was not active during the trial or that he took other than an important part. The record shows, I think, that Mr. Dittimore was the most active oppo-

nent of the board of trustees before he himself was removed by what I might almost call a reflex action on the part of the directors in that removal spirit that infected them at the particular time when they attempted the removal of Mr. Rowlands. But it is only natural that these gentlemen who view the matters from an entirely different standpoint from that of the trustees; the plaintiffs, have not stated all the things which occur to the plaintiffs as reasons why this intervention should not be permitted. I want to call to your attention certain facts which seem to me to have a decisive bearing upon this application. I shall not attempt to discuss the law, which has been so well covered in the statement that has been made, and, if it has not been adequately covered there, it will appear in the somewhat voluminous briefs which will be submitted to your Honor, I have no doubt, by both sides. Before going further, I want to express my admiration of the clear statement of the situation, what I might always term the cameo statement, which has been made by Mr. Krauthoff. We have not agreed in the contest which we have had, but the conception of the dispute which we have had has been not merely adequately but *entirely* presented by him. It is true, as he has stated, that this controversy as to the scope of the powers and duties and activities of two boards of trustees has not affected in its result in the slightest degree the fundamentals upon which the Christian Science religion and movement rest, and by which they have been inspired. The attempt to show otherwise is an utter failure. It has been the subject of propaganda which has been spread through the churches by artful devices, so that they believe, they take seriously, the astounding propositions that have been made here that the Master has found that the Manual is no longer the controlling power of the church, that the Manual has been repudiated and abolished. These trustees have never taken that position, and Mr. Krauthoff is brave enough and courageous enough and sincere enough to state it and to admit it. These trustees were appointed to certain duties and given certain powers by a Deed of Trust executed by Mrs. Eddy herself, by Mrs. Eddy herself made an irrevocable trust, and when the question came as to their duties under that trust they were advised, and the Master has found, that they must be guided by the terms of that trust, which was an irrevocable trust, and consciously so declared by Mrs. Eddy; and that if they did otherwise they would be recreant to the commands of the founder of Christian Science which had been laid upon them by the terms which she herself framed and which she herself signed. As Mr. Krauthoff well said, these trustees have never attacked or repudiated the Manual of

the church, and for the first time an attack was really made upon the Manual of the church when this curious petition, which alleges nothing, practically, as we shall see in a moment, was filed as a means of accomplishing what we shall see unfolded, that was desired to be accomplished by people who confessedly are behind the petition, people or parties who state that they are the real parties, and use Mrs. Hulin's name merely; because your Honor has not overlooked that in the petition itself there is a statement that many other Christian Scientists, committees and others, have retained the same counsel, and are actively behind this motion or petition for intervention. It will be necessary, we think, or may be necessary, for your Honor to consider why those persons have not appeared, why some chairman of committee, or some committees, have not appeared, rather than to select the name of a single person and put her forward, subject thus to the jurisdiction of the courts of Massachusetts, while those who are actively promoting the proposition can go on doing what they have been doing *without* subjecting themselves, as they think, to the jurisdiction of this court.

The COURT. We will suspend here to take a recess until two o'clock.

[Recess until 2 o'clock P. M.]

#### AFTERNOON SESSION

The Court came in at 2 o'clock.

MR. THOMPSON: If your Honor please, with Mr. Whipple's permission, I should like to refer in support of what I said this morning on the charge of bad faith, to finding No. 48 at the top of page 43: "So far as the assigned reasons accuse Rowlands of failure to devote time enough to the Publishing Society's business, or were made to appear as reasons requiring his removal only, and not equally the removal of his co-trustees, it may be said that they were not reasons assigned in good faith."

Then at the bottom of page 38, nearer the end of paragraph 43, "I am unable to regard the charge made as one actually believed to be true, by the Directors who made it, after due inquiry into the facts, or as one which they would have considered sufficient for his removal had they not desired to remove him for other reasons." Those are the statements that I rely on in support of my statement that all of these charges—not one, but all of them, were made with deliberate bad faith.

MR. WHIPPLE: If your Honor please, a single other preliminary matter which has been called to my attention by the argument which was made by counsel for Mrs. Hulin, I will speak of. And it is what is stated with regard to there being a church with directors to which this deed applied earlier than the organization of the present church. As I understand it, they rest almost all their case or

claim upon it. But I agree with what Mr. Thompson has said and what in effect Mr. Krautoff said, that all those papers were before the master. All of Mrs. Eddy's letters or communications on the subject which have been kept and treasured by the Board of Directors were made accessible by both sides and they were gone through carefully. I speak with hesitation in saying there is nothing which is now disclosed that was not before the master because I have not been able to go over it and check it up, but I am assured by my associates, especially by Mr. Withington who made a careful search among all these papers, that he sees nothing and has had his attention called to nothing that hasn't been before the master and considered at length and the directors took the position which they took with regard to the matter deliberately.

I must confess that I do not see anything added by the affidavit which was made by Mr. Johnson who was a witness and a witness called by the defendants. But there again, inasmuch as I did not see the affidavit at all or a copy of it until Mr. Dawson was in the midst of his argument, I cannot say that that paper does not add something, but so far as I can see it does not.

The whole matter, then, is left in accordance with the Church Manual published by Mrs. Eddy's authority, and the historical sketch in which all the facts that are vital in what they bring out in the affidavit are stated in the Manual itself, on page 17 of the Manual where the historical sketch is given with regard to this earlier worshiping society, chartered in June of 1879, regarding which so much has been said. It is not a new discovery that the diligence of Mr. Dawson or others have made. It was well known to all of us. The bill refers to that preliminary church on page 11 in these terms: "Prior to the date of either of the trust deeds hereinbefore referred to, to wit: in or about the year 1879, Mrs. Mary Baker G. Eddy became the Leader in the organization of a church designed to commemorate the word and works of our Master, which should reinstate primitive Christianity and its lost element of healing." Then we recite the organization of the present church in September 1892, and the directors who claimed to be and are officers of the church in their answer practically admit all the averments of the bill and more or less elaborate the same statement. Of course it is most unsatisfactory to speak with regard to these allegations without having time to review the affidavits which are supposed to disclose this new evidence, and it might be conceived that we should desire to file counter affidavits after we have had opportunity to go over them, if it is necessary.

Now coming to the question of intervention as I had planned to discuss it. It is necessary first, I think, to have

a clear understanding of the vital issues of the bill and the purposes for which the bill was filed, to contrast those and compare them with the issues that the intervenor or petitioner seeks to raise. Practically all there is to the bill is this: That Mr. Rowlands had been improperly and illegally removed by the Board of Directors; that the action which they had taken in attempting to remove him as a trustee under the deed of trust from Mrs. Eddy was inadequate for the purpose; that the reasons which they gave in their attempt to exercise this power were not sound reasons and were not made in good faith, and that therefore he was still a member of the Board of Trustees. Now then, in addition to that we have made these averments, that these directors never intended to carry out their will with regard to the matter to apply to the court to remove Mr. Rowlands, but that they had conceived a plan, a scheme, whereby they would make the position of the trustees untenable to the trustees and get the incumbents to resign by the use of their powerful influence as church dignitaries—make their position untenable to the nature of the business which they were attempting to conduct, and on those allegations, when we presented the bill to the Court, the injunction which has been described by the defendants as a "sweeping injunction" was issued, *ex parte* to be sure, but no attempt has ever been made to modify it or change it in any respect whatever, and that injunction, it is important to observe it with reference to what I shall say later, enjoins these defendants, their agents and representatives from either directly or indirectly interfering in any way with the administration of the business of the Publishing House by the Trustees of the Publishing Society. That is, this Court upon being invoked so to do, ordered that there should be no attempt to dislodge the trustees, to put them out of their positions by propaganda, by the power of the church to discipline, by the power of injuring the publications which Mrs. Eddy had created and inspired and left as a legacy to her church. Your Honor may remember, and it is important, that before we even had a hearing with regard to the merits of the case we were constrained to have a hearing before Mr. Justice Braley as to whether that injunction had not been already violated by the Board of Directors and as a result of the hearing there was a finding that all the directors but one had violated the injunction and that their counsel, one Clifford P. Smith who was cooperating with them had also violated the injunction, and the men who had done it, three of them, Mrs. Knott was not a member of the Board I think, were fined \$50 each and the counsel who had counselled that very thing was fined \$100. Then we went to trial before the master. We had these long hearings all during last



summer. I am reminded by Mr. Withington and I must suggest to your Honor, that at that time there was an application made for a modification of this injunction, made in behalf of the directors, and Judge Braley refused it, saying that these gentlemen should not be permitted directly or indirectly to attempt to destroy this publishing house and thus render nugatory any relief that the trustees might get at the hands of the court.

Now in the master's report all those averments are found to be true, that there was a scheme, a plan on the part of the directors to make the position of the Board of Trustees untenable, to compel and coerce them to resign, and that they were restrained by the injunction which was issued—restrained as far as it went. Now those are the issues with which we have to deal in this case. Was there a proper legal removal of one of the trustees? A. The trustees said "No", because the directors hadn't any authority to remove under the trust deed; that certainly the directors of the church had no authority whatever—trustees appointed under the original trust by Mrs. Eddy—what I will call the church trust—had authority in connection with the First Members, but that authority could only be exercised in company with the first members and that there was no surviving power or authority in them after the First Members had passed out of existence.

Now then the draft report was filed, or rather was given to counsel on December 20 last. It didn't come before this Court as a final report until March 7th. There were hearings all through January and February in which applications were made and repeated and urged upon the master to make changes in the findings which he had made in favor of the trustees, practically all his important findings being in favor of the trustees.

On the day, the very day that the report was filed, I think I am right in that, this petition for intervention was filed. I must correct that statement, it is slightly inaccurate. It was intended that it should be filed on the same day that the master's report was to be filed, but after this petition had been filed Judge Dodge held up his report because of the pendency of certain proceedings before Mr. Justice Crosby so that the synchronous filing of this petition and the master's report did not happen, as it apparently had been intended. Now the petitioner comes here in what capacity? She describes herself in three ways. In the first place she says she is a member of The Mother Church and that The Mother Church is the beneficiary under the terms of this trust. She says also that she is a First Member of the Mother Church. I think that has been adequately explained and that your Honor understands what a First Member is, but I will simply venture to say that it was a

membership that constituted the ruling membership or the ruling body of the Church. They were in the nature of officers of the church. The plan was to have the church affairs managed and handled by the First Members, no particular officers being given powers by that name as First Members, as if they were presidents or secretaries, or directors, and there was a membership of the church entirely aside from the First Members, the membership of The Mother Church, but they had no power, control or authority. She says that she presents her bill in her capacity as a First Member and then in another capacity. She says she presents it in an entirely different capacity. She says that the Publishing House trust is one of which all Christian Scientists are beneficiaries, for it is the purpose of that trust to spread the Christian Science faith throughout the world and to promote its interest, and therefore that any one who believed in it, possibly any one who is a member of humanity who will get the benefit of it; is a beneficiary of the trust, a beneficiary in the broadest terms. So in those three capacities she seeks to intervene. She alleges herself as one of each class. She says "in behalf of First Members I seek to intervene." One of a class. "In behalf of the members of The Mother Church, I seek to intervene." One of a class. "In behalf of the general public, Christian Scientists in general, those believing in its faith, I seek to intervene." One of a class. I think I state fairly the three capacities in which they seek to intervene.

Let us consider those just a moment at this point. In the first place she avers and the master has found that by the will and direction of Mrs. Eddy, the governing body of First Members has gone out of existence for all time; that they no longer have functions as church officials or church members. Their name was changed to Executive Members first; they were deprived of certain powers and duties by the Church Manual and by the direction of Mrs. Eddy, and finally by a note which was certainly decisive in its terms, she ordered that they should be put out of existence as such. Now she seeks to come in as a First Member. What does she allege? Does she allege that she takes the position that she is still a First Member and that First Members are still in authority as the ruling power of this church? If she does, she defies the Manual. She has said it in substance. It is the basis of what Mr. Krautoff stated earlier to your Honor. She has stated it in substance, but if your Honor will look at the petition you will see the ingenuity with which it is drawn to avoid taking that position. Does she say if she was admitted as a member she would assert before this Court and offer evidence tending to prove that the governing body of that church today consists of First Mem-

bers and that the directors have not the authority which they seemed to have and which they have asserted? Nowhere. Nowhere. She says that her interests as a First Member are likely to be affected. Affected, how? Affected how? They have been put out of existence as a part of the church organization. That has been done. Does she contend they have not? Because if she does, as has been stated by counsel, she is the first one in public or in private to attack the Manual, to resist the provisions of the manual, to resist and disobey the injunction of Mrs. Eddy, which is to the effect that there shall hereafter be no longer any First Members. She does not even assert it. That is a curious thing. She does not say she will come in and contend differently from what the directors have contended, namely, that they are extinguished and out of existence. Nowhere except by implication is it asserted. Now would your Honor permit some person to come in here in this case without any knowledge as to how that person was coming in or what she was going to assert, or what position they were going to take? Would you permit a First Member to come in here and join with the directors in contending that the First Members were out of existence? If they did there is no First Member, of course, and a person who does not exist could not come in here and assist in the contention that they do not exist. That is what it reduces itself to. But on the other hand if they say they do exist why don't they put in an affidavit, showing that they still do exist? Aren't they obliged to do that? But assume, if you please, that the First Members still exist. What then? They are the governing body of a great church. Can one of them come in here and say "I want to intervene in this suit in behalf of myself and other First Members"? Isn't it rather the procedure that First Members should have a meeting under the rules of their existence and the by-laws under which they are acting and make known their collective purpose? Is there any allegation that she has tried to get a meeting of First Members and that they refused to meet with her and to give the remedy which she seeks here? Not the slightest. If she can come in, cannot the fifty-one come in, or fifty, representing the different shades of opinion and different attitudes and different claims that each one might represent, the same as Mr. Krautoff does, standing by the directors and claiming that they are in authority and that the First Members no longer exist, and some others opposite and some betwixt and between. Would your Honor invite, even for the purposes of discussion and filing a brief, that all these fifty people should come in here and each one of them be entitled to file a brief or be heard before your Honor on Friday, or before the Full Court? That is not

hardly the way to conduct a litigation. That is not according to the rules of intervention, and I respectfully submit will not appeal to your Honor's discretion, because if you let one in, there is no reason why you shouldn't let others.

Speaking now of her other capacity as a member of the church. Just what I have said is accentuated, for as soon as she attempts to speak in behalf of the membership of the Mother Church another member, who happens to be here, until lately as counsel for the directors, rises in his seat and protests that she does not represent the desire of the membership of the Mother Church; that when she speaks and gives voice to that desire she violates the foundation of the Christian Science Church, to wit, the Manual. Now can your Honor invite the thousands of members of the Mother Church individually to come in, and feel obliged in order to get at the truth of the matter, that the truth might be known, to hear every shade of the controversy from the individual members of the Mother Church and all they represent? Why don't they act by their officers? They must act by their officers. The church must have officers and the officers of this church now, though they were not officers very likely when the things transpired which the master considered—the officers now are the directors; they are alleged in our bill to be officers, and they represent the Mother Church for the purposes of this litigation. No wonder they resent the claim of each individual member of this Mother Church who does not even have a vote and never had a vote, and who, as Mr. Krautoff, as well said, has had nothing but the privilege of contribution, to come in here and take an attitude different from the attitude which the church authorities have taken with regard to this controversy. Of course that cannot be done. We have a precedent for it. Former Senator John D. Works, one of the leading members of this faith in California, asked early in this controversy to be permitted to file a brief giving his opinions and judgment as to questions which had been raised in this controversy. Mr. Justice Loring gave the judgment upon that application of Senator Works, which I will not take the time to read, but will quote from page 8 of a brief which we shall hand to your Honor: "If there is a reason for Mr. Works being heard he can make application for a right to intervene and upon proper cause being shown he should be allowed to intervene in the three-cornered fight which is going on. In the absence of any reason for his intervention it does not seem to me wise to throw the doors open to a general discussion by anybody and everybody who feels like discussing it because they have an interest which is adequately represented already. If the interest is not adequately represented that is a reason for a petition for in-

tervention. Therefore I will deny this informal motion that the briefs may be filed. But I do it without prejudice to Mr. Works—Senator Works filing a petition of intervention setting forth the reasons why it should be granted. At present I will not receive the briefs."

We will deal with the question here as to whether any reasons are set forth in this petition. Now let us consider the other aspects, as to why Mrs. Hulin asks to be permitted to intervene. She says she is one of the great body of Christian Scientists throughout the world interested in the administration of this trust, one of the great public interested in the administration of a charitable trust. As to this there can be no question, that the only person who can intervene is the Attorney General. It is a charitable trust. The case presents, as it seems to me, different phases according to the position which Mrs. Hulin claims to occupy in the petition in this case. It is as one of the Christian Scientists at large, one of the general public. In order that there might not be permission on the part of the court to allow anybody in the world who says he is interested in Christian Science and therefore is a beneficiary under this trust to come in, the rule was laid down many many years ago that the Attorney General of the Commonwealth should be the one who, if he saw fit, upon the representations made to him, would attempt to regulate charitable trusts.

Therefore we submit that Mrs. Hulin's interests are adequately represented already; at least she is not, in any event, entitled to anything. If First Members still exist, and have a right, as the governing body of this church, to appear and take action, they have not taken it, and until they have been invoked so to do, until they have taken action one way or the other, upon proper representation, no individual member can do it. As to the church, it is represented already in the suit by proper authorities, who have attempted to act in this matter, and who are properly defendants in it. There is an uncertainty as to whether Mrs. Knott is one of the proper authorities, and that is stated in the bill; but, at all events, there is no ground why a person who occupies a position analogous to that of a stockholder should be permitted to come in here either to join in the contentions that are already being made by her representatives, the officers of the church, or to set up a contention contrary to what those officers have set up; and she must do either the one or the other; although I must say that, in order to avoid it, the strangest piece of pleading has been filed that I have ever been familiar with in my practice; and that leads me to comment upon the somewhat unusual character of this proceeding. I have understood that, when a person desired to intervene in litigation in

which the plaintiffs were on one side and the defendants on the other, the proper proceeding was to file either a motion or petition to be admitted either as a party plaintiff or a party defendant. This does neither. It does not ask to be admitted as plaintiff. The petition does not ask to be admitted as defendant. Which position would she be in if she was admitted? I understand that the usual procedure is then to set forth reasons, verified by oath, facts justifying the admission of the party who seeks to become either plaintiff or defendant. No such paper has been filed: no paper, unless those which were delivered to us this morning, may take the case out of that rule requiring affidavit. Then I understand the usual course is for the person, if the person desires to join with the plaintiffs, to say, "I come in and join with the plaintiffs in the allegations in the plaintiffs' bill," and file, perhaps, a supplemental statement as to the things on which he desires to be heard; or, if the person comes in for the defendant, he presents to the court in his motion for admission—he or she, the party, presents to the court the answer that he or she would like to file; or the statement that he or she joins in the answer of the defendant, or that he or she joins in it with certain qualifications. Then the court has before it just exactly the position which the petitioner seeks to occupy. But there is no such thing here. They do not present any statement as to whether they agree with the averments in the bill, or desire to join in those, or whether they agree with the averments of the answer, and desire to join in those. They present with their petition no facts verified by oath which show that something will be done affecting rights that they really have, or controverting positions which they represent and state openly and frankly. There is nothing of the sort here.

So I respectfully suggest that this is an anomalous and unusual petition. It recites certain things which may happen,—first, second, third,—it may happen; and in the amendment it recites, first, second and third, things that have happened; but it states nowhere, in any of those averments, as I will point out in a moment, that the decision which has been made is not right and that they would like to make a contention to the contrary. They say that their rights are affected thereby—that is what they say. Why, of course their rights are affected thereby, and it may be quite favorably and quite justly—they do not say anything to the contrary. And the reason for it, as your Honor sees now, is that they do not dare to file a petition or take a position contrary to that which Mr. Krautoff has so well stated, otherwise they would be violating the Manual. I will not say that they are crawling in by false pretenses, or anything of that sort,

but I will say that they are trying to creep into this case without stating what their position is, whether they want to be a plaintiff or whether they want to be a defendant, whether they defy the authority of the directors as established by the Manual, or whether they want to come in and support the directors and the Manual. They want that kind of a petition from which you cannot tell what their intention is, except that their rights, they fear, may be affected by the decision which the Master has made; and they apparently want to be on hand and say something, whichever way they want to say it, or whichever position they want to take when they get in.

I do not understand that such a permission would be likely to be accorded. I do not understand that in the regular order it would be accorded. It certainly is a matter of discretion. It certainly cannot be a matter of right, as was claimed by Mr. Choate in his interruption of Mr. Thompson's remarks. The bill in the other part, at least the paper, the pleading, in the other part, is in the nature of a cross-bill. Well, of course a cross-bill, to be filed, even by a defendant, has to have the authority of the court. Your Honor has disposed of that, and I will take no more time to discuss it, except to comment upon it as indicating the anomalous character of this proceeding, the unusual thing that they should come in, and in stating reasons why they should ask to come in, accompany it with a jumble of a cross-bill, in which they seek affirmative relief against the trustees, without calling it a cross-bill, without permission of the court to file a cross-bill, or without dignifying that curious piece of literature (I will call it, for want of a better name) which comes in under the heading of a petition to intervene; that is, filing a cross-bill asking for affirmative relief, without any heading to it, or at least filing a lot of words which would indicate that they desire affirmative relief, without calling it a cross-bill, or without calling it anything else except a petition to intervene. The prayer of a petition to intervene one would naturally expect to be a prayer that they be permitted to become a party and file a particular pleading. But what is their prayer here? Their prayer is as if they were already intervening, as if they were already in, and that your Honor will proceed to construe the papers that they desire to have construed, and grant an order compelling the trustees, the plaintiffs, to account, and possibly removing them from their office. And they call that a petition to intervene! A petition to intervene, formed or framed in a way respectful to the court, would end with a prayer that they might be permitted to intervene. I think that I am justified in saying that the paper is an anomaly in pleading, unusual, and in a form unknown to our practice.

Now, may I point out, if your Honor

please, a reason which has not been touched upon or suggested as to why this permission should not be granted? I have pointed out the injunction which has been granted. Now, the fact is, as shown by the affidavit, to which I will refer in a moment, that the man who is the chairman of the committee, and who in his public statements has said that he is the man who is promoting this litigation, who has declared publicly in the prints, in the newspapers in New York, that he was a party to the litigation, is a man who has been doing things throughout the state of New York which, if done by the directors, would be clearly contempt of the order of this court.

In other words, ever since the day that this draft report was delivered to counsel for the directors that man has been going up and down the State of New York, calling meetings in Christian Science churches, getting himself appointed as chairman of the different committees, and doing what? Urging them to cancel their subscriptions to the periodicals of the Publishing Society—the Sentinel, the Journal and the Monitor. He has said, "Show to these trustees your disapproval. We urge you to send in your cancellations, telegraph them in." Why? To discourage these trustees, to injure their business, to break them down, to compel their resignations by extra-court action, all of it in violation of the injunction of this court.

And that man is the man, cooperating with a gentleman in New York, as appears from this affidavit, who is a subordinate of the same counsel, Smith, who is already fined for contempt of court, who has gone up and down that State seeking to destroy—what? Institutions created and sanctified by Mrs. Eddy herself, publications that she founded and inspired! That is what he has been doing.

We also state in our affidavit that the moment the unfavorable findings of the Master were made known to the directors, another subordinate of the same counsel, Smith, who had already been fined for contempt of court in violating this injunction, sent broadcast to all Smith's subordinate committees on publications, the suggestion that now the time had come to cancel their subscriptions to Mrs. Eddy's publications. And now their counsel come in here, the counsel of Martin Jackson, the very man who went and retained them, and say, "We want to intervene to take care of the interests of the Publishing Society, because so many cancellations are taking place, because their business is running behind." And he admittedly stands at this bar as counsel for the man who has lost no opportunity or occasion to misstate the position of these trustees, to create prejudice against them, to inspire litigation against them, and to destroy the publications of Mrs. Eddy.

That man was an employée of the Board of Directors just before he

commenced doing this; whether he is so now or not I do not know—an employée in the sense of receiving \$100 a month from them—and that is alleged in the affidavit. Whether he has ever terminated that relation we do not know. But he has said in New York, according to this affidavit, publicly this. They challenged his right to speak for the directors in urging cancellations of their subscriptions to the publications. They said "We do not believe that the directors want any such thing." And what was Jackson's reply? "I know they do; I have talked with them and I have come from them; they are under a broad injunction which prevents their speaking; I am not, and I can speak, and I know they want you to cancel."

Publicly! And that man wants to be admitted, under the name of Mrs. Hulin, as a party to this litigation. Why? Because if he came himself he knows that he would come under the jurisdiction of this court and its injunction.

Your Honor has not had opportunity to read the affidavit which I refer to and I will just state from it the public utterances of Jackson. This was given to the journals of New York City, and from the Times we get this. This is on page 4 of our affidavit:

"The Board of Directors are prevented from making their own defense by reason of a sweeping injunction obtained by the Board of Trustees of The Christian Science Publishing Society; therefore in their behalf our committee wishes to state"—assuming to the public in New York, and assuming before the churches of New York, to act in behalf of these directors, who cannot act for themselves because they are under injunction.

This was sent out to all the Christian Science churches that they could reach. In the same published statement in the New York Times is this. "This committee"—the one of which he is the chairman—"which now represents the entire Christian Science movement, has filed a petition of intervention in the Boston litigation, the aim of which is to gain legal recognition of the Manual of The Mother Church as the supreme and final law governing the Board of Directors of the Publishing Society, as well as every other branch of the movement."

Note this, if your Honor please: "This suit was begun in the name of Mrs. Emilie B. Hulin of Brooklyn, a First Member, and Martin F. Jackson of New York, chairman of this committee."

That statement, in the clipping from the New York Times, headed "Christian Science Suit," is signed by B. Palmer Lewis, Treasurer, and Martin F. Joulson (meaning Jackson), chairman, Christian Science delegates of New York City, New York, March 5, 1920.

Mr. Jackson, not being able to be

present—or perhaps he is present, I was told he was not this morning—files his affidavit, but he does not deny any of those things in his affidavit; he files an affidavit saying that he has not talked with the directors. He cannot file an affidavit denying that he has gone up and down the State of New York recommending things that should be done that would prevent the trustees having a fair adjudication of their case in court, which would coerce them in a way that this court has said they shall not be coerced. The fact that he has had scant success is a matter of little consequence. It is the purpose of the man who is engineering this litigation, who is admittedly Mr. Dawson's client.

There is a saying in equity that one who comes into equity must come with clean hands. This man would come with his hands soiled with the violation of the injunction that the court has granted in this very case, reeking with it, fresh from his attempt to escape the judgment of this court, and do "in behalf of the directors," as he says, what the directors cannot do for themselves because this court has told them they must not do it.

Little wonder that he desires to go forward under the good name of Mrs. Hulin! Little wonder that his name, after he had advertised in New York that he was to become a plaintiff, was left off the petition for intervention!

Now the reasons stated—and I will be very brief with them, if your Honor please—are inadequate. They say that the Master may rule—now say he has ruled—that the vote to give the directors sole power is an ineffectual vote. He has so ruled. Do they contend the contrary? They nowhere state that they do. They nowhere state that they do not acquiesce in the position of the directors. They say that the Master has ruled that the First Members are incapable of exercising any power because they have gone out of existence. The Master has so ruled. Do they deny that they have gone out of existence? They nowhere state it in the petition. They merely say that their interest may be affected. They do not say that if they came before this court they would contend differently from what the directors have contended. They say that he may rule, or has ruled, that the power of removal is lost. But they do not say or assert that the power of removal is not lost. They state no fact indicating that the power of removal by the directors or by the First Members has not passed out of existence. They offer no pleading indicating a contention to that effect. They merely say that he has ruled so and that it may affect their rights.

What rights? If they are out of existence as First Members it cannot affect their rights in that respect. If they are merely members of The Mother Church they are adequately represented, as I have already suggested to your Honor.

They say that he may rule, or his findings and rulings may come, and they have come, to say that the sole power to remove will be in the court. Why shouldn't it? If these trustees are recreant to the trust of which The Mother Church is the beneficiary, then the directors may take action alleging that they have not performed the Trust according to its terms, and they would then be removed by the Court. If they did not handle the charitable trust right, so that the great public were losing the benefit of the charitable trust, the Attorney-general could and would intervene, and the court at his instance would regulate the trust, remove the trustees. Is that a calamity?

We cite in our brief what has been said on this subject by the present Chief Justice of the Supreme Judicial Court when a certain aspect of the litigation was before him several years ago.

Then they say that it will prevent other suits being brought. We say that it would not prevent other suits being brought, if you invited this one person to come in. Forty or fifty may come in as First Members, and your Honor would find difficulty in stating why she should come in and state her views and others should not; and many thousands might come in as members of The Mother Church. Nothing could cultivate and propagate litigation confined to this proceeding more than that.

The orderly procedure your Honor has already hinted at, or suggested. If there are reasons why these trustees should not hold their offices the courts are open to show those reasons in independent suits. This suit is to determine whether the directors had authority to remove them, attempted to remove them in good faith, or removed them illegally, arbitrarily and capriciously.

Those are the sole questions here, except that question which lies in the background of the whole thing, and that is as to whether the injunctions of this court, its mandatory orders, are to be respected heartily, in good faith, and with no reservations, or whether there are persons beyond the reach of the power of this court who by indirection will accomplish the defeat of its decrees.

#### AFFIDAVIT SETTING FORTH FACTS RELIED UPON BY THE PLAINTIFFS IN OPPOSING MOTION FOR INTERVENTION.

I, David B. Ogden, one of the plaintiffs in the above entitled cause, hereby depose and state as follows:

Prior to December 20th, or just prior thereto, said Jackson was in Boston, in conference with the defendants other than Dittemore, and with one Clifford P. Smith acting as personal counsel for the defendants other than Dittemore, and who also held the office of General Committee on Publications, by appointment of the

Board of Directors, and, as such, an employee of said Board.

For a long time prior to said December 20th one Louis L. Harney had been employed by said Clifford P. Smith as confidential secretary.

On said December 20th the Master in the above entitled cause placed in the hands of counsel his draft report which contained findings sustaining practically all the plaintiffs' contentions, and thereupon, immediately, said Jackson, in accordance with what the deponent believes to have been a plan preconceived and intended for execution in case of adverse findings by the Master, undertook to spread propaganda among the principal Christian Science Churches against the plaintiffs and against their contentions, and by such propaganda to do for and in behalf of the defendant Directors the things which, according to the averments of the bill in this cause, the Directors themselves planned and intended to do and perform, the performance of which on their part having been prevented by the temporary injunction duly issued and now outstanding.

Said Harney, a participant in said plan, as the deponent is informed and believes, immediately upon being informed of the findings in said report adverse to the Directors, sent out telegrams to publication committees, branches, or subordinates of said Smith, throughout the country, suggesting that by reason of the findings adverse to the Directors, which the Master's report was said to contain, Christian Scientists should be urged to cancel their subscriptions to the periodicals of the Christian Science Publishing Society issued by the plaintiffs.

At or about said date, said Jackson at a meeting of one of the Christian Science Churches in New York City, stated that the Directors of the Mother Church being under injunction, could not themselves talk, but that he was under no injunction and could talk, and in said address made various charges against the plaintiffs which were entirely without foundation.

Since said date, said Jackson has been continuously and busily engaged in calling and attending meetings of the members of different Christian Science Churches in the State of New York, urging the passage of resolutions by different churches adverse to the contentions of the plaintiffs and to the findings of the Master's report in their favor. Said Jackson in the course of said speeches has publicly made many false charges against the plaintiffs and their management of the Publishing Society.

In these proceedings said Jackson has been aided and abetted by one Gilmore, the New York Publication Committee, so called, a subordinate of said Smith, and under the direct authority of said Smith, who, in turn,

is an employee and under the direct authority of the Board of Directors.

Said Jackson and said Gilmore have both repeatedly and insistently urged upon the members of the different churches the cancellation of subscriptions to the periodicals of the Publishing Society and the institution by the churches of legal proceedings to aid defendants in this action in their controversy with the plaintiffs.

Said Jackson, at said meetings, when his authority to speak for the Directors has been challenged, has repeatedly stated that he was acting in accordance with what he knew to be the wishes of the Directors; that while the Directors could not by reason of the injunction of this Court say, themselves, what they desired to have done, he, Jackson, who was not under injunction, knew their wishes and spoke with their authority.

In the course of this undertaking, said Jackson has caused to be created several committees, so-called, of many of which he has caused himself to be selected as the chairman. As such chairman, said Jackson has repeatedly and continuously urged upon Christian Scientists not only in New York but throughout the United States, to discontinue their subscriptions to publications of the Publishing Society, basing such request upon the claim that the plaintiffs were wrong in the contentions presented in this suit, and that loyal Christian Scientists everywhere should, in effect, attempt to defeat the judgment that this Honorable Court might render, by using such propaganda to force the plaintiffs to resign their positions as Trustees.

The authority of said Jackson to speak for the defendant Directors having been challenged, said Jackson, on the 5th day of March current, caused to be published in the newspapers of New York City a statement containing among other things the following: "The Board of Directors are prevented from speaking in their own defense by reason of a sweeping injunction obtained by the Board of Trustees of the Christian Science Publishing Society.

Therefore, in their behalf, our committee wishes to state . . ." etc.

Said Jackson has also been urging said churches to consult counsel and institute litigation in order to support the Directors as against the Trustees. The deponent is informed and believes and therefore states that the motion and petition for intervention which have been filed in this Court in the name of Emilie B. Hulin is really an intervention which is sought by said Jackson and his associates, acting for and in behalf of the defendant Directors, and intended solely to support said Directors' contentions in this litigation, and that said petition is filed with the purpose either of delaying final judgment in the above entitled cause or securing a re-hearing of issues that have already

been decided in favor of the plaintiffs.

In the announcement in the New York papers hereinabove referred to, a statement was made with reference to this petition for intervention in the following words:

"This committee, which now represents the entire Christian Science movement, has filed a petition of intervention in the Boston litigation, the aim of which is to gain legal recognition of the Manual of the Mother Church as the supreme and final law governing the Board of Trustees of the Publishing Society as well as every other branch of the movement.

This suit was begun in the name of Mrs. Emilie B. Hulin of Brooklyn, a first member, and Martin F. Jackson of New York, Chairman of this committee."

I further depose and say as follows:

The bill in equity in this cause was filed on March 25th 1919. Hearings before the Master began on June 3rd, 1919, and continued, occupying in all thirty-four days, until argument, September 6th to 12th, inclusive. After the filing of the draft report on December 20th, to wit., from January 10th to February 19th, 1920, hearings were had upon the draft report on thirteen different days. Thereafter, on February 27th, a hearing was had before this Court (Mr. Justice Crosby) on a motion to withhold the filing of the report; which motion was denied. During the hearings before the Master all the evidence and arguments of counsel were published in the Christian Science Monitor from day to day. During all this time the petitioner was a subscriber to the Christian Science Monitor and receiving the daily publication containing its account of the evidence taken. The petitioner was aware of the litigation and followed the same with care, as shown by communications from her during said period.

And the deponent further states that counsel of record for the petitioner were, at their request, supplied with a copy of the draft report shortly after it was delivered to counsel on December 20th, 1919, at which time, so the deponent believes, they had already been consulted and employed at the instance of said Jackson, and that said Jackson, the real petitioner, and said Hulin, therefore, almost from said December 20th, had full knowledge of the contents of the Master's report and knowledge of the various hearings which were held, at which defendants' counsel sought to have some of said findings set aside or modified.

(Signed) DAVID B. OGDEN.

**ARGUMENT BY JOHN L. BATES, Esq.**

Mr. BATES. May I take your Honor's attention just for a few moments? As I have previously intimated, it has not appeared to my

clients, who are the directors of the Church, that in a case where the membership of the Church think their rights may be affected as members, that they ought to put themselves in a position of antagonism to their being heard by the court as to those contentions. We think in this position we are absolutely right.

The statement has been made that Mr. Krauthoff, who was formerly of counsel for the directors and is no longer of counsel, is the only Christian Scientist among the counsel for the directors. I do not suppose that the statement would have any special bearing upon this case, your Honor, but my brothers seem to think it has. I think the statement was made by Mr. Thompson and substantially reiterated by Mr. Whipple. The facts are, if it be material, that, of the counsel for the directors, two of them associated in my office as partners have been Christian Scientists for many years. One of them, Mr. Abbott, to whom reference was made, was a First Member and is still, if there are any such, and has held high positions in the Church. An associate counsel with us was one to whom Mr. Whipple has referred, Clifford P. Smith, formerly a judge of a high court in Iowa, for many years associated with the Christian Science church, and one who has the respect of practically all of its membership over the world.

So that instead of the directors being left without counsel who know what Christian Scientists believe, and what their contentions are, we are fortunate in that we have three, two of whom were First Members, one, and I think both, by Mrs. Eddy's own request, who have been associated with the Church for a great many years.

On the other hand, the counsel for Mr. Dittmore, gathered from Boston and from the granite hills of New Hampshire, have not that distinction; while the counsel for the trustees have never included among their number a Christian Scientist. They have come, not only from New England, but from New York and Chicago, to sustain the hands of these trustees, but there is no Christian Scientist to be found among them.

Now I wish to state that it is quite possible that there may be a difference of opinion as to the findings of the Master. It has certainly appeared here that if those things which the counsel for the petitioners think are in that report are there, it is contrary to what certain other counsel think. If, however, their view is correct, then it may be that the members' rights are affected.

I have an abiding faith that the Supreme Court of Massachusetts is not going to confirm this Master's report; that the evils which are apprehended are not going to take place; that it is going to be found that these directors were acting within their

rights. And those questions of law we expect to have the opportunity, as we shall have, of arguing before your Honor and your associates.

But it does appear from the statement of the petitioners that there is certain evidence that was not offered in regard to the organization of this Church at the beginning. Brother Thompson I think has misunderstood the situation, for he has stated that that was a matter of record which was before the Master. We did put all the records before the Master that we knew of. I do not understand that the evidence that is referred to by the petitioners—I have not had an opportunity to see the affidavit, but as I am informed the evidence which they propose to offer is evidence which has been found since, which has been found among the papers of the former, and I think the first, clerk of this Church, and also certain other evidence found among the papers of another one of the original directors of the Church. It is evidence that that was not open to us, and has not as yet come to us.

Now this brings me to a final—not exactly a final—suggestion. I would not weary your Honor by attempting to state the position of the directors, for that is not a thing for me to do at this time. But if any statement has been made which is absolutely incorrect, I assume that I ought to correct it in passing.

Mr. Whipple has stated, inadvertently no doubt, that the Master found that there was a scheme and plan on the part of the directors to get rid of these trustees. The Master's finding is not that. The Master says:

"It was the intent of the defendants who adopted the resolution for Rowlands' removal so to use their influence and power as Directors as to induce the plaintiffs either to resign or comply with their demands;"

Absolutely true. We argued that that was the situation, and we plead it in our answer. We stated that the directors had the right to remove, and having that right to remove they first asked the trustees to resign. They believed they had the right, and believing they had the right they acted under it. And it is for the Court to say whether or not they did have it. But there was no scheme, no plan. They believed they had the authority, and there was no need for any scheme or plan. What the Master says next is: "but I do not find an intent on their part, as alleged in par. 17 of the Bill, to use for that purpose the powers of church discipline belonging to them according to the By-Laws."

In other words, they used the authority which they believed they had. That was all that they used, and it was all that was necessary under the circumstances.

Now, there has been an affidavit filed that reflects in a way upon my clients,—the affidavit filed by Mr. Ogden,—and of which we had no

notice. It was handed to us after the hearing had opened here today. It is an affidavit which implies that the directors, notwithstanding the injunction of this Court, have been engaged in propaganda in order to hurt the Publishing Society and its publications.

If your Honor attaches any significance to that affidavit I shall ask your Honor to give us the opportunity of filing a proper affidavit in reply. My clients have not by any conscious effort in any way violated the injunction, either in its spirit or in its letter.

Mr. WHIPPLE. Governor, will you—

Mr. BATES. We ought not to be held responsible—

Mr. WHIPPLE. Will you allow the interruption just a moment? Will you state publicly in their behalf that they advise against the propaganda, that they do not approve it, that they require the Church members to subscribe for the publications—and not against them?

The COURT. I fail to see how this bears upon the motion to intervene. We are now getting on to one of the side issues which I trusted we would escape. I do not mean to go into that today. I do not propose to go into that controversy now and open it up.

Mr. BATES. No, your Honor. This is an affidavit that has been filed by Mr. Whipple today in this case, in which he makes this reflection upon my clients. I wish to state that the affidavit is evidently from its contents based upon hearsay, and it is not true.

In reference to the statement that Mr. Jackson made—

The COURT. I just want to escape going into this field, Governor. I am afraid if you open it up it is going to let others enter it. I am not going to consider this question of this propaganda in regard to this motion; I do not think it is open; I do not see its relevancy.

Mr. BATES. Then if your Honor takes that position it is not necessary for me to make any reply to it, and I am not going to make any reply.

It may possibly interest your Honor to know one further matter in connection with this case. It was the request of Senator Works of California to be heard as a friend of the Court by filing a brief. He sent his brief to brother Whipple, and brother Whipple at that time not having the assurance which he now has thought it was a delightful thing to have it filed and he urged it before the Master. The Master said he would not file it unless the Court so directed. Judge Loring heard the matter, and it is not a precedent for this. That was a request to file a brief. I made a statement then that if he wished to appear and had any right to appear it should be by intervention. And Mr. Justice Loring gave that as his opinion: that if he wished to appear he should offer a petition to intervene. So the question of whether or not a member should intervene has not come before the Court at this stage.

The COURT. Perhaps I ought to supplement what I said by adding that if after examining the affidavit to which you refer you deem it desirable to file an affidavit in the interests of your clients you will have opportunity to do it. I should like to have anything like that tomorrow, as I wish to decide it.

Mr. BATES. Well, if your Honor thinks that it does not have anything to do with this petition—

The COURT. It does not at this time seem so to me, but I have not of course had an opportunity to examine the affidavit. I say if you find in the affidavit anything that reflects on your clients, anything that calls for reply on behalf of the directors, you are at liberty to file an affidavit.

Mr. BATES. When your Honor interrupted me by saying that you were not going to consider it, I was about to make a very brief reply to what Mr. Whipple said in regard to the directors' relation to Mr. Jackson.

Mr. Jackson was not an employee of the directors, nor was he an employee of Judge Smith. He was a chaplain in the United States Army, recommended by the Board of Directors at the request of the Government, and he went across and was forty-two days under fire as a chaplain in the United States Army. Like all other chaplains of the Christian Science faith he did receive, while in the service only, extra remuneration from the War Relief Fund of the Christian Science Church. That ceased long ago, and since then he has not been an employee of Judge Smith or of the directors.

Mr. THOMPSON. If your Honor will excuse me just a moment, I think I am entitled to make this inquiry. Governor Bates just now discriminated between the petition of Senator Works and this petition. I should like to inquire whether in making that discrimination in favor of this petition he was arguing in favor of this petition or was not arguing in favor of this petition.

The COURT. I do not think we will have any cross-examination going on at this time.

Is there anything further to be heard upon this motion?

Mr. DAWSON. Your Honor, I think perhaps we ought to reply to some of the comments of learned counsel.

The COURT. Then I assume that I have heard all that is to be said in opposition to the motion, and you now desire to close in behalf of it.

Mr. DAWSON. That is the purpose.

The COURT. Very well.

ARGUMENT OF MILES M. DAWSON, ESQ., in Rebuttal.

Preliminary to any other statement, in view of the fact that this affidavit filed by the plaintiffs is just at this moment present in your Honor's mind, I think I should call your attention to one part of the affidavit which might

have some bearing—I think it is the only part—upon the motion before you. That is the part in which a quotation is made from the New York Times of March 5th. That quotation appears to imply, given as it is, that Mr. Jackson, the Chairman of the Committee of the New York Churches, whose affidavit is before you relative to how the committee was formed, elected, and so forth, claimed to be acting in making a certain statement for the Board of Directors. The quotation as given in the affidavit reads as follows:

“The Board of Directors are prevented from speaking in their own defence by reason of a sweeping injunction obtained by the Board of Trustees of the Christian Science Publishing Society.”

Then a new paragraph:

“Therefore in their behalf our committee wish to state”

and then stars, indicating that there is more in that sentence. Your Honor of course well recognizes that that is a known way of presenting matters in affidavits or briefs or argument, in indicating to the Court that the remainder of the passage is not germane. Now I want to finish that sentence for your Honor out of the clipping itself:

“Therefore in their behalf our committee wishes to state that we are daily receiving communications from churches and societies throughout the world assuring us of their unqualified loyalty to the Manual of the Mother Church and the Board of Directors.”

This indicates that the only thing they claim to speak on anybody's behalf upon is that.

In addition, the paragraph and sentence immediately preceding this quotation is also omitted. That reads as follows:

“Owing to erroneous reports”—  
this being a letter to the Times—

“that are being offered to the press, aiming to discredit the Board of Directors of the Mother Church in Boston, this committee, appointed to represent the Christian Science Churches and societies of New York state, protest.”

Bearing in mind that strict grammar would call for the use of “its” behalf instead of “their” behalf—of the Board, although of course that is often interchanged, your Honor will readily see that the statement of Mr. Jackson to me when this was called to my attention on Monday of this week, yesterday, that it was intended to speak in behalf of those only for whom he had claimed in the first paragraph to be acting in behalf of, is very well borne out. And the way in which the whole thing appears in the affidavit is therefore entirely misleading.

With the Court's permission I will leave the clipping here for its examination.

The argument of Mr. Krauthoff was that according to the Manual the

Board of Directors were here to represent the Church. That is admitted. Had the Master ruled that the Manual was in full force, and that the directors were officers of this Church, instead of ruling exactly to the contrary, we should not be here.

Mrs. Eddy's statement in the Manual, or rather in the preface to the Manual, that the Church was organized on September 23, 1892, the new Church, a voluntary, unincorporated association, is of course an expression of a legal opinion upon her part as to when the various acts leading up to the organization of this Church became an organization.

I am reminded by General Streeter that also the word was “reorganization” not “organization” at that time in that passage.

Now, in addition, your Honor, Mrs. Eddy was very careful many times in her lifetime, and in her writings, to make it very plain that she did not claim to have legal knowledge or training or could say what legal determination was. And at that very time and in connection with these transactions, in letters which we are prepared to produce, and which have not been produced, she expressed that same sentiment. In one of the letters which Mr. Johnson refers to, and which has not been produced, which was written to his father and found as a result of our asking him to search for it, is one sentence in which Mrs. Eddy made use of the following statement: “I do not wish you to charter this new Church.” And she gave her reasons, namely, that she had been advised that the Board of Directors could become a corporation. She then proceeded further in the letter: “Now go ahead and incorporate.” That was a thing which naturally made Mr. Johnson feel somewhat uneasy as to its result, and he wrote a letter back stating what they were going to do. He got no instructions not to do it, and the meeting of August 29 was had as had been provided.

A mistake on the part even of the revered Founder and Leader of this Church, as to the time when a reorganization or the formation of a new Church by means of a voluntary unincorporated association took place as a matter of law, as applied to the facts, would certainly not be controlling upon the Court and would not be controlling upon the members of this Church. Nor would the members of this Church, admonished by her as they have been not to look to her for guidance in regard to the legal construction of language, so consider it.

In connection with Mr. Krauthoff's remarks, he spoke of being the only Christian Scientist among the counsel. That has already been dealt with as regards several of the counsel. I may state in addition that one member of my firm is likewise a Christian Scientist.

Mr. KRAUTHOFF. Excuse me, I did not say I was the only Christian

Scientist among the counsel. I said, among those who had addressed the Court today.

Mr. DAWSON. Oh, I beg your pardon. I am corrected by brother Krauthoff.

The objection was also brought by Mr. Krauthoff that neither the plaintiffs nor the defendants objected to the holding that there are no First Members. But you will remember, your Honor, that we are here asking for permission to intervene and introduce new evidence; and one reason we are here asking for permission to intervene and to introduce new evidence is because we have asserted that our rights are not adequately represented, and we have asserted in our amended petition that they are not adequately represented because of rulings of the Master which deprive these very persons of the power and authority to represent us.

The fact that there has been no exception to that, in view of the further fact that the Court was proceeding, if it approved the Master's findings, to hold that this Church had lost all power to remove, is an additional reason why we should be permitted to intervene, not one why we should be refused permission to intervene. And we should be permitted to intervene in such manner that this report goes back and new evidence is introduced and opportunity given to us to except.

In Mr. Krauthoff's remarks he also brought out the point that in his opinion the only question was the construction of the Deed of Trust regarding the power of removal, and of course the additional question as to whether that power was properly exercised. If that had remained the only question we have already said that we should not be here.

It did not remain the only question, but instead all sorts of questions affecting the polity of this Church were brought here and are here to be decided.

Mr. Thompson's objection to our new motion was that it did not state on whose behalf we appear. Our new motion was merely a motion to be permitted to amend our intervening petition; and we offered that motion merely for the reason that when the papers were filed the Master's report had not been filed, and consequently an amendment ought to be made in order to bring them to this date. Our original motion asking permission to intervene stands, and we have not asked that that be either withdrawn or amended.

Mr. THOMPSON. That states that you intervene as members, not First Members.

Mr. DAWSON. The petition, however, makes it clear that we intervene as First Members, as members, and as persons interested in Christian Science. In other words, we intervene as representing the mass of people, both First

Members and others, who are here interested, considering that there is absolutely no line of demarkation between their various interests, and that they are common.

The only change in that regard in our amended petition is on page 3, the insertion of the words, "according to the Master's ruling as to the adequacy of our previous representations." It is true that Mr. Johnson was examined, but he was examined only as to special things. It is true that he had the diary of his father in court, but in regard to those matters he was examined only as to a few things, happening within a few days of the time when it was supposed by these various persons that the church was organized. His further search of these matters was made at our request, and for the reason that it appeared clear to counsel for this intervenor that there must have been many things which had taken place before that time, and at or about that time, that would throw great light on these conditions. And they do. They show that there was a meeting held on August 29th, two days before. They show that these 12 people were thoroughly familiar with this Deed of Trust that was to be made, which had not yet been made. They show that those people agreed on these four for directors. They show that their board of directors held a meeting two days before this Deed of Trust. They show in addition, your Honor, a usage already thoroughly established that the board of directors of the church of which this was to become the successor by reorganization, that the board of directors, etc., should hold their positions, with power to replace members who had passed out of the board. They show even that such a board was to be enforced and compelled by means of a deed of trust, and was accepted by the church under those circumstances. None of those things were brought out. It was also asserted that every attorney, and the entire board, knew of this evidence, but Mr. Johnson himself did not know of it. It is also stated that there were records that were there, but they are *not* records. The new evidence which we wish to introduce consists of letters, recollections of people who were there present, and entries in this diary since found, and other papers.

The point is made that the court here cannot try the question of doctrine; but I wonder how the court could escape having to try a question of doctrine if it only has the right to remove under a certain provision of this deed, which is to the effect that the man must continue a true, loyal Christian Scientist, and true to the doctrines as set forth by Mrs. Eddy in her book.

We come here, your Honor, primarily, we think, as indispensable parties. Our rights both as members of this church and our rights as voting members of this church, held by the

Master in his report to constitute the church itself, are here imperiled. There was no one here to represent the First Members, no one claiming to represent them. There was no one here representing the church, because the Master has held that the directors are not officers of this church.

Now, the Attorney General may become a party in this suit. It may be that he is a necessary party. But certainly this church by its members, who alone can represent it, is a necessary party.

Reference is made to the laches of the intervenors. I am not going to waste more time on that, but will merely call your Honor's attention to the fact that the condition did not arise where this intervention would have been tolerated until it was clear that the Master's report was going to hold that the First Members and the members themselves were not here represented.

Now, the point is made that had these parties been originally joined, a demurrer would have lain. I think that it would have, because apparently both parties to this litigation were at that time agreed that the directors did represent this church; but as the litigation proceeded counsel for the plaintiffs continually dwelt upon the evidence—unfortunately the evidence is not before your Honor—it was not permitted to be sent to the court by reference—but they continually dwelt upon the proposition that these directors were trustee directors, and not directors of this church, which is the opinion adopted by the Master. If the action disbanding the First Members is not valid, then does it not leave, and must it not leave, the First Members where they were—not because they preferred it, as has been here suggested, because they did not—they preferred to stand by their act as they understood it—but because that is their legal status if the act was void?

This brings me to Mr. Whipple's reply. It was his statement, I find on my notes, that Mr. Krauthoff was the only member of the counsel who was a Christian Scientist, and of course he had not the knowledge of that matter that Mr. Krauthoff himself would have; but Mr. Whipple dwelt upon that point as if it was a very valuable point. Now, Mr. Krauthoff could appear in this litigation only as an attorney, as an arm of this court, and as such, not as a witness, not as a person whose addresses to the court could be more valuable than those of the other attorneys if the other attorneys represented to the court the facts and the law correctly. It was somewhat interesting to see the sudden mutual esteem which some of the counsel who had been so adverse to one another formed for one another, and there is a sudden union against us.

Now, in regard to propaganda, the

situation; of course, your Honor, is that the injunction does not run against the whole Christian-Science membership, but only against the board of directors, their agents and representatives. None of our people are such. Some of them may engage in propaganda. I need not tell your Honor that in times such as these, the efforts of counsel, so far as they can be effective, are always, continually, along the line of holding people back, instead of putting them forward; and that I think is true of my intervenor, and I think that it is true in general of those who are with us.

There is a ruling on page 16 in regard to this Manual which the counsel for the plaintiffs has referred to in such a manner as to imply that we in intervening have taken a position strongly adverse to them, and thereby become guilty of some ecclesiastical offense, and particularly that our intervenor has done so. I wonder if the trustees excepted to that ruling? I think that it is safe to say—I have not seen their exceptions—I think that it is safe to say that they did not. Mr. Jackson has not appeared here as an intervenor. He was not a First Member, and he would not have been a suitable person on that account to appear in all the matters in which we are bringing to the attention of this court.

The issues as to whether this removal is good, provided the power is maintained in the directors or in the First Members together with the directors, we have already said, your Honor, we do not regard as our contest. That is a contest between the men who now compose that board and the men who compose the board of trustees.

The intimation was made that our papers were filed the same day that Judge Dodge was to report. If this is true, it was a pure accident. The day was not known to me, and I think was not known to my associate counsel. We were preparing the papers on Friday and Saturday, and they were filed on Monday, because they could not be got ready on Saturday afternoon. Had we known, certainly, that the Master's report would be filed on Monday, I know from conferences that we had about the general matter that we would have waited so that we would not have to amend our papers later, as we have now done.

Our intervenor has been accused, your Honor, of being the first one to attack this Manual. Unfortunately, the evidence again is not before the court, but this comes from the lips of the counsel of the plaintiffs, who defied the Manual from the start.

If the First Members still exist, the argument of counsel was that they are the governing body of the church, and therefore should appear here as a body, after having held a meeting and adopted resolutions and employed counsel of their own. The Master holds in his report, your Honor, that



they are not the governing body, but that they are the voting members who composed the church, and are not officers in any sense of this church. And that is in direct contention between the parties here, that the Master so holds.

In regard to Senator Works' request, your Honor will recognize that the other member of the Supreme Judicial Court before whom that came held that the proper course for him was to apply to intervene, just as we have done.

The statement was made by counsel for the plaintiffs that Mrs. Hulin's interests were adequately represented here already. Certainly not by the board of directors, who are not her officers, and who throughout this contention, adopted by the court, have been called continually "trustee directors," with limited power—surely not by his clients the board of trustees, who had limited powers under another Trust Deed.

Reference has been made to the somewhat unusual character of this proceeding. As regards the regularity of the papers, I am not a Massachusetts lawyer, I am not familiar with any special rules of your court. I know I have very thoroughly adequate counsel in this state who understand these matters. Personally we have come in here and merely asked for permission to intervene. Our intervening papers, in the form of pleadings, would naturally, I take it, follow those rules.

And that brings me to the close, which is, that we are here, your Honor, on two bases.—First, alleging our independent right to intervene because under the rulings of the Master this church is not here represented at all, because the First Members have not been here represented and the act which they took to transfer their powers to the directors has here been challenged and has here been adjudicated against its validity, and at the same time, notwithstanding its so being adjudicated against its validity, which they are prepared to support, instead of oppose, they are treated as if it was valid in the matter of depriving them of their existence, and thereby crippling this church all through this Deed of Trust in three important particulars which are now before you. We wish to appear, your Honor, before the Court and before the Master as a party defendant. We have so stated in our brief, and our pleadings will be so drawn if we are permitted to intervene. We wish to defend our act in transferring our powers to this board. If that act does not stand, notwithstanding our defense, we want to defend our right to assert the power which it is there held that we have not successfully transferred. We think also that our right to intervene should be permitted by the court as representatives of this church at large, which is otherwise not here represented, and which,

under the Master's rulings, as I have stated, cannot be represented really by its board of directors, cannot be represented by its First Members under his ruling, and *must* be represented by a dumb, voiceless church, incapable of voting even, and therefore must come in in the regular way through an intervenor acting for himself and for others similarly situated.

I thank your Honor for your patience.

Mr. THOMPSON. Will you allow me just a moment in which to say a word? It has been said here—and I think that I ought to correct one mistake—it has been said here that the Master has held that the directors are not officers. On the contrary, he has held in the most emphatic terms and repeatedly that they are officers. He held that they were not before 1908, but that they became so in 1908, and have been ever since. Therefore all arguments based on that hypothesis are based on sophistical and unfounded premises.

Mr. KRAUTHOFF. If your Honor please, I want to make one statement only. I cannot allow this hearing to close with the statement that the church of which I am a member is either dumb or voiceless. It lives and has its being through its board of directors.

The COURT. I ought to say, Mr. Krauthoff, that, if you desire to file something in the way of a motion, which I suspended at the beginning, you are entirely at liberty to do so.

Mr. KRAUTHOFF. I would like the privilege of doing that.

The COURT. Very well. Now, have I all the exhibits here? I have the motion, and the affidavits of Martin F. Jackson, William L. Johnson, and B. Palmer Lewis. Are there any other affidavits?

Mr. THOMPSON. Have you Mr. Dittmore's affidavit, sir? Have you the affidavit of Mr. Dittmore?

The COURT. I have a brief on his behalf.

Mr. THOMPSON. No, an affidavit.

The COURT. Oh, that is the one that was filed yesterday. That is with the papers. I was referring to the others, that have been presented today. Are there any other affidavits filed, or to be filed?

Mr. WHIPPLE. If your Honor please, if it is necessary to sustain our statement, that everything that has been now suggested or presented with regard to the former church was accessible and was before the court, we should like the opportunity to file an affidavit, or take Mr. Withington's statement—

The COURT. I think that you had better file it, otherwise I do not know how I can find it, except by going over the record.

Mr. WHIPPLE. Very well.

The COURT. For the purposes of this motion, it would be a simple matter to put that in the form of an affidavit and present it tomorrow.

Mr. WHIPPLE. We will do it tonight, and present it.

Mr. CHOATE. May we have an opportunity to file an affidavit in reply to that?

The COURT. This, as I understand it, is a reply to the affidavit filed in behalf of the proposed intervenor.

Mr. CHOATE. Of course the statement has been made by Mr. Thompson and Mr. Whipple that this evidence was before the Master, and that is evidently in conflict with the statement made by Mr. Dawson, who has investigated the matter, to the effect that Mr. Johnson did not know of the existence of these facts at the time that he was before the Master.

The COURT. So far as that particular part of the affidavit is concerned, if it calls for an answer, you may file one, but I am not going to have a criss-cross of affidavits, or counter-affidavits, filed in this matter. This affidavit is to meet one filed on behalf of your client, and except so far as it introduces affirmative new matter, it is not to be open to contradiction: so far as it does, you may meet it.

Mr. WHIPPLE. If your Honor please, there are certain things which are entirely inconsequential, that Mr. Johnson now for the first time brings out; but the really essential things, the things that really amount to anything, that Mr. Johnson suggested, we think should be met.

The COURT. We will have that done in the form of affidavits. Now, in addition to the affidavits, I have here a somewhat voluminous brief of brother Thompson on behalf of Dittmore. While I do not think that there is very much law involved, I shall be pleased to examine it. There is also one for Mr. Whipple.

Mr. CHOATE. We ask leave to submit a brief, if your Honor please.

The COURT. That exhausts the literature that I must pass on for the purposes of this motion, I hope.

Mr. KRAUTHOFF. May I leave a memorandum for you in the morning, if your Honor please?

The COURT. Oh, certainly. May I ask you, Mr. Krauthoff, to do that, if possible, tomorrow morning?

Mr. KRAUTHOFF. I will do it by ten o'clock tomorrow.

The COURT. Because I want to take this matter up as soon as I have finished with the list.

I think that I ought to return this copy of the pleadings, because there are some marks on it, memoranda which you may want for your own use [passing a document to the clerk].

Mr. WHIPPLE. We will send your Honor a clean copy.

The COURT. Well, I want to thank the counsel for coming as near as they did to finishing in the time stated. It is much nearer than I expected.

[Adjourned.]

Publisher's Note—The above is a verbatim report, with no corrections made by us in the stenographic court report supplied to us.

# Arguments on Exceptions

BOSTON, Massachusetts — Exceptions to the Master's Report in the Equity case of Eustace et al. vs. Dickey et al. pending in the Supreme Judicial Court of Massachusetts were filed and arguments on request of counsel before the court were heard March 25, 1920.

## COMMONWEALTH OF MASSACHUSETTS

### SUPREME JUDICIAL COURT

SUFFOLK, ss.                    IN EQUITY.  
EUSTACE ET AL. v. DICKEY ET AL.  
BEFORE MR. JUSTICE DeCOURCY

Boston, March 25, 1920.

MR. WITHINGTON: In the case of Eustace v. Dickey, the exceptions having been filed this morning in accordance with your Honor's suggestion last Friday, we would like to make application to have it set down for a hearing at the end of the list to-morrow.

THE COURT: Isn't that a little premature—before I pass upon the pending motion?

MR. WITHINGTON: I confess, in view of that fact there are difficulties which arise, and the reason I made this application was because at that time the petition for intervention was pending when your Honor suggested nevertheless that we might make our application.

THE COURT: I thought if the parties were anxious to bring this thing to a head, I would expedite matters all I could. Since that time I have not only had a whole day upon which there was argument, but have had a voluminous amount of affidavits and briefs which I have been working on until pretty near midnight for two nights, and last night three more came in with a new petition and brief which I have not as yet fully examined. Now of course I have got to determine the question of intervention. It has been physically impossible to do it with the court engaged here all the interim in another case. If the parties are all willing to do it, as far as I am personally concerned I would be content to do it, but suppose I come to the conclusion that this motion, this petition for intervention should be allowed in whole or in part, how would that leave the hearing on the master's report, so far as the new parties are concerned?

MR. WITHINGTON: I think that would depend entirely on the nature of your finding on the petition for intervention. If they were to be allowed, or permitted to come in and argue, or come in and introduce any

evidence, of course you could not very well set down this hearing without giving them opportunity further to present the things they care to. I have been informed that Governor Bates intends to present a motion to recommit to the master. We are anxious to have such motions as are likely to be presented, presented before the time of the hearing on the exceptions and formulated so we know where we stand, so we can have one hearing at one time, if your Honor could give us the time.

THE COURT: I cannot give you any time after this week. Next week is the Full Court consultation. With the possibilities of interminable litigation, to judge by the past, I do not think I ought to undertake to carry it beyond my session. One of my associates has tried that recently, and I hardly think he will repeat it.

MR. THOMPSON: The thought occurred to me that instead of its being an obstacle to the hearing on the exceptions that the petition for intervention is pending, it might be very conducive to the ends of justice to have the decision on the petition for intervention postponed until after your Honor has before you the exceptions. My impression is that your Honor would derive some light on the petition for intervention upon a perusal of these exceptions. I suggest it is all the more reason for accelerating this matter. I urge your Honor to put it down at the earliest possible moment. I think your Honor will be able to decide this matter much more justly if you have these exceptions before you.

THE COURT: Do you think I ought to take up the question of the exceptions when they haven't been argued at all?

MR. THOMPSON: What Mr. Withington is hoping to put down for hearing is the validity of 118 exceptions filed by Governor Bates based upon objections—perhaps not 118, about 100. Some of them are of a character which throws a great deal of light on the degree to which the matters that come before your Honor on the petition to intervene are really the work of novices or not novices. In as much as Governor Bates appeared on the petition to intervene and made remarks which although ostensibly neutral, as he called them, as I got them they were in favor of intervention and he ought not to complain and cannot complain if his entire attitude were disclosed as it would be and ought to be by a hearing on this matter of the exceptions to the master's report. I am very anxious that the exceptions should be disposed of for the reason that I am

anxious, as I have stated to your Honor, to have the petition for intervention dismissed. It is greatly delaying the case and impeding the course of justice in this case. I think even if your Honor should grant that petition, as I hope you will not do, that wouldn't be any reason for not taking up the exceptions.

THE COURT: I don't think I ought to take up the exceptions until I dispose of that motion. I don't think I ought to determine that motion in the light of the exceptions. At the hearing when the arguments were made the exceptions were not brought up. The arguments were made on the petition; it was heard and it must be determined on its own merits. The parties did not bring up any question of exceptions; they are not before me and I should not bring them in.

MR. THOMPSON: There would be no objection to the intervenors' counsel being present and taking part in the argument of those exceptions if they desire to do so. As a matter of fact these exceptions cover matters covered by the motion to intervene. I should much prefer to have him present and give him opportunity to discuss it and have your Honor decide both matters. I spoke of the petition to intervene when we were discussing the time for arguing these exceptions. I personally brought it to your Honor's attention and urged that the exceptions be put down for hearing at once because of the pendency of the motion for intervention. It is not beyond the field of imagination that they were supplied so that it might be possible that a grievous injustice may be done. I will not take up the time of the Court to give all the reasons; perhaps it would not be proper for me to give all the reasons. I can only say I should stake a good deal on the proposition that if your Honor heard these exceptions, after giving Mr. Choate notice to be present, a very different light would be thrown on the petition to intervene. At any rate from the standpoint of my client there is no reason why these exceptions shouldn't be disposed of. His other case is hanging fire and he is being deprived of having a definite arrangement made between him and the other parties. His case is being seriously compromised and I should be glad to have both disposed of each in the light of the other. I suppose everything I have said will be denied and assertions will be made which cannot be either verified or disproved. What I have said is this: I have told you the exact situation—

THE COURT: I think I should hear him speak for himself. What do you say about a hearing on the exceptions to-morrow?

MR. BATES: I think your Honor, would be impossible. In the first place because these exceptions can't be heard in any brief time; they go to the root of the whole matter; they involve many questions of law and questions which were argued at great length, to the extent of nearly a week, before the master by the different parties. It would be utterly impossible for us to be prepared to argue these exceptions to-morrow. Apart from that question, I think there would be no justice in requiring us to attempt to argue them to-morrow. We have a right to wait until the petition to intervene is decided, at least I assume we have, because our next action may depend somewhat on that decision. My brother has advised we intend to file a motion to recommit. It is possible we may wish to make a motion to recommit on the ground of newly discovered evidence after we have had opportunity of finding out what the evidence is. These affidavits which have been presented to your Honor in the matter of the petition to intervene are affidavits which haven't yet come to us. We haven't been able to obtain copies of them. When we endeavored to obtain copies from counsel we were told the only copy was in Mr. Thompson's hands. So we are still undecided about the evidence they may disclose, but they may disclose evidence which will require us in the interests of justice to make a motion to recommit. Certainly until these matters are determined it would not be advisable, and it ought not to be put down for a hearing on the exceptions. We filed them this morning, but not with the understanding that they were to be taken up or disposed of before the other motion, or that there should be any such attempt to carry things—an attempt such as could not be thought of in an ordinary case.

THE COURT: I will dispose of the motion before me before I hear anything else. I shall get no time during the working hours to-day or probably to-morrow, but I shall have time probably before Saturday to dispose of the motion to intervene. I think until that is done I ought not to undertake to hear the exceptions to the master's report unless all the parties have filed it, and I doubt if I should then, cause they are not before me on my motion to intervene. I must determine that on its own merits and I will do it at the first possible moment.

MR. THOMPSON: So it is left indefinite as to what time we shall come before your Honor on the exceptions?

THE COURT: It will have to go on the regular order.

MR. THOMPSON: May it go on the Tuesday list?

THE COURT: There is no request for me that it should. Mr. Justice Force will be holding this session next week, I suggest that you see him and you want to fix a time for it, either

before or after I have determined the motion to intervene.

MR. THOMPSON: May I make one final request. May I be permitted in lieu of a further affidavit on the motion to intervene, to submit to your Honor, giving notice to Mr. Choate, a copy of the exceptions now printed and filed by the defendants in this case?

THE COURT: I don't think I ought to examine them beyond what have been referred to.

MR. THOMPSON: Your Honor would permit the filing of additional affidavits?

THE COURT: I understand these are more than exceptions to the master's report—a mere statement of what those exceptions are?

MR. THOMPSON: Might not the fact that certain exceptions were taken which state the ground stated in the intervention petition as newly discovered,—might that not have a bearing on your decision? I should like to put in the form of an affidavit what they are.

THE COURT: Beyond making an affidavit to the effect that the questions involved, or that the questions that are sought to be raised by the motion to intervene are covered practically by the exceptions to the report I don't think I ought to go beyond that.

MR. THOMPSON: It will be denied unless I am permitted to file a copy of it with your Honor.

THE COURT: I don't think I ought to undertake that. The exceptions must be determined on their own merits; they were not stated as a part of the merits here. We had an elaborate all-day argument. I don't think I ought to take into consideration anything not presented at that hearing unless you desire to file an affidavit supplementing those already filed to the effect that the exceptions have a bearing on the reasons set forth in the motion to intervene.

MR. THOMPSON: As to whether these matters are in any sense of the word newly discovered.

THE COURT: I want to suggest if any affidavits are to be added they ought to be added very soon because I want this matter to be disposed of the first minute, which will be Saturday.

MR. THOMPSON: I was compelled to argue the motion to intervene without seeing, until I stood up, any of the affidavits. The case made in the affidavits was more definite and specific than in the motion and consequently the argument I was able to make both in the brief and orally, was not as direct as it ought to be. I was taken at a considerable disadvantage.

THE COURT: You mean by that you ought to have time to file some additional affidavits?

MR. THOMPSON: I ask permission to call your Honor's attention to the

particular exception I am now making—

THE COURT: The parties are at liberty to file any affidavits until to-morrow night. I shall take none after that time. I have already read substantially all that have been presented and a large part of the briefs, but of course there are some other matters before the court that require attention.

MR. THOMPSON: It would not be considered as taking advantage if I include in the affidavit some of the exceptions I refer to?

MR. BATES: I assume if Mr. Thompson does file it he will furnish us with a copy of it?

THE COURT: Yes, and it should be filed by to-morrow at two o'clock so as to give counsel opportunity to reply.

MR. THOMPSON: Do I understand Governor Bates wants a copy of the affidavit filed on the intervening motion?

MR. BATES: I certainly do.

MR. THOMPSON: You said you were neutral.

MR. BATES: I am but I don't propose to have my position misunderstood by reason of statements in affidavits I have never seen.

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## HULIN MOTION TO INTERVENE DENIED

BOSTON, Massachusetts — In the Massachusetts Supreme Judicial Court, yesterday, Judge De Courcy entered a decree denying the motion of Emilie B. Hulin to intervene in the case of Eustace et al v Dickey et al. An attested copy of the Court order follows:

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT.

SUFFOLK SS.  
No. 30564 Eq.

HERBERT W. EUSTACE, et al.  
vs.

ADAM H. DICKEY, et al.

INTERLOCUTORY DECREE DENYING MOTION FOR LEAVE TO INTERVENE.

This cause came on to be heard at this sitting upon the motion of Emilie B. Hulin for leave to intervene, and was argued by counsel, and thereupon, upon consideration thereof, it is ordered, adjudged and decreed that said motion be, and the same is hereby, denied.

By the court,

March 30, 1920. John F. Cronin,  
Clerk.

# Further Hearings on Exceptions

BOSTON, Massachusetts — Further hearings in the case of Eustace v. Dickey, on motion to set the case for hearings on exceptions and to confirm the Master's report, were heard yesterday.

## COMMONWEALTH OF MASSACHUSETTS

### SUPREME JUDICIAL COURT

Suffolk, ss.                      IN EQUITY.  
EUSTACE ET AL V. DICKEY ET AL.  
BEFORE MR. JUSTICE PIERCE.

Friday, April 2, 1920.

MR. WITHINGTON: If your Honor please, in the case of Eustace v. Dickey, which is commonly known as the Christian Science case, a week ago Thursday the exceptions to the master's report were filed in accordance with a suggestion previously made by Judge DeCourcy. We made application to him, on that date, to have the exceptions set down for hearing by him. At that time he stated that he could not possibly hear them during the time that he was sitting and that he did not care to put them down while your Honor was sitting. I have notified counsel that I should make a request of your Honor this morning to set them down for hearing on next Friday, and I would like to have the matter set down for hearing on the exceptions on next Friday's list.

MR. BATES: These exceptions, if your Honor please, are based on about ninety to a hundred objections. They virtually involve many questions of law and it is necessary for the whole thing to be considered in order to present those questions of law. When it comes to the hearing probably they will be grouped in such a way that it will not seem to be quite so large as to say there are ninety to a hundred objections or exceptions. Nevertheless they are fundamental; there is great interest in this matter; it involves a great church and the questions that are involved cannot be argued without a very careful preparation. The report itself is very complicated. The master's report is complex, it is something that will require a considerable time for its proper analysis. There are seventy pages of that report and in addition to that there are, made a part of it I think over or very nearly one hundred exhibits, at any rate a large number of exhibits, that must be printed before that case can be argued before any judge, that is, a large num-

ber of them must be because they are made a part of the report. I do not think that report could possibly be argued before your Honor properly within any such time as is suggested by my brother. I think I ought to have at least thirty days for preparation of it, unless your Honor should intimate that you thought it was a matter that could be reserved for the attention of the Full Court and your Honor should decide it was not wise to hear, or that any single justice should hear it previous to its hearing before the Full Court. In that case we should not object because that would be satisfactory to us. But if it is understood that the matter is to be argued before a single justice, then we wish the time that is necessary for a proper preparation of those arguments in order that it may be presented in the best manner possible, and I do not think that anything less than thirty days would be sufficient for the printing of the exhibits and preparation for argument, because it is something that will take considerable time.

MR. THOMPSON: If your Honor please, I represent one of the defendants in this case. These remarks that have been made are almost identical with those which have been made by the same counsel a week ago, except for the novelty of the thirty days and the suggestion that one hundred exhibits are to be printed. There is no such difficulty as the Governor suggests. I don't think there are a hundred exhibits, in the first place, but if there are they do not need to be printed. They are of a character that can be disposed of, many of them, in groups very readily. All that is necessary is that the judge may examine the report and see the character of them, and the time will have to be taken sometime to do it. There is a reason and a very important reason for accelerating this case in every way possible. One of the questions involved is whether my client is or is not a member of the Board of Directors. In the meantime many thousands of dollars are being spent by the Board of which he is or is not a member as to the wisdom of which he has no voice. The other question is whether one of Mr. Withington's clients is or is not a member of the Board of Trustees. In every aspect of this case, business, financial and religious, it is important that this particular controversy should be settled. I urge your Honor to put the matter down at the time set by Mr. Withington. I assure your Honor none of the difficulties suggested by Governor Bates will be found to be insuperable or anything like as great

as he suggested. Undoubtedly your Honor will feel that a great many of these exceptions ought to be reserved. There are other matters that should be passed upon by a single judge before any reservation is made. I think they will be found to be few in number. I do not think when brought face to face with this proposition it will be found as difficult as it is described. Every effort has been made for delay and I hope it will no longer succeed.

THE COURT: I know absolutely nothing about this controversy except as any outsider knows about it. I haven't read any of the papers, but what has been said leads me to this thought, in connection with what I have read in the newspapers, that no decision of mine or of any other single justice can establish the status of the two men one of whom you represent. I say that because I assume, not only from what you have said but from what Governor Bates has said, that the dissatisfied party will try in some form or other to get the matter before the Full Court. So really time is not the essence of the controversy, because this case could not possibly be determined by the Full Court until the next term, at least.

MR. THOMPSON: There is some suggestion as to the vast number of persons interested. It might not be deemed inappropriate, if all of the counsel agreed, to ask, perhaps, for a special hearing of this matter before the Full Court.

THE COURT: I think I can assure you that it would not be granted.

MR. THOMPSON: Very likely that would be the result.

THE COURT: I do not know, of course. I cannot vote for seven men, you know.

MR. THOMPSON: I think a pretty strong case could be made for it.

THE COURT: I will simply make a prediction that it would not be granted.

MR. THOMPSON: I hope your Honor's prediction will not be fulfilled. I think a pretty strong case could be made for it. It is going to take a good deal of time to make the brief that will have to be presented before the tribunal that will pass upon this matter and I do not like to have it drag along into the summer before we know what matters are which we will have to meet. The quicker this record is put into shape or reserved, or otherwise the better it will be for all concerned.

THE COURT: Let me ask this question: Is there any reasonable probability that a decision of the sit-

ting judge will be accepted as to any one of these matters in controversy?

MR. THOMPSON: I cannot very well answer that question. The decision of the master has been in favor of my client all through.

THE COURT: It is of such vital importance, that a decision of any one of these questions would be deemed to be essential, perhaps, to the determination of the principal questions.

MR. THOMPSON: I find a great deal of difficulty in answering that question, as the decision of the master's report, dealing with the law and the facts, is in favor of my client all along the line and unfavorable to Governor Bates' clients, and it is also favorable to Mr. Withington's clients. Whether we would be satisfied to have these findings reversed, I am very doubtful.

THE COURT: What is the sense of my passing upon any of these questions?

MR. THOMPSON: There isn't any, whatever.

THE COURT: Thereby making one less justice who can sit finally. There have been enough of us interested in this case now so that the rule probably will not apply—that nobody who has sat in the case as a single justice shall sit in the final hearing.

MR. THOMPSON: I see no reason. I think what ought to be done is to put it down for next Friday and let your Honor, if there are any discretionary matters dispose of them and then reserve the case for the Full Court.

THE COURT: I am going to make the suggestion that the case be arranged in such form by next Friday as far as it may be possible so that I shall intelligently be able to say as to whether or not—with the suggestions of counsel—it is a matter in which the decision of any single judge will expedite the final determination of the case. If his decision would involve the recommitment, of course that is a matter the sitting judge ought to determine, but if it does not involve such a question, as I said before, it would be foolish to tie my hands so I cannot sit later on.

MR. WITHINGTON: That is one of the reasons why we wanted this matter set down. We have felt it was very likely that all, or almost all of the questions which were raised by the exceptions, that Governor Bates would take the matter to the Supreme Court, but having filed exceptions (we have filed no exceptions to the master's report)—however, there has been in the offing for nearly a month a suggestion that some of the exceptions are based upon objections the effect of which would be to require your Honor (if allowed) if valid objections to recommit this report, send it back to the master. Governor Bates said to me only this morning (to repeat what has been stated three or four times)

that they might ask to have the case recommitted. Now if there are matters which require the discussion of the matter of recommitment of this report, they ought to be disposed of at this time.

THE COURT: That is what I am intending to have done by my suggestion that the matter shall be put in such form by Friday next,—I do not mean in a formal way for reservation—but that it may be determined as to whether or not any of these questions should be preliminarily determined by the sitting judge of this court, to enable him to say as to whether there should be a recommitment or not.

MR. WITHINGTON: I think that is quite proper.

MR. THOMPSON: Will your Honor set it down?

THE COURT: It may stand until next Friday for such purpose.

MR. KRAUTHOFF: In connection with the Christian Science litigation a new suit was instituted on the 31st of March—

THE COURT: I also say that in the newspaper.

MR. KRAUTHOFF: Entitled Krauthoff v. Attorney General et al. In that case I am asking for a preliminary order, and as it is in the nature of an injunction, I assume it is proper to ask for an order to show cause, returnable at a time to be fixed by your Honor.

THE COURT: When should it be made returnable for the convenience of everybody.

MR. KRAUTHOFF: I think Friday would be the proper date because practically everybody except the attorney general is already here.

THE COURT: Very well, you may have such an order.

MR. KRAUTHOFF: I assume Friday is agreeable?

MR. THOMPSON: I am not intending to object to any great extent, only this bill is of a very anomalous character.

THE COURT: Independently of that, he is entitled to an order to show cause.

MR. THOMPSON: An order to show cause for what? I don't see anything that justifies an order to show cause.

THE COURT: I understand Mr. Krauthoff to say that the prayer involves in the essence, injunctive relief.

MR. THOMPSON: It does not. That is what I thought ought to be called to your Honor's attention. It is, perhaps, not very important, but I think you ought to realize what is happening here. I do not see how any injunction can issue to this: "The Christian Science Board of Directors in whatever capacity—

THE COURT: Wait a moment. Wouldn't it be well to let Mr. Krauthoff point out what he thinks?

MR. THOMPSON: I would like to have him do it.

MR. KRAUTHOFF: If your Honor please, the litigation which is pending in the Eustace case has, to the minds of those of us who are members of the Mother Church, presented a situation where we think some things should be done of a protective nature to prevent the situation which is now arising in the conduct of the affairs of the Publishing Society continuing, and to that end I have asked for a preliminary order and took the liberty of putting my relief in the form of an order so that counsel who were interested in it could see exactly what I thought should be done at this time. The injunctive feature comes from the fact that in the 10th paragraph of the proposed order, it operates as a modification of the pending injunction in the Eustace case, and in the 11th paragraph of the proposed order the parties to this suit are enjoined from not obeying the order of court. The order of court undertakes to state who, pending the suit shall be recognized as directors of the church. In dealing with this question Mr. Thompson has outlined as to the propriety of spending money, who pending suit, shall be recognized as trustees of the Publishing Society, it being claimed that one of them has been legally removed and is not properly acting, that the business of the society shall be conducted in the manner in which it was conducted prior to the bringing of the suit, namely, that the deed of trust and the manual be construed together; that the periodicals of the Society shall be recognized as the official periodicals pending the suit; that the church and societies who have withdrawn their cards be required to have them reinserted, and that the directors see to it that they do have them reinserted; that the lesson sermons be recognized as official while this suit is pending. Some Christian Scientists have been trying to recognize them, they being the only sermons in the Christian Science Churches, and ask that all the controversies be subject to judicial ascertainment in this court rather than at meetings held here, there and elsewhere, and made the subject of extensive circularization throughout the Christian Science field, and that pending this suit the Christian Science Church shall proceed to elect editors, it appearing that there is one vacancy existing and two other editors are only acting temporarily, and the injunctive relief is predicated on the eleventh paragraph and that if such an order be entered the parties are enjoined from refusing to carry it out.

THE COURT: Let us see if I understand it. If this bill was filed by one of the parties in the other suit it would be in the nature—if a paper was filed of this character, it would be in the nature of a motion to the court to order the status quo existing prior to the bringing of that bill to continue pending the determination of that bill?

MR. KRAUTHOFF: Practically.  
MR. THOMPSON: Except it would leave out the fact that my client was a director prior to the bringing of the suit. There is a demurrer filed here. I ask that that should certainly be set down and heard first. I can state, I think without much fear of contradiction, that there is nothing in this bill that can be passed upon by the court. It is a non-justiciable matter, almost purely theological. I think before your Honor hears it you should hear the demurrer. I don't think that there would be anything left of this bill after the demurrer is heard. It is mostly theological anyway. It is an attempt by a member of the church to interfere in a suit in which he is not a party. It is an attempt to take affirmative action, when the attorney general is the only person who can take action in a charitable trust, by a person who is one of those constituting the beneficiaries of this trust, when such persons are forbidden by law to come in and file such bills, and the relief asked for amounts to this, that your Honor is asked to temporarily decree that things are true which are not true and things now exist which do not exist and which are shown not to exist by the findings of Judge Dodge. It is an attempt, and a rather clumsy attempt, to interfere generally with *Eustace v. Dickey*, to upset the master's report on every point of law and fact by a person who is not a party in *Eustace v. Dickey*. I ask your Honor to set the demurrer down for

Tuesday and then if there is anything left of it—

MR. KRAUTHOFF: Of the defendants, Mr. Thompson is the only one who has pleaded. I think it would be proper before discussing the demurrer for all the defendants to plead, so that all of them can be disposed of at one time. That was one reason I asked for an order to show cause. I should be glad to have the order to show cause returnable on Tuesday with the understanding that nothing shall be done on Tuesday except pleading to the bill, if the others want to demur.

THE COURT: The Clerk suggests that the subpoena should be made returnable the first Monday in May, but if there is any element of injunctive relief as you suggest, there may be in this case, then it is entirely proper for the Court to make an order for a more speedy answer of all the parties who are named as parties in this petition or bill, or whatever it may be. Therefore I am going to suggest in this case, accepting your statement that such relief is indirectly, if not directly, sought by a person who may or may not turn out to have some rights in the premises, that the pleadings in this case shall be completed so far as it is proper to complete them by Friday next, and that notice should issue to all the parties in the case, then I shall be able to see what the real situation is.

MR. KRAUTHOFF: An order to show cause.

THE COURT: It may stand until further pleadings are filed.

MR. BATES: I call your Honor's attention to the fact that there has been no service on anybody.

THE COURT: I understand all that. If this was an ordinary case seeking injunction and asking that an order of notice issue it might be issued at the same time making it returnable at some convenient date. That is the purpose here, that notice should be issued to all the parties named in the bill to appear and show cause and file such answers as they care to.

MR. THOMPSON: Some of the parties are non-residents. I don't believe we can reach them.

THE COURT: Then when Friday comes, it may be it will have to be extended still further.

MR. THOMPSON: One of these people, Mr. Septimus J. Hanna, lives in California, and Mrs. Hulin lives in Brooklyn, New York.

THE COURT: It does not appear that there is not somebody here that has authority to appear for him.

MR. THOMPSON: I haven't yet heard of anybody.

THE COURT: I certainly cannot decide anything about it unless I get out of the way some of these cobwebs that are gathering.

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# Court Extends the Injunction

BOSTON, Massachusetts — Justice Pierce of the Supreme Judicial Court of the Commonwealth of Massachusetts yesterday afternoon granted an ad interim injunction, the order of notice thereon being returnable May 3, in the case of the Trustees of The Christian Science Publishing Society against Lewis J. Harney, Luther P. Cudworth, James E. Patton, Grace C. Jacobs, Thomas C. Fales, Emma W. Fletcher, John J. Lauppe, Mary N. Bartlett, Charles F. Hackett, Adele M. Marsh, Richard J. Davis, Charles A. Applebee (alias Lawrence A. Almon), and William P. McKenzie.

The bill filed by Charles E. Hughes, Silas S. Strawn and Sherman L. Whipple, counsel for the Trustees of the Publishing Society, alleges that the defendants entered into a plan and conspiracy, having for its purpose the nullification of the effect of the decision of the master, Judge Frederic Dodge, in favor of the plaintiffs in the case of Eustace et al. vs. Dickey et al., and attempted the accomplishment of that result by doing those things which the Directors of The First Church of Christ, Scientist, were restrained from doing, and forbidden to do, by the order of the court in the case of Eustace vs. Dickey. It also alleges that all of the defendants, and those cooperating and conspiring with them were planning and intending by such acts to impair and injure the business of The Christian Science Publishing Society, and to injure and to break down the publications created and inspired by Mrs. Eddy, and used under her direction as instrumentalities for the promotion and extension of Christian Science.

The bill further alleges that while entering upon said plan and conspiracy, and undertaking the things contemplated in pursuance thereof, all the defendants knew the terms of the injunctive order, which had been issued in the case of Eustace vs. Dickey, and were fully aware of the terms of said order and the things forbidden thereby, and that the very things which the defendants planned to undertake and carry out were things which the injunction forbade to be undertaken and carried out.

The defendants are alleged to have joined in public statements that they, not being under injunction, could and would proceed to do in behalf of the Directors, things forbidden by said injunction, because, by reason of the injunction, the Directors were unable to do such things in their own behalf.

That among other things the defend-

ant, Harney, for some years secretary to Clifford P. Smith, counsel for the Christian Science Board of Directors, and Committee on Publication, an office held by said Smith under appointment by the Directors, on being informed of the contents of the draft report of the master, caused to be sent out telegrams to state Committees on Publication, subordinates of said Smith, and others, urging that in view of the adverse report of the master, Christian Scientists might well begin to cancel their subscriptions to the periodicals, which were being published by the plaintiffs as organs of the Church, and which were founded and authorized by Mrs. Eddy herself. And that since that time the defendant Harney has been active in doing a series of things, plainly forbidden by the injunction of the court, and seriously injurious to the business of the Publishing Society, and in interference of the administration of the trust by the plaintiffs.

That others of the defendants advertised themselves as an Information Committee, which while not elected, appointed, or designated by any responsible organization as such a committee, either of the Church or otherwise, was a self-constituted committee to carry out the plans and purposes of the conspiracy.

That the defendant Davis represented and held himself out as treasurer of an Employment and Aid Committee, a self-constituted and self-appointed committee, working in union with the other defendants in carrying out the plan and conspiracy.

That the defendant McKenzie participated in the carrying out of the plan and conspiracy.

That the defendant Applebee, otherwise known as Almon, is carrying on a business under the name of The Redaction Press, or other alias names, sending dispatches, statements, or information regarding events occurring or not occurring to certain newspapers, and that the defendant Applebee has been employed and utilized for sending out communications for the purpose of carrying into effect the plan or conspiracy.

That in pursuance of the plan and conspiracy the defendants have undertaken, (a) To procure the cancellation of subscriptions by Christian Scientists and Christian Science Churches to the periodicals of the Publishing Society; (b) By interfering with the employees of the plaintiffs they have attempted to hinder, delay, and prevent the publication of said periodicals on their appointed dates.

(c) They have sent out false and misleading reports, statements and information with regard to the administration of the trust by the Trustees, unjustly and unfairly criticizing the conduct and management of their trust by the plaintiffs; and, among other things, that they have wrongfully and falsely charged the plaintiffs with having withheld from the Treasurer of The Mother Church large sums of money due from the Trustees to said Treasurer, and have stated that in connection therewith the plaintiffs have made false entries in their own books. (d) In connection with the dissemination of false and misleading statements, and with a view to embarrass, annoy, and vilify the plaintiffs, said defendants have caused to be circulated among Christian Scientists throughout the United States printed requests which they have urged members of The Mother Church to sign, which requests have been addressed to the plaintiffs as Trustees, and contain false and scandalous statements with regard to the Trustees, to wit, that they do not obey the Manual of The Mother Church, and do not fulfill the demands of the Deed of Trust, that they are not loyal and faithful and consistent believers and advocates of the principles of Christian Science; while in fact and in truth the plaintiffs do and always have obeyed the Manual of The Mother Church and have faithfully and loyally performed their duties under the Deed of Trust, and have been and are loyal, faithful and consistent believers and advocates of the principles of Christian Science, as has been found to be the truth and the fact in said report of the Master. (e) The defendant McKenzie, cooperating with others of the defendants, and with other persons who are not defendants herein, but employees of the Publishing Society, by concerted action resigned their offices and employment with the intent to injure and embarrass the plaintiffs and prevent the publication in due course of the periodicals of the Publishing Society.

The bill further alleges that the defendants publicly claim that they are acting by the authority and with the approval of the Christian Science Board of Directors, other than Dittmore, but that whether such assertion be true in fact, the plaintiffs have no complete information, and are unable to state. That if said acts are performed at the instigation of the Directors or with their approval, then the defendants and all of them are

consciously violating an injunction of the court for and on behalf of those who do not dare themselves to perform the forbidden acts, but inspire others so to do.

The bill charges that none of the defendants are financially responsible or able to respond in damages to the extent of the injury which they are doing, and are likely to do unless restrained by order of this honorable court, and that unless restrained, will cause serious and irreparable injury to the business of the Publishing Society, will largely damage if not destroy its profits, and will thereby diminish the amount of profits which otherwise the trustees would pay to the support of The Mother Church, depriving The Mother Church of funds which it would otherwise have for its support, and impairing the influence and authority of Mrs. Eddy's publications, doing irreparable injury and practically defeating the purpose of Mrs. Eddy, declared in her trust of "more effectually promoting and extending the religion of Christian Science as taught by" her.

The order of court reads as follows:—

WHEREAS it has been represented unto us, in our Supreme Judicial Court, by HERBERT W. EUSTACE of said Boston and DAVID B. OGDEN of said Brookline, both in said Commonwealth of Massachusetts; and LAMONT ROWLANDS, of Picayune

in the State of Mississippi, as they are Trustees under a Deed of Trust dated January 25, 1898; wherein Mary Baker G. Eddy is the donor, complainants, that they, said complainants, have exhibited a Bill of Complaint in our said Court against you, the said respondents, wherein said complainants, among other things, pray for a writ of injunction against you, the said respondents:

We, therefore, in consideration of the premises, do strictly enjoin and command you, the said respondents, and all and every the persons before named, to desist and refrain from taking any further action intended directly or indirectly to impede or interfere with the plaintiffs, or any of them, in the discharge of his or their respective duties under the trust instrument of January 25th, 1898; from carrying out any purpose or plan by either direct or indirect means to compel the plaintiffs, or any of them, to resign their offices as Trustees; to impair, destroy, or in any way injure the business of The Christian Science Publishing Society as conducted by the plaintiff trustees; and from taking any action for the purpose of defeating or tending to defeat the purposes of Mary Baker G. Eddy as set forth and declared in the Trust Deed of January 25th, 1898, until the further order of our said Court, or of some Justice there-

## ARGUMENTS ON DEMURRERS HEARD

BOSTON, Massachusetts — Justice Pierce of the Supreme Court of the Commonwealth of Massachusetts devoted practically the entire day to the hearing of arguments yesterday by Mr. Edwin A. Krauthoff and the attorneys for all the defendants on the demurrers to the Bill in Equity filed by Daisy L. Krauthoff and Edwin A. Krauthoff against J. Weston Allen, as Attorney-General, The First Church of Christ, Scientist, Adam H. Dickey, James A. Neal, Edward A. Merritt, William R. Rathvon, Annie M. Knott, John V. Dittmore, Christian Science Board of Directors, Edward L. Ripley, and Herbert W. Eustace, David B. Ogden, and Lamont Rowlands as Trustees, and others; and also to the hearing of motions relating to said Bill in Equity.

The Court denied Mr. Krauthoff's motion to be permitted to be heard on the matter of the exceptions in the case of Eustace et al. vs. Dickey et al., and the right to be heard on argument to recommit to the Master. The Court also denied without prejudice the motions in effect asking a modification of the injunction.

After hearing on the demurrers the Court ordered answers filed to Mr. Krauthoff's bill, saying decision would be reserved on the demurrers until the answers were filed.



# Attorney-General's Arguments on Motion to Intervene

BOSTON, Massachusetts—Justice Pierce of the Supreme Court of Massachusetts, yesterday heard arguments on the motion of J. Weston Allen, attorney-general of Massachusetts, to intervene in the case of Eustace vs. Dickey.

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT  
Suffolk, ss. IN EQUITY  
EUSTACE ET AL V. DICKEY ET AL.  
BEFORE MR. JUSTICE PIERCE  
April 13, 1920.

MR. ALLEN (Attorney General) In this case of Eustace v. Dickey, I have filed an intervening petition I understand with the consent of all the parties, if the court is willing that the matter may be heard when the case is reached on the assignment to be heard upon the exceptions, the understanding that this motion may be taken up and the exceptions go forward.

THE COURT: You desire to intervene, accepting the situation as it now is?

MR. ALLEN: I desire to intervene. I filed an answer with the petition of intervention. There will be possibly certain things which are material to the record which I will present to the court at that time.

MR. THOMPSON: As matter of fact I think brother Allen has put it rather mildly. He has filed an answer which raises a great many questions of fact, many of them—

THE COURT: Let me interrupt. I read in the morning Post this morning a supposed answer. Did you read it? Do you know whether it is a true copy?

MR. ALLEN: It is part of an answer. I assume in due time I will read the answer to the court.

THE COURT: I wanted to know whether I have some ideas about it as I got it from the Post.

MR. THOMPSON: As far as Mr. Dittmore is concerned he opposes the reopening of the case.

THE COURT: I cannot tell about that. I will hear it later.

MR. ALLEN: I appear on behalf of the beneficiaries of this public charitable trust, the members and future members of the church—The First Church of Christ, Scientist—and the public generally. The Attorney-General has filed a petition to intervene on behalf of certain relators and of all members present and future, and if I may read the intervening peti-

tion and answer it will present the grounds upon which this intervention is sought. The petition of J. Weston Allen, Attorney-General and relators for leave to intervene as party defendant and file an answer to the bill of complaint—I am not reading the relators because they are mentioned in the petition:

HERBERT W. EUSTACE ET AL.

V.

ADAM H. DICKEY ET AL.

J. WESTON ALLEN, ATTORNEY GENERAL of the Commonwealth, ex rel. Julia S. Bartlett, of Brookline, in the County of Norfolk, Ellen L. Clark, of Boston, in the County of Suffolk, Mary F. Eastaman, of Somerville, in the County of Middlesex, Irving C. Tomlinson, of said Boston, and Helen A. Nixon, of said Brookline, all of Massachusetts, Gilbert C. Carpenter, of Providence, in the State of Rhode Island, Elizabeth P. Skinner and Effie Andrews, both of New York City, in the State of New York, Albert F. Conant and Laura C. Conant, both of San Diego, in the State of California, Mary E. Eaton, of Toronto, in the Province of Ontario, Martin F. Jackson, of said New York City, H. Graham Bleakly, of Orange, in the State of New Jersey, David W. Masters, of Wilmington, in the State of Delaware, F. Elmo Robinson, of Portland, in the State of Oregon, Milton S. Tilly, of Atlanta, in the State of Georgia, Frank C. Walrath, of Des Moines, in the State of Iowa, Arthur F. Fosbery, of San Francisco, in the said State of California, and Daniel Bridgeman, of Lebanon, in the State of New Hampshire.

Intervening Petitioner.

PETITION OF J. WESTON ALLEN, ATTORNEY GENERAL, EX REL., FOR LEAVE TO INTERVENE AS A PARTY DEFENDANT AND TO FILE AN ANSWER TO THE BILL OF COMPLAINT.

J. Weston Allen, Attorney General of the Commonwealth, respectfully represents to the court as follows:

1. The First Church of Christ, Scientist, commonly known as The Mother Church, is a public charitable trust devoted to the advancement of the religion of Christian Science, for the benefit of its present and future members and of the public generally.

2. The First Church of Christ, Scientist, is an unincorporated association. As at present constituted, it is a reorganization of a previously existing church for the advancement of Christian Science whose organization was effected in 1892 by twelve persons,

with the approval of the Founder of the Christian Science religion, Mary Baker Eddy. The relators, Julia S. Bartlett, Ellen L. Clark and Mary F. Eastaman, are survivors of the said twelve persons who effected the organization of the church in 1892.

3. The First Church of Christ, Scientist, after its reorganization in 1892 and until 1901, was governed by a body of original members and other early members chose by them, all of whom were known as First Members, and by the Christian Science Board of Directors, the said First Members and the said Board of Directors having certain powers and duties, both joint and several. In the year 1901 through the operation of by-laws approved by the Founder of Christian Science, the said Board of Directors was empowered to transact all the business, which had previously been done by the First Members. The First Members, however, remained as a body recognized by the Church Manual until 1908, when, by a by-law approved by the Founder of Christian Science, their title was abolished. The relators, Irving C. Tomlinson, Helen A. Nixon, Gilbert C. Carpenter, Elizabeth P. Skinner, Effie Andrews, Albert F. Conant, Laura C. Conant and Mary E. Easton, are among those First Members.

4. Since the master's report, as embodied in the draft submitted to counsel and in the form subsequently filed in this court, has become known to the public, the Christian Science churches in several states have held conferences and a committee has been chosen in each of said states to represent the churches in that state, for the purpose of taking such action as may be deemed necessary to protect the rights and interests of the members of the Mother Church. The relator Martin F. Jackson is chairman of such committee of the churches in New York. The relator H. Graham Bleakly is chairman of such committee of the churches in New Jersey. The relator David W. Masters is chairman of such committee of the churches in Delaware. The relator F. Elmo Robinson is chairman of such committee of the churches in Oregon. The relator Milton S. Tilly is chairman of such committee of the churches in Georgia. The relator Frank C. Walrath is chairman of such committee of the churches in Iowa. The relator Arthur F. Fosbery is a delegate of such conference of the churches of Northern California. The relator Daniel Bridgeman is chairman

of such committee of the churches in New Hampshire.

5. The First Church of Christ, Scientist, is not a party to this suit by representation of any one appearing on behalf of its members or of any of its First Members. The only parties to this suit purporting to represent the said church are the defendants Dickey, Neal, Merritt and Rathvon, alleged in the bill of complaint to be "Directors of the First Church of Christ, Scientist, in Boston, Mass.," and the defendants Dittemore and Knott, each claiming to hold the office of director in association with the other defendants.

By the report of the master, filed on the sixth day of March, 1920, not only is the power of the directors under authority of the trust deed of September 1, 1892, limited, by the rulings of the master, to those powers expressly set forth in the said deed, but it is further held that only four of the directors, who hold by appointment as successors to the original donees of the trust deed, have ever lawfully exercised the powers granted therein, the Board of Directors is held to be an unincorporated body, the validity of the by-law increasing the number of directors from four to five is called in question, and the binding force and effect of the acts of the Board of Directors done under authority of the Manual is questioned, if not denied.

6. The Attorney General, as representing the beneficiaries of said public charitable trust, to wit, the present and future members of said Church, and the indefinite body of persons who may be benefited by the advancement of the religion taught by the Founder of Christian Science, is a necessary party to this suit, and asks leave to intervene as a party defendant and to file the answer annexed hereto, to the end that all questions relating to the validity and effect of the by-laws constituting the Church Manual, and the authority of the Christian Science Board of Directors derived from the said by-laws, the said trust deed of September 1, 1892, and otherwise, may be finally determined.

J. WESTON ALLEN,  
Attorney-General.

The answer is as follows:

ANSWER OF J. WESTON ALLEN, ATTORNEY GENERAL, EX REL.

J. Weston Allen, Attorney General of the Commonwealth answers the bill of complaint as follows:

1. The Attorney General admits that the plaintiffs have been continuously acting as trustees under the deed of trust dated January 25, 1898, and believes that their several appointments, having been made with the consent and approval of the Christian Science Board of Directors and in conformity with the Church Manual, were valid.

2. The Attorney General admits the allegations in paragraph 2 of the bill of complaint as amended, except that he avers that the defendants Dickey,

Neal, Merritt and Rathvon, together with either the defendant Dittemore or the defendant Knott (according as the removal of Dittemore is valid or not), who are the Board of Directors of The First Church of Christ, Scientist, have and exercise, among their other powers, those usually enjoyed and exercised by deacons, church wardens or other similar officers of churches or religious societies, and as such Board of Directors being citizens of this Commonwealth, compose a corporation under the laws of Massachusetts, and by virtue of their said offices, as the legitimate successors in office of the original Christian Science Board of Directors, are trustees under the deed of trust dated September 1, 1892, and the other deeds referred to in said paragraph 2 of the bill of complaint.

Whether the defendant Dittemore or the defendant Knott is now a duly appointed member of the Board of Directors and trustees under the deed of trust dated September 1, 1892, the Attorney-General is not advised.

3. The Attorney-General admits the allegations of paragraph 3, except that he avers that, subsequent to the organization of the church which received its charter in June 1879, the church was organized as an unincorporated religious body in August, 1892, by twelve members and that the Board of Directors was established by the twelve members who organized the church and who constituted the entire membership prior to the admission of other members, and that the said appointment of the members of the Board of Directors took place prior to September 1, 1892; and he further avers that there was a usage in the Church of general acceptance by all followers of Mary Baker Eddy that persons designated by her should be accepted and elected by said Church as officers and directors, and that the reorganization of the Church and the appointment of the Board of Directors in September, 1892, were effected with knowledge of, and in recognition of, such usage and with reference thereto, and with the intent that it should govern and control and also with knowledge of the terms and conditions to that effect in the deed of trust which was executed by Mary Baker Eddy upon the first day of September, and with the intent and consent that such terms and conditions, recognizing such usage, should control; and he further avers that such usage has been observed by said Church to this day and has been incorporated in and made a part of its Manual.

4. The Attorney-General admits that the conception and plan of Mary Baker Eddy for the promotion and extension of the religion of Christian Science, as taught by her, involved both the organization of churches and the publication and dissemination of the doctrines of Christian Science. He denies that it was the purpose that the management of the publica-

tions of the Christian Science movement and the affairs of the Publishing Society should be independent of the Mother Church, and avers that, on the contrary, it was her purpose, as revealed in the successive editions of the Church Manual, each of which had her approval, that all the activities of the Christian Science religion should be subject to the control of the Mother Church. He further avers that the provision in said deed of trust of September 1, 1898, that the First Members together with the Directors of said Church could declare a vacancy in the Board of Trustees for such reasons as to them might seem expedient clearly indicates that the authority was vested in the Mother Church to hold the Trustees accountable, and that, by further changes formally effected through the Manual, the power to remove and therefore to control was, by agreement of all parties interested in such trust, vested in the Board of Directors as officers of said Church.

5. In answer to paragraph 5, the Attorney-General says that he is not sufficiently advised as to the allegations thereof, and therefore neither admits nor denies said allegations.

6. The Attorney-General admits the allegations of paragraph 6, except that he avers that such Board of Directors is the lawfully constituted Board of Directors of the Mother Church and that all other Christian Science Churches are branches thereof.

7. In answer to paragraph 7, the Attorney-General is not fully advised as to the details of the requests by the Board of Directors and the responses thereto by the Board of Trustees, and therefore neither admits nor denies said allegations.

8. The Attorney-General is not advised as to the truth of the allegations in paragraphs 8, 9, 10, 11, 12 and 13 of the bill of complaint and therefore neither admits nor denies such allegations.

9. The Attorney-General is not fully advised as to the details of the controversies between the plaintiff Rowlands and the Board of Directors, and is not at this time sufficiently informed as to whether all of the plaintiffs have been faithful, loyal and conscientious Christian Scientists in the performance of their duties, and as to the suitability of the plaintiff Rowlands for connection with the Christian Science Publishing Society as a trustee thereof, either to admit or to deny the allegations regarding these matters in the 14th paragraph of the bill of complaint, except that he is informed that before becoming such Trustee each of the plaintiffs had become a member of the Mother Church by subscribing to its tenets and by-laws as comprised in the Manual, and agreeing to be bound thereby and by all amendments thereto thereafter adopted, and that such by-laws and amendments thereto so adopted, in so far as they operated to affect the deed of trust here in suit,

were in force at the times when the plaintiffs and each of them became trustees, and that the appointment of and acceptance by them and by each of them of the office of trustee was subject not only to the express provisions of the deed of trust as it was originally executed but to such modifications and changes in its terms as were affected by the by-laws and amendments thereof, of which said trustees at the time of their acceptance of the trust were fully cognizant.

As to the relations alleged to have existed between the Publishing Society and its Board of Directors and the Mother Church and its proper officers, he avers that, from the beginning of the Church of which the Mother Church is a reorganization and of its issuing official publications, the Board of Directors has had control over the editors and policy of such publications, electing and appointing such editors and fixing their salaries, and by the practical construction of the deed of trust of 1898, acquiesced in by all parties including the First Members through many years until about the commencement of this litigation, this power of the Board of Directors was recognized and continually exercised, and the meaning and intent of such deed of trust is that it may so be exercised.

10. In answer to paragraph 15 of the bill of complaint, the Attorney-General avers that under the deed of trust of 1898 the First Members together with the Directors were given power to declare vacancies in the Board of Trustees for such reasons as to them might seem expedient, and under the Church Manual this power was subsequently given to the Board of Directors acting alone.

11. The Attorney-General is not sufficiently advised as to the allegations of paragraphs 16, 17, and 18 of the bill of complaint and therefore neither admits nor denies such allegations.

12. In answer to the allegations of paragraph 19 or the bill of complaint, the Attorney-General says that this litigation and the preceding controversies between the parties who are charged with the high duty of promoting and extending the religion of Christian Science have greatly endangered the proper conduct and maintenance of this Trust in conformity with the purposes of the Founder and in interests of the beneficiaries.

Wherefore, the Attorney-General has intervened in order that all questions in issue in this suit relating to the validity and effect of the Church Manual and the authority of the Christian Science Board of Directors thereunder may be fully and finally determined.

MR. ALLEN: Mr. Thompson suggests that in paragraph 4 of the bill here the deed referred to is the deed of 1898 and not the deed of 1892. With the consent of the court I will make that correction.

May it please the court; I do not

understand that any of the parties to the suit question the fact that the Attorney-General is a proper party to intervene. It has been apparent to me for sometime that the occasion would arise when on behalf of the members, present and future, it would undoubtedly be necessary for the Attorney-General on their behalf to become a party in this proceeding. But in becoming a party in this proceeding it is not in the interest of any persons who are parties to this proceeding in so far as they seek any individual rights in the proceeding. The Attorney-General is not concerned with whether or not the Directors may or may not in any action which they took legally to have removed the plaintiff Rowlands, but only in the question whether or not they had authority so to act. So that, in appearing at this time the purpose of such appearance is only that there may be established in this action upon all the facts which are material to the question the fundamental question which is vital to this charitable trust and to this church, whether or not there exists the power in the Board of Directors to require or declare vacancies in the Board of Trustees, if it seems to them expedient. Obviously it is a question which greatly concerns the present and future members of the church, because if that issue is now to be determined, it is to decide whether or not in the conduct of this great church all the activities of the church are to be under the control of a central authority, as it must be I think admitted in the by-laws was the intent of the founder or whether or not by some legal construction the intent of the founder has failed. There is in the master's report a finding that there was no existing church on September 1, 1892 when the deed of that date was executed by Mrs. Eddy, therefore that when in that deed it is stated that they should be called the Christian Science Board of Directors that that title was apparently an empty title because there was no church to which the authority indicated thereby could attach to be exercised. It is alleged in this bill that there was a meeting and an organization in August prior to the deed of September 1, 1892, and that at that time the Directors were chosen. It is also admitted I think that evidence of that meeting did not appear before the master. If that is true it is a fact which is of vital import to this court because it must be considered in determining the decision of the master. There is in the master's report a statement that no evidence was introduced before him as to the usual duties of deacons, church wardens, and similar officials named in the statute, provides that such officials should be a corporation, and as I read the master's report he finds upon such common knowledge as there is, that these Directors do not exercise those powers.

THE COURT: Is that just what he does find? Doesn't he find upon the evidence submitted that there is no similarity between the duties which would be assumed and taken upon themselves by the Board of Directors as compared with the duties of such officials as are named in the statute. Quite a different thing.

MR. ALLEN: Yes. I perhaps did not clearly state it, but I mean exactly that. And so it is immaterial to determine whether or not these Directors are exercising those duties which are commonly exercised by deacons, church wardens, and similar officials of other churches. And further more the question may become material as to establish usages in this church. I invite the intention of the court that on all other controversial questions in this proceeding which occupy most of the pleadings, as Attorney-General, representing members and future members, I take no issue. All those matters have been fully heard and I assume that everything that might have been introduced in the interests of one or the other of the contesting parties is before the court. And so in appearing at this time the only questions of fact which it seems to me are not before the court are prescribed within the narrow limits which I have already stated. I am making the allegations upon the good faith of counsel who assure me that those things are capable of proof and capable of proof as your Honor will see without any unnecessary delay in this proceeding. Because I should submit that a day of hearing in this court, in my judgment, would cover closely the prescribed limits of the things alleged in the answer. I have appeared in this proceeding naming relators. Before I took office the matter had been brought to the attention of the office and my predecessor assured me he believed sooner or later that the department would have to take its part in this proceeding. Before bringing this proceeding I have conferred with all the counsel interested in the present proceeding and I appear on behalf of these relators and if other relators, representing churches in other cities take action and are represented by counsel, I shall conceive it to be my duty, an appropriate duty at least, to ask that they may be joined as relators to the end that any persons who are authorized to act on behalf of the present and future members of the church may be represented before the court in that way.

THE COURT: As I understand it, you seek to have two additional matters determined which you think are in doubt in the master's report. First, that a prior meeting was held in August, 1892, prior to the deed of September, 1892.

MR. ALLEN: Yes.

THE COURT: That certain proceedings were had at that meeting.

MR. ALLEN: Yes.

THE COURT: Second, that there is

evidence which was not introduced before the master which will establish, for the purposes of establishing that this a corporation under the statute that the duties of the Directors as determined by the meeting in August before those that they exercised when the deed was created, constituted them such officers as correspond to wardens and other similar officers which are named in the statutes.

MR. ALLEN: Certainly that the duties that have been performed—

THE COURT: I take it you do not claim that the trust instrument of September 1892 can be modified by any doings of this church or by Mrs. Eddy after September 1892. That the rights of the Trustees under that instruments—I am going to call them Trustees because such they were—were determined at that time.

MR. ALLEN: Except in so far, if your Honor please as the matter is found by the Master's report upon implications in the deed which would entitle the court to make a finding based on—

THE COURT: All I mean to say about it is there is no occasion for any further taking of testimony.

MR. ALLEN: I feel that that testimony should be in the case if it existed and I believe that I am sure it does exist, that there was an organization of the church before September 1892 and that these Directors have performed duties which are ordinarily exercised by deacons, wardens, and similar officers of the church.

THE COURT: You mean perforce of the facts and circumstances which surrounded the execution of this deed of trust in September 1892, or do you mean that they performed these duties subsequently to that time.

MR. ALLEN: Subsequently, because as I understand it there was no church.

THE COURT: I assumed that was so.

MR. ALLEN: That may admit certain evidence in regard to the usages which would be of a very narrow scope, if at all. The position of the Attorney General as appearing for this public charitable trust is only that of endeavoring to secure in this proceeding a decision upon all the material facts as to the authority in this Board of Directors.

THE COURT: Query; Is such a decision open under the bill of complaint as it stands? Is it possible, not withstanding the dignity of your office for you to enlarge the scope of the complaint.

MR. ALLEN: That is as I find the litigation to-day.

THE COURT: This is a question of contested title between two sets of officers. If I remember rightly it was a matter of choice between the two as to whether the one or the other had the authority. I cannot see how any other question can possibly arise.

MR. ALLEN: It is a proceeding, as I read it, brought by the plaintiffs.

in which they deny that one of the plaintiffs was properly removed.

THE COURT: Yes.  
MR. ALLEN: As part of the plaintiffs' bill they allege—

THE COURT: They do not seek any relief other than the determination as to whether or no that particular one of the board of Trustees was properly or improperly removed. How can the court decide anything else on this case.

MR. ALLEN: Because I understand from the contention of the plaintiffs themselves they now take the position that the whole issue must turn on whether or not there is power in the Directors to declare vacancies in the Board of Trustees.

THE COURT: That is very simple, upon the master's report. It involves simply this one question whether the Board of Trustees needed the concurrent action of the First Members. The Board of Directors claim that the First Members have either gone out of office, ceased to exist, or didn't care anything about it, and that leaves the Board of Directors the only one remaining of the two concurrent Boards. Now the master finds as I understand it in that case, assuming the Board of Directors are the properly constituted Board, which again is in dispute, that that Board alone cannot remove one of the Trustees, and that the only power abides necessarily in the court to do it, and to that end the bill was filed.

MR. ALLEN: Yes.

THE COURT: Now isn't that the only thing there is. How are we going to raise all these other questions? I conceive the Attorney-General can bring a bill that would raise all these questions. He doesn't have to do it at the relation of anybody.

MR. ALLEN: No, sir. In conferences the question has arisen whether or not the Attorney-General should bring such a bill.

THE COURT: Isn't that the proper course.

MR. ALLEN: I am inclined to think and expect it will be the course of the Attorney General, but I also, after full consideration, believe that in this proceeding that the issue is before the Court that the Attorney General on behalf of the members is an interested party.

THE COURT: I assume he is an interested party, but in a very narrow sense, and as I presently look at it it seems to me highly desirable that the Attorney General should take the stand in the matter as representing all the interests but I have the gravest doubt as to whether that which is desired to be done can be accomplished in this intervention. Whether the Attorney General ought to boss the job. He is not an intervenor, he is the commander of the field, he does not ask relators or anybody else what he should do, but he does it; but he does it as representing the sover-

eignty of the State. I do not like the idea of the Attorney General dragging himself in here as the fifth wheel. I don't say you shouldn't do it.

MR. ALLEN: I say I am not doing that.

THE COURT: You don't mean to say, do you, that in coming in as an intervenor you have a right to say to Mr. Whipple or Mr. Thompson, or parties who represent the other side, "Do this" or "Do that"? They would say to you "Your position is up at the State House; go up there just as quick as you can." And I don't see but you would have to do it, in this particular case. Now that is as I conceive it a highly undesirable situation. As I say I cannot but feel that the Attorney General, desiring what you manifestly do, ought to go ahead on his own initiative and be in command of the proceedings. This is a contest on its face between two sets of men.

MR. ALLEN: In so far as their controversy is concerned the Attorney General is not interested.

THE COURT: That is of course true; it is only the side issues you could be interested in. As I said yesterday, in a hearing in some of these matters, if you are going to raise these questions they should be raised now and be decided, for their are living things to be decided.

MR. ALLEN: If the issue is raised in this proceeding—

THE COURT: Supposing the Court should say in this particular case, to whoever writes the opinion, "it may be the by-laws and it may be that the Manual ought to be considered in doing these things in this decision, but after all it isn't of very much consequence, the primary question here is as to whether the Board of Directors under the constituting instrument has power to remove the trustees notwithstanding the fact that they had only half the power they had before the happening of certain events, which events they created themselves." That is the fact in this case, the Board of Directors have made themselves, if they have this power of Kings, by by-laws that they passed when they froze out the First Members. I am only saying it might happen; I do not say it will because it may not.

MR. ALLEN: I have conceived that the Court, when it comes before the Court for final decision might say "We find that the proceedings by which, at the meeting when the trustee was removed, by which he was removed was not properly held—was not a proper proceeding because one of the members voted by telephone."

THE COURT: I am trying to save a waste of energy. Supposing when this matter comes up before the Full Court it should be my privilege to write the opinion and to persuade the others, and I should say in this particular case that the Board of Directors who voted upon this matter were an illegal board and therefore their action was

void and of no effect and stopped right there. That would be the proper thing to do, wouldn't it? It wouldn't be wise or desirable to say anything else, would it, if you are going to write a good opinion. I think it would not require over seven lines in length.

MR. ALLEN: Certainly the master's report has not stopped there.

THE COURT: If you should take all the master's report and go all through it and get to the end and say this Board of Directors which removed this trustee was an illegal Board, how is the Court going to say anything more? It may be the worst report in the world or the best, but the minute you decide that question this case is settled. Isn't that so? What actual excuse can there be for the Full Court to decide these great questions of church polity?

MR. ALLEN: One of the reasons I am intervening is for the very reason that I desire to be heard as to these questions. If it is decided as the master's report might result in its being decided and shall be decided after hearing of all the parties interested, also my duty will be served if as an intervenor—

THE COURT: Don't you agree that this is the situation: That so far as the Church is concerned, supposing now it is a charitable trust, there is no question about it, that this particular decision as between these two bodies of men is not an adjudication in any way whatsoever except as between these two men, it does not decide anything, and you can come in the next day with your petition and you set up the law that this was a decision in this particular case, it may have been decided as between these two parties, these two bodies of men, but it has not been decided as to the Church policy, the Church rights, the Church government, the Church constitution—they haven't been affected in the slightest degree by this decision. That must be so. In making this decision it may be I am all wrong and everybody will disagree with me, but if everybody agrees that you may intervene and that you may do all these things for the sake of fighting this wind mill, as it looks to me, well and good. If it is done I will report the case, but I could not report it without a protest. It looks to me like going out to fight a wind mill.

MR. ALLEN: The question might not be raised afterwards whether or not these directors did represent the Church. It seems to me therefore that while that question is undetermined that the members present and future are interested in the conduct of this proceeding until such time as it appears that that question is not going to be—

THE COURT: The question between the two boards is like this: Suppose you elect a board of directors in an ordinary corporation. Is it ever heard of that the stockholders could come in and take part in the deter-

mination—on a writ, or whatever it might be, or mandamus—to determine the title of these men? Has that ever been heard of?

Let us take a recess until two o'clock.

AFTERNOON SESSION

Mr. ALLEN: May it please the Court, at the last session the Court asked me whether or not in this case the Supreme Court, the court of last resort, the full bench, might not in seven words in substance say: "This is an illegal Board of Directors." It seems to me that it is because the Court might say that that it is necessary for the attorney-general to intervene here.

I cannot conceive of many things which would be more detrimental to the welfare of the members of this Church than to have the Court in a collateral proceeding find that this Board of Directors was an illegal Board. It has expended hundreds of thousands of dollars of the money of this Church, it must in the future conduct the business of this Church, and such a finding as that this Board of Directors was an illegal Board would place in jeopardy what has been done in the past, and would leave the Church without a legal Board to guide it in the future.

If I may give one other illustration—because I intervene in this suit only because it seems to me that it is necessary—if I may give one other illustration, the deed of the 25th of January, 1898, in the tenth paragraph says:

"The First Members together with the directors of said Church shall have the power to declare vacancies in said trusteeship for such reasons as to them may seem expedient." I understand that it is the contention of the plaintiffs at this time that that is the issue which they now make in this case. I find that their pleadings are amended, and that in the amended pleadings there is no ground to question the contention that they deny that the Board of Directors has power to declare vacancies.

The COURT: I assume that is the issue.

Mr. ALLEN: Yes, sir. And the Master in his report has said, at the bottom of page 34, or at the top of page 35:

"My ruling must be that it has rendered any exercise of the power to remove a trustee impossible, either according to the terms in which the deed of 1898 gives it or according to the intent manifested. Such exercise of the power having become thus impossible, removal of a trustee would require resort to a court."

Now, if that is an issue in this case that is of paramount interest to the members of the Church, because on that issue depends whether or not the Board of Directors as constituted by Mrs. Eddy is a self-perpetuating body like those boards of trustees

which represent public charitable trusts in England; whether or not that Board of Directors has the power, which all members of the Church have thought it had, and believe it should have, to be the supreme authority in the Church.

If, as a decision upon this point would decide, there is not in the Board of Directors power of declaring a vacancy and thereby exercising its authority in the guidance of the publications of the Church; then you have a Church in which the supreme authority in the Church in all other matters cannot control the literature, the lessons of the Quarterly, which are read in every service of the Church, and that that body which was supposed and was intended by Mrs. Eddy to be the supreme authority of the Church has not the authority which was given to it by the deed itself as long as the First Members were in existence, and which in the interests of the Church they submit must survive in the Board of Directors.

It might be decided, if I may use one further illustration, in this bill in equity, that the Directors were not a corporation within the meaning of Public Statutes 39, section 1. In many respects that would be a question which is of concern to the beneficiaries of this trust, because during all the period during which these Directors have acted they have acted as a corporation and believing that they were exercising the powers of officers of a Church having the right and being incorporated under our statutes.

If those questions do not come into the case in its final decision, then the beneficiaries would not be affected, as I view the case. But as long as those issues are in the case, and we must give to the Master's report the weight which any Master's report has at this stage of the proceedings, then upon those very issues the beneficiaries of the trust are interested to be heard in order that those questions may not be determined adversely to them in this proceeding.

The COURT: Mr. Thompson or Mr. Whipple, do you want to say anything?

Mr. WHIPPLE: Would your Honor care to indicate the order in which we should address the Court on this?

The COURT: It is immaterial to me. You might go ahead.

Mr. WHIPPLE: As I have very little to say, and I am on my feet, I will speak first.

Argument of Sherman L. Whipple, Esq.

Mr. WHIPPLE: This is nothing, so far as I can make out, except the Hulin petition again. The Hulin petition was one filed last month some time, and the matter came up before Mr. Justice DeCourcy, who was holding the session at that time. Mr. Nash then represented Mrs. Hulin, and Mr. Dawson and Mr. Choate, who now are interested through the attorney-general, and who I think I violate no

confidence in saying prepared for submission to the attorney-general the petition which is here being submitted. This petition is in considerably better form than the other, but in substance it is the same. I think there can hardly be any contradiction as to that.

Among other things that we presented to Mr. Justice DeCourcy as reasons why it should not be allowed was that if there were any ground for intervention at all it must be through the attorney-general and not through the individual. No basis of the decision, or rather no opinion, was handed down by Mr. Justice DeCourcy, but he dismissed the petition. So that it may have been that his action may have been based upon the fact that Mrs. Hulin did not have the right to intervene as a member of The Mother Church, or it may have been on broader grounds. We think it must have been on broader grounds. But the same two things that are mentioned here were the things as to which that petition claimed there had not been a full hearing.

Your Honor will not fail to note that as a practical matter this was in effect a statement that Governor Bates and the corps of counsel who appear with him on behalf of the Directors had overlooked what was really a vital and decisive thing to the Directors in their controversy with the trustees. But although it was many weeks ago that this startling proposition was advanced that the Governor had practically overlooked the vitals of his case as far as evidence was concerned, he has not yet come into court with any petition for a rehearing or any petition that the Master's report be re-committed for further findings of fact. If he has taken a good deal of stock in this newly-discovered evidence, and the mistake, the fatal error, which he had made in trying, he has never manifested it in any petition which he has filed with the court, or in anything more than mildly holding up his end of the controversy with his former associate counsel, Mr. Krauthoff, when Mr. Krauthoff said that these proceedings were in violation of the Manual, and the Governor said that he still contended that they were not.

We agree with all that your Honor has stated with reference to the attempted intervention in this suit of the attorney-general of the commonwealth. We can see no reason why he would want to do it. We can see every reason why he should respond to the request of one of the greatest benefactors of the Christian Science denomination that he should take action to make a broad and sweeping investigation of the administration of both these trusts, that which is conferred upon the Directors and that which is conferred upon the trustees of the Publishing Society. There he would be the master of the litigation; there he could cause to be made such investigations of the administration

of charitable trusts as an attorney-general ought to make before he summons the parties into court. There he would not have to rely upon representations made to him by anyone as to the existence of evidence which he believed to be existing, but he could send the agents of his department to ascertain what the facts were, and base his action upon the facts thus ascertained, rather than hearsay or rumor, or rather than intervening in a partisan way in a dispute between two boards of trustees, a dispute which does not concern the administration of the trusts under the trust deeds in any close way.

If, however, the attorney-general still feels, in spite of what has been said from the bench, that the duty is upon him to intervene in this matter, and he desires to come in and take the record as he finds it, as it has been brought about during these months that he says his office, he and his predecessor, have been watching, take it as he now finds the record and has permitted it to come about, then we do not make any objection to it. Indeed, we would prefer to have him do it, because then in this suit in which he has intervened he will have bound the Christian Science denomination throughout the world, as we understand the matter, to the adjudication which may come upon the record as it is made up and as it must remain,—a record which your Honor has so well pointed out would not bind him in any way in a separate and independent suit.

So, therefore, that is the position of the trustees. If he wants to come in here and take the record as he has permitted it to be made up, by waiting all through these months and watching the proceedings, apparently with a view to coming in if the turn of affairs was such as he thought he might want to come in, but at any rate watching and balancing the chances,—I say if he wants to come in in that way we do not object.

Nor would the trustees desire to take the position that if a really substantial fact had been omitted from the record, had been overlooked, one that was vital and fundamental in the controversy which they are waging—they would not wish to take advantage of the overlooking of the proof of such a fact or the admission of such a fact, if it could really be shown; because they desire here, not any personal victory, no personal holding on to their positions. They have sought from the beginning the fair, honorable, honest decision, reached fairly and honorably, a decision which will guide them in the administration of this great trust.

They sought the opinion of the distinguished counsel in New York for that purpose, not to get a partisan advantage, but to be advised as to what the law was that should control them, and what their duty was. Therefore they could not and would not

take the position that they desire to hold their offices upon the suppression, or through a loss by omission, of the presentation of facts that were really material. They believe, represented by their counsel who have examined the matter with care, that neither of these so-called facts or claims can be sustained. They believe that if they were sustained it would make no difference whatever in the decision.

Therefore if your Honor should take the view that the attorney-general ought to have his way in coming in, and ought to have the right in some way to attempt to modify the record, we think he ought to do it in the regular way. He should not come in here and say, "It is represented to me that there are certain facts which have not been brought out in the hearing before Judge Dodge." He knows nothing about it, whether they were or not. What he should require, and what I think if he does not the Court may properly require, would be, not that a claim should be set up in his answer, but that he should present a statement of the evidence which he says was overlooked—the evidence, the testimony, the documents which were in existence and which could have been offered in proof. He must do just what Governor Bates would do if he took stock enough in this matter so that he wanted to appear in behalf of his clients and ask to have this case re-committed to the Master. Your Honor would require under the rules of court that he should set forth in an affidavit or in affidavits the evidence or the actual facts, the data, that was overlooked.

Now I understand that the attorney-general claims, or the claim is made for him, that he does not need to verify his petitions by an affidavit, although for the life of me I cannot see why the rules of this court do not apply to him as well as to any other litigant. But if he is not obliged to have them verified by affidavits, let him produce before your Honor a statement, not of the claim that a church was founded—anyone can make claims—but of the substantive evidence, documentary or otherwise, by way of affidavits, upon which he relies. Then it gives the opportunity to the trustees to do just what they did in the Hulin case, and that is to file counter-affidavits. And we have reason to believe that Mr. Justice De Courcy's decision may have been influenced, and may have depended, upon the affidavits. At all events, that we understand to be the correct procedure. If they have evidence that there was a church prior to September 1, 1892, let them recite in the form of affidavits of the people who will testify, who will give the evidence tending to show that,—let them put that on the records of the court; so that your Honor may examine it, and we will put in a reply. If they have evi-

dence, and not a mere assertion, that there was such a similarity between the officials of this Church and the deacons and church wardens and so forth, let us have the evidence.

Now the Attorney-General does not know what was before the Master, I take it. At all events he does not know what was available to Governor Bates and his clients if he had wanted to put it in. If he does he does not disclose it to this Court. And those who are behind him, and at whose instance he acts, do not do any such thing as that. Therefore we respectfully request, if your Honor please, that before any order should be made, permitting the attorney-general to so enter this case as to postpone and delay and hold back the orderly procedure of the case as it would go on without his intervention, he request that those who inspired his action furnish affidavits as to the testimony, not as to what they claim as based on the testimony, but the testimony, the facts, documentary, oral statements, and the persons on whom they rely to sustain the claim, to which we may reply. But if he does not want to put that in, if he wants merely to be heard upon the questions of law that are involved and will be determined by the full court, and take the record as he finds it, we welcome his entry into the case, we welcome the distinction which he will bring to the case, and we welcome the opportunity to have all those for whom he intervenes bound by the decision of his Court.

Argument by William G. Thompson, Esq.

If your Honor please, it is important, perhaps unusually so, on this motion, that there should be no confusion on the part of anybody as to the attitude of Mr. Dittmore, and especially in relation to the Publishing Society trustees. I understand that your Honor as read or is familiar with the Master's report in this case. I sincerely hope that is the fact, because I do not see how a motion of this character could be very well dealt with by a magistrate who had not become somewhat familiar with that elaborate and careful document.

Mr. Dittmore's attitude on March 7, 1819, when the vote was passed removing Mr. Rowlands was, and for some time had been, as the Master finds, that although he believed, as I think most Christian Scientists did, that the Directors had the power to supervise the trustees in many details in their editorial work and in the selection of editors—and in that sense had an abstract power over the trustees, it was highly inexpedient for any body of men, possessing that power, to exercise it without sound cause, and without reasons which could appeal to a court of justice.

Mr. Dittmore took the position that these men ought all to be removed, or none; that there was no special ground for attacking Mr. Rowlands;

that the particular ground alleged by his colleagues for so doing, and emphasized in the vote, namely, that Mr. Rowlands had neglected his duty, was false, and was known by the directors who made it to be false, and he declined to be a party to any such proceeding.

He alleged then, and it has since turned out that his allegation was far truer than he as a layman could possibly know, that a removal of any trustee, or of all, ought to be accomplished by court proceedings. He said so then. He now knows that it ought to be accomplished by court proceedings. He urged upon his colleagues that they should not undertake the removal of any or all of these men except upon specific grounds alleging breach of trust, bringing their allegations within the scope of those reasons which a court of equity would recognize as a ground for removal; and if that could not be done they ran the risk of having their conduct viewed as a mere arbitrary, autocratic exercise of power for its own sake—just the way it has been viewed and ought to be viewed, by the courts that have thus far passed upon it.

Now, Mr. Dittmore's relation to the Eustace suit must be known to your Honor. He has made concessions in regard to the trial of his own suit. He omitted to testify, gave up his right to testify or to summon any witnesses. He took the position that he was content to rest the legality of his own removal by his fellow directors, which, your Honor will remember, followed within five minutes of the time of this improper vote passed against Mr. Rowlands, who was an honest man personally, however he may have been mistaken theologically, in the view of Mr. Dittmore—he took the position that he was content to rest the legality of the action of his colleagues in removing him upon their own confessions and admissions on cross-examination, and upon the documentary evidence in the case. And on that evidence, out of their own mouths, the Master condemned them—not out of Mr. Dittmore's mouth. He took the position, and the Master finds an agreement was made, that his case should be suspended, and his own status as a director should not be finally determined, until after this case had been fully heard and determined.

He therefore is greatly interested; and I think that the Church ought to be interested; and I think that any public official who really has at heart, not the interests of a faction, not the personal pride of opinion of some class of persons or lawyers in this case, but really at heart the interest of the great silent, quiet beneficiaries of this trust, would feel that it might be desirable that the decision should not be longer deferred as to a board of directors who, he now suggests, (apparently it is a novel idea to him, it has been a platitude to those of us who have been in this case)—who, as

he now suggests, have spent thousands if not millions of dollars since the illegal expulsion of one of their own members. I think it is desirable that that question should not be retarded by any unnecessary proceedings. Mr. Dittmore in good faith made the agreement, the Master has found it exists, he would like to have it carried out. His status cannot be established except upon the decision of this case, and upon that decision his status can and will be conclusively established, if we are to attach any importance to the decisions of Judge Dodge, Judge Crosby and Judge DeCourcy.

Now, the Attorney-General says that it is agreed that he has a right to intervene. Nothing could be further from the truth. The Hulin petition which, as Mr. Whipple correctly says, was the substance of this petition, and was promoted by the same lawyers who are behind this attempt to use the Attorney-General's office, was the same proceeding exactly. But we argued there that if any individuals had the right to intervene personally—I mean, sought to intervene personally—they could not do so because they must act in the character which would be represented by the Attorney-General. We did not say at any time that the Attorney-General did have a right to intervene, and we reserved that question until it should come up.

The Attorney-General states, with a show of fairness and impartiality, that he has conferred with all counsel. That is true, I suppose. He has conferred with me, I know, and I have assumed at the time he conferred that his mind was still open. I cannot make that assumption still. He has allied himself openly with one faction of this controversy between these two boards. He says that he has no interest in any personal fortunes of anybody, but only in the right, but he has rapidly, apparently, determined which is the right, directly to the contrary of what Judge Dodge has determined; and he is bound, if he can, to reargue as a matter of law, and retry as a matter of fact, the contentions made by the Board of Directors in this case—made after they had expelled Mr. Dittmore, who furnished them with the only solid contentions they might have made, and which they could not make because of their action in not making them the ground of expulsion.

Now he wants to retry those things. He has been asked, as Mr. Whipple says, by one of the greatest benefactors of this Church, a woman who has given nearly half a million dollars in cash to this cause, in writing, and begged by me, to investigate the financial conduct of these directors, who are so ready to make false charges against one man and to expel another man because he objected to it. I have not heard that he has done so yet. He says he is going to but I have heard nothing from him. It has

been suggested to him that the proper thing for him to do is to bring an independent proceeding to inquire into the finances of both of these sets of trustees, Mr. Whipple's clients, who from time to time have been charged with illegalities in the expenditure of money, falsification of accounts, and so forth, and especially this body of four men and one woman who are posing as the Christian Science Board of Directors. He has not done it.

I said to him a little while ago that if he would be content to take this record as he finds it, come in and argue his contentions, ally himself with Governor Bates, as he seems desirous of doing on every essential issue in this case, we should be overjoyed, delighted, to have him come in, write a brief and argue it to his heart's content. But what we did object to was the effort, (I acquit him of any intentional desire, but which nevertheless has the same result that similar efforts would have had if granted before), to reopen this case, not, as he says, on a few issues, very narrow, as your Honor attempted to summarize them a few moments ago, but your Honor by looking at his answer will find he has opened the door, on any fair construction, and if you will compare the answer with the allegations of the bill which he attempts to answer you will find he has opened the door to practically nine-tenths of the questions of fact that were tried before Judge Dodge—documentary evidence, practically all of it—on the question of usage, custom, habit, attitude, acquiescence—all that he has opened up. He has not confined himself to a few issues of fact. He has opened up issues which would take all summer, which would make it impossible for counsel to write a brief for the October or November sitting of this court, and which would still further delay the determination of the questions at issue in this case.

Why? Why this effort for delay? I am obliged to say that in my judgment the principal, the only reason—and I acquit Brother Allen entirely of conscious attempt to foster it—is that the decision which, it is known, which the parties have been advised, must follow as the night follows the day logically on that report of Judge Dodge—that that decision may be delayed long enough so that its consequences may be anticipated, and, if possible, forestalled by propaganda, misstatements, personal attacks on people, and especially on Mr. Dittmore, who, it is foreseen, is going to be put back on that Board.

I therefore say that I do oppose this intervention, if it is an intervention to open this case on the facts. I take there the same attitude that Mr. Whipple has taken. If these facts could be shown to be material, if they could be shown to be new, if they could be shown to have any real bearing on this controversy, Mr. Dittmore might

be content, even now, to wait another year or two in order that they might be put in. But just think of what the statement is! He says that his predecessor told him that the time had come for intervention.

Mr. ALLEN. Would come.

Mr. THOMPSON. Would come. He says he has expected it would come, he has expected it for a long time. He has allowed this case to go on and he has known all about it for a long time. He has allowed us to try these facts. He has known, presumably, if he has known anything about the case, the extraordinary care given to it by Governor Bates and his able corps of assistants, including Mr. Krauthoff and Miss Warren, who for months have been studying these records, and several other persons. He never opened his mouth when that evidence was going in. Apparently he never suggested to anybody that it was desirable to put in about this illusory organization of the Church in August. All the facts relating to that are facts of record. I understand that Mr. Withington—he represented to the Master that it was true—had been there and read these documents himself. Governor Bates never mentioned them as being material, except to state the fact that there was this organization. The Master knew all there was to know about it that was material. We all did. The fact never dawned on anybody that this matter that is now paraded here as a great discovery was either new or important. All that can possibly be important in it, if your Honor please,—and I am prepared in a moment to show that it is not so—is the addition that it is hoped to make by oral testimony to documentary evidence, that is just as well known to everybody in this case as the Bible is to most of us.

Oral testimony of defeated parties at the present juncture of this case, if your Honor please, ought to be looked at with some caution. Before your Honor opens up this case, tried as it has been, not at the suit of Governor Bates, who suffers from it if anybody does, your Honor should remember that he remains silent, he does not ask your Honor to open it, he has not opened his mouth on that line; and the reason is perfectly obvious, because he did not forget it, and because he knows that we know, and all of us know, that there was nothing forgotten, nothing overlooked. He is not the one who offers the testimony of these three people.

I suggest, if your Honor please, that if anything they could say would be material your Honor would hesitate under these circumstances a long time before permitting people whose interest is so overwhelmingly involved in this question to go on the witness stand now, after the hearing of every bit of evidence has clearly been disclosed, and reopen that question.

But is it material? Could it be? Let us see. All you have to do to de-

termine this question (we might defer to this petition so far as this new evidence is concerned) is to read the paragraph of Mrs. Eddy's Deed which relates to the filling of vacancies in the Board of Directors—not the trustees:

"Whenever a vacancy occurs in this Board the remaining members shall within thirty days fill the same by election."

You cannot contradict a written instrument by previous documents, by usage or by anything else. You can interpret an ambiguity, you can look to the surrounding circumstances for light on the interpretation. But when you have got a clear and explicit provision in a written instrument it is not open to be contradicted by any other evidence whatever.

Now, what is this evidence? Mrs. Eddy said that the succession to this Board of four trustees "shall be as defined in my Deed, and in a deed of 1903" which, by the way, Judge Dodge had and considered, and which was made the basis of argument. Many years afterwards Mrs. Eddy made these statements in regard to this Board of Directors, called a Board of Trustees, in the Deed of 1903:

"But said Church is a voluntary association of individuals, the title to the church property being vested in a Board of Trustees named in the Deed of Trust by me conveying the land upon which is situated the edifice. . . ." and:

". . . in the County of Bristol, and said Commonwealth, as they are the present trustees known as the Christian Science Board of Directors under said Deed of Trust hereinbefore referred to as dated September 1, 1892 . . . their successors in said trust." And again:

". . . mentioned in said deed creating said Board."

Creating said Board. Not ratifying a former Board, but creating said Board:

". . . to appoint new trustees by filling vacancies in said Board as in said deed expressed."

Now, then, the only relevancy of this evidence would be this. In the preface, Mr. Demond, my colleague, calls my attention to this, in the "Historical Sketch," which precedes, and always has, the Manual. Mrs. Eddy says:

"On the twenty-third day of September,"—Not in August—

"On the twenty-third day of September, 1892, at the request of Rev. Mary Baker Eddy, twelve of her students and Church members met and reorganized, under her jurisdiction, The Christian Science Church and named it, The First Church of Christ, Scientist."

Now, in the face of that, to say that all of us have been deluded, and that we have not understood what we were talking about, that it has been left for Brother Allen to come in here at the last moment, and with the help of Brother Nash and of gentlemen



from New York City, to discover what we have all of us been looking for in vain—it seems to me that there is such antecedent improbability against it that that alone is sufficient.

Let us go back a moment to the analysis. The only purpose of this evidence would be to indicate that when Mrs. Eddy says in that deed of 1892 that the said grantees shall be known as The Christian Science Board of Directors, and so on, and that whenever a vacancy occurred in said Board it shall be filled by them, she meant this: That said board of grantees, whom she calls trustees, shall be the members of the existing Christian Science Board of Directors, and the succession in that membership, and the number, shall be not in accordance with this deed, but in accordance with the pre-existing custom, usage, or whatever it was, that constitutes the Board of Directors and regulates their succession. You cannot have it both ways, it is either one way or the other. When Mrs. Eddy said that any vacancy shall be filled by the remaining trustees, in determining the manner of filling vacancies, and said that they should be known as The Christian Science Board of Directors, no evidence of the kind that the Attorney-General suggests here could possibly be admissible, even if it existed. It does not exist. It never did exist. It could not have existed and escaped the attention of all of us. The documentary part of it was observed and read and examined by Mr. Withington up here at that church. It was all produced, and every bit of it analyzed that was necessary to be used in court. It hasn't the slightest actual existence, and if it did it would be eliminated and ruled out as immaterial.

Judge Dodge is not the sort of man, and I hope that some at least of the counsel (I won't speak for myself) are not the sort of men, who would try a case for thirty long days in court, undertake the duty to their clients of investigating the facts, and overlook the fact that there was a Christian Science Board of Directors established in August, 1892, and fail to draw the inference from it that these gentlemen desire, if that inference could legitimately have been drawn.

As a matter of fact we drew the inference that a lawyer would draw who appreciates the facts of the case and who desires to enforce the laws of this Commonwealth. That Mrs. Eddy recreated anew the Board of Directors; that her Church was formed after and not before this deed was drawn; that she did not intend and could not by any process of construction or any type of evidence be held to have meant when she said "these four men shall be called the Directors of the Church and their succession shall be regulated by this instrument" that their succession should be regulated by something else. They are

wholly inconsistent and cannot be matched up in any way at all. I therefore suggest if the Attorney-General has any right to come in at all, this is a controversy between two boards, or between one man in one board and that Board for the consideration of a Court of equity based upon the proceedings before the master and the agreements they made indicate that there shall be no unnecessary delay—if he has a right to intervene, even if it were discretionary to permit him to intervene, it would incur enormous delay. He does not represent the public in this transaction. The persons concerned are Mr. Dittmore, as far as I am concerned, and his fellow directors. But waiving that, I am willing to extend to him all legal rights, but I don't like to see and I do object to his being used as a tool of others to reopen this case on the facts and delay it to an indefinite extent or for any purpose, because the evidence is all in and it cannot affect the legal determination by Judge Dodge, or if that were allowed it would do immense damage to my client, Mr. Dittmore who cannot afford to send people around to undo all the slander that is passed around about him.

MR. BATES: If it is to be assumed that this bill brought by the Trustees against the Directors is to be eventually dismissed by the Supreme Court because the Directors were acting within their powers and under the authority directly conferred upon them, then I cannot see why it is essential, or why the Attorney-General need to be an intervenor. But if it is to be assumed by any possibility that a decree is to be entered adverse to the Board of Directors, the governing body of this Church, and that therefore some decree is to be entered besides merely the dismissal of the bill, then I assume that the Attorney-General comes in as a matter of duty and not as a matter even of discretion.

THE COURT: Do you think it makes any difference whether he comes in as the Attorney-General or at the relation of all these people? I concede there is a great difference. Anybody may apply to the Attorney-General and at the relation he may allow his name to be used.

MR. BATES: I concede there is a distinction. He may come in as Attorney-General or at the relation of other parties, but when he does it, I assume he is still the Attorney-General and that the decree . . .

THE COURT: Let me ask this question. When one comes in by relation and the Attorney-General permits his name to be used, does not that person who comes in by relation have authority to control the suit to that extent?

MR. BATES: I had not assumed that he had.

THE COURT: I assume that is so.

MR. BATES: I understand the objection to be to the Attorney-General intervening at this time . . .

THE COURT: The suggestion is to

my own mind. I take it the situation is this: It has been suggested that the Attorney-General comes in as Attorney-General representing this Church and all these people and therefore he will be bound by whatever decree is necessary to be made by the determination of this case, and the Church will be bound. I am suspicious whether that is so. At least these parties, if they come in by relation—as to them I doubt it very much. I am in doubt as to whether it does not leave it then open to him to come in in his great sovereign capacity later on.

MR. BATES: The only suggestion which I wish to emphasize is this: If the time should arrive when a decree is to be made in this case, that then, inasmuch as a great public charity is specified it would be necessary for the Attorney-General to be made a party before that decree could be entered.

THE COURT: I agree.

MR. BATES: Therefore I had thought possibly that his intervention at this time, having that in view, might be the proper thing. But let me say this to your Honor, that so far as the defendant directors are concerned and their counsel, the intervention of the Attorney-General or his asking leave to intervene is entirely without their suggestion. We knew nothing of it until we saw it in the papers. Our conference with him was as a result of seeing it in the papers and came after he had already seen as we understand and as he stated to us, Mr. Thompson and Mr. Whipple as counsel representing the other parties. We are in no sense interested in his intervention so far as we are concerned, but inasmuch as we did not take any attitude in regard to the Hulin petition and thought the members of the Church, if they could convince the Court of their rights, ought to have an opportunity to do so, and so here we have taken no action in this matter. Whether he comes in as Attorney-General or at the relation of parties, it is entirely without any suggestion from us. As to the evidence which has been referred to in regard to the existence of a Board of Directors or a meeting of this Church in August 1892. We presented the records of this Church. They begin with September 22, 1892. So far as the record book shows or indicates, we do not know of this meeting which the Attorney-General refers to. We never had any evidence of it; it is not in the records of the Church; it is to be found elsewhere. We haven't had evidence of it and never have had and therefore we had no opportunity to present it; we had no knowledge of it. It might have an important bearing upon one phase of this matter.

THE COURT: Let me ask a question, it has been raised by counsel. Suppose I were hearing this case for the first time and a deed of trust was put in as of September 1892 and somebody offered to show that a meeting had been held by those who were inter-

ested in the Church with Mrs. Eddy who was entirely in control of the Church and of them, some weeks or months or years before that time in which she said or did something with their approval which is now contradicted, or rather is in contradiction of the terms of that trust as stated in the constituting instrument. Would I, or could I in the exercise of any legal power or discretion, receive as between all the parties who claim under Mrs. Eddy, that deed?

MR. BATES: I understand the evidence they propose to offer is not in contradiction of anything in the trust deed.

THE COURT: I have read the trust deed and it would seem to be about as simple an instrument as could be drawn.

MR. BATES: I agree with your Honor. I think now the master is wrong in his finding that the Directors were not created a body corporate by the joint action of the church. THE COURT On the facts found, it is open on the master's report, there is a fair opportunity for argument. I agree from my study of the master's report that the question is open.

MR. BATES: One thing that has remained in the master's mind which caused him to reach wrong conclusion was apparently that there was no Board of Directors in existence at the time she made her deed, there was apparently no church in existence. The records we produced did not disclose it. They propose to introduce evidence that the church was in process of formation, that these four men named as Directors were then named, and were in existence at the time this deed was made. That might have had an effect upon the mind of the master in arriving at the question whether or not this did become a body corporate under the statute. One of the chief reasons why we understood and thought they were not was because there was no church in existence of which they could be a corporate part, although it was admitted the church came into existence three weeks later. It might have, I conceive, a bearing on the master's mind if that evidence had been before him. As to the statements that have been made I don't know that I need to do anything further than to say that of course brother counsel uses every occasion to describe the virtues of his clients and condemn the Directors. It is not the proper place to argue these questions and I do not propose to allude to them further than to say that we do not agree with Mr. Thompson's statement with regard to the virtues of his clients.

THE COURT: It does not interest me whether they are all good men or all bad men.

MR. BATES: Moreover your Honor he did not object to the removal of Mr. Rowlands because he thought we would come into a court and ask for his removal. There is no such word

of testimony in the case anywhere. He was five times as insistent about the removal of the trustees, as any other of the Directors. He said, "Remove them all. Unless you remove them all I won't vote with you." That was where the controversy was. The Directors simply said, "If we remove them one at a time under our power then the few remaining can fill the Board. But if we remove them all at one time then there is nothing to do but to ask the court to fill it." There was no need of coming to the court to fill the vacancy. They also felt that the removal of one might tend to mend the way to the others.

MR. WHIPPLE: Why are you bothering the court now on this new bill?

MR. BATES: Brother Whipple is a good second to Mr. Thompson in the way he manages to get before the court the beauties of his case.

MR. WHIPPLE: You haven't yet told us why you were bothering the court with these explanations.

MR. BATES: Where one is, the other is generally to be found. I cannot specify anything as to the order of precedence. One is always ready to support the other. I don't quite understand what your Honor stated this morning in regard to the Directors by the passage of a by-law having frozen out the First Members. There was nothing of that kind in the case.

THE COURT: It looked so to me.

MR. BATES: I think I ought to correct that.

THE COURT: It wouldn't make a particle of difference whether it is so or not. Here was a body of 35 or 40 First Members who perforce of their number if not for other reasons controlled, or could control the action largely of the Board of Directors. Their action was to be concurrent in any of the steps that were needed to be taken. For some reason they didn't hold such meetings as they could have held or ought to have held and it happened that the Board of Directors with perhaps the assistance of the members made a by-law in which they, having the power to pass that by-law determined that the First Members were no longer to exist. Now I take it that is a clear case of freeze out.

MR. BATES: No, your Honor, I should correct that. That is not what the master found.

THE COURT: That was the impression left on my mind.

MR. BATES: That's why I want to get rid of that impression. The fact is that it was the First Members themselves that passed the law that transferred their authority to the Board of Directors.

THE COURT: Isn't it a good deal as it is with Mr. Thompson and Mr. Whipple, it doesn't make any difference which speaks first provided one echoes the other.

MR. BATES: Now this church was governed by Mrs. Eddy. What ever she said the members of that church regarded as their law.

THE COURT: That may be. But I don't remember anything in the by-laws which shows conclusively that Mrs. Eddy took any hand in getting rid of the First Members, or the First Members taking action to get rid of themselves.

MR. BATES: It was by her express direction and the master so finds.

THE COURT: It does not so read.

MR. BATES: May I be pardoned a moment. I wouldn't like to have that thought remain in your Honor's mind. It was not these Directors, but their predecessors in office. In 1901 the First Members passed a by-law transferring practically all the business of the church to the Board of Directors. They continued to exist until 1908 under the name of Executive Members, without power. Then by Mrs. Eddy's request, as found by the master, having nothing to do the by-law under which they were named was eliminated. But to say that the Directors did it, something that was done years ago by Mrs. Eddy's direction and the action of the First Members themselves indicated in my mind there might be an impression there which it was my duty to correct at this time. I don't think I have anything further to say on this matter except as I suggested before that if the Attorney-General does not come in now he will probably have to come in some time before it is over.

MR. THOMPSON:

To correct one statement on the earlier record in regard to September 23 I think it is somewhat important to call attention to the record, on page 236 of the testimony given before the master, as contained in my own affidavit in the Hulin petition. I think it is of considerable significance in view of the statement of the Governor that he didn't know anything about this former organization. Mr. Whipple addresses Mr. Dane.

"Mr. Whipple—Then that was before the Church was organized, according to that, and we do not appear to have any record of any by-laws creating directors, or anything of the sort, and we have the anomaly of the election of directors of a Church before the Church itself was organized. There must be some explanation of that, isn't there?"

Mr. Dane—There must be.

Mr. Whipple—This would seem to be the cart before the horse, if the directors got before the Church. It is what they have been doing latterly, but we did not suppose that it began that way.

Mr. Dane—I am only seeking at this time, Your Honor, now that we have this witness here, to identify records and certain signatures. The full significance of these records will be made perfectly plain when they are offered in evidence, but I want to identify these records, at this time by this witness. They never were made perfectly plain but when he talks about the record before Septem-

ber 23rd he put one in himself September 3rd.

The Governor often times forgets what occurred in a trial and what is in a master's report. The master did find that Mr. Dittmore declined to participate in the vote to remove Mr. Rowlands. He did find that Mr. Dittmore was perfectly sincere, that he didn't believe in the removal of these men except on specific charges. I have stated the master's report accurately and the Governor has been guilty unintentional but gross errors.

MR. BATES: I want to correct that suggestion. The records of the Board of Directors began from the time of the deed. But the church record began September 22nd. There was no record of any church meeting prior to that time. The August meeting we never knew of.

MR. THOMPSON: Mr. Dane must of understood it.

MR. KRAUTHOFF: If your Honor please, as plaintiffs in the case to which the Attorney-General was made a party on 31st of March by the members of The Mother Church we desire formally to object to having the controversies we had in our law suit telescoped into some other law suit. On the 31 of March 1920, the Attorney-General was named as party defendant to a suit in a bill so framed as to bring it within the jurisdiction of this court every possible conceivable controversy that has arisen among the parties, so many controversies in fact were interjected it has been criticized as multifarious. In the face of that the Attorney-General attempts to intervene in another case, and in that other case he attempts to speak for all the members of The Mother Church. To understand precisely what the Attorney-General is doing it becomes necessary to remember for a moment that an intervening petition was tendered by Mrs. Hulin, which was denied by Mr. Justice DeCourcy. Mrs. Hulin is not one of these relators. But the relators who are named in this intervening petition are associated with Mrs. Hulin, and the counsel who drafted the Hulin petition are the counsel upon whose statements the Attorney-General drafted this petition. This petition was not drafted on any statement I made or any conference I had with him.

We have here a very novel situation. We have a church that has a Manual. That Manual was written by Mary Baker Eddy the discoverer of Christian Science, the founder of the Christian Science church the leader of the Christian Science movement, whose words and works in their entirety without variableness or shadow of turning are accepted as divine inspiration by every loyal Christian Scientist. Mrs. Eddy says on the 23 day of September, 1892, "at the request of Rev. Mary Baker Eddy, twelve of her students and church

members met and reorganized under her jurisdiction the Christian Science Church and named it The First Church of Christ, Scientist." In the record in the Eustace case Exhibit 107, referred to in the master's report and so made a part of the report is the record of the meeting of the members of the church on September 23 1892 electing themselves members of the church. In the face of the statement of Mary Baker Eddy the Attorney-General of Massachusetts undertakes to tell us that we don't know the day on which our church was organized. He attempts to come into court and say as the representative of all man kind that our church was organized on the 29 or 30 day of August 1892. Now it is respectfully suggested that we have a right to form a church as citizens. We have a right to form a voluntary religious association in Massachusetts in the way we see proper. If we think proper to accept Mary Baker Eddy as our discoverer, as our founder, our leader of Christian Science we have a right to organize it the way she wanted to so long as she didn't violate any law. If she said we were organized on September 23, 1892 we were organized on that date, and when we dispute it we cease to be loyal Christian Scientists. It is almost the irony of fate that loyal Christian Scientists should have gone throughout the United States and built up this organization that is so glowingly depicted in this intervening petition and have selected the eminent counsel to come in on the Hulin petition and say, "It might be that Mrs. Eddy didn't understand what she was saying when she said this church was organized on September 23, 1892; it might be she was mistaken; it might be it was organized before." Mrs. Eddy was not mistaken. And whenever we yield to the belief of mistake we destroy the efficacy of all she did. It was not the plan of Mrs. Eddy that these Directors should be named by this church. It was her plan that she should name them and she named them in a deed of September 1, 1892. They owe their birth to a deed their origin to a deed, their status to a deed and are to-day responsible to the directions of a court of Equity and not responsible to the will of the membership.

Now this New York committee appearing through the Attorney-General is attempting to reverse that and to make it appear that the membership of this church selected the Board of Directors. Now what is the next step? Having registered the fact that the members of this church having selected the Directors in the first place it is but a step to the contention that the members of this church are free to elect another Board of Directors and indulge in the house cleaning that Mr. Dawson spoke about in the hearing of the Hulin petition. That is the reason I stand here to protest against the upsetting of these works

of Mrs. Eddy by the introduction of any testimony such as was offered by Mr. Johnson when he testified that he found a diary in which it appeared that some board had a meeting. That affidavit is on file in the Eustace case that is one of the reasons I stand here protesting against pulling down of the works of Mary Baker Eddy instead of coming in to uphold the work of Mary Baker Eddy it comes in to destroy it by trying to contravert what she said about the day she established her church—that it was not true—that in fact it was organized before. That is one of the objections that I have. Another objection that I have to the introduction of such testimony is that it again raises this ghost of First Members. Your Honor used the phrase and Governor Bates corrected it. But this master's report is an interesting document you have got to read all of it and keep all of it in mind. The master finds that every by-law adopted was adopted by Mrs. Eddy and at her request and with her approval. He speaks of them as by-laws written by Mary Baker Eddy. When you state the bald fact that the Directors in 1908 abolished the First Members and thereby inferentially increased their own power; at first blush it does seem as your Honor said it was a "freeze out." But it was done at the request of Mary Baker Eddy. The reason it was not brought up in the case of Eustace v. Dickey as to whether a specific request were made, was because everybody in Eustace v. Dickey agreed they were abolished. At the hearing on the draft report the master was asked to make this specific finding that this by-law was passed at Mrs. Eddy's request and he declined to do it. Now we have a record in this case and the Attorney-General says that he takes it as he finds it. That these First Members have been abolished and they have been abolished at the request of Mary Baker Eddy. The Attorney-General appearing at the instance of a number of relators says, "3. The First Church of Christ, Scientist, after its reorganization in 1892 and until 1901, was governed by a body of original members and other early members chosen by them, all of whom were known as First Members, and by the Christian Science Board of Directors, the said First Members and the said Board of Directors having certain powers and duties, both joint and several. In the year 1901, through the operation of by-laws approved by the Founder of Christian Science, the said Board of Directors was empowered to transact all the business which had previously been done by the First Members. The First Members, however, remained as a body recognized by the Church Manual until 1908, when, by a by-law approved by the Founder of Christian Science, their title was abolished. The relators, Irving C. Tomlinson,

Helen A. Nixon, Gilbert C. Carpenter, Elizabeth P. Skinner, Effie Andrews, Albert F. Conant, Laura C. Conant and Mary E. Eaton, are among those First Members." Their title was abolished, their office was abolished, their existence was abolished, and they ceased to be First Members. Nobody can come in and say they are among these First Members, in the present tense, without repudiating the action of Mary Baker Eddy, the Leader of the Christian Science movement in abolishing them. They were First Members in 1903 when they were changed to executive members. And they were executive members until 1908, but they are not First Members now. Now, if your Honor please, I welcome a suit by the Attorney General to bring before this court every controversy that arises in this situation. Because, if your Honor please, if there ever was a situation in the world that needed a bill of peace, and a decree settling every possible controversy, it is this. The Attorney General of Massachusetts. He has sold his birth right for a mess of pottage when he brings this intervening petition. He has an opportunity to bring a bill in which he sets out the fact that this church was organized by Mrs. Eddy by a deed which she executed; that the question has arisen whether there are four Directors or five Directors that the question has arisen whether the First Members still exist or whether they do not, what is the effect of their abolition, what is the effect on this instrument, what are the questions to be decided. Here is this deed of Mrs. Eddy executed in 1898 establishing the Christian Science Publishing Society. The Christian Science Publishing Society by eminent counsel, eminent not only here but throughout the United States have taken the position that that deed executed on January 25, 1898 is complete within itself and being complete within itself is not subject to the operation of the Church Manual. That deed contained within its four corners the power to remove First Members.

That deed contains within its four corners a power of removal. "The First Members together with the Directors of said church shall have the power to declare vacancies in said trusteeship for such reasons as to them may seem expedient." So that we are met first with the question of the existence of these First Members. In *Eustace v. Dickey* everybody agreed that they were abolished. The Master found that the circumstances of their abolition were such that the power of removal did not survive. If that is the conclusion of law reached by the Court that is the end of *Eustace v. Dickey*. But here come these First Members appearing in various subtle forms, and we are entitled, in human consciousness, to a decree setting their ghost at rest and wiping and blotting them out.

The Master found that when in 1898 Mrs. Eddy wrote a deed and said that the directors of said church had the power to declare a vacancy, she meant the four people that she had named in 1892, and she did not mean the five to which they were increased in 1903. Now, if this court reaches a conclusion that they were only four, then we have the question open: Does our church have four or five? Why, if your Honor please, this whole case that has cost thousands and thousands of dollars, may finally be decided in the Supreme Judicial Court, in *Eustace v. Dickey*, on the narrow proposition that it was four people that had the power of removal of Mr. Rowlands, and not five; that of those four one voted over the telephone and did not count, that one did not vote and he didn't count, and that two are not a majority of four; and at the end of all that, if your Honor please, your statement of this morning that we have been fighting windmills would be true. It would be a tragedy if this great case, that has involved the world of Christian Science in turmoil, should ever go off on such a narrow issue as that.

I hope, if your Honor please, that in the discharge of your duty as judge of this court, having the power to direct and control the course of litigation involving a great public charity, you will say at the conclusion of this argument what you said during the course of the morning, that this Attorney-General should not take into the narrow confines of the *Eustace* case two issues, on both of which he stands contradicted by the words and works of Mary Baker Eddy, and place himself in such a situation that when a decree has been rendered against him upon the testimony of the only witness who can testify in this case, Mary Baker Eddy, that decree then can be invoked by Mr. Whipple as a decree binding all posterity, for all time. I plead with all the earnestness of which I am capable that no such travesty on justice should ever take place in this case in this court.

Now, if your Honor please, as to this question of whether this Board of Directors is a corporation or not. It is not a question of whether it is a corporation in the full sense of the term. The only question is, is it a body corporate? That question has been magnified and distorted. It only relates to this phase of the case. The statute says they shall be a body corporate for the purpose of taking and holding in succession the grants of property made to them. It has nothing to do with the government of the church, it has nothing to do with their power of removing trustees. It simply relates to the incident of corporate succession, with respect to the title of real estate, namely, if one of them dies, does the title go to their heirs or does it automatically go to the survivor or to the successor?

Now, whether they are a body cor-

porate or whether they are not does not affect for a single moment their power to remove trustees under the Deed of January 25, 1898, because that power was vested in them as individual directors and not as a body corporate at all. So that question of a body corporate came into the *Eustace* case merely by indirection; it came in because there was hitched on to the *Eustace* case the question of whether Mr. Dittmore was a director or not. Then Mr. Dittmore attempted by his answer to set up the plea that there were two sets of directors, one of four and one of five, and in the disposition of that question the body corporate became important. If the four were directors, why, of course the question of whether they were five is immaterial; if the five were directors within the meaning of the deed of January 25, 1898, the question of whether there were four is immaterial. As to the power of removal, the question of a body corporate is not in the case at all.

So, your Honor, I can only ask, as I did a moment ago, let us bring into one case, one suit, one controversy, in all this mass of legal verbiage in which we have been involved—let this court in the exercise of that power which has been declared to be the power of a court of equity, to be equal to every emergency that presents itself, enter a decree upon proper pleadings, proper process, proper evidence, so that throughout all this world there may go to the Christian Scientists, "The works of Mary Baker Eddy are upheld; peace be still."

Argument of Attorney-General in Reply

Mr. ALLEN. May it please the Court, in response to what has been said about this being again the petition of Mrs. Hulin, I wish merely to say that—

The COURT. I don't think you need to say anything about it; it does not occur to me that you would lend yourself to a rehabilitation of that petition.

Mr. ALLEN. No, sir; and I may say that the petition and the answer that are filed here, after having petitions submitted to me by different counsel representing different relators, are my own preparation of the pleadings.

With respect to all that has been said in regard to certain facts not in evidence, in view of what has been said by the last speaker, if I have correctly the copy of Volume 1, page 91, of the records of Mrs. Eddy's writings, on the 19th of September, 1892, before this meeting at which he says that the church was organized, so that I have wrongfully represented the Founder, I find the words:

"Dear Student: Call the twelve who met at your last Church meeting together. Three days notice is enough as no legal form is required. Immediately get together the twelve students that met at your last Church meeting."

Now, all that I have asked in this pleading is that if these facts, which seem to me material, exist; they should come before the court; and my interpretation of my duty in alleging these facts, if they exist, is the same as Mr. Whipple himself has said, that if there are any facts material to this case, why, they should be before the court.

I have been asked by a client of Mr. Thompson, in writing, to cause an investigation of the finances of the directors and of the trustees, and I have told him that I would give that the fullest consideration, and I have discussed the matter with him. But the action taken in intervening in this proceeding is taken irrespective of any action which it may be in the province of the Attorney-General to bring in the future. My position in this, may it please the Court, is exactly the same that I understand Mr. Dittmore's position is when he says that he desires to contest the right of the directors to declare vacancies in the Board of Trustees, for reasons which would seem to them expedient.

Mr. THOMPSON. He didn't say that; Mr. Dittmore made no such statement. We contest the right of the directors to expel a brother director—to expel him.

Mr. ALLEN. I have read his pleadings. With regard to this delay that has been referred to, I believe that this case can be argued in October, which is the earliest time it can be argued; and I have suggested that if these few facts are material they can be heard and determined, and there would be no delay in the final disposition of this case.

The COURT. It seems to me, as I have listened to this case, and the arguments of counsel, coupled with the study which I have given to the Master's report, which has consisted

in more than one reading, that the petition for the intervention is an attempt to raise issues in the pending case which are not germane to the decision of that case, and I agree largely with what Mr. Krauthoff has said as to the desirability of permitting it. It seems to me unwise, and the motion is denied.

Mr. WHIPPLE. If your Honor please, we thought that the matter of the settlement of the exceptions was on the list for today, but I am informed that through some inadvertence it was not put on in the regular order, but was perhaps added by Mr. Flynn at our request at the end of the list. Will your Honor give direction as to the disposition of that matter? Will you take it up?

The COURT. When can it be taken up?

Mr. THOMPSON. We would like to take it up now; we came here prepared to take that up.

Mr. WHIPPLE. That is what we thought.

The COURT. Let me see what the situation is. The other day, as I understood it, it was the fair intent of all parties interested, unless some new light should come up, to have the Court reserve the question of the exceptions on the Master's report for the full court. If that meets with everybody's approval it may be so reserved.

Mr. WHIPPLE. I think that is entirely agreeable to us, if your Honor please.

The COURT. Very well.

Mr. WHIPPLE. I had it on my lips to say that some of the matters which were more in the nature of a motion to recommit, or to have a rehearing, than a real exception, perhaps your Honor would dispose of.

The COURT. It does not occur to me that there is anything of substance—I mean of substance to the decision

of the narrow issue which is in this case—which calls for any recommitment whatsoever.

Mr. WHIPPLE. We will agree to the usual form of the reservation of the exceptions; I take it.

The COURT. Yes, the usual form.

Mr. WHIPPLE. Is that agreeable to you, Governor Bates?

Mr. BATES. Yes, that is entirely agreeable; that is the way I understood the case.

Mr. THOMPSON. That is agreeable to us. I assume that you will prepare a final decree.

Mr. WHIPPLE. I shall have to ask your Honor's direction about that.

The COURT. What is that?

Mr. WHIPPLE. Do we need a decree?

The COURT. No. The power of this court is ample to reserve any question to the full court for decision. And so this case is, without any decision of this court at all, reserved for a hearing upon the Master's report for the full court.

Mr. WHIPPLE. I take it a motion to confirm has been filed, or ought to be.

The COURT. Upon motion to confirm the Master's report, the case is reserved for the consideration of the full court.

Mr. WHIPPLE. And there will be no decree?

The COURT. No; no decree whatsoever—

Mr. WHIPPLE. Until after the decision of the full court.

(Adjourned.)

Publisher's Note—The above is a verbatim report of the proceedings in the case of Eustace vs. Dickey, with no corrections made by us in the stenographic court report supplied to us.

# BILL IN EQUITY

INCLUDING

## DEED OF TRUST

Constituting the Board of Trustees — Organizing  
The Christian Science Publishing Society

---

## DEED OF TRUST

Conveying Land for Church Edifice with Supplementary Declaration

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## ANSWERS OF DEFENDANTS

ADAM H. DICKEY, JAMES A. NEAL, EDWARD A. MERRITT,  
WILLIAM R. RATHVON, AND ANNIE M. KNOTT

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## ANSWER OF JOHN V. DITTEMORE

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# Bill in Equity, Including Deeds of Trust

## COMMONWEALTH OF MASSACHUSETTS

Supreme Judicial Court

Suffolk, ss. In Equity

Between

Herbert W. Eustace of Boston, and David B. Ogden of Brookline, both in the Commonwealth of Massachusetts; and Lamont Rowlands of Picayune in the State of Mississippi, as they are Trustees under a Deed of Trust dated Jan. 25, 1898, wherein Mary Baker G. Eddy is the donor, Plaintiffs.

and

Adam H. Dickey, James A. Neal, Edward A. Merritt of said Brookline, and William R. Rathvon of said Boston, as they are Trustees under a Deed of Trust dated Sept. 1, 1892, wherein Mary Baker G. Eddy is Donor, and a Declaration of Trust supplementary thereto and in amendment thereof, dated March 19, 1903, and as they are also Directors of The First Church of Christ, Scientist, in Boston, Massachusetts; and John V. Dittimore and Annie M. Knott, both of said Boston, each claiming to hold the position and office of Trustee and Director in association with the other defendants, Defendants.

### BILL OF COMPLAINT

1. The plaintiffs are the duly appointed trustees under a Deed of Trust dated Jan. 25, 1898, in which Mary Baker G. Eddy of Concord, New Hampshire, was the Donor, and Edward P. Bates and others of Boston, Massachusetts, were donees and trustees.

A copy of said Deed of Trust, with the dates of resignations of trustees who have held office heretofore, and of the appointments of their respective successors endorsed thereon, is hereto annexed marked Exhibit "A." The plaintiff Eustace became a trustee on Dec. 2, 1912. The plaintiffs Ogden and Rowlands became trustees on Aug. 1, 1917, and all the plaintiffs have held their office continuously since the dates of their appointments.

2. The defendants Dickey, Neal, Merritt and Rathvon, as the plaintiffs are informed and accordingly allege, are trustees under a Deed of Trust dated Sept. 1, 1892, in which said Mary Baker G. Eddy was Donor, and a Deed of Trust, supplementary to and in amendment of the original deed, dated March 19, 1903, copies of which deed and sup-

plementary Declaration of Trust are hereto annexed marked respectively Exhibit "B" and Exhibit "C."

Said defendants are, also, as the plaintiffs are informed and accordingly aver, for the time being directors of The First Church of Christ, Scientist, in Boston, Massachusetts, a religious organization founded by said Mary Baker G. Eddy.

The defendant Dittimore was, until recently, as the plaintiffs are informed and accordingly aver, a trustee under said Deed of Trust of Sept. 1, 1892, and a director of The First Church of Christ, Scientist, in Boston, Massachusetts; but recently, as the plaintiffs are informed and accordingly aver, the defendants Dickey, Neal, Merritt and Rathvon, purporting and claiming to act under authority so to do, have removed, or attempted to remove, said Dittimore from his office as trustee as aforesaid and as a director of The First Church of Christ, Scientist, and have elected and appointed or attempted to elect and appoint, the defendant Annie M. Knott as successor to said Dittimore, both as trustee and director as aforesaid.

Accordingly, as to whether said Dittimore or said Knott is now the duly appointed trustee under said Deed of Trust and director of said First Church of Christ, Scientist, the plaintiffs are ignorant and are unable to make further averment.

The First Church of Christ, Scientist, in Boston, Massachusetts, hereinabove referred to, is also known as "The Mother Church," and will hereinafter be thus referred to.

3. Prior to the date of either of the trust deeds hereinbefore referred to, to wit: in or about the year 1879, Mrs. Mary Baker G. Eddy became the Leader in the organization of a church "designed to commemorate the word and works of our Master, which should reinstate primitive Christianity and its lost element of healing," and after the charter of said Church obtained in June, 1879, she became its pastor. In September, 1892, Mrs. Eddy was instrumental in reorganizing said Church, which was named "The First Church of Christ, Scientist," of which Mrs. Eddy became the pastor and later Pastor Emeritus until the date of her passing on.

As a means of promoting and extending the religion of Christian Science as taught by her, Mrs. Eddy had created an organization known as "The Christian Science Publishing Society," to publish and circulate various Christian Science publications of which Mrs. Eddy was the author or to which she contributed. In 1898 said

publications had acquired a substantial circulation and had been highly effective in accomplishing the purpose for which they were created, viz.: of more effectually promoting and extending the religion of Christian Science as taught by Mrs. Eddy. All authority in connection with her publications remained in the hands of Mrs. Eddy herself; and although the "Christian Science Board of Directors" had been created by the Deed of Trust of Sept. 1, 1892, said Board of Directors was given no authority by Mrs. Eddy over her publications and had no participation in the work of The Christian Science Publishing Society.

4. The conception and plan of Mrs. Eddy for the promotion and extension of the religion of Christian Science, as taught by her, involved two general branches of activity. The first, the organization of churches for the study of the Bible and teaching the doctrinal truths of Christian Science as contained in Mrs. Eddy's textbook of Christian Science, "Science and Health with Key to the Scriptures." The second, by increasing the circulation throughout the world of publications containing the truths of Christian Science, for the purpose thereby of more effectually promoting and extending the religion of Christian Science.

These two branches of activity, both calculated to develop and enlarge the Christian Science movement, so-called, Mrs. Eddy determined to put into the hands of different sets of trustees, reserving to herself, in respect to each and both, a large measure of power to control and guide both boards of agents selected by herself.

Mrs. Eddy accordingly, as hereinbefore stated, through the Deed of Trust of Sept. 1, 1892, and the amended declaration already referred to, placed with the "Christian Science Board of Directors" certain duties and powers in relation to The Mother Church, its organization and discipline, reserving to herself, however, general control by right of removal and appointment. Several years later, in 1898, as hereinabove set forth, she conveyed to the Board of Trustees her property used in The Christian Science Publishing Society; and delegated to said trustees the authorities connected therewith which she had up to that time reserved exclusively to herself, as appears in the Deed of Trust Jan. 25, 1898 (Exhibit "A"). The original trustees named in said Deed of Trust (Exhibit "A") included no members of the then "Christian Science Board of Directors" nor trustees under the trust deed of



Sept. 1, 1892 (Exhibit "B"); and the selection of other persons to serve as trustees under said Deed of Trust (Exhibit "A") as these plaintiffs are informed and believe, and accordingly aver, was in pursuance of a distinct purpose on the part of Mrs. Eddy, the Founder of The Mother Church and the Donor of both trusts, to keep the affairs of the Publishing Society under a separate control and management from that of her Church.

5. Since the date of their respective appointments as trustees under said Deed of Trust of Jan. 25, 1898 (Exhibit "A"), the plaintiffs have at all times zealously, conscientiously, and faithfully discharged the duties imposed upon them by the trust and confidence of Mrs. Eddy.

They have held and managed the property and property rights which came to them under the Deed of Trust exclusively for the purposes declared and defined therein, and solely for the promotion and extension of the religion of Christian Science as taught by Mrs. Eddy, the Donor of the trust and the Founder and Leader of the Christian Science Church. As specifically provided in the trust deed, the trustees have energetically and judiciously managed the business of the Publishing Society on a strictly Christian basis and upon the sole responsibility of themselves, the trustees.

As a result of the administration of the trust by the present trustees, the affairs of the Publishing Society have been highly prosperous and successful. The publications of the Society, religious and secular, have increased in circulation and influence. The interests of Christian Science have thereby been greatly promoted, the teaching of Christian Science has been widely extended, and the number of believers in the faith has been steadily increased. In no way have the plaintiffs failed in the proper discharge of their duty, as either expressed or implied in the terms of said Deed of Trust. The trustees have worked harmoniously with each other, and never in their business association has there been friction or disagreement as between themselves. They have all worked loyally, earnestly, and faithfully as Christian Scientists and believers in its tenets and doctrines, for the best interests of the Christian Science Church and the spread of Christian Science throughout the world.

In addition to the great work thus achieved in the direct promotion and extension of Christian Science, the plaintiffs and their predecessors in the trust have indirectly promoted and extended the interests of Christian Science by paying over, semi-annually, substantial sums of money to the defendants, both in their capacity as directors for the support of The Mother Church and in their capacity as trustees for the promotion of Christian Science under the terms of the trust created in Mrs. Eddy's will.

The trustees have paid over to the defendants in these two capacities, as directors of The Mother Church and as trustees, as earnings and profits from their conduct of the trust for a period of six months ending Oct. 1, 1918, a sum in excess of \$450,000.

6. In the growth and extension of the Christian Science movement, more than eighteen hundred Christian Science churches and societies have been created and are now in existence. The "Christian Science Board of Directors" hereinafter referred to as the directors, or directors of The Mother Church, are directors of only one of these Christian Science churches: to wit, The Mother Church situated in Boston.

The Church By-Laws created by Mrs. Eddy provide for local self-government of churches:

#### Article XXIII

Local Self-government. Section 1. The Mother Church of Christ, Scientist, shall assume no general official control of other churches, and it shall be controlled by none other.

Each Church of Christ, Scientist, shall have its own form of government. No conference of churches shall be held, unless it be when our churches, located in the same State, convene to confer on a statute of said State, or to confer harmoniously on individual unity and action of the churches in said State.

Sect. 10. . . . In Christian Science each branch church shall be distinctly democratic in its government, and no individual, and no other church shall interfere with its affairs.

#### Article XI

Sect. 13. . . . Each church shall separately and independently discipline its own members,—if this sad necessity occurs.

7. In recent years, since the passing on of Mrs. Eddy, the directors have been gradually endeavoring to assume and exercise powers with regard to the Publishing Society which the directors never assumed or attempted to exercise during the lifetime of Mrs. Eddy. Upon one excuse or another, the directors have sought from the trustees various information with regard to the work of the Publishing Society and the management of its affairs. They have requested the Board of Trustees to abstain from the exercise of certain powers and the performance of certain duties theretofore exercised and performed by them. The trustees have conformed to all of these requests. They have given all the information requested, and have in all cases conformed to any specific request which has been made by the Board of Directors.

In addition to such specific requests within the months recently last past, the directors have repeatedly insisted that the Board of Trustees should

make open, specific and public acknowledgment that the directors were the supreme and final authority with reference to all of the affairs of the Publishing Society and the management of the trust created by the trust deed of Jan. 25, 1898 (Exhibit "A").

8. During the month of October last past, the defendants Dickey, Neal, Merritt, Rathyon, and Dittmore made formal demand upon the trustees that thereafter the trustees should in general no longer conduct the business of The Christian Science Publishing Society as they had theretofore conducted said business and performed their duties as declared and defined by the provisions of the trust instrument; but that they, the trustees, thereafter should act in all matters concerning the administration of the trust in conformity with the directions of said Board of Directors in accordance with the interpretation by said Board of Directors of certain alleged wishes of Mrs. Eddy, the Donor, alleged by said directors to have been expressed both in the Manual of The Mother Church and otherwise, on occasions long after the date of the Deed of Trust, although these alleged expressions and statements are admittedly inconsistent with the terms of the Deed of Trust and in derogation of the powers and duties of the trustees as therein declared and defined.

The directors have demanded of the trustees in substance and effect not that they should do or refrain from doing any particular thing but that the trustees should declare their general acceptance of and assent to the directors' claim of supreme authority and agree definitely and in writing that they would thereafter discharge their duties as trustees in accordance with the directors' interpretation of the By-Laws of The Mother Church; and that upon occasions where the directors' interpretation of the provisions of the Church By-Laws or Manual was inconsistent with and contrary to the provisions of the Deed of Trust the trustees should disregard the provisions of the Deed of Trust and exercise their powers, or refrain from exercising their powers, in accordance with the interpretation of the directors of such By-Law,—denying to the trustees the right to act either upon their own interpretation of the provisions of the Manual or that of any person or persons other than the directors.

The directors have also insisted that the trustees should at once openly declare and agree that since the By-Laws of the Church as a whole indicated that the Directors of the Church were entrusted with the business of the Church, they, the directors, were thus authorized and required to supervise and control the business of The Christian Science Publishing Society as a part of the Church and that thereafter the trustees should not act as they hitherto had acted in the discharge of their duties as declared and defined by

the trust instrument, but should act solely and exclusively as directed by, and in subordination to, the directors, who would thus in effect arrogate to themselves all the duties of the trustees of the Publishing Society as well as of the directors of the Church.

The trustees desiring information as to their powers and responsibilities in the premises, consulted counsel in order to secure a competent opinion for their guidance. The trustees were advised, and accordingly communicated to the directors, that they were unable to conform to the request of the directors, because they believed that the demand which the directors had made was contrary to the purposes and intentions of the Founder of The Mother Church, the Donor of the powers declared in the Deed of Trust, and inconsistent with Mrs. Eddy's plans for the promotion and extension of Christian Science, especially in respect of maintaining the control of the Publishing Society apart and free from interference by the directors; that compliance with the demand of the directors would be in effect to defeat the purposes of the Donor as declared in the Deed of Trust; and that thus the trustees would become recreant to a sacred duty imposed upon them and them alone by the Founder and great Leader of the Christian Science Church.

9. Thereafter there occurred an interchange of correspondence between the Board of Directors and the Board of Trustees, in which the sole point discussed was whether the trustees would continue to conduct their trust and perform their duties in accordance with the terms declared and defined in the trust deed, or should in substance and effect agree thereafter to manage the affairs of the Publishing Society in accordance with the edict and direction of the Board of Directors under their own interpretation of the Church Manual and the alleged wishes of Mrs. Eddy.

On the third day of January last past, the Board of Directors sent to the Board of Trustees a communication in substance and effect demanding the resignation of the Board of Trustees, said demand being couched in the following terms:

"The directors have one more proposal to make. It is that the present members of the Board of Trustees submit their resignations to The Christian Science Board of Directors to take effect when their resignations are accepted by the Board of Directors."

10. On no occasion prior to the demand of Jan. 3 for the resignation of the trustees did the directors, or any member thereof, criticize either the efficiency or success of the management of the affairs of the Publishing Society. In substance and effect the directors conceded that the business affairs of said Society were being effi-

ciently and successfully managed, and that the purposes of the trust deed as stated and declared therein were being promoted; but said directors insisted that entirely apart from questions of efficiency of management and performance of the trust under the terms of the Deed of Trust it was in their opinion necessary to the success of the Christian Science movement that the Board of Directors of The Mother Church should have absolute and unchallenged dominion and control of the affairs of the Publishing Society as a department of the Church; that such was the purpose of the Founder of the Church, Mrs. Eddy, as made known to them and claimed by them to appear in the Church Manual; that accordingly the provisions in the trust deed creating the trust and defining the duties and responsibilities of the trustees must be disregarded by the trustees, who should accept the later declarations of the donor of the trust and the directors' interpretations thereof to guide them in the performance of their duties as trustees.

11. Upon receipt of said demand by the Board of Directors for their resignation, the Board of Trustees again consulted counsel and requested a further opinion as to the proper manner, under the circumstances thus presented, in which they should proceed in the discharge of their duties and responsibilities as trustees and for their guidance as to what they should do in the proper execution of their trust.

Counsel thus employed rendered an opinion in terms which appear in a communication addressed to counsel employed by the Board of Directors as follows:

"Boston, January 27, 1919.

"Messrs. John L. Bates,  
Clifford P. Smith,  
Leon M. Abbott,  
Edwin A. Krauthoff,

Counsel for the Board of Directors of  
The First Church of Christ, Scientist,  
in Boston, Mass.

"Dear Sirs:

"The trustees have sought our advice respecting their rights and duties as trustees under the Deed of Trust executed by Mary Baker G. Eddy, under date of January 25, 1898.

"After having carefully considered the deed, we have advised our clients that,

"(1) The Deed created a valid, express trust. The activities, powers and duties of the trustees are therein stated in clear and decisive terms;

"(2) The Deed of Trust is complete in itself and irrevocable. By it the title to the property therein described was transferred and the relation of the trustees and *cestuis que trustent*

was definitely fixed. It was beyond the power of Mrs. Eddy, the creator of the trust, thereafter to change, alter or modify the rights and interests established by the Deed.

"(3) The power under the Deed of Trust to declare vacancies having been vested jointly in the Board of Directors and the First Members, the Board of Directors alone cannot exercise the power;

"(4) The source of the powers and duties of the trustees is the Deed of Trust. To it they must look for the extent and limit of their authority. The language of the Deed of Trust being definite and controlling, neither subsequent provisions of the Church Manual nor, as heretofore stated, any subsequent declarations of Mrs. Eddy, can have the effect of modifying the Deed of Trust or the estates and equitable interests thereby created. Nor can such provisions or declarations add to, or detract from, the particular responsibilities, duties and functions imposed upon the trustees by the Deed;

"(5) If there be any conflict between the terms of the Deed and the language of the Church Manual, the legal and moral obligation of the trustees compels them to respond to and obey the mandates of the Deed. Should they do otherwise, they would violate the compact which they made by their acceptance of the trust "to honestly and faithfully do and perform all things to be done and performed by them within the terms, objects and purposes of this instrument."

"Although the Deed of Trust provides that the balance remaining after paying the usual and legitimate expenses incurred in conducting the business shall be paid over to the treasurer of The First Church of Christ, Scientist, in Boston, the avowed and reiterated purpose of Mrs. Eddy in creating the trust was more effectually to promote and extend the religion of Christian Science. As said by the Supreme Court of Massachusetts in *Chase v. Dickey* (212 Mass. pp. 555, 561, 562): "This latter purpose in substance is not a gift to the particular ecclesiastical organization for its special needs. It manifests a broader design, and authorizes the use of the gift for spreading the tenets of faith taught by the testatrix over an area more extensive than could possibly be gathered in one congregation. It includes the most catholic missionary effort, both as to territory, peoples and times. It is the founding of a trust of comprehensive scope for the up-building of the sect which the testatrix made the object of her bounty." Obviously it was not Mrs. Eddy's intention to establish a mere money-making enterprise for the benefit of the First Church in Boston.

"Having been thus advised as to their powers and duties and the objects of the trust, the trustees assert

it always has been and is now their purpose, as trustees and as loyal, faithful, and consistent believers and advocates of the principles of Christian Science as taught by me (Mrs. Eddy), in my book, "Science and Health with Key to the Scriptures," as required by the Deed, strictly to carry out and faithfully to discharge the duties and responsibilities which the Deed imposes.

"It must be assumed that in creating the Publishing Society and in designating trustees to hold and manage the property and property rights involved, and in imposing upon them the duty of energetically and judiciously managing the business of the Publishing Society on a Christian basis and 'upon their own responsibility,' Mrs. Eddy intended to commit this important work of 'effectually promoting and extending the religion of Christian Science' to men of character, discretion, and courage, and that by the controlling terms of the deed she did not intend that the trustees should yield their responsibility to some other body or individuals, or to permit the judgment of others to be substituted for that of the trustees.

"Minds may differ as to the manner in which the trustees have performed and are performing their duty, but there can be no serious dispute as to the meaning of the language of the Deed. The trustees welcome kindly and just criticism of anything which they may do or fail to do in the discharge of their duty. In the same spirit, they feel they must refuse to accept peremptory orders concerning subjects which rest wholly within the discretion of the trustees.

"We reiterate what was stated to you at the interview—our earnest wish to cooperate with you to the end that our respective clients may work harmoniously and effectively in the discharge of the duties which they have severally assumed, and we welcome your suggestions.

"CHARLES E. HUGHES,  
"SILAS H. STRAWN,  
"SHERMAN L. WHIPPLE."

12. As a result of conferences between counsel of the trustees and directors, it was agreed that the respective boards would make a sincere attempt to harmonize their different views as to the authority of the Board of Trustees in respect to the manner in which the trustees should perform their duties as such. The plaintiffs endeavored in good faith to carry out such agreement, but the directors personally and through counsel, both in interviews and by correspondence, demanded of the trustees and insisted as a condition of their continuing to hold their offices, that the plaintiffs should explicitly and in writing repudiate the advice and opinion of their counsel as hereinabove set forth, and agree that

their actions should not be governed thereby.

Said directors requested the trustees particularly to repudiate that part of the opinion of counsel stated in the following terms:

"If there be any conflict between the terms of the Deed (the Deed of Trust dated January 25, 1898) and the language of the Church Manual, the legal and moral obligation of the trustees compels them to respond to and obey the mandates of the Deed."

The directors insisted as a further condition of the trustees retaining their offices as such, that the trustees acknowledge in writing that the Board of Directors have final authority in regard to the editorial policy of the publications of The Christian Science Publishing Society, and general supervision of the general affairs of The Christian Science Publishing Society.

The trustees expressed themselves as always willing to receive recommendations or criticisms from the Board of Directors as to the administration of their trust and the direction of the editorial policy of their publications, and stated that they would give to such recommendations careful and earnest consideration and that they would on all occasions conform thereto when in the exercise of sound discretion and judgment they might do so.

They stated their assent that the Board of Directors of the Church was supreme in respect of any and all matters in any way affecting the government of The Mother Church in so far as such matters did not require the Board of Trustees to violate the terms of the trust deed, which was the source and measure of their own authority. The trustees offered cordially to cooperate with the directors in promoting and extending the interest of the Christian Science religion, but they declined to repudiate the advice of their counsel and stated that in the administration of their trust they would be guided by the terms of the trust instrument, with a due regard for the By-Laws of the Church and the provisions of the Church Manual, interpreted in relation to the expression of Mrs. Eddy's desires and purposes in the provisions of the Trust Deed.

13. Thereafter solely for the reasons above set forth the directors made an attempt to remove the plaintiff Rowlands as trustee and declare his office vacant. In pursuance of a plan which the defendants Dickey, Neal, Merritt, Rathvon, and Dittemore had conceived and intended to carry out to accomplish the subordination of the Board of Trustees to the will of the directors and to dominate the affairs of The Christian Science Publishing Society in derogation of the terms of the trust deed, the defendant directors on the 17th day of March current delivered to the plaintiff Rowlands a so-called "Notice of Dismissal" of said plaintiff

as a trustee of The Christian Science Publishing Society, said "Notice of Dismissal" being as follows:

"The following resolution is offered for adoption by The Christian Science Board of Directors, the Board of Directors of The First Church of Christ, Scientist, in Boston, and the governing board of the Christian Science denomination. It is offered for adoption in the exercise of the rights and powers vested in this church and in this board by the law of Massachusetts, by the Deed of Trust dated January 25, 1898, through which Mary Baker Eddy, the Discoverer and Founder of Christian Science, and the Leader of the Christian Science movement, constituted the Board of Trustees of The Christian Science Publishing Society, by the By-Laws of this church, and by the usage of the Christian Science denomination.

"Whereas Mr. Lamont Rowlands, who has been acting as a trustee of The Christian Science Publishing Society under said Deed of Trust and under Article XXV of the By-Laws of this church, was put into said position for the reason, among other reasons, that he was a member of this church who had subscribed to its By-Laws and was regarded as obedient to its By-Laws and government; and

"Whereas Mrs. Eddy has declared that 'The present and future prosperity of the cause of Christian Science is largely due to the By-Laws and government of 'The First Church of Christ, Scientist,' in Boston' (Christian Science Sentinel, Volume XVI, page 1010); and

"Whereas Mrs. Eddy has declared that 'Law constitutes government, and disobedience to the laws of The Mother Church must ultimate in annulling its Tenets and By-Laws. Without a proper system of government and form of action, nations, individuals, and religion are unprotected; hence the necessity of this By-Law and the warning of Holy Writ: "That servant, which knew his lord's will, and prepared not himself, neither did according to his will, shall be beaten with many stripes"' (Church Manual, page 28); and

"Whereas the tenets referred to in the foregoing quotation are 'the important points, or religious tenets, of Christian Science' (Science and Health, page 497), and the system of government and form of action referred to in the foregoing quotation is that which is shown by the By-Laws of this church; and

"Whereas it has become evident that Mr. Rowlands does not understand or recognize the importance and necessity of promoting the interests of Christian Science by following the directions given by Mrs. Eddy in our Church By-Laws; and

"Whereas Mr. Rowlands has shown a disposition to invent or adopt interpretations of our Church By-Laws that pervert their meaning and annul their effect; and

"Whereas since Mr. Rowlands began to act as a trustee of The Christian

Science Publishing Society, he and the other trustees thereof have tried to change the relation which had always theretofore existed between The Christian Science Publishing Society and its Board of Trustees on the one hand and The Mother Church and its proper officers on the other hand, and he in particular has tried to convert and enlarge said trusteeship into an office or function of a new and different character; and

"Whereas Mr. Rowlands and other persons acting with him, including several eminent lawyers wastefully employed have set up said Deed of Trust against the By-Laws and government of The Mother Church, and have threatened this board with litigation if this board exercise its right and power to remove any of said trustees; and

"Whereas it has become evident that Mr. Rowlands has allowed a sense of self-interest to interfere with the interests of Christian Science; that he has become self-assertive, contentious, and disposed to make trouble without regard to consequences; and that he is, for these reasons and the foregoing reasons and other reasons, not suitable for connection with The Christian Science Publishing Society as a trustee thereof; and

"Whereas Mr. Rowlands evidently has other interests which prevent him from giving sufficient time and attention to the business of The Christian Science Publishing Society;

"Now therefore it is resolved by The Christian Science Board of Directors, the Board of Directors of The First Church of Christ, Scientist, in Boston, and the governing board of the Christian Science denomination, in the exercise of the rights and powers above mentioned, that Mr. Rowlands is no longer accepted by this board as suitable for connection with The Christian Science Publishing Society as a trustee thereof; that he be and hereby is removed from the Board of Trustees of said Society; and that the trusteeship in connection with said Society heretofore held or claimed by him be and hereby is declared vacant." On the following day the defendant directors caused to be delivered to the plaintiff Rowlands' associates on the Board of Trustees a communication reading as follows:

"The Christian Science Board of Directors,  
Boston, Massachusetts.

"March 18, 1919.

"Mr. Herbert W. Eustace,  
"Mr. David B. Ogden, Trustees,  
"The Christian Science Publishing Society,  
Boston, Mass.

"Dear Friends:—

"I am instructed by The Christian Science Board of Directors to say in furtherance of the board's interview with you on the 17th inst., at which

time you were served with a notice of the dismissal of Mr. Lamont Rowlands as a trustee of The Christian Science Publishing Society, which action was taken by The Christian Science Board of Directors under Article XXV, Sections 3 and 5, of The Mother Church Manual, the board calls attention to your duty under Article XXV, Section 3, of the Manual, requiring the remaining trustees to fill the vacancy. It is the board's desire that you immediately appoint some one to fill the position made vacant by their action of yesterday, and in the appointment of Mr. Rowland's successor they expressly request that you name a person who shall be suitable and satisfactory to the Board of Directors.

"Kindly acknowledge receipt of this letter, and advise the Board of Directors when you will be able to comply with the above request.

"Sincerely yours,  
(Signed) "CHAS. E. JARVIS."

"Corresponding Secretary for The Christian Science Board of Directors."

14. The plaintiffs deny that the statements set forth in the preamble of the above resolution as a ground for the removal of the plaintiff Rowlands are well founded or justified in fact.

They especially deny that the plaintiff Rowlands has ever shown a disposition to invent or adopt interpretations of the Church By-Laws that pervert their meaning and annul their effect.

They further deny that either he or the other trustees have "tried to change the relation which had always theretofore existed between The Christian Science Publishing Society and its Board of Trustees on the one hand and The Mother Church and its proper officers on the other hand," and they state the fact to be that the trustees have continued the relations which they had found to exist between the Board of Trustees and the Board of Directors, and that the directors alone have tried to alter and destroy that existing relation.

The plaintiffs further deny that the plaintiff Rowlands "in particular has tried to convert and enlarge said trusteeship into an office or function of a new and different character," and they state the fact to be that no one of the trustees has in any way attempted to convert said trusteeship into an office or function of a new or different character and that said trustees have enlarged the trusteeship only in the sense that by their efforts they have steadily attempted to promote and extend the circulation of the Christian Science publications and increase their influence and thus to enlarge the interest of the world in Christian Science, and that in such endeavor the trustees have in fact been successful beyond any of their predecessors.

They deny that either they or their counsel have set up the Deed of Trust

against the By-Laws and government of The Mother Church, but they state the fact to be that having received the advice of counsel that their duties as trustees were defined and declared in the Deed of Trust, they accepted said advice and have acted accordingly, always giving due regard and heed to the provisions of the Church Manual.

The plaintiffs deny that they have at any time threatened the Board of Directors with litigation in case the board should exercise its alleged right and power to remove any of said trustees, and state the fact to be that the trustees were advised by their counsel that under the circumstances existing the directors had no right or power whatever to remove either the plaintiff Rowlands or any of said trustees, and that this advice was duly and respectfully communicated to the Board of Directors and their counsel.

The plaintiffs deny that "the plaintiff Rowlands has allowed a sense of self-interest to interfere with the interest of Christian Science or that he has become self-assertive, contentious or disposed to make trouble without regard to consequences," and they state the fact to be that he has in all respects discharged his duties as trustee solely with a view to what in the exercise of sound judgment he has regarded as the best interests of Christian Science, the Christian Science Church and the promotion and extension of Christian Science throughout the world; that he has been prayerfully conscientious and loyal and faithful to his duty as a believer in Christian Science and has taken no action whatever in the premises except upon the advice of those whose experience and learning in the law made them competent to guide the plaintiff in the discharge of those important duties to an important cause. The plaintiffs aver that all of them have been faithful, loyal and conscientious Christian Scientists in the performance of the duties under the important trust and confidence reposed in them by the great Leader and Founder of the Christian Science movement.

The plaintiffs deny that either for the reasons set forth in the preamble of said resolution or for any other reason the plaintiff Rowlands is not suitable for connection with The Christian Science Publishing Society as a trustee thereof, and they state the fact to be that in all respects, as they believe, he has discharged his duty faithfully and loyally and conscientiously.

The plaintiffs further deny that the plaintiff Rowlands has any other interest which prevents him from giving sufficient time and attention to the business of The Christian Science Publishing Society and they state the fact to be that upon taking the trusteeship he gave up large and important business interests and engagements which, if continued, would have brought to him a financial return

many fold greater than the salary of a trustee; that he made this financial sacrifice solely to consecrate himself to the extension and promotion of Christian Science which he had adopted and professed, and in which he had become very deeply and sincerely interested.

The plaintiffs believe that no valid or sound reason exists why the plaintiff Rowlands should be removed or should resign his office as trustee and they state their belief to be that the action of the defendant directors in seeking his dismissal does not rest upon sound judgment exercised in the interest of the Christian Science movement, but is an arbitrary and capricious attempt to exercise a fancied power which does not exist; that said action is undertaken for the purpose of extending the power of the directors, individually or collectively, into a domain purposely excluded from their jurisdiction by the specific provisions which the Donor caused to be inserted in said trust instrument, and thus create an absolute oligarchy in control of the great Christian Science movement, which its Founder and Leader never intended and against which she specifically provided in creating the trust under which the plaintiffs are acting.

15. The plaintiffs are advised and accordingly aver that neither as matter of fact nor under the law have the directors the right to remove or dismiss the plaintiff Rowlands from his position as trustee under the Deed of Trust, and that the action of the directors in the premises is nugatory and without effect, but upon belief they aver that the defendant directors having taken the above described action will further proceed to attempt to prevent the plaintiff Rowlands from acting as trustee and interfere with said Rowlands in the discharge of his duties under the trust agreement and that the business of The Christian Science Publishing Society may thereby be seriously and irrevocably injured.

16. The plaintiffs aver upon information and belief that the things which the directors have done in demanding the resignation of the plaintiffs as trustees and in attempting to remove from his office the plaintiff Rowlands are done in pursuance of a plan which the defendants Dickey, Neal, Merritt, Rathvon, and Dittmore have heretofore contrived, to which plan said defendants expect to secure the assent of the defendant Knott; that said plan involves a deliberate attempt by the directors to force the trustees out of the offices which they hold in order to place therein either three of the directors themselves or three persons who will be subservient to the directors and manage said trust and the affairs of the Publishing Society in subservience to the defendants; that said plan contemplates that

the trust created by Mrs. Eddy in respect of the Publishing Society and which she specifically provided should be dominated and controlled by trustees other than directors of The Mother Church shall hereafter be dominated and controlled by said directors.

The plaintiffs further aver upon belief that in case the plaintiffs Eustace and Ogden should decline to make an appointment of the plaintiff Rowlands' successor and appoint such person as may be selected by and agreeable to the directors, the directors plan to make such refusal a ground and excuse for an attempt to remove both said plaintiffs from their office as trustees.

17. The plaintiffs further aver upon information and belief that it is not a part of the plan of the defendants to appeal to the Courts for an order determination of the question of their right to remove the plaintiff trustees under existing circumstances, but that on the contrary they propose to accomplish their removal by the exercise of the great and dominating influence which they carry by reason of their official position and in the exercise of their power to dominate and control members of The Mother Church by the powers of discipline which they hold, and to influence the action of other churches by refusals to grant licenses or appointments.

The plaintiffs believe that the defendants intend thus to make the office of trustees practically untenable by the plaintiffs, or to make the performance of their duties so arduous and disagreeable as thereby to induce their voluntary resignation as trustees and their compliance with the demands which the defendants have made upon them as hereinabove set forth.

The plaintiffs further aver upon information and belief, that the defendants have stated to many Christian Scientists in substance that they plan to obtain control of the Publishing Society, or to destroy it; that if the plaintiffs as trustees continue to resist the demands of the directors and refuse to conform to their will, the directors propose in the terms used by one of them, "to make the Publishing Society an empty shell," and to accomplish that result by using their great influence with Christian Science churches and throughout the field to induce Christian Scientists not to continue to subscribe for and support the publications published by the Society established and founded by Mrs. Eddy, but to subscribe for and support new publications which the directors have threatened, themselves, to publish and issue, to take the place of those which the plaintiffs as trustees are now publishing as the duly authorized and accredited works of the great Founder and Leader of the Christian Science movement.

18. The plaintiffs aver that the threat on the part of the directors to injure the Publishing Society and to make the same "an empty shell" is in effect a threat to use their power as directors to embarrass the plaintiffs in the management of a trust created by Mrs. Eddy and which is being carried out in accordance with her express purposes and desires, as declared in the trust instrument; to defeat the purposes of the Donor of the trust to provide a management and control of the Publishing Society, separate and distinct from the management and control of The Mother Church; to injure and possibly to ruin an enterprise created by the Founder of The Mother Church for its support and for the extension of the Christian Science movement, and utterly to destroy the effect of the instrument which conveyed to the trustees the property which they hold upon a "perpetual and irrevocable trust and confidence," thus to destroy what is believed by all true Christian Scientists to be a sacred trust created by the Founder and great Leader of all Christian Science churches and the world-wide Christian Science movement.

19. The plaintiffs aver, upon belief, that unless the defendants are restrained from carrying out the plan which they have contrived, as hereinbefore described, and from executing the threat which they have expressed to make the Publishing Society "an empty shell," the trust which as trustees these plaintiffs are bound by duty to protect and maintain, will suffer irrevocable and irremediable harm, and great and lasting injury will be done to the business of The Christian Science Publishing Society; the income upon which The Mother Church and the Christian Science movement so largely depend, will be diminished or entirely abated and the purposes of the trust as therein declared for the promotion and extension of the religion of Christian Science as taught by Mrs. Eddy will be defeated.

WHEREFORE the plaintiffs pray:

1. That the defendant directors be restrained and enjoined from taking any further action intended directly or indirectly to impede or interfere with the plaintiff Rowlands, or either of the other plaintiffs, in the discharge of his or their respective duties as trustees, under the trust instrument of Jan. 25, 1898 (Exhibit "A").

2. That the resolution hereinbefore recited purporting to remove the plaintiff Rowlands as trustee of The Christian Science Publishing Society and declare said trusteeship vacant, be adjudged as nugatory and of no legal effect;

3. That the defendants be restrained and enjoined from carrying out any purpose or plan by either direct or indirect means to compel the plaintiffs or any of them to resign their of-

nces as trustees; to impair, destroy, or in any way injure the business of The Christian Science Publishing Society as conducted by the plaintiff trustees; or in any way to carry out any threat or purpose to injure the business of said Publishing Society either by creating and maintaining a publishing society to conduct a business in competition therewith, or otherwise;

4. That the defendants may be restrained and enjoined from taking any action to defeat or tending to defeat the purposes of Mrs. Mary Baker G. Eddy, the Donor, as set forth and declared in the Trust Deed of Jan. 25, 1898 (Exhibit "A");

5. And for such further relief as the case may require or admit of.

By their solicitors.

(Signed)

WHIPPLE, SEARS & OGDEN.

(Signed) CHARLES E. HUGHES,

(Signed) SILAS H. STRAWN,

(Signed) SHERMAN L. WHIPPLE,  
of Counsel.

We, the plaintiffs named in the foregoing bill in equity, hereby certify that we have read the bill; that the statements therein contained which are made upon knowledge, are true; and those made upon information and belief, we believe to be true.

(Signed) HERBERT W. EUSTACE,

(Signed) DAVID B. OGDEN,

(Signed) LAMONT ROWLANDS.

Commonwealth of Massachusetts,  
Suffolk, ss. March 25, 1919.

Personally appeared the above named Herbert W. Eustace, David B. Ogden and Lamont Rowlands and made oath that the foregoing statement by them subscribed is true, before me.

(Signed) ALEXANDER LINCOLN,  
Justice of the Peace.

[Exhibit "A"]

#### DEED OF TRUST

*The following is a copy of the Deed of Trust constituting the Board of Trustees—organizing The Christian Science Publishing Society.*

BE IT KNOWN THAT I, Mary Baker G. Eddy of Concord, New Hampshire, in consideration of one dollar to me paid by Edward P. Bates, James A. Neal, and William P. McKenzie, all of Boston, Massachusetts, and in consideration of their agreement to faithfully observe and perform all the conditions hereinafter specified to be by them observed and performed, and for the purpose of more effectually promoting and extending the religion of Christian Science as taught by me, do hereby sell and convey to them, the

said Bates, Neal and McKenzie, and their successors in the trust hereinafter established all and singular the personal property, goods, and chattels which were sold and conveyed to me by the Christian Science Publishing Society by its bill of sale dated January 21st, 1898, said property being located in the premises numbered 95 and 97 Falmouth Street in said Boston, including the publication called "The Christian Science Journal" (not including the copyrights thereof), the linotype, all pamphlets, tracts, and other literature conveyed to me by said bill of sale, the Hymnal, the subscription lists of "The Christian Science Journal" and of "The Christian Science Quarterly," all stationary fixtures, stock on hand manufactured or otherwise, machinery, tools, mailing lists, book accounts, notes, drafts, checks and bills, whether in process of collection or not, five United States bonds of one thousand dollars each, all cash and bank accounts and all personal property of whatsoever kind or nature which belonged to said Society which were conveyed to me as aforesaid, excepting only such of said property as may have been used and disposed of since the date of said sale to me, upon the following perpetual and irrevocable trust and confidence, namely:

1. Said trustees shall hold and manage said property and property rights exclusively for the purpose of carrying on the business, which has been heretofore conducted by the said Christian Science Publishing Society, in promoting the interests of Christian Science; and the principal place of business shall be in said Boston.

2. The business shall be done by said trustees under the unincorporated name of "The Christian Science Publishing Society."

3. Said trustees shall energetically and judiciously manage the business of the Publishing Society on a strictly Christian basis, and upon their own responsibility, and without consulting me about details, subject only to my supervision, if I shall at any time elect to advise or direct them.

4. Said trustees shall keep accurate books of account of all the business done by them, and shall deposit in a responsible and reliable Bank or Trust Company all bonds, mortgages, deeds, and other documents or writings obligatory of every kind and nature for safe keeping; also all surplus funds over and above the sum necessary to defray the running expenses of the business, until the same shall be paid over to the Church Treasurer, as herein provided. No papers or monies shall be taken from said Bank or Trust Company excepting by and in the presence of a majority of said trustees. Once in every six months the trustees shall account for and pay

over to the treasurer of "The First Church of Christ, Scientist, in Boston, Mass.," the entire net profits of said business. The "net profits" shall be understood to mean the balance remaining at the end of each six months after paying the usual and legitimate expenses incurred in conducting the business. No authority is intended to be conferred upon the trustees to expend the money of the trust for property not necessary for the immediate successful prosecution of the business, or to invest the same for purpose of speculation, or to incur liabilities beyond their ability to liquidate promptly from the current income of the business. Said treasurer shall hold the money so paid over to him subject to the order of "The First Members" of said Church, who are authorized to order its disposition only in accordance with the rules and by-laws contained in the Manual of said Church.

5. The business manager shall present to the trustees, at the end of each month, a full and correct statement of the receipts and expenditures of the month.

6. Said trustees shall employ all the help necessary to the proper conduct of said business, and shall discharge the same in their discretion or according to the needs of the business, excepting that the business manager may call in at times of necessity such temporary help as will facilitate the business.

7. The trustees shall employ such number of persons as they may deem necessary to prepare Bible Lessons or Lesson Sermons to be read in the Christian Science churches, the same to be published quarterly as has heretofore been done by and in the name of the Christian Science Quarterly; and they may, in their discretion, change the name or style of such Quarterly publication as occasion may demand. They shall also fix the compensation of the persons so selected.

8. Said trustees shall have direction and supervision of the publication of said Quarterly, and also of all pamphlets, tracts, and other literature pertaining to said business, using their best judgment as to the means of preparing and issuing the same, so as to promote the best interests of the Cause, reserving the right to make such changes as I may think important.

9. Said trustees and their successors in trust shall not be eligible to said trusteeship or to continue in the same, unless they are loyal, faithful, and consistent believers and advocates of the principles of Christian Science as taught by me in my book, "Science and Health with Key to the Scriptures."

10. Whenever a vacancy shall occur in said trusteeship for any cause, I reserve the right to fill the same by appointment, if I shall so desire, so long as I may live; but if I do not elect to exercise this right, the remaining trustees shall fill said vacancy. The First Members together with the directors of said Church shall have the power to declare vacancies in said trusteeship for such reasons as to them may seem expedient.

11. I also reserve the right to withdraw from said trust, if I shall so desire, the publication of the Christian Science Journal, but if I do not exercise this reserved option, then said Journal shall remain a part of the trust property forever.

12. Upon my decease, in consideration aforesaid, I sell and convey to said trustees my copyright of "The Christian Science Journal," to be held by them as the other property of said trust.

13. Said trustees shall each receive annually one thousand dollars for their services in that capacity, payable semiannually in payments of five hundred dollars, or such salary as the said Church may determine from time to time.

14. The delivery of this instrument to, and its acceptance by, said trustees shall be regarded as the full establishment of the trust and as the agreement by the trustees to honestly and faithfully do and perform all things to be done and performed by them within the terms, objects and purposes of this instrument.

WITNESS my hand and seal at Concord, New Hampshire, this twenty-fifth day of January, 1898.

(Signed) MARY BAKER G. EDDY.  
[Seal]

We accept the foregoing Trust,

(Signed) EDWARD P. BATES,  
JAMES A. NEAL,  
WM. P. MCKENZIE.

January 25th, 1898.

September 8th, 1898, (Signed) Thomas W. Hatten, Succeeding Edward P. Bates, Resigned.

October 21st, 1898, Joseph B. Clark, Succeeding James A. Neal, Resigned.

September 25th, 1906, (Signed) Allison V. Stewart, Succeeding Joseph B. Clark, Deceased.

January 6th, 1908, (Signed) William D. McCrackan, Succeeding Allison V. Stewart, Resigned.

June 19th, 1908, (Signed) Clifford P. Smith, Succeeding William D. McCrackan, Resigned.

September 12th, 1911, (Signed) James A. Neal, Succeeding Clifford P. Smith, Resigned.

December 2d, 1912, (Signed) Herbert W. Eustace, Succeeding James A. Neal, Resigned.

February 1st, 1917, (Signed) Edward A. Merritt, Succeeding Thomas W. Hatten, Resigned.

August 1st, 1917, (Signed) David B. Ogden, Succeeding William P. McKenzie, Resigned.

August 1st, 1917, (Signed) Lamont Rowlands, Succeeding Edward A. Merritt, Resigned.

[Exhibit "B"]

### DEED OF TRUST

*The following is a Copy of the Deed of Trust Conveying Land for Church Edifice*

Know all Men by these Presents,

That I Mary Baker Eddy of Concord in the County of Merrimack and State of New Hampshire in consideration of one dollar to me paid by Ira O. Knapp of Boston, Massachusetts, William B. Johnson of Boston, Massachusetts, Joseph S. Eastaman of Chelsea, Massachusetts, and Stephen A. Chase of Fall River, Massachusetts, the receipt whereof is hereby acknowledged, and, also in consideration of the trusts and uses hereinafter mentioned and established, do hereby give, bargain, sell, and convey to the said Ira O. Knapp, William B. Johnson, Joseph S. Eastaman, and Stephen A. Chase as trustees as hereinafter provided and to their legitimate successors in office forever, a certain parcel of land situate on Falmouth street in said Boston, bounded and described as follows: Beginning at the junction of Falmouth street, and a forty-foot street now called Caledonia street; thence running Southwest on said Falmouth street one hundred and sixteen and eighty-eight hundredths feet; thence Northwest at a right angle to a point where a line drawn at right angles to said forty-foot street at a point thereon one hundred and sixteen and fifty-five hundredths feet Northwest from the point of beginning meets the said boundary at right angles to Falmouth street, sixty-six and seventy-eight hundredths feet; thence at an obtuse angle on said line at right angles to said forty-foot street sixty-seven and thirty-five hundredths feet to said forty-foot street; thence Southeasterly on said forty-foot street one hundred and sixteen and fifty-five hundredths feet to the point of beginning; containing seven thousand eight hundred and twenty-eight square feet more or less, and subject to the agreements and restrictions mentioned in a deed recorded in Suffolk Registry of Deeds Lib. 1719, Fol. 83 so far as the same are now legally operative.

This deed of conveyance is made upon the following express trusts and conditions which the said grantees by accepting this deed agree and covenant for themselves and their successors in office to fully perform and fulfil.

1. Said grantees shall be known as the "Christian Science Board of Directors," and shall constitute a perpetual body or corporation under and in accordance with section one, Chapter 39 of the Public Statutes of Massachusetts. Whenever a vacancy occurs in said Board the remaining members shall within thirty days fill the same by election; but no one shall be eligible to that office who is not in the opinion of the remaining members of the Board a firm and consistent believer in the doctrines of Christian Science as taught in a book entitled "SCIENCE AND HEALTH," by Mary Baker G. Eddy beginning with the seventy-first edition thereof.

2. Said Board shall within five years from the date hereof build or cause to be built upon said lot of land a suitable and convenient church edifice, the cost of which shall not be less than fifty thousand dollars.

3. When said church building is completed said Board shall elect a pastor, reader or speaker to fill the pulpit who shall be a genuine Christian Scientist; they shall maintain public worship in accordance with the doctrines of Christian Science in said church, and for this purpose they are fully empowered to make any and all necessary rules and regulations.

4. Said Board of Directors shall not suffer or allow any building to be erected upon said lot except a church building or edifice, nor shall they allow said church building or any part thereof to be used for any other purpose than for the ordinary and usual uses of a church.

5. Said Board of Directors shall not allow or permit in said church building any preaching or other religious services which shall not be consonant and in strict harmony with the doctrines and practice of Christian Science as taught and explained by Mary Baker G. Eddy in the seventy-first edition of her book entitled "SCIENCE AND HEALTH," which is soon to be issued, and in any subsequent edition thereof.

6. The congregation which shall worship in said church shall be styled "The First Church of Christ, Scientist."

7. Said Directors shall not sell or mortgage the land hereby conveyed; but they shall see that all taxes and legal assessments on said property are promptly paid.

8. Said church building shall not be removed from said lot except for the purpose of rebuilding thereon a more expensive or a more convenient structure in which said doctrines of Christian Science only shall be preached and practised. If said church building is removed for either of the purposes above set forth, any and all tablets and inscriptions which are or shall be upon said church building at the time of removal shall be removed therefrom and placed upon the walls of the new edifice. If said building is

burned, the Directors shall forthwith proceed to rebuild the church.

9. Said Directors shall maintain regular preaching, reading or speaking in said church on each Sabbath, and an omission to have and maintain such preaching, reading or speaking for one year in succession shall be deemed a breach of this condition.

10. Whenever said Directors shall determine that it is inexpedient to maintain preaching, reading or speaking in said church in accordance with the terms of this deed, they are authorized and required to reconvey forthwith said lot of land with the building thereon to Mary Baker G. Eddy, her heirs and assigns forever by a proper deed of conveyance.

11. The omission or neglect on the part of said Directors to strictly comply with any of the conditions herein contained shall constitute a breach thereof, and the title hereby conveyed shall revert to the grantor Mary Baker G. Eddy, her heirs and assigns forever, upon her entry upon said land and taking possession thereof for such breach.

To Have and to Hold the above granted premises with all the privileges and appurtenances thereon belonging to said grantees and their successors in office to the uses and trusts above described forever.

And the said grantor for herself and her heirs, executors and administrators covenants with the said grantees and their successors in office that she is lawfully seized in fee simple of the aforesaid premises, that they are free from all incumbrances not herein mentioned or referred to, that she has good right to sell and convey the same to the said grantees and their successors in office as aforesaid, and that she will and her heirs, executors, and administrators shall, warrant and defend the same to the said grantees and their successors in office forever against the lawful claims and demands of all persons.

In witness whereof I the said Mary Baker G. Eddy have hereto set my hand and seal this 1st day of September, 1892.

MARY BAKER G. EDDY.

Signed, sealed, and delivered in presence of

Laura E. Sargent.  
R. E. Walker.

September 1st, 1892.

State of New Hampshire,  
Merrimack.

ss.

Then personally appeared the above named Mary Baker G. Eddy and ac-

knowledged the foregoing instrument to be her free act and deed.

Before me

R. E. Walker,  
Notary Public.

September 2, 1892.

Suffolk Registry of Deeds, Lib. 2081,  
Fol. 257.

[Exhibit "C"]

### DEED CONVEYING LAND FOR CHURCH PURPOSES

*Metcalf to Knapp et al Trs. Libro 2886,  
Fol. 521.*

KNOW ALL MEN,

That I, Albert Metcalf, the grantor in a certain deed given to Ira O. Knapp and others dated October 23, 1896, and recorded with Suffolk Deeds, Book 2591, page 398, do hereby declare that the land conveyed by said deed was conveyed to the grantees therein, as they are the Christian Science Board of Directors, upon the trusts, but not subject to the conditions mentioned in the deed creating said Board given by Mary Baker G. Eddy to Ira O. Knapp and others, dated September 1st, 1892, and recorded with Suffolk Deeds, Book 2081, page 257. In addition to the trust contained in said deed of September 1, 1892, from Mary Baker G. Eddy, this property is conveyed on the further trusts that no new Tenet or By-Law shall be adopted, nor any Tenet or By-Law amended or annulled by the grantees unless the written consent of said Mary Baker G. Eddy, the author of the textbook "Science and Health with Key to the Scriptures," be given therefor, or unless at the written request of Mrs. Eddy the Executive Members of The First Church of Christ, Scientist, (formerly called the "First Members,") by a two-thirds vote of all their number, decide so to do. And that the same inscription which is on the outside of the present church edifice shall be placed on any new church erected on said lot. And in consideration of one dollar to me paid by said Ira O. Knapp, William B. Johnson, Joseph Armstrong and Stephen A. Chase, the receipt whereof is hereby acknowledged, I do hereby confirm the deed as above mentioned, and do grant and release unto them, their heirs, successors and assigns in trust as aforesaid, the premises therein described.

In Witness Whereof I have hereunto set my hand and seal this nineteenth day of March, A. D. nineteen hundred and three.

ALBERT METCALF. [Seal]

Commonwealth of Massachusetts,  
Suffolk  
ss.

March 20, 1903.

Then said Albert Metcalf acknowledged the foregoing instrument to be his free act and deed.

Before me MALCOLM MCLEOD,  
Justice of the Peace.

March 20, 1903, at twelve o'clock and sixteen minutes P. M.  
Received, Entered and Examined.

Attest: Thos. F. Temple, Reg.

A true copy from the Records of Deeds for the County of Suffolk, Lib. 2886, Fol. 521.

Attest: Chas. W. Kimball, Asst. Reg.

### INJUNCTION ISSUED

On this bill on March 25, 1919, an ad interim injunction by the Supreme Judicial Court was issued, restraining all the defendants, as follows:

Until said hearing you the said defendant directors, your agents, attorneys and counsellors, and each and every one of them are commanded to desist and refrain from taking any further action intended directly or indirectly to impede or interfere with the plaintiff Rowlands, or either of the other plaintiffs, in the discharge of his or their respective duties as trustees, under the trust instrument of January 25, 1898; and from carrying out any purpose or plan by either direct or indirect means to compel the plaintiffs or any of them to resign their offices as trustees; to impair, destroy, or in any way injure the business of The Christian Science Publishing Society as conducted by the plaintiff trustees; or in any way to carry out any threat or purpose to injure the business of said Publishing Society either by creating and maintaining a publishing society to conduct a business in competition therewith, or otherwise; and from taking any action to defeat or tending to defeat the purposes of Mrs. Mary Baker G. Eddy, the Donor, as set forth and declared in the Trust Deed of January 25, 1898.



# Answer of Defendants

ADAM H. DICKEY, JAMES A. NEAL, EDWARD A. MERRITT, WILLIAM R. RATHVON,  
and ANNIE M. KNOTT

The defendants, Adam H. Dickey, James A. Neal, Edward A. Merritt, William R. Rathvon, and Annie M. Knott, for answer to the complainants' bill of complaint say:

1. Answering the first paragraph of the bill of complaint the above named defendants deny that the plaintiffs named in said bill of complaint are now the duly appointed trustees under a deed of trust dated Jan. 25, 1898, in which Mary Baker G. Eddy of Concord, New Hampshire, was the donor and Edward P. Bates, James A. Neal, and William P. McKenzie, all of Boston, Massachusetts, were the donees and trustees. And said defendants aver that the said Edward P. Bates was, on or about Sept. 8, 1898, duly succeeded as Trustee under said instrument by Thomas W. Hatten; that James A. Neal, on Oct. 22, 1898, by a vote of the First Members and the directors, was "granted an honorable discharge at his own request from the duties as a member of the Board of Trustees of The Christian Science Publishing Society;" that said First Members never took any other or further action with respect to the personnel of the trustees under said instrument; that thereafter, to wit, in the year 1901, the Church Manual was amended by a vote of the First Members by the consent and advice of Mrs. Eddy, so that the business of The Mother Church theretofore transacted by said First Members should thereafter be transacted by the Christian Science Board of Directors. And said defendants further aver that Thomas W. Hatten, on or about Feb. 1, 1917, tendered his resignation as a trustee to the trustees under said instrument, which resignation was accepted by said trustees, and thereupon the trustees named Edward A. Merritt as a trustee thereunder; that on or about the first day of August, 1917, the said Edward A. Merritt tendered his resignation as a trustee to the said trustees, which resignation was accepted by them, and thereupon the trustees named Lamont Rowlands as a trustee thereunder. And said defendants further aver that, on or about Oct. 22, 1898, Mrs. Eddy appointed Joseph B. Clark as a trustee to succeed the said James A. Neal; that on or about Sept. 25, 1906, Joseph B. Clark departed this life, and Mrs. Eddy, on or about that date, appointed Allison V. Stewart to succeed the said Joseph B. Clark; that in March, 1919, the said Allison V. Stewart departed this life; that since

the death of the said Allison V. Stewart no trustee has been named to succeed him; that in his lifetime the said Allison V. Stewart, on or about Jan. 6, 1908, tendered his resignation as a trustee to the trustees under said instrument, which resignation was accepted by them, and Mrs. Eddy, on or about that date, appointed William D. McCrackan to succeed the said Allison V. Stewart; that on or about June 19, 1908, the said William D. McCrackan tendered his resignation as a trustee to the trustees, which resignation was accepted by them and, on or about said date, Mrs. Eddy appointed Clifford P. Smith to succeed the said William D. McCrackan; that on or about Sept. 12, 1911, the said Clifford P. Smith tendered his resignation as a trustee to the trustees, which resignation was accepted by them, and said trustees, on or about said date, appointed James A. Neal as trustee to succeed the said Clifford P. Smith; that on or about Dec. 2, 1912, James A. Neal tendered his resignation as trustee to the trustees, which resignation was accepted by them, and the trustees, on or about said date, appointed Herbert W. Eustace as trustee to succeed the said James A. Neal; that on or about Aug. 1, 1917, the said William P. McKenzie tendered his resignation as trustee to the trustees, which resignation was accepted by them, and said trustees appointed David B. Ogden as trustee to succeed the said William P. McKenzie. And said defendants further aver that all of the changes above described in said trusteeship were had with the consent and approval of The Christian Science Board of Directors.

Said defendants admit that the plaintiffs, Eustace and Ogden, are acting as trustees under said Trust Deed, and aver that the plaintiff Eustace was appointed as trustee in the manner hereinabove stated, on or about Dec. 2, 1912, and said defendants aver that the plaintiffs, Ogden and Rowlands, were appointed as Trustees in the manner hereinabove stated, on or about Aug. 1, 1917, and they admit that the plaintiffs, Eustace and Ogden, have acted as trustees continuously from the dates of their respective appointments hitherto, and aver that the plaintiff Rowlands held his office continuously from Aug. 1, 1917, to March 17, 1919, and that the said Lamont Rowlands on March 17, 1919, ceased to be a trustee under said Deed of Trust. Said defendants further aver that none of the changes in

the trusteeship hereinabove described occurred as a result of any decree of any court; that the Deed of Trust contains no provision for resignation by any of the trustees thereunder, and if, at the instance of the plaintiffs it be held that said Deed of Trust is a complete instrument within itself and incapable of being modified or amended by the action of Mary Baker Eddy and The Mother Church, and that the power to declare vacancies in said Deed of Trust is not vested in the Christian Science Board of Directors, then said defendants aver that none of the plaintiffs ever became trustees under said Deed of Trust of Jan. 25, 1898.

2. Answering the second paragraph of the bill of complaint, said defendants admit that they are members of the Christian Science Board of Directors and directors of The First Church of Christ, Scientist, in Boston, Massachusetts; and they aver that by virtue of their said office they are trustees under a Deed of Trust dated Sept. 1, 1892, in which Mary Baker G. Eddy was grantor and a deed of trust supplemental to and in amendment of the original deed dated March 19, 1903, copies of which instruments are annexed to the bill of complaint and marked, respectively, "Exhibit B" and "Exhibit C."

Said defendants admit that the defendant John V. Dittmore was until recently, to wit, March 17, 1919, a member of the Christian Science Board of Directors and a director of The First Church of Christ, Scientist, in Boston, Massachusetts; and they aver that by virtue of his said office he was a trustee under said Deed of Trust of Sept. 1, 1892, and said defendants aver that on March 17, 1919, the defendant John V. Dittmore ceased to be a director as aforesaid, by reason whereof he also ceased to be a Trustee as aforesaid; and said defendants aver that on the said seventeenth day of March, 1919, the defendant Annie M. Knott became a member of the Christian Science Board of Directors and a director of The First Church of Christ, Scientist, in Boston, Massachusetts, and by virtue of her office then became a trustee under said Deed of Trust, dated Sept. 1, 1892, and that she still continues to hold said office of director, and by virtue thereof said office of trustee.

Said defendants admit that The First Church of Christ, Scientist, in Boston, Massachusetts, is also known as The Mother Church, and it is referred to

herein as such, and they aver that it is The Mother Church of Christian Science.

3. Answering the third paragraph of the bill of complaint, the said defendants admit that in the year 1879 Mrs. Mary Baker G. Eddy became the Leader in the organization of a church "designed to commemorate the word and works of our Master, which should reinstate primitive Christianity and its lost element of healing," and after the charter of said Church, obtained in June, 1879, she became its Pastor.

Said defendants aver that said Church so organized in 1879 dissolved prior to Sept. 23, 1892. Said defendants admit that in September, 1892, Mrs. Eddy was instrumental in reorganizing said Church, and aver that said reorganization occurred in the following manner: On Sept. 23, 1892, a voluntary religious association was formed under the leadership of Mrs. Eddy, which was named, and still is, "The First Church of Christ, Scientist, in Boston, Massachusetts," of which Mrs. Eddy became the Pastor and later the Pastor Emeritus and remained so until the date of her passing on; and which church is The Mother Church, hereinbefore mentioned.

Said defendants admit that prior to Jan. 25, 1898, as a means of promoting and extending the religion of Christian Science as taught by her, Mrs. Eddy had created an organization known as The Christian Science Publishing Society to publish and circulate various Christian Science publications to which Mrs. Eddy contributed, but the defendants deny that this Society prior to Jan. 25, 1898, published and circulated the publications of which Mrs. Eddy was the author. The defendants admit that in 1898 said publications had acquired a substantial circulation and had been highly effective in accomplishing the purpose for which they were created, namely, of more effectually promoting and extending the religion of Christian Science as taught by Mrs. Eddy. Said defendants admit that in the lifetime of Mrs. Eddy all authority in connection with the publications of which she was the sole author remained in the hands of Mrs. Eddy herself.

Said defendants further admit that at no time in her lifetime did Mrs. Eddy give any authority to the Board of Directors over the publications of which she was the sole author; and they aver that by the will of Mrs. Eddy, duly probated, she bequeathed all of said publications to The Mother Church, in trust for the promoting and extending of the religion of Christian Science as taught by her.

The defendants aver that prior to Jan. 25, 1898, the business of The Mother Church was in part transacted by its First Members, and that the First Members and the Christian Science Board of Directors did prior to Jan. 25, 1898, participate in the work of The Christian Science Publishing Society.

4. Said defendants deny the allegations of the fourth paragraph of the bill of complaint as therein stated, and aver that the intent and purpose of Mrs. Eddy in the execution of said trust instruments was to make and forever keep The Christian Science Publishing Society, as well as the various other branches of activity originated by her as herein stated, an integral part and activity of The Mother Church. Mrs. Eddy's plan for promoting and extending Christian Science includes its practice by Christian Scientists, particularly the practice of Christian Science healing, and includes the organization of The Mother Church and of churches and societies as branches thereof, the establishment of a Board of Lectureship, the teaching of Christian Science, and the organization and maintenance of The Christian Science Publishing Society. All of these various branches of activity she intended to have carried on under the general direction or supervision of The Mother Church, and to be devoted to one object, namely, the growth and development of the Christian Science religion throughout the world.

During the lifetime of Mrs. Eddy her intent and purpose as herein stated were well understood and fully effectuated.

Said defendants deny that it was ever the purpose of Mrs. Eddy to keep the affairs of the Publishing Society under a separate control and management from that of her Church, but on the contrary aver her purpose to have been to establish and maintain in The Mother Church a unified form of control over all the agencies and departments engaged in the activities originated by her. To that end she provided in said Trust Deed that said trustees should hold and manage said property and property rights in the promotion of the interests of Christian Science; that said trustees should once in every six months pay over to the treasurer of The First Church of Christ, Scientist, in Boston, Massachusetts, the entire net profits of the business of said trust, which money should be paid over to be held subject to the order of "The First Members" of said Church, who were authorized to order its disposition only in accordance with the rules and By-Laws contained in the Manual of said Church; that said trustees should so direct and manage the publication of the literature pertaining to the business of the trust as to promote "the best interests of the Cause," reserving the right to make such changes as she might think important. She also provided that said trustees and their successors in trust should not be eligible to said trusteeship, or to continue in the same, unless they are loyal, faithful, and consistent believers and advocates of the principles of Christian Science as taught by her in her book "Science and Health with Key to the Scriptures"; that the First Members together with the directors of said Church should have the power to de-

clare vacancies in said trusteeship, for such reasons as to them might seem expedient. Said defendants aver that the words "The First Members" as used by Mrs. Eddy in said Deed of Trust refer to the body of persons who on Sept. 23, 1892, organized The Mother Church, and who did by resolution then adopted constitute the First Members thereof, together with such other persons thereafter elected as First Members thereof; that on Jan. 25, 1898, all the governing power of said Church not reserved to Mrs. Eddy was vested exclusively in the First Members and the directors; so that by virtue of the provision in said Trust Deed, providing that the First Members and the directors might declare vacancies in the Board of Trustees, there was vested in the said Church, and it was the intent and purpose of the donor to vest in said Church as the beneficiary in trust, the power to remove said trustees, as a power coupled with an interest, to be exercised from time to time by the governing body of said Church, as it might to it seem expedient. In order further to insure a unified form of control, Mrs. Eddy also provided by means of By-Laws of the Church, adopted at or about the date of said Trust Deed (Church Manual, 1898, 8th Ed.), that "The First Members together with the directors of said Church shall have the power to declare vacancies in said trusteeship, for such reasons as to them may seem expedient." The duties, rights, and powers of the First Members have survived to and have been for many years, and now are, vested in the Board of Directors. She also provided (Manual, 1898, Art. XI of the Church By-Laws):

"Section 2. A person who is not accepted by our Pastor Emeritus and the Christian Science Board of Directors as suitable to publish her books shall in no manner be connected therewith, nor with The Christian Science Publishing Society . . ."

"Editors and Publishers. Section 3: Editors and publishers of The Christian Science Journal shall not be elected to these offices and shall not be removed therefrom without the knowledge and consent (if she chooses to decide) of the Pastor Emeritus."

In the Church Manual of 1899 (10th Ed.), Article XXIX of the By-Laws, it was provided:

"Weekly Newspaper. Section 6: If a weekly newspaper shall be at any time published by The Christian Science Publishing Society, it shall be owned by The First Church of Christ, Scientist, in Boston, and shall be copyrighted and conducted according to the By-Laws relating to The Christian Science Journal."

By means of several other By-Laws adopted by The Mother Church through its proper officers, upon the advice and request and with the approval and consent of Mrs. Eddy, from time to time subsequent to the date of the said Trust Deed, it was in effect provided that the control and govern-

ment of The Christian Science Publishing Society and the other Christian Science activities established by her as integral parts of The Mother Church be vested in the governing board of said Church. It was likewise provided that said Church, through its Board of Directors, should yearly elect the editors and the manager of the Publishing Society, and that a person who is not accepted by the Christian Science Board of Directors as suitable should in no manner be connected with The Christian Science Publishing Society, and the Church Manual provided the rule of conduct to be followed in the publishing house and prescribes the character of the literature to be bought, sold, and circulated by the members of said Church; that said Board of Directors shall also make provision for suitable buildings for the business of the publication of The Christian Science Journal, the Christian Science Sentinel, Der Herold der Christian Science, and all other Christian Science literature published by said society. It was in like manner provided that the Board of Directors should control the removal of cards from said Christian Science Journal, and fix the term of office of the editors and manager of said Publishing Society. It was in like manner provided by the Church Manual that it should be the duty of said directors to see that the periodicals published by the said Publishing Society are ably edited and kept abreast of the times; and it was likewise provided that the business of The Mother Church should be transacted by its said Board of Directors. Said defendants aver that at all times since the execution of said Trust Deed the governing body of said Mother Church, which since 1901, has been and now is the Christian Science Board of Directors, in fact has exercised supervisory control over the affairs of the said Publishing Society, and such control has never been questioned by the trustees of said society until recently.

5. Answering the fifth paragraph of the bill of complaint, said defendants deny that since the date of plaintiffs' respective appointments as trustees under said Deed of Trust of Jan. 25, 1898, that they, the plaintiffs, have at all times zealously, conscientiously, and faithfully discharged the duties imposed upon them by the trust and confidence of Mrs. Eddy.

They also deny that said trustees have held and managed the property and property rights which came to them under the Deed of Trust exclusively for the purposes declared and defined therein and solely for the promotion and extension of the religion of Christian Science as taught by Mrs. Eddy, and said defendants deny that said Trustees have energetically and judiciously managed the business of the Publishing Society on a strictly Christian basis and upon the sole responsibility of themselves, the trustees. Said defendants deny that the affairs of the Publishing Society have

been highly prosperous and successful, but they aver that the financial affairs of said society have as a whole been successful, but deny that such success is the result of the administration of said trust by said present trustees. Said defendants admit that the publications of the society, religious and secular, have increased in circulation and influence, that the interests of Christian Science have been greatly promoted, the teaching of Christian Science has been widely extended, and that the number of believers in the faith has been steadily increased, but said defendants aver that such results have been due, not only to the business of The Christian Science Publishing Society, but also and especially to the circulation of Mrs. Eddy's writings and to the work of all Christian Scientists, including practitioners, teachers, lecturers, and others.

Said defendants deny that the plaintiffs have properly discharged their duty as either expressed or implied in the terms of said Deed of Trust. As to whether or not the plaintiffs have worked harmoniously with each other, and never in their business association had any friction or disagreement as between themselves, said defendants have no knowledge, and therefore neither admit nor deny the same, but said defendants deny that said plaintiffs have all worked loyally, earnestly, and faithfully as Christian Scientists and believers in its tenets and doctrines, for the best interests of the Christian Science Church and the spread of Christian Science throughout the world.

Said defendants admit that the plaintiffs and their predecessors in the trust have indirectly promoted and extended the interests of Christian Science by paying over semi-annually substantial sums of money to the defendants, both in their capacity as directors for the support of The Mother Church and in their capacity as trustees for the promotion of Christian Science under the terms of the trust created in Mrs. Eddy's will.

The defendants aver that the trustees paid over to The Mother Church as earnings and profits from the conduct of the trust for a period of six months ending Oct. 1, 1918, the sum of \$287,103.11, and the defendants aver that the trustees have paid over to the defendants, together with others as trustees for the promotion of Christian Science under the terms of the trust created in Mrs. Eddy's will, for the period of six months ending Oct. 1, 1918, the sum of \$175,199.45, but that the amount so paid to the Trustees Under the Will of Mary Baker Eddy did not represent profits and earnings from the conduct of the trust, but represented royalties paid to the Trustees Under the Will of Mary Baker Eddy. Such result was made possible largely because said Publishing Society is, and for many years has been, the only recognized Publishing Society of The Mother Church. The money thus re-

ceived by The Mother Church and by the Trustees Under the Will of Mary Baker Eddy was used for the purpose of more effectually promoting and extending the religion of Christian Science as taught by Mary Baker Eddy.

6. As to the allegations contained in the sixth paragraph of the bill of complaint said defendants admit that more than eighteen hundred Christian Science churches and societies now exist; and said defendants admit that the Christian Science Board of Directors are directors of The Mother Church situate in Boston, but they say that said The Mother Church is the central organization of which all the other Christian Science churches and societies are branches. Said defendants admit that the By-Laws set forth in this paragraph of the bill of complaint are portions of the By-Laws of said Church and are contained in the Church Manual, a complete copy of which is hereto annexed and made a part hereof.

7. Said defendants deny the allegations contained in the seventh paragraph of said bill of complaint as therein alleged, and as to said allegations they aver that the Christian Science Board of Directors has from time to time taken the position that the said board is the responsible authority in direction of the affairs of The Mother Church, and that the business of The Christian Science Publishing Society, being a gift to the Church, the Board of Trustees, in carrying out their well defined duties according to the Deed of Trust and the Manual, are working under the authority of The Mother Church; that the Christian Science Board of Directors is intrusted with the general direction and supervision of the Christian Science movement in all of its departments; that the Christian Science Board of Directors has in relation to the trustees final authority in regard to the editorial policy of the official organs of The Mother Church and final authority in regard to all matters affecting the policy of The Mother Church or the cause of Christian Science.

8. Said defendants deny the first, second, and third sentences of the eighth paragraph of the bill of complaint as therein alleged, and as to said allegations they aver that the only formal communication in the month of October, 1918, between the Board of Directors and the said trustees was a letter written by the said Board of Directors on Oct. 8, 1918; that the said defendants deny that the effect of said letter was as stated in said paragraph, but they aver that the true effect and intendment of said letter was that the powers and duties of said trustees must be measured by the provisions of said Trust Deed, construed in connection with the Church Manual, in order to make effectual the purpose of the donor of said trust and to preserve the integrity of the Christian Science religion. As to the averments contained in said paragraph relating to the inter-

pretation of the By-Laws contained in the Manual, said defendants say that said By-Laws are clear and explicit and are to be interpreted in a simple and reasonable manner; and said defendants aver that said trustees have denied their binding effect upon them, the said trustees, and have put upon said By-Laws an arbitrary construction contrary to their plain meaning and intent. As to the remaining allegations in said paragraph, these defendants, deeming the same immaterial, neither admit nor deny them.

9. Said defendants admit that there was an interchange of correspondence between the Board of Directors and the trustees, as alleged in the ninth paragraph of the bill of complaint, but they deny that the substance and meaning of said correspondence was as stated therein. Said defendants admit that on Jan. 3, last past, the Board of Directors sent to the trustees a communication requesting the resignation of the trustees in the form set forth in this paragraph.

10. Said defendants deny the allegations contained in the tenth paragraph as alleged. They aver that the position taken by the Christian Science Board of Directors as to its duties in the premises is set forth in the following letter sent to the plaintiffs by the Christian Science Board of Directors:

"Feb. 24, 1919.

"Board of Trustees of The Christian Science Publishing Society,

"Boston, Massachusetts.

"Dear Friends:

"I am instructed by the Christian Science Board of Directors to send you the following letter and to request your earnest consideration thereof:

"From time to time since the meeting between the trustees and the directors on the 11th of September, 1918, the directors have considered and reconsidered every aspect of their relations with the trustees, and have done this for the purpose of understanding and maintaining the relations shown by the final expressions of our Leader's intentions. At all times, the directors have held the conviction that her final intention regarding the relations between these two boards could be carried out consistently with every moral, legal, or spiritual obligation. It was to be expected that the trustees would have the same conviction, and that concurrence on this point would furnish a basis on which full accord would become possible. Instead of concurring on this basis, the trustees have employed counsel to act for them who have set up the Deed of Trust dated Jan. 25, 1898, as superior to the subsequent expressions of our Leader's intention in our Church Manual, and as establishing a trust existing by itself apart from The Mother Church. Manifestly, such contentions, not yet disavowed by the trustees, constitute a repudiation of our Church Manual and a grave danger to The Mother Church.

"It seems to the directors that another grave danger is presented by the trustees themselves in what they have referred to as their 'metaphysical interpretation' of our Church By-Laws. For instance, in their letter of Sept. 30, 1918, the trustees construed Mrs. Eddy's words 'and it shall be the duty of the directors to see that these periodicals are ably edited and kept abreast of the times' (Article VIII, Section 14) to mean that 'it is the duty of the Board of Directors to call attention at once to any failure on the part of the trustees to have the periodicals well edited and kept abreast of the times.' Such an interpretation would practically wipe out Mrs. Eddy's words and allow to the Christian Science Board of Directors only such a duty as is conferred on 'any member of this Church' in a sentence which extends from the bottom of page 28 to the top of page 29 of the Manual. According to the dictionaries, the words 'see that' as used in the By-law just quoted called for supervision and denote superior authority.

"It is to be observed, also, that the trustees' interpretation would take what Mrs. Eddy has described as 'the periodicals which are the organs of this Church' away from The Mother Church and make them only organs of The Christian Science Publishing Society. It would virtually compel The Mother Church to have no periodicals as its organs, or compel it to start other periodicals for that purpose. The word 'organ' as used in this By-law means 'a medium of communication between one person or body and another; as . . . a newspaper is the organ of its editor, or of a party, sect, etc.' (Webster's New International Dictionary.) Therefore it must be Mrs. Eddy's intention that the periodicals issued by The Christian Science Publishing Society shall be, not merely mediums of communication between publisher and readers, but mediums of communication between The Mother Church and its members and other readers.

"The directors are obliged to remember, also, that Article VIII, Section 14, puts them under a special and direct obligation to the members of The Mother Church. In this By-law 'the privilege and duty of every member, who can afford it, to subscribe for the periodicals which are the organs of this Church' is coupled with 'the duty of the directors to see that these periodicals are ably edited and kept abreast of the times.' In effect the privilege and duty thus conferred upon the members is accompanied by the condition and assurance that the directors have and will perform the duty thus conferred upon. The duty thus conferred upon the directors would not be worth mentioning if it amounted to nothing more than the privilege of submitting criticisms to the trustees. This could be done by any member, by any subscriber or even by any reader. The duty stated in the By-law must mean

that the organs of The Mother Church for which the members should subscribe are under the jurisdiction of its directors, who can and will give all necessary directions regarding their contents.

"Again, in the letter from counsel for the trustees to counsel for the directors dated Jan. 27, 1919, the second part of Article VIII, Section 14, was construed or rejected as follows: 'The trustees will very much appreciate and gladly welcome helpful criticism of any editorials which may appear, and invite suggestions as to the general editorial policy, reserving to themselves, as they must in the performance of the duties imposed upon them, the right to determine whether the editorials published are consistent with the purposes of the Deed of Trust.' This statement by counsel for the trustees plainly disregards our Church Manual; nevertheless the directors feel that the foregoing quotation from the trustees' letter of Sept. 30, 1918, is no less contrary to the Manual, and that the trustees' letter is more dangerous because it purported to be an interpretation, not a simple rejection.

"Again, several persons, including counsel for the trustees, have stated that the trustees have construed Mrs. Eddy's words 'The Christian Science Board of Directors shall have the power to declare vacancies in said trusteeship, for such reasons as to the Board may seem expedient' (Article XXV, Section 3) to mean that if a vacancy occurs without action by the directors, then the directors can say it has occurred. Such an interpretation would not only ignore the clause for such reasons as to the board may seem expedient, but it would accuse Mrs. Eddy of neglecting a necessary safeguard while providing for a solemn and useless farce.

"Counsel for the directors have mentioned the following decision by the United States Supreme Court. A will authorized two trustees to remove the third one 'for good and sufficient cause.' The court held that this provision conferred on the two trustees, not only the power of removal, but the power to determine when there was good and sufficient cause for removal. This case is *May v. May*, 167 U. S. 310.

"For these reasons the directors again invite the trustees to sign the paper which was proposed for signature on the 10th of this month and of which another copy will be attached to this letter. Additional reasons are furnished by the following quotations from the letter written on the 15th of February, 1916, by the then trustees of The Christian Science Publishing Society to the Christian Science Board of Directors.

"'It is our duty to hold and manage the business which Mrs. Eddy made a gift to her Church, and the Christian Science Board of Directors is the responsible authority of this Church.'

"'In defining the financial situation in regard to the church edifice the

Manual says: "The Christian Science Board of Directors owns the church edifices, with the land whereon they stand, legally, and the church members own the aforesaid premises and buildings, beneficially." We believe the situation to be similar in regard to the business, in that, according to the Deed of Trust, the Board of Trustees holds the property "legally" and The Mother Church owns the business, "beneficially."

"The directors have, by the rules now given in the Manual, taken the place of the First Members (or Executive Members) and exercise the rights which they formerly had. The Christian Science Board of Directors, is therefore the responsible authority in direction of the affairs of The Mother Church, and the business of The Christian Science Publishing Society being a gift to the Church, the Board of Trustees in carrying out their well-defined duties according to the Deed of Trust and the Manual, are working under the authority of The Mother Church."

"Finally, the directors invite the trustees to consider whether it is right for them to accept election to an office which for twenty years had a well-defined character, and then hold it in spite of a request to resign, after having tried to convert it into an office of a different character. Would not most honorable men, if they formed the opinion that an office to which they had been elected should be enlarged and given a different character, resign rather than insist on taking greater and different authority? The directors feel that this would be the course pursued by most Christian Scientists if they unexpectedly found themselves in such a situation. What the directors especially desire, however, is some clear and conclusive evidence that the trustees do not intend to separate The Christian Science Publishing Society from The Mother Church but intend to fully maintain the unity shown by our Church Manual. The paper attached to this letter is submitted for signature as a suitable expression of that intention. Possibly some other paper could be prepared that would be equally suitable; but the directors feel that it should be an adequate assurance regarding the dangers which have been presented by the trustees and their counsel.

"Sincerely yours,

"Charles E. Jarvis,

"Corresponding Secretary for The Christian Science Board of Directors."

"Boston, February , 1919.

"It is mutually understood by the Christian Science Board of Directors and the Board of Trustees of The Christian Science Publishing Society that the former Board, as in relation to the latter Board, has final authority in regard to the editorial policy of the official organs of The Mother Church, and final authority in regard to all matters affecting the policy of

The Mother Church for the Cause of Christian Science.

"In witness whereof this memorandum is signed by the respective members of said Boards as follows:

"For the Christian Science Board of Directors:

"For the Board of Trustees of The Christian Science Publishing Society."

11. As to the allegations contained in the eleventh paragraph of the bill of complaint said defendants, deeming the same immaterial, neither admit nor deny them.

12. Answering the twelfth paragraph of the bill of complaint, said defendants admit that the directors insisted, as a condition of the trustees retaining their offices as such, that they acknowledge in writing that the Board of Directors has final authority in regard to the editorial policy of the publications of The Christian Science Publishing Society and general supervision of the general affairs of The Christian Science Publishing Society, and they say that this action was required by the duties and responsibilities imposed upon them, the Board of Directors, by the Trust Deed and the Church Manual, in order that the publications of said society should be and remain the true organs of said Church.

Said defendants admit that the plaintiffs stated their assent that the Board of Directors of the Church was supreme in respect to any and all matters in any way affecting the government of The Mother Church in so far as such matters do not require the Board of Trustees to violate the terms of the Trust Deed, and the said defendants aver that the plaintiffs' claim that the Trust Deed was the source and measure of the plaintiff's authority, and said defendants further aver that the matters in any way affecting the government of The Mother Church in which the Board of Directors of the Church was supreme do not in any way require the Board of Trustees to violate the terms of the Trust Deed, and that none of the provisions of the Church Manual which said directors are asking the plaintiffs to observe and obey require the trustees to violate the terms of the Trust Deed. As to the remaining allegations contained in the twelfth paragraph of the bill of complaint the said defendants, deeming the same immaterial, neither admit nor deny them.

13. As to the allegations contained in the thirteenth paragraph, said defendants admit that on March 17, 1919, they delivered to the plaintiff Rowlands a notice of dismissal, a copy of which is set forth in said paragraph,

but they deny that said notice of dismissal was given to said Rowlands solely for the reasons alleged by the plaintiffs in the first twelve paragraphs of their bill of complaint, and they deny that said notice of dismissal was sent to said Rowlands in pursuance of a plan which they had conceived and intended to carry out to accomplish the subordination of the Board of Trustees to the will of the directors and to dominate the affairs of The Christian Science Publishing Society in derogation of the terms of the Trust Deed; and deny that any such plan was ever conceived or intended by said Board of Directors, but, on the contrary, said defendants aver that said notice of dismissal was duly adopted by resolution and given to said plaintiff Rowlands by said directors, acting in good faith, in the proper discharge of their duties as directors, for the reasons, among others, set forth in said notice of dismissal. And said defendants aver that said notice of dismissal was so adopted and given by virtue of the authority conferred upon them under the following provision of the said Trust Deed of Jan. 25, 1898:

"10. . . . The First Members together with the directors of said church shall have the power to declare vacancies in said trusteeship, for such reasons as to them may seem expedient."

Said power to declare vacancies in said trusteeship was on the said seventeenth day of March, 1919, vested solely in the directors of said Church, the powers of the said First Members having been transferred on Jan. 10, 1901 to the Christian Science Board of Directors and the name of the First Members having been changed in 1903 to Executive Members, which body was dissolved on July 6, 1908, and said Board of Directors acted also by the authority conferred upon them by the Church Manual, Art. XXV, Section 3 and Section 5, to wit,

"Section 3: The Christian Science Board of Directors shall have the power to declare vacancies in said trusteeship, for such reasons as to the Board may seem expedient."

"Section 5: A person who is not accepted by the Pastor Emeritus and The Christian Science Board of Directors as suitable, shall in no manner be connected with publishing her books, nor with editing or publishing The Christian Science Journal, Christian Science Sentinel, Der Herold der Christian Science, nor with The Christian Science Publishing Society."

Said defendants deny that on March 18, 1919, the directors caused to be delivered to the plaintiff Rowlands' associates on the Board of Trustees the communication set out in the thirteenth paragraph of the bill of complaint dated March 18, 1919, and aver that on said date the directors caused to be delivered to said Eustace and Ogden, as trustees, a letter dated March 18, 1919, set out in the thirteenth paragraph of the bill of complaint.

14. Answering the fourteenth paragraph of the bill of complaint said defendants reaffirm the statements set forth in the preamble of the said resolution as a ground for the removal of the plaintiff Rowlands, and aver that the same are well founded and justified in fact.

Said defendants deny the remaining allegations of said paragraph; and aver that the dismissal of plaintiff Rowlands was for reasons which to the Board of Directors, acting in good faith, seemed expedient.

15. As to the allegations contained in the fifteenth paragraph, the said defendants are advised by counsel and accordingly aver that the directors had the right to remove and dismiss the

plaintiff Rowlands from his position as trustee under the Deed of Trust, and that the action of said Directors in the premises was effectual to accomplish that purpose. They deny that by said action, or by any contemplated action on their part, the business of The Christian Science Publishing Society will be in any way injured.

16. The said defendants deny the allegations contained in the sixteenth paragraph of plaintiffs' bill.

17. The said defendants deny the allegations contained in the seventeenth paragraph of plaintiffs' bill.

18. Said defendants deny the allegations of the eighteenth paragraph of plaintiffs' bill.

19. Answering the nineteenth paragraph of the bill of complaint said defendants deny that they have contrived any plan and deny that they or any of them have made any threat to make the publishing house "an empty shell," but on the contrary aver that it is and always has been their endeavor and purpose to support and promote the business of The Christian Science Publishing Society as an integral activity of The Mother Church, in order fully to carry out the purposes and intention of Mary Baker Eddy, the donor in said Trust Deed, and the discoverer and founder of Christian Science.

By their attorneys

Bates, Nay, Abbott & Dane,  
Clifford P. Smith,  
Edwin A. Krauthoff.

## Answer of John V. Dittmore

The defendant John V. Dittmore, answering the bill of complaint, says:

1. This defendant admits that Exhibit A is a correct copy of said Deed of Trust dated Jan. 25, 1898, that the plaintiffs Eustace and Ogden are duly appointed trustees under said deed, and that the plaintiff Rowlands was a duly appointed trustee thereunder until March 17, 1919, when he was dismissed from said office by the defendants Dickey, Merritt and Rathvon as hereinafter set forth in paragraph 13 of this answer. This defendant admits that since Dec. 2, 1912, the plaintiff Eustace, and since Aug. 1, 1917, the plaintiffs Ogden and Rowlands have been continuously acting and attempting to act as trustees under said deed; but he denies the legal right of the plaintiff Rowlands so to act since such dismissal.

2. This defendant admits that the defendants Dickey, Neal, Merritt and Rathvon are four of the five trustees known as the Christian Science Board of Directors under the deed Exhibit B, and are also trustees under the deed Exhibit C; and that they are also four of the five directors of The First Church of Christ, Scientist, in Boston, Massachusetts, a religious organization founded by Mary Baker G. Eddy.

This defendant further admits that until recently, to wit, until March 17, 1919, he was himself a trustee and director under said deeds Exhibit B and Exhibit C, and a director of The First Church of Christ, Scientist, in Boston, Massachusetts; but that at a meeting of the Christian Science Board of Directors duly held on March 17, 1919, a majority of said directors, to wit, the defendants Dickey, Merritt and Rathvon, undertook to dismiss and remove him from his office as such director

and trustee and undertook to elect the defendant Annie M. Knott as his successor as such director and trustee and passed formal votes to that effect; and he avers that since such dismissal or attempted dismissal he has not attended any meetings of said Board of Directors or acted in any manner as such director or trustee. This defendant says that in thus undertaking to dismiss him said defendants purported to act under a by-law of said Church which provides that "A majority vote or the request of Mrs. Eddy shall dismiss a member;" but that they acted in a wholly arbitrary, capricious and unlawful manner without giving him any opportunity whatever to reply to the charges against him, which charges were filed within fifteen minutes before the time of the vote of dismissal was passed, and that such action was not taken in the interest of the Christian Science movement or of said Church but for ulterior reasons and purposes. This defendant avers that he does not question or intend to question the validity of any of the by-laws of said Church or of any action taken thereunder in a proper manner by said Board of Directors or a majority thereof; but that on the contrary it is his purpose to support the same; but on account of the unlawful motives controlling their action and the unwarranted and unlawful method adopted by his associates, Messrs. Dickey, Merritt and Rathvon in attempting to dismiss and remove him without notice and hearing as aforesaid, while he does not now seek the aid of this court to give him active participation in the deliberations and official actions of said Christian Science Board of Directors for the time being, he is nevertheless advised and hereby claims that such attempted dismissal and removal was not lawfully effected and that he is still

legally and rightfully a member of said board.

This defendant, with all other loyal Christian Scientists, believes and holds that in all matters relating to the Church and all the Church activities, including the Christian Science Publishing Society and its trustees, the By-Laws of The Mother Church established by the Founder, Mary Baker Eddy, and set forth in the Church Manual, are the controlling authority over the Board of Directors, the trustees of The Christian Science Publishing Society and all members of The Mother Church; and that a denial by any of the above persons of the paramount and controlling authority of said By-Laws is equivalent to a confession of disloyalty and unfaithfulness to the principles of Christian Science as taught by Mrs. Eddy.

This defendant admits that The First Church of Christ, Scientist, in Boston, Massachusetts, is also known as The Mother Church, and it is referred to herein as such, and he avers that it is The Mother Church of Christian Science.

3. This defendant admits the allegations of fact in the first part of the third paragraph of the bill down to and including the words "until the date of her passing on."

This defendant admits that as a means of promoting and extending the religion of Christian Science as taught by her, Mrs. Eddy had created an organization known as The Christian Science Publishing Society to publish and circulate various Christian Science publications, of which Mrs. Eddy was the author, or to which she contributed; but only in the sense that she created an organization subordinate to and connected with The Mother Church, and that said Christian Sci-

ence Publishing Society was intended primarily to publish a monthly periodical known as The Christian Science Journal, and secondarily to publish various tracts, some written by Mrs. Eddy, and some written by her adherents. This defendant admits that in 1898 said Christian Science Journal and other publications had acquired a substantial circulation, and had been highly effective in accomplishing the purpose for which they were published, viz., of more effectually promoting and extending the religion of Christian Science as taught by Mrs. Eddy; and that all authority in connection with her publications, including publications published by said former Christian Science Publishing Society, remained in the hands of Mrs. Eddy herself. This defendant denies that by the terms of the Deed of Trust of Sept. 1, 1892, said Board of Directors was given no authority by Mrs. Eddy over her publications, and had no participation in the work of The Christian Science Publishing Society.

4. This defendant admits that the conception and plan of Mrs. Eddy for the promotion and extension of the religion of Christian Science as taught by her involved two general branches of activity, as stated in this paragraph of the bill; but denies that said conception and plan involved only two general branches of activity, and avers that it involved many more than two branches of activity; and further denies that said conception and plan involved independent and separate branches of activity; but avers that all the branches of activity were part of and all subordinate to a single organization, namely, The Mother Church, and the constituted authorities thereof; and avers that a permanent and fundamental purpose of Mrs. Eddy was not to divide up or separate said organization into independent parts, but to secure the subordination of all the parts to one harmonious and united whole.

This defendant denies that Mrs. Eddy determined to put into the hands of different sets of trustees the two particular branches of activity mentioned in this paragraph of the bill in the sense that she determined or desired to establish independent management for those or any other branches of the activities of said organization; but this defendant admits that Mrs. Eddy did reserve to herself in respect of each and all the activities and branches of the main organization, a large measure of power to control and guide the same, both personally and by boards of agents selected by herself.

This defendant admits that Mrs. Eddy, through the deeds Exhibit B and C, placed with the Christian Science Board of Directors the duties and powers with the reservations therein enumerated, and that several years later, to wit, in 1898, she executed the deed Exhibit A; but denies that in the deed Exhibit A she delegated to the trustees the authorities connected

therewith, which she had up to that time reserved exclusively to herself. This defendant admits that the original trustees named in the deed Exhibit A included no members of the then Christian Science Board of Directors, nor trustees under the Trust Deed of Sept. 1, 1892; but denies that the selection of other persons to serve as trustees under said deed Exhibit A was in pursuance of a distinct purpose on the part of Mrs. Eddy to keep the affairs of the Publishing Society under a separate control and management from that of her Church; and avers that by the establishment of By-Laws of said Church from time to time, and by other writings, Mrs. Eddy unmistakably indicated an intention to subordinate the trustees under the deed Exhibit A to the Christian Science Board of Directors, especially by a certain by-law of which the material part is as follows:

"The Christian Science Board of Directors shall have the power to declare vacancies in said trusteeship for such reasons as to the Board may seem expedient;"

and by another by-law of which the material part is as follows:

"The business of the Mother Church shall be transacted by its Christian Science Board of Directors;"

and by another by-law making it the duty of the Christian Science Board of Directors to provide a suitable building for the transaction by the trustees of the business defined in Exhibit A; and by another by-law making it the duty of said Board of Directors to see that the periodicals published by said trustees "are ably edited and kept abreast of the times;" and by another by-law requiring the net profits of said business to be paid over semi-annually to the Treasurer of The Mother Church, to be held subject to the order of said Board of Directors; and by references in the deed Exhibit A to said By-Laws; and by the following provision of the tenth paragraph of said Exhibit A:

"The First Members together with the Directors of said Church shall have the power to declare vacancies in said trusteeship for such reasons as to them may seem expedient."

The power of declaring vacancies in said trusteeship was vested in "the First Members together with the directors" by the provisions last above quoted because the government of The Mother Church was vested partly in the members known as "First Members" and partly in the directors at the time of the execution of said Exhibit A, and it was Mrs. Eddy's purpose to make the trustees subject to removal by the governing body of said Church. The Christian Science Board of Directors subsequently became the sole governing body of said Church through a transfer to it of all the powers of the First Members as hereinafter set forth, and the by-law first above quoted vesting in said Board of Directors exclusively the power to declare vacancies in said trusteeship, was then adopted in accordance with her said purpose. The

plaintiffs accepted their trusteeship under the deed Exhibit A with full knowledge of this by-law and of all said by-laws and written instructions of Mrs. Eddy as to the management of said trust, and at the time of accepting said trusteeship they and each of them severally and solemnly agreed to be bound thereby.

5. This defendant denies that since the date of their respective appointments as trustees under the deed Exhibit A the plaintiffs have at all times zealously, conscientiously, and faithfully discharged the duties imposed upon them by the trust and confidence of Mrs. Eddy; and denies that they have held and managed the property and property rights which came to them under the Deed of Trust exclusively for the purposes declared and defined therein, and solely for the promotion and extension of the religion of Christian Science as taught by Mrs. Eddy; and denies that they have energetically and judiciously managed the business of the Publishing Society on a strictly Christian basis; and avers on the contrary that since they severally became members of said Board of Trustees the plaintiffs have been more and more unfaithful to the duties imposed upon them by the deed Exhibit A, and have managed said business with great waste and extravagance, and upon a basis the reverse of Christian, and have shown a tyrannous disposition toward all their inferiors, servants, and employees, and an arrogant disposition toward the Christian Science Board of Directors, and toward the members of the Church at large, and that their predominating motive in the discharge of their duty has been a desire to aggrandize themselves by increasing their power and authority, and propagating their own personal views inconsistent with the principles of Mrs. Eddy and her design in said organization, and that they have sought to pervert and undermine all the larger and more fundamental purposes of their trust and to destroy the unity of the organization known as The Mother Church.

This defendant, while admitting that during the administration of the trust by the present trustees the affairs of the Publishing Society have been to a certain extent prosperous and successful, avers that such prosperity and success as has attended its affairs under their management has been in spite of and not in consequence of such management, and has been much less than it would have been had it not been for the general policy of said trustees, and for the wastefulness and extravagance with which they have administered their trust.

This defendant admits that the publications of said Publishing Society, religious and secular, have increased in circulation and influence; but avers that they have increased much less in circulation and influence than they would have increased had said trustees faithfully administered their trust.

This defendant admits that the interests of Christian Science have been promoted by the publications of the society, and the teaching widely extended, and the number of believers in the faith steadily increased; but avers that this has been in spite of and not because of the administration of their trust by the present trustees.

This defendant denies that the plaintiffs have in no way failed in the proper discharge of their duty, as either expressed or implied in the terms of said Deed of Trust. This defendant, while admitting that the trustees have recently worked harmoniously with each other, denies that they have always done so; and avers that until recently there has been in their business association friction and disagreement between themselves. This defendant denies that the plaintiffs have all worked loyally, earnestly, and faithfully as Christian Scientists and believers in its tenets and doctrines, for the best interests of the Christian Science Church, and the spread of Christian Science throughout the world.

This defendant admits that in addition to such work as has thus been achieved in the direct promotion and extension of Christian Science, the plaintiffs and their predecessors in the trust have indirectly promoted and extended the interests of Christian Science by paying over semi-annually substantial sums of money to the defendants, both in their capacity as directors for the support of The Mother Church and in their capacity as trustees for the promotion of Christian Science under the terms of the trust created in Mrs. Eddy's will; but avers that the sums so paid over by the plaintiffs have been much less than the same would have been had they administered their trust faithfully and performed their duties efficiently.

This defendant avers that the plaintiffs paid over to The Mother Church as earnings and profits from their conduct of the trust for the period of six months ending Oct. 1, 1918, the sum of \$287,103.11, and that they paid over to this defendant and others as trustees for the promotion of Christian Science under the terms of the trust created in Mrs. Eddy's will, for the same six months' period the sum of \$175,199.45; but he says that the amount so paid to the trustees under Mrs. Eddy's will did not represent profits and earnings from the plaintiffs' conduct of their trust, but represented royalties paid to the trustees under said will; and so far as the income of the plaintiffs herein has increased such increase has been due to the fact that the prices of the publications of The Christian Science Publishing Society have been advanced in some instances fifty per cent and in other instances one hundred per cent, while the quality of the material used in said publications has been cheapened, all of which has been a burden upon the members of The Mother Church, the beneficiaries under said trust, who compose almost all the

subscribers to said publications. The advances in the subscription prices of said publications which went into effect July 1, 1917, according to the circulation at that time, should have increased the annual income of the Publishing Society approximately \$780,000; but a large portion of the revenue derived from said advances has been used by the plaintiffs to make up a deficit brought about by waste and extravagance in their management of The Christian Science Monitor.

6. This defendant admits that in the growth and extension of the Christian Science movement more than eighteen hundred Christian Science churches and societies have been created and are now in existence; but denies that the Christian Science Board of Directors are directors of only one of said Christian Science churches, to wit, The Mother Church, situated in Boston, if said statement is intended to mean that the branch churches are in all respects independent of said Board of Directors; and avers that said Christian Science Board of Directors are the directors of said Mother Church, which is The Mother Church of Christian Science, and that in said capacity they have a general supervision over all branch churches of Christ, Scientist, and all other activities of the Christian Science movement throughout the world in accordance with the provisions of the Manual of The Mother Church, by Mary Baker Eddy. This defendant admits the existence of the By-Laws set out at the end of the sixth paragraph of the bill; but denies the statement that the Church By-Laws created by Mrs. Eddy provide for local self-government of churches, if said statement is intended to mean that the separate churches are in all respects independent of the Christian Science Board of Directors; and avers that many By-Laws were created by Mrs. Eddy other than those set out in this paragraph of the bill, the general purpose and effect of which is to subordinate all the local churches in many important respects to said Mother Church, and to the authority of said Christian Science Board of Directors.

7. This defendant admits that since the death of Mrs. Eddy the directors have assumed to exercise and have exercised powers with regard to the Publishing Society which the directors did not attempt to exercise during her lifetime; and avers that the directors have thus acted in accordance with the By-Laws and written instructions of Mrs. Eddy. This defendant admits that the directors have sought from the trustees various information with regard to the work of the Publishing Society, and the management of its affairs; but denies that they have done so upon any excuse whatever, or for any reason except that the directors had the duty and right to seek such information. This defendant admits that the directors have requested the trustees to abstain from the exercise of certain powers and the performance of cer-

tain duties theretofore exercised and performed by them; and that the trustees have conformed to some, but not to all, of these requests. The defendant avers that the trustees have not given all the information requested, and frequently have given inaccurate information, and have not in all cases conformed to specific requests which have been made by the Board of Directors. This defendant denies that the directors have repeatedly insisted that the Board of Trustees should make open, specific, and public acknowledgment that the directors were the supreme and final authority with reference to all of the affairs of the Publishing Society, and the management of the trust created by the Trust Deed of Jan. 25, 1898; but this defendant admits that the directors have repeatedly demanded that the trustees acknowledge the general superintending authority conferred upon the directors by the By-Laws of The Mother Church and that they abide by the terms of a certain memorandum to which said trustees had agreed as correctly setting forth the relative status of said directors and trustees and which is hereinafter set forth in paragraph 20 of this answer, and in particular that said trustees abide by the two concluding paragraphs of said memorandum which were as follows:

"The duties and responsibilities of the trustees as set forth in the Manual of The Mother Church and the Deed of Trust creating the trusteeship are the holding and management of the property of the trust and the conduct of the business of The Christian Science Publishing Society subject to the general supervision of the directors.

"It shall be accepted in theory and demonstrated in practice that The Mother Church is one institution and that the responsible authority for its direction in all of its departments is not divided, but has been definitely established in the Christian Science Board of Directors."

8. This defendant admits that during the month of October, 1918, the defendants Dickey, Neal, Merritt, Rathvon, and Dittmore, made a formal demand upon the trustees concerning the manner in which the trustees should in the future conduct the business of The Christian Science Publishing Society, and that the said defendants did demand that the trustees should not conduct said business as they had theretofore conducted it, and should not perform their duties as they had theretofore performed them; but this defendant denies that said request was a request that the trustees should not perform their duties and conduct the business as defined by the provisions of the trust instrument. This defendant admits that said request of the said defendants was that the trustees should thereafter conduct the business of the Publishing Society in general subordination to the policy determined by the Christian Science Board of Di-



rectors; but denies that they requested the trustees in all matters to act in conformity with the directions of said board. This defendant admits that said request of the Christian Science Board of Directors was based upon the wishes of Mrs. Eddy as expressed both in the Manual of The Mother Church, and otherwise, and on occasions after the date of the deed Exhibit A; but denies that these alleged expressions and statements of Mrs. Eddy were inconsistent or were admitted by them to be inconsistent with the terms of the deed Exhibit A, and in derogation of the powers and duties of the trustees as therein declared and defined. If the directors other than this defendant made any demands upon the trustees other than those above admitted, this defendant did not participate in such other demands or requests and has no knowledge of the same; and his answer is limited to such demands and requests made by the Christian Science Board of Directors as he himself participated in.

This defendant admits the allegations of fact in the portion of this paragraph of the bill beginning with the words, "The directors have demanded of the trustees in substance and effect," and ending with the words, "denying to the trustees the right to act either upon their own interpretation of the provisions of the Manual or that of any person or persons other than the directors;" but this defendant avers that the true effect and intentment of the demands of the directors here referred to was merely that the powers and duties of the trustees must be measured by the provisions of the Deed of Trust construed in connection with the Church Manual in order to make effectual the purpose of the donor and to preserve the integrity of the religion of Christian Science as taught by Mrs. Eddy. As to the averments in said paragraph relative to the interpretation of the By-Laws contained in the Church Manual this defendant says that said By-Laws are clear and explicit and are to be interpreted in accordance with their plain meaning and intent; that the directors' insistence was merely that the trustees conform to such plain meaning and intent; and that the trustees denied the binding effect of said By-Laws upon them, the said trustees, and attempted to put upon said By-Laws an arbitrary and unreasonable construction contrary to their plain meaning and intent.

This defendant admits the allegations of fact in the next portion of this paragraph of the bill beginning with the words, "The directors have also insisted that the trustees," and ending with the words, "should not act as they hitherto had acted in the discharge of their duties as declared and defined by the trust instrument;" but denies that the directors in any action in which this defendant participated, or of which he has knowledge, insisted that the trustees should act solely and

exclusively as directed by, and in subordination to, the directors, who would thus in effect arrogate to themselves all the duties of the trustees of the Publishing Society, as well as of the directors of the Church.

This defendant admits that the trustees did consult counsel; but what their motive was in so doing, and what advice counsel in fact gave to them, this defendant is ignorant. This defendant admits that the trustees did communicate to the directors that they would not conform to the request of the directors; but denies that the reasons given therefor were the reasons stated in the portion of this paragraph of the bill beginning with the words "because they believed that the demand," and ending with the words "by the Founder and great Leader of the Christian Science church."

9. This defendant admits that an interchange of correspondence occurred between the Board of Directors and the Board of Trustees; but denies that the sole point discussed therein was the point stated in the portion of this paragraph of the bill beginning with the words, "was whether the trustees would continue," and ending with the words "under their own interpretation of the Church Manual and the alleged wishes of Mrs. Eddy." This defendant admits that on Jan. 3, 1919, the Board of Directors sent to the Board of Trustees a communication of which a portion was the language quoted in this paragraph of the bill.

10. This defendant denies that on no occasion prior to the demand of Jan. 3d for the resignation of the trustees did the directors, or any member thereof, criticize either the efficiency or success of the management of the affairs of the Publishing Society; and denies that in substance and effect the directors conceded that the business affairs of said society were being efficiently and successfully managed, and that the purposes of the Trust Deed as stated and declared therein were being promoted, and says that such a concession, if made, would have been contrary to the truth. This defendant denies that the directors insisted that entirely apart from questions of efficiency of management and performance of the trust under the terms of the Deed of Trust, it was, in their opinion, necessary to the success of the Christian Science movement that the Board of Directors of The Mother Church should have absolute and unchallenged dominion and control of the affairs of the Publishing Society as a department of the Church, and that such was the purpose of the Founder of the Church, Mrs. Eddy, as made known to them and claimed by them to appear in the Church Manual, and that the provisions of the Trust Deed Exhibit A must be disregarded by the trustees, and that the trustees should accept the later declarations of the donor of the trust, and the directors' interpretations thereof, to guide them in the performance of their duties as

trustees, in the sense that they should act in violation of the deed Exhibit A. But this defendant admits that the Christian Science Board of Directors took the position that said board is the responsible authority in the direction of the affairs of The Mother Church and is invested with the general direction and supervision of the Christian Science movement in all of its departments; and that as the business of The Christian Science Publishing Society was a gift to said Church the trustees are subject to this general supervisory authority of the directors and to such By-Laws of said Church, adopted subsequent to the execution of the deed Exhibit A but in no way inconsistent with the donor's intent and purposes as therein expressed, as were in force and known and assented to by the trustees when they accepted said trusteeship, by which By-Laws said Board of Directors, among other things, is given final authority in regard to the editorial policy of the publications of said society; and this defendant avers that the directors were not only justified in taking this position but that the defendants Dickey, Neal, Merritt, and Rathvon did not insist thereon with sufficient firmness.

11. This defendant admits that after the receipt of said demand of the Board of Directors for their resignation, the Board of Trustees again consulted counsel, but is ignorant what request the trustees made of counsel. This defendant admits that an opinion, of which a portion is set out in this paragraph of the bill, was rendered to the trustees as therein stated.

12. This defendant admits that as the result of conferences between counsel of the trustees and directors, it was agreed that the respective boards would make a sincere attempt to harmonize their different views as to the authority of the Board of Trustees in respect to the manner in which the trustees should perform their duties as such; and avers that it was agreed that they should also make an attempt to harmonize their views on the question of the general subordination of the Board of Trustees to the Board of Directors. The defendant denies that the plaintiffs endeavored in good faith to carry out such agreement; and admits that the directors demanded of the trustees and insisted as a condition of their continuing to hold their offices, that the plaintiffs should explicitly and in writing repudiate the advice and opinion of their counsel as set forth in the bill and agree that their action should not be governed thereby in so far as such advice and opinion was inconsistent with the Manual of The Mother Church and the By-Laws contained therein, and he avers that such demand and insistence were justified. This defendant admits that the directors particularly objected to that part of the opinion of counsel specifically set forth in this portion of the bill beginning with

the words "If there be any conflict between the terms of the deed," and that they requested the trustees to repudiate the same in the sense in which the trustees claimed to understand the same.

This defendant admits the statements of fact in that portion of this paragraph of the bill beginning with the words, "The directors insisted," and ending with the words "when in the exercise of sound discretion and judgment they might do so"; but avers that said trustees also expressed themselves as adhering to and intending to act upon the theory that the Christian Science Board of Directors did not have general supervision and final authority in regard to the editorial policy of the publications of The Christian Science Publishing Society, and general supervision of the general affairs of said society.

This defendant admits that the trustees stated their assent that the Board of Directors of the Church was supreme in respect of any and all matters in any way affecting the government of The Mother Church in so far as such matters did not require the Board of Trustees to violate the terms of the Trust Deed, which they alleged was the source and measure of their own authority; but avers that the Board of Directors never requested the Board of Trustees to violate the terms of said Trust Deed. This defendant admits that the trustees offered in general terms cordially to cooperate with the directors in promoting and extending the interest of the Christian Science religion; and admits that they declined to repudiate the advice of their counsel in the sense in which they understood it; but denies that the trustees stated that in the administration of their trust they would be guided by the terms of the trust instrument, with due regard to the By-Laws of the Church and the provisions of the Church Manual, interpreted in relation to the expression of Mrs. Eddy's desires and purposes in the provisions of the Trust Deed.

13. This defendant admits that thereafter, to wit, on March 17, 1919, the defendants Dickey, Merritt and Rathvon, constituting a majority of said Board of Directors, attempted to remove and did remove the plaintiff Rowlands as trustee, and attempted to declare and did declare his office vacant; but denies that said directors made such attempt solely for the reasons set out in the preceding paragraphs of the bill; and denies that this defendant participated in any way in said removal. This defendant admits that said Directors Dickey, Merritt and Rathvon, on said March 17th, delivered to the plaintiff Rowlands a so-called "Notice of Dismissal" as a trustee of The Christian Science Publishing Society in the form set out in this paragraph of the bill; but denies that said "Notice of Dismissal" was delivered in pursuance of any plan which this defendant had conceived, or to which he

was a party. This defendant says that he then believed and still believes, and that he had repeatedly urged to his associate directors, that the interests of Christian Science imperatively demanded the removal from office not only of the plaintiff Rowlands but of all three of the plaintiff trustees, and particularly of the plaintiff Eustace, who was and is the dominant force among said trustees; but that the defendants Dickey, Merritt and Rathvon frankly stated to this defendant that they deemed it advisable to remove Mr. Rowlands only, instead of removing either all three trustees or Mr. Eustace, for the reasons hereinafter set forth in paragraph 22 of this answer; and that this defendant declined to participate in such removal of Mr. Rowlands because of the reasons thus assigned by said defendants for their proposed action, and because he considered such action an utterly inadequate remedy for the situation produced by the persistent refusal of the three plaintiffs to recognize the supervisory authority of the directors and the binding force of the By-Laws of The Mother Church, and by their gross mismanagement of the business of The Christian Science Publishing Society.

Immediately after said removal of the plaintiff Rowlands, the defendants Dickey, Merritt and Rathvon undertook at the same meeting to remove this defendant from his office as a director as hereinbefore set forth, in consequence whereof this defendant has never attended any meeting of the Board of Directors since March 17, 1919, and has no knowledge whether said Board caused to be delivered to the plaintiff Rowlands' associates the letter dated March 18, 1919, set out in this paragraph of the bill.

14. This defendant denies that the trustees have continued the relations which they had found to exist between the Board of Trustees and the Board of Directors, and that the directors alone have tried to alter and destroy that existing relation; and denies that no one of the trustees has in any way attempted to convert the trusteeship into an office or function of a new and different character, and denies that said trustees have enlarged the trusteeship only in the sense that by their efforts they have steadily attempted to promote and extend the circulation of the Christian Science publications and increase their influence and thus to enlarge the interest of the world in Christian Science; and denies that in such endeavor the trustees have been successful beyond any of their predecessors. This defendant is ignorant whether the trustees, having received the advice of counsel as to their duties, have accepted said advice and acted accordingly; but denies that said trustees have acted with due regard and heed to the provisions of the Church Manual. Except as herein stated this defendant is ignorant what advice the trustees received from their counsel; but he admits that the trust-

tees did communicate to the Board of Directors and their counsel that the opinion of counsel of the trustees was that the directors had no right or power to remove the plaintiff Rowlands.

This defendant denies that the plaintiff Rowlands has in all respects discharged his duties as trustee solely with a view to what in the exercise of sound judgment he has regarded as the best interests of Christian Science, the Christian Science Church, and the promotion and extension of Christian Science throughout the world. This defendant denies that the plaintiff Rowlands has been prayerfully or otherwise conscientious and loyal and faithful to his duty as a believer in Christian Science. This defendant is ignorant whether whatever action the plaintiff Rowlands has taken has been under the advice of competent counsel, or not. This defendant denies that the trustees have been faithful, loyal, and conscientious Christian Scientists in the performance of their duties; he avers that on the contrary their refusal to abide by the By-Laws of The Mother Church of which they are members, involving a wilful violation both of their own agreements and of the expressed wishes and intentions of the great Founder and Leader of Christian Science under whose Deed of Trust they claim to hold, and their attempt to create schism in said Church by setting themselves up as an independent and uncontrollable authority therein, is of the very essence of unfaithfulness and disloyalty, and he denies that the plaintiff Rowlands has faithfully, loyally, and conscientiously discharged his duty as trustee. This defendant is ignorant whether the plaintiff Rowlands, upon taking up the trusteeship, gave up large and important business interests and engagements and made a financial sacrifice, and he avers that said fact is immaterial if true.

This defendant denies all the allegations in the portion of this paragraph of the bill beginning with the words, "The plaintiffs believe," and ending with the words "in creating the trust under which the plaintiffs are acting."

15. This defendant denies all the allegations of fact of the fifteenth paragraph of the bill, except so far as the same relate to the future purposes of the defendants now acting as directors, as to which purposes he is ignorant.

16. This defendant denies all the allegations of fact contained in the sixteenth paragraph of the bill, subject to the same exception.

17. As to so much of the seventeenth paragraph of the bill as commences with the words "the plaintiffs further aver upon information and belief that it is not a part of" and ends with the words "which the defendants have made upon them as hereinabove set forth," this defendant is ignorant whether the allegations of fact contained therein are or are not true and

therefore cannot answer the same. As to the remainder of said seventeenth paragraph of the bill this defendant denies the allegations of fact therein contained so far as the same relate or may relate to himself, but he is ignorant whether said allegations are or are not true, and therefore cannot answer the same, so far as the same relate to or concern the other defendants.

18. This defendant denies the allegations of fact in the eighteenth paragraph of the bill.

19. This defendant denies the allegations of fact in the nineteenth paragraph of the bill.

Further answering, this defendant says:—

20. At or about the time of the execution and delivery of the deed Exhibit B, and as part of the same transaction, Mary Baker G. Eddy and certain of her friends who adhered to the doctrines of the religion of Christian Science as taught by her, particularly in her book entitled "Science and Health," including all the grantees named in the deed Exhibit B, voluntarily organized themselves as a Church, and called their organization The First Church of Christ, Scientist, and agreed for themselves and their successors in said organization to be bound by certain tenets, rules, and by-laws already prepared by Mrs. Eddy, the grantor in said deed, and whatever further by-laws might be prepared by her in the future; and agreed that one of the decisive tests of eligibility to membership in said organization, and of loyalty to the doctrines of Mrs. Eddy, should be unquestioning obedience to said by-laws then and thereafter established and promulgated by her; and the Church referred to in said deed Exhibit B was the Church thus organized and herein referred to as The Mother Church, and the Church edifice referred to in said deed was the edifice designed and intended, and actually always thereafter used, for the members of said Church. The congregation referred to in the sixth paragraph of said deed consisted of said persons who organized said Church, and of those who might thereafter become members of said Church; and the duties imposed in said deed upon said Board of Directors in reference to preaching and religious services were imposed for the benefit of said church members, who became and were the beneficiaries of said trust.

At the time of the organization of said Church as aforesaid, and until the month of January, 1901, the general administrative authority of said Church was by agreement of all the persons who organized the same, and of those who subsequently became members thereof, vested partly in said Board of Directors and partly in a body of persons called First Members, consisting of all the persons who originally organized said Church and of a few others subsequently elected to the office of First Members; and said First

Members were vested with all the authority of all the members of said Church in all matters not specially delegated to said Board of Directors. On Jan. 10, 1901, said Mary Baker G. Eddy established and promulgated the following by-law, adopted, ratified, and acquiesced in by unanimous vote of said First Members and said Board of Directors, viz.,

"The business of the Mother Church hitherto transacted by the First Members, shall be done by its Christian Science Board of Directors."

The First Members thereupon passed a formal vote transferring all their authority to the Board of Directors in accordance with this by-law, and thereafter, with the full consent and approval of all the Church members, including the trustees of the Publishing Society, the general administrative authority of said Church was exercised by said Board of Directors exclusively.

On March 17, 1903, said Mary Baker G. Eddy by another by-law also unanimously adopted, ratified, and acquiesced in by said First Members and said Board of Directors, changed the title of said First Members to Executive Members, without changing whatever functions or power then remained in said First Members.

On July 8, 1908, said Mary Baker G. Eddy established and promulgated another by-law, which likewise was adopted, ratified, and acquiesced in by unanimous vote of said First Members and said Board of Directors, abolishing all previous by-laws pertaining to Executive Members and First Members, and abolishing the office of Executive Members and First Members; and since July 8, 1908, there have been no First Members or Executive Members of said organization, and all the authority formerly possessed by the so-called First Members has been vested in the Christian Science Board of Directors and has ever since been exercised by said Board.

The Deed of Trust Exhibit A was designed and intended by Mrs. Eddy, the donor, as a gift to The Mother Church founded by her as aforesaid, through the instrumentality of the trustees as its publishing agents, of the publishing business referred to in said deed. By said deed she reserved the right to advise and direct the trustees in certain particulars, and to fill vacancies that might occur in the Board of Trustees, and to withdraw certain property from said trust; and in Paragraph 10 of said deed it was expressly provided that,

"The First Members together with the Directors of said Church shall have the power to declare vacancies in said trusteeship for such reasons as to them may seem expedient."

The purpose of this provision was to make the trustees as publishing agents subject to removal by the governing authority of the Church as the real owner of the publishing business, said governing authority then being

vested partly in the First Members and partly in the directors; and this power of removal was one of the powers which, as all parties concerned, including said trustees, well understood, was intended to be transferred to and exclusively vested in the Board of Directors when the By-Laws were subsequently so changed as to abolish the functions of and office of the First Members as above set forth.

At the time of the delivery and execution of said deed it was understood and agreed by Mrs. Eddy, the grantor, by the trustees, by the First Members, among whom were all three of the original trustees under Exhibit A, Messrs. Bates, Neal and McKenzie, and by all the existing directors of said Church, that the provisions of said Trust Deed should and would be further subject to alteration, modification or amendment from time to time by Mrs. Eddy by such by-laws as she might thereafter during her lifetime establish and promulgate; and that has been also the uniform and long-continued construction and interpretation of said deed by all persons interested therein, and having occasion to act thereunder. After the execution and delivery of said deed Mrs. Eddy established and promulgated in accordance with this understanding and agreement, the following by-laws, which were in each case adopted, ratified, and acquiesced in by unanimous vote of said First Members, said Board of Directors, and said trustees, to wit:

Art. I, Sect. 6. "The business of the Mother Church shall be transacted by its Christian Science Board of Directors . . ."

Sect. 7. Duty of the Directors "to provide a suitable building for the publication of The Christian Science Journal, Christian Science Sentinel, Der Herold der Christian Science, and all other Christian Science literature published by The Christian Science Publishing Society"; also to provide rooms for publication and sale of Mrs. Eddy's works.

Art. VIII, Sect. 14. ". . . it shall be the duty of the Directors to see that these periodicals are ably edited and kept abreast of the time."

Art. XI, Sect. 1 and 5. The Directors are charged with the maintenance of discipline, which makes them the supreme authority in determining the tenets of Christian Science. See also Art. XXVI, Sect. 9.

Art. XXV is devoted entirely to "The Christian Science Publishing Society."

Sect. 1 requires the trustees to conduct the business "on a strictly Christian basis, for the promotion of the interests of Christian Science."

Sect. 3. "The Christian Science Board of Directors shall have the power to declare vacancies in said trusteeship, for such reasons as to the Board may seem expedient."

Sect. 4. Limits the terms of office of the editors and manager to one year. Elections to be by Board of Directors.

16 Sect. 5. "A person who is not accepted by the Christian Science Board of Directors as suitable, shall in no manner be connected with publishing her books, nor with editing or publishing The Christian Science Journal, Christian Science Sentinel, Der Herold der Christian Science, nor with the Christian Science Publishing Society."

Sect. 9. "No cards shall be removed from our periodicals without the request of the advertiser, except by a majority vote of the Christian Science Board of Directors . . ."

All of said by-laws have by unquestioned, uniform and long-continued acquiescence and consent of all persons interested in said deed Exhibit A and in the trust thereby established and in said Church, including each and every trustee under said Trust Deed and the three plaintiffs Eustace, Ogden and Rowlands as well as their predecessors, been regarded as amendments of and supplements to said deed Exhibit A, and this view has been acted on and has never been questioned by any of said trustees or their predecessors in the trust until recently questioned by the present plaintiffs in this case.

In the year 1916, after considerable discussion and correspondence between the Christian Science Board of Directors and the then trustees, McKenzie, Hatten and the plaintiff Eustace, the following memorandum was drawn up by this defendant and agreed to by all said trustees at a joint meeting of the two boards as correctly stating the relations intended to be established by Mrs. Eddy in the deeds Exhibits A and B, and by her By-Laws, between the Christian Science Board of Directors and the trustees of The Christian Science Publishing Society:

#### MEMORANDUM

The Christian Science Board of Directors

and

The Christian Science Publishing Society

"1. The relations, duties and responsibilities of the Christian Science Board of Directors and of the Board of Trustees of The Christian Science Publishing Society must necessarily be based not up single detached sections or sentences of our Church By-Laws or of the Deed of Trust constituting the trusteeship, but upon the intent and purpose of all of the Church By-Laws relating to these boards and of the entire text of the Deed of Trust.

"2. The government of The Mother Church is set forth in the thirty-five Articles of our Church By-Laws as contained in the Church Manual. One of these articles (Article XXV) records the situation under which The Christian Science Publishing Society exists and fulfills its proper functions. The Manual reveals clearly that this

society is not a separate organization independent of The Mother Church, but is an interdependent department—and a very important one—in the denomination activity of the Christian Science movement.

"3. Mrs. Eddy has provided that 'The business of The Mother Church shall be transacted by its Christian Science Board of Directors.' The By-Laws as a whole clearly indicate that to this Board of Directors is entrusted, as its name indicates, the general direction and supervision of the Christian Science movement in all of its departments.

"4. The Church By-Laws and the Trust Deed give evidence that this trusteeship was created and exists for two general purposes,—First, 'For the promotion of the interests of Christian Science' through the publication of the current literature of Christian Science; and Second, for financial benefit to The Mother Church for the general use of all departments of The Mother Church for which funds can be expended according to the provisions of the By-Laws. Our church By-Laws dealing with this question confirm the fact that The Christian Science Publishing Society is under the general direction of the Christian Science Board of Directors. This Board of Trustees necessarily differs organically from other departments of our Church in that its responsibilities in the holding and management of valuable property require that it be constituted and perpetuated in accordance with the established legal usage necessary to safeguard and properly manage public trusts. We are agreed that Mrs. Eddy's use of words is wonderfully exact. Webster defines 'Trustees' as 'Persons to whom property is legally committed in trust.' Trusteeships always have to do with the holding and management of property.

"5. The Christian Science Board of Directors control the disposition of all funds accruing from the profits of the publications managed by the Board of Trustees. They elect to office the business manager of the Publishing Society and the editors of all the periodicals. They own and furnish the building in which the Publishing Society conducts its business. They are required to determine the salaries of the trustees and have had placed upon them the additional responsibility named in Article XXV, Section 3, of the Mother Church By-Laws.

"6. It is not our purpose either to magnify the responsibilities of The Christian Science Board of Directors or to minimize the duties and responsibilities of the Board of Trustees. This trusteeship is the most important and far-reaching trust in the world, and its financial resources are destined to become practically unlimited and to require in its management the highest degree of ability and intelligence that can be demonstrated. It is

our purpose, however, to define what we consider to be the correct and only consistent relationship of the trustees of The Christian Science Publishing Society to The Mother Church and the Christian Science Board of Directors to the end that all concerned may accept in theory such correct interpretation and demonstrate in practice, through a right sense of co-operation, the degree of efficiency in every detail connected with the publishing work which the Christian Science movement demands.

"7. In order that the directors of The Mother Church shall not be made responsible for policies and rules adopted and for actions taken by the trustees of The Christian Science Publishing Society without the approval of The Christian Science Board of Directors, it shall be agreed as follows:

"A. The trustees of The Christian Science Publishing Society shall order no special or unusual action to be taken affecting the field without the written approval of the directors.

"B. The responsibility for the editorial and news policies of the Christian Science publications shall rest with the Christian Science Board of Directors according to the provisions of Article VIII, Section 14, of the Church By-Laws.

"C. All rules governing the acceptance or rejection of applications for cards in The Christian Science Journal shall be subject to the written approval of the directors.

"D. All circular or form letters in regard to circulation or advertising shall be approved in writing by the directors before being sent.

"E. The salaries of all persons who are elected by the directors and employed by the trustees shall be fixed by mutual agreement.

"F. Any unusual expenditures by the trustees which affect the income of The Mother Church shall be subject to the written approval of the directors.

"G. We believe that appointments on the Bible Lesson Committee should be made by the trustees after consultation with the Board of Directors.

"H. The duties and responsibilities of the trustees as set forth in the Manual of The Mother Church and the Deed of Trust creating the trusteeship are the holding and management of the property of the trust and the conduct of the business of The Christian Science Publishing Society subject to the general supervision of the directors.

"It shall be accepted in theory and demonstrated in practice that The Mother Church is one institution and that the responsible authority for its direction in all of its departments is not divided, but has been definitely established in the Christian Science Board of Directors."

21. The plaintiffs are not and for a long time have not been loyal, faithful, and consistent believers and advocates of the principles of Christian Science as taught by Mary Baker G. Eddy in her book entitled "Science and Health with Keys to the Scriptures," and long before the filing of this bill the plaintiffs had ceased for that reason to be eligible to hold the office of trustees under the deed Exhibit A.

The plaintiffs during a long period prior to the filing of the bill had violated their trust, and had improperly conducted themselves in their office as trustees, in the following particulars among others, to wit:

By misrepresenting the circulation of The Christian Science Monitor, and selling advertising space therein by suppression of facts as to the amount of said circulation; by discharging old, faithful, experienced, and efficient employees, and replacing them with personal friends of the plaintiffs who were wholly inexperienced and incompetent; by permitting the quality of the mechanical work of the publications in their charge to deteriorate; by persistent incivility, arrogance, and abuse of power toward their employees; by spreading demoralization among their servants and agents by acting toward them, and especially in the discharging or employing of their servants and agents with caprice and prejudice; by gross extravagance in the management and conduct of the business entrusted to them; by the loss of large amounts of trust funds through mismanagement; by permitting the London Bureau of The Christian Science Monitor to maintain an organization entirely out of proportion, both in size and expense, to the other bureaus of the paper; by permitting the squandering of large sums of money on cable news from the London bureau, amounting to as much as \$21,000 in one month for transmitting matter which was largely rewritten from the London daily papers; by using the various publications in their charge as a means for the promotion of views and tenets inconsistent with and antagonistic to the doctrines of said Church, and by attempting to coerce into an adoption of said views persons applying for recognition as practitioners of Christian Science, and desiring to place their cards in the columns of The Christian Science Journal; and by destroying all practical correlation of management between the Editorial, News, Distribution, Advertising, and Financial Departments of The Christian Science Monitor, thus impairing the efficiency and value of said paper, and causing large and unnecessary waste and expense.

22. The disloyalty, misconduct, mismanagement and inefficiency of the plaintiff trustees in all the foregoing and other particulars hereinbefore set forth has long been well known to and

fully understood by the defendants Dickey, Neal, Merritt and Rathvon as well as this defendant, but said defendants Dickey, Neal, Merritt and Rathvon have declined to deal with the situation firmly and effectively because they have stood in fear of and been largely under the influence of the plaintiff Eustace. While all three of the plaintiffs have participated in said disloyalty, misconduct, mismanagement and inefficiency, the plaintiff Eustace has been and is the dominating member of said Board of Trustees; and in combination and cooperation with the editor of The Christian Science Monitor, one Frederick Dixon, said Eustace has dominated, influenced and intimidated a majority of the Christian Science Board of Directors to such an extent as to subvert many of the By-Laws established by Mrs. Eddy and undermine the characteristic doctrines discovered and promulgated by her, and has sought to withdraw The Christian Science Publishing Society from the legitimate control of said Board of Directors and to set said society up as an independent body of at least equal rank, power, and influence with said directors, and has thus introduced division in the Christian Science movement and in The Mother Church, in direct contravention of the expressed views and purposes of Mrs. Eddy. This plan and scheme of the plaintiff Eustace, well known to this defendant's associate directors, has in all its branches been consistently opposed by this defendant, and it was largely for that reason that the defendants Dickey, Merritt and Rathvon, acting largely at the instigation of and under the influence of the plaintiff Eustace and others associated with him, attempted to dismiss this defendant from said Board of Directors on March 17, 1919, as aforesaid.

The controlling purpose of said defendants Dickey, Merritt and Rathvon in removing the plaintiff Rowlands was to obviate the necessity of removing the plaintiff Eustace, with whose aforesaid wrongful plan and scheme they were too timid to interfere effectively, and with which plan and scheme the plaintiff Rowlands had comparatively little to do. The defendants Dickey, Neal, Merritt and Rathvon frequently stated and declared to this defendant that the plaintiff Rowlands was a person little known, who had only a small following among Christian Scientists, and that if he alone were removed or threatened with removal, his associates Eustace and Ogden would make no objection, and that his removal would satisfy the growing unrest of the Church members.

This defendant further answering says:

23. At the date of the delivery of said Trust Deed (Exhibit A) by Mrs. Eddy to Edward P. Bates, James A. Neal and William P. McKenzie as trus-

tees for the sole benefit of The Mother Church, the said Bates, Neal and McKenzie were First Members of said Church; and as heretofore stated understood and agreed that the provisions of said deed were subject to alteration, modification and amendment by Mrs. Eddy; and that their acceptance of the deed was subject to that condition.

Early in 1898 as shown in the first edition of the Church Manual after Jan. 25, 1898, the First Members, including said Bates, Neal and McKenzie, the trustees under the Trust Deed (Exhibit A), at the request of Mrs. Eddy united in unanimously establishing the by-law hereto annexed marked defendant Dittmore's Exhibit 1; and the power over the Publishing Society and business or affairs therein vested in the First Members and the Christian Science Board of Directors was thereafter with the full knowledge and consent of all parties in interest vested solely in the Christian Science Board of Directors.

Every trustee of the Publishing Society under said Trust Deed, including these plaintiffs, under all the circumstances, writings and documents to be exhibited to the court, is estopped in fact and in law from claiming in this court or elsewhere that the Trust Deed (Exhibit A) was not legally modified and amended by the provisions of the By-Laws adopted as heretofore stated.

These plaintiffs, if they were loyal, faithful and consistent believers and advocates of the principles of Christian Science taught by Mrs. Eddy as required by Section 9 of the Trust Deed Exhibit A under which they claim, would not be estopped from setting up their unwarranted claims in these proceedings against the directors; and their attempt to set up these claims in this proceeding, wholly regardless of the injury they may thereby inflict upon the cause of Christian Science is solely for their personal and selfish aggrandizement and to attempt to increase their personal power in the affairs of the Church; and, taken in connection with the methods they are using to assert such claims, furnishes conclusive proof that they are not "loyal, faithful, and consistent believers and advocates of the principles of Christian Science as taught by Mrs. Eddy" and is also conclusive that under the provisions of Section 9 of the Trust Deed they are not eligible to said trusteeship or legally entitled to continue as trustees thereunder, and have no legitimate standing in this court to proceed with the prosecution of their unlawful claims in this proceeding; and their bill should be dismissed with costs, by the court.

Because of the plaintiff's disloyalty, misconduct, mismanagement and inefficiency in the various particulars hereinbefore set forth, this defendant further avers that the Christian Sci-

ence Board of Directors was not only warranted in removing the plaintiff Rowlands from his trusteeship on March 17 last, but that the interests of the cause which said trusteeship was created to further, viz., the promotion and extension of the religion of Christian Science as taught by Mrs. Eddy, imperatively call for the removal from office of all three of the plaintiff trustees long prior to said date; and if (as the plaintiffs claim but this defendant denies) said Board of Directors does not technically possess the power of removing said trustees which the Founder of the trust intended and the By-Laws of the Church were designed to vest in them, or if they persist in declining effectively to exercise that authority because of timidity and the influence of the plaintiff Eustace, each and all of the plaintiff trustees can be and of right ought to be removed from office by this Court of Equity.

JOHN V. DITTEMORE,

By his attorneys,

(Signed) FRANK S. STREETER,  
WM. G. THOMPSON,  
FRED C. DEMOND.

[Exhibit 1.]

Article XI.

THE CHRISTIAN SCIENCE  
PUBLISHING SOCIETY

Section 1. The Board of Trustees, constituted by a Deed of Trust given by Rev. Mary Baker G. Eddy, the Pastor Emeritus of this Church, on January twenty-fifth, 1898, shall hold and manage the property therein conveyed, and conduct the business of "The Christian Science Publishing Society" on a strictly Christian basis, for the promotion of the interests of Christian Science. The net profits of the business shall be paid over semi-annually to the Treasurer of The First Church of Christ, Scientist, in Boston, Mass. Said Treasurer shall hold the money paid over to him subject to the order of the First Members of said Church, who are authorized to order its disposition only in accordance with the rules and by-laws contained in the Manual of said Church.

The First Members together with the Directors of said Church shall have the power to declare vacancies in said trusteeship for such reasons as to

them may seem expedient. Whenever a vacancy shall occur in said trusteeship for any cause, the Pastor Emeritus reserves the right to fill the same by appointment; but if she does not elect to exercise this right, the remaining trustees shall fill the vacancy, and the candidate proposed for this office shall be elected by a unanimous vote of all the First Members of said Church.

Sect. 2. A person who is not accepted by our Pastor Emeritus and the Christian Science Board of Directors, as suitable to publish her books, shall in no manner be connected therewith, nor with the Christian Science Publishing Society.

No pictures coming from outsiders shall be exhibited in the room where the Christian Science text-book is published. No idle gossip, no slander, no mischief-making, no evil speaking, shall be allowed in this room or any other in the publishing house.

Sect. 3. Editors and publishers of *The Christian Science Journal* shall not be elected to these offices and shall not be removed therefrom without the knowledge and consent (if she chooses to decide) of the Pastor Emeritus.

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Bill to Amend

**COMMONWEALTH OF MASSACHUSETTS**

**IN THE SUPREME JUDICIAL COURT**

**SUFFOLK, SS.**

**IN EQUITY**

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**JOHN V. DITTEMORE, Plaintiff,**

**v.**

**ADAM H. DICKEY, JAMES A. NEAL, EDWARD A. MERRITT,  
WILLIAM R. RATHVON, and ANNIE M. KNOTT, Defendants.**



# Bill of Complaint

1. The plaintiff and the defendants Rathvon and Knott are residents of Boston, in said County. The defendants Dickey, Neal, and Merritt are residents of Brookline in the County of Norfolk.

2. On or about Sept. 1, 1892, Mary Baker G. Eddy, late of Concord, in the State of New Hampshire, deceased, executed, acknowledged, and delivered a certain deed of trust, of which a copy is filed herewith, made part hereof, and marked Exhibit "A." On or about March 19, 1903, one Albert Metcalf executed, acknowledged, and delivered a declaration in the nature of a declaration of trust, of which a copy is filed herewith, made part hereof, and marked Exhibit "B." (Said Exhibits A and B are printed on pp. 128-138 of Exhibit "C," hereinafter referred to in paragraph 12 of this bill.)

3. In May, 1909, the plaintiff Dittmore, with the definite written approval of said Mary Baker G. Eddy, was under the provisions of paragraph 1 of said Exhibit A duly appointed a member of the Christian Science Board of Directors to fill an existing vacancy, and he has ever since been and is still a member of said Christian Science Board of Directors, and was at the time of the events of March 17, 1919, hereinafter referred to, and is still, the senior member of said Board. Since his appointment to said Christian Science Board of Directors, and by virtue of such appointment, the plaintiff has also been and is still a trustee under the provisions of said Exhibit B and a director of The Mother Church.

4. The defendants Dickey, Neal, Merritt, and Rathvon were also on and before March 17, 1919, members of said Christian Science Board of Directors under said Exhibit A and trustees under said Exhibit B, and directors of said Mother Church. On said March 17, 1919, the plaintiff Dittmore and the defendants Dickey, Neal, Merritt, and Rathvon constituted the Christian Science Board of Directors of said Church.

5. Substantially at the same time when Exhibit A took effect, and as part of the same transaction, said Mary Baker G. Eddy, who was the Discoverer and Founder of Christian Science, the Leader of the Christian Science movement, and the Pastor Emeritus and Head of said Church, together with certain of her friends who adhered to the doctrines taught by her, particularly in her book entitled "Science and Health" (referred to in the first paragraph of Exhibit A), voluntarily organized themselves as a

church, and called their organization "The First Church of Christ, Scientist, in Boston, Massachusetts," and also, "The Mother Church" (the latter being the name used herein), and agreed for themselves and their successors in said organization to be bound by certain tenets, rules, and by-laws already prepared and promulgated by Mrs. Eddy, and by whatever further by-laws might be prepared and promulgated by her in the future.

6. The Church referred to in Exhibit A was the Church thus organized, and the church edifice referred to therein was the edifice designed and intended, and actually always thereafter used, by and for the members of said Church. The Congregation referred to in the sixth paragraph of Exhibit A consisted of said persons who organized said Church, and of those who might thereafter become members of it; and the duties imposed in said Exhibit A upon said Christian Science Board of Directors were imposed upon them as directors of said Church for the benefit of its members, who became and are the sole beneficiaries of said trust, and, as such sole beneficiaries, were and are legally and equitably entitled to have such trust property administered for their benefit, and are also entitled to have the business of the trust known as the Christian Science Publishing Society hereinafter referred to), of which they are also the sole beneficiaries, properly administered for their benefit.

7. Prior to Jan. 10, 1901, the general administrative authority of said Church was vested partly in said Christian Science Board of Directors, and partly in a body of persons known as "First Members"; but on that day a by-law was established by Mrs. Eddy and adopted and ratified by a unanimous vote of said "First Members" as follows:

"The business of the Mother Church hitherto transacted by the First Members shall be done by its Christian Science Board of Directors."

8. On March 17, 1903, the title of "First Members" was changed to "Executive Members" by a duly authorized by-law; but on July 8, 1908, by another by-law established and unanimously adopted and ratified, the office of "Executive Members" was abolished, as well as all previous by-laws pertaining thereto.

9. Since July 8, 1908, there have been no First or Executive Members of said organization, and all the administrative authority of The Mother Church and the transaction of all its

business has been committed by its by-laws exclusively to said Christian Science Board of Directors. The duties and responsibilities thus vested in said Board involve not only the management of the local concerns of said Mother Church in Boston, but the general supervision of over eighteen hundred branch churches and societies in the United States and foreign countries, and general jurisdiction of every matter affecting the cause of Christian Science as a whole.

10. The Christian Science Publishing Society was established by Mrs. Eddy in 1898, by Deed of Trust, as an agency of The Mother Church for the publication of Christian Science literature for the promotion of the interests of Christian Science; but by by-laws established by her, which were adopted and approved by the members of The Mother Church as sole beneficiaries of the business of said Publishing Society, and which were assented to and approved by the trustees of said Society, who agreed to be bound thereby, said Publishing Society and its trustees were made subordinate and responsible to the Christian Science Board of Directors for the proper management of the business of said Society in accordance with the By-Laws of the Church for the benefit of the members of The Mother Church as such sole beneficiaries. To this end and for this purpose Mrs. Eddy, with the approval of the members of The Mother Church, the trustees of the Publishing Society, and the Christian Science Board of Directors, provided that said Board of Directors should have the power to declare vacancies in said Board of Trustees of said Publishing Society for such reasons as to said board may seem expedient; that the editors and manager of the Publishing Society shall (since the death of Mrs. Eddy on Dec. 3, 1910) be elected by the unanimous vote of said Board of Directors; that no person not accepted by the said Board of Directors as suitable shall in any manner be connected with the Christian Science Publishing Society, nor with publishing her books, nor with editing nor publishing The Christian Science Journal, Christian Science Sentinel nor Der Herold der Christian Science. Other provisions for the supervision of the trustees and business of the Publishing Society by the Christian Science Board of Directors were also established, adopted and approved as above described, and are set forth in Exhibit C, hereinafter referred to.

11. In addition to the general duties and responsibilities of the Board of Directors as above specified, they are vested with the control and management in trust of large property and financial interests for the benefit of The Mother Church and for the promotion of Christian Science as taught by Mrs. Eddy.

The "net profits" of the Publishing Society as determined by the trustees thereof (without a regular accounting) for the two years ending Oct. 1, 1918, and paid over to the treasurer of The Mother Church subject to the order of the Board of Directors as a trust fund to be disposed of only in accordance with the By-Laws of the Church, amounted to upwards of \$750,000. The gross income of The Mother Church for the fiscal year ending May 31, 1918, under the control and management of said Directors was upwards of \$500,000.

In addition to the foregoing financial responsibilities, the said defendants are a majority of the trustees who under the will of Mrs. Eddy have had for nearly eight years since Mrs. Eddy's death the control and management of the income of Mrs. Eddy's residuary estate left in trust to be used for the purpose of extending and promoting the religion of Christian Science as taught by her. The amount of income so controlled and managed uniformly amounts to upwards of \$400,000 annually.

12. On and for a long time prior to March 17, 1919, all the rules, tenets, and by-laws of said Mother Church were the tenets, rules, and by-laws contained in the eighty-ninth edition of the book entitled "Church Manual of The First Church of Christ, Scientist, of Boston, Mass., by Mary Baker Eddy." Said book is marked Exhibit "C," filed herewith, hereby referred to and made part of this bill, and is to be treated as if physically annexed hereto. (Exhibits "A" and "B" are printed at the end of this Exhibit "C.")

13. Special reference is hereby made to the following by-laws contained in said book, which were adopted and promulgated by Mrs. Eddy after Exhibit A took effect, to wit: Article I, Section 5, which reads as follows:

"The Christian Science Board of Directors shall consist of five members. They shall fill a vacancy occurring on that Board after the candidate is approved by the Pastor Emeritus. A majority vote or the request of Mrs. Eddy shall dismiss a member. Members shall neither report the discussions of this Board nor those with Mrs. Eddy."

Also the following by-laws, to wit, Article XXIV, Section 4, establishing a Committee on Finance, consisting of three members of the Church in good standing; and Section 6 of said Article, which reads as follows:

"In case of any possible future deviation from duty, the Committee on

Finance shall visit the Board of Directors, and in a Christian spirit and manner, demand that each member thereof comply with the By-Laws of the Church. If any Director fails to heed this admonition he may be dismissed from office, and the vacancy supplied by the Board."

14. For a considerable time prior to March 17, 1919, there had existed a wide difference of opinion between the plaintiff Dittmore and the defendants Dickey, Neal, Merritt, and Rathvon, concerning important questions which said Christian Science Board of Directors were charged with the duty of dealing with, deciding, and acting upon. Among the most important of these questions were:

(a) The question of the proper relation between said Board and the trustees of the Publishing Society as established by the By-Laws set out in the Church Manual, and as recognized by the trustees and the directors ever since the By-Laws were established, down to a comparatively recent period.

(b) The question whether said trustees were legally and properly administering their trust in accordance with the provisions of a certain deed of trust executed and delivered by Mrs. Eddy on Jan. 25, 1898, taken in connection with the By-Laws of said Church, and in the interest of said Church and of the Christian Science cause; or whether said trustees were grossly mismanaging their trust and thereby violating their duty to the members of said Church as the sole beneficiaries of said trust and to the Directors as the representatives of said beneficiaries.

(c) The question whether said trustees or any of them should be removed from office by said Board of Directors on account of such mismanagement.

15. On all the foregoing questions the position taken by this plaintiff Dittmore, as one of the Christian Science Board of Directors charged with the duty of protecting the interests of the members of the Church as trust beneficiaries, was uniformly opposed to the position and claims of the trustees of the Publishing Society, because he was convinced, and maintained at the meetings of the Board of Directors.

(1) That said trustees were not loyal Christian Scientists, but were undertaking to subvert and undermine in many respects the essential doctrines of Christian Science as discovered and promulgated by Mrs. Eddy.

(2) That they were introducing division and dissension into the Christian Science movement in direct contravention of the injunctions and cherished purposes of Mrs. Eddy.

(3) That they were guilty of gross waste and extravagance in the administration of their trust, squandering large sums of money improvidently, and permitting large amounts of trust

funds to be lost through the employment of incompetent agents and other mismanagement.

(4) That they were selling advertising space in one of the Christian Science publications, namely, The Christian Science Monitor, by suppression of facts and virtual misrepresentation as to the extent of its circulation.

(5) That they were demoralizing their agents and employees by persistent incivility, arrogance, undue partiality, and abuse of power.

(6) That it was the duty of the directors to resist the following among other definite claims of the trustees:

(a) That the directors have no supervision over the trustees or right to declare vacancies on the Board of Trustees, except for dishonesty or immorality;

(b) That the trustees do not recognize that the directors have succeeded to any of the rights or responsibilities stated in The Mother Church By-Laws as formerly belonging to Mrs. Eddy in relation to the Publishing Society and its Board of Trustees;

(c) That the final decision as to what goes out as official Christian Science literature rests with the trustees;

(d) That the trustees need not employ the Manager or Editors whom the directors elect;

(e) That the trustees must hereafter be supreme in the Publishing House;

(f) That the power of the trustees is absolute in formulating rules for the recognition of practitioners' cards and church cards in The Christian Science Journal.

(7) That the directors, as the legal representatives and agents of the members of The Mother Church (the sole beneficiaries of the business of the Publishing Society), should demand and insist upon an audit and accounting of the business and finances of the Publishing Society, to the end that the full amount of net profits of the publishing business for which the trustees were rightfully chargeable, as fixed by such accounting, might be turned over to the treasury of The Mother Church for the benefit of the members of that Church.

(8) That the board should notify the three trustees and business manager of the Publishing Society that the directors would hold them strictly accountable individually and collectively for any improper or unwarranted or unauthorized use of the trust funds received by them, or of the "net profits" as the same were defined by Mrs. Eddy in the trust deed of Jan. 25, 1898, as well as in the general provisions of the By-Laws of the Church.

(9) That the misconduct of the trustees in the foregoing and other respects and their attitude toward their duties, toward the Board of Di-

tors, and toward The Mother Church and its members as beneficiaries of the business carried on by Publishing Society, would; if perturbed, be destructive of said church organization and greatly impair the fire Christian Science movement.

10) That the directors should demand and insist on more adequate editorial management of all Christian Science periodicals.

6. The defendants Dickey, Neal, Merritt, and Rathvon were fully informed of the facts as to all the foregoing matters, and knew that the plaintiff Dittemore was fully justified in taking the foregoing positions and making the foregoing demands upon the directors for their action in the premises; but said defendants nevertheless uniformly opposed the taking of any effective action in the premises, one reason for such opposition being that they stood in fear of the trustees of the Publishing Society and one Frederick Dixon, the editor of the Christian Science Monitor, and another reason being that they or one of them were largely under the influence of Herbert W. Eustace, the dominating member of said trustees, said Dixon.

7. Other important differences between this plaintiff Dittemore and said defendants Dickey, Neal, Merritt, and Rathvon, related to the finances of the Mother Church, and the right of members to definite and accurate information concerning the same.

Among other things, against this plaintiff's protest, said defendants failed to provide adequate means for handling the steadily increasing requirements of the Church treasurer's office, and permitted the affairs of that office to fall into such chaotic condition that the treasurer's accounts have long been seriously in arrears, such arrearage amounting to four months in February last; also against the plaintiff Dittemore's protest, said defendants have persisted in refusing to reimburse the beneficiaries—the members of The Mother Church—information which the plaintiff believes they are entitled with reference to the finances of the Church, the amount of gross income, and for what purposes has been spent, and have persisted in making the annual financial reports to the Church members vague, inadequate, and secretive; also against the plaintiff's protest they have refused to publish full and correct statements of the finances of the Christian Science Benevolent Association, a subsidiary body to which the Church members have contributed over half a million dollars, and of whose board of trustees this plaintiff is president; so against his protest said defendants have repeatedly refused to correct a false statement in The Christian Science Monitor for Nov. 13, 1918, at "most" of certain expenditures aggregating \$1,375,560 had been for Christian Science War Relief work

overseas, whereas only about thirty per cent thereof was so expended, thus grossly misleading Christian Scientists generally as to the extent of this work abroad.

18. At a meeting of said Christian Science Board of Directors held on March 17, 1919, a majority of said Board, consisting of the defendants Dickey, Merritt, and Rathvon (the defendant Neal not being present), voted to remove from the office of trustee of said Christian Science Publishing Society one of the three trustees thereof, to wit, Lamont Rowlands. In this vote the plaintiff Dittemore, who was present, did not participate for the reason that he considered such action a mere subterfuge and an utterly inadequate remedy for the evils arising from the mismanagement and misconduct of said Publishing Society trustees, said Dittemore having long taken and then insisting upon the position that said evils imperatively required the removal of all three of said trustees and especially of the dominating trustee, Herbert W. Eustace.

19. Immediately after said vote, without any previous notice to or knowledge of the plaintiff, a long type-written list of statements relating to the plaintiff, denominated "charges," was produced by one of the defendants and read at said meeting. None of said charges reflected on the character and integrity of the plaintiff Dittemore as a man or as a loyal Christian Scientist; but said charges were based on the fact that as a director he did not agree with the majority of the board as to their legal duties to their beneficiaries and the action which was necessary for the board to take for the protection of the interests of said beneficiaries, namely, the members of The Mother Church; and all said charges were either false or irrelevant, or both, or contrary to the entire spirit of the Church By-Laws and of the teachings of Christian Science, and some of them were ingenious distortions and perversions of the truth, designed and intended to give a color of wrong to acts and words of the plaintiff as a director which were wholly innocent, and prompted simply by the plaintiff's zeal for the cause of Christian Science, and for the maintenance of the true principles and doctrines thereof, and for the unity of the organization as intended by Mrs. Eddy.

20. After the presentation of said so-called charges, the defendants Dickey, Merritt, and Rathvon, without complying with the plaintiff's request to be furnished with a copy thereof, and without giving the plaintiff any opportunity to examine the same, or to reply thereto, began to urge the plaintiff to resign voluntarily as a director on the ground that by so doing he might escape the discredit which they alleged would inevitably overtake him among all Christian Scientists if

he were dismissed or expelled from said board, and said defendants also threatened, unless the plaintiff would resign on the spot, to expel him forthwith from said board. The plaintiff then and there protested against the words, conduct, and threats of the defendants Dickey, Merritt, and Rathvon as arbitrary, unfair, and unjust, as inconsistent both with the letter and the spirit of said By-Laws and with the spirit of Christian Science generally, and as contrary to the teaching and practice of Mrs. Eddy, whose loyal followers said defendants claimed to be; but said defendants paid no attention to the plaintiff's remonstrances, and within a few minutes of the time when said so-called charges were first presented at said meeting, said Dickey, Merritt, and Rathvon, pretending that such arbitrary action was authorized by Article I, Section 5, of the Church By-Laws (above set forth under paragraph 13), passed a vote purporting peremptorily to dismiss this plaintiff as a director and to expel him forthwith from membership in said Christian Science Board of Directors, he having no opportunity to prepare for and make any defence other than the foregoing general and extemporaneous protest.

21. In thus peremptorily attempting to dismiss him without notice and hearing said defendants, as the plaintiff Dittemore is informed and believes, acted largely at the instance of the above mentioned Frederick Dixon and said Publishing Society trustees, and in the hope of making a collusive and unrighteous settlement with said trustees concerning the evil conditions which had grown up in the Publishing Society, and of concealing those conditions from the members of The Mother Church who were the sole beneficiaries of the publishing business, and to the carrying out of which plan said Dickey, Merritt, and Rathvon considered this plaintiff's presence on said Board of Directors an insurmountable obstacle.

22. Said vote of dismissal also contained the following passage, to wit:

"Resolved further that Mr. Dittemore be and hereby is requested to return to the clerk of The Mother Church and corresponding secretary of this board all letters, documents, papers, copies thereof, and other articles which he has taken or received as a member of this board or an officer of this Church, or which have been delivered to him by reason of his being a member of this board or an officer of this Church."

Immediately after said vote was passed, the plaintiff left the directors' room, and has not since attended any meeting of said Christian Science Board of Directors. Subsequently to said vote the defendants Dickey, Merritt, and Rathvon attempted to elect the defendant Knott a member of said board in place of this plaintiff, said defendant Knott having no adequate

knowledge of the conditions leading up to such attempted election, or of the reasons which actuated said Dickey, Merritt, and Rathvon in attempting to dismiss the plaintiff Dittmore; and this plaintiff is informed that since that time the defendant Knott has attended the meetings of said Board of Directors, and has acted and attempted to act as a member of said board, and has participated in the deliberations and votes of said board, and is still continuing so to do.

23. On March 27, 1919, all the defendants, acting by one C. Augustus Norwood, their duly authorized agent and representative in that behalf, again demanded of the plaintiff the return of the letters, documents, papers, and other things referred to in the vote hereinbefore set out, and demanded that the plaintiff Dittmore comply with said vote and surrender to said Norwood for said board all his files and collections of letters and other documents, in order that the defendants might take possession of all such material for their own use and benefit.

24. As one of the members of said Christian Science Board of Directors, the plaintiff was and is entitled to the use of two rooms in the building 236 Huntington Avenue, which is the headquarters of said Church, and the plaintiff had long occupied said rooms as such director, and is still occupying the same, and in said rooms the plaintiff has kept the books, papers, letters, documents, and other material received by him as a director, or by reason of the fact that he is and has been a director. On April 17, 1919, all of the defendants, acting through their secretary thereto duly authorized, delivered to the plaintiff a letter as follows:

"Dear Mr. Dittmore:—

"I am instructed by the Christian Science Board of Directors to ask your compliance with their request of nearly a month ago that the papers in your possession belonging to The Mother Church be returned.

"Mrs. Knott on Monday, April 21, will be required to yield her office in the Publishing Society to Mrs. Hoag, and will be under the necessity of occupying the rooms at 236 Huntington Avenue, in which you have had your office, on the morning of that day."

Upon the plaintiff's remonstrating with the defendants through their counsel at the attempt contained in said letter to obtain from him papers which were in his rightful possession, and at their threat to eject him from the rooms which he rightfully held as a director, the defendants suspended the operation of said letter until May 1, but informed the plaintiff that on that day they would insist upon strict compliance by him with the terms of said letter, of the demand of said Norwood, and of said original vote, and would take whatever steps were nec-

essary to enforce compliance with their said demands.

25. Some of the letters, papers, and other documents referred to in said vote and letter, and in the demand of said Norwood, have, as the defendants well know, an important bearing on the controversy between said Christian Science Board of Directors and said trustees of the Christian Science Publishing Society, and upon the conduct, attitude, purposes, and motives of the defendants Dickey, Neal, Merritt, and Rathvon in connection with that controversy, and upon both the official and private dealings of said defendants with said trustees; and said letters, papers, and documents will constitute material and important evidence in certain litigation hereinafter referred to now pending between said trustees and the parties to the present suit.

Among these letters are copies of some written by Mrs. Eddy to Christian Scientists, including some to those who have been directors of The Mother Church, which original letters are now in the possession of the directors but only as custodians, to the use and benefit of which every member of The Mother Church is entitled, and which letters have been largely secured and saved to the members of the Church through the persistent efforts of the plaintiff Dittmore, and a large number of which were his personal contribution to the Church through his personal as well as official efforts for many years. Some of the letters in his possession refute and uncover certain policies and acts of these defendants and of the trustees of the Publishing Society as opposed to the views of Mrs. Eddy, and for this and other reasons letters of this character in the possession of the directors are being suppressed; but said letters in the possession of the directors, as well as those in this plaintiff's possession, belong to the Church members beneficially, and should be kept available for the protection of their interests in preserving the integrity of the religion which Mrs. Eddy founded, and a proper administration of the trusts which she established.

The plaintiff is informed and believes, and therefore alleges, that one purpose of the defendants in demanding said letters, papers, and other documents of the plaintiff is to secure control of documentary evidence the production of which would tend to embarrass said defendants Dickey, Neal, Merritt, and Rathvon in said litigation, and in their relations to the members of The Mother Church.

26. Said letters, papers, and documents also contain important evidence and data in the interest of the beneficiaries against said Publishing Society trustees in any accounting in respect to their wasteful, extravagant, and unauthorized use of trust funds, and the plaintiff Dittmore is informed and believes, and therefore alleges,

that said defendants do not propose to require any such accounting, and that the members of The Mother Church as beneficiaries of the trust will be remediless in respect to a proper accounting by said trustees regarding said waste and extravagance if he is required to surrender said evidence into the possession of said defendants.

27. After the passing of said vote of attempted dismissal of the plaintiff, the defendants caused to be published in The Christian Science Monitor, a newspaper published under the auspices of said Church and having a large circulation among the members thereof, an article announcing that this plaintiff had "retired" from his position on the Christian Science Board of Directors. Said announcement was calculated, and the plaintiff avers on information and belief that it was wilfully intended, to convey the false impression that he had voluntarily resigned as a member of said Board of Directors; and it has actually conveyed such impression, as evidenced by many letters received by this plaintiff inquiring as to the reasons for his resignation. And since his attempted dismissal from said board and the publication of the foregoing announcement, said defendants Dickey, Neal, Merritt, and Rathvon have persistently circulated and caused their agents to circulate among members of The Mother Church throughout the United States false and malicious propaganda designed and calculated seriously to damage this plaintiff Dittmore's reputation for integrity, loyalty, and sincerity, and seriously to impair his standing and influence as a Christian Scientist.

28. On March 25, 1919, Herbert W. Eustace, David B. Ogden, and said Lamont Rowlands, being the three trustees of said Christian Science Publishing Society, filed in this Court a bill in equity against said Dickey, Neal, Merritt, Rathvon, and Knott, and against this plaintiff, alleging therein ignorance as to whether this plaintiff or said Knott was a duly appointed director, averring that said Rowlands was illegally dismissed by said vote of the defendants Dickey, Merritt, and Rathvon from said Board of Trustees of said Publishing Society, and seeking to enjoin all the defendants therein, including this plaintiff, from taking any further action intended directly or indirectly to impede or interfere with said Rowlands, or with said Ogden and Eustace, in the discharge of his or their alleged duties as such trustees; and on March 25 1919, a temporary injunction was issued by said Court to that effect, and said bill is still pending in said Court.

29. At a hearing held March 28, 1919, relative to the continuance of said injunction, the plaintiff Dittmore, through his counsel, endeavored to obtain the consent of the counsel for said Publishing Society trustees

and of the Court to a dismissal of said bill as to him, on the ground that while unwilling to resign or to recognize the legal validity of the unfair and unjust action taken by said Dickey, Merritt, and Rathvon in attempting to dismiss him from the office of director arbitrarily and without notice and hearing, yet this plaintiff preferred for the sake of avoiding, if possible, injury to the existing church organization, to submit to said illegal action to the extent of abstaining for the present from attending meetings of the board and from seeking the Court's aid to reinstate him, in the hope that the difficulty might be otherwise adjusted. But counsel for the Publishing Society trustees declined to dismiss this plaintiff as a defendant in said bill, the Court ruled that any such disclaimer by this plaintiff could in no way relieve the legal situation, and the injunction was accordingly continued against this plaintiff as well as against the other defendants to said bill.

30. Repeatedly after said vote of attempted dismissal of this plaintiff, and after the bringing of said suit by said Eustace, Ogden, and Rowlands, this plaintiff requested all the defendants in the instant suit, through their counsel, to reconsider their position and revoke said vote of attempted dismissal; but the defendants consistently declined and still decline so to do, and have affirmed their position and said vote of dismissal by the demand made by them through said Norwood, and by said letter of April 17, 1919, hereinbefore referred to.

31. The plaintiff Dittemore, with all other loyal Christian Scientists, unqualifiedly recognizes the validity and paramount and controlling authority of the By-Laws of The Mother Church established by its Founder, Mary Baker Eddy, and set forth in the Church Manual, including the provisions of Article I, Section 5, of said By-Laws, which authorizes The Christian Science Board of Directors, by majority vote, to dismiss a member; but he believes that if a member of said board can be summarily and unjustly dismissed for fairly exercising his inherent right to liberty of conscience, such autocratic, ruthless, and irresponsible personal domination, if permitted to pass unchallenged, will strangle freedom of conscience in the Christian Science movement, and eventually bring failure to the Christian Science cause; and he is advised by his counsel that under said by-law and the laws of this Commonwealth the power of said Board of Directors to dismiss a member cannot be exercised arbitrarily, but only after due notice and hearing, and for adequate cause, and that his attempted summary dismissal from office by the defendants Dickey, Merritt, and Rathvon was accordingly null and void.

Notwithstanding this belief and advice, he was unwilling affirmatively to

seek this Court's aid in restoring him to his legal rights, unless the interests of the cause of Christian Science and of the Church members for whom he was and is trustee, as distinguished from his own mere personal interests, should seem clearly to necessitate such action; and after the failure of his efforts to obtain his dismissal as a defendant to said bill of the Publishing Society trustees, he accordingly filed an answer to said bill wherein he affirmed both his adherence to the By-Laws and his understanding that he had not been removed from said Board of Directors in the lawful manner contemplated and required by said By-Laws, but averred that he did not then and in that proceeding seek the aid of this Court to give him active participation in the deliberations and official action of said board.

32. Because of the action of the defendants in insisting upon his forthwith vacating his office and surrendering into their possession and control all his papers, documents, and memoranda as above set forth, and in seeking by false and malicious propaganda concerning him to destroy his standing and influence as a Christian Scientist and his ability to serve the interests of the members of The Mother Church, and because of other reasons hereinbefore and hereinafter recited, no alternative is now left this plaintiff, if he is to remain in a position effectively to serve said interests, other than to apply to this Court to restore him to his legal rights as a member of said Board of Directors. Among other reasons which impel him to this course, from information received he fears that negotiations will soon be taken up between certain of the defendants and the Publishing Society trustees for a collusive settlement of the pending bill brought by said trustees and of the various controversies hereinbefore mentioned relative to the affairs of the Publishing Society; and he apprehends that if he fails to assert his legal rights as a director, and the defendants Dickey, Neal, Merritt, and Rathvon are thereby enabled to obtain possession of his said papers, documents, and memoranda, such a collusive settlement will at once be affected, the evidence contained in said papers concerning the mismanagement of the affairs of the Publishing Society and the collusive relations between the trustees thereof and Frederick Dixon and certain of the defendant directors will be suppressed, and it will become impossible for the members of The Mother Church as sole beneficiaries of the Publishing Society Trust, or for any person or persons representing them, and disposed loyally to serve their interests, to obtain a proper accounting as to the affairs of said trust, or other legal redress in respect to its past mismanagement.

33. This plaintiff in all his words and conduct as a director from his

election to that office down to the present time, and throughout the controversies with the trustees of said Christian Science Publishing Society, has acted sincerely and in good faith, according to the best light he had, for what he conceived to be the maintenance both of the doctrines and of the organization of The Mother Church as designed and intended by the Founder, Mrs. Eddy, and has never been actuated by any motive of personal gain or other ulterior motive, but has to the best of his ability conducted himself in a legal and proper manner both toward his fellow directors and toward the beneficiaries of his trust; and he has always recognized that the position held by him as director was not for his own benefit, but was a position of trust and confidence for the benefit of the members of said Church and of the adherents of Christian Science generally throughout the world.

At no time did the Committee on Finance mentioned in Article XXIV, Section 6, of said By-Laws, ever visit the Board of Directors with reference to any conduct of this plaintiff, or ever admonish this plaintiff, or otherwise take action in respect to his conduct; nor was his conduct ever complained of by any other of the authorities of said church except the present defendants and the Publishing Society trustees.

34. The defendants, Dickey, Neal, Merritt, and Rathvon, on the other hand, in their conduct toward the plaintiff, and particularly in their attempted dismissal of the plaintiff from said Board of Directors, and in their attempt to obtain from the plaintiff the said documentary evidence in his possession, have acted irregularly and in violation of the essential formalities of due notice and hearing required by said By-Laws, by natural justice, and by the law of this Commonwealth, and for causes not sufficient either in law or fact to warrant his dismissal, and alleged in bad faith; and they have not acted in good faith and in the exercise of sound reason, but capriciously and arbitrarily, and have been actuated simply by a desire to get rid of the plaintiff as an inconvenient obstacle to the carrying out of certain plans and purposes entertained by them, the said Dickey, Neal, Merritt, and Rathvon, inconsistent with the tenets and By-Laws of said church, and with the spirit of Christian Science, and subversive of the entire Christian Science movement; and they have finally, by their insistence and their illegal and improper plans and purposes toward this plaintiff and toward said church, forced this plaintiff into a position where he must either (a) by inaction and submission forthwith abandon his legal right to hold the office of director, and thus gravely impair his ability to serve the cause which, with the express approbation of Mrs. Eddy, he

was originally elected to serve, or (b) forthwith affirmatively assert that legal right in order to preserve his opportunity to serve that cause.

35. Accordingly the plaintiff now affirmatively asserts his legal right to hold the office of a member of the Christian Science Board of Directors, and having no adequate remedy at law for the wrongs hereinbefore set out, he invokes the aid of this Court of Equity and prays:

(1) That it be declared and decreed that said vote of March 17, 1919, purporting to dismiss and expel this plaintiff from the Christian Science Board of Directors, is utterly illegal, void, and of no effect, and that this plaintiff is still a member of said board, and entitled to all the rights and privileges appertaining to said office; and that said Knott is not a member of said Christian Science Board of Directors, since no vacancy legally existed in said board at the time of her attempted appointment, and is accordingly not entitled to participate in the deliberations and votes of said board as a member thereof.

(2) That the defendants Dickey, Neal, Merritt, Rathvon, and Knott, each and all of them, be restrained and enjoined from taking any further action intended or tending, directly or indirectly, to impede or interfere

with the plaintiff in the exercise of his functions and rights as a member of said board, or intended or tending to obstruct or impede him in attending and participating in the meetings of said board, including any action tending to deprive him of the occupancy of the rooms hitherto and now occupied by him as one of said directors in the building 236 Huntington Avenue, and from seizing or attempting to seize or obtain possession of any of the books, papers, documents, or other things in the plaintiff's possession as such director or in said rooms.

(3) That a temporary restraining order be issued restraining the defendants and each of them, and their servants, agents, and attorneys, until the further order of this Court, from taking any further action intended or tending, directly or indirectly, to impede or interfere with the plaintiff in the exercise of his functions and rights as a member of said board, or intended or tending to obstruct or impede him in attending and participating in the meetings of said board, and from doing anything to deprive him of the occupancy of the rooms hitherto and now occupied by him as one of the Christian Science Board of Directors in the building 236 Huntington Avenue, and from seizing or attempt-

ing to seize or obtain possession of any of the books, papers, documents, or other things in said rooms and in the possession of the plaintiff as such director; or in lieu thereof, that an order of notice issue to the defendants to show cause why a temporary injunction should not issue against them in the form above in this paragraph set out.

(4) And for such further relief as justice may require.

By his Solicitors,  
(Signed) FRANK S. STREETER,  
WM. G. THOMPSON,  
FRED C. DEMOND.

I, John V. Dittmore, the plaintiff in the foregoing bill, hereby certify that I have read said bill, and that the statements therein contained which are made upon knowledge are true, and those made upon information and belief I believe to be true.

(Signed) JOHN V. DITTEMORE.

COMMONWEALTH OF  
MASSACHUSETTS

Suffolk, ss. Boston, April 29, 1919.

Then personally appeared the above named John V. Dittmore and made oath that the foregoing statement subscribed by him is true.

Before me,  
(Signed) WILLIAM G. THOMPSON,  
Justice of the Peace.

## Answer of Defendants

NOTE: Because Mrs. Knott did not have personal knowledge of all facts known to the other directors she has filed a separate answer. Her answer, however, does not differ substantially from theirs.

Suffolk, ss.

In Equity

Answer of Adam H. Dickey, James A. Neal, Edward A. Merritt, William R. Rathvon.

The defendants, Adam H. Dickey, James A. Neal, Edward A. Merritt, William R. Rathvon, for answer to the plaintiff's bill of complaint say:

1. Said defendants admit that the plaintiff and the defendant Rathvon are residents of Boston, in said County of Suffolk, and they aver that the defendant Neal is a resident of Brookline, in the County of Norfolk, the defendant Merritt is a resident of Concord, in the County of Middlesex, and the defendant Dickey is a resident of Cohasset, in the County of Norfolk.

2. Said defendants admit the allegations contained in the second paragraph of the bill of complaint, relating to the execution of the two trust deeds copied in the Church Manual.

3. Said defendants deny that the plaintiff was appointed a member of the Christian Science Board of Directors under the provisions of paragraph

one of Exhibit A annexed to the bill of complaint (Trust Deed conveying land for church edifice, copied in Church Manual) in May, 1909, but they aver that he became a member of the Christian Science Board of Directors by virtue of a vote duly adopted by said Board of Directors on May 31, 1909, in accordance with Article I, Section 5, of the By-Laws contained in the Church Manual of The First Church of Christ, Scientist, in Boston, Massachusetts, by Mary Baker Eddy (Exhibit C annexed to the bill of complaint), which is as follows:

"Directors: Sect. 5. The Christian Science Board of Directors shall consist of five members. They shall fill a vacancy occurring on that board after the candidate is approved by the Pastor Emeritus. A majority vote or the request of Mrs. Eddy shall dismiss a member. Members shall neither report the discussions of this Board, nor those with Mrs. Eddy."

And they aver that plaintiff's election to the Christian Science Board of Directors, so effected, was with the written approval of Mary Baker Eddy.

Defendants deny that the plaintiff has ever since May 31, 1909, been and still is a member of said Board of Directors, but aver that he was from said May 31, 1909, to March 17, 1919, a member of said Board of Directors. Defendants deny that the plaintiff since March 17, 1919, has been, or is now, a member of said Board of Directors.

4. Said defendants admit that the defendants Dickey, Neal, Merritt, and Rathvon were on and before March 17, 1919, members of the Christian Science Board of Directors, and that on March 17, 1919, until the resolution of dismissal hereinafter set forth was adopted, the plaintiff and the defendants Dickey, Neal, Merritt, and Rathvon constituted the Christian Science Board of Directors.

5. Said defendants admit the allegations of fact of the fifth paragraph of the bill of complaint with respect to the organization of The Mother Church, excepting that contained in the last two lines thereof, and as to that allegation they deny that the persons who organized said church

agreed to be bound by whatever further by-laws might be prepared and promulgated by Mrs. Eddy in the future, and aver that Mrs. Eddy from time to time prepared and proposed by-laws for her church which were adopted accordingly.

And said defendants further aver that said church was organized on Sept. 23, 1892; that in organizing the same, in addition to the facts alleged in plaintiff's bill of complaint, defendants aver that certain persons were then named as "First Members," and a president, a clerk, and a treasurer of said church were then elected and the tenets of said church as prepared by Mrs. Eddy were adopted; that Mrs. Eddy became the Pastor Emeritus of said church, and at all times she was the Leader thereof; that the governing power of said church was at all times during the life of Mrs. Eddy vested either in Mrs. Eddy and the First Members and the Directors, or, after the duties of said First Members had been transferred to the directors, in Mrs. Eddy and the Christian Science Board of Directors.

6. Said defendants admit that the church referred to in said Exhibit A is the church organized as stated in paragraph five of the bill of complaint and paragraph five of this answer, and that the church edifice referred to in said exhibit is the edifice designed and intended, and at all times since the erection thereof, actually used by the members of said church. Defendants aver that the persons who organized said church on Sept. 23, 1892, and those who thereafter became members thereof, constituted the congregation referred to in the sixth paragraph of said Exhibit A. Defendants deny the remaining allegations of paragraph six as therein set forth, and as to said allegations aver that the duties imposed upon the directors of said church so organized on Sept. 23, 1892, by the Trust Deed (Exhibit A) were imposed upon them as said directors for the purposes and in the manner provided in said exhibits A, B, and C, the same being the Church Manual and the two deeds copied therein.

7. Said defendants admit the allegations of the seventh paragraph of the bill of complaint, except the allegation as to the method by which the by-law therein set forth was adopted; and as to that they aver that said by-law was prepared by Mrs. Eddy and proposed by her, and was thereupon duly adopted and ratified by a unanimous vote of said First Members.

8. Said defendants admit the allegations of the eighth paragraph of the bill of complaint, said paragraph relating to First Members and Executive Members.

9. Said defendants admit the allegations contained in the first sentence of the ninth paragraph of the bill of complaint, and they admit that the duties and responsibilities vested in the Christian Science Board of Direc-

tors since Jan. 10, 1901, involve the management of the local concerns of The Mother Church in Boston, and also general jurisdiction of every matter affecting the Cause of Christian Science as a whole, and they aver that since said last mentioned date The Christian Science Board of Directors has possessed and exercised jurisdiction and final supervisory authority over every matter affecting the relationship of the Christian Science branch churches and societies, numbering at present over eighteen hundred in the United States and foreign lands, to The Mother Church, in accordance with the By-Laws contained in the Church Manual.

10. Said defendants admit the allegations of fact contained in the tenth paragraph of the bill of complaint, except that they deny that the members of The Mother Church adopted any by-law as sole beneficiaries of the business of the Christian Science Publishing Society; and they aver that the By-Laws of The Mother Church were prepared and proposed by Mrs. Eddy and were adopted and ratified by its First Members, or later by its Board of Directors.

11. Said defendants aver that the Christian Science Board of Directors is vested with the control and management of large property and financial interests for the benefit of the Mother Church and for the promotion of Christian Science as taught by Mrs. Eddy. The defendants deny the inferential allegation that the said directors have received no regular accounting of the net profits of the said Publishing Society for the two years ending Oct. 1, 1918, and as to said allegation they aver that at the end of the six months' periods ending March 31, 1918, and Sept. 30, 1918, as well as for such periods in other years, the accounts of the trustees of The Christian Science Publishing Society were examined and audited by certified public accountants, and said Board of Directors has received from said trustees an account of profits derived from the business of said Publishing Society at or about the time of the semi-annual remittance of the net profits thereof, namely, soon after March 31, and Sept. 30 of each year, all of which the plaintiff Dittmore, as a member of said Board of Directors until March 17, 1919, well knew. The defendants admit that the net profits derived from the business of the Publishing Society, for the two years ending Oct. 1, 1918, and prior and subsequent to said period, paid over to the Treasurer of The Mother Church, are subject to the order of the said Board of Directors to be disposed of only in accordance with the By-Laws of the church, and they aver that such net profits, as stated by the said trustees, for the two years ending Sept. 30, 1918, amounted to \$760,566.20. The defendants also aver that the gross income of The Mother Church, exclusive of that derived from the

Publishing Society, for the fiscal year ending May 31, 1918, under the control and management of said directors was \$208,507.04. The defendants aver that defendants Dickey, Neal, Merritt, and Rathvon are a majority of the trustees under Mrs. Eddy's will, and such trustees have had, for more than five years last past, the control and management of the income of Mrs. Eddy's residuary estate left in trust for the purpose of promoting and extending the religion of Christian Science as taught by her. The amount of income so controlled and managed uniformly amounts to upwards of \$400,000 annually.

12. Said defendants admit the allegations contained in the twelfth paragraph of the bill of complaint, said paragraph relating to the contents of the Church Manual.

13. Said defendants admit that the By-Laws quoted in the thirteenth paragraph of the bill of complaint are By-Laws of said Church; and they aver that said By-Laws were prepared and proposed by Mrs. Eddy after Sept. 23, 1892, and were duly adopted by The Mother Church, The First Church of Christ, Scientist, in Boston, Massachusetts, by its proper officers, but said defendants also aver that the plaintiff was not dismissed under Article XXIV, Section 6, of said By-Laws so quoted, which relates to the guardianship of church funds, but was dismissed under Article I, Section 5, of said By-Laws, hereinbefore set forth.

14. Said defendants admit that for a considerable time prior to March 17, 1919, there had existed a wide difference of opinion between the plaintiff Dittmore and the defendants Dickey, Neal, Merritt, and Rathvon, concerning important questions which the Christian Science Board of Directors were charged with the duty of dealing with, deciding and acting upon. The defendants deny that among the most important of said questions are the questions stated in subdivisions (a), (b) and (c) of paragraph fourteen of the bill of complaint. Said defendants deny that any difference of opinion arose with respect to the question stated in subdivision (a) As to the question stated in subdivision (b) the difference of opinion which arose was as to the nature and extent of the mismanagement on the part of the Trustees of the Publishing Society. As to the question stated in subdivision (c) the difference of opinion which arose was as to whether said trustees be removed singly, in which case their successors or successor would be elected by the remaining trustees or trustee, or should all be removed at one time (as insisted upon by the said plaintiff, Dittmore) in which case their successors could only be appointed by application to the court.

15. Said defendants admit that the position taken by the plaintiff as one of the Christian Science Board of Directors was uniformly opposed to the position and claims of the trustees of

the Publishing Society as to the relative rights and powers of said trustees and said Board of Directors. And said defendants aver that if the plaintiff Dittmore intends to allege by anything stated in the fifteenth paragraph of his bill of complaint, that his position in opposition to the claims of said trustees as to the relative rights and powers of said two boards was also opposed to the position of these defendants Dickey, Neal, Merritt, and Rathvon, they deny such allegations and aver that the points of difference between said plaintiff and the other members of said Board of Directors as constituted prior to March 17, 1919, were as to the extent of the trustees' mismanagement and as to the method to be adopted most wisely to remedy a condition which all the members of said Board of Directors recognized as unsatisfactory and impossible of continuance. Said defendants admit that at the meetings of said Board of Directors, held from time to time, the plaintiff Dittmore made various claims regarding the trustees of the Publishing Society, but deny that he made all the claims in the manner set forth in the fifteenth paragraph of the bill of complaint, and aver that he made many other claims than those therein set forth. Said defendants deny that said Dittmore at any time prior to the existence of the controversy between the trustees of the said Publishing Society and the Christian Science Board of Directors claimed that the said directors, in any capacity, should demand and insist upon an audit and accounting of the business and finances of the Publishing Society; nor did he theretofore claim that there was any reason for any audit or accounting of such business and finances in addition to the regular semi-annual audit and accounting in connection with the remittance of net profits by the trustees to the Treasurer of The Mother Church. As to any conviction that the plaintiff may have had as to any of the various claims advanced by him, the defendants have no knowledge or information sufficient to form a belief, and hence neither admit nor deny the allegation relating thereto in this paragraph contained, but they do aver that he well knew at all times while he was a member of the said Board of Directors that regular audits were had by public accountants of the accounts of said trustees.

16. The said defendants, as to all the matters pleaded in paragraph fifteen of the bill of complaint (except as to the seventh clause thereof) caused an investigation to be made as to the fact thereof, and upon information and belief they admit that they are fully informed of said facts. As to clause seven, defendants had no knowledge prior to the existence of the controversy between said Publishing Society trustees and the Christian Science Board of Directors of the existence of the claim therein set out.

Said defendants deny that they knew that the plaintiff Dittmore was fully justified in taking any position or in making any demands upon the directors for any action, or that said directors uniformly or at all opposed the taking of any effective action in the premises, or that at any time or place or to any extent or degree any of said defendants stood or now stand in fear of the trustees of the Publishing Society or any of them, or of Frederick Dixon, the editor of the Christian Science Monitor, or that they or any of them were or are largely or at all under the influence of Herbert W. Eustace or Frederick Dixon.

17. Answering the seventeenth paragraph of the bill of complaint, said defendants deny that any differences arose between the plaintiff Dittmore and the defendants Dickey, Neal, Merritt, and Rathvon, with relation to the finances of The Mother Church, and the right of its members to definite and accurate information concerning the same, but aver that at all times the Christian Science Board of Directors fully complied with the provisions of the Church Manual in the premises and especially with Article XXIV, Section 3, thereof, which provides:

"It shall be the duty of the Christian Science Board of Directors to have the books of the Church Treasurer audited semi-annually and to report at the annual church meeting the amount of funds which the church has on hand and the amount of its indebtedness and of its expenditures for the last year."

and also with Article XXIV, Section 4, entitled "Finance Committee." Defendants deny that the defendants Dickey, Neal, Merritt, and Rathvon failed to provide adequate means for handling satisfactorily the increasing requirements of the Church Treasurer's office, or permitted the affairs of that office to fall into any chaotic condition, or that the Treasurer's accounts have long been seriously or at all in arrears, or that such arrearage amounted in February last to four months, or to any considerable period. The defendants further deny that the said defendants above named have refused to give the members of The Mother Church any information to which they may be entitled with reference to the finances of said Church, the amount of gross income, and for what purpose it has been spent, but on the contrary they have always freely and readily, as plaintiff well knows, given any and all information on financial matters to members of The Mother Church. Said defendants deny that they have persisted in making the annual financial reports to the Church members in any way vague, inadequate, or secretive, or that they have in any way refused to publish full and accurate statements of the finances of the Christian Science Benevolent Association.

Said defendants admit that they have declined to correct the statement

in the Christian Science Monitor for November 13, 1918, referred to in the seventeenth paragraph of the bill of complaint. They deny that the article referred to stated that most of certain expenditures aggregating \$1,375,560 had been for Christian Science War Relief work overseas, as the plaintiff alleges, but the defendants aver that said article was a news item and contained the following:

"Edward L. Ripley, Treasurer of The Mother Church, has stated that the total disbursements to date from the Christian Science War Relief fund amount to \$1,275,560. Most of this sum has been disbursed by committees of Christian Scientists in Great Britain, Ireland, France, Switzerland, Holland, Italy, Belgium, Roumania, Syria, Poland, Servia, and Germany. The money expended in Germany was sent before the United States entered the war."

Said defendants admit that there is an error in said statement as written by the reporter, in that the word "most" should have been "much" and in that the amount expended is stated approximately, the correct figures being as follows:

War Relief (overseas) .....	\$498,125.85
Canada .....	5,250.00
Mexico .....	357.41
Camp Welfare Activities in the U. S. ....	733,130.85
Office expenses .....	16,895.21
Halifax disaster .....	18,070.49
Total .....	\$1,271,829.81

With respect to the item "War Relief (overseas) \$498,125.85," there was expended overseas in direct war relief work, \$389,209, and in the distribution of literature and expense of camp welfare workers sent abroad \$108,916.85.

Said defendants aver that the total of all the items aforesaid (excepting for the Halifax disaster) were expended for one and the same general purpose—either relief abroad to persons made destitute as a result of the war, or for camp welfare activities for the benefit of those either at home preparing to go abroad, or those abroad engaged in the war, and under the circumstances, the said Board of Directors did not feel that the error made in the use of the word "most" instead of the word "much" as hereinbefore stated was of sufficient moment to those interested to call for a correction in the form of a published statement.

And defendants deny that said statement, although slightly inaccurate in the particulars mentioned, grossly misled Christian Scientists generally as to the extent of this work abroad, as the plaintiff alleges.

18. Answering the eighteenth paragraph of the bill of complaint, said defendants admit that at the meeting of the Christian Science Board of Directors held on March 17, 1919, a majority of the board then present, consisting



of the defendants Dickey, Merritt, and Rathvon, voted to remove from the office of trustee of said Christian Science Publishing Society one of the three trustees thereof, to wit, Lamont Rowlands. Said defendants aver that the defendant Neal was not present when such vote was taken, but that he had been previously advised that the taking of such vote was contemplated and he had concurred in the taking of such action. Said defendants admit that in said vote the plaintiff Dittmore, although present, did not participate, but as to the reason which may have actuated the plaintiff for not so participating the defendants have no knowledge or information sufficient to form a belief. Said defendants admit that prior to March 17, 1919, the plaintiff had long taken and insisted upon the position that certain evils existed which imperatively required the removal of all three of the trustees. Said defendants further aver that upon the question whether all three trustees should be removed at one time the plaintiff Dittmore assumed and persisted in holding a position opposed to every other member of said board, as it was constituted prior to said date. They further aver that the defendants Dickey, Neal, Merritt, and Rathvon took the position that, while the trustees had become unsuitable and were not properly managing the trust, and while said defendants were determined to exercise the authority vested in them, properly to protect the interests of said Church, they also were determined, if possible, so to exercise such authority as to save the business of the said Publishing Society from suffering harm and, if possible, to avoid court proceedings. Said defendants believed that to remove all of said trustees at once, as urged by the plaintiff, might cause unnecessary injury to the business of the Publishing Society and possibly necessitate a receivership, would tend to widen the breach between the two boards, and cut off the right to fill the vacancies thus created in said trusteeship without resort to a court; whereas the removal of one of said trustees, for the causes existing therefor, might result in a reversal of policy on the part of the remaining trustees, and the return by them to the proper understanding and practice of their duties and responsibilities as trustees and as Christian Scientists. They aver that they also believed that their action would save the right of the remaining members of the said Board of Trustees to fill the vacancy caused by the removal of said Rowlands by such appointment as might be approved by the said Board of Directors, in accordance with the Trust Deed of 1898 and the letter and spirit of the Church Manual. The desire and endeavor of said defendants was amicably to adjust the controversy, created by the improper conduct of the trustees, so far as they could do so

consistently with maintaining unimpaired the rights of The Mother Church and the authority of the Board of Directors and with discharging the duties with which they were charged by the Trust Deed and the Church Manual. In this they were not supported by the plaintiff who, in pressing his position, maintained a contentious, arbitrary, and unruly attitude, fomenting discord between the two boards calculated so to widen the breach that it would be impossible to unite on any equitable basis. He refused to cooperate with his fellow directors, characterizing all efforts to adjust matters with said trustees, before they were tried out, as futile and abortive. He became abusive and contemptuous in his denunciation of the discussions and decisions of said defendants. He falsely accused them of being under the influence of said trustees when there was no justification therefor. He absented himself from meetings of the directors with said trustees, refusing to discuss matters with them, declining to vote on matters as to which it was his duty to vote, and refusing to be bound by the votes of the majority of the directors.

Said defendants further aver that prior to March 17, 1919, the plaintiff Dittmore did at times attempt to usurp and exercise individually certain functions belonging to the Board of Directors; that he was dictatorial and threatening toward other members of the board in attempting to make his opinions the conclusions of the board; that he hindered the board in the transaction of its business; wrote numerous letters to said board critical of the conduct of the members thereof, and of the proceedings thereof, which communications were not constructive or helpful, but were contentious, vindictive, and sometimes false; and he so conducted himself in dealing with the trustees of the Publishing Society prior to said date as to increase hostility on the part of said trustees to the Christian Science Board of Directors. And said defendants further aver, upon information and belief, that plaintiff reported the discussions of the said Board of Directors, and that he was prior to said date endeavoring to build up outside the said Board of Directors a personal following and control in the affairs of The Mother Church calculated to weaken and destroy the usefulness of said Board of Directors to the detriment of the interests of the Church, inimical to its constituted authority and destructive of the orderly government provided for in the Church Manual.

And said defendants further aver that they were aware of these facts and of the facts stated in the resolution dismissing the plaintiff, hereinafter set forth, and they sought in good faith and in a Christian manner to induce him to modify his extreme views and frankly and freely to act with them

in a manner becoming members of the Christian Science Board of Directors. All of which was of no avail, the plaintiff continuing without restraint his policy of obstruction and self-assertion, to the extent that said defendants were obliged to exercise the right of the majority members of said Board of Directors, as set forth in the Church Manual, and dismiss the plaintiff from the said board in the manner set forth in the following paragraph.

19. Said defendants deny that at the director's meeting referred to in paragraph 19 of the bill of complaint, or at any other directors' meeting, any one of said defendants produced and read a long typewritten list of statements relating to the plaintiff denominated "charges." But they aver that at said meeting of March 17, 1919, following the adoption of the resolution removing the said Rowlands as a trustee, all efforts on the part of his fellow members on said board to bring about a change in the attitude and conduct of said plaintiff and to induce him to cooperate with them having failed, a resolution was then read to said plaintiff expressing the chief reasons why, in the belief of a majority of said board, it would be for the best interests of the Cause for the plaintiff Dittmore to resign as a member of said board; and he was then and there given an opportunity voluntarily to resign before said resolution was presented for adoption, which he refused to do. Thereupon said resolution was offered for adoption and was duly adopted by unanimous vote of the defendants Dickey, Merritt, and Rathvon, being a majority of said Board of Directors and being then present (the defendant Neal having been advised that such action was contemplated and having concurred in the taking of the same). Said resolution was as follows:

"Whereas Mr. John V. Dittmore, one of the members of this board, has frequently and continually failed and refused to accept and obey the by-law of this Church that 'The business of The Mother Church shall be transacted by its (C. S.) Board of Directors' (Manual, Article I, Section 6). In particular, he has violated this by-law by doing, or attempting to do, as a single member of the board, what could be done only by the board as such. He has violated this by-law by acting, as a single member of the board, contrary to what has been done, or deliberately left undone, by the board. He has violated this by-law by refusing to be bound by the votes of the majority and the decisions of the board. He has violated this by-law by disregarding the equal rights, duties, and responsibilities of the other members of the board, and by attempting to force them to accept his opinions and submit to his will.

"And whereas Mr. Dittmore has taken advantage of his position as a member of this board to carry on a

campaign for personal influence and control in the affairs of The Mother Church;

"And whereas Mr. Dittmore has violated Article I, Section 5, of our Church By-Laws by reporting the discussions of this board; and he has violated the last sentence of Article XXXIII, Section 2, of our Church By-Laws by giving directions to state Committees on Publication and inducing them to act contrary to bulletins issued by their manager with the approval of this board;

"And whereas Mr. Dittmore has conducted himself in such a manner as to produce discord and trouble between the trustees of the Christian Science Publishing Society and this board and to hinder the efforts of this board to arrive at a mutual understanding with said trustees and secure the rights of The Mother Church without litigation and without destruction or injury to any of the interests of Christian Science;

"And whereas Mr. Dittmore has written numerous letters to this board which were not calculated to help carry on its work, but which were self-assertive, controversial and acrimonious, and which sometimes included statements about the other members and the proceedings of the board that were unjust, distorted, and untrue;

"And whereas Mr. Dittmore has frequently and continually, during meetings of this board, acted toward the other members thereof in a rude, offensive, and threatening manner;

"And whereas Mr. Dittmore has ceased to maintain toward the other members of this board an attitude of unity, cooperation, equality, and Christian fellowship, and has habitually adopted the opposite attitude, so that it has become extremely difficult for this board to perform its functions;

"And whereas the other members of this board have repeatedly remonstrated with Mr. Dittmore in regard to most of the matters herein stated, but doing this has made no change for the better in his conduct;

"Now therefore it is resolved by The Christian Science Board of Directors, the Board of Directors of The First Church of Christ, Scientist, in Boston, that Mr. John V. Dittmore be, and he is by the adoption of this resolution, removed and dismissed from this board.

"Resolved further that Mr. Dittmore be and hereby is requested to return to the clerk of The Mother Church and Corresponding Secretary of this Board all letters, documents, papers, copies thereof, and other articles which he has taken or received as a member of this board or an officer of this church or which have been delivered to him by reason of his being a member of this board or an officer of this church."

Said defendants further aver that the foregoing resolution was the only

document relating to the plaintiff produced and read at said meeting, that it was offered and adopted by said Board of Directors in good faith for the reasons therein set forth, and in this answer above stated, and in the discharge of its duties under The Church Manual, and by the authority contained in Article I, Section 5, of the By-Laws in said Church Manual, which is set forth in the third paragraph of this answer.

Said defendants deny that said resolution can fairly be interpreted in the manner attempted by the plaintiff in the 19th paragraph of his bill of complaint, but aver that the terms thereof are clear and unambiguous and were well understood by the said plaintiff when read to him at the said meeting, and they deny that all or any of said statements in said resolution contained are false or irrelevant, but they aver that on the contrary all and singular the statements of fact therein set forth are true, and they deny that all or any of said statements are contrary to the spirit of the Church By-Laws or of the teachings of Christian Science and that any of said statements were designed to give a color of wrong to acts and words of the plaintiff as a director, which were wholly innocent, but they aver that all and each of said statements, being true, were consonant with both the letter and the spirit of the Church By-Laws and with the teachings of Christian Science, and were declaratory of actual conditions.

20. Said defendants deny the allegations of the first sentence of the 20th paragraph of the bill of complaint, regarding the manner in which the plaintiff was given an opportunity to resign, and aver the facts to be as stated in the 19th paragraph hereof.

They also deny that the defendants, Dickey, Merritt, and Rathvon, refused to comply with any request the plaintiff may have made to be furnished with a copy of said resolution, and deny the inferential allegation that plaintiff was given no opportunity to examine said resolution; and they aver that the plaintiff asked for no opportunity to reply thereto, nor did he, prior to the filing of his bill of complaint, make any reply thereto. Said defendants deny that at any time the defendants, Dickey, Merritt, and Rathvon, urged the plaintiff to resign voluntarily as a director on the ground that by so doing he might escape the discredit which they alleged would inevitably overtake him among all Christian Scientists if he were dismissed or expelled from said board, and deny that said defendants threatened the plaintiff unless he resigned on the spot to expel him forthwith from said board, or that they threatened him in any manner. They also deny that at any time the plaintiff protested against any words or conduct of the defendants Dickey, Merritt, and Rathvon as arbitrary, unfair, or unjust, or inconsis-

ent, both with the letter and the spirit of Christian Science generally, and, as contrary to the teaching and practice of Mrs. Eddy. And said defendants aver that the words and conduct of said defendants were not arbitrary, unfair, or unjust, or inconsistent with the spirit or letter of the By-Laws of The Mother Church or with the spirit of Christian Science generally, or contrary to the teaching and practice of Mrs. Eddy, and further aver that said defendants are loyal followers of the teachings and practice of Mrs. Eddy.

Said defendants Dickey, Merritt, and Rathvon deny that they paid no attention to the plaintiff's remonstrances, because, as they aver, the plaintiff made no remonstrance, of any kind, and they deny that they made any threats with respect to any action taken by them, or that they took any arbitrary action, but they aver that the action taken by them was under and by virtue of said Article I, Section 5, of the Church Manual, and that in regard to said action the plaintiff Dittmore did not ask any opportunity to prepare for or make any defense and did not at the time make any protest, either general, extemporaneous, or otherwise.

21. Said defendants deny that any of the defendants peremptorily attempted to dismiss the plaintiff as a member of The Christian Science Board of Directors without notice and hearing, and aver that the action of the defendants constituted a valid dismissal of the plaintiff and was strictly in accordance with the provisions of The Church Manual, in the manner hereinbefore stated. They deny that in any of the actions of any of the defendants they acted largely, or at all, at the instance of Frederick Dixon, or of the trustees of the Publishing Society, or any of them, and deny that they entertained any hope of or plan for making a collusive and unrighteous settlement with said trustees, and they aver that they have no intention of making any collusive or unrighteous settlement with said trustees concerning any condition, evil or otherwise, which may have grown up in said Publishing Society, and deny that they have any intention of concealing from the members of The Mother Church any of the conditions existing in the said Publishing Society.

22. Said defendants admit that said vote of dismissal contained the passage set out in paragraph 22 of the bill of complaint (it being part of the resolution set out in paragraph 19 hereof), and admit that immediately after said vote was passed the plaintiff left the directors' room and has since attended no meetings of The Christian Science Board of Directors. They deny that defendants Dickey, Merritt, and Rathvon attempted to elect defendant Knott a member of said board in place of the plaintiff, but aver that subsequent to said vote of

dismissal said defendants Dickey, Merritt, and Rathvon (with the concurrence of the defendant Neal, being absent) did duly elect the defendant Knott a member of said board in place of the plaintiff in accordance with said Article I, Section 5, of the By-Laws contained in the Church Manual; and they aver that the defendant Knott had adequate knowledge of the conditions leading up to her election and of the reasons which actuated the defendants Dickey, Merritt, and Rathvon in dismissing the plaintiff Dittemore. They admit that since March 17, 1919, the defendant Knott has attended the meetings of said Board of Directors and has acted as a member of said board, and has participated in the deliberations and votes of said board, and is still continuing so to do, and they deny that the defendant Knott has attempted to act as a member of said board, but aver that in fact and in law she has been, since March 17, 1919, and is now a member of said board.

23. Said defendants admit that on March 27, 1919, all of the defendants, acting by C. Augustus Norwood, their duly authorized agent and representative in that behalf, again demanded of the plaintiff the return of the letters, documents, papers and other things referred to in the vote hereinbefore set out, and aver that such letters, documents, papers, and other things were on said date and still are the property of The Mother Church, and that many of the same are private and confidential communications from Mrs. Eddy, and that of right, all such letters, documents, papers and other things so referred to should be in the possession of the constituted authority of the said Church. Said defendants admit that in the manner aforesaid they demanded that the plaintiff Dittemore comply with said vote, but deny that any demand was made that said plaintiff surrender to any one all his files and collections of letters and other documents, but aver that the demand made called only for all the files and collections of letters, papers, documents, copies thereof, and other articles in his possession which were and are the property of The Mother Church; and said defendants aver that, although plaintiff agreed to return such letters, documents, papers, and other articles, he has failed so to do and still wrongfully withholds the same.

24. Said defendants deny that the plaintiff has been since March 17, 1919, or is now entitled to the use of two rooms in the building 236 Huntington Avenue. They admit that prior to said date the plaintiff was, as one of the then members of the Christian Science Board of Directors, entitled to the use of said rooms, and had occupied said rooms during a part of the time that he was such director, and they aver that, although said rooms are leased, together with other rooms of said

building wherein they are located, by said Church for the transaction of its business, said plaintiff is still claiming the right to occupy the same, but aver that such claim is not well founded. As to whether the plaintiff has kept, or now has, in said rooms the books, papers, letters, documents, and other material received by him as a director, the defendants have no knowledge or information sufficient to form a belief, and, therefore, they neither admit nor deny the same, but require strict proof to be made thereof.

Said defendants admit that on April 17, 1919, they, acting through their secretary, thereto duly authorized, delivered to the plaintiff the letter, as alleged. They deny that in said letter was contained any attempt to obtain from the plaintiff any papers which were in his rightful possession, or that said letter was a threat to eject the plaintiff from any rooms which he occupied. They deny that either upon the remonstrance of the plaintiff, or otherwise, the operation of the letter was suspended until May first, or until any other date, and deny that the plaintiff was informed by the defendants that on that day, or any other day they would insist upon strict compliance by him with the terms of said letter, of the demand of said Norwood, or the demand of said vote, or would take any steps to enforce compliance with their demands; but on the contrary said defendants aver that the plaintiff stated that it was not convenient for him immediately to surrender said rooms and thereupon the defendants stated, through their counsel to the counsel for the plaintiff, that said defendants would appreciate it if plaintiff would yield the possession of the rooms as soon as it was convenient for him to move therefrom.

25. Said defendants admit that some of the letters, papers, and other documents referred to in said vote and letter and in the demand of said Norwood may have an important bearing upon the controversy between said defendants and said trustees, but deny that such letters, papers, and other documents have any bearing upon any conduct, attitude, purposes, or motives of the defendants Dickey, Neal, Merritt, or Rathvon, and they deny that they have any bearing on any private dealings of said defendants with said trustees, for the reason that there are no private dealings of any kind between said defendants or any of them, and said trustees, or any of them; and the defendants aver that some of said letters, papers, and documents may constitute material and important evidence in certain litigation, hereinafter referred to, now pending between said trustees and the parties to this bill of complaint.

Said defendants admit that among the documents in the possession of the plaintiff are copies of letters written by Mrs. Eddy to Christian Scientists, including some to those who have

been directors of The Mother Church, and that the originals of these letters are now in the possession of the directors as custodians, but deny that all of said letters are held for the use and benefit of every member of The Mother Church and deny that every member of said Church has the right to make or keep copies thereof. Said defendants admit that during his term of office as director, and as Clerk of the Church, and as secretary of said Board of Directors the plaintiff did as representing said board largely secure and save to the Church, through his official efforts, a large number of such letters, and that a number of letters from Mrs. Eddy to various persons were personally contributed by the plaintiff to the Church. And they deny that any of the letters in the possession of the plaintiff refute or uncover any policies or acts of these defendants as opposed to the views of Mrs. Eddy, but admit that said letters may refute and uncover certain policies of the trustees of the Publishing Society as opposed to the views of Mrs. Eddy. They deny that for any reason any letter of any character in the possession of the directors, or elsewhere, is being suppressed by said defendants, or any of them, and they aver that the letters from Mrs. Eddy and other papers in the possession of the directors, and those in the plaintiff's possession which defendants have demanded, belong to The Mother Church and should be kept available in the custody of this Board of Directors and for the protection of the interests of The Mother Church. Said defendants deny that in demanding said letters, papers, and other documents of the plaintiff they had, or have, any purpose to secure control of any documentary evidence the production of which would tend in any way to embarrass any of the defendants Dickey, Neal, Merritt or Rathvon, and deny that there is any such evidence, documentary or otherwise.

26. Said defendants admit that said letters, papers, and documents may contain important evidence and data in the interests of the beneficiaries against said Publishing Society trustees. As to whether such letters, papers, and documents contain any evidence or data with respect to any wasteful extravagance or unauthorized use of trust funds, said defendants have no knowledge or information sufficient to form a belief, and hence neither admit nor deny the same. Said defendants deny that they do not propose to require any accounting of the trustees of The Christian Science Publishing Society, and they deny that the beneficiaries of the trust will be remediless in respect to any proper accounting by said trustees regarding any waste or extravagance of which the trustees may have been or are guilty, if the plaintiff is required to surrender such evidence into the possession of the defendants.

27. Said defendants deny that after the adoption of said vote of dismissal they caused to be published in The Christian Science Monitor an article announcing that "this plaintiff had 'retired' from his position on the Christian Science Board of Directors," but aver that in the issue of said Christian Science Monitor for March 18, 1919, they caused to be published an article to the effect that Mrs. Annie M. Knott had been elected a member of The Christian Science Board of Directors "to succeed John V. Dittmore, retired." The defendants aver that such announcement was made in a sincere effort to make known, without in any way injuring the plaintiff, that the change mentioned had taken place on said Board of Directors, and they deny the innuendoes of plaintiff's allegations in this regard.

They also deny that at any time said defendants, or any of them, have persistently, or otherwise, circulated or caused their agents to circulate, among members of The Mother Church in the United States or elsewhere false or malicious, or any, propaganda designed or calculated seriously to damage the plaintiff's reputation for integrity, loyalty, or sincerity, or to impair his standing or influence as a Christian Scientist.

28. Said defendants admit the allegations of fact contained in the twenty-eighth paragraph of the bill of complaint, said allegations relating to the filing of the bill of complaint by Herbert W. Eustace, David B. Ogden, and Lamont Rowlands, claiming to be trustees of The Christian Science Publishing Society against the plaintiff and said defendants.

29. Said defendants admit that at a hearing held on March 28, 1919, relative to the continuance of the temporary injunction theretofore issued by this Court in the bill of complaint referred to in the preceding paragraph, the plaintiff attempted, through his counsel, to obtain the consent of the counsel for said trustees and of the Court to a dismissal of said bill as to him, but they deny that in making such attempt he took the position stated in the twenty-ninth paragraph of his bill, namely, that while he was unwilling to recognize the validity of his dismissal, yet he preferred for the sake of avoiding injury to the existing church organization, to submit thereto, to the extent of abstaining for the present from attending meetings of the board and from seeking the

Court's aid to reinstate him, in the hope that the difficulty might be otherwise adjusted; but said defendants aver that plaintiff then presented, through his counsel, a letter written by him which was read in open court, in which he unconditionally waived and relinquished his claimed legal right to enforce his reinstatement as a director of The Mother Church, because of his asserted loyalty to the Church Manual. A part of said letter read as follows:

"I shall submit to the dismissal, because I believe that the good of the Cause demands that I follow this course. I also believe that every honest Christian Scientist worthy of holding any position of trust and confidence in the Christian Science Church should be willing to subordinate any personal advantage at no difference how great a seeming sacrifice in order to avoid making a breach in the By-Laws of the Christian Science Church as they were established by Mrs. Eddy."

30. Said defendants admit that repeatedly after the vote of dismissal of the plaintiff and after the filing of the bill of complaint by Messrs. Eustace, Ogden and Rowlands this plaintiff requested all the defendants in the instant bill through their counsel to reconsider their position and revoke said vote of dismissal and restore him to membership on said board; but said defendants consistently declined to set aside such dismissal, and they deny that there was any attempted dismissal of the plaintiff, but aver that he was dismissed as herein set forth.

31. Said defendants deny that the plaintiff has at all times unqualifiedly recognized the paramount and controlling authority of the By-Laws of The Mother Church as set forth in the Church Manual, including the provisions of Article I, Section 5, of said By-Laws, which authorizes the Christian Science Board of Directors by a majority vote to dismiss a member. But on the contrary said defendants aver that while the plaintiff Dittmore has, both by said letter presented in open court and in his bill of complaint, inconsistently asserted that he is a loyal Christian Scientist, nevertheless he has, by his attitude and course of conduct in fact attempted to repudiate the Church Manual.

Said defendants have no knowledge or information as to what this plaintiff believes as to the matters alleged, or as to the advice he may have re-

ceived from his counsel, and, therefore, they neither admit nor deny such allegations. Said defendants deny that there was any attempted or summary dismissal of the plaintiff by the defendants Dickey, Merritt and Rathvon and aver that plaintiff was dismissed in the manner stated herein and that such dismissal is valid and final. As to whether or not the plaintiff was at any time unwilling affirmatively to seek this Court's aid in restoring him to any right claimed by him as his legal right, and as to the remaining allegations of this paragraph, not being allegations of fact, but matters of inference and argument, said defendants neither admit nor deny the same, but leave the plaintiff to his proof thereof if he deems them material.

32. As to the allegations in the first sentence of the thirty-second paragraph of the bill of complaint, said defendants aver that they are argumentative and, therefore, they neither admit nor deny the same. The remaining allegations of said paragraph, being allegations of fears and apprehensions which the plaintiff claims to entertain, defendants neither admit nor deny the same.

33. Said defendants deny the allegations of the first sentence of the thirty-third paragraph of the bill of complaint. They admit that at no time did the Committee on Finance, mentioned in Article XXIV, Section 6, of the By-Laws, ever visit the Board of Directors with respect to any conduct of the plaintiff, or ever admonish this plaintiff; and defendants aver that plaintiff was not dismissed from said Board of Directors under said section of the By-Laws.

Said defendants deny that plaintiff's conduct was never complained of by any other of the authorities of said Church except the present defendants and the Publishing Society trustees; but on the contrary they aver that former members of said Board of Directors have in the past many times complained of the plaintiff's conduct as a director and have discussed the advisability of and favored dismissing him from said board.

34. Said defendants deny the allegations contained in the thirty-fourth paragraph of the bill of complaint.

By their attorneys,  
BATES, NAY, ABBOTT & DANE,  
CLIFFORD P. SMITH,  
EDWIN A. KRAUTHOFF.



Official Report of the  
Hearing in Contempt Citation Proceedings

# Hearing in Contempt Citation Proceedings

Official Report of the Proceedings Transcribed from the Notes of the Official Stenographer, and printed in The Christian Science Monitor  
on June 4, 5, 6, 7 and 11, 1919

Contempt proceedings incidental to the suit of the Board of Trustees of the Christian Science Publishing Society vs. the Christian Science Board of Directors in the Supreme Judicial Court before Judge Braley.

June 3, 1919

COMMONWEALTH OF  
MASSACHUSETTS

Supreme Judicial Court

Suffolk, ss. No. 30654. In Equity

Eustace et al. v. Dickey et al.

Before Mr. Justice Braley,

Boston, June 3, 1919.

Mr. Whipple—This, if Your Honor please, is the return of an order of notice in contempt proceedings. The petition sets forth alleged contempt and no answer has been filed.

Mr. Justice Braley—Is the petition sworn to?

Mr. Whipple—Yes.

Mr. Justice Braley—You filed no affidavits?

Mr. Whipple—No, Your Honor.

Mr. Justice Braley—Does that order of notice to show cause, Mr. Clerk, specify the allegations?

The Clerk—It has attached to it a copy of the petition.

Mr. Whipple—A copy was furnished counsel on the same day the order of notice issued. I mention this matter because I think the filing of an answer, which will define the issues of fact, if any, to be determined, will very much facilitate and perhaps shorten the hearing. I have reason to believe that very little if anything alleged in the petition would be denied. Most of the facts that we have to deal with are written communications, and if we are put to a technical proof it would take more time than if those facts about which there is no dispute were admitted, as I think they ought to be, by the answer, and I am making the suggestion merely to take a course, or to indicate a course which I think might facilitate the hearings and shorten the actual trial.

Mr. Bates—I do not understand the suggestion made by my brother. We have filed no answer. The paper was served on us the night before the holiday, Thursday night. Friday was a holiday; Saturday was practically a

holiday; and Sunday was a holy day. Monday, yesterday, was the only time practically that we have had. I have understood, also, that the practice is not general to file an answer. If my brother would like an answer filed and if Your Honor thinks one should be filed we would be glad to file one, provided the opportunity is extended to do so.

Mr. Justice Braley—Are you ready for a hearing?

Mr. Bates—We are ready for a hearing.

Mr. Justice Braley—What do you say to that, and as to the proof that would be required on the part of the petitioner—I mean how far do you dispute the allegations of the petition for attachment?

Mr. Bates—The petitioner has stated that certain publications which were published were false in their statement. We shall require him to prove that statement. That is the only thing that I recall that will probably take considerable time—for him to attempt to prove the falsity and we shall attempt to prove that they are true. Also the fact that we have acted entirely in accordance with the custom from the beginning so far as all the matters which are complained of—or at least so far as one of the matters complained of is concerned. That is, we have followed the unbroken practice of 17 years and we do not understand the injunction requires us to cease from doing what has been done for 17 years with the approval of all the parties.

Mr. Justice Braley—That depends upon the terms of the injunction, of course. I do not know what those terms are; I know nothing about them. I understand you to say that under the terms of the injunction no violation has been made in the issuing of these statements or letters or whatever they may be called, provided the statements in those letters or communications were true. But if they were false—I do not ask you to concede anything, you know—I understand the question would be, whether or not there was any violation if they were true?

Mr. Bates—He has alleged they were false, so I presume he considers their falsity a part of his case. One of the matters involved is in regard to these publications. There is another matter,

and that is the notice that was sent to him that we were one of the directors—

Mr. Whipple—If I may offer a suggestion here. The allegation is not so much that what was stated in the letters was false, but what was stated in the letters was a violation of the injunction because it interferes with our administration of our business and tends to discredit the authority of the trustees, the very thing that the Court, as we claim, attempted to prevent by the issuance of the injunction. We say that the statements were misleading; they were misleading in this respect: After we had had a long experience with one of the editors who is employed in the publishing business, trying to make him do his duty, in which these very directors participated and in which we had their distinct encouragement, we finally were obliged to dismiss him and did dismiss him. We notified the directors that we did, and immediately they put out correspondence tending to show that this man had left his employment and had resigned because he couldn't stand the actions of the trustees, which is as false and misleading as a statement could possibly be. He had not resigned, although they attempted to let the field, or lead the people to believe he had resigned, while in point of fact he had been dismissed for some misconduct. Of course it may take some little time to show what was brought to the attention of the Board of Trustees and what the directors themselves brought to our attention which led to us dismissing him.

Mr. Justice Braley—Who are the respondents named?

Mr. Whipple—The four directors.

Mr. Justice Braley—Give me the names, please.

Mr. Whipple—Dickey, Neal, Merritt, Rathvon, and Annie M. Knott who was more recently elected, about whom there is some question as to her tenure of office. Mr. Dittmore was excluded from office, but we still think he may be, and also Mr. Clifford P. Smith who is an attorney and attorney of record in this case, who signed the letter which he sent to the newspapers, or we understand he signed it, it bears his signature and it was published in the newspapers.

Mr. Justice Braley—I understand you appear for all the respondents named, Mr. Bates?

Mr. Bates—I do, yes, Your Honor. I do not at all agree with the statement made by my brother that it will take some time to hear the case.

Mr. Justice Braley—How long do you think it will take to try the issue?

Mr. Bates—I should think three hours.

Mr. Justice Braley—Double it; it will take a day. The only hesitation I have about it is the press of work. I might send it out to a master rather than hearing it myself. Ordinarily I should hear an application for contempt proceedings myself. But it is very clear, of course, what this case is provided it turned out that there has been a violation of the injunction. There is no public question involved at all, the only question is how far the process of the Court having been violated, the Court should act.

Mr. Whipple—If I speak on the subject it will only be with what Your Honor will assume, that is that we should have great regret if Your Honor could not hear and deal immediately, before we go on with the hearings in the other matter, with the alleged contempt.

Mr. Justice Braley—Has the master appointed a time for beginning the hearings?

Mr. Whipple—Yes, Your Honor, it was this morning at 10 o'clock. We were to proceed then, but it was agreed by the parties that we should suspend that hearing until we had finished with this.

Mr. Justice Braley—Very well, that is sufficient. I will hear the case and I will hear it as speedily as possible.

Now as to an answer. The practice does not require an answer, at the same time if he filed an answer I do not know but it would clarify the issues. The regular practice is in filing a matter of this sort, the Court will support it by affidavits. The Court hears ex parte the petition, and if satisfied that a prima facie case is made out, orders notice to show cause why attachment should not issue service to be made upon the alleged contentents, they then come into court and the case is heard. The petition is supposed to specify exactly the grounds upon which the petitioner relies for the alleged contempt, but I do not think that the practice has been at all uniform. In this case I understand the petition is very plain and I understand it is very brief, and also specifies exactly the grounds upon which the petitioner relies. Upon that the clerk has issued an order to show cause with a copy of the petition attached; I think that is sufficient. I do not think you will need to file an answer and I do not care to make what might be considered or would be considered a precedent. So the case will be set down for hearing upon the petition and order of notice to show cause.

Mr. Bates—I want to make one suggestion, perhaps it comes a little late, but it will be entirely agreeable to us, if Your Honor would prefer, to have this case referred to the master to hear the facts, the reason being that it does in a way involve one of the main issues of the case; but it is entirely agreeable to us to go on if Your Honor can hear it.

Mr. Justice Braley—I shall hear it. We will mark it for hearing and I will take it up as speedily as I can.

June 4, 1919

COMMONWEALTH OF  
MASSACHUSETTS

Supreme Judicial Court

Suffolk, ss. No. 30654. In Equity

Eustace et al. v. Dickey et al.

Before Mr. Justice Braley,

Boston, June 4, 1919.

Hearing on petition that Adam H. Dickey et als. be adjudged in contempt of court for violation of temporary injunction.

The Court—I suggested to the clerk this morning, gentlemen, that you might come in this afternoon and read the papers, so to speak, and state the case and I will go on with the taking of the evidence tomorrow morning. That would not lead to any inconvenience in the summoning of witnesses and we shall advance the case just so much by getting rid of the preliminary proceedings. I think you go forward, Mr. Whipple.

Mr. Bates—May I call attention to one matter. We have filed a motion to modify the injunction so as to give us an opportunity, should Your Honor think we ought to have it, to elect editors of these magazines in accordance with the rules of the Church and in accordance with 17 years' unbroken practice. There might be serious difficulty arise if it is not done. Let me state further, in making this preliminary statement, that I notified brother Whipple that we should ask for this modification of this injunction unless he assented to our version of it, but up to the day before Memorial Day we did not know he was going to object; that is the reason this motion comes in at this time. Inasmuch as it involves the same matter as a part of the injunction I think it might properly be heard at the same time.

The Court—I will take up first the petition.

Mr. Whipple—I have said, in reply, I did not think it was usual for the Court to hear a petition for modification of an injunction when the question was still pending as to whether the injunction had been violated, but that I saw no objection to the whole matter being considered by Your Honor and that doubtless all the evidence that would come before Your Honor would be considered before that question—the question of a pos-

sible modification of the injunction—and that we would accept Your Honor's direction as to the most easy and convenient method of disposing of that question when we reached it.

Now with regard to the case we are to try. We are ready and think that we can occupy the afternoon with putting in the evidence, or a good share of it. We received word a little before one o'clock that the Court would be available for this afternoon and we have tried to get our people together. I think we have; at any rate there are certain important matters that can be dealt with this afternoon which I think will occupy a good deal of time and which will facilitate the hearing tomorrow, and the Court will not lose very much of its time.

Shall I read or state the substance of the petition—unless Your Honor has happened to read it.

The Court—You will read, if you please, the terms of the injunction, first.

Mr. Whipple—The injunction will be found printed in this small printed copy of the bill in equity. Have you one?

The Court—If you have a copy I should like to follow it.

Mr. Whipple—It is on the last page—this is a copy of the bill itself. Now the Deed of Trust—

The Court—Just a moment, please. Will you specify under the terms of this injunction, the violations upon which you rely. Are those set forth in your petition?

Mr. Whipple—Yes, Your Honor.

The Court—Then you can read the petition next.

Mr. Whipple—If it meets with your approval, may I call Your Honor's attention to this, that the parties are enjoined from interfering with the business—with interfering with the plaintiffs in the discharge of his or their respective duties as trustees under a trust instrument dated Jan. 25, 1898. Now if Your Honor desires to run your eye over the trust instrument, it is Exhibit A on page 42, because what our duties are are defined in that instrument. Perhaps the terms of the injunction itself are not complete without reference to that.

The Court—What is the exhibit upon which you rely?

Mr. Whipple—Page 42 is the Deed of Trust. It is Exhibit A. Then Your Honor will notice that the conveyance of all this property, the Publishing Society's property, The Christian Science Publishing Society's property—all the property that they receive and handle is granted upon the following perpetual, irrevocable trust and confidence, namely:

"1. Said trustees shall hold and manage said property and property rights exclusively for the purpose of carrying on the business, which has been heretofore conducted by the said Christian Science Publishing Society, in promoting the interests of Christian



Science; and the principal place of business shall be in said Boston."

In other words, the trustees are given the management of the property and property rights, and no question will be made that the property which was handed over, or that the trustees acquired, included the publications which are referred to in the petition, that is, The Christian Science Journal, the Christian Science Sentinel, The Christian Science Monitor, the editorial policy of which is involved and the editors of which are referred to as being those as to whose election there is a dispute.

"The business shall be done by said trustees under the unincorporated name of 'The Christian Science Publishing Society.'"

In other words these publications are the property of the trustees.

"3. Said trustees shall energetically and judiciously manage the business of the Publishing Society on a strictly Christian basis, and upon their own responsibility, and without consulting me about details, subject only to my supervision, if I shall at any time elect to advise or direct them."

May I state what is without dispute, that Mrs. Eddy herself during her lifetime as grantor, reserved certain rights of supervision and direction if she saw fit to exercise them, and what Governor Bates has referred to as the uninterrupted course of matters for 17 years, was merely the adoption by the Board of Trustees of the Publishing Society of any suggestion or supervision on the part of Mrs. Eddy before she passed away. In other words while Mrs. Eddy lived there wasn't a trustee of this organization who would not follow out in the fullest detail, minutely, any suggestion Mrs. Eddy made. If she nominated an editor, or asked to have one elected, there would not be the slightest hesitation in every one of these trustees obeying implicitly and to the letter the slightest suggestion of the great Leader of the Christian Science movement. I am calling attention to it now, because it will be referred to later. Mrs. Eddy passed away in 1910, and it is with regard to the course of proceedings since she passed away that the tribunal which hears the original bill will have to pass, and since that time there has been the selection of only three different editors and so there hasn't been, as we say, very much of an unbroken custom.

Now in paragraph 6, on page 45, it states:

"6. Said trustees shall employ all the help necessary to the proper conduct of said business, and shall discharge the same in their discretion or according to the needs of the business, excepting that the business manager may call in at times of necessity such temporary help as will facilitate the business."

We say the employment being in the hands of the trustees—that that meant the employment of every one.

"7. The trustees shall employ such number of persons as they may deem necessary to prepare Bible Lessons or Lesson Sermons to be read in the Christian Science churches, the same to be published quarterly as has heretofore been done by and in the name of The Christian Science Quarterly; and they may, in their discretion, change the name or style of such quarterly publication as occasion may demand. They shall also fix the compensation of the persons so selected.

"8. Said trustees shall have direction and supervision of the publication of said Quarterly, and also of all pamphlets, tracts, and other literature pertaining to said business, using their best judgment as to the means of preparing and issuing the same, so as to promote the best interests of the Cause, reserving the right to make such changes as I may think important."

And now 11. "I also reserve—"

This provides for a reservation that Mrs. Eddy herself might make and exercise a power with regard to controlling—with regard to withdrawing from the trustees or the trust the publication of The Christian Science Journal, and I think there is no question that she never withdrew it from the trustees and that when she passed away the publication of The Christian Science Journal was the trust property under this trust and so remained forever.

I venture to state that so as to bring clearly before Your Honor's mind just what we claim the right to do under our Deed of Trust, what it provided, and what action on the part of the directors the injunction was intended to prevent.

I take it that there is no contention, and I will ask Governor Bates if that is not true, that said temporary injunction after its issuance from the court was duly served on all the defendants and its contents made known and fully explained to them by their counsel.

Mr. Bates—We make no question but that is so.

The Court—What is the date of the service?

Mr. Whipple—It was issued on either March 25 or 26.

The Court—What is the officer's return? I have it, so you need not concern yourself about it. March 25, 1919, on all the defendants except Dittmore, and on Dittmore on March 26, 1919.

Mr. Whipple—The defendant Dittmore is not involved in this proceeding.

The Court—I understand that. March 26, 1919, that is the date of the service.

Mr. Whipple—As Governor Bates has stated, the contents of the writ of injunction were fully explained to these defendants by counsel. Now in paragraph 2 of our petition we have restated the paragraphs of the bill

upon which, as we understand it, our application for relief was granted. I will take Your Honor's direction about reading them. We thought that in construing the injunction these averments of what the defendants were forbidden to do might be materially important.

The Court—I shall let you take your own course about that. The terms of the injunction are very clear and explicit.

Mr. Whipple—We could show they are doing the very things we complained of and that they were forbidden to do. Paragraph 17. "The plaintiffs further aver upon information and belief that it is not a part of the plan of the defendants to appeal to the courts for an order determination of the question of their right to remove the plaintiff trustees under existing circumstances, but that on the contrary they propose to accomplish their removal by the exercise of the great and dominating influence which they carry by reason of their official position and in the exercise of their power to dominate and control members of The Mother Church by the powers of discipline which they hold, and to influence the action of other churches by refusals to grant licenses or appointments." That is the great source of their power. "The plaintiffs believe that the defendants intend thus to make the office of trustees practically untenable by the plaintiffs, or to make the performance of their duties so arduous and disagreeable as thereby to induce their voluntary resignation as trustees and their compliance with the demands which the defendants have made upon them as hereinabove set forth.

"The plaintiffs further aver upon information and belief, that the defendants have stated to many Christian Scientists in substance that they plan to obtain control of the Publishing Society, or to destroy it; that if the plaintiffs as trustees continue to resist the demands of the directors and refuse to conform to their will, the directors propose in the terms used by one of them, 'to make the Publishing Society an empty shell,' and to accomplish that result by using their great influence with Christian Science churches and throughout the field to induce Christian Scientists not to continue to subscribe for and support new publications," etc.

Now in the third paragraph, we recite that "Since the granting of said injunction, the said defendants (by which term as hereinafter used is meant all the defendants except Dittmore) have insisted upon doing all the things which they have claimed that they had theretofore been in the habit of rightfully doing, which said bill was aimed to prevent, and which said defendants were forbidden doing by the terms of said injunction. Said defendants in various ways have thus, and otherwise, interfered with the management by the plaintiffs of the

business of the Publishing Society under and in accordance with the terms of the Deed of Trust under which they derive their authority. Said defendants have from time to time asserted their purpose and intention of continuing to manage and control certain of the affairs of said Publishing Society in derogation of the authority of the plaintiffs, and have both promoted and permitted the active spread of propaganda by which they have threatened and intended to embarrass and interfere with plaintiffs, as set forth in the plaintiffs' bill."

That refers, if I may interrupt myself and state to Your Honor, to certain acts which have been referred to when this matter had been before the Court before, which seemed to the trustees to constitute a violation of the injunction. But we thought that by sending letters to counsel and calling their attention to the terms of the injunction and to the fact that these actions were violating the terms of the injunction, that would be enough. We did not want to trouble the Court with a hearing if they would desist and discontinue that course of action. They attempted with regard to Mrs. Knott, whom they elected as a director—

Mr. Bates—Are we to go into things which are not specified in this thing at all?

The Court—You are not obliged to answer anything except what is set forth in the motion for attachment in the contempt proceeding. Do you specify, Mr. Whipple, in that motion the particulars upon which you rely for violation of the injunction?

Mr. Whipple—After making this general statement, I specify two illustrative instances.

The Court—I think you better read the petition.

Mr. Whipple—Shall I begin with paragraph 3? I have stated substantially—

The Court—Begin below where you have stated the substance. Of course the bite of the case is, what have these defendants done specifically that violates the injunction.

Mr. Whipple—I have already read paragraph 3.

Paragraph 4. "As specific examples and illustrations of said conduct in violation of said temporary injunction, the plaintiffs set forth the following facts:

"(a) By reason of the neglect of duty and unsatisfactory conduct of one William D. McCrackan, an employee of the plaintiffs as an associate editor of the Christian Science Sentinel and The Christian Science Journal, the plaintiffs on May 19th dismissed said McCrackan from their service in a telegram reading as follows:

"May 19, 1919.

"Mr. William D. McCrackan,

"The Commodore,

"Forty-Second Street & Lexington Avenue,

"New York City.

"In view of your letter of April twenty-second written to Mr. McKenzie and your continued absence from the office, the trustees suspended you as associate editor and omitted your editorials, and in view of your conduct your services are discontinued as of today.

"BOARD OF TRUSTEES."

"Said dismissal followed and was in a measure the result of complaints with reference to said McCrackan which had been previously discussed between the defendants and the plaintiffs, and was on account of conduct and other reasons fully known to the defendants.

"On the day following the dismissal of said McCrackan, the plaintiffs notified the defendants of their action in a letter reading as follows:

"May 20, 1919.

"The Christian Science Board of Directors,

"Falmouth and St. Paul Streets,

"Boston, Massachusetts.

"Dear Friends:

"The continued absence of Mr. McCrackan and his neglect of his duties in connection with his position as associate editor made it necessary to discontinue his services and omit his further editorials. Consequently, Mr. McCrackan's services were discontinued yesterday.

"It will of course be necessary for the trustees to employ another associate editor, and we are now giving consideration to the subject. If you have any recommendations to make in connection with such appointment, and can furnish us the names of those who you think could serve in this position acceptably, and for the promotion of Christian Science, we shall be glad to have you furnish us with the names as early as practicable.

"With best wishes,

"Sincerely yours,

"BOARD OF TRUSTEES.

(Signed) "Herbert W. Eustace,

"Secretary."

"Thereupon on the following day, the defendants took action in the matter of electing a successor to said McCrackan, and notified the plaintiffs thereof in the following letter:

"May 21, 1919.

"Board of Trustees,

"The Christian Science Publishing Society,

"107 Falmouth Street,

"Boston, Massachusetts.

"Dear Friends:

"The Christian Science Board of Directors instructs me to acknowledge

with thanks the receipt of your favor of May 20 and to make the following reply:

"Under the provisions of Article I, Section 3, and Art. XXV, Sec. 4 of the By-Laws"—These do not appear anywhere in the bill. But we say it is not so even under the By-Laws. Only Mrs. Eddy could do that. Passing that, and begging your pardon for interrupting Your Honor's thought—"the directors are charged with the responsibility of electing the editors of the Christian Science periodicals.

"Basing their action on the established custom inaugurated by our Leader, Mary Baker Eddy, which has never been questioned but which has been accepted by the Christian Science movement since the establishment of the trust, the directors will be prepared to elect a successor to Mr. McCrackan on June 2 and will take pleasure in giving you due notice of such election.

"The directors trust that you will appreciate the propriety of the position taken by them under the Manual and will be guided accordingly.

"With kind regards,

"Sincerely yours,

(Signed) "CHARLES E. JARVIS,

"Corresponding secretary for the Christian Science Board of Directors."

"The action of the defendants and the notice thereof are a deliberate and purposeful interference by the defendants with the management by the plaintiffs of the affairs of the Publishing Society, the employment of editors and other officials, and therefore in violation of the terms of the injunction of this Honorable Court, and the result of said action is to discredit the plaintiffs and embarrass them in the performance of their duties."

That is our first specification. If before taking up the second specification I would like to say that in the bill that is the very thing we say they were asserting a right to do, namely, exercise some power that they found under the Manual that they exercised over the Deed of Trust.

The Court—Of course you are familiar with all the details of this bill; I am not. I am now going to ask you one or two questions for the purpose of getting some information for myself. You, Mr. Whipple, represent which board?

Mr. Whipple—The Board of Trustees of the Publication Society.

The Court—That is what I understood. You claim you have the sole right to determine the editorship of the paper?

Mr. Whipple—Under the terms of this trust.

The Court—And any vacancies which arise you alone have the power to fill, on the editorial staff?

Mr. Whipple—Under the Deed of Trust, yes.

The Court—I have read that portion of the Deed of Trust. Now your board

decided that Mr. McCrackan should no longer serve?

Mr. Whipple—Yes, Your Honor.

The Court—After that did you send a letter to this other board?

Mr. Whipple—Yes, Your Honor, and informed them that we had discontinued the services of Mr. McCrackan and they acquiesced in it.

The Court—Didn't you do something more than that—asking them to suggest a name or names?

Mr. Whipple—May I say why? Because we have always regarded it as our duty to cooperate for the promotion of the Christian Science movement.

The Court—Under the terms of this Deed of Trust and under the theory on which your bill goes, what did this other board have to do with the selection or failure in selecting Mr. McCrackan's successor?

Mr. Whipple—Nothing, except we consulted them—we conceded it to be our duty to ask anyone interested—

The Court—You mean it was a mere matter of Christian comity?

Mr. Whipple—Courtesy, Your Honor.

The Court—I don't want any other explanation now. The letter as I understand it—you got this answer to the letter which you have just read to me, from the other board, namely the defendants, so to speak.

Mr. Whipple—The directors. One is the trustees, the other the directors.

The Court—Claiming authority to do it themselves.

Mr. Whipple—Stating they proposed to do it, acting under the Manual. Their entire claim is that the Manual overrules the Deed of Trust.

The Court—I have already read the Deed of Trust through, and subject to the enlightenment of counsel, which they will give me, I think I have some understanding of what bearing it has. I wanted to get the specific thing you say was contempt, and I think I have it now. Now go on.

Mr. Whipple—The second specification is this: "On May 21, current, the defendants through—" May I call attention to the fact that that was the next day after we notified them that we had discontinued Mr. McCrackan's services—"On May 21 the defendants, through said Clifford P. Smith, their attorney of record and counselor and agent, attempted to have sent out for publication in newspapers circulating in the city of Boston a letter, a copy of which is given hereunder. Some of said newspapers published parts thereof, and others declined to publish any part thereof.

"Committee on Publication of The First Church of Christ, Scientist,

"236 Huntington Avenue,

"Boston, Massachusetts.

"To the Editor of The Boston Herald:"

We have got, or it is accessible to us, the one which was sent to the Herald. "There is a special reason just now why editors and readers of news-

papers should be cautious about accepting stories pertaining to Christian Science affairs. A very active propaganda is in operation against the government of The First Church of Christ, Scientist, in Boston.

"The report that when Mrs. Annie M. Knott resigned her position as one of the editors of the Christian Science periodicals to become a member of the Christian Science Board of Directors, this board 'found much difficulty in getting some one to take her place'—(that is in sub-quotations)—"is not true. Mrs. Knott resigned on the 19th of March. Her successor, Mrs. Ella W. Hoag, was elected on the 24th of March. She was the directors' first and only choice for this position, and she accepted it immediately when it was offered to her.

"Another mistaken report relates to the reasons why Mr. William D. McCrackan has declined reelection as one of the editors of the Christian Science periodicals. His actual reasons are shown by the following letters:

"P. O. Box 32, Fenway Station,  
"Boston, Mass., May 18, 1919.

"My dear Judge Smith:

"I am sending you copies of two letters, one to Mr. McKenzie dated April 22 and the other to our directors dated May 1.

"I want you to have the exact facts in regard to my position as editor. In case any false statements are printed I leave it to you as Committee on Publication to make the necessary corrections.

"Faithfully,

(Signed) "W. D. McCrackan."

"April 22, 1919.

"My dear Mr. McKenzie:

"I am forwarding to you my editorial which is due on Thursday, April 24.

"Since the trustees of the Publishing Society have taken to censoring the Sentinel and the Journal upon advice of counsel, what is happening is that their counsel are finally determining the nature of the articles and editorials for those periodicals. It is sufficient to recall among other instances that the trustees' counsel caused to be erased from an article the second verse of the good old hymn, "Onward, Christian Soldiers," and from an editorial a statement by Mrs. Eddy concerning the Manual which she framed for her own church. This produces an intolerable situation. In justice to my service to the Christian Science field I cannot be a party to this method of making up our periodicals.

"Under these circumstances I shall continue to send my editorials, but shall take no part in selecting and correcting articles.

"With all good wishes,

"Faithfully,

(Signed) "W. D. McCrackan."

"May 1st, 1919.

"Dear Directors:

"The time approaches when you will be called upon to make your annual appointments of editors of the Christian Science Sentinel, The Christian Science Journal, Der Herold, and Le Hérait. If my name should come up for reappointment, let me say that when I took office in 1916 I felt that three years would constitute a full rounded term of service for me as an editor. I have seen no reason to change my views. I served three years as Committee on Publication for the State of New York and three years as First Reader of The Mother Church. At the coming annual meeting I shall have served three years as associate editor. It is now my desire to take up other branches of Christian Science work at the close of my term.

"I am sincerely appreciative of the opportunities for good which the three annual appointments by the board have meant for me.

"With best wishes,

"I remain faithfully yours,

(Signed) "W. D. McCrackan."

"On account of the suit brought by the Board of Trustees of The Christian Science Publishing Society, The Christian Science Board of Directors is not responsible for the censoring to which Mr. McCrackan took exception.

"Sincerely yours,

(Signed) "CLIFFORD P. SMITH.

"Committee on Publication of The First Church of Christ, Scientist.

"Boston, Massachusetts,

"May 21, 1919."

Said letter was published and sent out by the defendants, with the purpose on their part to mislead the public and those interested in the Christian Science movement as to the circumstances under which said McCrackan's services were discontinued. The defendants knew at the time of putting out said letter that said McCrackan had been dismissed from the service of the Publishing Society by the trustees, and were fully informed as to the valid reasons which led the trustees to take such action.

The defendants and their attorney also knew, or in the exercise of reasonable diligence would have known, that the statements in said McCrackan's letter of April 22, to which they gave currency, to the effect that plaintiffs' counsel had caused to be erased a certain part of the hymn, "Onward, Christian Soldiers," and had also caused to be erased from an editorial a statement by Mrs. Eddy concerning the Manual, and that such alterations in editorials were the cause or reason for the retirement of said McCrackan as an associate editor, and that said McCrackan resigned as associate editor and was not dismissed, were entirely false and without foundation.

Said letter was sent out for publication by the defendants, intending thereby to give a false and misleading impression and understanding as to the reason or reasons why said McCrackan retired from the service of the plaintiffs and as to the circumstances of his dismissal, and for the further purpose of thereby discrediting the plaintiffs as trustees in their management of the affairs of the Publishing Society, and to interfere with and embarrass them in connection with such management, and to impede the trustees in the discharge of their duties as such.

Then there is the prayer for the summoning of the four defendants and Mr. Smith, their attorney, to answer for contempt in violation of the injunction.

The Court—Will you please read that prayer. I want to get it before my mind.

Mr. Whipple—Wherefore, The plaintiffs pray that the defendants Dickey, Neal, Merritt, Rathvon, and Knott, together with their agent, attorney and counselor, said Clifford P. Smith, be summoned to the bar of this Court, there to answer for their contempt of this Court in the violation of said injunction.

"The Plaintiffs,  
"By their Solicitors."

Then there is the verification by the three trustees of the averments.

If I may be permitted now to follow the course that I did with regard to the first specification and explain our claim, if it needs explanation. The facts with regard to Mr. McCrackan are substantially these: For some year or so before these happenings, certain conduct of his was called to the attention of the editors which was connected and associated with absences from the office and neglect of his editorial duties. He wanted to stay away and have as much time as possible away from the office where ordinarily he would be expected to be and remain from about 9 o'clock in the morning until some time in the afternoon. But he would get in at a late hour in the morning and come in the afternoon occasionally and then stay only a short time and there was marked neglect of his duty. The trustees of the Publishing Society and the defendant directors conferred together on the subject of McCrackan's conduct. I think the directors called it to the trustees' attention first, although perhaps not. I think Mr. McKenzie, his senior, was the first one to direct attention to it, and the editorial secretary, whose business it was to look after the performance of duties by different employees of the Publishing Society, called it to the attention of the Board of Trustees. The directors were cooperating with the trustees for the best interest of the Christian Science movement. The trustees had always taken that course because they were coordinate boards with co-

ordinate responsibilities and they wanted to function together for the best interests of the movement and therefore they consulted and consulted very freely with each other with regard to anything that concerned the movement. The directors took up the question of the discipline of Mr. McCrackan. They sent to us some excerpts from letters indicating what discipline he was being subjected to and what promises he made and we have summoned their secretary to bring to the court all the correspondence that was held on that subject in order that Your Honor may be advised as to what Mr. McCrackan's position with the situation was. The defendants have an application to make to Your Honor in connection with that correspondence, but it will also appear that the matter of dismissing him was a matter of constant conversation and conference between the directors and trustees. Finally, as it appeared, the trustees, finding that Mr. McCrackan in spite of his promises continued to neglect his editorial duties, sent for him to come before them and state what he had to say with regard to his dereliction of duty. He ignored them entirely. He would not answer their communications. He would not give us the courtesy of a reply. It appears now, although it did not appear then and they knew nothing about it, that he, McCrackan, was writing to the Board of Directors and to Mrs. McCrackan, preparing an ostensible excuse for retirement which he knew had got to come on account of his misconduct.

Having discharged him, the plaintiff trustees notified the directors, as has already appeared, asking for suggestions as to who would be agreeable and whom they would recommend to succeed him, purely as a matter of common interest to get the best man it was possible to procure, and as a matter of courtesy to the directors, who had nothing to do with it and were enjoined from taking any definite action with regard to it, by order of this Court.

As soon as we notified those people that we had dismissed him, they took this action in sending to the newspapers these letters of Mr. McCrackan with their own indorsement; of the fact that Mr. McCrackan had seen fit to resign and for reasons stated here; that he had not been dismissed at all. Now the effect of that upon what is called the Christian Science field is understood by none except by the members of the Christian Science Church themselves. It brought before the field just this information: That Mr. McCrackan, the associate editor, found himself to such an extent in disagreement with the position that had been taken by the trustees that he resigned as associate editor rather than to be further connected with the trustees, who were doing a thing which he could not approve of,

namely: They were permitting their publications to be censored by an attorney or counsel who was not a Christian Scientist, while Mrs. Eddy required that anyone who had anything to do with her publications must be a tried and true Christian Scientist. We will offer evidence as to the effect of that and the communications that the Board of Trustees have had with regard to it. This was done promptly, because otherwise it would appear in the field that Mr. McCrackan had been discharged; of course, and the Board of Directors published this in order to show that he had not been discharged and of course to mislead them into believing that it was a voluntary retirement and in a way to reflect on and discredit the trustees themselves because the trustees had been guilty of such misconduct that Mr. McCrackan could not stay with them any longer—an entirely false and misleading thought sent out to the field.

Now we have asked as a first witness Mr. Jarvis, who I understand is here, and perhaps could go on this afternoon. But I understand he has given up the letters which we have asked him to bring, to counsel. Do you want to make any application in regard to those letters now, Mr. Bates?

Mr. Bates—Not now; no, sir.

The Court—If you will state to me, Mr. Bates, what your application is as to the modification of the injunction.

Mr. Bates—I will read the injunction as modified.

Motion to modify ad interim injunction.

Now come the defendants Adam H. Dickey, James A. Neal, Edward A. Merritt, William R. Rathvon, and Annie M. Knott, and move the Court to modify the ad interim injunction heretofore issued in said cause by adding at the end thereof, after the words and figures "January 25, 1898," the following:

"Nothing herein contained shall be construed as preventing The Christian Science Board of Directors from electing the editors of The Christian Science Journal, the Christian Science Sentinel, Der Herold der Christian Science, Le Héraut de Christian Science, The Christian Science Monitor, and all other Christian Science periodicals published by The Christian Science Publishing Society, and the General Manager of The Christian Science Publishing Society."

By their attorneys,  
BATES, NAY, ABBOTT & DANE,  
CLIFFORD P. SMITH,  
EDWIN A. KRAUTHOFF.

The Court—Now, Mr. Whipple, you may proceed with such evidence as you desire to introduce.

Mr. Whipple—May I remark in passing that if that modification of the injunction were made there would be nothing left for the Board of Trustees to do because the management of the

Publishing Society consists in selecting a business manager and the editors, who are responsible for the conduct of the different publications.

Before interrogating the witness, may I offer this suggestion. While Mr. Dittmore is not involved in this contempt proceeding, he is involved in the question as to the modification of the original injunction, and Mr. Thompson just suggested to me that he might desire either to make a statement or to be heard on that question.

The Court—I will hear him at the proper time.

Mr. Whipple—He is now called away to keep an appointment.

The Court—I will hear him at the close of the evidence.

Mr. Bates—May I make one suggestion to Your Honor. I understood Your Honor to state that there would be no witnesses examined this afternoon unless it was agreeable to both parties. The party whom my brother proposes to call as the first witness is the Clerk of the Board of Directors, and he has been summoned to bring a large number of papers. We haven't had time to examine them as yet, and prefer that he be not heard until tomorrow morning.

The Court—Would that disarrange your order of proof, Mr. Whipple?

Mr. Whipple—Yes, because it is all based on these letters. But I do not want to have this hearing adjourned if I can help it without having Your Honor's assistance with regard to these letters. The letters as we say passed in this McCrackan matter, and they absolutely refute, stultify and contradict the position taken by Judge Smith in this letter he sent broadcast through the field in regard to the reasons for McCrackan's removal, showing the directors absolutely understood the situation in regard to McCrackan and the reasons why he was dismissed, and they deliberately misrepresented the situation to the field. An objection has been made to producing these letters. I suggested yesterday we could save Your Honor's time in letting these letters be put into my hands so that I could examine them and select those which we wished to submit to Your Honor. Quite a bulky lot of letters which amount to nothing whatever were submitted to me. I was frankly told there were letters involving the church discipline of McCrackan and the very things upon which we base this application, but that some of them were personal, of a personal nature, and that they did not desire to let me take them. I asked if they couldn't have them—if they were not the very letters that we had indicated were the letters which would show that the Board of Directors and Judge Smith knew—just exactly the inconsistency that these letters would illustrate—and while I didn't put it in that form Mr. Dane told me in substance they were letters of the character that I felt confident they were, practically knew they were, and therefore if we

could go ahead with Mr. Jarvis sufficiently to raise that question and then submit it to Your Honor for determination, why these letters should not be taken in evidence, I should be glad to do it.

The Court—Have you given notice to the other side to produce certain letters or documents?

Mr. Whipple—I summoned him with them in his possession.

The Court—With a subpoena duces tecum?

Mr. Whipple—Yes, Your Honor.

The Court—Call him. Read the subpoena.

Mr. Whipple—Have you your subpoena?

Mr. Jarvis—No, Mr. Bates has it. [Subpoena handed to Mr. Whipple.]

Mr. Whipple—"To Charles E. Jarvis, Secretary, Hotel Hemenway, Boston. You are hereby required in the name of the Commonwealth of Massachusetts to appear before the Supreme Judicial Court, holden at Boston, within and for the County of Suffolk, on the third day of June, 1919, at 9:30 o'clock in the forenoon, and from day to day thereafter until the action hereinafter named is heard by said Court and give evidence of what you know relating to a petition for contempt, then and there to be heard and tried, between Eustace et als., trustees, plaintiffs, and Dickey et als., defendants. You are further required to bring with you all letters or correspondence or copies of letters or correspondence passing between The Christian Science Board of Directors, or any of them, or their secretary, and one William D. McCrackan, or Mrs. William D. McCrackan, his wife, all memoranda of any description of conversations or otherwise between said directors and said McCrackans, or either of them, and any and all records of any sort or description of any action of said Board of Directors, or any member thereof, in respect to said McCrackans, or either of them, between Jan. 1, 1917, and the present date. Also all letters or correspondence or copies of letters or correspondence passing between said directors, or any or either of them, and the trustees (these are the plaintiffs), The Christian Science Publishing Society, or any or either of them, in relation to said William D. McCrackan between Jan. 1, 1917, and the present date. Also all letters or correspondence, or copies of letters or correspondence, written to any other person or persons, or to each or any of them, or to their secretary or representative . . . and hereof fail not," etc. That was served by Edson T. Minor, constable.

The Court—You may now inquire of the witness.

Charles E. Jarvis, Sworn

Q. (By Mr. Whipple). Will you state your full name? A. Charles Edward Jarvis.

Q. What is your business or occupation? A. Corresponding secretary for The Christian Science Board

of Directors and Clerk of The First Church of Christ, Scientist, in Boston.

Q. How long have you held the former position as corresponding secretary? A. Since June 1, 1916.

Q. Where do you reside? A. Hotel Hemenway, Boston.

Q. Is it a part of your business to transcribe or write letters by direction of the Board of Directors? A. It is.

Q. And has been for the last two years or more? A. Yes.

Q. Do you also receive letters addressed to them? A. I do.

Q. And keep the files in which copies of letters which you send are contained and those you receive, on certain subjects? A. I do.

Q. Have you brought with you in response to this subpoena duces tecum the papers therein enumerated, the correspondence and records therein referred to? A. So far as they were in my custody, yes.

Q. Are you aware of some that were not in your custody? A. No, sir; that is to say—May I explain, Your Honor?

The Court—Certainly.

Q. Let me put the question.

The Court—He wants to explain his answer.

A. I want to say, as I construe it, I am only called to produce here such letters as are written to or from the Board of Directors to any persons bearing on this subject. But I have no knowledge of any letters written by individual directors, personally, which of course would be personal in their nature.

Q. Or any that they have personally received? A. Yes.

Q. Haven't you had certain things in your possession? A. No.

Q. Since that subpoena was served? A. No.

Q. Haven't you seen them? A. Personal letters you mean?

Q. Yes. A. No, sir.

Q. Very well. Let us see what we have.

Mr. Bates—May I interrupt just a moment. I assume Your Honor does not suppose that because I failed to call to Mr. Whipple's attention many statements with which we do not agree, that Your Honor does not therefore assume that we do agree to them. Let me state before Your Honor came in this afternoon I stated to Mr. Whipple that certain letters which he had called for were personal, of such a personal nature as to reflect on the character of a certain party and that they were received by us. We had no objection to Your Honor seeing them, but we question whether or not we had a right to allow those letters, which deal more or less with scandal, to be read in open court. I suggested that we see Your Honor before this session in order that that question might be determined. There is nothing in the letters but what we as parties would be perfectly willing you should read.

The Court—Those letters will be read to the Court and no further publication will be made of them.

Mr. Whipple—We desire nothing that is not pertinent or germane to the issue and absolutely right. If what you say refers to Mr. McCrackan it is a very important matter.

The Court—But I shall not, if there are any matters in those letters that are defamatory or derogatory, while I shall read them myself, they will not be read publicly. Of course, you haven't examined at all or had opportunity to do so, these documents which are produced, and you do not know what they are, do you?

Mr. Whipple—No, Your Honor.

The Court—Now, Mr. Bates, I take it there will be no objection whatever to Mr. Whipple sitting down with Mr. Jarvis and going through these letters.

Mr. Bates—We expected to do this this afternoon. We had not expected to be called into court to go on with the case.

Mr. Whipple—That is what I would like to do.

The Court—Suppose I adjourn until tomorrow morning. You will be prepared to go on in the morning and put in such evidence as you wish. I will adjourn until tomorrow morning, if that is agreeable to you.

[At this point the court was adjourned until Thursday morning, June 5, at 9:30 o'clock.]

## The Petition

The full text of the petition for summons for contempt, referred to in today's proceedings, is given on the following page:

### COMMONWEALTH OF MASSACHUSETTS

Supreme Judicial Court

Suffolk, ss.

In Equity

Eustace et als., Trustees

v.

Petition for summons for contempt against the defendants, Adam H. Dickey, James A. Neal, Edward A. Merritt, William R. Rathvon, and Annie M. Knott, and one Clifford P. Smith agent, counselor, and attorney for said defendants.

The plaintiffs respectfully represent to this Honorable Court that the defendants, Dickey, Neal, Merritt, Rathvon, and Knott and one Clifford P. Smith, have violated the terms of the temporary injunction heretofore issued in the above entitled cause, and as specifications of said violation set forth the following facts:

1. Upon the filing of the bill a temporary injunction was issued, ex parte, and thereafter, upon hearing in open court, continued, which restrained all the defendants, their agents, attorneys and counselors, in the following terms:

"Until said hearing you the said defendant directors, your agents, attorneys, and counselors, and each and every one of them are commanded to desist and refrain from taking any further action intended directly or indirectly to impede or interfere with the plaintiff, Rowlands, or either of the other plaintiffs, in the discharge of his or their respective duties as trustees, under the trust instrument of Jan. 25, 1898; and from carrying out any purpose or plan by either direct or indirect means to compel the plaintiffs or any of them to resign their offices as trustees; to impair, destroy, or in any way injure the business of The Christian Science Publishing Society as conducted by the plaintiff trustees; or in any way to carry out any threat or purpose to injure the business of said Publishing Society, either by creating and maintaining a publishing society to conduct a business in competition therewith, or otherwise; and from taking any action to defeat or tending to defeat the purposes of Mrs. Mary Baker G. Eddy, the Donor, as set forth, and declared in the Trust Deed of Jan. 25, 1898."

Said temporary injunction was thereafter duly served on all the defendants, and its contents made known and fully explained to them by their counsel.

2. Said injunction was granted on the basis of the averments in the plaintiff's bill, which were duly verified by oath, especially upon the following averments appearing in paragraphs 17 and 18 of said bill.

"17. The plaintiffs further aver upon information and belief that it is not a part of the plan of the defendants to appeal to the courts for an order determination of the question of their right to remove the plaintiff trustees under existing circumstances, but that, on the contrary, they propose to accomplish their removal by the exercise of the great and dominating influence which they carry by reason of their official position and in the exercise of their power to dominate and control members of The Mother Church by the powers of discipline which they hold, and to influence the action of other churches by refusals to grant licenses or appointments.

"The plaintiffs believe that the defendants intend thus to make the office of trustees practically untenable by the plaintiffs, or to make the performance of their duties so arduous and disagreeable as thereby to induce their voluntary resignation as trustees and their compliance with the demands which the defendants have made upon them as hereinabove set forth.

"The plaintiffs further aver, upon information and belief, that the defendants have stated to many Christian Scientists in substance that they plan to obtain control of the Publishing Society, or to destroy it; that if the plaintiffs as trustees continue to resist the demands of the directors

and refuse to conform to their will, the directors propose in the terms used by one of them to make the Publishing Society an empty shell, and to accomplish that result by using their great influence with Christian Science churches and throughout the field to induce Christian Scientists not to continue to subscribe for and support the publications published by the society established and founded by Mrs. Eddy, but to subscribe for and support new publications which the directors have threatened, themselves, to publish and issue to take the place of those which the plaintiffs as trustees are now publishing as the duly authorized and accredited works of the great Founder and Leader of the Christian Science movement.

"18. The plaintiffs aver that the threat on the part of the directors to injure the Publishing Society and to make the same 'an empty shell' is in effect a threat to use their power as directors to embarrass the plaintiffs in the management of a trust created by Mrs. Eddy and which is being carried out in accordance with her express purposes and desires, as declared in the trust instrument; to defeat the purposes of the Donor of the trust to provide a management and control of the Publishing Society, separate and distinct from the management and control of The Mother Church; to injure and possibly to ruin an enterprise created by the Founder of The Mother Church for its support and for the extension of the Christian Science movement, and utterly destroy the effect of the instrument which conveyed to the trustees the property which they hold upon a 'perpetual and irrevocable trust and confidence,' thus to destroy what is believed by all true Christian Scientists to be a sacred trust created by the Founder and great Leader of all Christian Science churches and the world-wide Christian Science movement."

Said injunction was intended to prevent the said defendants from carrying out the scheme which they had prepared and which is set forth in said paragraphs of discrediting the plaintiffs in the performance of their duties as trustees from carrying into effect the threats averred in the bill to have been made, and to prevent said defendants from interfering in any way with the management by the plaintiffs of the business of the Publishing Society as they are rightfully managing the trust under the terms of the deed creating the trust, or from doing threatened injury to the business of said Publishing Society.

3. Since the granting of said injunction, the said defendants (by which term as hereinafter used is meant all the defendants except Dittmore) have insisted upon doing the things which they have claimed that they had theretofore been in the habit of rightfully doing, which said bill was aimed to prevent, and which said

defendants were forbidden doing by the terms of said injunction. Said defendants in various ways have thus, and otherwise, interfered with the management by the plaintiffs of the business of the Publishing Society under and in accordance with the terms of the Deed of Trust under which they derive their authority. Said defendants have from time to time asserted their purpose and intention of continuing to manage and control certain of the affairs of said Publishing Society in derogation of the authority of the plaintiffs, and have both promoted and permitted the active spread of propoganda by which they have threatened and intended to embarrass and interfere with plaintiffs, as set forth in the plaintiffs' bill.

4. As specific examples and illustrations of said conduct in violation of said temporary injunction, the plaintiffs set forth the following facts:

(a) By reason of the neglect of duty and unsatisfactory conduct of one William D. McCrackan, an employee of the plaintiffs as an associate editor of the Christian Science Sentinel and Christian Science Journal, the plaintiffs on May 19 dismissed said McCrackan from their service in a telegram reading as follows:

"May 19, 1919.

"Mr. William D. McCrackan,

"The Commodore,

"Forty-Second Street and Lexington Avenue, New York City.

"In view of your letter of April 22, written to Mr. McKenzie and your continued absence from the office, the trustees suspended you as associate editor and omitted your editorials, and in view of your conduct your services are discontinued as of today.

"BOARD OF TRUSTEES."

Said dismissal followed and was in a measure the result of complaints with reference to said McCrackan which had been previously discussed between the defendants and the plaintiffs, and was on account of conduct and other reasons fully known to the defendants.

On the day following the dismissal of said McCrackan, the plaintiffs notified the defendants of their action in a letter reading as follows:

"May 20, 1919.

"The Christian Science Board of Directors,

"Falmouth and St. Paul streets,

"Boston, Massachusetts.

"Dear Friends:

"The continued absence of Mr. McCrackan and his neglect of his duties in connection with his position as associate editor made it necessary to discontinue his services and omit his further editorials. Consequently, Mr. McCrackan's services were discontinued yesterday.

"It will, of course, be necessary for the trustees to employ another asso-

ciate editor, and we are now giving consideration to the subject. If you have any recommendations to make in connection with such appointment, and can furnish us the names of those who you think could serve in this position acceptably, and for the promotion of Christian Science, we shall be glad to have you furnish us with the names as early as practicable.

"With best wishes,

"Sincerely yours,

"BOARD OF TRUSTEES.

(Signed)

"HERBERT W. EUSTACE,

"Secretary."

Thereupon, on the following day, the defendants took action in the matter of electing a successor to said McCrackan, and notified the plaintiffs thereof in the following letter:

"May 21, 1919.

"Board of Trustees,

"The Christian Science Publishing Society,

"107 Falmouth Street,

"Boston, Massachusetts.

"Dear Friends:

"The Christian Science Board of Directors instructs me to acknowledge with thanks the receipt of your favor of May 20 and to make the following reply.

"Under the provisions of Article I, Section 3, and Art. XXV, Sec. 4 of the By-Laws of The Mother Church, the directors are charged with the responsibility of electing the editors of the Christian Science periodicals.

"Basing their action on the established custom inaugurated by our Leader, Mary Baker Eddy, which has never been questioned, but which has been accepted by the Christian Science movement since the establishment of the trust, the directors will be prepared to elect a successor to Mr. McCrackan on June 2 and will take pleasure in giving you due notice of such election.

"The directors trust that you will appreciate the propriety of the position taken by them under the Manual and will be guided accordingly.

"With kind regards,

"Sincerely yours,

"(Signed) CHARLES E. JARVIS.

"Corresponding Secretary for the Christian Science Board of Directors.

"CEJ-L"

The action of the defendants and the notice thereof are a deliberate and purposeful interference by the defendants with the management by the plaintiffs of the affairs of the Publishing Society, the employment of editors and other officials, and therefore in violation of the terms of the injunction of this Honorable Court, and the result of said action is to discredit the plaintiffs and embarrass them in the performance of their duties.

(b) On May 21st, current, the defendants through said Clifford P. Smith, their attorney of record and counselor and agent, attempted to have sent out for publication in newspapers circulating in the city of Boston a letter, a copy of which is given hereunder. Some of said newspapers published parts thereof, and others declined to publish any part thereof.

"Committee on Publication of The First Church of Christ, Scientist, 236 Huntington Avenue, Boston, Massachusetts.

"To the Editor of The Boston Herald:

"There is a special reason just now why editors and readers of newspapers should be cautious about accepting stories pertaining to Christian Science affairs. A very active propoganda is in operation against the government of The First Church of Christ, Scientist, in Boston.

"The report that when Mrs. Annie M. Knott resigned her position as one of the editors of the Christian Science periodicals to become a member of the Christian Science Board of Directors, the board 'found much difficulty in getting some one to take her place' is not true. Mrs. Knott resigned on the 19th of March. Her successor, Mrs. Ella W. Hoag, was elected on the 24th of March. She was the directors' first and only choice for this position, and she accepted it immediately when it was offered to her.

"Another mistaken report relates to the reasons why Mr. William D. McCrackan has declined reelection as one of the editors of the Christian Science periodicals. His actual reasons are shown by the following letters:

"P. O. Box 32, Fenway Station,

"Boston, Mass., May 18, 1919.

"My dear Judge Smith:

"I am sending you copies of two letters, one to Mr. McKenzie dated April 22 and the other to our directors dated May 1st.

"I want you to have the exact facts in regard to my position as editor. In case any false statements are printed I leave it to you as Committee on Publication to make the necessary corrections.

"Faithfully,

(Signed) "W. D. McCrackan."

"April 22, 1919.

"My dear Mr. McKenzie:

"I am forwarding to you my editorial which is due on Thursday, April 24.

"Since the trustees of the Publishing Society have taken to censoring the Sentinel and the Journal upon advice of counsel, what is happening is that their counsel are finally determining the nature of the articles and editorials for those periodicals. It is sufficient to recall among other instances that the trustees' counsel caused to be erased from an article the second verse of the good old hymn, "Onward, Chris-

tian Soldiers," and from an editorial a statement by Mrs. Eddy concerning the Manual which she framed for her own church. This produces an intolerable situation. In justice to my service to the Christian Science field I cannot be a party to this method of making up our periodicals.

"Under these circumstances I shall continue to send my editorials, but shall take no part in selecting and correcting articles.

"With all good wishes,

"Faithfully,

(Signed) "W. D. McCrackan."

"May 1st, 1919.

"Dear Directors:

"The time approaches when you will be called upon to make your annual appointments of editors of the Christian Science Sentinel, The Christian Science Journal, Der Herold, and Le Héraut. If my name should come up for reappointment, let me say that when I took office in 1916 I felt that three years would constitute a full rounded term of service for me as an editor. I have seen no reason to change my views. I served three years as Committee on Publication for the State of New York and three years as First Reader of The Mother Church. At the coming annual meeting I shall have served three years as associate editor. It is now my desire to take up other branches of Christian Science work at the close of my term.

"I am sincerely appreciative of the opportunities for good which the three annual appointments by the board have meant for me.

"With best wishes,

"I remain faithfully yours,

(Signed) "W. D. McCrackan."

"On account of the suit brought by the Board of Trustees of The Christian Science Publishing Society, the Christian Science Board of Directors is not responsible for the censoring to which Mr. McCrackan took exception.

"Sincerely yours,

(Signed) "CLIFFORD P. SMITH.

"Committee on Publication of The First Church of Christ, Scientist.  
"Boston, Massachusetts,  
"May 21, 1919."

Said letter was published and sent out by the defendants, with the purpose on their part to mislead the public and those interested in the Christian Science movement as to the circumstances under which said McCrackan's services were discontinued. The defendants knew at the time of putting out said letter that said McCrackan had been dismissed from the service of the Publishing Society by the trustees, and were fully informed as to the valid reasons which led the trustees to take such action.

The defendants and their attorney also knew, or in the exercise of reasonable diligence would have known, that the statements in said McCrack-

an's letter of April 22 to which they gave currency, to the effect that plaintiff's counsel had caused to be erased a certain part of the hymn, "Onward, Christian Soldiers," and had also caused to be erased from an editorial a statement by Mrs. Eddy concerning the Manual, and that such alterations in editorials were the cause or reason for the retirement of said McCrackan as an associate editor, and that said McCrackan resigned as associate editor and was not dismissed, were entirely false and without foundation.

Said letter was sent out for publication by the defendants, intending thereby to give a false and misleading impression and understanding as to the reason or reasons why said McCrackan retired from the service of the plaintiffs and as to the circumstances of his dismissal, and for the further purpose of thereby discrediting the plaintiffs as trustees in their management of the affairs of the Publishing Society, and to interfere with and embarrass them in connection with such management, and to impede the trustees in the discharge of their duties as such.

Wherefore, The plaintiffs pray that the defendants Dickey, Neal, Merritt, Rathvon, and Knott, together with their agent, attorney, and counselor, said Clifford P. Smith, be summoned to the bar of this Court, there to answer for their contempt of this Court in the violation of said injunction.

The plaintiffs,

By their solicitors,

We, the petitioners named in the foregoing petition in equity, hereby certify that we have read the petition, that the statements therein contained which are made upon knowledge are true, and those made upon information and belief we believe to be true.

Commonwealth of Massachusetts  
Suffolk, ss.

Personally appeared the above named Herbert W. Eustace, David B. Ogden, and Lamont Rowlands and made oath that the foregoing statement by them subscribed is true, before me

Justice of the Peace.

June 5, 1919

Boston, June 5, 1919.

## SECOND DAY

The Court came in at 9:30 o'clock.

CHARLES E. JARVIS, resumed  
DIRECT EXAMINATION CONTINUED

Q. (By Mr. Whipple.) Mr. Jarvis, have you with you the records which are kept of what transpires before the Board of Directors? A. I have.

Q. Will you produce those records? A. I have correctly compared excerpts here, and the originals of the books and records are within the rail.

Q. You mean you have prepared excerpts of all the records, or merely

records that have to do with the McCrackan matter? A. I have prepared excerpts that have to do with the McCrackan matter from Jan. 1, to date.

Q. If you have compared them and know that they are accurate— A. I have.

Q. I am content with Your Honor's approval to take the copies. Will you let me take them?

[Excerpts handed to Mr. Whipple.]

Mr. Bates—Call attention to the fact that it is Jan. 1, 1918.

Mr. Whipple—No. It is Jan. 1, 1917, but I think there are a great many things that have to do with the selection of Mr. McCrackan as an officer of the Church.

Q. Let me ask you whether during 1917 Mr. McCrackan's business being associate editor of certain Christian Science publications, he was not the First Reader of The First Church of Christ, Scientist? A. He was at different periods. He served as temporary First Reader, or substitute First Reader.

Q. Can you tell us during what time he served as temporary First Reader? A. I could only tell you by referring to the minutes.

Q. I do not care for it exactly. When was it and was it for a substantial period? You may state when he was selected as temporary First Reader. A. At a regular meeting—

The Court—You need not go into all that; just answer the question.

Q. Just the date. A. June 25, Mr. McCrackan was asked to serve as temporary First Reader.

Q. What year? A. 1917.

The Court—That answers the question.

Q. How long did he continue as temporary First Reader? A. On the date just stated he was asked—

The Court—You did not understand what the Court said. Answer the question only, please. Read the question again.

Q. How long did he continue as temporary First Reader? A. Aug. 13 to Sept. 1, both inclusive.

Q. Did he serve as First Reader after that, either in 1917 or 1918? A. Apparently not.

Q. Now he was elected at some time as President of The Mother Church, was he not? Will you state when he was elected and how long he served within these dates that I am inquiring? A. June 4, 1917, Mr. McCrackan was elected President of The Mother Church for the ensuing year.

Q. I did not get the year. A. 1917.

Q. Was he elected as President in 1918, reelected? A. No, sir.

Q. But he served that year as President? A. Yes.

Q. What is the office of First Reader? What are the duties of that office? A. He shall conduct the regular Sunday and Wednesday evening meetings of The First Church of Christ, Scientist.



Q. That is, he read the sermons, did he? A. Yes.

Q. And conducted the religious meetings?

The Court—Do you yourself know the duties of that office, substantially?

Mr. Whipple—No, I am sorry to say I do not.

The Court—The object of my inquiry was to suggest that if you did you may lead the witness.

Q. It was the duty of that office to conduct the meetings, read the sermons, and conduct the religious exercises? A. Yes.

Q. What were the duties of the President of The Mother Church. A. After the opening exercises of the annual meeting, immediately following his election as President he presided for the remainder of that meeting. At the annual meeting a year hence he opened the meeting and delivered his remarks and gave way to his successor.

Q. He read at those meetings, or one of them—he read at one of those meetings a speech prepared by himself and submitted to the directors for their approval; is that correct? A. Yes, sir.

Q. At which meeting does the President of The Mother Church read this annual address, the one when he is elected, or the one following that? A. At both of those meetings.

Q. Mr. McCrackan served on both of those occasions? A. He did.

Q. Governor Bates gave me some correspondence with regard to Mr. McCrackan, and I will ask you if this letter purporting to be from the corresponding secretary for the Christian Science Board of Directors to Mr. William D. McCrackan in Tamworth, New Hampshire, dated July 23, 1918, is a copy of a letter which was actually sent?

The Court—Do you make any question whatever as to these copies, Mr. Bates?

Mr. Bates—No, Your Honor.

The Court—You may read them without further verification.

Mr. Bates—I think that letter is one of those of the character I mentioned to you yesterday.

The Court—Mr. Whipple, if you will please have this marked. I understand there are some phrases in it which I ought to read which ought not to be read publicly.

[Letter marked Exhibit 1.]

The Court—I see in the margin on the last page there is a stamp in red. It is a part of the exhibit, it says, "This letter read August 15, 1918, Christian Science Board of Directors."

Mr. Whipple—May I call Your Honor's attention also to the stamp on the front. It is apparently the habit whenever a letter or rather a communication comes up before the Board of Directors and is read to stamp that paper to show when it was before the board for discussion. This letter was read Aug. 13, 1918.

The Court—Who is the corresponding secretary?

Mr. Whipple—Mr. Jarvis, who is on the witness stand.

Q. Will you tell me in whose handwriting this memorandum is in pencil, "5 copies made for directors, July 24, 1918, L."?

A. That of Miss Esther Lowe, the stenographer in my office.

Mr. Whipple—I call attention to this because these are referred to later.

I now offer the reply which is on a heading, "Fenway Station, P. O. Box 32, Boston, July 29, 1918."

The Court—Pass it to me after having it marked.

[Letter marked Exhibit 2.]

Mr. Whipple—The next paper that we have is a proposed letter. It is headed "Proposed Letter" to Mr. Allison V. Stewart.

Mr. Bates—Don't you think I ought to see those before you state them?

Mr. Whipple—Let me give the date, dated Aug. 14, 1918, purporting to be prepared for the signature of the corresponding secretary for The Christian Science Board of Directors. The letter which was actually sent, apparently from the record, is dated the next day. But since the question of these letters is merely to show what was in the mind of the directors, what they knew, what their position was, this declaration which was not sent to Mr. McCrackan we deem quite as important as anything that went out. It is on that ground that we offer it.

Mr. Bates—I object to it. As a matter of fact it was not sent. It was a draft prepared by somebody, but as to who made it or what authority there was for it there is no evidence. The actual letter that was sent, the next day, we have no objection to.

Mr. Whipple—I will find out the authority for it. I am offering this to show what knowledge and information was in the directors' control in their hands.

Q. I show you a letter, or a proposed letter which I just described; who drafted it, if you know? A. I could not say.

Q. From whom did it come into your possession? A. From Mrs. Allison V. Stewart.

Q. And who is Mrs. Allison V. Stewart? A. Widow of the late Director Allison V. Stewart.

Q. When did it come into your hands? A. Within the last two months, I should say, shortly after Mr. Stewart's demise.

Q. Was Mr. Stewart a director on Aug. 14, 1918? A. He was.

Q. Had you ever seen this paper or one similar to it prior to two months ago? A. Yes.

Q. Where had you seen it? A. Presumably in my office, in my capacity as corresponding secretary.

Q. When? A. On or about Aug. 14, 1918.

Q. How did it come to your hands then? A. As a memorandum, dic-

tated or given to me by one or more of the directors.

Q. Which one or more? A. I could not say.

Q. But it came to you as one of the official notes of the Board of Directors? A. One of the memoranda prepared by them or some of them; a tentative memoranda on which a letter was to be based.

The Court—Directed to whom?

A. Mr. McCrackan.

Q. And this is one, apparently of the five copies that were prepared for the directors at that time? A. Yes, sir.

Q. What became of the one that was given you? A. I cannot say because the letter which was finally sent—

Q. That answers the question, it is merely that you cannot say? A. No.

Q. But you have no doubt this is one of five that were prepared, one for each member of the Board of Directors, on or about Aug. 14, 1918? A. Yes.

Q. Dealing with this same subject matter? A. Yes.

Q. And a letter was prepared and actually sent based upon this memorandum? A. To a certain extent, yes. In other words this was revised into the letter that was finally sent.

Mr. Whipple—Now, if Your Honor please, I should like to offer it. You have seen it, Governor Bates?

Mr. Bates—I have seen it.

[Letter marked Exhibit 3.]

Q. Now have you a memorandum of the action of the Board of Directors with regard—

The Court—May I interrupt, just a moment to see that I am getting the connection. I have it; go on.

Q. Have you a memorandum or a record from the Board of Directors as to these letters? Take the first one which was July 23, look at your record for that day or the day preceeding? A. Yes.

Q. May I see it? A. Certainly.

Mr. Whipple—I would now like to offer, if Your Honor please, the record of a motion on July 8, 1918, which will show the action of the directors which led up to the sending of this letter and the knowledge which they had; also one of July 9, 1918—if Your Honor will indulge me just a moment. I have never seen this and I would like to see if they are material. Yes, I should like to offer those.

Now may I have Your Honor's direction. These excerpts or copies which I desire to put in are not all on one page, shall I have them each excerpt separately?

The Court—Marked as one exhibit.

Mr. Whipple—Will you take that page out, please.

Mr. Jarvis—Beginning with what date, please? Q. Begin with July 18, 1918.

Mr. Whipple—Then if Your Honor will indulge me just a moment I will read the rest of the page. I will offer

this page, which contains references to Mr. McCrackan, the McCrackan matter under date of July 8, July 9, July 17, and July 18, 1918.

[Four papers marked Exhibit 4a, 4b, 4c, 4d.]

The Court—The exhibit which you have now put in does not contain the final action of the board?

Mr. Whipple—No, Your Honor, it is what led up to this correspondence which we have already put in. Now I will offer the next sheet, or that part of it which gives the record of the meeting of July 23, Aug. 1, Aug. 13, and Aug. 15, with the exception of a—well, I see no objection to the protest of Mr. Dittmore going in; that will carry it over on to the next page. It will also include the record of Aug. 19, Aug. 26, Aug. 28, and Aug. 29. Just as far as that.

I will reserve, if I may, the balance of these which as I run my eye over them do not seem to affect the question before us. These four sheets then are marked Exhibit 4a, 4b, 4c, and 4d. And I have indicated in the record the parts of them which I offer in evidence. Shall I hand these succeeding sheets to Your Honor?

The Court—No, it is not necessary.

Mr. Whipple—I now offer a copy of a letter dated Aug. 15, from the corresponding secretary to Mr. McCrackan; it is stamped in red, Aug. 26, 1918, as read Aug. 26, 1918, Christian Science Board of Directors. That is the next letter in the chronology of the correspondence between the Board of Directors and Mr. McCrackan.

I offer next the reply of Mr. McCrackan addressed to Mr. Jarvis, dated Aug. 19, 1918.

[Letter marked Exhibit 6.]

Mr. Whipple—The next letter in the chronology is a letter from Mr. McCrackan, dated Aug. 23, addressed to Mr. Jarvis, the corresponding secretary, and is a further reply to the letters of the Board of Directors.

The Court—When was the vote of deposition passed?

Mr. Whipple—May I make it clear. The directors never deposed Mr. McCrackan.

The Court—Never passed such a vote?

Mr. Whipple—The trustees who were during all this period cooperating with the directors, dismissed him in the May following. This matter was patched up for a time, hoping for better conduct on the part of Mr. McCrackan, and by cooperative consent on the part of the trustees.

[Letter marked Exhibit 7.]

Mr. Whipple—Would it be in order for me to suggest at this time there are two questions pending, not merely the question whether Mr. McCrackan might appropriately continue as an associate editor, but there was a question of the Church discipline with which only the directors could deal, and the matter of dealing with it was

turned over to the directors for that reason, and it is that aspect of it that was dealt with by the directors alone.

The next is a copy of the reply of the directors, dated Aug. 30, 1918.

[Letter marked Exhibit 8.]

Mr. Whipple—That concludes this episode of correspondence, and I am now requested by Mrs. Windsor to have the direction of the Court as to how to deal with the record in respect to these letters. Ordinarily they would be transcribed in the record, but there has been an arrangement which was discussed before Judge Dodge which was supposed to obtain in this hearing, whereby the press should have a copy of the record with the authority to transcribe it into the newspapers verbatim, making no comment at all. We are now confronted with the question, or Mrs. Windsor is, as to what should be done, and in that connection, perhaps, I may properly say that while we shall earnestly share in a desire to have nothing appear of record that will necessarily discredit any people, whether involved in the litigation or not, it will be necessary, of course, to examine our witnesses and have them state what they heard in and knew of this matter as bearing upon the question of contempt. The question here as we view it is not for Your Honor to determine the truth or falsity of any charges with regard to Mr. McCrackan; the question as we view it is this: The trustees having acted in regard to Mr. McCrackan on the basis of the information that they received here, and dismissing him from the service as an associate editor, the directors seized the opportunity to publish to the field and publish broadcast, that Mr. McCrackan had retired voluntarily from the Board of Editors because he could not tolerate the action of the Board of Trustees in permitting their publications or editorials to be censored by counsel. We say that there was absolutely no basis for the claim of any such censorship on the part of counsel, and that the whole thing was gotten up to mislead and misrepresent to the field and to discredit the trustees. Now just how far we shall go in our proof as to the actual reasons for the discharge of Mr. McCrackan, we shall want to have Your Honor's direction. We have, of course, got to offer some evidence on it, and I merely offered that suggestion at this time that Your Honor might have it in mind, in considering what direction shall be given to the stenographer, and I speak of it now because she told me she had to leave in 10 minutes for some one else to take her place because hourly reports are being made.

The Court—You have now introduced evidence of a certain character which was before the board, as I understand it, and I now understand that subsequently, the date does not appear, after this letter which I have just read, the contents of which speak

for themselves, that a vote was passed dispensing with Mr. McCrackan's services.

Mr. Whipple—Before that letter of Judge Smith the vote was passed by the Board of Trustees.

The Court—I am talking about the Board of Trustees.

Mr. Whipple—The directors taking no action, we notified the directors about it.

The Court—Have you put that vote in?

Mr. Whipple—We were coming to that next.

The Court—You may put the vote in.

Mr. Whipple—May I put in the correspondence that led up to it, to make the record chronologically accurate?

The Court—If it is material.

Mr. Whipple—I think Your Honor will think it is.

The Court—Suppose this board, acting within the powers alleged in the bill which I told counsel last night is the law regarding this hearing, had removed Mr. McCrackan without assigning any cause at all. What remedy would he have had?

Mr. Whipple—Mr. McCrackan would have had no remedy. But the trustees might well have been subjected by their own action to the serious criticism of the Board of Directors and the Christian Scientists throughout the world.

The Court—That is wholly immaterial. I am not dealing with the criticism within this organization; I am dealing with the law. Having that power they could exercise it. They could exercise it arbitrarily; they could exercise it unjustly. This case is: This board having jurisdiction has acted, discharging him, and then followed what you said yesterday would be put in evidence on the part of these respondents. I am to determine if what they did after your board acted, is in violation of the terms of this injunction which is based on the bill. That assumes, as it must, that all the allegations of the bill as to your powers are correct.

Mr. Whipple—I will offer this copy of a telegram that the Board of Trustees sent to Mr. McCrackan on May 16. It is: "The trustees desire an interview with you at 2 o'clock Monday afternoon, May 19." Of course we shall offer evidence as to what the interview was.

[Telegram marked Exhibit 9.]

Q. On May 19 the trustees sent this letter to Mr. McCrackan: "In view of your letter of April 22 written to Mr. McKenzie and your continued absence from the office, the trustees suspended you as associate editor and omitted your editorials, and in view of your conduct your services are discontinued as of today."

The Court—Gentlemen, do you wish these exhibits copied into the record?

Mr. Bates—No, Your Honor, my brother's statement in regard to the agreement as to publishing the pro-

ceedings in the main case does not, I think, apply to this hearing. I do not think these letters, being of a private nature, should be published.

The Court—I should not allow certain of them to be published in the record.

Mr. Whipple—I do not intend to suggest that there was any agreement that covered this matter, I merely indicated what we expected to do.

The Court—There is no criticism about it. The stenographer asked if she should put them in. I told her no, unless counsel desired it.

Mr. Whipple—If Your Honor please, the letter of April 22, from Mr. McCrackan to Mr. McKenzie, which is referred to in that telegram, comes in in another connection and is copied verbatim in the petition, but I will offer it at this time.

The Court—It is in the petition, is it? If so, you may put it in.

Mr. Whipple—I will offer it as the letter referred to, which was called to the attention of the trustees.

Mr. Whipple—Mr. McCrackan wrote a letter to the Board of Trustees under date of May 17 in reply to their telegram, that should have gone in before the next telegram did, but it may be marked in order.

Mr. Bates—Let me see that, Mr. Whipple, please. (The letter is handed to counsel.) There is no reason why that should be read into the record.

Mr. Whipple—Every reason why it should. This is a copy, if Your Honor please, and at the head has this legend:

Exhibit 12

"Regular Address, P. O. Box 32  
Fenway Station, Boston, Mass.

"The Commodore,

"Forty-Second Street and  
Lexington Ave., New York.

"May 17, 1919.

"To the Board of Trustees of The  
Christian Science Publishing Society.

"Dear Friends:

"In reply to the 'confirmation copy' of your telegram of May 16th, which reached me by mail, let me say that I do not expect to be in Boston on the date mentioned in your telegram.

"Faithfully yours,

(Signed) "W. D. McCrackan,

"P.S. If the subject of the desired interview concerns my reappointment as associate editor, let me say that on May 1st of this year I wrote to our directors that if my name came up for reappointment, when I took office in 1916 I felt that three years would constitute a full rounded term of service for me, and that I have seen no reason to change by view.

"W. D. McC."

Mr. Whipple—Mr. Bates wants me to read the letter of April 22d, if Your Honor please, which I put in as incidentally referred to in the telegram. This is it:

"April 22, 1919.

"My Dear Mr. McKenzie:

"I am forwarding to you my editorial which is due on Thursday, April 24.

"Since the trustees of the Publishing Society have taken to censoring the Sentinel and the Journal upon advice of counsel, what is happening is that their counsel are finally determining the nature of the articles and editorials for those periodicals. It is sufficient to recall among other instances that the trustees' counsel caused to be erased from an article the second verse of the good old hymn, 'Onward, Christian Soldiers,' and from an editorial a statement by Mrs. Eddy concerning the Manual, which she framed for her own church. This produces an intolerable situation. In justice to my service to the Christian Science field I cannot be a party to this method of making up our periodicals.

"Under these circumstances I shall continue to send my editorials, but shall take no part in selecting and correcting articles.

"With all good wishes,

"Faithfully,

(Signed) "W. D. McCrackan."

That I have already read and then called attention to the fact that it was in no sense a resignation, but was merely dictating a limitation of his own duties.

The suggestion has been made that we put in the reply which Mr. McKenzie, the editor, sent to Mr. McCrackan, dated April 26, and I think it does bear upon the situation, or may.

Mr. Bates—Will you let me see that? (Examining letter.) All right.

[Letter, William P. McKenzie to W. D. McCrackan, dated April 26, 1919, is marked "Exhibit 13."]

Mr. Whipple—The editor-in-chief replied to Mr. McCrackan on April 26, as follows:

Exhibit 13

"April 26, 1919.

"My Dear Mr. McCrackan:

"I was relieved to get your editorials Thursday for you had then been absent for a week from your office without explanation. Your mail was accumulating without any instructions in regard to forwarding, and I was wondering what was the matter. Please let the department know what you wish done in regard to readdressing or forwarding mail.

"You propose now sending editorials, but not to share in editorial work of selecting and approving articles for use in the periodicals. An arrangement something like this prevailed at the time I was called to fill the vacant place of editor, but the basis on which you were excused from this work then was temporary inability to perform the duties involved. I think you have viewed this work of editing articles and testimonials too much in the light

of drudgery, for you have always seemed reluctant to do it. Yet it is necessary if the periodicals are to be issued. I regret your decision not to do in full the work which may be legitimately expected from an associate editor. I believe that this work well done will be helpful to the field.

"With best wishes,

"Yours very sincerely,

"EDITOR.

"Mr. William D. McCrackan,

"Box 32, Fenway,

"Boston, Massachusetts."

I am using only a copy. It was signed by Mr. McKenzie, editor-in-chief. This was addressed to Box 32, Fenway, Boston, Massachusetts.

Now, if I may offer, in chronological sequence, the letter of the trustees to the directors, dated May 20, 1919, informing them, the directors, what they, the trustees, had done—the action they had taken.

The Court—I have already said, Mr. Whipple, what I thought the law was in this case and what I should rule.

Mr. Whipple—Yes, Your Honor.

The Court—If you think that letter has any possible bearing upon the issue I am trying you may put it in.

Mr. Whipple—Yes, Your Honor. If Your Honor will indulge me, I will, because it was followed up by the action on the part of the directors of which we complain.

The Court—Action of the directors in what particular?

Mr. Whipple—In publishing what they did publish in the newspapers about Mr. McCrackan.

The Court—Do you mean this letter, then, was notice to the board of what you had done?

Mr. Whipple—Yes, Your Honor, that is just the point.

The Court—Very well.

Mr. Whipple—So that they knew that Mr. McCrackan had been dismissed.

The Court—And not a letter in any way recognizing their power to interfere with what you had done?

Mr. Whipple—Not the slightest, no, Your Honor.

The Court—Very well.

Mr. Whipple—Or authorizing any statement to the public different from what the facts were.

The Court—You may read it.

[Letter, trustees to the directors, dated May 20, 1919, is marked "Exhibit 14."]

Exhibit 14

"May 20, 1919.

"The Christian Science Board of  
Directors,

"Falmouth and St. Paul Streets,

"Boston, Massachusetts.

"Dear Friends:

"The continued absence of Mr. McCrackan and his neglect of his duties in connection with his position as associate editor made it necessary to

discontinue his services and omit his further editorials. Consequently Mr. McCrackan's services were discontinued yesterday.

"It will, of course, be necessary for the trustees to employ another associate editor, and we are now giving consideration to the subject. If you have any recommendations to make in connection with such appointment, and can furnish us the names of those who you think could serve in this position acceptably, and for the promotion of Christian Science, we shall be glad to have you furnish us with the names as early as practicable.

"With best wishes,

"Sincerely yours,

"BOARD OF TRUSTEES.

(Signed)

"HERBERT W. EUSTACE,  
"Secretary."

That was acknowledged on May 21 in a letter which is in the petition, set forth in full, and which has been read, which I will ask to have marked.

[Letter, Charles E. Jarvis, corresponding secretary for The Christian Science Board of Directors, to the Board of Trustees, dated May 21, 1919, is marked "Exhibit 15."]

Mr. Whipple—May I read that again, in the chronological sequence?

The Court—No, I don't think you need to, because I heard it read in the original petition.

Mr. Whipple—That is the letter on the basis of which we claim the contempt. I now desire to offer the record of the Board of Directors with regard to this reply to the trustees. It is as follows, and perhaps it had better be in the record instead of marking it.

[A copy of an extract from the Board of Directors, dated May 20, 1919, is marked "Exhibit 16."]

Exhibit 16 -

May 20, 1919.

Proposed reply to Mr. William D. McCrackan's letters to the board of May 1 and May 17 was read, revised, and referred back to corresponding secretary for further revision.

A letter was read from the trustees of The Christian Science Publishing Society dated Boston, May 20, with respect to the retirement of Mr. McCrackan and requesting recommendations as to his successor. Referred to counsel.

The Court—What is the date of that?

Mr. Whipple—May 20, the same day we wrote the letter; and the letter, as I have already pointed out, which was received, was on May 21, after our letter had been referred to counsel.

I will also now offer a memorandum of May 21, which shows the genesis of the letters which were published in the newspapers.

The Court—A memorandum of what?

Mr. Whipple—Of a meeting of the Board of Directors. It is as follows:

"April 21, 1919.

"Letters were read from the following:

"Letters from Mr. McCrackan (1) to Judge Smith dated May 18; (2) to Mr. McKenzie dated April 23, and (3) May 1 to the Board of Directors in connection with his retirement from the position of associate editor were submitted by Judge Smith and approved for publication in reply to the article about Mr. McCrackan in the Boston Herald of even date.

"On motion of Mr. Merritt, seconded by Mrs. Knott, it was voted to authorize the manager of the Committee on Publication to order 1000 copies of the Boston Traveler of even date containing the reply to Mr. McCrackan's story in this morning's Herald."

Mr. Whipple—That will be Exhibit 17.

[Memorandum of May 21, from records of Board of Directors, as above, is marked "Exhibit 17."]

Mr. Whipple—Now, Mr. Jarvis, if you will take the stand again.

Q. Mr. Clifford P. Smith has been mentioned as a Committee on Publication. A. Yes, sir.

Q. He constitutes the committee, does he? A. He is manager of Committees on Publication.

Q. The manager; and as such is under the direction of the Board of Directors? A. Yes, sir.

Q. They are immediately his superiors? A. Yes, sir.

Q. And he acts under their direction? A. Yes, sir.

Q. He has also acted as counsel for the board, has he not? A. He has.

Q. He is mentioned in these different memoranda as counsel to whom various communications are referred. A. Yes, sir.

Q. And he is the gentleman referred to as Judge Smith, to whom the question of the publication of these McCrackan letters was referred. A. Yes, sir.

Q. And the gentleman who subsequently sent them to the newspapers? A. Yes, sir.

Q. Do you know to how many newspapers he sent those communications? A. I do not.

Q. I beg pardon? A. I do not.

Q. Where were these newspaper communications prepared—in your office? A. No; in Judge Smith's office.

Q. He has an office in your building? A. No, sir; at 236 Huntington Avenue.

Q. In immediate connection with the Board of Directors? A. Yes.

Q. And counsel of the board, or adviser of the board? A. Yes, sir.

Mr. Whipple—We offer an original letter from Clifford P. Smith, Committee on Publication of The First Church of Christ, Scientist, dated May 21,

1919, addressed to the editor of the Boston Herald. It is on the heading of the Committee of Publication of The First Church of Christ, Scientist, 236 Huntington Avenue, Boston, Massachusetts, and evidently is the letter which was authorized by the directors on May 21 in the vote read in Exhibit 17. (To Mr. Bates.) You have seen this, I take it?

Mr. Bates—Isn't this the one that was published?

Mr. Whipple—Yes; well, it is published in part; it has never been published anywhere in full. I don't understand, although I am informed that it was sent to all the newspapers with the request that they publish it in full; some did and some did not.

Mr. Bates—Well, if you have any evidence of that kindly put it in the regular way.

Mr. Whipple—Do you deny that it was sent to all the Boston papers?

Mr. Bates—I do not know.

Mr. Whipple—And the Associated Press.

Mr. Bates—I do not know. I object to your making a statement without asking some witness in regard to it.

The Court—Mr. Clerk, get me the petition for contempt in this case. (The petition is handed to the Court.)

Mr. Bates—I am informed that it was not.

The Court—Go on, Mr. Whipple.

Mr. Whipple reads the following:

"To the Editor of the Boston Herald: "There is a special reason just now why editors and readers of newspapers should be cautious about accepting stories pertaining to Christian Science affairs. A very active propaganda is in operation against the government of The First Church of Christ, Scientist, in Boston.

"The report that when Mrs. Annie M. Knott resigned her position as one of the editors of the Christian Science periodicals to become a member of the Christian Science Board of Directors, this board 'found much difficulty in getting some one to take her place' is not true. Mrs. Knott resigned on the 19th of March. Her successor, Mrs. Ella W. Hoag, was elected on the 24th of March. She was the directors' first and only choice for this position, and she accepted it immediately when it was offered to her."

The Court—Well, that letter is copied, is it not, in the petition for contempt?

Mr. Whipple—Yes, Your Honor.

The Court—You need not read it; I have it before me.

Mr. Whipple—The letter upon which we found our claim.

The Court—Yes, I understand that.

Q. Have you here the records of the directors between March 19 and March 24, with regard to the selection of a successor to Mrs. Knott? A. I have.

Q. Produce them, please. (Record book produced.)

Mr. Whipple—Mr. Jarvis wants to say something to me—asks if it is permissible. I presume he would rather speak to you, Governor.

Mr. Bates—I have no objection to his talking to you.

The Witness—What I would like to say is I only have here the original book of record, and if you have any intention of filing it as an exhibit I would prefer to have copies made and filed.

Mr. Whipple—All right; we will accommodate you in that respect, I am sure; His Honor always does allow that in the case of original records that you do not want to have marked. Let me see the record.

The Witness—Well, not anticipating your question, I am not prepared to quickly give it to you.

Mr. Whipple—All right. Mrs. Knott resigned on March 19 and Mrs. Hoag was elected on March 24. Just let me see what your record is between those dates.

Mr. Bates—Let me ask Your Honor's judgment as to whether or not this is a matter that comes within the specifications?

The Court—I did not quite get you.

Mr. Bates—As to whether this is a matter which comes within the specifications as to the contempt which is alleged to have been committed.

The Court—What do you say, Mr. Whipple?

Mr. Whipple—It is not one of the two matters that we spoke of as illustrative. It is a matter with regard to Mrs. Hoag, regarding whom, if Your Honor will permit it, we desire to offer evidence showing that the directors, right after the injunction, began a violation of it, and we claim that we notified them of that fact but did not deem it of sufficient importance to bring to the attention of the Court.

The Court—I must exclude it.

Mr. Bates—In view of the statement that has been made, may I not also state to Your Honor that this—

The Court—No, it is wholly immaterial. I exclude it. I hold you to nothing except the specifications and the order to show cause for contempt.

Mr. Whipple—Now, then, may I add this suggestion, which perhaps I ought to have added? You see in this letter of Judge Smith's, which was published when he knew with regard to the terms of the injunction, he says this is not true, that is, that this Board of Directors found much difficulty in getting some one to take her place:

"Mrs. Knott resigned on the 19th of March. Her successor, Mrs. Ella W. Hoag, was elected on the 24th of March. She was the directors' first and only choice for this position, and she accepted it immediately when it was offered to her."

I want to examine this record with regard to the accuracy of those statements.

The Court—I do not think that is within your specifications. The other

matter is, beyond any possible question.

Mr. Whipple—We claim that this letter was misleading.

The Court—Undoubtedly. You say it was misleading in a certain particular. I say "undoubtedly" because I have in mind, of course, the frame of this bill, and the evidence which you put in here, until it is controlled. What I said is predicated upon that. This has substantially—a proceeding of this kind—the particularity of specifications in a criminal prosecution, and I shall have to confine you within the specifications.

Mr. Whipple—We accept Your Honor's ruling.

The Court—If you discover anything of importance, that you deem really of importance, I shall allow you, of course, to file a new petition with further specifications.

Mr. Whipple—No; I am content with Your Honor's ruling.

The Court—Very well.

Mr. Whipple—We will have this letter which I started to read marked, which is the basis of the proceeding.

[Letter, Clifford P. Smith to Boston Herald, dated May 21, 1919, is marked "Exhibit 18."]

Mr. Whipple—In the vote which was offered in evidence, which is marked "Exhibit 17," there is a motion of Mr. Merritt to authorize the manager of Committees on Publication—that is, Judge Smith—"to order 1000 copies of The Boston Traveler of even date containing reply to Mr. McCrackan's story in this morning's Herald." I should like to offer that article, which they had succeeded in having published, and of which they had 1000 copies ordered, as we expect to show, for the purpose of circulation among Christian Scientists. Now, there is no need of taking the whole paper.

[Article in Boston Traveler, May 21, 1919, is marked "Exhibit 19."]

Mr. Whipple—The heading is, "McCrackan's Letters Explain His Resignation. Christian Science Editor Declares 'Censoring by Trustees of Publishing Society Created 'Intolerable Situation.'"

"The Committee on Publication of The First Church of Christ, Scientist, today made public three letters to explain the termination of the Rev. William D. McCrackan's connection with the editorial board of the Christian Science publications. One of the letters states the trustees of the Publishing Society, acting upon advice of counsel, created 'an intolerable situation' by 'censoring the Christian Science Sentinel and The Christian Science Journal.'"

"Mr. McCrackan was associate editor of both these publications.

"In the two letters made public the Mr. McKenzie referred to is editor-in-chief of the publications named above. Judge Smith is the Committee on Publication. The letters follow."

And then the letters are given. Then follows this biographical sketch:

"Mr. McCrackan was appointed to the—"

The Court—Now, Mr. Whipple, you need not read that sketch through. By whom is that communication signed?

Mr. Whipple—It says "Judge Smith."

The Court—Judge Smith.

Mr. Whipple—It does not give the whole thing; it gives Mr. McCrackan's letters: You see, they took merely the McCrackan letters. You see the original article is signed by Judge Smith.

The Court—Yes.

Mr. Whipple—They do not print that in full but they summarize it, showing that Judge Smith gave out the letters. Here is what they said—

Mr. Bates—The article which you are reading from is not signed by Judge Smith nor by anyone.

Mr. Whipple—No; but it is based on these letters.

The Court—I understand.

Mr. Bates—That is an entirely different story.

Mr. Whipple—And gives the information that that letter purports to convey, but they do not print it in full.

The Court—I understand your position is that Judge Smith sent this letter to The Boston Herald?

Mr. Whipple—Yes, Your Honor.

The Court—And in consequence of The Boston Herald's receiving that letter it was redrafted more or less and appeared in print?

Mr. Whipple—And in the form in which it is.

The Court—Certainly, and in the form in which it is here; and your argument is, of course, if he had not done it, it would not have appeared in print in the form in which it now appears.

Mr. Whipple—Yes, your Honor; and we call attention to this because it is headed, as he apparently intended it, "McCrackan's Letters Explain His Resignation."

The Court—That does not impress me very strongly. He set the machinery going; that is the point about it, that is what you claim.

Mr. Whipple—Yes, Your Honor.

The Court—And, as you further claim, he set it going in behalf of these respondents.

Mr. Whipple—Yes, Your Honor.

The Court—And with their knowledge and consent.

Mr. Whipple—Yes. We put in their vote.

The Court—Yes.

Mr. Whipple—Which apparently authorized it.

The Court—Yes.

Q. Going back now to the McCrackan letters—and I mean the letters that passed between Mr. McCrackan and the Board of Directors—did the Board of Directors receive letters and communications from different members of the Church and Chris-

tian Scientists on account of which they preferred the charges? A. I do not recall. There may have been one or two such letters.

Q. Do you know upon what information they acted? A. I think possibly upon two letters—

Q. I do not care to go into the possibilities. A. Yes.

Q. Did you hear the discussion? You were present, were you not, to keep the record? A. I am not always present, no, Mr. Whipple.

Q. Well, were you not on these occasions, so that you knew on what information they acted? A. I believe I read to them two letters bearing on the subject of complaints.

Q. Were you made aware of personal interviews which they had with different members of The Mother Church on the basis of which they acted? A. Yes; that came to my attention.

Q. How many different members of The Mother Church appeared before that committee, before the directors, making these charges on which they—

Mr. Bates—I didn't catch, Mr. Whipple, what charges you referred to.

Mr. Whipple—The charges which appear in the letters written to Mr. McCrackan.

Q. How many appeared?

Mr. Bates—I do not think it is material.

Mr. Whipple—I beg pardon?

Mr. Bates—I don't object, but I do not think it is material.

The Court—Well, I want it understood that, while you do not object, I shall not treat it as a basis for you to make any reply to. You understand the situation. Wholly incompetent testimony, wholly immaterial. As I said to you before, Mr. Whipple, whether Mr. McCrackan was all that some of these letters say, or whether, in the performance of his editorial duties, he did not measure up to the standard, is wholly immaterial. Your Board of Trustees had the power to remove him without telling him why or wherefore.

Mr. Whipple—May I address on that point a suggestion to Your Honor which I fear I have not made clear?

The Court—Yes.

Mr. Whipple—As indicating our position?

The Court—Yes.

Mr. Whipple—The question before Your Honor is not altogether as to whether we had the power to remove Mr. McCrackan, as I conceive it to be. The situation is this. These defendants are enjoined by the Court from attempting to interfere or to discredit the trustees in the field, to make them unpopular, to make them lay down the burden which they were carrying simply because they were overwhelmed with criticism on the part of the field. Now what we say is that the very purpose of these letters was not merely to interfere in the actual administration, but was to discredit the trustees with the field. In order to

discharge successfully their duties as trustees for the promotion of Christian Science, it was necessary for them in a measure to deserve, at least, the approval of the Christian Science people among whom they were leaders.

Now, what we charge in the bill is that the directors were planning a campaign so to discredit them with the field as to compel them to resign instead of applying to the courts, and that is one of the very things that they were enjoined from doing—from attempting in any way to discredit and injure the business. We shall show Your Honor a little later that, as a result of this thing that Judge Smith sent to the newspapers, that very thing happened. There was a discontinuance of the publications because they said, in substance, this: If you are permitting, if the trustees are permitting, counsel who are not Christian Scientists to censor the articles which go out to the Christian Science field, we want no more of you—or that in substance.

Now, it is in that aspect, which is beyond the one which Your Honor has so fully expressed and stated—the ground of action on which we offer this evidence—that they were putting out propaganda to discredit the trustees in the field, and that they were enjoined from doing it. Your Honor will notice that the injunction is to prevent their attempting to discredit the trustees with the field, and they could not discredit them any more than to say, or to make it understood, that a prominent member of the Christian Science Church had resigned his position as associate editor because the situation was so intolerable on account of the way they were conducting their business.

That, I wanted to make clear, was the theory upon which we offer this evidence, and it is on that branch of the injunction that we offer it, namely, interference with our business.

The Court—The bill alleges, what is set out in the petition for contempt, and now you put in evidence which tends to show, that, notwithstanding your action, which, as I have said two or three times, so far as this hearing is concerned is strictly within the powers of the Board of Trustees, they published an article which appeared in The Boston Herald, for which you say not merely the writer, the man who held the pen, is responsible, who is enjoined as one of the respondents, but all these respondents, the defendants in the original bill, with the exception of Mr. Dittmore, are responsible. If your proof finally comes up to the proposition there can be but one result. Now, undoubtedly such a course of action does tend and must tend to impede and hamper the legitimate performance of the duties of this Board of Trustees, but there is no necessity of going further with it except and in so far as perhaps your evidence would show such a state of

mind and willful purpose: that the Court ought perhaps to take that into very serious consideration, if the contempt is proved, in imposing sentence.

Mr. Whipple—Your Honor has expressed the thought that I had in mind much more clearly than I did: that it was, as we allege in the petition, a purposeful interference in order to discredit them.

The Court—You may inquire into that, but it is strictly along the lines which I have indicated.

Mr. Whipple—Yes, Your Honor.

The Court—And, I add, a mere over-excess of zeal, over-excess of the expression of conviction or of form of belief—that is one thing. A good deal is to be excused and tolerated. But if there is a deliberate purpose back of it all, notwithstanding the case is pending in which these various rights are to be determined by a trial on the merits, one side and the other, still insists on a propaganda which interferes with the rights of the other side, and persists in it, that is a very different sort of situation. Now, if you have evidence along the line of what I have said it is admissible undoubtedly, for the sole purpose I have indicated. You may inquire further.

Mr. Whipple—I think in view of what Your Honor has stated we do not wish to inquire further of Mr. Jarvis. I think we have covered everything that we desire to elicit from him, with this exception, perhaps:

Q. Mr. Jarvis, do you know what was done with those thousand copies of The Boston Traveler containing this article? A. Partially.

Q. What? A. I believe they were mailed to persons in the immediate vicinity of Boston to whose attention the article in the Herald might have come, possibly.

Q. What persons? A. Well, to practitioners, advertised practitioners of Christian Science.

Q. That is, Christian Science leaders? A. Advertised practitioners.

Q. In the different sections? I beg pardon? A. Advertised practitioners, not necessarily leaders.

Q. Where is the list of people to whom these were sent? You must have a mailing list? A. In The Christian Science Journal.

Q. You mean The Christian Science Journal published by these trustees was used to furnish a list of people to whom you sent these thousand copies? A. The Christian Science Journal is the official organ of The First Church of Christ, Scientist, in Boston.

Q. And was that used to give you a list to whom to send these thousand copies? A. I assume that that might have been used as a partial list.

Q. What was done with the rest of them? A. I do not know.

Q. Who would know, up at your place? A. The manager of the Committees on Publication.

Q. Well, he is a defendant in this case and I cannot put him on as a witness. Who would be the clerk who

would be able to furnish us the information and give us the list? A. Possibly some clerk in his office.

Q. Do you know the names of any of them? A. Well, his first assistant is Mr. Lewis L. Harney.

Q. Is he present in the court room? A. I do not know.

Mr. Whipple—Will you give us that list, Governor Bates?

Mr. Bates—What list?

Mr. Whipple—The mailing list, showing to whom these papers were sent.

Mr. Bates—If His Honor thinks it comes within the specifications and assuming that we have the list. I have not seen it; I have not heard of it until today.

Mr. Whipple—It would mean I should only have to issue a summons.

Mr. Bates—I beg your pardon. If Your Honor thinks we ought to produce that list, provided we have it, and we can, we shall be glad to do so.

The Court—Yes; I think if you have it you should produce it. If you haven't it of course you cannot.

Q. Those people, the people whose names appear in The Christian Science Journal as practitioners, are the advertisers in that Journal as you know it, do you not? A. Yes.

Q. People who pay to have their cards put in The Christian Science Journal? A. Yes.

Q. That is, you might say that it was sent to the customers of the Journal, people who support the Journal by paying to have their cards inserted and people who are subscribers to it? A. Yes.

Q. I beg pardon? A. Yes.

Q. So that the article was sent to the people who, if they disapproved of the conduct of the Publishing Society, were the people who were in a position to express their disapproval by withdrawing their financial support? A. Possibly.

Q. The people whose good graces and favor the trustees desired, as you knew, to keep—especially to keep—the money contributors to their prosperity? That is true, isn't it? A. Possibly.

Q. Now, did you hear discussed in the Board of Directors, when they passed this vote, what was to be done with these newspapers containing this article? A. Yes.

Q. What was the discussion? Tell us. A. I do not recall distinctly.

Q. Well, tell us the best you remember. A. As I stated before, that they were to be mailed to those in the vicinity of Boston, not outside the State of Massachusetts.

Q. Not outside of Massachusetts. Were the names or the character or class of the people to whom you were to mail them mentioned in the discussion? A. I do not recall.

Q. To whom did the directors leave the matter of the people to whom these papers should be sent? A. To

the manager of Committees on Publication.

Q. And that means Mr. Smith, or Judge Smith? A. Yes.

Q. Do you remember whether they later added more than the thousand? A. No, sir.

Q. Now, have publications or re-publications of this article in The Traveler come before the board since then? I mean, has it been brought to their attention that this communication was circulated in other papers throughout the United States? A. Not to my knowledge.

Q. Do you know whether it was sent to the chairmen of committees on publication in other states? A. I do not.

Q. How could we find that out? A. By interrogating the manager of Committees on Publication.

Q. Yes; but you see we cannot interrogate him under our rule. We have got to find some one else who knows about it, unless you can tell us.

Mr. Bates—We have agreed to give you the list.

The Court—It is not necessary for you at present to interrogate him.

Mr. Whipple—Very well.

The Court—This witness says that these copies were sent out after having been before the respondents.

Mr. Whipple—Yes, Your Honor.

The Court—It is for them to show what they did with them. I should draw the inference, until it was controlled, that it was done with their knowledge and consent.

Mr. Whipple—The question that I had in mind was directed to the extent of circulation.

The Court—I do not think I will hear it now. It is circulated in Massachusetts to the extent to which Mr. Jarvis has stated.

Q. Mr. Jarvis, may I ask whether this action, "Resolutions Adopted by the Students of Miss Mary Stewart, Chicago, Illinois," on May 24th, did not come to your attention as bearing on this very subject? (Handing paper to witness.) A. I do not recall having seen this document or a similar one before.

Q. You did not see it in the directors' room, at least? A. No, sir.

Mr. Whipple—If you have such a copy as this will you produce it?

Mr. Bates—It is the first time I have ever seen it or anything like it.

Mr. Whipple—I have told you that your clients had not kept you informed.

Mr. Bates—Well, I object to your stating—

The Court—Is there anything further?

Mr. Whipple—That was only by way of reply. We will put this in later in another way. That is all. Thank you, Mr. Jarvis.

The Court—Mr. Bates, I will take a short recess.

[Short Recess]

Mr. Whipple—May it please Your Honor, may I have the privilege of presenting to you Silas H. Strawn, Esq., of Chicago, who is associated with us in this case, and I will ask for him that the courtesies of our bar be extended to him.

The Court—The Court is very glad indeed to grant the request, and to welcome his presence.

Mr. Bates—May it please Your Honor, I would like to present to the Court Edwin A. Krauthoff, Esq., of Washington.

The Court—The Court is very glad also to receive him.

Mr. Whipple—Do you care to cross-examine Mr. Jarvis?

Mr. Bates—I do not care to examine Mr. Jarvis at this time.

Mr. Whipple—Mr. Eustace, I will ask you to testify. Before I ask questions of Mr. Eustace I want to call attention to the fact that by inadvertence I omitted one of Mr. McCrackan's letters, dated Aug. 1, 1918, to the Board of Directors. It is stamped as read Aug. 1 and read Aug. 13. I do not think that it changes at all the significance of the correspondence, but Your Honor might like to just look at it and then I will have it marked as an exhibit.

Mr. Bates—Mr. Whipple, will you return to me what you have not used of those letters?

Mr. Whipple—Yes; I may want to use some more of them, but I will collect them.

Mr. Bates—We shall want them later.

Mr. Whipple—We will give you the file. This comes out of order, and I would be glad, if it meets Your Honor's approval, to have it marked with an "A" in between the correspondence, so that it will come in in chronological order in that correspondence.

[A letter from W. D. McCrackan to Charles E. Jarvis, corresponding secretary for the Christian Science Board of Directors, dated Aug. 1, 1918, is marked Exhibit 19-A.]

Herbert W. Eustace, Sworn.

Q. (By Mr. Whipple) Mr. Eustace, will you state your full name? A. Herbert Willoughby Eustace.

Q. Where do you reside? A. Hotel Braemore.

Q. In Boston? A. In Boston.

Q. You are one of the trustees of the Publishing Society? A. Yes, sir.

Q. Of the Christian Science Publishing Society? A. Yes, sir.

Q. And you are one of the plaintiffs in the main cause? A. Yes, sir.

Q. And one of the petitioners in the petition for contempt? A. Yes, sir.

Q. How long have you held the office which you now hold? A. Since December, 1912.

Q. Your associates on the Board of Trustees are who? A. David B. Ogden and Lamont Rowlands.

Q. They were appointed more recently? A. August, 1917.

Q. And you have been associated together as trustees under the Deed of Trust of Jan. 25, 1898? A. Yes, sir.

Q. Ever since their appointment? A. Yes, sir.

Q. Mr. Eustace, were you made aware of some things which had been said to the Board of Directors and also to the Board of Trustees with regard to Mr. McCrackan, one of your associate editors, some time in 1918? A. Yes, in a general way.

Q. Did you confer with the Board of Directors with regard to the matter? A. The matter was under discussion somewhat informally a number of times.

Q. During the summer of 1918? A. Yes, during the year of 1918.

Q. During the whole year? A. More or less during the—

Q. More or less during the year. Were you aware of the full correspondence which has been put in evidence passing between Mr. McCrackan and the Board of Directors? A. Was I aware of it?

Q. Yes. Were any copies of it sent to you or to your board? A. No. There were extracts from it sent.

Q. Those extracts having to do merely with the question of his performance of his duties as associate editor? A. Yes, sir.

Q. And not as to the other questions which were involved? A. No.

Q. But were those complaints that had been made to the Board of Directors talked of freely in your discussions with them? A. Informally, yes. I was away during July and August, when it was taken up more fully.

Q. Yes, exactly. You found out what had been done when you came back? A. I did.

Mr. Whipple—Now, I would like to put in on that just a couple of letters. Here is one of Sept. 12, 1918.

The Court—Well, show them to counsel.

Mr. Whipple—There is one of Sept. 5. I would like to put that one in first. That was sent by Mr. Eustace, I think.

Mr. Bates. (Examining letter.)—All right.

Mr. Whipple—This is the reply.

[A letter from the Board of Trustees to the Board of Directors, dated Sept. 5, 1918, is marked Exhibit 20.]

Mr. Whipple—The letter of Sept. 5 is one that Mr. Eustace sent to The Christian Science Board of Directors.

Q. You were secretary of the board, were you not? A. I was.

[Exhibit 20.]

"Sept. 5, 1918.

"The Christian Science Board of Directors,

"Falmouth and St. Paul Streets,  
"Boston, Massachusetts.

"Dear Friends:

"Your letter of Aug. 28 is received, embodying a portion of Mr. McCrackan's letter to you.

"In order that we may be fully cognizant exactly how the situation with

Mr. McCrackan stands, we shall be glad if you will send us a copy of the correspondence that you had with Mr. McCrackan. We could of course reply fully to what Mr. McCrackan has written you in extenuation of the complaint against his work in the editorial department. The information given to you in our letter of July 31 was merely incidental to what we understand to be the main problem involved, which is undoubtedly the cause of his failure to fulfill all the duties of his office as editor. Therefore, we feel it better to wait until we know exactly what the whole correspondence has been.

"Very sincerely yours,

"BOARD OF TRUSTEES.

"Secretary."

Q. You understood that at the time there were two questions involved, one as to whether he should continue as editor, and the other whether he should—

Mr. Bates—I object to the form of the question.

Mr. Whipple—Very well. I wanted to make it as short as I could. It is stated in the next letter. I will read it.

[Letter, Board of Directors to the Board of Trustees, dated Sept. 12, 1918, is marked "Exhibit 21."]

Mr. Whipple—The reply, if Your Honor please, is dated Sept. 12, addressed to the Board of Trustees:

"Dear Friends:

"I am instructed by The Christian Science Board of Directors to acknowledge receipt of your letter of Sept. 5, and in compliance with your request to quote the following extracts from the board's letter to Mr. McCrackan of July 23, 1918, and his reply thereto of Aug. 1; also extracts from the board's letter to him of Aug. 15, and their entire letter of Aug. 30, the latter in reply to Mr. McCrackan's letter of Aug. 23, from which the board has already quoted extracts to you.

"The directors are glad to refer to you these additional extracts from the correspondence, which refer to the business of The Christian Science Publishing Society, and instructs me to say that the balance of the correspondence was wholly upon a matter which involved possible discipline."

Then there are quotations which it does not seem to me necessary to read from the correspondence which has already been laid before Your Honor so far as it deals with his editorial work.

Q. And that is all the knowledge you had of the correspondence up to the time that it was produced here in court? A. Yes, sir.

Q. That is, that which had to do with church discipline? A. Yes.

Mr. Whipple—Now, perhaps to complete the correspondence I will read the letter in reply, dated Sept. 17, from Mr. Eustace to the directors.

Mr. Bates—I beg your pardon, would you mind reading the extracts?

Mr. Whipple—Will you read it, Governor? I didn't think His Honor would want to take the time to read extracts that had already been read.

Mr. Bates—I assented to the letter on the supposition that the whole letter was going in.

The Court—Very well; you may read the extracts now or later if you think they are material.

Mr. Bates reads as follows:

"(From directors' letter to Mr. McCrackan, Aug. 15, 1918.)

"Since then the trustees of our Publishing Society have written a letter dated July 31, in which these trustees again informed this board that you 'are not giving the service which is demanded for the welfare of the periodicals.' These trustees continued and concluded as follows:

"Mr. McCrackan prepares his own editorials each week, but seems reluctant to give the attention to the detail of editing the articles and communications which are to be published in the periodicals, and we are giving you this information because we feel that unless there is a radical change on his part, we cannot conscientiously continue to compensate him for a service that he is not fulfilling."

"(Directors' letter to Mr. McCrackan of Aug. 30, 1918.)

"I am instructed by The Christian Science Board of Directors to acknowledge receipt of your letter of Aug. 23, and to thank you for your expressed desire to comply with the board's requests contained in their letters to you of July 23 and Aug. 15. The directors have confidence in your ability to carry out your determination, and are grateful for your assurance to that effect.

"Since receiving the letter from The Christian Science Publishing Society, from which the board quoted in their letter to you on Aug. 15, the board has had, and is happy to share with your further advice from the society expressing appreciation for the marked improvement in your work."

Then there is added after the quotations this:

"In explanation of the 'further advice from the society' above referred to, I am instructed by the board to say that this was not in the form of a letter, but was a verbal communication from Mr. McKenzie to Mr. Jarvis.

"With kind regards and best wishes," and so forth.

Mr. Whipple—Now to complete the correspondence, I will say that Mr. Eustace, for the Board of Trustees, on Sept. 17, wrote:

"Thank you for your letter of September 12, with further information relative to the correspondence you have had with Mr. McCrackan. With best wishes."

[The above letter, Board of Trustees to the Board of Directors, Sept. 17, 1918, is marked "Exhibit 22."]



Q. Mr. Eustace, has your attention, as one of the Board of Trustees, been called to any failure on the part of Mr. McCrackan to perform his duties as editor? A. Constantly.

Q. How early? A. You mean how early, what time?

Q. Yes. A. When did it begin?

Q. Yes. A. Well—

Q. Well, I will fix it in this way— A. During 1918 largely.

Q. There had been some complaints before that, I understand? A. Yes.

Q. But more particularly in 1918 the complaints came. From whom? A. Largely from the editorial department.

Q. And especially the editor in chief? A. And the manager, the secretarial manager.

Q. Mr. McKenzie was the chief editor? A. Yes.

Q. Who was the managerial secretary? A. Mr. Seeley.

Q. Were those complaints intermittent or did they continue right along? A. They were intermittent, but they continued right along.

Q. They were both, then? A. Yes.

Q. In July you say you were away? A. July and August.

Q. July and August of 1918. When you returned you saw this correspondence so far as it has appeared, and learned that he had undertaken to do better? A. Yes.

Q. What did you notice then, from that time on, with regard to his attention to his editorial duties? A. Well, from the reports that came it was very little better.

Q. Very little better? A. Very little.

Q. What did you learn as to what he was doing and failing to do? A. Well, largely not attending to his work.

Q. Did he come to the office? A. At times he was in attendance and then the report would be that he would be away for a day or so.

Q. Was an account kept by the secretarial officer you spoke of? A. I think there was.

Q. That is, his absences were noted? A. I think so.

Q. Could you find where he was when he was absenting himself? A. At times we knew where he was and at other times not.

Q. When is the last time to your knowledge that he came around at all to the editorial offices? A. Well, the editor reported that the last time that he saw him I think was on April 17.

Q. Just prior to that had the editor made complaints that he was not keeping up his work? A. Well, I don't think the editor was satisfied with his work at all for some time.

Mr. Bates—I object to the answer as being irresponsible.

Mr. Whipple—That may be—

Q. Had he made the complaint that he was not keeping up with his work?

Mr. Bates—May be what?

Mr. Whipple—That may be stricken out.

The Court—It may go out.

Q. Had he made complaints to you that he was not keeping up with his work? A. He had.

Q. Were Mr. McKenzie's complaints occasionally in writing? Look at this, May 14. (Handing paper to witness.) Did you receive that, or the board receive that? A. Yes; oh, yes.

Mr. Whipple—I would like to offer it. (To Mr. Bates.) Have you seen it? (Handing letter to counsel.)

Q. I will ask, while that is being looked at, whether you or to your knowledge any of the trustees had any conversation with Mr. McCrackan regarding these matters which were questions of church discipline? A. I did not myself and I don't know whether my associates had or not.

Q. You had no report from them to that effect? A. No.

Mr. Whipple—This letter, if your Honor please, is dated May 14, 1919.

The Court—You may state to me what the substance of it is. Is it a complaint from the editor-in-chief of the way in which Mr. McCrackan was doing his work or failing to do it?

Mr. Whipple—Yes, your Honor.

The Court—That is sufficient.

Mr. Whipple—It also refers to Mrs. Hoag, who was another—

The Court—I have nothing to do with Mrs. Hoag.

Mr. Whipple—I mean, she is another one of the editors who made the complaint.

[Letter, from William P. McKenzie to Board of Trustees, dated May 14, 1919, is marked Exhibit 23.]

Q. It was the final letter on the basis of which the trustees took action, combined with what they knew themselves, in dismissing Mr. McCrackan? Is that correct? A. Yes.

Q. Now, in the letter of Judge Smith to the newspapers containing a letter of Mr. McCrackan there is a suggestion or a charge that certain editorials in the Christian Science publications were censored, and that the editorials in general were being censored, by counsel for the trustees. What is the fact about that? A. Why, there is absolutely no truth whatever in it; not one of our counsel saw an editorial that I know of.

Q. That is, either that as to "Onward, Christian Soldiers," or anything else? A. Anything at all.

Q. You say there is absolutely no basis whatever— A. Absolutely no basis.

Q. —for the charge of Mr. McCrackan, which was sustained and sent out by Judge Smith. A. Yes, sir.

Q. Do you remember as to whether counsel have said to you that while this litigation was going on they approved the determination of the trustees that there should be nothing said in any of the Christian Science Journals about it, either one way or the other? A. That is the fact.

Q. And that was the advice of Judge Hughes and Mr. Strawn and myself, and nothing further in regard to any publication? A. Nothing further whatever.

Q. Either directly or indirectly? A. Neither directly nor indirectly.

Q. And it is within your knowledge that no editorials were submitted for censorship or criticism or anything else? A. None whatever.

Q. Now, since the publication of Mr. Smith's letter in the Traveler have you had communications from Christian Scientists in different parts of the United States showing that they had read it and taken action in regard to it? A. We had a circular from a Miss Stewart's association in Chicago.

Q. Have you had clippings sent to you from various papers in Chicago and other parts? A. We have.

Q. You are of course familiar with the doctrines and beliefs of the Christian Science religion? A. I accept them.

Q. You have been a student of Christian Science for a great many years? A. Since 1892.

Q. Have you a judgment as to what the effect would be, or has been, upon the Board of Trustees in the discharge of their official duties to have it published by responsible authority that their publications or editorials were being censored by counsel who were not Christian Science members?

Mr. Bates—I pray Your Honor's judgment.

The Court—Excluded. That is for me to say.

Mr. Whipple—It had occurred to me that the opinion of a Christian Scientist might be helpful to Your Honor, but we are perfectly willing to leave it.

Q. Is this the circular which you received from Chicago? (Handing paper to witness.) A. That is.

Q. That you referred to? A. That is the one.

Mr. Whipple—I should like to offer it.

Mr. Bates—I object to it. I have not seen it.

The Court—Oh, that may be put in.

Mr. Whipple—Would you like to see it?

Mr. Bates—I understand His Honor has admitted it.

Mr. Whipple—Yes; but I thought perhaps you might want to make a specific objection. Otherwise I will have it marked.

[A circular, "Resolutions Adopted by the Students of Miss Mary Stewart, C. S. B., of Chicago, Illinois, in Annual Meeting, May 24, 1919" is marked Exhibit 24.]

Mr. Whipple—This is a printed paper, indorsed on the outside, "Resolutions Adopted by the Students of Miss Mary Stewart, C. S. B., Chicago, Illinois, in Annual Meeting, May 24, 1919." It was on May 21 that the publication went out.

Mr. Whipple reads the following:

"The students of Miss Mary Stewart, C. S. B., of Chicago, in annual meeting assembled, May 24, 1919, unanimously adopted the following resolutions:

"(1) Be it Resolved, That we pledge our unqualified support and loyal allegiance to the Manual of The Mother Church, and to the authority of The Christian Science Board of Directors as outlined therein; and

"(2) Be it Further Resolved, That we protest against the action of Messrs. Eustace, Ogden, and Rowlands, who are or were trustees of The Christian Science Publishing Society, in bringing into the courts the affairs of The Mother Church, The First Church of Christ, Scientist, in Boston, Massachusetts, and demand that they act in strict conformity with Article XXV, Section 3, of the Manual; and

"(3) Be it Further Resolved, That we protest against the action of Mr. John V. Dittmore in bringing suit against The Christian Science Board of Directors and decry any attempt of anyone to becloud by the introduction of personalities the issue as defined in paragraph 2 of these resolutions; and—"

Mr. Whipple—This is the part to which I wish particularly to direct Your Honor's attention:

"(4) We earnestly protest against the condition by which we can be suddenly deprived of the services of Mr. William D. McCrackan, one of the able editors of our periodicals, without explanation or courteous comment; and against the intolerable situation permitted by those who are or were trustees of the Publishing Society, and by its manager, in allowing one who is not a Christian Scientist to act as censor over the organs of The Church of Christ, Scientist, which are inseparable from it, in respect to what shall or shall not be published editorially or otherwise, or in respect to its management in any particular or degree; and

"(5) Be it Further Resolved, That we affirm our conviction that the manager of The Christian Science Publishing Society, the editors of the periodicals, including The Christian Science Monitor, as well as all the employees, be Christian Scientists, and in full accord with the Manual, and recognize the authority of the Board of Directors under the Manual."

Mr. Whipple—The rest of it I do not care to read, but I have no objection to your reading it if you care to. I mean, it does not seem to me to be material or a useful expenditure of time.

I should like to offer, if Your Honor please, a clipping from a Los Angeles, California, paper, of a dispatch from Boston, because we say that this was given out to The Associated Press.

Mr. Bates—There has been no proof of that, Your Honor.

Mr. Whipple—Well, we have here a clipping of an exclusive dispatch, from The Los Angeles, California, Herald—is it—

Mr. Bates—It is your statement that I object to.

Mr. Whipple—You do not object to this, then. I will have it marked, if I may.

[Clipping from Los Angeles Herald is marked Exhibit 25.]

Mr. Bates—Mr. Whipple, won't you let me see that a moment?

Mr. Whipple—Certainly.

Mr. Whipple—This is marked Exhibit 25. I will read it. "Science editor out because of censors. 'Onward Christian Soldiers' and Mrs. Eddy quotation blue-penciled.

[Exclusive Dispatch]

"Boston, May 22. William D. McCrackan has severed his connection with the editorial board of the Christian Science publications. He declares the 'censoring' of his articles by the trustees of the Publishing Society has created an 'intolerable situation.'

"Mr. McCrackan was personally appointed by the late Mary Baker Eddy as First Reader of The Mother Church when the \$2,000,000 temple was built in the Back Bay, in 1906. He was also for a time a member of the board whose actions he now condemns. He is one of the best-known lecturers of the society, speaking three languages, English, French, and German, and has lectured in Europe as well as in America.

"The ex-editor declares the censors caused to be taken out of one of his articles the second verse of the good old hymn, 'Onward, Christian Soldiers' and, from an editorial of his, a statement by Mrs. Eddy concerning the Manual which she framed for her own church.

"These he cites as but instances to prove that the trustees, rather than the editors, are determining the nature of articles and editorials."

Q. It is true, is it, that he was a member of the Board of Trustees at one time? A. He was.

Mr. Whipple—Here is a quotation sent from the New York Tribune of May 22, 1919: "McCrackan, Christian Science Editor, Quits. Charges Church Trustees Censored Articles and 'Situation Is Intolerable.'

"Boston, May 21. William D. McCrackan has severed his connection with the editorial board of the Christian Science publications. He declared the 'censoring' of his articles by the trustees of the Publishing Society has created an 'intolerable situation.'

"Mr. McCrackan was personally appointed by the late Mary Baker Eddy as First Reader of The Mother Church when the \$2,000,000 temple was built in the Back Bay in 1906. He also was for a time a member of the board

whose actions he now condemns. He is one of the best-known lecturers of the Church.

"The ex-editor declares that the censors caused to be taken out of one of his articles the second verse of the hymn 'Onward, Christian Soldiers' and from an editorial of his a statement made by Mrs. Eddy concerning the Manual which she framed for her own Church. These he cites as but instances to prove the trustees rather than the editors are determining the nature of articles and editorials."

Mr. Whipple—That is a dispatch from Boston on May 21, and curiously enough is in almost exactly the same form as the one I just read. I say "curiously enough" as showing it was a matter which was sent out to the papers.

Q. It appears that at the time the trustees were deciding to sever Mr. McCrackan's relations as associate editor, he was having correspondence with the directors with regard to his intention to resign. Did you or any one of your associate trustees know anything about that? A. Nothing whatever.

Q. Did you know anything more than that you could not get in touch with Mr. McCrackan and was complaining that he was not doing his duty and that he would not come before the board when you asked him to come?

Mr. Bates—Is that a proper form of question?

Mr. Whipple—If you object to it in form I will withdraw it.

Mr. Bates—I do.

The Court—It seems to me it is incompetent. I stated to you before in substance, I cannot try this case as it is to be tried before the master.

#### CROSS-EXAMINATION

Q. (By Mr. Bates.) Mr. Eustace, this circular or copy of a resolution adopted by the students of Miss Mary Stewart of Chicago, was read in part. Possibly it will save my reading the rest of it if I ask you if the rest of it does not consist of quotations mainly justifying the circular from the Manual. A. If you will let me see it I will tell you, Governor Bates. There are two quotations here. One, the first as to the Christian Science and Miscellaneous and one from Miscellaneous Writings—not from the Manual.

Q. From Mrs. Eddy's writings? A. Yes, from her writings.

Q. I will read you the paragraph which was not read in. What is referred to by the "Manual" there? Does it refer to the Church Manual? A. It is one of Mrs. Eddy's books, the Church Manual.

Q. What is the Church Manual? A. The Church Manual is the spiritual direction to the members of The First Church of Christ, Scientist.

Q. To The First Church of Christ, Scientist, of Boston, you mean, I assume? A. Yes.

Q. And is it known—that church—known as The Mother Church? A. It is known as The Mother Church.

Q. And does it entertain a certain relationship to all the other Christian Science churches, are they all called branch churches? A. They are.

Q. And is it necessary for those that organize a branch church to be members of The Mother Church? A. A certain number.

Q. And is it necessary for their first readers, or for their readers to be members of The Mother Church? A. It is.

Q. And is it necessary also for them in order to be practitioners to be members of The Mother Church? A. It has been the custom.

Q. Is it also necessary for them to be members of The Mother Church in order to be teachers? A. That also is the custom. I do not know that it is defined there, or said, but it is taken for granted.

Q. As a matter of fact while the Manual prohibits numbering the members of The Mother Church, or at least disapproves of it, the members of The Mother Church are numbered and reckoned by the tens of thousands? A. I should say so.

Q. They are all over the world? A. Yes.

Q. It is regarded as the center of the Christian Science movement? A. What is?

Q. The Mother Church? A. Yes, if you care to use such a term. I shouldn't have applied it in that way.

Q. And these publications are the publications of The Mother Church? A. They are used by The Mother Church.

Q. Are they the publications of The Mother Church? A. They are the publications of The Christian Science Publishing Society.

Q. Are they the official organs of The Mother Church? A. They are.

Q. Why didn't you say so in the first place? A. Because I differentiate between the official organs of The Mother Church and the publications.

Q. Then these publications are all of them publications of The Mother Church—The Christian Science Journal, for instance?

Mr. Whipple—He said no.

A. I said they are the publications of The Christian Science Publishing Society.

Q. Is it an official organ of The Mother Church? A. It is.

Q. It is so designated, is it not, on the title-page? A. It is.

Q. You consider, Mr. Eustace, that you have the right as trustee under the Deed of Trust, to censor articles that appear in the papers that are published as the official organs of The Mother Church? A. We have absolute and final authority on that question, as I understand the trust.

Q. Then it is no embarrassment to you to have it given out to the field, is it? A. It is the way in which—

Q. Wait a minute. Will you answer the question. Is it any embarrassment to you in your publications in the field, to have it known that you are censoring articles which go into the official organs of The Mother Church? A. It is not any embarrassment—

Q. Will you answer that question. A. State it again, please.

Q. Is it any embarrassment to you in your work as trustee to have the field know that you are censoring that the trustees are censoring the articles which are published in the church organs? A. No.

Q. Then is that article which has been put in here from the Los Angeles (California) Herald—does that say anything more than that you as trustees are censoring it? A. There is no reference there to it.

Q. There is no reference there to counsel, is there? A. No, I believe there is not in that article.

Q. Then it does not embarrass you, does it? A. No.

Q. Will you kindly look at that one, which is the other item that was put in from the newspaper, the New York Tribune. Tell me if that is not merely a statement that the trustees are censoring the articles, and that that was what Mr. McCrackan objected to? A. No.

Q. That is right, is it not? I made a correct statement of it—there is no representation there that counsel was censoring it, but that the trustees were censoring it? A. No.

Q. Then that is no embarrassment, is it? A. If I must answer no or yes, I must say no.

Mr. Whipple—I think His Honor always permits you to make any explanation you wish after answering it yes or no.

Mr. Bates—I will give you time to make any explanation you desire.

The Court—He has the right to explain at the time he makes the answer. There is no claim made here on its face that either of these publications purport to say that there has been something done which the Board of Trustees did not have authority to do. But the claim of the other side is, that these communications or these articles rather, never would have been published if it had not been for the original articles, and that these two are to be read with that claim in view—that there had been censoring done outside the Board of Trustees, namely, that counsel advised it.

Mr. Bates—What I particularly direct Your Honor's attention to, is that my brother in his opening and in the presentation of his evidence has represented that this was something that hindered the work of the trustees. He introduces these two items to show—

The Court—I do not think I made myself clear. I repeat: The claim is that the letter in the Herald, of which Mr. Smith was apparently the author, which it was claimed was put out on the authority of these respondents, stated that these editorials were being

censored by counsel, who were not members of the Christian Science Church. It is claimed these articles to which you refer were published because of that article and never would have been published if that had not been published first, and that the terms used in these two extracts which you have referred to censoring, meaning the censoring set forth in Mr. Smith's letter—I am not saying it was proved—it is claimed—that is what it referred to. So you are putting in something that is not material and is irrelevant matter because, unless I find there is that connection, they have no probative force whatever, and if I find there is that connection, it only bears on one aspect of the case, which I have already stated—

Mr. Bates—If I may direct Your Honor's attention to the fact that these items or articles simply state what they set up in their bill of complaint, and therefore it cannot be an interference with them to publish what they themselves claim in their bill of complaint.

The Court—They complain in their bill of complaint what I have stated the issue must be that is to be tried. I shall not try any side issue whatever. I have called the attention of counsel to it repeatedly. I shall not go at all into the controversy between these parties. I am trying one issue and one issue only.

Mr. Whipple—If it be proper, I would like to correct a statement—

The Court—I do not think I care to hear you, Mr. Whipple. I have stated what the issue is. I have read the petition myself.

Q. The Publishing Society, of which you are a trustee, Mr. Eustace, occupies buildings owned by The Mother Church, does it not? A. It does.

Q. They have no other quarters except those that are furnished by The Mother Church. A. Some we pay rent for.

Q. What do you mean by "pay rent for"? A. On Norway Street we pay rent for some buildings we occupy. Is that correct?

Mr. Bates—I am asking you to testify. I am not testifying.

Q. Are you testifying from your own knowledge? A. Yes, sir.

Q. Why did you ask some one within the bar, if you were testifying of your own knowledge? A. I wasn't—

Q. Then you are not testifying from your own knowledge? A. Yes, I am testifying from my own knowledge that it is so.

Q. If that is the case why did you ask Mr. Watts who sits within the bar and when he shook his head you answered. A. I answered it first. That was a mistake; I should not have done it.

Q. Do you know what that property that you occupy that is owned by The Mother Church is valued at? A. I have no idea.

Q. It is several hundreds of thousands of dollars? A. You mean the buildings and the land?

Q. Yes. A. I suppose so.

Q. Now who paid for those buildings? A. The field contributed, I believe, to the first portion of the building. They supplied the funds.

Q. What do you mean by the "field"? A. Christian Scientists throughout the world. They sent in their contributions.

Q. To whom? A. To the Treasurer of The Mother Church, I believe.

Q. And The Mother Church used them for the purpose of building this building? A. I don't know, Mr. Bates, whether it was a special fund. I think if I remember rightly at that time it was a special fund for the publishing house building.

Q. The Mother Church—of The Mother Church—do you recall that? A. Are you asking a question?

Q. Was it a special fund of The Mother Church? It wasn't a special fund of the Publishing Society, was it? A. No, a special fund for the publishing house building, I believe it was called.

Q. From the time that Publishing Society first started under the Deed of Trust they have occupied quarters belonging to The Mother Church, have they not? A. Yes.

Q. Have they paid any rent to The Mother Church for them? A. None whatever.

Q. Have they occupied those quarters as a result of provisions in the Church Manual made by Mrs. Eddy? A. They occupied them—

The Court—How is this material to any issue I am trying?

Mr. Bates—I assume, Your Honor, that our motion to modify the injunction should be heard at this time.

The Court—No. Not in the slightest. Mr. Bates—I understood so.

The Court—I said I would hear you on this first case, hearing also such evidence as you desire to put in on the question of dissolving the injunction. That injunction I should not dissolve for one moment pending the trial of the issue unless you introduced evidence to show me that the complainants have been indulging in the same sort of propaganda that the respondents are claimed to have been; then you might come to me and ask me to dissolve the injunction, because the injunction was to maintain the status quo until such time as the merits are determined.

Mr. Bates—I know they are sometimes tried together.

The Court—Certainly, they are sometimes tried together. I have indicated the only ground on which I would modify the injunction.

Mr. Bates—Of course I accept Your Honor's ruling, but I want to ask whether or not we are not entitled to show, on the question of modifying the injunction, first, that what we asked to do is something that has been done for 17 years without question, it is

merely stating that we propose to show what the status has been and that that status should be preserved pending the final decision. We also propose to show subject to Your Honor's ruling, of course, that there are equities—these are organs of The Mother Church, and they are published in buildings belonging to The Mother Church, and that it was members of The Mother Church who contributed to the fund which paid for the buildings to the extent of millions of dollars, and have always been so regarded. I assume these things are open to me on my motion to modify the injunction.

The Court—That is all an answer to the bill to which the plaintiffs have replied by replication joining issue. That is the question to be tried by the master who has been appointed. If your contention is sustained, then the bill will have to be dismissed. If on the other hand he finds as alleged in this bill, then the bill can be maintained. I am not dealing with that issue at all. I shall not deal with it on the matter of the injunction which, as I said before, was to maintain the status quo until it is tried out, and to allow you to go on and do what you claim in your answer you have a right to do—and it may turn out that you have a right to do it—would be to deny the plaintiffs the relief they seek and would destroy their case before they had a chance to have it tried on the merits. But if it can be shown to me that these plaintiffs come in here asking the aid of the Court to maintain their rights as defined by the preliminary injunction it would be no advantage to you if the injunction had been violated. But if you can show that they alone have violated it, that would be strong ground for the Court to dissolve that injunction.

Mr. Bates—I merely want to get set right, and I want to suggest this, that I had thought and I still think that it comes dangerously near the main question in the case, the ground upon which we ask this modification. On the other hand there is the other side, and that we are not asking that anything shall be done differently from what has been done every year, if we were, I agree we should not be allowed. But Your Honor will recall that when this injunction, or when the order of notice was returnable, we stated at that time we did not care to contest it because we assumed there would be a certain construction put on it which was that anything we were in the habit of doing without protest for 17 years could not be considered an interference with their management.

The Court—The moment I go into that, as I tried to make clear and you must understand it because you are thoroughly familiar with this case and there is no question of your understanding the law—the minute I do that I have gone into the field where you have gone, namely, what is the construction of this trust deed and

does the Church Manual in usage and custom override it? Or, are there to be read into it any modifications of its terms? I am not trying that. That is the question on the main issue and of course what you say about the preliminary injunction I thought at the time and I think still you have acted with the greatest discretion, because it was a case where if I had been obliged to take prima facie proof I suppose I should have ordered that injunction. It is a case for injunctive relief, as you know. Unless preliminary injunctive relief was given whereby permanent injunctive relief may be given, the plaintiff's case is destroyed. It is not a case where damages are compensatory, which is quite another thing. So this whole line of examination is wholly outside of what I am trying, either on the motion for contempt or on the motion for the modification of the injunction.

Mr. Bates—I understand Your Honor's ruling is that the only evidence that you think is competent—

The Court—This line of evidence which you are now putting in I think is incompetent.

Mr. Bates—I understood Your Honor to say we are limited practically—

The Court—What I said was by way of illustration.

Mr. Bates—I will try to keep myself within the line suggested. If I step outside—

The Court—I think you presented very properly what you have said and Mr. Whipple has, also. You are representing your clients who have various views, and it is your duty to present their respective views to the Court and my duty to rule upon it.

Mr. Bates—I summoned Mr. Eustace to bring with him the records of the trustees to show that they never elected an editor or a business manager of these publications. I understand that is ruled out by Your Honor's ruling.

The Court—State that again.

Mr. Bates—I propose to show that the Board of Trustees, the plaintiffs, have never elected an editor or a business manager of the Publishing Society.

The Court—Upon the ground, of course, that they had no authority so to do and the fact that they had not acted is evidence they had no authority. That is the issue you will try before Judge Dodge, as master.

Mr. Bates—Not for the purpose of arguing it, but may I direct Your Honor's attention to this fact. It would leave us in this situation: An injunction that restrains any interference with a situation as it exists it is presumed would do no harm to the other party until it is settled. But an injunction that restrains us from doing things that are required, that we have done without question and that affect our publications may do irreparable injury to the defendants as well as the reverse to the plaintiffs.

The Court—The fallacy in that position is this, which I have stated two or three times already. You are thoroughly aware of what this bill is and what your answer to it is, and that the only relief, as I said before, is injunctive relief. Now if it turns out that at the hearing before Judge Dodge your views are sustained, the plaintiff has got to go out of court, probably. If your views are not sustained then the plaintiff can have relief. That is, you beg the very issue that has got to be tried and determined in the main case.

Q. Mr. Eustace, can you at this distance—it seems to be a little bit difficult to get around the tables where counsel are—can you identify that document? A. I can.

Q. What is it? A. The bill in equity that we filed.

Q. Who published it? A. We printed it and published it, if you call it publishing. We printed it.

Q. In the Publishing Society? A. Yes.

Q. How many copies did you publish? A. I think about 140,000.

Q. What did you do with them? A. We sent them out to each of our subscribers.

Q. To all your papers? A. No, except The Monitor.

Q. You sent them to the subscribers of the Christian Science Journal, the Christian Science Sentinel, and to the two foreign papers and the Quarterly? A. Yes.

Q. How many copies did you say you sent out? A. I think about 140,000.

Q. Did you do that as soon as you could after the bill was filed? A. No, sir.

Q. Didn't you have it in print when the bill was filed? A. We did not have it in print, no.

Q. Are you certain about that? A. Absolutely.

Q. Are you certain that copies of it were not furnished to anybody on the next day after your bill was filed? A. No copies were furnished to anybody until the bill was filed.

Q. At the time the bill was filed these copies were furnished to the press, were they not? A. At the time—I think they were furnished to the press at the time they were filed.

Q. That was before any answer had been filed, of course? A. Yes, sir.

Q. That publication contains not only your bill in equity, but also what purports to be extracts from the injunction on the back page. A. Yes, sir.

Q. There was no suggestion that that injunction had been granted ex parte, or without a hearing? A. I really don't know. I suppose there isn't. If you say so I will take your word for it.

Q. Were these also sent to your reading rooms of The Mother Church and the branch churches? A. I cannot answer that; I do not know.

Q. Who had charge of sending them out? A. The business manager of the Publishing Society.

Q. Who is that? A. Mr. John Watts.

Q. Is each church, each branch church, required to maintain at least one reading room, under the Church Manual? A. Under the Church Manual, yes.

Q. Is it provided in the Church Manual that the official organs of the Church shall be sent to each branch and kept there on file? A. No, not provided.

Q. Is there not a provision in the Manual that those papers shall be on file in the reading rooms and on sale there? A. No; nothing shall be sold there except that.

Q. Don't you think that means the same thing? A. Not to me.

Q. As a matter of fact they are all sent there, are they not? A. I think they all order them; yes, sir.

Q. Is the reading room the place where Christian Scientists go to read the Christian Science publications and others, as they may see fit? I mean other people go there? A. It is.

Q. Now when your bill in equity was filed, did you send out, or cause to be sent out telegrams to The Associated Press and to different papers regarding this matter, requesting them not to publish anything in connection with this suit except what they obtained from your Publishing Society? A. No, we did not.

Q. Didn't Mr. Watts do that? A. No, he did not.

Q. Did you send any communications of that kind? A. We sent a telegram; I haven't a copy of it.

Q. Was it not substantially as I have stated? A. No, it was not.

Q. What was it?

Mr. Whipple—We will produce a copy of it if you want it; that will be better.

Q. Who did you send it to? A. We sent it to the news publishers in the United States, and Canada.

Q. Did you send it to The Associated Press? A. We did.

Mr. Bates—Have you a copy of it here?

Mr. Watts—I don't believe I have; I can get one.

Mr. Bates—Produce a copy this afternoon, please.

Mr. Whipple—I rather assumed we had it. I will have it here.

Mr. Bates—Also the list as to whom it was sent?

Mr. Whipple—I think that has been stated.

Mr. Bates—I want to know how many.

Q. Can you tell? A. 467, I think.

Q. What is that? A. 467.

Q. 467 telegrams you sent out? A. I think so.

Q. Those were sent at the expense of the Publishing Society? A. Certainly.

Q. And were all telegrams to the press? A. They were all telegrams to the news publishers.

Q. In regard to this suit? A. In regard to the filing of the bill in equity.

Mr. Bates—I ask for a little delay because I am going over a great many matters which I am leaving out at Your Honor's suggestion.

Q. Mr. Eustace, when did you first learn that Mr. McCrackan had written the Board of Directors that he was not a candidate for reelection? A. I think through the newspaper clipping that I read. Now I would have to see the date on the letter from Mr. McCrackan that was read this morning.

Q. What newspaper clipping? A. The newspaper clipping in The Traveler.

Q. Did you not send a letter to the Board of Trustees on May 20, in which you stated that you had dismissed Mr. McCrackan? A. Yes, sir.

Q. Well, that was before these articles were published in the paper, was it not? A. I must understand your question. What was your former question?

Q. When did you first learn that Mr. McCrackan had written to the Board of Directors that he would not be a candidate for reelection as editor?

Mr. Whipple—He answered it—when he read it in The Traveler, after he dismissed him.

Mr. Bates—The correspondent shows that was not so. He said he was mistaken and asked for a chance to reconsider it.

Mr. Whipple—No, he didn't say it was not so.

A. As I stated I think it was the article I read in The Traveler that was the first notification that I had that Mr. McCrackan had resigned—not resigned, but had sent a letter to the board declining reelection.

Q. Mr. Eustace, you have identified a letter here, or a copy, dated May 17, 1919, directed to the Board of Trustees, written by Mr. McCrackan, in which he puts on a postscript: "If the subject of the desired interviews concerns my appointment as associate editor, let me say on May 1, I wrote to our directors that if my name came up for re-appointment, I felt that three years constituted a full rounded term, and I see no reason to change my mind," etc.

Q. What was the date of that letter? A. May 17.

Q. When was the newspaper article? A. I really didn't pay much attention to that part of it, Mr. Bates.

Q. You didn't pay any attention to this part? A. No.

Q. Do you know when you received the letter of May 17? A. I think the 18th or 19th.

Q. The 18th or 19th? A. I think so.

Q. And then immediately when you found Mr. McCrackan had told the board under date of May 1 that he would not be a candidate for reelection, you immediately then sent the

telegram dismissing him? A. No, not at all. That is, it was nothing to do with that letter.

Q. Isn't it a fact that it followed immediately? A. I think that it was at the same meeting that that letter was handed in that this other action was taken.

Q. At that time you know that he had practically declined reelection that you sent the telegram dismissing him? When does his term of office run out? You said it was at the same meeting, didn't you? A. I think so, but we had taken that action in substance when we sent our first telegram to him. It had then reached such a point that his dismissal was practically essential, absolutely essential.

Q. You knew nothing of his resignation at that time? A. The first telegram was May 16th.

Q. That was the telegram in which you asked him to come on for a conference? A. Yes.

Q. You then received a letter on the 17th, or he wrote a letter on the 17th that you received on the 18th or 19th, and on the same day, you sent a telegram dismissing him; is that right? A. I would have to look up the record to be sure of it.

Q. That is your best impression? A. I cannot say that; it might be so. It made no impression. We had taken action virtually when we sent the first telegram.

Q. How many days before his term of office would have expired? A. There is no term of office.

Q. Doesn't the Manual say directors, or rather editors shall be elected annually—at the annual meeting? A. Yes, at the annual meeting.

Q. And they have been? A. I think so, I don't know.

Q. Then he had just nine days more to serve, I should suppose—

Mr. Whipple—I don't suppose you want to put in there what you suppose.

Q. Put it another way. Mr. Eustace, under the laws of the Church Manual, Mr. McCrackan's term of office would have expired when the annual meeting in June was held? A. Under the Church Manual, yes, I suppose that would be so.

Q. So that at the time you dismissed him, he had just—well, less than two weeks more to serve? A. Mr. Bates, we did not enter into that part of it.

Q. I understand you didn't, no. Did you in your letter—well the letter will speak for itself. In your letters to the board in regard to this matter you never complained of anything except—I mean at the time of the dismissal—except his absence and the fact that he had not—

Mr. Whipple—Had not what?

Q. The fact that he had not been attending to his business?

The Court—What is your answer?

Q. You complained of nothing as to his other conduct? A. Nothing.

The Court—I suppose you want to put in there "his alleged other conduct" do you not?

Mr. Bates—Yes, his alleged other conduct. Thank you for Your Honor's suggestion.

Q. And the matter of his alleged other conduct was under discussion somewhat in the summer of 1918, discussion between the trustees and directors since that time? A. Since when?

Q. Since August, 1918. A. I would have to refer to the records.

Q. The last letter put in by my brother was dated in August. Do you remember any conference with the Board of Directors in regard to that matter after that time? A. We haven't been having any conferences since then.

Q. Then you don't remember any, do you? A. I don't think I do, on that subject.

Q. Did you send them any letter after that time in which you referred in any way to his alleged conduct? A. I think we sent some time in September, a letter.

Q. Will you produce the letter? A. I think it has already been read here.

Mr. Whipple—It is in evidence.

Mr. Bates—If it is in evidence I won't bother about it now.

Q. That was last year? A. Yes, last year, Sept. 12, I think it was.

Mr. Whipple—Possibly I am in error by saying that the letter was in evidence.

Q. Now when did you first learn of the letter of Mr. McCrackan to the editor-in-chief, Mr. McKenzie, dated April 22, in which he criticized the trustees for censoring articles in the papers? A. I am not sure, again, whether it was through the paper or whether Mr. McKenzie sent us a copy of that letter.

Q. You have no recollection of it? A. No, I don't remember which it was.

Q. You refer to it, do you not, in your telegram of dismissal? A. Yes, we had it then.

Q. That was before anything had come out in the paper, was it not? A. The dates are so close together there unless I look it up it is difficult to say which it is.

Q. You have no recollection at all as to when you first heard of the letter of Mr. McCrackan's? A. Not definitely; we either heard of it through Mr. McKenzie sending us a copy or through the Traveler.

Q. Did Mr. McKenzie ordinarily send you copies of letters of that kind? A. Not usually, but this was different.

Q. You have a copy of it, you think? A. Yes, sir.

Mr. Whipple—This copy I got from Mr. McKenzie, but I think you ought to read the telegram of dismissal—you are right, the telegram of dismissal refers to it. That copy I just got through your witness.

Mr. Bates—What I want is the letter Mr. McKenzie sent to him.

Mr. Whipple—He says he is not sure whether he did or not.

Mr. Bates—Have you such a letter?

Mr. Whipple—That is something that has not been introduced. A. I don't know that Mr. McKenzie sent one.

Q. Let me ask you this. In your telegram you do not deny the truth of the statements about censoring, do you?

Mr. Whipple—The telegram will show. A. Telegram to whom?

Mr. Bates—Telegram to Mr. McCrackan.

Mr. Whipple—Doesn't it speak of it?

Mr. Bates—I think I have a right to ask about it. A. What is the question?

Q. Your telegram refers to his letter of April 22? A. Yes.

Q. Then you must have had the knowledge at that time when you sent the telegram? A. Yes, sir.

Q. Did you in the telegram in any way deny the charge that he had made in his letter to Mr. McKenzie? A. No, there was no necessity.

Q. Whenever you first heard of it you made no effort to deny it, did you? A. None whatever; we only heard of it right at that time.

Mr. Bates—I understand in this letter published by Judge Smith the only two things you complain of are publishing the letters and the letters of Mr. McCrackan.

Mr. Whipple—Oh, no. What he says is that these letters show the reason why Mr. McCrackan resigned. That is the bite of the whole thing, while we say he knew that Mr. McCrackan had been discharged and for reason, and that those letters do not show any resignation at all. That is the virus of the whole letter.

Mr. Bates—To save time will you tell me if there is anything in the other two paragraphs of that letter.

Mr. Whipple—I cannot point out specifically, except this: "A very active propaganda is in operation against the government of the First Church of Christ, Scientist, in Boston." I have a suspicion you will accuse the trustees of inciting that propaganda and there isn't a word of truth in it.

Mr. Bates—I haven't asked you for your suspicions, because those are not evidence and wouldn't be if you were on the witness stand.

Mr. Whipple—I don't think there was much active propaganda except what Mr. Dittmore set in operation.

Mr. Bates—Do you object to that statement?

Mr. Whipple—I don't know what you mean.

Q. It is a fact that there were many articles appearing in the newspapers attacking the Board of Directors and the government of The Mother Church, is it not? A. I read some.

Q. They were particularly appearing in The Boston Herald and The

New York Herald, were they not? A. I read some.

Q. What do you mean by "some," several? A. Yes.

Q. Did you see that article that appeared in The Boston Herald on May 21? A. Yes, I did.

Q. Did you see that one which appeared in The Boston Post on the same date? A. No, I don't know that I did.

Q. You don't know whether you saw this or not? A. No, but I probably did, because we have all the clippings at the publishing house.

Mr. Bates—I want to offer this first one of The Boston Herald on May 21.

Mr. Whipple—Are you offering them? I have no objection to Your Honor looking them over, but they are articles with reference to which we had nothing to do and hadn't the slightest knowledge of them.

Mr. Bates—We haven't claimed that you did.

Mr. Whipple—Then I don't quite see their materiality, but I will not argue it.

Mr. Bates—Our article that you object to is in reply to this article—their absolutely unqualified misstatements of the situation.

Mr. Whipple—If you were replying to somebody else's propaganda, all right, but you had no right to involve us. If you will put that in in mitigation—

Mr. Bates—I am putting it in for what it is worth. The first one marked Exhibit 27 and the second marked Exhibit 28. Both are dated May 21.

I want to direct Your Honor's attention to the articles in The Boston Herald, which is dated May 21, and headed "W. D. McCrackan Leaves Editorial Board of the Scientist Publications. It was learned yesterday that the Christian Science Sentinel for May 24 will announce the retirement of William D. McCrackan from the editorial board of the Christian Science publications. It is said that Mr. McCrackan resigned his office and left Boston. It is also said that his resignation was because of his opposition to certain policies of the Church movement and interference with his efforts for editorial progress.

"When the Rev. William P. McKenzie, the editor of the Christian Science Sentinel, was asked by a representative of The Boston Herald regarding the retirement of Mr. McCrackan, he refused to either deny or confirm the report." Then it goes on and speaks about Mr. McCrackan's work. "Much concern is felt in Boston and will doubtless extend over the entire Christian Science movement when Mr. McCrackan's retirement and the causes of it are known. He had long been prominent in church activities and for seven or eight years was one of the official lecturers. It is rumored that Mr. McCrackan has been out of favor for some months, and that he has felt that his position was rapidly becoming intolerable. Interest is felt also in Bos-

ton among the church members as to the possibility of obtaining a successor to Mr. McCrackan. It is known that at the time Mrs. Annie M. Knott resigned from her position as co-editor with Mr. McCrackan the directors of the Church found much difficulty in getting some one to take her place, finally obtaining Mrs. Ella Hoag of Toledo, who had recently been appointed a lecturer.

"There is no hesitation among prominent members of the Christian Science Church in stating that Mr. McCrackan's term of office began to be limited a year ago, when as retiring president of The Mother Church he made an address at the annual meeting before 5000 members in which he called upon them, as well as the officials, to arouse themselves to the fact that the vital spiritual needs of the organization were being neglected.

"This is said to have been the cause of antagonism as reflecting on certain policies of government with which it was known he was out of sympathy."

The rest of the article is largely descriptive of his work.

The article in The Boston Post is brief. On the first page the headline is "Quits Office of Scientists. McCrackan resigns his editorial position. William D. McCrackan, one of the most prominent of Christian Scientists and editorial director of The Christian Science Journal and the Sentinel, has resigned his offices. It is declared that he had become disgusted with the present friction in the Church and the dictatorial attitude of the Church directors. Mr. McCrackan was formerly president of The Mother Church, and was looked upon as Mrs. Eddy's greatest confidant during her late years. She appointed him First Reader of the new Mother Church in 1906, at the time the edifice was dedicated."

These papers, if Your Honor please, were the morning papers of May 21, and the matter to which my brother refers was the reply which was printed in the evening papers of the same date intended to correct the false statements.

Mr. Whipple—The resolution sending them out didn't say anything like that.

Mr. Bates—We will discuss it later.

Mr. Whipple—I know. Then I object to your statement. You surely don't want to make that statement on your own responsibility.

Mr. Bates—I do not intend to make any statements that are not proper at this time. My brother has made so many in the nature of evidence on assumption, perhaps I have fallen into the habit, after listening to him for so long.

Mr. Whipple—You ought to have more strength of mind.

[At this point the Court took a recess until 2 o'clock.]

#### AFTERNOON SESSION

Q. (By Mr. Bates.) Mr. Eustace, have you secured a copy of the telegram that you sent out? A. I have.

Mr. Bates—I offer this telegram, Your Honor. It is dated in blank.

"Personal and confidential and not for publication: A controversy having arisen between the Board of Trustees of The Christian Science Publishing Society and The Christian Science Board of Directors over the question of control of the Society's affairs, the Society asks your cooperation in preventing unauthorized statements regarding the question at issue from appearing in your paper. Any information you may desire will be gladly furnished you by this Society. A copy of Bill in Equity filed by the trustees in Massachusetts Supreme Court will be mailed you at once. Thanking you in anticipation.

"Board of Trustees,

"Publishers of The Christian Science Monitor, Boston, Massachusetts."

Q. There is a memoranda here, Mr. Eustace, which reads at the bottom as follows:

"Copy of telegram dispatched to 467 newspapers and news associations in this country and Canada." That is correct, is it? A. That is correct.

Mr. Whipple—We have the list, if you desire it. You have asked for the list.

Mr. Bates—I have asked for the list.

Mr. Whipple—There is the list (handing papers to Mr. Bates).

[Copy of telegram without date as above is marked Exhibit 29.]

Q. Did you endeavor to have that telegram sent out through the Associated Press? A. No.

Q. Did not the Associated Press refuse to send it? A. Not that I know of.

Q. As a matter of fact, you sent it to all the newspapers that were members of the Associated Press. A. I don't know whether that is so or not. The business manager will know that.

Q. Is that your memoranda on there (showing paper to witness)? A. That is not mine.

Q. It is not your writing? A. No.

Q. Whose writing is it? A. I don't know. I don't know whose that is.

Mr. Bates—I offer this memoranda furnished by counsel.

[Memorandum containing list of 467 papers to which Exhibit 29 was sent is marked Exhibit 30.]

Mr. Bates—It is penciled on certain of the pages, "Associated Press members," and then there are 3½ sheets that are marked "United Press members," and then others, in addition to that, and certain apparent publications that are not connected with either. Without reading the list, which would take a long time, I direct Your Honor's attention to the fact that there is an alphabetical list of states here, with many newspapers under each, and so

as I have been able to discover on cursory examination there is not a State in the Union but what received, in the press of which received, that telegram. In addition to that, there was sent to The Star at Montreal, in the Province of Quebec, to The Herald at Calgary, in Alberta, to the Jack Cairns at Vancouver, Province of British Columbia, to The Free Press and Tribune at Winnipeg, Manitoba; to the Star, Mall, and Empire in Ontario, at Toronto; to The Citizen and Journal at Ottawa, and to The Standard at St. Catharines, in the Province of Ontario, and to the independent papers—Kansas City, The Star; Los Angeles, California, The Herald; Akron, Ohio, The Beacon-Journal; New York, The American.

Q. Are you familiar with the names of any newspapers in America that that telegram was not sent to? A. I really do not know. I do not know who the—I could not go through that list to know.

Q. You state in that telegram that you are going to send them a copy of your Bill in Equity. That was done, I assume? A. It was.

Q. Together with the extract from the injunction? A. Together with the extract.

Q. Have you 140,000 subscribers to the papers that you publish for The Mother Church? A. We evidently have, because we sent out, I believe, 140,000.

Q. Did you not send them to others than subscribers? A. No. Not that I know of.

Q. Does anyone except your society have possession of the subscription lists of those magazines? A. Certainly not.

Q. What other papers have you sent out in connection with this matter? A. Nothing whatever.

Q. Did you not order 1000 extra copies of The Boston Herald that had an attack upon The Mother Church, or on the Board of Management of The Mother Church in it? A. I don't know whether there were—whether they were ordered or not.

Q. You don't know? A. I do not.

Q. Did you ever hear anything about it before? A. I have sent out some myself.

Q. You have? A. Yes. To my friends—that is all.

Q. How many? A. Oh, I suppose 50 or 60.

Q. Who ordered them? A. I ordered them.

Q. And did you pay for them personally? A. Yes.

Q. The telegrams, and the printing of these 140,000 copies of the Bill in Equity, were paid for out of the funds of the Publishing Society, were they not? A. They certainly were.

Q. Did you keep any account of the expenses of that printing? A. I suppose.

Q. Of that publication? A. I don't know, but I suppose the bookkeeping

department may have kept it, or not; I don't know anything about it.

Q. You don't know anything about whether or not the expense has been kept in such a way that it can be told? A. No.

Q. You never have inquired? A. Never have inquired.

Q. And never have asked what the expense was? A. Not a word.

Q. Or the expense of the telegrams? A. Not a word.

Q. As trustees you were not interested in that? A. No; I was interested in protecting our movement.

Q. Did you receive any protest from the field after sending out your 140,000 copies of the Bill in Equity? A. Doubtless there were protests, but—

Q. Why do you say "doubtless"? A. Because I believe they have been coming in, but I have not seen them.

Q. Don't you know that they have been coming in? A. I say, doubtless they were, but I say I have not seen them.

Q. I am asking you for your knowledge. A. Well, I suppose that they are, but I have not seen them, therefore I cannot say that I know. I have seen a few.

Q. But the only things that you can recall that have come in in regard to this publication that was sent to The Boston Herald by Mr. Smith, are the ones that you have mentioned here this morning? A. Say that again, will you?

Q. There are no other protests that you have received, which you attribute to the article of Mr. Smith except what you have mentioned here this morning? A. Well, I have not gone through the clippings, I don't know.

Q. Did you not get up a form of reply that you sent out to protests that you were receiving from the field? A. We did.

Q. Where is it? Have you a copy of it here?

The Witness—Is there a copy?

Mr. Whipple—We have no objection to putting it in, but it seems we are going a little afield in putting in now the correspondence between the trustees and a great many of the Christian Science people all over the world, who we claim have been misled, and misunderstood this situation by just such propaganda as we are complaining of here. But it is a fact that we prepared a stereotyped reply to all these protests, which we felt were inspired by the directors. Then if I may be permitted, of course all these people who sent them were people, under the direction and the dominion of the directors. Whether they could be called agents or not—

Mr. Bates—Are you testifying in this case?

Mr. Whipple—No, not at all. I was calling attention to some facts you had overlooked.

Mr. Bates—I object.

Mr. Whipple—That is one of many.

The Court—You may proceed if there is any other question.

Q. I understood you to state, Mr. Eustace, that you presumed that protests had been received but that you did not know? A. I said, in volume, I know, I said I had seen some.

Q. Well, they were in sufficient volume so that you prepared that letter to be sent to them? A. Undoubtedly.

Q. A form letter? A. We prepared that letter immediately the first one came in.

Q. Well, were you expecting a large number? A. Not at all.

Q. Why did you prepare the form letter then? A. Because we wanted something that was dignified and uniform and without any personal opinion in it.

Q. Do you know how many of those have been sent out? A. I have not the slightest idea.

Q. Who would know? A. I suppose the business manager may be able to find out from the Publishing Society.

Q. The trustees, you think, would not know anything about it? A. We can get the information.

Q. Did you ever, before this suit was brought, as trustee, or your Board of Trustees, attempt to censor any articles of the editorial department? A. We continually, when the occasion arose, called the attention of the editor to articles and editorials.

Q. Before this suit was brought? A. Always.

Q. Have you any case in mind where you did that thing? A. I haven't in particular; but I can go back over the Sentinels and Journals and point out.

Q. Did you criticize or question anything that was appearing as an editorial in the papers? A. As an editorial in what?

Q. In the papers. A. Did we criticize? Yes, we did.

Q. But you do not recall an instance of it? A. No, I do not. I could pick them out.

Q. You stated a few minutes ago, Mr. Eustace, that you yourself got several copies of The Boston Herald and sent out perhaps 50 copies to your friends. What was the Herald that you sent out the 50 copies of? A. I have had them sent out—the clippings—as they came along. I paid no attention to any particular one; I just sent them out to some friends that I wanted to keep informed of what was going on in Boston.

Q. Then you have sent out a good many times clippings, have you? A. I have sent out the clippings as they have come along.

Q. To the extent of 50 each time? A. To the extent of 50, I suppose, each time.

Q. Did you send them to the parties on a regular list which you had? A. I sent them to my own particular friends.

Q. Did you have a list that you sent them to? A. I have.



Q. And were the clippings always sent to the same parties? A. Always sent to the same parties.

Q. You had reference to no particular Herald articles when you said you had sent out the Herald to 50 people? A. Not at all. I sent every one irrelative.

Q. Have you your list here? A. No, I have not. It is only a card list.

Q. A card list? A. That is all.

Q. Belonging to you personally? A. Belonging to me personally.

Q. Did the other trustees also send out these clippings to their friends? A. I know nothing about what they have done.

Q. And these 50 were your special friends, I understand? A. They were my special friends.

Q. Have you ever made any attempt to correct the statement that you say was false, that was made by Mr. McCrackan, in regard to the censoring of the articles in the periodicals? A. Who to? No one. No, we have not.

Mr. Whipple—This case is for the purpose of that.

Q. You never have made any attempt, then, to do that? A. None at all.

Q. You did send out 140,000 copies of your bill, and you sent out telegrams to all the press of the country asking them to get their information from you, but when a matter appears that you think was false in regard to Mr. McCrackan, and which you say was of importance, you have taken no means whatsoever to correct it? A. Why, I am in court on account of that now.

Q. Have you taken any other means to correct it? A. None whatever.

Q. Have you ever published any correction in the newspapers of any kind? A. None at all.

Q. Never sent any to the papers? A. Never sent any.

Q. Was it by advice of counsel that you did not do it? A. Did not do what?

Q. Make any corrections? A. It was never discussed at all that I know of.

Q. When the counsel advised you not to print anything in the papers concerning this case, as you have testified to this morning, was that at the same time that you were sending out 140,000 copies of these bills in equity to all the members on your subscription list? A. I did not say this morning that they had told us not to. They agreed with us that the right way to handle this was not to allow anything to appear in our periodicals.

Q. And so you took your subscription lists and sent them out? A. Sent out what?

Q. The Bill in Equity. A. No. That was long before.

Q. That is what I am speaking of. A. No; the Bill in Equity was sent long ago.

Q. Well, but wasn't that the time that the counsel advised you not to let anything appear in the newspapers in regard to this case? A. Doubtless it was at the same time that we asked them whether it would not be advisable to protect our periodicals from anything.

Q. What did they advise you? A. They agreed with our statement that it would not be wise to allow anything to go in.

Q. And have you stricken out portions of articles because you thought that they in some way or other tended to give an opinion in regard to the case? A. We have asked the Editor to do so, and he has very kindly done so.

Q. And have you pointed out to him in several instances things which you thought ought to be taken out? A. We have.

Q. And did you point out to him the matters in Mr. Harsch's article that were stricken out of it? A. We did.

Q. And did you tell him why they should be stricken out? A. We pointed it out and asked him, and he agreed, I believe, with us, that it was all right.

Q. To strike it out? A. To strike it out.

Q. Because you thought it affected these suits? A. Because what?

Q. Because you thought it affected this case in any way? A. No; but because we thought that we wanted to keep our periodicals entirely free from this suit.

Q. Well, then, it was because you thought in some way it had some reference to this suit, was it not? A. In the sense that we did not want any of our subscribers to be troubled or bothered with regard to the suit.

Q. And did you cause to be stricken out an article written by one of the directors merely because it was written by a member of the Board of Directors? A. We told the Editor that we felt that under the circumstances it would be wiser for a director's article not to be published.

Q. It had no reference in any way to the suit, did it? A. Not in the least, except it was a suit on between the directors and the trustees, and it seemed dignified and proper to keep it out.

Q. Do you remember the title of the article? A. I do not just now. I think it was—I have forgotten what it was.

Q. It was after it had all been set up in type and the proof sheets had come to you, wasn't it, that you ordered it omitted? A. It was.

Q. And the title of it was, "Spirit Against the Flesh"? A. I think that was it, by Mr. Merritt.

Q. Written by Mr. Merritt? A. Yes.

Q. Did you say that counsel advised you it was wise to leave that out? A. I did not.

Mr. Bates—That is all.

#### Redirect Examination

Mr. Whipple—I want to offer, if Your Honor please, this circular letter, or letter here that was called for, which was not read. I will read it, and then will you mark it? (Reading):

"COPY.

"May 5, 1919...

"Board of Directors,

"Mrs. Julia S. Selover, Chairman,  
"First Church of Christ, Scientist,  
"810 Sixth Street,  
"Devil's Lake, North Dakota.

"Dear Friends:

"We realize and appreciate in full measure your interest in the controversy which has arisen between the directors and trustees. We tried earnestly to prevent an open break. It was only when an institution founded by our great Leader for the promotion and extension of Christian Science was threatened with destruction, and that her inspired purposes were likely to be defeated, that we did the only thing which it seemed we could do, viz., to appeal to the highest tribunal in the Commonwealth where our Leader established her trust, to determine the controversy and instruct us as to our duty in the performance of the sacred trust and confidence with which we had been endowed.

"While this appeal is pending, it is not becoming for us to discuss the merits of the controversy. We will ask merely that all Christian Scientists believe that we have not taken this step without a full realization of its seriousness, and in the belief that what will ultimately result will be in the best interests of the Christian Science movement.

"Meantime, we ask that you will suspend judgment while we await the decision of a tribunal in which the whole world must have confidence.

"Yours sincerely,

"BOARD OF TRUSTEES."

[Letter above referred to and read into the record is marked "Exhibit 31. R. M. K."]

Q. (By Mr. Whipple.) That is a letter, I understand, that the Board of Trustees prepared and sent in reply to resolutions or criticisms or any communications that came to them from the field, in which they referred to this pending litigation? A. That is the letter.

Q. And then having prepared that letter, you say you did not read all the resolutions that came in, or expressions, but gave general directions to send out that letter? A. That is exactly it.

Q. Explaining why you could not discuss the merits of this controversy? A. That is it.

Q. Now, in your testimony you said that until the bill was filed in court, it was not printed, but was given out as soon as the bill was printed, or something to that effect. Let me ask

you if you remember that the bill was prepared and sworn to and subsequently filed on Tuesday, March 25, in this court? A. Yes.

Q. And that being filed in the morning of that day, you were informed that a temporary injunction was issued, which was served? A. Yes.

Q. And do you remember I immediately notified Governor Bates of the fact a bill had been filed and an injunction had been granted, which we desired to serve upon his clients? A. I do.

Q. And that I then suggested to him that with the approval of the Court the bill had been withdrawn from the files in order that we might consider together the situation and see if it was necessary for the litigation to proceed? A. I do.

Q. And that therefore—  
Mr. Bates—May it please the Court, I object to this. While it may be my brother's understanding, his memory is at fault.

Mr. Whipple—It isn't my memory.

Mr. Bates—It certainly isn't a proper statement for him to be making and putting into the mouth of the witness.

The Court—If the witness can testify to such an understanding, of course, he can.

Q. Do you remember my calling up Governor Bates? A. I do.

Q. You being present while I was calling him? A. I was present in the office when he was called up.

Mr. Bates—I beg Your Honor's pardon.

The Court—Was this a conversation you had with Mr. Bates over the telephone?

Mr. Whipple—Yes, Your Honor.

The Court—Of course, the witness, all he can testify to is that he was in your office.

Mr. Whipple—Yes.

The Court—At the time you purported to call up Mr. Bates.

Q. You remember I called him up? A. I remember you called up.

Q. You remember my suggestion over the telephone, as far as it went, that I had had the permission and approval of the Court to withdraw the case from—withdraw the bill from the files?

Mr. Bates—I object, Your Honor. I understood Your Honor to rule it out. I am willing he should make his statement, if I am allowed to make a statement in regard to it.

The Court—Unless it is conceded what he heard you say was in reply or by way of interrogation of Mr. Bates at the other end of the line I shall have to exclude it, but if Mr. Bates admits he was at the other end of the line and was talking with you then you may put in what this witness heard you say. I will leave that to Mr. Bates. If you do not, Mr. Bates, it shall go out, of course.

Mr. Whipple—You remember my talking with you, Governor Bates, the morning after it was filed?

Mr. Bates—I have no recollection of seeing Mr. Eustace present over the telephone at any conversation you had with me.

Mr. Whipple—You remember hearing my voice over the telephone?

Mr. Bates—Several times.

Mr. Whipple—You remember it that morning.

Mr. Bates—I do not know what morning you refer to.

Mr. Whipple—All right, we will pass that.

Mr. Bates—I am perfectly satisfied if Mr. Whipple shall make a statement, not putting it into the mouth of the witness, making his statements, then I can make mine.

Mr. Whipple—I will pass it, if Your Honor please. Q. And do you remember until the night of the next day, that is, the 26th, this bill was published in no newspaper and no one knew of it outside of His Honor, of the Clerk and yourself, and any information Governor Bates may have had? A. I do.

Q. No publication whatever? A. No publication whatever.

Q. And then, do you remember that it was announced that there could be no adjustment, that the bill must go forward? A. I do.

Governor Bates—I beg Your Honor's pardon. This is entirely irregular. You remember what, and when, and where? You put matters into the witness' mouth, your own witness, and not specifying anything as to the time and place.

Mr. Whipple—It was the afternoon of Wednesday, the 26th.

The Court—Mr. Whipple, you may ask the witness if he was advised by counsel so and so.

Mr. Whipple—Yes.

The Court—Go on.

Q. I will ask you whether, on the 26th, the day after the bill was filed on the morning of the 25th, in the afternoon, or toward evening, you were informed that there could be no adjustment? A. I was.

Q. And that therefore it was useless longer to attempt to prevent the bill being published? A. Yes.

Q. And do you remember that in the meantime the bill had been printed in the form in which it here appears with nothing whatever on the outside except "Bill in Equity"? A. That is the form in which it was printed.

Q. And at the request of counsel so that it would be in convenient form for use? A. Yes.

Q. Do you remember that then the question came as to how to have the publication, if it were published in the newspapers, exactly accurate? A. I do.

Q. Now, why did you send out these copies of the Bill in Equity to the newspapers to whom you did send it?

Mr. Bates—I pray Your Honor's judgment.

The Court—Why, of course—

Mr. Bates—I think it is within Your Honor's discretion to find from the

facts as to why it was done. I was merely going to suggest that the facts show why it was done.

The Court—That is for you to argue—I quite agree. But if you claim, as you have a perfect right to, that the respondents conducted propaganda to prejudice everybody in their favor, this witness may state why he did, and what he did do, to send out these press copies.

Q. Why did you send them out? A. We sent the Bill in Equity in that form out in order that our subscribers might have the exact facts as filed in the court instead of being possibly deceived by garbled newspaper reports.

Q. Why did you send these to the newspapers? A. In order that they might not garble it.

Q. Now, were you apprized that with a matter of this public interest it would be likely that the newspapers would publish something in regard to the suit? A. We felt confident that they would.

Q. Because of the wide-spread interest in it? A. Exactly.

Q. Had you any other desire in sending this copy of the Bill in Equity, exactly as it was filed in court, except that there might be before your subscribers and before the public as nearly as possible the exact statement of what was in your bill? A. That was exactly our reason for sending it out.

Q. That is the bill exactly as it was filed in court? A. Without any comment or word.

Q. Or any argument or suggestion in connection with it? A. Exactly.

Q. And I understand that the sending of that bill, or the furnishing of a copy to the newspapers, if they cared to publish anything, is the only thing that you did toward the publication, with the exception of this telegram. Is that correct? A. That is absolutely correct.

Q. Governor Bates has repeatedly said, in regard to the telegram, that it indicated or suggested that the trustees desired that the newspapers all secure their information only from the trustees. Was there any such intention or suggestion in it? A. Just the reverse.

Mr. Bates—I pray Your Honor's judgment. The telegram speaks for itself.

Mr. Whipple—I will call Your Honor's attention to the statement: "Any information desired will be gladly furnished you by the society."

Q. Did you intend in any way to prejudice the newspapers or anyone else with that telegram? A. Not at all.

Q. Or to do anything else except to get an exact statement of what the bill was, showing what the controversy was? A. It was exactly our idea.

Q. Now, as to the way the bill was delivered to the Boston newspapers, do you know how that was done? A. I believe that our counsel delivered it to the Clerk of Court, with the request

that if any newspaper wanted it, to give them a correct copy, a printed copy.

Q. That is to deliver printed copies?  
A. To deliver printed copies.

Q. That is, if any newspaper reporters called at the Clerk's office and desired a copy of the bill— A. Yes.

Q. An accurate copy, these should be given out? A. Yes.

Mr. Bates—Is he testifying as to what he knows of himself, now?

Mr. Whipple—Something he is advised of by counsel.

Q. Had you any desire or purpose there except that if the newspapers printed anything, they should publish accurately what the bill said? A. Our one thought was to have the newspapers and the entire world correctly informed on exactly what this suit was.

Q. Now, reference has been made to the two newspaper clippings which we put in, one from California, and one from New York, in which no reference was made in either to the fact that counsel had censored, had been guilty of the censoring to which Mr. McCrackan objected, and you said that so far as that was concerned, you had no complaint, but did you notice in both those articles it stated that Mr. McCrackan, not that Mr. McCrackan had been dismissed, but that he had resigned his position because of the intolerable situation which the trustees had caused? A. Yes.

Q. Did you object to that? A. I certainly did.

Q. As discrediting the trustees and their business? A. That was what seemed to me the purpose of it.

Mr. Whipple—That is all.

#### Re-Cross-Examination.

Q. (By Mr. Bates.) Mr. Eustace, your desire in sending out the 140,000 copies of your Bill in Equity was in order that people might get the truth of what your case was, was it? Did you print the copies in order that people might get the true statement of your case, was it? A. Yes.

Q. Did you print copies of the answer of the defendants? A. We did not.

Q. Have you sent out any copies of the defendants' answer in this matter? A. None.

Q. Have you sent any telegrams to the press telling them that you would see they had a correct statement of the answer? A. We have not.

#### Redirect Examination.

Q. (By Mr. Whipple.) Do you know, in fact, the defendants have had their answer printed and sent out to the field? A. I do.

Q. As promptly as it was ready? A. Right away, I believe.

Q. So they did not need your help? A. No.

Mr. Whipple—That is all. Thank you.

#### Re-Cross-Examination.

Q. (By Mr. Bates.) Just one question. The defendants had no access to your lists?

The Court—I suggest to you in this court this kind of examination is not in order unless new matter is brought out in redirect examination.

Mr. Bates—That is the only question I propose to ask him.

The Court—Because new matter was brought out in redirect.

Mr. Bates—He has just brought out the matter that we sent out copies. I wish to show we did not have the list to send it to and couldn't send them in any such way as he did.

The Court—You may ask the question.

Q. We had no access to the lists of the subscribers of the Christian Science periodicals? A. None whatever.

#### Redirect Examination.

(By Mr. Whipple.) And never asked for any? A. Never asked for any.

Mr. Whipple—That is all. We have present the other two trustees, and the business manager, whom we would call if we thought they could add anything to the testimony that has been given. They are here. I can put them on, merely to be cross-examined, if Governor Bates desires it, but do not wish to take Your Honor's time by calling them for any questions we desire to put.

The Court—I will hear the other side.

#### John R. Watts, Sworn

Q. (By Mr. Bates.) Your full name, Mr. Watts? A. John R. Watts.

Q. Your occupation. A. I am the business manager of The Christian Science Publishing Society.

Q. How long have you been business manager of The Christian Science Publishing Society? A. Since Aug. 1, 1917.

Q. What was your occupation before you became business manager of The Christian Science Publishing Society? A. I was assistant to the business manager.

Q. And before that? A. Attorney-at-law.

Q. And you are a member of the bar? A. I am a member of this bar, yes, sir.

Q. Have you acted as counselor for the trustees at times? A. No.

Q. Or advised them? A. Often advised them, but not as counsel.

Q. Often advised them? A. Only in the capacity of business manager.

Q. Have you, under the instructions of the trustees or otherwise, acting as manager, obtained extra copies of The Boston Herald containing articles reflecting on the Board of Directors of The Mother Church? A. I have an order with one of the assistants in the office to keep from 50 to 75 copies of every newspaper article appearing in connection with this case.

Q. Have you ordered any special number of copies of The Boston Her-

ald's article? A. There was one article. I do not remember just what it was. I think it was of Mr. Dittmore's bill that I ordered 1000 copies of The Boston Herald. I have never—I think it was 1000; it may have been more; I am not sure but what it was a little more than 1000; I do not know the exact number, but we have never done anything with them, and since then I have never ordered any large number.

Q. What did you order them for?  
A. I thought Mr. Dittmore might not print his bill, and it would save us the expense of printing the bill.

Q. Why did you need so many copies? A. I thought we might need them.

Q. A thousand copies? A. Yes.

Q. That bill in equity contained an attack on the Board of Directors of the Christian Science Church, did it?  
A. I should think it was. I should not say the board—

Mr. Whipple—It does not seem to me it ought to be characterized. It is a bill in equity pending in this court, and whether it is an attack or not, no witness should be asked.

Mr. Bates—Will you agree it is?

Mr. Whipple—I do not regard it as an attack at all. I regard it as a bill in equity in which a suitor in this court states his grievance and asks for his remedy.

The Court—What has the Dittmore case to do with this case?

Mr. Bates—Under Your Honor's suggestion that we could show they had been engaged in propaganda to affect this case.

The Court—As a director, what the plaintiffs did in reference to circulating the bill here. As a director, if he knows.

Q. What did the trustees do in the matter of circulating the Dittmore bill? A. So far as I know, not one thing.

Q. Did they not print it? A. We printed it for the convenience, and at the instance of our lawyers in book form and furnished copies to yourself.

Q. How many copies did you print?  
A. I think about 50 copies each.

Q. That was all you printed of them? A. I think that was all, sir. There may have been a little more.

Q. Have you still down there in your possession the thousand copies of The Boston Herald? A. Yes, sir.

Q. Did you obtain any extra copies of The New York Herald containing articles of a similar nature? A. Yes, sir. We have got about 75 of them.

Q. What did you do with them?  
A. All of them are in our records in the publishing house.

Q. You have all of them? A. Yes, sir.

Q. You have never sent them out?  
A. I have never sent out one, so far as I know.

Q. Didn't you order a second thousand of The Boston Herald of the articles containing the Dittmore bill?  
A. That is, what I said to you a while

ago is, there might be more than a thousand. I do not know, Governor Bates, just the exact number.

Q. Do you recollect you did send a second order at some time? A. No, I did not send a second order, but I think the original order was for more than a thousand. There was some complication when the man got down there, and somebody else had ordered 10,000 of them, and he did not know whether ours was 1000 or 10,000.

Q. Do you know who ordered the 10,000? A. No, sir. I thought it was you. I haven't any idea.

Mr. Bates—I think that is all.

Mr. Whipple—No questions, Mr. Watts.

William Patrick McKenzie  
Sworn

Q. (By Mr. Bates.) Mr. McKenzie, what is your full name? A. William Patrick McKenzie.

Q. What is your occupation? A. Editor.

Q. Of what? A. Of The Christian Science Journal, The Christian Science Sentinel, Der Herold der Christian Science, Le Héraut de Christian Science.

Q. Was Mr. McCrackan an associate editor with you? A. Yes, sir.

Q. There has been reference here, Mr. McKenzie, to a publication which it is alleged the Board of Trustees caused to be censored by omitting something that Mrs. Eddy had written. Have you any papers giving any light on that matter? A. I have here the original, that is, the copy which went to the printers, which has in it the paragraph which was afterward eliminated.

Q. Will you read the paragraph that was eliminated? A. (Reading.) "Great men are always a surprise. They are disconcerting to the inactive human mind. Jesus never spoke or acted as the Pharisees expected him to do; Columbus, Luther, Morse, Marconi, performed the unexpected; the By-Laws which Mrs. Eddy conceived for her Church under the stress of circumstances were not such as legislators would have framed. Referring to the many letters thanking her for the third manual, Mrs. Eddy wrote, 'Miscellany,' p. 229, 'Heaps upon heaps of praise confront me, and for what? That which I said in my heart would never be needed,—namely, laws of limitation for a Christian Scientist. Thy ways are not as ours. Thou knowest best what we need most,—hence my disappointed hope and grateful joy.'"

Q. Who wrote the article from which— A. Mr. McCrackan.

Q.—the paragraph that you have read was left out by some one's instructions? A. By instructions of the trustees.

Q. And that paragraph that you have read was a part of Mrs. Eddy's writings? A. It is a quotation from "Miscellaneous Writings."

Q. Of Mrs. Eddy's? A. Yes.

Q. Did you have any talk with the trustees, or any of them, in regard to that article? A. Yes, I was present when the request was made to eliminate the paragraph.

Q. And what was stated in that conversation? A. A page proof was in the hands of the trustees, and my attention was called to that paragraph, and Mr. Eustace thought that it introduced what might be a reference to the situation and said he thought that possibly the writer had introduced it purposely.

Q. What situation did you refer to or did he refer to?

Mr. Whipple—Well, the fact anything was said—

Q. What situation did you refer to? A. The fact that I had received instructions on March 26 to eliminate from the periodicals everything which might seem to have a bearing on the question of the suit, and I had instructed the associate editors as to that situation.

Q. Well, then, do you remember who it was that said that should be left out because it had some reference to the suit? A. Mr. Eustace said he thought it would be better to leave it out.

Q. Was there anything said in that conversation about the advice of counsel? A. Not in that conversation that I remember of.

Q. Was the matter left out at the suggestion of Mr. Eustace? A. It was.

Q. It was eliminated, and the article was printed without it? A. Yes.

Q. Now, there has been reference to some paper that was prepared for publication that contained a verse, "Onward, Christian Soldiers." Will you state to the Court what the facts were in regard to that? A. That was an article prepared by Paul A. Harsch, entitled, "If two of you shall agree." It had a bearing on the camp welfare work of the Church. It was edited by both associate editors and by myself. I was at a regular meeting with the Board of Trustees, and Mr. Ogden first restated the matter that we had discussed before as to the fact that it was necessary to exercise a great deal of care in what was published, that the trustees were acting under advice of counsel and had been told not to allow anything to appear which might seem to have a bearing on their side in the controversy, and after that conversation this page proof was placed in my hands. It was censored in ink, and I was told it would be well to make the eliminations.

Q. Will you read to the Court what was eliminated by direction of the trustees. A. I will read this full sentence. "As in Peter's time, when many were gathered together praying for him, so the unselfish united thought—"

Mr. Whipple—If you will pardon me, whereabouts is that? A. At the foot of the first column, sir. "As in

Peter's time, when many were gathered together praying for him, so the unselfish united thought, the agreeing thought, mobilized in support of the men in camp, field, and rest areas, quickly liberated them and greatly aided the work of the practitioners or Camp Workers, as those who did the field work were generally called." The words "the agreeing thought, mobilized" were cut out and the word "working" put in their place, so that it reads: "so the unselfish united thought working in support of the men in camp."

Q. Were there any special reasons stated why the other words were eliminated, except that they were thought to conflict with results desired by counsel? A. We didn't discuss that elimination. Then in the middle of the third page: "In carrying on this work The Mother Church with its branches has again proved that its conception of its mission to 'reinstate primitive Christianity and its lost element of healing' (Manual, p. 17) requires not only generous and unremitting activity on the part of all its members, but a working knowledge of the Principle involved in the statement which is the basis of this article. Agreeing only with the law of God and refusing as steadfastly to agree with any other law." The words "its conception of" were cut out; and the last sentence which is, "Agreeing only with the law of God and refusing as steadfastly to agree with any other law." That sentence was eliminated.

At the close of the article was the following sentence: "May we agree always so thoroughly and constantly with our associates in arms that it shall be said of us, to quote the words of a well-known hymn:

"Like a mighty army,  
Moves the Church of God;  
Brothers, we are treading  
Where the saints have trod;  
We are not divided,  
All one body we,  
One in hope and doctrine,  
One in charity."

The verse of the hymn and that sentence were omitted.

Q. And what was the conversation in regard to the omission of that verse and the sentence? A. I expressed astonishment and said that this hymn of Baring Gould's was really a hymn that belonged to the whole church; it was sung by many different denominations and expressed their ideals; and furthermore, it having been set to Sir Arthur Sullivan's music it had become a marching song for the soldiers and they had sort of adopted it, I thought, and it was suitable to appear in connection with this especial article.

Q. What reply was made? A. That they still thought it better be eliminated. So I made no objection and no further comment.

Q. Didn't they give you a reason

why they thought it ought to be eliminated? A. No.

Q. Was there any reference in that conversation to counsel? A. Reference to the advice of counsel was in the beginning of the conversation before this was placed in my hands, when they spoke of the necessity for very great care because they were acting under the advice of counsel and had been told they must be careful not to publish anything that would seem to have a bearing on the issues.

Q. Did they tell you in what way they thought this had a bearing on the issues of the case? A. No.

Q. Have they ever told you how they thought it had a bearing on the case? A. No.

Q. I don't think I asked you, Mr. McKenzie, how long you had been editor? A. Since, I think, July 23, 1917.

Q. You succeeded Mr. McLellan? A. Yes.

Q. And Mr. McLellan died about that time? A. Yes, sir.

Q. Prior to being editor, had you held a position in the Christian Science Church? A. At that particular time I was one of the trustees of The Christian Science Publishing Society.

Q. And were you one of the original trustees under Mrs. Eddy's trust deed? A. Yes.

Q. You had been a trustee down to the time you accepted the editorship in 1917? A. Yes.

Q. Had you during that time ever known of the Board of Trustees attempting to censor any of the articles of the papers? A. No.

Q. Did you ever know of their electing editors for the papers during that period?

Mr. Whipple—I pray Your Honor's judgment.

The Court—The last question is excluded.

Mr. Bates—I did not offer it in connection with what was said this morning, but on the question of our good faith in sending the notice to Mr. Whipple of which he complains.

Q. Since you have been editor when did the trustees first begin to censor any of the articles of your department? A. Do you mean since this bill in equity?

Q. Did they ever censor any before this bill in equity was brought? A. Yes, there have been a number of corrections. That is, they have advised me.

Q. Has there been any difference since this bill was brought? A. There has been a different reason assigned.

Q. What I want to find out is, whether or not it has been the policy to supervise your editorials.

Mr. Whipple—It has been brought out that corrections have been made. Whether that is supervision is for the Court to say. A. My work has not been supervised.

Mr. Whipple—Certainly not.

Q. Did Mr. McCrackan send you a letter of April 22, in which he referred

to this censoring of his articles? A. Yes.

Q. And so far as you know was any reply sent to him denying the truth of his statement in that letter?

Mr. Whipple—I pray Your Honor's judgment. Mr. McKenzie was not called upon to send any denial.

Mr. Bates—I withdraw the question.

Q. Did you communicate to Mr. McCrackan the reasons why those articles were deleted as they were?

Mr. Whipple—I pray Your Honor's judgment.

The Court—How can that be material to any issue I am trying here?

Mr. Bates—I don't think it is particularly important.

The Court—I am not trying Mr. McCrackan in any way.

Q. Have you the original of the article in which Mrs. Eddy's words were stricken out. A. That is the original article written by Mr. McCrackan.

[Article referred to marked Exhibit 32.]

Mr. Whipple—Will you let me see it? (Handed to Mr. Whipple.)

Q. Have you the proof? The proof was not in our files.

Mr. Whipple—Do you wish the proof of it? We have it.

Mr. Bates—If you have it, yes.

Mr. Whipple—There is the proof.

Q. Is that the proof of it? A. Yes, sir.

Q. It was set up originally with those words in it? A. Yes, sir.

[Proof marked Exhibit 33.]

Q. Now as to the article by Mr. Harsch? A. That is the article.

Q. Is this the original article? A. The original article is here. It was corrected by the editorial staff and typewritten for setting up.

Q. Where is the copy that has the deletion suggested by the board—is this the one? A. Yes, sir.

Q. The proof sheet? A. Yes, sir.

Mr. Bates—That, Your Honor, is similar. I think my brother will not object to my stating here that his bill in equity proceeds on the basis that the Publishing Society is a distinct and independent activity of the Christian Science movement. The answer is upon the theory that the Christian Science movement is one and is united—a united movement—we have so stated in the answer. With that in mind I think Your Honor will see how these things have their bearing. I offer that as an exhibit.

[Marked Exhibit 34.]

Mr. Whipple—I haven't the slightest objection to your statement, but I do not agree with your statement as to our claim in the bill.

Mr. Bates—I refer Your Honor to Section 4.

The Court—Have you any further questions to ask of this witness?

#### Cross-Examination

Q. (By Mr. Whipple.) I understand that shortly after the bill was filed you were told by the trustees, or one of them, that care must be taken that in the publications of The Christian Science Publishing Society there was nothing which could be construed as bearing upon the merits of this litigation, on either one side or the other? A. On the 26th of March, at a meeting of the trustees, that and several other things were stated.

Q. That is enough for present purposes. On the 26th of March? A. Yes.

Q. Now then, what is the date on which this deletion occurred? A. It would be nine or ten days before that date of issue.

Q. I have a paper here with regard to the "Onward, Christian Soldiers" article, stamped May 3, 1919. Have you any doubt that that was the date? A. May 3 is the date of the issue, sir.

Q. The date of issue? A. Yes, sir. That stamp is put on to show that the proof belongs to the issue of May 3d.

Q. Thank you for that, because there is the same date. These conversations occurred some time after that statement to the Board of Trustees with regard to excluding from the columns of the Society any mention of this litigation which would prejudice people one way or the other? A. Yes, sir.

Q. Quite a while, was it not? It would be about the 23d of May? A. I say about nine or ten days previous to the date of publication.

Q. I do not understand that when these changes were made in the proof anything was then said as to the particular reason for making them? A. Except that Mr. Ogden again recited the situation and stated that they were acting under advice of counsel.

Q. In regard to one of them, not as to the other? A. With regard to one of them, yes, sir.

Q. (By Mr. Bates.) You have heard, Mr. McKenzie, the testimony with regard to Mr. McCrackan's delinquencies with regard to his dilatory work—you have heard the statements on the stand? A. Some of them, yes, sir.

Q. It is a fact that during the last year he was absent a great deal from the office, is it not? A. Yes, sir.

Q. And that you made complaints to the trustees about it? A. No.

Q. Didn't you call to the attention of the trustees anything about it? A. No, not since July, 1918. But I made reports.

Q. You made reports? A. I made reports. The statement that I have made constant complaint of his conduct is incorrect.

Q. You made reports in response to questions? A. Yes.

Q. In point of fact he was neglecting that work which an editor ought to perform? A. He was irregular, yes, sir.

Louis Leon Harney, Sworn

Q. (By Mr. Bates.) Your full name, Mr. Harney? A. Louis Leon Harney.

Q. What is your occupation? A. Secretary to Clifford P. Smith, manager of the Boston Committee on Publication.

Q. Mr. Harney, did you have charge of the distribution of the copies of The Boston Herald containing Mr. Smith's reply to certain statements in the paper with regard to Mr. McCrackan's resignation or retirement? A. I do not understand that there was any distribution made of the article in the Herald.

Q. There has been testimony—you were not here—that there were 1000 copies of the Traveler (I should have said) that were ordered by the Board of Directors. Are you familiar with the disposition of that 1000 copies? A. I am.

Q. Will you state what the distribution was? A. 1000 copies were ordered and I held them awaiting decision of counsel as to whether it would be proper to mail them to a list of practitioners advertised in The Christian Science Journal in greater Boston and Massachusetts. I did not receive permission to do this and they were not sent out.

Q. And have any of them been distributed? A. On Tuesday morning, May 27, in connection with the sending out to the assistant Committees on Publication and regular correspondents in the State of Massachusetts, I asked whether it would be right to include with the answer of The Christian Science Board of Directors to the complaint of Mr. Dittmore and a copy which the board had issued of the letter, whether it would be proper to include this article to a limited number on a list which we had.

Q. And that was a list of what? A. A list of assistant Committees on Publication and regular correspondents for the State of Massachusetts.

Q. How many were distributed? A. I think I counted them this morning, 113.

Q. And the rest are still— A. The rest are not there. There is a small quantity left, as people have come into the office at the time of the annual meeting and they have taken them.

Q. Helped themselves? A. Yes.

Q. There are still a quantity of them there? A. Yes.

Q. The annual meeting was held June 2? A. June second, last Monday.

#### Cross-Examination

Q. (By Mr. Whipple.) How many did you say had been distributed out of hand? A. This is the list.

Q. I mean people have been coming in and getting them, you said. A. Probably to the extent of a few hundred.

Q. A thousand is only a few hundred. Can't you tell us? A. I don't know.

Q. Haven't you seen the amount you have left? A. I think there are left only about one or two hundred.

Q. In other words the 1000 have been distributed within one or two hundred? A. They haven't been distributed by sending them out.

Q. No, certainly not, but they have been distributed. A. People have come in and taken them.

Q. Taken them without your consent? A. No.

Q. With your consent? A. Knowing they were there.

Mr. Whipple—Let's have the list marked.

[List marked Exhibit 35.]

Mr. Whipple—I understand these are sub-committees whose duty it is to re-distribute news.

#### Re-Direct.

Q. (By Mr. Bates.) Upon whose direction and advice, if anybody's, did you send out the 113 copies? A. I simply asked Judge Smith if it would be all right, as he was going by, and he said, Yes.

Clifford P. Smith.

Q. (By Mr. Bates.) Your full name? A. Clifford P. Smith.

Q. What is your present occupation? A. I am Committee on Publication and manager of Committees on Publication for The First Church of Christ, Scientist, in Boston.

Q. And how long have you been on that Committee on Publication? A. Five years.

Q. And have you held any other position in The First Church of Christ, Scientist, The Mother Church, so-called? A. I was the First Reader for three years and also one of the trustees of The Christian Science Publishing Society for three years and a little more. I was president of the Church one year. I was on the Board of Lectureship of the Church for three years. I have held various temporary employments.

Q. Prior to becoming identified with the work of the Christian Science Church, what was your occupation? A. I was Judge of the District Court of Iowa.

Q. What is the jurisdiction of the District Court of Iowa? A. Substantially the same as the Superior Court of Massachusetts.

Q. How long were you a judge of that court? A. Eight and one-half years.

Q. And you are a member of the bar? A. Yes.

The Court—Do you understand that Mr. Smith is a member of the Massachusetts Bar?

The Witness—Yes, Your Honor.

Q. You went directly from the work on the bench to the work for the Christian Science Church? A. Yes.

Q. And have devoted yourself to it ever since? A. Except for practicing law to a very limited extent and doing

a certain amount of work as an author or writer.

Q. How many years ago was it you left the bench? A. In 1908.

Q. You have stated that you are at present the Publication Committee? A. Yes.

Q. Will you state to His Honor what that position is? A. Perhaps I can state it best by reading the By-Laws applicable to it, it is not long. Art. 33 of the Church By-Laws, parts of Sects. 1 and 2 of that article. "There shall be appointed by The Mother Church a Committee on Publication, which shall consist of one loyal Christian Scientist who lives in Boston, and he shall be manager of the Committees on Publication throughout the United States, Canada, Great Britain, and Ireland. It shall be the duty of the Committee on Publication to correct in a Christian manner impositions on the public in regard to Christian Science, injustices done Mrs. Eddy or members of this Church by the daily press, by periodicals or circulated literature of any sort. This Committee on Publication shall be responsible for correcting or having corrected a false newspaper article which has not been replied to by other Scientists, or which has been forwarded to this Committee for the purpose of having him reply to it. Furthermore, the Committee on Publication shall read the *last proof sheet* of such an article and see that it is published according to copy; he shall circulate in large quantities papers containing such an article, sending a copy to the Clerk of the Church."

Q. The Committee on Publication has nothing to do with the publication of the periodicals of the church? A. Nothing at all.

Q. It is left to you to see to it that no false reports are circulated in the daily press or otherwise and of correcting them when they come to your attention? A. Yes, sir.

Q. You are the only member of the committee? A. Yes. Perhaps I should say that in other states there are committees who act under my direction. I am the only committee in Massachusetts.

Q. There are other committees. There is a committee in each state, in Great Britain, Ireland, and all these come under you? A. Yes.

Q. Now, did there come to your attention on May 21, an article in The Boston Herald or in The Boston Post, stating the alleged reasons for Mr. McCrackan's alleged retirement? A. Yes, sir.

Q. And will you state what you did upon seeing those articles? A. I first read them, of course, and tried to take account of their probable effect upon the average readers. Then being in the board room of the directors of The Mother Church early that morning on other business, I consulted them about supplying to the down town newspapers, the afternoon

newspapers, a copy of Mr. McCrackan's letters to me, for the purpose of keeping the afternoon papers from reprinting the story; also consulted them about furnishing a letter from myself to The Boston Post and The Boston Herald incorporating the McCrackan letters and dealing with the additional statement that the directors had had great difficulty in getting anybody to become a successor to Mrs. Knott. The chairman of the Board asked me if I had seen the morning papers, and I said I had. He asked me what I was going to do about it. I told him I was thinking of doing what I have just said.

Q. Have you those papers with you that you were endeavoring to correct? A. I have.

Q. These are in as exhibits, but I think the stenographer has them, so I will refer to these. Will you take up the one in The Boston Post and point out to His honor the false statements you thought it was your duty to correct? A. The Boston Post article which was published on the front page was headed "Quits Office of Scientists. McCrackan Resigns His Editorial Positions." That contained the false statement that he gave as a reason for his resignation that he was disgusted with the dictatorial attitude of the church directors.

Q. Now will you point out the statements you conceived to be false in The Boston Herald article on that point. A. The Boston Herald article was headed "W. D. McCrackan Leaves Editorial Board of the Scientist Publications. Has Resigned and Left Boston, It Is Said—Speech a Year Ago Is Understood to Have Aroused Antagonism." The reasons for his resignation were stated in two different places in the article. One place reads as follows: "It is also said that his resignation was because of his opposition to certain policies of the church government and interference with his efforts for editorial progress." At another place it is stated: "There is no hesitation among prominent members of the Christian Science Church in stating that Mr. McCrackan's term of office began to be limited a year ago when as retiring President of The Mother Church he made an address at the annual business meeting before 5000 members in which he called upon them as well as the officials to arouse themselves to the fact that the vital spiritual needs of the organization were being neglected. This is said to have been the cause of antagonism as reflecting upon certain policies of government with which he is known to be out of sympathy."

Q. Were those statements true or false? A. False, at least I so believed them.

Q. And did you send the article to the evening papers, or the letter? A. I merely sent a copy of Mr. McCrackan's letters to me to the afternoon papers in order to keep them from reprinting the same story. I

sent letters to the two morning papers that had published the story.

Q. You did send the letter that is copied into the petition in this case? A. I did, that is the one in The Boston Herald and a similar but shorter one to The Boston Post.

Q. Did you know, did you consider at the time you sent Mr. McCrackan's letters, that they were truthful statements? A. I did.

Q. Had you any reason to think otherwise? A. I had not.

Q. Did you have any purpose in mind except to correct those statements that had been made in the morning papers? A. That was my sole purpose.

Q. Had you any thought in mind of in any way violating the provisions of the injunction? A. I did not. I thought I was very careful to observe it.

Q. Have you at all times been careful to observe and respect the injunction? A. I have tried to be very, very careful.

Q. Have you advised the directors in regard to exercising great caution? A. I have.

Q. Whether or not you have done anything to prevent any persons under you or otherwise from violating the injunction? A. Since this controversy has arisen I have had opportunity to write simply hundreds of letters in which the actual facts might have been stated and made capable of being regarded as reflecting upon the trustees. I have refrained from writing more than these two letters. In the case of New York City, which was the other scene of the propaganda from the very start, I cautioned my subordinate there to let things pass and be very careful to obey the injunction.

Q. As a matter of fact has there been a large number or a considerable number of articles appear in the daily press here and in New York attacking the government of The Christian Science Church in connection with these suits?

Mr. Whipple—I shall have to object to that.

The Court—I do not think it is material.

Q. Have you been inquired of by people who were members of the Church in regard to the situation and advised them having relation to the injunction? A. I don't know that I have. I have declined to answer a good many letters, saying I preferred not to say anything by reason of the injunction.

Q. That is what I had reference to. I understand you to say there have been hundreds of them? A. I answered a great many letters of that sort.

Q. So far as you know, has there been any violation of the injunction by any of the Committees on Publication under you throughout the country?

Mr. Whipple—I pray Your Honor's judgment.

A. I don't believe there has been any single instance.

The Court—You were not asked what you thought. You were asked if you knew of any.

A. I do not know of any.

Q. You were a trustee under this Deed of Trust of Mrs. Eddy and a trustee of The Publishing Society for what time? A. From the first of July, 1908, to September, 1911.

Mr. Bates—I think this comes within what Your Honor admitted. I ask you not to answer unless it does.

Q. During that time when you were trustee, was there ever any attempt on the part of the trustees to control the editorials or the editorial policies of the paper?

The Court—I think I must exclude that. I have explained to you why.

#### Cross-Examination

Q. (By Mr. Whipple)—Judge Smith, I understand you noticed in the Post the article and also the article in the Herald, on the morning of May 21, a statement with regard to Christian Science matters that you thought you ought to correct? A. That is correct, Mr. Whipple, except the date. The date was the 21st.

Q. I thought I said the 21st. Of course in setting the matter right you wanted to state the truth? A. I intended to state the truth with regard to the published statement.

Q. Now you say that that statement was in both those papers that Mr. McCrackan had resigned his position. You observed that, did you not? A. Yes, sir.

Q. Did you think that was a truthful statement? A. Substantially.

Q. That he had resigned? A. He had declined reelection.

Q. I am talking about resignation. You know the difference, don't you? A. I do not see any difference between resignation and a declination of reelection, in view of the fact—

Q. Will you point out the letter of Mr. McCrackan's where he declined reelection?

The Court—I do not want to interrupt your cross-examination, but I am familiar with it.

Do you understand, Mr. Whipple, that this witness knew of the action taken by the trustees.

Q. I will ask Judge Smith, did you, or rather had you read the letter of May 20 in which the trustees informed the Board of Directors that they had dismissed him from the service? A. I did. I had submitted that letter to counsel on the day it was written. Submitted it to Governor Bates and other counsel.

Q. On May 20, when you received it—I am reading from the record Exhibit 16—You were present when it came up before the board were you not? A. No, sir, but I received a copy of that letter with the request to submit it to counsel and I did so.

Q. So that on the 20th you knew before you wrote the letter to the Her-

aid—you knew that under the bill in equity that was filed the trustees made a claim that they had a right to employ editors and discharge them did you not? A. I did. I knew they claimed a right to employ them and their letter implied a claim of a right to discharge them.

Q. You knew they brought this bill for the purpose of asserting that right? A. No, I did not.

Q. Didn't you know that was a part of the bill? A. No, I did not.

Q. Did you not know that was the object of the bill? A. No, I did not.

The Court—Ask him if he has read the bill?

Q. Have you read the bill? A. Many times.

The Court—You must remember Mr. Smith is a member of the bar and has read this bill.

Q. You were one of the counsel who drafted the answer? A. Yes.

Q. Indeed you drafted the answer yourself, didn't you? A. I did not.

Q. You contributed to it to a slight extent, possibly? A. To a slight extent.

Q. And certainly have read the answer? A. Yes.

Q. So you know the issue? A. I do.

Q. And you say you do not know that it was an issue whether the trustees themselves had the right to select and hire an editor and dismiss him? A. I did not give that answer, at least did not mean to.

Q. I ask you whether you did know that it was that right the trustees were attempting to assert? A. I assume that was included within the rights they were asserting.

Q. You read the injunction, of course? A. Yes, sir.

Q. And knew that it enjoined the directors from interfering with the management of the Publication Society according to the Deed of Trust? A. I read the injunction more than once.

Q. Did you not send communications to The Associated Press and send copies to The Associated Press of these letters of Mr. McCrackan's and accompany them by statements that those represented the true reasons why Mr. McCrackan resigned? A. I did not.

Q. Do you know that anyone under you did do that? A. I do not know that anyone did. The only instructions I gave I have heretofore stated.

Q. Were you unaware, are you unaware that those copies of those letters were sent to one Mr. McKernan of The Associated Press in Boston? A. I do not know that they were.

Q. You do not know it now? A. No, I do not. My instructions were to take the typewritten copy of Mr. McCrackan's letters down to the afternoon papers for the purpose of keeping them from repeating the story, and take my letters to The Boston Herald and The Boston Post.

A. And not to The Associated Press?

A. I did not give instructions of that kind.

Q. Who was the person you instructed to do this—to take these down? A. Mr. Harney who has just been a witness.

Mr. Whipple—I want to recall Mr. Harney.

Mr. Smith—If he has gone I will have him here tomorrow morning.

Adam H. Dickey, Sworn

Q. (By Mr. Bates.) Your full name, Mr. Dickey? A. Adam Herbert Dickey.

Q. You are one of the defendants? A. Yes, sir.

Q. You are a member of the Board of Directors of the Christian Science Church? A. Yes.

Q. How long have you been such? A. Since 1910.

Q. What were you prior to that—immediately prior to that? A. I was secretary to Mrs. Eddy.

Q. And for how long a period were you secretary to Mrs. Eddy? A. Nearly three years.

Q. What years? A. 1908, 1909, and 1910.

Q. What had been your occupation previous to that? A. I was reader in a branch church in Kansas City and teacher and practitioner of Christian Science.

Q. Previous to that time? A. I was in the manufacturing business.

Q. And did you leave the manufacturing business to devote yourself to the Christian Science movement? A. Yes.

Q. Did you become Mrs. Eddy's secretary at her request? A. Yes.

Q. And did you become a member of the Board of Directors at her request? A. I did.

Q. You have been a member of the Board since 1910? A. Yes, sir.

Q. Taking up first the matter of the alleged contempt in the case of the letter that was sent to the trustees, stating to them that you would elect an editor on the day of the annual meeting, June 2. Had the board been in the habit of electing editors on the day of the annual meeting? A. Yes.

Q. Do you know, Mr. Dickey, what efforts, if any, had been made to obtain the assent of counsel for the plaintiffs to this matter, were you advised that there had been efforts of that nature? A. Yes, sir.

Mr. Bates—Have you the letters that passed between us?

Mr. Whipple—We have them here.

Mr. Bates—If you will allow us to put in the copies I think it would expedite matters.

The first is a letter of May 2, 1919; it is from my firm to the Hon. Sherman L. Whipple.

At this point the Court adjourned until Friday morning, June 6, 1919, at 9:30 o'clock.

“May 2, 1919.

“Dear Mr. Whipple:

“The time fixed by the By-Laws of The Christian Science Church, for the annual election of the business man-

ager and editors of the periodicals, is the Monday following the first Sunday in June, which this year, is June 2. This election has been held each year, at least since the date of the trust deed, in connection with the annual meeting of The Mother Church, and these officers always have been elected by The Christian Science Board of Directors. During all this time the trustees of the Publishing Society have recognized the right of the directors to choose the editors and business manager, and they, as well as the directors, have regarded the trust deed, together with the By-Laws, as the source of this authority on the part of the directors. Under this interpretation the periodicals of the church have attained their present position of importance and influence as the official literature of the Christian Science faith.

“Had it not been for your letter of April 1st, in which you took the position that an election of an editor by the directors would constitute a violation of the ad interim injunction, we would not have considered that such action, following the usual procedure established by the By-Laws and acquiesced in for more than 20 years by all parties, could be construed as such a violation. In our opinion, this long-continued practice is both in accordance with the true meaning of the Trust Deed and in obedience to the By-Laws of the Church; and, as it seems to us, the terms of the injunction cannot be extended, by any fair interpretation, to prohibit the directors from continuing to do their duty in this respect.”

“May 2, 1919.

“Whatever ultimately may be decided by the Court concerning the right of the directors of the Church to control the editorial policy of its official organs, until such decision is made we think that equity requires that the status that has, uninterruptedly and without question, prevailed for so long a period of time should be preserved. Because of the views expressed by you in your letter in regard to this matter, while they are entirely opposite from our own, and, in our judgment, untenable, we think as a matter of courtesy to you, since you have taken the pains so fully to express yourself to us, we ought, before any action is taken regarding the coming election, to ask that you give us your written assent, without prejudice, that these officers may be chosen as usual by the directors at the approaching annual election. We are led to believe that you may do this and avoid the necessity of an application to the Court, because, of course, you realize that the theory upon which courts proceed in the matter of ad interim injunctions is the preservation of the status quo pending a decision on the merits, and also because of the statements contained in your letter of the first of April, which we quote:



"The trustees are most anxious to go through this ad interim period with the greatest possible harmony with the directors. They desire that the least possible injury be done to their business which has the single purpose of promoting and extending Christian Science. They will cooperate with the directors to the fullest. . ."

"If your clients will suit their actions to these words of yours, we will certainly receive your assent (requested and given without prejudice) that the election may proceed this year as it has in the past. If, however, you are not inclined to give us such assent, we shall make a motion for a modification of the injunction, seeking to obtain the express sanction of the court for doing that which, but for the claim you have advanced, we would not have regarded as within its prohibitive scope.

"Very truly yours,  
"BATES, NAY, ABBOTT & DANE."

Mr. Bates—There was no answer to that letter until May 12, then came the following letter.

"May 12, 1919.

"My dear Governor Bates:

"The fact that I have been out of the city since your letter of the 2nd inst. came to the office accounts for my delay in replying.

"My information as to the method of engaging a business manager and editors is not in accord with that which has been given to you.

"Under the Deed of Trust the authority of the trustees to employ such a business manager and such editors as they think are best adapted for the service, is perfectly clear, and I find nothing in the record of what has hitherto been done which indicates that the trustees have surrendered such power or authority.

"The really important question, however, is as to who shall be employed. Have you reason to suppose that the trustees and directors are not in accord in this matter? If, in point of fact, the parties are in agreement as to the personnel, we ought to be able to devise a method of expressing their agreement which shall not prejudice our respective contentions.

"Sincerely yours,

"W/U."

"May 15, 1919.

"My dear Mr. Whipple:

"Your letter of May the 12th, replying to ours of May the 2d, is at hand. In this letter you do not quite answer our question, but you ask us whether or not we have any reason to suppose that the trustees and directors are not in accord as to the persons to be elected as business manager and editors. I cannot give you an answer to this question at this time. In your conversation with me over the telephone, you stated in substance that you do not admit that the Board of Directors has any authority in the matter of the election of a

business manager and editors, and that the trustees would not recognize the validity of any such election. You further said, however, that you did not care whether the board elected or not, provided they did not attempt to enforce the results of their election upon the trustees, and that you did not consider that an election by the board would be a violation of the injunction. You simply thought it would be a futile thing for the board to do.

"If I have not correctly stated your position kindly so advise me. If I have correctly stated it then there is not at present occasion for us to ask for a modification of the injunction and the board will at the customary time proceed to elect a business manager and editors in accordance with the provisions of the Church Manual and in accordance with unbroken custom.

"Yours sincerely,

"BATES, NAY, ABBOTT & DANE."

"May 15, 1919.

"My dear Governor Bates:

"I have your favor of even date.

"While I think you have re-stated with substantial correctness what I said by telephone, the remarks which I made do not fully or adequately state our position in relation to your proposition to have the Board of Directors elect a business manager and editors.

"As I said to you, the trustees do not admit that the directors have any authority in this matter, and they would not recognize the validity of any attempted election of business manager and editors by the Board of Directors. It is true in a certain limited sense that a mere election by the directors, if nothing further were done, would very likely not be a violation of the injunction. This would be so, simply because of the futility of such a proceeding, and that no harm had resulted therefrom. If, however, in connection with such a futile election, the directors brought about an interference with the trustees in the discharge of their duties as such, and actually did interfere with the business of the Publishing Society, or did acts tending to impair, destroy, or in any way injure the business of the Publishing Society, such conduct would, of course, violate the injunction.

"If, for illustration, your clients, having proceeded to elect a business manager and editors, should publish the fact or attempt to make it known or believed that the business manager and editors discharged their duties by reason of such election, such conduct would be so serious a violation of the injunction that the trustees could not do otherwise than bring it to the attention of the court.

"If the directors really desire or purpose to do anything effective in the way of attempting to appoint or elect a business manager or editors, I think the safest course for them to adopt would be to move for a modification

of the injunction. I cannot think of any real, effective action they could take in this behalf that would not be claimed by us as a violation of the injunction for the reasons which I have pointed out above.

"Sincerely yours,

"W-U."

"April 1, 1919.

"My dear Governor:

"Two matters have been called to my attention in which it seems clear to me that The Christian Science Board of Directors have acted in violation of the ad interim injunction. I call them to your attention without any purpose to be technical or unduly critical, but to request you to make clear to your clients the scope of the injunction and the fact that the trustees must insist upon its being scrupulously obeyed.

"1. The trustees have just received from the directors a letter in which the directors request the trustees to publish an announcement of the election of Mrs. Hoag as associate editor, succeeding Mrs. Knott, resigned. I enclose herewith for your information a copy of the letter.

"The fact is, however, that the trustees have never been consulted as to the election of Mrs. Hoag, nor has Mrs. Knott sent in any resignation to them.

"Section 6 of the Deed of Trust provided:

"Said trustees shall employ all the help necessary to the proper conduct of said business."

"By the ad interim injunction the directors are

"commanded to desist and refrain from taking any further action intended directly or indirectly to impede or interfere with the Plaintiff Rowlands or either of the other plaintiffs in the discharge of his or their respective duties as trustees under the Trust Instrument of January 25, 1898."

"It is too plain for argument that under the terms of the trust the trustees have authority to appoint the editors. The injunction is that the directors be enjoined from carrying out their plan to 'impair, destroy or in any way injure the business of The Christian Science Publishing Society, as conducted by the plaintiff trustees.' The effect of this circular is likely to injure the business of the Publishing Society. We hope that this result will not follow, but we believe that the effect will be very soon seen.

"The trustees are most anxious to go through this ad interim period with the greatest possible harmony with the directors. They desire that the least possible injury be done to their business which has the single purpose of promoting and extending Christian Science. They will cooperate with the directors to the fullest extent in harmonious execution of this great purpose but there can be no such har-

mony if, upon the matter being called to their attention, the directors will not respect or obey the order of the Court.

"I feel confident that I have only to call this aspect of the matter to their attention through you to effect the desired result.

"May I add that the trustees have been requested by the directors to publish an announcement of Mrs. Knott's selection as a member of the board.

"This is a matter in controversy before the Court. It has not yet been determined whether Mrs. Knott or Mr. Dittmore holds that position.

"The trustees have determined that their publications shall refrain from publishing any facts or comments referring in any way to the disputes which are now before the courts. I approve this suggestion and I hope it will meet favor with yourself and your clients.

"Sincerely yours,"

June 6, 1919

THIRD DAY

The Court came in at 9:30. After calling the regular docket the hearing was resumed at 10 o'clock.

Mr. Bates—At the time of adjournment yesterday, Your Honor, I think we were trying to find what I supposed was a missing letter that was from my office to Mr. Whipple in reply to his letter to me of April 1, which had just been read.

I find his statement is probably correct, the answer was by way of conference or telephone, but he subsequently sent me a letter on the same subject on April 7. And that was the reply—it was the reply to that letter which I had in mind, which I would like to put into the case, because it bears on this matter.

The Court—Certainly.

Mr. Bates—Have you that letter, Mr. Whipple? I think it appears that it was a reply to that letter of April 7, and I ought to introduce it, although it is a substantial repetition of what was said in the letter of April 1.

The letter from Mr. Whipple of April 7 is as follows:

"My dear Governor Bates:

"I write you further in relation to the matter of Mrs. Knott's resignation and Mrs. Hoag's appointment to succeed her.

"As I said in my letter of April 1, neither did Mrs. Knott send a resignation to the trustees, nor did the trustees appoint Mrs. Hoag as her successor.

"The trustees have received under date of April 3 a copy of a resignation of Mrs. Knott, dated March 19, and addressed to The Christian Science Board of Directors.

"The trustees cannot allow it to be said that while the bill was pending, and in violation of the injunction, the

Board of Directors continued to elect or appoint editors of the Publishing Society and receive resignations, ignoring entirely the Board of Trustees.

"I would suggest that Mrs. Knott address her letter of resignation to the Board of Trustees, and that Mrs. Hoag confer with the Board of Trustees with regard to her appointment by the board as associate editor. This action may be taken entirely without prejudice to the claims of the Board of Directors as to how the matter should properly be done. The point of this suggestion is that it accords with and does not violate the injunction.

"Sincerely yours,"

[Letter marked Exhibit 42.]

Mr. Bates—And the reply sent to Mr. Whipple was on the same date, April 7, 1919.

"My dear Mr. Whipple:

"Replying to your letter of April 7, in relation to the matter of Mrs. Knott's resignation and Mrs. Hoag's appointment to succeed her, Mrs. Knott resigned, in accordance with custom, to The Christian Science Board of Directors, on March 19, 1919, and her resignation was accepted by that board on that date. Mrs. Hoag was appointed, in accordance with custom and the Manual, as associate editor on March 24, 1919. The injunction was issued March 25.

"Very truly yours,

"JOHN L. BATES."

[Letter marked Exhibit 43.]

Mr. Bates—While I am introducing these letters there has been handed to me another letter which I sent to Mr. Whipple on the date, which reads as follows:

"My dear Mr. Whipple:

"We will at once call this matter to reference to a telegram received by Mr. Eustace, making complaint of remarks said to have been made by Mr. Strickler.

"We will at once call this matter to the attention of the Board of Directors; and need not assure you that if the remarks were made as stated they were made without the knowledge or consent of the board.

"Will you kindly favor us with a copy of the telegram.

"Thanking you for calling this matter to our attention, we are,

"Yours very truly,

"JOHN L. BATES."

Adam H. Dickey, Resumed

Direct Examination Continued

Q. (By Mr. Bates.) Mr. Dickey—

Mr. Bates—I would like to offer at this time, Your Honor, a copy of the Church Manual, in which the directors' duties are prescribed.

Mr. Whipple—I do not think it is competent or material. I do not see how it bears upon the questions raised by this petition.

The Court—I agree with you. I exclude the Manual.

Mr. Bates—It is offered, Your Honor, to show the good faith of the defendants.

Q. Mr. Dickey, there have been references made here to a letter—

The Court—If I may interrupt you a moment. While the law is that while intention or motive which governs an act may have some bearing, it is of no materiality whatever as a justification or a defense. Yet, at the same time, if it should appear in the course of the hearing that it was an innocent mistake, or there was no motive or purpose whatever to disobey the order of the Court, the Court does take into consideration such considerations in imposing whatever penalty may be awarded, and if you desire you can ask, or put your question in any form you choose, these various respondents whether they had any such purpose or intent.

Q. Mr. Dickey, reference has been made to a letter of May 21 that was sent by your board to the Board of Trustees, in reference to its proposed action in electing a successor to Mr. McCrackan. Was that letter sent on advice of counsel? A. It was.

Q. And all your counsel? A. Yes.

Q. What did your counsel advise you in regard to that matter? A. They advised us that we should write this letter, that he had had a consultation with Mr. Whipple, and no objection had been offered to the board proceeding in its usual way, but we were to await further word from you, and take no definite action until we had final word from counsel.

Q. That is, you were to do nothing except to elect, until you heard further from counsel? A. Yes, sir.

Q. You were to take no measures to enforce the election? A. That is it.

Q. As a matter of fact, has any election taken place? A. No, sir.

Q. Was that also postponed by advice of counsel? A. It was.

Q. Your annual meeting was adjourned because that matter was left unattended to? A. Yes, sir.

Q. Now, there has been reference here to the annual meeting. Will you state what is meant by the annual meeting of the board? Whether or not it is the same thing as the annual meeting of the Church? A. No. The annual meeting of the board is that meeting at which the Board of Directors elects the officers of the Church and the editors and the business manager of the Publishing Society for the ensuing year.

Mr. Whipple—I ask that that answer be stricken out because it is an attempt to put into this case, under the guise of answering a question as to the annual meetings, a statement that has been repeatedly excluded.

The Court—I will let it stand, if you think it has the slightest materiality.

Q. And the annual meeting of the Church is held later on the same day? A. Yes, sir.

Q. That is a meeting of the Church members? A. Yes, sir.

Q. And has nothing to do with the election of officers? A. No.

Q. Now, Mr. Dickey, in sending that letter to the trustees, had you any purpose or intent to in any wise violate the injunction that was issued by this Court? A. None whatever.

Q. Have you permitted any propaganda to go out in violation of this injunction? A. No, we have taken every means to prevent such a thing.

Q. What have you done to prevent it? A. In conversation personally I have advised people to continue their subscriptions to the periodicals, inasmuch as they belong to the Church, and should not be interfered with in any way. I wrote letters to the same effect.

Q. And that was in answer to letters asking you as to your advice in the matter?

Mr. Whipple—If these letters are material, I think we ought to have that correspondence.

The Court—I do not think I shall take time to go into it unless I am satisfied you would be prejudiced if I did not.

Q. You heard read a few minutes ago, Mr. Dickey, a letter of mine to Mr. Whipple in reference to some remarks by Mr. Strickler. Who was Mr. Strickler? A. One of the lecturers of the Christian Science Church.

Q. Do you have a body of lecturers, or a number of lecturers? A. Yes, 23 of them.

Q. Where was Mr. Strickler at this time this complaint was received from Mr. Whipple? A. I believe he was in the far west, Arizona or California.

Q. Did counsel bring to your attention the letter of Mr. Whipple in regard to the alleged remarks of Mr. Strickler? A. Yes.

Q. Did the board take any action in regard to it? A. It did.

Q. What action did it take? A. They sent a telegram to every lecturer.

Q. How many telegrams were sent? A. One for each lecturer, presumably 23.

Q. What was the telegram that was sent? A. "Please refrain from discussing pending legislation between trustees and directors."

Mr. Whipple—Probably he means "litigation."

A. What did I say?

Mr. Whipple—Legislation.

A. I meant litigation.

Q. Is this the telegram? A. Yes, sir.

Q. Is this the list which you sent the telegrams to, if you can tell? A. Yes, sir.

Mr. Bates—I offer this telegram.

[Marked Exhibit 45.]

Mr. Bates—It is as follows: "Please refrain from discussing pending litigation between trustees and directors."

Mr. Bates—I would also like to have the list marked.

[Marked Exhibit 46.]

Q. That was practically sent all over the world? A. Yes, wherever they were it was sent.

Q. Have you been a teacher of Christian Science? A. Yes.

Q. Have you pupils and student? A. Yes.

Q. Did you take any action to prevent their saying anything that would be in any case regarded as a violation of this injunction? A. As to all those that gave me opportunity, I did.

Q. As a matter of fact, in the matter of the election of editor to succeed Mr. McCrackan, the only thing that has been done was to send notice to the trustees that you proposed to do it? A. That is all.

Q. That was in response to a letter you had received from them? A. Yes, sir.

Q. Now, coming to the matter of Mr. McCrackan's letters which were published by Judge Smith. Did you, at the time of that publication, consider that the publication of those letters was in any wise a violation of the injunction? A. No.

Q. Had you any thought or intent of embarrassing the plaintiffs in any way in the management of their business by publishing it? A. None at all.

Q. Judge Smith was your Committee on Publication to correct false report in the papers? A. Yes, sir.

Q. And the matter was in his hands and he was your adviser about the matter? A. Yes, the Board of Directors was in session, and Judge Smith was in the room on some other business, and I asked him what he intended doing in regard to the publications that appeared containing the McCrackan letters.

Q. That morning? A. That morning.

Q. Not containing Mr. McCrackan's letters, but containing a statement in regard to Mr. McCrackan's retirement? A. I beg your pardon, that is correct. And he said he had received a letter from Mr. McCrackan which denied the report published in the paper, and he would use it to correct the misstatement.

Q. Was there anything further said about it at that time? A. That was all, except he spoke of sending them out to the people who had received copies of the misstatement. The fact about that is, that it appears the persons who were interested in printing the misleading reports used the advertising name of The Christian Science Journal to send their propaganda to injure the Board of Directors, and therefore the Board of Directors thought it would be wise to send the correction to the same list of people.

Q. What list of people was that? A. People living adjacent to Boston and Massachusetts whose cards appeared in The Christian Science Journal.

Q. Did the board take any action in regard to the distribution of the thousand papers that were ordered? A. There were about 50 of them sent to my office; I think they are nearly all there now.

Q. Were some of them sent to the office of each director? A. I believe so.

Q. But no further action was taken in regard to their distribution? A. None that I know of.

Q. Did you consider at the time that the statements made in Mr. McCrackan's letter were true? A. Yes, sir.

Q. And had you heard from others in regard to his complaint as to the censoring of his articles? A. I had heard remarks, rumors of it.

Q. And whom had you heard from? A. I think that information was brought to the board.

Q. Do you recall who brought it? A. Might have been Mr. Jarvis.

Q. Had you heard anything from Editor McKenzie in regard to the matter? A. Mr. McKenzie sent a copy of a letter he sent in reply to Mr. McCrackan.

Q. Have you that letter? A. I haven't it; no.

Q. Did that letter in any wise dispute the statement made by Mr. McCrackan? A. No.

Q. And had you had that before this question came up as to sending the corrections to the papers on May 21? A. I believe so.

Mr. Bates—Have you a copy of that letter, Mr. Whipple?

Mr. Whipple—I do not distinguish the one you mean.

Mr. Bates—The letter of Mr. McKenzie to Mr. McCrackan of May 1.

Mr. Whipple—I don't think there is any letter of May 1. I have here a letter of Mr. McKenzie to Mr. McCrackan of April 26.

Mr. Bates—I have my dates mixed. The letter of April 26 is the letter in which he questioned the censoring, and the letter of May 1 to the board in which he stated he would not be a candidate for reelection. Will you let me see that letter?

Mr. Whipple—It is in already.

Mr. Bates—The letter is in; I overlooked that fact.

#### Cross-Examination

Q. (By Mr. Whipple.) Mr. Dickey, did you and do you now know the point of the controversy between the trustees and the directors which this bill was brought to litigate? A. Yes.

Q. What was it, as you understood it—both prior to the filing of the bill and after the bill was filed? A. You mean the present case that is being tried now?

Q. Not the contempt proceeding, no, sir. That is what is being tried now. Don't you know what I mean? A. Yes, I think I do.

Q. I mean the bill in equity which was filed on which the injunction is—

sued for the violation of which you are now cited before the Court. A. Yes, sir.

Q. Now before that bill was filed, you have stated to His Honor you knew what the point of controversy was between the directors and the trustees? A. Yes, sir.

Q. What was it, so far as affected the election or selection or employment of editors of the periodicals? A. I did not know that it affected the election of editors at all.

Q. Did you know that you were enjoined from interfering with the trustees in the management of the business of the Publishing Society? A. Yes.

Q. And you knew that the business of the Publishing Society was maintaining the periodicals? Did you not know that? A. Printing the periodicals, yes, sir.

Q. And the selection and employment of editors? A. No.

Q. I see. You did not regard that as part of the employment at all? A. Never did. The editors were elected by the directors.

Q. You did not regard the employment of editors as part of the publishing business at all and never have, is that correct? A. I didn't say that.

Q. I ask you that. That is the question. A. The fact is that the directors have always elected the editors of the Publishing Society and the Publishing Society employed them and paid them for their work.

Q. Will you answer the question as to whether it was part of the publishing business, as you understand, to employ editors? A. Yes, it was.

Q. And that business you were enjoined from interfering with? A. I do not understand it so.

Q. You don't so understand it? A. No.

Q. I thought you said you did understand the point— A. I understand what you claimed in the bill.

Q. That is right. We claimed we had a right to employ our editors and you understood it? A. Had a right to employ help.

Q. And a right to employ all the employees for the publishing of these editorials—periodicals? A. I did not understand you had the selection, if that is what you mean by employment of editors.

Q. I ask you if you do not understand that was the claim in our bill?

Mr. Bates—I do not wish to interrupt except to say there is no such specific claim in the bill. The word editor is not even mentioned in the bill.

A. That is as I understand it.

Q. Then you did not understand at all that the Publishing Society, the trustees of the Publishing Society, claimed the right to select editors and employ them in the bill. A. I do not recall it as stated that way in the bill.

Q. You did not understand that

from anything there was said in the bill? A. I couldn't if it wasn't there.

Q. Your counsel in what he has said which you are now following didn't say anything except that it was not specifically stated in the bill—he said it was in by implication. Now I ask you, didn't you understand from reading the bill that the trustees claimed they had a right to select and employ all the employees connected with the periodicals? A. I do not so understand it, and so stated before even counsel made the remark, specifically.

Q. Did you in general know that they claimed a right to manage the affairs of the Publishing Society, among other things the selection of the employees, or didn't you? A. I understand they made that claim.

Q. You understand the injunction was to prevent your interfering with the discharge of their duty knowing their claim? A. Yes.

Q. Therefore when you selected or elected an editor, was that not interference with a duty which they claim they had a right to perform? A. I do not think it was, because they were to employ the editors whom we appoint, as they have always done.

Q. That is, you thought the election, while it was a perfectly futile thing, was a thing that you might do? A. No.

Q. And now when you sent this letter to the trustees saying that you intended to elect an editor on June 2, did you really intend to or not; or was that merely—if I may use that common word—bluff? A. We fully expected to do it. We thought it was in perfect accordance with custom and precedent and no possible objection could have been made to it.

Q. I am asking you whether you intended to do it or not. You did intend to do it, didn't you? A. I so stated.

Q. That is, you intended to proceed in spite of all this correspondence with regard to Mrs. Knott and Mrs. Hoag. You still intended to proceed to elect that editor? A. We did not intend to do anything "in spite of" anything.

Q. Had you read the correspondence with regard to Mrs. Hoag's appointment? A. Yes, sir.

Q. And understood that counsel for the trustees protested that you had no right to do it? A. I believe they did make that protest.

Q. I asked you if you read the correspondence? A. Yes.

Q. You knew it? A. Yes.

Q. And after having read it you decided that nevertheless you would proceed to the election of an editor? A. No, we did not decide "nevertheless" to do it. We had always done it and could see no reason why they could not concur in our action as they always did.

Q. That is, you intended to do it whether the Court had forbidden it or not? A. Oh, no! Nothing that the

Court had forbidden would have ever been done.

Q. You didn't think the Court had forbidden it? A. We did not think so; no, sir.

Q. You knew the trustees claimed the Court had forbidden it? Answer the question, please.

A. Will you state it again, please?

Q. You knew the trustees claimed that the Court had forbidden it? A. I do not know that I understand that.

Q. When that letter—you had read my letters, had you not? A. Yes, but you said a great many things in your letters.

Q. Didn't I say, among other things, that we regarded your attempt to elect Mrs. Hoag as contempt of court? Didn't you understand that? A. I don't think you used that expression—contempt of court.

Q. What was the expression? A. I don't recall, the letter will show.

Q. Then how do you know that wasn't it? A. The letter is in evidence; it will tell.

Q. You say you do not understand it as saying that. What did you understand it to say? A. My recollection now is that there was a vague intimation in the letter that if we undertook to do anything of that kind you would object.

Q. I am talking about the letter in regard to Mrs. Hoag's election. A. We had already accepted Mrs. Hoag and she was accepted by the trustees.

Q. Not at that time. On April 1 the letter was written.

Q. Now, will you look at this letter of April 1 and tell us where there is what you would describe as a vague intimation that we claimed that you might be in contempt. Read to His Honor what you think justifies that remark. (Handling letter to witness.) A. Here is a clause which says: "By the ad interim injunction the directors are 'commanded to desist and refrain from taking any further action intended directly or indirectly to impede or interfere with the plaintiff Rowlands, or either of the other plaintiffs, in the discharge of his or their respective duties as trustees, under the trust instrument of Jan. 25, 1898.'" Now, in order to facilitate the conduct of their business it was necessary that they should have an editor, and I consider that we greatly helped them in their efforts to conduct these magazines by appointing an editor in due form. That did in no way interfere with or impede their work.

Q. That is the way you reasoned it out, was it, yourself? A. That is the only conception I could take of it.

Q. And the fact that the trustees did not want your help and had asked the Court to enjoin you from thus helping them, was a matter of no concern to you? A. It did not enjoin us from electing an editor; it enjoined us from interfering with or impeding their work.

Q. But the election of an editor, the employment of people in connec-

tion with the publication society, is provided for in the Deed of Trust, is it not? A. The Deed of Trust states that they shall employ all help necessary. Now, I should not regard that an editor of the periodicals would be classed as help.

Q. I see. And it says that they shall manage the business of the Publishing Society upon their own responsibility? You saw that too, didn't you? A. Upon a Christian basis and in accordance with the teachings of Christian Science, one of which is to accept the Church Manual as their guide.

Q. I see; that was it. Then, being of the opinion that they should act in accordance with the Church Manual, although the Court had restrained you from interfering in any way with their management under the Deed of Trust, you felt warranted to go ahead and elect an editor? A. No.

Q. Now, in this letter you knew that the trustees complained that the action of your board with reference to Mrs. Hoag was a violation of the injunction, did you not? A. I knew that their counsel had made such a claim.

Q. Well, you understood the counsel spoke for the trustees, didn't you? A. Yes.

Q. "Two matters have been called to my attention in which it seems clear to me that The Christian Science Board of Directors have acted in violation of the ad interim injunction." And the first one was in electing Mrs. Hoag. You understood that from the letter, did you not? A. I couldn't understand that that would be anything but a help to the trustees.

Q. But you understood that the trustees objected to that help, didn't you? A. Well, I do not so understand it. Let me see the letter, please.

Q. Why, how could the violation of an injunction be a help to the trustees when they had asked the Court to enjoin you from so helping? A. I did not consider that the election of an editor was a violation of the injunction.

Q. I see. Why? A. Because they couldn't get along without an editor; they had to have one.

Q. They could hire one, couldn't they? A. Yes.

Q. Employ one, couldn't they? A. They could if we had elected one for them to employ.

Q. Do you mean that they could not in your conception employ an editor unless you had elected one? A. Not under the terms of the Deed of Trust.

Q. Under the Deed of Trust. Therefore you say that your understanding was that they, the trustees, could not select or employ an editor under the Deed of Trust until you, the directors, had elected one? A. That is their understanding as well as mine.

Q. And that was your understanding? A. Yes, sir.

Q. And you acted upon that under-

standing, did you? A. We acted on the advice of our counsel.

Q. What? A. We acted on advice of our counsel.

Q. Did you act with that understanding—the one you have just stated? A. Repeat it, please.

Q. Don't you remember what I said? A. No, I do not.

[The preceding question is read by the stenographer: "Therefore you say that your understanding was that they, the trustees, could not select or employ an editor under the Deed of Trust until you, the directors, had elected one?"]

A. I so understand it.

Q. Now, will you point out in the Deed of Trust where it says that in order to employ an editor the directors must first elect him? That is the Deed of Trust I have laid before you. Point out what indicates that before the trustees can employ an editor the directors must elect him. A. It doesn't say so in that specific language.

Q. Well, point out the language which you say means that. A. The first clause says: "Said trustees shall hold and manage said property and property rights exclusively for the purpose of carrying on the business, which has been heretofore conducted by the said Christian Science Publishing Society, in promoting the interests of Christian Science."

Q. That is the one? A. That is one.

Q. Yes. Now, any other, point out any other, which, as you say, made it impossible for the trustees to select their employees or editors until they had been elected by the Board of Directors. A. Here is one, at about the seventh or eighth line of the first paragraph. Would you like me to read the whole paragraph?

Q. Whatever you wish to read as justifying the statement which you have made before His Honor. A. "Be it known that I, Mary Baker G. Eddy of Concord, New Hampshire, in consideration of one dollar to me paid by Edward P. Bates, James A. Neal, and William P. McKenzie, all of Boston, Massachusetts, and in consideration of their agreement to faithfully observe and perform all the conditions hereinafter specified to be by them observed and performed, and for the purpose of more effectually promoting and extending the religion of Christian Science as taught by me." Now, my contention is that if they had rejected her teaching of Christian Science, and had failed to observe the admonitions laid down for their guidance, it would have turned the entire Christian Science field against the publications.

Q. Well, what does it mean, or how do you find there a justification of your statement that you have got to elect the editors before they could employ them? A. In the promotion and extension of Christian Science as taught by Mrs. Eddy it is necessary for the trustees to observe the rules governing the Christian Science movement.

Q. Yes—observe the Manual. A. One

of the rules is that The Christian Science Board of Directors shall elect the editors.

Q. Then it reduces itself to this: That the Manual stated that the directors should elect the editors, your contention was, and you acted under that contention, that you had a right, in spite of what the Court might say, to elect? A. Not that alone. Even if it were not stated in the Manual, the field at large, who subscribe to the periodicals of this church, if they thought they were dictated or published contrary to what is understood for the best interests of the cause, I believe they would withdraw their patronage, which would be an irreparable injury to The Christian Science Publishing Society, and which we were trying to prevent.

Q. How? A. By doing that which would most facilitate their work in the publishing house—electing an editor for their employment.

Q. Whether the injunction of the Court prevented it or not? A. No. No, sir; if the injunction of the Court had intimated any such thing we would have been the first ones to desire to obey it.

Q. Now, referring to the letter or letters which Judge Smith sent out, when those were sent out had you received the letter from the Board of Trustees informing you of their dismissal of Mr. McCrackan? A. Yes.

Q. Did you say anything about it or instruct Judge Smith to say anything about that in the letter which you sent to the newspaper? A. I don't think we gave him any instruction; he is the head of his own department and carries on that business himself.

Q. Did you see the letter he sent out before it was sent? A. I think not. I believe it was read at a meeting of our board.

Q. Then you heard it? A. Yes.

Q. It was read to you? A. Yes.

Q. Did you notice that Judge Smith in his letter made this statement: "Another mistaken report relates to the reasons why Mr. William D. McCrackan has declined reelection as one of the editors of the Christian Science periodicals. His actual reasons are shown in the following letters." You noticed that, did you not? A. Yes.

Q. Did you know that Mr. McCrackan's dismissal by the Board of Trustees had been under consideration for some time on account of neglect of duty and other reasons? A. No. I didn't know they ever contemplated such a thing; in fact, I know they did not.

Q. That is, that they never contemplated his dismissal? A. Never contemplated dismissing Mr. McCrackan.

Q. That is, during this period of correspondence between the directors and Mr. McCrackan in 1918, you did not understand that on account of those charges there was the slightest

idea of dismissing him? A. Not on the part of the trustees. They had no right whatever to dismiss Mr. McCrackan—never claimed any such right.

Q. They had not considered it in any way? A. Yes, they considered it by coming over to the Board of Directors and stating to us some of the grievances they had against Mr. McCrackan, with the expectation that we would take action.

Q. Then when you received this notice on the part of the trustees that they had dismissed Mr. McCrackan, in your theory of it that amounted to nothing? A. It amounted to an attempt to convince us that they had a right to do something which they had never claimed before, and which we knew they had no right to do.

Q. In other words, you did not regard their attempt to dismiss Mr. McCrackan as effective at all? A. I did not regard it seriously; I thought it was intended just to create an impression.

Q. And therefore, after they had dismissed him and you knew it, you authorized this publication, ignoring the fact that they had dismissed him at all? A. Mr. McCrackan had prior to all this written a letter—

Q. Pardon me; will you answer that question, please? A. Yes, I will.

Q. And not another?

(The question is read by the stenographer.)

Q. That is so, isn't it? A. Yes, because—

Q. I didn't ask the reason, sir. A. But I would like to give it.

Q. Well, you may ask His Honor if he desires it.

The Court—Yes. If you think that your position will be more truthfully represented by giving your reasons, you may give them.

A. Because the fact is that we had previously received a letter from Mr. McCrackan stating that in case his name came up for reelection as associate editor he did not wish to be reelected.

Q. Did you know that that— A. The trustees also knew that, I believe.

Mr. Whipple—I move that that part be stricken out, if Your Honor please, or at least disregarded.

The Court—You may go on.

Q. And you knew that Mr. McCrackan had written that letter to you after the Board of Trustees had requested him to come before them to explain why he was not attending to his duties? A. I didn't know they had made any request to him to come before them.

Q. Would that have made any difference, if you had known it? A. I do not know.

Q. You can't state—you won't state to the Court—whether it would have made any difference at all? A. I would state if the question was one that I could answer frankly and fairly. I do not know what I might have done

under those circumstances. You can be sure that I would have done anything that would have been a help to the Publishing Society in conducting their business.

Mr. Whipple—That is all. Just one moment. There is a question, if I may have Your Honor's permission.

Q. Were all the directors present when Judge Smith read this letter which he proposed to send to the newspapers? A. There was a quorum there; I don't remember if every individual was in the room.

Q. Do you remember of any one being absent? A. I do not recall now.

Q. Well, won't you try to give us your best memory? You admit you were there. A. If you please, strike this out of the record, and let me explain to you.

Q. No, I want in the record whatever you say, sir. A. We were holding meetings every day, twice a day, and a great many things transpired; and I think to look back now and ask me if I can remember whether every individual director was in the room at that time is not a reasonable question.

Q. Are you willing to exercise your memory to the best of your ability? A. I certainly am. There would be no reason why I should conceal such a fact if it were true.

Q. Were you present? A. I was.

Q. Who else was present? A. As nearly as I can recall, all the members of the board were present.

Mr. Whipple—That is all.

#### Re-Direct-Examination

Q. (By Mr. Bates.) Mr. Dickey, you have stated that the trustees had never made any claim to their right to elect an editor prior to this suit. Have you any letters from the trustees in which they made that statement and acknowledgment to you? A. I do not recall any now. I am of the impression, however—

Mr. Whipple—I pray Your Honor's judgment.

Mr. Bates—I am a little in doubt about this, Your Honor, because there is a letter which comes in under the nature of what you have excluded.

The Court—You may answer.

Mr. Bates—But it was brought out by the cross-examination. A. Repeat the question, please.

(The question is read by the stenographer.)

The Court—You may answer the question. A. I do not recall any now, Your Honor.

Q. Is that the letter from the trustees to the board? (Handing letter to witness.) A. Yes, sir.

Mr. Bates—I offer that; a letter of Oct. 1, 1918.

Mr. Whipple—May I look at it? (Examining letter.) How is that material?

Mr. Bates—You have made it material under your cross-examination.

Mr. Whipple—I cannot stop to read this, if Your Honor please, or, at least, I do not wish to take Your Honor's

time, but it does not seem to me that it is material, nor have I made it so under the cross-examination. This gentleman, as Your Honor noticed, volunteered a great many statements, not in response to any question.

The Court—Well, it is not a jury trial. The shortest way would be to read it. If it becomes material we will consider it; if not, it will not be considered.

Mr. Whipple—Very well.

[A letter from the Board of Trustees to the Board of Directors, dated Oct. 1, 1918, is marked Exhibit 47.]

A letter from the Board of Trustees to the Board of Directors, dated Sept. 30, 1918, is marked Exhibit 47-A.]

Mr. Bates—These are both 1918, last fall, after this controversy had arisen. The letter of Oct. 1, 1918, is as follows:

"The Christian Science Board of Directors,  
"Falmouth and St. Paul Streets,  
"Boston, Massachusetts.

"Dear Friends:

"Under separate cover we are sending to the Board of Directors a letter bearing upon the subject that we were to discuss with you today. A copy of the letter is being sent for each member of your board, and also a copy of the Deed of Trust.

"If after reading this letter the Board of Directors still wishes to see the trustees, we shall be in session at the publishing house, and shall be glad to have you telephone us.

"With best wishes,

"Yours sincerely,

"BOARD OF TRUSTEES.

(Signed)

"HERBERT W. EUSTACE,  
"Secretary."

Mr. Bates—Now, the letter which accompanied it is a long letter; I have no objection to the whole of it being read.

Mr. Whipple—If any of it is to be read, I think it all should be.

The Court—What is the part that you think is material?

Mr. Bates reads, from Exhibit 47-A, as follows:

"The trustees understand that they are absolutely responsible for the entire business of The Christian Science Publishing Society, being the owner and manager in trust of said business and constituting in their trusteeship The Christian Science Publishing Society, under which name they are required to do business. The Deed of Trust demands that the Trustees shall energetically and judiciously manage the business of the Publishing Society on a strictly Christian basis, and upon their own responsibility' (Section 3), and shall further 'employ all the help necessary to the proper conduct of said business, and shall discharge the same in their discretion or according to the needs of the business' (Section 6). This requirement, relating to employing and discharging, the trus-

tees hold to include every man, woman, and child working for the Publishing Society, in whatever capacity. The Board of Directors elect the editor and associate editors of our monthly and weekly periodicals, the editor of our daily newspaper, and the business manager, but the trustees employ these officers, and determine their salary; hence they are employees of The Christian Science Publishing Society—in other words, of the Board of Trustees and not of the Board of Directors."

Mr. Bates—That communication is signed by each of the three trustees. I think that is all.

Mr. Whipple—If Your Honor please, I desire to have go in at an appropriate time, perhaps in connection with this witness' examination, a letter from myself to Governor Bates of April 7, which is the one the reply to which he has already put in. The correspondence ought to be complete.

The Court—There is no objection, I take it, Mr. Bates, to that being done, to complete the correspondence.

Mr. Whipple reads the following:

[Copy of Exhibit 48.]

"April 7, 1919.

"Hon. John L. Bates,  
"Tremont Building,  
"Boston, Massachusetts.

"My dear Governor:

"Confirming my conversation with you by telephone just now, we learn from a telegram to Mr. Eustace that Mr. Strickler, a lecturer appointed by your clients, The Christian Science Board of Directors, during the past week, at San Jose, Santa Cruz, Los Gatos, California, 'made lengthy and vicious derogatory tirades against you (Mr. Eustace) personally, and the work of your board, charging among other things dishonesty. . . . He also endeavored to have San Jose and Santa Cruz churches pass resolutions indorsing Board of Directors' attitude in the present controversy, and is taking advantage of his position as lecturer to instill his views and circulate this slander. . . ."

"As I said just now by telephone, it seems to me this is a clear violation of the injunction by one of the agents of the Board of Directors, and I think that your clients may well see to it that such a thing does not happen again, either in California or anywhere else.

"We have reason to believe that propaganda of this sort was prepared before the filing of the bill and the granting of the temporary injunction. You will observe by the bill that this is precisely the thing which was enjoined upon its averments.

"I still hope that you will make your clients understand the importance of observing this injunction strictly, not only in its letter but in the spirit as well.

"Sincerely yours,

"W/U."

Mr. Whipple—I had intended to ask—and the testimony seems to indicate—that up to this time no attempt whatever had been made on the part of the Board of Directors to prevent these lecturers, who are under—

The Court—That is a matter for argument later. That letter may be marked as an exhibit, if you please.

Mr. Whipple—Well, unless it is admitted that no effort had been made before, I might want to ask a question.

The Court—You can do so.

Mr. Bates—I did not understand your statement.

Mr. Whipple—I say, unless it is admitted that no effort had been made to prevent this sort of thing prior to my sending this letter to you I should want to ask the witnesses with regard to it.

Mr. Bates—No objection to your asking them.

[Letter, Mr. Whipple to Mr. Bates, April 7, 1919, as above, is marked Exhibit 48.]

Mr. Whipple—I would like to ask Mr. Dickey, then, if I may. Mr. Dickey, will you take the stand a moment?

Adam H. Dickey, recalled.

Q. (By Mr. Whipple.) You referred in your testimony, in response to questions by your own counsel, to telegrams which you sent to your lecturers, and a telegram was read. Had you taken any action before that to prevent the sort of thing that you attempted to prevent by that telegram? A. Yes.

Q. What? Will you produce any communication which you sent to your lecturers beforehand? A. Before the suit was filed, even.

Q. No; I mean after the suit was filed and the injunction granted. A. After the injunction?

Q. Yes, sir. A. Before the injunction.

Q. I do not ask you about that, sir; I ask you after the injunction was granted. You couldn't enjoin upon them the observation of the injunction before it was granted unless you had remarkable foresight. A. Well, we had remarkable foresight in those days. We saw what was coming. We tried to avoid it.

Q. Now, I have asked you to produce any communication of any sort or description from the board or any member of it, after the granting of the injunction, up to this telegram of April 7, or April 8, whatever it was. Can you do it? A. Yes.

Q. Produce it, please. A. I will have to go to my office.

Mr. Whipple—Have you any such papers here?

Mr. Bates—No, we have none. We have not been asked to produce any. I will state to Your Honor that I understand that somebody had informed the board something in regard to some statement made by Mr. Strickler, and that a telegram had been sent on our own initiative, warning him. Everything had been done.

This was the first complaint of Mr. Whipple; our answer to it was effective.

Mr. Whipple—Of course we say it was not for us to discover violations of the injunction and inform you of them in order to get you to prevent further violations; it was your duty at once, when the injunction was granted, to prevent violations on your own responsibility.

The Witness—We did that.

Mr. Whipple—And if there was any attempt I should like to have the letters produced, or the telegrams.

The Court—Are there any further questions of Mr. Dickey? That is all. Call your next witness.

James A. Neal, sworn.

Q. (By Mr. Bates.) Mr. Neal, what is your full name? A. James A. Neal.

Q. And are you one of the defendant directors? A. I am.

Q. And how long have you been a director of The First Church of Christ, Scientist, in Boston? A. It will be seven years the 12th of August, I believe is the date.

Q. Have you also occupied at any time the position of trustee under this trust deed? A. I was one of the original appointees of Mrs. Eddy under the trust deed.

Q. How long did you continue as a trustee under that deed? A. I think it was about one year.

Q. Then did you resign? A. I resigned.

Q. Were you afterward a trustee again under the deed? A. I was again, in 1911. The date is not quite clear to me. I was a trustee from the time elected in 1911 until I was elected a director, and then resigned the trusteeship.

Q. And you were elected a director in December, 1912. A. I don't remember the date, but it was in 1912.

Q. August, 1912? A. August, 1912.

Q. And have been ever since? A. Yes, sir.

Q. Now, taking the matter of the election of editor, or, rather, of your notice of an intention to elect an editor, that was sent in response to their own letter, was it not? A. I believe it was, yes.

Q. And had you any intention, in sending that letter, to in any wise hamper or impede the board in its management? A. I had not.

Q. The Board of Trustees of the Publishing Society? A. Not at all.

Q. Had you any intention of in any way violating the injunction of this Court? A. I had not.

Q. In the matter of the publication of the McCrackan letters, or Judge Smith's letter, which was sent to the papers to correct what was thought to be a false statement, had you any expectation, in authorizing that, that that would in any way impede or hinder or embarrass the trustees in their work as trustees of the Publishing Society? A. No.

Q. And had you any intention of in any way violating the injunction in doing that thing? A. No.

Q. You were acting under advice, as has been stated by Mr. Dickey? A. Under advice of counsel.

Q. In that matter? A. Yes.

Q. In the matter of the election, or notice of election of an editor, you were acting under advice of counsel, as stated by Mr. Dickey, were you? A. Yes.

Q. And in the matter of the assent to the publication of the McCrackan letters you were simply voting as you did ordinarily when a matter was brought to your attention by Judge Smith? A. Yes.

Q. And did your counsel, in connection with the advice as to sending the letter in regard to the intention to elect, advise you that they had consulted with Mr. Whipple, and that he had stated that a mere election would not in his opinion be a violation of the injunction? A. That is my recollection.

Mr. Bates—That is all.

#### Cross-Examination

Q. (By Mr. Whipple.) You were present at this meeting when it was voted to send out this communication of Judge Smith's, were you not? A. I was.

Q. And you had already read the letter from the Board of Trustees saying that they had dismissed Mr. McCrackan for a failure to perform his duty as an editor? A. I believe that was the fact, but I am not quite clear on it in my mind whether it had been read just prior to that or not.

Q. But you had read that letter, and immediately afterward they took up the matter of sending out Judge Smith's letter to the newspapers? A. I am not quite clear, Mr. Whipple, on that point—about whether that letter had been read just prior to that or not.

Q. But you think so? That is your best memory? A. No. I can't think so unless I have some clear thought about it.

Q. Is that your best memory? A. No.

Q. What is your best memory? A. I am not clear about it at all.

Q. Then you haven't any memory about it. When you received that notice of the dismissal of Mr. McCrackan did you think it was effective to dismiss Mr. McCrackan as an editor? A. I did not.

Q. You thought it was a purely futile proceeding on the part of the trustees, did you? A. Well—

Q. Won't you kindly answer that? I am hurrying to get the case through as briefly as possible. A. If you will state the question again.

Q. Did you think when you received that letter of the trustees that they had dismissed Mr. McCrackan that it was a purely futile action on their part? A. I didn't think they had any right to dismiss him.

Q. Well, did you think it was futile? A. Yes.

Q. Futile and ineffective to dismiss him? A. I think so.

Q. And you acted accordingly thereafter? A. I think so.

Mr. Whipple—That is all.

Edward A. Merritt, Sworn

Q. (By Mr. Bates.) What is your full name, Mr. Merritt? A. Edward A. Merritt.

Q. And you are one of the directors of the Christian Science board? A. I am.

Q. How long have you been a director? A. Since the 19th of July, 1917.

Q. Were you at any time a trustee under the Deed of Trust, of the Publishing Society? A. I was.

Q. And are familiar with its operation and its duties? A. I am.

Q. Was Mr. Eustace a member with you at the same time? A. He was.

Q. Did you have any intention of violating the injunction when you assented to Mr. Smith's publication of the McCrackan letters? A. I did not.

Q. Did you have any intention of violating the injunction when you sent the letter to the trustees notifying them of the intention of the board to elect, at its annual board meeting? A. I did not.

Q. And you did that under advice of counsel, as has been stated by Mr. Dickey? A. I did.

Mr. Bates—That is all.

#### Cross-Examination

Q. (By Mr. Whipple.) Mr. Merritt, you were present at this meeting when Judge Smith's letter was read? A. I don't think I was in the room at the time the letter was read.

Q. Did you know that it was read? A. I knew afterward.

Q. How soon afterward? A. I believe it was the next morning.

Q. After it had been published? A. Yes.

Q. Had you read or had read to you the letter of the trustees notifying the directors that they had dismissed Mr. McCrackan for failure to perform his duties properly? A. I did not until the next morning.

Q. Did you regard that as of any effect of validity at all in dismissing Mr. McCrackan? A. I didn't see how it could be absolutely effectual, because our Leader had not provided for that action.

Q. So that you regarded it as ineffective and futile, did you? A. Well, I didn't give it any weight in that direction.

Q. Didn't consider it one way or the other? A. No.

Q. So it is fair to say you entirely disregarded it? A. In its effect, yes; but as a matter of recognizing that the letter was written, no.

Q. That is, the way you felt might be fairly represented by saying that you recognized that you had received such a letter, but that you regarded it

as futile and ineffective for the purpose of dismissal? A. Equally so, yes.

Q. And treated it accordingly? A. Didn't treat it or act upon it in any manner.

Q. Disregarded it? A. Yes.

Q. Had you heard any talk about Mr. Smith's publishing the letter, the next morning? A. No. When I came in the board room the following morning I was told that the McCrackan letters had been published.

Q. And you never had heard a discussion before that? A. No.

Mr. Whipple—That is all.

William R. Rathvon, Sworn.

Q. (By Mr. Bates.) What is your full name, Mr. Rathvon? A. William R. Rathvon.

Q. And you are one of the defendants? A. Yes, sir.

Q. How long have you been a director? A. Since October last.

Q. Had you held any other positions in The Mother Church prior to that? A. I was treasurer of The Mother Church from June to October last.

Q. And, with that exception, you have held no other position in The Mother Church? A. Yes; I was one of the Christian Science Board of Lectureship for seven years; I was also for more than two years one of Mrs. Eddy's secretaries.

Q. Did you have any intention to violate the injunction in sending the notice to the Board of Trustees that you were intending to elect a successor to Mr. McCrackan at the annual board meeting? A. No, sir.

Q. Had you been advised by counsel that in view of the statement made by Mr. Whipple it was proper for you to do that thing? A. I don't catch that question—the drift of it.

Q. Had you been advised by your counsel that it was proper for you to do that, in view of conferences which they had had with Mr. Whipple? A. Yes, sir.

Q. In assenting to or authorizing the publication of the McCrackan letters, when they were presented by Judge Smith, did you have any intention, in doing that, of violating the injunction? A. No, sir.

Q. Have you ever had any intention of violating the injunction in any way? A. No, sir. On the contrary, I have studiously avoided doing anything that might tend to that end.

Q. Have you attempted to warn and caution others so as to prevent their doing it? A. I have repeatedly.

Q. And in what way? A. Well, in conversation and in correspondence.

Q. Whether or not you know if that has been done by all your associates or directors? A. They have, I believe, done the same thing.

Mr. Bates—I think that is all.

#### Cross-Examination

Q. (By Mr. Whipple.) You were present at this meeting? A. Yes, sir.



Q. Heard the letter of Judge Smith's, that he was going to send to the newspapers, read? A. Yes, sir.

Q. Just before that you had heard the reading of the letter from the Board of Trustees, announcing their dismissal of Mr. McCrackan? A. Yes, sir.

Q. One of them following immediately after the other, as I understand? Is that correct? A. I think so.

Q. That is, the letter from the Board of Trustees came in announcing their dismissal of Mr. McCrackan; then that was read, and then Judge Smith read the letter which he proposed to send to the newspapers? A. I do not recall that the one followed the other; I do not even recollect that they were read at the same session.

Q. I thought you said a moment ago that they did succeed one another? A. They did succeed one another.

Q. Your records show they were read at the same session. A. Possibly so, but I do not recollect that.

Q. You don't remember about it. Did you regard that letter of the Board of Trustees dismissing Mr. McCrackan as effective for that purpose? A. I gave it no consideration as to whether it would be effective or not.

Q. You didn't consider it one way or the other? A. No, because Mr. McCrackan's future as an editor had already been disposed of by his letter to us.

Q. Then you regarded it as a perfectly futile thing on the part of the trustees? A. I did not consider its effect at all as to his future.

Q. Disregarded it? A. No; it was very interesting.

Q. What consideration did you give to it? A. Very interesting, as exhibiting an unwarranted, unprecedented and unheard-of action on the part of the trustees.

Q. Interested you in that way merely? A. Yes, sir.

Q. But for the purpose entirely ineffective? A. I did not give that any consideration.

Q. Whether it was effective or not? A. No.

Q. But you regarded it merely as a piece of presumption on the part of the trustees? A. Well, that is a severe word to use in that connection. I would prefer to call it unusual, unwarranted, and contrary to the practice of Christian Science.

Q. And you so regarded it at the time? A. Yes.

Mr. Whipple—That is all.

Annie M. Knott, Sworn.

Q. (By Mr. Bates.) Your full name, Mrs. Knott? A. Mrs. Annie M. Knott.

Q. And you are one of the defendant directors in this proceeding? A. Yes.

Q. How long have you been a director, Mrs. Knott? A. Since March 19 of this year.

Q. That is, you were elected on the same day that Mr. Dittmore was re-

moved from the board? A. That is my recollection.

Q. And at his suggestion. It was on the 17th of March, was it not, Mrs. Knott, instead of the 19th, that your election took place? A. I think that is right.

Q. Now, what position had you held, if any, in the Christian Science movement, prior to your election as director? A. I had been associate editor of The Christian Science Journal and Sentinel since June, 1903, and during the later years of the German Herold and the French Héraut.

Q. And during that time you had been associated with Mr. McLellan, who was editor-in-chief until the time of his death? A. Yes, until July, 1917.

Q. And after that time you were associated with Mr. McKenzie, who was the editor-in-chief? A. Yes.

Q. Did Mr. McKenzie ever call your attention to the deleted articles which have been mentioned here, that is, to the deletion of the specific—I call your attention—A. Yes, sir.

Q. To the deletion of the verse "Onward, Christian Soldiers," and the article which had been prepared by Mr. Harsch? A. Yes, sir.

Q. Did Mr. McKenzie state to you as to the authority upon which that had been eliminated from that article?

Mr. Whipple—If you will pardon me, Mrs. Knott, I can't see that a conversation between two witnesses of the defendant can be admissible.

Mr. Bates—Your Honor, we are accused by my brother of publishing a letter which we knew to be false, which we had no reason for supposing to be true. I think it is directly material on that question.

The Court—You may answer.

A. Mr. McKenzie informed me that these deletions had been made from the proof pages of the Sentinel by the trustees on the advice of their counsel.

Q. And he had made that statement to you prior to the action of the board in authorizing the publication of the McCrackan letters? A. Yes, sir.

Q. What have you done, if anything, Mrs. Knott, to show a desire to have all parties whom you could influence keep inviolate this injunction? A. Will you read the question, please?

Q. What have you done to show a desire on your part to have all parties whom you could influence keep inviolate the injunction of this Court? A. Until my successor was installed I devoted all the time I possibly could to working on the periodicals.

Q. That is—A. Keeping up their standard.

Q. Until your successor as associate editor was installed? A. As associate editor was installed in the publishing house.

Q. And did you do that at the request of the trustees? A. I had no special request from them. I did that voluntarily until April 24. I had kept the work up regularly until that time, and they sent for me and I had an interview with them and assured them

of my great desire to help in the work of the Publishing Society, but that it was no longer necessary for me to continue, as Mrs. Hoag was now in Boston and waiting the opportunity to go on with the work.

Q. Then, in order to assist, you did continue as associate editor from March 17 until April 24? A. Yes, sir.

Q. And how about your articles, if any, communications, sent to you in regard to this case? A. I have urged people to stand by the Publishing Society and to give it their very best support in every way.

Q. Were you present when the board heard from Judge Smith that he was intending to publish the McCrackan letters? A. Yes, sir.

Q. And in authorizing their publication had you any intention in any wise of embarrassing the trustees? A. Not at all.

Q. Had you any intention of in any way violating the injunction? A. Not at all.

Q. And you knew of the sending of the letter in regard to the proposal to elect an editor as successor to Mr. McCrackan? A. Yes, sir.

Q. On the annual board meeting day? A. Yes, sir.

Q. That was done under the advice of counsel, as has been stated? A. Yes, sir.

Q. And you had no intention then of in any way violating the injunction? A. No.

Q. Were there a good many matters before the board on the day that the McCrackan letters came up for brief discussion? A. Yes, sir, a great many.

Q. I said, "brief discussion." Was there any discussion in regard to the matter at the time? A. I think there was a very brief discussion.

Q. Did that meeting precede the annual meeting of the Church by only a few days? A. It seemed to me it was a little longer than that. I can't remember the date.

Q. Well, the annual meeting of the Church took place on June 2? A. Yes, sir.

Q. Whether or not that annual meeting makes a lot of extra business for the directors and brings up many matters for them to discuss, so that they are more busy than usual at that time of the year? A. Yes, sir.

Q. And do you recall that there were a great many matters before the board on the 21st when this action was taken? A. Yes, sir.

Mr. Bates—I offer it, but I am not quite sure whether I am within Your Honor's ruling, but I would like to ask Mrs. Knott whether or not during all the time that she was an editor her elections were always by the Board of Directors and her employment afterward by the trustees?

The Court—I have already ruled on that question; I am not trying that

issue. It is very pertinent indeed on the merits of the case, but not here. Any cross-examination?

Mr. Whipple—No, Your Honor.  
The Court—That is all.

Louis L. Harney, recalled.

Q. (By Mr. Bates.) Mr. Harney, you were asked yesterday as to whether or not you sent any copy of the McCrackan letters to The Associated Press, I think, and you stated that you did not, as far as you recalled. Do you wish to make any correction in regard to that matter? A. I do not recall that that question was asked me yesterday while on the stand.

Q. Well, I think I may be in error. Let me ask you whether or not there were any copies sent to The Associated Press? A. I did not take any copies there myself. If you care to have me I will go on and tell you what—

Q. I wish you would state what the actual fact was in regard to it. A. In the morning I was instructed to take copies of the McCrackan letters to the afternoon papers in Boston, and I was told that there would be two special corrections to be taken down later to the Herald and the Post in answer to articles which had appeared in the morning papers, which seemed to have not been true. I took those letters to the afternoon papers, beginning with The Boston Traveler, and returned back to my office about 11:30. During my absence Mr. McKernon of The Associated Press had called up and wished to talk to me. I called him over the telephone and he asked whether he could have those letters. And I recalled this morning, after being on the stand yesterday, that I had allowed one of the girls in the office to take them down in response to his request.

Q. And not in response to any instructions? A. Not at all.

Q. And did the directors or Judge Smith know of that fact? A. Not at all.

Q. And when did they first learn of it? A. Yesterday; this morning Judge Smith knew of it.

Q. When he first learned it? A. Yes. I do not believe the directors knew anything of it until just now, until this statement.

Q. That is, what was done with The Associated Press, if anything, was on the request of The Associated Press representative? A. It was.

Q. And not as a result of any voluntary act on your part? A. Not a particle.

Q. Or any authority from the board or from Mr. Smith? A. I did not take them there by any request or any instructions.

Mr. Bates—I think that is all.

#### Cross-Examination

Q. (By Mr. Whipple.) Did you try to get these letters back from Mr. McKernon, or instruct anyone to do it? A. I did not.

Q. You never have seen any re-

quest? A. I have never seen Mr. McKernon since I talked to him about it.

Q. You are sure of that? A. Absolutely sure.

Q. You can testify with certainty that no one in your organization did? A. What do you mean by "organization"? My office in which I am?

Q. No; I mean the Board of Directors or Mr. Smith. A. I don't know as to that. I can testify only to the office in which I am employed.

Q. Who was the girl whom you sent with the letters? A. A girl by the name of Miss Helen Kreighof.

Q. Is she here? A. She is not.

Q. Is she one of the employees of Judge Smith? A. She is one of the employees of the office in which I work.

Q. And that is Judge Smith's office? A. That is Judge Smith's office.

Mr. Whipple—That is all.

The Court—That is all.

David B. Ogden, Sworn.

Q. (By Mr. Bates.) Mr. Ogden, you are one of the trustees of the Publishing Society? A. I am.

The Court—What is your full name, please?

The Witness—David B. Ogden.

Q. Your board dismissed Mr. McCrackan by telegram? A. Yes, sir.

Q. On May 19? A. Yes, sir.

Q. Have you elected any editor as successor in his place? A. We had it under consideration; have not elected anyone.

Q. Have you elected anyone? A. Have not elected anyone yet.

Mr. Bates—That is all.

#### Cross-Examination

Q. (By Mr. Whipple.) You spoke of or assented to the terminology of Governor Bates of "electing." I understand that the board employs? A. Yes, sir.

Q. The Board of Trustees employed him, didn't they? A. I should have said selected and employed.

Q. That is, you select and employ an editor or associate editor and continue him in that position until you dismiss him. A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Mr. Whipple—That is all, Mr. Ogden.

Mr. Bates—The article as it appeared in the Herald, I submit, if my brother has no objection (handing newspaper clipping to Mr. Whipple). I refer to their publication of Judge Smith's letter.

Mr. Whipple—Why, this seems to be an entirely different communication at a later date, May 24. I think not. It is not this communication.

Mr. Bates—I am informed that that was the only one. No; it is May 21, the date of it.

Mr. Whipple—The 24th. It is not this communication at all. The Herald declined to publish it, as we are told. And then another communication was sent on the 24th, which was put in, and one which was free from the objectionable matter.

Mr. Bates—I call Your Honor's attention that the confusion in regard to the date arises from the fact that it came from a clipping bureau, evidently, and it is marked May 24 by the clipping bureau. But the letter itself is dated May 21, and it is the only publication that was made of Judge Smith's letter. It was revised, but the only part of it which they published was that relating to Mrs. Knott and Mrs. Hoag.

The Court—Very well.

Mr. Bates—It bears on the question as to whether or not any damage transpired from it. I offer it as an exhibit.

The Court—You may put it in.

[Clipping from Boston Herald is marked Exhibit 49.]

Mr. Bates—These two letters were offered this morning and read, but I do not think that they have been marked as an exhibit. Letters of April 7.

Mr. Whipple—Oh, I think they were, weren't they?

[Letter, Mr. Whipple to Mr. Bates, April 1, 1919, is marked Exhibit 50.]

Letter, Mr. Bates to Mr. Whipple, April 7, 1919, is marked Exhibit 50a.]

Mr. Bates—I think there is only one more letter which I wish to put in, Your Honor. These are letters bearing on the alleged conduct of Mr. McCrackan, which come under the same heading. I will have them marked.

[Letter to the Board of Directors, dated May 10, 1917, is marked Exhibit 51.]

Letter to the Board of Directors, dated Dec. 11, 1917, is marked Exhibit 52.

Letter from the Board of Directors, dated Oct. 17, 1918, is marked Exhibit 53.

Letter to the Board of Directors, dated Oct. 14, 1918, is marked Exhibit 53a.]

The Court—You may put in that additional paper, Mr. Whipple.

Mr. Whipple—I understand, if Your Honor please, that the respondents have completed the evidence with the possibility that there may be discovery of further letters which they may desire to put in. We have nothing to offer in reply, but, as I just stated at the bench, we have received a letter in ordinary course from one of the correspondents in Berkeley, California. I do not care to read the whole letter. It is addressed to The Christian Science Publishing Society:

"Dear Sirs:—"

Mr. Bates—Shouldn't I see the letter first?

Mr. Whipple—Oh, certainly. It is that paragraph to which I am calling attention (indicating on paper).

It begins:

"As promised in my telegram of last night, I am inclosing my check for \$67.75, to cover expense of all periodicals therein subscribed to."

I understand this is some one who

is charged with the sale of the publications in Berkeley—a subscriber.

"Joint literature distribution was voted discontinued in Berkeley about two weeks ago. Later Second Church voted to stop all her activity in literature distribution, claiming, because its jurisdiction is no longer under the jurisdiction of the Board of Directors, that it is no longer authorized literature. About the same time First Church voted unanimously for 'increased efficient distribution.'

"However, on Thursday evening First Church reversed her previous action and voted to discontinue all purchase of literature for distribution. Authorization for this action was based on a communication from Judge Clifford P. Smith, Committee on Publication, containing a clipping or copy of a letter, purporting to be from William D. McCrackan to William P. McKenzie—which letter was read at our meeting.

"As this means reducing free Christian Science literature to a minimum here in Berkeley, and as the apparent motive is to kill this wonderful activity, ways and means are being devised to carry on this work even more efficiently than before. Individually we are contributing to a common fund, to pay for these subscriptions, and as fast as possible, two or more at a time are to be transferred to those who will be responsible for its delivery to such persons as have been the highest demonstration of the committee. Much latitude will be left each individual placer for further demonstration," and so forth.

This has to do with the means that are being taken to supply or repair the injury claimed to have been done, or which is alleged to have been done by the Smith letters. I won't read the rest of it unless you desire.

The Court—It may be marked.

[Letter from Mrs. Lillian M. Allen to The Christian Science Publishing Society, Boston, Massachusetts, dated May 31, 1919, is marked Exhibit 54.]

The Court—I understand this closes the evidence.

Mr. Whipple—Yes, Your Honor.

The Court—With the reservation of counsel that if either discovers anything material he may introduce it next Tuesday morning, to which time I will adjourn, and hear the arguments.

(Adjourned at 12 m. to 9 a. m., Tuesday, June 10, 1919.)

June 10, 1919  
FOURTH DAY

Boston, June 10, 1919.

Clifford P. Smith, recalled

Q. (By Mr. Bates.) There was introduced, Mr. Smith, just before the adjournment of the court at the last session, what purported to be a telegram from a party in California, a Mrs. Allen. You were in court when that telegram was read? A. I was.

Q. Had you had any communication with Mrs. Allen? A. Not any.

Q. Had you had any communication with anyone in California with reference to the action that was taken, or alleged to have been taken by the churches in Berkeley? A. Not any.

Q. Have you endeavored to ascertain what actually took place and the reasons for it since court adjourned? A. I have.

Q. What efforts have you made? A. I sent a telegram to my subordinate at San Francisco asking him to make inquiry. You have the telegrams there.

Q. Will you pick out the telegram or the copy of the telegram that you sent him? A. This one, dated June 6, is the one that I sent to my subordinate at San Francisco; I also sent him another one on June 7.

Mr. Bates—I offer these, Your Honor.

The Court—Very well.

Mr. Whipple—If Your Honor please, it does not occur to us that those can be admissible as evidence. The letters which we asked Your Honor to receive were those which we received in the ordinary course of business without any knowledge of any dispute or without any suggestion on our part that they send them, in order to show, so far as they did show, the effects of these publications. Now, then, an offer is made to show certain things by hearsay evidence after a dispute has arisen, and when Mr. Smith thinks it is necessary for him to do something in regard to producing evidence. I should think that all the objections that apply to hearsay evidence should apply to that. I quite agree that Your Honor might receive them with a full consciousness of the infirmities of hearsay evidence, but it leaves us in a difficult position to meet it.

The Court—I quite agree with what you say, that it is within the rule of hearsay evidence, but if the respondents deem it material to their case I shall let them put it in, and if I find that you are called upon to meet it, I will give you notice. Go on.

I do not think, and I ought to say so, that it affects at all or can affect the specific charges in this petition. Go on.

Mr. Bates—Telegram of June 6, 1919, to Mr. Peter V. Ross, 166 Geary Street, San Francisco, California. "In contempt proceedings here today counsel for trustees put in evidence letter dated May 31, from Mrs. Lillian M. Allen, 303 First National Bank Building, Berkeley, which referred to some communication from me as reason for action taken by alleged church or distribution committee. Have not had any correspondence with Mrs. Allen nor with anyone at Berkeley on such subject. Please inquire what communication she referred to and send this and other pertinent information by wire. Clifford P. Smith.

Charge to Committee on Publication, 236 Huntington Avenue."

The next is a copy of a telegram of June 7, 1919, to the same party: "Please ask clerk of First Church of Berkeley to send me by wire collect full text of resolution in question. Telegram should be sent Sunday night or Monday, and should be signed with name and title of sender. It should also say when resolution was adopted. Clifford P. Smith."

Q. Have you received any answer to those telegrams? A. Yes.

Mr. Bates—Have them marked, please.

[Telegram of June 6 marked Exhibit 55.]

[Telegram of June 7 marked Exhibit 56.]

A. I received one from Mr. Ross dated June 7 and one from Emily Martindale, secretary First Church of Christ, Scientist, Berkeley, dated June 9.

Mr. Bates—We offer these.

[Telegram signed by Peter V. Ross marked Exhibit 57.]

[Telegram signed by Emily Martindale marked Exhibit 58.]

Mr. Bates—I will read them.

"San Francisco, California, June 7, 1919. Judge Clifford P. Smith, 236 Huntington Avenue, Boston, Mass. First Church in Berkeley, of which Mrs. Allen is a member, resolved to purchase no more periodicals for distribution until their control returns to directors. During discussion of resolution your alleged letters to Boston papers giving reasons for McCrackan's dismissal was read. Resolution would have them adopted regardless of said reading similar one previously adopted by Second Church, Berkeley. Peter V. Ross."

"Berkeley, California, 10:11 a. m., June 9, 1919. Judge Clifford P. Smith, 236 Huntington Avenue, Boston, Mass. Following is full text of resolution adopted by First Church of Christ, Scientist, Berkeley, California, at membership meeting May 29, whereas in the last three lines of Article 8, of Section 14, of The Mother Church Manual we read: 'It shall be the duty of the directors to see that these periodicals are ably edited and kept abreast of the times.' Whereas we also read in Article 25, Section 5: 'A person who is not accepted by the Pastor Emeritus and the Christian Science Board of Directors as suitable, shall in no manner be connected with publishing her books, nor with editing or publishing The Christian Science Journal, the Christian Science Sentinel, Der Herold der Christian Science, nor with The Christian Science Publishing Society.' Whereas the trustees of the Publishing Society have served an injunction through the Supreme Judicial Court which absolutely prohibits the Board of Directors from performing these duties outlined in The Mother

Church Manual, and whereas under existing circumstances for the time being all literature coming from the publishing house is without the authorization of the Board of Directors of The Mother Church. Be it therefore resolved that as a church we purchase no further periodicals for free distribution from the publishing house until we receive word that the Board of Directors of The Mother Church are again allowed to perform those duties as laid down by Mrs. Eddy in our Mother Church Manual." (Signed) "Emily Martindale, Secretary First Church of Christ, Scientist, Berkeley."

Q. Had you any knowledge of that action, Mr. Smith, prior to this matter coming out in court? A. I had not.

Q. I think there was a reference in Mrs. Allen's letter to the action of the Second Church in Berkeley. A. There was.

Q. Have you endeavored to ascertain in regard to that? A. The telegram to Mr. Ross is the only effort I have made. That is a previous action as I understand it.

Q. And as to all these matters you had no knowledge until this letter of Mrs. Allen's was read in court? A. That is true.

Mr. Bates—Have you the original copy of the letter of Mr. McKenzie?

Mr. Whipple—I haven't. If you have a copy why don't you use it?

Mr. Bates—The letter of Mr. McKenzie dated May 14, 1919, to the trustees was put in evidence as Exhibit 23 by my brother at the former session. That letter of May 14 was followed by a letter from Mr. McKenzie to the trustees which reads as follows—that is the next day, May 15, 1919:

"Dear Friends: You had my response by letter yesterday to your request for an opinion from the editor regarding the continued publication of editorials from the associate editor who has been continuously absent from his office since April 17. It is quite clear if any action is to be taken in the direction indicated that the decision made effective should be arrived at by you in full agreement with the Board of Directors, by whom the associate editor was elected. Only in such a case could I agree to it being carried out.

"This is an opportunity for cooperation. A temporary injunction cannot be said to stand in the way of legitimate fellowship and customary cooperation for the welfare of the cause. What our Leader says must always be true for us no matter what the circumstances: 'The ways of Christianity have not changed. Meekness, selflessness, and love are the paths of His testimony and the footsteps of His flock' (Rudimental Divine Science, p. 17).

"Yours very sincerely,  
(Signed) "W. P. MCKENZIE, Editor.  
"Board of Trustees,  
"The Christian Science Publishing Society, Boston, U. S. A."

Mr. Bates—In looking over the record I was not quite certain that our letter from Mr. McCrackan stating in substance that he did not wish to be a candidate for reelection, written on the first of May—I am not quite certain whether it was put in evidence.

The Court—It is already in the record, inasmuch as it is set out in extenso in the bill.

Mr. Whipple—May it please Your Honor, the Court has ruled that the order of proceedings with regard to the selection and employment of editors prior to the filing of the bill is immaterial, that is, the evidence is inadmissible to maintain the claim which has been averred, to the effect that there had been 17 years of uninterrupted procedure. Nevertheless that ruling was relaxed to let in, permitting the introduction of various letters which contain that assertion, and statements on the part of the directors as to some proceedings in conformity with that rule. Therefore, if it seemed in order or at all material to meet it, at least by a statement that we do challenge that assertion; that in point of fact the editors and business manager were always selected by Mrs. Eddy during her lifetime as she had a right to select them under the terms of a trust deed, they received her advice and suggestions, but since she passed away there have been only three editors selected, that they have been selected by a joint, friendly action of the two bodies, both working together. The Manual does not provide as has been constantly asserted, that the directors should have the right to elect or select the editors or business manager; it provided and still provides that incumbents who have served a year or more can be reelected, or new officers elected by the unanimous vote of the Christian Science Board of Directors and the consent of the Pastor Emeritus given in her own handwriting. Of course that provision being for a joint cooperating action of the two bodies. When Mrs. Eddy had passed on, the question arose whether the directors have not under the Manual had any authority whatever in connection with that election. It was thought that they did not. We were confronted with a situation where even under the Manual, with which all parties desired to abide, the directors had no longer any authority because they could not have Mrs. Eddy's approval in writing. Furthermore, Your Honor will observe another complication. There must be a unanimous action of the Board of Directors even under the Manual and it was absolutely uncertain who the Board of Directors were because Mr. Dittmore claimed he had not been removed and if he had not been Mrs. Knott was not a member at all.

Now whether Your Honor would feel that, in view of what has gone in, if Your Honor would attach any importance to it at all, which I must confess I doubt, in view of the statements from the bench, we should like

either to put in evidence to clear up this situation or at least to show that it was a debatable controversy over the subjects covered by the bill, and that the assertions of this uninterrupted course of proceeding are baseless, or from our point of view are baseless matters of controversy.

The Court—I have already said during the trial of this case and indicated clearly, too, what the law is. I now repeat that it is settled beyond any possible argument that in the trial of an issue of this kind the merits of the original controversy named in the bill are not before the Court at this time, and counsel well understand why that is so. But inasmuch as the trial of an issue of this character stops here—no exceptions to the Court's ruling can be taken or maintained, nor is there any appeal—I have allowed the greatest latitude to the respondents, in fact they have been allowed to put in anything and everything which they thought had the slightest bearing upon the merits of this controversy.

Without now, and probably at any time, attempting to find what is more or less vaguely referred to in the textbooks and in the authorities, the distinction between criminal contempt and a civil contempt, which seems to me to mean nothing more than this, that where there is civil contempt which is willfully committed, recklessly committed, then the criminal element enters into it, I have permitted a certain line of inquiry here. Of course later on I have something to say when the arguments are closed as to other rules of law which are applicable.

Have you any evidence which you wish to offer in reply?

Mr. Whipple—Nothing except that. I feel that with Your Honor's intimation that is enough.

The Court—I cannot try that issue.

Mr. Whipple—I want to make it clear that it was controverted and I do not accept it.

The Court—I do not understand you do accept for a moment the position of the directors, nor do I understand that Mr. Bates, representing the directors, assents to the position of the trustees. That is the great controversy between you, as to your powers and duties.

The evidence being closed, you go forward, Mr. Bates.

Mr. Bates—I think I ought to express my gratitude to Your Honor for having adjourned this matter until today when the sun is shining and when we can meet in the cool of the morning rather than in the heat as it was in the days when the evidence was being put in.

I have accepted absolutely the suggestions made by Your Honor. I know that we are not allowed to try this case, the matters which are averred by the plaintiffs' bill; that for the purpose of a decision of these things, the facts stated in that bill are as-

sumed to be true, and if any evidence has been offered, as suggested by my brother which tends to contradict the statements which his clients have sworn to in that bill it has come in not for the purpose of trying those issues which are the main issues in the case here referred to the master to find the facts, but they have come in solely for the purpose of showing the circumstances and of throwing light upon the attitude of these defendants to the end that Your Honor might be placed as it were in the circumstances in which they were placed thereby more accurately to arrive at their attitude and their purpose. From that standpoint and that standpoint alone I may refer to them in the course of my remarks. They tend to show that the defendants thought at any rate that the injunction did not interfere with their doing something which they claimed had not been protested before. In other words, they assumed that the injunction being for the purpose of preserving things as they were until the main issue could be decided, that they not only had the right, but that it was their duty to go ahead and assist in so far as possible until such time as the case should be decided.

I want to say right here, for fear I may forget it, in regard to the evidence that was introduced this morning. My brother alleges in his bill, which is taken as true for the purposes of these proceedings, that the churches are independent of The Mother Church; that this is but one of many. Taking that attitude, he could not of course take the attitude that we can control the action of these 1800 churches scattered all over the world. As a matter of fact, we cannot control them. Our supervision over them is very limited and only in certain matters specifically mentioned. We have no supervision over them so far as these matters are concerned; if we had that supervision over them, the resolution which I read here this morning would not have been adopted. We knew nothing of it, whatever, until the matter was called to our attention here in court.

We do not in any wise agree with that resolution. But it was offered to show that that resolution resulted not from Judge Smith's action or the defendants' action in allowing the McCrackan letters to be published; it was something that was started before they knew anything in regard to that matter, and it relates back to the bill brought by the plaintiffs, a copy of which they sent, and we did not, to these people in California, together with the injunction, and it was because of that bill and injunction that the action was taken, and it is not a matter for which we can in any just sense be held responsible.

I take it, too, Your Honor, that it is not the case. It has no part in the case, and it is not one of the specifications, but my brother brought it in

here and we could not allow it to go unanswered, because then there might be the assumption that we could not answer, or that we were in some way responsible for it. There have been several matters which have been referred to here that I am not going to argue at any great length. I am going to pass over them with a word because, as I understand it, the only matters that are before the Court under Your Honor's ruling are the two that were specified, but my brother has somewhat persistently endeavored to make it appear that we were trying to violate the injunction, that other incidents have occurred, and he has mentioned incidents which have no bearing under his specifications but which nevertheless we have a right to refer to because they show just the opposite of what he contends. For instance, he endeavored to put in facts and to argue before Your Honor in regard to Mrs. Knott's resignation. They are all stated in the letters which have appeared in evidence, and the letters had to go in for other purposes. The facts are he wrote me two letters to try to induce me, threatening me, really, with proceedings for contempt, practically, because we, before his bill was filed, before we knew anything about its contents or anything else, or had any reason to suppose that there was any question in regard to the letters, because we, before his bill was filed, and therefore before the injunction was issued, had done as we always had done, as claimed in these letters, and had elected Mrs. Hoag as successor to Mrs. Knott as associate editor.

He wrote me two letters. I had talked with him and knew he understood perfectly our position, and therefore I did not bother to respond to the first one because he knew the facts. Then he wrote me a second letter of the same purport; then I sent him that short and rather sharp letter in which I called attention again to the dates on which these things took effect, that the date of the injunction was after the defendants' action, and that his suggestion was not material and had no bearing in this matter. That indicates, I think, the disposition on the part of these plaintiffs to make trouble, to put it mildly.

Then in regard to Mr. Strickler. Mr. Strickler was a lecturer traveling somewhere in the western part of the country, and it so happened that Mr. Whipple's clients received a telegram from somebody that they had it that Mr. Strickler had said something they didn't like in regard to the suit they had brought. Mr. Whipple called it to my attention. That was the first thing he called to my attention and the only thing that has been mentioned except this subsequent matter. What do we do? Did we say, "We are not responsible for this lecturer?" We might have said that. He was engaged to lecture on Christian Science. On the contrary

we at once wrote him and told him—thanked him for calling it to our attention. We wrote at once to every one of the lecturers, or rather sent them a telegram; we did not wait for the slowness of the mail. We sent each of them a telegram asking them to refrain from saying or doing anything with reference to this controversy. My brother says that that should have been done before. If I remember right it was sent on the 7th, that was only a few days after we had notice of it. Why should it have been done before? Had we any reason to suppose that a man in California, lecturing on Christian Science, was going to indulge in remarks in regard to this litigation? There was no reason to suppose anything of the kind.

It did appear that one telegram had been sent to him after that information had come to us; but that was not done voluntarily on our own account. But we had no reason to suspect that until the time the information was in our hands that such a thing would be done and then we took immediate action.

Now my brother instead of giving us credit for that, as he ought to have done in all fairness, says we ought to have done it before. I submit, Your Honor, that the only reason why Mr. Strickler knew of this proceeding was from and came through information obtained from them. The only information he could have got that would enable him to criticize the suit must have proceeded from them. We did not know at the time he had it, but we have since learned that all the other Christian Scientists so far as their names could be reached from the subscription list had sent to them a copy of the bill by the plaintiffs themselves. If they had not sent out that bill with the extracts from the injunction printed on it to all of their subscribers, some 140,000 in number, then there would have been no occasion to notify any of the lecturers at such a distance as California because they would have known absolutely nothing about it.

My brother did not notify us they were sending it out. I mention this as indicating what seems to be an overbearing disposition on the part of these plaintiffs to find fault when there was never and has never been, honestly, any fault to be found with the action of the directors.

Then there is the petition. The first paragraph sets forth the terms of the injunction. The second says it was granted on the averments of the plaintiffs' bill and sets forth the averments, namely, paragraphs 17 and 18 of the plaintiffs' bill. The third sets forth in general terms the fact that there has been a violation of the injunction, but no specifications. The fourth paragraph sets forth specifications, two matters, that are the only matters before Your Honor under this petition. The first was our notice of intent to elect an editor; and the

other the publishing of the McCrackan letters.

I submit the injunction, as preliminary to considering those things; the injunction must be read as to what it restrained and as to what it was intended to prevent. My brother uses that expression. He says "the injunction was intended to prevent"—it must be read in the light of the averments. He states, by the remaining paragraphs upon which he relies, that by the wording of the paragraphs upon which he relies and upon which the injunction was issued.

"17. The plaintiffs further aver upon information and belief that it is not a part of the plan of the defendants to appeal to the courts for an order determination of the question of their right to remove the plaintiff trustees under existing circumstances, but that on the contrary they propose to accomplish their removal by the exercise of the great and dominating influence which they carry by reason of their official position and in the exercise of their power to dominate and control members of The Mother Church by the powers of discipline which they hold, and to influence the action of other churches by refusals to grant licenses or appointments.

"The plaintiffs believe that the defendants intend thus to make the office of trustees practically untenable by the plaintiffs, or to make the performance of their duties so arduous and disagreeable as thereby to induce their voluntary resignation as trustees and their compliance with the demands which the defendants have made upon them.

"The plaintiffs further aver upon information and belief that the defendants have stated to many Christian Scientists in substance that they plan to obtain control of the Publishing Society or to destroy it; that if the plaintiffs as trustees continue to resist the demands of the directors and refuse to conform to their will, the directors propose in the terms used by one of them, 'to make the Publishing Society an empty shell,' and to accomplish that result by using their great influence with Christian Science churches and throughout the field to induce Christian Scientists not to continue to subscribe for and support the publications published by the Society established and founded by Mrs. Eddy, but to subscribe for and support new publications which the directors have threatened, themselves, to publish and issue to take the place of those which the plaintiffs as trustees are now publishing as the duly authorized and accredited works of the great Founder and Leader of the Christian Science movement."

There is not a word in there complaining in any way, shape or manner of our attempt to elect editors or of our managing the editorial policy or publishing anything in the papers. These averments are based solely on the proposition that we had formed a

scheme or plan by which we were to oust Mr. Rowlands and his associates from the trusteeship and that we were going to accomplish it by indirect means if we could not by direct, and it specified that the indirect means we were going to use was "our great and dominating influence as directors" and the "use of our official position to dominate and control the members of The Mother Church, not by sending out statements to the press correcting false statements (that we had supposed to be false) and not by electing editors or giving notice that we were going to elect an editor. The averment is that we were going to do it by "disciplining the members of The Mother Church" and that we were going to do it as to other churches by refusals to grant licenses or appointments. That is the thing they set up.

"18. The plaintiffs aver that the threat on the part of the directors to injure the Publishing Society and to make the same 'an empty shell' is in effect a threat to use their power as directors to embarrass the plaintiffs in the management of a trust created by Mrs. Eddy and which is being carried out in accordance with her express purposes and desires, as declared in the trust instrument; to defeat the purposes of the Donor of the trust to provide a management and control of the Publishing Society, separate and distinct from the management and control of The Mother Church; to injure and possibly to ruin an enterprise created by the Founder of The Mother Church for its support and for the extension of the Christian Science movement, and utterly destroy the effect of the instrument which conveyed to the trustees the property which they hold upon a 'perpetual and irrevocable trust and confidence,' thus to destroy what is believed by all true Christian Scientists to be a sacred trust created by the Founder and great Leader of all Christian Science churches and the world-wide Christian Science movement."

There is reference to that power of the directors in the next paragraph. Now we had a right to suppose that the injunction was granted on the averments and that certainly brother Whipple is estopped from claiming it wasn't fair to him and sets it up in his petition. I submit there is not a scintilla of evidence in this case that there has been anything done that comes within the averments of those two paragraphs or either of them. They say: "The plaintiffs further aver upon information and belief . . . that the directors . . . by using their great influence with Christian Science churches and throughout the field to induce Christian Scientists not to continue to subscribe for and support the publications." Is there a particle of evidence that we have done that? Have they offered evidence to show that we have used our influence in that way? On the contrary every

director testified that they had requested those who had written to them and oftentimes had volunteered it, and requested everybody to keep up their subscriptions. Why shouldn't they? It is admitted they are the official organs of the Church. Why should they not do that? Why should they want to harm them? They believe that these organs are going to be returned to them when the merits of this case are decided by Your Honor and your associates, and we believe that when they come back they will come back to them to be used in the same manner that they have been used before under their supervision, and, believing that, certainly they would be the last persons in the world to try to make them worthless.

It is not as if there had been a final decree of this Court taking away their right to control the official organs. There has been nothing of the kind. They recognize that and they know for the purpose of holding matters as they are, until the questions are decided that this injunction is issued, but they expect confidently the result in the end will be that their organs are coming back to them, and it would be absurd to assume that they have done or are doing anything to make them less valuable. But I call Your Honor's attention to it because of the averments that they are going to use their great influence and to induce Christian Scientists in the field not to continue their subscriptions. For support of that averment there is not a particle of evidence as they have done nothing of that kind. That averment has not been made out.

Then in paragraph 18 the power that has been referred to is the power to discipline the members, and the refusal to grant licenses and appointments. I ask when and where they have shown that power has been used for any such purpose. There is nothing that has been shown or that is specified in this bill that comes within the specifications of the averments upon which the injunction was brought, or founded.

The whole of the injunction and the whole of these two paragraphs proceed upon the basis that there was a plan, a scheme as it is spoken of in one place, to remove these plaintiffs. If they could not remove them, then to bring to bear these powers. I submit there is nothing in either of the specifications or the evidence that tallies with this averment in any way, shape or manner.

And in so far as this is a proceeding of a quasi criminal nature, we are entitled to the strictest construction of these averments. Incidentally, I may call Your Honor's attention to the fact that there is nowhere in the bill any reference to editors. There is nothing in the bill that directly, and, on looking it over more carefully, I can find nothing in the bill indirectly, that seems in any way to be an averment

that we were interfering in that matter; and there is nothing therefore that would lead us to suppose that we, in the matter of this injunction, were restrained from action in regard to the editors, particularly when Your Honor bears in mind that there was put in here the admission, signed by each one of the plaintiffs, that it was the duty of the directors to elect, and their duty to employ, the editors. Your Honor will recall that that came in in a letter from the trustees, dated last October, to the directors. That was recently. It was not our statement; it was their statement. Why, then, should we assume that anything that had to do with the editors was restricted, or that they were trying to restrain us, when there was not a word in their bill, and when we had that letter giving their own statement as to the situation and their discrimination as between electing and employing editors?

I wish to speak as briefly as possible in regard to the two specifications which my brother has brought forward, upon which he asks Your Honor to use what is practically the most autocratic power left on the face of the globe today—the power of a court to punish for contempt. As Your Honor has stated, there is no appeal, there are no exceptions. It is regarded that the Court stands in the place of the government. It stands for the people, who are behind the government; and therefore that power is recognized as one which is necessary in order that law and order may be respected.

My brother and I have both stood where the questions were being considered, and we have both stood for the maintenance of the dignity of the Court, and for the full protection of its prerogatives, to the end that there might be no lawlessness and that there might be no disorder. I am as insistent on it, as he knows, as he is. But men may differ, and differ justly, in their conception as to what an injunction means. Never any case comes before the Supreme Court of this State but what the attorneys differ as to what the law is. The fact that we may differ from my brother, or that he may set forth that a certain thing would in his mind be a contempt, does not compel us to accept his decision, eminent as he may be. On the contrary, we have that right to our own opinion in the matter, if it is an honest opinion, and if it seems to us to be the right and the just opinion. I would take my brother's opinion if he was acting as my counsel, but I never would take his opinion when he is acting for the other side, because I should have a suspicion of the Greeks bearing gifts in such a case.

We are accused of having sent to the trustees a notice that we proposed to elect an editor to fill the vacancy caused by Mr. McCrackan's dismissal or withdrawal or whatever it may be, and that we proposed to do it on the date of the annual meeting as pro-

vided in the Manual—so the letter of notification, which is the subject of the contempt proceedings, states. It was in reply to a letter from them stating that there was a vacancy and asking if we had anything to say, practically, in regard to filling that vacancy.

The letter that we wrote was a courteous letter, it was courteously written and in courteous form, and invited the cooperation of the trustees in the matter. It was not sent to anybody else. We did not ask them to publish it. We did not publish it. Not a soul in the world knew of it, so far as we know, outside of the board and the trustees, until they brought this matter into court.

I ask how such a notice could be a violation of the injunction in this case. I submit that the thing itself could not be. I know that there are occasions when a notice under certain circumstances of an intention to violate an injunction is the same as a violation of it, and would be contempt, but this is not such a case as that. This is a case where, as the trustees knew, church officers, with solemn obligations upon them, imposed by their church, were proposing to go through the form, so far as Your Honor's injunction allowed, of the election. There is nothing to indicate that they intended to do anything more. We accept my brother's statement that to merely elect, and do nothing more, would be futile. It was a carrying out, however, of the injunction of the Leader of this great religious movement. It was something that was laid as an obligation upon the hearts of these defendants, and as such they came to us for advice, and what did we do?

We said that Mr. Whipple, in the matter of Mrs. Knott, told us that he considered that an election of an editor would be a violation of the injunction. That case was something that happened before, but nevertheless his opinion in regard to that matter would probably apply in regard to this. If you want to carry out the provisions of your by-law it will be necessary, therefore, or wise, although we do not agree with Mr. Whipple's interpretation, to go into the court and ask the court to modify the injunction so as to permit you to do that thing. But before we do that, we said, we will write to Mr. Whipple and ascertain whether or not he is willing it should be done, because, if he is, then of course there is no contempt.

And so we wrote to Mr. Whipple about the first of May, May 2, I think, to be accurate, and we stated the situation in which the directors were, both as to the Manual and as to precedent. We stated that we did not agree with his interpretation of the law, and that we should not have thought of asking him whether he thought this would be a violation except for the fact that he had written to us in regard to the Knott matter. We said, "We wish now to know whether or not you consider

that such action on our part would be a violation of the injunction; for, if you do, we are going to ask the court to modify it; if you do not, there will be no occasion for us to do it."

Mr. Whipple was engaged down in Maine on important business, and that letter remained unanswered until May 12 or 15. In the meantime, 12 days had gone by in which we might have brought our motion to modify the injunction. But when his reply came it did not answer the question. It sort of evaded the question, and wanted to know if there was any reason to suppose that the trustees and the directors were not in accord as to who should be elected.

I called him up on the phone. The conversation that took place on the phone I then stated in a letter to him, on the 15th. I told him that he had not answered the question; that what we wanted to know was whether or not he would consider that act an act in contempt, because we wished to avoid anything that might seem to be a matter in contempt of the injunction. I told him, in that letter of the 15th, that if I had misstated his conversation he should so advise me; if I had not, then it was not necessary for us to apply to the court. I stated to him that that conversation was in substance this: That he did not object to our electing as many editors as we pleased, provided we did not attempt to enforce the election on the trustees; that he thought the act would be futile, but that it would not be in contempt of court.

That was the conversation that I had over the phone, that was the conversation that I put in the letter for him to verify or to disavow. He writes back that his recollection of the conversation is substantially the same as mine; in other words, that he had agreed that the mere election of an editor would not be a contempt in these proceedings and would not be a violation of the injunction. To be sure, he went on to say, what we admit, that if we should attempt to enforce that upon the trustees in such a way as to harass them, then it might become a violation of the injunction.

That has not been done. I do not think that a member of the bar was ever more surprised than I was to find that my brother, as appears absolutely from that correspondence, would assent that we should do that, that if we did that thing it was not a contempt of this injunction or a violation of it, and yet within a few days to specify it as a reason for bringing proceedings of this kind. It is in the line of the Knott incident, which he has endeavored to bring in, and which occurred before. It is in line with the Strickler incident, which we did everything which an honest man could do to avert.

I submit, Your Honor, that he is estopped from claiming that that matter was a contempt of court. He is

estopped not only by reason of the fact that he admitted it, but he is estopped by reason of the fact that his correspondence to us, if it is to be considered as anything less than a consent, came so late that it left us without the remedy that we had told him we were going to adopt, namely, of going to the court and asking for a modification; that it left us without opportunity to seek the remedy before the annual meeting at which this duty was to be discharged.

My letter to him was on the 15th. He replied on the same day, I am not certain as to the date I received it, but the presumption is that, I having written him on the 15th, and he having replied on that date, that I did not receive that letter until the next day. At any rate, the next day was the last court day—it was Friday, the 16th of May—it was the last court day until the 27th of May. Your Honor will recall that consultation week came in and there was no session of the court, and the 27th of May was but five days before the annual meeting. So that by reason of relying on his statements we were in effect precluded from coming in and asking Your Honor to change the injunction. And then, when it is too late, and when we have sent a courteous note in which we state that we propose to do just what we said we could do, he says, "Oh, well, you notified us of it, notified us you are going to do it, and that is a violation of the injunction."

I do not think that I need to consider that matter longer. I am certain that Your Honor cannot think that there was any contempt on the part of these defendants for contempt is a serious charge in this matter.

Now, as to the second specification, which is the publication of Judge Smith's letter, with the accompanying letters of Mr. McCrackan. Judge Smith has had a large experience at the bar and on the bench. I am fully aware that that statement cuts both ways. It makes him all the more familiar with the laws in regard to injunctions, and at the same time it enables him also, perhaps, to have a judgment in regard to a matter which he thinks he can rely upon honestly; and when he does a matter such as he is alleged to have done here it is to be assumed, particularly after his appearance on the stand and his candid statement in regard to every matter connected with this matter, that he was not, in view of his experience on the bench and in view of his experience as an attorney, doing anything that he was conscious was in any way a violation of the injunction issued by this court.

The offense is alleged to have consisted in our sending to the evening papers of Boston Mr. McCrackan's letter, and to the morning papers, the Herald and the Post; and, furthermore, it appears that we had ordered, at the

same time we had sent these matters to the press or on the same day, 1000 copies of the Boston Traveler, and that 117 of them had been sent out under our authority—sent out to Massachusetts people only, and to those who probably or might have seen the false matter which appeared in the Post and in the Herald, and which they were designed to correct. That was probably the intention in sending out more copies or having them where they could be used. But only 117 were sent out, and they were sent out to these assistant committees on publication, absolutely and strictly in accordance with the rule of the Manual under which Mr. Smith was acting. They were sent out in order that his subordinates throughout the State might have what he considered to be the facts in case anybody should call to their attention these false statements which had appeared in the morning papers on that day.

It is a fact that some of those papers were subsequently given out to people who happened to come into the office and wanted one of them, but it was not in Judge Smith's presence nor in that of the directors'. It was a very busy time, and Your Honor has a right to consider that. It was just prior to the annual meeting and there were many things being done. The attention of these directors was being constantly called to matters which they must attend to and prepare for. The ordering of those copies was almost a routine matter. The attention that was given to those letters of Mr. McCrackan was practically that of a hurried attention, that I think was justified or excusable under the circumstances. There was no evident intent on the part of anybody to start a propaganda or anything of that sort; it was solely to correct.

If there had been any intention to start a propaganda, these papers would have been sent all over the country to the press, the way my brother has sent his bill in equity to the press all over the country. Instead of that, they were limited to Boston and Massachusetts, where it was assumed that the statements which appeared in the morning papers would be seen, and where it was assumed, therefore, that the correction was necessary.

As to that thousand copies it appears, Your Honor, that they, the trustees, the plaintiffs, were in the habit of getting papers and distributing them. The trustees say that they distributed, or had, each of them—or Mr. Eustace testified that he had 50 of all of them come—50 or 60, he said—and he sent them out to his friends, and so forth, containing matters referring to this case. As he says he did not send out any answers of the defendants, it is to be assumed he sent out only those matters which were favorable to the trustees. They cannot complain when these church

officers, acting under a church by-law, purchased papers for the purpose of correcting a false statement in the morning papers.

The number was limited, and the distribution was such as to show that there was no willful or purposeful intent to create any false impression, or to circulate propaganda that would be prejudicial to the trustees.

What called for this act on the part of the defendants? The morning Herald had published an article in which it was stated that Mr. McCrackan's resignation had resulted from conflict with the directors, practically that he was out of sympathy with the government of the Church, which is the Board of Directors, as shown in their own bill in equity; that because of being out of sympathy with them and with their management, and because it was alleged he had been criticized for his address as president, both of which it appears on the testimony were false—both statements were false—but the Herald article said it was because of those two statements, or because of those two things that Mr. McCrackan had resigned.

The Post article deliberately said that it was because of the arbitrary acts of the directors that he had resigned. Both of those statements were absolutely false. Whatever else may be said in this case, and whatever else may be false or true, there is no one that has said that those statements were true. Nobody has claimed they were. It was not because of trouble with the directors, it was not because of their criticism, it was not because of their arbitrary action, that he had resigned.

What were we correcting? We were not correcting a statement as to why he was dismissed. My brother says he was dismissed, and that he did not resign. We were not correcting a statement as to why he was dismissed. We were correcting a statement that appeared in the press, which was that he had resigned because of trouble with the directors, to put it in simple words, and that was all there was to it.

Now, we had Mr. McCrackan's letters in which he set forth the reasons why he had resigned. In one of those letters he had complained of the censorship of the trustees, being, as he said, advised by counsel. In the other letter he had simply called our attention to the letter of May 1, to the fact that his three years' term would be up at the time of the annual meeting on June 2, and, in effect, that he did not wish to be considered a candidate for reelection.

Had we been correcting a statement as to why he was dismissed, which the papers had not said anything about, then we might have published the trustees' letter, and the trustees' letter would have shown that he was dismissed because of his letter of April 17 and absence from office. It



would not have shown that he was dismissed because of innuendoes in regard to some misconduct that occurred many months before, or was alleged to have occurred.

Now, having the letters on a busy day, many things coming before the board, it became the duty of Judge Smith, as Committee on Publication (which has nothing to do with the publications of the Church, but has solely to do with correcting false statements in the press), to send to the press a statement of what was the true situation. If he had sent it in his own words it might have been different. He does not assume to do that. He sends Mr. McCrackan's own statement. The Herald and the Post had published what they said were the reasons why Mr. McCrackan withdrew. He sends Mr. McCrackan's own statement as to why he withdrew, and I submit that under all the circumstances that was something that he had a right to correct. He was acting in accordance with his duty under the By-Laws.

My brother has alleged that these statements made in Mr. McCrackan's letters were false. Let me see if they were. The first, not in Mr. McCrackan's letter, but in Judge Smith's letter to the Herald, which was not published in full, or only a very small portion of it—and the part which was published certainly could not be offensive to anybody—he calls attention to the fact that there is propaganda apparently against the directors of the Church. Does Your Honor need any more indication of that than the fact that that very morning two papers had published something which attacked the directors of the Church in regard to Mr. McCrackan? Then there is the evidence, that has come into this trial all the way through, that many other articles were being published. But here were two that very morning. Now he says that there is propaganda evidently being published against the Church and newspapers should be careful as to what they publish unless they know that it is true, and cites as an illustration that the paper had published the fact that the directors had had great trouble in securing an associate editor as successor to Mrs. Knott. He says that is not so; Mrs. Knott was elected to the Board of Directors on such a date, her successor was chosen on such a date, and she was willing immediately to enter upon the duties of her office. That was all.

Then as to the facts in regard to Mr. McCrackan's case itself. It was not a question of dismissal that was uppermost in Mr. Smith's mind. To be sure, that letter had come in from the trustees in which they said, "We have sent a telegram dismissing Mr. McCrackan." But, Your Honor, that came in after the directors had all this information. It came in at a time when they knew that Mr. McCrackan's term of office under the Manual was running out inside of two weeks. It came

in at a time when they knew that Mr. McCrackan had refused to do anything further. It did not seem important to them—the question as to whether he was dismissed under those circumstances or as to whether he was withdrawing; but it did seem important to them that they should not allow to go unchallenged the statement that he had withdrawn because of their arbitrary action, and that was the statement which they corrected.

Mr. McCrackan's dismissal, Your Honor, followed his statement that he had sent on May 1 to the board his practical expression of his wish that he should not be considered for re-appointment; and then, having waited until that time, when he had only a few days more under any circumstances to stay in the position, they got in such a hurry that they sent a telegram to him dismissing him.

I am not surprised that the directors did not consider that that was an important element in this case. They were not answering anything that the trustees had raised. We gave Mr. McCrackan's own reasons for his withdrawal. We thought them true, and had heard the same thing from the editor, Mr. McKenzie, who testified here in court, and who had told the directors, or some of the directors, as was testified on the stand, the same matter in regard to Mr. McCrackan's complaints as to censorship. Therefore we had reason not only from Mr. McCrackan's own letters to suppose them true, but we also had reason from the editor-in-chief of these publications to suppose the statements true. The censorship of the trustees was under and by advice of counsel, at least, to this extent, that the counsel had agreed with them—they say that the trustees thought it wise and counsel coincided; but the statement that was made to Mr. McKenzie as the reason for eliminating these matters from these articles by Mr. Eustace was that they were doing it on the general advice of counsel to have nothing go into the papers that would in any wise affect the case. And so Mrs. Eddy's quotation was cut out. I mention it because my brother says that what was stated in those letters was false. There was not a word stated in those letters but what was true, except possibly the deduction that this was a specific case of counsel's interfering to censor. The statement can bear the other interpretation, that these trustees, acting under the general advice of counsel, thought it their duty to cut out these items which they did cut out by reason of that general advice. It is not a question of whether it was specific advice or whether it was general advice. If it was general advice under which they acted, and they had so stated, then the statement as alleged by Mr. McCrackan is true.

Mrs. Eddy's quotation in regard to the Manual was cut out, and Mr. Eustace states that it was cut out

because it was thought to have a bearing on the case. The second verse of "Onward, Christian Soldiers" had to go for the same reasons, notwithstanding Mr. McCrackan's remonstrance. Mr. McCrackan says he told the trustees that this was a famous old hymn and that it had become a marching song for the soldiers across the sea, and he thought it was going a little far to cut that out.

But, Your Honor, it did contain something that seemed to the trustees—we do not question the honesty of their opinion in this matter—to have something to do with the case. It described the armies being one and united, undivided, marching forward; and their bill in equity is based on the principle of a divided army. Therefore they thought that that in some way had some bearing on the case.

Again, Mr. McKenzie's reply to Mr. McCrackan's letter in which he had stated that he would not continue certain editorial work with this kind of censorship going on, did not in any wise dispute Mr. McCrackan's statement. Would it not have if there had not been a foundation, and the best foundation, for the truth of it? It is very significant that Mr. McKenzie did not dispute it. It is very significant that the trustees never took any action to dispute it, either to Mr. McKenzie or to anyone else. Instead of disputing it, as late as the 15th they asked Mr. McCrackan for a conference. They say they intended at that conference to dismiss him, but if they did they were judging the case and they had no reason to send for him for a conference. As a matter of fact, they probably intended to have a conference and to see whether or not some arrangement could be made whereby he might continue his services. At least, the fact that they did not dismiss him until they found that he had refused to go on is very significant.

I submit that it is characteristic of this proceeding in certain features that there is an attempt to make it appear here that there was some alleged misconduct of Mr. McCrackan, and that that was the reason, this petition insinuates, that Mr. McCrackan was discharged, and that we knew it, and that therefore when we published this statement to the world in the matter of sending these McCrackan letters to the papers we knew that there was another reason and that that was the important reason.

I submit, Your Honor, that that is not tenable at all. If they had the right to discharge Mr. McCrackan for any alleged misconduct it should have been done six months before, at the time when it was alleged to have taken place. As a matter of fact, the letters which Your Honor has seen show that that matter was practically dismissed from everybody's mind as long ago as last September or Octo-

ber; and as absolute proof that estopped the plaintiff from setting up any such suggestion we have their own letter to us in which they give us a statement that they had dismissed Mr. McCrackan, and they give the reasons, and they state it is because of his absence from business. There is no reference whatsoever, in any way, shape or manner, to that alleged misconduct that occurred months before. We had a right to assume, therefore, that they were giving us the true reasons, and they are estopped from claiming that there is any other reason at that late day.

I want to call Your Honor's attention to this fact. In publishing this matter we were endeavoring to correct a false statement in regard to ourselves, and that was uppermost in our minds. We had no thought of its hurting anybody or of its being by any possibility a violation of this injunction.

Now, did we have a right to do it? Your Honor will recall that when the matter was before Your Honor as to continuing the injunction, on March 28, that the injunction was continued in regard to Mr. Dittmore as well as in regard to the defendants here and that Mr. Thompson, as counsel for Mr. Dittmore, asked Your Honor as to whether or not Mr. Dittmore had got to keep his mouth shut when false things were being said against him, and Your Honor immediately said, "No, by no means." I have here a quotation from the remarks of Your Honor at that time indicating what was on our minds in regard to our right to correct false statements in regard to us:

(Mr. Bates reads the following extract from the proceedings before the Court on March 28, 1919.)

"The Court—Then as far as Mr. Dittmore is concerned, Mr. Thompson, if he would prefer not to enter into the stipulation rather than to continue the injunction as against him—

"Mr. Thompson—May I say this? Perhaps I am not aware as to the stipulation you wish me to make. May I ask to what extent—

"The Court—You will stipulate that you will refrain from doing the things which are enjoined by the injunction.

"Mr. Thompson—May I say, with great deference, I would rather have a hearing on the case now than to stipulate anything which will effectually close his mouth—

"The Court—He may talk all he pleases.

"Mr. Thompson—Now if Your Honor please, if the construction—

"The Court—You need not take time on that because I am satisfied from the reading of it that it restrains and enjoins him from entering into any sort of scheme or purpose of propaganda for doing certain things.

"Mr. Thompson—He cannot even say what his opinion is, his mouth is absolutely closed—

"The Court—I do not agree with that. He could not by letter or interviews seek to impair, overthrow, and destroy this trust. I can agree that is so. I was not aware from the reading of his letter and what you addressed to me that he was in that attitude of mind. I inferred that while he did not care to contest the legality of his removal he had become in this controversy a neutral; it now appears that he has not."

I refer to that, Your Honor, only as showing the fact that it is the natural right of a man to defend himself when false things are said about him, and we had that right, and it comes, as I think, within the scope of our rights under the injunction and within the scope of Your Honor's suggestion in regard to the necessity or lack of necessity, of our keeping our mouths closed when we are attacked.

I want to suggest further that there has been an attempt to show here that this matter did impede or embarrass the plaintiffs. That is competent, as to whether it did or did not, I assume, solely as showing whether or not it was reasonably likely to. But the evidence has been very slight.

In the first place, they introduced two clippings from the papers that they claim had resulted from this statement being sent out, neither of which referred to the advice being on the part of counsel, and both of which do refer to censoring on the part of the trustees—a right which they claim they had, and which, as I suggested at the time indicates that they could not be prejudiced by the publication of the fact that they were doing something which they claimed they had the absolute right to do.

The yellow slip that came from Chicago was a piece of evidence that I think could not have very much weight. There was nothing to identify it with this publication of Mr. McCrackan's letters, except the bare possibility that it referred to the fact that the censorship was being exercised by outside parties, but the whole burden of that resolution that was adopted was rather the interference with the work of the directors which they had been accustomed to perform by the bringing of this suit on the part of the trustees. It was not the burden of it. It did not come as a complaint of the action of counsel in this alleged advice as to censorship.

The papers which were read this morning and the letter from their own employees, I assume, out in California, also indicate that the trouble came from their filing their bill and sending it broadcast over the world, and not from this publication by Judge Smith.

Now, when Your Honor considers that they have alleged in their bill that there are over 1800 of these churches in the world, and that there are a vast number of members of this faith, and that they have 140,000 subscribers to

their publications, when Your Honor considers that, I submit that the evidence that they have put in to show that they were actually harmed two weeks and more after the matter took place, or nearly three now, is very slight, and can all of it be traced rather to the original action of the trustees than to this action of the directors in publishing the McCrackan letters.

I want to submit to Your Honor that it was not propaganda. Why, there had been a thousand opportunities, Your Honor, for propaganda. It has appeared that articles were appearing against these directors and the church government. There hasn't anything been brought in here to show that they have replied to any of them, excepting in this one instance, where the statement was so glaring and the evidence they had seemed so conclusive that they felt justified in publishing it; yet had they been disposed to violate this injunction there were thousands of opportunities to do so.

I submit it is very significant that the allegations have had to be so meager. There is nothing certainly that shows any malice or any willfulness that would accompany propaganda. There is nothing that shows any continued effort, or anything of that kind. You cannot be guilty of propaganda by simply publishing one statement to correct a false statement. There was no purposeful violation. It is inconsistent with their whole attitude. They are not to be judged, Your Honor, in arriving at the purpose or the willfulness by the single matters which are set forth here, but rather by their whole course of conduct; the warnings that they had sent out in their endeavor to cooperate with this court in the maintenance of the injunction; the telegrams, the advice to their students, the assistance given by Mrs. Knott—all of these things go to show absolutely a spirit of cooperation in harmony with the court and not one of hostility to it.

I want to state one thing which I omitted in regard to the question as to whether or not this did do or could do, or might reasonably be expected to do, any harm or to interfere or impede.

The Court—Do you mean pecuniary damage?

Mr. Bates—No! the question of interference with the trustees or embarrassing them. I want to call Your Honor's attention to the fact that they did not hesitate to send out 140,000 copies of their bill. They did not hesitate and do not hesitate now, to publish these contempt proceedings in full in their paper every day.

The Court—Well, you mean publishing what actually takes place in court, without comment?

Mr. Bates—Yes, Your Honor.

The Court—Very well. They have a right to. I suppose anybody has a right to.

Mr. Bates—Now, if they thought that

the directors had published the statement, or that Mr. McCrackan's letters were false, and there was no foundation for them, as they allege in this petition, then, Your Honor, I submit that it was a duty incumbent on them to let the world know it. They say they brought these proceedings. These proceedings were brought somewhat later; but it was the people who might be influenced by that fact that they should have formed of it, and yet they admit that they have not done anything to counteract that statement. The reason for that is either because they knew the statements in Mr. McCrackan's letters were true or else because they did not consider that our statements would have any likelihood of embarrassing or impeding them in their work.

Under these circumstances I think I have a right to say to Your Honor that the plaintiff's petition ought to be dismissed, that the proceedings are not justified. They are serious proceedings. The specifications are not serious enough to warrant them. They should be dismissed in the interest of justice and of equity in the dealing of all the parties to this case.

That brings me to the third or last point which I wish to submit to Your Honor, and that is to our motion on file to modify the injunction, or to this motion which I now hand to the clerk to dissolve the ad interim injunction, because of the action of the plaintiffs themselves.

They are not coming into court with clean hands, and I say that advisedly. Their stand is not equitable. I submit that if when they stood before Your Honor on an ex parte proceeding and asked Your Honor to close our mouths and to shackle us by an injunction that would prevent us from discussing this in any way or from answering it, if when they had done that they had told Your Honor that they had the intention at that time of sending out on their own behalf 140,000 copies of the bill in equity that they had filed, and of telegraphing every newspaper in this land asking them to publish practically nothing except what they got from them, that Your Honor would never have granted the injunction. We did not learn of these things, or of the full extent of them, until we learned of them on the stand from them in this case.

I call Your Honor's attention to the fact that that bill in equity was drafted purposely for propaganda purposes. The evidence of it is shown in the fact that they incorporated into that bill in equity the argument of their counsel as submitted in the letter sent to the counsel of the directors. I could hardly understand why that was included, but now that I have found that it was intended at that time to send that bill to every Christian Scientist whose name they had on their list throughout the world, I can see why they included in it that argument. It was propaganda abso-

lutely. I recognize that there is a right to publish proceedings. I recognize that there is a right to publish the bill in equity, but it may be done in such a way and to such an extent as to indicate contempt of court. It may be done to such an extent as to be in violation of the principle of the injunction which they are seeking, and I submit that that was the case in this matter. A bill in equity deliberately prepared for the purpose of influencing public opinion. While they are asking Your Honor for an injunction their presses are running to get off 140,000 copies of it. The ink was not dry on the injunction before they had taken out of it certain portions—did not publish the whole of it, but certain portions of it—put it on the last page of their printed pamphlet containing their bill in equity, with no statement that it was granted on an ex parte hearing, no statement that it was not in full, nothing to indicate that it was granted ex parte, and they print that, and then they begin sending those out to every subscriber to their periodicals, that is, to the Journal and to the Sentinel, and to the two foreign papers, and they say there were 140,000 of them.

Is there anything, Your Honor, that we have done that compares with that in the matter of propaganda? They say it was done in order that the people of the Christian Science faith might not have garbled reports of what was going on here, but a true report. If that had been their object, Your Honor, they would have sent out our answer, but they say they did not, never sent out a copy of it. Their whole purpose was to try to poison the mind of this great church against its board of government and in their favor, and to close the doors in the meantime to us to do anything in the way of reply. We have no subscription list, we could not copy their effort. To be sure, following their example, we have had answers printed, but we have not sent them out as they have. We have had no list to send them to; there has been no opportunity. We had to do it to a certain extent in self-defense.

But here is the situation. They were our lists and our official organs, and they sent them out without sending anything to counteract them or anything to show the other side. The telegrams to the papers, I submit, Your Honor, were a violation also of the spirit. It is admitted on the stand that they had their copies ready and filed them with the clerk—printed copies—so that any newspaper man who came in might have a copy. Not only that, but they sent to every newspaper in the land a copy of it as soon as they could mail it; and, for fear that they would not understand, they sent 476 telegrams telling them that they were going to send them a copy of it and asking them practically not to publish anything except what they

obtained from the Publishing Society. Bear in mind that they were the publishers of a daily paper, The Christian Science Monitor, that circulates all over the world, that therefore they were appealing to newspaper men, as a sort of a professional request, a brotherly courtesy to keep out of their columns anything that might come to them except what came through them or what they authorized.

I do not think there was ever any such a case brought to Your Honor's attention, a case so extensive, so deliberate, with only one object, and that was the object of getting their view before the people, and no one else's view.

Your Honor, they did claim, and we supposed in good faith, that they were not going to publish anything, on advice of counsel, in the columns of their paper. I submit, Your Honor, that that statement does not look very well compared with what they did. If they had published their bill in equity in their paper they could not then have excluded us from their columns for the publication of the answer; it would have been so manifestly and openly unfair. So they assumed the righteous rôle. "We will allow our publications to publish nothing concerning this matter, we are going to keep them entirely neutral." And then, without our knowledge, they take the lists of all the subscribers to all the periodicals, with the exception of the Monitor, 140,000 of them, and send out, at the expense of the Publishing Society, printed on the presses that print our periodicals and our official organs, published in the building that we own—they sent those letters out without our knowledge to all the world. There can be only one view of such an action as that, and that is that they are not entitled to claim that the defendants have done anything under these conditions which in any wise measures up to the enormity of their own vicious and unfair propaganda. It is absolutely contrary to the spirit of the injunction.

I submit, Your Honor, that their action in this respect, not only prevents their equitable prosecution of these proceedings for contempt, but they show that they are not entitled to a longer continuation of this injunction for their protection. They come into court staggering under the beam that is in their own eye, while at the same time they ask the court to examine carefully the mote that is in their brother's eye.

The Court—I will take a short recess, Mr. Whipple, before I hear you.

(Short recess.)

Closing Argument by Sherman L. Whipple, Esq.

Mr. Whipple—May it please Your Honor, I will, if I may, in the first instance deal with the application to dissolve the injunction. It is based

upon the claim that the plaintiffs have been guilty of reprehensible conduct with regard to publications of propaganda. Let us consider for a moment precisely what they have done. Having prepared their bill, after various attempts on the part of counsel for one side and the other to make peace between these parties, the bill was filed in the Supreme Judicial Court, duly verified by affidavit, and an ex parte injunction was issued. Then by indulgence of Your Honor, who happened to be sitting as the justice, the bill was withdrawn from the files so that it would not become a public matter pending a final effort on the part of counsel for the petitioning trustees to make an accommodation of this controversy which would save the scandal that must go through the Christian Science world from the precipitation of litigation between these parties.

The injunction was promptly served and the parties were furnished with copies of the bill. And for something like 48 hours, as I remember it, there was no publication whatever. There need have been no publication with regard to this litigation except that the directors still maintained the policy and claim outlined in the bill, which the trustees were advised was entirely untenable under the law. And therefore it became necessary that the bill should take its usual course. Of course these plaintiffs and their counsel knew that such litigation would be an event of profound importance through the Christian Science world, that there would be a great desire on the part of Christian Science followers to know what the controversy was. It was decided by the trustees that they would not trust the publication of any of these matters to the newspapers, The Christian Science Monitor, or to the other publications which were under their control, lest there might appear to be some flavor of prejudice one way or the other with reference to the controversy, and they took a position which was admirable, that they desired no prejudice to go out into the field from any of the publications which they controlled. But Your Honor very well knows, from the many years of experience that you have had upon the bench, what happens in the clerk's office as soon as a bill is filed which is thought to be of public interest. The reporters from every newspaper, and from The Associated Press representing the newspapers throughout the country, desire at once to get hold of the bill and to send broadcast throughout the country, and to publish in their own papers, what is said in the bill. They desire, each one of them, very creditably, to be the first to make a publication with regard to it. The result is that in the clerk's office there are anywhere from a dozen to fifteen men all struggling to get hold of a single paper. Such a situation as that does not make for accuracy of statement,

and the result is that frequently in the publications, in the newspapers, there is published a garbled statement of the whole situation entirely inaccurate.

To guard against such a situation as that, and to do what is elementary is not only the right of every plaintiff, but the proper thing for the plaintiff to do, printed copies—because a great many were going to be needed—were furnished to the clerk of court so that the newspaper men might have those printed copies for their own convenience and in the interest of accuracy. I have never, so long as I have practiced at this bar, heard the slightest criticism of that sort of procedure, when a bill is filed to furnish to every newspaper, who desired to have it, an accurate copy of the bill in equity for their convenience, in order that they may promptly and speedily and accurately do their work.

It was also the desire of these plaintiffs that the Christian Science people throughout the world should know just what they had done and why they had done it; that they have absolutely accurate information. And nothing is more elementary than that a bill, once filed and put out before the public, is public property, and it is in the interest of the promotion of justice that all the world should know absolutely accurately the things that are said in court; and that they get no perverted or partisan or biased view with regard to the proceedings. And accordingly, with the approval of counsel, these trustees sent to the people who were most interested—that is, their subscribers—what? A copy of the bill in equity without one comment, a copy just as it appears on the records of this court, and a copy of the ad interim injunction—and everybody knows what an ad interim injunction means—in the back of it, without comment, to their subscribers. That was absolutely within the rights of the plaintiffs, a commendable procedure, and I am astounded that a gentleman of the experience of my learned opponent should find for one moment anything in that to criticize.

Besides that, they sent to the newspapers of the country interested merely for accuracy, a telegram, to the different members of The Associated Press, in which they announced that "A controversy having arisen between the Board of Trustees of The Christian Science Publishing Society and The Christian Science Board of Directors over the question of control of the society's affairs, the society asks your cooperation in preventing unauthorized statements regarding the question at issue from appearing in your paper. Any information you may desire will be gladly furnished you by this society."

And that means information within the limits of the proper publication.

"A copy of Bill in Equity filed by

the trustees in Massachusetts Supreme Court will be mailed you at once."

So that they might have before them an accurate statement of exactly what the complaint was that was on file in the Supreme Judicial Court of this Commonwealth. And since that day absolutely no publication of any sort or description with regard to this controversy has been given out.

Now, the thing that is criticized with regard to newspaper publication is for an attorney or for parties to get into the newspaper prints some partisan or biased expression which will favor themselves, something outside the court, something which will prejudice somebody, something which could not be brought to the attention of the tribunal determining the facts in the court itself, something outside, some propaganda; and there is absolutely nothing of that sort that the plaintiffs have done here.

Reference has been made here to propaganda and to newspaper publications as if there had been a great many. But there is no question that, however frequent there may have been personal differences with regard to Christian Science matters since the date that this bill was sent out, not one thing has been sent out or inspired directly or indirectly by these trustees.

Criticism has been made or suggested because the Dittmore bill Mr. Eustace sent to a half dozen, or 20 or 30 of his friends. That was a matter with which we had nothing to do. We were not parties to the bill in any way whatever. Your Honor may have seen the publication of an old letter of a former distinguished counsel of the Board of Directors, advising against their increasing their salaries clandestinely, or something of that sort, and replies which were made to that, and apparently the interchange of newspaper views with regard to that have been fast and furious. But Your Honor has seen, and it is admitted, that the trustees have not indulged in that in the slightest degree.

We are found fault with because when these directors, through Mr. Smith, put out a false statement, we did not rush into the public press and contradict it. We came to the court with our complaint. Having once lodged here our complaint, our bill in equity, we abide by the decision of this Court, and what complaints we have to make are made here and not in the newspapers. I am not criticizing anything that has been said in the newspapers by the parties to the other branches of this controversy, nor am I suggesting for one moment that counsel have had any part in the publications; I am merely saying that so far as the trustees are concerned they have had no part in it. I can conceive of a case with no cleaner record of any reference on the part of the trustees to newspaper articles or propaganda, because I conceive it to

be, as I have stated, elementary that a bill once filed in court is the property of the public as soon as it is released by the order of the Court, and that the publication of exactly what is in that bill, and nothing more, and no comment, is not only within the rights of the parties, but it is in the interest of the proper administration of justice. So much for that branch of the case, which I close with a certainty that Your Honor will feel that nothing that can be criticised has been done in that behalf by the trustees—that, indeed, their conduct is such as would be commended by the Court.

Dealing now with what is really the issue in the case—the petition for contempt. I feel it necessary, in view of the somewhat surprising argument, I was about to say misconception, with regard to the issue, of the learned and distinguished counsel to call attention to what the controversy really is, as the foundation of any remarks that I may make.

The parties on the one hand are three trustees of the Publishing Society, so-called—The Christian Science Publishing Society; the defendants are five or six, four certainly, directors, and two, uncertain in their tenor, directors of the Christian Science Church. The trustees are created and hold their position and authority by reason of a trust deed which creates them, which defines their duties, which gives them their powers and fixes the limitations upon those powers, which conveys to them the property which they have the right to hold and the great enterprise which they are to manage. That is the final definition of their power and statement of their duty. The purpose is defined to be for the spread and development of the Christian Science movement, the Christian Science religion, throughout the world. That is declared to be, impliedly by every statement in the trust deed and expressly in parts of it, the purpose for which these trustees shall work. The directors are also created and have their power by reason of a trust deed, and a copy of that is attached to the Bill in Equity. It was a deed of trust which was subsequently reformed, as Your Honor will remember, by a supplementary paper. That trust deed and supplementary agreement transfers to the Board of Directors certain property which they are to hold in trust for specified and specific purposes stated in that trust deed. There their powers, so far as they are powers which the courts will recognize, are limited and defined, their duties and responsibilities are fixed. They are charged with the control and management of The Mother Church, so-called, in the city of Boston, and the great property which Mrs. Eddy turned over to them in connection with the church. The purposes for which they were created as trustees are also defined in the trust deed, and happily they are

precisely the same purposes for which the Board of Trustees was created by Mrs. Eddy—namely, the promotion, the development, and the spread of the Christian Science religion throughout the world. That was Mrs. Eddy's conception, that is the statement of her great religious purpose, through these two branches, whose duties, the limits and the scope of their duties, are defined in these two instruments signed by her. That is her conception of the two ways in which she would develop and extend the Christian Science religion, of which she was the Founder.

It would seem that there was no room for dispute, having those two instruments and papers before the court, to have a fair, final, clear definition of the relative duties and responsibilities of these two great boards of trustees—because they are both boards of trustees—who were created by Mrs. Eddy, and to whom both of them owe their power.

But a controversy did arise, a controversy of some long standing before this Bill in Equity was filed. The trustees, as Your Honor will see from the correspondence which has gone on, and from what is related in the bill, had felt, under the advice of counsel, that they must obey the Deed of Trust, that the Deed of Trust was the definition of their power and duties, and if and in case there was any disagreement with the Manual they must adhere to the trust as it was declared in their trust deed rather than to the Manual.

Now, let me explain right here that that does not mean for a moment that these trustees ever had in mind to violate the terms of the Church Manual and follow an instrument separate and merely a legal instrument. The position of the trustees is that the trust deed is a part of the Church Manual—it is referred to in the Church Manual, as is stated in the bill. It is incorporated in the Church Manual. The Church Manual was created by Mrs. Eddy, hence its sacred character. But no less was the trust deed created by Mrs. Eddy, and no less sacred in its statements as to what the trustees should do, no less authoritative as to the scope of their powers and the definition of the duties which her agents under this sacred appointment were obliged to perform.

Now, if the Church Manual in any of its statements seemed to contradict the trust deed, which was also a part of the Manual, which should the trustees obey? That was the question with which they were confronted. And they made up their minds that their duty was to obey that part of the Manual expressed in the trust deed, which was declared in solemn form and was declared as an irrevocable instrument of trust; that as between that and a later declaration in the Manual, no more authoritative and no more inspired, they were bound by that which was solemnly and

irrevocably declared, rather than by a declaration which was to meet a situation of a day and which could have been changed in a twinkling by Mrs. Eddy. And that was the position which the trustees have taken and made clear to the Board of Directors.

But the Board of Directors, on the other hand, said, "No, no, we insist that you comply with a part of Mrs. Eddy's statement contained in the Manual which gives to us, as we claim, the authority to dominate and control your trusteeship; to take your places in the management of the trust created in this solemn manner by Mrs. Eddy herself; we propose to control the affairs of the Publication Society and you are subordinate to us." It is unnecessary to go through the sophistical argument which they made to enforce that view, their view. Of course when the lawyers read it and advised the trustees, they said, "From the legal point of view there cannot be any question with regard to it." But the trustees, even then, were not satisfied, because they are good Christian Scientists and they revere and obey the words and directions of Mrs. Eddy as sacred words and directions, absolutely; and they themselves decided the proposition with regard to the Manual with reference to which view we here in the court of law have nothing to do, because we are outside of that part of the scope of this controversy. But it is necessary to find out and to ascertain what the controversy was, and is, because the directors' position was that, "We will impose our will upon the trustees in the management of your affairs, under this sacred trust of Mrs. Eddy's, and you shall do our will and not her will as you read it, and as it is expressed in the trust deed."

The trustees pointed, as they do now, to the expressions of the Deed of Trust, which are no less the utterances of Mrs. Eddy because they happen to be contained in a legal instrument. The consideration upon which Mrs. Eddy made the Deed of Trust to the original trustees is this:

"In consideration of their agreement to faithfully observe and perform all the conditions hereinafter specified to be by them observed and performed"—That is, the first thing in that instrument is that these trustees cannot hold their positions except upon the condition that they perform the conditions which are specified in the trust deed itself. After the statement that the transfer is upon the "perpetual and irrevocable trust and confidence," then it states broadly that the trustees shall hold and manage said property and property rights exclusively for the purpose of carrying on the business which has heretofore been conducted by The Christian Science Publishing Society in promoting the interests of Christian Science. And then:

"3. Said trustees shall energetically and judiciously manage the business of the Publishing Society on a strictly Christian basis, and upon their own responsibility, and without consulting me about details, subject only to my supervision, if I shall at any time elect to advise or direct them."

There was the reservation on the part of the Donor of the right to direct and to advise the trustees and agencies which she had selected for this vast work which was intrusted to them by the Deed of Trust.

"6. Said trustees shall employ all the help necessary to the proper conduct of said business, and shall discharge the same in their discretion or according to the needs of the business, excepting that the business manager may call in at times of necessity such temporary help as will facilitate the business."

Nothing could be broader than that expression of power, and I was astounded that any man of intelligence should construe that word "help" as in the ordinary use of it in the servant problem. It is not used in that sense. "Said trustees shall employ all the help necessary to conduct their business." "Help" in that connection means assistants, but one or two of these gentlemen had, what I think I may almost term effrontery, to say they did not suppose that an editor was help. What a gross construction of that word! Editors certainly were rendering assistance in running the affairs of this great trust, they could not get along without them; but he evidently, a leader of this great Church, has mistaken that as meaning something akin to kitchen help.

Now, the issue is defined in the bill, and here I want to direct particular attention to what has been said by counsel that they did not know, these gentlemen did not know that this litigation involved at all the question of editors. He said, "I do not find editors mentioned in the bill," with reference to the question of help, and they had attached a different construction to "help" that that did not mean editors.

Let us turn—and I hope counsel will do it—to page 24 of the bill. Referring to page 20 first. We put in the statement of counsel advising these trustees as to their duty in order that we might lay before the court just exactly the issue in the form in which it had been defined by the parties before the suit was brought, and in that letter paragraph 4 states:

"The source of the powers and duties of the trustees is the Deed of Trust. To it they must look for the extent and limit of their authority. The language of the Deed of Trust being definite and controlling, neither subsequent provisions of the Church Manual nor, as heretofore stated, any subsequent declarations of Mrs. Eddy, can have the effect of modifying the Deed of Trust or the estates and equitable interests thereby created. Nor

can such provisions or declarations add to, or detract from, the particular responsibilities, duties, and functions imposed upon the trustees by the deed."

We put that in so that the averment should appear in the bill just exactly as the trustees had been advised by their counsel.

Also No. 5:

"If there be any conflict between the terms of the deed and the language of the Church Manual, the legal and moral obligation of the trustees compels them to respond to and obey the mandates of the deed. Should they do otherwise, they would violate the compact which they made by their acceptance of the trust 'to honestly and faithfully do and perform all things to be done and performed by them within the terms, objects, and purposes of this instrument.'"

There was the definition of the issue in a broad sense. Following that, as Your Honor will remember, counsel felt that they had succeeded in preparing and putting into effect a *modus vivendi*, so that the parties would get along without litigation, and in order to show how nearly exactly the issue which we have now before us was defined, I would like to call your attention to this part of the bill, which appears on pages 23 and 24: The directors, almost immediately after the *modus vivendi* had been established, requested the trustees particularly to repudiate that part of the opinion of counsel stated in the following terms:

"If there be any conflict between the terms of the deed and the language of the Church Manual, the legal and moral obligation of the trustees compels them to respond to and obey the mandates of the deed."

The bill then proceeds:

"The directors insisted as a further condition of the trustees retaining their offices as such, that the trustees acknowledge in writing that the Board of Directors have the final authority in regard to the editorial policy of the publications of The Christian Science Publishing Society, and general supervision of the general affairs of The Christian Science Publishing Society."

Then there is stated in the bill the concessions which the trustees were willing to make. They said that they would always receive recommendations or criticisms as to the administration of their trust and the direction of the editorial policy of their publications, and stated that they would give to such recommendations careful and earnest consideration, and that they would on all occasions conform thereto when in the exercise of sound discretion and judgment they might do so. But they said that they would decline to repudiate the advice of their counsel, that they would be guided by the terms of their trust with a due regard for the By-Laws of the Church and the provisions of the Church

Manual, interpreted in relation to the expression of Mrs. Eddy's desires and purposes in the provisions of the trust deed.

The very question upon which these parties fell apart, as expressed in the bill itself, was the control of these publications, which means nothing else but the appointment of the editor, the control of the editorial policy. We filed the bill because they insisted they would attempt to remove the trustees if the trustees did not acknowledge in writing that the editorial policy was to be within their control, and then those gentlemen one by one have the assurance to take that witness stand and say that they had read the bill and that they did not know that the question of editors was involved at all; and the learned counsel says to Your Honor that he does not find the word "editors" used in the bill. Why, if Your Honor please, I will venture to repeat that the whole question involved in the bill hinged upon the question as to who should appoint the editors and control the publications, which are constantly referred to by counsel in his argument as "ours," meaning the directors', but which are transferred under a solemn deed of trust to the trustees, in which paper the directors are not even mentioned. The question was as to whose publications these were, and who should control them. And the injunction which was granted was that there should be no interference on the part of the directors with the management of those periodicals, or the control of the editorial policy of the newspapers. That was the fundamental question at issue as between the parties. And yet these directors would ask Your Honor to believe that they did not know that the question of editors or editorial policy was at all involved, and that when they attempted again to thrust their will upon these trustees and elect such editor as they pleased, and proclaimed to the field that they had elected him, that they did not know that that was the question involved in the bill. Isn't it a proposition which is impossible to believe, assuming that they have the ordinary intelligence, or the extraordinary intelligence which, from their appearance you would think that they had; and especially a lawyer and a judge of experience for years upon the bench of a western court, that he did not know that the question, the vital and fundamental question in the case, was the control of the editorial policies of these instrumentalities? And the injunction was issued, among other broader statements, with reference to this very vital dispute.

They were forbidden to interfere with the trustees in the management of the Publishing Society's property and business, which in effect was nothing more than to elect and supervise the editors and assistant editors of the various publications, and to select and supervise the business manager

of its concerns. And they say that they did not suppose that the bill had anything to do with the editors or assistant editors or a business manager, but that it referred merely to the help, that is, such subordinate errand boys and clerks as would have to serve under the heads of departments, which they still insisted, in spite of the injunction, they had the right to elect.

Now, it is interesting, in view of this plea of ignorance and inadvertence, to see whether this situation was not brought to their attention after the bill was filed, and it was in the whole instrument. It appears that before the bill had been filed, although these trustees knew nothing about it, the directors, in discharging Mr. Dittmore, had taken Mrs. Knott, one of the assistant editors, on the Board of Directors, and that they promptly proceeded, without any consultation with the trustees whatever, to appoint an editor in her place. But they never informed the trustees in reference to it until long after the bill was filed. That appears in the correspondence which is in the case. And they said having appointed the editor, "That is the end of it; you are to accept that editor in spite of any order of the court."

Well, Your Honor will observe that on April 1—and may I with a little particularity call Your Honor's attention to the terms of the letter which was read somewhat hastily, in which we complained of their action on this very matter, the control of the editorial policy, which they seemed to have forgotten was in issue at all—

"Two matters have been called to my attention"—writes counsel—"in which it seems clear to me that The Christian Science Board of Directors have acted in violation of the ad interim injunction. I call them to your attention without any purpose to be technical or unduly critical, but to request you to make clear to your clients the scope of the injunction and the fact that the trustees must insist upon its being scrupulously obeyed."

That is criticized by distinguished counsel as being carping and meddling, showing a purpose to be unduly complaining and critical.

"The trustees have just received from the directors the letter in which the directors request the trustees to publish an announcement of the election of Mrs. Hoag as associate editor succeeding Mrs. Knott, resigned. I inclose herewith for your information a copy of the letter."

Just think of it, if Your Honor please! They elected this lady and then sent to these trustees and said, "Publish, if you please, the notice that we have elected her." That is after the bill was filed. That was after an injunction against their interfering any longer on the part of the trustees of the publication society's business. "Please give notice of what we have done." Never making a suggestion that the trustees were to be con-

sulted in the matter, but with the courtesy that the head of the office extends to the office boy, said, "Publish this that I tell you." And then we are chided because the trustees make a complaint in which they say, "We do not purpose to be technical or unduly critical, but request you to make clear to your clients the scope of the injunction," dealing with the very question of editors.

Then we say, "The fact is, however, that the trustees have never been consulted as to the election of Mrs. Hoag, nor has Mrs. Knott sent in any resignation to them." When Mrs. Knott was elected as a director, all the trustees heard about it was from the outside. Then we call attention to the terms of the ad interim injunction and say, "It is too plain for argument that under the terms of the trust the trustees have authority to appoint the editors," and that the appointment of an editor by the directors impedes and interferes with the trustees in the discharge of their duty, "under the trust instrument of Jan. 25."

We again say, attempting to exercise Christian courtesy toward these gentlemen and to get along with them under these trying conditions:

"The trustees will be very glad to receive suggestions of the directors as to the editors to be selected. In all cases where it is possible they would undoubtedly appoint persons whom the directors desired, but so long as the injunction is outstanding it must be obeyed and the directors must act in accordance with its terms. I would suggest, therefore, that in matters coming under the terms of the injunction the directors should consult with you before they act. The violation of an injunction of our Supreme Judicial Court is too serious to be dealt with except by the attorneys of the respective parties."

And at this late day the learned counsel says that the violation of an injunction of our court, is a serious matter.

The suggestion was made that it was serious, and how serious it was, on April 1, when there was the complaint, definite, that they had proceeded to interfere with the Board of Trustees in the election of Mrs. Knott, and that we should not stand idly by. Although it was couched in pleasant language, it was an avowal that the trustees would not stand idly by and see an injunction of this court thus flagrantly violated.

That matter was passed in accordance with a later sentence in this letter.

"The trustees are most anxious to go through this ad interim period with the greatest possible harmony with the directors. They desire that the least possible injury be done to their business which has the single purpose of promoting and extending Christian Science. They will cooperate with the directors to the fullest extent in har-

monious execution of this great purpose, but there can be no such harmony if, upon the matter being called to their attention, the directors will not respect or obey the order of the Court."

That is the way matters were left as of April 1, when a definite statement was made that they, the directors, had violated, in an essential particular, namely, in the election, or attempted election, of an editor, the injunction which this court had issued. So that there is no possible ground for the plea, or claim of ignorance. Much of the time of counsel has been devoted to saying what parts of this injunction they have not violated; very little in dealing with the question of the part which was the real meat of the controversy, with reference to which they declared their purpose to proceed, and have proceeded, in defiance of the injunction.

The Court—Will you direct my attention to the evidence of what, if anything, took place on June 3 on the part of the directors in electing a successor to Mr. McCrackan?

Mr. Whipple—Nothing, I understand. There is no evidence on the subject.

The Court—I understood so, that they did not act.

Mr. Whipple—They did not act. But that was after this bill had been filed.

The Court—Oh, I understand that.

Mr. Whipple—They did not act. We may refer now to the fact that counsel replied to this letter and said that Mrs. Hoag had been elected by the directors before the bill was filed. That was not what we complained of, although they never had had the courtesy to inform us of any action that they had taken. But whether she was elected or not, they had no right whatever to continue to insist upon her being put into the position. An injunction had issued from this court before they had taken any action in connection with it, and after that injunction their deliberate violation was to ask us to publish in the newspaper, a thing which they were forbidden to do. They were insistent upon it. The injunction stepped in between their secret election, which was harmless enough, a futile and idle thing to do, and the attempt in some form to put into execution the declaration of their will and their purpose in a matter in which they had no business to interfere.

The correspondence of May 12, in reply to May 2, I won't go into at length further than to say that on May 2 a letter was sent in which, in spite of this previous letter, the directors asserted that they desired and proposed to elect another editor, and asked if we should consider it a violation of the injunction, after we had written as fully as we had with regard to Mrs. Hoag and made our position perfectly clear. To which, in an attempt to keep the peace, the trustees replied in substance, "What is the use of bringing that up; can't we agree

in some way as to who shall serve, and if we can there ought to be no difficulty about installing that person in such a position without prejudice to the rights or asserted rights of either one of the parties?" The reply was in substance, "We won't do it, we won't recognize that you have anything whatever to do with regard to this election. The question is, do you claim"—as we had already said we did claim—"that the election by us of a director will be an interference?" And they rely upon the answer of counsel, which was in substance this: that if they did nothing but elect an editor there would be no harm done; that is, if they kept it to themselves, if those five gentlemen with their counsel wanted to relieve their consciences by electing an editor, and they never let anybody know it, that they could do so.

Curiously enough, that is made a defense here; but that is all that was said. We added, "If there is any attempt to enforce the will of these directors upon the trustees, we regard it a flagrant contempt."

Well, what did they do? They met and voted on a letter which they sent to the trustees, informing them that on the second day of June they proposed to elect. They had done exactly what counsel said would be regarded as flagrant contempt, namely, attempting to enforce their will upon the Board of Trustees. That is exactly the action that we said we should regard as contempt. That is why I asked one of these gentlemen if they really intended to do it, or whether it was merely bluff, and he said, "We really intended to do it," showing a defiant, contumacious state of mind and expression of a purpose to violate the injunction. And under those circumstances we do not have to wait before appealing to the court, as I understand the law, to have the flagrant violation done, because the vote and declaration of the purpose to do it is in itself an action in violation of the injunction. A statement of a purpose is of itself a definite act if it is seriously made. And they stated their purpose, so that we were not, as we think, obliged to wait until they had done the wrong and the harm that would have been done if, in the presence of 10,000 Christian Scientists assembled here, they had gone on publicly, as they threatened to do, and said, "We will elect, and we do elect so-and-so as an editor of The Christian Science Journal." It would have been as hard a blow as could well have been delivered to the prestige of these trustees in trying to hold on to the management of their trust. It would have been as grave in that way as it would be grave thus defiantly and flagrantly to defy the order of this court. I mean to say, in its private aspects it would have been as serious to the parties themselves as in its public aspect, and

every violation of an injunction has those two aspects—one affecting the rights of the private parties—that is of less importance, usually—and the other affecting the dignity of the court and its ability to administer justice and have its orders and commands obeyed. The only defense, as I understand it, to that violation, that alleged violation of the injunction, is that they supposed and understood that counsel agreed to it. I think Your Honor has read the correspondence and it is made perfectly clear—

The Court—I have heard it read and have it in mind.

Mr. Whipple—Counsel agreed to nothing further than that in the silence of the directors' ruling, if they saw fit to do it, they could go through the futile, idle ceremony, and if nobody ever knew it nobody could ever complain of it. But the declaration of a contumacious purpose would be regarded as a defiance and violation. I do not need, I think, to pause at all to discuss the reason and basis upon which the trustees acted in dismissing Mr. McCrackan.

The Court—I do not care to hear you unless you want to argue on specification B. That is, that may be characterized as the McCrackan specification in all its details.

Mr. Whipple—Yes, Your Honor. I had in mind to say, in reference to that, that I could not possibly see how there was any real defense to the statement that that was a violation of the court's order, and that what I had expected, instead of an argument which seemed to flutter between an attempted justification on one side and an attempt to palliate on the other, no real defense to meet the facts had been made. I had expected that there would have been at least, connected with what was practically an admission of violation of this injunction by a member of this bar, an apology to the court; but instead of that there has been this curious combination of persistent, obsessed assertion of a right which, if it ever existed, had been suspended by the injunction, and a purposeful statement on the one hand that "We did not intend to violate this injunction, but we intended to do what we did because we felt it was our duty," and the curious suggestion, after all this controversy about interference with the editorial policy, and the injunction directed against that, two or three of these men who took the stand said, "We thought we were helping you by doing it," adding to the indignity of their violation the insult of sarcasm.

Just think of it! My blood chilled as I sat in this court room with its traditions of respect for the judiciary, to hear those men obsessed and drunk with power, trifle with a statement like that. Enjoined because they knew the controversy was in regard to the editorial policy, and enjoined from interfering, they said, "We disregarded the dismissal of Mr. McCrackan, be-

cause we never believed they had any right to do it, and we elected, or proposed to elect, a new person because we thought it would be helpful to you." I cannot believe they said it seriously. We must credit them with some intelligence with regard to what had happened. They talked with counsel. But there we have it on the record parrot-like, with two or three of them, that they thought they were helping us by violating this injunction.

Now, as to these letters, unless I can be of assistance in pointing out facts which seem to me bring the violation of the injunction within the line of the quasi criminal, I do not care, in view of Your Honor's intimation, to discuss them. But we have the statement of Judge Smith that he had read the bill, he knew what the issue was, and he sent out these letters which were a statement of what he regarded as the truth of the situation, although he had received notice before he sent them out that the trustees had dismissed one of their employees for malfeasance, for non-performance of his contract. He never referred to that. Why? Because there was still in that obsessed mind the determination that they would not recognize anything that these trustees did, that they would not recognize that anything that they said or any vote that they passed was effective, injunction or no injunction. They did not dare to say it on the stand—not quite that way; but their attitude and their demeanor was that of defiance, flippancy, insistency, based upon the obsession which they seemed to have communicated to each other, that no ruling of any court and no order of any court should prevent them from doing the things which they believed they had the right to do under their interpretation of the Manual.

The fact with regard to the letters and the whole thing possibly is explained by this: With the relations of Mr. McCrackan and the Board of Trustees, his employers, under this injunction these directors had nothing to do. It was made none of their concern or business by the injunction. They had claimed the right to have to do with it, and the Court said, "You shall have nothing to do with it, it is none of your business or concern during the pendency of this suit." That is the plain English of it, and they disregarded it, and Judge Smith says, "In my duty under the Manual I saw something in the newspaper that I thought ought to be disputed, and I proceeded to give my version with regard to it and publish what I conceived to be the facts." About what? About the relation between the trustees and the editors, with regard to which the Court had said by its injunction, "Hands off."

The Court—Do you make any distinction as to the respondent Merritt? The letter which was published concerning the McCrackan episode was



sent out with the sanction and approval of the directors. If I recall accurately, Mr. Merritt said he was not present and did not participate.

Mr. Whipple—Your Honor is entirely correct in your memory as I remember it, of the record. It seemed to me that from his attitude of approval and his subsequent conduct that he might be considered to have participated with the rest. But I did note as we went ahead, and had intended to speak of that differentiation. I also noted that his attitude in the matter was a little more what I should call reasonable and not as defiant as that of the first witness, who was evidently expected to explain the ideas and purposes and the theory upon which they had acted. It ought to be considered that Mr. Merritt had never attempted to exculpate himself at all, that he had never repudiated in any way the action of his associates. He did not when he came into court. He did not make that plea.

The Court—I take up first the motions of the directors to whom I shall refer as respondents.

The first motion is to modify the injunction heretofore issued so that it shall be construed as providing that the Christian Science Board of Directors shall have power, or be considered as having power, to elect editors of The Christian Science Journal, the Christian Science Sentinel, and The Christian Science Monitor.

Mr. Clerk, make a docket entry "Motion denied without prejudice." When the master's report comes in, if it is favorable to your contention. Mr. Bates, a motion of that nature will be in order; perhaps a broader motion.

Give me the second motion, Mr. Clerk.

The second motion filed by the respondents is that the injunction heretofore issued be dissolved.

Of course when an injunction is issued ad interim in a case which is of the nature of this case on its merits, it is for the purpose of preserving as nearly as possible the exact situation until the final decree. And if a plaintiff, obtaining an injunction to enjoin defendants from doing certain things, proceeds to act contrary to the understanding under which such injunction was procured, that is ground for a motion to dissolve or modify.

What are the facts on this proposition in this case?

Without taking up too much time about it, if the trustees had caused to be published in the newspapers their bill and the injunction or had circulated a copy of their bill and injunction with comments thereon, setting forth their side of the case or any other comments which tended to infringe upon the merits of the controversy, there would be no question whatever that such acts would be a flagrant violation of the understanding which they had with the Court and it would be intolerable that the trustees should be permitted to pursue that

course while the directors were precluded from making any answer. But that is not this case. The trustees had a right to print and to circulate the bill, which no one claims is not a true copy, and the injunction so far as it is printed, which no one claims is not a true copy, without comment. And the directors had the same right to print and circulate their answer. And what I have said also sweeps in what may have been done by way of calling the attention of the newspapers of the world to this controversy and saying that what you publish must be in conformity to the facts without making any comment whatever, for that is what it means. So that I find there has been no violation either in letter or in spirit of the understanding on which this injunction was issued, and that motion, Mr. Clerk, is accordingly denied. I do not deny it without prejudice because it deals only with the past. If today or tomorrow such conduct is entered upon by the trustees, a new motion can be filed and the attention of the Court called to the situation.

I now come to the petition for contempt filed by the trustees against the directors and Mr. Smith, who appears of record in this court of counsel for the directors. The petition should have contained the date when the bill was filed, when the injunction was issued and the service of the injunction. It does not. But these dates may be read in by resort to the record, and it there appears that the bill was filed March 25, the injunction was issued on the same day and was served upon the majority of the directors, with one exception I think, on March 25. One of the respondents was served on March 26. The Court deals only with what has taken place since the injunction was served. Perhaps, however, to a certain extent, what had taken place previously between the parties may throw light on the acts of the parties subsequent to the injunction.

There are two specifications in this petition. One relates to what has been very elaborately argued, but which I may characterize as one branch of the McCrackan episode. The trustees sent a letter after they removed, and I find as a fact that they did discharge and remove Mr. McCrackan from his position as assistant editor, to the directors announcing their action. The trustees were not obliged to do this. They did it, and by doing it they invited a reply from the directors. I must treat that reply as having been invited, and the reply, a copy of which is annexed to or is embodied in the petition for contempt, states that, adhering to their former position that they alone have the authority to elect or appoint the editor and his assistants for all these publications, they propose to fill this vacancy on June 2 and add "will take pleasure in giving you due notice of such election." They never have acted. They have not filled or attempted as yet to fill by any

action of the directorate the vacancy. It is argued earnestly by counsel for the trustees that I ought to treat so much of that letter as I have referred to as a constructive contempt. That I cannot do. It is one thing if a respondent who has been enjoined from doing certain things expresses himself perhaps with a great deal of force against what the Court has done; and perhaps says that notwithstanding what the Court has ordered he will do certain things which, if done, would be undoubtedly a violation of the injunction. But until he does it, it is not a violative, overt act. The distinction between such a situation and the situation where a party anticipating great and irreparable injury to his property proceeds at once before harm has been done to file a bill in equity asking for an injunction to protect him against such anticipated acts. That would not be an apposite illustration which can be applied to the situation before me. I find, therefore, on the evidence and for the reasons which I have stated, that the respondents Adam H. Dickey, James A. Neal, Edward A. Merritt, William R. Rathvon and Mrs. Annie M. Knott have not violated the injunction under specification (a).

I now come to specification (b). The letter of the directors to the trustees, saying what they intend to do has an important bearing on this specification, and I find that except in so far as the injunction by its terms may be a deterrent, that the directors have not abated one jot or tittle of their opposition to the position taken by the trustees and of their purpose to assert that they are the dominant administrative power within the scope of what has been stated within the organization known as the Christian Science Church. It is perfectly proper that they should do so. It is a part of their defense. But I must consider it when I pass upon specification (b). I find my proof which is satisfactory that the publication by Mr. Smith of the letter or communication with its copies in The Boston Herald was a violation of the terms of the injunction. I am not called upon, it seems to me, after the long trial which we have had and the arguments of counsel, to go into an analysis of why it is so. Possibly I ought to, however.

I read: "Another mistaken report relates to the reasons why Mr. William D. McCrackan has declined reelection as one of the editors of the Christian Science periodicals. His actual reasons are shown by the following letters." These letters were incorporated and are precisely the same as if Mr. Smith had written in these letters at the close of his communication. He gave them authenticity. Another excerpt is this: "On account of the suit brought by the Board of Trustees of The Christian Science Publishing Society, the Christian Science Board of Directors is not responsible for the censoring to which Mr. McCrackan

took exception." I find as a fact on the evidence here there was no such censoring by the trustees.

The effect of such communications on the rights of the trustees as set forth in their bill of complaint is, of course, very plain and I need not enlarge upon it.

Advice of counsel is no defense to a violation of an injunction.

Believing that such action is justifiable is no defense whatever, but the elements of good faith and innocent mistake are to be considered when fixing the penalty, if a violation is found. As I have heretofore said, this communication was published with the knowledge, sanction and approval of all the directors with the exception of the defendant Merritt. It is their act, therefore, so far as these proceedings are concerned. I repeat, that I cannot divorce from what they did the spirit and purpose on their part to which I have already alluded, however commendable it may be in the forum of litigation when the merits are tried and whatever the result may be, even if in their favor, it affords no justification for what was done.

There has been no pecuniary damage suffered by the trustees. And while I find, and I think I ought to find, that the conduct of the respondents whom I have named as having sanctioned the proceedings, and I will include Mr. Smith, though I shall refer to his case later, there was no willful or reckless violation—I use the words in the sense of a defendant doing what he wants to do and does not care what the consequences are—I think that the spirit is absent, but I must find that what was done was intentionally done and the deliberateness of action shows that they had the advice of counsel and requires me to infer that the action of the directorate was not precipitate, it was with the knowledge of what this bill alleged and with the knowledge of what the injunction was.

And here perhaps as well as in any other place, the question which those who are affiliated with this great organization might well ask: What is to be done? Suppose the editor-in-chief or his assistants through some incident inseparable from human life should become incompetent; have these great publications which perhaps are a part of the life stream of this organization, got to be suspended? Not for a moment. The proper procedure would be to apply at once to the Court, who would take care of it, and if it became necessary—of course that would be an extraordinary situation which I could not think with the learned and able counsel representing the parties in this case could ever arise—but if it became necessary before seeing the destruction of these organs of publication or their impairment, which would come pretty near perhaps to being its destruction—the Court would vacate the decree and dissolve the injunction. That is the answer to all such suggestions.

I now come to the case of Mr. Smith, and it is not a pleasant or an agreeable duty which I have to perform.

Mr. Smith is a member of the Massachusetts Bar, and, as I have said, he is one of the counsel of record in this case for the directors. He has associated with him as general counsel an eminent member of the bar. He well might have asked his advice; but he did not. Of Mr. Smith's competency as a lawyer and his standing as a man I have not the slightest question. But he tells us that he read the injunction through carefully. I do not recall whether he said he read the bill through carefully; but he said he read the injunction through carefully. It is perfectly fair and just to assume that he must have known the frame of the bill and the doubt was in his mind whether what he proposed to do could be done without violating the injunction. But instead of consulting general counsel in the case or coming to the Court, which he had a right to do, asking for a modification or for instructions as to whether he could take the proposed action, he did what has already been put in evidence and which has been sufficiently characterized. He is an officer of the Court. He is an officer of this Court. I cannot say that he stands on a parity with these others who acted under his advice. I cannot. I must recognize that his position as a member of the bar imposed a greater duty and a correspondingly greater responsibility. I find under specification (b) that the respondent Merritt is not guilty and is to be discharged.

I find that the other respondent directors, namely Dickey, Neal, Rathvon, and Mrs. Knott, have violated the injunction, and the order of the Court is that they pay a fine of \$50 for the use of the County of Suffolk.

As to Mr. Smith, I find that as counsel he has violated the injunction and he is ordered to pay a fine of \$100 for the use of the County of Suffolk.

Mr. Bates, I take it there will be no necessity of the Court proceeding further.

Mr. Bates—No, Your Honor.

COMMONWEALTH OF  
MASSACHUSETTS

Supreme Judicial Court  
Suffolk, ss. No. 30654. In Equity

Eustace et al, Trustees,

v.

Dickey et al.

Decree

This cause came on to be heard at this sitting upon a petition for attachment as for a contempt against the defendants Adam H. Dickey, James A. Neal, Edward A. Merritt, William R. Rathvon, Annie M. Knott, and Clifford P. Smith, and it appearing to the court that the defendants had been duly notified to appear and show cause why

an attachment should not issue against them as and for a contempt of this court, in that they had violated the terms of the temporary injunction heretofore issued in the above entitled cause, said injunction being in the words following, to wit:—

"Until said hearing you the said defendant directors, your agents, attorneys and counselors, and each and every one of them are commanded to desist and refrain from taking any further action intended directly or indirectly to impede or interfere with the plaintiff Rowlands or either of the other plaintiffs, in the discharge of his or their respective duties as trustees under the trust instrument of January 25, 1898; and from carrying out any purpose or plan by either direct or indirect means to compel the plaintiffs or any of them to resign their offices as trustees; to impair, destroy, or in any way injure the business of The Christian Science Publishing Society as conducted by the plaintiff trustees; or in any way to carry out any threat or purpose to injure the business of said Publishing Society, either by creating and maintaining a publishing society to conduct a business in competition therewith, or otherwise; and from taking any action to defeat or tending to defeat the purposes of Mrs. Mary Baker G. Eddy, the Donor, as set forth and declared in the Trust Deed of January 25, 1898."

And it appearing that the defendants, Adam H. Dickey, James A. Neal, William R. Rathvon, Annie M. Knott, and Clifford P. Smith have violated the said injunction certain particulars more specifically set forth in a Memorandum of Decision in said case, now, thereupon, upon consideration thereof, it is Ordered, Adjudged, and Decreed that the defendants Adam H. Dickey, James A. Neal, William R. Rathvon, Annie M. Knott and Clifford P. Smith are guilty of contempt of this court, and that the defendants Adam H. Dickey, James A. Neal, William R. Rathvon and Annie M. Knott be, and they are hereby sentenced to pay a fine of fifty (\$50) dollars each forthwith, and that they stand committed to our common gaol in our County of Suffolk until the same is paid, and that the defendant Clifford P. Smith be, and he is hereby sentenced to pay a fine of one hundred (\$100) dollars forthwith, and that he stand committed to our common gaol in our County of Suffolk until the same is paid; said amounts to be paid to the Clerk of this court, to be by him paid into the treasury of the County of Suffolk.

By the Court,

JOHN H. FLYNN, Asst. Clerk.

June 10, 1919.

A true Copy,

Attest:

JOHN F. CRONIN, Clerk.

October 4, 1919.

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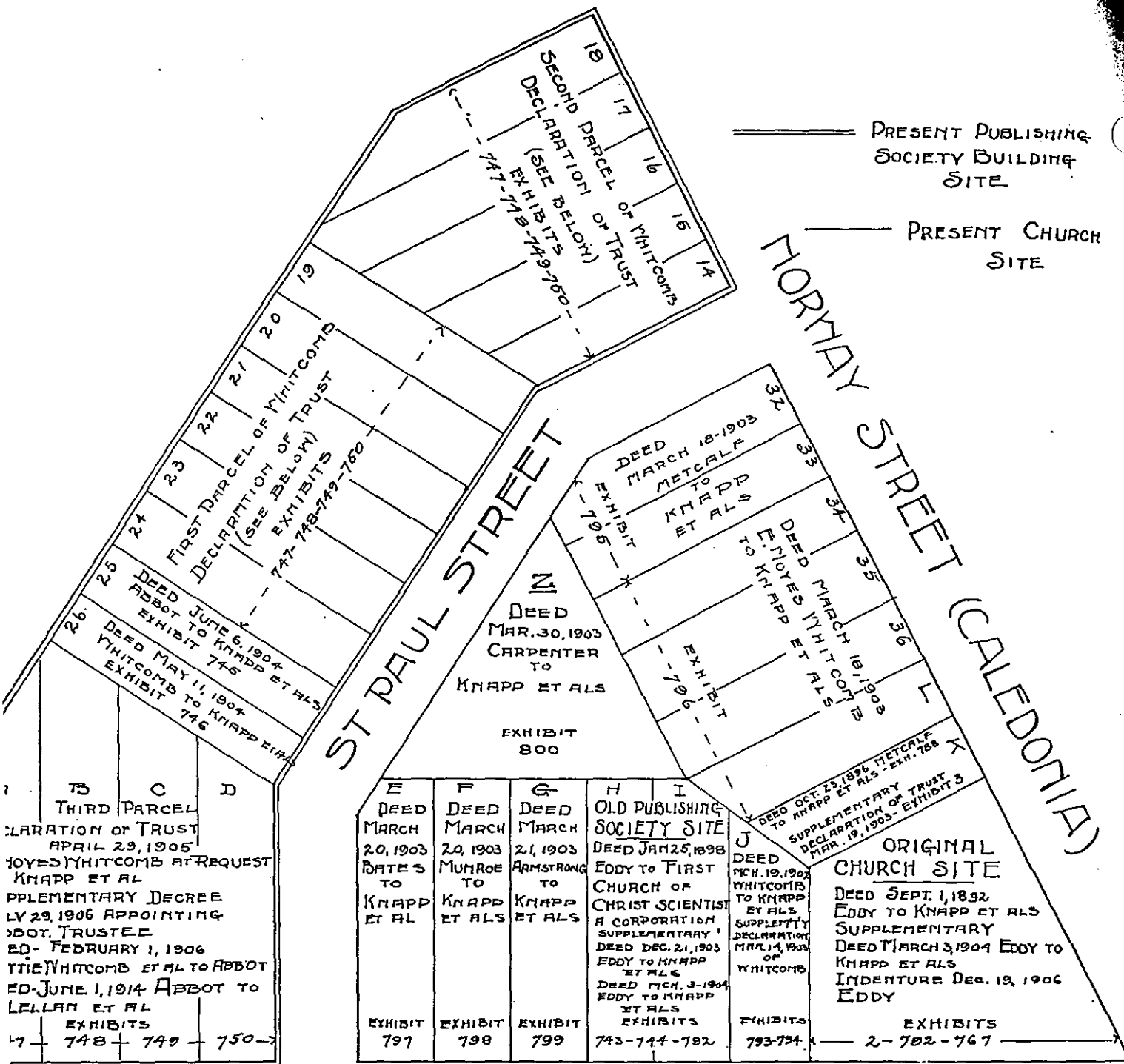
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## Plan of Properties and List of Deeds

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The following list of deeds and a plan of property occupied by The First Church of Christ, Scientist, is submitted by agreement of counsel. By agreement exhibit numbers have been given to those deeds which counsel consider material which are not already in evidence.

The description of the properties contained in these deeds is omitted, it being agreed that the description applies to the parcels as designated in the plan.



PRESENT PUBLISHING  
SOCIETY BUILDING  
SITE

PRESENT CHURCH  
SITE

MORRAY STREET (CALEDONIA)

ST PAUL STREET

73 C D  
THIRD PARCEL  
DECLARATION OF TRUST  
APRIL 29, 1905  
JOYES WHITCOMB AT REQUEST  
KNAPP ET AL  
SUPPLEMENTARY DECREE  
MAY 29, 1906 APPOINTING  
ABBOT TRUSTEE  
DEED - FEBRUARY 1, 1906  
WHITCOMB ET AL TO ABBOT  
DEED - JUNE 1, 1914 ABBOT TO  
LELLAN ET AL  
EXHIBITS  
748 - 749 - 750

E DEED MARCH 20, 1903 JOYES TO KNAPP ET AL EXHIBIT 797	F DEED MARCH 20, 1903 MUNROE TO KNAPP ET AL EXHIBIT 798	G DEED MARCH 21, 1903 ARMSTRONG TO KNAPP ET AL EXHIBIT 799	H DEED JAN 25, 1898 EDDY TO FIRST CHURCH OF CHRIST SCIENTIST A CORPORATION SUPPLEMENTARY DEED DEC. 21, 1903 EDDY TO KNAPP ET AL DEED MCH. 3-1904 EDDY TO KNAPP ET AL EXHIBITS 743-744-752	I OLD PUBLISHING SOCIETY SITE DEED JAN 25, 1898 EDDY TO FIRST CHURCH OF CHRIST SCIENTIST A CORPORATION SUPPLEMENTARY DEED DEC. 21, 1903 EDDY TO KNAPP ET AL DEED MCH. 3-1904 EDDY TO KNAPP ET AL EXHIBITS 743-744-752
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J  
DEED  
MCH. 18, 1903  
METCALF  
TO  
KNAPP  
ET AL  
EXHIBIT  
795

K  
DEED  
MCH. 18, 1903  
E. JOYES  
TO  
KNAPP  
ET AL  
EXHIBIT  
796

L  
DEED  
MCH. 18, 1903  
METCALF  
TO  
KNAPP  
ET AL  
EXHIBIT  
795

M  
DEED  
OCT 25, 1898  
METCALF  
TO  
KNAPP  
ET AL  
EXH. 788

N  
DEED  
MAR. 30, 1903  
CARPENTER  
TO  
KNAPP ET ALS  
EXHIBIT  
800

O  
DEED  
MCH. 19, 1902  
WHITCOMB  
TO  
KNAPP  
ET AL  
SUPPLEMENTARY  
DECLARATION OF TRUST  
MAY 14, 1903  
OF  
WHITCOMB  
EXHIBITS  
793-794

P  
DEED  
MCH. 19, 1902  
WHITCOMB  
TO  
KNAPP  
ET AL  
SUPPLEMENTARY  
DECLARATION OF TRUST  
MAY 14, 1903  
OF  
WHITCOMB  
EXHIBITS  
793-794

ORIGINAL  
CHURCH SITE  
DEED SEPT. 1, 1892  
EDDY TO KNAPP ET ALS  
SUPPLEMENTARY  
DEED MARCH 3, 1904 EDDY TO  
KNAPP ET ALS  
INDENTURE Dec. 19, 1906  
EDDY  
EXHIBITS  
2-782-767

FALMOUTH STREET

PARK LAND

DEED MARCH 20, 1909  
LONGYEAR TO M<sup>o</sup>LELLAN ET AL  
SUPPLEMENTARY  
RELEASE JUNE 6, 1911 - LONGYEAR  
EXHIBITS  
802-803

HUNTINGTON  
AVENUE  
TO

DEED APRIL 15, 1909  
RICHARDSON TO M<sup>o</sup>LELLAN ET ALS  
EXHIBIT 801  
ALSO SEE DEED APRIL 20, 1909  
BUFFUM TO M<sup>o</sup>LELLAN ET AL  
(HUNTINGTON AVE AND PASSAGEWAY)  
EXHIBIT  
804

MORRAY STREET

# List of Deeds

## ORIGINAL CHURCH SITE

(1) Deed of Sept. 1, 1892, from Mary Baker G. Eddy to Knapp, Johnson, Eastaman and Chase, and their legitimate successors as trustees, being Exhibit 2.

[Exhibit 2.]

### Deed of Trust

The following is a Copy of the Deed of Trust Conveying Land for Church Edifice.

"Know all Men by these Presents, That I Mary Baker G. Eddy of Concord in the County of Merrimack and State of New Hampshire in consideration of one dollar to me paid by Ira O. Knapp of Boston, Massachusetts, William B. Johnson of Boston, Massachusetts, Joseph S. Eastaman of Chelsea, Massachusetts, and Stephen A. Chase of Fall River, Massachusetts, the receipt whereof is hereby acknowledged, and, also in consideration of the trusts and uses hereinafter mentioned and established, do hereby give, bargain, sell, and convey to the said Ira O. Knapp, William B. Johnson, Joseph S. Eastaman, and Stephen A. Chase as trustees as hereinafter provided and to their legitimate successors in office forever, a certain parcel of land situate on Falmouth street in said Boston, bounded and described as follows:

"This deed of conveyance is made upon the following express trusts and conditions which the said grantees by accepting this deed agree and covenant for themselves and their successors in office to fully perform and fulfil.

"1. Said grantees shall be known as the 'Christian Science Board of Directors,' and shall constitute a perpetual body or corporation under and in accordance with section one, Chapter 39 of the Public Statutes of Massachusetts. Whenever a vacancy occurs in said Board the remaining members shall within thirty days fill the same by election; but no one shall be eligible to that office who is not in the opinion of the remaining members of the Board a firm and consistent believer in the doctrines of Christian Science as taught in a book entitled 'Science and Health,' by Mary Baker G. Eddy beginning with the seventy-first edition thereof.

"2: Said Board shall within five years from the date hereof build or cause to be built upon said lot of land a suitable and convenient church edifice, the cost of which shall not be less than fifty thousand dollars.

"3. When said church building is

completed said Board shall elect a pastor, reader or speaker to fill the pulpit who shall be a genuine Christian Scientist; they shall maintain public worship in accordance with the doctrines of Christian Science in said church, and for this purpose they are fully empowered to make any and all necessary rules and regulations.

"4. Said Board of Directors shall not suffer or allow any building to be erected upon said lot except a church building or edifice, nor shall they allow said church building or any part thereof to be used for any other purpose than for the ordinary and usual uses of a church.

"5. Said Board of Directors shall not allow or permit in said church building any preaching or other religious services which shall not be consonant and in strict harmony with the doctrines and practice of Christian Science as taught and explained by Mary Baker G. Eddy in the seventy-first edition of her book, entitled 'Science and Health,' which is soon to be issued, and in any subsequent edition thereof.

"6. The congregation which shall worship in said church shall be styled 'The First Church of Christ, Scientist.'

"7. Said Directors shall not sell or mortgage the land hereby conveyed; but they shall see that all taxes and legal assessments on said property are promptly paid.

"8. Said church building shall not be removed from said lot except for the purpose of rebuilding thereon a more expensive or a more convenient structure in which said doctrines of Christian Science only shall be preached and practised. If said church building is removed for either of the purposes above set forth, any and all tablets and inscriptions which are or shall be upon said church building at the time of removal shall be removed therefrom and placed upon the walls of the new edifice. If said building is burned, the Directors shall forthwith proceed to rebuild the church.

"9. Said Directors shall maintain regular preaching, reading or speaking in said church on each Sabbath, and an omission to have and maintain such preaching, reading or speaking for one year in succession shall be deemed a breach of this condition.

"10. Whenever said Directors shall determine that it is inexpedient to maintain preaching, reading or speaking in said church in accordance with the terms of this deed, they are authorized and required to reconvey forthwith said lot of land with the

building thereon to Mary Baker G. Eddy, her heirs and assigns forever by a proper deed of conveyance.

"11. The omission or neglect on the part of said Directors to strictly comply with any of the conditions herein contained shall constitute a breach thereof, and the title hereby conveyed shall revert to the grantor Mary Baker G. Eddy, her heirs and assigns forever, upon her entry upon said land and taking possession thereof for such breach.

"To Have and to Hold the above granted premises with all the privileges and appurtenances thereon belonging to said grantees and their successors in office to the uses and trusts above described forever.

"And the said grantor for herself and her heirs, executors and administrators covenants with the said grantees and their successors in office that she is lawfully seized in fee simple of the aforesaid premises, that they are free from all incumbrances not herein mentioned or referred to, that she has good right to sell and convey the same to the said grantees and their successors in office as aforesaid, and that she will and her heirs, executors, and administrators shall, warrant and defend the same to the said grantees and their successors in office forever against the lawful claims and demands of all persons.

"In Witness Whereof I the said Mary Baker G. Eddy have hereto set my hand and seal this 1st day of September, 1892.

"MARY BAKER G. EDDY.

"Signed, sealed, and delivered in presence of

Laura E. Sargent.  
R. E. Walker.

"September 1st, 1892.

"State of New Hampshire, } ss.  
"Merrimack

"Then personally appeared the above named Mary Baker G. Eddy and acknowledged the foregoing instrument to be her free act and deed.

"Before me

"R. E. WALKER,  
"Notary Public.

"September 2, 1892.

"Suffolk Registry of Deeds, Lib. 2081,  
Fol. 257."

(2) Deed of Mar. 3, 1904, from Mary Baker G. Eddy to Knapp, Johnson, Eastaman & Chase, as they are the present Trustees known as the Christian Science Board of Directors under deed of trust Sept. 1, 1892, conveying rights to reconveyance or

rights of reversion to grantor or heirs for failure to comply with conditions of trust deed of Sept. 1, 1892, being Exhibit 792.

[Exhibit 792.]

"Suffolk Registry of Deeds.

1.

"EDDY to KNAPP et als.

"Book 2954, Page 426

"Know all Men by these Presents That Whereas I Mary Baker G. Eddy of Concord in the County of Merrimack and State of New Hampshire on the first day of September 1892 by deed recorded in the Suffolk Registry of Deeds Book 2081 page 257 did convey to Ira O. Knapp, William B. Johnson, Joseph S. Eastaman and Stephen A. Chase as trustees under the designation of the 'Christian Science Board of Directors' a certain parcel of land situated on Falmouth Street in Boston in said County of Suffolk and the Commonwealth of Massachusetts bounded as described in said deed,—said conveyance being subject to certain trusts and conditions therein stated—and it was therein provided that, under certain contingencies said grantees would be authorized and required to reconvey said land, with the buildings thereon, to the grantor her heirs and assigns, and that the omission or neglect on the part of said grantees strictly to comply with any of the conditions therein contained, should constitute a breach thereof, and that the title conveyed by said deed should revert to the grantor, Mary Baker G. Eddy her heirs and assigns; and Whereas I the said Mary Baker G. Eddy on the twenty-fifth day of January 1898 by deed recorded in said Suffolk Registry of Deeds, Book 2504, page 79 did convey to the 'First Church of Christ Scientist' in Boston, Massachusetts two certain parcels of land with the buildings thereon situated in said Boston and bounded as described therein, reserving to myself the right to have and occupy so much room conveniently and pleasantly located in the publishing house as may be necessary to carry on the publication and sale of books of which I am or may be the author and other literature connected therewith; and Whereas, I the said Mary Baker G. Eddy on the twenty first day of December 1903 by deed recorded in said Suffolk Registry of Deeds Book 2943, page 2 did correct certain errors in the description of the grantee named in said deed of January 25, 1898 and modified the reservation to myself contained in said last named deed and added to the trusts upon which the property in said last named deed was to be held; and Whereas I now desire to reaffirm all the trusts and conditions as the same are now established by the foregoing conveyances but also to provide that no event or contingency provided for in said deeds or any of them shall require a reconveyance of said lands or

buildings or any of them, to my heirs, and that no breach of any of said trusts or conditions and no omission or neglect on the part of said directors strictly to comply with any of the conditions set forth in said deeds, shall operate by law or otherwise to revert the title of any of said lands or buildings in my heirs or to cause the said title to revert to my heirs. Now, therefore, I the said Mary Baker G. Eddy in consideration of One Dollar and other good and valuable considerations to me in hand paid by Ira O. Knapp, William B. Johnson and Joseph Armstrong all of Boston in the County of Suffolk and Commonwealth of Massachusetts and Stephen A. Chase of Fall River in the County of Bristol and said Commonwealth as they are the present trustees known as the 'Christian Science Board of Directors' under said deed of trust hereinbefore referred to as dated September 1, 1892, the receipt whereof is hereby acknowledged do hereby remise, release and forever quitclaim unto the said trustees their successors in said trust and assigns forever, all the rights at law, in equity or otherwise, which my heirs may, or at any time hereafter might, have to require a reconveyance of said lands or buildings or any of them, or to enter upon, have, receive or demand any of the lands or buildings described in said deeds of September 1, 1892, January 25, 1898, and December 21, 1903 by reason of any omission or neglect on the part of said directors, or their successors in trust or assigns strictly to comply with any of the conditions contained in said deeds or by reason of the breach of any duty or trust therein created; also all contingent rights of reversion which my heirs may at any time hereafter have in or to said lands and buildings, or any of them because of any provision contained in any of said deeds above mentioned. Nothing in this deed contained shall ever be construed as a waiver or as permitting a modification in any degree or any of the trusts and conditions as the same are now established and exist under and by virtue of the deeds above described. I do further declare that nothing herein contained shall ever be construed as a waiver or as permitting a modification in any degree of the further trusts set forth in deed of Albert Metcalf to Ira O. Knapp and others dated March 19, 1903 and recorded in said Suffolk Registry of Deeds Book 2386, page 521, whereby it is provided that no new tenet or by-law shall be adopted nor any tenet or by law amended or annulled by the grantees, unless the written consent of said Mary Baker G. Eddy the author of the text book "Science and Health with Key to the Scriptures" be given therefor, or unless at the written request of Mrs. Eddy the executive members of the First Church of Christ Scientist known and designated as "Mary Baker G. Eddy's Church, The Mother Church, or The First Church of Christ, Scien-

list, in Boston, Mass." and whereby it is further provided that the same inscription on said nineteenth day of March 1903 was on the outside of the church edifice shall be placed on any new church erected on said lot. But all said trusts and conditions as now established by all said deeds shall be performed and carried out as fully and effectually as though this deed had not been executed. To have and to hold the said remised premises and the said contingent rights and reversion and reconveyance as above described with all the privileges and appurtenances thereunto belonging to the said Ira O. Knapp, William B. Johnson, Joseph Armstrong and Stephen A. Chase, as they are the Christian Science Board of Directors, to themselves and their successors in trust and their assigns forever. And I the said Mary Baker G. Eddy for my heirs and assigns, do hereby covenant and warrant that my heirs shall not make any claim or demand with reference to, or have any rights in said lands and buildings, or any of them, inconsistent with the provisions of this deed; and I do further covenant with said grantees their successors in trust and assigns that I will warrant and defend the premises and rights hereby conveyed, to the said grantees their successors in trust and assigns against the lawful claims and demands of any person or persons claiming by, from or under me. In Witness Whereof I have hereunto set my hand and seal this third day of March in the year of our Lord 1904. Mary Baker G. Eddy and a seal. Signed sealed and delivered in the presence of us. Geo. H. Kinter, August Mann. State of New Hampshire, Merrimack ss. Personally appearing the above named Mary Baker G. Eddy acknowledged the foregoing instrument to be her voluntary act and deed. Before me. Dated the third day of March, 1904. Fred N. Ladd Notary Public and his Notarial Seal ——— March 11, 1904, at three o'clock and twenty minutes P. M. Received, Entered and Examined— Attest: Thos. F. Temple Reg.

A true copy from the Record of Deeds for the County of Suffolk. Book 2954, Page 426.

Attest: Wm. T. A. Fitzgerald,  
Register.

(3) Indenture of December 19, 1906, signed by Mary Baker G. Eddy to Knapp, Armstrong, Johnson, Chase and McLellan.

[Exhibit 767.]

EDDY to KNAPP et als.

Libro 3178, Page 551

This Indenture made this 19th day of December in the year one thousand nine hundred and six, between Mary Baker G. Eddy, of Concord, in the County of Merrimack and State of New Hampshire, of the first part, and Ira O. Knapp, Joseph Armstrong and William B. Johnson, all of Boston, in the

County of Suffolk, Stephen A. Chase, of Fall River in the County of Bristol, and Archibald McLellan of Brookline, in the County of Norfolk, and all in the Commonwealth of Massachusetts, at present constituting the Christian Science Board of Directors, a body corporate duly existing under the provisions of the thirty-seventh chapter of the Revised Laws of said Commonwealth & especially of the first section thereof, of the second part. Witnesseth: That Whereas the said party of the first part by her deed dated September 1, 1892, and recorded with Suffolk Deeds, Lib. 2081, page 257, conveyed to Ira O. Knapp and others, thereby constituted the Christian Science Board of Directors, a certain lot of land containing seventy-eight hundred and twenty-eight (7828) square feet situate at the corner of Falmouth Street and Norway Street (formerly called Caledonia Street) in said Boston, said conveyance being therein stated to be made subject to certain trusts and conditions in said deed set forth, providing among other things for the erection upon said lot of a suitable and convenient church edifice and for the maintenance therein of regular preaching, reading or speaking on each Sabbath, which said edifice was duly completed on said lot and public worship was therein maintained in accordance with the requirements of said deed. And whereas a new church edifice has lately been erected on adjoining land, and it becomes appropriate that public worship should henceforth be maintained in said new edifice in accordance with the doctrines of Christian Science, and it is probable that weekly services will cease to be held with regularity in the original edifice; And whereas the said deed contains further provisions, trusts and conditions; And whereas the said party of the first part while hereby re-affirming all the trusts and agreements in said deed contained except as herein modified; desires also and hereby provides that no event or contingency mentioned in said deed or deemed to occur or arise upon any construction thereof, shall require a reconveyance of said lot of land or of said edifice to her or to her heirs or assigns, and that no breach of any of said trusts or conditions and no omission or neglect on the part of said Directors to comply with any of the trusts or conditions contained in said deed, shall operate by law or otherwise to re-vest the title, legal or equitable, of said lot or edifice in her or in her heirs or assigns, or to cause or give rise to any forfeiture of any grant made by said deed, and that in no event shall the said title revert to her or her heirs or assigns; And, whereas, she desires also to remove all other doubts which except for this indenture might arise in regard to the construc-

tion of said deed dated September 1, 1892; Now, Therefore, it is hereby agreed by and between the said party of the first part and the said parties of the second part, that the provisions contained in said deed shall be henceforth construed not as technical conditions or as involving a possible forfeiture of the grants made by said deed dated September 1, 1892, but only as trusts and agreements to be duly observed so far as consistent with present or future circumstances or as required for the welfare of The First Church of Christ, Scientist, and among other things that the regular preaching, reading, or speaking in said original edifice on each Sabbath provided for in said deed shall be no longer required. And it is further agreed that said original church edifice and the lot upon which it stands, being the lot described in said deed, shall not be sold nor shall said Board of Directors or their successors allow its use for any other purpose or purposes than those of reading, instruction, worship and service in accordance with the doctrines of genuine Christian Science. And the said party of the first part in consideration of the premises and of one dollar to her paid by said parties of the second part, the receipt whereof is hereby acknowledged, doth hereby remise, release and forever quitclaim unto the said parties of the second part, and their heirs, successors and assigns, the land described in said deed with the buildings thereon, but subject to the trusts in said deed contained, except as herein modified. To have and to hold the above released premises to the said Ira O. Knapp, Joseph Armstrong, William B. Johnson, Stephen A. Chase and Archibald McLellan, at present constituting the Christian Science Board of Directors as aforesaid, their heirs successors and assigns, to their own use and behoof forever, but subject to the said trusts except as herein modified. In witness whereof, the parties hereto have hereunto set their hands and seals on the day and year first above written, said parties of the second part having adopted no particular form of seal as a corporation. Mary Baker G. Eddy and a seal. State of New Hampshire Merrimack ss. December 19th, 1906. Then personally appeared the above-named Mary Baker G. Eddy and acknowledged the foregoing instrument to be her free act and deed, before me, Josiah E. Fernald, Notary Public and his Notarial Seal. ——— December 20, 1906 at three o'clock and thirty-eight minutes P. M. Received, Entered and Examined.

Attest Wm. T. A. Fitzgerald, Reg.

A true copy from the records of Deeds for the County of Suffolk, Libro 3178, Page 551.

Attest: Wm. T. A. Fitzgerald,  
Register.

LOT K.

(1) Deed dated October 23, 1896, from Albert Metcalf to Knapp, Johnson, Armstrong and Chase, as they are the Christian Science Board of Directors.

[Exhibit 788]

The certified copy of deed referred to is marked Exhibit 788. R. H. J., and the following is a copy thereof:

Know all Men by these Presents, That I Albert Metcalf of Newton in the County of Middlesex and Commonwealth of Massachusetts in consideration of one dollar and other valuable considerations made and paid by Ira O. Knapp, William B. Johnson and Joseph Armstrong all of Boston in the County of Suffolk and Stephen A. Chase of Fall River in the County of Bristol and all in said Commonwealth as they are the "Christian Science Board of Directors" the receipt whereof is hereby acknowledged do hereby grant, bargain, sell and convey unto the said Knapp, Johnson, Armstrong and Chase as aforesaid their successors and assigns. A parcel of land with the buildings thereon situated in said Boston bounded and described as follows: . . . To Have and to Hold the granted premises with all the privileges and appurtenances thereto belonging to the said Knapp, Johnson, Armstrong and Chase as the "Christian Science Board of Directors" and their successors and assigns to their own use and behoof forever. And I hereby for myself and my heirs, executors and administrators covenant with the grantees and their successors and assigns that the granted premises are free from all incumbrances made or suffered by me and that I will and my heirs executors and administrators shall warrant and defend the same to the grantees and their successors and assigns forever against the lawful claims and demands of all persons claiming by through or under me but against none other. And for the consideration aforesaid I Mary C. Metcalf wife of the said Albert Metcalf hereby release unto the grantees and their successors and assigns all right of or to both dower and homestead in the granted premises. In Witness Whereof we the said Albert Metcalf and Mary C. Metcalf hereunto set our hands and seals this twenty third day of October in the year one thousand eight hundred and ninety six. Albert Metcalf Mary C. Metcalf and each a seal. Signed and sealed in presence of ———.

Commonwealth of Massachusetts. Suffolk, ss. Boston October 23d, 1896. Then personally appeared the above named Albert Metcalf and acknowledged the foregoing instrument to be his free act and deed, before me John H. Appleton, Justice of the Peace. ——— March 14, 1899 at ten o'clock and fifty



five minutes A. M. Received, Entered and Examined. —

Attest: THOS. F. TEMPLE, Reg.  
A true copy from the records of Deeds for the County of Suffolk. Book 2591 Page 398.

Attest: STEPHEN A. JENNINGS,  
Asst. Register.

(2) Declaration of trust dated March 19, 1903, from Albert Metcalf to Knapp, Johnson, Armstrong, and Chase.

[Exhibit 3.]

### DEED CONVEYING LAND FOR CHURCH PURPOSES

METCALF to KNAPP et als.  
Libro 2886, Fol. 521

Know All Men,

That I, Albert Metcalf, the grantor in a certain deed given to Ira O. Knapp and others dated October 23, 1896, and recorded with Suffolk Deeds, Book 2591, page 398, do hereby declare that the land conveyed by said deed was conveyed to the grantees therein, as they are the Christian Science Board of Directors, upon the trusts, but not subject to the conditions mentioned in the deed creating said board given by Mary Baker G. Eddy to Ira O. Knapp and others, dated September 1st, 1892, and recorded with Suffolk Deeds, Book 2081, page 257. In addition to the trusts contained in said deed of September 1, 1892, from Mary Baker G. Eddy, this property is conveyed on the further trusts that no new Tenet or By-Law shall be adopted, nor any Tenet or By-Law amended or annulled by the grantees unless the written consent of said Mary Baker G. Eddy, the author of the textbook "Science and Health with Key to the Scriptures," be given therefor, or unless at the written request of Mrs. Eddy the Executive Members of The First Church of Christ, Scientist (formerly called the "First Members,") by a two-thirds vote of all their number, decide so to do. And that the same inscription which is on the outside of the present church edifice shall be placed on any new church erected on said lot. And in consideration of one dollar to me paid by said Ira O. Knapp, William B. Johnson, Joseph Armstrong and Stephen A. Chase, the receipt whereof is hereby acknowledged, I do hereby confirm the deed as above mentioned, and do grant and release unto them, their heirs, successors and assigns in trust as aforesaid, the premises therein described.

In Witness Whereof I have hereunto set my hand and seal this nineteenth day of March, A. D. nineteen hundred and three.

ALBERT METCALF. [Seal]

Commonwealth of Massachusetts, Suffolk ss. March 20th, 1903.

Then said Albert Metcalf acknowl-

edged the foregoing instrument to be his free act and deed.

Before me

MALCOLM McLOUD,  
Justice of the Peace.

March 20, 1903, at twelve o'clock and sixteen minutes P. M.

Received, Entered and Examined.

Attest: THOS. F. TEMPLE, Reg.

A true copy from the Records of Deeds for the County of Suffolk, Lib. 2886. Fol. 521.

Attest:

CHAS. W. KIMBALL, Asst. Reg.

### LOTS H AND I

(1) Deed of Jan. 25, 1898, from Mary Baker G. Eddy to The First Church of Christ, Scientist, a Massachusetts corporation.

[Exhibit 743.]

### EDDY TO THE FIRST CHURCH OF CHRIST, SCIENTIST.

Libro 2504, Page 79

Know all Men by these Presents, That I, Mary Baker G. Eddy of Concord, in the County of Merrimack and State of New Hampshire, for and in consideration of the sum of one dollar, and other good and valuable consideration to me, in hand, before the delivery hereof, well and truly paid by "The First Church of Christ, Scientist, in Boston, Mass." a corporation duly established under the laws of the Commonwealth of Massachusetts, hereby remise, release and forever quitclaim unto the said Church, its successors and assigns forever, a parcel of land, with the buildings thereon, situated in Boston, in the County of Suffolk and said Commonwealth bounded and described as follows: . . . Reserving, however, the right to have & occupy so much room conveniently & pleasantly located in the Publishing House as may be necessary to carry on the publication & sale of the books of which I am or may be the author, & other literature connected therewith. To have and to hold the said remised premises, with all the privileges and appurtenances thereunto belonging, to the said Church, its successors & assigns forever; and I do hereby covenant with the said grantee, its successors & assigns that I will warrant & defend the said premises to the said grantee, its successors and assigns, against the lawful claims & demands of any person or persons claiming by, from or under me, except as aforesaid. In witness whereof I have hereunto set my hand & seal this twenty-fifth day of January, in the year of our Lord, one thousand eight hundred & ninety eight. Mary Baker G. Eddy and a seal. Signed, sealed & delivered in presence of us Septimus J. Hanna. Reuben E. Walker. State of New Hampshire, Merrimack ss. Personally appearing the above named Mary Baker G. Eddy, and acknowledged the foregoing in-

strument to be her voluntary act & deed, before me, Dated the twenty fifth day of January 1898. R. E. Walker, Notary Public and his notarial seal. — February 4, 1898 at eleven o'clock and forty five minutes A. M. Recd. Entrd & Exmd. —

Attest: Thos. F. Temple, Reg.

A true copy from the Records of Deeds for the County of Suffolk, Libro 2504, Page 79.

Attest: Wm. T. A. Fitzgerald,  
Register.

(2) Declaration of trust dated Dec. 21, 1903, Mary Baker G. Eddy to Knapp, Johnson, Armstrong and Chase, as they are the present Trustees known as the Christian Science Board of Directors under the Deed of Trust dated Sept. 1, 1892.

[Exhibit 744.]

### EDDY to KNAPP et als.

Book 2943, Page 2

Know all Men by these Presents, That whereas I, Mary Baker G. Eddy, of Concord, in the County of Merrimack in the State of New Hampshire, did, on the twenty-fifth day of January one thousand eight hundred and ninety eight convey two parcels of land with the buildings thereon being lots I and H on a plan made by William H. Whitney, dated December 30, 1886, and recorded with Suffolk Deeds, Book 1756, page 17, the grantee named in said conveyance being "The First Church of Christ, Scientist, in Boston, Mass., a corporation duly established under the laws of the Commonwealth of Massachusetts," And whereas it has now been brought to my attention that said grantee was not a corporation, but said Church is a voluntary association of individuals the title to the Church property being vested in a board of trustees named in the deed of trust by me conveying the land upon which is situated the edifice in which said Church worships, said deed of trust being dated September 1st, 1892, and recorded in Suffolk Registry of Deeds, Book 2081, Page 257, and Whereas said deed of January 25, 1898, conveying said lots I and H was delivered to and accepted by said Board of Trustees and said Trustees have been in the actual possession of the property since the date of said conveyance and are now about to build an additional church edifice upon said two lots and adjoining property held by them, And whereas I now desire to modify the reservation to me contained in said deed of a right of occupation of a portion of said premises, and I further desire to correct the error in the description of the grantee named in the said deed, and to add to the trusts upon which this property is to be held. Now, therefore, I the said Mary Baker G. Eddy, in consideration of one dollar and other good and valuable considerations to me in

hand paid by Ira O. Knapp, William B. Johnson, and Joseph Armstrong, all of Boston in the County of Suffolk and Commonwealth of Massachusetts and Stephen A. Chase of Fall River, in the County of Bristol, and said Commonwealth, as they are the present Trustees known as the Christian Science Board of Directors under said deed of trust hereinbefore referred to as dated September 1st, 1892, the receipt whereof is hereby acknowledged, do hereby release, remise and forever quitclaim unto the said Trustees, their successors in said trust and assigns forever, the parcels of land hereinbefore referred to being lots I and H on said plan, for a more particular description of which reference is hereby made to said deed by me of January 25, 1898. With reference to the reservation in said deed of January 25, 1898, of which the following is a copy, namely: "Reserving however the right to have and occupy so much room conveniently and pleasantly located in the publishing house as may be necessary to carry on the publication and sale of the books of which I am or may be the author and other literature connected therewith." I for myself my executors, and assigns, do hereby agree with said Ira O. Knapp, William B. Johnson, Joseph Armstrong and Stephen A. Chase as present trustees and as said Christian Science Board of Directors, and with their successors in said trust, that the rights so reserved in said deed of January 25, 1898, shall be suspended and unenforceable so long and for such times as said Christian Science Board of Directors, and their successors shall provide, free of expense to me, my executors and assigns for rent and storage, suitable rooms conveniently and pleasantly located in the Christian Science Publishing House, as may be necessary to carry on the publication and sale of books of which I am or may be the author and other literature connected therewith. In addition to the trusts contained in said deed of September 1, 1892, this property is conveyed on the further trusts that no new tenet or By-Law shall be adopted nor any tenet or By-Law amended or annulled by the grantees unless the written consent of said Mary Baker G. Eddy the author of the text book "Science and Health with Key to the Scriptures" be given therefor, or unless at the written request of Mrs. Eddy the Executive Members of "Mary Baker G. Eddy's Church, The First Church of Christ, Scientist" (formerly called the "First Members") by a two-thirds vote of all their number decide so to do. And that the same inscription which is on the outside of the present church edifice shall be placed on any new church erected on said lot. To Have and to Hold the said remised premises and said reservation to the said Ira O. Knapp, William B. Johnson, Joseph Armstrong and Stephen A. Chase as they are the

Christian Science Board of Directors their successors in said trust and assigns forever, upon the trusts aforesaid and upon the trusts but not subject to the conditions mentioned. In said deed creating said Board, dated September 1, 1892, with all the powers therein contained, including the power to appoint new trustees by filling vacancies in said Board as in said deed expressed. In Witness Whereof I have hereunto set my hand and seal this twenty first day of December in the year of our Lord one thousand nine hundred and three. Mary Baker G. Eddy and a seal. Signed sealed and delivered in the presence of us Calvin A. Frye, Geo. H. Kinter, State of New Hampshire, Merrimack, ss. December 21, A. D. 1903. Personally appearing the above named Mary Baker G. Eddy acknowledged the foregoing instrument to be her voluntary act and deed, before me Fred N. Ladd Notary Public and his notarial seal. . . . January 7, 1904, at ten o'clock and forty minutes A.M. Received Entered and Examined.

Attest: Thos. F. Temple Reg.

A true copy from the Records of Deeds for the County of Suffolk, Book 2943, Page 2.

Attest: Wm. T. A. Fitzgerald Register.

(3) Deed dated March 3, 1904, conveying all rights to reconveyance or rights of reversion to grantor or heirs for failure to comply with conditions of trust deed of Sept. 1, 1892, Jan. 25, 1898, and Dec. 21, 1903, to Knapp, Johnson, Eastaman and Chase, as they are the present Trustees known as the Christian Science Board of Directors under deed of trust Sept. 1, 1892, Exhibit 792. This Exhibit is printed in full under "Original Church Site."

#### LOT J.

(1) Deed of March 17, 1902, from E. Noyes Whitcomb to Knapp, Johnson, Armstrong and Chase, as they are the Christian Science Board of Directors under deed of Sept. 1, 1892.

[Exhibit 793.]

WHITCOMB to KNAPP et als.

Book 2813, Page 79

Know all Men by these Presents That I, E. Noyes Whitcomb of Boston, in the County of Suffolk, and Commonwealth of Massachusetts, in consideration of One Dollar and other valuable considerations, paid by Ira O. Knapp, William B. Johnson, Joseph Armstrong and Stephen A. Chase as they are the "Christian Science Board of Directors" under a deed and declaration of Trust made by Mary Baker G. Eddy, dated September 1st, 1892, recorded with Suffolk Deeds, Book 2080, Page 257, the receipt whereof is hereby acknowledged, do hereby remise, release and forever quitclaim unto the said Ira O. Knapp, William B. Johnson, Joseph

Armstrong and Stephen A. Chase, a parcel of land with the buildings thereon situated in said Boston being lot J, on a plan made by William H. Whitney, dated December 30th, 1886, recorded with Suffolk Deeds, Book 1756, page 17, and bounded as follows:

. . . To Have and to Hold the above released premises, with the privileges and appurtenances thereto belonging to the said Ira O. Knapp, William B. Johnson, Joseph Armstrong and Stephen A. Chase Directors as aforesaid their successors, heirs and assigns, to their use and behoof forever. And I do hereby, for myself and my heirs, executors and the administrators covenant with the said grantees and their successors, heirs and assigns, that the granted premises are free from all incumbrances, made by me, except as aforesaid, and that I will and my heirs, executors, and administrators shall warrant and defend the same to the said grantees and their successors, heirs and assigns forever against the lawful claims and demands of all persons, claiming by, through, or under me, except as aforesaid but against none other. And for the consideration aforesaid I, Mittie A. Whitcomb wife of the said grantor do hereby release unto the said grantees and their successors heirs and assigns all right of or to both dower and homestead exemption in the granted premises. In Witness Whereof we the said E. Noyes Whitcomb and Mittie A. Whitcomb have hereunto set our hands and seals this seventeenth day of March in the year of our Lord nineteen hundred and two. E. Noyes Whitcomb and a seal. Mittie A. Whitcomb and a seal. Signed, sealed and delivered in presence of May Whitcomb. Commonwealth of Massachusetts. Suffolk ss. March 17th, 1902. Then personally appeared the above named E. Noyes Whitcomb and acknowledged the foregoing instrument to be his free act and deed, before me —Malcolm McCloud, Justice of the Peace. — March 19, 1902, at three o'clock and thirty minutes P. M. Received, Entered and Examined. —

Attest: Thos. F. Temple, Reg.

A true copy from the Records of Deeds for the County of Suffolk.

Book 2813, Page 79.

Attest: Wm. T. A. Fitzgerald, Register.

(2) Declaration of trust dated March 31, 1903, by E. Noyes Whitcomb, of property conveyed to Knapp, Johnson, Armstrong and Chase, Exhibit 794.

1.

WHITCOMB to KNAPP et als.

Book 2898, Page 484

Know all Men that I, E. Noyes Whitcomb, the grantor in a certain deed given to Ira O. Knapp and others, dated March 17th, 1902, and recorded with Suffolk Deeds, book 2813, page

79. do hereby declare that the land conveyed by said deed was conveyed to the grantees therein, as they are the Christian Science Board of Directors upon the trusts, but not subject to the conditions mentioned in the deed creating said Board given by Mary Baker G. Eddy to Ira O. Knapp and others dated September 1st, 1892, and recorded with Suffolk Deeds, Book 2081 page 257. In addition to the trusts contained in said deed of September 1, 1892 from Mary Baker G. Eddy this property is conveyed on the further trusts that no new tenet or By Law shall be adopted nor any tenet or By Law amended or annulled by the grantees unless the written consent of said Mary Baker G. Eddy the author of the text book "Science and Health with Key to the Scriptures" be given therefor, or unless at the written request of Mrs. Eddy the Executive Members of "Mary Baker G. Eddy's Church, The First Church of Christ Scientist" (formerly called the "First Members") by a two thirds vote of all their number, decide so to do. And that the same inscription which is on the outside of the present church edifice shall be placed on any new church erected on said lot. And in consideration of one dollar to me paid by said Ira O. Knapp, William B. Johnson, Joseph Armstrong and Stephen A. Chase the receipt whereof is hereby acknowledged, I do hereby confirm the deed as above mentioned and do grant and release unto them, their heirs, successors and assigns in trust as aforesaid, the premises therein described. In Witness Whereof I have hereunto set my hand and seal this thirty first day of March A. D. nineteen hundred and three. E. Noyes Whitcomb and a seal. Commonwealth of Massachusetts. Suffolk, ss. April 23d, 1903. Then said E. Noyes Whitcomb acknowledged the foregoing instrument to be his free act and deed, before me—Malcolm McLoud, Justice of the Peace. — May 14, 1903, at Four o'clock and thirty minutes P. M. Received, Entered and Examined. —

Attest: Thos. F. Temple, Reg.

A true copy from the Records of Deeds for the County of Suffolk. Book 2898, page 484.

Attest: Wm. T. A. Fitzgerald,  
Register.

#### LOTS 32 AND 33

Deed of March 18, 1903, from Albert Metcalf to Knapp, Johnson, Armstrong and Chase, as they are the Christian Science Board of Directors.

[Exhibit 795.]

METCALF to KNAPP et als.

Libro 2886, Page 444

Know all Men by these Presents, That I, Albert Metcalf of Newton, in the County of Middlesex and Com-

monwealth of Massachusetts, in consideration of one dollar and other valuable considerations paid by Ira O. Knapp, William B. Johnson, and Joseph Armstrong of Boston, and Stephen A. Chase of Fall River, all in said Commonwealth, the receipt whereof is hereby acknowledged, do hereby remise, release, and forever quit claim unto the said Ira O. Knapp, William B. Johnson, Joseph Armstrong and Stephen A. Chase, as they are the Christian Science Board of Directors, upon the trusts, but not subject to the conditions mentioned in the deed creating said board given by Mary Baker G. Eddy to Ira O. Knapp and others, dated September 1st, 1892, and recorded with Suffolk Deeds, Lib. 2081, Page 257, a parcel of land with the buildings thereon situated in Boston, in the County of Suffolk and said Commonwealth, being the estates numbered 40 and 42 on Norway Street, and being lots numbered 32 and 33 on a plan made by William H. Whitney, dated January 6th, 1887, and recorded with Suffolk Deeds, Book 1756, Page 600, and bounded: . . . In addition to the trusts contained in said deed of September 1, 1892, from Mary Baker G. Eddy, this property is conveyed on the further trusts that no new tenet or By Law shall be adopted nor any tenet or By Law amended or annulled by the grantees unless the written consent of said Mary Baker G. Eddy, the author of the textbook, "Science and Health With Key to the Scriptures," be given therefor, or unless at the written request of Mrs. Eddy, the Executive Members of the First Church of Christ Scientist (formerly called the "First Members") by a two thirds vote of all their numbers decide so to do. And that the same inscription which is on the outside of the present church edifice shall be placed on any new church erected on this lot. To Have and to Hold the above released premises, with the privileges and appurtenances thereto belonging to the said grantees and their heirs, successors, and assigns to their own use and behoof forever, but upon the trusts fully set forth in said deed from Mary Baker G. Eddy, and with all the powers therein contained, including the power to appoint new trustees by filling vacancies in said board as in said deed expressed. And I do hereby for myself and my heirs, executors and administrators covenant with the said grantees and their heirs, successors, and assigns that the granted premises are free from all incumbrances made by me, except as aforesaid, and that I will and my heirs, executors, and administrators shall warrant and defend the same to the said grantees and their heirs, successors and assigns forever against the lawful claims and demand of all persons claiming by, through or under me, except as aforesaid, but against none other. And for the consideration aforesaid I, Mary C. Metcalf, wife of the said grantor, do hereby release

unto the said grantees and their heirs, successors and assigns all right of or to both dower and homestead exemption in the granted premises. In Witness Whereof we, the said Albert Metcalf and Mary C. Metcalf, have hereunto set our hands and seals this eighteenth day of March in the year of our Lord nineteen hundred and three. Albert Metcalf, Mary C. Metcalf and each a seal. Signed, sealed and delivered in presence of Malcolm McLoud, Commonwealth of Massachusetts, Suffolk ss. March 18th, 1903. Then personally appeared the above named Albert Metcalf and acknowledged the foregoing instrument to be his free act and deed before me, Malcolm McLoud, Justice of the Peace.

March 19, 1903, at three o'clock and fifty-nine minutes P. M. Received, Entered and Exam'd.

Attest:

THOS. F. TEMPLE, Reg.

A true copy from the Records of Deed for the County of Suffolk, Libro 2886, Page 444.

Attest:

THOS. F. TEMPLE, Reg.

#### LOTS 34, 35, 36 AND LOT L

Deed of March 19, 1903, from E. Noyes Whitcomb to Knapp, Johnson, Armstrong, and Chase, as they are the Christian Science Board of Directors.

[Exhibit 796]

WHITCOMB to KNAPP et als.

Libro 2886, Page 442

Know all Men by these Presents,

That I, E. Noyes Whitcomb of Boston, in the County of Suffolk and Commonwealth of Massachusetts, in consideration of one dollar and other valuable considerations paid by Ira O. Knapp, William B. Johnson, and Joseph Armstrong of said Boston, and Stephen A. Chase of Fall River in said Commonwealth, the receipt whereof is hereby acknowledged, do hereby remise, release and forever quit claim unto the said Ira O. Knapp, William B. Johnson, Joseph Armstrong & Stephen A. Chase, as they are the Christian Science Board of Directors upon the trusts, but not subject to the conditions mentioned in the deed creating said Board given by Mary Baker G. Eddy to Ira O. Knapp and others, dated September 1st 1892, and recorded with Suffolk Deeds, Lib. 2081 Page 257, the following parcels of land situated in said Boston, being the estates numbered 32, 34, 36 and 38 on Norway Street and the premises conveyed to me by the following deeds, to wit: Book 2728 page 458 from Harlan P. Whitcomb; Book 2728 Page 457 from Harlan P. Whitcomb; Book 2730 Page 282 from Edward Z. and Margery A. Hickey. Said premises are conveyed subject to such

incumbrances as of record appear, and with all the rights, privileges and appurtenances thereunto belonging. In addition to the trusts contained in said deed of September 1, 1892 from Mary Baker G. Eddy this property is conveyed on the further trusts, that no new tenet or By Law shall be adopted nor any tenet or By Law amended or annulled by the grantees unless the written consent of said Mary Baker G. Eddy, the author of the text book "Science and Health with Key to the Scriptures" be given therefor, or unless at the written request of Mrs. Eddy the Executive Members of The First Church of Christ, Scientist (formerly called the "First Members") by a two thirds vote of all their number, decide so to do. And that the same inscription which is on the outside of the present church edifice shall be placed on any new church erected on these lots. To Have and to Hold the above released premises, with the privileges and appurtenances thereto belonging to the said grantees and their heirs, successors and assigns to their own use and behoof forever, but upon the trusts fully set forth in said deed from Mary Baker G. Eddy and with all the powers therein contained, including the power to appoint new Trustees by filling vacancies in said Board as in said deed expressed. And I do hereby, for myself and my heirs, executors and administrators covenant with the said grantees and their heirs, successors and assigns that the granted premises are free from all incumbrances made by me except as aforesaid, and that I will and my heirs, executors and administrators shall warrant and defend the same to the said grantees and their heirs, successors and assigns forever against the lawful claims and demands of all persons claiming by, through or under me, except as aforesaid, but against none other. And for the consideration aforesaid I, Mittie A. Whitcomb, wife of the said grantor do hereby release unto the said grantees and their heirs, successors and assigns all right of or to both dower and homestead exemption in the granted premises. In Witness Whereof, we, the said E. Noyes Whitcomb and Mittie A. Whitcomb have hereunto set our hands and seals this eighteenth day of March in the year of our Lord nineteen hundred and three. E. Noyes Whitcomb Mittie A. Whitcomb and each a seal. Signed, sealed and delivered in presence of Malcolm McLoud, Commonwealth of Massachusetts Suffolk ss. March 18th 1903. Then personally appeared the above named E. Noyes Whitcomb and acknowledged the foregoing instrument to be his free act and deed before me, Malcolm McLoud, Justice of the Peace — March 19, 1903, at three o'clock and fifty nine minutes P. M. Received, Entered and Examined.

Attest: THOS. F. TEMPLE, Reg.

A true copy from the Records of

Deeds for the County of Suffolk Libro 2886 Page 442.

Attest:  
(sg) THOS. F. TEMPLE, Reg.

#### LOT E

Deed of March 20, 1903, from Edward P. Bates to Knapp, Johnson, Armstrong and Chase, as they are the Christian Science Board of Directors.

[Exhibit 797]

BATES et ux to KNAPP et als.

Libro 2887, Page 67

"Know all Men by these Presents, That we, Edward P. Bates and Caroline S. Bates, his wife in her right, of Boston, in the County of Suffolk and Commonwealth of Massachusetts, in consideration of one dollar and other valuable considerations paid by Ira O. Knapp, William B. Johnson and Joseph Armstrong of said Boston and Stephen A. Chase of Fall River, in said Commonwealth, the receipt whereof is hereby acknowledged, do hereby remise, release and forever quitclaim unto the said Ira O. Knapp, William B. Johnson, Joseph Armstrong and Stephen A. Chase, as they are the Christian Science Board of Directors upon the trusts, but not subject to the conditions mentioned in the deed creating said Board given by Mary Baker G. Eddy to Ira O. Knapp and others, dated September 1st, 1892, and recorded with Suffolk Deeds, Lib. 2081 Page 257, a parcel of land with the buildings thereon situated in said Boston, being lot E on a plan made by W. H. Whitney, Surveyor, dated December 30th, 1886, recorded with Suffolk Deeds, Book 1756 Page 17, bounded as follows: . . . In addition to the trusts contained in said deed of September 1, 1892, from Mary Baker G. Eddy this property is conveyed on the further trusts that no new tenet or By Law shall be adopted, nor any tenet or By Law amended or annulled by the grantees unless the written consent of said Mary Baker G. Eddy, the author of the textbook "Science and Health with Key to the Scriptures" be given therefor, or unless at the written request of Mrs. Eddy the Executive Members of The First Church of Christ, Scientist (formerly called the "First Members") by a two thirds vote of all their numbers decide so to do. And that the same inscription which is on the outside of the present church edifice shall be placed on any new church erected on said lot. To Have and to Hold the above released premises, with the privileges and appurtenances thereto belonging to the said grantees and their heirs, successors and assigns to their own use and behoof forever, but upon the trusts fully set forth in said deed from Mary Baker G. Eddy, and with all the powers therein contained, including the power to appoint new Trustees by filling vacancies in said Board as in said deed expressed.

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And we do hereby for ourselves and our heirs, executors and administrators covenant with the said grantees and their heirs, successors and assigns that the granted premises are free from all incumbrances made by us, except as aforesaid, and that we will and our heirs, executors and administrators shall warrant and defend the same to the said grantees and their heirs, successors and assigns forever against the lawful claims and demands of all persons claiming by, through or under us, except as aforesaid, but against none other. In Witness Whereof we, the said Edward P. Bates and Caroline S. Bates have hereunto set our hands and seals this twentieth day of March in the year of our Lord nineteen hundred and three. Edward P. Bates, Caroline S. Bates and each a seal. Signed, sealed and delivered in presence of Malcolm McLoud, Commonwealth of Massachusetts, Suffolk ss., March 21st, 1903. Then personally appeared the above named Edward P. and Caroline S. Bates and acknowledged the foregoing instrument to be their free act and deed before me, Malcolm McLoud, Justice of the Peace — March 21, 1903, at one o'clock and thirty minutes P. M. Received, Entered and Examined.

Attest: THOS. F. TEMPLE, Reg.

A true copy from the Records of Deeds for the County of Suffolk, Libro 2887 Page 67.

Attest:

(Sg) THOS. F. TEMPLE, Reg.

#### LOT F.

Deed of March 20, 1903, from Marcellus Munroe to Knapp, Johnson, Armstrong and Chase, as they are the Christian Science Board of Directors.

[Exhibit 798.]

MUNROE et ux to KNAPP et als.

Libro 2886, Page 619

Know all Men by these Presents, That we, Marcellus Munroe and Mary W. Munroe, his wife in her right of Somerville, in the County of Middlesex and Commonwealth of Massachusetts, in consideration of one dollar and other valuable considerations paid by Ira O. Knapp, William B. Johnson & Joseph Armstrong of Boston, and Stephen A. Chase of Fall River, both in said Commonwealth, the receipt whereof is hereby acknowledged, do hereby remise, release and forever quit claim unto the said Ira O. Knapp, William B. Johnson, Joseph Armstrong and Stephen A. Chase, as they are the Christian Science Board of Directors, upon the trusts, but not subject to the conditions mentioned in the deed creating said Board given by Mary Baker G. Eddy to Ira O. Knapp and others, dated September 1st, 1892, and recorded with Suffolk Deeds, Lib. 2081 Page 257, a parcel of land with the buildings thereon situated in Boston, in the County of Suffolk and Commonwealth

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aforesaid, being lot F. on a plan made by Fuller and Whitney, dated December 10th 1886, recorded with Suffolk Deeds, Book 1756 Page 17, bounded as follows: . . . Subject also to such encumbrances as of record appear. In addition to the trusts contained in said deed of September 1, 1892 from Mary Baker G. Eddy this property is conveyed on the further trusts that no new tenet or By Law shall be adopted, nor any tenet or By Law amended or annulled by the grantees unless the written consent of said Mary Baker G. Eddy, the author of the text book "Science and Health with Key to the Scriptures" be given therefor, or unless at the written request of Mrs. Eddy the Executive Members of The First Church of Christ, Scientist (formerly called the "First Members") by a two thirds vote of all their number, decide so to do. And that the same inscription which is on the outside of the present church edifice shall be placed on any new church erected on said lot. To Have and to Hold the above released premises, with the privileges and appurtenances thereto belonging to the said grantees and their heirs, successors and assigns to their own use and behoof forever, but upon the trusts fully set forth in said deed from Mary Baker G. Eddy and with all the powers therein contained, including the power to appoint new Trustees by filling vacancies in said Board as in said deed expressed. And we do hereby for ourselves and our heirs, executors and administrators covenant with the said grantees and their heirs, successors and assigns that the granted premises are free from all incumbrances made by us, except as aforesaid, and that we will and our heirs, executors and administrators shall warrant and defend the same to the said grantees and their heirs, successors and assigns forever against the lawful claims and demands of all persons claiming by, through or under us, except as aforesaid, but against none other. In Witness Whereof we, the said Marcellus Munroe and Mary W. Munroe have hereunto set our hands and seals this twentieth day of March in the year of our Lord nineteen hundred and three. Marcellus Munroe, Mary W. Munroe and each a seal. Signed, sealed and delivered in presence of Malcolm McLoud, Commonwealth of Massachusetts, Suffolk ss. March 20, 1903. Then personally appeared the above named Marcellus and Mary W. Munroe and acknowledged the foregoing instrument to be their free act and deed before me, Malcolm McLoud, Justice of the Peace

—March 20, 1903. at four o'clock and fifty three minutes P. M. Received, Entered and Examined.

Attest: THOS. F. TEMPLE, Reg.

A true copy from the Records of Deeds for the County of Suffolk, 2886 Page 619.

Attest: THOS. F. TEMPLE, Reg. (sg)

#### LOT G

Deed of March 21, 1903, from Joseph Armstrong to Knapp, Johnson, Armstrong and Chase, as they are the Christian Science Board of Directors.

[Exhibit 799.]

ARMSTRONG et ux to KNAPP et als.

Libro 2887, Page 69

Know all Men by these Presents, That we, Joseph Armstrong and Mary E. Armstrong, his wife, in her right, of Boston, in the County of Suffolk and Commonwealth of Massachusetts, in consideration of one dollar and other valuable considerations paid by Ira O. Knapp, William B. Johnson and Joseph Armstrong of said Boston, and Stephen A. Chase of Fall River in said Commonwealth, the receipt whereof is hereby acknowledged, do hereby remise, release and forever quit claim unto the said Ira O. Knapp, William B. Johnson, Joseph Armstrong and Stephen A. Chase, as they are the Christian Science Board of Directors, upon the trusts, but not subject to the conditions mentioned in the deed creating said Board given by Mary Baker G. Eddy to Ira O. Knapp and others, dated September 1st, 1892, and recorded with Suffolk Deeds, Lib. 2081 Page 257, a parcel of land with the buildings thereon situated in said Boston, being lot G. on a plan made by William H. Whitney, dated December 30th, 1886, recorded with Suffolk Deeds, Book 1756 Page 17, bounded as follows: . . .

In addition to the trusts contained in said deed of September 1, 1892, from Mary Baker G. Eddy this property is conveyed on the further trusts, that no new tenet or By Law shall be adopted nor any tenet or By Law amended or annulled by the grantees, unless the written consent of said Mary Baker G. Eddy the author of the text book "Science and Health, with Key to the Scriptures" be given therefor, or unless at the written request of Mrs. Eddy the Executive Members of The First Church of Christ, Scientist (formerly called the "First Members") by a two thirds vote of all their number decide so to do. And that the same inscription which is on the outside of the present church edifice shall be placed on any new church erected on said lot. To Have and to Hold the above released premises, with the privileges and appurtenances thereto belonging to the said grantees and their heirs, successors, and assigns to their own use and behoof forever, but upon the trusts fully set forth in said deed from Mary Baker G. Eddy, and with all the powers therein contained, including the power to appoint new Trustees by filling vacancies in said Board as in said deed expressed. And we do hereby for ourselves and our heirs, executors and administrators covenant with the said grantees and their heirs, successors and assigns

that the granted premises are free from all incumbrances, made by us, except as aforesaid, and that we will and our heirs, executors and administrators shall warrant and defend the same to the said grantees and their heirs, successors and assigns forever against the lawful claims and demand of all persons claiming by, through or under us, except as aforesaid, but against none other. In Witness Whereof we, the said Joseph Armstrong and Mary E. Armstrong have hereunto set our hands and seals this twenty first day of March in the year of our Lord nineteen hundred and three. Joseph Armstrong, Mary E. Armstrong and each a seal. Signed, sealed and delivered in presence of Malcolm McLoud, Commonwealth of Massachusetts Suffolk ss. March 21st 1903. Then personally appeared the above named Joseph and Mary E. Armstrong and acknowledged the foregoing instruments to be their free act and deed before me, Malcolm McLoud, Justice of the Peace ——— March 21, 1903 at one o'clock and thirty minutes p. m. Received, Entered and Examined.

Attest: Thos. F. Temple, Reg.

A true copy from the Records of Deeds for the County of Suffolk Libro 2887 Page 69.

Attest: Thos. F. Temple, Reg.

#### LOT Z.

Deed of March 30, 1903, from Gilbert C. Carpenter to Knapp, Johnson, Armstrong and Chase, as they are the Christian Science Board of Directors.

[Exhibit 800.]

CARPENTER to KNAPP et als.

Libro 2888, Page 375

Know all Men by these Presents That I, Gilbert C. Carpenter of Providence in the State of Rhode Island, in consideration of one dollar and other valuable considerations paid by Ira O. Knapp, William B. Johnson and Joseph Armstrong of Boston and Stephen A. Chase of Fall River, both in said Commonwealth, the receipt whereof is hereby acknowledged, do hereby remise, release and forever quit claim unto the said Ira O. Knapp, William B. Johnson Joseph Armstrong and Stephen A. Chase, as they are the Christian Science Board of Directors, upon the trusts, but not subject to the conditions mentioned in the deed creating said Board given by Mary Baker G. Eddy to Ira O. Knapp and others, dated September 1, 1892, and recorded with Suffolk Deeds, Lib. 2081 Page 257, a parcel of land with the buildings thereon situated in said Boston and shown as lot "Z" on two plans recorded with the Suffolk Deeds, Book 1756 Pages 17 and 600 respectively, . . . In addition to the trusts contained in said deed of September 1, 1892 from Mary Baker G. Eddy, this property is conveyed on the further trusts that no new tenet or By Law shall be adopted nor any tenet or By Law amended or

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annulled by the grantees unless the written consent of said Mary Baker G. Eddy, the author of the text book "Science and Health with Key to the Scriptures" be given therefor; or unless at the written request of Mrs. Eddy the Executive Members of "Mary Baker G. Eddy's Church, The First Church of Christ, Scientist" (formerly called the "First Members") by a two thirds vote of all their number, decide so to do. And that the same inscription which is on the outside of the present church edifice shall be placed on any new church erected on said lot. To Have and to Hold the above released premises, with the privileges and appurtenances thereto belonging, to the said grantees and their heirs, successors and assigns, to their own use and behoof forever, but upon the trusts fully set forth in said deed from Mary Baker G. Eddy, and with all the powers therein contained, including the power to appoint new Trustees by filling vacancies in said Board as in said deed expressed. And I do hereby for myself and my heirs, executors and administrators, covenant with the said grantees and their heirs successors and assigns that the granted premises are free from all incumbrances made by me except as aforesaid, and that I will and my heirs, executors and administrators shall warrant and defend the same to the said grantees and their heirs, successors and assigns all right of or both Dower and Homestead Exemption in the granted premises. In Witness Whereof we, the said Gilbert C. Carpenter and Minnie C. Carpenter have hereunto set our hands and seals this 30th day of March in the year of our Lord nineteen hundred and three. Gilbert C. Carpenter, Minnie C. Carpenter and each a seal. Signed sealed and delivered in presence of \_\_\_\_\_, Commonwealth of Massachusetts Suffolk ss. March 30th, 1903. Then personally appeared the above named Gilbert C. Carpenter and acknowledged the foregoing instrument to be his free act and deed before me, Percy E. Walbridge Notary Public.——March 30, 1903 at three o'clock and fifty three minutes P. M. Received, Entered and Examined.

Attest: THOS. F. TEMPLE, Reg.

A true copy from the Records of Deeds for the County of Suffolk Libro 2886 Page 375.

Attest: THOS. F. TEMPLE, Reg.

LOT 25.

Deed of May 11, 1904, from Leon M. Abbott to Knapp, Johnson, Armstrong and Chase, as they are the Christian Science Board of Directors.

[Exhibit 745.]

"ABBOTT to KNAPP et als.

"Book 2972, Page 35

"Know all Men by these Presents That I, Leon M. Abbott, of Boston, in the County of Suffolk and Common-

wealth of Massachusetts, in consideration of one dollar and other valuable considerations to me paid, by Ira O. Knapp, William B. Johnson, Joseph Armstrong, all of said Boston, and Stephen A. Chase of Fall River, in the County of Bristol and said Commonwealth the receipt whereof is hereby acknowledged, do hereby remise, release and forever Quitclaim unto the said Ira O. Knapp, William B. Johnson, Joseph Armstrong and Stephen A. Chase, as they are the Christian Science Board of Directors, upon the trusts, but not subject to the conditions mentioned in the deed creating said board, given by Mary Baker G. Eddy to Ira O. Knapp and others, dated September 1, 1892 and recorded with Suffolk Deeds, Book 2081 page 257. In addition to trusts contained in said deed of September 1, 1892, from Mary Baker G. Eddy this property is conveyed on the further trust that no new tenet or by-law shall be adopted, nor any tenet or by-law amended or annulled by the grantees unless the written consent of said Mary Baker G. Eddy, the author of the Text Book 'Science and Health with Key to the Scriptures' be given therefor, or unless at the written request of Mrs. Eddy the executive members of 'Mary Baker G. Eddy's Church, The Mother Church or The First Church of Christ, Scientist' (formerly called the 'First Members') by a two-thirds vote of all their number decide so to do; and that the same inscription which is on the outside of the present Church edifice shall be placed on any new church erected on said lot. To Have and to Hold the above released premises with all the privileges and appurtenances thereto belonging to the said grantees and their heirs, successors and assigns to their own use and behoof forever; but upon the trusts fully set forth in said deed from Mary Baker G. Eddy, and with all the powers to appoint new trustees by filling vacancies in said Board as in said deed therein contained, including the power expressed. And I do hereby for myself and my heirs, executors and administrators covenant with the said grantees and their heirs, successors and assigns, that the granted premises are free from all encumbrances made by me, and that I will and my heirs, Warrant and Defend the same to the said grantees and their heirs, successors and assigns forever against the lawful claims and demands of all persons claiming by, through or under me but against none other. And for the consideration aforesaid I, Florence T. Abbott do hereby release unto the said grantees and their heirs, successors and assigns, all right of or to both Dower and Homestead in the granted premises and all other rights and interests therein. In Witness Whereof, we the said Leon M. Abbott and Florence T. Abbott hereunto set our hands and seals this eleventh day of May A. D. 1904. Leon M. Abbott, Florence T. Abbott and each a seal.

Commonwealth of Massachusetts, Suffolk, ss. Boston, May 19th, 1904. Then personally appeared the above named Leon M. Abbott and acknowledged the foregoing instrument to be his free act and deed, Before me Robert E. Buffum, Notary Public and his Notarial Seal \_\_\_\_\_ June 6, 1904 at one o'clock and fifty minutes P. M. Received, Entered and Examined.——

"Attest: THOS. F. TEMPLE, Reg.

"A true copy from the records of deeds for the County of Suffolk. Book 2972, page 35.

"Attest: WM. T. A. FITZGERALD, "Register."

LOT 26.

Deed of May 11, 1904, from E. Noyes Whitcomb to Knapp, Johnson, Armstrong and Chase, as they are the Christian Science Board of Directors.

[Exhibit 746.]

"WHITCOMB to KNAPP et als.

"Book 2972, Page 37

"Know all Men by these Presents That I, E. Noyes Whitcomb of Boston, in the County of Suffolk and Commonwealth of Massachusetts, in consideration of one dollar and other valuable considerations to me paid by Ira O. Knapp, William B. Johnson, Joseph Armstrong all of said Boston, and Stephen A. Chase of Fall River, in the County of Bristol and said Commonwealth, the receipt whereof is hereby acknowledged, do hereby remise; release and forever Quitclaim William B. Johnson, Joseph Armstrong and Stephen A. Chase, as they are the Christian Science Board of Directors, upon the trusts but not subject to the conditions mentioned in the deed creating said Board, given by Mary Baker G. Eddy to Ira O. Knapp and others, dated September 1, 1892 and recorded with Suffolk Deeds, Book 2081 page 257; . . . In addition to the trusts contained in said deed of September 1, 1892, from Mary Baker G. Eddy, this property is conveyed on the further trust that no new tenet or By Law shall be adopted, nor any tenet or By Law amended or annulled by the grantee unless the written consent of said Mary Baker G. Eddy, the author of the Text Book, 'Science and Health with Key to the Scriptures' be given therefor, or unless at the written request of Mrs. Eddy executive members of 'Mary Baker G. Eddy's Church The Mother Church or the First Church of Christ, Scientist' (formerly called the 'First Members') by a two thirds vote of all their number decide so to do; and that the same inscription which is on the outside of the present Church edifice shall be placed on any new Church erected on said lot. To Have and to Hold the above released premises with all the privileges and appurtenances thereto belonging to the said grantees and their heirs successors and assigns to their own use and behoof forever, but upon the trusts fully set forth in said deed



from Mary Baker G. Eddy and with all the powers therein contained, including the power to appoint new trustees by filling vacancies in said Board as in said deed expressed. And I do hereby for myself and my heirs, executors and administrators, covenant with the said grantees and their heirs, successors and assigns, that the granted premises are free from all encumbrances made by me and that I will and my heirs, executors and administrators shall warrant and defend the same to the said grantees and their heirs, successors and assigns, forever against the lawful claims and demands of all persons, claiming by, through or under me but against none other. And for the consideration aforesaid I, Mittie A. Whitcomb, wife of said E. Noyes Whitcomb, do hereby release unto the said grantees and their heirs, successors and assigns all right of or to both Dower and Homestead in the granted premises, and all other rights and interests therein. In Witness Whereof we the said E. Noyes Whitcomb and Mittie A. Whitcomb hereunto set our hands and seals this Eleventh day of May A. D. 1904. E. Noyes Whitcomb, Mittie A. Whitcomb and each a seal. Commonwealth of Massachusetts. Suffolk, ss. June 6, 1904. Then personally appeared the above named E. Noyes Whitcomb and acknowledged the foregoing instrument to be his free act and deed, Before me Percy E. Walbridge, Notary Public.— June 6, 1904, at one o'clock and fifty minutes P. M. Received, Entered and Examined.

"Attest: THOS. F. TEMPLE, Reg.

"A true copy from the records of deeds for the County of Suffolk, Book 2972 Page 37.

"Attest: WM. T. A. FITZGERALD,  
"Register."

Lots 14 to 24, Inclusive, and Lots A, B, C, and D.

(1) Declaration of trust, April 29, 1905, by E. Noyes Whitcomb at the request of Knapp, Johnson, Armstrong and Chase, as they are the present members of the Christian Science Board of Directors, a Board originally named in deed of September 1, 1892, [Exhibit 747.]

"Commonwealth of Massachusetts  
"Suffolk, ss. Supreme Judicial Court

"PETITION OF

"IRA O. KNAPP, et al.

"For the Appointment of a Trustee  
under a Written Instrument

"To the Justices of the Supreme Ju-  
dicial Court:

"Respectfully represent Ira O. Knapp, Joseph Armstrong, William B. Johnson, of Boston in said County, Archibald McLellan of Brookline in

the County of Norfolk, and Stephen A. Chase of Fall River in the County of Bristol, the members of, and constituting the Christian Science Board of Directors, and the said Christian Science Board of Directors, a body corporate, existing by virtue of the laws of this Commonwealth; that E. Noyes Whitcomb, late of Boston in said County of Suffolk, was trustee under a certain instrument in writing dated April 29, 1905, and recorded in the Registry of Deeds for the County of Suffolk, Book 3037, page 161, wherein said Whitcomb did declare that he held certain estates in trust for the benefit of your petitioners, as more fully appears in and by said instrument, a copy of which is annexed hereto; that said Whitcomb died before the objects of said trust were accomplished and that no adequate provision is made in said instrument for supplying the vacancy thus created; that said Whitcomb left a widow, Mittie A. Whitcomb of Boston in said County, and as his only heirs-at-law and next of kin his daughters, May Whitcomb and M. Ethel Whitcomb, of said Boston.

"And your petitioners further represent that Leon M. Abbott of Boston in the County of Suffolk and Commonwealth of Massachusetts is a fit and proper person to be appointed trustee in the place and stead of said Whitcomb; that they have requested him to accept said appointment and he has signified his willingness so to do.

"And your petitioners further represent that the property held under said trust instrument consists wholly of real estate and that no provision is made in said instrument for the giving of a bond by the trustee and that in their judgment there is no necessity that a bond should be required upon the appointment of a new trustee.

"Wherefore your petitioners pray that said Leon M. Abbott may be appointed trustee as aforesaid, according to the provisions of the law in such cases made and provided, without giving a bond as such trustee.

"And your petitioners further pray that notice may issue from this honorable court to the Attorney-General for the Commonwealth, and to all persons interested under said declaration of trust and in the property covered thereby.

"Dated this 15th day of January, 1906.

"IRA O. KNAPP,

"WILLIAM B. JOHNSON,

"JOSEPH ARMSTRONG,

"STEPHEN A. CHASE,

"ARCHIBALD McLELLAN,

"Christian Science Board of Directors.  
"By William B. Johnson, Secretary.

"The undersigned, Mittie A. Whitcomb, widow of the aforesaid E. Noyes Whitcomb and May Whitcomb and M. Ethel Whitcomb, the only heirs-at-law

and next of kin of said Whitcomb, request that the prayer of the above petition be granted.

"MITTIE A. WHITCOMB,  
"Administratrix of the Estate of  
E. Noyes Whitcomb.

"MITTIE A. WHITCOMB,

"MAY WHITCOMB,

"M. ETHEL WHITCOMB.

"I, Leon M. Abbott, of Boston in said County and Commonwealth, hereby signify my willingness to accept the appointment above prayed for.

"LEON M. ABBOTT.

"Notice of the above petition is hereby acknowledged and hearing thereon waived.

"DANA MALONE,  
"Attorney-General.

"Boston, Mass., Jan. 18, 1906.

"By FRED T. FIELD,  
"Assistant Attorney-General."  
[Whitcomb Declaration]

"Whereas I, E. Noyes Whitcomb, of Boston in the County of Suffolk, Commonwealth of Massachusetts, at the request of Ira O. Knapp, Joseph Armstrong, William B. Johnson, all of said Boston, and Stephen A. Chase of Fall River, county of Bristol, as they are the present members of the Christian Science Board of Directors, a board originally named in a deed to Ira O. Knapp and others from Mary Baker G. Eddy dated September first, 1892, recorded Suffolk Deeds, Libro 2081, Folio 257, purchased certain parcels of real estate situated in said Boston, with the buildings thereon being numbers 1, 2, 3, 4, 5, and 6 on St. Paul Street, Nos. 46 and 48 Norway Street, Nos. 111 and 113 Falmouth Street, which properties (except Lot 1 on St. Paul Street which is hereafter to be conveyed to me) were conveyed to me by deeds recorded with Suffolk Registry of Deeds, Libro 3016, Folios 49, 50, 51, 52, 54, 55, 56, 383 and Libro 3017 Folio 174.

"Whereas said Board of Directors has paid to me the sum of 58403 17-100 dollars, being the amount paid by me for said properties, with interest thereon to the present time, and I am to account to them for all rents and revenues received less expenses paid by me thereon.

"Now therefore I declare that I hold said parcels of real estate and the property so conveyed to me upon the following trusts:

"1. To keep said property in good tenable condition and in conformity with the requirements of the Board of Health of the city of Boston, and to lease and rent the same to persons of orderly life and conversation and to no others, and not to permit the same, or any part thereof, to be used or occupied for the sale of intoxicating liquors, or any illegal, immoral or offensive purpose, or for any purpose tending to disturb the neighborhood or to interfere with the conduct of religious services in the church edi-

place situated on Norway, Falmouth and St. Paul Streets, not only that part thereof heretofore used, but that part thereof now in process of erection.

"2. To collect and receive all rents and income from said premises, employing therefor such agents and attorneys as may be reasonably necessary, with power to pay reasonable commissions therefor, and to account for and pay over semi-annually to said Christian Science Board of Directors all sums so received less all sums paid out by me as provided in Section 3 of this declaration of trust.

"3. To pay out of any funds received by me as aforesaid, or which may be from time to time furnished me therefor by said Board of Directors, all taxes or assessments levied upon said property, all interest accruing or becoming due upon any mortgages now outstanding upon the same, or any part thereof, all cost of repairs and maintenance of said property, all commissions paid by me for the collection of rents and all legal or other expenses reasonably necessary or incident to the execution of this trust.

"4. To pay off and discharge all mortgages now outstanding against said property, or any part thereof, so soon as the same may become due, or may be, by agreement with the mortgagees, capable of discharge, out of any funds in my hands, as aforesaid, or which may be from time to time furnished me therefor by said Board of Directors, or otherwise.

"5. To sell and convey said property, or any part thereof, at such price, upon such terms and to such person, persons or corporations as said board, or any three members thereof shall at any time or times in writing direct, and to forthwith pay over the purchase price received by me to said Board of Directors, and in case any mortgage or other security is received for such purchase price, or any part thereof, to hold the same subject to the terms of this declaration of trust, or transfer the same to said board on request and to pay over to said board all sums so secured, if received by me.

"6. To convey said property, or any part thereof upon request in writing signed by said Board of Directors for the time being, or any three members thereof, to said Board of Directors, or to such person, persons or corporation and upon such trusts, conditions and terms as they shall, in writing, direct.

"7. To permit said Board of Directors, or a majority thereof, at any time to tear down any or all of the buildings standing upon said property and to build thereon, or otherwise improve or use said property as they may desire.

"8. To permit said Board of Directors, or a majority thereof to use any or all of said buildings now standing on said property, or hereafter erected thereon as they may see fit, without rent or payment of any kind

therefor, or to take into their own hands at any time the management and control of said property and appoint their own agents and attorneys.

"It is understood, however, that no conveyance shall be required of me and no building shall be destroyed by said directors, or other use be made by them of any of said property while any sum or sums are due to me for payments made by me as above provided, if any, in excess of sums received by me for rents and income, or otherwise.

"And it is further understood that I am not and shall not be under obligation or duty to advance any money for payment of taxes, interest, repairs or expenses in or about said property in excess of sums received by me from rents and income, or otherwise.

"And it is further understood that I shall be responsible only for gross negligence or willful misconduct on my part and that I am to receive no commission or compensation as trustee or for the care and management of said property.

"And I, Mittie A. Whitcomb, wife of the said E. Noyes Whitcomb, in consideration of the foregoing, hereby covenant and agree with the aforesaid Board of Directors, that I will at any time or times join with my husband in an execution of any deed or deeds herein provided to be made by him, in token of my release unto the grantees and their heirs, successors and assigns named in any such deed, of all right of or to dower and homestead in the premises to be granted.

"In witness whereof I, the said E. Noyes Whitcomb, and I, the said Mittie A. Whitcomb have hereunto set our hands and seals this twenty-ninth day of April, in the year of Our Lord, one thousand nine hundred and five.

"Signed, sealed and delivered in the presence of:

"E. NOYES WHITCOMB (seal)

"MITTIE A. WHITCOMB (seal)

"Witness to both:  
"FRANK E. BRADBURY."

[Whitcomb Declaration]

"We, the undersigned, Ira O. Knapp, Joseph Armstrong, William B. Johnson of Boston in the County of Suffolk and Commonwealth of Massachusetts and Stephen A. Chase of Fall River, County of Bristol in said Commonwealth, as we are the Christian Science Board of Directors, hereby assent to and approve the foregoing declaration of trust and agree with the said E. Noyes Whitcomb that it contains the trusts, and the only trusts upon which the property therein mentioned is held.

"In testimony whereof we hereto set our hands this twenty-ninth day of April, in the Year of Our Lord One thousand nine hundred and five.

"IRA O. KNAPP

"JOSEPH ARMSTRONG

"WM. B. JOHNSON

"STEPHEN A. CHASE

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"Commonwealth of Massachusetts  
"Suffolk, ss. "April 29, 1905.

"Then personally appeared before me the above named E. Noyes Whitcomb and acknowledged the foregoing instrument to be free act and deed. May 1, 1905, 10:47 a. m.

"FRANK E. BRADBURY, J. P.

"Received & entered & examined,  
"July 18, 1919.

"A true copy.

"Attest:

"JOHN F. CRONIN,  
"Clerk."

(2) Petition and decree of court July 29, 1906, appointing Leon M. Abbott trustee to succeed E. Noyes Whitcomb, Exhibits 747, 748 and 749.

"DECREE

"This cause came on to be heard and upon consideration thereof, it appearing that the said E. Noyes Whitcomb, trustee under a declaration of trust dated April 29th, 1905 and recorded in Suffolk County Registry of Deeds, Book 3037, page 161, has died before the objects of said trust are accomplished, and that no adequate provision is made in said instrument for supplying the vacancy; that the beneficiaries under said trust have requested the appointment of the said Leon M. Abbott as a new trustee, and by a formal vote at a meeting duly called for that purpose, have further requested that he be excused from giving a surety or sureties on his bond; and it further appearing that all persons interested in said trust have been duly notified of the foregoing petition, and have indorsed thereon in writing their assent thereto,

"It is thereupon ordered, adjudged and decreed that the within petition be granted, and the said Leon M. Abbott be, and he hereby is, appointed trustee, as aforesaid, in place of the said E. Noyes Whitcomb, and that upon filing with the clerk of this court his personal bond in the sum of one hundred thousand (100,000) dollars, payable to the beneficiaries of said trust for the performance of said trust, and the faithful observance of the requirements of the trust instrument, under which said trust was created, he shall have the same powers, rights and duties, and the same title to the real estate held under and by virtue of the provisions of said trust, that the said E. Noyes Whitcomb, the prior trustee, had.

"Jan. 29, 1906.

"By the Court,

"JOHN NOBLE, Clerk."

"July 18, 1919.

"A true copy,

"Attest:

"JOHN F. CRONIN,

"Clerk."

[Seal]

[The paper of which the foregoing is a copy is marked Exhibit 748. R. J. M.]

day

## BOND

"Know all Men by these Presents, That I, Leon M. Abbott of Boston in the County of Suffolk and Commonwealth of Massachusetts, am holden and stand firmly bound unto Ira O. Knapp, Joseph Armstrong and William B. Johnson of said Boston, Archibald McLellan of Brookline in the County of Norfolk, and Stephen A. Chase of Fall River in the County of Bristol, as they are members of and constitute the Christian Science Board of Directors, in the sum of One Hundred Thousand (100,000) Dollars, to the payment of which sum to the said Knapp, Armstrong, McLellan and Chase, or their successors, I do hereby bind myself, my heirs, executors and administrators.

"The condition of this obligation is such that

"Whereas, E. Noyes Whitcomb, late of said Boston, deceased, did declare by a certain instrument in writing dated April 29, 1905, and recorded in the Registry of Deeds for the County of Suffolk, book 3037, page 161, that he held certain estates in trust for the benefit of said Christian Science Board of Directors; and

"Whereas, said Whitcomb died before the purposes of said trust were accomplished, and the trust instrument made no adequate provision for filling the vacancy thus created; and

"Whereas, a petition has been presented to the Supreme Judicial Court of this Commonwealth praying that I, the said Leon M. Abbott, may be appointed trustee as the successor of said E. Noyes Whitcomb; and

"Whereas, by a decree of the said Supreme Judicial Court, dated January 29th, 1906, said petition has been granted and said appointment as trustee has been made;

"Now Therefore, if I, as such trustee, shall well and truly perform the duties imposed upon me by said trust instrument and said appointment and well and faithfully observe all the requirements thereof, then this obligation shall be null and void; otherwise it shall be and remain in full force and effect.

"In Witness Whereof I hereunto set my hand and seal this twenty-ninth day of January, A. D. 1906.

"LEON M. ABBOTT [Seal]

"A true Copy,

"Attest:

[Seal] "JOHN H. FLYNN

"Asst. Clerk.

"August, 1919."

(3) Deed of June 1, 1914, from Leon M. Abbott to McLellan, Stewart, Dittmore and Neal, as they are the Christian Science Board of Directors of Mrs. Eddy's church, The Mother Church or The First Church of Christ, Scientist.

## ABBOTT to McLELLAN et als.

Whereas I, Leon M. Abbott, now of Brookline in the County of Norfolk and Commonwealth of Massachusetts, was appointed trustee, by the Supreme Judicial Court for the County of Suffolk, by decree dated Jan. 29, 1906, under and subject to all and the same rights, terms, conditions and trusts mentioned in a certain declaration of trust by E. Noyes Whitcomb, dated April 29, 1905, and recorded with Suffolk Deeds, Book 3037, page 161, and a certain other trust deed from Mittie A. Whitcomb et als. to me, said Leon M. Abbott, dated Jan. 29, 1906, and recorded with said deeds, Book 3103, page 120; and

Whereas under the sixth clause of said declaration of trust made by said E. Noyes Whitcomb on April 29, 1905, the said trustee is required to convey, upon request in writing from the Christian Science Board of Directors, the property held under said trust, to such persons or corporations, and upon such trusts, conditions and terms as they, the said Christian Science Board of Directors, shall in writing direct; and

Whereas said Board of Directors has requested me, the said Leon M. Abbott (as appears from the written request, a copy of which is hereto attached) to convey all of the real estate held by me as trustee as aforesaid, to Archibald McLellan, Allison V. Stewart, John V. Dittmore, Adam H. Dickey, and James A. Neal, all of said Brookline, as they are the Christian Science Board of Directors of Mary Baker Eddy's Church, The Mother Church, or The First Church of Christ, Scientist, in Boston, Massachusetts;

Now therefore, I, the said Leon M. Abbott, Trustee as aforesaid, in consideration thereof, and in further consideration of the sum of one dollar and other good and valuable considerations to me in hand paid by the said Archibald McLellan, Allison V. Stewart, John V. Dittmore, Adam H. Dickey and James A. Neal, Directors as aforesaid, the receipt whereof is hereby acknowledged, do hereby remise, release and forever quitclaim unto the said Archibald McLellan, Allison V. Stewart, John V. Dittmore, Adam H. Dickey, and James A. Neal as they are the Christian Science Board of Directors as aforesaid, and their heirs, successors and assigns forever, the following described parcels of land together with the buildings thereon, situated on St. Paul, Norway and Falmouth Streets in that part of Boston, in the County of Suffolk and said Commonwealth, called the Back Bay. . . .

Intending to convey hereby any and all real estate held by me as trustee aforesaid.

To Have and to Hold the granted premises with all the privileges and appurtenances thereto belonging, to the said Archibald McLellan, Allison V. Stewart, John V. Dittmore, Adam H. Dickey, and James A. Neal, as they are directors as aforesaid, and their heirs, successors and assigns, to their own use and behoof forever.

In Witness Whereof I, the said Leon M. Abbott, trustee as aforesaid, hereunto set my hand and seal this first day of June one thousand nine hundred and fourteen.

LEON M. ABBOTT [Seal]  
Trustee.

Commonwealth of Massachusetts  
Suffolk, ss. Boston, June 1, 1914.

Then personally appeared the above-named Leon M. Abbott, trustee as aforesaid, and acknowledged the foregoing instrument to be his free act and deed.

Before me,

JOHN L. BATES,  
Justice of the Peace.

Mr. Abbott—Attached to this deed is a letter from the secretary of the Christian Science Board of Directors, which is on their letterhead, dated May 28, 1914, addressed to me, and which says:

At the regular meeting of the Christian Science Board of Directors held yesterday, the following resolution was adopted:

That Mr. Leon M. Abbott be requested to convey to The Christian Science Board of Directors all of the real estate held by him in trust by virtue of his appointment as trustee by the Supreme Judicial Court of Suffolk County, under date of Jan. 29, 1906.

Very sincerely,

(sd) JOHN V. DITTEMORE,  
Secretary.

LAND LYING BETWEEN HUNTINGTON AVENUE AND THE MOTHER CHURCH AND THE PUBLISHING SOCIETY BUILDING.

(1) Deed of April 15, 1909, from Robert J. Richardson to Knapp, Johnson, Chase, McLellan and Stewart, as they are the Christian Science Board of Directors of Mary Baker G. Eddy's Church, The Mother Church or The First Church of Christ, Scientist, Boston, Mass.

[Exhibit 801.]

Suffolk Registry of Deeds.

RICHARDSON to KNAPP et als.  
Book 3355, Page 244

Know all Men by these Presents That I, Robert J. Richardson of Brookline in the County of Norfolk, and Commonwealth of Massachusetts, in consideration of one dollar and other valuable considerations paid by Ira O.

Knapp and William B. Johnson both of Boston in the County of Suffolk, Stephen A. Chase of Fall River, in the County of Bristol, and Archibald McLellan and Allison V. Stewart, both of said Brookline, as they are the "Christian Science Board of Directors of Mary Baker Eddy's Church, the Mother Church, or The First Church of Christ, Scientist in Boston, Mass." the receipt whereof is hereby acknowledged do hereby remise, release, and forever quitclaim unto the said Ira O. Knapp, William B. Johnson, Stephen A. Chase, Archibald McLellan and Allison V. Stewart as aforesaid, their successors and assigns, a certain parcel of land situated in that part of said Boston called the Back Bay and bounded as follows: . . . To Have and to Hold the granted premises, with all the privileges and appurtenances thereto belonging, to the said Ira O. Knapp, William B. Johnson, Stephen A. Chase, Archibald McLellan and Allison V. Stewart, as they are the "Christian Science Board of Directors" as aforesaid, and their successors and assigns, to their own use and behoof forever. And I do hereby, for myself and my heirs, executors and administrators, covenant with the said grantees and their successors that the granted premises are free from all incumbrances, made or suffered by me, except as aforesaid and that I will and my heirs, executors and administrators shall Warrant and Defend the same to the said grantees and their successors and assigns forever against the lawful claims and demands of all persons claiming by, through or under me, except as aforesaid, but against none other. In Witness Whereof, I the said Robert J. Richardson (being unmarried,) hereunto set my hand and seal this fifteenth day of April in the year one thousand nine hundred and nine. Robert J. Richardson and a seal. Signed, sealed and delivered in presence of \_\_\_\_\_ Commonwealth of Massachusetts. Suffolk ss. Boston April 15, 1909. Then personally appeared the above named Robert J. Richardson and acknowledged the foregoing instrument to be his free act and deed, before me—Henry Endicott Jr. Justice of the Peace. — April 15, 1909 at twelve o'clock and eighteen minutes P. M. Received, Entered, and Examined. \_\_\_\_\_

A true copy from the records of Deeds for the County of Suffolk  
Book 3355, Page 244.

Attest: WM. T. A. FITZGERALD,  
Register.

(2) Deed of March 20, 1909, from Mary H. Longyear to Knapp, Johnson, Chase, McLellan and Stewart, as they are the Christian Science Board of Directors of Mary Baker G. Eddy's Church, The Mother Church or The First Church of Christ, Scientist, Boston, Mass.

[Exhibit 802]

LONGYEAR et ux to KNAPP et als.

Book 3355, Page 246

Know all Men by these Presents, That I, Mary H. Longyear, wife of John M. Longyear, of Brookline, in the County of Norfolk and Commonwealth of Massachusetts, in consideration of one dollar and other good and valuable considerations to me in hand paid by Ira O. Knapp of Boston in the County of Suffolk and said Commonwealth, Stephen A. Chase, of Fall River in the County of Bristol and said Commonwealth and William B. Johnson, Archibald McLellan and Allison V. Stewart of Brookline in the County of Norfolk and said Commonwealth, as they are the Christian Science Board of Directors of Mary Baker Eddy's Church, the Mother Church or The First Church of Christ, Scientist in Boston, Mass, the receipt whereof is hereby acknowledged, do hereby remise, release and forever quitclaim unto the said Ira O. Knapp, Stephen A. Chase, William B. Johnson, Archibald McLellan and Allison V. Stewart, directors as aforesaid, their successors and assigns forever. . . Said premises are conveyed subject to any and all restrictions of record, so far as the same may now be in force and applicable, to said premises, together with the further restrictions that no building nor structure shall ever be erected or maintained upon the said premises which will obstruct the view from Huntington Avenue, or the Mother Church the First Church of Christ, Scientist, in Boston, Mass. To Have and to Hold the granted premises with all the privileges and appurtenances thereto belonging, to the said Ira O. Knapp, Stephen A. Chase, William B. Johnson, Archibald McLellan and Allison V. Stewart, directors as aforesaid, and their successors and assigns to their own use and behoof forever. And for the consideration aforesaid I, John M. Longyear, husband of said Mary H. Longyear, do hereby release unto the said grantees, their successors and assigns, all right or Curtesy in the granted premises and all rights by statutes and all other rights therein. In Witness Whereof we, the said Mary H. Longyear and John M. Longyear have hereunto set our hands and seals on this twentieth day of March A. D. 1909. Mary H. Longyear and a seal. John M. Longyear and a seal. Witness C. F. Brown to both. Commonwealth of Massachusetts. Suffolk, ss., Boston, March 20, 1909. Then personally appeared the above named Mary H. Longyear and acknowledged the foregoing instrument to be her free act and deed; before me, Charles F. Brown, Notary Public. My commission expires May 27, 1915, and

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his Notarial Seal. — April 15, 1909, at twelve o'clock and eighteen minutes P.M. Received, Entered and Examined.

A true copy from the Records of Deeds for the County of Suffolk, book 3355, page 246.

Attest: WM. T. A. FITZGERALD,  
Register.

[Exhibit 803]

(3) Release of restrictions of deed of March 20, 1909, dated June 6, 1911, from Mary H. Longyear to Knapp, Johnson, Chase, McLellan and Stewart, as they are the Christian Science Board of Directors of Mary Baker G. Eddy's Church, The Mother Church, or The First Church of Christ, Scientist, Boston, Mass. [Ex. 803.]

(4) Deed of April 20, 1909, from Robert E. Buffum to Knapp, Johnson, Chase, McLellan and Stewart, as they are the Christian Science Board of Directors of Mary Baker G. Eddy's Church, The Mother Church or The First Church of Christ, Scientist, Boston, Mass.

[Exhibit 804]

BUFFUM to KNAPP et als.

Book 3355, Page 639

Know all Men by these Presents, That I, Robert E. Buffum of Somerville in the County of Middlesex and Commonwealth of Massachusetts, in consideration of one dollar and other good and valuable considerations paid by Ira O. Knapp of Boston in the County of Suffolk and Commonwealth of Massachusetts, Stephen A. Chase of Fall River in the County of Bristol, and said Commonwealth, and William B. Johnson, Archibald McLellan and Allison V. Stewart of Brookline, in the County of Norfolk and said Commonwealth, as they are the "Christian Science Board of Directors of Mary Baker Eddy's Church, or The First Church of Christ, Scientist, in Boston, Massachusetts," the receipt whereof is hereby acknowledged, do hereby remise, release and forever quitclaim unto the said Ira O. Knapp, Stephen A. Chase, William B. Johnson, Archibald McLellan and Allison V. Stewart, Directors as aforesaid, their successors and assigns forever, a certain parcel of land with the part of the brick wall thereon situated in said Boston and shown on a plan made by S. C. Ellis April 12, 1887, recorded with Suffolk Deeds book 1781, page 272, and bounded as follows: . . . To Have and to Hold the granted premises with all the privileges and appurtenances thereto belonging, to the said Ira O. Knapp, Stephen A. Chase, William B. Johnson, Archibald McLellan and Allison V. Stewart, Directors as aforesaid, and their successors and assigns, to their own use and behoof forever. In Witness Whereof I, the said Robert E. Buffum being unmarried hereunto set my hand and seal this twentieth day

of April in the year one thousand nine hundred and nine. Robert E. Buffum and a seal. Commonwealth of Massachusetts. Suffolk, ss. Boston, April 20, 1909. Then personally appeared the above named Robert E. Buffum and acknowledged the foregoing instrument to be his free act and deed, before me, Leon M. Abbott, Justice of the Peace. — April 20, 1909, at four o'clock and fifteen minutes P. M. Received, Entered and Examined.

A true copy from the Records of Deeds for the County of Suffolk, Book 3355, page 639.

Attest: WM. T. A. FITZGERALD,  
Register.

COMMONWEALTH AVENUE  
PROPERTY.

(1) Deed dated Feb. 12, 1898, from Mary Baker G. Eddy to The First Church of Christ, Scientist, in Boston, a body corporate.

[Exhibit 805]

EDDY to THE FIRST CHURCH OF  
CHRIST, SCIENTIST, Tr.

Libro 2507, Page 222

Know all Men by these Presents, That I, Mary Baker G. Eddy of Concord in the County of Merrimack and State of New Hampshire, for and in consideration of the sum of One dollar and other good and valuable considerations to me in hand before the delivery hereof well and truly paid by The First Church of Christ, Scientist in Boston, Mass. a body corporate, Trustee, have remised, released and forever quitclaimed and by these presents do remise, release, and forever quitclaim unto the said Church, its successors forever, a certain parcel of land, situated in that part of said Boston, known as the Back Bay, with the dwelling house thereon, being lot 10 on plan by Fuller and Whitney, dated February 10, 1886, recorded with Suffolk Deeds, L: 1713 between f. 2 and f. 3 bounded and described according to said plan as follows viz: . . . It is also made for the purpose of transferring the title of said described real estate to said Church to hold for the objects and purposes mentioned in a certain declaration of trust to said Church executed by me of even date herewith. To Have and to Hold the said remised premises with all the privileges & appurtenances thereunto belonging to the said Church and its successors forever in accordance with the terms and conditions of said declaration of trust and I do hereby covenant with the said Church that I will warrant and defend the said premises to it the said Church and its successors against the lawful claims and demands of any person or persons claiming by, from or under me. In Witness Whereof, I have hereunto set my hand and seal this twelfth day of February in the year of our Lord one thousand eight hundred and ninety

eight. Mary Baker G. Eddy and a seal. Signed, sealed and delivered in the presence of us Clara M. S. Shannon, R. E. Walker. State of New Hampshire, Merrimack ss. Personally appearing the above named Mary Baker G. Eddy acknowledged the foregoing instrument to be her voluntary act and deed, before me, dated the twelfth day of February 1898. R. E. Walker Notary Public and his notarial seal. — February 17, 1898 at two o'clock and fifty five minutes P. M. Received, Entered and Examined.

Attest: THOS. F. TEMPLE, Reg.

A true copy from the Records of Deeds for the County of Suffolk, Libro 2507, Page 222.

Attest: WM. T. A. FITZGERALD,  
Register.

(2) Deed of July 7, 1905, from Mary Baker G. Eddy, purporting to correct deed of Feb. 12, 1898, to Knapp, Johnson, Armstrong and Chase, as they are the present Christian Science Board of Directors as Trustees.

[Exhibits 806 and 806a]

EDDY to KNAPP et als.

Book 3058, Page 204

Know all Men by these Presents That Whereas I, Mary Baker G. Eddy, of Concord, in the County of Merrimack and State of New Hampshire, did on the twelfth day of February, one thousand eight hundred and ninety-eight, convey a parcel of land with a dwelling house thereon, being lot 10 on plan by Fuller and Whitney, dated February 10, one thousand eight hundred and eighty-six and recorded with Suffolk Deeds, Book 1713, between pages two and three, the grantee named in said conveyance being the First Church of Christ Scientist in Boston, Massachusetts a body corporate trustee to be held on certain trusts set forth in a declaration of trust to said Church executed by me on even date therewith, and Whereas it has now been brought to my attention that said grantee was a voluntary association of individuals the title to the Church property being vested in a Board of Trustees known as the Christian Science Board of Directors, which said Board is named in a deed of trust by me conveying land upon which is situated the edifice in which said Church worships said deed of trust being dated September 1, 1892, and recorded in Suffolk Registry of Deeds, Book 2081, page 251, and Whereas said Christian Science Board of Directors are clothed with the management and control of the affairs of the said Church, and their duties correspond to those of the officers of other churches referred to in Sec. 1 of Chap. 37 of the Revised Laws of the Commonwealth of Massachusetts and Whereas said deed of February 12 one thousand eight hundred and ninety-eight conveying said lot 10 was delivered to and accepted by

said Christian Science Board of Directors, and said Christian Science Board of Directors have been in the actual possession and management of the property since the date of said conveyance and have been actively engaged in the administration of the trusts set forth in the declaration of trust hereinbefore referred to, and Whereas it was my intent in making said deed of February 12, 1898, to convey said lot 10 so that it should be held for the benefit of Mary Baker G. Eddy's Church The Mother Church or the First Church of Christ Scientist in Boston, Mass., and Whereas I now desire to make definite the description of the grantee named in the said deed and to declare afresh and to incorporate herein the trusts referred to in said deed of February 12, one thousand eight hundred and ninety-eight as contained in a certain declaration of trust executed by me on said date. Now therefore, I, the said Mary Baker G. Eddy, in consideration of one dollar and other good and valuable considerations to me in hand paid by Ira O. Knapp, William B. Johnson and Joseph Armstrong all of Boston in the County of Suffolk and Stephen A. Chase of Fall River in the County of Bristol, as they are the present Christian Science Board of Directors, the receipt whereof is hereby acknowledged, do hereby release, remise and forever quitclaim unto the said Christian Science Board of Directors, as trustees, their successors in said trust and assigns forever, the parcel of land hereinbefore referred to, being lot 10 on said plan for a more particular description of which reference is hereby made to said deed by me of February 12, 1898. [Ex. 806a] To Have and to Hold the said remised premises to the said Ira O. Knapp, William B. Johnson, Joseph Armstrong, and Stephen A. Chase, as they are the Christian Science Board of Directors, their successors in said trust and assigns forever, upon the following trusts, being the same trusts set forth in my declaration of trust dated February 12, 1898. 1. "The First Reader" of said Church and each successive First Reader thereof forever shall have the use and enjoyment of said real estate free from all charge therefor, each so long as he or she may occupy and perform the duties of that position, provided however, that he or she shall not rent or lease said real estate, or allow it to be used or occupied for any purpose whatever than that of a home and residence of First Reader of said Church. 2. Said Christian Science Board of Directors shall forever keep said real estate in a good and proper state of repair and shall pay all taxes and other legal charges thereon in consideration of this trust and said conveyance and shall pay to me semi-annually a rental of two thousand (2000) dollars during my lifetime. 3. Hereby reserving to myself the right to make such changes from time to time in the terms and

conditions of this trust as I may deem prudent for the promotion of the cause of Christian Science and to revoke this trust if the best interests of this cause shall in my opinion demand such action and to constitute new trusts, said changes, new trusts and said revocation to be made in writing signed by me and directed to said Christian Science Board of Directors and said Board of Directors shall thereupon execute and deliver such legal instruments, if any shall be necessary to fully effectuate such changes or such revocation, as the case may be. 4. The acceptance of this trust and said deed of conveyance shall be deemed an agreement on the part of said Christian Science Board of Directors to hold said real estate upon the terms and conditions aforesaid and perform all things herein contained by it to be performed. In Witness Whereof I have hereunto set my hand and seal this seventh day of July in the year of our Lord one thousand nine hundred and five. Mary Baker G. Eddy and a seal. Signed, sealed and delivered in the presence of us Josiah E. Fernald, Calvin A. Frye. State of New Hampshire. Merrimac ss. July 7, A. D. 1905. Then personally appeared the above named Mary Baker G. Eddy and acknowledged the foregoing instrument to be her free act and deed before me,—Josiah E. Fernald, Notary Public and his Notarial Seal.

We, Ira O. Knapp, William B. Johnson, and Joseph Armstrong, of Boston and Stephen A. Chase of Fall River, accept the foregoing deed upon the trusts and subject to the provisions thereof, and we acknowledge the truth of the recitals thereof including in particular the recitals concerning the delivery to us as trustees of the deed dated February 12th, 1898 and that our holding of the property thereby conveyed was upon the trusts set forth in this deed and was not adverse. Ira O. Knapp. William B. Johnson. Joseph Armstrong. Stephen A. Chase. ——— July 15, 1905. At eleven o'clock and thirteen minutes A. M. Received, Entered and Examined.

Attest: THOS. F. TEMPLE, Reg.

A true copy from the Records of Deeds for the County of Suffolk. Book 3058, Page 204.

Attest: WM. T. A. FITZGERALD,  
Register.

#### PROPERTY CONVEYED BY WILL OF MRS. EDDY.

Deed dated March 25, 1913, from Dickey, McLellan and Fernald, Trustees under the will, to The First Church of Christ Scientist in Boston, Exhibit 807. This deed conveys Chestnut Hill properties and one property on Commonwealth Avenue in Boston.

[Exhibit 807]

#### DICKEY et al. to THE FIRST CHURCH OF CHRIST, SCIENTIST, IN BOSTON Book 3718, Page 166

Whereas on the sixth day of March 1907, Mary Baker G. Eddy, late of Concord, in the State of New Hampshire, executed a certain written instrument, recorded in the Registry of Deeds for the County of Suffolk in the Commonwealth of Massachusetts, Book 3201, Page 82, in the Registry of Deeds for the County of Norfolk in said Commonwealth, Book 1050, Pages 521, 523, in the Registry of Deeds for the County of Merrimack, in the State of New Hampshire, volume 371, page 549, by which said written instrument all the real estate and interest therein of said Mary Baker G. Eddy was transferred and conveyed to Henry M. Baker, of Bow, New Hampshire, Archibald McLellan, of Boston, Massachusetts, and Josiah E. Fernald, of Concord, New Hampshire, Trustees, the said property to be disposed of in accordance with the provisions of the last will of said Mary Baker G. Eddy, and Whereas on the sixth day of May 1908, the said Mary Baker G. Eddy executed another certain written instrument recorded in the South District Registry of Deeds for the County of Middlesex in said Commonwealth, Book 3367, page 156, whereby the said Mary Baker G. Eddy, transferred and conveyed to the said Henry M. Baker, Archibald McLellan, and Josiah E. Fernald, Trustees, certain other real estate therein described, and Whereas on the twenty-second day of September 1909, the said Mary Baker G. Eddy, executed another certain written instrument recorded in the South District Registry of Deeds for said County of Middlesex in said Commonwealth, Book 3472, Page 53, in the Registry of Deeds for said County of Suffolk in said Commonwealth, Book 3395, page 501, in the Registry of Deeds, in said County of Merrimack, in said State of New Hampshire, Volume 383, Page 553, whereby the said Mary Baker G. Eddy, appointed Adam H. Dickey, of Newton, Massachusetts, to be the successor of said Henry M. Baker, as Trustee under the certain written instruments aforesaid. Now therefore know all men by these presents that we, Adam H. Dickey, of Newton, Massachusetts, Archibald McLellan, of Boston, Massachusetts and Josiah E. Fernald, of Concord, New Hampshire, Trustees as aforesaid, do by virtue and in execution of the powers and authority to us given in and by the written instruments aforesaid, also by "An act to authorize The First Church of Christ, Scientist, in Boston to take and hold property under the will of Mary Baker G. Eddy," being Chapter 115 of the Acts of the Commonwealth of Massachusetts for the year 1913, also pursuant to a final

decree of the Supreme Judicial Court for the County of Suffolk and Commonwealth of Massachusetts entered the 4th day of March 1913, in the case of Stephen A. Chase, et al v. Adam H. Dickey et al (being these grantors) said case being numbered 16026 in equity docket of said court, also pursuant to the terms and provisions of the last will and testament and any codicils thereto of the said Mary Baker G. Eddy, now deceased, and late of Concord New Hampshire, and of every other power and authority hereto enabling and in consideration of one dollar paid by The First Church of Christ Scientist in Boston, the receipt whereof is hereby acknowledged, hereby grant, bargain, sell and convey unto the said The First Church of Christ, Scientist in Boston, five certain parcels of real estate situated in the Commonwealth of Massachusetts, and bounded and described as follows: . . . To Have and to Hold the granted premises, with all the privileges and appurtenances thereto belonging, to said The First Church of Christ Scientist in Boston, and its successors and assigns, in accordance with said Chapter 115 of the Acts of 1913, and as a part of the Trust Fund under the provisions of the will of the said Mary Baker G. Eddy, upon the trust set forth in the residuary clause of said will. In Witness Whereof we the said Adam H. Dickey, Archibald McLellan and Josiah E. Fernald, Trustees hereunto set our hands and seals this twenty-fifth day of March in the year one thousand nine hundred and thirteen. Adam H. Dickey, Archibald McLellan, Josiah E. Fernald, and each a seal. Signed and sealed in presence of As to signature of A. H. D. Julia F. Brightman, Chas. H. Welch.— As to signature of A. McL. Myra B. Lord. Ann E. Fisher. As to signature of J. E. F. Henry M. Bunker, Ernest A. Bunker. Commonwealth of Massachusetts. Suffolk ss. Boston, March 25, 1913. Then personally appeared the above named Adam H. Dickey and Archibald McLellan and acknowledged the foregoing instrument to be their free acts and deed, before me,—Chas. H. Welch, Notary Public. My commission expires Jany. 27, 1916 and his Notarial Seal. ———State of New Hampshire, Merrimack ss. Concord, March 26, 1913. Then personally appeared the above named Josiah E. Fernald, and acknowledged the foregoing instrument to be his free act and deed, before me,—Isaac Hill, Notary Public. My commission expires Dec. 11, 1913, and his Notarial Seal. ———March 29, 1913. At nine o'clock and twenty-six minutes A. M. Received, Entered and Examined.

A true copy from the Records of Deeds for the County of Suffolk. Book 3718, Page 166.

Attest: WM. T. A. FITZGERALD,  
Register.

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# Arguments before the Supreme Court

BOSTON, Massachusetts—Final arguments before the Full Bench of the Supreme Judicial Court in the case of Eustace et als. vs. Dickey et als. were begun Nov. 29, 1920, and will continue until Dec. 1, 1920. The stenographic report of the arguments follows:

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT FOR  
THE COMMONWEALTH  
November Sitting, 1920.

Rugg, C. J.; Braley, Crosby, Carroll and Jenney, JJ.

No. 1395.

Herbert W. Eustace et al., Trs., vs. Adam H. Dickey et al., Trs.

No. 1396.

Daisy L. Krauthoff et al., vs. Attorney-General et al.

No. 1400.

Attorney-General vs. Herbert W. Eustace et al.

No. 1402.

Herbert W. Eustace et al, vs. Adam H. Dickey et al.

No. 1415.

Herbert W. Eustace et al, vs. Adam H. Dickey et al.

No. 1423.

Herbert W. Eustace et al, vs. Adam H. Dickey et al.

Appearances:

Hon. Charles E. Hughes, Sherman L. Whipple, Esq., Lothrop Withington, Esq., and Silas H. Strawn, Esq., for Herbert W. Eustace et als.

Messrs. Bates, Nay, Abbott & Dane, and Clifford P. Smith, Esq., for Adam H. Dickey et als.

Hon. J. Weston Allen, Attorney-General and Edwin H. Abbott, Jr., Esq., Assistant Attorney-General, for Attorney-General.

Messrs. Thompson & Spring (William G. Thompson, Esq.), and Messrs. Streeter, Demond, Woodworth & Suloway, for John V. Dittmore.

Edwin A. Krauthoff, Esq., for Daisy L. Krauthoff et al.

Messrs. Dawson, Merrill & Dawson (Miles M. Dawson, Esq.), for Emilie B. Hulin.

ARGUMENT ON BEHALF OF THE  
DIRECTORS OF THE MOTHER  
CHURCH

by

Hon. John L. Bates.

Mr. BATES. May it please the Court: The litigation which is about to be discussed is litigation which has stirred the entire Christian Science world—stirred it as nothing else

could stir it—because it involves its form of government, the authority of its constituted Board of authority, its publishing house, the organs which have been regarded as its official organs for many years, and the income of a large trust which has been used by it for the promotion of the cause of Christian Science. It is not the ordinary case of two contracting parties, each asserting rights which they desire to have vindicated. It is a case where those who are trustees only, and as such having no beneficial interests, have, as we claim, brought proceedings in this court to overthrow the intentions of the donor of the trust, contrary to her express directions, and contrary to the course of conduct which has actuated the trustees for over twenty years, and under which rights have grown up that would not have existed had it not been for the fact that the trustees, the plaintiffs in this suit, had acquiesced in all of the instructions which Mrs. Eddy had given in regard to this trust, and which are to be found in the By-laws, the fundamental law of the Church.

The case to which I particularly direct your Honors' attention is one numbered 1395 on the docket. There are several others that in various phases are to be considered by those who address you, but I style this case, the case of Eustace v. Dickey, No. 1395, as the main case, because it was the first case that was brought, it is the only one which has been heard by a Master, and it comes before you this morning on the Master's report and our exceptions thereto. There are other cases on the docket that are entitled Eustace v. Dickey, but the one which we call the main case is No. 1395.

This case comes before you, as shown by the first page of the record, on a reservation, and is the case of Herbert W. Eustace, David B. Ogden and Lamont Rowlands, as they are trustees under a Deed of Trust dated January 25, 1893, wherein Mary Baker G. Eddy is the donor. These three trustees, or alleged trustees—because Mr. Rowlands is the one who was removed and who we claim is not now a trustee—are the plaintiffs. The defendants are Adam H. Dickey, James A. Neal, Edward A. Merritt, William R. Rathvon, stated by the plaintiff's Bill of Complaint to be trustees under the Deed of Trust dated September 1, 1892, wherein Mary Baker G. Eddy is donor, and a declaration of trust supplementary thereto and in amend-

ment thereof, dated March 19, 1903, and as they are also directors of The First Church of Christ, Scientist, in Boston, Massachusetts; and John V. Dittmore and Annie M. Knott, both of said Boston, each claiming to hold the position and office of trustee and director in association with the other defendants.

For the purpose of reference during the discussion I call your Honors' attention to the fact that the Bill of Complaint of the plaintiffs is printed beginning with page 2 of the report. It is followed by exhibits which, however, are made a part of the bill; then the answer of the defendants, whom we represent, Adam H. Dickey, James A. Neal, Edward A. Merritt, William R. Rathvon and Annie M. Knott, whom we claim are the directors of the Church; and it is not contended but what they are the directors of the Church except as to Mrs. Knott. As to her the plaintiffs' bill says that both she and Mr. Dittmore claim to be Directors and it is uncertain as to which is therefore a Director. The Board of Directors is a Board of five. Hereafter in referring to our clients I shall call them the Directors, but I do not mean thereby to include Mr. John V. Dittmore, who is made a defendant, as claiming to be a Director, and who is represented by distinguished counsel on my left.

In connection with our answer, on page 49 your Honors will find a little slip, where there is supposed to be inserted, and I presume has been in each case, a copy of the Church Manual, its 89th edition, which is the authoritative Manual of the Church, containing its laws.

The answer of Mr. Dittmore as a defendant is found beginning on page 49. The rule to the Master for the hearing is found on page 75, following the answer of Mr. Dittmore. Mr. Justice Loring filed a memorandum in connection with that rule, which is found on page 73, in which he discussed the right of the Master to make rulings of law, and in which he directs that the rule shall issue in the usual form. On page 74 he says what the Master cannot do is to "make general rulings of law as to the effect of these findings," since "it was the Master's duty to find the facts only and not rule upon their legal effect."

The order of reference to the Master in the usual form is printed on page 76: "To hear the parties and their evidence, to find the facts, and report the same to the court."

The Master's report follows, beginning on page 77. The date when it

was filed was March 6 of the present year. The Master's report is filed by a motion that was filed by us as representing the Directors; that was made before the Master, asking him to reopen the case to hear further evidence in the matter of the so-called Dittmore issue, of which I shall speak more at length later on. That motion was denied.

On page 76 you will find that, on behalf of the Directors, we made a motion to set down for hearing the case of Dittmore v. Dickey, and suspending the settling of the Master's draft report in Eustace v. Dickey. That causes me to say just a word at this time, that there is involved in these proceedings, in the Eustace case, what is designated as the Dittmore issue.

Mr. Dittmore up to March 17, 1919, was a member of the Board of Directors. He was removed on that date. On April 29 he brought his bill, asking that the proceedings by which he was removed might be declared of no legal effect. The Court referred this case to the same master, and in view of the fact that there was a question as to who were the directors of the Church, as stated in the plaintiff's bill in the Eustace case, wherein it is stated that Mrs. Knott and Mr. Dittmore both claimed to be, it directed that the two cases be heard together. That was the reason for these motions, and as appears from them, they have not been heard together so far as completing the hearings in the matter of the Dittmore case. That motion was denied. On page 77 it will be found that we made a motion to set down for hearing the case of Dittmore v. Dickey, and to suspend the settling of the draft report in Eustace v. Dickey until that case had been heard. That also was denied.

This is followed by the objections of Mr. Dittmore to the Master's report. They are very brief and found at the bottom of page 149. His objection was—

"to the master's finding and ruling, however expressed, that the Christian Science Board of Directors did not have general supervisory power over the trustees of the Christian Science Publishing Society; and in so far as the master has found or ruled that the Christian Science Board of Directors had no power or authority to declare vacant the offices of all three trustees of the Christian Science Publishing Society, or for a proper reason to declare vacant the office of any one of them, this defendant objects to said finding and ruling."

Exception was saved on those objections.

These objections are followed on page 151 by the objections which the defendant Directors whom we represent took to the Master's report. They number some hundred and more.

I may say that in general we were entirely satisfied with the findings of the Master where he confined himself

to findings of fact. They were based largely on legal documents and records about which there was no dispute. But what we have objected to is the constant and successive rulings of law which the Master made in his report, which we claim it was unnecessary for him to make in order to find any facts stated in the report, and we claim were not in accordance with the law.

With very few exceptions, so far as his findings of fact are concerned, they confirm everything which we contend for.

Our exceptions based on those objections, numbering fifty-two in all, are found on page 79 and following. These exceptions are followed by the defendants' motion made in both the Dittmore case and the Eustace case, and filed in the court, asking that the Master be directed to hear all the evidence in the Dittmore case before he decided or made a report in the Eustace case. This motion came before a justice of this court and the motion was denied, as found on page 84.

Our appeal from that decision is found on page 85, and the motion to confirm the Master's report by the plaintiffs is found on page 85. Then comes a list of exhibits. This list it will be almost essential to refer to in order to determine where the exhibits are to be found, but by reference to this list of exhibits which comes just before the exhibits in the record, it will be easily discovered where each exhibit is to be found in the record.

I direct your Honors' attention to the fact that one of the exhibits, the Manual of the Church as it has existed since Mrs. Eddy's death in 1910—for there has been no change since—is found on page 49 in the slip. The other manuals are on the clerk's desk, having been by agreement of all counsel placed in the custody of the clerk. There are some eight or ten of them that the Master makes a part of his report.

The next exhibit I should direct your attention to, because it is a photographic copy of the deed of 1898, the trust deed under which the plaintiffs claim, and the fundamental important document in the case.

The exhibits have been grouped, not chronologically, and not in accordance with the numbers which they bear, but in accordance with the subject to which they relate. Therefore we have Exhibit 2, the first printed exhibit, the deed of Mrs. Eddy of 1892, to which I shall refer more particularly hereafter; but I ask your Honors now to have in mind that while there are many deeds printed in this appendix or among these exhibits, to which reference may be made, the two fundamental important deeds in connection with this whole matter, are the deed of Mrs. Eddy by which she constituted the Church Directors, or which was the first step in constituting the Church directors,

which is this Exhibit 2, and is dated the 1st day of September, 1892. The other important deed is the deed constituting the trust, a photographic copy of which I have just referred to.

Following the deed of Mrs. Eddy by which the property of the Church was conveyed to certain men who were, as stated in the deed, to be the directors of a church in accordance with the statute, a body corporate, comes the trustees' record of the meeting of September 11, 1918. This, so far as the exhibits show, is the beginning of the dispute and controversy which led finally to the removal of Mr. Rowlands. The letters of this controversy from September until the following March will need considerable attention. They are to be found on the following pages of the exhibits running as far as page 46, not including the whole of page 46. They state the controversy probably better than can be stated in the limited time which is given to counsel, although the counsel feel very appreciative of the fact that they have been allowed by the order of the Court an unusual amount of time for presenting this case.

This correspondence is followed by exhibits relating to the organization of the Church. Then follow exhibits relating to the construction placed upon the trust deed of 1898. They include Mrs. Eddy's letter to Judge Hanna, and it begins on page 51. They include Mrs. Eddy's paper, a gift deed, etc., made at the time. They include letters from the original trustees showing how they considered the trust and interpreted it from the beginning, and matters of this kind take the exhibits up to page 59. Page 59 and thereafter relate to the increase of membership of the Board of Directors. On page 60 are found the resolutions dismissing Mr. Rowlands, and also the resolution on page 161 by which Mr. Dittmore was dismissed.

Exhibit 740 is the will of Mary Baker Eddy, and following that is a plan of Church properties and several pages of deeds and extracts of deeds running from page 73 to page 90.

I may say that the deeds are not here arranged chronologically, the reason being that they were grouped according to the special piece of property that they referred to. It produces a little confusion in drawing any conclusions from them. We have therefore placed a list of them chronologically at the end of our brief giving the inferences, as we think, to be drawn, or at least stating the facts from which we think inferences may be drawn.

I may say right at the start, however, that in this litigation there is no question of title involved. There is no issue of title of any property, and, as we believe, everything from that plan, including the plan and the deeds that follow it, could be left out of the case as immaterial and bearing strictly on no issue in the case. The

Master refers to them, and therefore we may have occasion to refer to them briefly later on.

The Christian Science Publishing Society is not a society in the significance that that term is generally used. It is merely three Trustees, and those three trustees owe their existence to the trust deed of Mrs. Eddy of 1898,—January 25th, 1898. The plaintiffs therefore are sometimes called the Publishing Society of the Church. They are sometimes called the Trustees of The Publishing Society. They are sometimes called the Trustees under the deed of 1898. It is all one and the same thing.

They publish, however, for the Church, the Christian Science Journal, which is a monthly. That had been in existence long before these trustees were appointed. It belonged to Mrs. Eddy, and was started by her. It is an official organ of the Christian Science Church. They publish the Christian Science Quarterly, which contains all of the lessons which are read in the Sunday Schools and in the churches at their services. It is not something that is published to contain new or original matter. It publishes solely the extracts from the Bible, and from Mrs. Eddy's works that are to be read at services on certain days throughout the year, and the editors of that quarterly simply determine what selections they shall be, and the Quarterly is sent to the Christian Scientists and all who subscribe, giving them information.

It is thus seen that the Church services are in a measure, a large measure, absolutely dependent upon the Quarterly that is published by the Society. There is the Christian Science Sentinel, which was not in existence at the time the trust was started, but which was started under Mrs. Eddy's directions shortly after. There is the Der Herold der Christian Science, a German paper, that has been published for a number of years, and was the next paper established by Mrs. Eddy and published by the Trustees. Then there was established the Christian Science Monitor, a daily, that had until the beginning of this litigation a world-wide circulation by reason of its character. Then there was established last a French Herald, the Le Héraut de Christian Science, which also is published by these trustees, all of which were published under the authority of the Church authorities, and all of which have been found to be the organs and periodicals of the Church by the Master.

They also published the entire Christian Science literature, with the exception of the works of Mrs. Eddy herself. When the trust deed was made there was a restriction upon them. They were not to publish her works, but they were to publish all other Christian Science literature. Therefore they have been in fact the publishers of the only authorized Christian Science literature, with the

exception of certain works of Mrs. Eddy, the publishing of which she kept to herself as long as she lived, the distinct publisher, but which were given under her will, when she died in 1910, to trustees, and by arrangement with those trustees this publishing society is now also publishing those books. So that at the present time they are publishing all the literature of Christian Science, and were at the time this litigation started.

I may say that the trustees under the will of Mrs. Eddy, so far as their membership is concerned, are the directors of the Church—that is, those who were directors in 1919, when this removal took place—and to them was added to them a sixth, Mr. Fernald, who lives in Concord, New Hampshire. That is, the trustees under the will, five of the six, are the same as the directors were, but they occupy the positions not because they are directors, but because they have been appointed by the Court as trustees under the will. I have already stated that the defendants are the Board of Directors of the Christian Science Church. The only controversy is as to the words "defendants," and that is not a controversy, because if you will notice the requests for relief that are made in the plaintiffs' bill, they do not ask that the Court shall determine who the Directors are of the Church, and in fact they obtained on an ex-parte hearing an injunction against all six of the defendants because two of them claimed to be directors, the Court not finding it necessary to determine that question as to whether or not they were, inasmuch as they claimed to be, in order to give the temporary relief that was requested.

In the prayers in the plaintiffs' bill it is to be noticed that with one exception they do not refer to the defendant directors, that they simply refer to the "defendants" and ask that the defendants be restrained and enjoined, etc.

We have claimed, and we still claim, that the question as to whether or not Mr. Dittmore was removed is not properly a question in this case, and that the Eustace case could have been decided by the Master without in any wise touching upon that question. Let me make it clear. On the same day, March 17, 1919 (last year) the board of directors, for reasons which they thought necessitated their action in the discharge of their duty, passed two resolutions. One was a resolution that removed Mr. Rowlands from the Publishing Society. That led to the litigation of the Eustace suit, for while it is called the Eustace suit, and not the Rowlands suit, it is because Mr. Eustace was a co-trustee, he had been the longest on the board, and his name leads among the three trustees; but the Eustace suit, so-called, is founded on the fact that the directors removed by resolution Mr. Rowlands as trustee of the Publishing Society.

The Dittmore case is founded on

the fact that on the same date the board, for reasons which it regarded as not only justifying but obliging it to do so, removed Mr. Dittmore, one of their own number, on their own board of directors, acting under the power and authority given to them in the Church Manual. So that the Dittmore case is founded on Mr. Dittmore's removal as a director.

The Eustace case is founded on Mr. Rowlands' removal as a trustee.

And the reason why the plaintiffs, when they brought their bill, said that they did not know whether Mrs. Knott or Mr. Dittmore was a director, and therefore made them both defendants, was because after the directors had removed Mr. Dittmore as a director, they elected Mrs. Annie M. Knott, who had been for many years devoted to the cause of Christian Science, and as an editor of its papers—they made her a director, and since that time, as the report shows, Mr. Dittmore has not acted as a director, and Mrs. Knott has acted as the director.

We claim that the question as to whether or not Mr. Dittmore was a director could not be decided in the Eustace case unless he brought a cross-bill as between himself and his co-directors to determine his rights. He did not do so. He waited for six weeks, and then he brought a separate bill, known as the Dittmore case, which has not been heard by the Master completely, although he was ordered to hear it; upon which he has never filed any report, and which he has failed and refused to set down for a hearing, because the Master says that he thinks that the Dittmore question is an issue in the Eustace case and that therefore he must find it there: a conclusion to which he admits he did not come until all the evidence had been put into the Eustace case; a conclusion which he knew we did not assent to, because we took exception to it when he made the ruling, and we endeavored in every way possible to have him, if he was going to make that an issue in that case, which we thought was entirely unnecessary, to have him reopen the case in order that the evidence in regard to Mr. Dittmore's dismissal might be put in; and he absolutely refused to do it.

So that, so far as that case comes before your Honors in this matter, we claim that it was not properly an issue in the Eustace case, and, if it was not, then his findings in regard to it are to be disregarded. We claim that it was not necessary to be decided for any purposes of the Eustace case. We claim that if it was an issue in the Eustace case, then the procedure of the Master was such as to defeat justice, because his procedure was such as did not permit us to put in the evidence on it, and he himself says that the case had never been formally opened, and it was admitted that there was other evidence to be introduced

on matters bearing on the Dittmore case. But he says, nevertheless, upon the evidence as presented, that he finds Mr. Dittmore was not properly removed,—first, as a matter of law, basing his rulings on the Manual; and we would not object if he had left it as a matter of law, because that is open to us to argue here, and I think that we can satisfy your Honors that his conclusion was wrong; but he went further, and he found on questions of sufficiency of reasons and of motives, which were not gone into by the defendant directors, and which we had no opportunity to go into, by reason of the peculiar situation which arose in the Eustace case.

Now, the bill brought by the trustees, the plaintiffs in this case, the Eustace case, seeks not only to have Mr. Rowlands' removal declared null and of no effect, but it also seeks, through the relief that it asks for, to prevent the authorities of the Christian Science Church from in any way interfering with the publications and literature of the Publishing Society,—from in any way interfering with its management. In other words, it seems to absolutely divorce the publishing house of this great church from the church itself, and to make it entirely independent, under the three trustees, with no control existing in the church over the official organs or the publishers.

The first broad question, then, that arises in the Eustace case is whether or not the Christian Science board of directors had on March 17, 1919, the day when they did remove Mr. Rowlands, as we claim—whether or not they had the legal power to remove him from his position as a trustee of the Publishing Society; and, secondly, if they had such power, whether or not it was lawfully exercised. That is really all that there is to this complicated case,—those two questions. But incidentally the Master has gone into so many other matters that it requires a long statement to show the facts bearing upon all the matters upon which he has made findings.

I might say that incidentally, while those are the two questions involved, by reason of the relief asked for by the trustees, it involves not only the question of the legality of the removal of Mr. Rowlands, but it also involves the question as to whether or not the Church has any authority whatsoever, even a vestige of authority, over the Publishing Society, which for over 20 years has published its literature, not only under the Deed of Trust, but under the By-Laws, which are the fundamental law of the Church.

If the bill is dismissed, of course the Dittmore issue does not arise in any way, shape or manner.

I have referred to the rule under which this matter was referred to the Master, which was the usual rule, limiting it to finding the facts and reporting the same to the court. An attempt to enlarge this rule was de-

nied by Mr. Justice Loring; and later on, as shown by the Master's report, a motion was presented to the Court to enlarge the rule, and that was withdrawn at the suggestion of the Court. So that the rule stands as originally issued.

Upon the filing of the Master's report there is evidence that comes before your Honors, to be at least inferred from the many proceedings that were brought, and from the pleadings in them, that his report had created a great disturbance in the Christian Science field. The members of the Church gathered in various places. New York committees came here through Mrs. Hulin, and petitioned to intervene, on the ground that their rights as members in the Church were being jeopardized by the findings of the Master, who seemed to make findings which took away the authority of those whom the Christian Science Church had made its authorized board of directors; it seemed to take away the very foundations of their government, and to question the legality of what had been done; and so they came here to assert their rights. Other matters were brought. Mr. Krauthoff, who up to the time of the filing of the Hulin petition had been one of the counsel for the directors, became himself a petitioner, seeking to represent members—done, it is only fair to say, after he had taken himself away as an attorney for the directors—done without the consent of the wishes of the directors, so far as his appearance was concerned; and ever since, every action that he has taken has been taken absolutely not only without the consent of those who had employed him formerly, but without their knowledge until the action was taken. I am not saying this either to commend or to reflect on Mr. Krauthoff; I am saying it as a fact which cannot be denied. Mr. Krauthoff does not in any sense represent the directors since, for reasons which have never appeared of record. He withdrew as counsel at the time of the presentation of the Hulin petition, and what he has done has been done on his own authority, absolutely, with neither the wish nor the consent of the directors, but, for the most part, if their wishes had been consulted, absolutely contrary to them. And yet Mr. Krauthoff, in his position, seeks to uphold, as does Mrs. Hulin's petition, not the board of trustees, but the authority of the Church, its board of directors, its powers, as the constituted authority of the Church.

The Attorney-General, at the instance of Illinois Christian Scientists, and Christian Scientists of other states, as appears from the record, attempted to come in at the relation of those members to protect their rights. He was denied that right, but the Court made the suggestion to him that if he thought that the rights of the members, or rather if he thought that the public's rights, the public

beneficiary of this public charitable trust—if he thought that their rights were to be affected, he should bring his original bill himself; and, acting under that suggestion of the Court, the Attorney General, it must be presumed, after the most careful and considerate investigation of all the matters involved, brings his bill, asking that the authority of the directors and the authority of the Christian Science Manual be upheld, and that this trust of the trustees of 1898 be construed in accordance with the directions in the Manual, which had always been followed, and in accordance with the construction which had always been placed upon the Trust Deed until these plaintiffs sought to change it, beginning in September, 1918.

So that there stands before this Court no one except the three trustees alone seeking to get a decision of this Court as to the intent of a legal document that is absolutely opposed to all that we know of the way in which Mrs. Eddy for twelve years afterwards—the donor—construed the instrument,—to all that we know as to the way in which all their predecessors as trustees had construed it,—to all that we know as to the way in which they had construed it previous to this trouble in 1918—they stand alone, seeking that interpretation to be placed upon their deed; and against them, seeking the interpretation for which we stand are all the other parties that have sought to intervene, and whose matters come before your Honors in connection with this litigation at the present time in various ways,—on demurrers, on motions, etc.

It is significant of the feeling of the Christian Science Church, of its respect for the laws of Mrs. Eddy, and of the justice, the equities, of the case, that the opinion of the Church should be so unanimously expressed in sustaining the authority of the directors, and against the contentions of the plaintiffs, the trustees.

As to the Master's report, I have stated that our objections to it are not on his findings of fact, with one or two exceptions, which I shall refer to, and where we claim that his findings of fact are refuted by the evidence which he reports: they are to the fact that apparently he could not dissociate himself from his long custom of writing an opinion instead of a finding of fact. He decided, and then he wrote an opinion to support his findings, and endeavored to make everything fit, so far as possible, that opinion; and in doing that he went outside the realm of the Master under the rule, and he made numerous rulings of law, entirely unnecessary, and we believe entirely erroneous.

Now, as to the Christian Science Church, the Court, I assume, takes judicial notice of the fact that Mrs. Eddy was the founder of the religion of Christian Science. During her life-

time she was its recognized leader. Whatever Mrs. Eddy said in regard to the Christian Science movement was law. Her followers had that respect and love that no one ever questioned a direction that she gave or a suggestion that she made. She founded the Christian Science Church in 1879. It was designed, in her words, to commemorate the Word and Works of Our Master, and which should reinstate primitive Christianity and its lost element of healing. That Church was chartered. That was forty-one years ago. In 1892 Mrs. Eddy, thirteen years after the original organization of the corporate Church, reorganized the Church, caused it to be reorganized, if you please, as a voluntary religious association. It had been a corporation. It was dissolved. She wished it to take the form of a voluntary religious association. There were several steps incidental to that reorganization, as there would be in the reorganization of any church. The record shows that it was reorganized in September. The first step, so far as appears on the record, as would naturally be presumed from the circumstances, was that Mrs. Eddy made a deed of property to be used for church purposes, and that is the deed of 1892, to which I have referred as one of the chief deeds, one of the two chief deeds, to be borne in mind.

Let me call your attention to that Deed. I am reading from the copy of it which is found on page 26 of the record, where it is printed in large type, and it appears in finer type among the exhibits at the end of the record. It was a Deed of Trust from Mary Baker G. Eddy of Concord in the County of Merrimack and State of New Hampshire, to Ira O. Knapp, William B. Johnson, Joseph S. Eastman, and Stephen A. Chase. Your Honors will notice that each of those four were of Massachusetts. Mrs. Eddy, as appears from this Deed, intended for these men who were taking her property as grantees to become, as soon as the reorganization was perfected, a Board of Directors of the reorganized church, having duties similar to wardens and deacons, to the end that they might become a body corporate under the statutes of Massachusetts, being Section 1 of Chapter 39 at that time, which makes deacons and wardens and similar officers of churches bodies corporate for the purpose of holding real estate, etc.

The provision of the statute is that they must be Massachusetts citizens. Therefore Mrs. Eddy, although of Concord at that time, included no one but Massachusetts citizens among her grantees, and thereby complied with that portion of the statute, as we claim she complied with every portion of it.

Your Honors will notice that she describes them, as it says in the conveying clause, as trustees, but as trustees as hereinafter provided, and

to their legitimate successors in office forever. The Master finds that the four trustees became under the Deed trustees only, that they did not become a board of directors, therefore it is important to see how she refers to them here. She only once refers to them as trustees. In every other place in this Deed she refers to them as grantees or as a board of directors. What was the trust? First, she describes the land, which has ever since been used for church purposes, and which is on Falmouth Street in Boston, and where the original Christian Science Church is located. She says this is "made upon the following express trust and conditions which the said grantees by accepting this Deed agree and covenant for themselves and their successors in office"—  
not successors of a trust—

"—and their successors in office to fully perform and fulfil.

1. Said grantees shall be known as the 'Christian Science Board of Directors,' and shall constitute a perpetual body of corporation under and in accordance with Section 1, Chapter 39 of the Public Statutes of Massachusetts."

That is now Section 1 of Chapter 37 of the Revised Laws, and is the statute to which I have referred, which says that the officers of a church similar to deacons and wardens shall be a body corporate for the purpose of holding real estate of a church or a society.

Now she goes on to say:

"Whenever a vacancy occurs in said Board"—

Again she uses the term "Board"—

—"the remaining members," etc.

In Paragraph 2 she says:

"Said Board shall within five years from the date hereof build or cause to be built upon said lot of land a suitable and convenient church edifice, the cost of which shall not be less than fifty thousand dollars." One of the duties of wardens is the care of church property and the erection of church buildings.

"When said church building is completed said Board shall elect a pastor, reader or speaker to fill the pulpit." Those are duties similar to those which are conferred on wardens and oftentimes on deacons.

"Said Board of Directors shall not suffer or allow any building to be erected upon said lot," etc. The said Board of Directors—not trustees—

"—shall not allow or permit in said church building any preaching or other religious services which shall not be consonant and in strict harmony with the doctrines and practice of Christian Science."

Again:

"The congregation which shall worship in said church shall be styled

'The First Church of Christ, Scientist.'"

When her reorganized church held its first meeting as a reorganized church, in this very month that the Deed was given, on September 23, they took that name.

"Said directors shall not sell or mortgage," etc.

Again:

"Said Directors shall maintain regular preaching." The duties are the same as those of deacons.

"Whenever said Directors shall determine that it is inexpedient to maintain preaching," etc.,—then the title must come back. That was subsequently changed by another deed, to which, however, no reference need be made at this time. And you will find in the habendum clause that it is "said grantees and their successors in office." That occurs in the habendum clause and in the covenant clause four times. Nowhere do we find the term "successors in trust." It is significant. Your Honors will notice probably that the Notary Public who takes Mrs. Eddy's acknowledgment to that deed is R. E. Walker, one of the present Justices of the Supreme Court of New Hampshire. Can there be any doubt that he advised her that with the completion of the reorganization of that Church that Board of Directors or those grantees would become a body corporate? And if they became a body corporate then they had the right to increase their numbers, which is one of the questions raised by the Master in his report.

The giving of that Deed was followed by the meeting of the Church, which is found on page 46 of the exhibits at the end of the book. That is a record of the first meeting. At that meeting there is recorded the fact that eleven were present. Various parties were elected as members of the Church, and parties were elected as First Members of the Church. The term "First Members" is something that I shall have to call your attention to at length hereafter. Tenets were adopted for the Church and rules were adopted.

There is nothing in the record that shows that the Church at that time specifically adopted the Board of Directors, that had been named in Mrs. Eddy's deed of grantees; but all the evidence tends to show, and in fact the Master finds, that they were recognized as the Board of Directors of the Church down to 1903—they or their successor—and that in 1903 by reason of a change in the By-laws of the Church the membership of the Board was increased to five, and that from 1903 on the membership of the Board remained five in accordance with the By-laws, and that the right to increase it, or the legality of it, was never questioned.

This church has been called and was designated in the reorganization

proceedings as The First Church of Christ, Scientist. It is designated in Mrs. Eddy's Deed of 1892, where she says "The congregation which shall worship in said church," by the same designation. In the Manual of the Church, which was first published in 1895, three years later, it is called for the first time, so far as the record shows, "The Mother Church." I ask your Honors to bear in mind that The Mother Church and The First Church of Christ, Scientist, are the same thing. It is The Mother Church here in Boston, so known the world over. It has over eighteen hundred branches throughout the world. These branches have a certain measure—a large measure—of independence, but in very many other matters they are bound by the law of The Mother Church as shown in the Manual, which is one of the exhibits.

Their membership runs up among the hundreds of thousands, and probably millions. Mrs. Eddy, in accordance with the old Israelite injunction, forbade the numbering of the people. They never have been numbered. But it appeared in evidence, and appears from the Master's report, that there were over eighteen hundred of these branches throughout the world. Membership in The Mother Church and membership in branch churches are both possible—not only possible, but a large number are members not only of branch churches but of The Mother Church also. Therefore The Mother Church itself, as The Mother Church, has a membership that extends all over the world.

The other important Deed, the Deed under which the Trustees as plaintiffs bring their claims and contentions, I wish to refer to, and it is to be found on page 22 of the record:

"I, Mary Baker G. Eddy of Concord, New Hampshire, in consideration of one dollar paid to me by Edward P. Bates, James A. Neal and William P. McKenzie," etc., "for the purpose of more effectually promoting and extending the religion of Christian Science as taught by me, do hereby sell and convey to them . . . and their successors in the trust hereinafter established all and singular the personal property, goods, and chattels.

It is to be noted that this Deed of 1893, under which the Trustees claim, is a personal property trust; there is no real estate connected with the trust.

"— said property being located in the premises numbered," etc., "including the publications called 'The Christian Science Journal' (not including the copyrights thereof), the linotype, all pamphlets, tracts, and other literature conveyed to me by said bill of sale"—

—which she had received from the Christian Science Publishing Society, a corporation which had preceded this one—her corporation, if you please.

In other words, Mrs. Eddy not only changed the form of the church organization from a body corporate to a voluntary association in 1892, but in 1898 she changed the form of the publishing society from a corporation to a board of trustees of three:

"—the subscription lists of 'The Christian Science Journal' and of 'The Christian Science Quarterly,' all stationary fixtures, stock on hand . . . upon the following perpetual and irrevocable trust and confidence, namely:"

The plaintiffs lay great stress upon the words "upon the following perpetual and irrevocable trust and confidence." There is nothing in our contentions that in any way contests the statement that she made this an irrevocable trust. Everything that has been done has been done in accordance with its terms, and our whole contentions are consistent with that theory.

"Said trustees shall hold and manage said property and property rights exclusively for the purpose of carrying on the business, which has been heretofore conducted by the said Christian Science Publishing Society, in promoting the interests of Christian Science.

2. The business shall be done by said Trustees under the unincorporated name of 'The Christian Science Publishing Society.'"

Then there is a provision for books of account, and there is a provision in the fourth paragraph that:

"Once in every six months the Trustees shall account for and pay over to the treasurer of 'The First Church of Christ, Scientist, in Boston, Mass.,' the entire net profits of said business. The 'net profits' shall be understood to mean the balance remaining at the end of each six months after paying the usual legitimate expenses incurred in conducting the business. . . . Said treasurer shall hold the money so paid over to him subject to the order of 'the First Members,' of said Church, who are authorized to order its disposition only in accordance with the rules and By-laws contained in the Manual of said Church.

The business manager shall present to the Trustees, at the end of each month, a full and correct statement of the receipts and expenditures of the month."

I next direct your attention to Paragraph 8:

"Said trustees shall have direction and supervision of the publication of said Quarterly, and also of all pamphlets, tracts, and other literature pertaining to said business, using their best judgment as to the means of preparing and issuing the same, so as to promote the best interests of the Cause, reserving the right to make such changes as I may think important."

If your Honors will refer to the photographic copy of this Deed, which

is among the first of the exhibits at the end of the book—the only photographic copy near the end of the book—you will see that the words "reserving the right to make such changes as I may think important" were written in handwriting whereas the instrument is a type-written instrument.

We attach the greatest significance to these words. The paragraph itself goes to the administration of the entire trust, and we claim that that reservation in regard to this personal property trust was sufficient to give Mrs. Eddy the right to make any changes that she saw fit in the direction and supervision of the trust. It is an important change. It was important enough to be written in after the paper had been prepared—undoubtedly at her insistence that the power reserved in Paragraph 3 was not sufficient for her purpose. Paragraph 3, you will remember, says that the Trustees shall carry on the business "upon their own responsibility, and without consulting me about details, subject only to my supervision, if I shall at any time elect to advise or direct them."

But here is a broader power; and, moreover, it is changes that she thought important, that she had a right to make, as expressed by the language. So we claim that there was a reservation, not of a power to amend an instrument—that would have been more limited—but it is a reservation of a power to make changes in the administration of this trust; and there is no limitation upon that power, because the paragraph with which it is connected is one which goes to the entire business of the trust.

Further, Paragraph 9 says:

"Said Trustees and their successors in trust shall not be eligible to said trusteeship or to continue in the same, unless they are loyal, faithful, and consistent believers and advocates of the principles of Christian Science as taught by me in my book 'Science and Health with Key to the Scriptures.'"

Now, Paragraph 10, the important clause, the one under which the Board of Directors acted, as well as under the By-laws:

"10. Whenever a vacancy shall occur in said trusteeship for any cause, I reserve the right to fill the same by appointment, if I shall so desire, so long as I may live; but if I do not elect to exercise this right, the remaining trustees shall fill said vacancy."

Now the important clause:

"The First Members, together with the Directors of said Church shall have the power to declare vacancies in said trusteeship for such reasons as to them may seem expedient.

11. I also reserve the right to withdraw from said trust, if I shall

so desire, the publication of The Christian Science Journal, but if I do not exercise this reserved option, then said Journal shall remain a part of the trust property forever.

13. Said Trustees shall each receive annually one thousand dollars for their services in that capacity, payable semi-annually in payments of five hundred dollars, or such salary as the Church may determine from time to time."

In Paragraph 14 the Trustees are not only obliged to carry out the trust according to its terms, but according to its objects and purposes.

Incidentally, and before passing on, let me say that the plaintiffs lay great stress upon the statement in Paragraph 3, that the trustees shall manage the business upon their own responsibility. They say that means that they will not be interfered with by anybody, and that the trust deed must be so interpreted. But the trust deed must be interpreted as a whole. That did not mean an absolute authority. Mrs. Eddy reserved to herself much authority. So that there was that reservation. But, in addition to that, she reserved the authority, or placed in the church the authority, to fix the salaries from time to time of these men.

I ask your Honors if that is not significant. If the church had the right to fix the salaries did that not give the church a certain right of authority over them, in effect at least? The power to fix a salary always carries with it a certain power of direction. The supposition always is that the Board which has the right to fix a salary has a power over it. If I remember rightly, the statutes of this Commonwealth, or the Constitution, provide that the salary of a judge shall not be diminished during his term of office. The reason for it is plain. By reducing the salary the judge might be compelled to resign; the Legislature might get a control that it ought not to have.

But, in addition to that, there is the provision that the First Members, who were a board of the Church together with the Directors, shall have the power to declare vacancies. If you have a power to declare vacancies on boards for such reason as you deem expedient, does not that involve a certain amount of supervision and direction of the board?

So that we say, reading the Instrument as a whole, it in no way justifies the contentions of the plaintiffs that those words "on their own responsibility" meant an absolute independence. On the contrary it appears perfectly evident that they were to be under the control of the Church."

Let me say a word in regard to the Manuals. The Manual was first adopted in 1895. It was adopted by the First Members at Mrs. Eddy's suggestion—that first Manual—and this refers to the question that was raised in regard to the Board of Directors.

That first manual, while it did not say in the By-Laws that the directors were officers, it recognized them. It gave them duties to perform. It says, "They shall elect all the officers of the Church," and other duties were given to them. Moreover, their names appear on one of the pages in the first part of the Manual under the title of "Officers of The Church", and they appear in all of the manuals from 1895, which was three years after the reorganization, down to the present time as Directors of the Church in the list of officers. In 1908 a by-law was incorporated which specifically included them as Directors, something which we claim was not necessary, but which was done at that time.

The Manual contains the laws of the Church as they were made from time to time, all of which were made, as a matter of fact, at the suggestion or with the approval of Mrs. Eddy. Down to 1901 they were made by a board called the First Members. After that they were made under the authority given to the Board of Directors. There have been eighty-nine editions of that Manual from 1895 to 1910. In 1910, at the time of Mrs. Eddy's death, the 89th Edition had been published. That remains as the edition without change or correction or amendment or addition in any way. Mrs. Eddy herself deciding that the By-Laws should remain fixed and that no changes should be made without her consent, and no one has ever assumed to make any changes since her death.

Mrs. Eddy attached the greatest importance to the forwarding of the cause of Christian Science to obedience to the Manual. In the Manual itself there is published a citation from her works which says:

"The Rules and By-Laws in the Manual \* \* \* were impelled by a power not one's own. They sprang from necessity, the logic of events,—from the immediate demand for them as a help that must be supplied to maintain the dignity and defense of our Cause; hence their simple, scientific basis, and detail so requisite to demonstrate genuine Christian Science, and which will do for the race what absolute doctrines destined for future generations might not accomplish."

She recognizes them as a part of her Christian Science movement, and obedience to them as necessary. This bears upon the question as to whether or not any of those By-Laws could be ignored by Trustees who were appointed to promote the cause of Christian Science without thereby defeating the cause of Christian Science which they are pledged and which their trust compels them to support.

She said:

"A departure from the spirit or the letter of the By-Laws involves schisms in our Church and the possi-

ble loss for a time of Christian Science."

Again she says—and these are all in the record that I am reading:

"The Church Manual of The First Church of Christ, Scientist, in Boston, Mass., written by Mary Baker Eddy and copyrighted, is adapted to The Mother Church only. It stands alone, uniquely adapted to form the budding thought and hedge it about with divine Love. This Manual shall not be revised without the written consent of its author."

And it never was, the Master finds, except with her consent. All applicants for membership in the Church, including these three plaintiffs, subscribed to the By-Laws which they now seek to have this Court say have no control or force over them.

Let me read from page 44 of the exhibits a further word of Mrs. Eddy in regard to the importance of these By-Laws. The one which I have reference to is on page 26, at the foot of the page:

"The present and future prosperity of the cause of Christian Science is largely due to the by-laws and government of 'The First Church of Christ, Scientist, in Boston.'

"The present and future prosperity of the cause of Christian Science." This trust of 1898 was to promote that cause. She herself says that its future and its prosperity is dependent upon the By-Laws and government of The First Church of Christ, Scientist, in Boston. "None but myself can know, as I know, the importance of the combined sentiment of this church remaining steadfast in supporting its present by-laws."

And yet these plaintiffs stand before this Court seeking to be absolved from all the By-Laws which give any direction whatsoever to the Church over these publications, and which By-Laws I shall call your attention to a little later.

Rules were adopted at the time of the reorganization, but the printed By-Laws first appeared naturally in the 1st Edition of the Manual, which was in 1895. It appears from the Master's report that during Mrs. Eddy's lifetime By-Laws were adopted and changes made whenever Mrs. Eddy recommended them, at first, until 1901, by the Board of First Members, after 1901 by the Board of Directors, to whom the power had been transferred to make them. Since her death in 1910, no by-law has been made or amended, no new ones adopted. He finds specifically that every by-law in the Manual had Mrs. Eddy's approval, and in nearly every case, if not in all, were proposed by her. He finds that all the By-Laws have been accepted and acquiesced in by Christian Scientists from the beginning. All members of the Church, he finds, subscribe to them upon becoming members, and each of the



plaintiff trustees subscribed to them.

Now, let me read some of those by-laws that bear upon this litigation, the by-laws, as the Master finds, that bind all Christian Scientists.

In Section 9 she says:

"Law constitutes government, and disobedience to the laws of The Mother Church must ultimate in annulling its Tenets and By-Laws. Without a proper system of government and form of action, nations, individuals and religion are unprotected; hence the necessity of this By-Law and the warning of Holy Writ: 'That servant, which knew his Lord's will, and prepared not himself, neither did according to his will, shall be beaten with many stripes.'"

The Trustees are before this Court claiming not to have violated those By-Laws, or to desire to do so, but in effect absolutely go contrary to very many of them, as will appear from the Master's report. Mrs. Eddy makes those a part of the fundamental law for Christian Science, but there must be no annulling of them and no disobedience to them, and if there is disobedience then the penalty must follow.

The powers given to the Board of Directors, if I had time I would like to call to your attention, because they are such as to practically give the entire management of the Church and the Cause into the hands of the Directors. The first by-law, however, bearing directly on that question in litigation, which I call to your attention, is Article XVIII, Section 14.

"Church Periodicals.

Sect. 14. It shall be the privilege and duty of every member, who can afford it, to subscribe for the periodicals which are the organs of this Church; and it shall be the duty of the Directors to see that these periodicals are ably edited and kept abreast of the times."

That By-Law has been in existence a great many years, many years before Mrs. Eddy's death. It was first adopted in 1899. At that time the word "Church" was then in the place of "Directors". Two years later the word "Church" was changed to "directors", showing that by the "Church" she had meant the "Directors," as having the power and the duty to see that they were ably edited.

Notice the reciprocal character of that By-Law. Members are to subscribe. The Directors are to see that they are ably edited and kept abreast of the times. Does that give, so far as any intelligent consideration of language can indicate, anything except a power and authority in the Board of Directors? It was a duty. Under that By-Law the Master finds that the Publishing Society has always solicited subscriptions from the membership of the Church, claiming it was their duty under the By-Laws of the Church to subscribe to these. You can imagine why those publica-

tions have become strong, or had become up to the time of this litigation. It was because, as the Master finds, they had the support of Christian Scientists. He also says that they would have very little reading outside of the Christian Science field. In other words, their support comes from the Christian Scientists, and it is made obligatory upon them. But there is also the obligation that the Directors shall be allowed to look after the supervision of them if the Trustees are to have the right to claim that members shall subscribe. They have seen fit to attempt to take part of the By-Law and to ignore the other part. They receive the benefit and are not willing to admit the obligation.

I will go directly to Article XXV of the By-Laws. Such an article was introduced. It relates to the Christian Science Publishing Society. It was introduced into the By-Laws of the Church not in this specific form, but an article giving certain instructions and directions was introduced into the By-Laws of the Church within one month of the making of this trust deed, showing Mrs. Eddy's expectation that under the reservations of her power she had the right through the form of permanent by-laws in her Manual to give the instructions for the carrying on of this trust.

Now, Article XXV of the Manual speaks of the Board of Directors, but Section 3 says:

"The Christian Science Board of Directors shall have the power to declare vacancies in said trusteeship for such reasons as to the Board may seem expedient."

Section 4 says:

"The term of office for the editors and the manager of The Christian Science Publishing Society is one year each, dating from the time of election to the office. Incumbents who have served one year or more can be reelected, or new officers elected, by a unanimous vote of the Christian Science Board of Directors".

In other words, Section 3 places the power of removal in the hands of the Directors of the Church. Doesn't that give authority? And the Trustees are here to contest it. Section 4 says that the editors and the manager shall be elected by the Board of Directors. Does not that give authority? But the Trustees are here to deny it.

Section 5 says:

"A person who is not accepted by the Pastor Emeritus (who was Mrs. Eddy) and the Christian Science Board of Directors as suitable, shall in no manner be connected with publishing her books, nor with editing or publishing the Christian Science Journal, Christian Science Sentinel, Der Herold der Christian Science, nor with The Christian Science Publishing Society."

Who was to determine the question? The Directors, of course, under their

power of removal. No one was to be connected with that Society who was not regarded as suitable by the Board of Directors. And yet they are here proclaiming that they obeyed the By-Laws, and asking this Court to issue an injunction permanently that will prevent them from in any way whatsoever interfering with their management of the Publishing House.

There are other By-Laws. There is one By-Law which makes it the duty of the Board of Directors to furnish the building in which the Publishing Society lives and has its being. A magnificent building has been furnished for the Publishing Society belonging to the Church, built by the Church and occupied as the home of the Publishing Society, because under the By-Laws the Publishing Society is a party to the church, and they have had that right and have occupied it all these years because they were acting in obedience to these By-Laws and were recognizing the right of the authorities of the Church to control and supervise them.

I do not think I need to say more in general about the Directors at this time, except as to the question of the body corporate being raised. We think that an examination of the deeds, the powers, the records of the Church, the recognition of these grantees under the deed as the directors of the Church for over twenty years, the fact that no records were kept, except of the Board of Directors of the Church, none kept of the Board of Trustees as such, shows that the Master is entirely wrong when he says in his findings that the Board of Directors as designated by Mrs. Eddy did not become a body corporate, and, not becoming a body corporate, could not increase its numbers, and therefore from 1903 the five men sitting as a Board of Directors were not the parties entitled to hold the property as trustees under the deed. We claim that by becoming a body corporate it had all the powers of a body corporate. It was a body corporate because they were Directors under Church By-Laws, not by reason of Mrs. Eddy's deed, but she deeded to them in contemplation of their becoming such. As a body corporate under the Church By-Laws, with its Board of Directors, the Church under its By-Laws had the right to change its number. The question is not very important from our standpoint, the Master using it in an endeavor to show that the fifth member of the Board did not properly have a right to vote, although his right had been recognized for all those years, and that therefore there was some question about whether Mr. Rowlands' dismissal was by a majority vote of the Board. Our answer to that is that if it was a body corporate the right to vote of Mr. Merritt as the successor of Mr. McLellan, who was the original fifth director, is unquestioned. The Master admits that. If it was not a body cor-

porate, then under the Master's finding it was a board of directors, nevertheless, acting under the By-Laws, and the Board of Directors for 1903 was a body of five and the removal was by the Board of Directors of the Church, and the power of removal under the deed of 1898 as well as under the by-laws is to the Board of Directors of the Church and not to a Board of Trustees under a deed.

I wish to direct your Honors' attention for a few minutes to the question of First Members, which raises a very important question in connection with the exercise of this power. At the reorganization meeting of 1892, the reorganization meeting of the Church, certain persons were designated as First Members. Others were added to the number later on. They were not First Members by reason of the fact that they first joined the Church; they were First Members, we contend, by reason of the fact that they had certain duties to perform as a board. Their number, at the time of this deed of 1898, was given by Mrs. Eddy. You will notice that the power in the deed is given to declare vacancies by the First Members, together with the board of directors of the Church. The First Members in 1898, at the time that that deed was given, were a recognized body of the Church. There were provisions, under the by-laws existing at that time, that the board should not be less than forty: if it fell to less than forty, the number was to be made up to forty; and it should not exceed fifty. It was a board that had the power to elect members of the Church. It also had at that time power to make by-laws of the Church. The board of directors, on the other hand, was another executive board of the Church; it had the power to elect officers; it had the power of the management of the Church property; it had the power in regard to the Christian Science services at The First Church of Christ, Scientist. In other words, when Mrs. Eddy made her trust deed in 1898, there were two boards, that divided between them the governing authority of the Church. There was no power in the members, so far as the by-laws were concerned, of voting or otherwise. The entire authority of the Church was vested at that time in those two boards; and, being vested in those two boards, she gives those two boards, as representing the Church, and to protect its interests as beneficiary, and to protect the cause in which she was interested, the right to remove the trustees.

Now, if the First Members had continued as a board down to 1919, we admit that their action would have been necessary also in order to have removed the trustee under that provision of the deed; but, as a matter of fact, the First Members became extinct as a board. Some of the individuals still exist, but they are like those who have held offices on other boards:

they were formerly members, but the board itself has been wiped out. It was a church board. We contend that a church board owes its authority solely to the church law under which it exists, and that when the law is wiped out the board is wiped out. I think that there is no serious contention on the part of anybody, unless, possibly, it is Mrs. Hulin, that the First Members have absolutely become extinct. How did it happen? Three years after the giving of this trust deed, that is, in 1901, at the suggestion of Mrs. Eddy, they adopted a by-law by which all of the business which they had hitherto done was passed over to the board of directors to be done. In other words, it was made the business of the directors thereafter to transact all the business of the Church. So that, by virtue of the by-law, which has never been questioned, in 1901 all the authority that had hitherto existed in two boards existed in one board, which was the board of directors. To be sure, the First Members were still mentioned in the by-laws, but they had nothing to do. They met semi-annually, and did nothing. Their name was changed in 1903 to Executive Members, showing something as to the nature of their former duties, but nothing as to the nature of any duties left, because they had none.

In 1908 Mrs. Eddy writes that they must be disbanded, and that they had no duties to be performed, and that a by-law should be adopted disbanding them; and in 1908 a by-law was adopted, that has always been acquiesced in, and the Master so finds, that disbanded the First Members.

Now, the Master—

RUGG, C. J. Is that printed in the Manual?

Mr. BATES. Not in the Manual, because it passed out of existence after the work had been done. There is no reference in the Manual, and there has not been for years, to First Members—not since that time. In other words, the disbanding having been accomplished by the passing of the by-law, that by-law in subsequent editions and amendments, was left out altogether, because there was no longer any occasion for it to be there.

Now, as to these First Members, the Master does not specifically say that they were not a board, but he refers to them as a body several times, and he designates them all through his report as Voting Members. We say that that is a misleading term. He admits that it is a term that is nowhere used in the evidence, or in the records, or in the by-laws, and it never has been, but he calls them Voting Members, for his purpose, of the Church. The fact is that, as appears from the records, they kept separate records, they kept records as First Members. The members of the Church did not meet with them in those meetings. They passed on matters there

because the matters were assigned to them under the by-laws to do. The duties were those of a board, and not of Voting Members. At that time, in 1898, the Manual of that date shows that there were seventy-five hundred members of The First Church of Christ, Scientist, in Boston—back in 1898. The board of First Members was limited to fifty, not less than forty. That shows that there was a board, representative, as an executive body, the same as the directors were, the only difference being that the directors were a smaller board. The by-laws then provided that the First Members could vote; that a quorum should be seven; and that a majority of a quorum could do business. So that it got down, practically, to a board of four that was able to transact business for the First Members and for the membership of the Mother Church, which at that time was merely eight thousand people; and yet the Master calls them Voting Members of the Mother Church. The disbanding by-law which is in the record shows that in the direction that they be disbanded the by-law itself speaks of them not as Voting Members—it never did—but as an organization to be disbanded. An organization implies that they were a board, and not merely Voting Members in a general church membership voting in church meetings; and the word "disbanded" itself, which is used, shows that they were a board, and as a board they passed out of existence, so far as their duties were concerned, in 1901, so far as any reference in the Manual or any basis under church law is concerned, in 1908. So that at the time that this power was exercised there were no First Members to exercise it—at the time that the power was exercised, I mean, by the directors in 1919.

Let me just review for a moment, before proceeding to another branch of the case, the matters that were required of the directors by the by-laws, bearing in mind all the time that these trustees claimed to have the greatest respect for the by-laws, and to be bound by them; bearing in mind the fact that Mrs. Eddy said practically that the cause of Christian Science, which they were bound to promote, could not be promoted except by adherence to these by-laws; bearing in mind that they deny any objection to the by-laws and at the same time they come here seeking an injunction which would prevent the directors from interfering with them in any way, shape or manner in the management of their trust. Let me call your attention specifically again to the by-laws which relate to the duty of the directors to supervise and look after the Publishing House. First, there is the duty on the part of the board of directors of electing editors. That would be an interference with the Publishing House. There is the duty of electing the business manager. That is provided for in the by-laws,

and they have always been complied with, the Master says, down to the time of the present dispute. Third, there is the duty of seeing that the periodicals are ably edited and kept abreast of the times,—a duty charged on the directors. There is the duty of fixing the salaries of the trustees. That duty originally was given to the Church in the Deed of Trust. It says that the Church shall fix the salaries. The by-law subsequently passed by Mrs. Eddy's direction said that the directors should fix the salaries. They were one and the same thing, because the directors had all the constituted authority of the Church. The trustees deny that they mean the same thing, and at the same time they have accepted, as the Master finds, from time to time the increases of salary that have been voted to them by the board of directors—never by the membership of the Church, because the Church does not vote, and its membership does not meet for any purpose except annual meetings, to listen to reports, as is prescribed in the by-laws. Their attitude is absolutely inconsistent in accepting salaries that are determined by the directors under a by-law, and not, as they claim, under the construction of the deed.

The directors are charged under the by-laws with seeing that the net proceeds of this trust, as they are turned over to the Church treasurer, shall be used in accordance with and to promote the cause of Christian Science. Therefore they have an interest, a direct interest, in the net proceeds, and that means in the management of the business, of course. Then there is the by-law providing that the directors shall transact all the business of the Mother Church. There is the by-law providing that the directors, as representing the Church, shall furnish the Publishing Society with a suitable building for its purposes,—something which it has always done. There is nothing in the deed about it. There is the by-law that says—and I have referred to it before—that no person shall be connected with the Publishing Society in any way that is not accepted as suitable by the board of directors. And there is a by-law that provides that the directors shall have the power to declare vacancies in the board of trustees, for such reasons as to them may seem expedient. There are no less than eight fundamental propositions in the by-laws of supervision on the part of the board of directors, each one of which these trustees seek to throw off their obligation to.

Now, the trustees refuse to abide by those by-laws. That is all that there is to this litigation. They refuse to abide by them. The directors saw that if they were not to continue the authority of the Church over the publications, there was no protection for the cause of Christian Science, there was no protection for the literature;

it would become adulterated, as Mrs. Eddy had feared it would, if they did not have any power of supervision over the literature that was not only their official organs, but all other literature. The only literature that, under the by-laws, can go into their reading rooms is the literature published by this society, which gives them their great market; and yet, notwithstanding that provision, that they should go into the reading rooms and be the only literature, together with Mrs. Eddy's works, was put into the by-laws, it was put in there because there was this supervision on the part of the Church to protect it: it never would have been put there for a minute had not the trustees acceded to that proposition.

Now, as is shown by the correspondence to which I have referred, the dispute which arose in 1918, in September, was over the authority of the directors to control in any way the trustees. I shall, if time permits, refer to many incidents which had already arisen, showing the friction which had come from such supervision; and yet Mr. Rowlands and his co-trustees said that it was intolerable that the directors should exercise any supervision over them; the word "intolerable" is used in one of those communications; they said that they would not submit to it for a moment, after the contest had become acute.

Then the board, recognizing that the salvation of the Church, the protection of the literature and the cause itself demanded that the by-laws should be carried out and the supervision carried on as provided both by deed and by-laws, removed Mr. Rowlands, because he, among other things, was the chairman of the board that was making for the first time this contention. Brother Thompson suggests that I am mistaken, that he was not chairman at that time, but if you will refer to the exhibits you will see that the record of the meetings of the trustees shows that I am right. It is an important matter in connection with a finding of the Master later on. The exhibit is No. 366, and will be found on page 9 of the exhibits, and it is an extract from the trustees' records, their own record, and it relates to this controversy, and their meeting with the board of directors. On page 10 you will find, at the beginning of the first whole paragraph on page 10; that

"After some further general remarks, Mr. Rowlands, as chairman of the Board of Trustees, stated for the trustees that it was felt that there was a still larger question connected with these recent occurrences than that of the issuance of the pamphlet, namely, that of the responsibilities and obligations demanded of the trustees by the Deed of Trust, and that the trustees felt the action of the Board of Directors in giving the business manager of the publishing house written instructions regarding the pamphlet

directly contrary to those given him by the trustees, or in fact, giving him any instructions whatever, was illustrative of the question to be considered."

Now, if you will read the record of that meeting, you will find that Mr. Rowlands was the moving cause of this entire matter, and that the other trustees, who had been connected with the publishing house much longer than he had in one capacity or another, simply said "Amen" to all that he said: they reiterated his statements. It is important, because the Master thinks as to Mr. Rowlands that there was no reason for removing him, except what pertained to all the other members. There was a reason, as I shall show.

The first question involved in this case is, Did the board have power—I find that my time is getting so limited that I must hurry over these matters much faster than I would like to—did the board have power under clause 10 of the Deed—without any reference now to the by-laws—did it have power to remove Mr. Rowlands? We claim that it did. Our first contention, in brief, is this, that the donees of the power, as expressed in clause 10 of the Deed, were the First Members and the board of directors. The First Members had passed out of existence. They had become extinct. But before passing out of existence the powers which they had exercised in regard to the Church, under the Church Manual, had become the powers of the board of directors under the Church Manual. I think that you are to determine who were the donees of this power, in interpreting this deed, according to the character of the donee, and not according to the name. The character of the donee was the authorized governing board of the Church, that is, the two boards together, the board of First Members, with certain executive duties to perform, and the board of directors, with other executive duties to perform, in 1893, constituted the entire authority of the Church. There were no other boards of any kind that had any vote. They together constituted the entire authority of the Church; and I submit that it is only reasonable to assume that Mrs. Eddy, in constituting them the power to decide as to when a vacancy should be declared, did it to protect the Church, and because they were the parties to protect the Church under the by-laws of the Church; and that when the duties of both boards under a by-law became united in one board, that being one of the boards that she had named, by virtue not of any transfer of power from one board to another, but by virtue of the Church law which consolidated the entire authority of the Church in one board, they became the donee of the power. There is an Illinois case that is cited on our brief that is somewhat similar. It is a case where a woman made a trust com-

pany her executor. Before she died the trust company had been combined with another trust company under the name of the other trust company, yet the court found that her purpose was not to entrust the executorship to the trust company by reason of any personal considerations of its administration, which she knew and must have contemplated would change from time to time, but in the consolidated board she must have contemplated that there would be from time to time changes in the corporation, that it might be consolidated with others, and so forth—that, as the result of such consolidation, she was not to be denied the right to have that board act in place of the original board as the donee of the power which she had given.

It is not the case of a delegation of authority. As I have said, it is the case of a merging under the church By-laws of the powers in one board, which became the constituted authority of the church. It is to be noticed that this By-law had Mrs. Eddy's approval—this combining of the powers of the two boards into one. It had the approval of the donor, under the Master's finding. It also had the approval of all parties at that time who had any interest in the matter.

The case to which I referred, Chicago Title & Trust Co. v. Zinser, 234 Ill. 31, is a recent case. The court pointed out that no element of trust in the judgment and discretion of an individual was in the case, and no reliance on the continuance of the same administration. This case is stronger by reason of the fact that the donor herself was alive and approved the change so far as these two boards were concerned. Immediately after that power—all the power—was vested in the directors, a By-law was passed with Mrs. Eddy's approval which gave to the Directors alone the authority to remove a trustee or declare a vacancy for such reason as may be deemed expedient. Her intention there can be no question about. It will be claimed that this was two boards, one to be a check on the other. That element does not seem to exist here. In the first place, Mrs. Eddy, as I said, in 1901 caused this very change to be made in the By-laws. It was her intent evidently that one board should exercise the power because she caused that By-law to be made. But, in addition to that, that board did continue to exist until 1908. If she had intended to have one board as a check on the other she would have continued the authority in that board, but she did not do so. It shows that her object in making that Deed was to vest the donee's authority in the controlling authority of the church, whatever it might be, and it is to be assumed that she contemplated that that might change from time to time, but whoever had the controlling authority in the church would be the one to exercise the authority. Other-

wise how can you enforce it, or how can you protect the church? You cannot come into court on all questions of doctrine, all questions of suitability of trustees. How could she enforce the 9th paragraph of her Trust Deed, which provided that the Trustees must have certain qualities and do certain things, which could only be determined by an ecclesiastical tribunal? She vested it in the church, to protect the church, the financial beneficiary; and that was the great head and propelling force of the movement which she had inaugurated. This does not require any change in the Deed, it does not require any amendment; it simply requires a construction that would give force to the evident intent of the donor, to give this church, through its governing authority, the authority to control the Board of Trustees and to remove them for such reasons as it deemed expedient, in order that there might be protection for her purposes.

As I have already stated, the Trustees have recognized that it was the controlling authority that she referred to by accepting salaries. In the matter of the increase of salaries, it was provided in the Trust Deed that they should be increased by the church, and they have accepted the vote of the Directors as being that of the church, and they have also accepted it in the disposition of the net proceeds, because the Deed provided that the net proceeds should be disposed of in accordance with the directions of the First Members, under the Manual; and since the First Members turned their powers over to the Directors in 1901, under the By-laws, the Master finds that the Directors have been the ones who have seen to this disposition as provided in the By-laws, that were changed at that time. The Trustees have never questioned it.

The second question to which I call your attention is—although it would not have to be considered if you agree with me on the first, because in that case, so far as the power is concerned, the plaintiffs' bill would be dismissed, assuming the power had been properly exercised—the second question is (if that is not to be held, although we think it ought to be), that the question of the well-known question of the survival of a power where there are two donees of the power comes into play here. The two donees do not have to be natural persons; they may be artificial persons, like corporations or like boards. Here were two boards to whom the power was given in this case. If they are to be considered not as a controlling authority, if we are not to look under the mask and see what in reality they were, if we are to take them by their name, then they are two boards, and those two boards have this authority. One board dies, it becomes extinct. How does it differ from the case of two persons having a power, as executors, for instance? One dies, and

the court holds that the other can exercise the power so long as there is an interest coupled with it. The interest does not have to be legal, under the decisions; it may be equitable.

Here was the interest of the Directors of a big church to protect the church and the beneficiary in the administration of this trust. I have not time to quote any citations which are given on our brief, but the principle is fundamental, and is of course well recognized, that there is a survival of a power where it is coupled with an interest, where there is no special confidence found to have been placed in the personality of the donee. There is no such confidence in this case, because they were boards. One of them was a board of forty or fifty members, likely to die and resign from time to time, almost constantly. It shows that it was because it was a board, and by virtue of the office, that this power was given, and not by reason of any personal considerations for the members who happened to be at that time directors. By virtue of the office! The Master finds that they were not officers because they had not been elected by the church. We contest that. We say that is not a correct ruling of law. He admits that they had always been recognized as the officers of the church, and they can be acquiesced in by a church membership. The election does not have to be by a meeting of over a hundred thousand members, of which First Church of Christ consists here in Boston. The very form of organization of the church would prevent that kind of meeting; its very size would prevent it. But she did entrust it to the governing board, because they were the ones who were in position to protect and to defend the church so far as the administration of this trust was concerned.

I have spoken of the object to be accomplished. I would like to refer to it a little more at length but time will not permit.

I wish now to come to the question, if you decide here that the donee of the power remains the same because the power was given to the church authority, or if you decide that the power survives in the Board of Directors by reason of the extinction of the board of First Members, in either case the authority was then properly exercised by the Directors.

There is a third ground upon which you may decide this case, and that is that the power of removal exercised under the By-laws was adequate and sufficient, because the By-law gives this power to the Directors—of that there is no question—to discharge or to remove for such reasons as they may deem expedient. And under the clause which was written into Mrs. Eddy's Deed of Trust, and which I have said was very significant, the eighth section thereof, "reserving the right to make such changes as I may

think important," by reason of its location in the instrument, referring to the entire direction and supervision of this business, it was adequate enough to permit Mrs. Eddy to give such directions, that would continue after her lifetime, because there was no reason why this should be limited, as she did give to the By-laws of this church.

Now, as consistent with that theory, not only consistent with it but as showing that that was her intent, we have as among the exhibits here the fact that just prior, only three or four days prior to the making of this deed of 1898, Mrs. Eddy made a change, had a change made, in the By-laws of the church, which had prohibited a trusteeship within the church at that time. She had a change made so that a trusteeship should only exist except it was constituted by the pastor Emeritus, Mary Baker Eddy. She had in view this trusteeship which she constituted only two or three days afterward. It was her intention thereby to bring it under the church By-laws, as something coming under the authority of the church. Judge Hanna, who is recognized, the Master finds, as a man who had the confidence of Mrs. Eddy and of all Christian Scientists, and who was one of her closest advisers at that time—his deposition is in these exhibits—he said that Mrs. Eddy told him, at about the time that she made the Deed, that it was her intention through the By-laws to control and direct the workings of this trust.

So we have her express intention, undeniably by any evidence. In addition, we have the fact that in February following the making of this Trust Deed she began to make By-laws, and have them made, affecting this trust, and nobody objected. We have the fact that the trustees at the time assented to the changes, recognized her right to make them, never questioned them. We have the correspondence in the exhibits, of Mr. McKenzie, one of the first trustees, in which he calls her attention, only six months after the trust was made, to the fact that there is a vacancy in the Board of Trustees and that it must be filled by unanimous vote of the First Members; that that is impossible—that unanimous vote of the First Members—under the By-laws. He calls her attention again later to it. He says that they are bound by the Manual, and he begs her to or asks her to exercise her power of appointing a trustee, in order that the requirements of the By-laws may not have to be complied with, which says it shall be a unanimous vote, and which, he says, is practically impossible.

The By-law was changed because it was impossible to work it, but not because it was in conflict with that Deed. The Master refers to the change in that By-law but he does not show how Mr. McKenzie treated it, and that everybody treated it as valid as long

as it existed, and it was only changed because it was unworkable. So we have the construction placed on it at that time. In addition to that we have, as the Master finds, the fact that all the By-laws relating to the Publishing Society have been complied with in practice by the trustees ever since, until this controversy became acute.

So that we submit that the power reserved by Mrs. Eddy was understood by her to give her that right at the time; that it was her intention to make these changes in the By-laws; that the trustees acquiesced in them always; that they secured great advantages as trustees by reason of acquiescing in them. Mrs. Eddy herself would never have permitted the Christian Science Journal, or any of these other periodicals, to have become their property except as they had absolutely acquiesced in these By-laws; and it is too late now for them, after twenty years of that acquiescence, to claim that they are not bound by them.

The matter of the vote is discussed in our brief. I have not time to go into it at length now. I think I have twenty-five minutes left. I wish to take up some findings of the Master's report as being important to refer to, because I know that my brothers will base as much as possible upon two or three findings in this report, as to whether or not the removal was lawful, assuming that the Directors had the power.

I ask your Honors, as I know you will, to look over the brief carefully, which goes at much greater length into these questions of law which I am bringing to your Honors' attention than I have time to do now.

The Master goes into two questions in connection with the question of the power having been lawfully exercised. One is as to whether or not the reasons were sufficient that were given; the other is as to whether or not the action was in good faith.

We claim that he had no right to go into the first question, as to whether or not they were sufficient; that the power is given to them to exercise for such reasons as they deem expedient. Of course that means, and the Master finds, expedient for the welfare of the trust.

We claim that the Master had no right to go into the question of the expediency, or the sufficiency, of the reasons; but this power is broadly given, both in the Deed and in the By-law. "For such reasons as they may deem expedient" makes them the sole judges and arbiters; if it was to be reviewed by the court then it would be for such causes as the court may deem expedient. It was in regard to church matters. It is to be assumed that they would exercise for such reasons as they deem expedient and for the welfare of the trust. That relates to questions of doctrine, the publication of literature; all sorts of ec-

clesiastical questions are involved there. It is to be assumed that the highest authority of the church to which the power was given was intended by Mrs. Eddy to have absolute discretion in this matter. No plainer words could be used to indicate it. The Master himself finds there was no requirement in this matter for a hearing or for a notice, but he says he finds in fact that the reasons given were not sufficient.

Now, I want you to see the reasons that were given, as printed on the top of page 20. I refer to the brief where it is printed, beginning at the bottom of page 19. The resolution of removal was this:

"Whereas, Mr. Lamont Rowlands, who has been acting as a trustee of The Christian Science Publishing Society under said Deed of Trust and under Article 25 of the By-laws of this church, was put into said position for the reason, among other reasons, that he was a member of this church who had subscribed to its By-laws and was regarded as obedient to its By-laws and government; and

"Whereas, Mrs. Eddy has declared that 'The present and future prosperity of the Cause of Christian Science is largely due to the By-laws and government of The First Church of Christ, Scientist, in Boston'—

—omitting some portions of the resolutions, but reading those to which I wish to direct your special attention:

"Whereas, the tenets referred to in the foregoing quotation are 'the important points, or religious tenets, of Christian Science,' and the system of government and form of action referred to in the foregoing quotation is that which is shown by the By-laws of this church; and

"Whereas, it has become evident that Mr. Rowlands does not understand or recognize the importance and necessity of promoting the interests of Christian Science by following the directions given by Mrs. Eddy in our church By-laws."

We think that is perfectly tenable. No man could promote the Cause of Christian Science under Mrs. Eddy's instructions who does not carry out her By-laws.

"Whereas, Mr. Rowlands has shown a disposition to invent or adopt interpretations of our church By-laws that pervert their meaning and annul their effect; and

Whereas, since Mr. Rowlands began to act as a Trustee of The Christian Science Publishing Society, he and the other Trustees thereof have tried to change the relations which had always theretofore existed between The Christian Science Publishing Society and its Board of Trustees on the one hand and The Mother Church and its proper officers on the other hand, and he in particular has tried to convert and enlarge said trusteeship into an office or function

of a new and different character; and

Whereas, Mr. Rowlands and other persons acting with him, including several eminent lawyers wastefully employed, have set up said Deed of Trust against the By-laws and government of The Mother Church, and have threatened this Board with litigation if this Board exercised its right and power to remove any of said Trustees; and

Whereas, it has become evident that Mr. Rowlands has allowed a sense of self-interest to interfere with the interests of Christian Science; that he has become self-assertive, contentious, and disposed to make trouble without regard to consequences; and that he is, for these reasons and the foregoing reasons and other reasons, not suitable for connection with The Christian Science Publishing Society as a Trustee thereof."

Your Honors will recognize those words, "not suitable for connection therewith." Under the By-laws it is said that no man should continue there except he was considered suitable by the Directors.

"Whereas, Mr. Rowlands evidently has other interests which prevent him from giving sufficient time and attention to the business of The Christian Science Publishing Society."

Now I submit that those charges are sufficient. They state that Mr. Rowlands was disobedient to the By-laws of the church, that it was necessary to carry out those By-laws in order to promote the cause of Christian Science, which was the object of their trust. They state that he was working contrary to Mrs. Eddy's instructions; they state that he has put a forced construction upon the Deed of Trust, which is contrary to Mrs. Eddy's instructions; and they state that he has allowed his feeling of self interest to interfere with the interests of Christian Science; that he has other interests which are taking too much of his time.

Now, the Master finds that those are not sufficient, but I want your Honors to see what was really the reason for this as revealed in those exhibits, in the correspondence which passed between the two boards—the gravity of it. The Directors say, in a letter to them in an exhibit on page 18:

"Such a claim, if conceded, might destroy the unity of the Christian Science movement."

We believe it would. On page 19 the Board says it desires an assurance on this point; that is, in regard to the recognition of the right of the Directors to have a supervising and directing power. It is needed for the general welfare, they say.

There had already arisen questions in regard to editorials and publications which the society was publishing. The correspondence, the letter

of the attorneys, will show that there had arisen questions in regard to an article on "Purification." There had arisen questions in regard to one on "Life." There had arisen questions in regard to the recognition by the Publishing Society of churches which the Board of Directors had not recognized—branch churches. There had arisen questions in regard to the right of the Publishing Society to publish cards of practitioners whom the Board of Directors did not recognize as qualified. There had arisen questions in regard to an editorial, and the publishing of it, entitled "A Mad World," which it was alleged would seem to indicate that there was some conflict between the Christian Scientists and law, which was contrary to all of Mrs. Eddy's instructions.

The questions had arisen. I mention them, not as important in themselves, but as showing what the results would be if this Board was independent of the Directors and allowed to go ahead and decide what Christian Science was, and all its literature, without the authority of the church having anything to say over it.

The Directors say, on page 44 of the exhibits, in substance, "Your contention repudiates the Manual and constitutes a grave danger to The Mother Church."

Again they say:

"Your interpretation would take what Mrs. Eddy has described as 'the periodicals which are organs of this church' away from The Mother Church and make them only organs of The Christian Science Publishing Society."

Again: "It would virtually compel The Mother Church to have no periodicals as its organs, or compel it to start other periodicals for that purpose."

Again they say: "You take away the Directors' control over the editorials, the unity of the movement, they say, is at stake, the power of the Church and the purity of its literature."

We submit that those reasons and the great results that were involved were sufficient. It was not merely an academic question. The questions had already arisen. There was nothing for the Directors to do if they discharged their duty under the Church law but to remove a trustee who was thus setting up a change in conduct that had not existed, a change in course of conduct previous to that that had always hitherto existed.

Now, the Master does something which is incomprehensible. He finds that our charge that Mr. Rowlands evidently has other interests which prevent him giving sufficient time and attention to the interests of the Christian Science Publishing Society was not justified. He goes further than that. He says:

"I am unable to regard the charge as one actually believed to be true by the Directors who make it after due

inquiry into the fact, or as one which they would have considered sufficient for his removal had they not desired to remove him for other reasons."

They did desire to remove him for other reasons. The big reason was that he was not promoting the cause of Christian Science, but was injuring it. But that is no reason why all the reasons that the Board of Directors thought led to the same effect should not be stated. When the Master says that the Board of Directors did not believe that charge was true, he prints right in the record evidence that justifies it, and I ask your Honors to consider that because I know that my brothers are going to try to build much on that question as a last hope, that it was not a removal in good faith. He says that charge was not justified. Mr. Rowlands has only been a member of the Board a little over a year. During that time that Board of Trustees, which is a busy board, having charge of an enormous business, had met, the Master says, 407 times, and Mr. Rowlands had been absent 192. Were the meetings for nothing? I cannot in any way explain the mental attitude of a Master who would say that that charge was not justified under those circumstances.

The Master says that he did have large business interests—Mr. Rowlands did; that they did take him away from Boston for long periods at a time. The records show that the trustees refused to meet with the Directors because Mr. Rowlands was away and things of that nature. And yet the Master says that the Directors did not believe the charge was true when they made it. He finds it true, and the evidence he reports shows it was true. Moreover, the evidence shows that he was absent 47 per cent of the meetings of the trustees—47 per cent; 192 out of 407.

The only precedent for the removal of a trustee was when E. P. Bates was removed away back at the beginning of the trust in the first year. He was removed, as the letters show in the exhibits, because he was absent 30 per cent of the meetings of the Trust, when it was a small affair. And yet the Master says with an absence of 47 per cent of the meetings that the Directors in making that as a charge stated something which they did not themselves believe. I think a master who makes such a statement as that on that evidence, who reflects on a board of directors of a church—and this is the only place where he can reflect on them, or does—on such evidence as that, has got a mental attitude towards this case that requires that all his findings should be scanned with the greatest care.

Now, the Master again says that Mr. Rowlands was selected to be removed because he had been the last appointee of the three—that perhaps was a good reason; "because he had no pupils in Christian Science,"—that

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might have been a factor entering into it—"as had his co-trustees, and because he had not so many friends who might be disturbed by his removal as they had." But the Master neglects to tell you that Mr. Rowlands, as revealed by these exhibits, is also the Chairman of the Board and the leader in this opposition, the leader in this changing of course of conduct for twenty years, and that no attempt was made to make a change until he became a member, as is indicated by the records of the trustees themselves. No trouble arose until he came. He himself was chairman,—why should not they select the Chairman? There is no significance to be attached to the removal of one and not of three. Mr. Dittmore wanted the whole three removed. The Board of Directors thought it was wiser, if they could, first to see if they could not adjust it, and they worked for weeks to adjust the controversy. Then they thought if they could not do that, that the next important thing was to see if by the removal of one the other two might not be led to come back to their moorings and to advance the cause as it had been advanced previously.

But, notwithstanding those findings—and, as I say, I can't understand the mental attitude of a judge who would do it on the evidence he reports—notwithstanding that the Master says—and this is a finding of absolute good faith on the part of the directors:

"But that the Directors who adopted the resolution honestly believed themselves to be exercising a power belonging to them, and for sufficient reasons, whether those assigned or not, I find no reason to doubt."

There is an absolute finding of good faith and shows so far as that question is concerned that if the Board of Directors had a right to remove, then in the exercise of their discretion they acted in good faith in making the removal.

I have but a few moments left for the consideration of two very important parts of the case. One is the general equities of the case. You can call it implied contract, or you can call it equitable estoppel. The facts are as the Master finds, that for twenty years this trust has been managed with the supervision of the Board of Directors having the most important powers and duties under the Manual in regard to it; that it had never practically been questioned; that as the result of that a small trust with a little property had occupied Church quarters as a Church Publishing Society under its By-Laws for twenty years; that the Church had grown enormously, its membership was all over the earth. The periodicals that were started from time to time had become very prosperous and productive. The literature itself was being published in large quantities to supply the demand. The Publishing Society had become prosperous because of the obligations laid on mem-

bers to subscribe to the periodicals by the By-Laws. The Trustees had for twenty years accepted all of those provisions. It was too late then for them to say, "We refuse longer to recognize your authority." Their trust would never have grown had they not recognized it.

Mrs. Eddy said in her trust deed, "I reserve the right to take away the Christian Science Journal." She did not exercise it, because all during her lifetime no one ever questioned the authority of the By-Laws that she had made. Rights have intervened. There can be no equity in allowing a trustee to do that which an honorable man would not be allowed to do who was not acting as a trustee, and of course the law is full of cases which provide that no one shall take the advantage of an understanding and then refuse to carry it out. And that is what these people are trying to do. They are equitably estopped from trying to maintain the position which they here attempt to maintain. They are estopped by the wishes of the donor. They are estopped by all the beneficiaries of the trust as represented here by the Board of Directors of the Church, the membership of the Church, and the Attorney General representing the great public. And yet they would have your Honors do something which they themselves, as shown all through their correspondence, say that they must not do. They deny and refute the idea that they are trying to get away from the By-Laws. Yet they have. This whole proceeding is an endeavor to take them out from under them. But in the correspondence which led up to it they did not take any such position. If you can take the time to read that you will see that they complained that it was their duty to in all ways conform to the directions given by Mrs. Eddy in the By-Laws in the management of their Trust.

I am quoting from Pomeroy's Equity Jurisprudence, 4th Edition, Sec. 803:

"It is accurate, therefore, to describe equitable estoppel, in general terms, as such conduct by a party that it would be fraudulent, or a fraud upon the rights of another, for him afterwards to repudiate and set up claims inconsistent with it. This use of the term has long been familiar to courts of equity, which have always treated the word 'fraud' in a very elastic manner. The meaning here given to fraud or fraudulent is virtually synonymous with 'unconscientious' or 'inequitable.'"

We claim that the contentions of the trustees are unconscientious and inequitable.

As to the Dittmore issue the Master finds in this case, where it was not made an issue by the pleadings—and I understand the brief of Mr. Dittmore's counsel does not claim it was made an issue in the pleadings

—the Master attempts to determine Mr. Dittmore's status in this case with no cross bill and as against Mrs. Knott, who has never been summoned into court on any matter of this kind, and who has had no chance to be heard. It was an unfortunate situation. The evidence in the Eustace case had been closed. The Master had been directed to hear the two cases together. The evidence so far as it had been offered in the Eustace case had been considered as applying to the Dittmore case also. But the great issue of the Dittmore case was whether or not the directors had the right, and properly exercised it, of removing Dittmore. The issue in the Eustace case was whether or not the directors had the right, and properly exercised it, of removing Mr. Rowlands. The Master finds the Dittmore case had not been opened. It remains for that issue to be put in. But he says that such an issue is material after this case is decided. None will remain if this case is decided as he wants it decided. He finds that the reasons for removing Mr. Dittmore were not sufficient. I have not time to go into them. The resolution speaks for itself. It shows absolute reason for it. The resolution does, and the Master's finding does, for he finds that Mr. Dittmore was removed, and virtually finds that he had been an habitual and constant dissenter for a long period in all actions of the board.

A church board has got to be harmonious. The reports recognize that lack of harmony in a board may be cause for removal, or a Church board could not long continue to make a church prosperous where such a condition exists, an habitual and constant dissenter from his associates. But the Master, while hinting in this case that there might have been some reasons other than those disclosed, as he did in the other case, and disclosing a mental attitude which I say must be examined carefully, nevertheless says that the controlling motive for Mr. Dittmore's removal was because he had refused to help or assist in any way, but, on the other hand, had opposed the directors in their efforts that they had been making for months to avoid this litigation, to bring the trustees into some kind of an agreement that would not waive any principle at stake, and at the same time avoid this litigation—a most commendable attitude on the part of my clients, a most commendable act. And the man who, sitting on that board, would not seek to save that church from the litigation in which it was plunged, who on the contrary was seeking to avoid any settlement and to prevent any settlement—it was sufficient reason for his removal.

But I think your Honors will further find that it being a dismissal from a church board under a church by-



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law, the Master ought not to go into the reasons. His finding as to the controlling motive in that case shows also that there was absolute good faith. But there is a further ground. We have not had our day in court on that issue. The master himself says that he understood that it had been agreed that he should decide or that he had stated that he was going to decide that as a question, but he admits that he made no suggestion in regard to it until after the evidence was closed, and that several days before the time set for the arguments we brought to his attention the fact that we did not propose to consider that as a question and did not consider that he had decided it. We brought it in order to have a confused situation cleared up. At that time, September 3d, long after the evidence was closed, and several days before the arguments, we told him that we could not consider the propriety of his deciding that issue before the evidence was heard. His only reply was that he thought that we had agreed to it, but anyway he now rules—that is the first time he makes the ruling—he now rules, on September 3, many days after the evidence is closed, that that was an issue in the case.

I see that your Honor is consulting your watch, and I will stop. I will simply say that the Master's report shows that had we had that evidence in regard to the motives and reasons why Mr. Dittmore was removed, and he would not have acted on it, no harm could have been done by giving us the chance to present it. All that we asked was the chance to present it in either case before he foreclosed the situation. He goes ahead and finds issues of fact on matters which he says had not been presented in the case, by reason of the peculiar situation; and we say, in conclusion, that we ask that the decision of this case, based on the general equities, may be such as to give the donor her way in the carrying out of this trust. No one's rights will be prejudiced. Give the Church its way. No one's rights will be prejudiced. The trustees are but the agents for her and the Church. Give the Church its way, and you sustain the course of conduct of the directors, and prevent men from taking an inequitable position. The consequences of taking the other course are apparent. The Master finds substantially that it could not be hoped that this Church could support publications not under its authority. The very welfare of the trust, then, requires that this deed shall be interpreted in the way that we have suggested. Any other interpretation defeats the trust and makes it become but a shadow. The trustees said in one of those letters which you will find in the exhibits that God would not permit them not to be obedient to all the rules of the by-laws. We ask

this court to do something that they are on record as saying that God would not permit them to do. We ask that that which own consciences tell them is wrong may not be sustained by the judgment of this court.

Closing Argument of William G. Thompson, Esq.

In Behalf of John V. Dittmore.

May it please the Court: The time allowed to Mr. Dittmore is such that we shall have to rely upon our brief practically entirely in the cases of Krauthoff and Hulin. It is unfortunate, perhaps, that we do, because if those cases are analyzed it will be found that there is a singular unanimity in the relief prayed for and in the attitude taken by all these parties, Mrs. Hulin, Mr. Krauthoff, and the Attorney-General, towards the Master's report, towards all his rulings of law, though not his findings of fact, and especially against Mr. Dittmore and the Publishing Society trustees. Mr. Krauthoff has brought a bill in which he states that for many months and years he was counsel for Governor Bates' clients; that he attended all the hearings before the Master (this is stated in his bill), and argued the case in court, and that after the Master's final report was filed he withdrew from the case, and he and his wife, and later one other person whom they have joined with them, brought a bill in equity to enjoin the further progress of the suit of Eustace v. Dickey, in which an unfavorable Master's report had been found, and to obtain certain declarations, a large number of declarations, from this court as to the relation between the Publishing Society trustees and the board of trustees under the deed of September 1, 1892, and all the matters covered by the Master's incidental and necessary rulings of law in the case of Eustace v. Dickey. The result, of course, would have been to hold up this case indefinitely, and obtain practically a new trial for the defeated directors in the case of Eustace v. Dickey. It is true that Mr. Krauthoff reaches that result by a very circuitous route. His bill is sixty or seventy pages long, his brief much longer—three or four hundred pages—and his authorities range from Sophocles to the Governor of this Commonwealth, and it is impossible to follow in that line. I will only say in regard to it that he seems to ignore the fact that it is perfectly well settled in this Commonwealth that a member of a public charitable trust—and I understand him to contend and admit that the publishing society trust and the deed of September 1 are trusts, though he avoids the use of the word "charitable"—but nevertheless they are charitable trusts—he shows no reason why they are not—he seems to have entirely overlooked the fact that in this Commonwealth the only official person who has a right to call the attention of

the court to a breach of the terms of a public charitable trust, to remove trustees, to prevent the misapplication of trust funds, etc., is the Attorney-General. Also he seems to be laboring under the impression that there cannot be a public charitable trust unless the trustees are the trustees for the entire population of the globe, civilized and uncivilized. He seems to be unable to realize the fact that there may be public charitable trusts if the beneficiaries are indefinite, and although they may be a very small class of persons, as in the case of Burbank v. Burbank, 152 Mass., 254. Therefore I think, and we contend in our brief, that his bill would be absolutely demurrable if brought by the Attorney-General, but also it is absolutely demurrable because the Attorney-General has not brought it; and I will content myself with making that statement, and by urging your Honors, if you have any further doubt about it, to give such attention to the brief that we have written on that subject as you may think it deserves. I cannot spend all my time in arguing Mr. Krauthoff's cases.

Similarly, Mrs. Hulin is the only person who has brought here a bill of exceptions, not an appeal. That is of some consequence. Her case comes up strictly on a bill of exceptions. She has filed a brief. I think that she has tried to file one as *amicus curiae*—I do not know whether she has actually filed one or not—in aid of Governor Bates' clients as well as in aid of herself. She sues as a member, and she also claims as a First Member, and she seeks to arrest the progress of Eustace v. Dickey, and she seeks to obtain declarations contrary to the Master's incidental rulings of law on all matters in which Mr. Dittmore has obtained rulings in his favor, as well as in favor of the Publishing Society trustees. She also seeks to introduce one other piece of evidence, which the Attorney General also brings forward, which is that before September 1, 1892, when the original deed of trust was executed and delivered by Mrs. Eddy, there was a body of persons in existence called the Christian Science Board of Directors; and it is urged that that fact has, or ought to have, great effect on the construction of the language used by Mrs. Eddy in the deed of September 1, 1892. That fact is, of course, perfectly immaterial on the construction of that deed, but Mrs. Hulin accepts, so far as we are able to see, the Master's other findings of fact, and quarrels greatly with his rulings of law. She overlooks the fact that the record does not show that any ruling of law in her case was ever requested, made or refused. There is no question of law, whatever, that I can see presented in the bill of exceptions in her case. Hers is a bill of exceptions, and not an appeal. It is possible that there is a question whether her right to intervene was

an absolute right to intervene. It is a question whether her bill of exceptions raises that point. It is possible that it does. We have assumed that it does, and have argued that point. But in listening to her counsel I trust that your Honors will have in mind that difficulty, which I have no doubt her counsel will pronounce technical, but which I think is essential to the proper presentation of matters of law in this or any other appellate court,—that she comes here by a bill of exceptions, and that her bill shows no question of law whatever. Now a word in regard to Mr. Dittmore's attitude on the single exception which he has taken in the case of *Eustace v. Dickey*, before I come to discuss the matters in which he is more particularly interested. He has taken one general exception. I do not know whether your Honors will remember it, but Governor Bates read it, and it is an exception to the Master's ruling that there was no supervisory power in the Christian Science Board of Directors over the Publishing Society trustees. In our brief we have stated that in view of the extraordinary way in which Governor Bates' clients, our client's fellow-directors, have brought that question here,—in view of the purpose as found by the Master which they seek to accomplish by obtaining a ruling to that effect, we cannot associate ourselves with them in their motives, in their purposes—and I am speaking of what the Master has found—not anything that I personally attribute to them—but we are content to rely for that exception on any legitimate argument that has been addressed by Governor Bates to your Honors in support of the general supervisory power; only saying that if any board of directors had a supervisory power over the Publishing Society trustees—and we think that one board did—it is the successors of the original board of four trustees under the deed of September 1, 1892, and not the board of five trustees afterward established by the by-laws. What arguments are legitimate among the varied considerations which have been addressed to your Honors this morning by Governor Bates on that topic I do not feel called upon to state at this time, for reasons which I think will become more apparent when I come to discuss the conduct of Governor Bates' clients which led to Mr. Dittmore's being here at all.

Now, a word is necessary, I think, a preliminary word, in regard to the facts of this case. They have been stated with great diffusiveness, but I think that those which are important have not been, perhaps, as clearly stated by Governor Bates as they might have been. There are two deeds here. There is a deed of September 1, 1892—it is admitted to have been signed by Mrs. Eddy—conveying real estate to the four individuals named. It provided that they should

be trustees, and that they should be called the Christian Science Board of Directors. It imposed certain duties upon those four men. The principal duty was to build a church edifice. Your Honors will observe that it gave them no money with which to do it; it only conveyed land: nothing else. They were required, however, to build a church edifice. They were required to build another one if the first one should be found not to be suitable. They were further required to maintain worship in that church edifice, to make rules and regulations for the conduct of worship, to see that the preaching was in accordance with the doctrines of the text book, "Science and Health with Key to the Scriptures," to employ pastors and readers, and generally to conduct a religious association in that building—in whatever building they should erect. They were given no money with which to do it. It was stated that,

"The congregation which shall worship in said church shall be styled 'The First Church of Christ, Scientist'."

And they were obviously the beneficiaries, not merely the members of the Church to be formed later, but anybody who should worship in that church. In the case of *Attorney General v. Clark*, 167 Mass., 201, it was held that ordinarily the beneficiaries of a church trust are not merely the members, but, in accordance with our New England customs, anybody who may go into the church, and the persons who from time to time may go in are the indefinite class of beneficiaries. That is the first deed.

Now, the second deed was some six years later, in 1898, when Mrs. Eddy executed and delivered another solemn instrument in the form of a trust deed, conveying this time personal property, not real estate,—just the opposite of what she did in the first deed. I may say, before passing to the second deed, that it obviously was the purpose of Mrs. Eddy that the trustees under that deed should be in constant receipt of contributions from the congregation, contributions not only to build the church with, because they could get money nowhere else, but contributions to run the church with, to conduct worship in it, and to employ a pastor and reader. And that is what they did. They took contributions from Christian Scientists, those who afterwards became members in accordance with the rules of membership, and from others, and they built this building, and afterwards another, and they heated it and kept it going, and paid the bills, etc.

Now, the deed of 1898, some six years later, gave money to three men as trustees for another purpose, a separate purpose, but all in consonance with the general purpose which is apparent here, to maintain the religion of Christian Science, promote

it and encourage it; and that was to publish these publications, to make these publications; and it vested the power of declaring vacancies in that board of trustees, in a body of persons called First Members, and in the Christian Science Board of Directors.

Now, a few weeks after the first deed was executed, on September 1, 1892, on September 23, three weeks later, this church which Mrs. Eddy had anticipated was as a matter of fact organized. These are the findings of the Master, and I am keeping well within the Master's report. Certain statements made by Governor Bates I think went outside of the Master's report when he referred to the great unanimity of feeling on the part of the Christian Science field in this matter. That, I think, justifies me in saying that there is no such unanimity; that there is the same conflict outside of court that there is inside; and that no importance is to be attached to the number of persons who may appear today or tomorrow on one side or the other of this controversy. We are dealing here, I understand, with questions of law, to be decided on legal principles, irrespective of the emotions or feelings, or even the consequences, which may occur on the one side or the other to persons outside of this controversy. I almost feel that it is necessary to apologize for making such a suggestion to this Court, but in view of the feeling displayed both here and elsewhere in regard to this matter I think that it is only proper to mention that fact.

Now, that church was organized by the choice of First Members and the election of a president, a clerk and a treasurer. The First Members were, as a matter of fact, the first people who organized it, but they were also intended to be a permanent body, and they were the only members who ever had any voting power at all in the Church, ever had anything to do with the running of the Church. The ordinary member had no power, and the Master so finds, and it is not disputed. The number of the First Members could not be less than forty, but I do not understand that it was to be limited to fifty. I think that it might be an indefinite number above forty. Those First Members subsequently, in 1901, by voluntary action of their own, at the request of Mrs. Eddy, transferred all their power to transact the Church's business to the directors. In 1903 they were changed to Executive Members, merely by name. In 1908 these First Members were abolished by vote of the directors. In 1903 the number of directors was increased to five by a by-law.

Now, the Master finds that the intention of Mrs. Eddy, to be derived from the four corners of the deed of 1898, as well as from all the surrounding circumstances, many of which are not reported, and some of which are,

but the finding, I think, is conclusive on your Honors on that question of fact, was that the board of directors who were to exercise jointly with the First Members the power of removal of the Publishing Society trustees, were the board of four trustees under the deed of September 1, 1892, and not those four men plus one other man, who had been made the board of five disciplinary officials by the vote of 1903. He finds that there has been an ambiguity, an ambiguity has arisen in the use of the term "Christian Science Board of Directors," from the fact that originally they designated four people with specific duties under an executed deed of trust; that little by little those four people had other duties added to them, of a disciplinary character, by the by-laws of the Church, concerning the expulsion of members, the regulation of matters outside, that were not mentioned in the deed, a great variety of matters concerning church discipline—those four people had other duties gradually added to them by the First Members, who were the Voting Members, and the only Voting Members, of the Church as Mrs. Eddy founded it; and by and by those same by-laws added another person to the four members, under the impression—Mrs. Eddy and all others shared in the impression—that the original four were a corporation, by virtue of their similarity to deacons and church wardens, a fact which the Master finds did not exist, and finds it as a matter of common knowledge, on which your Honors might so find, but nevertheless it was supposed to exist by Mrs. Eddy; so that we have here a succession of acts done in consequence of the prior act, we have a number of acquiescences based upon mistaken impressions as to the legal consequences of acts previously done. One mistaken impression was that those four men were similar to deacons and church wardens, and therefore became a corporation. That led to the second mistaken impression, that the number could be increased to five, and they would still remain the same corporation. Another, a third, mistake, was that Mrs. Eddy could add to their duties, duties not contained at all in the deed, and in the performance of those duties they would still be trustees under the deed of 1892, which they were not. The Master finds that they were a self-perpetuating body, having no responsibility to anybody after 1901, having a sole right to elect all church officers,—president, treasurer, readers, and so forth,—the entire autocratic authority in that church, having their tenure of office during good behavior,—perpetual tenure of office,—having their method of succession precisely defined in the deed itself, not left to any by-law. And whenever any vacancy occurs, the deed of September 1, 1892, says that it shall be filled by the remaining members—not by the voting members, not by the First Members, but by the remaining three. In all

those respects they are totally different from deacons and church wardens, who are the servants and not the masters of their respective congregations, whose functions are empty, who have not the right to employ pastors and directors as they see fit—for the wardens and vestrymen in the Episcopal church, and the deacons in the Congregational church, are not a self-perpetuating body, but are elected persons; and that is a vital distinction.

The Master finds for all those reasons, and others which I do not now enumerate, that there is a radical distinction between the members of a self-perpetuating Board of Trustees and the deacons of a Congregational church or the wardens of an Episcopal church, and for that reason he finds that they never became a corporation at all.

One further fact. The Master finds that a controversy arose in the year 1918, I think, between the Publishing Society Trustees, who were publishing these periodicals that Mrs. Eddy had founded, who were publishing the Lesson Sermons which are read in the churches, and other documents deemed of help to Christian Scientists—a controversy arose between them and the Directors of the Church, meaning the five Directors, as to the character of the literature they were publishing, as to some questions of breaches of trust, in the legal sense of the term, and as to the general right claimed by the Directors of supervision over the Publishing Society Trustees; that is to say, determining what literature was heretical and what was not, determining questions of doctrine, and, in general, guiding and supervising their conduct. In other words, the subordination of one trust to the other.

The Master finds further that Mr. Dittmore sincerely believed and maintained—and he finds with very great vigor—in his absolute sincerity in all of it, which cannot be doubted and has never been questioned. He finds that Mr. Dittmore desired to exercise this claimed power of supervision over these trustees, not for the purpose of obtaining dominance, power, arrogating to himself superiority, but for the purpose of curing a certain specific breach of trust which he claimed had been committed in the technical or legal sense of the term.

He finds further that Mr. Dittmore, with that in mind, desired to remove all three of the Trustees, and bring a bill in court, and resort to the court, to test it. He finds that the attitude of his co-directors was quite different on that subject. They ignored the specific matters of breach of trust, which alone justified the assertion of the power, unless it should be said that the power can legitimately be sought merely for its own sake, which is the very essence and spirit of autocracy. They abandoned any claim of specific breaches of trust, demanded statements of inferiority to be signed, for

the purpose of getting those statements, and concocted the plan of removing Mr. Rowlands, who was the least objectionable, and not the most, from the standpoint of the other Directors, as Governor Bates has contended—and I resist that contention—removing him, in the hope that his two remaining associates would decline to fill his place and that would give them an excuse for removing the other two Trustees.

The Master finds that that plan had been in preparation for a long time, and that it had been a plot formed by these associates of Mr. Dittmore for the purpose of coercing these Trustees and getting an excuse for declaring a vacancy in the office of Mr. Eustace and Mr. Ogden, and he finds that Mr. Dittmore declined to become a party to that scheme.

He finds that his sincerity was not doubted, and the necessary inference is that he declined to become a party to it because he had not lost, in becoming a Christian Scientist, his sense of common honesty as a man. That is what he finds; and that is what stings Governor Bates' clients when he talks about the religion of Christian Science, and about the action of these clients of his in upholding this religion. He is aware of the fact that a competent Master, of long legal experience in this Commonwealth has found his clients guilty of conduct which no honorable man would tolerate. That is the trouble with his case.

Mr. Dittmore therefore declined. They selected Rowlands, the Master finds, because he had few friends, and because they thought it would either terrorize his associates, or they would refuse to fill his place, in which case they would eject them. In other words, they discriminated against Rowlands.

He finds one other fact; that when they charge Rowlands with neglect of duty they did not believe it at the time they said it. He finds that Mr. Rowlands was a man of large business experience. They valued greatly getting him on the Board. It was well known when they got him that he could not attend all these meetings because of his great business interests and business capacity, and that this talk about his not having attended these meetings was an afterthought, an excuse, made in bad faith.

Mr. Dittmore would not tolerate that; and because Mr. Dittmore would not tolerate the action of these people in discriminating against one of these men on false grounds, in forming a plot against him, in abandoning the only proper grounds for asserting the power which Mr. Dittmore still thinks ought to exist—on the same day, and within five minutes of the time they passed the vote to expel Mr. Rowlands in pursuance of this corrupt plan, they passed a vote to expel Mr. Dittmore from their own Board, and the Master finds that that

vote had been in contemplation for months; that it had never been communicated to Mr. Dittmore; that it was an absolute surprise to him; that it had been prepared by counsel for these four men; and that it was sprung upon him, and his resignation was demanded, at the price of not passing that vote, and he declined to resign and was then expelled from that Board. That is what the Master finds in regard to Mr. Dittmore.

The Master does his best to soften it for Governor Bates, and it is exceedingly ungrateful, to put it mildly, for Governor Bates to be here criticizing Judge Dodge for finding bad faith against his clients, when Judge Dodge has added to those findings of specific facts, which are black and cannot be gotten rid of, a few consolatory phrases which makes Governor Bates say he did not mean to find bad faith at all.

That is what he has found, if your Honors please. Those are the facts in this case. That is why we are here.

Now, Mr. Whipple brought a suit, or these Trustees did, joining Mrs. Knott, who was elected within five minutes after the expulsion of Mr. Dittmore took place.

It is now of importance to notice what the pleadings are in this case. There were six defendants. Four of them, Dickey, Neal, Merritt and Rathvon, were joined as defendants by Mr. Whipple's clients; two more, Mrs. Knott and Mr. Dittmore, were joined as persons each claiming to be a director, with an averment of his ignorance as to which in fact and in law was a director.

An answer was filed. I may say, the purpose of the bill was obvious, to stay further proceedings, to have the removal of Mr. Rowlands declared void, to have him restored, and future attempts of the same kind prevented. Your Honors can easily imagine what the nature of that bill was without my going into details. It is wholly unnecessary. There is much unnecessary language in it, there is much unnecessary language in all the pleadings in this case, but at bottom the situation is a very simple one.

Now, Governor Bates' clients filed the first answer. They did not answer Mr. Whipple's allegation that he did not know which was the Director; they did not say, "You do know," which would have been strictly the technical issue to have taken with him. They said, "Mrs. Knott is a director, Mr. Dittmore is not a director, on March 17, 1919, the date when this vote was passed." They go into some elaboration of detail in their answer, stating why the removal of Mr. Dittmore and the election of Mrs. Knott in his place was legally valid.

Three days later Mr. Dittmore filed an answer in the case. He does not deny that Mr. Whipple is ignorant, or his clients, as to which was a Di-

rector, which would have been the only technical strict general denial, but he says that he was illegally removed, and he puts into his answer that statement with a degree of elaboration entirely suitable to a bill in equity, and, in fact, corresponding to the bill which four weeks later he did in fact bring against his fellow Directors for reinstatement.

In other words, he set up in his answer to Mr. Whipple's clients all the ground on which he relied to show the invalidity of the action of March 17 dismissing him. In other words, he took issue directly with Mr. Whipple's averments in his bill.

Such is the situation in the pleadings. Now, it becomes of importance to consider what had taken place before, and what did take place on August 2, 1919. That case had then been on trial some twenty-seven days. Mr. Dittmore's bill—and I have a right to refer to it because the Master summarizes it in his report, as I have summarized it—states that it was a bill to obtain reinstatement and to declare the invalidity of the vote of March 17 discharging Mr. Dittmore.

So that you have before you all that it is necessary for you to know about the pleadings in Dittmore vs. Dickey for the purposes of this case, although the case itself has not yet been brought here—not yet finished—for reasons which I shall state in a moment.

The Master finds that it took twenty-seven days to try it; that it was tried on certain agreements. The case of Dittmore v. Dickey was referred to him by the same judge, to be tried with the case of Eustace v. Dickey; there was no authority for the case of Eustace v. Dickey to be tried with Dittmore v. Dickey, but only the reverse. There was an agreement that all the evidence introduced in one case should be admitted, so far as material evidence in the other case. There was an agreement that Mr. Whipple open the case, put in his evidence, which he did; that Governor Bates should then put in his defense, which he did; that any rebuttal which Mr. Whipple desired to be put in should then be put in, all of which was carried out. It was further agreed that Mr. Dittmore should have the right to cross-examine the witnesses as he saw fit concerning the issues in his case, and it is stated by the Master that he did so. He did not testify himself, he did not open his own case. He had not on August 2, and he had not called any witnesses in his own behalf. Mr. Dittmore had not, but the Master states that he had cross-examined all of the defendants fully and exhaustively on the subject of his own discharge on March 17, including all the circumstances relating to it and the circumstances leading up to it. He says that at that time, and for some weeks later, there had been no suggestions that all the documen-

tary evidence—and there is none now, as I understand it, from Governor Bates—relating to that discharge, had not been fully introduced by one party or the other, on August 2. A great mass of Mr. Dittmore's correspondence has been introduced on cross-examination of the defendant Directors.

So that on that day the situation was that all of the documents were in the case upon which the validity of Mr. Dittmore's dismissal could possibly depend, including the By-laws and the Deed, and a great variety of collateral papers, which might or might not have some bearing upon the construction of those two essential documents.

Every excuse which the Directors could think of had been given, and the Master finds that they had examined in re-direct on every subject opened in cross, and he finds that the subjects that had been opened in cross covered the entire ground of Mr. Dittmore's dismissal. So that these defendant Directors on August 2 had had every opportunity that could possibly be given to them to explain orally their conduct in passing that vote, and every document that had any bearing on the subject had been introduced. That is what the Master finds.

Now, that is not all. That is just the background of what happened. It might well have been that up to that time, in spite of all that, the Master would not have had the right to decide whether on March 25, the date when Mr. Whipple's bill was filed, Mr. Dittmore was or was not a Director, which is all he attempts to decide here; not whether on April 29, four weeks later, when Mr. Dittmore's bill was filed, he was a Director, but whether or not when Mr. Whipple's bill was filed, on March 25, Mr. Dittmore was a Director. That is all he undertakes to decide, and that of course depends on whether he had been illegally discharged on March 17.

He says on that day, on August 2, the plaintiffs requested him to decide the case of Eustace v. Dickey without waiting to hear any remaining evidence that might be offered in the case of Dittmore v. Dickey concerning Dittmore's conduct between the date of March 25, when Mr. Whipple's bill was filed, and the date of April 29, when Mr. Dittmore's bill was filed. I was a little surprised to hear the Governor suggest this morning that there was no issue there. It had always been supposed that there was a question of whether or not, after Mr. Whipple's bill was filed, Mr. Dittmore had not waived his rights by something occurring before Mr. Justice Braley—the reading of a letter; but I understand now that there was no issue in the Governor's mind that remained to be tried; that nothing happened, in other words, after

March 25, 1919, which could possibly affect Mr. Dittmore's right to hold the office of Director under the Deed of September 1, 1892, or of Director under the By-laws, possessing certain disciplinary functions not mentioned in that Deed at all.

I may say here that the Master finds that Mr. Dittmore was a legitimate successor of one of the original grantees of the Deed of 1892, and that Mr. Merritt, one of the other Directors, was not, but was a legitimate successor only of the fifth Director, added in 1903. Therefore the four Directors under the Deed on March 17, 1919, the date of the vote, were Mr. Dickey, Mr. Neal, Mr. Rathvon and Mr. Dittmore, Mr. Merritt being there only by virtue of his election under the By-laws, and not by succession in the manner prescribed by the Deed of September 1, 1892.

The Master says that, that being the situation on August 2, Mr. Whipple asked him if he could not decide the case of Eustace v. Dickey without waiting to finish any further evidence that might be offered in Dittmore v. Dickey; and he further finds that Governor Bates and his clients seconded the request—and I cannot put that too strongly—joined with Mr. Whipple in urging the Master—urging the Master—to decide the Eustace case without its being delayed, if he could find a way to do it. Delayed by what? By the case of Dittmore v. Dickey, which had not yet been opened, in which my client had not even opened his mouth to defend himself or to make out a case. Who was likely to be the sufferer, if your Honors please, by that plan, if carried out? Mr. Whipple's client? No; because the record shows that Mr. Whipple's clients had taken no position one way or the other throughout that entire case in regard to Mrs. Knott or Mr. Dittmore. They had neither affirmed that Dittmore was a Director, nor denied it, and the same way with Mrs. Knott. They had assumed the attitude of persons who brought a bill of interpleader, and left to be tried out between Mr. Dittmore and Mrs. Knott the question as to which properly held the office.

The Master finds that on that day, August 2, Mr. Whipple stated, on behalf of his clients, that he only sought relief against Dittmore and Knott in a representative capacity, and only intended to hold that one of them which the Master might find was a Director. That was said at the time this request was made to expedite the case and close it up—joined in by Governor Bates, before the case of Dittmore v. Dickey had been finished; and Dittmore sat by in silence while these people were both trying to hurry him on and force him into a decision of his case without his ever having opened his mouth.

Does it seem as if Dittmore was the man who had taken any advantage, or

who was likely to be put at a disadvantage by that arrangement?

The Master further finds that, having these men join with them, he said then "I cannot do it without deciding the Dittmore issue—whether Mr. Dittmore was a Director on March 25, when Mr. Whipple's bill was filed, or not; I cannot do it." That issue—and he does not say this, but it is apparent from common sense and from the terms of his report—that was an issue in both those cases before him; he thought it ought to be decided on the same evidence and in the same way. It is unnecessary for me to labor the proposition of the absurdity of this Master first deciding that Mr. Dittmore was not properly removed on the evidence in Eustace v. Dickey, as it existed on August 2, and then going ahead and hearing some more evidence and deciding that he was. And when this Master said, "I cannot do it without deciding the Dittmore issue," it is obvious what he meant. "If you assent to my deciding this issue of Mr. Dittmore between him and his co-Directors, made such by the pleadings in this case, made such by the answers of the respective defendants in this case, I will accede to your request, provided Mr. Dittmore is willing; otherwise not." And he finds that all the parties were understood by him on that day to have assented to his suggestion in that sense—on August 2.

Mr. Dittmore did assent to it, if your Honors please. He was asked to take a chance, and he took the chance. He had no such motive as Mr. Whipple had for accelerating the progress of this case, namely, the destruction of the business that was going on, the necessity for determining quickly who should be editors, and so on, the constant conflicts and friction between these two Boards. He had no such motive as Governor Bates had, similar to Mr. Whipple's, to get the friction stopped and something settled which would determine the rights where \$300,000 a year was at stake, coming in as profits of this Publishing Society. He had only the question before him as to whether he had been illegally discharged on March 17.

That is what interested him, but because he recognized as a member of the Church rather than as a litigating party, the validity of the arguments for speed put forward both by Mr. Whipple and Governor Bates, he assented to the proposition, and sacrificed his rights to testify himself, submitted his case on the documents and on the confessions of his opponents and won the case on that basis.

And now they say, if your Honors please, that a gross injustice has been perpetrated, that they have lost the case without having had a chance to hear it, when what they have done was to close the mouth of their opponent, to make every statement that occurred to them in their own defense

without any contradiction from him; to introduce every document, as he now confesses, that bore on that case. And in spite of all that—

Mr. BATES. You are misquoting me.

Mr. THOMPSON. Pardon me, you said if he had decided on documentary evidence alone you would not have objected. I heard you say it.

Mr. BATES. That is not what I said.

Mr. THOMPSON. Wait a moment, I am arguing this case now.

Mr. BATES. I don't wish you to say anything that I haven't said.

Mr. THOMPSON. Can I proceed, your Honor?

RUGG, C. J. I understand Mr. Bates says that you have misquoted a part of his argument.

Mr. THOMPSON. Yes, and I contend that I have not, and I will leave it to your Honors to decide whether I have or not. Perhaps he did not appreciate what he was saying when he said that I did. And now he says that he has suffered an injustice, that he has been led into something that he did not realize. Let us see if he has. The Master finds that he has decided that issue on facts either undisputed or confessed by the defendants themselves,—that explicit finding in this report on facts either undisputed or confessed and admitted by Mr. Bates' clients themselves, and that he has eliminated every possibility that his decision has been made on grounds that could not by any possibility be affected by any further evidence that could possibly be introduced in Dittmore v. Dickey. He finds that explicitly and in so many words.

Now that case went on that understanding; no objection made by Governor Bates when that statement was made by the Master on August 2nd: "I cannot do it unless I decide the Dittmore issue with it. I must decide it on the pleadings in this case, or else the case will have to wait an indefinite time, perhaps." Now it stayed that way from August 2nd until August 30th. In the meantime we had been spending our vacation—which the Master finds, although he does not say "vacation"; he says, "in the meantime we prepared our argument." Your Honors I think will have very little difficulty in realizing that preparing an argument in August is spending a vacation. We were preparing our argument on the faith of this ruling, and on August 30th we are suddenly notified, and the Master is, by him, that the other Directors think that the Dittmore issue ought not to be discussed and decided after everybody has gone on on the assumption that it had been agreed to. And then there is a hearing and the Master then says he rules definitely and absolutely that that issue was an issue which he must decide in that case. And then for the first time these other Directors took

an objection and an exception, whatever that may be, before a Master—I don't know what it is, but they took an exception before the Master. I suppose that they took, that means, an extremely emphatic objection to what he did.

Then the case was argued, he finds, on September 8th, as it had been agreed upon on August 2nd—the date had been fixed. And it finds that on that date Governor Bates argued fully the question of the Dittemore issue, although still protesting that he thought that it ought not to be discussed. But what he finds is that not until after the Master's draft report was filed on December 20, 1919, months afterwards, not until February 2, 1920, when the defendants knew that they had lost the case, did they ever ask to reopen it to put in any more of this mysterious, magical evidence which, if they had only thought of it, would have won the case for them. That is the significant thing, if your Honors please. No attempt was made, or no suggestion made that they had any more evidence that they wanted to put in on the Dittemore issue. All they wanted was an exception when they found they had lost or thought they might lose, when it began to dawn on them they wanted an exception, but it was only after they found they had lost that they wanted any chance to put in any more evidence, and then they did not specify what they wanted to put in.

Now they tried it on the Master to get him to reopen that case after they knew what his report was, and he declined, and he made another finding of fact, and this is of vital consequence, if your Honors please. "I find that their claim that they were surprised is not true." Those are the men who are being set up here as religious leaders, persons of moral character, entitled to respect, and talking about maintaining the religion of Christian Science. Those are the men that are setting up such talk as that in the face of conduct found by Judge Dodge in this case which would have discredited an ordinary trader on the street. He finds: "I find as a fact they were not surprised." Now they have the face to come here and contend in that finding that an injustice has been done and ask your Honors to examine the mind and mental processes of a magistrate of the experience and honorable position in this community of Judge Dodge because, having shielded them in every possible way, he was obliged to find that they had acted in bad faith, both in the dismissal of Rowlands and in the dismissal of Dittemore and in their conduct before the Master in seeking to play fast and loose—"heads I win, tails you lose." That is what has happened in this case, if your Honors please. They made an agreement just as definite, just as clear as could possibly be. The Master's finding irresistibly leads to that statement. They tried to get out of it and they

found it was against them. And now they wish your Honors to reverse this ruling and send this case back, and send it back you will have to for the plaintiffs also, delay the whole case so that they may introduce—what? All we have ever heard of that the assiduity of the Attorney General, who has been acting in their behalf for a long time and practically maintaining the same proposition as Mrs. Hulin, who comes at it from another angle—all they have ever been able to discover to meet the Master's findings of fact is that there was a body of persons called the Christian Science Board of Directors, existing at the date of the deed of September 1, 1892, and that if the Master had only known that fact he would have said that when Mrs. Eddy conveyed land to four individuals mentioned by name and provided that when there was a vacancy in their number the remaining members should fill it, determining the method of their succession explicitly, she did not mean what she said—she meant, "I do not convey to these four men as trustees, I convey to them in their present office as Directors of this Church, and they are to fill their vacancies not in accordance with this deed, but in accordance with whatever present or future method may be established in the Church for determining their number and their order of succession."

Now that is the flimsy fact, and the only fact that they seek, any of these parties, to get into this case for the purpose of upsetting the most careful, admirable report that personally I have ever seen presented to any court of justice in this Commonwealth by a Master and by one of the most competent men that ever sat on the bench of the Federal Court in this state.

RUGG, C. J. You may suspend your argument here, if you please, until 2 o'clock.

[Recess.]

#### AFTERNOON SESSION

RUGG, C. J. You may resume your argument, Mr. Thompson, please.

Mr. THOMPSON. If your Honors please: One other fact occurred on August 2d of importance, which the Master finds specially. Mr. Dittemore, he finds, when this colloquy was in progress concerning the speedy disposition of the Eustace case, offered to be treated as a Director for the purposes of this case, conceded that it might be said, "I will agree, if you like, so as to urge matters on and so as not to bind you and Mrs. Knott as against me—I will concede that I may be treated as a Director and that will remove this element."

Now what happened then? Governor Bates' clients declined to agree. If any further facts were needed to fix an agreement on these people and make it perfectly clear that they not only agreed but were eager and wanted at that time to have this question of Mr. Dittemore's status on

March 25th decided, which means substantially, "Was he illegally dismissed March 17th," that fact is enough to do it. He offered to waive the question so that it would not bind them as between him and them at all, and they declined; not Mr. Whipple, but that these Directors declined to agree. That could only mean "we insist," not merely "we will agree," but "we will insist that the question shall be decided as part of this Eustace case whether or not you were illegally discharged on March 17th." I do not think it is possible on the special findings of fact to reach any other conclusion unless one forces the situation to a degree which it is incredible should be done.

I will come later, if I have time, to the cases which show that such an arrangement under such circumstances is entirely consistent with equity practice. There is nothing improper about it. The parties agree in such a situation, and for the reasons given here, and the Master understands it and they understand it, why the agreement has got to be given effect, but there is nothing in equity pleading or practice or procedure to prevent it.

Now, then, that being the Master's attitude, the Master proceeded to decide the Dittemore issue, and he decided it on ten premises and ten conclusions. There isn't any contention here, I apprehend, that his logic, his reasoning from premises to conclusions is as a matter of logic defective. The attack is made upon his premises, not on his conclusions from those premises. Two of the premises are entirely unnecessary and they are the ones which Governor Bates mostly objects to. I will read what they are. He decides that Dittemore was, on March 17, a trustee under the deed of September 1, 1892, in legitimate succession to an original trustee under that instrument. That is one of his findings. And, by the way, Judge Loring, in response to a motion to enlarge the rule, said that although the Master could not pass on the ultimate question of law whether the facts found warranted any particular decree, he not only could but must pass on every question of law incidental and necessary to enable him to pass on facts in their various alternative aspects, so as to give an adequate consideration to the case. That is all he has done and that is all he says he has done.

I might add right here that the motion to enlarge his powers was signed by every counsel and agreed to, giving him full power to pass on the ultimate question, and the only reason it was not carried into effect was that one of the judges of this court declined to receive it, saying that it would alter the practice improperly as it ought not to have been made. It was, as a matter of fact, made, and that disposed of a good deal of this talk if it were

not otherwise disposed of, that the Master exceeded his jurisdiction in making these incidental rulings of law: first, he decided that Dittmore was on March 17 a legitimate successor of one of the trustees under the trust deed of September 1, 1892; second, that he was also elected a director of the Church under the By-Laws. The By-Laws of the Church, your Honors will remember, came into effect two or three years later, after this deed was executed and delivered, and underwent various changes from time to time, finally resulting in the appointment of five directors for the purpose of holding trials on questions of heresy and conduct of members and all that great multitude of affairs that has nothing to do with financial matters, building a church or running it, but has to do with the discipline of the members in their capacity as members. So that he finds that Mr. Dittmore held both the offices, and we contend that the office of Director in this church took its origin from two wholly distinct sources. One was the trustee-director under the deed of September 1, 1892, to perform the duties mentioned in that deed, both expressly and impliedly—the duty to build the building, raise personal contributions of money and keep and regulate them, to run the services, and so on; and then this further set of duties concerning the disciplining of members which were provided by successive editions of the By-Laws. The By-Laws were changed seventy-three different times in the period between 1895, when the first edition was adopted, and the adoption of the 73d Edition shortly before Mrs. Eddy's death. I understand this 89th Edition which is now here is substantially the same as the 73d; the differences between them are not material. But I do think it is important in connection with the Attorney General's case as well as in connection with this case to remember that these By-Laws underwent many and very profound changes, and if you are going to decide what effect a By-Law had, you must know what was the By-Law in force at the particular time in question; then he decided that the resolution was passed on March 17th as stated. There is no dispute about that, but he decides also that Dittmore did not acquiesce in it; that there was no consent on his part; that he was taken by surprise; that he received no notice, no hearing. This plot had been hatching, according to the Master, for months by these people who had been consulting counsel without giving him any intimation or hint, meantime maintaining ostensibly pleasant relations with him, and suddenly he was confronted with this motion and given this quick alternative to resign or get out, and the resolution was passed—a transaction seldom equaled in the annals even of clubs or more or less religious organ-

izations in brutality and secrecy and general meanness.

He then points out as his next premise that there is no provision in the deed of September 1, 1892, for the discharge of a trustee under that deed, and therefore whatever other effect this resolution could have had, it could have had no effect to discharge him as a trustee under that deed—only a court of equity could do that. As a trustee under that deed he was not subject to discharge, because the deed made no provision for his discharge.

Your Honors will see the importance of discriminating between the two boards of directors, the board of four and its legitimate successors chosen in strict accordance with the provision of that deed and the board of those four plus one other chosen for wholly different purposes, under the successive editions of the By-Laws of this church.

He then decides, as he was bound to do, that the resolution was inoperative, had no effect whatever on his position as a trustee under the deed of September 1, 1892.

He then passes to the question of what was the tenure of a By-Law Director, and reaches the conclusion from an analysis of the so-called Manual and the surrounding circumstances that the tenure was during good behavior. Mr. Dittmore was elected in 1909 and had held his office all those years and there never had been any fixed term for the Directors under the By-Law, and the Master rules that his tenure was not one subject to the arbitrary dismissal of his fellow members, but was a tenure during good behavior, so that he could be dismissed only for cause, and only after notice and reasonable opportunity to be heard, in accordance with the principles of natural justice. And then he passes to a consideration of the charges themselves. Assuming that such a discharge could not be made except on fairly definite charges and on notice and reasonable hearing, he takes at first the question of these charges, thirteen I figure them, he figures them ten. The difference is merely combining two clauses in one sentence and making one charge, and I split them up. There were at least ten charges and the Master analyzes them one by one and reaches the conclusion that they were all so vague and indefinite that even if there had been notice and hearing they would have been inadequate for anything but a purely arbitrary dismissal.

He then calls attention and finds the fact that there was no notice or hearing whatever; that the situation was very much aggravated by the plotting which had been going on for months, the secret consultations with counsel and the schemes which had been put up in Mr. Dittmore's ignorance of what was going on.

Then he finds that their principal

motive was to stifle opposition in the board of directors to their purposes in connection with Mr. Whipple's clients, attributing the motive of personal hostility and dislike to Mr. Dittmore. That is a fact that cannot be wiped out of this case, if your Honors please—personal hostility and dislike of Mr. Dittmore—why? For being sincere, for trying to maintain what he believed to be a correct theory of law in the relations of these two boards, and doing it in a manly and decent fashion, and not doing it by making charges against one of these trustees which he knew to be false, because he would not join with these men in their attempts to make an unfair use of the power which he as well as they thought existed—they discharged him, expelled him, and the Master finds that an element of personal hostility and dislike contributed to the action which they then took.

Then taking up one of their objections, which was that Mr. Johnson, Mr. Dittmore's predecessor as a member of the board of trustees, under the deed of September 1, had resigned to the board and not to a court, he says that a resignation of a trustee under that deed did not need to be to a court of justice, to a probate court or a court of equity; that the power to accept a resignation is connected with the power to fill a vacancy, and that there being no question of pecuniary responsibility or accounting here, the same body that would fill the vacancy was authorized to receive the resignation, and that therefore Mr. Dittmore was properly elected a trustee under the deed of September 1, 1892.

Then he finds that Mr. Dittmore's entire sincerity in all his conduct in connection with this controversy was not disputed, and cannot be doubted,—a finding which I apprehend Governor Bates would like to have had made in connection with his clients, but which unfortunately for him was not made in connection with them.

Then he finds that this discharge of Mr. Dittmore could not be justified unless the court is prepared to state that the discharge of one member of a deliberative body, holding a tenure during good behavior, simply for the purpose of stifling his opposition, sincere opposition, to plans of the majority, can be justified; and that is the proposition which Governor Bates asked this court as a court of equity to sustain. When you strip this case of all collateral and irrelevant considerations by which it has been surrounded both by Governor Bates and by the Attorney-General and by Mrs. Hulin, when you strip it right down to its bare bones, that is what these gentlemen come before your Honors and ask your Honors to do,—to say that a member of a board, the highest ecclesiastical body in this Church, holding office indefinitely, having great judicial powers to discipline the members, to expel the members for misconduct, for heresy or what not, and



having power as a body of four over the expenditure of vast sums of money that Mrs. Eddy intended by the by-law, Article I, Section 5 of the by-laws, dealing with these By-Law Directors—"A majority vote or the request of Mrs. Eddy shall dismiss a member"—that is the language—"A majority vote or the request of Mrs. Eddy shall dismiss a member"—that Mrs. Eddy intended that a majority at any time, for the purpose of stifling a sincere difference of opinion between itself and the minority, could, without notice and hearing, without any opportunity to defend and explain, peremptorily eject a dissenting minority, and find it when the minority was dissenting on principles of common honesty and common decency, as in this case. Are your Honors prepared to reach such a conclusion as that?

Then came these motions to reopen the case after the report had been filed, and they were denied by the Master, with the significant finding that they were not surprised, that Governor Bates was not surprised, by the Master's ruling that the Dittemore issue was to be decided in this case as of March 25, 1919, and that it would be unfair to Dittemore and to the plaintiffs, who had made their preparations and changed their position on the faith of the definite agreement, to reopen the case at that stage for the introduction of further evidence, especially when the further evidence was not particularized or mentioned.

Then came a motion made before Mr. Justice Crosby in this court, to the same effect—to compel the Master, after they knew what the decision was to be, to let them put in some vague additional evidence, without specifying what it was. He heard that whole case, he heard the facts, he made a decision on the facts he had before him, the draft of the Master's report, and he denied that motion; and your Honors are asked, sitting here without the knowledge that Mr. Justice Crosby had of the facts and of the evidence produced before him in support of this claim of injustice and surprise—you are asked to reverse the finding of a single justice, into which questions of fact necessarily entered, of which your Honors have no evidence whatever. Of course your Honors cannot do it without reversing the uniform practice not only of this court but of other courts of equity in dealing with the findings of a single judge or of a master.

Now, I assume that Governor Bates understands now, if he did not understand on August 2nd, as I claim he did, that this issue has been decided between himself, his clients, every one of them, all of whom had their day in court, and Mrs. Knott and Mr. Dittemore. It is *res adjudicata* if this finding is upheld. I understand that he does not now take the position that the exceptions which he has taken to that ruling should be overruled, because the Master has not decided any-

thing as between Dittemore and his clients, but only as between Dittemore and the plaintiffs. He does not take that position. The only reason he objects to this is because he knows that what the Master intended to do, and what he has done, is to make a finding as between the parties defendant in a case which will be binding only in the case of *Dittemore v. Dickey*; and it is only on that hypothesis that I find it necessary to argue this case at all. That is what we say the Master did do, and that is what Governor Bates said he had no right to do. Now, if that is what the Master intended to do, I have cited in my brief a number of authorities for the proposition that he violated no rule of equity practice or procedure in doing that in this state of the pleadings and on the agreements made on August 2nd. I will call attention to only one of them, *Corcoran v. Chesapeake Canal Co.*, 94 U. S., 741, a case precisely in point. There Corcoran, who stood in a double capacity of a coupon holder of the bonds of the Chesapeake Canal Company, and a trustee under the mortgage which secured the bonds, brought an action to recover on overdue coupons, and the defense, and the only defense, to that action was that in a previous suit, brought by the State of Virginia against the State of Maryland, Corcoran and his co-trustees, that issue had been decided between the defendants in that case on conflicting answers, although not between the plaintiff and any of the defendants. Exactly what happened here! And the Supreme Court of the United States said that that settled the matter; they said, We do not look at technicalities if in truth and in fact the people have had their day in court, have had their chance to argue and be heard on that question; it does not make any difference whether they had it in their capacity of defendants against other defendants, or in their capacity as defendants sued by plaintiffs.

All this talk about a cross bill is perfectly beside the point in a situation of this character. It would be necessary, in order to refute what the Master did, in order to show that this agreement could not be legally carried out, to show that it violated some fundamental principle of equity practice and procedure; and that cannot be done. I call your Honors' special attention to that case of *Corcoran v. Chesapeake Canal Company*, as well as to other cases, of which there are a considerable number. I do not do it because I think that the matter is doubtful, because it seems on the face of it common sense. The proposition that when parties take an agreement like the agreement which we have here, when the plaintiffs have no issue with either of them, as Governor Bates says on the subject, this court will say that they cannot do what they want to do, that for the purpose of

accelerating the trial of the case in court and gaining the advantage of speed they cannot litigate, when they have spent 27 days in putting in testimony, and two days (as Governor Bates did) in arguing the Dittemore issue, that there is something mysterious and against public policy in such a proceeding, is simply monstrous—it is laughable enough in itself, and there is no necessity for the citation of authorities on it.

Now I continue: That the Master's conclusion that Dittemore was both a deed director and a by-law director is perfectly sound on the evidence and on the facts found by him, on those ten premises, or on seven of them. It is admitted that he had no notice and hearing. In the first place, it is admitted that the deed of September 1, 1892, contained no provision for the discharge of a trustee. That ends that matter, so far as that is concerned. No vote of five people or of four people can eject a man who is trustee under that deed, where there is no right given in the deed to the majority to eject a co-trustee; they have got to come to the court for that. That is all that there is to that. The only question is, could they eject him as a by-law director? That is the only question of any consequence here; and on that question your Honors are familiar with the cases: If you are a member of a body having tenure of office during good behavior, if it is a deliberative body, if it is the highest body of the organization, be it a club, a church, or what not, when you see fit to make thirteen written charges against a man you cannot legally accomplish his ejection from the board by a vote without giving him any chance to meet the charges and to show that they are not true. It violates the most elementary principles of Anglo-Saxon law, and I have quoted in my brief some striking statements from both English judges and American judges, the judges of this court, on that subject.

Now, it is said that there is no provision in that by-law for discharging for cause. It is said that it says, "A majority vote or the request of Mrs. Eddy." Mrs. Eddy could not do it; she had died, she had passed on, and so of course she could not do it; she could not make any request, and did not. So that it reads, "A majority vote shall dismiss a member." But the Master ruled, and quite properly, in view of the cases, especially in view of one English case, that it is to be presumed, in the absence of explicit language to the contrary, that the parties did not intend such an unfair proceeding as that a minority of a deliberative body should be subject to instant arbitrary dismissal at the will and pleasure and whim of a majority; and in the case of *Innes v. Wiley*, 1 Car. & K., 257, a recent English case, which I have discussed, as well as several other cases in this country, that question is considered. That was the case

of a club. The by-laws did not contain any provision for dismissal, except that a certain committee might dismiss a member. It did not say "for cause." The English court read that language into it, saying, We will not assume that they meant to lay the basis for injustice and brutality unless they said so, unless they said explicitly that they meant to dismiss a member without cause. And so the court said that unless they said that it meant so and so, they would say that it meant for cause, for reasonable cause, anything that a reasonable man would suppose disqualified one from being a member of that club; and they said, You shall give your man notice and hearing; and the man, who had been dismissed, was reinstated, and the whole proceeding was declared void. There are numberless other cases to the same effect. In other words, you have got to find, if you seek to maintain arbitrary and autocratic power, which is what these gentlemen want to do in these days of the twentieth century—if you seek to put upon an instrument like this an expression which will give absolutely arbitrary power to men to expel a brother member, you have got to find it, it has to be stated, in clear and plain language. That has been the effect of the rulings of courts of justice in the twentieth century, and in the nineteenth century, too, and it is a ruling that is consistent with the principles of decency and fairness and justice and everything else. Any other ruling would not be consistent with the spirit and the letter of the laws under which we have lived and which we have prospered.

Now, it is said that the directors were a corporation under that deed; that Mrs. Eddy succeeded in making them a corporation; and, if so, their number could be increased, although it is admitted that if they remained trustees, no subsequent change of mind on Mrs. Eddy's part could possibly increase the number of trustees under an executed instrument. I have already discussed that. Her declaration or fiat could not possibly do it. It needed the fact of similarity; it needed the fact of their being officers of a church, and being officers similar to deacons and church wardens. That fact had to exist. Mrs. Eddy could not create that fact except by making them similar, and she did not do it. They are not elected; they are a self-perpetuating body; and their powers are far greater than and different from the powers given to deacons and church wardens. Consequently that effort was ineffective. Neither could the legislature, by assuming a fact to exist that did not exist, create it. There is no power to create facts in this country or in any other country. You cannot create something out of nothing by assuming it or saying that it is true.

It has got to be true. That I say with reference to the two statutes passed in 1913 and 1917, upon which

the Attorney-General somewhat relies. And they were not officers; they were not officers of any church at the time that Mrs. Eddy made this deed; there was no church in existence for them to be officers of. It did not come into complete existence until three weeks later. Therefore the very basis of similarity disappears, because they have got to be officers before the question can arise whether they are similar.

Also there are provisions that are wholly inconsistent for reconveying the property. Chief Justice Shaw, in *Weid v. May*, 9 Cush., 181, made some very striking remarks concerning the methods of organizing churches, away back in the beginning of the last century. He said that people have their choice between two methods. If they want to operate under the ancient statute, which is now Revised Laws, Chapter 37, section 1, which is applicable to officers so similar to deacons and church wardens as to become a corporation for the purpose of holding property, they can organize their church, and elect people, and make them similar, and then those people will be a corporation for the limited purpose of holding property, not for the purpose of expelling other people, but for the limited purpose of holding property; or, if they do not want to do that, and get the flexibility which comes from that, they can make a trust deed, but they cannot do both things. The two things are inconsistent.

A similar suggestion was made in reference to the Jackson deed by the Chief Justice of this court in the case of *Crawford v. Nies*, 220 Mass., 61, where those two methods were contrasted, and it was held that the principles of the doctrine in the *Dartmouth College* case, and the case of *Cary Library v. Bliss* had to be complied with; that neither the donor nor even the legislature has the power to alter any essential feature of the trust; whereas if you see fit to do it, as many people did in the early days, by the method similar to that which is adopted in the case of deacons and church wardens, you get certain advantages, and you also get certain disadvantages; and Chief Justice Shaw in that early case showed clearly the distinction, and pointed it out, and that distinction has remained ever since in our law. There is not any time for me to go into the intricacies of the Massachusetts ecclesiastical questions, even if I cared to do it or had the ability to do it, but those distinctions I think should be constantly kept in mind.

Now, Mrs. Eddy had always supposed that what she had done was to make these people a Corporation. She did not realize the mistake of law into which she had fallen. She realized, as she states in a letter which is an exhibit here, that Mr. Samuel Elder had told her that for some reason the five directors could not take title to

real estate, and so she conveyed it to four, although there were five directors, under the by-laws, and she said to Mr. McLellan, to the fifth director, "I am sorry that you cannot take title to real estate, but Mr. Elder says that it cannot be done." She realized that for some reason that was not possible, but what the reason was she obviously did not understand; and she labored, as have all her followers since, under the mistake of law that she had made these four people a corporation, and that therefore she could increase their number, although not for the purpose of taking title to real estate; and therefore it was one body instead of two.

Now for the first time the facts are all before the court and the situation is cleared up, and in *Chase v. Dickey*, where nobody contested the proposition, nobody argued one way or the other, everybody took it for granted that these by-law directors were a corporation, because of their similarity to deacons and church wardens under the Revised Laws, Chapter 37, Section 1, were a corporation, that question was not decided by this court, it was assumed, it passed sub silentio. The truth will have to be declared on a contested issue. This is the first time that the question assumed in that case has ever been presented as a contested issue in any court. That is the reason, I suppose, why these people kept only one set of records, which is the fact.

Now, the next objection is that the record of the meeting at which he was elected shows that he was elected only a by-law director. They do not show anything of the sort. The Master finds expressly that when Mr. Dittmore was elected a director in 1909 he was elected in both capacities, both under the deed and under the by-laws; and the records show it. The parties were acting under the supposition that it was one board, but the Master finds that the boards always acted together, that the boards were always unanimous until this came up, that everybody was elected by a unanimous vote, and therefore the participation of the fifth man had no effect at all. That is obviously true.

Now, as to the tenure of office, I have said all that I care to, except on the subject of the notice that is required.

There are a great many provisions in this Manual concerning the disciplining of members, and every one of them requires some sort of notice and hearing, and there is one provision in regard to the dismissal of the entire Board of Directors at once, on complaint of any member or Mrs. Eddy herself. It says there shall be a complaint and a finding as to whether the complaint is true or not. It does not say a finding by whom; that is left vague. Of course these provisions are not drawn as the judiciary committee would draw a statute of Massachusetts practice. They are loose in

many respects, but the essential idea is that Mrs. Eddy recognized the necessity for fair dealing, and for notice and hearing, in ten or a dozen different places in that Manual. Now we are forced to the conclusion that when the whole Board was to be dismissed Mrs. Eddy required notice and hearing, but you could dismiss any one in succession without any notice or hearing at all. The whole spirit of the Manual is against any such conception as that.

I have no more to say on the case of *Dittemore v. Dickey*. I believe I have three-quarters of an hour more, if your Honors please, on *Eustace v. Dickey*.

I now pass to a consideration of the case of the Attorney-General. This bill of the Attorney-General was brought on May 26, 1920, against the Trustees of the Publishing Society, the Directors, by which he means, Dickey, Neal, Merritt, Rathvon and Knott. He has assumed that Mrs. Knott has succeeded Mr. Dittemore, I suppose, both under the Deed and under the By-laws—a somewhat startling assumption to make; and also against Mr. Dittemore on the ground of his claiming to be a Director, as he certainly is, and Judge Dodge has found his claim well founded; and also against the First Members, who he alleges still exist and are too numerous to be joined as a body, and therefore are joined by three or four representatives. That is of great importance. The Attorney-General asserts that the First Members are still in physical existence. They are all there, if your Honors please, only waiting to be reconvened if anyone sees fit to reconvene them, but he says they are so numerous that they cannot be joined as a body.

That is of some consequence to realize—that those First Members are in existence today. They have tried as hard as they could to get rid of their functions under the Deed of 1898. They had the sole right under that Deed, without the Directors, to dispose of all the annual profits of the Publishing Society. That was given to them solely. They had the joint right with the Directors to declare vacancies in the trusteeship of the Publishing Society; and in 1895, when the Manual was first adopted, they transferred to the Directors, meaning the four Deed Directors, the power to elect their president, treasurer and clerk. But they retained all their other powers, to discipline members, and to vote on other subjects. In 1901 they passed a vote saying that the business of The Mother Church shall hereafter be conducted by the Board of Directors, meaning these Deed Directors, persons who were not officers of the church at all but had been selected for another purpose by Mrs. Eddy. In 1903 they were abolished—I mean, in 1903 their names were changed to Executive Members,

and in 1908 they cooperated in their own abolition.

They voluntarily had tried as hard as they could to get rid of the trust functions which they shared with the Directors under the Deed of 1898, but the Attorney-General tells us that they still exist and are too numerous to be joined individually in his bill.

Then he incorporates in his bill the pleadings in *Eustace v. Dickey* and the Master's report. It is an extraordinary bill. He says in his bill that he has tried to intervene in *Eustace v. Dickey*, which is true. He did. He tried to intervene and filed a petition, and it was denied, and he so states in his bill, and no appeal was taken from it. Your Honors are entitled to look at the record and see that. Then he says, passing somewhat outside the record, as Governor Bates did this morning, that it was suggested to him by the court that he file another independent proceeding instead of an intervention, and not do it on the relation of Mrs. Hulin, for whom he acted when he tried to intervene in the *Eustace v. Dickey* case, but do it on his own hook, and this is the bill that he has brought on his own hook. He never appealed from the denial of that motion to intervene in *Eustace v. Dickey*, and he is now trying to hold up the case of *Eustace v. Dickey* indefinitely until a large number of declarations, as he calls them—declarations of relationship between these two bodies, and of doctrine and of religion, can be made to your Honors, coupled with an injunction that shall hold up the further progress of *Eustace v. Dickey* until the declarations have been made or it is decided that they should not be made.

He wants your Honors to establish what he calls a dominant trust. He says there is a trust under the Deed of September 1, 1892, and another under the Deed of January 25, 1898, but those are subsidiary. He says there is a great, over-hanging dominant trust, and it is called "The Mother Church;" and his whole bill is built up around the loose unanalyzed assertion that The Mother Church, which means, we admit, the First Church of Christ, Scientist, in Boston, is a public charitable trust. He says if your Honors could only get that conception then you will be able in his bill to settle all these erroneous rulings which the Master has made in *Eustace v. Dickey*, and to settle a great many other questions besides; and if you cannot settle them on the Deeds then you can invoke the cy pres doctrine, and create new boards to exercise the functions which the First Members have abdicated, although they still exist and are made parties to his bill.

Now, we have demurred to that bill, that information. He calls our demurrer prolix, and it is rather prolix and argumentative—too much so, be-

cause it disclosed to him every particular of the objections that we make.

In the first place, we say that his bill is built up upon perfectly sophistical reasoning. There is no third trust. There is no meaning to the expression "The Mother Church constitutes a dominant public charitable trust." What does that mean? It must mean either that The Mother Church is the trustee of some trust or is a beneficiary of some trust. "The Mother Church constitutes a public charitable trust," that is what he says, and it is a dominant trust, and these others are all subsidiary.

Now, what he has done in this bill, as appears by reading the exhibits annexed to it, including the Master's report, by which he is bound—because he doesn't contest a single one of the Master's findings of fact, he does not allege that the Master has made one erroneous finding of fact—but his attack, as also Governor Bates' attack, is on the rulings of law. It is nothing but another attempt to get a relitigation of these issues of law which the Master was obliged to make under Judge Loring's ruling in order to find any facts at all in this case. That is what the bill is attempting to do.

We think it is an attempt to build up this dominant trust by subtracting items and particulars from the trust of September 1, 1892, and that of January 25, 1898, and creating The Mother Church, by which it appears from his brief he means the five By-Law Directors, the Trustees of this new charitable trust, and for his instrument of trust he looks to the Church Manual, but he does not tell us which one of the 73 Manuals he looks to; and for the property of the trust he relies upon a general allegation, in Paragraph 6 of his bill, that millions of dollars have been given—in the passive voice—he does not say by whom or when or for what purpose—that millions of dollars have been given to The Mother Church, to be administered by the church under the Church Manual and in accordance with the terms thereof; and he asks your Honors to find that the five By-Law Directors are the trustees of millions of dollars for charitable purposes, which, you will discover somewhere, if you read this book as to the discipline of the members, in the Church Manual, without telling us which Manual of the 73 that have been issued since 1895 you are to look at, and that that trust is so much superior to the trust of 1892, although it did not come into existence ex hypothesi until three years later, that you ought to control your conception of the Deed of 1892 and the Deed of 1898 so that it will fit into his interpretation of the imaginary dominant trust. In that way they hope to accomplish, in a round-about method, what in a stand-up fight they could not accomplish in *Eustace v. Dickey*, namely, get this Master to rule that a person having made a deed of trust, declared

it and executed it, could not change it afterwards by any change of heart or mind whatever, and that an executed instrument once made cannot be altered just because you wish you had made it in some other way, and that mistakes of law do not make the mistakes right. They are still mistakes. Although you do not understand the legal consequences of your acts the consequences are there just the same.

All those things are what trouble the Attorney-General, because they trouble the Directors, because they trouble Governor Bates' clients. This bill is an attempt, by creating this so-called imaginary dominant trust, and whittling down the other trusts to get the material and blocks to build it out of, to get these rulings of the Master in *Eustace v. Dickey* reversed, to get the case suspended or enjoined and opened up for one further fact—that old fact that they are after so much, that they think will do them so much good, the only fact they can find—and we admit by the demurrer of course that it exists, although we deny as a matter of fact it ever existed—he wants you to reopen that case and give him the right, as he tried to do in *Eustace v. Dickey* when he sought to intervene,—to reopen this case so that the Master or somebody can find that before September 1, 1892, there existed a church with a body of persons called directors, and that that ought to alter the construction of the Deed of September 1, 1892. With that single exception he makes no contest as to any facts found by the Master in the *Eustace v. Dickey*.

Now we say that not only is there no dominant trust, but if there is he shows no ground for intervention or information. What are the grounds for the Attorney-General to bring an information on? Failure of trustees, misconduct of trustees, misapplication of trust funds, failure of purposes, failure of administrative machinery. Not one of those is alleged in regard to this dominant trust. There is something alleged by him in regard to the trust of 1898, which I think is the milk in the cocoanut. He says there the First Members, who are so numerous that he could not make them all parties, have ceased nevertheless to exist as an independent body, although they still exist in this world, and that therefore your Honors must vest the powers which the First Members had to dispose of these net profits of the Publishing Society, and to join with the Directors in discharging trustees—you must vest it in somebody else, and he wants you to vest it in the five By-Law Directors.

Now, he says there anyway is an opportunity for the *cy pres* doctrine to be invoked, and that is enough to sustain my bill. He does not contend that there is any failure of administrative machinery under the Deed of September 1, 1892, or any failure of the purpose of that trust. The trustees are still there, the buildings are there, con-

tributions are coming in, services are being maintained, worship is being maintained, people are being paid, just as required by that deed. There is no failure there. But there is, he says, a failure in two respects under the Deed of 1898: One that there is nobody left to dispose of the net profits, although the Directors have been doing it right along. There is a question now raised as to whether they had a right to do it. Second, there is nobody left to discharge a trustee; Mr. Rowlands may not have been legally discharged; therefore your Honors are to vest the power to discharge a trustee, arbitrarily and without cause—you are to vest it in these men who have cooked up schemes as this Master finds, to do an injustice to their brother religionists, who have been scheming and plotting with lawyers to get people out of one trust or another on false charges. The Attorney-General of Massachusetts comes here and asks you to resolve every doubt about that power so to act in their favor, and if they have not got the power to give it to them, so that they can complete the transaction that they have started, later arrested by injunction, and discharge Mr. Rowlands on false charges, and discharge Mr. Dittemore on equally false charges.

Is it conceivable that such a request as that, when analyzed and brought to the light, can be received favorably by a court of justice, by a court of equity, by a court of Massachusetts?

We maintain that the Attorney-General's information can be maintained on one ground, and on one only, and it is fortunate that it is not here on other grounds, because I think it would never be brought on the only ground on which it ought to have been brought—and that is to remove from office, if there is any dominant trust, which we deny, the people whom they allege are trustees of it—*Dickey, Neal, Merritt, Rathvon* and *Knott*; and if there is no dominant trust, to remove from the trusteeship under the deed of September 1, 1892, *Dickey, Neal* and *Rathvon*, on the ground that on the Master's findings, adopted by the Attorney-General in his information, they have shown themselves totally unfit to be members of any board of trustees, public or private, charitable or the reverse.

But I think that when you come to hear the Attorney-General's argument in this case he will make no request of your Honors to reopen that bill for that purpose, or to permit him to amend it into a bill to remove these trustees. We do not deny the general power of the Attorney-General to administer public charities; of course it exists, irrespective of the statutes, at common law. We make no denial of that. There are, however, limitations of that power, and one limitation is this, declared first in *Old South vs. Crocker*, which has been overruled on all points except one, and declared again in *Attorney-General vs. Clark*, 167 Mass., page 1, I think, and that is

that where there is a person or a corporation having to sue for a fund or the profits of a fund held for a public charity, the Attorney-General has no right to intervene at all.

Now, one of the grounds, in addition to the joint power of removal and disposition of net profits, on which he also seeks to maintain this information, is that Mr. Whipple's clients are retaining in their hands pendente lite many hundreds of thousands of dollars' worth of profits, and ought to be required to pay them over. But the Deed of Trust of 1898 says that the treasurer of the church is the one that shall receive those profits—sue for them and receive them; and the Attorney-General cannot maintain an information to obtain definite, specific funds, when by the terms of the very instrument under which he is acting the funds are to be paid to a definite individual, who he alleges in his bill still exists, namely, the treasurer of the church. So you cannot maintain that bill on the *cy pres* doctrine either to vest the power of disposing of these profits in this Board of five Directors, when you allege that the people who have the right to that power still exist and the only trouble there is they won't exercise it—that is not a failure of an administrative feature in the sense of the law. The failure of administrative machinery means either the death of the person in whom the power is vested, or the abolition by law of the official body, as in *Benjamin Franklin's will case*, *Boston vs. Doyle*, where, your Honors will remember, the selectmen of Boston were given, jointly with the ministers of certain churches the power to dispose of the fund, were abolished by the charter of Boston, and a new body was created, called the Board of Aldermen, members of the City government. That was treated as a failure of an administrative feature, because the official body had been absolutely abolished. But, as the Master says, no one has ever heard of treating the voluntary abdication of people who still exist as a ground for vesting the power that they possess in somebody else. That is not a failure of administrative machinery.

In *Attorney-General vs. Winthrop*, as well as in the recent case of *Elliot vs. Trinity Church*, your Honors took occasion to make some very pointed remarks about the limits of the *cy pres* doctrine. It is not a matter of expediency. You cannot do it because, as in *Attorney-General v. Winthrop*, it was thought more convenient to have another body of men, less expensive. The treasurer there wanted to resign and let Harvard College, I think, take the fund, and they urged how cheap and inexpensive it would be. This court said that that cannot be done, that is not a failure; the mere voluntary abdication of the

function is not a failure of administrative machinery.

In *Elliott vs. Trinity Church* the Chief Justice of this court made similar remarks; not for expediency, not for cheapness, not for honesty or interest, as this bill alleges, not because it is desirable or because you wish it could be done—none of those reasons are sufficient. A failure of the machinery in the sense of the law, not a failure in the sense of the wishings and feelings and emotions of a body of religionists, is necessary.

Now, I have analyzed the paragraphs in the bill which tend to show that there is any such dominant trust. There isn't anything except allegations about that millions of dollars have been given. Mr. Abbot, who wrote the brief, undertakes to say that if you search through the Manual you will find a provision for the publication of Lesson Sermons, or, rather, for their use, and that that alone would be a public charitable trust. Well, possibly it would. But if you look at the Deed of 1898 you will find that that very Deed requires the Publishing Society Trustees, Mr. Whipple's clients, to publish Lesson Sermons; and they have simply ignored that fact—and it is a fact, and have used it as an item to build up this dominant trust. And so with all the other things. The Manual is not an instrument of trust; it cannot be tortured into a declaration of trust. If it could you would have to find which part of the million was given when the first edition came out, and which part when the sixth, seventh, eighth, ninth, and so on, came out. You would have to distribute these moneys, which were in fact given for the purpose of being expended by the four Trustees, under the Deed of September 1, to maintain public worship; you would have to distribute that sum all around. You would have an impossible problem. It is not so; there is all there is to it.

In that way they can get your Honors to hold up the decision in *Eustace v. Dickey* and to reverse Judge Dodge, although you would not do it in the case of *Eustace v. Dickey*. There are one or two other provisions which he takes out of the Manual and says from those he drew the conclusion that this was a charitable purpose. Were they there when the million dollars was given? What part of the million dollars was given when that particular provision was there? When you analyze it you see it wasn't intended as a charitable purpose. Mr. Krauthoff makes much of the contention that the Manual is part of the religion of Christian Science. The Manual is not part of the religion of Christian Science in the sense in which the Attorney-General represented it. It is a book on discipline. The religion of Christian Science is in "Science and Health with Key to the Scriptures." That is

the only test Mrs. Eddy made for fitness for trusteeship under the deed of 1898. She does not say people who believe in the Manual. She says people who believe in and practice Christian Science as taught by me in my book, "Science and Health." All this effort to magnify this book, these disciplinary rules changing 73 different times, one of the provisions a tax of a dollar a year per head, and they tell us seriously that it is part of the religion of Christian Science to pay a tax of a dollar a year. And you will find throughout the administrative and business features in the Manual nine-tenths consists only of such provisions as that. And they have the assurance for purposes in order to beat Mr. Dittmore and perpetuate this fraud that was committed, this gross injustice, to force upon that document a construction which any candid reader can see it was never intended to have. That is the trouble with the Attorney-General's bill. That is one trouble with the Krauthoff bill, the other trouble being that the Attorney-General ought to have brought it so that when it was demurred to he would be the sufferer and not Mr. Krauthoff, because it is demurrable whoever brings it, and doubly demurrable when brought by Mr. Krauthoff.

Then the Attorney-General undertook to urge your Honors to find that this Christian Science Board of Directors was incorporated, and he relies on two statutes, passed after *Chase v. Dickey* was decided. Your Honors remember the reference there, that it was a gift to a church, and it could not have an income of over \$2000 a year. And the Attorney-General came in, and at his suggestion your Honors held that that statute must be enforced. Then he proceeded to discuss the validity of the trust irrespective of the statute, because you said the statute did not affect the advisory power—only the recipient—and you assumed that these people were a corporation. Then after that there was a statute passed which authorized the Mother Church to take that bequest under Mrs. Eddy's will. Meantime six trustees had been appointed by the Court in New Hampshire, and they took it. Nothing was ever done under that statute. The utmost effect that that statute could have would be to say that the question that your Honors raised there about public policy was settled in favor of religion—the religion is not against public policy. Therefore it is a dead letter. It does not undertake to create these men or anybody else a corporation. It simply removes the bar of the \$200,000, and it simply declares by inference that the religion of Christian Science is a public charity.

Then he says another statute was passed in 1917. That is true. There was a statute passed in 1917 for the purpose of accomplishing the same purpose apparently, of removing any doubt as to the public policy, and I

think the first section speaks of The Mother Church as a "body corporate." It does not constitute it a body corporate, but it refers to it as a body corporate, evidently on the same assumption that Mrs. Eddy made, and that everybody else has made, that she succeeded in her deed of 1892 in making those four men similar to deacons and church wardens, and making them officers of the church, so that the legislature and everybody else assumed it was a corporation. Now, even the legislature of Massachusetts, if your Honors please, can make a mistake of law, and here is a conspicuous illustration of where they made one. They assumed that the four self-perpetuating autocrats of the Christian Science Church were officers of the Church and were similar to deacons and Church wardens, elective officers with different powers entirely. That is where they made a mistake. That statute does not create these people a corporation. It refers to them as a corporation.

If the question arose as to Mrs. Eddy's will it might be important to inquire whether the legislature can create a fact by assuming it. But I do not think it is specially significant now. Of course it cannot. There is no such effect to the statute.

Then that statute went on to declare in the second section:

"All deeds, gifts or grants . . . heretofore made"—  
heretofore made"—

"or hereafter made to The First Church of Christ, Scientist, in Boston, Massachusetts; . . . The Mother Church; The Christian Science Board of Directors"—

and so on—"shall be vested" —

I think it says—

Mr. ABBOT. "Shall be deemed."

Mr. THOMPSON. I want to be sure I get this right.

[Examining statute]

"shall be deemed as giving, granting, conveying, devising or bequeathing the property mentioned in such instruments to The First Church of Christ, Scientist, in Boston, Massachusetts, unless the contrary really appears from the instrument, and the titles passing respectively by such instruments shall be and the same hereby are vested in The First Church of Christ, Scientist, in Boston, Massachusetts, subject to any limitations governing any trust expressed in any such instrument."

The provisos underlie the statute. If they do not, the statute is not worth the paper it is written on. You cannot after establishing a public charitable trust—the Legislature cannot vest the title in somebody else. *Library v. Bliss* (151 Mass. 364) still law here. So is the Dartmouth College case, and so are others more recent—*Crawford v. Nies* (220 Mass. 61), where your Honors had occasion to consider the same question; Attor-

ney-General v. Armstrong (231 Mass. 196), if I remember correctly.

That statute was a blundering attempt by somebody who had not yet grasped the fact, or who was afraid it might turn out to be true, that Mrs. Eddy had not succeeded in making those four men a corporation, because the fact did not exist on which alone they could become one, and fixed it up by a statute, which, if it has the effect, is unconstitutional, but which contains so many provisos that it has no effect at all. And so we are brought right back to where we started.

In the beginning the Attorney-General says this Church was unincorporated, and it was a voluntary organization. There is nothing in his bill to show it ever changed its form, and therefore I am now speaking of not the trustees under the deed of 1892. The preliminary organizations all went along and reaped the benefits of this building built by the trustees under the deed of 1892. The bill comes back to where it started from. It comes back to the proposition, to showing, when you analyze it, that this Church is just what it always has been, a voluntary, unincorporated association. That is what the defendants, the directors, have always contended that it was, not a corporation at all, never has been a corporation; that the directors have not been a corporation; that this church is different from any other Church that we know about in having no power over its services, no power over its building, the members have no power at all, the First Members used to, but they long ago gave it up; that they are simply the beneficiaries of the free will and power of four trustees under the deed of September 1, 1892, of a public charitable trust made by deed in 1892, September 1. That is all there is to it, that is all there has ever been to it, and all these elaborate efforts of Mrs. Hulin and others to change that situation are just throwing dust in the eyes of anybody who wants to get at the fact.

It cannot be denied that it would be desirable—it would be desirable, as the Master says, if the Directors had more control over the trustees of the Publishing Society than they did. No doubt. It cannot be denied, as the Master explicitly finds, that Mrs. Eddy changed her mind, changed her intention after she had drawn the deed of 1898. He has explicitly found that. She changed her mind. That cannot be denied. Nor can it be denied that if she had the legal power to change her mind, to change her previous acts, it might be desirable. But nobody has the power to get rid of the consequences of his acts, whether they are legal consequences or moral, they stand and cannot be changed. It is not necessary for the purpose of exalting Mrs. Eddy and showing her proper respect—it is not necessary to argue, as Mr. Krauthoff does in his brief, that she alone of all the citizens of this State had the power

to change the legal consequences of her acts and make something happen which no other person could secure by changing her mind after she had made an executed instrument.

If the Legislature cannot do it, nobody can do it in this state, and it is not of any use to come here and try to represent that because it is desirable, because we wish he could, it has happened. We are dealing with legal principles. This case must be decided just like any other case, irrespective of what people want, irrespective of what they wish they had done. What they did had its legal effect. It has had it ever since, and always will have. They did not understand it. They made mistakes as to the consequences of their acts. Perhaps Mrs. Eddy was ill-advised, and perhaps not. Neither she nor her directors nor anybody else thoroughly understood those consequences. It is that misunderstanding that made the ambiguity in the term "Christian Science Board of Directors," not in the action or intent of Mrs. Eddy, because when she and others used that term they meant the original four directors, afterwards erroneously supposed to have been increased to five. They always meant the same thing. They did not observe that in between those original four directors and the fifth one added in 1903 came the law of Massachusetts. They did not know it. All this litigation is simply the result of discovering now what was not understood during that time.

Now, no acquiescence—and acquiescence is relied on here more than anything else—no acquiescence, as Chief Justice Knowlton said in *Doyle v. Boston*, can ever contradict or alter the non-ambiguous terms of a trust deed. You may acquiesce to the end of time. Everybody may acquiesce. The Attorney-General may come in formally, as he has here in his information, and say, "I hereby agree right in this information that this deed shall be altered." It cannot be done. The beneficiaries of a charitable trust are indefinite. They are people living, unborn people who cannot acquiesce today and may not want to tomorrow, and no acquiescence can alter the unambiguous language of a trust deed. Acquiescence and things of that kind become important when there is an ambiguity, when there is something to be construed. There is nothing to be construed in the deed of September 1, 1892. The methods of succession are definitely determined and cannot be altered, and that is the whole trouble with this litigation. I have a few more minutes?

RUGG, C. J.—Yes.

MR. THOMPSON—I will not attempt to go into further details in the Attorney-General's case. I have only discussed it in the most general and cursory manner. In our brief we have analyzed it in minute detail and I of course assume if there is any doubt in your Honors' minds,

what we have spent so much time and labor on will be given proper attention. So that you will find I think every detail that has not been touched on by me in oral argument is thoroughly discussed there.

I will say this about the Attorney-General's cases. He says that of course an unincorporated association can be a trustee, and that it is ridiculous to say it cannot. And he cites two cases—he cites a half a dozen cases where there were gifts apparently to an unincorporated association, but where it turned out there were two or three definite individuals ready to act and mentioned as specific trustees. Then he cites two more, the American Bible Society case, where it is perfectly plain that there was no trustee mentioned in the will, and the Court sustained the bequest. But he failed to observe that the Court did it by appointing trustees. There are over 100,000 members in this church. The Mother Church in that sense means over 100,000 people,—as Governor Bates says, 125,000. You cannot vest a title to property in a hundred thousand people as trustees. If that were the intention the Court of Equity would have to appoint trustees for the unincorporated body.

There are one or two other points I had in mind here. I think that is all that I had in mind on the Attorney-General, I will just run through this brief and see if there is anything. (Examining these.)

He alleges on page 28 of his brief that the bill avers and the demurrers admit that continued control by the duly constituted authorities of the Church and the Christian Science Board of Directors as now constituted is essential. That is not admitted on any fair construction of the demurrer. It is partly an allegation of law, and he cites some passages which require notice and hearing. He emphasizes the great importance of having the literature published by the Publishing Society, controlled by the Directors. No doubt that is very important indeed. Mr. Dittmore thought so and did his best to get it sustained until he was prevented by the improper conduct of his associates from carrying it out.

Then he says:

"The Manual sufficiently designates the Christian Science Board of Directors as trustees to hold and manage the property described in the bill for the public charitable purposes defined in the Manual." What property? To make a charitable trust you have got to have identifiable property of some definite kind with an identifiable declaration of trust. You have got to be able to point to something, either as in *Attorney-General v. Bedard*, orally, or some definite appropriation of definite property to some charitable purpose at some definite time. You have got to have these three requirements.

You cannot make a public charitable trust out of loose generalities. You cannot make one by saying that millions of dollars had been given, when at the same time that they were given there were half a dozen declarations of trust—not only half a dozen, but seventy-three.

This bill of the Attorney-General's utterly fails to show any dominant trust created at any particular time for any particular purpose. All that is created here is the trust to administer the funds of this Church, the contributions, just as it would administer the real estate, and administer it for the purpose stated in that deed. Little by little additional functions were conferred by the acquiescence of the parties and by the By-Laws of Mrs. Eddy, adopted by the First Members and Directors, upon the four and afterwards upon the five. Some of those functions went beyond what the deed of 1892 provided for. Most of them did not. Most of the disciplinary function did, and some of the business functions did. But the fact that neither Mrs. Eddy nor anybody else realized the necessity of keeping the trust within the terms expressed, not imposing upon people duties which the deed did not impose, does not make it possible to take the excess, if any—you cannot put your finger upon any particular thing—take the excess and turn it into any new charitable trust for any such purpose as the Attorney-General mentions here.

As for the case of Mrs. Hulin, as I pointed out, she has come here on a bill of exceptions. The record does not show any question of law at all, except the bare question whether there was absolutely no discretion to deny that motion. I want to call attention to this. It was heard on affidavits. The affidavits are there. They raise important issues of fact. This cuts under all question of whether she was a necessary party or a proper party, or anything of that kind. Is she acting as the secret agent of these directors? That was raised by the affidavits. Was her newly-discovered evidence in fact newly-discovered? That was raised by the affidavits. Is she simply trying to get a new trial for these directors? That was raised by the affidavits, counter-affidavits.

Now, those questions of fact were decided. It must be assumed on exceptions that they were decided against; consequently even if she had a lien on specific property in the hands of the Court, it is the only time when there is an absolute right to intervene. She would be thrown out because it would be assumed, the bill of exceptions not showing the contrary, that those questions of fact were decided against her and that she was not acting in good faith as an independent party, but merely as the agent of the directors to get a new trial. She has no independent interest. She does not claim any lien

on the property in the control of the Court, which always gives an absolute right of intervention. She was not a necessary party to the suit, could not have been made a party. That is an external controversy between the two Boards of Trustees. It is a controversy which, if it were a private trust, the beneficiaries would not be entitled to be represented in, and that is the difference in a public trust. This is a controversy where the trustee naturally represented the beneficiary, who would not have been entitled to be heard by counsel employed by themselves. It is a contest between two trustees, each representing those beneficiaries, and neither the Attorney-General nor anybody else representing a beneficiary, First Member, or the Commonwealth has any right to intervene.

I thank your Honors for your attention. I do not think I shall require the additional five minutes of my time, and I trust that I have sufficiently covered every point in the case, at least, so that your Honors will see the general outline. And as to other points I think I may safely rely on my brief, and I only regret I have not an opportunity to answer some of the contentions that have been made against me. But for those answers also I must ask your Honors to look to the brief.

RUGG, C. J. Counsel for Mrs. Hulin. Statement of Myles M. Dawson, Esq., Counsel for Mrs. Emilie B. Hulin.

May it please the Court, I rise to make an announcement to the Court which I am rather sorry to make in view of the fact that counsel who has just taken his seat gave his last attention to us, and I can cite a case to your Honors immediately which bore directly upon that point. But I rise to make an announcement to the Court which I know will be welcome, in view of the large amount of argument which will be presented to you, and notwithstanding the fact that it is a late time to make it, that my client, Mrs. Hulin, has decided not to go forward with her bill of exceptions and has requested her counsel to ask permission of the Court to withdraw the same. And in view of the fact that this is an extraordinary request to come at such a stage as this I deem it proper, with the Court's permission, to make a short statement of the reasons which have caused her to do it, and also the reason why it comes at this late hour.

No intimation reached counsel that Mrs. Hulin desired to withdraw her bill of exceptions until late last night, and no final determination to do so was arrived at until noon today, which is the reason why counsel has not brought it to the Court's attention previously. The position which she takes in the matter is that she intervened here for the purpose of causing the Church itself, its membership, to be heard by counsel, and that that has been sufficiently accomplished by causing the Attorney-General to come

into this case, and that the Attorney-General coming into this case gives ample opportunity for the members of the Church to give, wholehearted, their support to him in the argument which he will present to you and in any further proceedings in the case.

RUGG, C. J. The entry may be made, then, I understand, that the exceptions of Mrs. Hulin are waived?

MR. DAWSON. They are waived, and, your Honor, before taking my seat I wish to ask the privilege and permission of the Court to file a brief upon the exceptions to the Master's report, on the reservation of the same, as *amicus curiæ*, and in filing this brief I will ask the Court to disregard point four thereof, because point four was prepared with a view to the exceptions which have now been withdrawn, and it will not have any bearing, in view of the withdrawal of the exceptions.

RUGG, C. J. The Court will take under advisement the question of whether the brief will be received, and if it is received of course it will be considered.

Mr. Hughes?

ARGUMENT OF HON. CHARLES E. HUGHES ON BEHALF OF THE PLAINTIFFS HERBERT W. EUSTACE ET ALI.

May it please the Court, I shall endeavor to present the argument upon the main questions that arise in the case of *Eustace v. Dickey*. So far as the other cases are concerned which are before your Honor and bear upon phases of the controversy, I shall not attempt to discuss them. Other counsel will deal with that after I have finished within the time that your Honors have kindly allowed. Nor in discussing the case of *Eustace v. Dickey* shall I attempt to deal with the question which has been presented by counsel for the defendant *Dittemore*, that is, the particular question as between himself and the other defendant directors.

From the standpoint of the plaintiffs it is not important whether Mr. *Dittemore* is a director or Mrs. *Knott* is a director. The plaintiffs merely desire that whoever is the director should be put under appropriate injunction.

The questions in *Eustace v. Dickey*, the fundamental questions, arise under the deed executed by Mrs. Eddy on January 25, 1898. The pith of the matter is, as your Honors have observed from the course of the arguments, that the defendants *Dickey*, *Rathvon* and *Merritt*, with the acquiescence by telephone of the defendant *Neal*, have undertaken to remove Mr. *Rowlands* as a trustee under this Trust Deed of January 25, 1898. It also appears from the findings of the Master that this action was part of a plan to establish the primacy of the trustees called the *Christian Science Board of Directors* with respect to the conduct and management of the property and affairs committed to the trustees,

known as the Christian Science Publishing Society, under this deed of January 25, 1898. This action of the directors, as I shall hereafter call them, we regard as subversive of the trust created by Mrs. Eddy. This bill has been brought for the purpose of giving effect to Mrs. Eddy's trust. These complainants, the trustees, called the Christian Science Publishing Society, have not only the privilege, but are under the obligation, to carry out the terms of the trust which they have accepted. They are not here to subvert Mrs. Eddy's will, but to maintain it. Mrs. Eddy's will was expressed in a trust deed in accordance with laws of this Commonwealth, and it is the law of the Commonwealth that governs the transactions of the trustees, and which they invoke.

Now, preliminarily, and with respect to the observations made by counsel for the directors as to the great importance of this litigation, I may say that I am reminded of a remark of Mr. Justice Holmes in one of his opinions, that so-called great cases are rarely great with respect to the development of the law. They are called great because of some accident, as he said, of extraordinary and overwhelming interest on the part of a great number of people, which tends to confuse and to disturb the judgment. And as he went on to say, in these so-called great cases, there is a pressure by reason of these interests like the hydraulic pressure, which tends to make that doubtful which otherwise would be entirely clear. It does take a little time to know all the facts upon which the questions of law turn, but we think that the court will soon observe that, after the facts as found by the Master are ascertained, the questions of law are very simple. They are not from our standpoint made difficult either because of the earnestness of counsel or the multitude of people that are interested in their disposition.

The question, as I have said, is as to the construction and effect of this trust deed of Mrs. Eddy of January 25, 1898. We have here no question of ecclesiastical law: we simply have the question as to the construction and effect of an instrument that is found in a very few pages.

With your Honors' permission, I shall refer first to the general purpose of this trust, before I discuss in detail some of the particular provisions which have raised questions in issue. I refer to the printed copy, at page 22 of the record. The general purpose of this trust is important, as it seems to us, because it is not a trust for the mere purpose of making money for the Mother Church. It is true that the net profits of this business were to be paid over to the treasurer of the Mother Church, described in paragraph 4 of the deed as "The First Church of Christ, Scientist, in Boston, Mass." But the purpose of the trust was far wider than any pecuniary

interest in net profits on the part of this church in Boston. That purpose is stated at the beginning of the deed as follows,—

"for the purpose of more effectually promoting and extending the religion of Christian Science as taught by me."

You will find it also referred to in paragraph 3 of the deed, on page 23:

"Said trustees shall energetically and judiciously manage the business of the Publishing Society on a strictly Christian basis, and upon their own responsibility."

And that business of the Publishing Society, which is thus managed, is stated in paragraph 1, as a business—"which has been heretofore conducted by the said Christian Science Publishing Society, in promoting the interests of Christian Science."

The proper appreciation of the general purpose we conceive to be quite important. It is a purpose distinct from the benefit of a particular church, as was the purpose of the broader trust to which this court referred in construing or dealing with Mrs. Eddy's will, in the case of *Chase v. Dickey*. And that we do not mistake the purpose—and, indeed, I refer in what I am about to mention not with any idea that it has any legal significance with respect to a purpose so clearly set forth in the deed itself, but I am prompted to refer to it by reason of some of the remarks that have been made in argument—is clear from the will of Mrs. Eddy, in which she explicitly ratified and confirmed this trust deed, a copy of which you will find on page 65 of the exhibits, which are paged after the rest of the record. This will of Mrs. Eddy, you will observe on page 66, was under date of September 13, 1901, and in the course of the will, as you will find at the bottom of page 65, paragraph 7, she ratifies and confirms

"the following trust agreements and declarations."

I call your attention to the language which she uses in subdivision "(2)" of that paragraph as to the trust deed in question:

"The trust agreement dated January 25, 1898, conveying to Edward P. Bates, James A. Neal, and William P. McKenzie, and their successors, the property conveyed to me by The Christian Science Publishing Society, by bill of sale dated January 21, 1898, the said trust being created for the purpose of more effectually promoting and extending the religion of Christian Science as taught by me."

There you will observe that any thought of a particular church, however relatively important, as the Mother Church, was not uppermost in her mind, but a much broader purpose, that of promoting the religion of Christian Science.

I may also call attention in this connection to the fact that in a codicil of Mrs. Eddy, which appears on pages 66 and 67, which was executed on November 7, 1903, she ratifies and re-

affirms her will, except as it is modified by the codicil, and it was not modified by the codicil with respect to the ratification and confirmation of this trust.

There is also another codicil, which appears on pages 68 and 69, under date of May 14, 1904, in which we find again a ratification of her will, except in the respects modified; and that left the will, left her last word, speaking at the moment of her death, confirming the trust which she had established for the promotion of the religion of Christian Science, by the deed of January 25, 1898.

We have, then, no question, as it seems to us, of the general purpose of this deed. I may say that as we view it it was not a question whether a particular transaction would result, as in the case of an ordinary business corporation, in a greater amount of money to be paid as a part of the net profits to a particular church, if that transaction would in a less degree promote the great cause of Christian Science. These trustees were to promote the cause of Christian Science according to their best judgment and in fidelity to the terms of the deed. After they had done that, and used the property for that purpose, then if they made money the net profits were to be disposed of as provided in the deed.

The business has been very highly successful. It should be successful. It is quite obvious that the control of the business of publishing the literature, as it is termed, of Christian Science, which has been having a widening influence, should be very successful. This controversy has arisen—did arise—at a time when it was most successful, and it sufficiently appears from the findings of the Master that these gentlemen who have been doing their duty in rather difficult circumstances on account of the antagonistic attitude of the directors, have not been guilty of any mismanagement, but, on the contrary, their management has been most successful.

Now, we come more definitely and specifically to the questions of the construction and effect of the deed, so far as the issues here raise them. We premise—and I have not heard it questioned by any one—that this deed created a valid charitable trust. I am not now speaking of some supposed and imaginary and never-created dominant trust in this Mother Church, which the Attorney-General attempts to set forth in his bill: I am speaking of the actual trust created by this deed. We view it as a trust complete in itself, a valid trust. Taking it in that light, we next suggest to the Court that it has never been modified. As it stood when executed it stands now. And the question is, What, when it was executed, did it mean? What is the fair construction of the terms that are drawn into question here? It was not modified, be-



cause as matter of law it could not be. It was by its terms a perpetual and irrevocable trust. If you will observe the photographic copy of the trust deed as it appears in Exhibit 1, you will find that those words on page 1 of Exhibit 1 are underlined, underscored,

"upon the following perpetual and irrevocable trust and confidence."

I may say that Mrs. Eddy knew quite well how to reserve the power to change a trust. She did not make any such reservation, as we shall presently see, in this case, but she and her advisers knew full well how that was done, because in a deed of February 12, 1898, which was less than three weeks after the execution of the trust deed in question, you will observe a very clear reservation. That is found on page 89 of the book of exhibits. That is a deed by Mrs. Eddy of certain property, I believe, on Commonwealth Avenue, and she recites in that deed—this deed itself being in 1905—she recites in that deed the terms of a declaration of trust which was made by her on February 12, 1898, and in reciting the terms of that earlier declaration, you will find that in that declaration—I refer now to the bottom of column 2 of page 89 and the top of column 3—she said this:

"Hereby reserving to myself the right to make such changes from time to time in the terms and conditions of this trust as I may deem prudent for the promotion of the cause of Christian Science and to revoke this trust if the best interests of this cause shall in my opinion demand such action and to constitute new trusts, said changes, new trusts and said revocation to be made in writing signed by me and directed to said Christian Science Board of Directors [the grantees in the deed] and said Board of Directors shall thereupon execute and deliver such legal instruments, if any shall be necessary to fully effectuate such changes or such revocation, as the case may be."

That, as I have said, is taken from this trust of February 12, 1898, and shows how at the very time—substantially at the very time—when the trust deed in question was executed, Mrs. Eddy was fully aware—at least we must assume that she was—certainly her advisors were—of the appropriate manner of reserving a power of revocation and of modification of a deed creating a charitable trust. But in this deed she took pains to state, and underscored the words, that this was perpetual and irrevocable.

It is also to be observed that with all that has been said with respect to the effect of subsequent statements or actions of Mrs. Eddy in relation to the by-laws, Mrs. Eddy never did execute any instrument purporting to change or revoke or modify in any sense whatever the terms of the trust deed of 1898. The argument

with respect to a change or modification is by inference with respect to her acquiescence in or suggestion of certain by-laws of the Church. The point that I make now is that not only was the deed irrevocable according to the law of the Commonwealth, unless there was a power of revocation reserved, but she pronounced it to be irrevocable, and never at any time did she execute any instrument purporting to change it, her last word upon the subject being the expression in her will that it was ratified and confirmed.

Now we come, as I conceive it—and while I shall be brief in the matter, I shall be brief because the points are really short, and there is no occasion, I conceive, to beat out a statement of an elementary principle—we come to this point: I understand it to be the settled law of Massachusetts, as elsewhere, that this deed is not subject to revocation or change by Mrs. Eddy, no matter what she thought or desired subsequently, if that power of revocation was not reserved; and I have just called attention to that provision in the deed itself by which she indicated that it should be irrevocable. Now I come to the consideration of the deed itself, to see what reservations there were in the deed, their proper construction and effect, as bearing upon this question. There are three of these. The first you will find in paragraph 3 of the deed, on page 23:

"Said trustees shall energetically and judiciously manage the business of the Publishing Society on a strictly Christian basis, and upon their own responsibility, and without consulting me about details, subject only to my supervision, if I shall at any time elect to advise or direct them."

When you consider her statement that this was a perpetual and irrevocable trust and confidence, and her failure anywhere in the deed to provide for a general power of modification, you at once observe, it seems to us—you must observe—that this clause,

'subject only to my supervision, if I shall at any time elect to advise or direct them,'

has reference only to the details of management, and reserves to her simply a personal power, that is personal to herself, if she so elects to advise the trustees with respect to the details in connection with the administration of the trust. In other words, that does not amount, as the Master has held, to a reservation of a power to change the conditions of the trust, or the personnel of the trustees, or in any way to modify or revoke the trust. It does reserve the power, personal to herself, if at any time she sees fit to advise with regard to the details in the execution of the trust. I emphasize the words "personal to herself" because there

has never been any question—there is none here—of any failure to comply with any suggestion that Mrs. Eddy made with regard to any transaction, or any detail of business, in the carrying out of this trust. It is not Mrs. Eddy who removed Mr. Rowlands, or who has attempted to make this trust subordinate to the will of the directors. That is the purpose and action of these gentlemen many years after Mrs. Eddy's death. This power, giving it the most sweeping effect that is possible, only relates to what Mrs. Eddy might do, and only relates, as we conceive it to be quite clear, to her from time to time interposition by suggestion or request with respect to some detail of management in no way affecting the structure of the trust or the personnel of the trustees.

Now I will call attention to this: Mrs. Eddy, who knew very well how to reserve a broad power, had this inserted in a paragraph. This does not control the entire scheme of the trust deed; certainly it has no reference at all to paragraph 10, with regard to the removal of trustees and the election of successors. This has reference to the conduct of the business, the doing of the things to which reference is made in paragraph 3. There also is a clause which in the discussion of this particular point should not escape attention, for it is quite at variance with the contention of the directors in this case, and that is, she says, "subject only"—"subject only"—"to my supervision."

Now I take the liberty of emphasizing the words "only" and "my." But they are there, and they are of extreme importance, when we come to consider the broad claims of these Directors. "Subject only to my supervision, if I shall at any time elect to advise or direct them." Who? These trustees, whom I have appointed upon a perpetual and irrevocable trust and confidence, for whose successors I provide hereinafter; for whose removal or election in case of vacancies I provide hereafter, if I shall at any time elect to advise or direct them.

She did not purport to change "them." She did not purport to change her scheme of trust at all, and they were to have the full responsibility, subject, not to the supervision of the Directors, not to the supervision of anybody, except as they were subject to the courts and to their duty. "Subject only to my supervision, if I shall at any time elect to advise or direct them."

The next reservation to which I wish to call attention is in Paragraph 8, which you will find on page 24:

"Said trustees shall have direction and supervision of the publication of said Quarterly, and also of all pamphlets, tracts, and other literature pertaining to said business, using their best judgment as to the means of preparing and issuing the same, so

as to promote the best interests of the Cause, reserving the right to make such changes as I may think important."

Now, before we consider the sweep of that last clause, we may call attention, as did counsel for the Directors, to the photographic copy on page 4 of Exhibit 1, where it will be noted that that clause was interlined in ink. The typewritten copy stopped evidently with the words, "so as to promote the best interests of the Cause." Then were added, in ink, "reserving the right to make such changes as I may think important."

I draw quite a different inference with respect to that interlineation from that drawn by the counsel of the Directors. If this came up, as I understand was assumed, at the time of the execution of the Deed, and Mrs. Eddy had desired to reserve the right to change trustees in a manner different from that provided in Paragraph 10, to alter the scheme of the trust, to preserve a general power of revocation or of modification, why, it would have been a very simple matter to advise her to have words put in the Deed which would accomplish that result. Any lawyer would have at once suggested the appropriate term. But she was intent upon a perpetual and irrevocable trust, as she repeatedly declared, in and out of the Deed; and, that being so, her suggestion was simply this, as we construe it: That in dealing with these Christian Science pamphlets, tracts, and other literature, using their best judgment in preparing and issuing the same, so as to promote the best interests of the cause, if she wanted to make some change in the literature, in the pamphlets, in the tract, that she was to have full opportunity to do it.

There, again, you have this in a paragraph. In Paragraph 8 the clause is to be taken in conjunction with its context. It is to be read, not to destroy what she has said was irrevocable, but to be in harmony with what she has said as to irrevocability; and, taken in connection with the subject matter of the context it seems to us quite clear, as it seems to the Master, that the only question was of her power to make some directed change in the literature, in these publications that were coming out. That was the natural thing.

That, again, you will observe, has no relation to Paragraph 10. In Paragraph 10, which is the paragraph here under discussion specially, you have a reservation which shows what power she wanted to retain with respect to the subject matter of that paragraph, and that is the third reservation to which I desire to allude.

Paragraph 10, which may be read either in the print at page 24, or in the photograph copy at page 5—and if it is just as convenient to your Honors I will read it in the photographic copy, for there is another in-

terlineation there which should be observed. That is on page 5 of Exhibit 1:

"10. Whenever a vacancy shall occur in said trusteeship for any cause, I reserve the right to fill the same by appointment, if I shall so desire, so long as I may live;"

Then the words "on and after my decease" were erased, and in place were the words:

"—but if I do not elect to exercise this right, the remaining trustees shall fill said vacancy. The First Members, together with the Directors of said church shall have the power to declare vacancies in said trusteeship for such reasons as to them may seem expedient."

Now here, again, as in Paragraph 3 and in Paragraph 8, that reservation is a purely personal one; that is, so far as it concerns what Mrs. Eddy saw fit to reserve the power to do. She says, "I reserve the right to fill the same by appointment if I shall so desire so long as I may live." Thus she was making whatever reservation she desired to make with respect to the effect of Article 10, and that reservation was solely and exclusively that during her life, if any vacancies occurred, she could if she desired fill the same by appointment.

That in no way, as we understand it, affected the efficacy of the second clause or sentence of Paragraph 10, with respect to the power to declare vacancies in said trusteeship. The very fact that she had put in this reservation, to fill by appointment during her life, shows very clearly what she did not put in, and that was any reservation which qualified the efficacy, the continued efficacy, of the Trust Deed, so far as the provision for declaring vacancies is concerned. And especially is that important after her decease, when she can no longer exercise the power reserved in the first sentence of Paragraph 10.

Therefore we have, if I may summarize briefly what I have attempted to say, this: A perpetual and irrevocable trust, with no power reserved to revoke it or modify its structure; we have certain reservations within the scheme of that irrevocable trust. There is one in Paragraph 3, with respect to the details of management, if she personally desires to advise the trustees; one in Paragraph 8, with respect to the contents of the literature issued, if she sees fit to make a suggestion with respect thereto; and one in Paragraph 10, with respect to her filling of vacancies by appointment during her life.

Now, it is submitted that there is no escape from the conclusion that after Mrs. Eddy's death, and at the time to which this controversy dates, this was a complete and effective deed, speaking as of the time of its date. It makes no difference what desire to change may have been entertained. There was no power to change. And if Mrs. Eddy did entertain the desire

to change she might have entertained the desire to alter what was changed, and her last word upon the subject, speaking in her will, was that her intent was fully declared in the instrument itself.

There is also the finding of the Master as to her intent with respect to this, in the light of all the circumstances that exist.

Now I have examined, perhaps at too great a length, because it would seem quite obvious from an examination of the Deed what its purport is, these reservations in the Deed itself, and we come now to a consideration of the effect of acquiescence in any unauthorized changes subsequently made, if there were such. It hardly needs argument to the court that trustees of a charitable trust have no power to change the terms of the trust; and when these gentlemen, these present trustees, came into office, they were not only not bound by any statement or suggestion by way of acquiescence in anything which derogated from or altered their duty, but their first duty to the law of the land, to Mrs. Eddy, to their own consciences, was to carry out this trust faithfully and not permit it to be subverted, as was attempted to be done by these Directors.

I shall not review the cases, because they are familiar to your Honors, and I merely suggest the point, deeming that entirely sufficient—that so far as acquiescence is concerned it cannot in any way alter the duty or the right of the trustees under a public charitable trust.

We are, therefore, then brought to the question of the construction of this provision of Paragraph 10 with respect to the First Members, together with the Directors of the church, having the power to declare vacancies in said trusteeship for such reasons as they may deem expedient. There has been something said here, and something was said before the Master, with regard to statements or declarations of Mrs. Eddy prior to the execution of this Trust Deed. The Master did not find any statement or declaration which in any way, from whatever view of the law, could be regarded as affecting the intent which was here expressed in the Trust Deed itself. Of course I need not argue that whatever had been said with regard to the creation of the trusteeship, whatever had been said with regard to the Directors, before the execution of this Deed, could not in any way change the clear and explicit provisions of the Deed itself. The question is, What does the Deed mean? We can of course refer to extrinsic circumstances to ascertain the situation at the time of its execution, to know who First Members were, to know who Directors were, to give the court the light that Mrs. Eddy had at the time she used these words. But when we have exhausted all that information we find there is nothing whatever that could

as matter of law, or did as matter of fact, change or affect the intent which she expressed in the Deed itself.

I shall therefore first refer to the organization, the boards and trustee-ships, that existed at the time this Trust Deed was executed, for the purpose of indicating the basis for the construction which we think should be put upon this clause in Paragraph 10.

In the first place, the reference is to the First Members. There has been a good deal said to the court upon that point and I do not intend to labor the matter. I merely wish to bring forward quickly the salient and controlling facts. This Deed was executed on January 25, 1898. At that time there was a church, known as The First Church of Christ, Scientist, in Boston, and also as The Mother Church. That church was organized on September 23, 1892. Prior to the organization of that church Mrs. Eddy had executed a Trust Deed, and that Trust Deed was of certain land and was executed to four persons who by the Deed itself were styled as the Christian Science Board of Directors—that name being affixed to them not in any capacity, as will be speedily seen by an examination of the Deed itself, other than that which they took through the execution of the Deed and the constitution of them as trustees in accordance with the terms of that Deed.

On September 1, 1892, this Deed was executed, before there was any church organization. Now I am aware that it is suggested here in the bill of the Attorney-General that in August, a few weeks previous, there had been some suggestion of the organization of the

church which afterwards came into existence, and some meeting for that purpose. When I say there had been no organization of the church, I mean of that voluntary association which came to be known as The Church, and which is The Church with respect to this Trust Deed of September 1, 1892, and the Trust Deed of January 25, 1898. There had been a former corporation but that form of organization was dispensed with, and Mrs. Eddy at this time was obviously looking forward to a voluntary association.

She made this Deed on September 1, 1892; and the organization of the church which we know now as The First Church of Christ, Scientist, in Boston, The Mother Church, began on September 23, 1892. Those are facts found by the Master.

The First Members became such by joining first that church, and then they elected others as First Members; and the very inception of the matter, and the significance of the term "First Members," will be found by looking at the Minutes of that organization meeting, which are found on page 46 of the book of Exhibits, Exhibit 107.

You will there find that eleven persons met. The date was September 23, 1892. The Deed to the directors of the land had been executed about three weeks before. You will observe this statement:

"The following motion was read by the chairman, seconded, and unanimously voted: That all who are present, and Mrs. Ellen L. Clarke, who is absent, are First Members of 'The First Church of Christ, Scientist,' in Boston, Massachusetts."

Then you will find the election of Dr.

Eddy as president, later of Mr. William B. Johnson as clerk, and of Mrs. Mary F. Eastaman as treasurer—the words of the ordinary association electing its officers. Then you will find the election of various persons by unanimous vote, who, it is said, are elected First Members of The First Church of Christ, Scientist, in Boston.

Then you will see, on page 47, the rules, the tenets and the rules, that were adopted by this voluntary association. First, the tenets to be subscribed to by those uniting with the First Church of Christ, Scientist, in Boston; then down below the rules, which provide for an annual meeting, for the choice of officers for the ensuing year, for quarterly meetings, for applications for membership, and that the names elected should be read from the pulpit, for the communion service, and then a restriction with respect to membership in other churches. In short, you have an organization of a voluntary religious society.

Now, without stopping to go into the details of what took place later—and you will observe that for the sake of clarity I am confining myself now to a statement of the First Members, in order that the court may have clearly the constitution of that body—then later I shall endeavor in the same way to show the controlling facts with regard to the constitution of the Directors of said church, as referred to in Paragraph 10 of the Trust Deed.

RUGG, C. J. You may suspend your argument here, if you please, until tomorrow morning.

(Adjourned to 9.30 A. M., Tuesday, Nov. 30, 1920.)

## Tuesday, Nov. 30, 1920

BOSTON, Massachusetts—Final arguments before the Full Bench of the Supreme Judicial Court in the case of Eustace et al. vs. Dickey et al. were continued Nov. 30, 1920 and are to be completed Dec. 1, 1920. The stenographic report of arguments follows:

### COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT FOR THE COMMONWEALTH  
November Sitting, 1920.

Rugg, C. J.; Braley, Crosby, Carroll and Jenney, JJ.

No. 1395.

Herbert W. Eustace et al., Trs. vs. Adam H. Dickey et al., Trs.

No. 1396.

Daisy L. Krauthoff et al., vs. Attorney-General et al.

No. 1400.

Attorney-General vs. Herbert W. Eustace et al.

No. 1402.

Herbert W. Eustace et al., vs. Adam H. Dickey et al.

No. 1415.

Herbert W. Eustace et al., vs. Adam H. Dickey et al.

No. 1423.

Herbert W. Eustace et al., vs. Adam H. Dickey et al.

Appearances:

Hon. Charles E. Hughes, Sherman L. Whipple, Esq., Lothrop Withington, Esq., and Silas H. Strawn, Esq., for Herbert W. Eustace et als.

Messrs. Bates, Nay, Abbott & Dane, and Clifford P. Smith, Esq., for Adam H. Dickey et als.

Hon. J. Weston Allen, Attorney-General and Edwin H. Abbott, Jr., Esq., Assistant Attorney-General, for Attorney-General.

Messrs. Thompson & Spring (William G. Thompson, Esq.), and Messrs. Streeter, Demond, Woodworth & Suloway, for John V. Dittmore.

Edwin A. Krauthoff, Esq., for Daisy L. Krauthoff et al.

Messrs. Dawson, Merrill & Dawson (Miles M. Dawson, Esq.), for Emilie B. Hulin.

### SECOND DAY

Supreme Judicial Court, Boston, Mass.,  
November 30, 1920, 9:30 a. m.

RUGG, C. J. You may resume your argument, Mr. Hughes, if you please.

Argument of Hon. Charles E. Hughes, on Behalf of the Plaintiffs,  
Herbert W. Eustace, et al., resumed.

May it please the Court: At the time of adjournment yesterday I was discussing the facts which determined the significance of the term "First Members" as used in Paragraph 10 of the Trust Deed of January 25, 1898. I had referred to the organization of the Church known as "The First Church of Christ, Scientist, in Boston," and to the minutes of the organization meeting on September

23, 1892. At that time the actual First Members elected others as First Members, and also adopted certain tenets and rules. They provided for the election of officers—president, secretary and clerk. They did elect such officers for the first year. On page 48 of the exhibits you will find the record of the next meeting of the First Members, which took place on October 5, 1892. There you will observe the record of the previous meeting was approved and an additional rule was adopted. From that time for several years the organization continued as it was there effected. The members admitted by the vote of First Members, if admitted as members only, were without vote. Those who were admitted and elected as First Members joined the company that had and used that name, and that transacted through their votes the business of the Church.

The Church, as the Master finds, you will see, on Record page 85, was never incorporated. The rules above mentioned continued until 1895, the officers being elected annually by these First Members.

The first Church Manual was adopted, the Manual being a convenient term to describe church by-laws and church rules, in the year 1895. This and all the other editions of the Manual are exhibits in the case, but are not set forth in extenso in the record. They are here for the examination of the Court as a part of the actual record. The particulars of the rules—that is, a summary of the rules, so far as stated by the Master—will be found set forth at page 87 of the record.

I have here the exhibit which is the first Church Manual, thus adopted, in 1895. There is a preface to the Manual under the caption of **FORMATION OF THE CHURCH**, which refers to its organization in these words:

"On the twenty-third day of September, 1892, by advice of our beloved Teacher, Reverend MARY BAKER EDDY, twelve of her students met and formed a Christian Science Church, and named it, 'THE FIRST CHURCH OF CHRIST, SCIENTIST.' At this meeting twenty other students of Mrs. Eddy's were elected members of this church, who, with the twelve who formed the church, are to be known as 'First Members.' The Church Tenets, rules, and By-laws formulated by Mrs. Eddy, were adopted. Also rules for the government of the Church."

This first Church Manual, which was adopted in September, 1895, set forth certain church rules. I will refer briefly to those which are important as giving an understanding of the term "First Members."

Article I provides for regular meetings. It says:

"The annual meeting of The First Church of Christ, Scientist, in Boston, Massachusetts, shall be held on the first Tuesday in October in each year, to listen to the reports of the treas-

urer, clerk, and the committees, and general reports from the field of the entire members of this Church who desire to speak of their various experiences. Only the First Members of the Church are required to vote on admitting candidates and attend to the transaction of any church business that may properly come before the meeting. The candidates for church membership shall be elected by a majority vote of the First Members that are present."

There is a reference to application for membership, and provision regarding such applications, in Article IV, which concludes:

"The candidates shall be elected by a majority vote of the First Members present."

In connection with a provision of the Trust Deed, to which I may refer parenthetically, that is, the Trust Deed to the publishing trustees, you will note in paragraph 13, on page 25 of the record, the provision that the trustees are to receive compensation for their services, or such salary as the said church may determine from time to time. I refer to that in this connection because in this Article VIII of the first Manual, of 1895, I find, at the close of Section 3, these words:

"This rule cannot be changed, amended, or annulled, except by a unanimous vote of the Church."

You will find through this first Manual several references to the Church. There cannot be the slightest doubt as to who constituted the Church, who were the voting members of the Church, or to whose action reference was made. As the Master found, this article in the Trust Deed referred, in the light of the history, to the First Members of the Church. They were those who under the Manual had the authority to act at that time in the matter referred to as a matter to be dealt with by the Church, in contradistinction to this board of trustees, to which I shall presently allude, holding the title to real estate upon certain specific trusts, which was known as the Board of Directors.

Down to the adoption of these rules and by-laws in 1895 the officers of the Church, consisting, as defined by the rules, of a president, a clerk and a treasurer, had been elected by the First Members, or as the Master calls them quite appropriately, for it corresponds exactly to the fact, the Voting Members.

By Article I of the by-laws of 1895 it was provided that the officers of the Church shall be elected by the board of directors at their annual meeting, and that the officers shall consist of a president, a clerk and a treasurer.

From that time the directors elected these officers. The First Members, however, transacted the other business of the Church.

Now, the organization continued under those rules and by-laws until 1897, when there was another edition, with some changes. This, called the Seventh Edition, the edition of 1897, was the last one preceding the Trust Deed of January 25, 1898. This discloses the rules and by-laws as they existed at the time of Mrs. Eddy's deed to the publishing trustees.

Now, it will be noticed that there is substantially the same sketch with regard to the formation of the Church. Under the Church by-laws we find in Article II this provision:

"The regular meeting of the First Members of The First Church of Christ, Scientist, in Boston, Mass., shall be held semi-annually on the Saturday next preceding the Communion Sunday in January and July in each year, beginning in July, 1897."

Article III provides for special meetings of the First Members of this Church.

Article IV is entitled "First Members," and as this is very definitive with regard to the First Members as they existed at the time of the Trust Deed, I will ask the Court to permit me to read it—it is not very long. I should say that this is also an exhibit in the case, and while it is not set forth in extenso in the Master's report, a summary of it will be found at page 87 of the record.

"Article IV, First Members.

"Section 1. The First Members of the Church shall vote on admitting candidates, and attend to the transaction of any church business that may properly come before the meeting. The names of the candidates for church membership shall be read at the semi-annual meeting and voted on.

"Section 2. If the First Members shall become less than forty in number they shall regain this number, and those elected shall be persons who have proven themselves in successive years strict adherents to the doctrines and practice inculcated in 'SCIENCE AND HEALTH WITH KEY TO THE SCRIPTURES.'"

"A majority of all the First Members elect a First Member. The First Members so elected shall have the same power to act for this Church as the incumbent. This rule shall neither be amended nor repealed except by unanimous vote of the First Members."

"Section 3. Important questions relative to Church members shall be discussed in the meetings of the First Members." [Important questions relative to Church members shall be discussed.] Seven First Members shall constitute a quorum for transacting the Church business."

Then follows in Article V the provision that the Church officers shall consist of a president, a clerk, a treasurer, and two readers, and pro-

vision for the election of those officers by the Board of Directors.

As indicating the relation of the First Members to the organization, I may also refer to Section 3 of Article II of the Church rules as they existed in 1897. The concluding clause of Section 3 reads:

"If a member of this Church has been twice notified of his ex-communication, he shall not again be received as a member of this Church. This Rule cannot be amended or annulled except by a unanimous vote of the First Members of this Church."

That was the situation with respect to this body, well-defined, which constituted the First Members of the Church at the time when Mrs. Eddy executed her Trust Deed.

Now, with respect to the directors if your Honors will again refer to Paragraph 10, relating to vacancies in the trusteeship constituted by the deed of January 25, 1898, you will observe the expression, "the First Members, together with the directors of said Church, shall have the power [this is on record page 24] to declare vacancies in said trusteeship for such reason as to them may seem expedient."

Now, what was meant by the term "directors of said Church"? We now must recur to the deed of September 1, 1892, which you will find copied on page 26 of the record, for the constitution of these directors. This deed is the deed of certain real estate, by Mary Baker G. Eddy, to Ira O. Knapp, William B. Johnson, Joseph S. Eastman and Stephen H. Chase, as trustees. You will find immediately after the description the words:

"This deed of conveyance is made upon the following express trusts and conditions."

Then Paragraph 1 provides:

"Said grantees shall be known as the 'Christian Science Board of Directors' and shall constitute a perpetual body or corporation under and in accordance with section 1, Chapter 39 of the Public Statutes of Massachusetts. Whenever a vacancy occurs in said Board the remaining members shall within thirty days fill the same by election; but no one shall be eligible to that office who is not in the opinion of the remaining members of the Board a firm and consistent believer in the doctrines of Christian Science as taught in a book entitled 'Science and Health,' by Mary Baker G. Eddy beginning with the seventy-first edition thereof."

Then follow in succeeding paragraphs other terms and conditions of the trust. It is not necessary for the present purpose to read those paragraphs. What we are now concerned with is the constitution of the so-called board of directors. Your Honors will observe that it is a board of trustees, that this is the name or style of the grantees under the deed of trust. That deed of trust was exe-

cuted on September 1, 1892, and it was in existence as an effective trust at the time of the organization of this Church (to which we have referred) on September 23, 1892.

Now, the Church did not elect these directors. The Church thus organized, on September 23, 1892, and continuing as a voluntary religious society, never elected the directors. They never filled any vacancy in the board called the Christian Science Board of Directors. These directors were in no sense church officers. They were not chosen by the religious society. Their powers, their duties, their responsibilities were solely created and defined by the Trust Deed of Mrs. Eddy, executed on September 1, 1892.

There was no provision until many years after the subsequent Trust Deed to the publishing trustees in 1898—until many years after that—for the inclusion of the board of directors as church officers, in the definition, in the article of the by-laws which defined who should be church officers. Even that, however, accomplished nothing. These gentlemen still remained as a self-perpetuating board of trustees. They had no standing in the law, pursuant to any action or act of creation, except as trustees; and as trustees they were a self-perpetuating board, dependent entirely upon the original authority of the deed of September 1, 1892, and upon the election by the remaining members of a new trustee under that deed whenever a vacancy arose.

Now, it clearly appears that on January 25, 1898, when the trust deed to the publishing trustees was executed, there were no directors of said Church except these trustees under the deed of September 1, 1892. It necessarily follows, and so the Master has found, that the reference in Paragraph 10 to "the directors of said Church" was the reference to the four trustees created by the deed of September 1, 1892, and those who should become directors as trustees under that deed by virtue of an election through remaining members, as provided in the deed, whenever a vacancy occurred. The Master finds that that was Mrs. Eddy's intent.

Now, it may be noted here that these Directors, although referred to in the Trust Deed of September 1, 1892, as a corporation under the Public Statutes of Massachusetts, Chapter 39, Section 1, did not and could not constitute such a corporation. Mrs. Eddy of course, as a private individual, had no authority except as she acted under the law of the Commonwealth to create a corporation, and these Trustees under her Deed could not become a corporation unless they became such by virtue of the law to which reference has been made.

The controlling clause of the statute is that deacons, wardens, or similar officers of churches or religious

societies may become a corporation. The meaning of that has been defined by Chief Justice Shaw in the case of *Weld vs. May*, 9 Cushing 181, and he concludes his statement with reference to deacons and wardens and similar officers with this very terse statement which disposes, as we view it, of the contentions to the contrary in this case. Chief Justice Shaw said:

"Other officers, not of a character similar to that of deacons, must hold simply as trustees."

If we argued this case for several days we could not add anything to that succinct statement. These Directors were trustees as they were a self-perpetuating body, as they owed no authority to this voluntary organization, as this voluntary organization in no way defined or limited their powers, and they existed by virtue of the formation of the Board by Mrs. Eddy, and then by election through remaining members to fill vacancies. They necessarily were trustees.

I may submit to the court that probably the court, and certainly counsel, has never heard of deacons or church wardens or similar officers chosen and perpetuated in that way. They are in a class quite distinct from the deacons and church wardens. They are not by virtue of that fact in a class outside the law. They, however, fall into the category of law, known as trustees; and the description was evidently due, that is, the description as to corporate character, was evidently due to a misapprehension of the law.

That is recognized by Mrs. Eddy many years later when the Directors themselves, long after the Trust Deed to the publishing trustees, attempted to make their number five instead of four, and a Mr. McLellan was elected as a fifth director. The name "By-Law Director" has been given to it, to express the situation.

Mrs. Eddy in her letter of March 19, 1903, Exhibit 739, which you will find on page 59 of the record, shows that she had been advised with reference to this situation. This is the note at the foot of the letter:

"I regret that your name cannot appear as a member of the Christian Science Board of Directors on their deeds. I have twice urged this question but Mr. Elder finds it cannot be legally so."

You will also find it interesting and important in this connection to refer to the deed of Mrs. Eddy in December, 1903, which releases to the four trustees certain real estate. You will find this at page 77 of the book of exhibits, in Column 2. Passing the first clause of the preamble, we come towards the foot of Column 2 to these words:

"And whereas it has now been brought to my attention"—

Your Honors will pardon me if I interrupt the reading to say that she

had previously executed a deed of the land upon which the Publishing House had formerly done business, prior to the execution of the Trust Deed of 1898, to the First Church of Christ, Scientist. Now she gives this deed, in 1903, as a release of the same property to the four trustees, not to the five, it will be observed, but to the four; and in making this release she uses the language which I shall now read:

"And whereas it has now been brought to my attention that said grantee was not a corporation, but said Church is a voluntary association of individuals the title to the Church property being vested in a Board of Trustees named in the Deed of Trust by me conveying the land upon which is situated the edifice in which said Church worships"—

Then in Column 3, in the granting clause, you will find:

"Now, therefore, I the said Mary Baker G. Eddy, in consideration," etc., "to me in hand paid by Ira O. Knapp, William B. Johnson, and Joseph Armstrong, all of Boston in the County of Suffolk and Commonwealth of Massachusetts and Stephen A. Chase of Fall River, in the County of Bristol, and said Commonwealth, as they are the present trustees known as The Christian Science Board of Directors under said Deed of Trust hereinbefore referred to as dated September 1st, 1892"—

That, you will observe, was executed in December, 1903.

As I shall presently have occasion to say, it being impossible to utterly separate the different considerations that apply to different points in the case, the attempt of the First Members to abdicate their powers was in 1901, and it was in the early part of 1903 that they became Executive Members, but they had abdicated their power, or sought to, to transact business of the church. This deed was in December, 1903; and you will note what Mrs. Eddy has to say with regard to these members in the same deed, in Column 1 of page 78. Towards the top of the column she says:

"In addition to the trusts contained in said deed of September 1, 1892, this property is conveyed on the further trusts that no new tenet or By-law shall be adopted nor any tenet or By-law amended or annulled by the grantees unless the written consent of said Mary Baker G. Eddy, the author of the textbook 'Science and Health with Key to the Scriptures' be given therefor, or unless at the written request of Mrs. Eddy the Executive Members of 'Mary Baker G. Eddy's church, The First Church of Christ, Scientist' (formerly called the 'First Members') by a two-thirds vote of all their number decide so to do."

I may also refer to the fact that similar provisions were made in deeds

by other grantors, and in a still later deed by Mrs. Eddy, in 1904.

With this understanding, then, of the constitution of the First Members on the one hand, and of the Directors on the other hand, we come to the question of the construction of Paragraph 10, giving this power to declare vacancies. There is a vital consideration in the construction of this deed as a whole, and in particular of this clause, Paragraph 10. These Directors, known as The Christian Science Board of Directors, had been trustees since September 1, 1892, a period of over five years. Mrs. Eddy had been in constant contact with that Board. That Board had the important trusts with regard to the edifice and the maintaining of worship, as defined in the Deed of September 1, 1892. But Mrs. Eddy did not select those Directors as trustees of the Publishing Society. The significance of that, it seems to us, cannot be ignored.

Prior to this Trust Deed of 1898 to the publishing trustees, the publishing business had been conducted by a corporation. That corporation, The Christian Science Publishing Society, or in substance so named, on January 15, 1898, ten days before the execution of the Trust Deed, conveyed their real estate and their personal property and all the rights appurtenant to the business, to Mrs. Eddy; and then on January 25, 1898, Mrs. Eddy executed two deeds. The one deed was a deed of the real estate on which the publishing business had been conducted, to The First Church of Christ, Scientist, the deed referred to in the deed of 1903, releasing the same property to the four trustees, which I have just read. Then on the same date, January 25, 1898, Mrs. Eddy conveyed all the personal property and everything that pertained to the publishing business, except the real estate, to these publishing trustees, that is, the trustees under the Trust Deed of January 25, 1898.

Nothing could be clearer than that she did not select the Directors to conduct that business, that she decided not to put that business under the control and management of the Directors, and that she determined, as she had a right to determine, that with respect to that publishing business there should be a separate trust, the terms of which she carefully defined.

It is in that connection that these words which I emphasized yesterday, that the business should be conducted by these trustees under the deed of 1898 upon their own responsibility, "and without consulting me about details, subject only to my supervision," are significant. The references to the judgment which was to be exercised and the discretion used in the management of this publishing business were plainly to the judgment and dis-

cretion of these Trustees, not to the Directors.

It will then be observed that when Mrs. Eddy, having determined upon this separate trust, in Paragraph 4 provided for the accounting of the net profits of the business, she did not provide that they should be paid over to the Directors, but to the Treasurer of The First Church of Christ, Scientist. Then she provided with regard to the disposition of these moneys by said treasurer; not that he should dispose of them as ordered by the Directors, but that he should hold the moneys so paid over to him subject to the order of the First Members of said church.

And then, finally, in Paragraph 13, with regard to the salaries, she provided, not that the salaries should be fixed by the Directors, but should be fixed by the church, the significance of the use of that term being apparent in connection with what I have read from the church By-laws as then existing.

We therefore see that Mrs. Eddy had clearly in mind what was the fact, that there were two bodies, each of which had distinct rights, privileges and responsibilities under the law. There was the body known as the First Members. They were in truth the voting members of the church. They represented the religious society in the sense that they as First Members had formed it, and then, in accordance with its constitution, had drawn to themselves others who were called First Members, and this body of First Members transacted the business of the church. Then there was a body who, properly speaking, were not church officers at all, did not exist by virtue of the authority of this church, but by virtue of a trust, and that body was a Board of Trustees which bore the name of the Christian Science Board of Directors.

Now, it does not require argument to point out what her intent was. Her intent was that while she remained alive, as stated in Paragraph 10, if a vacancy occurred in the publishing trusteeship she should reserve the right to fill the same by appointment if she so desired; that when it came, however, to declaring vacancies in said trusteeship there were to be two bodies, who should act concurrently in regard to the serious consequence of declaring a vacancy in this Board of Trustees for the publishing business, which she had independently created, knowing full well that she could put the power in the Directors had she seen fit to do so, and she did not see fit to do so.

I apprehend that there never was a case where the importance of the action of two bodies was more obvious, and the intent that the power should be exercised only in case of their concurrent action was more clearly expressed. Stress is laid here upon the words, to which I shall sub-

sequently refer, "for such reasons as to them may seem expedient." But the broader the scope of those words the clearer is the importance of the concurrent action of the two bodies. It cannot be conceived, we submit, that if Mrs. Eddy had intended to put this business under the control of the Directors, her own Board, constituted by her, she would not have said so, nor can it be conceived that if she intended to vest the power of removal in these Directors, the trustees under the Deed of 1892, she would not have said so. She chose her words deliberately, and it is not for these defendants to attempt to frustrate that purpose, declared by Mrs. Eddy in her Deed.

A familiar principle of law thus applies. When there is a discretionary power given to two donees of course both donees must act in the exercise of that power, and one donee cannot act alone. Another point is at once clear. The First Members could not transfer this power. This power was a non-delegable power, a non-transferable power; and yet it is plain that these defendants rely, and in the light of fact are bound to rely, upon an attempted transfer of this power by the First Members to these Directors. That becomes clear from a consideration of these facts; and now I refer to the subsequent history, that is, the history subsequent to the Deed of 1898.

Of course it is our contention that nothing that subsequently took place could affect this Deed as a valid trust to be construed according to its terms as they were and were to be construed when it was executed. But the subsequent history is important in determining the basis for the contention of these defendants in their effort to remove the Trustees, or one of them, and their plan to make all subordinate to their will.

The first event after the execution of the Trust Deed of 1898 was the adoption of another Manual, with the amendments, which we find adopted in 1898, some little time after the Trust Deed. We find provisions in this Manual, in the church By-laws, Article 2, with respect to the semi-annual meetings of the First Members of the church; Article 3, provision for special meetings of the First Members; Article 4, substantially, and I believe exactly the same, with respect to the First Members, as a corresponding article in the edition of 1897, which I have read. Then we find Article 11, an Article introduced and entitled, "The Christian Science Publishing Society." That refers to the Deed of January 25, 1898, describes the matter substantially in the language of the Deed, and then it provides this:

"The First Members together with the Directors of said Church shall have the power to declare vacancies in said trusteeship for such reasons as to them may seem expedient. Whenever

a vacancy shall occur in said trusteeship for any cause the Pastor Emeritus reserves the right to fill the same by appointment; but if she does not elect to exercise this right the remaining trustees shall fill the vacancy, and the candidate proposed for this office shall be elected by a unanimous vote of all the First Members of said Church."

Now, you will notice that that follows the provision of the Deed, except in the last clause, that "the candidate proposed for this office shall be elected by a unanimous vote of the First Members of said church."

It happens that in August, 1898, a vacancy did arise in the Board of Trustees under the deed of 1898, and attention was called to this and it was expunged, so that in effect the matter remained as provided in the trust deed.

There is in this Article XI a clause that "A person who is not accepted by our Pastor Emeritus and the Christian Science Board of Directors as suitable to publish her books, shall in no manner be connected therewith or with the Christian Science Publishing Society."

That refers both to the Pastor Emeritus and the Christian Science Board of Directors. Of course it had no effect whatever upon the provision of the deed and so far as power of removal is concerned it did not concern it at all.

Now, then, it was not until 1901—about three years after the execution of the Trust Deed of 1898—that the First Members attempted to abdicate their power. On January 10, 1901, the First Members adopted a by-law that business theretofore transacted by them should be done by the Directors. Then it was in February, 1901, that the Christian Science Board of Directors themselves adopted a by-law providing that the Board of Directors should have power to declare vacancies in the Trustees under the deed of 1898. The power, then, as it is sought to be found in the by-laws on the part of the Directors to declare a vacancy in the Trustees under the deed of 1898 was conferred upon them by themselves so far as the by-law itself is concerned, and they base their right to confer this power upon themselves upon the action of the First Members in the month preceding, January, 1901, in providing that the business theretofore transacted by the First Members should be done by the Directors.

You will at once observe that whatever may be said of this body known as the First Members, having become extinct later on, were not extinct in 1901. They were not extinct in 1903. They were then "Executive Members" in 1903. The Board of Directors attempted to take this power of removal to themselves in February, 1901. Therefore it is that counsel for defendants in their brief attempt to

maintain the power of the First Members to transfer this power of removal. It seems to me that the question is not arguable. These First Members vested with this power of removal under the deed of 1898, could not transfer it according to the most familiar principles. Now, going further with the subsequent history, we find that in 1903, the First Members, despite the fact that they had passed the by-law giving the Directors or attempting to give them, the power to transact the business formerly transacted by them, were now to be known by the singularly inappropriate term "Executive Members." That by-law was adopted by the Directors themselves in 1903. They had already added one to their number so as to constitute a board of five, that being done by the Directors themselves. This was not only a self-perpetuating board under the deed of 1892 but it was a board apparently that could do what it pleased in adding to its numbers or in arranging for a disturbance of trust instruments. It arrogated, at least, to itself this privilege which we say had not the slightest basis in any legal authority.

Then in 1908 these Executive Members, so-called, originally the First Members, still meeting but transacting no business, the Board of Directors in 1908 disbanded them. The defendants then, having first attempted by virtue of the by-law of the First Members, to arrogate to themselves the power to declare vacancies, rely upon that as a transfer to the First Members, and then they themselves having disbanded the First Members, or the Executive Members, in 1908, then assert that the First Members thereby became extinct and that the power of removal survived to them.

They make the argument that this power of removal was a power coupled with an interest and hence would survive.

RUGG, C. J. After 1908 did the First Members exercise any prerogatives of the Executive Members?

Mr. HUGHES. I believe not.

You will observe they refer in, it seems to me, a somewhat ambiguous manner, to a power coupled with an interest, and also to a power attached to an office. There is a sense in which the term may be used as applicable to both cases but it needs a little analysis, as it seems to us, to indicate the fallacy in the way in which the argument is presented by the defendants. Of course, there was no interest in any proper sense in the Directors, the First Members. They were not, as First Members or as Directors, on either side, either the legal or the beneficial owners. Certainly the Directors were not. They owed their position and authority solely to the deed of trust. So far as the First Members were concerned, they were

a portion of many hundreds of actual members of this religious society who had exercised the right to vote and who had transacted business in accordance with the constitution of the society. There was no power coupled with an interest, as I understand that phrase to be used in the law. The point they make, however, is that it was a power attached to an office and hence passed to the successors in office. And they illustrate by reference to the familiar cases of executors or trustees who have powers which may be exercised by the remaining trustees or the continuing Board of Directors when a vacancy which occurs is filled, or otherwise. But this loses sight, it seems to us, of a very important, a very fundamental consideration. There was no office in the sense that comprehended both First Members and Directors. The First Members had their office; the Directors had their office. The rule which our friends invoke would be pertinent if they were continuing the power to the First Members as a class by virtue of the office or the Board or constitution of the body of the First Members. It also would be pertinent with reference to the directors so far as that phrase defined a continuing body of trustees so that the Board of Trustees, under this deed constituted, renewed and continued as provided in the deed, would constitute an office similar to executors or other trustees, so that if one died the power would not be lost. But confusion results from a commingling of the First Members and the Directors, neither of which was the successor of the other, and the power being given to both and not to either.

The matter is of special significance because Mrs. Eddy could have chosen either and the fact that she did not choose either but chose both indicated her determination that there should be a check upon this action.

We have, then, nothing but a bald attempt by the First Members to transfer this discretionary power to the Directors, and if the Directors disbanded them and if the First Members or the Executive Members acquiesced in that action that in no way changed the function or the constitution of the Directors. They were still not the First Members, not in any proper sense the successors of the First Members, but simply a Board of Trustees that had attempted to destroy a codonee. Neither that destruction nor the attempted transfer could give them the power which Mrs. Eddy had decided not to give them but had given to both.

There is a great deal said here in briefs and in arguments with regard to the "Constituted Authorities of the Church." That expression is used in a way to beg the judgment, for it adds nothing to the state and constitution of the particular authority thus attempted to be described. The Direc-

tors were not constituted authorities of the Church in the sense that a religious society had chosen them and empowered them and continued them and renewed them as a Board of Directors or as an executive board representing the society. They were the Trustees under this deed and always remained so—never became anything else. They were not governing authorities of the church in the sense that they were the continuation of some board that owed its power to the church members. Mrs. Eddy had a complete right to establish such a board and to define its duty. But when it was established we submit that you cannot lose sight of the character which it had and always had by calling it the constituted authority of the church.

Similarly the First Members,—they had their special position and the particular rights. Nothing is gained by ignoring the constitution of the First Members, on the one hand,—the formation of the Board of Directors known as the Directors, on the other hand—bringing them together in a comprehensive description such as "The Constituted Authorities," which had no place in either of these deeds and hence has no place in the applicable law.

It follows, then, that when these gentlemen, these defendants, in 1919, attempted to remove Mr. Rowlands and to assert a power to subordinate the execution of the trust by the publishing trustees to their will, they acted without any authority of law.

Before passing to the circumstances of this removal, and to this plan to subordinate the trustees, I desire to refer briefly to evidence by which they endeavor to control the plain meaning of the words of paragraph ten. I say the plain meaning because there is nothing in the paragraph itself that is at all ambiguous. The only thing needed to be known is—who are the First Members, who are the Directors. With respect to the facts in each case there is not the slightest contradiction in the evidence. The facts are perfectly clear as to who were the First Members. The facts are perfectly clear as to who were the Directors intended. And then you have perfectly plain English words to apply in the light of those facts and of the principles of law. They say, however, that contemporaneous evidence should be resorted to to show some intent on the part of Mrs. Eddy, to show some intent other than that which she so clearly defined in the deed. And they refer to a statement of Mrs. Eddy—page 49 of the book of exhibits, Exhibit 464, which is entitled a "Gift to The Mother Church and a Grant of Trusteeship." This is under date of January 15, 1898. Before I read it I will call attention to the finding of the Master that in legal effect it accomplishes nothing because on January 15, 1898, Mrs. Eddy owned none

of this property. The property was conveyed to her on January 21, 1898, by the corporation, then known as the Christian Science Publishing Society, and on January 25, 1898, she executed her trust deed. Therefore this had no legal effect, but it is referred to with respect to the intent. I shall not read it through. You will observe she says:

"I hereby constitute a Board of Trustees, namely, Edward P. Bates, James A. Neal, and William P. McKenzie, all of them being residents of Boston, Massachusetts. And I hereby entrust to the aforesaid persons The Christian Science Journal, and all moneys, subscription lists, real estate, or whatever other property is connected therewith at this date."

You will find nothing inconsistent in this deed with the general purpose of the trust as outlined until you come to this general question of removal. On page 50 you will find it expressed as follows:

"If for any reason a member of this board becomes incapacitated to transact the duties of this office, his place shall, by a majority vote of the board subject to my approval (or by myself if I see fit so to decide) be declared vacant, and the remaining members shall at once proceed to elect a new member to fill the vacancy."

So far from that confirming the attempt ascribed to Mrs. Eddy by the defendants, it indicates, if it has any significance at all, the exact contrary. But it shows how futile such evidence is, for no one would contend that this overruled the deed and a provision of paragraph 10 as she constituted it ten days later. The contemporaneous evidence of course is not of the slightest account, for it countervails the clear provisions of the deed, but it indicates that at that time she did not have any idea of giving either to the First Members or the Directors this power.

There is also reference to Judge Hanna's testimony, which the Master summarized in the record at page 105. That was simply testimony of a conversation at or before the execution of the deed. The Master very properly says that it could not have any legal bearing upon this clear and unambiguous provision of the deed. And when she came to execute her deed she then stated specifically who should have this power to declare vacancies.

I have through the argument referred to this power to declare vacancies as though it embraced a power of removal. That possibly may be a question. It is a question that I shall not argue because it is so unnecessary to refine the argument to that extent when it appears that whatever the power was it was never vested or passed to these Directors alone.

There is also an allusion made to the so-called removal of one of the Trustees under the publishing trust soon after the execution of the deed



in the following summer. And merely to clear that up as a matter of history—it has no bearing strictly upon the legal question—I refer briefly to it.

Counsel referred to that as if it were a removal in connection with the suggestion that there had been an abstention from participation in the business of the trust. Correspondence relating to the matter will be found on pages 55-58 of the book of exhibits and it will there appear that reference was made to the absence of the third trustee, Mr. Bates, and on August 11th a vote was taken that his trusteeship be declared vacant. Then there was a meeting of the trustees (page 56) by which Mr. Hanna was nominated to fill the vacancy on the Board, and a provision that Mrs. Eddy be notified. Then there was a letter to Mrs. Eddy on August 19th, 1898, from the secretary, who refers to the election by the First Members by unanimous vote. There was subsequent correspondence which I need not detail. The nub of it was that Mrs. Eddy finally appointed, as you will see at the foot of page 58, on September 8th, 1898, Mr. Hatten. And then action was taken which expunged this provision for a unanimous vote of the First Members, which was inconsistent with the Trust deed.

The question whether Mr. Bates was removed or not is a negligible one, so far as the merits of this controversy are concerned, but to have all the facts before you, you will find in the photographic copy of the trust deed creating the Publishing Trust, wherein the acceptance of the trust by the various persons who succeeded is shown, under date of September 8, 1898, Thomas W. Hatten succeeding Edward P. Bates, resigned. So it would seem, according to that, if that is the official statement or the controlling statement, that there was a resignation and not a removal. There is, therefore, not the slightest basis that could be suggested in law for any estoppel with respect to the exercise of this right of removal. It had never been exercised at all except in the case of Bates, and to that the Directors had no relation. The point simply is that these gentlemen had their protection under the law of the land in executing their trust, and the power of removal is to be determined in accordance with its terms.

Now, coming to the removal of Mr. Rowlands you will find the resolution of removal on page 44 of the book of exhibits. There are a considerable number of statements with regard to Mr. Rowlands, in attempted justification of the exercise of this power. If what I have said with respect to the power itself is well founded in fact and law then of course this whole action was abortive. If, however, it could be conceived that the Board of Directors had any power of removal this is the way they attempted to ex-

ercise it. In the first place, it should be noticed that the vote was illegal because it was not a vote of a majority of the trustees under the deed of 1892, or of the board succeeding to such trustees. That is the continued Board of Trustees.

I shall not discuss the question whether that power, assuming the Directors had it, could have been exercised by a majority. I think that is a very serious question, if it were necessary to consider it.

I fail to find any ground for the same, as the Master has said that a majority could exercise that power. If they had that power they had it as a board. I shall not, however, go into a discussion of that, because it was certainly a power, if it ran to the directors at all, that ran to the four trustees under the deed of 1892. They had no power to add a fifth to their number, and in that way to create a majority of three, through which this action of removal could be taken.

Now we have, then, this board of trustees or directors, so-called, on March 17, 1919. Mr. Dittmore, who was one of the so-called deed directors, did not vote; Mr. Neal, another of the deed directors, was absent; they called him on the telephone and got his acquiescence by telephone. It would seem to be clear that if this was a power to be exercised by the trustees constituting the board of directors, it would require their deliberation, their consideration together, their determination of the pertinent facts, and that acquiescence by telephone would be wholly illegal to justify participation in such a removal. Merritt was a by-law director, not a successor, as the Master has found, showing clearly the line of succession. So that there were only two of these four trustees or board of directors continuing as such under the deed of 1892 who voted for this removal, and certainly two could not remove. Therefore we say that the vote was illegal to start with.

Now, passing beyond that point, the power is a power, as you will see from the language in paragraph 10 of the Trust Deed—the power is a power to declare vacancies in said trusteeship for such reasons as to them may seem expedient. Undoubtedly that is a very broad power. Expediency is a very large consideration. But it has been here admitted, and we think it must be admitted, that that did not mean to confer an arbitrary and capricious power, or the power to act capriciously. It might be that it would be impossible in many cases to penetrate to the thought of the men exercising that power, to be able to state whether they acted arbitrarily or capriciously, but certainly if the fact were assumed, or the hypothesis established, the power to act for such reasons as may be deemed expedient

would not confer a power to act arbitrarily or capriciously.

Now, what is the limitation of this power, if any exists—and we think that a clear limitation does exist? It has been well expressed here by counsel for the directors when he said that it must be expediency with reference to the welfare of the trust.

Well, what is the determination or the criterion with respect to the welfare of the trust? The welfare of the trust must be determined by the Trust Deed, and the fundamental purpose of the Trust Deed was that the trustees thereby constituted and their successors as thereby appointed should have the responsibility of the management of that business. No one can read that deed and for a moment support the suggestion that the directors were to have the responsibility for the conduct of that business. Therefore if it appears that the purpose of removal was solely to put the responsibility and the judgment and the discretion of the directors in place of the responsibility, the judgment and the discretion of the trustees under the deed, it would be directly antagonistic to the welfare of the trust, a subversion of the trust, not only arbitrary and capricious, but directly opposed to Mrs. Eddy's intent. If that could be proved, there would seem to be no doubt that it was a case lying outside the power; for certainly a power for a reason expedient in connection with the welfare of the trust could not be used to destroy the property, and the very essence of the trust is personal confidence, the very essence of the trust is the confiding to persons named and those elected to succeed them the powers defined by the Trust Deed. If they were faithless to that, of course the court could remove them, or, in a broad sense, if the power of removal existed here, it could be exercised, but it could not be exercised to destroy the very terms and foundation of the trust itself.

Now, referring to the action taken by the directors as it appears on page 44 of the book of exhibits, you will find a number of matters recited. Mr. Rowlands was the one selected for the attack. The Master has found as a fact, which I understand is controlling here, that he was selected because he did not have pupils in Christian Science; he had fewer friends by reason of that fact than the others in Christian Science work; and therefore they thought that they could, in the language of the street, "work" this in the case of Mr. Rowlands. They made this statement, with some attempt at justification; they attempted to state that he had not given—here it is on page 45—

"Whereas Mr. Rowlands evidently has other interests which prevent him from giving sufficient time and atten-

tion to the business of The Christian Science Publishing Society."

Now, if your Honors will refer to the finding of the Master upon that point, you will see that the Master finds that they could not have believed that to be true. He says:

"I am unable to regard the charge made as one actually believed to be true, by the Directors who made it."

"So far from suffering any disadvantage [I am referring to record page 114] by reason of his connection with it, my finding must be that the business referred to had been materially assisted by his service as one of the trustees."

They referred to his absence from a certain number of meetings. Of course it is important that a trustee should attend meetings, but the importance should not be over-emphasized, for it is well known that sometimes men of great experience are brought into boards with the understanding that they cannot attend every meeting, but that their business judgment, and their acquaintance and familiarity with affairs, will be of such great value, and their advice when important matters come up, that it is very important that they should act upon the board. Mr. Rowlands was a man of that character, and the Master finds that his relation was most helpful to the society.

But the Master finds the real point of it all, as he states, on record page 119, and I shall, with the court's permission, read only a line:

"In adopting the resolution, the defendants Dickey, Neal, Merritt and Rathvon, but not the defendant Dittmore, were acting in pursuance of a plan, as alleged in paragraph 16 of the Bill, to bring about the retirement of all the plaintiffs from their trusteeships and to install in their places trustees who would admit the Directors' final authority and manage the trust in subjection thereto."

Now the question comes up, of course, at once, whether there is any legal power, whether the courts have any right at all to inquire into the grounds of a removal purporting to be made under such a power as this. Well, if they have not, then the trust, that which has always appealed especially to the conscience of a court of equity, has no protection at all, and the power given to save and maintain the trust can be used absolutely to destroy it. We conceive that a contention of that breadth is impossible. If the court has any jurisdiction to inquire into the reasons for the exercise of the powers, to see at least that they are not arbitrary or capricious, that is, are not reasons at all, or that they do not frustrate or destroy the trust, why, then the inquiry would be prosecuted as it has been prosecuted here. Certainly the mere assertion of the removing power would not aid its exercise, because by assertion then the jurisdiction of the court would be thwarted. If you inquire into the facts and take the facts as

found, then you have here the basis of this removal finally determined, and that basis is inconsistent with the trust itself.

Now, just a word in conclusion. A good deal has been said with respect to the importance of harmony. No one could dispute the desirability of harmony. But there are two conceptions of harmony. One is the harmony produced by despotic power; the other is the harmony that results from a unity of ideas and common views of religious truth. It seems to us most unjust to Mrs. Eddy, most contrary to her teachings, to assume for a moment that she relied upon the exercise of the despotic power which these directors have arrogated to themselves. There is a quotation in the brief of counsel for Dittmore from one of Mrs. Eddy's writings which impressed me as I read it on page 101 of this brief, where it appears that she said in her book on "Retrospection and Introspection:"

"... material organization has its value and peril, ... organization is requisite only in the earliest periods in Christian history. After this material form of cohesion and fellowship has accomplished its end, continued organization retards spiritual growth, and should be laid off."

There is a profound truth in that, and when we note the late provision of the Manual we find with regard to branch churches, in Article XXIII of the present Manual:

"The Mother Church of Christ, Scientist, shall assume no general official control of other churches, and it shall be controlled by none other.

"Each Church of Christ, Scientist, shall have its own form of government."

Mrs. Eddy believed, of course, in organization, and she selected her forms of organization, but her confidence was in the truth as she conceived it and taught it. She believed that that truth would have a harmonizing power, that it would bring all those devoted to the truth as she taught it together in a unity of action, not through forms of organization; in fact it seems to me, and I submit, that when with her knowledge of these directors, and having already constituted them trustees of the real estate under the deed of 1892, she selected another board of trustees under the deed of 1898 for the publishing power, she feared the autocracy that might result if the entire power of organization was in one hand; she feared that when she drafted Article X, when she invested not the Board of Directors with the power to declare vacancies, but the First Members together with the directors. Whatever may have been said or done later, that was her last word, spoken through the will, which spoke her intent as of the time of her death.

Now, there is a very interesting statement quoted from Mrs. Eddy in

this very resolution of removal, at page 44:

"Whereas, Mrs. Eddy has declared that 'Law constitutes government'—

"Law constitutes government"—and in the next sentence she says,

"Without a proper system of government and form of action, nations, individuals, and religion are unprotected."

Mrs. Eddy was acting under the law of the land, not attempting to thwart the law of the land. She acted, of course, in accordance with the advice given her, but she declared this trust under the law. The true harmony for this Church of Christian Science is by studying the teachings of Mrs. Eddy, conforming themselves to the truth which the members of the Church believed had been revealed to her, and then by seeking to act together in their various responsibilities, to have that unity which will promote the cause to which she was devoted.

The unity which these gentlemen wish, the unity of despotic power, the control absolutely of this entire government of Christian Science in the church and in the publications and everywhere else—that is the unity which might very well destroy the very faith or the organization for the propagation of the faith to which they profess to be devoted.

May I say a word with regard to the Attorney-General's bill? The Attorney-General's bill, as I understand it—and I shall not attempt to speak of the authority of the Attorney-General under the law of Massachusetts—the Attorney-General's bill is predicated upon a trust that has no existence. There are here two trusts, the one of 1892 and the one of 1898. Of course it is for the court of equity to see that those trusts are maintained, but these questions are before the court in *Eustace v. Dickey*. There is no failure of the trust in any sense; there is no failure of trustee; there is no failure of administrative machinery: there is simply an attempt to subvert the trust by taking powers to these directors that were never given them with respect to it. The Attorney-General seeks to find a trust in the church. What trust? Of what property? Is it a trust of the property conveyed by the deed of 1892? Then there is no such trust except as defined by the deed of 1892. Is it a trust with respect to the property and business conveyed by the deed of 1898? Then there is no trust except that conveyed and defined by the deed of 1898. Is there any other trust? What property? What is it? It is not disclosed.

We conceive that the bill of the Attorney-General has no standing in this court; it reveals nothing which invites the jurisdiction of the court. There is a suggestion of evidence; there is a suggestion that in August, 1892, before the deed of September 1,

1892—that is, a suggestion in the Attorney-General's bill—it has no place in the record otherwise, that is, in the record of *Eustace v. Dickey* it is not found—there is a suggestion that there was a meeting, a preliminary meeting for organization, and that four men were elected directors of the Church, and these were the same four who later were made directors in Mrs. Eddy's deed. But what organization was effected is shown by the meeting to which I have called your attention, this meeting of September 23, 1892, defined by the First Members themselves as the organization. That was their beginning, as defined by themselves, and you will so find it in every historical sketch, in every one of these Manuals issued with the authority of Mrs. Eddy. And it also appears in the deed which I read to the court (on page 77, column 2), that—

“Said Church is a voluntary association,”

and she proceeds to describe the functions of the trustee.

The church was organized on September 23, 1892, established its rules at that time, states it was being organized as of that time, but, what is more, and controlling, these Directors are the Directors appointed by the Deed of September 1, 1892, and the successors elected by the Trustees and their successors under that deed, themselves a self-perpetuated board that we have here to deal with, that hold no authority whatever from anyone but the donor in the Deed of Trust, and through the Deed of Trust of September 1, 1892, and their own acts, except as they have sought to arrogate to themselves a power through the invalid attempt to abdicate or transfer power on the part of the First Members.

For these reasons we ask for the relief prayed for in the bill of complaint on the part of the publishing Trustees.

Mr. WHIPPLE. May it please the court, all the issues from the standpoint of the Trustees have been so comprehensively and satisfactorily covered by what Mr. Hughes has said that the Trustees will offer no further oral argument.

RUGG, C. J. Mr. Krauthoff, you may go forward.

ARGUMENT ON BEHALF OF DAISY L. KRAUTHOFF et al.,  
by

Edwin A. Krauthoff, Esq.

Mr. KRAUTHOFF. If your Honors please, we shall address ourselves at the outset to the bill of complaint in No. 1396, entitled *Krauthoff vs. Attorney-General*. In doing so we desire to remind the court that that suit comes upon reservation upon demurrers to the bill. Much of the discussion that has preceded us has gone into the realm of fact as to what was and what was not true. We need only to remind the court, in approaching a

consideration of the Krauthoff bill, of the well settled rule that a demurrer to a bill admits the truth of every fact that is therein well pleaded.

At the outset the Krauthoff bill is challenged by everybody connected with this litigation, as to our right to be here at all. So I shall, before taking up the time of the court as to the details of the bill, state the legal theory which permits us to address this court. We are met with a situation unprecedented in the annals of jurisprudence. A great church, extending throughout the world, is being litigated; its affairs are being subjected to a scrutiny that no institution on earth could survive. Everybody connected with that litigation, except ourselves, unites in the contention that in those circumstances the church shall not be heard—and that, if your Honors please, in a Commonwealth which has given to the world the immortal definition of due process of law, that law which proceeds upon inquiry and hears before it condemns.

We have now, with the disappearance of the Hulin intervention to that oblivion from whence it should never have emerged, four contending bodies left. With the passing of the Hulin intervention, we trust that we may have heard the last of the theory that First Members may be claimed to exist. That dismissal is a recognition that Mrs. Eddy did do something in the course of her natural life—she did abolish First Members.

We have heard a great deal about the mistakes that she made; we are privileged to tell you of her accomplishments.

We have here four contending factions among themselves, all of which disagree bitterly about everything that touches their personal power and place and position, and all agree upon one proposition, and that is that the real parties in interest, the members of the church, shall have nothing to say about it. The Trustees of The Christian Science Publishing Society are publishing literature in buildings that belong to us. They are asking us to subscribe to literature that they publish. They claim that under the Church Manual it is our duty to do so without question and we have no right to establish a publishing house of our own. When we approach a court and say, that being true, we desire to remind the court of the conditions under which they occupy our buildings, of the conditions under which we are required to subscribe to their literature, our answer is, “Why, you are merely the beneficiaries of an indefinite public charitable trust and as such have nothing to say about it.”

Now, if your Honors please, as beneficiaries of an indefinite public charitable trust no power on earth can compel us to subscribe to their literature. A public charitable trust as to its beneficiaries is not a contractual institution. A man who is a beneficiary, an indefinite beneficiary of a

public charitable trust, entertains with respect to it no contractual relation. We stand before this court as parties to a contract. We say that, under this Church Manual, it is our contract, and that so long as they operate under it we are required to subscribe to the literature of The Christian Science Publishing Society under Article VIII, Section 14, of the Church Manual. I will call attention to it later in the course of my argument. I shall only mention it now, in passing, in order to point it out. In a recent issue of the *Sentinel*, published by The Christian Science Publishing Society, they quoted a portion of Article VIII, Section 14, of the Church Manual. I shall read all of it for the information of the court:

“It shall be the privilege and duty of every member, who can afford it, to subscribe for the periodicals which are the organs of this Church; and it shall be the duty of the Directors to see that these periodicals are ably edited and kept abreast of the times.”

I read the “semicolon” because Mrs. Eddy taught the value of punctuation, as she taught the value of everything else. In *The Christian Science Sentinel* of November 27, 1920, we have a testimonial which reads as follows:

“In the Church Manual, Article VIII, Section 14, Mrs. Eddy says: ‘It shall be the privilege and duty of every member, who can afford it, to subscribe for the periodicals which are the organs of this church.’”

Not a word about the duty of the Directors to see that these periodicals are ably edited and kept abreast of the times; but these Trustees undertake to publish, as an organ of our church, a periodical which deliberately misquotes our church Manual, and send it out to our Reading Rooms, to be sold in our churches, as Christian Science literature. And when we stand at the bar of the courts of Massachusetts to say that so long as they do that we have some right to be heard, we are met with the plea that it is no concern of ours—what is done to the literature that we subscribe for and which is circulated in our churches.

The next argument that we are met with is on the part of John V. Dittmore. Mr. Dittmore comes into a court to be restored to a church office, a Director under the Manual, to an office under a deed upon a religious trust, the Deed of September 1, 1892, which we say is one office. Being restored to that office, he exercises jurisdiction over us as members of The Mother Church. He has the power to tell us what to do under the Church Manual, and what not to do.

Mr. Dittmore tells us that he is two kinds of a Director; that he is one of four under a deed of September 1, 1892, and that he is one of another kind under the Church Manual, to which we are contracting parties; and yet when he comes to this court to argue that which we shall show, if

sustained, would result in the utter destruction of the very trust that he claims to be a Director of, we are told that we have no right to be heard, that we are to be subject to his jurisdiction without ever having anything to say about it, and that in a religion of which Mrs. Eddy says that the government of another church depends upon the common consent of the governed.

When in those circumstances we turn to the Christian Science Board of Directors and ask them to uphold the rights of the members of The Mother Church, what is the answer? Why, we will not file exceptions to the report of the Master which will present to the Full Bench of the Supreme Judicial Court of the Commonwealth of Massachusetts the fact that the religion of Christian Science includes the Church Manual. That is the answer of the Directors to us as church members—when their resolution of removal is based upon the ground that Mr. Rowlands did not observe the tenets of the religion of Christian Science.

What do we find next that our friends the Directors are doing to the church members? Secretly circulating through the publication committee of The Mother Church the most false and deceptive statements as to the law of this case that could be well imagined—a direct contempt of court in that it is not a full and accurate statement of your decision in Chase vs. Dickey—and appealing to the field of Christian Science to support the Christian Science Board of Directors; and in that members of The Mother Church are expected to remain silent and permit that to go without ever having any right to be heard in court.

Then comes the Attorney-General of the Commonwealth of Massachusetts, in all the plenitude of his office as the Attorney-General of the Commonwealth, and tenders the remarkable proposition, never before heard of in a court of justice, that he is entitled to decide for himself that our church as a church—not the gift to it, not the properties that it holds upon a trust—but that the church itself constitutes a public charitable trust, of which he is the sole director-general, administrator at large, and with respect to a proceeding to administer, not even the church itself has a right to be heard—and that in a Commonwealth and under a constitution which says that in this Commonwealth the executive shall never assume judicial power, to the end that this may be a government of laws and not of men. A bill false upon its face, a bill denying the date of the organization of our church, when he knew better, because the facts were in his possession; a bill which fails to plead fully the abolition of the First Members, and he knew better when he wrote the bill. And today he presents as the deputy assistant Attorney-General pro tem

counsel retained by some members of The Mother Church, because those members of The Mother Church entertain views that accord with those of the Attorney-General and the Directors of The Mother Church; and other members of The Mother Church who stand at the bar of this court are told that they are merely indefinite public beneficiaries of an indefinite trust, and that their principal duty is silence. Ah! Not in every respect. We are to pay our per capita taxes, and support this trust which the Attorney-General is to administer for us.

Whence did this idea ever originate, that the Attorney-General was the sole manager of all the churches in the Commonwealth of Massachusetts? It not only means the churches, but it means every educational institution, it means every eleemosynary institution—all are to be administered upon a petition entitled "Ex parte Allen." This court is not to be permitted to hear anyone in opposition to his views, under his theory, because he says that everybody that has anything to do with Harvard College is a mere beneficiary of a public trust, including President Lowell, and if the Attorney-General files a bill the court can become a rubber stamp for the Attorney-General and enter a decree as prayed without hearing anybody in opposition to it.

Now, where did that start? We say, without fear of contradiction, that there is not a reported case in America in which church members have been denied the right to be heard. We say that we have examined the books day and night, and have cited every case that we could find, so much so that we are subject to the criticism of overloading this court with authorities. The Attorney-General of Massachusetts cannot find a case where an Attorney-General ex parte administered the affairs of a church; he cannot find a case where he ever administered it at all. I will tell you the three cases in which an Attorney-General attempted to run the affairs of a church, so far as the reported books are concerned.

One was in the State of Illinois. A Universalist Church sold its property by the vote of its entire membership, and divided up its proceeds among themselves. The Attorney-General of the State of Illinois brought a proceeding to claim that that church was a public charitable trust and should have been continued as a church. The Attorney-General named the church itself as a party defendant. Mr. Allen has not named The First Church of Christ, Scientist, as a party defendant in the suit that he has brought to transform it into that which it is not.

In that case the church was an incorporated body, and the court distinctly ruled that that church, being incorporated, it represented its membership. The First Church of Christ, Scientist, of Boston, Massachusetts, is

not a pure corporation. It has under Section 12 of Chapter 37 of the Public Laws of Massachusetts the limited corporate capacity to take property. In its governmental aspect it is a voluntary religious association composed of its members. No member as such is named as a party defendant in the Attorney-General's bill. The church in its corporate capacity is not named as a party defendant. He has named people who are members, but not as representative of the membership; and he has named them because they are plaintiffs in lawsuits that he asks to be enjoined, in order that he may have a free field for the exercise of these unlimited facilities that he has lately discovered he possesses.

In that case the court said that the church in its corporate capacity in Illinois, being before the court, it represented its membership; but inasmuch as there was no other church that approximated to the Universalist Church in its belief, or in its faith, or in its doctrine, there was nothing for the court to do but to dismiss the bill and allow the membership of that church to divide its property among themselves.

The next case in which an Attorney-General undertook to administer the affairs of a church was in the Dublin case in New Hampshire, where relators were present. This suit is not brought on the relation of a member of the church—the Attorney-General's suit; no member would have anything to do with it. In fact, the Hulin intervention was withdrawn yesterday so that Mr. Choate would be relieved of the embarrassment of appearing as counsel for members and for the Attorney-General at the same time.

But in the Dublin case the members of the church were named as relators, and appeared and were heard. In these late Bromfield Street church cases, the Attorney-General of Massachusetts, Mr. Allen's immediate predecessor, Mr. Attwill, proceeded under the case of Attorney-General vs. Armstrong, in which relators were named, in which counsel for church members were heard, in which the Attorney-General of the Commonwealth said that the right of the public to attend churches in this Commonwealth existed merely by courtesy, and in which this court at the instance of the Attorney-General of the Commonwealth, held that the proceeds of the sale of the Bromfield Street church belonged to the members of a particular local religious society. We are now told by the Attorney-General of Massachusetts that property in Massachusetts belonging to churches no longer belongs to them, but belongs to an indefinite public beneficiary.

Now, if your Honors please, to clear this at the outset, we do not claim to be the beneficiaries of a public charitable trust, as members of The Mother Church, and we are not assuming to

appear here in our capacity as indefinite beneficiaries of a public charitable trust.

Whenever this court strips the membership of this Church of its character of members, reduces them to the status of indefinite beneficiaries of a public charitable trust, go close up the Church.

The Attorney-General says he wants to run a church and he begins by excluding members from it. Most people when they start a church are looking for members. The Attorney-General starts by turning his back upon them and we are to have the novelty of a church without a membership.

What does that mean? We do not deny his right to appear. We named him as a party defendant to our bill brought on the 21st of March, fifty-six days before his bill. He has not named us as a party to his bill. He has not named any member of the Mother Church.

Let us see, now. What do the statutes of the Commonwealth of Massachusetts say about this? Section 6 of Chapter 37, Revised Laws:

"No conveyance of the land of a church shall be effectual to pass the same, if made by the deacons without the consent of the church or of a committee of the church appointed for that purpose, or if made by the wardens without the consent of the vestry, or if made by the trustees of the Methodist Episcopal Church without the consent of the quarterly conference."

You are asked by judicial opinion to amend that statute to read: "No conveyance of the land of a church shall be effectual to pass the same, unless made upon the ex parte application of the Attorney-General of the Commonwealth of Massachusetts, from which church members are to be excluded." That is what you are asked to do by the Attorney-General of the Commonwealth of Massachusetts in this case.

We are told here in section 1:

"The deacons, wardens or similar officers of churches or religious societies, and the trustees of the Methodist Episcopal churches, . . . shall . . . be deemed bodies corporate for the purpose of taking and holding in succession all gifts, grants, bequests and devices of real or personal estate, made either to them and their successors, or to their respective churches."

That should be changed to read that they "shall be deemed the agents of the attorney-general of the Commonwealth of Massachusetts for the management of the church and subject to his order and direction upon an ex parte application presented by him to the court." The whole statute is to be rewritten in order to confirm this newly discovered theory of the powers of the Attorney-General of the Commonwealth.

What is the excuse for it? It is said that he has certain powers under the

statutes of the Commonwealth—we are not denying that—to enforce trusts of a public nature. We agree with him that that statute does not have anything to do with the case at all, that his powers are much broader than the statute. The history of the statute is interesting. At one time the Commonwealth of Massachusetts, in 1847, concluded to do without the office of attorney-general and created district attorneys; and then, to be right sure that the power to administer a charity was not lost, they provided that the district attorneys should have the power to do it. And that was the first case in this state where a district attorney or the officer of the commonwealth brought a suit to administer a charity, in 2 Cushing.

Then, when, having lost the attorney-general, the commonwealth realized the mistake it had made and how unfortunate it was without any attorney-general, it re-created the office. And then, to be right sure that he had not been shorn of his ancient, honorable privileges and powers, the legislature then passed the statute giving the attorney-general certain power, and this court has decided at least twice that this did not interfere in the least with all the dignity that attended the office of attorney-general in England. So we named him as defendant as representing to its full extent whatever interest the public may have in this situation. We deny that the public has all the interest and that we have none.

Up to the case of McAlister v. Burgess, 161 Mass., this court was committed to the doctrine that a church was a private institution. It is easy to understand that when you have regard to the history of the commonwealth. I visited Christ Church in this city one day and I saw the pews. On them were the names of So-and-so, and So-and-so. I have read the cases where they talked about the proprietors of a meetinghouse. It was interesting in that old New England idea of religious freedom, of individual right, of individual ownership, of the individual right of man to worship God according to the dictates of his own conscience, that it should be admitted that a church, as said by this court in the 14th Gray, was the property of its owners. And in the case of Attorney-General v. Merrimack Manufacturing Company, where an industrial concern established a church and then ceased to use it as a church, and the Attorney-General claimed it belonged to the public, the court said the church belonged to its owners.

The other cases that grew out of the Old South Meeting House—Parker v. May, 5 Cush., way down to the 13th and 14th Allen, all sustained these principles.

In that situation of affairs in 1892 Mary Baker Eddy wrote a deed, September 1, 1892, at a time when there was not a line in the books of the courts of this state where there was any intimation that even a gift to a

church was to be regarded in the light of a public charity to be administered by the commonwealth.

Then came McAlister v. Burgess, in 161 Mass., in which this court, dealing with a gift to a church, held that it was not void as against the rule against perpetuities. No one would now contend that it is. We have discussed that in our brief and we have pointed out that under the gift to a church there is a present vesting of the interest. That is what makes it immune from the rule against perpetuities and not because it is a gift to a charity; because an intermediate gift to an individual for a period within the rule with a gift over to a charity for a period beyond the rule would be void in toto.

Now after McAlister v. Burgess—nobody was talking in that case about the right of a church to be heard—a church was a party to that suit, the Attorney-General was a party. He didn't claim to be the only person entitled to be a party or even the only person entitled to be the plaintiff. After McAlister v. Burgess, in the 161 Mass., this court followed the rule of Attorney-General v. Clark, in which the Attorney-General undertook to administer the affairs of a church and this court said that where there was a recognized church body competent to protect its own affairs the Attorney-General had no standing with respect to the affairs of a church and the bill was dismissed. That happened in 167 Mass.

Then came the case of Osgood v. Rogers, 186 Mass., where two bequests for two different churches were created by the same instrument. One of the churches ceased to function; it sold its property without the consent of the Attorney-General and without the Attorney-General having anything to do with the sale of its property. And then the question came, what should be done with the proceeds; and in a suit to which both churches were parties the property was given to the remaining church. That was 186 Mass.

Then came the case of Sears v. Attorney-General, 193 Mass., where it was argued that a gift to a church was a public charity; and we are not denying that this gift which we are talking about today is upon a religious use in which the public has an interest. We are saying that that gift is to a body of individuals of which we are one. That being true, we owe to the property that is conveyed to us upon a trust the duty of seeing that that trust is enforced; and that trust being created, and that duty vesting in us, the law gives us the right to discharge it, not with a view of taking this church and converting it into money and putting the money into our pockets and dividing it among ourselves. No, that is not what we ask. We ask that this court, when Mary Baker Eddy, the Leader of Christian Science, is attempted to be stripped of

everything that pertains to her in her authority as such and to be reduced to the status of a person giving away real estate and printing shops—we stand here to say that anybody that will allow his counsel to make such an argument in his presence deprives himself of the name of Christian Scientist. And we include in that the Christian Science Board of Directors, who fail to stand at the bar of this court and uphold the religion of Christian Science as including the Church Manual. We are here as members of The Mother Church to enforce the trust upon which this property is held and in which the public have an interest, because we, the members of The Mother Church, are the real beneficial owners and the real trustees of the property. And in *Osgood v. Rogers* this court did not deny the title of a church.

In *Sears v. Attorney-General* this court did not deny the right of the trustee to appear. He was the plaintiff. This court did not deny the right of the church interested in the trust to appear. That was one of the defendants. And the court held that a gift for the benefit of the widows and orphans of former rectors was a gift upon a strict charity and therefore subject to the *cy pres* doctrine. That was in the 192d.

After that came *Saltman v. Nesson*, 201 Mass., in which this court entertained a suit brought by church members without any attorney-general being present, in which church members were heard upon the merits of the claim that a church by-law regulating use of the church property was null and void.

Then came *Chase v. Dickey*. In *Chase v. Dickey*, if your Honors please, the Attorney-General did not appear to defend the trust; he appeared to destroy it. He did not appear to defend it. He appeared not as the representative of the beneficiary of a public trust; he appeared as the law officer of the Commonwealth to claim that a conveyance to a church was void because it related to property that produced an income of more than \$2000 a year. The directors of The Mother Church stood before this court in that case as the persons seeking to enforce it, and your Honors will recall the care with which Chief Justice Rugg pointed out that there was a clear distinction between a gift to a church for its own use and a gift to a church upon a trust of a public nature; that one of them was void if it produced more than \$2000 a year and one of them was valid. And we are told here today in all solemnity that when Chief Justice Rugg spent that time as he did—I do not mean to say that anybody is saying this in so many words, but the legal effect, the logical contention, is that Chief Justice Rugg spent all that time in vain; that he could have said at the outset that no matter what a church owns in the Commonwealth

of Massachusetts or how it gets it or whence it comes or what the nature of it is, all of it is a public charity and that ends the discussion as to whether it produces \$2000 a year or more or less. In that case the right of a church to hold property which did not produce an income of more than \$2000 a year in its own right was recognized and upheld by this court.

Then came the Bromfield Street Church cases, appearing before this court three times, at the end of which the right of the church was recognized. This court, in a bill brought by the Attorney-General at the relation of church members, in which church members were heard, held that the church belonged to the members of the particular congregation for whose use and benefit that deed was made.

Need I remind your Honors of the great case in the House of Lords of England that was argued eight days on one occasion and nine on another, in which the members of the Free Church of Scotland were held entitled to protect the church of which they were members? Nobody in all that wealth of learning—Lord Halsbury, Lord Halverston, Lord Davy and Lord James, with all the counsel in the case—nobody ever thought of sending for the attorney-general. Nobody ever thought of saying to church members, "You have no right to be heard."

Take the great Mormon Church case, where the United States in the exercise of its power revoked the charter of the church, took charge of its property and proceeded to administer it. Members were permitted to intervene and be heard. And when a scheme came up for the administration of it, the court, instead of giving it to the public at large to maintain public schools in the territory of Utah, gave it to the members of the Mormon Church to be used for the legitimate purposes of that religion.

Take the Cumberland Presbyterian litigation, heard in twelve states, part of it decided by Mr. Justice Hughes of the Supreme Court of the United States. In two cases before him in that tribunal the right of church members to bring a suit in the commonwealth of Tennessee in the Federal Court was recognized without any intimation that the Attorney-General of Tennessee was the only party that was able to act.

The great church litigation—think of it—think of the novelty of this discovery—is all to be wiped out by the simple device of treating every church as the property of the Attorney-General of the commonwealth of Massachusetts.

So much for the theory of the Attorney-General that he is the only person that has a right to be heard.

Now, if your Honors please, as we have said, we brought this suit as church members. We bring it upon the theory that we are the beneficial owners of this real estate. And at the

outset we want to remind this court that while *Eustace v. Dickey* only involves the title to two offices, the case of *Krauthoff v. Attorney-General* involves the title to the church property. There are in this city two pieces of property, one triangular in form, surrounded by streets, on which is built the edifice of The Mother Church. There is another piece of property across the street which is occupied by The Christian Science Publishing Society. In the case of *Eustace v. Dickey*, in the list of exhibits at the back of it is a map of it. The title to that property was acquired through various deeds. Those deeds are set out in *Eustace v. Dickey* and under an order of Mr. Justice Braley expediting the printing, they are a part of *Krauthoff v. Attorney-General*.

We are not here asking for any abstract declarations of religious doctrines. Whenever we want to know what Mary Baker Eddy taught in Christian Science we do not go to a law office to find out and we do not go to towns outside of Boston to select eminent counsel to advise us what Mary Baker Eddy meant when she told us what to do. We turn to the words and works of Mary Baker Eddy to find out what Christian Science is, because it is essentially her individual discovery, her individual demonstration. She knew more about it and knows more about it than anybody that ever lived, and she knows all about it because she taught it with complete demonstration and nobody knows anything about Christian Science except as they have learned it in the way that she has pointed out. So it is not necessary for us to come into a court to ask for abstract declarations of religious doctrine. We are not here asking any protection for our civil rights as members of The Mother Church. We are asking at the bar of this court that this property dedicated to the promotion and extension of the religion of Christian Science shall be hereafter administered for the promotion and extension of the religion of Christian Science and shall not be promoted and administered to its destruction.

If your Honors please, when counsel of the eminence and ability of Former Judge Hughes, of Mr. Thompson, retained by Christian Scientists, appear at the bar of this court and solemnly exclaim that Mary Baker Eddy did not know what she was doing when she wrote certain documents, there is only one thing in common honesty for those people who have those views to do, and that is to cease to be Christian Scientists, because that declaration takes them effectually out of the religion.

We had a lot of discussion yesterday about whether Mrs. Eddy removed Mr. Rowlands, whether or not the directors did it in good faith. Why, Mr. Rowlands was removed the day that Mr. Hughes and Mr. Whipple and Mr. Strawn told Mr. Rowlands that he need no longer obey the Church Manual, and

when he accepted that invitation, as a practical effect he tendered his resignation and advertised to the world that he was no longer a Christian Scientist. There is no undivided loyalty about it. If you were examining a person for admission to citizenship and you asked him, "Do you believe in the Constitution of the United States?" and he should say, "Well, I shall have to go down and consult Sherman L. Whipple to find out how much of it is really valid," would you admit him to citizenship? We do not ask the Attorney-General of Massachusetts to advise us what constitutes Christian Science.

We have here the Concordances to Mrs. Eddy's Works, which have every word in all of them. If Mr. Allen can find the word "Attorney-General" in anything that Mrs. Eddy said, he is welcome to the consolation that that may bring him. She said, "Follow your Leader." How? As a human being? In her personal capacity? No. "Follow your Leader only so far as she follows Christ." We shall contend that this court has that privilege, of following the leadership of Mary Baker Eddy in the enforcement and execution of this trust, and we shall assume, without fear of contradiction, that if it were possible for her to come into this room in the flesh, this lawsuit would stop! because in her presence no one would say, as Governor Bates said yesterday, that she was not the Leader of Christian Science in her lifetime; no one would argue, as Mr. Thompson said, that she did not understand the law when she wrote certain instruments, and that certain instruments that she wrote are invalid; no one would talk, as Mr. Justice Hughes did, about these by-laws being suggestions and recommendations, and having her approval, and about the arbitrary exercise of power by directors who followed her commands. The lawsuit would stop, because in her presence there is not a litigant here today that would dare to say that that which she expressed, in a form which she deemed authoritative, was not valid and binding.

Then we have a curious proposition. We are told that there is such a thing as the law of the land, and that this law of the land is something that tells us that we cannot have a church in the way that we want to have a church. It is all right for us as Christian Scientists to have a church Manual if we want to; it is all well enough for us to be good little children so long as we want to be good; but just so soon as we become bad, our religion has nothing more to do with us, and there is nothing for us to do but to employ a lot of lawyers, who have no knowledge of Christian Science, and then go to a court and carefully exclude from that court everything that the religion has to do with the case, in the hope that, having been punished through our experience

in court, we may thereafter again become Christian Scientists and again become good.

We proclaim the presence of an Infinite God. We proclaim that there is no law of the land distinct from the law of the Church, for the law of the Church is either valid under the law of the land, or it is not law. We point with pride to the statements of Mary Baker Eddy,—

"I love Boston, and especially the laws of the State whereof this city is the capital. Today, as of yore, her laws have befriended progress."

What she then said is true today, and will be true for all time to come, for Mary Baker Eddy wrote not for a single day, nor for a single hour, but she wrote for eternity. She tells us, "I uphold the laws of the land."

She tells us that the law of the land and the law of God is the same thing; and, if it is not the same thing, as law-abiding citizens we have no Church.

Now, if your Honors please, we proclaim in our brief this doctrine upon which we rest this case, that in the enforcement of a trust upon a religious use, the court will respect and protect the religion to which the use relates. That is almost like telling you that 2 and 2 make 4; and yet that is a complete answer to this case. We are not talking about a legal deed to real estate; we are not talking about a private donor; we are not talking about a printing shop that somebody named Mary Baker Eddy established. So far as the printing shop is concerned, it would be just the same as if her name had not been Mary Baker Eddy. We are talking about a religion, a religion that gives these deeds all of the life that they possess, whether in this court or elsewhere; because unless those deeds were executed upon a religious use they would all be void under the rule against perpetuities, and we would not be here to talk about it; and if they were not executed upon a religious use there would not be a single person in the world that would pay a dollar to the Church to maintain and sustain it or subscribe to the literature.

We have heard a good deal about this deed of September 1, 1892, being complete in itself; and about the deed of January 25, 1898, being complete in itself. Suppose that it were physically possible to tear those pieces of paper out of here, and say to Mr. Dittmore, "Go and run your deed of September 1, 1892, all by yourself, and complete within yourself," how far would he get? Suppose that we could say to the trustees of the Publishing Society, "Go and run your deed of January 25, 1898, all by yourselves," how far would they get? That is not what they are asking. The trustees of the Christian Science Publishing Society are demanding the right to be known as the Publishing Society of the Chris-

tian Science movement, and to have everybody else excluded from it; and Mr. Dittmore is demanding the right to compel the church members to obey the Church Manual, in order that, if he be a director under the deed, he may have some income to manage the Church of which he is to be a director.

All the acts of Mary Baker Eddy are to be construed as one harmonious whole, each one in case of variance displacing the one which preceded it.

Now, then, in doing that, we do not ask for any rule of law applicable to Mary Baker Eddy that is not applicable to anybody else in like circumstances and conditions. We do not ask for any rule as applied to Mary Baker Eddy in her individual and natural capacity as the holder of the legal title to real or personal property, that does not apply to anybody else that holds the legal title to real and personal property. We claim for her no supernatural existence. We claim for her just what every religious leader has the right to have claimed for him, just as your Honors have the right to say that when Henry K. Braley signed the injunction in this case it was the Supreme Judicial Court of the Commonwealth that spoke, and not Henry K. Braley in person. Suppose, if your Honors please, that in the fullness of time Mr. Justice Braley had retired from this court after he had signed the injunction, and someone was brought before the court for violating it, would it be any answer to say that Henry K. Braley signed that injunction while he was living; he is not living now; this injunction does not operate any more? Yet we are told here in all solemnity that governmental acts signed and executed by Mary Baker Eddy, the sole governing authority of Christian Science, have no more force or effect now because she has ceased to manifest motion in her physical body. Why, if your Honors please, it is a little difficult to view that with equanimity, because if anybody admitted that to be true Christian Science would be at an end. And I am going to do these Christian Scientists who have followed these Philistines, the lawyers, who have not studied Christian Science—I am going to do them the honor to believe for the present that they do not believe anything of the kind; that they have permitted themselves to be deceived; and I am going to include the directors in that, and believe that they have permitted themselves to be deceived by the idea that when you have a lawsuit you bid farewell to God and religion, and turn yourself over to a lot of lawyers, who boldly proclaim that a court has no jurisdiction to entertain questions of religion, and then hope for some day when, relieved of the lawyers of the court, you may again become a religionist. That, if your Honors please, is a slander upon a court. I say that because in the work that we have done in this case as church members we have traveled far

afield, we have talked with earnest, prayerful Christian Scientists, and it is with humiliation that we come to this court and state that people have said to us, "Well, what are we going to do about it? The court has issued an injunction, our directors have been enjoined; what are we going to do? What are we going to do about it?" they said. "It is in court." One man said, "Does it make any difference how we get it out if it was wrong to get it in? What are we going to do about it? It is in court." I will tell you what we are going to do about it. We are going to present to this court the material—we have presented it in our brief—that will enable this court to continue to recognize in the future, as in the past, that when this court opens with the invocation, "God save the Commonwealth of Massachusetts," it means that God is present here and now to save the Commonwealth of Massachusetts, including the Mother Church of Christian Science, The First Church of Christ, Scientist, in Boston, Massachusetts. He is here to save this court from becoming the victim of specious reasoning. He is here to save this court and to enable it to discharge the duty which the judges of this court assumed when holding up their hand and taking their official oath they said, "So help me God." We are doing it upon this legal theory. We have outlined the right of members of the Mother Church to appear, and this is the legal theory, and because of the immensity of the proposition that I am about to state, and in the desire to be entirely accurate, I shall read it from my notes:

As a natural person, and in her individual capacity as the holder of the legal title to real and personal property, Mrs. Eddy never attempted to alter the legal effect of or revoke any instrument executed by her.

We are told of the Saviour of mankind that He was in all things obedient to His parents. He observed all the ordinances of the religion in which He was born, including the last one. Mrs. Eddy never violated the human law. She enjoined upon her followers that we should not violate it. And we are appearing in our capacity as Church members, but we are not unmindful of the fact that we have had a legal training and a legal education, and that our position as members of the bar in other states would prevent us from saying to this court anything that we did not believe to be true as lawyers. And we said, when we were met by that proposition—I said, when I was met by that proposition—Could I be a Christian Scientist and a lawyer at the same time?—I decided that I could; and we are today, in what we say to you, going to be Christian Scientists and lawyers at the same time; and we are going to say, and we say it now, that after the days and the nights spent in the law library which

have enabled us to bring to this court this document, that we are glad to say that Mary Baker Eddy is just as good a lawyer as she is anything else, and that everything that she did, in the way that she did it, is legally valid. Why? We must have regard to her governmental capacity. Nobody can talk about Mary Baker Eddy as the holder of legal title to property; nobody can talk about her as the donor of real estate, or the giver of things, and get anywhere; for she never asked anything in that particular; she did not say, "Follow Mary Baker Eddy;" she said, "Follow your Leader," with a capital "L"—"Follow your Leader." Who? The Leader of Christian Science. She in Christian Science is the absolute monarch; everything that she does in Christian Science is a part of the religion of Christian Science, because it came to the world through her.

Now, if your Honors please, we do not expect you as judges to decide that Christian Science is true. Nobody is asking here today to convert you to the doctrines of Christian Science. We are asking you as judges to recognize that that is what Christian Science teaches as to its adherents, and that anyone who claims to be an adherent of Christian Science must accept at the outset the absolute authority of Mary Baker Eddy in every particular. Of course it may seem strange in these modern days that we should talk about a religion which is the projected light of a single individual. But that is not anything that is new in the history of the world. Martin Luther gave to the world the Lutheran Church. John Wesley gave to the world the Methodist Church. Alexander Campbell gave to the world the Christian Church. Nobody can talk about the Presbyterian Church without mentioning the name of John Calvin. Nobody can talk about the Baptist Church in this country without thinking of Roger Williams. But in Christian Science Mary Baker Eddy stands unique in the fact that she discovered Christian Science in her personal experience. She gave it to the world in her textbook, in her teachings, in her writings, in her Manual. There is not a thing in Christian Science that she did not establish and did not give to her loyal followers. She taught, she proclaimed, she made good, she demonstrated, that through following her teachings in their entirety, not as advised by counsel, from time to time, nor as administered by the Attorney-General of the Commonwealth of Massachusetts, but as taught by Mary Baker Eddy, it is possible for us, while yet in the flesh, to have such an understanding of the presence of an infinite God that sin, disease, are reduced to their native nothingness, and sick are no longer present to our senses. That is what she taught. She taught that it was pos-

sible for her to do what Jesus of Nazareth did, and she made good as to everything except at this time of actually raising a physical body from the dead. People have approached the symptoms of death, have been given up to die, and through Christian Science have been restored to health and to strength.

Now, that is what she taught; that is what she did. Is that wrong? Who is going to paralyze that? Who is going to say that I threw a rock in the window and helped break that church? Nobody. Mary Baker Eddy told us that the gates of hell should not prevail against the church that she established, and we have not approached that yet in this case.

Now, if your Honors please, that is what she taught. She is entitled to a fair chance to make good. She is entitled to have that truth perpetuated to the world in the form in which she gave it until somebody else appears, and we do not think that they ever will appear, that can tell it a better way; and we who have felt the healing power of the truth that she taught are entitled to have the form of government that she established for us preserved. We do not ask anybody to join our church. We maintain no propaganda. We do not interfere with the religious rights of any human being. But we do say that we have a right to worship God according to the dictates of our own conscience, and if that conscience tells us to accept unreservedly and absolutely the teachings of Mary Baker Eddy as the Leader of Christian Science, it is our privilege to do so, and those who do not agree with us have the right to go out and call themselves something else, if they want to. She used the word herself, she adopted the word. In the world of unfair competition the word would be regarded as so indissolubly connected with Mary Baker Eddy that nobody could claim to be entitled to be called a Christian Scientist who does not follow the teachings of Mary Baker Eddy in their entirety, without variableness, without shadow of turning, and without regard to legal advice.

Now, then, having regard to her leadership, this Manual has been talked about here as church by-laws; it has been talked about as rules of government for the church. Judge Hughes said something about Mrs. Eddy's recommendations and her suggestions.

Why, if your Honors please, the Church Manual in Christian Science stands as the inspired word of God, revealed unto Mary Baker Eddy, not only for the conduct of her affairs of church but the conduct of our affairs wherever we are or whatever we do. It binds me as a member in this court; it bound me when I severed my connection with The Christian Science Board of Directors. It stands as the inspired word of God and is in-



dissolubly connected with the religion of Christian Science.

Mr. Thompson attempted to argue here yesterday that it was not a part of the religion because he said it required us to pay a per capita tax of one dollar a year. Why, in Malachi we are taught to bring all the tithes into the storehouse. God demands of His children that they bring their substance unto Him. To say that this Manual is not a part of the religion of Christian Science because it enjoins the paying of a per capita tax is to admit one's ignorance of what the Manual really is. Mrs. Eddy taught that it was included within the religion of Christian Science. We plead that as a fact in our bill and it is admitted by the demurrer to it.

So, if your Honors please, we start with the proposition that this Manual is the revealed word of God unto Mary Baker Eddy for the government of the Christian Science movement; and, that being so, it is an essential and integral part of the religion itself. Someone said yesterday that Mrs. Eddy changed her mind from time to time. Why, Mrs. Eddy never taught us that it was the mind of Mary Baker Eddy that was leading us, as Moses led the Children of Israel from the land where they made bricks without straw to the land flowing with milk and honey. She taught us that she was revealing the mind of God. As she wrote she wrote as a scribe under orders, and wrote what she considered to be and what she understood to be the will of God; and those of us who agree with her have the right to follow that.

Now, then, having in mind that she is the Leader of Christian Science, let us state our next proposition. As the Leader of Christian Science, and in her governmental capacity, Mrs. Eddy never attempted to alter the legal effect of or revoke any instrument executed by her in her individual capacity. We do not claim that in her official capacity as Leader she had the right to destroy legal titles once conveyed. This is what we say. As the Leader of Christian Science, and in her governmental capacity as such, it was competent for Mrs. Eddy, with respect to any trust executed either by her or anyone else, upon the trust to promote and extend the religion of Christian Science, to define from time to time the religion of Christian Science as it unfolded to her, and to regulate and alter the method of administration of such trusts, so that such administration would at all times be in accord with the religion. That, if your Honors please, is a proposition upon which we rely, and to which we shall now address ourselves.

At the outset, having regard to page 27 of our brief we state the proposition that a court of equity has jurisdiction to enforce a trust in property

held for the purpose of promoting and extending a religion.

That proposition is almost self-evident. We have instanced cases in which this court and other courts have exercised that jurisdiction. We have pointed out in the course of our brief the fact that every one of these bills of complaint pending before you, three in number, purport to be bills to administer a trust upon a religious use. We are dealing with a religion. Without the religion this case would not be here.

The next proposition to which we desire to ask the attention of your Honors is the fact that this court possesses full equity jurisdiction. In coming as I have into this Commonwealth from a State where equity was accepted as natural and inherent in a court, it came to me with some surprise at first to learn that in the earlier days of this Commonwealth this court did not possess full equity jurisdiction, and that not until 1877 did this Commonwealth vest in this court the full jurisdiction of a court of equity. That jurisdiction now obtains. That being true, the historic question as to whether or not the statute of the 43d Elizabeth was the sole origin of the doctrine with respect to a charitable trust becomes immaterial. Your Honors will remember the Girard will case, in which Mr. Binney, with a wealth of learning that will never perish, demonstrated that the power of a court of equity to administer a trust upon a religious use was inherent in its nature and did not depend upon the statute of the 43d Elizabeth. Of course at the time when this court did not possess the full jurisdiction of a court of equity, it became necessary for you to recur to the 43d Elizabeth. But now, since 1877, that you have the plenary power of a court of equity, that power which Mr. Justice Brewer has defined to be the power which is equal to every emergency that may present itself, you are not limited to the 43d Elizabeth at all.

In passing from the statute of the 43d Elizabeth I want to record, with grateful appreciation, the very great help that Mr. Chief Justice Rugg, speaking for this court, gave to my understanding of that statute in pointing out the contemporaneous appearance of the statute of the 43d Elizabeth and the King James version of the Bible, in which Mr. Chief Justice Rugg pointed out that the word "charity," was used at the same time in both instruments, appearing within ten years of each other, and that the true root word was "love."

So we are administering the love of Mary Baker Eddy. Love includes loyalty; and the highest test of love is defined in that statement of our great Master when he said, "If ye love me, keep my commandments." The highest tribute that anybody can pay to the love of Mary Baker Eddy, which he is

claiming to administer, is to obey her commandments, and we are going to ask this court to do that in this case, because she gave this to us. It is her religion.

Why, if your Honors please, one day I was talking with a barber, and the barber says, "What is this lawsuit in Boston all about?" "Well," I said, "there are a lot of people claiming that Mary Baker Eddy didn't know how to organize a church, and that pretty nearly everything she did was wrong, and now it is to be run differently from the way she said it should be done." This barber turned to me, in the simplicity that common people so often manifest, and said, "Well, why shouldn't it be the way she said it should be? Didn't she make it?"

Didn't she? Who will go out of this court, with the decree that he is seeking, to do that which Mary Baker Eddy did not want him to do, but which is now discovered to be in violation of the law of the land? None of these contending factions will bear that mark of Cain upon their brow. Lawyers will argue with legal ingenuity that something Mrs. Eddy did is not what it purports to be because it is something else, but every Christian Scientist claims he is upholding what Mary Baker Eddy did.

Now, then, having a court of equity, a court of equity that has full jurisdiction in the premises, let us now have regard to the proposition that I stated a moment ago. It is found on page 35 of our brief.

In the construction and interpretation of a trust relating to a religion, the court respects and protects the religion to which the trust relates.

Now, I want to call attention, in view of the fact that the Attorney-General has demurred to the paragraphs of our bill which plead the religious import of what Mrs. Eddy did, in view of the fact that the Trustees of the Publishing Society have done likewise, Mr. Dittmore has done likewise, to the fact that the Directors of The Mother Church refuse in *Eustace v. Dickey* to bring to the attention of this court the religious import of that which Mrs. Eddy did, to show you just what is contained in these pleadings.

I shall begin with the Deed of September 1, 1892. In that Deed Mrs. Eddy, according to the pleadings, or according to the Krauthoff bill, which is admitted as true—the Deed of September 1, 1892, was executed to promote and extend the religion of Christian Science. That Deed of September 1, 1892, clearly relates to the establishment of a church. It prescribes the nature of the services that shall be held in that church, and requires the grantees in the Deed to believe in the principles of Christian Science as taught in the Christian Science textbook.

In the Deed of January 25, 1893, Mrs. Eddy said it was executed for the

purpose of more effectually promoting and extending the religion of Christian Science. That is recognized by counsel in their opinion and in their argument; but through a failure to understand the precise nature of The Mother Church, Judge Hughes has said that the promotion and extension of the religion of Christian Science was a purpose much broader than The Mother Church. This court voiced something of the same idea in Chase vs. Dickey, where you said that the trust created by Mrs. Eddy's will, for the promotion and extension of the religion of Christian Science, was broader than the confines of a single congregation.

Well, The Mother Church in Boston, Massachusetts, is not a single congregation. It does not consist of the people who assemble in Boston on Sunday or other days to worship in the church. It is The Mother Church of Christian Science, extending throughout the world, and has over 1800 branches; and when you come to understand the words that Mrs. Eddy used a very simple principle applies. If you are construing the Constitution of the United States you have in mind that the men who wrote it studied Blackstone, and you turn to Blackstone to see what an indictment is, when you want to find out what an indictment means in the Constitution of the United States.

Now, Mrs. Eddy used the word "branch." Where did she get it? She studied the Bible. Where is "branch" in the Bible? In the 15th Chapter of John: "I am the vine, ye are the branches. He that abideth in me, and I in him, the same bringeth forth much fruit. . . . If a man abide not in me, he is cast forth as a branch," I am quoting freely.

So that this Mother Church lives in every branch church throughout the world. It lives in every practitioner of Christian Science who gives his time to healing work. It lives in everything that Christian Science relates to, because it is a part and parcel of the whole, and not a part or parcel of part of it. There can be no purpose broader than the purpose of The Mother Church of Christ, Scientist—the First Church of Christ, Scientist, in Boston, Massachusetts.

It was a statement of Webster that the drum beats of England were heard round the world twice each week, and sometimes three times. On Sunday mornings, and sometimes in some churches on Wednesday evening, we hear, with grateful appreciation, the statement "This church is an authorized branch of The Mother Church, The First Church of Christ, Scientist, in Boston, Massachusetts." And those churches that do that turn to this court today in the confidence that Mary Baker Eddy knew what she was doing when she committed the admin-

istration of her affairs to the laws of the Commonwealth of Massachusetts.

Now, let us see what these Trustees claim about themselves—they who claim in this demurrer that this court has no authority to consider a religion? The Trustees claim in their bill of complaint that they have held and managed the trust property in their care "solely for the promotion and extension of the religion of Christian Science as taught by Mrs. Eddy," and "on a strictly christian basis"; and that the Trustees "have all worked loyally, earnestly and faithfully as Christian Scientists and believers in its tenets and doctrines, for the best interests of the Christian Science church and the spread of Christian Science throughout the world."

They refer to "Mrs. Eddy's plan for the promotion and extension of Christian Science," and to "a sacred duty (said to be) imposed upon them and them alone by the Founder and great Leader of the Christian Science church."

Did they say they were appearing at the bar of this court as trustees of a deed executed by the donor of a printing shop? No. Do they proclaim to the world that we are the owners of a printing shop, given by an individual named Mary Baker Eddy? No. They say that these duties were devolved upon them by the Founder and great Leader of Christian Science. I ask them to follow the great Leader of Christian Science and to remember that Mary Baker Eddy knew more about Christian Science than everybody in this room put together.

Then Mr. Rowlands said this—this is what Mr. Rowlands has tendered as an issue. Mr. Rowlands says that he "has in all respects discharged his duties as trustee solely with a view to what in the exercise of a sound judgment he has regarded as the best interest of Christian Science, the Christian Science church, and the promotion and extension of Christian Science throughout the world; that he has been prayerfully conscientious and loyal and faithful to his duty as a believer in Christian Science;" and that all of the plaintiffs "have been faithful, loyal, and conscientious Christian Scientists in the performance of the duties under the important trust and confidence reposed in them by the great Leader and Founder of the Christian Science movement."

Now, we do not propose to inveigh Mr. Rowlands' consciousness, and to go with him into his closet and find to what extent he has been prayerfully conscientious, but we do say this: That when the Trustees of The Christian Science Publishing Society spend the money of that trust, and in court quietly sit by and hear their counsel tell this court that this part of the Church Manual is null and void, "The Christian Science Board of Directors shall have the power to declare va-

cancies in said trusteeship, for such reasons as to the Board may seem expedient,"—they resign as Christian Scientists in the most effectual manner. They never again can go forth and tell the world, "We uphold the Manual of The Mother Church." That much at least has been accomplished. We have heard much of it in this room. Almost with tears in his eyes, Mr. Whipple used to tell us how loyal they were to their Leader. The disguise is thrown off; the mask has gone. The Trustees ask you to decide this case in their favor because they say a section of the Church Manual, written by Mary Baker Eddy, the Leader of Christian Science, as the revealed will of God, is null and void. Any title to any office that they get upon any such decree as that will not be worth the paper on which it is written. It denies their bill and every argument they make.

They say that Mr. Rowlands had made a financial sacrifice in becoming a Trustee "solely to consecrate himself to the extension and promotion of Christian Science which he had adopted and professed, and in which he had become very deeply and sincerely interested."

Can you accomplish the promotion and extension of the religion of Christian Science by tearing a section out of its Church Manual, which we regard as a part of the religion, and which our bill pleads to be a part of the religion, and which the Trustees' demurrer admits to be a part of it—a book published by them and sold by them? Do they expect to revise this book and cut it out? Can they as honest men continue to sell a book which their counsel tells them contains something that is null and void under the laws of the land? What are they going to do about it?

Then we further find this—Mr. Ditmore says this in his answer. This, if your Honors please, is an answer filed by William G. Thompson, who tells this court that Mr. Krauthoff has consumed a large part of the time of the single justices of this court in talking about doctrine and religion, and this is the issue that Mr. Thompson tenders.

"The plaintiffs (in the Eustace case) are not and for a long time have not been loyal, faithful and consistent believers and advocates of the principles of Christian Science as taught by Mary Baker Eddy in her book entitled 'Science and Health with Key to the Scriptures,' and long before the filing of this bill the plaintiffs had ceased for that reason to be eligible to hold the office of Trustees under the Deed Exhibit A."

If your Honors please, parties that tendered issues like that, who brought the religion of Christian Science into this court, and for the purpose of being restored to a position of power were willing to do anything to destroy that which Mrs. Eddy did in the hope that they could win a lawsuit, bring-

ing into the Christian Science field the greatest disaster that could ever occur to it, when met with a bill of a constructive nature to assemble this form of church government in legal language before this court, and ask for its upholding in its entirety, say that the court has nothing to do with a religion. Those pleadings are still here. They have not been withdrawn. They ask for a decree in their favor based upon those allegations. Nobody can come into a court of justice and blow hot and cold. Nobody can occupy inconsistent positions, because in a court we are dealing with truth, the whole truth, and nothing but the truth.

Now, what is the contention that we have to meet? Mr. Dittmore served as a Director for nearly ten years, under the Church Manual and a Deed, without ever discovering that they were two separate and distinct instruments. Let us see what he said in this case. I am talking now about *Eustace v. Dickey*—we are talking about the record in this case.

Mr. Dittmore filed an answer in *Eustace v. Dickey*, (record, page 68), in which he pleaded as a part of his answer a memorandum called the Dittmore Memorandum of which he is the sole author, and, he says, expresses the relationship between the Trustees and the Directors of the church. That Memorandum is in the pleadings in *Eustace v. Dickey*. It has not been withdrawn. I will ask your Honors to read that Memorandum, written by Mr. Dittmore, with a view of discovering when he first found out that he was two kinds of a Director. He has not withdrawn this pleading, either, by the way:

"It shall be accepted in theory and demonstrated in practice that The Mother Church is one institution and that the responsible authority for its direction in all of its departments is not divided, but has been definitely established in The Christian Science Board of Directors."

In other words, when John V. Dittmore was a director of The Mother Church and was seeking to exercise authority over Mr. Rowlands, Mr. Eustace and Mr. Ogden, when he was clamoring, as he did then, for the removal of all three of them because they did not obey the Church Manual, then he wrote a Memorandum that is still in the pleadings in this case,—that the Deed of Trust of January 25, 1898, and the Church Manual, are one document. With that pleading before this court, with that theory tendered in his answer, he asks you to abandon the theory on which he wrote the Dittmore Memorandum, and to decide what? That when Mary Baker Eddy wrote the Deed of January 25, 1898, she could not modify it by a church Manual, because he wants to be a Director under the Deed of Sep-

tember 1, 1892, and if she could modify one she could modify the other.

We are not concerned in this controversy between Mr. Dittmore and the Directors, about what they did on March 17, 1919. We do say, as members of The Mother Church, that the argument of William G. Thompson in this case, made in the presence of John V. Dittmore, renders him unfit to hold any office in the Christian Science church, and excludes him from any consideration at the hands of a court of equity, because it is a denial of that which Mary Baker Eddy did as the Leader, the Discoverer and Founder of Christian Science, and we are entitled to have Directors who are loyal to our Leader.

Now, those are the pleadings that these parties have tendered, and say that this court has nothing to do with considerations of a religious nature. But, independent of the pleadings, let us go to the law of the case. And before I do that, if your Honors please, I am going to read something that has been a very great help to me in the work that we are doing in this case. In the 13th Chapter of Mark, the 34th verse, we read as follows:

"For the Son of man is as a man taking a far journey, who left his house, and gave authority to his servants, and to every man his work, and commanded the porter to watch."

Mary Baker Eddy to human sense has taken a far journey, but she has left her house, the Christian Science religion. She has given authority to her servants, and to every man his work, and we are discharging what we conceive to be ours. She has commanded the porter to watch. What is the porter? The law of the Commonwealth of Massachusetts. We are not arguing here that the law of the Commonwealth is one thing and the law of the church is another. We are arguing here that they are identical, because if they are not neither of them would amount to anything. A law unsupported by religion is unknown to civilized society; a religion unsupported by law is inconceivable. The Supreme Court of Ohio has said, in very felicitous language: "Religion is the parent, not the offspring, of government." We are coming to a court that owes its origin to a Commonwealth that had its existence when the Mayflower Compact was signed, and the first words written in the Commonwealth of Massachusetts were, "In the name of God, amen." The first appeal to organized society was "In the name of God, amen." We begin and we close what we have to say in this case with that same highest invocation, "In the name of God, amen." And we say that in this Commonwealth this court will not say that while it may go to church on Sunday, and while it in its individual capacity may read the Bible and be members of a church, that when we become judges we forget everything that we know about God and religion and are

merely pagans, dealing with legal concepts and deeds executed under seal.

Now, what is the law on the subject? Yesterday Mr. Thompson said that in our brief we went back to the days of Sophocles. We go much farther; we go back to the beginning, for we say that "In the beginning God created the heaven and the earth, and all that in them is." He gave to man at the beginning intelligence, understanding, from which man has never become separated; and there isn't any error that runs through this case more pernicious than the argument of separation.

Judge Hughes said, with great earnestness—and I appreciate his viewpoint because ten years ago I might have said the same thing—that these two documents were separate and distinct interests. Now, if your Honors please, if he had studied Mrs. Eddy's writings—and we have to put ourselves in the place of Mary Baker Eddy when she used the word, we have to understand what she meant, what she tried to accomplish, what she tried to do—he would see that her constant argument for the infinity of God was an argument against separation. We are told in common parlance that while in the first chapter of Genesis God created man in His own image and made him in His own likeness, in some way or other man fell from grace and became separated from God. And that belief of separation from God is the cause of all the disaster and the sorrow and the tragedy of the world. Mary Baker Eddy did not teach separation; she taught unity. We have pleaded that in our bill, that unity is the essential nature of Christian Science as taught by Mary Baker Eddy. That demurrer admits the truth of that statement; and, with that demurrer on file, counsel solemnly argue that Mary Baker Eddy intended to separate her religion into fragments.

Now, as to considerations of a religious nature. In the Bromfield church cases—and I mention those first because they are the most recent expression of this court on this subject—your Honors on the third appeal were met with the question, Who owns the proceeds of the sale of this property? May I briefly remind your Honors that in that case the Jackson deed, around which all the litigation revolved, had been given for the benefit of a local society of a Methodist Episcopal Church; that under the law of the church that local society had become consolidated with another society, and the other society claimed the proceeds of the sale of the church property under the church law; and that Mr. Crawford, the principal defendant, and the principal cause of the controversy, had evolved the idea that instead of having a local church of the Methodist Episcopal church, being subject to its jurisdiction and its discipline, these Trustees would erect a church, the building of which would be "ours." I am quoting from the

language of this court. I almost, as I read that, was reminded that error repeats itself, and that these trustees of the Publishing Society were trying to build up a publishing society which would be "ours," and not Mary Baker Eddy's. I am using "ours" with quotation marks.

What happened in that case? This court said that under the law of the church the consolidation of the two churches was legal and valid, and that the use of the Bromfield Street church property depended upon the law of the church; and it was argued in that case that the law of the church could not displace the law of the Commonwealth, and this court made the law of the Commonwealth and the law of the church identical.

I read from the brief in the Bromfield Street Church case: "No church discipline can supersede the laws of the state." That is what counsel contended. What did Chief Justice Rugg say, speaking for this court?

"Membership in the church and the local society and the use of the church therefor are to be determined according to the 'rules and discipline' of the church."

Now that is what we ask for The Mother Church. We ask that the use of The Mother Church be determined according to the rules and the discipline of the church, contained in the Church Manual written by Mary Baker Eddy under divine guidance.

What is the next case in which this court has had the experience of examining doctrines of religion? Take the great case of Earle v. Wood, where Mr. Chief Justice Shaw, speaking for this court, considered the peculiar tenets and doctrines of the Society of Friends, that we commonly call Quakers. And we have heard much in these cases by counsel for Trustees of the Publishing Society upon the sacred right of members of the church to vote, at the same time filing a demurrer which tenders the legal issue that members of The Mother Church have no justiciable status which entitles them to do anything but pay dues and subscribe for the periodicals.

In Earle v. Wood Mr. Chief Justice Shaw was passing upon the question of who were the legally elected officers of a meeting of the Society of Friends, in which no vote is ever taken, the "solid sense of the meeting" being taken by the clerk presiding. He said what?

"The legislature, in providing means for holding property in succession for the use of Quakers, and designating overseers of monthly meetings for that purpose, must have intended overseers appointed or set apart in an orderly manner, according to the fundamental rules and usages of Quakers."

In other words, Mary Baker Eddy founded a church; she established every part of its government; she did

it in the way that God revealed unto her as the right way to do. Now we are told that she should have done it the way that she would have done it if a number of distinguished lawyers had walked by her side and had advised her what to do from time to time.

Now, if your Honors please, the immensity of this question as to the application of the religion to this case is such that we have treated it exhaustively in our brief. I shall not undertake now to continue that line of argument further. I am going to assume that the Commonwealth of Massachusetts is not at this time going to reverse that to which it owes its origin, its continuity and existence, namely, the desire for freedom of religion, by intimating that religion has no place in its courts.

Having in mind now that the promotion and the extension of a religion is the object of this trust, having in mind that the court in promoting and extending that religion must have regard to the religion, because it can do it in no other way, we call attention to the proposition that is all controlling in determining the nature and effect of the acts of Mary Baker Eddy. And we state that proposition in our brief on page 99.

"Mary Baker Eddy is the recognized Discoverer and Founder and Leader of Christian Science. As such, her words and work, taken in their entirety, in their spiritual import, stand as the revelation of Christian Science to the human understanding. In her governmental capacity her power is absolute, and her requests are given implicit obedience by her loyal followers as a religious precept. Accordingly, in a case relating to property dedicated to the promotion and extension of the religion of Christian Science, this court will respect and protect her words and work, expressed in a manner deemed authoritative by her, and enforce the Church Manual, included in such religion."

That is the proposition that guided Mrs. Eddy in that which she did. That is the governing principle of her life. That it is which upholds it in its entirety. To abandon that means to create a state of affairs that would spell chaos in the administration of a trust.

Now, if your Honors please, the rule is well settled that where a civil right depends upon a religious right the court takes jurisdiction to enforce the civil right so far as it relates to property, but where that civil right depends upon a religious right the court accepts the decision of the religious tribunal as the controlling decision. The court in the separation of church and state has not made of religion an outlaw. The court has not said that it would not take jurisdiction of a case relating to a religion. The

court in the very nature of its authority is required to take jurisdiction of a case involving a religion, but when so doing accepts the religion.

Now we plead in paragraphs 16 and 17 of our bill—and that is admitted to be true by the demurrer—that Mary Baker Eddy discovered Christian Science; that she is the recognized Leader of Christian Science and that her statements on Christian Science are accepted as the only authoritative exposition of it.

Now, then, you are charged with the duty of promoting and administering a trust relating to the religion of Christian Science. You said in Chase v. Dickey that the religion of Christian Science would be presumed to be no more difficult of understanding than any other religion, and you took jurisdiction of the controversy as to whether or not the religion of Christian Science was against public policy. That same question arose in New Hampshire and the court there took jurisdiction of the question. So that in this case this court cannot undertake to enforce these trusts without having regard to the controlling principle of the religion.

Now let us define clearly the word "religion." Christian Science was discovered when Mary Baker Eddy was healed. That stands reduced to human apprehension as the divine principle of healing. The religion of Christian Science is the organized form in which Mary Baker Eddy gave it to the world. No system of theology ever healed the people. It must be an organized form that brings it to their understanding. So that religion stands as her organized form of government.

Now Mr. Justice Hughes quoted from "Retrospection and Introspection," in which Mrs. Eddy said that in the early days organization had its perils and was something to be avoided as we grew and developed. Her experience in dealing with human affairs taught her that no church could exist without organization, and she said at a later date:

"Heaps upon heaps of praise confront me, and for what? That which I said in my heart would never be needed,—namely, laws of limitation for a Christian Scientist."

She discovered as she proceeded in her work that Christian Scientists were not yet absolute exponents of Christian Science and needed to be regulated and governed and to live under an organized form of government. So she wrote as she did of the Church Manual as an unfolding of her plan of government.

Now, then, standing as she did as the Leader of Christian Science, whatever Mary Baker Eddy decided as the Leader of Christian Science becomes true in Christian Science. There is no appeal from that. You need not be a Christian Scientist if you do not want to, but being a Christian Scientist you

must accept as true that which Mary Baker Eddy decided as to what constituted a Christian Scientist, just as a loyal citizen of the Commonwealth of Massachusetts must accept as true with respect to the laws of Massachusetts that which this court decides.

Now, then, what did she do in her capacity as Leader of Christian Science? She did not destroy a single one of these trusts that she created. She fulfilled them. And we are asking this court to fulfill them. What did she do? We will come presently to what she did with respect to these various trusts. Before we proceed to that let me remind you of some historic incidents where courts have respected the binding force and effect of religious leadership. By religious leadership I do not mean a single individual. That is a question of the religion. The great church which through the ages has stood has its head in the Papal authority. The other churches—Martin Luther founded the Lutheran church; John Wesley established the Methodist church and for a period of time governed it absolutely. But however that governmental authority is exercised, it is religious leadership. In the Methodist church there is a General Conference, which prior to the Civil War divided the church into two churches. And you might today if you were examining a title in the South, go to a courthouse and read a deed which said "Methodist Episcopal Church," and if you went up to the door of the church and looked at it you would see over the door "Methodist Episcopal Church South." And you would say "How did the word 'South' get on that church when it wasn't on the deed?" You would be told, "Why, there was a conference of these churches in 1844 that divided them in two and now this church is South." You would say, "All right, that is all right." In my own experience I examined the title of a church and it claimed to be a Presbyterian church. I said, "Here is the deed which says it claimed to be a Cumberland Presbyterian church." "Oh, yes," they said, "there was a general assembly of these churches that met some years ago and decided that hereafter these churches should be one." That was a subject of controversy and was upheld because the General Conference had so said and that made the deed read differently.

So when Mary Baker Eddy said that the Christian Science Board of Directors should consist of five members, that is a part of the religion of Christian Science, and the religion of Christian Science operates on the deed given to promote and extend the religion of Christian Science and no man can say, "I am a Trustee under a deed given to promote and extend the religion of Christian Science" and deny that under the deed the number of

trustees has been increased from four to five.

Now that authority of Mary Baker Eddy is the same authority that the commonwealth exercised in the Franklin will case, when it abolished the town of Boston and made the city of Boston. The town of Boston was succeeded by the city of Boston and the city of Boston became the trustee under the will of Benjamin Franklin instead of the town of Boston. And so under the religion of Christian Science The Mother Church has five directors for all purposes, and not four. "Oh," but you say, "what do you mean? Do you mean that a religion has anything to do with the number of the directors of its church?" Why, if your Honors please, the oldest religion in the world contains within its principles the statement that certain candlesticks should have seven prongs. God said unto Moses, so Moses understood, that he should have a candlestick with seven prongs. And if I were a Jewish rabbi and insisted on having candlesticks with nine prongs or five prongs in my synagogue, your Honors would be authorized to remove me from office.

Religion finds its expression in all these things because they are the human symbols that teach us our way to God. And there isn't anything about the organization of a church that hasn't something to do with the religion of it.

May I illustrate? It was my experience in a foreign land to be present at a funeral, and at the close of the ceremonies the friends of the departed came forward and sprinkled some water upon the coffin. To them it was the act of a religion. It was the holy water of the church. Would we be authorized to sit in judgment and say of that religion, "Water could have nothing to do with sanctity—material water?" No, not in a country that recognizes the freedom of religion.

We find, then, a doctrine that courts respect the decrees of a religion as to that which depends upon the religion—why? Because the religion is supposed to know what it is talking about. If Mary Baker Eddy was offered as a witness in this case there would not be a single person that would dare to testify—I do not mean from fear—there would not be a single person who would testify that she was mistaken and that her statement of Christian Science was not true.

What do you do when a suit is brought involving the law of a foreign jurisdiction? What would you do when a man was injured in Connecticut and brought a suit in Massachusetts? You read the decisions in Connecticut. What did Mr. Justice Gray do when he was sitting in the Supreme Court of the United States and he had to ascertain what was the binding effect in France of a judg-

ment rendered in America? He studied the law of France.

Now this is not peculiar to Mary Baker Eddy. As we have pointed out, great religious leaders have stood before the world and their statements as to their religion have been respected and enforced. Take the Salvation Army, Presbyterian Church; all of them have their leadership.

Now, then, we come to the next question, the argument that the church is something distinct from the religion. That argument, if your Honors please, could not endure for a moment, because unless the church is founded upon the religion of which the church is the exponent the church could not endure for a moment. The teachings of all churches proclaim their divine origin.

Now, then, having regard to the fact that the Church is a part of religion, that Mrs. Eddy stands as the governmental authority of the religion, this Manual was not written at her suggestion, it was not written because she recommended it, it was not adopted with her approval: she wrote it! It stands because she wrote it. That is what makes it valid in Christian Science. The directors of The Mother Church were merely part of the machinery that she utilized to educate her loyal followers in the technique of government, so that when she passed away they might not be left helpless. There is not a single statement in this Manual that has any force and effect because the board of directors adopted it: it has force and effect because Mary Baker Eddy wrote it; and we in Christian Science do not limit ourselves to the Manual; we turn to her other statements and her other requests that she made in an authoritative manner, and we give them the same force and effect as if they were in the Manual, because they come to us as the exposition of the Leader of Christian Science.

Now, then, what does the court say about the governmental authority of a Church? We find a recognition of the fact that the general assembly of the Presbyterian Church comprises within itself all the legislative, all the judicial and all the executive power that there is in the Presbyterian Church. Mary Baker Eddy did that in the Christian Science movement. And when the Presbyterian Church divided itself, that divided the Church; and when Mary Baker Eddy did these things as the Leader of Christian Science, they were effective as a part of the religion of Christian Science, just exactly as the legislature of a state amends the charter of a municipality charged with the execution of a charitable trust. In the Girard Will case the legislature of Pennsylvania passed a law that the trustees to act for the city of Philadelphia should be named by the judges of courts, and the validity of that was attacked, and it was held

that when Stephen Girard selected the city of Philadelphia to be the trustee under his will, a municipal corporation, he did it subject to the incident of legislative change and regulation as to the trusteeship, so long as the object of the trust was not destroyed.

In *Ware v. Fitchburg* your Honors did the same thing in respect to a trust there.

Now, then, if your Honors please, the authorities all recognize the proposition that as to a public corporation, the power of the state is never surrendered, but, as to a public corporation, the power of the state to regulate, to govern, continues unimpaired, to be exercised whenever the occasion exists.

As the Leader of Christian Science, Mary Baker Eddy had the right to determine the nature and extent of her jurisdiction. It is so recognized by the leading authorities in church law. Just as this court, as the highest judicial authority in the Commonwealth, has the right to regulate its own jurisdiction, she had the right to make rules for her own government, as long as she violated no law. She did, as the Leader of Christian Science, make this Manual, write this Manual, and it becomes part of the religion of Christian Science. The deeds to which the Manual relates are a part of the religion of Christian Science; and hence the Manual controls the deeds. That is the proposition that we present to your Honors.

Now, if your Honors please, as to the legality of the organization of The Mother Church, Jesus said,

"Wherever two or three of you are gathered together in My name, there shall I be in the midst of you."

And we respectfully submit that in the Commonwealth of Massachusetts, wherever two or three people come together and say,

"We are a Church, holding religious services,"

they become a church. Just what their legal rights may be is another matter, but they are a church, because they are organized in accordance with the form of the religion which they adopted.

We have cited the authorities in this state to show the liberality with which this state has treated the organization of churches, requiring nothing but an adherence to their own forms.

Now, as to the Church Manual, primarily it is binding upon us as church members as a contract. You understand, when you come to examine the Kranthoff bill, that we ask that this Manual be recognized—not established—recognized as legally valid, binding and controlling upon the church membership, and legally valid, binding and controlling upon the members embraced within the religion of Christian Science. As to members of the church, the Manual is contrac-

tual in its obligation. That being true, this court will recognize the law of the Church, precisely the same as it recognizes the law of the merchant, and as it recognizes the law of the market-place. We have cited authorities on questions that cannot be disputed, and here I want to pause and render my grateful appreciation of the case in which Judge Hughes wrote the opinion for the Supreme Court of the United States, known as *The Community Case*, where a man joined a religious order which had as one of its principles the agreement that upon his death all his property should belong to the order of which he was a member. The case was heard three times. It was heard before a single judge in the Federal Court; it was removed on appeal to the Circuit Court of Appeals; and on appeal the court said that the law of the land, and not the canon law, must govern in the disposition of his property. What did Judge Hughes say, speaking for the Supreme Court of the United States? He said that it was not a question of the law of the land, and it was not a question of canon law: it was a question of contract. The man had agreed that upon his death the property that he owned at his death should belong to the order of which he was a member; and that was the end of the discussion, and the property went to that religious order.

So here we as Christian Scientists have agreed that we are bound by this Church Manual as a contract, just as the people who belong to a community are bound as to their property by the contract of the community.

Ministers suing for salary are bound by the laws of the church. Church members, when they litigate as to property, are bound by the laws of the church of which they are members.

Now, then, that having been true, that the Church Manual is a contract, and that the Church Manual is valid, it is argued here, if your Honors please, by people not Christian Scientists, that this Church Manual was not legally adopted, because they say that it was largely adopted by votes of directors of the Church. Why, the Church Manual is valid primarily because it is written by Mary Baker Eddy, it is valid as against the claim that the Church members have not voted upon it, because under the usage of the Christian Science Church, as to which the Christian Science Church is the sole expositor, we have agreed that the power of voting shall reside at one time in the First Members, and at another time in the Christian Science Board of Directors.

We have heard discussion here to the effect that the directors were not a body corporate because they were not similar to deacons and church wardens, because deacons and church wardens are elected, and our directors were not. I was reminded of the fact that the judges of this court are not elected by the people of the Common-

wealth of Massachusetts, and yet they are the judges of this court very effectually. We are also reminded that the people of the United States do not elect their president. Nobody voted for Charles Evans Hughes for President of the United States—not a single one in all the United States. He could not even have voted for himself under the law if he had wanted to. Why? Because the people of the United States elect the Electors and the Electors elect the President. Who can complain of that? Nobody but the people of the United States. We have agreed that our directors shall do the voting in our church, and that is a matter that concerns no one except members of the church. It certainly does not concern the trustees of the Publishing Society, who claim that they are strangers to our Church, and have nothing to do with our Church organization as trustees of the Publishing Society.

The Master, as Governor Bates pointed out, could not forget that he was a Federal Judge on one occasion, and had written opinions, and he just sailed through this case, scattering observations right and left, some of them pertinent and some of them impertinent. In one of them he said—and that has caused a great deal of trouble in the Christian Science world—he said that our by-laws were not valid because they were not adopted under the statutes of the Commonwealth of Massachusetts. We have not said that they were; we do not claim that they were adopted under the laws of the Commonwealth of Massachusetts. The laws of the Commonwealth say that we may adopt by-laws: it does not say that we must.

We have cited authorities to the proposition that a church can exist without by-laws, if it wants to: the usages of its members are sufficient to justify its action.

It is possible for a church, just as it is for a corporation, to vest the power to make by-laws in its directors, and it is not necessary in a church for every church member to have a vote,—in fact very few churches give to every member of the church a right to vote.

The Dartmouth College Case is relied on in this case. We cite it as authority for two propositions. First, we say that the Dartmouth College case recognizes to its fullest extent the right of the state to regulate a governmental corporation. We cite it also as authority for the proposition that the Attorney-General, when he was writing his bill of complaint, was somewhat like the judge in Missouri, who said that judicial discretion had pulled up its tethering pin and gone out on the range! How a lawyer accustomed to the use of accurate language could ever have tendered to a court this statement is a mystery to us. I am now going to read from the

first paragraph of the Attorney-General's bill:

"The First Church of Christ, Scientist, in Boston, Massachusetts (hereinafter called The Mother Church) with its interrelated activities, constitutes a public charitable trust devoted to the advancement of the Christian Science religion for the benefit of the present and future adherents of Christian Science, and the public generally."

We can understand how a gift to a church may be a gift upon a public charity; we can understand, having regard to legal accuracy (in which Massachusetts stands preeminent throughout the world), that in the case of a gift upon a public charitable use there are the donor, the donation, and the donee; we can understand how the donor may give the donation and that the gift may be upon a public charitable use; but just how the donee can be converted into a charitable trust we have not yet been advised. We have tried to argue that in our brief as an impossibility. We think that it is impossible legally. In other words, a city may be the trustee of a trust upon a charitable use. Boston is. A county may be. A trust company may be. But that does not convert the city or the county or the trust company into a charitable use. The time has not come yet when the Attorney-General of the Commonwealth can administer the city of Boston as a charitable trust under the cy pres doctrine, just because it is a trustee under the will of Benjamin Franklin. And in the Dartmouth College Case it is pointed out with a wealth of learning and ability that is unapproachable that the fact that Dartmouth College was administering a trust upon an educational use that was public in its nature did not convert Dartmouth College into a public corporation, and that it was entitled to maintain its integrity as a private corporation.

In the state of Illinois it was claimed that in the progress of events stock-yards had become impressed with such a public use that hereafter they would have to be regarded as public property. The Supreme Court of Illinois said that when that period arrived in the history of an organization, it was the privilege of the legislature, and not of the courts, to make the change.

And so when the churches of the Commonwealth of Massachusetts are to be condemned for public use without compensation, that must be done by legislative authority, and not by the fiat of the Attorney-General, having regard, of course, to some constitutional considerations.

Now, what is the basis of the right of the public to attend services in a church? Mind you, the Attorney-General is here asking what? Not for the administration of a pile of brick and mortar. To merely have a pile of brick and mortar down on Fal-

mouth Street would not do anybody any good. We would probably be sued for damages in a very short time for injuries to people that went by. He is asking for the administration of a church. Now, what does a church consist of? Its activities. How are those activities to be manifested? Suppose that you went to church on a certain day, and there were no ushers there—you find ushers now because they are members of the Mother Church: would you telephone to Mr. Allen to please send down some ushers? Where is he going to get them?

Mr. Allen in his brief said that the Mother Church has become a public charitable trust. Why? Because Mrs. Eddy said in the Church Manual that she welcomed to her seats strangers. But Mr. Allen also in legal effect says—and the logic of his contention is—that Mrs. Eddy has ceased to have any seats to welcome strangers to. He says that we have become a public charitable trust because under the Church Manual we are enjoined to welcome strangers to the Church. How are we going to welcome strangers to the Church that belongs to the Attorney-General? The right of the public to worship in a church carries with it the duty on the part of the church membership to see that the church is there for the public to worship in. And that is what we are asking for here,—the right to discharge our duty to the public, which is just as great, and entitled to just as much consideration, as the duty of the Attorney-General. We, as church members, are asking this court to see that this church shall be continued in order that the public may there worship according to the doctrines of the religion of Christian Science as taught by Mary Baker Eddy. For the Attorney-General of the Commonwealth of Massachusetts to attempt to exclude us from all church privileges is to destroy the thing that he is seeking to protect. Mrs. Eddy described it. She said that it is like arguing in favor of the plaintiff in a case that you know is going to be decided in favor of the defendant.

Now, if your Honors please, if you were invited to a house as guests, would you expect to be met at the door with the statement, "This house is yours. Good bye"? Would you say that that was hospitality? We have invited the public to our church. We want to have a church for them to visit. We want to keep it lighted, clean, heated; we want to have readers there to read, an organist to play, a soloist to sing; we want to have ushers to show people seats; we want the religion of Christian Science protected in that church; we want to exclude nobody; we want to ask everybody to come.

But the Attorney-General of Massachusetts reminds me of the experience that a minister in the South had.

He was trying to explain to a colored slave—a former slave—about the return of a Confederate brigadier; and this minister said to the colored man, "Moses, don't you remember that when the general came back from the war he was all torn and tattered, and that he came back broken-hearted, and that we all went out to welcome him as a prodigal son, and that we killed the fatted calf?" and Moses said, "The general didn't do anything of the kind. The general walked right into the house and put his feet on the table and said, Where is the veal?" Now, we have opened our church to the hospitality of the public, and we are calmly told that by so doing we have walked out of the front door and ceased to have any rights in regard to it at all, because it is said by the Attorney-General of the Commonwealth of Massachusetts that we have been converted into a public charitable trust. That argument was made in the Dartmouth College case. It was denied in that case. It has continued to be denied. We still retain our integrity as an organization entitled to discharge the duties vested in us by our religion and the law of the land.

Now about the rule against perpetuities. The Attorney-General has filed with his bill the Church Manual. That being true, he admits the truth of the Church Manual. He cannot in this case be heard to deny the validity of any statement in the Church Manual. Self-evidently not so long as Mr. Choate appears as associate counsel who is retained by Christian Scientists who are upholding the Church Manual in its entirety. We find in the Church Manual this statement as to the ownership of this property. In Article XXIV of the Church Manual Mrs. Eddy recites that on March 20, 1895, there was conveyed to her the Mother Church building, and she declined to accept the gift, and—

"she now understands the financial situation between the Christian Science Board of Directors and said Church to be as follows:—

Sect. 2. The Christian Science Board of Directors owns the church edifices, with the land whereon they stand, legally; and the Church members own the aforesaid premises and buildings, beneficially."

In the brief of the Attorney-General it is intimated that if we claim any private or peculiar interest as members of The Mother Church, what we claim is void under the rule against remoteness. Now, Mr. Attorney-General, we claim a peculiar interest under that provision in the Church Manual, and we call upon the Attorney-General of the Commonwealth of Massachusetts to say whether that provision in the Church Manual is the thing that he refers to as being void under the rule against remoteness. The rule against remoteness has no application to a gift to a church in

this Commonwealth, in view of these statutes under which a voluntary association may take property absolutely. There was a time in the state of the law where much learning was displayed on the question of the right of a voluntary association of individuals to take property, much learning displayed as to the rule against perpetuities, it being, as we stated earlier in our argument, well settled now that the rule does not apply to a charity just because it is a charity, but the rule does not apply to a charity because in the case of a charity there is a present vested interest, and that present vested interest under the statutes goes to the voluntary association in its corporate capacity.

The Attorney-General of the Commonwealth of Massachusetts, as an exponent of the Church Manual, has upheld it in its entirety, and he cannot come to this court and say that the peculiar interest which vests in members of The Mother Church is void under the rule against perpetuities, for two reasons: He thereby denies and repudiates the Manual which he seeks to enforce, and he denies the statutes of the Commonwealth of Massachusetts. And when I have heard it intimated, as I have in this case from time to time, that Mary Baker Eddy was a very poor lawyer, and did not know anything about the practice of the law, and have read this statement in the Manual, and have gone to the books and seen Lemuel Shaw state the same thing in the same way, I concluded that Mary Baker Eddy was just as great a lawyer as she was anything else, and that when she wrote this language she knew what it meant, and it meant what it says, and it says what it means, and that we as church members do beneficially own the title to this church property, not, as I explained a moment ago, for our pecuniary benefit, with the right to convert it into money and distribute it among ourselves, but for the purpose of ourselves, and in our own right, and in our own way, without first having to go up to the State House and beseech the Attorney-General of the Commonwealth of Massachusetts to please be good enough to do it for us, but we have the right in our own way to approach this tribunal and as citizens of this country to attempt to set up our own rights and ask that they be enforced and upheld.

RUGG, C. J.—You may pause here.

Mr. KRAUTHOFF—May I ask how much more time I have left?

RUGG, C. J.—Twenty minutes more.

(Recess until two o'clock P. M.)

#### AFTERNOON SESSION

Mr. KRAUTHOFF: If your Honors please, the Krauthoff bill is demurred to on the ground of multifariousness, and Mr. Thompson presents in his brief that phase of the law of the case as if it were necessary, in order to make a bill single, that each defend-

ant be interested in every allegation in the bill.

That is not the law. It is sufficient for a bill to be single that it tells a single connected story, relating to one subject matter, and that each of the defendants be interested in some part, but not all, of the bill. The bill is lengthy. It covers the span of a human life. It begins with 1866 and comes down to 1920. When examined it will be seen that it tells a single connected story relating to the same subject matter, the life work of Mary Baker Eddy.

The principal questions arising on the Krauthoff bill, and which caused the reservation to be made for the Full Bench, are, first, the right of the plaintiffs as church members to maintain the suit, and, second, the religious import of the bill, which runs through it.

We recommend to the court that when these propositions shall have been decided, as we think they ought to be, in the affirmative, that the court leave open the question of multifariousness to be settled by a single justice; because, after all, if any of the allegations are multifarious the bill is amendable, and the excluded items may be set up in further and other suits to be hereafter instituted.

There is a document in this case to which scant reference has been made up to date. It is the "Woman document," bearing date of January 15, 1898. We call it the "woman document" because Mrs. Eddy so termed it in her letter written to Judge Hanna a few days after its execution. She prepared the document without the aid—I was about to say without the hindrance—of legal advice. It is her inspired work; it is her understanding of the right of the situation. It will not do to dismiss this document with the passing statement that when she executed it she did not have the legal title to the property conveyed. We have cited authorities in our brief to the effect that the subsequently acquired title of the donor enures to the benefit of the donee.

The objection that the gift related to property which produced an annual income of more than \$2000 is obviated by the fact that in the year 1917 the Legislature of this Commonwealth gave the First Church of Christ, Scientist, the power to receive gifts without respect to the amount of income which they produced. Under the decision of your Honors in the Hubbard case, this legislation makes the gift valid as of the date of its execution.

Mr. James A. Neal, who stood as close to Mary Baker Eddy as any human being, testified in the course of *Eustace v. Dickey* that on one occasion Mrs. Eddy said to him that she was sorry she could not have given her paper to the church, as she desired, but that we must have confidence in God, and that in good time He would make His purpose manifest. In the fullness of time that period has now arrived.

The Deed of Mary Baker Eddy of January 15, 1898, standing as a gift to The Mother Church, has been validated by the Legislature of the Commonwealth of Massachusetts. No question of limitations can arise, because until September 30, 1918, the property was in fact managed as the property of The Mother Church.

And now, in grateful commemoration of Mary Baker Eddy for all that she has given unto us, we submit to the court that the time has arrived when this court shall recognize the validity of her gifts, and declare that The Mother Church is the owner of The Christian Science Publishing Society.

#### STATEMENT BY MRS. DAISY LOVERING KRAUTHOFF.

Mrs. KRAUTHOFF. Your Honors: The Legislature of Massachusetts, I believe, gives to every party to a suit the right to speak in person. There are just five minutes left of the time allotted to us, and, with your courteous permission, I will occupy those minutes.

As fully as Mr. Krauthoff has covered the issues in this case, in his brief and in his oral argument, still there is one point of which he has not informed your Honors, whereof you have the right to be informed, namely, his peculiar relations to this situation. A combination of circumstances, unsought by him, places him today with a wealth of information regarding the Christian Science movement second to none among those now before this court. Through days and nights of studious research he has familiarized himself with the work and words of our Leader regarding her church, its organization and government, as penned by her and as now found in the archives of The Mother Church. So that it is safe to say, without the slightest fear of controversy, that none of the counsel appearing before the court in this case can approximate his intimate understanding of it, or will claim that they have given one-hundredth of the time to its study that Mr. Krauthoff has given.

Therefore he speaks with an authority that cannot be questioned—the authority of Mary Baker Eddy—for in what he asks there is nothing of or for himself. He has no personal office to uphold, to lose or to gain. Every averment of our bill is supported by the words of Mrs. Eddy. It is her church, her form of government, that we are asking may not be destroyed.

When Mr. Krauthoff withdrew as counsel for The Christian Science Board of Directors we questioned seriously returning to our home in silence; but we could not respect ourselves and withhold information that belonged to this court—information that would enable this court to administer that justice for which it was created by confident people, information that would enable this court to protect a religion which, even our enemies



admit, blesses every community in which it is found, bettering its men, women and children, mentally, morally and physically, and ever teaches law and order; a religion whose very foundation has been attacked by theories promulgated by the selfish personal ambition of unworthy officers, supported by argument based on the mere letter of the law and absolutely disregarding its spirit; information without which this court might be impelled to write upon its records a decision that would ultimately wipe out the greatest achievement credited to woman in the history of the world, for Christian Science is a woman's work.

Therefore it is very meet that, as an American woman, as a Christian Scientist and a member of The Mother Church, I stand before this court and plead with you to heed this man, to ponder soberly his words, that you may not be swayed by arguments that deny us as members the very right of self-preservation.

Remember, I pray you, that like a pulsating heart, you hold in your hands the idealism of a great army of earnest, God-loving men and women; and let it not be said that the courts of Massachusetts, with all her wealth of history, a history that ever tells of a mighty struggle for moral and religious advancement—let it not be said that this court failed to uphold our rights as American citizens to continue our religious institutions according to the law of our order, whereby literally crime, sin, sorrow, sickness of every phase are healed. Give to us as Christian Scientists, as members of The Mother Church, the support and protection that are our due, our Church and its organization as our Leader left it to us, untainted by these warring factions that have no right or place therein, and prove to the world that the laws of this land at least emulate the great Exemplar, and are come to fulfill and not destroy.

#### ARGUMENT ON BEHALF OF THE COMMONWEALTH

by

Hon. J. WESTON ALLEN, Attorney-General

Mr. ALLEN. May it please the Court: The authority of the Attorney-General to appear in matters relating to charitable trusts is an authority that comes to him in the first instance under the common law and afterwards by statute. The authority and the extent of that authority have been called in question. It is of course true that there are many cases in which charitable trusts are parties in which it is not necessary, and therefore not appropriate, that the Attorney-General should appear. I need not cite those cases; but there are some issues in this case, in this group of cases, in which the Attorney-General on behalf of the public is not concerned. I am willing to include in the authority of the Attorney-General in this case

those things which in the brief of Mr. Thompson have been mentioned as those with relation to which the Attorney-General is an interested party on behalf of the public, to wit, the establishment, the protection, the enforcement, and the proper management, of the trust.

There is in law a clear line of demarkation which fixes the interest of the Attorney-General, and that line of demarkation is the public interest in a public charity. Wherever the public interest is concerned there always the Attorney-General as an official appears properly to represent that public interest.

In the present case the duty of the Attorney-General to appear rests in the fact that the establishment, the protection, the enforcement and the proper management of these great charitable trusts is put in issue in a proceeding which, in the first instance, appeared to be a controversy between two respective boards of directors and trustees.

I appear to suggest that I am a necessary party in *Eustace v. Dickey*, as has appeared from the fact that for an hour and three-quarters eminent counsel, representing the plaintiffs in that case, has discussed the great fundamental question upon which the administration of this trust—of all these trusts—rests. I appear to maintain the demurrer in the proceedings brought by Mr. Krauthoff, in which I am joined as a party defendant; and I appear affirmatively to maintain the right of the public in the bill which I have brought and which is now before the court.

In each of these proceedings I have submitted briefs, and in those briefs I have cited the authorities which seem to me to be of importance for the consideration of the court; and in the limited time of argument I shall not for the most part cite the authorities or discuss those cases.

I wish to address myself primarily to the fundamental question of whether or not the contention of the plaintiffs in the case of *Eustace v. Dickey*, or the contention of the Directors, and the contention which I have put forward in the Information filed in this court, is the interpretation of the Deed of 1898, which effects the fundamental purpose of that Deed; and I, following the arguments that have been made, find that with one single exception all of the parties are agreed that the fundamental purpose of that Deed of 1898 was to effectually promote and extend the religion of Christian Science, and in that respect it differs not in any way from the purpose of the church which was established by Mrs. Eddy, the Founder, and it is the same as the purpose which animated her life.

That, then, is the dominant purpose; and if that was the dominant purpose of the Deed of 1898, then the question that is presented to this court is, What

construction of that Deed more effectually carries out the dominant charitable purpose of that Deed? I submit that the construction which is put upon that Deed by the plaintiffs is not the construction which more effectually carries out that dominant purpose of her life and of that Deed, and the dominant purpose which was shown in her will, and there expressed.

Let me for a moment turn the attention of the court, somewhat chronologically, to the development of the religion of Christian Science which antedated that Deed of 1898. The church was established and incorporated in 1879, with Mrs. Eddy as its pastor; and in all the activities of the Christian Science religion from that date until 1898, it is averred, and it is not disputed, that Mrs. Eddy as the Founder and Leader and Pastor and Pastor Emeritus of the church, was the person who directed all of the activities of the Christian Science religion, and her direction and authority were found and admitted never to have been questioned during that time.

Something has been said to the effect that I allege, in the bill of the Attorney-General, that the church had its preliminary organization or reorganization in August of 1892, as a voluntary religious association, with four directors. The allegation that that church was organized in its preliminary organization in August, 1892, is an admitted fact in the case before the court upon demurrers. It has been called in question. In other words, the learned counsel for the plaintiffs, although that is an admitted fact under the demurrers, has seen fit to cite some evidence to the effect that that could not be so. At the proper time I can show, by a letter of Mrs. Eddy, that there was such a meeting, and that at that meeting the Directors were chosen under the usage of the church at that time.

It is true, and there isn't any question, that the reorganization was completed on September 23, 1892. For instance, of the 12 persons who were present at the former meeting in August, 11 were present on September 23, 1892, and they added 20 to their number, so that in the completed reorganization there were these members.

The significance of that allegation rests in this fact. The Master in his report has intimated that there was no church of which there could be Directors when the Deed of September 1, 1892, was executed; that that title of the directors was a meaningless title, floating in ether, as it were, until the Deed of twenty-three days later. I only say that the fact alleged in the bill is material in a consideration of this case at this time, because upon that allegation it appears that there were Directors when the Trustees were appointed, and that under the deed of September 1, 1892, Mrs. Eddy, the donor, named the four per-

sons who had already been chosen Directors to be the trustees under that Deed, and it gave meaning to that Deed, and there was nothing of the uncertainty that would otherwise appear to be manifested.

Now, the Deed of 1892 created a trust, a public charitable trust, which was a step in the development of Mrs. Eddy's work and the carrying on of her religion. That Deed, like a subsequent deed creating the Trustees of the Publishing Society, was permanent and irrevocable, and in that Deed she charged those Trustees that they "shall maintain public worship in accordance with the doctrines of Christian Science in said church, and for this purpose they are fully empowered to make any and all necessary rules and regulations."

And, again, in the fifth paragraph: "Said Board of Directors shall not allow or permit in said church building any preaching or other religious services which shall not be consonant and in strict harmony with the doctrines and practice of Christian Science as taught and explained by Mary Baker G. Eddy in the seventy-first edition of her book entitled 'Science and Health,' which is soon to be issued, and in any subsequent edition thereof."

Those obligations to protect the purity of the church's services were placed upon those trustees permanently as long as that obligation obtained. The deed of 1892 primarily regulated a trust relating to the church edifice. That was its obvious purpose, its specific function, in the development, the promotion and the extension of Christian Science as distinguished from the church organization which had been effected and was perfected on September 23.

After that by-laws and rules were adopted when the reorganization of the church was completed and subsequently, in 1895, the Manual of the Church was adopted.

I wish now to bring to the attention of the court the situation which existed when this deed of 1898 was executed. At that time there had been a publishing society which about a year before that had been incorporated, which had been acting in the publication of the organs and the literature of the Church. That publishing society had been first organized in 1883, and from that time it had been one of the activities which had been under the direction of Mrs. Eddy throughout that period. The reference in the Church Manual in 1897 was in Article XI—"The Publisher of the Textbook.

"Section 1. A person who is not accepted by our Pastor Emeritus and the Christian Science Board of Directors, as suitable to publish the Christian Science textbook, shall in no manner be connected therewith, or with the house whence it is issued."

What transpired in 1898? At that time a corporation, not legally subject to the church which Mrs. Eddy

had organized, the corporation having the full independent powers that went with that corporate charter, was publishing the literature of the Church. And Mrs. Eddy caused to be conveyed to her on January 21 of that year all the real estate and all the personal property of that corporation, so that she herself obtained by that deed property of that Publishing Society which up to that time had existed legally independently of the Church although as a matter of fact always subject to her direction, which was always accepted.

The next step that she took was to cause the Manual of 1897 to be changed before this trust was created, and the change in the Manual appears for the first time in Article IV of the Manual of 1898. In the Manual of 1897 that article read:

"No Board of Trustees shall ever be formed by or between the members of this Church or shall exist in The Mother Church."

In order to make it possible under the Manual to create a Board of Trustees in The Mother Church to carry on the publishing activities which had formerly been exercised by an independent corporation, she caused an amendment of that by-law.

Article V, section 5:

"No Board of Trustees shall ever be formed by or between the members of this Church or shall exist in The Mother Church except the trusteeship be constituted by the Pastor Emeritus."

That made it possible for Mrs. Eddy to create a trust in the Church which would be subject legally to those limitations which were not previously subject to the corporation which had conducted that work. And then, having received all the real estate and personal property of that corporation, she deeded to these trustees created under that amendment of the by-laws the personal property of the Publishing Society, and at that same time—and I submit that it indicates her intent—she conveyed, not to the four trustees who had received the land in 1892 but to the Church itself, by deed, the real estate that had been the property of the incorporated Publishing Society. And from that time under this deed the trustees of the Publishing Society as a trust organized in the Church conducted that activity of the Church, to wit, the publication of its authorized literature and the business formerly carried on by the Publishing Society, upon the property of the Church and under her direction as long as she lived.

I have said that the dominating purpose of the deed of 1898 was the extension of Christian Science.

"The said trustees shall hold and manage said property and the property rights exclusively for the purpose of carrying on the business which has been heretofore conducted by the said Christian Science Publishing Society

in promoting the interests of Christian Science."

The learned counsel for the plaintiffs in the case of Eustace v. Dickey stated that at the opening of his argument. This morning, when he was speaking as to the conduct of the directors in removing the trustees, he said the fundamental purpose was to manage the trust independently and on their own responsibility. It is a pertinent question which of these two purposes was the dominant purpose because in this consideration of this charitable trust the dominant purpose is going to control. But let me call attention to the fact that in that first section not only the dominant purpose of the trust was declared, the dominant purpose of all Mrs. Eddy's activities, but the special function of that trust was stated and limited. It is limited to carrying on the business which has been heretofore conducted by The Christian Science Publishing Society. This trust received only the charge of carrying on the business that had heretofore been conducted by The Christian Science Publishing Society, and that business had always been conducted under the direction of Mrs. Eddy and as a part of the activities of the Church.

And then the next section of that deed which is significant and which has been argued by counsel is the third.

"Said trustees shall energetically and judiciously manage the business of the Publishing Society on a strictly Christian basis and upon their own responsibility and without consulting me about details, subject only to my supervision, if I shall at any time elect to advise or direct them."

And those words "upon their own responsibility" have been taken out and presented in vacuo as a claim that that gave to these trustees an independent authority to act. There is something suggestive in the very next line where it says "without consulting me about details." The meaning of that is no different than if in my own department I should say to an assistant that he should manage a matter upon his own responsibility and without consulting me about details, subject only to my supervision if I should at any time elect to advise or direct him. Can it have any different meaning when taken with the context? And then I call the attention of the court—because I believe it is one of the most important things in determining the construction of that instrument—to those words "subject only to my supervision if I shall at any time elect to advise or to direct." In the conduct of that entire business she reserved in that section 3 at any time the right to advise and to direct.

Now, in the argument that has been addressed to this court it has been pointed out that this instrument is permanent and irrevocable; and in the next breath counsel alludes to this as something temporary and ephemer-

eral. That cannot be. The rule which made the instrument irrevocable gave to Mrs. Eddy, if we are to give a proper construction of the deed, the right to advise and direct in such a way that that authority should continue with the life of the deed. And if that construction will reconcile the obligations of this instrument and the obligations of the Manual doesn't that bear weight with any determination of the question? I submit that this court is going to be slow to give a construction to this deed which is contrary, in the first place, to the known construction that Mrs. Eddy put upon it; second, it will weigh carefully before it gives to this instrument a construction which places the control of the organs and the authorized literature of the church beyond the authority of the supreme ecclesiastical authority of the directors; and in the third place, it will hesitate to give a construction which imposes upon the members of the Publishing Society an obligation which calls for the repudiation of the obligations of the Manual to which they as members of the Church have subscribed. If there is a construction which is consistent with the deed and which will avoid those things which should be avoided, if that can be, then that construction will prevail.

The language of that third section uses the words, "if I shall at any time elect to advise or direct them."

In another instance she specifically limited her reservation to her lifetime.

In the fourth section it is provided:

"Said treasurer shall hold the money so paid over to him subject to the order of 'The First Members' of said Church, who are authorized to order its disposition only in accordance with the rules and by-laws contained in the Manual of said Church."

I may mention in passing that one objection that has been made to the bill was that the treasurer of the Church was not joined. I need only mention that, because he is not an official upon whom any obligation was to be imposed in granting the relief asked for by the bill; but this trust which was created gave the income of this trust to the Church—to the Church—to be ministered by the First Members, and in accordance with the rules and by-laws contained in the Manual; so that all of the income of this trust under the deed of 1898 was to be received by the Church to be administered under the Manual—not under the deed of 1892.

Then I want to refer to Section 8 of this deed, which has not been discussed:

"Said trustees shall have direction and supervision of the publication of said Quarterly, and also of all pamphlets, tracts, and other literature pertaining to said business, using their best judgment as to the means of preparing and issuing the same, so as to promote the best interests of the Cause, reserving the right to make

such changes as I may think important."

That reservation of "the right to make such changes as I may think important," which was interlined in that instrument, was in order to repeat and confirm the power of Mrs. Eddy, which she had recited in Section 3, to make changes in that instrument, in its administration, if she might advise or direct such changes. It was to make clear that that was subject to the same limitation.

Section 9 provided:

"Said trustees and their successors in trust shall not be eligible to said trusteeship or to continue in the same, unless they are loyal, faithful, and consistent believers and advocates of the principles of Christian Science as taught by me in my book 'Science and Health with Key to the Scriptures.'"

Was that a material provision in this deed? And if it was, how was it to be enforced? It was to be enforced under the discipline of the Church. It could not be enforced in any other way. And in order to enforce it it must be construed in connection with Section 10.

May I call the Court's attention to the fact that the power of excommunication in the Church vested from the beginning in the Board of Christian Science Directors under the 11th Section of the Manual? That power of excommunication is that high power which vests in the supreme ecclesiastical authority of a church. That power is not questioned in any of these proceedings; and therefore this board of directors has had the power of excommunication over any member of the Church who was disloyal or unfaithful.

See what a situation develops if the supreme ecclesiastical authority of the Church, which has the power of excommunication of these trustees as members of the Church, has no power of removal from office. Will it be said that the ecclesiastical authorities who have the power of excommunication by the intent of Mrs. Eddy did not have the power of removal of a person who was disloyal or unfaithful? And yet if you give to Section 10 of the deed the interpretation which is contended for it you have a situation where disloyal and unfaithful members of this Church could be excommunicated from membership in the Church, but because of the interpretation put upon Section 10 they could not be removed from their office as trustees in conducting the publications of the Church. The power of removal of the trustees who were conducting the publication business of the Church, including the reading lessons in the churches, was an ecclesiastical power, and obviously not a civil power, and yet under the contention that is here made if Section 10 is given the construction that is asked for it, although the directors can ex-

communicate a trustee as a member of the Church, they cannot say that that excommunicated, unfaithful, disloyal member shall stop publishing the authorized literature of the Church, but that only a court can do that when invoked by the authorities. I submit that it is unthinkable that Mrs. Eddy could have intended the construction of the deed which would take from the supreme ecclesiastical authority of the Church the power to remove, when it gave to them the power to excommunicate disloyal members.

Section 10:

"Whenever a vacancy shall occur in said trusteeship for any cause, I reserve the right to fill the same by appointment, if I shall so desire, so long as I may live"; if not, it was then given to the First Members together with the directors.

Now, the 13th clause says:

"Said trustees shall each receive annually one thousand dollars for their services in that capacity, payable semiannually in payments of five hundred dollars, or such salary as the said Church may determine from time to time."

That authority was given to the Church, and I submit that that authority to the Church was in the mind of Mrs. Eddy, given to the same body as the authority given in Section 10—the authority to fix salaries, the power of the purse, vested in the Church and in the governing body of the Church, which must be the permanent governing body. And so with respect to Section 10. In other words, this question would never have arisen if in the drawing of this instrument, in either Section 10 or Section 13, it had said, "the then governing body of the Church." Was that not what Mrs. Eddy meant? To hold otherwise is to create an irrevocable deed and give no power to the ecclesiastical authority of the Church to control a trust which is created within the Church.

Mr. Hughes has pointed out to this court that in the will of Mrs. Eddy, and in a codicil to the will which was executed a few years later, the Trust Deed was confirmed. I enter the door which he has opened, and I ask, What Trust Deed did Mrs. Eddy confirm? It is admitted that she wrote the by-laws, with one possible exception, I believe, and that every one of them had her approval. Will it be contended that in that last moment of her life, when she confirmed this deed, this instrument of 1898, she confirmed it as she herself intended it and construed it, or will it be contended that by confirming that instrument she confirmed it in a form to repudiate the provisions in the Manual, which, under the interpretation given by the plaintiffs, are in conflict with it? Mrs. Eddy's understanding of that instrument, and the limitations which she put upon it as the donor, are

indicated by the fact that in the Manual of 1898 she caused Article XI to be changed in a manner in which she therein, within a few weeks, within a month after the execution of the instrument, exercised that authority which she reserved to direct how the business should be conducted. To direct "at any time" includes a direction which will operate permanently; and under Article XI she said:

"The Board of Trustees, constituted by a Deed of Trust given by Rev. Mary Baker G. Eddy, the Pastor Emeritus of this Church, on January twenty-fifth, 1898, shall hold and manage the property therein conveyed, and conduct the business of 'The Christian Science Publishing Society' on a strictly Christian basis, for the promotion of the interests of Christian Science. [The dominant purpose repeated.] The net profits of the business shall be paid over semi-annually to the Treasurer of the First Church of Christ, Scientist, in Boston, Mass. Said Treasurer shall hold the money paid over to him subject to the order of the First Members of said Church, who are authorized to order its disposition only in accordance with the rules and by-laws contained in the Manual of said Church [which is the constitution of this public charitable trust with respect to these moneys which came to the Church as annual gifts through that trust of 1893].

"The First Members together with the Directors of said Church shall have the power to declare vacancies in said trusteeship for such reasons as to them may seem expedient. Whenever a vacancy shall occur in said trusteeship for any cause, the Pastor Emeritus reserves the right to fill the same by appointment; but if she does not elect to exercise this right, the remaining trustees shall fill the vacancy, and the candidate proposed for this office shall be elected by a unanimous vote of all the First Members of said Church."

That was a direction which she gave within three weeks of the time when the deed was executed; and subsequently she gave directions which she made permanent by having them inserted in the Manual, which more directly controlled the business that was being conducted by the trust. She said that the manager and the editors of the Christian Science Publishing Society should be selected by the directors, and she said that the employees of the Christian Science Publishing Society should be persons that the directors held were suitable. In those directions given to exercise her power to direct the administration of that trust, and made permanent by her, because she declared that the Manual should be permanent, she gave permanent direction to control a permanent trust instrument under the Church. That is not a forced construction: it is the natural construction. It avoids the

limitation that she, giving an instrument which was to be for all time, limited herself to a temporary change in the management of that instrument which would cease with her lifetime, and in view of the fact that with respect to one limitation she specifically limited that to her lifetime.

It has been said that this Church is not a public charity, or a public charitable trust, as alleged in the Information which I have filed. I submit that a church, under the decisions of this court, receiving any gift, receives it as a public charity, and that when that gift is received as a gift to the church *eo nomine*, the church is the recipient of that gift under a public charitable trust. And it is alleged in the Information that several millions of dollars have been received by this church as gifts; and that is admitted. For example, when the deed of 1892 was executed, creating four trustees to build the first church, a certain piece of land was given to them as the gift in the making of that trust, charged with the obligations of the trust. That church was built on a small piece, a small triangular piece of land. And then came the time when the enlarged church, covering all of the balance of that triangular piece of land bounded by those three streets, was built. Those gifts were not received by those four trustees. The enlarged church was not built by those four trustees. Those gifts were received by The Mother Church from the members of The Mother Church, and the Church was erected by the directors of the Church under their authority as directors, and not charged with the trust of 1892, the deed of 1892.

Of course the income from the Publishing Society, which has been received semi-annually, is not charged with the trust of 1892. It was received by the church and administered by the officials of that church. How? Under the Manual, which is the constitution under which the dominant public charity, to wit, the Christian Science Church, is administering all of the funds which are received by the church. It cannot be contended that much of the money that is being received and expended is handled by the Trustees under the Deed of 1892, because they had no powers to perform the necessary duties to carry out the particular objects of the dominant charitable trust. That trust is conducting religious services in a building that was not built upon the land which was included in the trust of 1892. It has been erroneously stated here that after that, with a single exception, all of the deeds ran to those four trustees. There are five of the deeds of land, so far as that is material, which run to the five trustees of the church.

The particular objects of the church charity in its administration include religious services, lesson sermons, Reading Rooms, Sunday Schools and

Lectureships. I call the attention of the court to the fact that those objects are not all included in the Deed of 1892, and that money received under the Deed of 1892 could not be expended for those purposes.

In other words, the Deed of 1892, like the Deed of 1898, created subsidiary charitable trusts, agencies, in the great work of the church, which has received by far the chief amount of the gifts that have come to extend the Christian Science religion. When that church was built, under the admonitions of the Deed of 1892—the original church—and when the larger church was built by the five trustees, the services of the church were thereafter conducted, not on the land included in the Deed of 1892, but upon other land, in another building, by contributions made to the Christian Science church. The obligations of the trustees as such under the Deed of 1892 obviously were restricted, because their duties were assumed under the Manual by the dominant charity, the Christian Science church, which, through its officials, under the Manual, expended those charitable funds.

Mr. THOMPSON. Would you object to my correcting one statement of fact? All those Deeds were made to the four trustees, and I thought probably you knew that. They were made to the four trustees, under the Deed of 1892, and that entire church building was built upon land owned by those four trustees. I only correct that, among several mistakes of fact of a similar character that you have made.

Mr. ALLEN. Well, before I close tomorrow I will give a list of the five deeds, and of course that is a matter of verification. It is, however, immaterial who held the title to those lands. That must be obvious. They could be given to the church or to trustees appointed who would hold the title. They were in some cases deeded to the four trustees. Mrs. Eddy, having shown her intent to give the lands which had been the property of the corporation which published the literature of the church, subsequently made the release to give that land to the four trustees. But they held that, not under the Deed, but merely as holding the title for the church.

The question has been discussed as to whether or not either the Board of Directors or the church was a corporation. I do not attach great importance to that except in this regard. Mrs. Eddy, in the Deed of 1892, obviously intended—because she said so within the four corners of the Deed—to convey to the four trustees as a corporation, and that is a matter for consideration in determining whether or not those four directors were and are a corporation.

It has been said that they are not similar officers to deacons or wardens. The statute, Chapter 37, Section 1, of

the Revised Laws, in saying "deacons; wardens or similar officers," I submit is not emphasizing those duties of wardens and deacons which are not administrative. Ministerial duties, ceremonial duties, religious duties, performed by deacons and wardens, are not duties, if in fact emphasis is to be put upon duties. But the reason for the statute, as we all know, was because under the common law an unincorporated religious association could not hold property, and the purpose was to give to the administrative body, the administrative officers of the church, the right to hold in succession, and correct a difficulty which arose from the fact that unincorporated religious societies could not hold property. It is an administrative duty that is put upon deacons, wardens or similar officers. In this church is it to be implied that for the purpose of receiving gifts which could not be received by an unincorporated religious society, that statute is to be so construed that the administrative body of the church, the executive body of the church, is not entitled under the statute to receive them? The intent of the donor was to give to those directors, who were the only administrative officers of the church, the authority, the power, to hold, which in other churches is given to deacons, wardens and other similar officers, because they are the officers in the other churches that perform administrative duties.

Obviously, the Legislature did not put a narrow construction upon it when they enacted the statutes. The fact that the trustees in the State of New Hampshire received the gift under Mrs. Eddy's will has no bearing whatever upon the purpose of the Legislature, or the effect of the Legislature, in passing the earlier statute, and when the Legislature passed the later statute, the statute of 1917, Chapter 132, the statute which is cited in my brief, it provided that the church should be deemed to have the right to hold real estate and personal property which had been given for the uses of the church. This court will give to that legislative enactment force if it can be given. And with respect to that statute, whether or not it is held that it was intended to be declaratory of Section 1 or Section 12—I am inclined to think the latter—in any event it gave to the church the authority to receive gifts; and the gifts that had been received by the Directors or by any other body or in any other name, which were intended for the church, were to be deemed to have been given to the church for the uses of the church.

The allegations in my bill with respect to the church as a charity are sufficient, because I have alleged the existence of the church, and the gifts to the church, eo nomine, whether contributions or whether income of the Publishing Society, are within the rule and ample administrative machinery,

whether incorporated or unincorporated, exists for the exercise of the duties to carry out the objects of the trust.

"Tell me what was done under such a deed and I will tell you what that deed means," said Sugden, as Irish Chancellor, in Attorney-General v. Drummond, quoted in the Dublin case, 38 N. H. 459. The full equity jurisdiction of this court gives to this court the capacity to recognize all gifts given to this dominant trust and to provide for their administration.

Now, I have suggested, in the Information that I have filed, that the court can invoke the doctrine of cy pres in order to carry out the dominant purpose of the trust. I believe, for the reasons stated, and by an analysis of those sections within the four corners of the Deed, that the construction of the Deed makes that unnecessary; and that the Deed is subject to construction is obvious from the fact that the plaintiffs in this case undertake to construe it, and the Master undertakes to construe it; and the court has a Deed which may carry out the provisions of Mrs. Eddy as set forth in the Manual, if that construction more truly carries out the purpose of the dominant trust, or it may give the narrower construction which has been claimed for it by the Plaintiffs.

The control intended for the Directors is essential to more effectually promote Christian Science. No church can endure that lacks or has lost the power to formulate its own tenets and doctrine and to enforce them by its discipline. This power is inherent in every church which has survived, whether Catholic or Protestant.

In this case the situation is different from the Congregational churches as we know them in New England, whether Trinitarian or Unitarian. There the power of the church over its literature stands upon a different basis, because each church controls what is said in its church and in its Sunday School.

This case is perhaps analogous—closely analogous—to the Episcopal church as we know it, where the authorized literature of the church is a part of the church service. In the Christian Science church that is the same. The authorized literature, which is in the hands of the Trustees of this Publishing Society, is read in every church of Christian Science in this land or in any other land. If it purports to issue authoritative literature the discipline must extend to that literature, else it ceases to be authoritative. Two bodies, each authorized to determine what shall be authoritative, are impossible.

In that connection, the duty imposed upon the Directors under the Deed of 1892 to protect the purity of the services in the churches, was the same duty, charged with the same obligation, and equally permanent, as any duty imposed in the Deed of

1898; and the construction which gives permanently to the governing body of the church the authority over the authorized literature of the church makes possible the carrying out of both of those trusts, and places the authority to determine what is authorized literature of the church in the ecclesiastical authorities of the church. If it is otherwise, this court has got to assume the duty of determining what is the authorized literature of the church.

There is nothing unworkable in the contention which is made by the Directors, or on behalf of the beneficiaries of this trust, in carrying out the provisions of the Manual. The First Members ceased to function, not in 1908 when they were abolished, but in 1901. And from 1901, during nine years of Mrs. Eddy's life, the business of the church was conducted by the Directors in every particular, and this is business of the church. It is just as much business of the First Members as any other business which they were called upon to perform. Such control by the church is especially necessary in the present case by reason of the complementary provisions of the Manual. The church is to supply the Publishing Society building; the literature is to be sold in the Reading Rooms and is to be bought by the field. There is the injunction of the Manual on the church, that the members of the church shall buy this literature if they can afford it. And yet it is contended that the Manual does not operate to protect that literature, by the authorities of the church, who are responsible for the authoritative utterances of the church through its authorized literature. The Lesson Sermons are an essential part of the church service.

Mrs. Eddy could exercise her supervisory or directory powers by the permanent directions contained in the Manual which she approved as well as by temporary directions contained in letters or messages given by word of mouth. She did so by Article XI of the Eighth Edition of the Manual, which was adopted with her approval only a few weeks after the deed was delivered. This is Article 25 of the 89th edition of the Manual, with changes appropriate to vesting all powers in the directors. Mrs. Eddy has confirmed the deed, but she confirmed the deed with the construction which she put upon it during her lifetime.

In conclusion we say that in considering this question I present it to the court because it involves the fundamental question of the true construction of the deed of 1898 which is now before the court for the first time. I have no interest, I have no client, except the Commonwealth. I represent only and speak only for those public rights which are in issue. But certainly from financial considerations and from every consideration the issue presented and which is made

a material issue in the case of Eustace v. Dickey is an issue which is of vital public concern. Upon the construction placed upon this deed the question is to be determined which in the future will assure to the Church the purity of the authoritative literature of the Church, and that is necessary in order to carry out the promotion and extension of Christian Science, because the adherents of Christian Science cannot be expected to support a trust which is not being conducted under the direction of the Manual to which they have subscribed.

The pole star of the argument on the other side is the parole evidence rule. The contention of the directors, which is the contention of Mr. Dittemore in this record,—because he reserved, by objection and by exception before this court, his claim which he consistently made for ten years, that the directors had the control of the business of the Publishing Society through the removal of the trustees,—the contention of Mr. Krauthoff,—all are in accord with the position which I have taken, and the only persons who today are before the court claiming otherwise than a construction which is in accord with Mrs. Eddy's views, which makes possible allegiance to the trust deed and to the Manual, the only persons who are before the court contending for any other construction, are three trustees who are here claiming that one of their number has been improperly removed. I refrain, because I speak impersonally and as an officer of this court, from suggesting anything as to what I think the Trustees of The Publishing Society should do or what I think the Directors of the Church should do in this great crisis. To my mind the public are not concerned with the question of whether or not this trustee has been removed properly or improperly provided only that the great question of the construction of the trust deed of 1898 is determined in accordance with the interests of the public. And of course, as it seems to me, the public is not concerned—at least I have taken that view—with the question of whether or not Mr. Dittemore was properly or improperly removed. I have refrained from presenting to the court any question except that question of construction, which is vital to the future of the trust, which is the construction placed upon it by Mrs. Eddy, and which has the seal of her life purpose and the construction which is essential to protect the public who are those for whom I appear.

I should like to give the balance of the time to Mr. Choate who will speak further upon the cases in which I am interested.

RUGG, C. J. In what capacity do you speak, Mr. Choate? In what capacity do you introduce Mr. Choate to speak, Mr. Allen?

Mr. ALLEN. I introduce Mr. Choate

to speak on behalf of the Commonwealth under my request and speaking officially for the Commonwealth upon the cases in which the Commonwealth is a party.

RUGG, C. J. Is that to be interpreted as stating to the Court that you in your official capacity as Attorney-General have appointed Mr. Choate as your special assistant for the argument of the cases?

Mr. ALLEN. In the practice of the office it has not been necessary to make a definite appointment of an assistant in order to ask them to appear. But for this purpose I have requested him to make a portion of the argument on behalf of the commonwealth.

RUGG, C. J. Very well. Mr. Choate speaks in behalf of the Commonwealth.

#### ARGUMENT ON BEHALF OF THE COMMONWEALTH

by

CHARLES F. CHOATE, Jr., Esq.

Mr. CHOATE. May it please your Honors: I appreciate the courtesy that your Honors have shown me in allowing me to speak in support of the Attorney-General's bill, and I acknowledge my gratitude to the Attorney-General in granting me a portion of his time.

I know the court is weary at the end of a long day and that the matter has been most fully discussed, and I should little venture to have the temerity to again recite the history of this litigation or to deal extensively with the facts. A few important features, as it seems to me, of the cause as it is presented by the Attorney-General's information only I wish to ask your attention to.

I must confess I do approach the discussion of the question that is here in litigation, I hope with a proper sense of humbleness and inadequacy. Nobody in this room was unaffected by the earnest and beautiful appeal of Mrs. Krauthoff, and when you know that she speaks for a million others of her faith whose hopes are centered here on the issue that is to be decided by this court, you know how a listening world is waiting to see whether the faith in which it has lived is to be shattered—because upon whether the question for which the Attorney-General stands, the proposition upon which his bill is based, may be sustained, depends the whole future of the Christian Science church.

Do you remember, in Macaulay's Essay on the Papacy, his description of the grandeur and permanency of the Roman Catholic Church, and how, when he has described its origin in the very twilight of history, and has said how it outlived Greece and Rome and Venice, he ends his description in language something like this: "And she will still flourish in undiminished vigor when, two thousand years hence, some traveller from New Zealand shall stand upon a shattered arch of London Bridge, amid a vast soli-

tude, to sketch the ruins of St. Paul's." It was the hope of millions that was voiced by Mrs. Krauthoff, to see their church attain an age and a grandeur and a permanency that will not be unlike that of which Macaulay spoke those words.

Now it all depends upon what the court determines to be the public charitable trust which the Attorney-General now asks this court to construe, because I think one may brush aside all the technical objections which are made to the Attorney-General's bill, and base it simply and solely upon his right as representing the Commonwealth to come to this court and ask for a construction of a public charitable trust. All concede that every feature of this structure, of which we are endeavoring to present the different parts to you and fit them together in their proper ultimate form, is a public charitable trust, and that he may represent the beneficiaries.

In all respects except as to who has the right to speak we are in accord with Mr. Krauthoff's contention. The question is, I say, what construction the court will, at the instigation of the Attorney-General, place upon those instruments and those activities and those acts and that history which go to make up the whole of this structure which the Christian Scientist calls his Church.

No one who listened to the argument of Mr. Hughes,—Mr. Justice Hughes, I like to think of him,—but was affected by its power,—no one but what would concede the soundness of his argument with reference to the deed of 1892 if his premises were accepted. It is right there that the information filed by the Attorney-General brings to this court information with reference to facts, at the behest of the beneficiaries of this trust, that this court ought to know and must know before the true construction can be given to the structure composed of these various parts.

I ask your attention to the difference between the contention presented by Mr. Justice Hughes and the contention of the Attorney-General in his information. The plaintiffs, for whom Mr. Justice Hughes speaks, stand upon the proposition that the church as it is today, and the Board of Directors of that church, had its and their origin in the deed of September 1st, 1892; that Mrs. Eddy by that instrument created the Christian Science Board of Directors, and that they were nothing but trustees except as other duties were transferred to them or devolved upon them under the Manual which was subsequently adopted. It then becomes quite easily possible to adopt the language of the Master,—call them trustee-directors, or any other insignificant name which belittles their position, which is the effort of the plaintiffs here to do,—and by contrast with

their simple and limited origin, to charge them with arrogating the assumption of powers which are vast and which do not belong to them. But the truth and the fact is that their origin is quite different from that upon which it was based in the case of *Eustace v. Dickey*.

And because of that fact, and because the facts with reference to their origin were not presented to the Master in that litigation, I am happy to say that the Attorney-General has seen fit to listen to those who are beneficiaries of this great trust, and come here and tell the court what the facts are. A little of the venom of Mr. Thompson's argument, I understand, spattered upon the Attorney-General, because he thought that it was a public duty to have those facts presented to the court. Whatever there may be of reproach in the attitude of these beneficiaries of the Church coming forward here to save that Church when they saw this rising tide of destruction destined to engulf it I am willing to accept. I think that it is their duty, and the Attorney-General's duty, to come here and save it, because it is a public charitable trust, and not leave it to be destroyed by the petty litigation which may be conducted between officers of this Church in a dispute between themselves.

Now, the fact, then, as to the origin of the Christian Science Board of Directors is this, as stated in the Attorney-General's Information: They were elected at a meeting of the Church in August, 1892. The religion of Christian Science was revealed to Mrs. Eddy and founded by her in 1866. The Church had been established and incorporated by her in 1879. It was a reorganized church which met in August, 1892, and elected Christian Science directors. But it was a church in 1892 which did not spring from nothing on that day. It had a past; it had a past of fourteen years—thirteen years; it had customs and usages and traditions and practices. The Attorney-General alleges that the Christian Science Board of Directors were elected in that August meeting when the Church was reorganized according to the usages and practices of that Church.

Now, it seems to me that it is of little importance to consider or debate whether those persons were afterwards elected to that office by voting members or whether they were given power at that time to fill vacancies and to appoint their own successors. They were chosen, and they continued

to act as the Christian Science Board of Directors according to the practices and usages of the Church. So the Attorney-General informs you, and so he is ready to prove. Of that I shall speak a little more later; but the significance of that fact is this—it has an immense importance in the interpretation that you place upon the language of the deed of 1892.

Now, you have noticed, I know, already that the deed of 1892 ran to the four named persons and their successors in office forever; not their successors in trust. In making the Trust Deed of 1898 Mrs. Eddy used the appropriate words; she named trustees, and gave the grant to the trustees and their successors in trust. But she recognized quite clearly and consistently that the Christian Science Board of Directors were officers of her church, and she properly described in her grant a grant to those four men and their successors in office, and, as was pointed out in an earlier argument, four times in the course of that deed she refers to them and their successors in office. Now, it is possible, I suppose, to argue, though not plausibly or convincingly, that that language, "successors in office," referred to the trust. But it did not: it could not have. It referred to the office to which they had been elected within a few days before that time, and which they held; and that version of it is confirmed by her reference to them as a body corporate. They did possess, they acquired, those attributes which the statute gives them, at least to the extent of being a body corporate for the purpose of holding and taking title to real estate. Possibly they had—very likely they had—other powers beyond those, which were given to them from other sources, but, for the purposes of this deed, they were the Christian Science Board of Directors, the officers elected as directors of that Church, who are named as such, and who are to be trustees, with their successors in office.

Now, I know also that your Honors have observed the provisions that she made for succession. She did not reserve any right to appoint successors. She provided that they themselves should fill vacancies in their number. The whole trend of the instrument is consistent with that theory, and it is not soundly consistent with any other, namely, that she recognized their election to the office, as the Attorney-General informs the court, according to the uses and customs and

practices of the Church. She gave the grant to them in her official capacity. She intended them to be succeeded by those who succeeded them as directors of the Church, and by none other.

Now, then, it is obvious that that places a vastly different complexion on the subsequent history of that board and its subsequent powers from what the Master assumed them to be. The Master has assumed that these men were nothing but trustees; that the addition of title and the naming of them as a body corporate was nothing, meant nothing, accomplished nothing. I do not claim that it did accomplish anything more than to make plain who they were and what position they held and how she meant to have them regarded. But it does follow—these consequences did follow—that if those grantees were the officers of the Church, and also had the capacity under the statute to be a body corporate, that is, to possess the corporate power to hold real estate for the Church, they could enlarge their number without transgressing any provision of the Trust Deed or violating any principle of law. If that grant was made to the officers of the Church, the Christian Science Board of Directors, it was made to the officers whether their number be three or be fifty. As the Church saw fit to regulate its internal affairs, and limit or extend the number of its officers, the trust followed, vesting in those officers, and in that body corporate so far as it was entitled to enjoy the privileges which the statute extended to them. That has an immense bearing upon the situation that arises under the deed of 1898 and the effect of the action of these trustees. It also has a very important bearing upon the interpretation that this court will give to the 10th clause, which gives to somebody—gives to somebody—the power to control these trustees of the Publishing Society. It has been argued here that they were not under anybody's supervision with reference to the discharge of their responsibilities. Well, they need not be. It is not necessary to find in that deed a provision that they were under anybody's superintendence or supervision. The one provision in that deed that they could be removed by somebody is all that is needed.

RUGG, C. J. You may suspend your argument here, if you please.

[Adjourned to 9:30 o'clock a. m., Wednesday, December 1, 1920.]

Wednesday, Dec. 1, 1920

BOSTON, Massachusetts—Final arguments before the Full Bench of the Supreme Judicial Court in the case of Eustace et al. vs. Dickey et al. were completed Dec. 1, 1920, and the hearing closed. The stenographic report of the arguments follows:

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT FOR THE COMMONWEALTH

November Sitting, 1920.

Rugg, C. J.; Braley, Crosby, Carroll and Jenney, JJ.  
No. 1395.

Herbert W. Eustace et al., Trs. vs. Adam H. Dickey et al., Trs.  
No. 1396.

Daisy L. Krauthoff et al., vs. Attorney-General et al.  
No. 1400.

Attorney-General vs. Herbert W. Eustace et al.  
No. 1402.

Herbert W. Eustace et al., vs. Adam H. Dickey et al.  
No. 1415.

Herbert W. Eustace et al., vs. Adam H. Dickey et al.  
No. 1423.

Herbert W. Eustace et al., vs. Adam H. Dickey et al.  
Appearances:

Hon. Charles E. Hughes, Sherman L. Whipple, Esq., Lothrop Withington, Esq., and Silas H. Strawn, Esq., for Herbert W. Eustace et als.

Messrs. Bates, Nay, Abbott & Dane, and Clifford P. Smith, Esq., for Adam H. Dickey et als.

Hon. J. Weston Allen, Attorney-General and Edwin H. Abbott, Jr., Esq., Assistant Attorney-General, for Attorney-General.

Messrs. Thompson & Spring (William G. Thompson, Esq.), and Messrs. Streeter, Demond, Woodworth & Sulloway, for John V. Dittemore.

Edwin A. Krauthoff, Esq., for Daisy L. Krauthoff et al.

Messrs. Dawson, Merrill & Dawson (Miles M. Dawson, Esq.), for Emilie B. Hulin.

THIRD DAY.

Supreme Judicial Court, Boston, Mass.,  
December 1, 1920, 9.30 A. M.

Mr. KRAUTHOFF. If your Honors please, there is a correction that I desire to make in the verbatim report of yesterday's proceedings published in the Christian Science Monitor. The correction should be made in justice to Governor Bates. Governor Bates referred to Mrs. Eddy—

RUGG, C. J. Mr. Krauthoff, I think that that is a matter over which the court would not undertake to exercise any jurisdiction at this moment. It is a publication which the court has not authorized, and does not control, and I dare say that it is a matter that you can arrange outside. However that may be, I think that it is a matter over which this court would not be likely to exercise jurisdiction.

Mr. KRAUTHOFF. At first blush, that would seem to be so, but if your Honors were advised of something that I am about to say, you would probably see it differently. The Monitor is exceedingly particular in these proceedings not to publish anything that does not occur in open court, and unless I made the correction in open court the Monitor would not feel justified in publishing it, and the statement would go uncorrected, and it would be a very serious injustice to Governor Bates. It seems to me that it should be corrected, and it will take but a minute. The statement was this—

RUGG, C. J. Is it a correction in your argument?

Mr. KRAUTHOFF. No, it is not.

RUGG, C. J. It may have been a lapsus linguæ on your part. If it was, of course you have a right to correct it.

Mr. KRAUTHOFF. It is a misstatement of what I said. May I state it, if your Honors please? Governor Bates said that Mrs. Eddy was the Leader of Christian Science. In an effort to state it in the present tense, I said that Mrs. Eddy is the Leader of Christian Science, and that one would not say, as Governor Bates did, that she was the Leader of Christian Science. The stenographic report records me as saying that Governor Bates said that Mrs. Eddy was not the Leader of Christian Science. Governor Bates did not say that, of course. Governor Bates said that she was the Leader of Christian Science, and, in justice to him, I wanted to record that correction at this time, in order that in this manner, which is the only manner in which I could do it, it would go into the report of today's proceedings. I appreciate your Honors' courtesy.

Mr. WITHINGTON. If your Honors please, may I inquire with regard to the time of filing reply briefs to the briefs of the Attorney-General on the motion as to the jurisdiction of the court in Eustace v. Dickey? Does the court have any intention of setting a time within which reply briefs shall be filed?

RUGG, C. J. The Court has made

no order respecting that. What have you to say, Mr. Attorney-General?

Mr. ALLEN. I did not understand that reply briefs to my briefs were to be filed. If briefs were filed during the argument, or even within such time as the court should fix, I, of course, would not wish to prevent any such information by way of briefs being brought to the attention of the court; but I do not think that those briefs should be reply briefs. I have put my argument in brief, in printed brief, in the hands of the parties, or their counsel, so that they have it—

RUGG, C. J. When did you do that, Mr. Attorney-General?

Mr. ALLEN. I did that before the argument yesterday; and the briefs are filed with the Court.

Mr. THOMPSON. If your Honors please, we certainly understood, on our side, that we were to have permission to file a reply brief. My question was going to be this morning whether, in view of the fact that the Attorney-General had in truth argued the case of Eustace v. Dickey yesterday on the record as he found it, there was any occasion for any further controversy on the subject. If there is, I certainly would like permission, which I understood we had already received, to file a reply brief. I understood it in that way.

Mr. ALLEN. May it please the Court: I do not wish to have the statement unchallenged that I argued the case of Eustace v. Dickey yesterday. I argued only those issues which are raised in the Information which I brought, and of course included in that Information is the issue of the construction of the charitable trust.

RUGG, C. J. The original statement that was made to counsel respecting this motion of the Attorney-General, filed in Eustace v. Dickey, was that the Attorney-General may not argue orally his motion in No. 1395, Eustace v. Dickey, but may submit briefs. Other parties to that case may file briefs in opposition to that motion of the Attorney-General. It will be observed that nothing is said in that order or statement respecting reply briefs. The Court understood that counsel would understand from that statement that the Attorney-General was to support his motion, which was filed two weeks ago, or such a matter, by brief, instead of by oral argument and brief, and that counsel in that case who opposed his motion also might file briefs, but that they would be filed in accordance with the usual rule respecting briefs. Apparently that was not understood by counsel.



Mr. WITHINGTON. If your Honors please, the cause for the confusion, I think, was in what was said before your Honor at the meeting of all of the counsel when the revised schedule of times was made.

RUGG, C. J. Yes.

Mr. WITHINGTON. At that time, as I remember it, Mr. Abbot suggested that he needed additional time in which to argue this question of jurisdiction, and at that time your Honor said that in your order you had pointed out that that was a matter that was not to be argued orally, but that briefs might be submitted, and then Mr. Dawson brought up the question as to whether he might file a supporting brief, and your Honor said, as I understood it, and as Mr. Thompson evidently understood it, that the parties in *Eustace v. Dickey* who opposed that motion were to be permitted to file reply briefs. It was on that assumption that I had not filed any brief, nor has Mr. Thompson, as we assumed that until we knew the grounds on which the Attorney-General based his motion it would be entirely useless to attempt to file briefs which would cover the entire range of *Eustace v. Dickey* on that point.

RUGG, C. J. Within what time can that be done?

Mr. WITHINGTON. I can complete my brief in that subject today, and just as soon as the printer can get it in shape I will file it with the Court. That is something which, of course, I cannot control, but the matter of finishing the brief I will accomplish today, and get it to the printer at once.

RUGG, C. J. Is there anybody else who did not understand the matter, as your statement indicates, and who would like to file a brief?

Mr. THOMPSON. I should like until Saturday. I have not even read this document, which was handed to me yesterday, I have been so busy on other aspects of the case. I did, however, understand that the Attorney-General had already discussed all the issues of law in which he thinks the public is interested, presented in the record in *Eustace v. Dickey*. That was my impression.

RUGG, C. J. Perhaps in your oral argument and your brief you have presented all that you care to present.

Mr. THOMPSON. I have not had a chance to read the Attorney-General's brief yet to see whether over and above what he has argued here there is any technical question of jurisdiction, such as he seems to speak of now. If there is any such question discussed in his brief, that has not been discussed in the arguments already presented, I should like to have the opportunity until Saturday to investigate and file a brief. I think that the chances are even that there will be no occasion for any further brief, but I do not want to foreclose myself without knowing the facts.

RUGG, C. J. Very well. Counsel in

*Eustace v. Dickey* opposed to the position indicated by the motion of the Attorney-General, filed in that case, may have until Monday next within which to file briefs.

Mr. Choate, you may proceed with your argument, if you please.

Mr. CHOATE. If your Honor please, may I ask how much time I have remaining?

RUGG, C. J. You have three-quarters of an hour.

Argument on Behalf of the Commonwealth by

Charles F. Choate, Jr., Esq., resumed.

May it please your Honors: I seek to press home upon your attention the facts alleged in the opening paragraphs of the Attorney-General's bill, because in those respects his case is to be definitely differentiated from the case of *Eustace v. Dickey*. Those facts I ask you particularly to bear in mind are that he shows—

“that The Mother Church is a reorganization of the original First Church of Christ, Scientist, which was founded in 1879 as an incorporated religious body and of which Mrs. Eddy was pastor; prior to August, 1892, Mrs. Eddy took steps to reorganize the church as a voluntary association; that at a meeting held for that purpose in August, 1892, four of her students, Ira O. Knapp, William B. Johnson, Joseph S. Eastaman and Stephen A. Chase, were duly chosen as its directors conformably with the usages of the church; that the reorganization was completed on September 23, 1892.”

It is obvious that the deed of September 1, 1892, was a deed in pursuance of the general and dominant purpose which pervaded Mrs. Eddy's entire life, for the extension, promotion and furtherance of the religion of Christian Science. It was a deed to provide her followers, those who believed in her teachings, with a church, and to establish that church upon a firm and perpetual basis.

Now, as we approach the deed of 1898, I ask your Honors to bear in mind this important feature of the Attorney-General's bill: This deed of 1898 has been discussed before you as if it were a separate, unrelated instrument, and was to be viewed and decided as if it stood solely by itself, as if the establishment of the Christian Science Publishing Society was the establishment for the first time of a trust and an institution to publish Christian Science literature. If the deed bore that true interpretation, much that has been said upon the other side would be almost unanswerable; but the Attorney-General brings it to the attention of this Court that an agency for the publication of Christian Science literature has been one of the instrumentalities used by Mrs. Eddy in the promotion of Christian Science since 1883.

The bill, in paragraph 8, on page 4, presents to you these facts:

“Subsequent to the founding of the original church in 1879, Mrs. Eddy, in pursuance of her purpose as expressed in her works to promote and extend the influence of the church and the doctrines of Christian Science, established in 1883 a publishing business as one of the activities of the church. As pastor of the original church and later as pastor emeritus of The Mother Church she supervised the activities of the church, including the publishing of its literature. The publishing business was at first conducted by Mrs. Eddy herself, and later, in 1889, under her supervision by a committee of the National Christian Science Association, which committee was known as the Christian Science Publishing Society. In 1887, the Christian Science Publishing Society was incorporated as a religious society under the laws of Massachusetts, with eight incorporators, all of whom were First Members of The Mother Church and three of whom were members of the Christian Science Board of Directors. The function of the Publishing Society was to publish as the organ of The Mother Church such instructional and informative matter as was determined by The Mother Church and Mrs. Eddy, its pastor emeritus, to be authoritative Christian Science doctrine, and to publish the lesson sermons which under the provisions of the Manual were and are to be read in all the churches. At that time two periodicals, the Christian Science Journal and the Christian Science Quarterly, were issued by the Publishing Society.”

You see the establishment of that instrumentality by the deed of 1898 was but a continuation in a slightly different form of activities which had been in existence for the same dominant purpose since the year 1883.

I think, and I submit, that she vested that power in what she regarded—I won't say, if Mr. Justice Hughes objects to it—as the constituted authorities of the church; I will say what I think more nearly represents it—the then governing bodies of the Church, the bodies who were then invested with the authority and burdened with the responsibilities of running the affairs of the church, and who were recognized as having those duties and those responsibilities as church officers; not as men, not as officers created by the Deed alone, because there were none, but as officers that existed independent of the Deed, in an organization which had the power, perfectly within the law, to change the form of its internal government.

Am I not justified in saying that the church, as a voluntary association, had entire power to change the form of its own government, to have more than forty voting members or less, to eliminate them altogether, to have Christian Science directors, or a body by any other name or different number, or with perhaps different duties, pro-

vided that those bodies, or some body, representing their powers, merged or consolidated, or in some way, was the body that was the governing body, and possessed those duties and those responsibilities in the First Church of Christ, Scientist? If the church had that power internally to regulate its affairs—and so wise a person as the donor of this trust must have anticipated that in the centuries that she thought and believed existed for this religion that she had founded those changes must come, that the wisdom of later days would lead to modifications in the particular form of government which had then been set up, and that there might be different governing bodies with different names—then what she meant to do was to vest that power to remove, not in two specific boards described by name and number, and in no others, but in the boards that from time to time in the life of that church through the centuries represented the governing power and authority and responsibility of that church.

If it is clear, and I submit it is, that the church had the power to make those changes in itself and in its governing body, it seems to me that it is a most narrow interpretation to endeavor to argue that unless those two bodies continued to exist for all time, then the church has lost the power to exercise any control, or the most vital control, over one of the most vital instruments for its well being and its success and its extension, because these activities are interrelated, they are all interwoven. How is the church to live without the income from the Publishing Society? How is the Publishing Society to live without the support of the church, through the Manual, which requires, as one of the duties of its members, the support of every member annually to the Publishing Society?

The public at large are not the supporters of the Publishing Society. Those who are not Christian Scientists probably to a very limited degree buy the church literature. All Christian Scientists who follow the Manual buy its literature. There is the source of the income of the Publishing Society, the reason for its success, the reason why it has a large income. That income its duty is to turn, through its channel, into the church, for the extension and promotion of Christian Science.

Mr. Justice Hughes pointed out, and dwelt with particular emphasis, on the fact that when Mrs. Eddy made the Deed of 1898 she did not make any of the Directors trustees. He thought that that was an important feature. It is, and it may be, but not for the reason that he suggested. Not because she did not want to have Directors of the Christian Science Church managing the publications of the church, because there were already

three in the Board of the corporation which turned the property back to her in 1897. But there are two fundamental reasons which may be suggested, which appeal to me and I submit should appeal to your Honors far more than that suggested by Mr. Justice Hughes.

In the first place, there was a certain and obvious inconsistency in a church, dedicated to the promotion of Christian Science, conducting by its incorporated officers a business for profit. It was good judgment undoubtedly, and wisdom, to separate the Christian Science Directors, who were the ecclesiastical heads of that movement, from the business end, which was publishing the literature for a profit; a profit, to be sure, to be used in the interest of the church, but whose activities were wholly of a business character.

Again, the statute limiting the right of a church to take or hold property of more than a certain annual volume was there directly in the way. The church had not then had the authoritative decision of *Chase vs. Dickey*, but what that decision might be could well have been anticipated by Mrs. Eddy's advisers.

Those two reasons are the reasons for separating in its legal aspect the Publishing Society from the church, and not because Mrs. Eddy did not want a man who was a Christian Science Director to have anything to do with the publication of the literature.

If the court please, the Attorney-General's information has brought to the attention of the court these facts which I have now been seeking to impress upon your minds. They were not involved, though I say that with qualification—they were not presented to the Master in *Eustace v. Dickey*. They might well have been if that litigation led those parties into the entire field of Christian Science, as we must necessarily be led because of the length to which the Master went in his decision. If the Attorney-General had supposed, or if those whom he represents, the beneficiaries of this church, had supposed, that, involved in *Eustace v. Dickey*, were to be these questions on which the Master has made rulings of law which if sustained level this structure to the ground and leave it without a future home, they would not have waited until that decision was rendered to have asked this court for a right to be heard upon it.

But who could have dreamed that *Eustace v. Dickey*, which started apparently involving only the right of Mr. Rowlands to occupy his office as trustee, would have effects as far-reaching as have been developed here? Who could have dreamed that the Master, appointed to find the facts, and authorized only to make such subsidiary rulings of law as would be necessary in finding those facts, would have dealt with the whole question of the origin and history and legality of the church which Mrs. Eddy founded,

—with the result that, having been persuaded to view the whole proceedings with an unsympathetic eye, and having been imbued with the prejudices which the zeal of litigation has instilled into the minds of those who represent the Trustees, he should reach a result as fatal to this great movement as this?

As I said, I submit that the Attorney-General needs no further justification for his action than the fact—which fact is conceded—that this is a public charitable trust; and when I say "this" I mean the Christian Science movement as evidenced by the church and all its subsidiary activities, and the funds which have been given to carry on that trust; and that he is justified to come before this court, in view of the cross currents of litigation, which, each presenting but one small aspect of the picture, may leave your Honors in a position where, unadvised as to the effect of a decision this way or that, the whole structure may be destroyed. And with him, and supporting him, is this whole body of Christian Scientists, who see everything that they have hoped for and believed in imperiled by this attack in an entirely collateral issue, involved in the removal of a single trustee—the question of whether they have got any church, of whether there is any trust and what that trust is, or what its future is to be.

Now, in summing up these different points which I have urged upon your Honors, I submit this. This case of the Attorney-General's has brought together all these different threads and all these different trusts, and has presented them in a simple, united whole. Does anyone doubt but what that is the real whole of Mrs. Eddy's purpose? Does anyone doubt that it was her purpose, and the one central purpose of her life, to extend and promote that religion which she believed had been revealed to her and for the promotion of which she believed she had been inspired?

In Exhibit 464, at page 49 of the volume of exhibits, at the end of the reservation, which was called to your attention by Mr. Justice Hughes yesterday, and which is the document that Mrs. Eddy wrote, entitled, "A Gift to The Mother Church, and a Grant of Trusteeship," there follows, after the words that were read to the Court by Mr. Justice Hughes yesterday, this language:

"This property is only to be held in trust by the above named persons for the purpose of carrying on the business which has been conducted by the Christian Science Publishing Society at Boston, Massachusetts."

The deed of 1898 carries substantially the same meaning, and unquestionably the same purpose.

Now may I ask leave to impress this upon your Honors' minds? Mrs. Eddy had revealed to her in 1866 the doctrine which she believed in and

has taught. She established her church in 1879. That church existed with forms and practices and usages and followers and Leader until 1892, when it was reorganized. As one of the activities of that church, this same Christian Science Publishing Association, not in name but in fact and in substance, came into being in 1883, and was under the control and direction of the same Leader to whom the religion was revealed, and who was the Leader and Founder of the religion from 1883 until 1887. It took various forms. The activities were in part conducted by the National Christian Science Publishing Association, later by an incorporated body, which lasted only for a year. Then what followed? That it was obviously and entirely under the control of Mrs. Eddy is plainly indicated by what happened in 1897, that the Publishing Association, then a corporation, conveyed to her everything that it had, and it had real estate as well as personal property, copyrights, money, a going business of publishing the literature of the Christian Science Publishing Society. She gave the real estate outright to the Church; she gave the personal property and the business as a going business to these trustees. But for what purpose? As she said, "only to be held in trust by the above named persons for the purpose of carrying on the business which has been conducted by the Christian Science Publishing Society."

And I ask you not to lose sight of the feature of continuity and gradual growth and development in this entire dominant trust, which is the central keystone of the structure,—the promotion and extension of the doctrines and beliefs of Christian Science, as to which the publication of the literature was but one of the activities. She gave to the church, which meant to those who believed in what she taught, the church edifice, where they might worship; she gave to another agency or instrumentality the business which she had conceived, inaugurated, developed, carried on,—the business of publishing the literature, which would promote and advance the doctrines of Christian Science; but only for the purpose of carrying on the business which she had carried on before, under, first, her own name, under her own guidance; then through a committee called the National Christian Science Publishing Committee; then through a corporation; and now through a trust.

Now, it presents a very different aspect when you view the deed of 1898 in that relation from what it does when you view it as a single isolated instrument, which apparently, as was argued by the other side, created for the first time a new trust, a new activity, a new and unrelated and single factor which was to be judged solely by the words that appeared within the four corners of that instrument.

The thing had been an instrumentality of the church, it had been to further the dominant purpose in her mind, one factor, one important but by no means dominating feature, in the whole plan which she had.

Now, is it to be wondered that this structure was a gradual growth? Is it to be wondered that there are at times points where progress seems to falter or to turn aside from the main, direct path, where there arose inconsistencies in the plan, apparent inconsistencies which had to be reconciled and worked out? It was the realization of a great idea, where new thoughts came, new embodiments of thought, new activities, all of which had to be gradually and wisely coordinated; and this was an effort at coordination: it was not the setting up of a single independent trust.

I said yesterday, and I urge again, that when you look at the deed of 1898, it is not necessary to look at the different paragraphs and endeavor with a microscope to find out whether in this or in that these trustees under the deed were subject to somebody else's supervision or superintendence. You have the history of this publishing association; you know it is but a subordinate factor in the whole great movement; and you have nothing, and you need nothing, in that deed to place it under the control of the dominant power in that movement beyond the power to remove.

I remember well in the debates in the Constitutional Convention of two years ago the discussion on the tenure of office of the judges of our courts, and your Honors will remember well how from time immemorial the unanswerable argument has been urged, and has convinced every hearer almost, that to obtain independence of a judge, his term of office must be beyond the power of anybody's interference. If it was to be limited by years, if it was to be fixed by election, all possibility of his feeling in his very soul free from every influence was gone. Would a judge who was appointed during the pleasure of the Governor, of any Governor that might be elected by the people, with the changes in administration, be free to administer justice? Would he be anything more than a judge appointed during pleasure? I do not mean to say that that exactly describes the condition of these trustees. They were something more than trustees appointed during pleasure, but they were trustees who were subject to be removed when it was expedient to remove them. It is said that "expedient" means with reference to the trust. Yes, but what trust? Not merely the trust that is described in that little deed of 1898. No; expediency is to be viewed and determined with reference to the whole of this Christian Science movement. The trust is, the funds are given for the promotion of Christian Science.

It is expediency with reference to that whole trust, I submit, which is to determine whether these trustees shall remain or be removed.

Now, I say that it was the evident purpose of the donor that these trustees were to be subject to that control, and there need be no other, that is so tremendous in its power. It does not mean that a man may not exercise his independence when he is there, but it does mean that it is unwise or inexpedient that his independent thought shall have full rein in view of the best interests of the main and dominant trust; and then he must accept it, and he can be removed.

Who is to have that power to remove? It is said that it is vested in two boards, and that because of the disappearance or extinction of one of those boards the power is lost. The dominant purpose in Mrs. Eddy's mind, surely, in making that deed was that the power should exist as the most important element of control that was left in the regulation of this instrumentality of the main trust.

It was a thing of gradual development and growth, as any human undertaking, however guided, must be; no more subject to inconsistencies, to slight apparent inconsistencies, which may be reconciled when the main purpose is taken as a guide, no more subject to variation, no more subject to departure from the main, central, direct course, than any other human enterprise, which is the culmination of now some sixty years of growth. It was a gradual but a continuous and steady growth; beginning with the year 1892, the date of the first Deed, with the background of a church, of a Publishing Society, operated together under a single head; then meeting conditions which required the establishment of some more permanent form, the gift of the land and the money for the church for the promotion of Christian Science, the carrying on of the Publishing Society alongside that gift of the church edifice, with the same activities to promote the religion of Christian Science, still under Mrs. Eddy's personal direction; or, as its activities became greater, under the direction of a committee that she directed, or under the direction of a corporation, in which there were three members of the Christian Science Board of Directors; and then the changing over of that particular form of activity into the more permanent form evidenced by this Deed of 1898.

It is all one. It is all for the purpose of promoting the religion of Christian Science, and all these are but connected and coordinated activities, all intended to work to a common purpose.

Is it necessary for the court to dissect this structure into all its separate parts, and carry off this Deed of 1898, and, excluding everything else from its mind, to place that under a micro-

scope and say, "If I had nothing but this Deed of 1898, then I must come to the conclusion that there remained no control over these trustees after the First Members had passed over their duties to the Directors, and the Directors had succeeded to those duties?"

If it must be so, it must be so. But it is in this court's hands whether this church shall live or die. You have heard that said to you, in substance, and in many forms and words, by almost every person who has addressed you on behalf of the interest which these beneficiaries in this room are here believing in. You may think that we are suffering from an obsession, that no such serious consequences will follow. You may say Mr. Justice Hughes is right, it was a part of Mrs. Eddy's plan that there should be two Boards with equal powers, independent of each other, whose only point of contact should be friendly harmony, and that that was her plan; she meant them to be each independent in their respective spheres, and we will let them go on in that way because we believe it to be her purpose.

Well, that is the vital thing when you come to deal with the ultimate fact. Must you so interpret the Deed as to find that that was her purpose? We have said that it was fatal, because this difference illustrates what human frailty is going to bring into this church if the construction placed upon that Deed by these Trustees prevails, now and in every generation that this church lasts. And we say that it cannot last, that a church divided against itself can no more stand than a nation divided against itself. There must be some authority in this church which can speak for the church. That authority during Mrs. Eddy's life on earth was Mrs. Eddy. That authority she intended to be vested in The Christian Science Board of Directors when she passed on.

Now, that that was her purpose, and her consistent purpose, and the way in which the affairs of the church were managed until the Deed of 1898 was drawn, is too obvious to need discussion; that during her life, and since the Deed of 1898, it has been the interpretation placed upon the general effect of all those documents, by Directors, by Trustees, by the entire body of the beneficiaries, who number millions, until this fatal difference arose two years ago. The disappearance of the First Members, the succession of the Christian Science Directors to their authorities and duties, has been acquiesced in by the church. It was believed in and acquiesced in by Mrs. Eddy. Nobody has questioned the soundness of it as a decision of wise policy in conducting the affairs of the church.

We cannot expect in this movement to find in every respect, from the beginning of this church movement to its end, or from the beginning of this church movement to today, every one

of these movements carefully plotted out in strictly proper language, because it has been a structure of slow and gradual growth, one stone placed upon another, until the entire structure is developed, and visible now to the human eye, of these different stones which have gone in to make it, but all with the central purpose toward which its spire points.

I say if you are to interpret, as the Attorney-General asks you to, this trust as Mrs. Eddy intended it, the object of this church can be accomplished, and the great purpose of its Founder brought to its fulfillment.

I thank your Honors for the attention you have given me.

Mr. THOMPSON. If your Honors please, one very serious misstatement of fact, which I think ought to be corrected, has been made. May I correct it? It is a statement made by the Attorney-General's distinguished assistant. I think it is a fact that ought to be corrected unless there is some objection.

RUGG, C. J. You may.

Mr. THOMPSON. The Attorney-General's assistant has stated that the facts which he has mentioned here, especially the facts relating to the August directors, were not before the Master.

RUGG, C. J. The fact with reference to what?

Mr. THOMPSON. Relating to the so-called August directors, the directors who were supposed to have existed before the Deed of September 1, 1892, was executed. It may be material whether that is true or not. I do not think it is, but it may be. Now, that assertion would not have been made by Mr. Choate if he had considered the papers in the case. The record shows the exact contrary. Your Honors will remember that before Mr. Choate arose the Hulin petition was formally discontinued here. It would not have been safe to make that assertion without the discontinuance of that case. But the Attorney-General in his Information refers to the Hulin petition, makes it a part of his bill, and therefore I call attention to this fact: That in the Hulin petition it is alleged that this fact of the August directors was not brought to the attention of the Master. Affidavits were filed in both directions, pro and con, on that proposition, and it appeared clearly from the affidavits, first, that the fact of the existence of those directors was at the hearings, both the witnesses and the documents to prove it, and were not introduced by Governor Bates. Second, that after the hearings were over, and before the draft report was filed, that precise document, which had been collected by Mrs. Longyear, was called for by Governor Bates, before the draft report was finished, sent to his office, examined, and returned. All these facts relating to these so-called August

directors were rejected, because not material.

Another affidavit showed that the reason they were not material was because those directors were elected in an abortive and discontinued attempt to make the Board a corporation, and that this plan of making it a voluntary association superseded that plan on September 23.

Now, all these facts that he speaks of were examined, rejected, and disposed of; and, what is more, all the proceedings were published daily in the Monitor; and it was known for a year before the Attorney-General ever appeared precisely what was going on, precisely what rulings of law were likely to be made. This whole suggestion here has been called up by the discontinuance of the Hulin petition. That, if examined, when Mr. Choate appeared, or his office, at that time, would disclose to your Honors the absolute hollowness of this talk about August directors and newly discovered evidence.

Mr. CHOATE. May it please your Honors: This is a statement made entirely off the record by Mr. Thompson. I appreciate his capacity of general mentor over all the counsel in this cause and his obligation to point out where they are incorrect. But I have examined the record enough to know that there is nothing in the Master's report which shows these facts outlined by the Attorney-General, and I take serious issue with the statement Mr. Thompson has made, both his facts and the propriety of making it.

Mr. THOMPSON. I leave it to your Honors' decision.

Mr. KRAUTHOFF. If your Honors please: With respect to this issue of the August directors, the Krauthoff bill pleads affirmatively that The Mother Church was organized by the execution of a Deed, executed by Mary Baker Eddy on September 1, 1892. The Attorney-General has demurred to the Krauthoff bill. So in his capacity as a demurrant to the Krauthoff bill he admits that The Mother Church had its organization, its inception, on the first day of September, 1892, by the Deed executed by Mary Baker Eddy, which makes them Mary Baker Eddy's directors, and which makes it Mary Baker Eddy's church.

Now, as representing the public in his own bill, ignoring his demurrer to our bill, he pleads another set of facts, and says these are not Mary Baker Eddy's directors, this is not Mary Baker Eddy's church; but he says it is a church organized by eleven people who met in a room on August 29, 1892.

We deny that we are members of a church other than Mary Baker Eddy's church. We say that the very Manual that he files as an exhibit to his bill contains the statement by Mary Baker Eddy that this church was reorganized on September 23, 1892, and or-

ganized on that date. And we point again to the injustice of the Commonwealth of Massachusetts appearing at the bar of this court and attempting to tell us that we are not members of a church organized by Mary Baker Eddy on September 1, 1892, but that we are members of a church organized by eleven people that we never heard of until an affidavit was filed in the Hulin intervention, resurrecting an unknown diary, to tell us that we are members of some other kind of church, and then at the same time saying that we have no right to be heard on that proposition.

One other matter. Mr. Choate has told you about the beneficiaries of this trust. He mentioned them; he said they are in this room. The beneficiaries of this trust are members of The Mother Church, who have retained Mr. Choate, and whose retainer he now has—members of The Mother Church; and those beneficiaries the Attorney-General of the Commonwealth of Massachusetts has denied the right to be heard in their own right.

Mr. ALLEN. I have five minutes, so that I am not speaking outside of the time that was assigned to the Attorney-General.

In the information of the Attorney-General I have alleged certain facts in regard to that August meeting. There are two letters that are not in the record, there are three people living who were present at that August meeting; and on that information, and on what has been said here, it is quite evident that all the facts apparently have not been presented.

I also wish to say that while I have been silent upon all the personalities in this case because, speaking impersonally, I have believed that my only obligation was to bring to the attention of the court those facts which related to the establishment and continuance and protection of this trust, I think that I need not reply to such statements as that I have been the director-general, or

claim or arrogate to myself certain powers.

In conclusion, I want to give to the court the five deeds which I had stated to the court that I would refer to. The first is Exhibit 767, an indenture executed by Mrs. Eddy to the five directors of the church as constituted under the date of that instrument, December 19, 1906. A deed of Mrs. Longyear to the five directors as they are The Christian Science Board of Directors, dated March 20, 1909, Exhibit 802. A deed of Richardson to the five grantees as they are The Christian Science Board of Directors, dated April 15, 1909, Exhibit 801. A deed of Buffum to the five grantees as they are The Christian Science Board of Directors, dated April 20, 1909, Exhibit 804. A deed of Abbott, Trustee, to the five grantees as they are The Christian Science Board of Directors, dated June 1, 1914, Exhibit 750.

I call the attention of the court to the fact that upon the record every deed since January 15, 1906, was to the five Directors as grantees. I further wish to ask the court to examine the deed of Mrs. Eddy, the indenture of Mrs. Eddy, dated December 19, 1906, Exhibit 767, because that specifically refers to those obligations in the trust deed of 1892, imposed upon the four so-called Trustee Directors, and relieves the Trustees named in that deed from the obligation to carry on some of the duties imposed upon them in that deed, because the new church had been built, and services were not to be carried on further in the building built under the deed of 1892; and therefore she did not wish forfeiture to her and her heirs to result from the failure to perform the obligations under that deed. This instrument was made to the five directors as the directors of the Christian Science Church on December 19, 1906.

RUGG, C. J. You will please hand the list to the clerk, Mr. Attorney-General, or a copy of it, if you prefer.

Mr. BATES. May it please your

Honors: I had assumed from the time that was assigned to counsel that there would be no opportunity for us to reply, although we had to precede all of the counsel, knowing not what they were going to emphasize, and therefore not being able to meet some of their contentions in advance. I do not wish now to impose upon the courtesy of the court. I understand it is its wish that there should be no reply, except so far as is necessary to correct the statement just made by Mr. Thompson. For should this case ever come up again before this court in any form before final decision, Mr. Thompson would be very apt to urge that by reason of my not having contradicted him in regard to the statement that he has just made we understood it as he did.

I want to say, in general, in regard to that matter, that we do not so understand it—neither I, nor any of the men who are engaged with me in the trial of this cause on the side of the Directors. I may say, in general, in regard to his statement of the understandings, that we are content to rely on the record. There have been many misstatements of the record made. We are satisfied that your Honors will examine the record and see as to how far they are substantiated by it. Every point, I think, that has been raised is covered more or less, we trust successfully, in our brief. We depend, therefore, having no opportunity to reply to these counsel, upon the brief that we have filed with your Honors. But as to this latest statement, being made in the way it was, I considered it my duty to call to your Honors' attention the fact that the evidence which the Attorney-General says he now has, after the most diligent search on the part of the counsel engaged in this case, never did come to our attention. We have never seen it to this day. We know nothing in regard to it. And my associates will sustain that statement. As to its importance we do not care to argue.

(Adjourned.)